IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	**§**	**Case No. 11-46399-705**
	§	
LaToya L. Steward,	**§**	**Chapter 7**
	§	
Debtor.	**§**	
	§	
LaToya L. Steward,	**§**	
Movant,	**§**	
v.	**§**	**[Docket No. 29]**
	§	
James C. Robinson and	**§**	
Critique Services L.L.C.,	**§**	
Respondents.	**§**	

AMENDED MEMORANDUM OPINION AND ORDER:

(1) DETERMING THAT SUBJECT MATTER JURISDICTION EXISTS, PERSONAL JURISDICTION EXISTS, RECUSAL IS NOT PROPER, AND NOTICE AND OPPORTUNITY TO BE HEARD HAVE BEEN GIVEN;
(2) IMPOSING CIVIL SANCTIONS UPON JAMES C. ROBINSON, CRITIQUE SERVICES L.L.C., AND ELBERT A. WALTON;
(3) SUSPENDING MR. ROBINSON AND MR. WALTON FROM THE PRIVILEGE TO PRACTICE BEFORE THE U.S. BANKRUPTCY COURT FOR A PERIOD OF ONE YEAR;
(4) REFERRING THIS MEMORANDUM OPINION TO THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL AS A COMPLAINT AGAINST MR. ROBINSON AND MR. WALTON, TO THE U.S. DISTRICT COURT FOR POSSIBLE DISCIPLINARY INVESTIGATION, AND TO THE OFFICE OF THE U.S. TRUSTEE AS A REPORT OF SUSPECTED BANKRUPTCY FRAUD OR ABUSE;
(5) PROVIDING A COPY OF THIS MEMORANDUM OPINION TO THE OFFICE OF THE U.S. ATTORNEY GENERAL;
(6) SUSPENDING THE ELECTRONIC AND REMOTE ACCESS FILING PRIVILEGES OF MR. ROBINSON AND MR. WALTON FOR A PERIOD OF ONE YEAR; AND
(7) GRANTING IN PART THE MOTION TO DISGORGE

"When even a single financially vulnerable client is preyed on by an unethical attorney . . . it is one too many."

In re Ezell, 502 B.R. 798, 818 (Bankr. N.D. Ill. 2013)

TABLE OF CONTENTS

Currently pending in the above-referenced main bankruptcy case (the "Main Case") is the Debtor's letter deemed to be a Motion for Disgorgement of Attorney's Fees and Other Equitable and Punitive Relief Based on Inadequate Representation by Debtor's Counsel (the "Motion to Disgorge") [Docket No. 29],[1] requesting disgorgement of the fees paid prepetition to the Debtor's bankruptcy attorney, James C. Robinson, and his firm, Critique Services L.L.C.[2] (together, the "Respondents"). Now, after months of the Respondents refusing to comply

[1] All docket references are to the Main Case docket, unless otherwise noted.

[2] The Respondents inconsistently include a comma in the name "Critique Services L.L.C." between "Services" and "L.L.C." When the Court refers to "Critique Services L.L.C.", it refers to "Critique Services L.L.C." or "Critique Services, L.L.C."—whichever is the proper legal name of that Respondent.

with their discovery obligations, but choosing instead to employ contempt, abuse of process, and vexatious litigation to avoid discovery, and after lesser sanctions failed to garner compliance, the Court orders, as set forth in this Memorandum Opinion and Order (the "Memorandum Opinion") that (i) the sanctions be imposed against the Respondents and Mr. Walton, and (ii) the Motion to Disgorge be granted in part.

I. THE RESPONDENTS' RELATIONSHIP WITH EACH OTHER

A. The Inconsistent Representations Regarding the Respondents' Relationship

Mr. Robinson has long practiced law before this Court. His practice is based on the low-cost/high-volume business model of representation of individuals. During the litigation of the Motion to Disgorge, he represented that he does business (that is, he practices law) as the other Respondent, Critique Services L.L.C., an artificial legal entity. (*See, e.g.,* Response to the Motion to Disgorge [Docket No. 33] and Response to the Motion to Compel [Docket No. 65].) Accordingly, in prior orders, the Court treated the Respondents essentially as being one-and-the-same.[3] However, Mr. Robinson also represented in other pleadings that he does business as "Critique Services." "Critique Services" (without the "L.L.C.") is a fictitious name, not an artificial legal entity. The problem is: a natural person, an artificial legal entity, and a fictitious name are distinct legal concepts. Because of these inconsistent representations, it is unclear how the Respondents are related. For purposes of this Memorandum Opinion and the accompanying Judgment, the Court will treat the Respondents as being "Mr. Robinson d/b/a Critique Services L.L.C." However, the Court also **ORDERS** that any monetary sanctions imposed upon the Respondents also be imposed upon Mr. Robinson and Critique Services, L.L.C., jointly and severally,

[3] This is not a legal conclusion that a natural person can be a d/b/a of an artificial legal entity. In a footnote in its Order Denying the Amended Motion to Dismiss [Docket No. 82], the Court expressed concern about whether, as a legal matter, an artificial entity can be a d/b/a of a natural person. The Respondents never offered any comment or clarification on the point.

should the Respondents not be the same entity, or should Critique Services L.L.C. otherwise not be Mr. Robinson's d/b/a.

B. Direction for Clarification Regarding the Respondents' Relationship

The conflicting representations about the Respondents' relationship raise serious concerns about the "services" offered to the public by the Respondents. *Is Critique Services L.L.C. a law firm, and if not, what is it, exactly? Is it a bankruptcy petition preparer? If it is not a law firm, how can Mr. Robinson represent that it is the d/b/a through which he practices law? Is Mr. Robinson an employee, owner, or independent contractor of Critique Services L.L.C.? If he is not the owner, who is the owner, and is that person licensed to practice law? If Mr. Robinson is not an owner, from whom does he take direction in terms of the legal services he provides, and is that person a lawyer? Which non-attorney staff members speak to the clients and on whose behalf, and upon whose instruction? What services are rendered before the attorney-client relationship is formed, and by whom? Are the clients informed of the distinction, if any, between Mr. Robinson and Critique Services L.L.C.? When and to whom do clients pay for their services? If Critique Services L.L.C. is not a law firm, do the clients pay for the services of Critique Services L.L.C. separately from fees paid to Mr. Robinson for his legal services? If the clients are provided non-attorney services by Critique Services L.L.C., are they informed that they have a choice of counsel and are not bound to hire Mr. Robinson, simply because they received services from Critique Services L.L.C.?*

These are not questions of morbid curiosity. The answers may bear directly on the veracity of the claim that Critique Services L.L.C. is Mr. Robinson's d/b/a, and on the veracity of Mr. Robinson's certification in his Declaration of Compensation of Attorney for Debtor(s) statement [Docket No. 1] that: "I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm." If Critique Services L.L.C. is not a law firm or Mr. Robinson's d/b/a, but Mr. Robinson agreed to share the Debtor's compensation with it, this certification appears suspect. The Court is obligated to ensure that an attorney is truthful in describing

himself, his relationship with his client, the nature of his compensation, and any fee-sharing arrangement.

Accordingly, the Court hereby **ORDERS** the Respondents to file, no later than fourteen (14) days from entry of this Memorandum Opinion:[4]

(I) a copy of the Articles of Incorporation of "Critique Services L.L.C.";

(II) a copy of all retainer or employment agreements between and among Critique Services L.L.C., Mr. Robinson, and the Debtor; and

(III) an affidavit attesting to:

(A) whether Critique Services L.L.C. is a law firm;

(B) what services Critique Services L.L.C. provides, if any, other than legal services;

(C) each owner, whether holding a majority or minority interest, of Critique Services L.L.C., and each such person's percent of ownership interest, from 2011 to the date of the submission of such affidavit;

(D) the exact nature (owner, employee, independent contractor, or other) of Mr. Robinson's relationship with Critique Services L.L.C.;

(E) whom Mr. Robinson's clients pay for his services;

(F) a description of what fee-sharing relationship Mr. Robinson may have with Critique Services L.L.C. and any other owners, members, or attorneys of Critique Services L.L.C.; and

(G) all attorneys employed by Critique Services L.L.C., in any capacity (whether as an employee, independent contractor or other relationship) from 2011 to the date of the submission of such affidavit.

[4] These documents may be filed under seal. The U.S. Court District for the Eastern District of Missouri (the "U.S. District Court"), the Office of the U.S. Trustee (the "UST"), the Office of the United States Attorney General (the "USAG"), the Missouri Supreme Court's Office of the Chief Disciplinary Counsel ("OCDC"), will be permitted to access the documents without the need for a motion, by filing a notice and stipulating that they will not disclose or share such information with other entities unless upon leave of Court or as required by non-bankruptcy law.

Because of the Respondents' inconsistent representations about their relationship and because the Respondents have gone to such lengths to avoid responding to discovery requests that relate to their business, the Court cannot permit Mr. Robinson to continue practicing before this Court until the nature of their relationship is clarified. The reinstatement of Mr. Robinson's privilege to practice (which is being suspended in Part XIV herein) will be contingent upon, among other things, the making of these disclosures.

II. FACTS AND PROCEDURAL HISTORY

In this Memorandum Opinion and accompanying Judgment, the Court imposes sanctions, pursuant to Federal Rule of Civil Procedure ("Rule") 37(b)(2)(A), whereby the matters embraced in the Motion to Disgorge and the Debtor's July 10, 2013 Affidavit (the "Debtor's Affidavit") [Docket No. 50] are taken as established. The findings of fact herein include those embraced facts.

A. The Debtor's Retention of the Respondents

In 2010, the Debtor retained Mr. Robinson to represent her in filing for bankruptcy relief.[5] (Motion to Disgorge at p. 1, ll. 3-5).[6] At her initial meeting at the office of Critique Services L.L.C., the Debtor met with a staff woman named "Dee," who took from her $195.00 in payment, handed her a packet to complete regarding personal information and her creditors, and instructed her to obtain a copy of her credit report. (Motion to Disgorge at p. 1, ll. 16-18.)

When the Debtor returned for her next visit, she paid to Dee the remainder of the balance owed. (Motion to Disgorge at p. 1, l. 19.) Dee advised the Debtor that she had to list a St. Louis residence in her petition papers, and that if she did not, Mr. Robinson would not represent her because Mr. Robinson does not "go to" St. Charles, the county of the Debtor's residence. (Motion to Disgorge at p. 1, ll.

[5] Missouri Supreme Court's Rule of Professional Conduct of the Rules Governing the Missouri Bar and the Judiciary (each, a "Mo. Prof. R.") 4-1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client."

[6] The Motion to Disgorge, prepared by the pro se Debtor, does not include line numbering. **Attachment A** provides the numbering system the purpose of citation in this Memorandum Opinion.

19-20, 21, 24-25; Aff. at ¶ 6.a.i.) When the Debtor inquired as to the propriety of listing a false address, Dee assured the Debtor that she "would not get in any trouble." (Motion to Disgorge at p. 1, ll. 22-24; Aff. at ¶ 6.a.i-ii.) The Debtor then provided the address of a St. Louis residence at which she did not reside. (Aff. at ¶ 6.a.iii.) When the Debtor later, finally, met Mr. Robinson, she advised him that she did not live in St. Louis. (Aff. at ¶ 6.a.iv.) Nevertheless, the false address, which was solicited by the Respondents, was included in her petition papers, which were prepared and filed by the Respondents.

At a subsequent meeting with a different staff person, the Debtor was advised that she could not file for bankruptcy unless she could list dependents, and was asked if she knew anyone that had children. (Aff. at ¶ 6.b.i-ii.) The Debtor's nephews lived with her, so the Debtor gave her nephews' names, although these nephews were not her dependents. (Aff. at ¶ 5.b.) This false representation about her dependents, which was solicited by the Respondents, was included in the petition papers, which were prepared and filed by the Respondents.

The petition papers contained other false statements, beyond those regarding the Debtor's address and dependents. (Aff. at ¶ 4.) The Debtor did not review the petition papers before signing them, but simply signed at the pages that had been tabbed by Critique Services L.L.C. for signature. As a result, she did not discover the majority of the false statements until she reviewed her papers with her new counsel in mid-2013. (Aff. at ¶ 4.) The Respondents did not advise the Debtor on the law regarding perjury. (Aff. at ¶ 7.)

In addition to soliciting and including false statements in her petition papers, the Respondents were highly unprofessional in other ways, in both their prepetition and postpetition acts. The business was operated so that it was nearly impossible for the Debtor to communicate with her attorney. The Respondents refused to return the Debtor's telephone calls. (Motion to Disgorge at p. 1, ll. 26-27 & p. 2, ll. 9-11.) The secretary refused to take messages. (Motion to Disgorge at p. 1, ll. 39-40.) Voicemail often did not permit a message to be left. (Motion to Disgorge at p. 1, l. 38.) The Respondents failed to properly

maintain the Debtor's file in a professional way, resulting in the loss of documents and the need for the Debtor to re-take a statutorily required course, and incur the associated fee. (Motion to Disgorge at p. 1, l. 40-47.)

The Respondents also abandoned the Debtor in her efforts to rescind her reaffirmation agreement with Ford Motor Credit (the "Reaffirmation Agreement") [Docket No. 12], despite Mr. Robinson having signed the Reaffirmation Agreement at Part C in the "Certification by Debtor's Attorney" section. After the approval of the Reaffirmation Agreement, the Debtor decided that she wanted to rescind it (Motion to Disgorge at p. 2, ll. 6-16), as was her right under § 524(c)(4) of title 11 of the United States Code (the "Bankruptcy Code"[7]), within sixty days of filing such an agreement. The Debtor repeatedly contacted the Respondents' office and left voicemail messages (when the voicemail system would permit it) seeking assistance with the rescission, but her messages went unreturned. (Motion to Disgorge at p. 2, ll. 9-10.) Finally, she went to the office without an appointment, where she was advised by a staff person that she had missed the deadline for rescinding by two days. (Motion to Disgorge at p. 2, ll. 11-13.) When she asked for a copy of her file, she was told that the file would be provided only if she paid a $100.00 office fee plus a $5.00 per page copying fee. (Motion to Disgorge at p. 2, ll. 18-19.)[8] As a result of not rescinding her Reaffirmation

[7] Hereinafter, any reference(s) to "section[s]" or "§[§]" shall refer to the section(s) of the Bankruptcy Code, unless otherwise indicated.

[8] Mo. Prof. R. 4-1.5(a) requires that "[a] lawyer shall not . . . collect an unreasonable fee." Further, Mo. Prof. R. 4.1-16(d) provides that, upon termination by a client, an attorney "shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled. . ." If the Debtor had terminated Mr. Robinson, he was obligated to surrender the file to her—that means, *to surrender it*—to give it up unconditionally and not to hold it hostage to the ransom of exorbitant, cost-prohibitive "administrative" fees. And even if the Debtor had not formally terminated Mr. Robinson at that point, she still was entitled to her client file without first having to pony-up for "administrative" fees. If Mr. Robinson wished to retain a copy of the file, the costs for copying the file were his to bear.

Agreement, the Debtor surrendered the vehicle and remained obligated on the debt. (Motion to Disgorge at p. 2, ll. 21-22.)

B. The Complaint for a Determination of Exception to the Discharge

On December 4, 2012, the Debtor filed, pro se, a complaint (the "Ford Complaint") against Ford Motor Credit, thereby commencing Adversary Proceeding No. 12-4341 ("Adversary Proceeding No. 12-4341") [Adv. Proc. No. 12-4341 Docket No. 1], requesting that her debt to Ford Motor Credit be determined to be excepted from discharge, based on the allegation that the Respondents failed to represent her in her rescission efforts. The Ford Complaint was electronically mailed to Mr. Robinson at his email address of record.[9]

On March 8, 2013, Ford Motor Credit filed a Motion to Dismiss [Adv. Proc. No. 4341 Docket No. 6], arguing that the alleged professional negligence by the Respondents could not, as a matter of law, establish an exception to discharge. At the hearing on the Motion to Dismiss, the Debtor orally motioned for leave to substitute the Respondents as the defendants. From the bench, the Court granted the request, and Ford Motor Credit's counsel prepared a proposed order granting dismissal as to Ford Motor Credit and allowing substitution of parties. That order [Adv. Proc. No. 12-4341 Docket No. 10] was entered on March 28, 2013. However, on April 5, 2013, the Court entered an Amended Order [Adv. Proc. No. 12-4341 Docket No. 13], granting the Motion to Dismiss but declining to order party substitution. Instead, the Court gave the Debtor fourteen days to file "whatever moving papers she believed proper" against the Respondents, offering no guidance as to what papers she might file or what relief she might seek. The Respondents were not electronically mailed the Amended Order (because they were not made parties to the Adversary Proceeding, and thus were not included on Adversary Proceeding No. 12-4341 service list). Mr. Robinson was electronically mailed to his email address of record (i) the notice of the entry of disposition in Adversary Proceeding No. 12-4341, and (ii) the notice

[9] The record of electronic mailing of a document can be viewed through the radial button at the left of the docket number on the electronic docket sheet.

of the closing of Adversary Proceeding No. 12-4341, both of which were entered as docket notations in the Main Case on April 9, 2013.

C. The Motion to Disgorge

On April 5, 2013,[10] the Debtor filed in the Adversary Proceeding 12-4341 a document captioned "amended complaint" [Adv. Proc. 12-4341 Docket No. 12], naming the Respondents as the defendants. Despite its caption, the document did not amend the Ford Complaint. In the document, the Debtor requested an entirely new form of relief, against entirely new parties, based on entirely new claims. Specifically, the Debtor requested "a monetary settlement" against the Respondents for the $495.00 she paid in attorney's fees, plus other damages, based on the Respondents' failure to represent her.

Because pro se filings must be liberally construed, the Court looked to the Debtor's substantive intent, rather than merely to the procedural mechanism employed. The Court determined that the document's clearest request was for disgorgement of attorney's fees. A request for disgorgement of attorney's fees is brought by a motion filed in the main bankruptcy case pursuant to § 329(b). It is not brought by the filing of a complaint, which initiates an adversary proceeding.

Accordingly, the Court directed the Clerk's Office to re-docket the document to the Main Case. In addition to affording the most accurate construction of the document based on the Debtor's substantive intent, the re-docketing also promoted judicial efficiency and economy. Had the Court dismissed the amended complaint without prejudice to it being re-filed as a motion in the Main Case, the Debtor simply would have re-filed the document in the Main Case, and the matter would be before the Court as it is now—as a contested matter in the Main Case.

The Motion to Disgorge, as docketed in the Main Case at Docket No. 29, was electronically mailed to Mr. Robinson at his email address of record. It was

[10] The same-day timing of the entry of the Amended Order and filing of the "amended complaint" was coincidental. When the Court sent its Amended Order for entry, it was unaware that the "amended complaint" had just been received by the Office of the Clerk of Court (the "Clerk's Office").

clear from the record that the Amended Motion to Disgorge had been filed in Adversary Proceeding No. 12-4341 then was re-docketed to the Main Case. The re-docketing was reported in the italicized language at Adversary Proceeding No. 12-4341 Docket No. 12 docket entry and the document history available at the radial button at Docket No. 29 indicates that the original file name of the document was "12-4341." And, the Amended Motion itself bears a prominent handwritten reference to Adversary Proceeding No. 12-4341. Moreover, the Court mentioned the procedural history at the May 15, 2013 hearing.

D. The Response to the Motion to Disgorge

On April 8, 2013, the Court entered a Notice of Hearing [Docket No. 30], setting the Motion to Disgorge for hearing on May 8, 2013. The Notice of Hearing was electronically mailed to Mr. Robinson at his email address of record.

Pursuant to Local Bankruptcy Rule ("L.B.R.") 9013-1(B), the Respondents were required to respond to the Motion to Disgorge within seven days of the May 8 hearing. The Respondents failed to do so. They also failed to request an extension of time to respond. Yet, despite these failures, the Court did not enter an order granting the Motion to Disgorge before the May 8 hearing, as it could have done pursuant to L.B.R. 9013-1(D).

On May 7, 2013—the day before the hearing—the Respondents finally and untimely filed their response to the Motion to Disgorge (the "Response") [Docket No. 33]. The Respondents then failed to even attempt any kind of good faith service of the Response. The certificate of service certified that the Respondents mailed the Response to the Debtor by regular U.S. Mail on the day before the hearing—thereby guaranteeing that the Debtor would not have received the Response before the hearing. The certificate of service also advised that the Respondents would provide the Debtor a copy "in open court." However, providing the late-filed, untimely Response for the first time on the day of the hearing in court was nothing more than a bad faith attempt to sandbag the Debtor at the hearing.

At 9:05 A.M. on May 8, 2013, the Respondents filed a Motion to Withdraw as Counsel [Docket No. 34]. At 9:30 A.M. that day, the Motion to Disgorge was

called for hearing. When the Debtor did not appear, the Respondents made an oral motion to dismiss. That is: after tardily responding to the Motion to Disgorge, then after making no good faith effort to serve their tardy Response, the Respondents demanded dismissal based on the Debtor's first-time tardiness. Their demand was made all the more audacious by the fact that the Court had just declined to order similarly harsh relief against the Respondents, by granting the Motion to Disgorge after the Respondents failed to timely respond. To any degree, the Court does not ordinarily dismiss upon a first-time tardy appearance. The matter was continued a week. The Debtor arrived later during the docket, and was advised of the continuance.

On May 15, 2013, the Court called the Motion to Withdraw and the Motion to Disgorge for hearing. The Debtor appeared pro se and the Respondents appeared through Mr. Walton. Mr. Robinson was present in the courtroom. The Debtor had just received a copy of the Response. The Court granted the Motion to Withdraw then turned to the Motion to Disgorge. The Court asked the Debtor to speak to the nature of her motion. The Court gave her this opportunity, since she had not received the tardily filed and improperly served Response until shortly before the hearing. The Debtor had not had an opportunity to consider or address the Respondents' non-specific allegations that the Motion to Disgorge was "vague, indefinite and uncertain." The Respondents objected to the Debtor being permitted to comment. The Court allowed the Respondents to have a running objection, but the Debtor's comments were not received as evidence or treated as establishing any fact.

It quickly became clear that the parties had not attempted to communicate with each other in advance of the hearing, as required by L.B.R. 2093(B). They had not prepared a joint stipulation of uncontested facts. The Debtor had not had an opportunity to consider the generic defenses and needed time to serve subpoenas for telephone records. Mr. Robinson had only just been allowed to withdraw as the Debtor's counsel. The matter was not ready to be heard.

The Court directed the Debtor to provide to the Respondents written proposed agreed facts, so that they could determine to which facts they could

stipulate. The Court also warned the Debtor that although she was pro se, she had to proceed in a lawyerly fashion. The Court continued the matter to June 26, 2013. The Respondents objected to the continuance and again made a request for dismissal, which was denied. The Respondents had not timely filed their Response, and there had been no opportunity for discovery, briefing, or the taking or presentation of evidence. Dismissal was not proper at that point.

E. The Requests for Discovery and the Motions to Quash

On June 17, 2013, the Debtor's new counsel filed his Notice of Appearance [Docket No. 38], as well as his Disclosure of Compensation of Attorney for Debtor(s) statement [Docket No. 40], in which he represented that he was representing the Debtor on a pro bono basis in all matters before the Court. Also on June 17, 2013, the Debtor, through her new counsel, filed a Motion to Continue the June 26 Hearing [Docket No. 39], requesting that the June 26 setting be used as a status conference instead of an evidentiary hearing on the Motion to Disgorge. That request was granted, although the June 26 status conference was later continued to August 14, 2013.

On June 26, 2013, the Debtor served upon the Respondents interrogatories and requests for production (together, the "Requests for Discovery") [Docket Nos. 46 & 47]. Pursuant to Rules 33(b)(2) and 34(b)(2)(A), and pursuant to the Federal Rules of Bankruptcy Procedure (each, a "Bankruptcy Rule") 7033 and 7034, the Respondents had thirty days to respond by answering and producing, or by declining to do so based upon a specific objection. Instead of responding as required, on July 20, 2013, the Respondents filed a frivolous Motion to Quash the Interrogatories [Docket No. 56] and a frivolous Motion to Quash the Requests for Production (together, the "Motions to Quash") [Docket No. 58], arguing that discovery is not permitted in contested matters. However, it is well-established law that discovery is permitted in contested matters.[11] The Motions to Quash were another example of the Respondents' and Mr. Walton's

[11] Mo. Prof. R. 4-3.1 provides that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is basis in law or fact for doing so that is not frivolous . . . "

bad faith and vexatious litigation. On July 31, 2013, the Court entered an Order Denying the Motions to Quash [Docket No. 60].

F. The Failure to Timely Respond to the Requests for Discovery

Federal discovery deadlines are not suggestions and the failure to abide by them has consequences. The Respondents failed to timely respond to the Requests for Discovery. They failed to request an extension of time to respond. They failed to allege any cause for their failure to timely respond.[12] As such, the Respondents waived whatever objections they may have had to the Requests for Discovery, regardless of the bases of any such objections, and cannot now refuse to respond based on any objection.[13] This is true even if the Requests for Discovery demanded embarrassing, privileged, confidential, trade secret, financial, or damaging information.[14] The Respondents are bound to respond, in full, to each and every request in the Requests for Discovery. No amount of courtroom histrionics, pleadings deluging, raising of waived objections, asserting

[12] If the Respondents could have raised objections but failed to do so by their counsel's strategy or incompetence, then perhaps they can seek a remedy against their counsel in connection with his lawyering. However, their remedy is not with this Court, by way of having their untimely objections entertained now.

[13] *Carfagno v. Jackson Nat'l Life Ins. Co.*, 2001 WL 34059032, at *2 (W.D. Mich. Feb. 13, 2001); *Cleveland Indians Baseball Co. v. U.S.*, 1998 WL 180623, at *4 (N.D. Ohio Jan. 28, 1998)(holding that waiver of untimely objections "applies with equal force to all objections" even to "those based on attorney-client privilege or attorney work product"); *Zaremba v. Federal Ins. Co.* (*In re Continental Cap. Inv. Servs., Inc.)*, 2011 WL 4624678, at *4 (Bankr. N.D. Ohio Sept. 30, 2011).

[14] *Peat, Marwick, Mitchell & Co. v. West*, 748 F.2d 540, 542 (10th Cir. 1984)("Failure to [timely object] is not excused because the document is later shown to be one which would have been privileged if a timely showing had been made."); *Davis v. Romney*, 53 F.R.D. 247, 248 (E.D. Pa. 1971)("Regardless of how outrageous or how embarrassing the questions may be, the defendants have long since lost their opportunity to object to the questions. If they feel that the questions are unfair[,] they have no one to blame but themselves for being required to answer them now").

of baseless legal positions, making of false representations, or shouting at the Court will resurrect their right to object.[15]

G. The August 14 Status Conference

On August 14, 2013, the Court held a status conference, at which the Mr. Walton represented that the Respondents' responses to the Requests for Discovery were complete and would be provided. The next status conference was set for 9:30 A.M. on September 4, 2013.

H. The September 4 Status Conference

On September 3, 2013—three weeks after August 14, 2013—the Respondents finally provided what the Respondents claimed were "responses." These "responses" were provided near the end of business or after business hours on September 3, only hours ahead of the 9:30 A.M. conference the next day. Once again, the Respondents demonstrated bad faith in their litigation.

At the September 4 hearing, the Respondents offered no excuse for failing to respond until the eleventh hour, despite having represented weeks earlier that they were ready to respond. Mr. Walton did represent that "we did email them all to him, all of the documents and the answer to the interrogatories." However, because the documents and interrogatories to which Mr. Walton was referring had been sent the night before, opposing counsel had not had the opportunity to review them. The Court continued the conference to September 11, 2013, to allow opposing counsel an opportunity to review the responses. The Court even offered to accommodate Mr. Walton's trial schedule in other courts, and instructed the parties to advise if they would need a further continuance.

I. The September 11 Status Conference

At the September 11 status conference, it was established that the September 3 "responses" were grossly insufficient. The Respondents' and Mr.

[15] This waiver would not have prevented the Respondents from timely objecting to extraneous or new issues. The Respondents remained free to object to new discovery demands outside the scope of the Requests for Discovery. In addition, the Court indicated that it would consider ordering production in a tiered format, to help ensure that production was not overly broad—despite the fact that the Respondents have waived the right to object based on breadth.

Walton's August 14 representation that the "responses" were complete had been misleading. Their "responses" amounted to a bad faith effort to respond. The "responses" were mostly refusals to respond based on untimely, non-specific objections to scope, vagueness, relevancy, work product or harassment. As the Debtor's counsel summarized: "I asked for a lot of things; got nothing."

During the hearing, Mr. Walton belligerently argued with the Court, insisting that he had not represented at the August 14 status conference that the responses would not include objections. Regardless, however, the Respondents had waived their objections by failing to timely raise them, and thus had no right to rely on any objection in declining to answer or produce.[16]

Mr. Walton used the September 11 status conference to attempt obfuscation, create distraction, and misplace blame:[17]

- When addressing why Mr. Robinson had not produced the tax and financial information, Mr. Walton announced that, "I don't think [the Debtor's counsel is] entitled to [Respondent Robinson's] tax returns."[18] He appeared to be drawing a distinction between the Respondents for purposes of that production. However, Mr. Robinson represented that Critique Services L.L.C is his d/b/a. Therefore, he could not later turn around and claim that he is distinct from Critique Services L.L.C. Moreover, even if such a distinction could have been drawn, the objection

[16] Mo. Prof. R. 4-3.4(d) provides that a lawyer shall not "in pretrial procedure . . . fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party."

[17] Mo. Prof. R. 4-3.5(d) provides that a lawyer shall not "engage in conduct intended to disrupt a tribunal." Comment (4) explains this obligation: "[r]efraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. . . . An advocate can present the cause, protect the record for subsequent review, and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics."

[18] Mr. Walton made similar arguments in support of the untimely objection based on "trade secrets." But again, this objection was waived and, to any degree, merely declaring that trade secrets exist, then baselessly accusing the Debtor's counsel of trying to steal them through discovery, is not evidence of either point.

had not been timely raised and therefore had been waived. And, even if Mr. Robinson is distinct from Critique Services L.L.C., that distinction does not excuse the non-production of the requested documents. Critique Services L.L.C. still must produce the documents through an agent.

- Mr. Walton blamed his clients for the failure to respond, accusing them of failing to give him the discovery—despite the fact that Mr. Walton had represented three weeks earlier that the responses were complete and were ready to be provided.
- Mr. Walton accused the Debtor of perjury. He stated that he had looked at the docket sheets posted downstairs (presumably referring to the criminal docket sheets publicly posted outside the U.S. District Court), and saw people prosecuted for perjury. This was a bad faith argument offered in explanation for his clients' refusal to meet their discovery obligations. Whether the Debtor committed perjury was irrelevant to the issue of whether the Respondents were obligated to respond in full to the Requests for Discovery. Mr. Walton was simply trying to bully the Debtor with the suggestion of a criminal prosecution if she continued to proceed on her Motion to Disgorge.
- Mr. Walton accused the Court of being "interested in dumping on Mr. Robinson," trying to blame the Court for the Respondents' situation, despite the fact that the Respondents' predicament was caused by their decision not to timely participate in the discovery process—a decision that was made while they were represented by Mr. Walton.
- When the Court pointed out to Mr. Walton that his clients had failed to properly and fully respond to the Requests for Discovery, Mr. Walton argued with the Court, being either unwilling or incapable of accepting that the Respondents had not met their legal obligation to respond.
- Mr. Walton was obnoxious and disrespectful in his tone and demeanor. He accused the Court of ignoring his (irrelevant) accusations of perjury and his unpersuasive arguments. He insisted that he was correct about procedural issues when he was not, implying that the Court did not know

the rules of procedure, and claiming (wrongly—twice), "that's what the rules say!" but citing to no rule. This self-attributed expertise on procedure was ironic, given that it had been Mr. Walton who had filed the frivolous Motions to Quash and ignored the deadline for objecting to discovery.

- Mr. Walton insisted that the Debtor's counsel must "send me a pre-motion" before filing a motion to compel and seeking sanctions, because "[t]hat's the rules I looked at." The Court pointed out to Mr. Walton that the Debtor was not seeking sanctions under Rule 11, the rule that prohibits a party from filing a motion for sanctions thereunder without first providing to the other party an opportunity to withdraw or correct the challenged document.

Despite Mr. Walton's bellicose presentation, misrepresentation of the facts, and unsound legal arguments, the Court declined to consider imposing sanctions without a motion. Moreover, the Court advised that it would entertain a motion for a protective order, if the Respondents would file one. The Court continued the status conference to 9:00 A.M. on September 18, 2013.

J. The September 18 Status Conference and the Order Compelling Discovery

On September 16, 2013, the Respondents supplemented their responses. Later on September 16, 2013, the Debtor filed the Motion to Compel Discovery (the "Motion to Compel") [Docket No. 63], detailing the many problems and insufficiencies with the "responses." Attached to the Motion to Compel were numerous exhibits, including a table captioned "Itemization of Time Spent in Preparation for Motion to Compel Discovery" (the "Exhibit 7 Fee Statement"), submitted in support of the Debtor's request for relief of attorney's fees as permitted under Rule 37. The Exhibit 7 Fee Statement set forth that the Debtor's lead counsel and co-counsel spent 8.1 hours in preparation for the Motion to Compel and gave the customary billable rates for those attorneys.

The Motion to Compel was set concurrently with the September 18 status conference.[19] At 8:24 A.M. on September 18, 2013, the Respondents filed a

[19] The Debtor also filed a Motion to Expedite [Docket No. 64] related to the setting of the Motion to Compel Discovery. At the September 18 hearing, the Respondent orally consented to the request for an expedited setting.

Response [Docket No. 65] to the Motion to Compel. Despite the Court's invitation to the Respondents to file a motion for a protective order, the Respondents did not file a motion for a protective order.

At the September 18 status conference and hearing, it was established that the Respondents remained willfully noncompliant with their discovery obligations. Emails submitted by the Respondents and the Debtor showed that the Debtor's counsel repeatedly sought compliance with the discovery requests, and that Mr. Walton either ignored the requests or insufficiently responded. Moreover, Mr. Walton advised in an email to the Debtor's counsel that the Respondents would not produce anything else without an order compelling discovery. This was a bad faith response to a legal obligation to respond to *uncontested discovery requests*, and an effort to vexatiously litigate an otherwise straightforward matter. The Respondents also continued to assert waived objections,[20] and many of their "responses" to interrogatories were so vague or incomplete that they were non-responsive.

For example:

- When asked to describe "each oral communication between [the Debtor] and you or [a person who has worked for you, or with you, or with whom you have been professionally associated]," the Respondents responded that there had been "the usual and customary attorney client interview as to her bankruptcy filing the specific words of which the respondent has no present recollection other than to set forth in general those areas of discussion that are usual and customary in providing advice and counsel to the movant as to the filing of a Chapter 7 bankruptcy case." Aside from being vacuous, non-specific nonsense, this response appears to refer to the personal memory of Mr. Robinson only. It does not offer a representation of Critique Services L.L.C.'s institutional memory. However, Mr. Robinson is responsible for not merely his own personal memory, but

[20] A motion to compel discovery does not present a chance to raise, for the first time, objections to the requests for discovery.

also the memory of Critique Services L.L.C., his purported d/b/a. And, even if Critique Services L.L.C. is not his d/b/a, Critique Services L.L.C. is still required to respond through an authorized agent. The Respondents could not avoid responding based on claims of personal ignorance related to Critique Services L.L.C. Moreover, the "usual and customary" description was deliberately vague. It revealed nothing about the content of the discussion, other than the fact that Mr. Robinson allegedly provided whatever he happens to subjectively believe to be "usual and customary." It provided no specifics, such as the date or the length of the conversation, or any other relevant details.

- When asked to describe each complaint filed against the Respondents for a violation of Rule 4 of the Missouri Supreme Court's Rules of Professional Conduct, the Respondents refused. (This interrogatory specifically excluded from its request any information about the complainant or any attorney-client privileged information.) Instead of properly responding, the Respondents untimely raised objections based on breadth (without alleging what made the request overly broad), confidentiality (without citing with specificity any ground for such confidentiality), and privilege (despite the interrogatory excluding privileged information). Then, after raising these untimely, non-specific objections, the Respondents also responded by telling the Debtor to go get the information herself from the OCDC.
- Much of the requested material related to tax and financial information still was not provided, with the Respondents continuing to baselessly insist that the Debtor was not entitled to it.
- A document labeled "Case notes" was provided, but it appeared to be pulled from thin air, with no indication as to who prepared it or when.
- Other production was illegible, with key handwritten notes obscured.

These responses are evidence of the Respondents' and Mr. Walton's bad faith in "responding" to the Requests for Discovery.

Oral arguments did not help matters for the Respondents, as Mr. Walton chose to conduct a sideshow of irrelevancy and mischaracterization:

- Mr. Walton offered no excuse for the non-responsiveness. Instead, he insisted that the discovery requests were objectionable. When the Court again, and pointedly, told Mr. Walton that full response to the Requests for Discovery was required because the Respondents had waived their right to object, he simply proclaimed, "I haven't waived anything!"
- Mr. Walton argued that it was the Debtor who was proceeding in bad faith—apparently because the Debtor had the nerve to point out the defectiveness of the Respondents' non-responsive "responses." Mr. Walton baselessly insisted that the Debtor was required to have notified him of the illegibility before she was permitted to raise the issue to the Court. However, it was *the Respondents* who chose not to provide the documents timely; it was *the Respondents* who waited until shortly before the status conference to provide the documents; it was *the Respondents* who failed to review their own discovery responses; it was *the Respondents* who provided illegible documents; it was *the Respondents* who provided substantively non-responsive "responses"; and it was *the Respondents* who provided their supplemental "responses" so late that there was not time for the Debtor to contact Mr. Walton to ask for the documents to be re-submitted. It was the Respondents who were the perpetrators of bad faith, not the victims of it.
- Mr. Walton mischaracterized the requests made in the interrogatories, falsely alleging that the interrogatories did not request certain information that they clearly did. After he got caught in his lie when the Debtor's counsel read the interrogatory into the record, Mr. Walton dismissively asserted that, as far as he was concerned, the interrogatory was vague. That assertion, aside from being untrue, was irrelevant since the Respondents waived their objections, including an objection to vagueness.
- Mr. Walton repeatedly yelled at the Court, bellowing over the Judge and interrupting him, to insist that the Court must produce a written order on

the Motion to Compel Discovery for him, outlining specifically for him what discovery had to be made—as if the Court owed to him a how-to manual on responding to uncontested discovery requests.

- Mr. Walton accused the Court of trying to "trap him" to explain how Mr. Walton and the Respondents ended up in their situation in this matter.
- When the Court advised Mr. Walton that it did not appreciate his remarks at the last hearing that implied that the Court did not know the law, Mr. Walton denied that he made any such remarks. He asserted, "I didn't say you weren't an expert…" then, in a rare moment of self-reflection, asked to no one in particular, "…did I?" But Mr. Walton quickly recovered to his predictable temerity, concluding that he could not have made such a representation because, "I am not a fool!" The Court chose not to comment on this unsolicited self-assessment.

By the end of the hearing, it was established that the Respondents: participated in bad faith and abused the judicial process at nearly every step of discovery; launched personal attacks on the Court; made irrelevant factual allegations to disparage the opposing party; made misleading representations as to their intent to properly respond; asserted frivolous legal positions; relied on waived objections; knowingly submitted incomplete, insufficient responses to the Requests for Discovery; and were in willful violation of their discovery obligations, thereby deliberately depriving the Debtor of the discovery to which she was entitled.[21]

From the bench, the Court directed the Respondents to respond to the Requests for Discovery within seven days, and gave notice that, if they did not, they would face sanctions of $1,000.00 a day for each day of noncompliance after those seven days. On September 20, 2013, the Court entered an order consistent with its bench ruling (the "Order Compelling Discovery")[Docket No.

[21] Mo. Prof. R. 4-3.4(a) provides that a lawyer shall not "unlawfully obstruct another party's access to evidence . . . [and a] lawyer shall not counsel or assist another person to do any such act."

68].[22] In the Order Compelling Discovery, the Court allowed the Respondents to produce any financial information under seal (despite the fact that the Respondents never filed a motion for protective order). The Court did not include "trade secrets" information in that protection, but it also did not foreclose the possibility of permitting their protection—if the Respondents would ever offer any evidence (other than their self-serving beliefs and unsupported pronouncements) of the existence of any trade secrets.[23] The Court ordered that the Respondents pay $1,710.00 of the Debtor's attorney's fees incurred in prosecuting the Motion to Compel Discovery.

> Also, at the end the Order Compelling Discovery, the Court provided that:
>
> > the Court is exhausted of [Mr. Walton's] unprofessional and disrespectful demeanor in the courtroom, which appears to be part of an ill-conceived strategy of delay and obfuscation. At status conferences over the course of the past month, counsel for Mr. Robinson has been belligerent, bombastic, bellicose and prevaricating (often complemented with being misguided, misleading, or simply incorrect). In any future court proceeding in this matter, if Mr. Walton so much as raises his voice above the level necessary for civil discourse and argument, or employs a disrespectful tone with the Court, other counsel, or any party, for any reason, such behavior will be immediately sanctionable in the amount of $100.00 for each such incident, charged to Mr. Walton personally.

And to make sure that the often direction-deaf Mr. Walton got the message, the Court stated: "In the future, Mr. Walton should bring to this Court either a professional, respectful demeanor or his checkbook."

---

[22] Even though a hearing was not required before sanctions were imposed pursuant to the Order Compelling Discovery, *see Comiskey v. JFTJ Corp.,* 989 F.2d 1007, 1012 (8th Cir. 1993), the Court nevertheless held the October 1 status conference before imposing sanctions.

[23] As it turned out, even if the Court had allowed "trade secrets" to be produced under seal, the Respondents would not have been satisfied. As was later made clear in the Motion to Set Aside the Order Compelling Discovery, what the Respondents really wanted was not the right to submit their alleged "trade secrets" under protection, but to be shielded from producing them. This request was simply an untimely, backdoor objection to the request for production.

K. The Ten Days Following the Entry of the Order Compelling Discovery

Rather than complying with the Order Compelling Discovery, the Respondents spent the next ten days filing a slew of motions,[24] including:

- A Motion to Recuse (the "First Motion to Recuse") [Docket No. 69], which contained false and misleading allegations.
- A Motion for Judgment on the Pleadings [Docket No. 70], which amounted to an attack on the Debtor with allegations that she had committed bankruptcy crimes while the Respondents represented her.
- A Motion to Set Aside the Order Compelling Discovery and a Memorandum in Support [Docket No. 74], which was an attempt to litigate for the first time the merits of waived objections and to complain that the Court did not enter a sufficient protective order. The Respondents also threw in a baseless personal attack against opposing counsel.[25]
- A Motion to Dismiss [Docket No. 77].
- An Amended Motion to Dismiss [Docket No. 78], a Brief [Docket No. 79], and an Amended Brief in Support of the Amended Motion to Dismiss [Docket No. 80], which contained frivolous arguments related to personal jurisdiction and baseless allegations and mischaraterizations of the actions of the Court and the Clerk's Office staff in support of the subject matter jurisdiction argument.

---

[24] Mo. Prof. R. 4-3.2 provides that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interest of his client." Comment (1) provides that "[t]he question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client."

[25] The Respondents alleged that the discovery "suggests something more nefarious" by the Debtor's counsel, accusing him of trying to obtain the Respondents' unspecified trade secrets, to "use for his own design." However, there was no evidence that the Debtor's counsel is a diabolical puppeteer with evil plans of corporate espionage. And, after watching the Respondents in action in this matter, it defies belief that the Debtor's counsel—who has shown himself in this matter to be a capable, honest lawyer—could possibly want to adopt for himself whatever "trade secrets" the Respondents claim to have.

Most of these motions and briefs employed verbosity over quality, and relied on unpersuasive argument and unsupported allegations. To properly adjudicate the matters but without adding to the delay, the Court and its staff worked for more than a week, producing orders that were as thorough and detailed as necessary [Docket Nos. 71, 72, 81, & 82]. The Court also entered a notice [Docket No. 73] of an October 1 status conference.

L. The October 1 Status Conference

At the October 1 status conference, it was established that no discovery had been made since the entry of the Order Compelling Discovery. Further, Mr. Walton advised that the Respondents did not intend to comply with the Order Compelling Discovery, but would seek leave to appeal and file a petition for writ of mandamus. From the bench, the Court continued the conference for a week.

M. The First Order Imposing Sanctions

Following the status conference, the Court sua sponte reconsidered the continuation in the bench ruling, given that the Respondents advised that the continuance would produce no additional discovery. Deciding that there was no point in going through the charade of another week without discovery compliance, on October 2, 2013, the Court entered an order imposing sanctions (the "First Order Imposing Sanctions") [Docket No. 84]. Consistent with its previous notice, the Court sanctioned the Respondents $1,000.00 a day for each day of noncompliance going forward thereafter, and gave notice that, after thirty days, the Court may impose further sanctions. The Court also provided that sanctions would not accrue on any day that there was a pending request for leave to appeal or an appeal, to protect the Respondents from being effectively punished for their appeal efforts.

N. The Motion for Leave to Appeal

Also on October 2, 2013, the Respondents filed in this Court a Notice of Appeal [Docket No. 85], with a copy of the Motion for Leave to Appeal Interlocutory Orders (the "Motion to Leave to Appeal") attached. In the Motion for Leave to Appeal, the Respondents sought leave of the Bankruptcy Appellate Panel (the "B.A.P.") to appeal three interlocutory orders: the Order Compelling

Discovery; the Order Denying the First Motion to Recuse; and the Order Denying the Motion to Dismiss. Later on October 2, 2013, the Respondents filed a Motion for Stay Pending Appeal [Docket No. 87], then an Amended Motion for Stay Pending Appeal [Docket No. 88]. On October 4, 2013, the Court entered an Order Denying the Amended Motion for Stay Pending Appeal [Docket No. 93]. On October 8, 2013, the B.A.P. entered a Judgment denying the Motion for Leave to Appeal [Docket No. 95].[26] On October 9, 2013, the sanctions imposed in the Order Compelling Discovery began accruing.

O. The Petition for Writ of Mandamus

On November 1, 2013, the Respondents filed a Petition for Writ of Mandamus with the U.S. District Court for the Eastern District of Missouri (the "U.S. District Court"), initiating Case No. 4:13-cv-02214, and suing the Judge[27] in his official capacity for the Court's actions in this matter. On December 10, 2013, the U.S. District Court dismissed the petition for writ of mandamus.

P. The Second Order Imposing Sanctions

Between October 9, 2013 and November 12, 2013, the Respondents continued to refuse to comply with the Order Compelling Discovery, thereby incurring $35,000.00 in sanctions. On November 13, 2013, the Court entered its Second Order Imposing Sanctions [Docket No. 100]. In that order, the Court stopped the accrual of the daily monetary sanctions and imposed two new sanctions: (i) a finding of contempt pursuant to Rule 37(b)(2)(A)(vii), and (ii) the making of the accrued sanctions due for payment.[28]

---

[26] The B.A.P. Judgment was docketed in the Main Case on October 9, 2013.

[27] This Memorandum Opinion and the accompanying Judgment are issued by the office that the Judge occupies—that is, by the bench of the Court—and not by the Judge personally. A court, and the person who occupies the bench of the court, are distinct. To reflect this distinction, the Court employs the third-person voice when referring to facts about the Judge.

[28] In addition, the Court revoked Mr. Robinson's electronic and drop-box filing privileges. The Court required that Mr. Robinson file any pleadings on behalf of himself or his clients in person, during business hours, at the desk at the Clerk's Office, until such time as the sanctions are paid.

The sanctions in this second round were not imposed for the purpose of inducing discovery. By then, the Court had no hope that discovery compliance could be induced. Rather, they were imposed to punish the willful refusal to obey the Order Compelling Discovery and to deter others from similar conduct. However, despite the fact that the Court had no realistic expectation that discovery would be made, it still did not impose the most severe sanctions. For example, it did not strike the Response, deem the Debtor's allegations to be admitted, or enter a default judgment. The Motion to Disgorge remained pending and, thus, the Respondents remained obligated in the discovery process. As such, the opportunity to purge by compliance with their discovery obligations remained available. The Court also gave notice that additional sanctions might be imposed for the continued refusal to satisfy their discovery obligations.

Q. The Notice Regarding the Second Order Imposing Sanctions

On November 27, 2013, the Respondents filed a Notice of Appeal [Docket No. 107], giving notice that they were seeking to appeal the Second Order Imposing Sanctions to the U.S. District Court. In that appeal, they alleged that the Second Order Imposing Sanctions was a final order for criminal sanctions.

However, by the terms of the Second Order Imposing Sanctions, discovery remained due, and thus purgation remained available, thereby making the sanctions interim and civil, and not final and criminal. On December 2, 2014, the Court entered a Notice to the Respondents Regarding Sanctions Imposed [Docket No. 113], providing a clear purgation term—just in case the Respondents had a sincerely held misunderstanding that they could not purge the sanctions. In the December 2 Notice, the Court stated in unequivocal terms: "should the Respondents have a change of heart and decide to properly participate in discovery, the Court would embrace that decision as evidence that sanctions are no longer needed. The ball is in the Respondents' court."

R. The Alternate Choice for Satisfying the Sanctions

Over the course of the litigation of the Motion to Disgorge, the Respondents went from responding to a relatively small-dollars claim for disgorgement to finding themselves at the bottom of a $35,000.00 sanctions hole.

Moreover, the Respondents could not climb out of that hole simply by settling with the Debtor. The *Court's* sanctions for violating its order could not be negotiated-away through a settlement of the *parties'* disputes.[29] By January 2014, the Respondents' sanctions hole was in jeopardy of becoming their grave.

The Court sent a rope down the hole to the Respondents. On or about January 23, 2014, the Court instructed its law clerk to advise the chapter 7 trustee, a highly respected attorney who was already in communication with the parties, that the Respondents would be given the choice of satisfying their sanctions by an alternate, nonmonetary method. The Court conveyed this choice through the chapter 7 trustee, who was not a party to the sanctions, to avoid yet-again memorializing on the record the Respondents' bad acts and bringing them into even further public disgrace.

This alternate choice required that the Respondents: file under seal certain information regarding the ownership structure and employees of Critique Services L.L.C. (to clarify how the Respondents are related); file a letter of apology for their contempt and admit that they made, through their attorney, false representations; agree to attend continuing legal education; and agree not to be represented again by, or serve as co-counsel with, Mr. Walton before this Court (to ensure that the improprieties that occurred in this matter would not be repeated). However, the Court did not modify the sanctions terms in the Second Order Imposing Sanctions. As such, the Respondents remained free to satisfy

[29] Mr. Walton claimed in the Third Motion to Recuse—in an effort to argue that the alternate choice showed bias—that the settlement negotiations involved the issue of the Court's sanctions. This is false. As the Court warned the parties in its February 13 Notice, while the parties were free to seek to settle disputes between them, the sanctions were a debt owed to the Court. They were not the parties' currency to spend. This meant that, unless discovery was made, the sanctions would be imposed on a final basis, regardless of any settlement between the parties. The sanctionable behavior had already occurred; settling the dispute between the parties cannot wipe clean the unpurged sanctions or deprive the Court of jurisdiction to impose those sanctions. The offer of a choice to the Respondents as to how they could satisfy their sanctions was unrelated to how the Respondents might settle their disputes with the Debtor.

the sanctions by payment, as set forth in the Second Order Imposing Sanctions, and to continue employing Mr. Walton.

The chapter 7 trustee conveyed this choice to the Respondents and Mr. Walton. The Respondents did not perform pursuant to this alternate choice. They also chose not to pay the sanctions. Instead, they chose to continue in their contempt, choosing also to continue to employ Mr. Walton as their counsel.

S. The Settlement Negotiations

On December 9, 2013, the Debtor filed a complaint [Docket No. 118] thereby commencing an adversary proceeding (the "Adversary Proceeding No. 13-4284") against the Respondents and other individuals currently or formerly associated with Critique Services L.L.C., requesting money damages and injunctive relief under §§ 110, 526, 527, & 528. Adversary Proceeding No. 13-4284 was assigned by "the wheel" to another U.S. Bankruptcy Judge of the District (the "Originally Assigned Judge"). On December 12, 2013, the Originally Assigned Judge issued a show-cause order, directing the defendants in Adversary Proceeding No. 13-4284 to show cause as to why the matter should not be transferred to the docket of the undersigned Judge, consistent with the practice of this Court when matters in different proceedings involve the same or overlapping issues of law and fact. On January 13, 2014, the Originally Assigned Judge held a hearing on the show-cause order, at which Mr. Walton (representing most of the defendants, including the Respondents) and Mr. Ross Briggs (representing himself, an attorney associated with Critique Services L.L.C. who also was a defendant in the Adversary Proceeding, and representing his co-defendant, Doreatha Jefferson) appeared and made argument. Instead of addressing the issue of whether transfer was proper based on the issues of facts and law raised in the Adversary Proceeding No. 13-4284 complaint, the defendants argued against transfer based on the fact that they planned to file a motion to recuse if the matter would be transferred. On January 21, 2014, the Originally Assigned Judge issued an order determining that the defendants had failed to show cause as to why the matter should not be transferred, and ordered the transfer.

Shortly after the transfer, the undersigned Judge's Chambers was notified by the chapter 7 trustee in the Main Case that the parties to the Motion to Disgorge and Adversary Proceeding No. 13-4284 planned settlement negotiations. As a courtesy, the Court made available, at no cost, courthouse conference rooms on January 28, 2014, for these negotiations.

The Respondents did not request relief from the Order Compelling Discovery or an abatement of the Motion to Disgorge while settlement negotiations were undertaken. As such, the settlement negotiations had no impact on the effectiveness of the Order Compelling Discovery. The Respondents chose to continue to refuse to meet their discovery obligations.

In the six weeks that followed the January 28 settlement negotiations, no certificate of status regarding settlement negotiations or a motion to approve settlement was filed. On March 4, 2014, the Court entered an Order Regarding Status in the Main Case and Adversary Proceeding [Docket No. 128], directing the Debtor to file a certificate of status or a motion to approve settlement by March 7, 2014. On March 6, 2014, the Debtor filed a Motion for an Extension of Time [Docket No. 129], representing that the parties were close to settlement. On March 7, 2014, the Court granted the motion [Docket No. 131], giving the Debtor an additional week to comply.

On March 14, 2014, the Debtor filed a Declaration [Docket No. 132], advising that the parties were close to finalizing a settlement. The Debtor did not request another extension of the deadline. However, on March 22, 2014, the Debtor filed an Amended Declaration [Docket No. 133], advising that the settlement efforts had collapsed. Thereafter, the Court prepared to proceed on the Motion to Disgorge and any sanctions related to the litigation of the motion.

T. The Events Between April 3, 2014 and April 28, 2014

April 3 Notices of Intent to Impose Sanctions. On April 3, 2014, the Court entered a Notice Regarding Sanctions [Docket No. 134], giving notice that the Court was considering imposing further and final sanctions against the Respondents for their refusal to meet their discovery obligations, and giving them until April 11, 2014 to fulfill those obligations. Also on April 3, 2014, the Court

entered a Notice Regarding Sanctions Against Mr. Elbert Walton [Docket No. 136], giving notice that the Court was considering imposing sanctions against Mr. Walton, and giving him until April 11, 2014 to file a Brief in Response.

Affidavit of Attorney's Fees. On April 7, 2014, the Court entered an Order Directing the Debtor's Counsel to File an Affidavit Attesting to Attorney's Fees, Costs and Expenses [Docket No. 139], giving notice that "it is considering the imposition of additional sanctions against the Respondents . . . and the imposition of sanctions against the Respondents' counsel, Mr. Elbert Walton," and directed the Debtor's counsel to submit an affidavit in support of his fees, costs, and expenses by April 11, 2014. Since the Debtor's counsel was serving pro bono, the Court instructed that it "expects [counsel] to calculate his hourly fees for purposes here as he would calculate such fee in a comparable for-fee representation. He should not charge more than his regular hourly rate, and he should not discount his rate." The Court gave the Respondents and Mr. Walton until April 18, 2014, to respond to the attestations in such affidavit.

On April 10, 2014, the Debtor's counsel filed a Motion to Extend Time to File the Affidavit. On April 22, 2014, the Court entered an order granting the extension [Docket No. 166], giving the Debtor's counsel until April 23, 2014 to file the affidavit. On April 23, 2014, the Debtor's counsel filed two affidavits, one for the Debtor's lead counsel and one for co-counsel (the "Fee Affidavits") [Docket Nos. 171 & 172].[30] Neither the Respondents nor Mr. Walton requested an extension of time to respond or filed a response to the Fee Affidavits at any point for the Court to consider. The attestations in the Fee Affidavits are uncontested.

[30] The 8.1 hours of time set forth in the Exhibit 7 Fee Statement (which had been filed in support of the Motion to Compel Discovery) were included in the Fee Affidavits, except for .9 of an hour for co-counsel for services rendered on September 13, 2013 and 16, 2013. Co-counsel's Fee Affidavit was not duplicative of any time previously reported in the Exhibit 7 Fee Statement. His Fee Affidavit included time from September 17, 2013 forward.

Mr. Walton's Status as Counsel. On April 10, 2014, Mr. Walton filed a Motion to Withdraw as Attorney [Docket No. 141].[31] Later that day, the Court entered an order [Docket No. 143] denying such motion because it was untimely and appeared to be another attempt to create delay. In addition, the Court construed it to be a backdoor effort by Mr. Walton to avoid the Court's jurisdiction over him personally. However, in denying the motion, the Court permitted the renewal of the withdrawal request after the pending matters were concluded.

Also on April 10, 2014, Mr. Robinson filed a "Notice of Dismissal" [Docket No. 142], in which he purported that he had "dismissed" Mr. Walton as his counsel. The Notice of Dismissal was filed by Mr. Robinson only—this time Mr. Robinson claimed "Critique Services" (the fictional name) was his d/b/a, and not the other Respondent, Critique Services L.LC. Nothing in the Notice of Dismissal represented that Critique Services L.L.C.—to the degree that it is a separate entity from Mr. Robinson—had fired Mr. Walton. To any degree, even if Mr. Robinson's claim that he had dismissed Mr. Walton as counsel for himself was true (no evidentiary hearing was requested to establish this claim), Mr. Robinson still could not release Mr. Walton from his Notice of Appearance. L.B.R. 2093-A requires that withdrawal of counsel from a notice of appearance be done by motion. On April 11, 2014, the Court entered an order [Docket No. 147] striking the Notice of Dismissal as ineffective.

At 2:40 P.M. on April 11, 2014, Mr. Walton filed a Motion to Substitute Attorney [Docket 151], trying again to get out of the matter. This time he claimed that he had a conflict with the Respondents. He pleaded no facts in support of that contention—just his word. Ordinarily, the word of an attorney might be sufficient to establish that withdrawal is proper. However, based on Mr. Walton's making false and misleading statements over the course of this matter, his word meant little. At 3:50 P.M. on April 11, 2014, the Court entered an order [Docket

[31] On the docket sheet, Mr. Walton captioned this motion as "Agreed," presumably meaning that the motion was either jointly made with Mr. Robinson and Critique Services L.L.C., or that Mr. Robinson and Critique Services L.L.C. consented to the relief request. However, neither Mr. Robinson nor Critique Services L.L.C. was a signatory to the motion.

No. 155] denying the motion, but doing so without prejudice to Mr. Walton renewing the request upon the pleading of facts in support and the setting of the matter for an evidentiary hearing. Thereafter, Mr. Walton continued to file papers on behalf of Mr. Robinson and Critique Services L.L.C., and did not renew his withdrawal request.

Responses to the April 3 Notices of Intent to Impose Sanctions. At 2:16 P.M. on April 11, 2014, Mr. Robinson filed a Response [Docket No. 149] on behalf of himself. Mr. Robinson did not substantively address the issue of whether sanctions should be imposed against him. Instead, he advised that discovery had not been made because the Debtor's counsel allegedly told him he did not have to participate in the discovery process. He requested an extension of time to participate in the discovery process. This request was not a credible representation of the Respondents' intent to participate in good faith in the discovery process. The Respondents had not made even the merest gesture of producing discovery in good faith. This latest request for an extension of time in which to participate in the discovery was nothing more than yet-another stall tactic, in an attempt to delay the imposition of sanctions. The Court had no reason to believe that, if a formal extension was granted, the time would be used to provide the discovery. At 3:48 P.M. on April 11, 2014, the Court entered an order [Docket No. 154] denying the Response as to its request for a formal extension of time. However, even with the denial of a formal extension, the Respondents still were compelled to participate in the discovery process and still were free to meet their discovery obligations until the sanctions were entered on the final basis. At any time, between then and today, the Respondents could have fulfilled their discovery obligations. They never did. They never even tried.

Second Motion to Recuse. At 3:47 P.M. on April 11, 2014, Mr. Walton filed on behalf of himself a Motion to Recuse (the "Second Motion to Recuse") [Docket No. 153]. Mr. Walton did not request a hearing on his motion. None of the allegations supported disqualification. On April 14, 2014, the Court entered an Order Denying the Second Motion to Recuse [Docket No. 163]. In that order, the Court reiterated that, if the Respondents wanted to meet their discovery

obligations, they needed to do it soon, before the entry of the disposition on the Motion to Disgorge and the entry of an order for sanctions on a final basis.

Filing of the State Court Action by Mr. Walton Against the Judge in his Personal Capacity. On April 14, 2014, Mr. Walton filed a civil suit in the Circuit Court for the City of St. Louis (the "State Court Action"), on behalf of himself, against the Judge in his personal capacity, alleging claims related to the Court's offer to the Respondents of an alternate choice for satisfying the sanctions the Court had imposed. On May 2, 2014, the State Court Action was removed to the U.S. District Court.

The April 21 Notice to the Respondents and Mr. Walton. On April 21, 2014, the Court entered a Notice to the Respondents and Mr. Walton [Docket No. 165], giving notice that the Court intended to impose sanctions against them for the making of false statements about the Judge's service in governmental employment as the UST. The Court gave the Respondents and Mr. Walton until April 28, 2014 to file a joint response or separate responses.

The Third Motion to Recuse. On April 23, 2014, Mr. Walton, on behalf of himself and the Respondents, filed yet-another Motion to Recuse (the "Third Motion to Recuse") [Docket No. 168]. They did not request a hearing. This time, the requested recusal was made pursuant to 28 U.S.C. § 144 (with a renewed request for disqualification under § 455 thrown in). However, the law is well-settled that § 144 does not apply to bankruptcy judges. Moreover, even if § 144 applied, the Respondents and Mr. Walton failed to provide a "sufficient affidavit" as required. In addition, no ground for disqualification under § 455 was shown. On April 23, 2014, the Court entered its Order Denying the Third Motion to Recuse [Docket No. 170]. In the order, the Court also stressed to the Respondents and Mr. Walton the importance of responding to the April 21 Notice by the deadline, warning that the Court was considering monetary and nonmonetary sanctions, including the revocation of privileges before the Court.

The Responses to the April 21 Notices. On April 28, 2014, Mr. Walton and Mr. Robinson each filed a Response to the April 21 Notice [Docket Nos. 178 & 179]. The Responses offered no cause upon which sanctions should not be

imposed and no reason to mitigate the sanctions. They did not address the degree, nature or amount of sanctions. They did not request a hearing on the issue of whether sanctions should be imposed.

The Motion to Compromise Controversy. In midst of all this, on April 3, 2014, the Debtor filed in Adversary Proceeding No. 13-4284 a Motion to Submit Settlement Agreement Under Seal [Adv. Proc. No. 13-4284 Docket No. 23]. The Court entered an order granting the request [Adv. Proc. No. 13-4284 Docket No. 24], based on the representation that information in the proposed settlement agreement was of a sufficiently sensitive nature to warrant sealing.

On April 10, 2014, the Debtor filed in the Main Case a Motion to Compromise Controversy [Docket No. 144] and a proposed settlement agreement (the "Settlement") [Docket No. 152], which was filed under seal. She also filed a "Notice" [Docket No. 146], in which she advised the Court that she would no longer accept discovery because of the filing of the Motion to Compromise Controversy. On April 11, 2014, the Court entered an Order Directing the Debtor to Accept Discovery, Should the Respondents Attempt to Make Discovery [Docket No. 148]. In that Order, the Court rejected the implied contention that the Debtor had the authority to decline to accept discovery if it were offered. While the Court had no naïve hope that the Respondents would meet their discovery obligations at that point, given the severity of the sanctions that would be imposed, it was proper to make clear that the Respondents remained free to purge their contempt. At 2:19 P.M. on April 11, 2014, the Debtor filed another Notice [Docket No. 150], advising that she would accept discovery, if it were offered. On April 12, 2014, the Debtor filed a Notice [Docket No. 157], advising the Court that she had received no additional discovery.

On April 28, 2014, the Court entered an order [Docket No. 177] denying the Motion to Compromise Controversy for failure of standing under Bankruptcy Rule 9019. The denial was without prejudice to re-filing the request within fourteen days, provided that: (i) the request be either filed by or joined by the chapter 7 trustee; (ii) the proposed settlement agreement be publicly available (not under seal); (iii) a copy of the motion and the proposed settlement

agreement be served upon all creditors; and (iv) an objection date and hearing date be noticed. No new motion to compromise controversy was filed within fourteen days, or at any point thereafter.

III. CURRENT STATUS

The Respondents have spent the last eight months in willful, bad faith contemptuous refusal to obey the Order Compelling Discovery. This refusal is without excuse and is an act of contumacious defiance of their legal obligation. The imposition of escalating sanctions has proven ineffective. The Respondents' contempt was facilitated and promoted by Mr. Walton through his strategy of untimeliness, obfuscation, vexatious litigation, misleading representations, false statements, abuse of process and frivolous legal positions. As a result, the holding of an evidentiary hearing on the merits of the Motion to Disgorge at this point would be a mockery of the judicial process, as the Debtor would have to litigate her claim and respond to the defenses without the benefit of the discovery to which she is entitled.

The time has come for the contempt to end and for this matter to move forward. Without the sanctions imposed herein, the Respondents would benefit from their contempt, Mr. Walton would escape any accountability for his role in the contempt, and the Debtor would be denied the opportunity to proceed on the merits of the Motion to Disgorge with the benefit of the discovery to which she is entitled. The Court has the power "to control litigation and to preserve the integrity of the judicial process." *Nick v. Morgan's Food, Inc.*, 270 F.3d 590, 594-95 (8th Cir. 2001). The Court now will employ that power for that purpose. Before addressing the merits of the Motion to Disgorge and imposing sanctions, the Court will examine the issues of subject matter jurisdiction, personal jurisdiction, judicial disqualification, notice and the opportunity to be heard, and the civil nature of the sanctions—issues raised by the Respondents and Mr. Walton during the course of this litigation.

IV. SUBJECT MATTER JURISDICTION

A. Subject Matter Jurisdiction Over Disgorgement Request

Shortly after the Order Compelling Discovery was entered, the Respondents sought dismissal for a lack of subject matter jurisdiction. In its Order Denying the Amended Motion to Dismiss, the Court determined that subject matter jurisdiction existed. In connection with ordering the relief herein, the Court considers anew the issue of subject matter jurisdiction and again determines that subject matter jurisdiction exists.

The bankruptcy court has subject matter jurisdiction over a request for disgorgement of attorney's fees paid to the debtor's attorney. *Walton v. LaBarge (In re Clark)*, 223 F.3d 859, 863 (8th Cir. 2000)(affirming disgorgement of attorney's fees where the attorney overcharged clients, misused the bankruptcy process for his personal gain, and had a non-attorney prepare and file documents and give legal advice).[32] Regardless, the Respondents challenged subject matter jurisdiction by arguing that the re-docketing of the Motion to Disgorge that occurred six months earlier was an error, and that such error destroyed subject matter jurisdiction. They offered no legal authority in support.

The re-docketing was not an error. A court is permitted to re-docket improperly docketed pleadings,[33] and by directing the re-docketing, the Court was satisfying its obligation to construe a pro se pleading liberally. Moreover,

---

[32] The "Walton" in *Walton v. LaBarge (In re Clark)* is the same Elbert Walton involved here. The Court does not cite to *Walton v. LaBarge* for the purpose of pointing out Mr. Walton's history of unethical lawyering and sanctionable behavior. It cites to this case because the case happens to be precedential Eighth Circuit authority on the issue of fee disgorgement and attorney sanctions.

[33] *See, e.g., Winston v. Friedline*, 2009 WL 3747225, at *1 (W.D. Pa. Nov. 5, 2009)(re-docketing a pro se complaint as a motion for sanctions, "in fairness" to the nature of the document); *Excell v. Woods*, 2009 WL 3124424, at *3 n.2 (N.D.N.Y. Sept. 29, 2009)(re-docketing a declaration of support of a motion as a reply to a response); *Jones-Coon v. U.S.*, 2006 WL 2358647, at *1 (W.D.N.C. Aug. 14, 2006)(re-docketing a 28 U.S.C. § 2255 motion filed in a civil case as a Federal Rule of Criminal Procedure 35 motion in a criminal case); *Gaud v. Havana Tropical Café*, 2007 WL 2749446, at *1 (D.S.C. Sept. 20, 2007)(re-docketing a motion to deny charges as an answer to the complaint).

even if the re-docketing was an error, it did not deprive the Court of subject matter jurisdiction over the issue of disgorgement. Just as a party cannot create subject matter jurisdiction by stipulating to it where it otherwise does not exist, the Court cannot destroy subject matter jurisdiction by its acts. The Motion to Disgorge contained a request for disgorgement when it was docketed in Adversary Proceeding No. 12-4341, and it contained that same request when it was re-docketed in the Main Case. Even if the Court erred by re-docketing the Motion to Disgorge, that would not have destroyed subject matter jurisdiction.

B. Subject Matter Jurisdiction Over the Imposition of Sanctions

Because the Court has subject matter jurisdiction over the issue of disgorgement, it also has subject matter jurisdiction over the issue whether sanctions should be imposed under Rule 37(b), § 105(a) and Bankruptcy Rule 9011. In addition, even if it does not have subject matter jurisdiction over the disgorgement request, it still has subject matter jurisdiction over the issue of whether sanctions under Bankruptcy Rule 9011 may be imposed:

> imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate. Such an order implicates no constitutional concern because it "does not signify a district court's assessment of the legal merits of the complaint." It therefore does not raise the issue of a district court adjudicating the merits of a "case or controversy" over which it lacks jurisdiction.

Willy v. Coastal Corp., 503 U.S. 131, 138 (1992)(quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395-96 (1990)).

Accordingly, the Court **ORDERS** that any request for dismissal based on a failure of subject matter jurisdiction be **DENIED.**

V. PERSONAL JURISDICTION

A. Personal Jurisdiction Over the Respondents

Shortly after the Order Compelling Discovery was entered, the Respondents sought dismissal for a lack of personal jurisdiction. In its Order Denying the Amended Motion to Dismiss, the Court determined that the personal jurisdiction argument was frivolous and denied the request. In connection with

ordering the relief herein, the Court considers anew the issue of personal jurisdiction and again determines that personal jurisdiction exists.

Personal jurisdiction is waivable by a person's act or the failure to act. *Yeldell v. Tutt*, 913 F.2d 533, 539 (8th Cir. 1990)(noting that the defense of a lack of personal jurisdiction may be lost by submission to personal jurisdiction through conduct or by implication). The Respondents made numerous representations in this matter and have waived any objection based on personal jurisdiction.

B. Personal Jurisdiction Over Mr. Walton

Because the Respondents submitted to personal jurisdiction over them, the Court has personal jurisdiction over Mr. Walton for purposes of sanctioning him under Rule 37(b), § 105(a), and Bankruptcy Rule 9011. *Alexander v. Hedback (In re Stephens)*, 2013 WL 3465281, at *3 (D. Minn. Jul. 10, 2013)(citing Rule 16(f)[34] and *Gundaker v. Unisys Corp.*, 151 F.3d 842, 849 (8th Cir. 1998)), *aff'd*, *Alexander v. Hedback (In re Stephens)*, 2014 WL 1302928, at *1 (8th Cir. Apr. 2, 2014).

Accordingly, the Court **ORDERS** that any request for dismissal based on a failure of personal jurisdiction be **DENIED.**

VI. JUDICIAL DISQUALIFICATION

Over the course of the litigation of the Motion to Disgorge, the Respondents and Mr. Walton filed three Motions to Recuse. In connection with ordering the relief herein, the Court considers anew the issue of judicial disqualification and again concludes that disqualification is not proper.

A. False Statements Made in Support of the Requests for Recusal

The Respondents made numerous false and misleading statements about the Judge's service in governmental employment as the UST,[35] apparently on the

---

[34] *See* Part IX.D (recognizing similarities between Rule 16(f) (applicable in *Alexander v. Hedback*) and Rule 37(b) (applicable in the instant matter)).

[35] Mo. Prof. R. 4-8.2 provides that "[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge . . ." Mo. Prof. R. 4-3.3(a)(1) provides that a lawyer shall not knowingly "make a false statement of fact or law . . . to a tribunal . . ."

theory of *audacter calumniare, semper aliquid haeret*.[36] The Respondents first made false and misleading statements in the First Motion to Recuse and the accompanying Brief in Support. In the Order Denying the First Motion to Recuse at footnote 4, the Court advised the Respondents that some of their statements about the Judge were false. Yet despite being so advised, the Respondents nevertheless repeated the allegations—and made additional false or misleading allegations—in the Motion for Leave to Appeal, a copy of which was filed in this Case. In its Order Denying the Motion for Stay Pending Appeal, the Court advised of the false and misleading allegations in the Motion for Leave to Appeal.[37]

The false and misleading statements included:

- The Judge was an attorney with the UST prior to his appointment as the UST. (First Motion to Recuse at 2.) (The Judge was never employed as an attorney for the UST prior to being appointed as the UST.)
- The Judge served as the "prosecuting attorney" against Critique Services L.L.C. and "he himself" had prosecuted cases against Critique Services L.L.C. (Brief in Support of First Motion to Recuse at 5 & 7.) (The Judge was never an attorney with the Office of the UST, separate and apart from being the UST, and as UST, never served as the "prosecuting attorney," chairing a prosecution. He was the name-plaintiff in the capacity of the UST.)
- The Judge drafted injunctions, holdings and adversarial positions against Critique Services L.L.C. and employees of Critique Services L.L.C. (Brief

---

[36] *Latin.* "Slander boldly; something always sticks."

[37] And, despite being advised that their allegations were false, the Respondents *again* made the allegations in their Petition for Writ of Mandamus. In the Second Order Imposing Sanctions, the Court recounted the Respondents' attempts to avoid making discovery, noting the filing of Petition of Writ of Mandamus and the false and misleading allegations therein.

in Support of the First Motion to Recuse at 10.) (The Judge never drafted such documents.)

- The Judge served as an investigator (First Motion to Recuse at 3.) (The Judge never served as an "investigator"; he served as the UST.)
- The Judge served as the U.S. Attorney. (Motion for Leave to Appeal at 24 & 25.) (The Judge never served as the U.S. or as an attorney with the Office of the USAG.)
- The Judge "either personally or in his supervisory or official capacity investigated [Critique Services L.L.C.] and advocated out of court adversarial positions and matters against Critique Services [L.L.C.] . . ." (Motion for Leave to Appeal at 17.) (The Judge was the UST, acting as a name-plaintiff and in an official capacity. He did not act "personally.")

In short, the Respondents blew a lot of phoney smoke to create the false impression of a real fire. But, not all rising vapor is smoke; sometimes it is the telltale sign of a steaming pile of fetid manure.

The actual facts about the Judge's employment relevant to the issue of disqualification are as follows: In June 2003, the Judge was appointed as the UST for Region 13 and served in that capacity until May 2006. As such, his three-year tenure began more than a decade ago. This was the Judge's only service in governmental employment before being elevated to the bench. He never served as an attorney with the Office of the UST prior to his service as the UST. He never served as the U.S. Attorney or as attorney with that office. In his capacity as the UST, Judge supervised the Assistant USTs in their duties and was the name-plaintiff in actions brought by his Office. He was not a party in his personal capacity. He was not an attorney who chaired prosecutions. He did not personally conduct investigations. He did not personally draft pleadings. During his service, his Office received numerous complaints about Critique Services L.L.C. and undertook several investigations into Critique Services L.L.C. His Office filed two lawsuits against Critique Service L.L.C. and certain of its employees (but not Mr. Robinson), both of which settled. All the matters involving Critique Services L.L.C. that were undertaken during the Judge's service as the

UST were wholly unrelated to the pending Motion to Disgorge. The only commonality between those matters and the Motion to Disgorge is that Critique Services L.L.C. happens to have been involved. The Judge's service in governmental employment as the UST did not expose him to any extrajudicial facts about the Motion to Disgorge, which was not filed until many years after he resigned as the UST.

B. The Law on Judicial Disqualification

When considering a request for judicial disqualification, "[a] judge should be very careful to explain why recusal is not appropriate." *In re Tri-State Ethanol Co., L.L.C.*, 369 B.R. 481, 488 (D.S.D. 2007). As such, the Court will endeavor to provide a thorough consideration of why judicial disqualification is not required.

Section 455 specifies when a federal judge must disqualify himself:

> (a) Any justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
>
> . . .
>
> (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.

28 U.S.C. § 455 (in relevant part). By its plain language, § 455 applies to any federal judge. *See also* Fed. R. Bankr. P. 5004(a).

A federal judge has an affirmative duty to preside unless he is disqualified. *See Davis v. C.I.R.*, 734 F.2d 1302, 1303 (8th Cir. 1984)(citing *National Auto Brokers Corp. v. General Motors Corp*., 572 F.2d 953, 958 (2d Cir. 1978)); *S.E.C. v. Drexel Burnham Lambert Inc. (In re Drexel Burnham Lambert Inc.)*, 861 F.2d 1307, 1312 (2d Cir. 1988)("A judge is as much obliged not to recuse himself

when it is not called for as he is obliged to when it is."). A judge must not disqualify himself unnecessarily "because a change of umpire in mid-contest may require a great deal of work to be redone . . . and facilitate judge-shopping." *Matter of National Union Fire Ins. Co. of Pittsburgh*, 839 F.2d 1226, 1229 (7th Cir. 1988); *White v. National Football League*, 585 F.3d 1129, 1138 (8th Cir. 2009)(holding that § 455 "is not intended to give litigants veto power over sitting judges, or a vehicle for obtaining a judge of their choice." (quoting *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993)); *M.K. Metals, Inc. v. National Steel Corp.*, 593 F.Supp. 991, 993-94 (N.D. Ill. 1984)(observing that if a judge were to recuse unnecessarily, "the price of maintaining the purity of appearance would be the power of the litigants or third parties to exercise a negative power over the assignment of judges"). A judge is presumed to be impartial, and it is the "substantial" burden of the movant on a § 455 motion to prove otherwise. *United States v. Dehghani*, 550 F.3d 716, 721 (8th Cir. 2008); *Pope v. Federal Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992).

A § 455 motion is determined by the judge whose disqualification is sought, at the Court's sound discretion. *In re Medtronic, Inc. Sprint Fidelis Leads Prods. Liability Litigation*, 601 F.Supp.2d 1120, 1124 (D. Minn. 2009)(citing *Moran v. Clarke*, 296 F.3d 638 648 (8th Cir. 2002)). A § 455 motion may not be transferred to another judge for determination. 28 U.S.C. § 455 (providing that a judge shall disqualify "*himself*")(emphasis added).[38]

The Court is not required accept as true the allegations made in a § 455 motion. *U.S. v. Marin*, 662 F.Supp.2d 155, 158 (D.D.C. 2009)("[T]here is no support for the position that the facts alleged by a person relying on [§] 455 must in every case be accepted as true, whether the papers be a verified memorandum or are in some other form."); *U.S. v. Greenough*, 782 F.2d 1556,

[38] Each of the three motions to recuse included a request that the motion be transferred to another judge, upon denial of the request for recusal. However, because a § 455 motion must be determined by the judge who is the subject of such request, the Court denied the requests to transfer the motions. In addition, the Court notes that the proper challenge to a denial of a motion to recuse is an appeal to a higher court, not upon a transfer to another trial court for a "do-over."

1558 (11th Cir. 1986)("If a party could force [recusal] by factual allegations, the result would be a virtual 'open season' for recusal."); *U.S. v. Heldt*, 668 F.2d 1238, 1272 (D.C. Cir. 1981)) ("[("The very fact that [§] 455 is addressed directly to the judge makes it evident that some evaluation by the court of the facts giving rise to the motion is anticipated in most cases.").[39]

Moreover, a judge may contradict the allegations made with facts drawn from his own personal knowledge. *U.S. v. Balistrieri*, 779 F.2d 1191, 1202 (7th Cir. 1985); *Massachusetts Sch. of Law at Andover, Inc. v. American Bar Ass'n*, 872 F. Supp. 1346, 1349 (E.D. Pa. 1994); *see also U.S. v. Sciarra*, 851 F.2d 621, 625 n.12 (3d Cir. 1988)(noting that "[t]here is considerable authority for the proposition that the factual accuracy of [§ 455] affidavits may be scrutinized by the court deciding the motion for recusal.").

Whether to hold a hearing of a § 455 motion is within the Court's discretion. *U.S. v. Heldt*, 668 F.2d at 1271-72. Whether it is appropriate and necessary to hold a hearing "may depend upon the nature of the allegations made." *Id.* at 1272.

A § 455 motion must be timely made. *United States v. Bauer*, 19 F.3d 409, 414 (8th Cir. 1994). To be timely, a § 455 motion must be made at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim. *Fletcher v. Conoco Pipe Line Co.*, 323 F.3d 661, 664 (8th Cir. 2003); *U.S. v. Tucker*, 82 F.3d 1423, 1425 (8th Cir. 1996)(quoting *Apple v.*

[39] *But see In re Krisle*, 54 B.R. 330, 346 (Bankr. D.S.D. 1985)(holding that allegations made in support of a § 455 motion must be accepted as true). However, *Krisle* cites to *Berger v. United States*, 255 U.S. 22 (1921), and *U.S. v. Dodge*, 538 F.2d 770 (8th Cir. 1976), both of which involved § 144 and affidavits, and neither of which addressed on-point whether allegations in a § 455 motion must be accepted as true. In contrast to a § 455 motion, a § 144 request must be made by affidavit, and that affidavit must be accepted as true when determining the sufficiency of the affidavit. Section 455, however, has no affidavit requirement, and by its terms, requires that adjudication on the merits of the request for recusal—an act that necessarily involves determining the truth of the allegations made. *See Cooney v. Booth*, 262 F.Supp.2d 494, 505 n.6 (E.D. Pa. 2003)(noting that the court is not required to accept as true the facts alleged in a § 455, in contrast to the requirement that the court accept as true for the attestations in a § 144 affidavit).

Jewish Hosp. & Med. Ctr., 829 F.2d 326, 333 (2d Cir. 1987)). Timeliness is necessary for two reasons: (1) a prompt application affords the judge an opportunity to assess the request on its merits; and (2) a prompt application avoids the risk that a party is holding back a recusal motion as a fall-back position in the face of an adverse ruling. *U.S. v. Tucker*, 82 F.3d at 1425 (citing *In re Internat'l Bus. Machines Corp*., 45 F.3d 641, 643 (2d Cir. 1995)); *see also In re Cargill, Inc*., 66 F.3d 1256, 1262-63 (1st Cir. 1995)("In the real world, recusal motions are sometimes driven more by litigation strategies" than by genuine ethical concerns"). The failure to timely raise § 455 can result in waiver of the claim at the trial court level or forfeiture of judicial review at the appellate court level. *Fletcher v. Conoco Pipe Line Co.*, 323 F.3d at 664 (citing to *United States v. Mathison*, 157 F.3d 541, 545-46 (8th Cir. 1998)).

C. Analysis under § 455(b)(3)

Section 455(b)(3) provides that a judge shall disqualify himself "where he has served in governmental employment and in such capacity . . . expressed an opinion concerning the merits of the particular case in controversy." The Judge served in governmental employment as the UST from June 2003 to May 2006. However, the "particular case in controversy" here, the Motion to Disgorge, did not exist until 2013. As such, it is not possible for the Judge to have expressed an opinion about the particular case in controversy while in the capacity of serving in governmental employment.

Section 455(b)(3) also provides that a judge shall disqualify himself "[w]here he has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding . . ." This is the "personal participation rule." *Baker & Hostetler LLP v. U.S. Dept. of Commerce*, 471 F.3d 1355, 1357 (D.C. Cir. 2006). It stands in contrast to the "associational standard," applicable pursuant to § 455(b)(2), which sets forth when a judge must disqualify himself related to his previous service in private practice. If the associational standard applied to § 455(b)(3), a judge would be prohibited from presiding on the bare fact of his previous governmental employment. By contrast, the plain language of § 455(b)(3) makes it clear that a

judge is not automatically proscribed from presiding over a case due solely to his previous governmental employment. *See Rahman v. Johanns*, 501 F.Supp.2d 8, 14 (D.D.C. 2007)("Indeed, it is commonplace for judges to serve in the government prior to appointment to the federal bench, and [§] 455(b)(3) reflects Congress's studied response to this circumstance.")(internal citation omitted); *Mangum v. Hargett*, 67 F.3d 80, 83 (5th Cir. 1995)("§ 455(b)(3) does not mandate recusal unless the former government attorney has actually participated in some fashion in the proceedings."). For purposes of § 455(b)(3), the Judge "participated" only in those proceedings that were pending while he served in governmental employment as the UST and now is obligated under § 455(b)(3) to disqualify himself from those proceedings—should they come before the Court. Here, however, the Judge could not have "participated" in the proceeding currently before the court, the Motion to Disgorge, because that proceeding did not even exist at the time that the Judge served as the UST. The fact that the Judge participated in cases that are not now proceedings before the Court, but which happen to have involved one of the Respondents, does not establish that disqualification is proper under § 455(b)(3).

D. Analysis under § 455(b)(1)

Section 455(b)(1) provides that a judge shall disqualify himself where he has "personal knowledge of disputed evidentiary facts concerning the proceeding." The disputed evidentiary facts here relate to whether disgorgement of the fees paid by the Debtor to the Respondents is proper, and whether the Respondents and Mr. Walton committed acts for which they should be sanctioned. The Judge has no personal knowledge, based on his employment as the UST or from any other source, regarding these issues.

Section 455(b)(1) provides that a judge shall disqualify himself "[w]here he has a personal bias or prejudice concerning a party . . ." Such bias[40] must be actual, not merely in appearance. Bias "must be evaluated in light of the full

[40] For the purpose of brevity, the Court uses the term "bias" to refer to the statutory concept of "bias or prejudice."

record, not simply in light of an isolated incident." *In re Federal Skywalk Cases*, 680 F.2d 1175, 1184 (8th Cir. 1982). A judge may not disqualify himself simply because a litigant has transformed his fear of an adverse decision into a fear that the judge will not be impartial. *In re Kansas Pub. Employees Retirement Sys.*, 85 F.3d 1353, 1359 (8th Cir. 1996)(citing Sen. Rep. No. 93-419, 93d Cong., 1st Sess. 5 (1973)). An "extrajudicial source" is the common basis for bias under § 455(b)(1). *Liteky v. United States,* 510 U.S. 540, 549-550 (1994). However, on a rare occasion, a bias may be acquired from judicial sources after the commencement of the matter. However, this type of bias is rare. A judge is permitted to make judgments while he is presiding:

> [t]he judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task. As Judge Jerome Frank pithily put it: "Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions." *In re J.P. Linahan, Inc*., 138 F.2d 650, 654 (CA2 1943). Also not subject to deprecatory characterization as "bias" or "prejudice" are opinions held by judges as a result of what they learned in earlier proceedings. It has long been regarded as normal and proper for a judge to sit in the same case upon its remand, and to sit in successive trials involving the same defendant.

510 U.S. at 550-51.[41] The Respondents allege numerous bases for establishing bias for purposes of § 455(b)(1). The Court now addresses those in turn:

[41] *Liteky* also gave an example of a comment that "reveal[ed] such a high degree of favoritism or antagonism as to make fair judgment impossible," pointing to the case of a judge who, while presiding over an espionage trial of a German-American in 1921 commented that, "One must have a very judicial mind, indeed not [to be] prejudiced against German Americans" because their "their hearts are reeking with disloyalty." *Id*. at 555. Despite the Respondents' and Mr. Walton's bald insistence of their victimhood, the Court responding with little indulgence of the Respondents' and Mr. Walton's abuse of process, improper courtroom

Prior rulings. The Respondents argued that the Court's prior rulings against them is evidence of the bias. However, prior rulings are almost never evidence of bias. *Liteky v. United States,* 510 U.S. at 555.

"Open and notorious pronouncements." The Respondents and Mr. Walton alleged that the Judge made unspecified "open and notorious pronouncements" about them, and argued that these pronouncements are evidence of bias. However, the Respondents' use of hyperbolic adjectives and accusatory terminology is not evidence. Moreover, remarks by a court, even if critical of a party or his counsel generally are not evidence of bias. *Id.* at 555 ("[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge"). Examples of judicial commentary that are not evidence of bias include: "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges sometimes display." *Id.* at 555-56. The generic complaint here of "open and notorious pronouncements" amounts to indignation at the Court not being sufficiently solicitous of the Respondents' and Mr. Walton's abuse of process and contempt.

The Unclean Hands Doctrine. The Respondents argued that the fact the Debtor is permitted to proceed at all is evidence of bias. Specifically, they alleged that the Debtor has "unclean hands"—and therefore the Court is biased if it permits the Debtor to come before the Court on her claim, at all. However, the fact that the Court did not dismiss on the ground of "unclean hands" is not evidence of bias.

The "checkbook" warning. The Respondents and Mr. Walton argued that the "checkbook" warning to Mr. Walton is evidence of bias against Mr. Walton personally and against the Respondents derivatively. The warning is not evidence of bias against anyone. It is evidence that the Court's patience with Mr. Walton's courtroom antics had expired. The Court is not obligated to deliver its

---

decorum, dishonesty, and contempt is not remotely equivalent to being subjected to an ethnic slur regarding treasonous intent.

threat of sanctions in the offender's preferred choice of deferential terms. The warning was designed to get Mr. Walton's attention—no small task, since the Court would have to be heard over the deafening volume of Mr. Walton's ego. Although the Court has issued stern orders on a rare occasion in other matters, the bluntness required here was a first. But then, almost universally, the attorneys who appear before the Court do not confuse presenting argument with being argumentative, or mistake belligerence for zealous advocacy.

The Respondents also argued that the warning is evidence of bias because "no judge should direct a lawyer to bring his checkbook to court because the judge is going to fine him if he zealously represents his client." There is no basis for the assertion that a judge cannot give explicit directions that an attorney be prepared to pay his sanctions for sanctionable behavior. Moreover, the allegation that the Court stated that it would sanction Mr. Walton for zealous advocacy is false. The Court threatened sanctions for unprofessional courtroom behavior. Despite the Respondents' and Mr. Walton's confusion on this point, zealous advocacy and disrespectful courtroom behavior are not synonymous.

Timely dispositions. The Respondents argued that the Court's timeliness in disposing of their motions is evidence of bias. They cited to no authority in support of their argument. The dearth of supportive authority may be because efficient, timely dispositions are not evidence of bias. They are evidence of hard work and a commitment to the administration of justice without delay. The Respondents' suspicion of timeliness may lie in the fact that timeliness is a foreign concept to them, as so amply demonstrated in this matter.

The Court's alleged lack of respect for Mr. Walton. The Respondents and Mr. Walton argued that the Court's alleged lack of respect for Mr. Walton is evidence of bias against Mr. Walton personally and against the Respondents derivatively. This argument conflates two distinct concepts. Having a lack of respect for someone is not synonymous with having a bias against that person. Having a bias is the condition of having an *improper* predisposition towards someone or something. By contrast, having a lack of respect is merely the condition of not having esteem for someone or something. Unlike a bias, a lack

of respect may be *entirely proper*, if it is deserved. An attorney cannot act sanctionably, then demand judicial disqualification because the Court develops an understandable lack of respect for the attorney, based on his sanctionable acts. By that logic, a court would almost never be able to sanction an attorney, since most sanctionable acts suggest that the actor is not worthy of respect for committing those acts. Accordingly, even if the Court has a lack of respect for Mr. Walton, that lack of respect would be a result of Mr. Walton's behavior and would not establish bias against Mr. Walton. It would establish an opinion of Mr. Walton that is well-deserved, based on his actions in this matter.

Second, § 455(b)(1) requires disqualification when the judge holds a bias against a party, and the Respondents cite no authority for the premise that a court's disposition towards a party's counsel can derivatively establish bias against that party. In making this argument, the Respondents demonstrated a fundamental misunderstanding of their available remedy. If they believed that Mr. Walton was not their best choice of counsel because they suspected that the Court has a lack of respect for him, their remedy was not to change the judge; it was to change their counsel. While a party generally may select the attorney of his choice, in making that choice, the party takes on the risks of that choice—including the risk that the attorney's behavior may result in the Court taking a dim professional view of the attorney. A party is not entitled to a judge who respects his attorney or to a judge who respects him for his choice of attorney. "A litigant chooses counsel at his peril." *Boogaerts v. Bank of Bradley*, 961 F.2d 765, 768 (8th Cir. 1992).

The Re-Docketing of the Motion to Disgorge. The Respondents argued that the re-docketing of the Motion to Disgorge is evidence of bias. However, as previously noted in herein, a court is permitted to re-docket improperly docketed pleadings. Moreover, nothing about the re-docketing substantively assisted the Debtor. In addition, the Respondents made this request for disqualification out of time. The re-docketing occurred on April 5, 2013, but the Respondents failed to raise the issue until five months later. To excuse their tardiness, the Respondents claimed (for the first time) in the Motion for Leave to Appeal that Mr.

Walton became aware of the re-docketing until just after the Court compelled discovery). However, Mr. Robinson, an attorney, received electronic mailings regarding all docket entries in the Main Case in April 2013, including the notice of the disposition of Adversary Proceeding No. 12-4341 and the filing of the Motion to Disgorge and its attendant document history. Mr. Robinson had the obligation to raise the issue at the earliest possible moment. Moreover, the claim that Mr. Walton only "recently" became aware of the re-docketing is not true. At the May 15 hearing, the Court pointed out the procedural history of this matter, when both Mr. Walton and Mr. Robinson were present. Moreover, the re-docketing and the document's history was part of the electronic docket sheet when Mr. Walton was retained as counsel. The assertion that Mr. Walton did not notice the re-docketing in the six months between May and October—but did, coincidentally, manage to notice it just after the Court compelled discovery—is not believable. And, even if Mr. Walton actually failed to familiarize himself with the Motion to Disgorge and its history when he began his representation of the Respondents, that negligence does not now make timely the raising of the re-docketing as a ground for disqualification.[42]

The Judge's Service in Governmental Employment. The Respondents argued that the Judge's service in governmental employment as the UST is evidence of bias. As the Court determined in its Order Denying the First Motion to Recuse, the request for disqualification on this ground was untimely because it was raised for the first time six months after the Motion to Disgorge was filed.

However, in their Motion for Leave to Appeal, the Respondents alleged (for the first time) that Mr. Walton "was unaware of the [Judge's UST] role in the [matters] . . . at the time he entered his appearance in this case, and only became aware thereof when discussing with Robinson" the discovery sanctions.

[42] In raising the re-docketing as an issue, the Respondents argued that the re-docketing deprived the Court of subject matter jurisdiction. A subject matter jurisdiction challenge, of course, is not subject to a timeliness requirement. The Court addresses the merits of the re-docketing as the basis of a subject matter jurisdiction challenge in Part IV.A.

However, Mr. Walton's claim of protracted ignorance is not credible. Mr. Walton has long practiced before the bankruptcy courts here. *Walton v. LaBarge (In re Clark)*, 223 F.3d at 861 (noting that Mr. Walton is "one of the more frequent bankruptcy petition filers" in the District.) It is a well-known among bankruptcy practitioners in this District that the Judge served as the UST prior to taking the bench. It is not believable that Mr. Walton wandered for months in this matter in a cloud of cluelessness about his own clients' previous encounters with the UST but then suddenly realized—only after his clients ran out of options for avoiding discovery—that one of the Respondent's paths crossed with that of the Judge when the Judge served as the UST.

Moreover, even if Mr. Walton actually was ignorant of his own clients' history with the Office of the UST, his ignorance does not now make the disqualification request timely. The request for disqualification should have been made by Mr. Robinson—an attorney himself, who purports do to business as Critique Services L.L.C.—at the earliest possible moment after the filing of the Motion to Disgorge.

And, even if the hiring of Mr. Walton somehow restarted the timeliness clock, the request for disqualification based on the Judge's service in governmental employment as the UST still was untimely. The First Motion to Recuse was filed four months after Mr. Walton filed his Notice of Appearance. It was Mr. Walton's responsibility, at the beginning of his representation, to assess the facts to determine how to proceed in advocating for his clients' interests in a timely manner—which would have included considering whether there were grounds for judicial disqualification at that time. If Mr. Walton was ignorant of the facts related to the interactions that the Office of the UST had with Critique Services L.L.C. during the Judge's service as the UST, that ignorance was by his own negligence and does not now inure to the benefit of his clients.

Further, setting aside the untimeliness issue, the reading of § 455 as a whole does not support the argument that the Judge's service in governmental employment requires disqualification under § 455(b)(1). Section 455(b)(3) sets forth the limited circumstances under which a judge must disqualify himself

based upon his previous governmental employment—and the Judge is not required to disqualify under § 455(b)(3). To argue that § 455(b)(1) nevertheless requires disqualification because of the Judge's service as the UST undermines § 455(b)(3) while artificially over-empowering § 455(b)(1).

The Offering to the Respondents of a Choice of an Alternate Method for Satisfying the Sanctions. The Respondents allege that the offering of a choice of an alternate, nonmonetary method of satisfying their monetary sanctions is evidence of bias. That is, the Respondents argue that the Judge is biased *against them* because the Court was willing *to cut them a break* so that they would not have to pay tens of thousands of dollars in sanctions. However, the Court showing mercy towards the Respondents is not evidence of the Judge having a bias against them. In addition, the request for disqualification on this ground is untimely. The choice for satisfying the sanctions by the nonmonetary method was offered to the Respondents near the end of January. They did not seek disqualification on this ground until mid-April.

The State Court Action. In the Third Motion to Recuse, which is in the form of an affidavit, Mr. Walton attested that the Judge is biased against him because he sued the Judge in the State Court Action, and attached in support a copy of the State Court Action petition. However, the fact that Mr. Walton chose to sue the Judge in his personal capacity during the pendency of this matter is not evidence that the Judge is biased against him. A party cannot "create" judicial bias by the act of suing the judge. This is not to say that the Court necessarily respects Mr. Walton for his decision to sue him. But, in choosing to sue the Judge, Mr. Walton opened himself up to the risk that the Judge might not respect him for that choice.

In addition, nothing alleged in the State Court Action petition supports a finding that the Judge is biased.[43] In the petition, Mr. Walton baselessly claims that the Court's act of mercy towards his clients was really an effort to harm *him*.

[43] The Court would have preferred not to comment on the State Court Action in this Memorandum Opinion. However, Mr. Walton pointed to the State Court Action as a basis for his request for disqualification. Accordingly, the Court must address the issue of whether the State Court Action is a basis for disqualification.

In support of this, he makes numerous false and misleading allegations, including that: the Court "mandated" that Mr. Walton be fired (in reality, the Respondents remained free to satisfy the sanctions by payment pursuant to the terms set forth in the Second Order Imposing Sanctions); the Court "interfered" with settlement negotiations (in reality, the choice of the alternate method for satisfying the sanctions was conveyed to the chapter 7 trustee before the settlement negotiations began); the Court's offer was related to claims at issue in the settlement negotiations (in reality, the parties had no ability to agree among *themselves* how to satisfy sanctions owed to *the Court*); the Court participated in ex parte communications (in reality, the Court communicated with the chapter 7 trustee, who was not a party to the sanctions); and the Judge acted outside the scope of his judicial authority by giving the Respondents this choice (in reality, the offer of this choice was made through the Court's law clerk, upon the Court's direction, in a matter before the Court, concerning the Court's sanctions).

The crux of Mr. Walton's argument in the Third Motion to Recuse and the attached State Court Action is that the Judge has a "vendetta" against him. However, sanctioning Mr. Walton for his sanctionable behavior is not personal; it is professional. Likewise, offering the Respondents the choice to satisfy their sanctions by agreeing to never engage Mr. Walton again before this Court was not personal. The Court took the facts that it had before it—including the fact that Mr. Walton facilitated the contempt that caused the need for sanctions—and offered the Respondents a choice by which they could satisfy their sanctions and ensure the Court that there would not be a re-play of this collusion of contempt. Mr. Walton may resent that the Court gave his clients this choice, but his resentment does not establish bias.

Issuance of the April 3 Notices of Sanctions. The Respondents and Mr. Walton argued that the issuance of the April 3 Notices of Sanctions is evidence of bias. They alleged that the "reasonable inference" from the issuance of the April 3 Notices is that the Court had ex parte communications regarding the settlement negotiations, then issued the Notices in response. This "inference" is neither reasonable nor supported. On March 22, 2014, the Court received notice

from the Debtor in her filed Declaration, advising that negotiations had collapsed. After this, the Court began to prepare to dispose of the Motion to Disgorge and to impose sanctions for the sanctionable behavior that occurred during the course of the litigation. While the parties remained free to continue to negotiate, the Court proceeded on the assumption that a settlement would not occur. Providing due process notice of the Court's intent to impose sanctions and allowing the Respondents and Mr. Walton an opportunity to respond was a necessary step in the process of preparing the final order in this matter.

Correction of the Incorrect April 11, 2014 Docket Entry. The Respondents argued that the correction of an incorrect entry on the electronic docket is evidence of bias. On April 11, 2014, the Debtor filed a document captioned "Notice from Debtor related to Debtor's Motion to Compel Discovery." For reasons unknown, the Debtor described the document on the electronic docket as "Correspondence, Withdrawal of Document." However, the document was not correspondence and it did not operate to withdraw anything. The document provided that "for all intents and purposes the motion [to compel discovery] is withdrawn." This representation had no legal effect. A motion cannot be withdrawn for "all intents and purposes," and it cannot be withdrawn after its disposition. The electronic docket sheet's description of the document as correspondence or a withdrawal was incorrect and misleading. Because the electronic docket is publicly available, the Court strives to maintain it so that it does not become a tool for incorrect or misleading representations. Therefore, the Court directed the correction on the electronic docket sheet of the description so that it now reads as the exact title that the Debtor gave to the document—no more, no less, and no different. This correction had no substantive effect and does not establish bias.

Issuance of the April 21 Notice of Sanctions Against Mr. Walton. Mr. Walton alleges that the issuance of the April 21 Notice against him after he brought the State Court Action is evidence of bias against him. A judge cannot disqualify himself from presiding over a case just because an attorney facing sanctions decides to sue him. Accordingly, the Motion to Disgorge and the issue

of the imposition of sanctions had to go forward—which meant that the Court needed to issue due process notices regarding its intent to impose sanctions. Nothing about giving such notice is evidence of bias.

E. Analysis under § 455(a).

Section 455(a) provides that "[a]ny . . . judge . . . of the United States shall disqualify himself in any proceeding in which his impartiality might be reasonably questioned." The standard under § 455(a) is objective (what a reasonable person might believe), not subjective (what the judge feels about his ability to rule without bias); therefore, the proper test under § 455(a) is whether "a reasonable person who knew the circumstances would question the judge's impartiality, even though no actual bias or prejudice has been shown." *U.S. v. Tucker*, 78 F.3d at 1324 (quoting *Gray v. University of Ark.*, 883 F.2d 1394, 1398 (8th Cir. 1995)). As one court explained, "[t]he reasonable outside observer is not . . . 'a person unduly suspicious or concerned about a trivial risk that a judge may be biased,' since a presiding judge is not required to recuse himself solely because of 'unsupported, irrational or highly tenuous speculation.'" *In re 1103 Norwalk Street, L.L.C.,* 2003 WL 23211563, at *2 (Bankr. M.D.N.C. Dec. 11, 2003)(quoting *United States v. DeTemple*, 162 F.3d 279, 286 (4th Cir. 1988)).

However, despite the sweeping language of § 455(a), the statute does not extend literally to any kind of doubtful behavior. *United States v. Sypolt,* 346 F.3d 838, 839 (8th Cir. 2003). Section 455(a) "must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the merely unsubstantiated suggestion of personal bias or prejudice." *U.S. v. Cooley*, 1 F.3d at 993 (quoting *Franks v. Nimmo*, 796 F.2d 1230, 1234 (10th Cir. 1986)). Section 455 is not "intended to bestow veto power over judges or to be used as a judge shopping device." *Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir. 1995)(internal citations omitted). If opinions "are based on 'facts introduced or events occurring in the course of the current proceedings,' those opinions warrant recusal under § 455(a) only if they 'display a deep-seated favoritism or antagonism that would make fair judgment impossible.'" *U.S. v. Sypolt*, 346 F.3d at 839 (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

Section 455(a) inquiries are extremely fact driven and must be judged on their unique facts and circumstances. *Nichols v. Alley*, 71 F.3d at 351. Among the various matters and allegations that ordinarily are insufficient include: rumors; speculation; beliefs; conclusions; innuendo; opinion; prior rulings in the proceeding or another proceeding, solely because they were adverse; the mere fact that the judge has previously expressed an opinion on a point of law or has a dedication to upholding the law or a determination to impose severe punishment with the limits of the law; mere familiarity with the party, the type of claim, or the defense offered; baseless personal attacks on the judge; and suits against the judge by a party. *U.S. v. Cooley,* 1 F.3d at 994-94 (numerous citations omitted); *see also In re U.S.*, 158 F.3d 26, 30 (1st Cir. 1998)(holding that "compulsory recusal must require more than subjective fears, unsupported accusations, or unfounded surmise").

To the degree that the Respondents allege that it is reasonable to question the Judge's impartiality based on any of the grounds Part VI.D, the Court concludes that these allegations do not establish that it is proper for the Judge to disqualify himself § 455(a), for the same reasons that they do not establish actual bias under § 455(b)(1). These allegations are no more persuasive that it is reasonable to question the Judge's impartiality than they are persuasive of the Judge having actual bias.

In addition, the Court notes a few points specifically:

- It is not reasonable to question a judge's impartiality based on a false or misleading statement made in support of disqualification.
- It is not reasonable to question a judge's impartiality based on the sheer number of allegations, when none of the allegations makes it reasonable to question the judge's impartiality. One cannot consider $x = 0 + 0 + 0$, then reasonably question whether x is equal to anything other than 0.
- The reading of § 455 as a whole does not support the request for disqualification under § 455(a) based on the Judge's service as UST. It cannot be reasonable to question a judge's impartiality under § 455(a)

based solely on the judge's previous service in government employment when that service does not require disqualification under § 455(b)(3).

Accordingly, the Court **ORDERS** that any request for judicial disqualification be **DENIED.**

VII. NOTICE AND THE OPPORTUNITY TO BE HEARD

A. The Law on Notice and the Opportunity to be Heard Before the Imposition of Sanctions

Notice is required before sanctions are imposed. *Walton v. LaBarge* (*In re Clark)*, 223 F.3d at 864. Due process is provided where "the sanctioned party has a real and full opportunity to explain its questionable conduct before sanctions are imposed." *Coonts v. Potts*, 316 F.3d 745, 753 (8th Cir. 2003)(*Chrysler Corp. v. Carey*, 186 F.3d 1016, 1023 (8th Cir. 1999)). However, this is not a mandate that a hearing be conducted prior to the imposition of sanctions. *Walton v. LaBarge* (*In re Clark)*, 223 F.3d at 864 ("The court may act [to impose sanctions] without a hearing if it has provided an opportunity for one but no parties in interest requested it."); *Chrysler Corp. v. Carey*, 186 F.3d at 1022 ("[N]o hearing is necessary before sanctions are imposed where the record demonstrates a willful and bad faith abuse of discovery and the non-cooperating party could not be unfairly surprised by the sanction."); *In re Rimsat, Ltd*., 212 F.3d 1039, 1046 (7th Cir. 2000)("Putting to one side the possibility that the appellants were not entitled to a hearing in the first place, the problem with the appellants' argument that the bankruptcy court should have held a hearing before imposing sanctions is that the appellants never requested a hearing. Since a court is not invariably required to provide a hearing before imposing sanctions, the appellants' failure to request a hearing waives any right they might have had to one."); *see* 11 U.S.C. § 102(1)(providing that "'notice and a hearing', or a similar phrase . . . means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but . . . authorizes an act without an actual hearing if such notice is given properly and if . . . such a hearing is not requested timely by a party in interest.").

B. The Respondents' Notice and Opportunity to be Heard Before the Imposition of Sanctions Under Rule 37(b) & § 105(a) for Discovery Violations

The Respondents received notice and an opportunity to be heard before sanctions were imposed on an interim basis:

- At the September 18 hearing on the Motion to Compel Discovery, the Court held that the Respondents were compelled to meet their discovery obligations within seven days and advised that, afterwards, sanctions of $1,000.00 a day would be imposed for each day of noncompliance. At that hearing, the Respondents had an opportunity to be heard.
- In its September 20 Order Compelling Discovery, the Court reduced its September 18 bench ruling to writing, and gave notice that further sanctions may be imposed for refusal to meet the discovery obligations.
- At the October 1 status conference, the Court gave notice that further sanctions may be imposed for the refusal to satisfy the discovery obligations, and the Respondents had an opportunity to be heard.

The Respondents received notice and an opportunity to be heard before sanctions were imposed on a final basis, along with repeated reminders that the sanctions could be purged by compliance with the Order Compelling Discovery:

- In the November 13 Second Order Imposing Sanctions, the Court gave notice that the continued refusal to obey the Order Compelling Discovery may result in the imposition of "any other sanction that is reasonable and just under the circumstances."
- In its December 2 Notice, the Court provided an explicit purgation term: "[c]omply, and the sanctions will be purged. Refuse to comply, and the sanctions will stand. Continue to refuse to comply, and additional sanctions may be imposed."
- In its February 13 Notice of Satisfaction,[44] the Court advised that it was "giv[ing] notice (again) to [the Respondents]: if they continue to refuse to

[44] The Notice of Satisfaction was issued to make a record that Mr. Robinson had satisfied a separate $3,000.00 in sanctions he accrued in this matter when he

make the required discovery, the sanctions will stand and further sanctions may be imposed for additional violations." Moreover, in the Notice, the Court warned the Respondents that they could not purge their sanctions by settling their disputes with the Debtor:

> the Court is aware that the parties have been attempting to negotiate a settlement of their disputes, and wishes them the best in reaching a mutually acceptable agreement. However, the Court wants to make clear: Mr. Robinson and his law firm cannot buy their way out of the Court-imposed sanctions for discovery abuse simply by settling with the Debtor. The sanctions are not owed to the Debtor; they are not part of the claim and issues between the parties. The sanctions are owed to the Court . . . The sanctions will not b[e] purged simply as a bi-product of any settlement. If Mr. Robinson and his law firm intend to use settlement as a way to permanently avoid making the discovery . . . then they should understand that such avoidance will come at the price of the unpurged sanctions. If Mr. Robinson and his law firm had wanted to settle this dispute to avoid making discovery, they should have done so before abusing the Court and the discovery process.

- In its April 3 Notice Regarding Sanctions, the Court gave the Respondents until April 11, 2014 to meet their discovery obligations, and gave notice that, if they did not, the Court may impose additional sanctions enumerating specifically what those sanctions might include.
- On April 11, 2014, the Respondents filed a Response to the April 3 Notice. The Respondents did not request that the matter be set for hearing.
- In footnote 1 of its April 14 Order Denying Second Motion to Recusal, the Court reminded the Respondents that they still could satisfy their discovery obligations until such time as the final disposition of the Motion to Disgorge, but advised that the time for doing so was quickly expiring, as the Court was preparing its disposition on the Motion to Disgorge.
- In its April 21 Order Denying the Motion to Compromise Controversy, the Court once again stated that the Respondents still could meet their

---

violated the Second Order Imposing Sanctions by using the Court's exterior drop box for filing three documents in bankruptcy cases pending before other Judges.

discovery obligations and purge the sanctions, until such time as the final order on the Motion to Disgorge was entered.

- In its April 23 Order Denying the Third Motion to Recuse, the Court impressed upon the Respondents the importance of responding to the April 21 Notice, providing that: "In addition, the Court encourages the Respondents and Mr. Walton to respond by the April 28 deadline by filing a Brief in Response. This is not a minor matter. It may result in monetary sanctions and/or the revocation of privileges with this Court."
- In a May 15 Order, the Court again reminded the Respondents: "Mr. Robinson carries the keys to his sanctions prison in his own pocket. If he complies with the Order Compelling Discovery, the sanctions he has accrued will be purged."

C. Mr. Walton's Notice and Opportunity to be Heard Before the Imposition of Sanctions Under Rule 37(b) and § 105(a) for Discovery Violations

Mr. Walton received notice and an opportunity to be heard before sanctions were imposed against him. In the April 3 Notice Regarding Sanctions Against Mr. Walton, the Court gave notice that was

> considering imposing monetary and non-monetary sanctions against him personally for his participation in the Respondents' improper efforts to avoid making discovery, including, but not limited to, the acts of: vexatiously increasing the costs of litigation by interfering with discovery; making false representations to the Court about the Respondents' intent to participate in discovery; filing frivolous motions for the purpose of avoiding discovery; attempting to avoid discovery by asserting untimely and waived objections; requiring the Court to hold numerous hearings in an attempt to stall the making of discovery; making false allegations regarding the presiding Judge; prolonging this proceeding without excuse; and vexatiously attempting to prevent the Debtor from prosecuting her Motion to Disgorge by refusing without excuse to make discovery.

The Court gave Mr. Walton until April 11, 2014, to respond, adding that "[i]f the Respondents make their legally required discovery by responding in full and without objections . . . by that time, the Court will take the . . . compliance into

consideration when determining whether to issue sanctions personally against Mr. Walton." Mr. Walton filed a response, but did not request a hearing.

D. The Respondents' and Mr. Walton's Notice and Opportunity to be Heard Before the Imposition of Sanctions Under Bankruptcy Rule 9011 and § 105(a) for Making of False Statements about the Judge's Previous Service as the UST

In its April 21 Notice to the Respondents and Mr. Walton, the Court advised that it intended to impose sanctions for the making of false statements:

> for the numerous false representations and statement made by the Respondents through Mr. Walton, willfully and in bad faith, at hearing and in pleadings, during the course of the litigation of the Motion to Disgorge. Those false statements and representations include, but are not limited to, the false representations made at hearings regarding the status of the Respondents' discovery responses and the Respondents' intent to make discovery, and the false statements made about the presiding Judge's previous employment as the United States Trustee made in support of a demand for the Judge's disqualification. The sanctions contemplated by the Court are both monetary and nonmonetary in nature, and may be imposed pursuant to any statutory authority available to the Court. These sanctions may be in addition to any sanctions that may be imposed upon the Respondents related to their refusal to make discovery, and in addition to sanctions that may [be] impose[d] upon Mr. Walton for his vexatious and contumacious efforts to undermine the judicial process in his facilitation of the Respondents' refusal to make discovery.

The Court gave the Respondents and Mr. Walton until 4:00 P.M. on April 28, 2014 to respond. Both filed responses, but neither requested a hearing.

VIII. CIVIL NATURE OF THE SANCTIONS IMPOSED HEREIN

A. The Law on the Difference Between Civil and Criminal Sanctions

"Where a contempt sanction is not compensatory, it is civil, and therefore non-punitive, only if the contemnor is afforded some opportunity to purge the contempt." *Duby v. United States*, 451 B.R. 664, 670 (B.A.P. 1st Cir. 2011)(citing *International Union v. Bagwell*, 512 U.S. 821, 829 (1994) and *Penfield Co. of Cal. v. SEC*, 330 U.S. 585, 590 (1947)); *Armstrong v. Rushton (In re Armstrong)*, 304 B.R. 432, 437 (B.A.P. 10th Cir. 2004); *In re Ware*, 2003 WL 1960454, at *9 (M.D.N.C. Apr. 24, 2003). "This purge mechanism distinguishes civil from

criminal contempt." *May-Ex II v. Du-an Prods., Inc. (In re Mayex II Corp.)*, 178 B.R. 464, 470 (Bankr. W.D. Mo. 1995) (citing *United States v. Ayer*, 866 F.2d 571, 573-74 (2d Cir. 1989)). Not even incarceration is a criminal sanction, if the incarceration may be ended upon purging. *Shillitani v. United States*, 384 U.S. 364, 370 n.6 (1966)(affirming the bankruptcy court's order of imprisonment to coerce compliance when the contemnor had the ability to comply). If non-compensatory sanctions are purged, then the court issues a notice of purgation, relieving the contemnor of his obligation to satisfy the sanctions. *See, e.g., First Mariner Bank v. Resolution Law Group, P.C.*, 2014 WL 1681986, at *3 (D. Md. Apr. 28, 2014). However, if the non-compensatory sanctions are purged by compliance, but the court punishes the contemnor by imposing the sanctions anyway, then the sanctions are criminal. *First Mariner Bank v. The Resolution Law Group, P.C.*, 2014 WL 1681986, at *3 ("A sanction imposed following compliance would be punitive, and thus, a remedy for criminal contempt.").

B. The Civil Nature of the Sanctions Imposed Under Rule 37(b) and § 105(a) Upon the Respondents for Discovery Violations

The sanctions imposed in the First Order Imposing Sanctions were not compensatory. They also were not criminal. They were civil sanctions imposed to garner compliance with the Order Compelling Discovery within thirty days. Likewise, the sanctions imposed in the Second Order Imposing Sanctions were not compensatory. They also were not criminal. Although they were not imposed specifically to garner compliance with the Order Compelling Discovery (because the Court had no realistic expectation at that point that discovery would be made), they also did not cut off the possibility of compliance. This second round of sanctions were imposed, in part, to discourage others from such behavior and, in part, to punish the Respondents with the disgrace of being found in contempt and the Court's public acknowledgment in its loss of trust in Mr. Robinson. However, this "punishing" effect did not make the sanctions criminal in nature. All sanctions "punish," in the sense that they all rebuke the offender and hold him up for condemnation for his behavior. What makes non-compensatory sanctions criminal in nature is the imposition of punishment without the opportunity to purge.

The fact that purgation was possible was evident from the terms of the Second Order Imposing Sanctions and the purgation provision of the December 2 Notice. Since the Second Order Imposing Sanctions, the Respondents have had months to meet their discovery obligations but have chosen not to do so. The non-compensatory discovery-related sanctions imposed herein pursuant to Rule 37(b) and § 105(a) are civil in nature.

C. The Civil Nature of the Sanctions Imposed Under Rule 37(b) and § 105(a) Upon Mr. Walton for Discovery Violations

The sanctions imposed herein upon Mr. Walton under Rule 37(b) and §105(a) for his bad faith and willful abuse of process, vexatious litigation, making of misleading representations about the condition of the discovery and the Respondents' intent to provide the discovery, and facilitation of the Respondents' refusal to meet their discovery obligations and contempt are compensatory and civil in nature. They are imposed for the purpose of "compensating the [C]ourt for the added expense of the abusive conduct," consistent with *Carlucci v. Piper Aircraft Corp*., and for the purpose of deterring other from similar discovery-related abuse of process and vexatious litigation.

D. The Civil Nature of the Sanctions Imposed Under § 105(a) Upon the Respondents and Mr. Walton for the Value of the Debtor's Attorneys' Fees

The sanctions imposed herein upon the Respondents and Mr. Walton under Rule 37(b) and § 105(a) for the value of the Debtor's attorneys' fees and costs are compensatory and civil in nature. These sanctions are imposed to compensate the Debtor's counsel and require the bad acting parties to bear the burden of the costs caused by their bad acts.

E. The Civil Nature of the Sanctions Imposed Under Bankruptcy Rule 9011 and § 105(a) Upon the Respondents and Mr. Walton for False Statements

The sanctions imposed herein upon the Respondents and Mr. Walton under Bankruptcy Rule 9011 for the making of false statements about the Judge's service in governmental employment as the UST are civil in nature. *Wayland v. McVay (In re Tbyrd Enters., L.L.C.)*, 354 Fed. Appx. 837, 839 (5th Cir. 2009)("There is no legal basis for equating" Bankruptcy Rule 9011 sanctions and

criminal sanctions); *see Miller v. Cardinale (In re DeVille)*, 361 F.3d 539, 552-53 (9th Cir. 2004); *In re W.A.R. L.L.P*., 2012 WL 4482664, at *3 (Bankr. D.D.C. Sept. 26, 2012). To the degree that these sanctions may be imposed under § 105(a), they are compensatory and civil in nature. They are payable to the Court to compensate the Court for the damages inflicted as a result of the making of the false statements.

IX. SANCTIONS IMPOSED UPON THE RESPONDENTS AND MR. WALTON UNDER RULE 37(b)(2) AND § 105(a) FOR THE VIOLATION OF RULE 37(a)

A. The Law on Rule 37(a) & (b)(2)

Rule 37(a)(3)(B) [45] provides, in relevant part, that "a party seeking discovery may move for an order compelling an answer, designation, production, or inspection."

In turn, Rule 37(b)(2)(A) provides, in relevant part, that

> [i]f a party . . . fails to obey an order to provide or permit discovery, including an order under . . . [Rule] 37(a), the court . . . may issue further just orders. They may include the following:
>
> (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
>
> (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matter in evidence;
>
> (iii) striking pleadings in whole or in part;
>
> . . .
>
> (vi) rendering a default judgment against the disobedient party; or
>
> (vii) treating as contempt of court the failure to obey any order . . .

By the plain language, the Court is not limited to those enumerated sanctions; it also may enter any "further just orders." The purpose for Rule 37(b) sanctions

[45] Rule 37 is applicable pursuant to Federal Rule of Bankruptcy Procedure "("Bankruptcy Rule") 9014(a), which provides that Rule 7037 (which, in turn, makes applicable Rule 37) is applicable in contested matters.

may include (1) compensating the court and other parties for the added expense of the abusive conduct, (2) compelling discovery, (3) deterring others from similar conduct, and (4) punishing the guilty party. *Carlucci v. Piper Aircraft Corp*., 775 F.2d at 1453 (internal citations omitted).

The Court has broad discretion in determining appropriate sanctions for the failure to participate in discovery. *See National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639, 642 (1976); *Aziz v. Wright*, 34 F.3d 587, 589 (8th Cir. 1994). "[W]hen the facts show willfulness and bad faith in the failure to permit discovery, the selection of a proper sanction is entrusted to the sound discretion" of the court. *The Cooperative Fin. Ass'n v. Garst*, 917 F.Supp 1356, 1374 (N.D. Iowa 1996)(citing *Avionic Co. v. General Dynamics Corp*., 957 F.2d 555, 558 (8th Cir. 1992)). This includes discretion to impose extreme sanctions available under the Rule. *Comiskey v. JFTJ Corp*., 989 F.2d at 1009 (holding that Rule 37(b)(2)(C) grants "the authority to enter a default judgment against a party who abuses the discovery process."); *Boogaerts v. Bank of Bradley*, 961 F.2d at 768 ("Rule 37(b)(2)(C) authorizes . . . discovery abuse sanctions of [dismissal], striking pleadings, or entering a default judgment against the abusive litigant.").

By the plain language of Rule 37(b)(2), the sanctions must be "just," *Comiskey v. JFTJ Corp*., 989 F.2d at 1009 (citing *Shelton v. American Motor Corp.*, 805 F.2d 1323, 1329-30 (8th Cir. 1986)), and "relate to the claim at issue in the order to provide discovery," *Harmon Autoglass Intellectual Property, L.L.C. v. Leiferman (In re Leiferman)*, 428 B.R. 850, 853 (8th Cir. B.A.P. 2010)(quoting *Hairston v. Alert Safety Light Prod., Inc*., 307 F.3d 717, 719 (8th Cir. 2002)). This means that the sanctions are bound only by that which is "reasonable" in light of the circumstances. *Carlucci v. Piper Aircraft Corp*., 775 F.2d at 1453; *see U.S. v. $18,680.00 in U.S. Currency*, 2009 WL 1158953, at *1 (M.D. Ga. April 28, 2009).

Relevant factors in determining whether Rule 37(b) sanctions are just and reasonable in light of the circumstances include the materiality of the issue on which discovery is withheld and the difficulty posed to the seeking party by the withholding. *The Cooperative Finance Ass'n v. Garst*, 917 F.Supp. at 1374 (citing *Avionic Co. v. General Dynamics Corp*., 957 F.2d at 558). For example, a party

is unfairly prejudiced if the failure of the opposing party to meet their discovery obligations impairs the requesting party's ability to determine the factual merits of the opponent's claim or defense. *Id.* (citing *Avionic Co. v. General Dynamics Corp.*, 957 F.2d at 558).

In *Poulis v. State Farm Fire & Casualty Co*., 747 F.2d 863, 868 (3d Cir. 1984), U.S. Court of Appeals for the Third Circuit provided six factors to consider when determining sanctions under Rule 37(b): (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary cause by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal; and (6) the meritoriousness of the claim or defense.

In *Tan v. Tranche 1 (SVP-AMC), Inc. (In re Tan)*, 2007 WL 7541007, * 6 n.19 (B.A.P. 9th Cir. Sept. 28, 2007), the B.A.P. for the Ninth Circuit recognized a higher burden must be met when imposing dispositive sanctions:

> "[d]ispositive" sanctions such as dismissal (Fed. R. Civ. P. 37(b)(2)(6)), default (Fed. R. Civ. P. 37(b)(2)(C)), and their functional equivalents (i.e. refusing to allow the disobedient party to support or oppose designated claims or defenses (Fed. R. Civ. P. 37(b)(2)(B)), or precluding any evidence as to a prima facie element of a claim . . . must meet a higher standard. First, noncompliance must be due to willfulness, fault or bad faith. . . . Then the court must weigh five factors:
>
> > (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the [opposing] party; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.

see also Paolino v. Brener (In re Paolino), 87 B.R. 366, 379 (Bankr. E.D. Pa. 1988) (imposing the sanction of dismissal where plaintiff "manifested an intent to refuse to comply at all" with discovery requests).

In addition to Rule 37(b), § 105(a) also provides authority for the Court to sanction for abuse of the discovery process. Section 105(a) provides that

> [t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

See also Walton v. LaBarge (In re Clark), 223 F.3d at 864 (holding that the bankruptcy court may impose sanctions under § 105(a) for abuse of process); *In re Rimsat, Ltd.,* 212 F.3d at 1047 (affirming § 105(a) sanctions where there was abuse of process in a vexatious manner). "Abuse of process generally occurs when the legal process is used for improper purposes or to achieve an end not lawfully attainable." *In re DeLaughter*, 1997 WL 34725992, at *6 (Bankr. S.D. Iowa Mar. 21, 1997).

The Court assumes that sanctions imposed under § 105(a) should be warranted by clear and convincing evidence. *See May-Ex II v. Du-an Prods., Inc. (In re Mayex II Corp.)*, 178 B.R. 470-71 (holding that a moving party must prove civil contempt by clear and convincing evidence); *see, e.g., The Cadle Co. v. Moore*, 739 F.3d 724, 720-30 (5th Cir. 2014)(holding that invocation of the inherent power to sanctions requires a finding of bad faith or willful abuse of judicial process upon a finding of clear and convincing evidence); *Shepherd v. American Broadcasting Cos., Inc*., 62 F.3d 1469, 1478 (D.C.C. 1995)(requiring clear and convincing evidence of litigation misconduct as a condition for a default judgment as an exercise of the Court's inherent powers). *But see In re Silberkraus*, 253 B.R. 890, 913-14 (Bankr. C.D. Cal 2000)(questioning whether "clear and convincing" is the applicable standard where the bankruptcy court makes an explicit finding that conduct constituted or was tantamount to bad faith).

The Court has broad discretion in determining what remedy is appropriate for an act of civil contempt. *May-Ex II v. Du-an Prods., Inc. (In re Mayex II Corp.)*, 178 B.R. at 470 (citing *CBS Inc. v. Pennsylvania Record Outlet, Inc.*, 598 F.Supp. 1549, 1557 (W.D. Pa. 1984)). In general, "the appropriate sanction for an act of civil contempt is a calculated monetary penalty equal to that of the loss incurred and/or the amount necessary to coerce . . . compliance with the order." *In re*

Burnett, 455 B.R. 187, 195 (Bankr. E.D. Ark. 2011)(citing *U.S. v. United Mine Workers*, 330 U.S. 258, 304 (1947), and *McDonald's Corp. v. Victory Invests*., 727 F.2d 82, 87 (3d Cir. 1984)). The amount of civil sanctions should be determined upon consideration of (i) the character and magnitude of the harm threatened by continued contumacy, (ii) the probable effectiveness of any suggested sanction in bringing about the result desired, and (iii) the amount of the contemnor's financial resources and consequent seriousness of the burden. *Id.* (quoting *U.S. v. United Mine Workers*, 330 U.S. at 304)).

B. The Violation of Rule 37(a)

The clear and convincing evidence shows that the Respondents are in the contemptuous, willful, bad faith violation of the Order Compelling Discovery. Although the Respondents are legally obligated to respond, in full, to the Requests for Discovery, regardless of any basis for objection that they might have raised by timely objection, they refuse to meet their discovery obligations. Mr. Walton advised the Debtor's counsel that his clients would not produce without an order compelling discovery, needlessly forcing the Debtor to file the Motion to Compel Discovery. The Court and the Debtor endured weeks of status conferences and stalling that failed to produce the required discovery. The "responses" that were (very untimely) provided were grossly insufficient. When the Court finally entered the Order Compelling Discovery, the Respondents then filed numerous rapid-fire motions in an attempt to avoid complying—several of which were either frivolous or close to it, and some of which contained false or misleading representations. The Respondents made bad faith representations about having made reasonable inquiry before making false allegations. They misstated the record about what the Court had ordered. When those motions were denied, Mr. Walton told the Court at the October 1 hearing that the Respondents did not intend to comply with the Order Compelling Discovery. Thereafter, the Court entered the First Order Imposing Sanctions. When those sanctions did not garner the discovery, the Court entered its Second Order Imposing Sanctions. In the meantime, the Respondents lied again about the Judge in federal pleadings, accrued $35,000.00 in sanctions, attempted to

appeal twice, and filed a petition for writ of mandamus that was denied. Still, no discovery was made. The Court offered the Respondents an alternative, nonmonetary choice for satisfying the sanctions, but the Respondents instead chose to persist in their contempt. After the Motion to Compromise Controversy was denied for a lack of standing, the Respondents then filed another motion to recuse, denied they had made false statements, claimed they were excused from making discovery by the Debtor's counsel, and continued to refuse to meet their discovery obligations.

The clear and convincing evidence also shows that Mr. Walton, in an effort to facilitate and promote the Respondents' contempt, willfully and in bad faith abused the judicial process and vexatiously litigated the issue of the Respondents' discovery obligations, resulting in the multiplication of hearings and the length of this litigation for no legal reason. His actions included: failing to timely file a Response on behalf of the Respondents, then attempting to "serve" the Debtor by jumping her in court on the day of the hearing with the untimely Response; demanding that the Debtor obtain an order compelling his clients' response to uncontested discovery requests; raising waived objections and insisting that they had not been waived; taking frivolous legal positions both in pleadings and at court; misstating the record and the content of orders; repeatedly insisting that the required discovery would be made when it later was not; insisting that his clients did not have to respond to the Requests for Discovery in full; waiting until the last possible moment before the court date to produce the already untimely discovery responses (depriving the Debtor's counsel of the opportunity to review the documents before the hearing), then providing the Respondents' grossly insufficient "responses"; accusing the Debtor of bad faith for not advising him of his obviously inadequate responses; using an obnoxious and unprofessional demeanor in the courtroom that included shouting at the Judge and arguing belligerently; making false representations regarding his clients' intent to participate as required in the discovery; making personal attacks on opposing counsel in pleadings; and blaming the Judge for the circumstances of his clients. As a result of Mr. Walton's abuse of judicial process,

what should have been a simple § 329 disgorgement request has dragged on more than a year, monopolizing scores of hours of the Court's and opposing counsel's time, and denying the Debtor the opportunity to proceed on her litigation. From the moment Mr. Walton filed his Notice of Appearance, he has utilized bad faith and willful, bad acts to advocate for his clients—to their grave detriment, but not mitigating their own responsibility.

C. Sanctions Imposed Upon the Respondents Under Rule 37(b)(2) and § 105(a) for Discovery Violations

Pursuant to Rule 37(b)(2)(A) and § 105(a), (either of which would, alone, be sufficient as a ground for imposing these sanctions), the Court **ORDERS** that:

(I) the accrued $30,000.00[46] in sanctions be imposed on a final basis and made immediately due for payment;

(II) pursuant to Rule 37(b)(2)(A)(vii), the Respondents' refusal to obey the Order Compelling Discovery be treated as contempt of the Court;

(III) pursuant to Rule 37(b)(2)(A)(ii), the Respondents be prohibited from supporting any claim or defense they may have raised to the claims in the Motion to Disgorge and from opposing any claim of the Debtor made in the Motion to Disgorge;

(IV) pursuant to Rule 37(b)(2)(A)(i), it be directed that all well-pleaded facts alleged by the Debtor in the Motion to Disgorge and all well-attested facts to which she attested in her Affidavit be established for purposes of the Motion to Disgorge, even if any such fact is contrary to any factual allegation made by the Respondents in any pleading or at any hearing in this matter; and, in any circumstance where any fact established pursuant to this sanction may conflict

[46] The Respondents accrued $35,000.00 in sanctions. However, those sanctions were reduced in the February 13 Notice of Satisfaction. In that Notice, the Court recognized that Mr. Robinson had satisfied a separate $3,000.00 in sanctions that he had accrued in this matter, following his violation of the bar on his use of the Court's drop box. In recognizing this satisfaction, the Court also reduced the $35,000.00 in sanctions by $5,000.00—even though the Court expressed skepticism about Mr. Robinson's claimed excuse for why he violated the bar. The Court sua sponte reduced the sanctions in recognition that Mr. Robinson showed some modicum of respect by paying those sanctions promptly.

> with any factual allegation made by the Respondents in a pleading or at a hearing in this matter, then such conflicting allegation shall be disregarded.

The Court considered the *Poulis* factors and determined that those factors weighed in favor of imposing sanctions:

(1) ***Poulis* Factor 1: Personal Responsibility.** The Respondents—an attorney and his purported d/b/a—were not innocent bystanders to the abuse of process. They were not victimized by their bad-acting attorney. Mr. Robinson is an officer of the Court and knew that what the Respondents were doing was unlawful. The Respondents are personally responsible for their refusal to meet their discovery obligations and for the strategies employed to avoid making discovery.

(2) ***Poulis* Factor 2: Prejudice.** The Debtor was severely prejudiced by the refusal to meet their discovery obligations. She was deprived of the material responses and production to which she was entitled. She was severely hindered in her ability to prosecute her motion and to respond to the defenses.

(3) ***Poulis* Factor 3: Dilatoriness.** The Respondents had a history of dilatoriness. They failed to timely file their Response to the Motion to Disgorge. They failed to timely serve their Response upon the Debtor. They failed to timely respond to the Requests for Discovery. They consistently waited in the very last possible moment to file most of their pleadings and to provide already-late, grossly deficient discovery "responses," in a clear effort to stall the proceedings and deny the Debtor a proper opportunity to consider the documents.

(4) ***Poulis* Factor 4: Willful, Bad Faith Conduct.** The Respondents' conduct was willful and in bad faith. For example, they filed the frivolous Motions to Quash. They failed to timely respond to the Requests for Discovery. They repeatedly raised

waived objections and refused to meet their discovery obligations based on those waived objections. They asserted the frivolous defense of a failure of personal jurisdiction. And they submitted vague, unreadable and otherwise deficient late responses to the Requests for Discovery.

(5) ***Poulis* Factor 5: Effectiveness of Other Sanctions.** Previous, lesser sanctions were ineffective.

(6) ***Poulis* Factor 6: Meritoriousness.** Nothing about the generic denials and blame-the-Debtor defenses indicates that they are meritorious, especially in light of the Respondents' refusal to participate in the discovery process on those defenses.

In addition, the Court also considered the *Tan* factors and determined that those factors weighed in favor of imposing the dispositive sanctions:

(1) ***Tan* Factor 1: Public Interest.** The public has a strong interest in the expeditious resolution of this litigation, as a year-plus delay in making discovery to the uncontested discovery requests on a motion to disgorge does not build confidence in the judicial system's timeliness, and undermines the public's confidence in the process.

(2) ***Tan* Factor 2: Docket Management.** The Court has a need to manage its docket so that this matter no longer usurps an inordinate amount of the Court's time and resources due to frivolous and vexatious litigation and willful contempt.

(3) ***Tan* Factor 3: Risk of Prejudice:** The risk of prejudice to the Debtor if these sanctions are not imposed is considerable, as she will be forced to either abandon the Motion to Disgorge or prosecute it blind, after essentially no discovery.

(4) ***Tan* Factor 4: Policy of In Favor of Disposing on the Merits.** While public policy favors disposing of cases on the merits, that policy is not trumped by the need to protect the Debtor and the

Court from the further bad faith, contempt and abuse of the Respondents and their counsel.

(5) ***Tan* Factor 5: Less Drastic Sanctions.** Less drastic sanctions have failed, as the Respondents are recalcitrant in their refusal to participate in the discovery process as required.

Further, the Court considered whether the sanctions are "just" as required under Rule 37(b)(2), and reasonable, and "necessary or appropriate" as required under § 105(a):

An inducement to obey the Order Compelling Discovery and a consequence for refusing to obey the Order Compelling Discovery. The sanctions were just, reasonable, necessary, and appropriate to induce compliance with the Order Compelling Discovery. By the time they were imposed on October 2, 2013, the Respondents were in willful, bad faith, unexcused refusal to obey the Order Compelling Discovery. They had made it clear at the October 1 hearing that they did not intend to obey the Order Compelling Discovery. As such, the Court concluded that the Respondents could not be induced to obey simply by pointing out the law and asking firmly.

In setting the sanctions at $1,000.00 a day, the Court considered the *In re Burnet* factors: (i) the "character and magnitude of the harm threatened" by the refusal to obey the Order Compelling Discovery (the harm was inflicted in bad faith, done for the purpose of preventing the Debtor from proceeding, and was of a great magnitude, since the refusal denied the Debtor of significant discovery); (ii) "the probable effectiveness" of the sanctions (these sanctions offered the best chance of garnering compliance, especially as compared with toothless demands); and (iii) "the amount of [the Respondents'] financial resources and the consequent seriousness of the burden" (the Court balanced the need to make the sanctions significant enough not to be an absorbable cost of doing business, with the goal of not over-sanctioning).

As to the third *Burnet* factor: Respondents receive approximately $1,000.00 in attorney compensation each day for new cases filed in this Court. Pursuant to the records of the Clerk's Office (**Attachment B**), in 2013, the

Respondents filed 1,133 bankruptcy cases in this District. Of those, 89% (1,009) were chapter 7 cases and 11% (124) were chapter 13 cases (thereby averaging three new chapter 7 cases a day). Further, a random sampling[47] done by the Clerk's Office of 100 of cases filed by the Respondents in the first six months of 2013 shows that the Respondents' average chapter 7 case fee was $296.23. As such, the Respondents average approximately $900.00 a day in compensation for chapter 7 cases alone—a figure that does not include any of the considerable compensation for the Respondents' chapter 13 cases.[48] Given this, the $1,000.00 a day in sanctions constituted a monetary penalty equal to that of the loss incurred and/or the amount necessary to coerce compliance, as articulated in *In re Burnet*.

The Respondents did not raise as a defense to the imposition of these sanctions based on a claim of financial inability. Had they raised and established such defense, the Court would have recalibrated the sanctions. However, establishing such a defense would have required the presenting of evidence on the issue of the Respondents' financial abilities, thereby exposing their business to at least some degree of scrutiny—something that the Respondents have gone to considerable lengths to avoid in discovery.

A discouragement to others from such sanctionable behavior. The sanctions were just, reasonable, necessary, and appropriate to discourage others from similar, sanctionable behavior. The unexcused, willful refusal to obey a lawful court order must be strongly discouraged. The fact that these Respondents in particular were not discouraged by the sanctions does not mean that the sanctions would not discourage others. The Respondents' unmitigated

[47] The sample was weighted so that 90 percent of the cases were chapter 7 proceedings and 10 percent of the cases were chapter 13 proceedings, mirroring the Respondents' percentage of chapter 7 cases to chapter 13 cases.

[48] According to the records of the Clerk's Office, the Respondents charge an average of $4,000.00 to represent a debtor in a chapter 13 case (more than thirteen times the usual rate charged for chapter 7 representation). As such, even though chapter 13 cases are only 11% of the Respondents' filings, they account for a significant portion of the Respondents' disclosed compensation.

refusal to obey a lawful court order and their imperviousness to deterrents is certainly an outlier of attorney behavior, in the Court's experience.

A consequence for willful, bad faith contempt. The sanctions are just, reasonable, necessary and appropriate as a consequence for the Respondents' bad faith and willful refusal to purge their contempt and to meet their discovery obligations. The Respondents deserved to be sanctioned for unpurged contempt and held up for public dishonor. The monetary sanctions are a particularly just, reasonsable, necessary and appropriate consequence, given that the Respondents receive considerable compensation for cases filed before this Court, for which they clearly have no respect. As such, it is entirely just, necessary and appropriate that they be hampered in their ability to make money off filings here while they abused the judicial process.

In light of the effect of the Respondents' refusal to meet their discovery obligations. The effect of the refusal to meet their discovery obligations was significant and severe, as set forth previously in this Memorandum Opinion in the discussion of the *Poulis* Factor 2.

D. Sanctions Imposed Upon Mr. Walton Under Rule 37(b)(2) & § 105(a) for Discovery Violations

Sanctions may be imposed under Rule 37(b) against not only the violating party, but also against his attorney, when that attorney has engaged in abuse of the discovery process. In the recent case of *Alexander v. Hedback (In re Stephens)*, 2014 WL 1302928, at *1, the Eighth Circuit affirmed the bankruptcy court's imposition of sanctions against an attorney under Rule 16(f), the rule governing pretrial procedure. *Hedback* determined that the contemnor as well as his counsel had "flagrantly abused not only the discovery process and the rules but [also] this Court's scheduling order" without regard "to this Court's integrity" and without regard to anything "other than an obstructionist attitude," *Alexander v. Hedback (In re Stephens)*, 2013 WL 3465281, at *3 (quoting the bankruptcy court's order), and imposed sanctions against both the contemnor and his counsel. Sanctions also were imposed against counsel for vexatiously increasing the costs of litigation by interfering with discovery, by requiring the court to hold

additional hearings, and by prolonging the already protracted litigation. *Id.* at *6. The language of Rule 16(f) is similar to the language of Rule 37(b)(2)(A), and even incorporates Rule 37(b) by reference: "On motion or on its own, the court may issue any *just orders*, including those authorized by Rule 37(b)(2)(A)(ii-vii), if a party or its attorney fails to appear at a pretrial conference or fails to participate in or obey an order related to pretrial obligations." (emphasis added.) As such, *Hedback* supports the conclusion that the Court may impose sanctions against an attorney pursuant to the "just orders" provision of Rule 37(b)(2)(A). Rule 37(b)(2)(A) permits sanctions to be imposed upon an attorney for violations by his client of the discovery process, if circumstances make such relief just.[49]

Moreover, even if Rule 37(b) does not contemplate the imposition of sanctions against the attorney, the Court still has authority under § 105(a) to sanction an attorney for abuse of the bankruptcy process, including abuse of the discovery process. *Walton v. LaBarge (In re Clark)*, 223 F.3d at 864 (holding that the bankruptcy court "had ample . . . authority to sanction Walton. Section 105 gives to bankruptcy courts the broad power to implement the provisions of the [B]ankruptcy [C]ode and to prevent an abuse of the bankruptcy process, which includes the power to sanction counsel. This provision has been interpreted as supporting the inherent authority . . . to impose civil sanctions for abuses of the bankruptcy process.")(internal citations omitted).

Abuse of the bankruptcy process occurs when the legal process is used for improper purposes or to achieve an end not lawfully attainable. "A federal judge is responsible for each case before him, for seeing it to completion with the efficient use of the court's and parties' time and resources in a timely manner." *In re DeLaughter*, 1997 WL 34725992, at *6. Abuse of the bankruptcy process is committed by a party's attorney when an attorney acts in such a way that he

[49] The Court does not suggest that it should be common practice to impose sanctions against an attorney when his client chooses to violate his discovery obligations. To the contrary, an attorney generally should not be sanctioned because his client chooses a contemptuous path. However, here, the attorney did not merely suffer a noncompliant client. He actively facilitated and promoted the contempt through his advocacy.

uses the legal process for improper purposes or in an effort to obtain an unlawful end—which is what Mr. Walton did here.

Pursuant to Rule 37(b)(2)(A) and § 105(a),[50] the Court **ORDERS** that Mr. Walton be made jointly and severally liable with the Respondents for the $30,000.00 in sanctions payable to the Court for the Respondents' refusal to obey the Order Compelling Discovery. These sanctions are just, reasonable, necessary and appropriate, in light of the facts set forth in this Memorandum Opinion. Mr. Walton assisted in, endorsed, facilitated, and actively promoted the Respondents' refusal to meet their discovery obligations and their months of contempt. Mr. Walton's actions have been just as disgraceful, abusive and worthy of sanctions as have been those of his clients.

X. THE DISPOSITION OF THE MOTION TO DISGORGE

Because of the effect of the sanctions imposed herein, a hearing on the Motion to Disgorge is not required or appropriate. The Respondents are deemed to have admitted the well-pleaded facts in the Motion to Disgorge and the well-attested attestations in the Affidavit. They also are prohibited from presenting or supporting any defense they may have, or from opposing the Debtor's claims. Because the well-pleaded facts and the well-attested attestations establish that disgorgement is proper, the Court now can dispose of the Motion to Disgorge on the merits.

A. The Law on Disgorgement Under § 329

Section 329(b) provides that "[i]f such compensation [of a debtor's attorney] exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to . . . the estate, if the property transferred . . . would have been property of the estate." This statute "allows the court sua sponte to regulate attorneys and other people who seem to have charged debtors excessive fees." *(Brown v. Luker) In re Zepecki*, 258 B.R. 719, 725 (B.A.P. 8th Cir. 2001)(citing *In re Weatherley*, 1993 WL 268546 (E.D. Pa. 1993)). Section

[50] The Court cites the authority in complement, but notes that these sanctions could be ordered imposed under either Rule 37(b) or § 105(a), standing alone.

329, by its terms, applies to post-petition services as well as to prepetition services. *See Schroeder v. Rouse (In re Redding)*, 247 B.R. 474, 478 (B.A.P. 8th Cir. 2000). As such, pursuant to § 329(b), the bankruptcy court may order that a request for payment of the debtor's attorney's fees be denied or that fees paid to the debtor's attorney be disgorged. *Walton v. LaBarge (In re Clark)*, 223 F.3d at 864 (noting the power of the bankruptcy court to award or deny fees); *In re Burnett*, 450 B.R. at 130-31 (providing that § 329(b) allows the court to disgorge compensation already received).

Disgorgement of attorney's fees is not a punitive measure and does not constitute damages. *In re Escojido*, 2011 WL 5330299, at *2 (Bankr. S.D. Cal. Oct. 28, 2011) (citing *Berry v. U.S. Trustee (In re Sustaita)*, 438 B.R. 198, 213 (B.A.P. 9th Cir. 2010)). As such, disgorgement pursuant to § 329(b) is a civil remedy with no additional procedural protections.

Section 329 "is aimed solely at preventing overreaching by a debtor's attorney." *In re Benjamin's-Arnolds, Inc.*, 1997 WL 86463, *6 (Bankr. D. Minn. Feb. 28, 1997). Before disgorgement may be ordered, there must first be a determination that the fees are excessive. *Schroeder v. Rouse (In re Redding)*, 247 B.R. at 478. In determining whether fees are excessive, "a court should compare the amount of compensation that the attorney received to the reasonable value of the services rendered." *Brown v. Luker (In re Zepecki)*, 258 B.R. at 725 (citing *Schroeder v. Rouse (In re Redding)*, 247 B.R. at 478). The attorney bears the burden of proving that his compensation is consistent with the reasonable value of his services. *See id.*

An attorney may not hide behind the excuse that his non-attorney staff rendered poor or improper services,[51] regardless of whether he specifically

[51] Mo. Prof. R. 4-5.3(a) & (b) requires that "a lawyer who . . . possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that [a nonlawyer's] conduct is compatible with the professional obligations of the lawyer" and that "a lawyer having direct supervisory authority of the nonlawyer shall make reasonable efforts to ensure that the [nonlawyer's] conduct is compatible with the professional obligations of the lawyer."

directed his staff to practice law without a license or to commit improprieties, or whether he just incompetently managed his staff. "Responsibility for the inadequate representation . . . cannot be placed on [the attorney's] employees. Purely as a matter of his role as the attorney in [the] case, [the attorney] bears responsibility for the actions of his employees." *In re Burnett*, 450 B.R. at 135.

B. Analysis of the Request for Disgorgement Under § 329

The evidence establishes that the reasonable value of the Respondents' services—which were not "legal services" in any meaningful sense—is $0.[52] Their value is $0 because, in order for legal services to be worth anything, they must actually be rendered. Here, the evidence shows that the Respondents abjectly failed to render anything close to "legal services." Moreover, those "services" that were rendered constituted a *dis*service:

- The Respondents failed to properly manage their office to allow them to meet basic clients needs, such as by allowing the voicemail system to remain full (making client contact by telephone impossible) and by losing the Debtor's credit counseling certificate, requiring her to re-take (and incur the cost for) the credit counseling course.
- Non-attorney agents of the Respondents gave the Debtor legal advice.
- Mr. Robinson relied on his non-attorney staff to do the substantive client contact, interviewing and document preparation.
- Mr. Robinson met with the Debtor only after she had paid for his legal services and only after the Respondents' non-attorney agents improperly provided her with legal advice about the preparation of her petition papers.
- An agent of the Respondents solicited false information from the Debtor for the purpose of including such in the Debtor's petition papers.

[52] The Court chooses to assign zero-value because this dovetails with § 329(b)'s "excess" requirement. However, an alternate holding would be that the Respondents failed to adequately represent the Debtor, thereby failing to earn the $495.00. *In re Bost*, 341 B.R. 666, 689 (Bankr. E.D. Ark. 2006)(ordering disgorgement because the attorney had not adequately represented his clients and has not earned the fees they paid him).

- An agent of the Respondents advised the Debtor that she must make false representations on her petition papers in order for Mr. Robinson to represent her in a chapter 7 bankruptcy case.
- An agent of the Respondents misled the Debtor into believing that her false representations would not present a legal problem.
- Mr. Robinson failed to correct the petition papers, despite knowing that they contained a false representation regarding the Debtor's address.
- Mr. Robinson signed the Debtor's petition papers and filed them on behalf of the Debtor, knowing that they contained a false representation.
- Mr. Robinson failed to advise the Debtor that making false representations on her petition papers was illegal, and represented, by filing the papers, that these false representations were acceptable.
- Following the filing of the petition papers, the Respondents' failure to return telephone calls, keep client records, and properly advise the Debtor as to how she could rescind the Reaffirmation Agreement resulted in the Debtor being unable to rescind her Reaffirmation Agreement.

In summary, the facts show that Mr. Robinson "practiced law" (and the Court uses that phrase very loosely) by using his non-attorney staff to collect payments, interview clients, and prepare the petition paperwork. He did not meet with the Debtor until after she paid for his services, and after she was improperly and repeatedly given bad "legal advice" from Mr. Robinson's non-attorney staff. At best, Mr. Robinson is a human rubberstamp who signs legal paperwork prepared by his non-attorney staff, but is so intellectually unengaged, incapable or indifferent that he fails to correct known false statements. However, the Court believes that the clear and convincing evidence (including the admitted facts and the reasonable inferences drawn from the Respondents' steadfast refusal to meet their discovery obligations, which involved disclosures about their business) establishes that the reality is much worse. Mr. Robinson runs a business that is a low-rent petition preparation mill masquerading as a law practice, where non-attorneys solicit false information, the attorney provides no real legal representation, and money is made off the exploitation of the vulnerable—those

who are without the financial means to employ better counsel or to hold their attorney accountable for his failure to provide legal services.

The conclusion that the Respondents' services were worth $0 is an understatement that approaches flattery. The Respondents' "services" did not benefit the Debtor in any way and instead caused her financial damage.[53]

Accordingly, the Court **FINDS** that the reasonable value of the "services" rendered by the Respondents is $0, and that the Debtor paid $495.00 in excess compensation. As such, the Court **HOLDS** that it is proper that the Respondents disgorge the excess compensation of $495.00[54] and **ORDERS** that the Motion to Disgorge be **GRANTED IN PART**.[55] The Respondents are directed to forthwith

---

[53] Mo. Prof. R. 4-1.3 requires that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." Mo. Prof. R. 4-1.4(a)(1) & (2) requires that "[a] lawyer shall . . . keep the client reasonably informed about the status of the matter . . . [and] promptly comply with reasonable requests for information." Mo. Prof. R. 4-1.1 requires that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

[54] In her November 12, 2013 Declaration [Docket No. 99], the Debtor represents that Mr. Ross Briggs, an attorney associated with Critique Services L.L.C. (and now a defendant in Adversary Proceeding No. 13-4284), remitted to the Debtor's attorney a payment of $199.00. In the Declaration, it was represented that, in remitting these funds, Mr. Briggs indicated that the Debtor had paid him $199.00 for representation in a bankruptcy case that Mr. Briggs never filed. The Debtor's counsel advised that his client did not accept the remittance, to the degree that it may have constituted an effort at settlement, but that he would retain the funds as an offset against any future awards that the Debtor may obtain. To the degree that the $199.00 constitutes a payment from Critique Services L.L.C., such payment should be an offset as the Debtor's counsel indicated, and remitted to the chapter 7 trustee for administration, when the remainder of the $495.00 is remitted.

[55] There is a discrepancy between the amount of attorney's fees that the Debtor alleges she paid in attorney's fees ($495.00) and the amount Mr. Robinson represented in his Disclosure of Compensation of Attorney for Debtor(s) statement that he was paid ($199.00). Because the sanctions herein provide that "in any circumstance where any fact established pursuant to this sanction may conflict with any factual allegation made by the Respondents in a pleading or at a

disgorge the $495.00 in fees and that those disgorged fees be remitted to the chapter 7 trustee for administration.

However, the Court also **ORDERS** that the Motion to Disgorge be **DENIED IN PART** as to the request to order additional monetary relief for damages the Debtor alleges she suffered as a result of the Respondents' failure to render legal services. The only form of relief available under § 329 is disgorgement—and disgorgement is necessarily limited to the amount paid. The relief requested by the Debtor related to her damages sounds in malpractice. The law indicates that a § 329 motion is not a substitute for a malpractice action.[56] *See, e.g., In re Burton*, 442 B.R. 421, 468 (Bankr. W.D.N.C. 2009) ("The sanctions matter, while a serious disciplinary proceeding, is not an adequate substitute for a malpractice suit." (citing *In re Palumbo Family Ltd. P'ship*, 182 B.R. 447,473-74 (Bankr. E.D. Va. 1995)). Accordingly, the Court declines to award on the Motion to Disgorge damages or sanctions to compensate the Debtor for any losses that she alleges were the result of malpractice. However, this denial in part is without prejudice to the bringing of a malpractice claim. *See, e.g., Woodward v. Sanders (In re SPI Communications & Marketing, Inc.),* 112 B.R. 507, 510 (Bankr. N.D.N.Y. 1990)(holding that postpetition claims for legal malpractice by a debtor's attorney were core proceedings); *Hershman v. Thorne, Grodnik & Ransel (In re Stockert Flying Serv., Inc.)*, 74 B.R. 704, 707-08 (N.D. Ind. 1987)(holding that legal malpractice claim against the debtor's attorney for postpetition mishandling of the estate assets was a core proceeding).

In the alternative, if entering the judgment on the merits were not proper for whatever reason, the Court would impose additional sanctions of (i) striking the Response to the Motion to Disgorge pursuant to Rule 37(b)(2)(A)(iii), and (ii) entering a default judgment in the Debtor's favor under Rule 37(b)(2)(A)(vi), and

---

hearing in this matter, then such conflicting allegation shall be disregarded," the Court accepts $495.00 as the amount of the fees paid.

[56] The issue of whether an attorney committed malpractice in the course of overcharging the debtor is different from the issue of whether disgorgement is proper because of overcharging—even if facts that are relevant to the § 329 determination may also be relevant to a malpractice claim.

would order that the $495.00 in fees be disgorged without prejudice to the bringing of any other claim against the Respondents.

XI. FALSE DISCLOSURE OF COMPENSATION STATEMENT

The review of the relevant pleadings in connection with the Motion to Disgorge raises the concern for the Court that Mr. Robinson filed a false Disclosure of Compensation Statement under Rule 2016(b). In the Disclosure of Compensation of Attorney for Debtor(s) statement filed in the Main Case, Mr. Robinson certified he "agreed to render legal service in all aspects of the bankruptcy case, including: a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy; b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required; c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof; d. [Other provisions as needed]."[57] However, Mr. Robinson's rendering of "advice" included having his non-attorney staff advise the Debtor and solicit false representations for inclusion in the petition papers. His "preparation and filing" of the petitions papers involved known false representations. His postpetition rendering of services was not better. The Respondents did not return

[57] According to the Disclosure of Compensation of Attorney for Debtor(s) statement, excluded from the scope of representation of the Debtor were "any dischargeability actions, judicial lien avoidances, redemption, relief from stay actions or any other adversary proceeding *and/or* motions." (emphasis added.) This "and/or" gibberish, coupled with the unspecified "[Other provisions as needed]," takes the practice of "services unbundling" to a new low. First, a carve-out of representation cannot be on an "and/or" basis. The service either is, or is not, carved out. Second, the "and/or" permits the scope of representation to be left up to the whim of Mr. Robinson. This is inconsistent with an attorney's obligation to make clear to his client the scope of the representation. *See* Mo. Prof. R. 4-1.5(b). Third, the carving out of representations on all "motions" (apparently, even for motions related to or challenging papers prepared by Mr. Robinson) is inconsistent with Mr. Robinson's obligation to provide competent representation. *See* "You're Charging Me For Text Messages? Communication Should Begin With Your Representation Agreement," Melody Nashan, Nov. 13, 2013 (article available on the OCDC website)("The scope of the engagement may not be so limited that it violates the lawyer's duty to provide competent representation pursuant to Rule 4-1.1."). An attorney cannot contract for client abandonment when competent representation is required.

calls, did not permit messages, did not maintain the Debtor's file properly, and provided no services to assist the Debtor in her legal efforts to rescind the Reaffirmation Agreement. The evidence suggests that Mr. Robinson did not intend to provide the services for which he had been retained.

Accordingly, this apparently false statement, along with other issues and concerns raised in this Memorandum Opinion supports the Court's directions to provide a copy of this Memorandum Opinion to (i) the U.S. District Court for referral for any disciplinary investigation that may be proper, (ii) the Office of the UST as a report of suspected bankruptcy fraud or abuse, and (iii) the Office of the USAG, for that Office's information.

XII. SANCTIONS IMPOSED UPON THE RESPONDENTS AND MR. WALTON UNDER § 105(a) FOR VALUE OF THE DEBTOR'S ATTORNEYS' FEES

On April 23, 2014, the Debtor's counsel filed the Fee Affidavits, as ordered by the Court. Neither the Respondents nor Mr. Walton challenged the attestations in the Fee Affidavits. A hearing on the issue of the imposition of sanctions for attorney's fees was not requested.

The Court now **ORDERS** that the Respondents and Mr. Walton be sanctioned by being made jointly and severally liable for $19,720.00. This is the amount of the value of the attorney's fees incurred by the Debtor's counsel between September 5, 2013 (the day that the Fee Affidavits indicate that the Debtor's counsel began devoting significant time to the issue of the Respondents' refusal to meet their discovery obligations) through January 27, 2014 (the day before settlement negotiations), as reflected in the Fee Affidavits and the Exhibit 7 Fee Statement, with certain adjustments backed out (**Attachment C**).[58] These sanctions are necessary and appropriate because they make the bad actors bear the burden of the time, effort, and resources spent by the Debtor's counsel as

[58] The Court closely scrutinized the Affidavits in determining the appropriate sanctions for attorneys' fees. Excluded from fees included in the sanctions are those related to: Adversary Proceeding No. 13-4284; preparation for mediation efforts and settlement negotiations; meetings with the Office of the UST; and reviewing press coverage related to the Case. In calculating the value, the Court applied the attorneys' attested hourly rates, as set forth in the Fee Affidavits.

direct result of the Respondents' refusal to meet their discovery obligations, their vexatious litigation, and their abuse of process. The Debtor's counsel's good faith efforts to obtain the discovery were met with nothing other than bad faith responses and litigation in an effort to avoid making discovery. There were numerous unproductive hearings. One of the attorneys was subjected to an unfounded attack upon his character. Sanctioning the Respondents and Mr. Walton for the value of the attorney's fees for that time period is necessary and appropriate for the purpose of protecting the sanctity of the judicial process and to properly place the burden of their bad acts upon them. The fact that the the Debtor's counsel served on a pro bono basis makes no difference. Public policy should not operate to hold a bad actor less accountable because opposing counsel provided his services on a pro bono basis.[59]

Specifically, the Court **ORDERS** as follows:

(I) $1,710.00 of the $19,720.00 (the amount of attorneys' fees ordered to be paid in the Order Compelling Discovery) be paid in full and forthwith, by cashier's check or other source of immediately payable funds, to the Debtor's counsel, pursuant to Rule 37(a)(5)(A) and 37(b)(2)(C);

(II) $18,010.00—the remainder of the $19,720.00—be paid in full and forthwith, by cashier's check or other source of immediately payable funds, to a local legal services charity of the choice of the Debtor's counsel, pursuant to § 105(a). Along with tendering payment, the Respondents and Mr. Walton shall provide to the charity: (i) a cover letter advising that the funds are being transferred, free and clear and without contingencies, in fulfillment of Court-ordered sanctions; (ii) a copy of this Memorandum Opinion along with a citation to the page number on which this relief is ordered; (iii) a request that the donation be made in honor of "All Honorable Attorneys Who Practice Before the U.S. Bankruptcy Court for the Eastern District of Missouri"; and (iv) a specification that "no public acknowledgement, recognition, honor or accolades of charitable intent be given to the transferor(s) in connection with this transfer," with the explanation that: "This transfer, while being made to a charity, is not being made as a personal act of generosity or charity on the part of the transferor(s), but is being made solely in satisfaction of sanctions directive set forth in a federal court order." Upon payment of this amount, a "Notice of

[59] The Court will honor the Debtor's counsel's intent to provide pro bono services.

Satisfaction of Sanctions Payable to Charity" shall be filed, with a copy of the form of payment and the cover letter attached.

(III) The Debtor's counsel to file a "Notice of Choice of Legal Charity," with the name, address and contact information of their chosen local legal services charity, within three days of entry of this Memorandum Opinion, so that the Respondents and Mr. Walton can act forthwith.

XIII. SANCTIONS IMPOSED UPON THE RESPONDENTS AND MR. WALTON FOR THE VIOLATION OF BANKRUPTCY RULE 9011

A. The Law on Bankruptcy Rule 9011

Bankruptcy Rule 9011(b) provides, in relevant part, that

> [b]y presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . .

By the plain language of Rule 9011, an attorney "presents" a petition, pleading, written motion or other paper whether "by signing, filing, submitting, or later advocating." This list is disjunctive, meaning that an attorney subjects himself to Bankruptcy Rule 9011 merely by signing, or by filing, or by submitting, or by advocating, the document.

If a Court has cause to believe that an attorney has violated Bankruptcy Rule 9011(b), it may, "[o]n its own initiative . . . enter an order describing the specific conduct that appears to violate subsection (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto." Bankruptcy Rule 9011(c)(1)(B). As such, both the attorney and the party may be sanctioned under Bankruptcy Rule 9011(c)(1)(B).

Bankruptcy Rule 9011 sanctions are "limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. . . . [and] may consist of, or include, directives of a nonmonetary nature . . ." Fed. R. Bankr. P. 9011(c)(2). Moreover, while courts have the power to sanction

attorneys for misconduct, that power must be limited in scope; thus, sanctions should be imposed judiciously. *Halverson v. Funaro (In re Funaro)*, 263 B.R. 892, 901 (B.A.P. 8th Cir. 2001)(addressing the imposition of Rule 9011 sanctions). The Court "may not 'not rush into ill-considered imposition of sanctions.' Rather [the Court] should consider the imposition of different kinds of sanctions, the effect of the sanctions on litigation, and the ability of the prejudiced parties to present their case in light of their misconduct." *Id.* (quoting *In re Brown*, 152 B.R. 563, 569 (Bankr. E.D. Ark. 1993)).

B. The Notice and the Responses by the Respondents and Mr. Walton

In the April 21 Notice, the Court issued a show cause directive in the form of notice that it intended to impose sanctions against the Respondents and Mr. Walton for the making of false statements at hearings and in pleadings, including but not limited to, "the false representations made at hearings regarding the status of the Respondents' discovery responses and the Respondents' intent to make discovery, and the false statements made about the presiding Judge's previous employment as the United States Trustee made in support of a demand for the Judge's disqualification." It advised that such sanctions might be imposed on any ground permissible under the law. This necessarily included (as any bankruptcy attorney would know) sanctions under Bankruptcy Rule 9011 (for false statements in pleadings) and § 105(a). The Court gave the Respondents until April 28, 2014 to respond.

In the Third Motion to Recuse filed the next day, Mr. Walton collaterally attacked the April 21 Notice, complaining that the Court indicated that it intended to impose sanctions on representations made in the Second—not the First—Motion to Recuse. In its April 23 Order Denying the Third Motion to Recuse, the Court pointed out that the false statements to which the April 21 Notice referred were not made in the Second Motion to Recuse, but had been made in earlier pleadings (and which had been identified as false in previous Orders).

On April 28, 2014, Mr. Walton filed on behalf of himself and the Respondents a response to the April 21 Notice. He cited no on-point case law or statute. He did not address Bankruptcy Rule 9011 or § 105(a). For the most part,

his arguments were re-hashing of previously raised issues, generic claims, or baseless factual allegations and legal contentions.

Also on April 28, 2014, Mr. Robinson filed a response on behalf of himself. First, he argued that he did not have sufficient notice as to which false representations were included in the "are not limited to" language of the April 21 Notice. Without commenting on the merits of this position, the Court notes that this point is moot. To the degree that sanctions are imposed under Bankruptcy Rule 9011, they are imposed for the false statements made regarding the Judge's service in governmental employment as UST—false statements about which the Respondents were well-aware, as the Court had identified them as false in previous orders.

Second, Mr. Robinson argued that he was not afforded an evidentiary hearing on the issue of whether the false statements were false. However, Mr. Robinson was not entitled to an evidentiary hearing on the falsity of those statements. When he filed the motions that included those false statements, he did not seek a hearing from this Court on the veracity of those allegations. In doing so, he ran the risk that the Court would do exactly what it did: determine that the allegations were false. The Court also notes that, even now, Mr. Robinson does not contend that the allegations he made about the Judge are, in fact, true. He just claims that he did not make false statements.

Third, Mr. Robinson accused the Court of "prejudging" him by issuing the April 21 Notice. The April 21 Notice was a show cause directive. Such a directive advises a party that the Court intends to enter a particular disposition and warns that such a disposition may be entered unless cause is shown to do otherwise. It necessarily means that the Court has an inclination as to a judgment. Moreover, Mr. Robinson seems to complain he is being "prejudged" not on the issue of whether sanctions should be imposed, but on the issue of whether he made false statements—an issue that the Court determined long ago.

Fourth, Mr. Robinson argued that the Court lacks jurisdiction because he currently is attempting to appeal the Second Order Imposing Sanctions. Those appeal efforts do not divest the Court of jurisdiction to enter an order for

sanctions. The Court is under no obligation to keep this matter in a holding pattern until the disposition of those appeal efforts.

Fifth, Mr. Robinson argued that the Court is constitutionally prohibited from imposing criminal sanctions. However, the sanctions imposed herein are not criminal in nature, as the Court discussed in Part VIII.

Sixth, Mr. Robinson argues that sanctions should not be imposed until after the Motion to Compromise Settlement is determined. Without commenting on the merits of this argument, the Court notes that said motion was denied.

Neither the Respondents nor Mr. Walton requested a hearing on the issue of whether sanctions under Bankruptcy Rule 9011 should be imposed. Without an indication they wanted a hearing and would have used a hearing in good faith, the Court was disinclined to set a hearing, given that the Respondents' and Mr. Walton's record of using hearings to mislead and bloviate. Moreover, the parties' legal positions were clear from their papers, and their factual allegations amounted to a rejection of the Court's finding that those statements were false.

C. The Violation of Bankruptcy Rule 9011(a)

By filing in the Main Case the First Motion to Recuse and the Motion for Leave to Appeal, Mr. Walton "presented" those documents to the Court for purposes of Bankruptcy Rule 9011(a).[60] Pursuant to Bankruptcy Rule 9011(b), by presenting those pleadings, he certified that, to the best of his knowledge, information and belief, formed after inquiry reasonable under the circumstances, the allegations and factual contentions therein that had evidentiary support or were likely to have evidentiary support upon further investigation or discovery. As set forth in Part II.P, these documents contained false statements about the Judge's previous service as the UST.

The evidence shows that, before filing the First Motion to Recuse, Mr. Walton had no good faith basis for representing that the allegations against the

[60] The fact that the Motion to Leave was before the U.S. District Court for disposition does not relieve Mr. Walton of his obligations under Bankruptcy Rule 9011 before this Court. He also filed a copy of the document in the Main Case. Bankruptcy Rule 9011 is clear that "filing" a document constitutes "presenting" a document to the Court.

Judge had evidentiary support or were likely to have evidentiary support "to the best of [his] knowledge, information and belief" formed after reasonable inquiry. Had he conducted even minimal inquiry, he easily would have ascertained the falsity of the allegations. However, he did not ask for an evidentiary hearing; he did not ask to conduct discovery; he did not ask for a short period of time to conduct an inquiry; he did not even ask the Judge about his UST services during the numerous hearings. Instead, he simply made false allegations about a federal judge in a federal pleading, in an effort to obtain judicial disqualification.

Moreover, the evidence indicates that Mr. Walton did not simply fail to make a reasonable inquiry before making these allegations; it also clearly and convincingly establishes that Mr. Walton willfully and in bad faith made these false allegations *knowing that they were false*. Before the Motion for Leave to Appeal was filed, the Court specifically advised in the Order Denying the First Motion to Recuse that the allegations were false. The Respondents ignored this and then made false allegations again in the Motion for Leave to Appeal, in the apparent hope of obtaining judicial disqualification, by either harassment of this Court or fraud upon higher one.

D. Monetary Sanctions Under Bankruptcy Rule 9011

Bankruptcy Rule 9011(c)(1)(B) permits the imposition of monetary sanctions for the purpose of deterring "other similarly situated" from such conduct. However, the Court has no reason to believe that within the bankruptcy law community of this District (that is, among the "others similarly situated"), there is a contingent of ethically challenged lawyers, lying in wait with an ill-conceived strategy of deceit similar to that employed by the Respondents and Mr. Walton. To impose monetary sanctions under Bankruptcy Rule 9011 on the premise that there are "others similarly situated" in need of deterrence from such behavior is an insult to the bankruptcy bar of this District. In the Court's experience, the vast majority of practitioners here could not conceive of knowingly making a false representation in a federal pleading about a judge in an effort to obtain recusal. Accordingly, the Court declines to impose sanctions under Bankruptcy Rule 9011 for the purpose of purportedly deterring others. The "others similarly situated"

have done nothing to warrant the presumption that such deterrence is needed and do not deserve to be besmirched by the remotest association with this matter.

Bankruptcy Rule 9011(c)(1)(B) also permits the imposition of monetary sanctions "sufficient to deter repetition of such conduct" by the violator. The Court declines to impose monetary sanctions under the pretense that sanctions might deter repetition of this disreputable conduct by the Respondents and Mr. Walton. Based on the Respondents' and Mr. Walton's actions in this matter, the Court does not believe that any monetary sanctions, in any amount, would be sufficient to deter Mr. Robinson and Mr. Walton from repetition of their conduct. It has already been shown that significant monetary sanctions do not deter the Respondents from untoward behavior, and nothing suggests that Mr. Walton—a repeat bad actor before the U.S. Bankruptcy Court in this District—can be persuaded to be an honest, rule-abiding practitioner. Any monetary sanctions imposed against them under Bankruptcy Rule 9011 would achieve nothing other than increasing the sanctions dollars total—a result that would be inconsistent with the plain language and the purpose of Bankruptcy Rule 9011.

E. Nonmonetary Sanctions under Bankruptcy Rule 9011

Although the Court declines to impose monetary sanctions under Bankruptcy Rule 9011, it remains incumbent upon the Court to deter the future visitation of abuse and dishonesty by the Respondents and Mr. Walton. The Court will use nonmonetary sanctions and discipline, as set forth in Parts XIV and XV, to accomplish that purpose. The violation of Bankruptcy Rule 9011(a) makes appropriate these sanctions and discipline ordered herein against both Mr. Walton and the Respondents. However, these sanctions and discipline also are made necessary and appropriate under § 105(a). The sanctions could be imposed under either Bankruptcy Rule 9011 or § 105(a).

XIV. SUSPENSION FROM THE PRIVILEGE TO PRACTICE

A. The Law on Suspension

Suspension Pursuant to the Court's Inherent Power. Bankruptcy courts "possess 'inherent power . . . to sanction 'abusive litigation practices.'" *Law v. Siegel*, __U.S.__, 2014 WL 813702, *5 (Mar. 4, 2014)(quoting *Marrama v.*

Citizens Bank of Mass., 549 U.S. 365, 375-376 (2007)). "This power is broad in scope, and includes the power to impose monetary sanctions, as well as to 'control admission to its bar and to discipline attorneys who appear before it.'" *In re Burnett*, 450 B.R. at 132 (Bankr. E.D. Ark. 2011)(quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991), and citing *Plaintiffs' Baycol Steering Comm. v. Bayer Corp*., 419 F.3d 794, 802 (8th Cir. 2005), and *Harlan v. Lewis*, 982 F.2d 1255, 1259 (8th Cir. 1993)). And although great restraint and discretion is necessary when fashioning a sanction under those powers, *id.*, that restraint and discretion does not mean that severe sanctions cannot be warranted.

Suspension Under Local Rules. In addition, the applicable local rules make it clear that the Court has the authority to discipline an attorney, including by suspending him. L.B.R. 2093-A provides that "[t]he professional conduct of attorneys appearing before this Court shall be governed by the Rules of Professional Conduct adopted by the Supreme Court of Missouri, the Rules of Disciplinary Enforcement of the United States District Court for the Eastern District of Missouri, and these Rules." In addition, L.B.R. 2094-C provides that "[n]othing in this Rule shall preclude the Court from initiating its own attorney disciplinary proceedings regardless of whether an attorney has been disciplined by another court," and L.B.R. 2090-A provides that this Court adopts "[t]he requirements for . . . attorney discipline . . . outlined in Rules 12.01-12.05" of the Local Rules of the U.S. District Court (each, an "E.D.Mo. L.R.")

In turn, E.D.Mo. L.R. 12.02 provides that "a member of the bar of this Court and any attorney appearing in any action in this Court, for good cause shown and after having been given an opportunity to be heard, may be disbarred or otherwise disciplined," as provided in the U.S. District Court's Rules of Disciplinary Enforcement (each, an "E.D.Mo. R.D.E.").

And in turn, E.D.Mo. R.D.E. IV-A provides that "[f]or misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded or subjected to such

other disciplinary action as the circumstances may warrant."[61] E.D.Mo. R.D.E. IV-B defines conduct "which violates the Code of Professional Responsibility adopted by the Supreme Court of Missouri" may be grounds for discipline.[62]

B. Propriety of Suspension

The Court gave repeated notices to Mr. Robinson and Mr. Walton that it was considering the imposition of sanctions against them. It warned that the sanctions it was contemplating included revocation of privileges before the Court. It afforded them the opportunity to respond in writing, and neither the Respondents nor Mr. Walton requested a hearing on the issue of whether sanctions should be imposed. Neither offered any cause showing why the Court should not sanction them or offered a basis for mitigation of the sanctions.

Good cause has been shown to suspend Mr. Robinson and Mr. Walton each from the privilege to practice. As detailed in the footnotes throughout this Memorandum Opinion, Mr. Walton and Mr. Robinson violated numerous Rules of the Missouri Supreme Court's Rules of Professional Conduct. They refused to obey a lawful discovery order in violation of Rule 37(a). They falsely represented their intent to meet their discovery obligations. They purposely and in bad faith stalled on making discovery, and what little discovery they did make was grossly inadequate. They made an unfounded personal attack on opposing counsel in a pleading. They violated Bankruptcy Rule 9011 by conducting no reasonable inquiry before making material factual allegations. They lied about the Judge in pleadings in an effort to obtain disqualification. They filed frivolous motions, took meritless legal positions, asserted waived objections, abused the judicial process and vexatiously litigated. Not only did Mr. Robinson and Mr. Walton show bad faith by delaying or disrupting the litigation [and] by hampering enforcement or a

[61] Disciplining an attorney by suspending him under E.D.Mo. L.R. 12.02 and E.D.Mo. RDE IV-A is not the same as bringing a "formal disciplinary proceeding" against that attorney under E.D.Mo. R.D.E. V, whereby the court may refer the matter to counsel is appointed under E.D.Mo. R.D.E. X, for investigation and prosecution of the misconduct.

[62] The Missouri Supreme Court's Rules of Professional Conduct serve as the code of professional responsibility for attorneys licensed to practice by that court.

court order, but by their actions, "the very temple of justice has been defiled." *Chambers v. NASCO, Inc.*, 501 U.S. at 44. These *attorneys*—who were entrusted with the privilege of practicing upon their oath—flagrantly disregarded their obligations as officers of the Court to pursue their illicit plan of contempt and abuse, which deprived the Debtor her opportunity to prosecute her motion upon the discovery to which she was legally entitled. And they did all of this to avoid disclosure of information regarding the Respondents' business—a business that is in the business of filing pleadings before this Court. They have no respect for this Court, the law, or their duties as officers of the Court. Mr. Robinson and Mr. Walton "cannot be depended upon to faithfully perform the duties of an attorney representing a debtor under any chapter of the Bankruptcy Code in this Court." *In re Moix-McNutt*, 220 B.R. 631, 638 (Bankr. E.D. Ark. 1998).

C. Terms of Suspension

Accordingly, pursuant to § 105(a) and Bankruptcy Rule 9011, the Court **ORDERS** that, effective immediately, Mr. Robinson and Mr. Walton each be suspended from the privilege to practice before the U.S. Bankruptcy Court for the Eastern District of Missouri for one year (365 days) from the date of the entry of this Memorandum Opinion. However, nothing in this Memorandum Opinion or accompanying Judgment shall prevent the Court from issuing an additional suspension, upon separate notice and by separate order, additional terms of suspension, should such a suspension be warranted following the determination of the OCDC, or upon any determination by the Board of Judges of this Court, or upon any determination by the U.S. District Court.

Mr. Robinson's privilege to practice will not be reinstated after one year unless: (i) Mr. Robinson has submitted the information required in Part I.B; (ii) all monetary amounts due by Mr. Robinson pursuant to this Memorandum Opinion are satisfied; (iii) Mr. Robinson provides evidence that he is in good standing in all other courts in which he has been admitted to practice; and (iv) the facts otherwise establish that reinstatement is proper. Mr. Robinson may file a Motion to Reinstate Privilege to Practice thirty days before the end of the one-year term.

Mr. Walton's privilege to practice will not be reinstated after one year unless: (i) all monetary amounts due by Mr. Walton pursuant to this Memorandum Opinion are satisfied; (ii) Mr. Walton can provide evidence that he is in good standing in all other courts in which he has been admitted to practice; and (iii) the facts otherwise establish that reinstatement is proper. Mr. Walton may file a Motion to Reinstate Privilege to Practice thirty days before the end of the one-year term.

During his suspension from practice, neither Mr. Walton nor Mr. Robinson may file a pleading or document of any sort on behalf of anyone other than himself, or represent any person, other than himself, before this Court in any capacity. Mr. Walton and Mr. Robinson each is barred from practicing or appearing before this Court on behalf of another person, whether it be by: special appearance or regular appearance; for representation of a paying client or a pro bono client; for representation of a family member or an unrelated person; or in a Main Case or an Adversary Proceeding. Mr. Robinson may not represent the artificial legal entity of Critique Services L.L.C., regardless of his insistence that it is his d/b/a.[63] The Court gives **NOTICE** that any violation of this suspension may be met with further sanctions.

XV. FORWARDING OF THIS MEMORANDUM OPINION

To ensure that the proper authorities are aware of the events that transpired in this matter, the Court **DIRECTS** that a copy of this Memorandum Opinion be forwarded to:

(I) the U.S. District, for referral for any disciplinary investigation or other action or proceeding against the Respondents and Mr. Walton that it may deem proper in light of this Memorandum Opinion;

(II) the Office of the UST as a report of suspected bankruptcy fraud or other abuse by the Respondents based on the findings of fact herein;

[63] Nothing herein shall prohibit Mr. Robinson or Mr. Walton from being subpoenaed or summonsed in any matter before this Court or from responding to such subpoena or summons. They may be subject to deposition in matters before this Court and may give testimony in hearings and trials before this Court.

(III) the Office of the USAG; and

(IV) the OCDC as a complaint against Mr. Robinson and Mr. Walton each under each Rule of the Missouri Supreme Court's Rules of Professional Conduct cited herein.[64]

[64] Mo. Prof. R. 4-8.4 provides that it is professional misconduct for a lawyer to . . . violate or attempt to "violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."

XVI. SUSPENSION OF MR. ROBINSON'S AND MR. WALTON'S ELECTRONIC AND REMOTE ACCESS FILING PRIVILEGES

The Court **DIRECTS** the Clerk of Court to continue the suspension of the electronic filing system and remote access filing privileges of Mr. Robinson, both in his individual capacity and in his capacity as "d/b/a Critique Services L.L.C.", and immediately suspend the electronic filing system and remote access filing privileges of Mr. Walton. The term of the suspension is effectively immediately and will be for one year (365 days) from the date of the entry of this Memorandum Opinion. Neither Mr. Robinson nor Mr. Walton may submit any document for filing by using the Court's electronic filing system or the exteriorly located drop box for the U.S. Bankruptcy Court, or by delivering a document to the Clerk's Office through the U.S. Mail or by any other carrier. To file a document, Mr. Robinson and Mr. Walton on behalf of himself must present such document at the Clerk's Office during business hours. Mr. Robinson and Mr. Walton each may not present a document for filing through an agent. No agent, associate, or assistant may operate the computers in the Clerk's office for either Mr. Robinson or Mr. Walton; all acts related to filing must be done entirely by Mr. Robinson or Mr. Walton on behalf of himself. Any agent, associate, or assistant brought to the Clerk's Office with Mr. Robinson or Mr. Walton cannot be left unattended by Mr. Robinson or Mr. Walton or be permitted to do any filing-related work for Mr. Robinson or Mr. Walton. If either Mr. Robinson or Mr. Walton violates this suspension, the document may be rejected for filing and returned, and the violator may be sanctioned $1,000.00 for each document submitted for filing in violation of the suspension; and

XVII. OPPORTUNITY TO WITHDRAW AS COUNSEL

Now that the Court has disposed of the Motion to Disgorge and rendered determination regarding sanctions, Mr. Walton may withdraw from his notice of appearance in this matter, if he wishes. He may do so by filing on his own behalf a motion to withdraw. No hearing for such a motion is required to be set.

XVIII. CONCLUSION

Accordingly, the Court now summarizes[65] the relief ordered and acts directed herein, which includes but is not limited to ordering and directing that:

(I) monetary sanctions be imposed in the amount of $30,000.00 upon the Respondents and Mr. Walton, for which they will be jointly and severally liable;

(II) nonmonetary sanctions be imposed upon the Respondents, pursuant to which: (a) the Respondents be found in contempt for their refusal to obey the Order Compelling Discovery and prohibited from supporting any claim or defense they may have raised to the claims in the Motion to Disgorge and from opposing any claim of the Debtor made in the Motion to Disgorge; and (b) it be directed that all well-pleaded facts alleged the Motion to Disgorge and all well-attested facts in the Debtor's Affidavit be established for purposes of the Motion to Disgorge, and any conflicting allegations be disregarded;

(III) the Motion to Disgorge be granted in part, and that the $495.00 in attorney's fees be disgorged and remitted to the chapter 7 trustee;

(IV) sanctions be imposed under Rule 37(b)(2)(A) in the amount of $1,710.00 in attorney's fees upon the Respondents and Mr. Walton, for which they will be jointly and severally liable, to be paid forthwith to the Debtor's counsel; and sanctions be imposed under § 105(a) in the amount of $18,010.00 in attorney's fees upon the Respondents and Mr. Walton, for which they will be jointly and severally liable, to be paid forthwith to the legal services charity of the Debtor's counsel choice;

(V) a copy of this Memorandum Opinion be forwarded to the OCDC, the U.S. District Court, the Office of the UST, and the Office of the USAG; and

(VI) Mr. Robinson and Mr. Walton each be suspended from the privilege to practice before this Court other than to represent himself, until such time as the terms set forth herein are satisfied.

[65] The statements in the "Conclusion" portion are for summary only. The specifics governing each form of relief and direction are set forth within the Memorandum Opinion.

In addition, a Judgment consistent with the relief ordered herein will be issued forthwith. This Memorandum Opinion constitutes a final order on the Motion to Disgorge and the sanctions imposed herein.

CHARLES E. RENDLEN, III
U. S. Bankruptcy Judge

DATED: June 11, 2014
St. Louis, Missouri
jim

Copy Mailed To:
David Nelson Gunn
Law Offices of Mueller & Haller, LLC DBA
The Bankruptcy Company
2025 S. Brentwood, Ste 206
Brentwood, MO 63144

James Clifton Robinson
Critique Services
3919 Washington Blvd.
St. Louis, MO 63108

Elbert A. Walton, Jr.
Metro Law Firm, LLC
2320 Chambers Road
St. Louis, MO 63136

E. Rebecca Case
7733 Forsyth Blvd. Suite 500
Saint Louis, MO 63105

Office of U.S. Trustee
111 South Tenth Street Suite 6353
St. Louis, MO 63102

ATTACHMENT A

LS

Complaint with stipulation of facts
Case # 11-46399-705

RECEIVED + FILED
2013 APR -5 PM 3:32
CLERK, US BANKRUPTCY COURT
EASTERN DISTRICT
ST LOUIS, MISSOURI

Plaintiff:
Latoya Steward
Po Box 110
Troy Mo 63379
314-458-2630

Defendent:
James Robinson & Critique ~~Srevices~~ Services
3919 Washington Blvd.
St.Louis Mo 63108
314-533-4357

* Court Line Numbering

I would like to ask the courts to please except this letter as my (Latoya L Steward) complaint and stipulation of facts. against Attorney jamse Robinson, and Critique Services LLC. The defendents were hired by my self Latoya Steward to represent me in filling bankruptcy Chapter 7. in 2010 due to the unprofessional practices and negligence at this firm I have suffered multiple damages mental and financial, so I am asking the help of the courts to PLEASE help me. I have how ever filed a complaint online to the department of Justice Eastern dist. in 2012, and they responeded with appologys and informed me that my complaint will be followed looked in to, and a anonymous complaint with the missouri bar assoc. in 2012 and online to the BBB but they said I was to late for them to investigate. I am asking the courts to hear my story in hopes that any punishment, fines, etc... be brought against this business.

I apologize to the courts that I don't have dates and times documented but their is a paper trail...

My first apponment at Critique Services I meet with a lady name Dee, I paid my fee of $195. and was given a packet of paperwork to fill out of my personal info and creditors. I was told to pull my credit report from all 3 bureaus and fill in all my credit info. On my next visit I paid my remaing balance and Dee looked over my paperwork and informed me that I need to change my address to a St.Louis address because they can't represent me in St.Charles Co which was where I lived to the time. I asked if that was legal and she said its nothing I need to worry about because regaurdless as far as my concern I would not get in any trouble because its all the state of missouri but we have to change it because James Robinson can't represent me in St.Charles county courts for a chapter 7.

Weeks went by I never heard anything I called numerous times to find out what I needed to do next, my calls never get returned. I started to have creditors calling my work, friends, and family. I would inform them I was in the process of filing bankruptcy and I obtained an attorney. I provide my attorney's contact info and they would continue to call because my attorney's office refuse to speek with them. I drove into the office with no appointment and sit for hours until someone would talk to me. This is when I met April and she further informed me that NO they do not take collection calls from credtors, we just need to get me a court case number and i can give them that when they call, but I need to complete my Credit Counceling course online and provide my pay check stubs. I did that! so now I had to meet with the Attorney James Robinson.

Months went on and on i didn't hear anything from Critique Service I started calling again to find out if I got a court date yet. Again all voices mail boxes are full!!! if you select the option to be a new client the secratry does answer the phone but will not that a message. So another drive into the office with no appointment and alot of waiting finally I met with someone else i never seen before fulled my file and notes on it said- waiting for Class Certificate and pay stubs.... I knew they were faxed in by both parties (my employeer & Education course) because I had confirmation papers. She then went threw papers in my file and they were there whole time as she stated the were not in the correct place of the file. by then my certificate expired so I had to repeat and repay for my course, and update my paystubs.

* Court Line Numbering

help

I finnally got a case number and was called into the office to sing more papers one of the papers being my reaffemation to Ford Credit to keep my 2006 Explorer, about a 2weeks later I spoke with my attorney friend about my case and my decsion to keep me explorer because I was afraid I wouldn't be able to get financed for another car loan with a recent bankruptcy on my credit, thats when he informed me that that wasn't true. I told him that I signed an affermation with Ford so I thought I was stuck with it. He advised me to contact my attorney because I should have time to cancel the affermaition since I hadn't been to court but he wasn't sure of the time limit. So I called and called and left messages on every line I could when I could with detailed informtion of the nature of my call about surrendering my 2006 Explorer as usual my calls were never returned. So another drive into the office with no appointment. They pulled my file and looked up legal info on the affermation agreement and it was 2!!!! days too late to cancel the agreement and include the truck. I then asked for my file and a refund so I could hire another attorney, James Robinson himself called me on my cell phone and ask what was the problem I informed hime that his office is very unprofessinal, unorganized, and they don't return calls, and they don't help do anything so I didn't understand what I was paying them for so I would like my money back and my file since I did all the work anyway. He then informed I can have my file but it will be a $100 office fee and $5 per page. Which I couldn't afford.

I then called Ford my self and surrended the truck. I have since then been to court several times with Ford Motor Credit, my wages were garnished, and my bank accounts were also garnished. I really feel as all of this could have been avoided if Critique Service and James Robinson were not so negligent in handeling my case, I have also suffered other damages at the hands of this law firm, my wages were garnished by another creditor in 2011, and again they did not help me in anyway. My 1st court hearing no one from Critique Service showed up for my deposition. I called 2 weeks before and 1 week before to ask what I needed to do no one called back or showed up in court with me.

The day of my final court apperance I was not the only client waiting to see the judge we all were called the office leaving messages and again no answer no show!! I have never heard anything from Critique Service since my last office visit when I was 2days too late to cancel my affermation agreement.

At this time I am asking the courts to grant an monetary settlement in my favor for the following-

$495.- Fees paid to Critique Services
$100.- Education course
$8500.- Ford Credit
$3500.- Personal agervation, time off work, and gas.
total=$12595.00

Latoya Steward 4-4-13

ATTACHMENT B

UNITED STATES GOVERNMENT
OFFICIAL MEMORANDUM

Bankruptcy Court
Eastern District of Missouri

To: Judge Rendlen's Chambers

These calculations below relate to the CM/ECF Report on 100 cases filed by James Robinson in 2013.
Below is an average fee for Mr. Robinson:
Chapter 7 case - $296.23
Chapter 13 Case - $4,000.00

Math calculations shown below:
Chapter 7 Cases
1 Case $199 = $ 199.00
77 Cases $249.00 = $ 19,173.00
11 Cases $299.00 = $ 3,289.00
1 Case $4,000.00 = $ 4,000.00
90 Cases $26,661.00 / Average Case Fee of $296.23

Chapter 13 Case
10 Cases $4,000.00 = Average Case Fee of $ 4,000.00

Select a Case

There was 1 matching person.
Robinson, James Clifton (aty)
(100 cases)

There were 100 matching cases.

Name	Case No.	Case Title	Chapter / Lead BK case	Date Filed	Party Role	Date Closed
	13-40050 $249.00		7	01/03/13	N / A	04/11/13
	13-40051 $249.00		7	01/03/13	N / A	08/02/13
	13-40052 $249.00		7	01/03/13	N / A	04/11/13
	13-40053 $249.00		7	01/03/13	N / A	04/11/13
	13-40054 $249.00		7	01/03/13	N / A	04/11/13
	13-40056 $249.00		7	01/03/13	N / A	04/11/13
	13-40057 $4,000.00		13	01/03/13	N / A	N / A
	13-40058 $249.00		7	01/03/13	N / A	04/11/13
	13-40059 $4,00.00		13	01/03/13	N / A	03/12/14
	13-40061 $249.00		7	01/03/13	N / A	05/29/13
	13-40159 $249.00		7	01/08/13	N / A	04/18/13
	13-40160 $249.00		7	01/08/13	N / A	04/18/13
	13-40161 $249.00		7	01/08/13	N / A	04/18/13
	13-40162 $249.00		7	01/08/13	N / A	04/18/13
	13-40163 $249.00		7	01/08/13	N / A	06/20/13
	13-40164 $249.00		7	01/08/13	N / A	04/18/13
	13-40165 $299.00		7	01/08/13	N / A	06/05/13
	13-40166 $249.00		7	01/08/13	N / A	04/18/13
	13-40167 $299.00		7	01/08/13	N / A	04/18/13
	13-40168 $249.00		7	01/08/13	N / A	04/18/13
	13-40169 $4000.00		13	01/08/13	N / A	N / A

13-40170	$249.00	7	01/08/13	N / A	12/19/13
13-40227	$249.00	7	01/10/13	N / A	N / A
13-40228	$4,000.00	13	01/10/13	N / A	07/11/13
13-40229	$249.00	7	01/10/13	N / A	04/18/13
13-40232	$249.00	7	01/10/13	N / A	04/18/13
13-40234	$249.00	7	01/10/13	N / A	N / A
13-40235	$299.00	7	01/10/13	N / A	04/18/13
13-40236	$299.00	7	01/10/13	N / A	04/18/13
13-40237	$249.00	7	01/10/13	N / A	04/24/13
13-40311	$249.00	7	01/15/13	N / A	07/18/13
13-40312	$4,000.00	13	01/15/13	N / A	N / A
13-40313	$249.00	7	01/15/13	N / A	09/16/13
13-40314	$249.00	7	01/15/13	N / A	08/14/13
13-40315	$249.00	7	01/15/13	N / A	04/25/13
13-40316	$249.00	7	01/15/13	N / A	04/25/13
13-40317	$249.00	7	01/15/13	N / A	04/25/13
13-40318	$249.00	7	01/15/13	N / A	05/06/14
13-40322	$249.00	7	01/15/13	N / A	04/25/13
13-40323	$249.00	7	01/15/13	N / A	04/25/13
13-40324	$4,000.00	13	01/15/13	N / A	N / A
13-40325	$249.00	7	01/15/13	N / A	07/03/13
13-40326	$4,000.00	7	01/15/13	N / A	06/27/13
13-40388	$4,000.00	13	01/17/13	N / A	N / A
13-40395	$249.00	7	01/17/13	N / A	04/30/13
13-40397	$249.00	7	01/17/13	N / A	04/30/13
13-40398	$249.00	7	01/17/13	N / A	04/30/13
13-40399	$249.00	7	01/17/13	N / A	04/30/13

13-40403	$249.00	7	01/17/13	N / A	07/02/13
13-40404	$249.00	7	01/17/13	N / A	04/30/13
13-40406	$249.00	7	01/17/13	N / A	04/30/13
13-40407	$4,000.00	13	01/17/13	N / A	N / A
13-40408	$299.00	7	01/17/13	N / A	04/30/13
13-40552	$249.00	7	01/24/13	N / A	05/23/13
13-40553	$249.00	7	01/24/13	N / A	05/09/13
13-40554	$249.00	7	01/24/13	N / A	05/23/13
13-40556	$4,000.00	13	01/24/13	N / A	N / A
13-40563	$299.00	7	01/24/13	N / A	05/23/13
13-40565	$249.00	7	01/24/13	N / A	05/21/13
13-40567	$249.00	7	01/24/13	N / A	05/09/13
13-40568	$249.00	7	01/24/13	N / A	05/09/13
13-40630	$249.00	7	01/28/13	N / A	05/09/13
13-40632	$249.00	7	01/28/13	N / A	05/09/13
13-40633	$249.00	7	01/28/13	N / A	05/09/13
13-40635	$249.00	7	01/28/13	N / A	05/09/13
13-40636	$299.00	7	01/28/13	N / A	05/09/13
13-40637	$249.00	7	01/28/13	N / A	05/09/13
13-40638	$249.00	7	01/28/13	N / A	05/09/13
13-40639	$249.00	7	01/28/13	N / A	05/09/13
13-40640	$249.00	7	01/28/13	N / A	05/09/13
13-40679	$4000.00	13	01/29/13	N / A	N / A
13-40680	$249.00	7	01/29/13	N / A	05/15/13
13-40681	$249.00	7	01/29/13	N / A	05/15/13
13-40682	$249.00	7	01/29/13	N / A	05/24/13
13-40685	$249.00	7	01/29/13	N / A	01/14/14
13-40686	$249.00	7	01/29/13	N / A	05/15/13

13-40688 $249.00	7	01/29/13	N / A	05/15/13
13-40689 $299.00	7	01/29/13	N / A	05/15/13
13-40690$299.00	7	01/29/13	N / A	05/15/13
13-40801 $249.00	7	01/31/13	N / A	06/04/13
13-40805 $249.00	7	02/01/13	N / A	04/14/14
13-40875 $299.00	7	02/05/13	N / A	05/16/13
13-40876 $249.00	7	02/05/13	N / A	05/16/13
13-40877 $249.00	7	02/05/13	N / A	N / A
13-40878 $249.00	7	02/05/13	N / A	05/16/13
13-40879 $299.00	7	02/05/13	N / A	N / A
13-40910 $249.00	7	02/06/13	N / A	08/13/13
13-40911 $249.00	7	02/06/13	N / A	05/16/13
13-40913 $249.00	7	02/06/13	N / A	05/16/13
13-40914 $249.00	7	02/06/13	N / A	05/22/13
13-40915 $249.00	7	02/06/13	N / A	05/22/13
13-40916 $249.00	7	02/06/13	N / A	05/22/13
13-40917 $249.00	7	02/06/13	N / A	05/22/13
13-40919 $249.00	7	02/06/13	N / A	05/22/13
13-40922 $249.00	7	02/06/13	N / A	05/22/13
13-40925 $249.00	7	02/06/13	N / A	05/24/13
13-40957 $249.00	7	02/07/13	N / A	05/22/13
13-40958 $199.00	7	02/07/13	N / A	05/22/13
13-40960 $249.00	7	02/07/13	N / A	05/22/13
13-40964 $249.00	7	02/07/13	N / A	05/22/13

ATTACHMENT C

HALLER AFFIDAVIT

(with the Court's handwritten annotations to indicate time included in sanctions)

Haller
Fee
Affidavit

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Case No. 11-46399
	)	
Latoya Steward,	)	Chapter 7
	)	
Debtor.	)	Affidavit

AFFIDAVIT

I, James J. Haller, make the following statement under oath and penalty of perjury:

1. I am an attorney engaged in the representation of the Debtor in the above captioned matter.
2. My representation of the Debtor is pro bono and the retainer agreement entered into with the Debtor states that my client is not responsible for compensating me for my services.
3. As such I have not kept contemporaneous time records of my representation.
4. I am submitting the attached itemization of my time at the request of the Court.
5. I spent 5.1 hours recreating my time records from reviewing my calendar, the dates that documents that I drafted were created and updated, and from reviewing my email and phone records.
6. I can personally verify the accuracy of the attached time records by my own reference to these sources.
7. I believe that I performed substantially more work that is not referenced in this time record as I could not verify it from a separate source. As such my actual work may be understated significantly.

James J. Haller

STATE OF ILLINOIS)
) ss.
COUNTY OF ST. CLAIR)

On this 23rd day of April, 2014, before me the undersigned, a Notary Public, in and for the County of St. Clair, State of Illinois, personally appeared the above signed, to me known to be the person described in and who executed the foregoing Affidavit, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

"OFFICIAL SEAL"
GERI B. LEVERY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 7/31/2016

Court's handwritten annotations:
~~Date~~ = time entry not included in attorney's fees sanctions
✓Date = time entry included in attorney's fees sanctions

	Date	Time	Attorney	Description
✓	9/17/2013	0.5	JJH	Review of email communication 1) between D Gunn and E Walton regarding discovery on 9/17/13 (5 emails), and 2)email from and reply to D Gunn concerning upcoming sanction hearing.
✓	9/18/2013	0.1	JJH	Review of email from D Gunn re sanction hearing on 9/18/13
✓	9/19/2013	0.7	JJH	Listened to audio file of hearing on 9/18/13 and sent email to DGunn re same
✓	9/20/2013	0.7	JJH	Reviewed Order Granting Motion To Compel and Notice to Respondents' Counsel; reviewed DGunn's email to EWalton asking if EWalton wanted to confer about discovery, exchanged emails with DGunn re case
✓	9/23/2013	0.3	JJH	Reviewed email from DGunn re communication to go to EWalton further explaining discovery in detail and offering to assist Defendants in answering discovery requests
✓	9/24/2013	3.5	JJH	Reviewed Motion to Recuse Judge with memo Filed by Respondent James C. Robinson (29 pages) Discussed same with DGunn over the phone and via email. Drafted up Response and sent to DGunn.
✓	9/25/2013	1.7	JJH	Reviewed emails from DGunn (sent at 11:40 p.m. and 11:52 p.m. Monday evening – 9/24/13) which enclosed the Motion to Judgment on the Pleadings for Respondents against Movant Steward Filed with memo by Respondent James C. Robinson (19 pages) and DGunn's statement for the 9/25/13 scheduled hearing. Reviewed those documents as well. Did research and began prep of response to motion for summary judgment (during down time at 341 hearings in ESTL) and sent DGunn email re same. Reviewed Orders from the Court entered on 9/25/13. Reviewed further emails from DGunn re same later in the day.
✓	9/27/2013	0.4	JJH	Reviewed Motion to Set Aside, Motion for Protective Order , Motion To Stay Filed by Respondent James C. Robinson (12 pages).
✓	9/29/2013	0.7	JJH	Reviewed Motion to Dismiss Case as to Motion to Disgorge and for Sanction; Amended Motion to Dismiss Case as to Motion to Disgorge and for Sanction, Brief Filed by Respondent James C. Robinson Amended Brief Filed by Respondent James C. Robinson. I began drafting a response.

8.6 hours included in sanctions

	Date	Time	Attorney	Description
✓	9/30/2013	0.4	JJH	Reviewed Court Orders re Motions filed.
✓	10/1/2013	0.8	JJH	Listened to audio file of hearing on 10/1/13; exchanged emails with DGunn and BMueller re hearing and Orders.
✓	10/3/2013	2.5	JJH	Review of 10/2/13 Order, the Notice of Appeal to BAP (85 pages), Motion to Stay Pending Appeal (4 pages), Amended motion to Stay Pending Appeal (4 pages)Review and exchange of emails with DGunn re same. Review of appellate rules re appealing interlocutory orders, set deadline of 14 days to draft up objection to Motion for Leave; began research and preparation of same.
✓	10/7/2013	0.5	JJH	Review of 10/4/13 Court Order. Multiple email communication to and from DGunn re this order and other issues in the case.
✓	10/9/2013	0.2	JJH	Review of BAP Order.
✓	11/7/2013	1.2	JJH	Email exchange with DGunn re status of case and other issues. Review of Petition for Writ of Mandamus filed in Federal Court on 11/1/13 (31 pages), review of law regarding writs of mandamus.
✓	11/8/2013	0.3	JJH	Email exchange with DGunn re possible settlement issues.
	~~11/11/2013~~	3.5	JJH	Reviewed and edited the Certificate of Non-Compliance and multiple emails with DGunn discussing same along with strategy for the case. Did research on prior cases involving Critique et al on PACER, reviewed docs re same. Drafted initial draft of Complaint against Critique et al. Sent to DGunn for review, changes and editing. Exchanged multiple emails with DGunn re same.
✓	11/12/2013	0.1	JJH	Reviewed email from DGunn re Certificate of Noncomplaince.
✓	11/14/2013	0.5	JJH	Reviewed Court order of 11/13/13. Discussed evidentiary issues with DGunn in multiple emails.
	~~11/15/2013~~	0.5	JJH	Reviewed recent ABI article regarding 707 violations, exchanged email with DGunn regarding draft Adv Complaint against Critique et al.
✓	11/25/2013	0.3	JJH	Email exchange with DGunn re the status of the Petition for Writ of Mandamus.

6.8 hours included in sanctions

Date	Time	Attorney	Description
✓ 11/27/2013	0.2	JJH	Email exchanges with DGunn re adversary complaint against Critique et al.
✓ 12/6/2013	1.5	JJH	Reviewed DGunn's Adv Complaint vs Critique et al, Notice of Appeal to the district Court and associated docs filed by EWalton. Multiple email exchanges with DGunn re same.
~~12/9/2013~~	2.5	JJH	Drafted Answer in Opposition to the Motion for Leave and memo and performed research for same. Email exchange with DGunn re same.
~~12/9/2013~~	0.3	JJH	Reviewed final version of Complaint against Critique.
~~12/10/2013~~	2.5	JJH	Drafted Motion to Dismiss procedurally defective appeal and memo in support of same. Email exchange with DGunn re same.
~~12/12/2013~~	0.3	JJH	Email exchange with DGunn re Motion to Dismiss appeal and memo.
~~12/13/2013~~	0.5	JJH	Review of Bankruptcy Court's Sua Sponte Order of 12/12/13. Review of multiple email exchanges re settlement.
~~12/17/2013~~	0.5	JJH	Review of Order Dismissing the Petition for writ of mandamus. Email exchange with DGunn re same and mediation.
~~12/20/2013~~	0.4	JJH	Multiple emails with DGunn re mediation
~~12/30/2013~~	0.1	JJH	Email exchange re mediation.
✓ 1/6/2014	0.6	JJH	Review of Response to the Court's Sua Sponte Order of 12/12/13 by DGunn, and Defendants. Edits made to DGunn's reponse.
✓ 1/17/2014	0.2	JJH	Email exchanges with DGunn re case
~~1/25/2014~~	0.3	JJH	Review of settlement statement from DGunn
~~1/28/2014~~	8.5	JJH	Attendance and participation at settlement conference at US BK Ct building in St. Louis.
~~2/7/2014~~	1.5	JJH	Draft of initial settlement document, email to DGunn with same
~~2/9/2014~~	0.4	JJH	Review of Court order of 2/7/14 and email exchange with DGunn re same
~~3/13/2014~~	0.2	JJH	Email to DGunn re settlement proceedings

2.5 hours included in sanctions

Date	Time	Attorney	Description
~~3/14/2014~~	0.4	JJH	Email to DGunn re settlement proceeding, review of multiple emails between the parties re settlement
~~3/21/2014~~	2.5	JJH	Review of multiple email exchanges between the parties including EWaltons email at 5:59 p.m. Friday, multiple email exchange with DGunn re settlement proceedings including (.4) Research into law regarding motion for vexatious multiplication of proceedings (2.1).
~~3/23/2014~~	0.2	JJH	Email to DGunn re settlement proceedings, status of settlment
~~3/27/2014~~	1.3	JJH	Multiple emails with DGunn re settlement agreement, the meeting with the parties scheduled at 12 p.m. at the Courthouse today and EWalton's late appearance which led to delay and further new objections and demands in the settlement agreement.
~~3/28/2014~~	0.3	JJH	Discussion via phone withDGunn and BMueller re settlement of case more details from Thursday's settlement conference and settlement status.
~~4/1/2014~~	2.5	JJH	Researched and drafted Motion and memorandum to Disqualify Defendant's counsel. Send to DGunn via email.
~~4/4/2014~~	0.2	JJH	Email to DGunn re settlement agreement
~~4/7/2014~~	0.4	JJH	Review of Notices regarding Sanctions to Robinson, Critique and Walton dated 4/3/14. Review of motion to approve settlement agreement from DGunn. Tele conf with DGunn re motion for approval of settlement agreement.
~~4/8/2014~~	0.3	JJH	Review of Court's 4/7/14 Order and discussion of same with DGunn.
~~4/9/2014~~	5.1	JJH	Review of email exchange between the parties and particularly the email by EWalton sent at 6:42 p.m. on 4/8/14 in pertinent part that his clients are not bound by the settlement agreement. Discussion with DGunn and BMueller re same. (.6) Reviewed email inbox and sent folders for all emails re this case including docket entries to recreate my time records for this case (4.5).

Ø hours included in sanctions

TOTAL HOURS 53.1

Total hours included in sanctions → for Mr. Haller (in this Affidavit)

8.6 hours
6.8
2.5
17.9 hours

EXHIBIT 7 ATTACHED
TO MOTION TO COMPEL

(with the Court's handwritten annotations to indicate time included in sanctions)

Court's handwritten annotations:
~~Date~~ = time entry not included in attorney's fees sanctions (this time was accounted-for already because it was included in Mr. Gunn's Fee Affidavit)
✓ Date = time entry included in attorney's fees sanctions (Mr. Haller's Fee Affidavit began on 9/17/13; thus, these entries were not accounted-for already)

Exhibit 7

Itemization of Time Spent in Preparation for Motion to Compel Discovery

Date	Time	Attorney	Description
~~9/7/13~~	0.1	DNG	Email from David Gunn to James J. Haller re: instructions on Motion to Compel Discovery
✓ 9/9/13	0.4	JJH	Email from James Haller to David Gunn re: detailed instructions on Motion to Compel Discovery
~~9/13/13~~	1.5	DNG	Initial draft of Motion to Compel Discovery
~~9/14/13~~	2.2	DNG	Initial draft of Exhibits to Motion to Compel Discovery
~~9/15/13~~	1.5	DNG	Completion and revisions to Motion to Compel Discovery and related exhibits
~~9/15/13~~	0.2	DNG	Email from David Gunn to James J. Haller re: Motion to Compel Discovery
✓ 9/16/13	0.5	JJH	Review and revisions to Motion to Compel Discovery
~~9/16/13~~	1.2	DNG	Revisions to Motion to Compel Discovery and drafting of Motion to Expedite Hearing for Motion to Compel Discovery based on James Haller feedback.
~~9/16/13~~	0.1	DNG	Email from opposing counsel Elbert Walton to David Gunn containing supplemental answer to interrogatory 1
~~9/16/13~~	0.1	DNG	Email from David Gunn to Elbert Walton re: request for complete answer for interrogatory 1
~~9/16/13~~	0.3	DNG	Revisions to Motion to Compel and Exhibits based on Respondents supplemental answer to interrogatory number 1

→ Total hours included in sanctions: .9 hours for Mr. Haller

Customary Attorney fees of David N. Gunn (DNG) are $200.00 per hour.

Customary Attorney fees of James J. Haller (JJH) are $300.00 per hour.

Total time of David N. Gunn at $200.00 per hour is 7.2 hours. Total attorney fee is $1,440.00

Total time of James J. Haller at $300.00 per hour is 0.9 hours. Total attorney fee is $270.00

Total attorney fee expended prosecuting Motion to Compel Discovery as of September 16, 2013 is $1,710.00

GUNN AFFIDAVIT

(with the Court's handwritten annotations to indicate time included in sanctions)

Gunn
Fee
Affidavit

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:	)	Case No. 11-46399
	)	
Latoya Steward,	)	Chapter 7
	)	
Debtor.	)	Affidavit

AFFIDAVIT

I, David Gunn, make the following statement under oath and penalty of perjury:

1. I am an attorney engaged in the representation of the Debtor in the above captioned mater.
2. My representation of the Debtor is pro bono and the retainer agreement entered into with the Debtor states that my client is not responsible for compensating me for my services.
3. As such I have not kept contemporaneous time records of my representation for any matter regarding this case other than the prosecution of the Motion to Compel Discovery as I was aware of the statutory requirements regarding attorney fees.
4. I am submitting the attached itemization of my time at the request of the Court.
5. I spent 13.9 hours recreating my time records from reviewing my calendar, the dates that documents that I drafted were created and updated, and from reviewing my email and phone records.
6. I can personally verify the accuracy of the attached time records by my own reference to these sources.
7. I believe that I performed substantially more work that is not referenced in this time record as I could not verify it from a separate source. As such my actual work may be understated by this time record by as much as 200%.
8. Additionally, a majority of my time spent conversing on the telephone is not reflected in this affidavit as it was impossible to measure the time actually spent from reviewing my records.

9. My customary hourly rate is $200.00; the customary hourly rate for James Haller is $300.00.

David Gunn

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

On this 23rd day of April, 2014, before me the undersigned, a Notary Public, in and for the County of St. Louis, State of Missouri, personally appeared the above signed, to me known to be the person described in and who executed the foregoing Affidavit, and acknowledged that she executed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

NOTARY PUBLIC

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

JENNIFER A. HANNER
My Commission Expires
May 25, 2015
St. Louis County
Commission #11192724

My Commission Expires:

Court's handwritten annotations:
~~Date~~ = time entry not included in attorney's fees sanctions
✓Date = time entry included in attorney's fees sanctions

Date	Time	Attorney	Description
~~5/16/2013~~	0.5	DNG	listen to audio file for status conference of Pro Se Motion to Disgorge
~~5/16/2013~~	0.2	DNG	email to William Mueller and James Haller re: audio file of stauts conference of Pro Se Motion to Disgorge
~~5/16/2013~~	1	DNG	legal research regarding statute of limitation for perjury
~~5/17/2013~~	0.1	DNG	email from Willaim Mueller re: representation of client pro bono
~~5/17/2013~~	0.2	DNG	email to Willaim Mueller and James Haller re: representation of client pro bono
~~5/17/2013~~	0.5	DNG	reivew of rules of professional conduct re solication of clients
~~5/17/2013~~	0.2	DNG	email to William Mueller and James Haller re: ethcial rules regarding solication of clients
~~5/17/2013~~	0.4	DNG	phone conversation with James Haller re: representation of client pro bono
~~5/17/2013~~	0.5	DNG	drafting letter to client re: representation pro bono
~~5/17/2013~~	0.2	DNG	email to William Mueller and James Haller with copy of letter to client attached
~~5/17/2013~~	0.2	DNG	email to James Haller containing order entered in case 05-43244 UST v. Critique
~~5/20/2013~~	0.1	DNG	emial from client re: representation pro bono
~~5/20/2013~~	0.1	DNG	email to William Mueller and James Haller re: correspondence from client
~~5/21/2013~~	0.01	DNG	email to client re: representation pro bono
~~5/21/2013~~	0.3	DNG	phone call with client re: represenation pro bono
~~5/21/2013~~	0.1	DNG	email from client re: thanking attorney for the call
~~5/23/2013~~	1	DNG	drafting of retainer agreement and acknowlegment regarding purjuried testimony
~~5/23/2013~~	0.1	DNG	email retainer agreement and acknowlegement regarding perjury to Willaim Mueller and James Haller
~~5/23/2013~~	2	DNG	first consultation with client
~~5/23/2013~~	0.5	DNG	review of reaffirmation agreement between client and Ford
~~5/23/2013~~	0.4	DNG	phone call with client and Cricket Debt Solutions re: credit counseling classes obtained by client prior to filing for bankruptcy
~~5/23/2013~~	0.1	DNG	email from Cricket Debt Solutions containing all credit counselling certifications obtained by client
~~5/27/2013~~	0.2	DNG	email from client re: gathering documents for amendments
~~5/27/2013~~	0.3	DNG	email to client re: documents required for amendments
~~5/30/2013~~	0.5	DNG	research regarding other Critique clients
~~5/30/2013~~	0.1	DNG	email to Willaim Mueller and James Haler re: research of other Critiuqe clients
~~6/4/2013~~	3	DNG	meeting with client to discuss case and to review documents and prepare amended bankruptcy schedules and statements

Ø hours included in sanctions

~~6/4/2013~~	0.2	DNG	email to paralegal re: instructions for processing amendments into bankruptcy preparation software
~~6/5/2013~~	0.4	DNG	email to William Mueller and James Haller re: errors and omissions in original bankruptcy schedules and statements
~~6/5/2013~~	0.3	DNG	draft of letter to UST requesting 341 audio transcript for client's original 341 meeting held on July 25, 2011
~~6/6/2013~~	0.2	DNG	pick up CD with audio file of 341 held on July 25, 2011 at office of UST
~~6/6/2013~~	4.5	DNG	meeting with client to review and adjust amended bankruptcy schedules and statements and listen to audio file of 341 meeting held on July 25, 2011
~~6/6/2013~~	0.8	DNG	email to James Haller contain draft version of amended schedules and statements, original schedules and statements, and issues regarding discovery
~~6/7/2013~~	0.1	DNG	fax to UST requesting all other audio files regarding all 341s held on July 25, 2011
~~6/7/2013~~	0.1	DNG	email from James Haller with link to dropbox containing additional 341 audio files from July 25, 2011
~~6/7/2013~~	2	DNG	review fax to Ford sent on November 30, 2011 for voluntary surrender of vehicle secured by reaffirmed loan; legal research regarding notification of rescission
~~6/8/2013~~	6	DNG	review of audio files for all 341s held on July 25, 2011
~~6/8/2013~~	0.5	DNG	email to William Mueller and James Haller re: audio file of client's 341 is not present on material provided by UST
~~6/9/2013~~	0.1	DNG	email from James Haller re: missing audio file of client's 341 testimony
~~6/9/2013~~	0.5	DNG	email to William Mueller and James Haller re: missing 341 audio file
~~6/11/2013~~	1	DNG	email to William Mueller and James Haller re: ethics regarding candor to the court regarding false statements made by client while represented by another attorney, confidentality of incriminating disclosures, recantation, and proffer to US Attorney
~~6/11/2013~~	3	DNG	meeting with client to discuss amendments and strategy regarding recantation
~~6/11/2014~~	2	DNG	review PACER for documents of other Critique clients with 341 meetings on July 25, 2011
~~6/12/2013~~	3	DNG	initial draft of memorandum regarding changes dislcosed in amended bankruptcy petition, statements, and schedules
~~6/15/2013~~	8	DNG	legal research regarding recantation
~~6/15/2013~~	0.5	DNG	email to Willaim Mueller and James Haller summarizing legal research regarding recantation
~~6/17/2013~~	3	DNG	research regarding recantation and proffer for immunity
~~6/17/2013~~	2	DNG	drafting memorandum concerning recantation and proffer of immunity
~~6/17/2013~~	0.5	DNG	drafting and filing of motion to continue evidentiary hearing
~~6/17/2013~~	0.3	DNG	drafting proposed order granting motion to continue hearing

Ø hours included in sanctions

~~6/17/2013~~	0.2	DNG	drafting and filing disclosure of attorney compensation
~~6/17/2013~~	0.3	DNG	email from James Haller with comments on amended schedules and statements
~~6/17/2013~~	0.5	DNG	email to James Haller with reply to comments on amended schedules and statements
~~6/17/2013~~	0.5	DNG	drafting and filing entry of appearance
~~6/18/2013~~	0.1	DNG	review of Order Granting motion to continue evidentiary hearing
~~6/18/2013~~	0.3	DNG	review of Trustee's withdraw of notice of conclusion of 341 meeting and withdraw of report of no distribution
~~6/19/2013~~	0.5	DNG	email to client regarding research of recantation
~~6/18/2013~~	3	DNG	drafting acknowldegement regarding consequences of recantation for client
~~6/18/2013~~	1.5	DNG	meeting with client to review acknowledgement regarding consequences of recantation
~~6/20/2013~~	4	DNG	initial draft of interrogatories and request for production of documents
~~6/20/2013~~	0.5	DNG	email of draft discovery to William Mueller and James Haller
~~6/20/2013~~	0.5	DNG	draft letter to UST requesting 341 audio files for August 19, 2011 and September 26, 2011
~~6/21/2013~~	0.2	DNG	email from James Haller with comments on discovery requests
~~6/21/2013~~	0.1	DNG	email to James Haller re: comments on discovery requests
~~6/21/2013~~	0.2	DNG	email from James Haller re: comments on discovery requests
~~6/22/2013~~	0.5	DNG	email to James Haller re: comments on discovery requests
~~6/24/2013~~	0.1	DNG	reivew of Notice of Special Meeting of Creditors
~~6/24/2013~~	4	DNG	review of bankruptcy filing statistics for Critique in St. Charles County and audio files for 341 meetings of other Critique clients
~~6/24/2013~~	0.5	DNG	email to William Mueller re: research regarding Critique filing stastics in St. Charles County
~~6/24/2013~~	3	DNG	review audio files of 341 meetings with other clients of Critique; cross reference bankruptcy documents from PACER with Lexis Nexis public record reports
~~6/25/2013~~	5	DNG	revisions to interrogatories and request for production of documents
~~6/26/2013~~	0.5	DNG	filing of interrogatories and request for production of documents, reivew of filed documents, revisions for corrected .pdf, filing of corrected .pdf
~~6/26/2013~~	1	DNG	status conference in Courtroom 7 South
~~6/26/2013~~	1	DNG	drafting and filing subpoena for client's phone records from Sprint
~~6/26/2013~~	0.3	DNG	email to William Mueller and James Haller re: outcome of status conference
~~6/27/2013~~	4	DNG	
~~7/2/2013~~	0.2	DNG	email to Eva Kozney, attorney for Ford, regarding settling reaffirmed debt
~~7/3/2013~~	1	DNG	initial draft of affidaivt of false statements for recantation
~~7/3/2013~~	2	DNG	meeting with client re recantation and meeting of creditors

Ø hours included in sanctions

~~7/6/2013~~	5	DNG	
~~7/8/2013~~	1	DNG	revisions to affidavit re: false statements and recantation
~~7/8/2013~~	2	DNG	mock 341 meeting
~~7/8/2013~~	3	RJL	mock 341 meeting (includes driving time from St. Charles office to Brentwood office) - Robert Lawson taking role of panel trustee
~~7/9/2013~~	2	DNG	review of affidavit re: false statements and recantation with client and revisions to the same
~~7/9/2013~~	2	DNG	preparation for meeting of creditors
~~7/10/2013~~	4	DNG	meeting of creditors and debriefing with client
~~7/10/2013~~	0.2	DNG	email to Ross Briggs re: statements made at 341 meeting, request for copy of retainer agreement, and confirmation of his status as a creditor in client's bankruptcy
~~7/11/2013~~	0.1	DNG	email from Ross Briggs containing copy of retainer agreement
~~7/11/2013~~	0.1	DNG	forward email from Ross Briggs containing retainer agreement to William Mueller and James Haller
~~7/11/2013~~	0.1	DNG	email to Ross Brigges requesting amout of debt owed to him
~~7/11/2013~~	0.1	DNG	email from Ross Briggs advising that he is not a creditor of client
~~7/22/2013~~	0.1	DNG	email from book keeper re: whether firm is paying for costs for filing fees out of pocket
~~7/22/2013~~	0.1	DNG	email to book keeper confirming that firm is not being reimbursed for costs associated with case
~~7/22/2013~~	1	DNG	review of motion to quash discovery and memorandum in support filed by Respondent
~~7/23/2013~~	0.1	DNG	email from client re: 341 audio files of other Critique clients
~~7/23/2013~~	0.1	DNG	email to client re: 341 audio files of other Critique clients
~~7/31/2013~~	0.2	DNG	review of Order Denying Motion to Quash Discovery
~~8/1/2013~~	0.1	DNG	email to client re: reciept of phone records
~~8/6/2013~~	0.1	DNG	email to attorney for Respondent re: status of discovery
~~8/6/2013~~	0.1	DNG	reivew of response by attorney for Respondent of email requesting status of providing discovery
~~8/6/2013~~	2	DNG	review phone records
~~8/7/2013~~	2	DNG	compare phone records with case notes provided by Respondent through discovery
~~8/6/2013~~	0.1	DNG	email to attorney for Respondent re: status of discovery - indicating that motion to quash had previously been denied
~~8/14/2013~~	1.5	DNG	status conference in Courtroom 7 South
~~8/26/2013~~	0.2	DNG	email to client re: meeting to review phone records and listen to audio recordings of 341s for other Critique clients
~~8/27/2013~~	3	DNG	meeting with client re: review of phone records and audio files for 341s of other Critique clients
✓ 9/5/2013	3	DNG	review of discovery emailed by attorney for Respondent
✓ 9/7/2013	0.1	DNG	Email from David Gunn to James J. Haller re: instructions on Motion to Compel Discovery
✓ 9/7/2013	0.2	DNG	email to client with discovery attached
~~9/9/2013~~	0.4	JJH	Email from James Haller to David Gunn re: detailed instructions on Motion to Compel Discovery

not Mr. Gunn's time (appears mistakenly included on this Affidavit); this time of Mr. Haller included on Exhibit 7 attached to the Motion to Compel [Docket No. 63]

3.3 hours included in the Sanctions

✓ 9/11/2013	1	DNG	status conference in Courtroom 7 South
✓ 9/11/2013	3	DNG	review discovery
✓ 9/13/2013	1.5	DNG	Initial draft of Motion to Compel Discovery
✓ 9/14/2013	2.2	DNG	Initial draft of Exhibits to Motion to Compel Discovery
✓ 9/15/2013	1.5	DNG	Completion and revisions to Motion to Compel Discovery and related exhibits
✓ 9/15/2013	0.2	DNG	Email from David Gunn to James J. Haller re: Motion to Compel Discovery
~~9/16/2013~~	0.5	JJH	Review and revisions to Motion to Compel Discovery
not Mr. Gunn's time; this time of Haller's included on Exhibit 7			
✓ 9/16/2013	1.2	DNG	Revisions to Motion to Compel Discovery and drafting of Motion to Expedite Hearing for Motion to Compel Discovery based on James Haller feedback.
✓ 9/16/2013	0.1	DNG	Email from opposing counsel Elbert Walton to David Gunn containing supplemental answer to interrogatory 1
✓ 9/16/2013	0.1	DNG	Email from David Gunn to Elbert Walton re: request for complete answer for interrogatory 1
✓ 9/16/2013	0.3	DNG	Revisions to Motion to Compel and Exhibits based on Respondents supplemental answer to interrogatory number 1
✓ 9/17/2013	3	DNG	prepare for motion hearing on motion to compel discovery, prepare for arguments on potential motion for protective order if filed prior to hearing
✓ 9/18/2013	1	DNG	hearing on Motion to Compel Discovery
✓ 9/19/2013	0.1	DNG	email from client re: sanctions
✓ 9/19/2013	0.1	DNG	email to client re: sanctions
✓ 9/19/2013	0.5	DNG	review audio file of hearing on Motion to Compel Discovery
✓ 9/19/2013	0.5	DNG	prepare and file supplement for certificaiton of good faith communication regarding discovery
✓ 9/20/2013	0.5	DNG	review Order Granting Motion to Compel
✓ 9/23/2013	0.9	DNG	draft of email to attorney for Respondent regarding clarificaiton of interrogatory 1
✓ 9/23/2013	0.1	DNG	email draft of email regarding interrogatory 1 to James Haller
✓ 9/23/2013	0.5	DNG	phone call with James Haller re: email to attorney for Respondent regarding discovery and other attorneys and employees that have known associations with Critique
✓ 9/23/2013	0.1	DNG	email to attorney for Respondnet re: interrogatory 1
✓ 9/24/2013	2	DNG	review of motion to recuse filed by Respondent
✓ 9/24/2013	0.2	DNG	email motion to recuse filed by Respondent to Willaim Mueller and James Haller
✓ 9/24/2013	0.2	DNG	email from William Mueller re: motion to recuse
✓ 9/24/2013	0.3	DNG	email to Willaim Mueller and James Haller re: motion to recuse
✓ 9/24/2013	0.3	DNG	phone call with William Mueller and James Haller re: motion to recuse
✓ 9/24/2013	0.1	DNG	email from William Mueller re: motion to recuse
✓ 9/24/2013	1.5	DNG	review of motion for judgement on the pleadings filed by Respondent

23.0 hours included in sanctions

✓ 9/24/2013	0.3	DNG	email to Willaim Mueller and James Haller re: motion for judgment on the pleadings
✓ 9/25/2013	0.5	DNG	review of Orders Denying Motion to Recuse and Motion for Judgment on the pleadings
✓ 9/26/2013	3	DNG	review phone records
✓ 9/27/2013	0.5	DNG	reivew of motion to set aside Order Denying Motion for Judgment on the Pleadings
✓ 9/28/2013	0.5	DNG	prepare and file notice to the Court regarding status of discovery
✓ 9/28/2013	0.3	DNG	prepare and file second supplement for certificaiton of good faith communication regarding discovery
✓ 9/30/2013	2	DNG	review briefs filed by Respondent regarding motion to dismiss
✓ 10/1/2013	1	DNG	status conference in Courtroom 7 South
✓ 10/1/2013	0.2	DNG	email to William Mueller and James Haller re: status conference held in Courtroom 7 South
✓ 10/1/2013	0.4	DNG	review of audio file for status conference held in Courtroom 7 South
✓ 10/1/2013	0.2	DNG	email from James Haller re: status conference held in Courtroom 7 South
✓ 10/1/2013	1	DNG	review of Order Denying Motion to Vacate
✓ 10/1/2013	0.5	DNG	review Order Denying Amended Motion to Dismiss Case
✓ 10/2/2013	0.5	DNG	review of Order Removing Status Conference from Docket and Directing the Immediate Imposition of Sanctions
✓ 10/2/2013	0.5	DNG	email to William Mueller and James Haller re: Order Removing Status Conference from Docket and Directing the Immediate Imposition of Sanctions
✓ 10/3/2013	1	DNG	review motion and amended motion for stay pending appeal
✓ 10/5/2013	0.5	DNG	review Order Denying Motion for Stay Pending Appeal
✓ 10/7/2013	3	DNG	review documents filed by Respondent for appeal
✓ 10/8/2013	0.5	DNG	reivew of Order Denying Motion for Interluctory Appeal entered by BAP
✓ 10/8/2013	0.2	DNG	email Willaim Mueller and James Haller Order Denying Appeal
✓ 10/9/2013	0.2	DNG	email from William Mueller re: status of BAP appeal
✓ 10/9/2013	0.2	DNG	email to William Mueller re: status of BAP appeal
✓ 10/15/2013	3	DNG	meeting with Jim Haller re: trial strategy
✓ ~~10/15/2013~~	4	JJH	meeting with David Gunn re: trial strategy (includes driving time from Belleville, IL office to Brentwood, MO office)
~~11/6/2013~~	0.1	DNG	conversation with Judge Barry S. Schermer re: mediation of contested matter
~~11/6/2014~~	0.5	DNG	phone conversation with William Mueller re: mediation of contested matter by Judge Schermer
~~11/7/2013~~	1	DNG	letter to Paul Randolf of UST requesting depositions of former clients of Critique taken in previous lawsuits
~~11/8/2013~~	0.2	DNG	phone call with Judge Schermer re: mediation of contested matter
~~11/8/2013~~	0.3	DNG	email to William Mueller and James Haller re: mediation of contested matter by Judge Schermer

Not Mr. Gunn's time but also not included in Mr. Haller's time in Exhibit 7 or in his Fee Affidavit; therefore, included here as part of hours

24 hours included in sanctions
↳ of which 20 are Mr. Gunn's time and 4 are Mr. Haller's time

~~11/8/2013~~	0.2	DNG	email from William Mueller and James Haller re: mediation of contested matter by Judge Schermer
~~11/8/2013~~	0.3	DNG	email to William Mueller and James Haller re: mediation of contested matter by Judge Schermer
✓11/11/2013	0.2	DNG	email from James Haller re: Writ of Mandamus
✓11/11/2013	0.1	DNG	email to James Haller re: Writ of Mandamus
✓11/11/2013	1.5	DNG	drafting attorney certification of non-compliance regarding Order Granting Motion to Compel Discovery
✓11/12/2013	0.2	DNG	filing attorney certification of non-compliance regarding Order Granting Motion to Compel Discovery
~~11/13/2013~~	0.3	DNG	review of article written on case by Missouri Lawyers Weekly
✓11/14/2013	3	DNG	review of Order Imposing Additional Sanctions
~~11/21/2013~~	0.5	DNG	email to James Haller re: article written by Missouri Lawyers Weekly
~~11/21/2013~~	8	DNG	research for adversary claims, drafting complaint
✓11/25/2013	0.1	DNG	email from James Haller re: Writ of Mandamus
✓11/25/2013	0.1	DNG	email to James Haller re: Writ of Mandamus
✓11/25/2013	0.1	DNG	email from James Haller re: Writ of Mandamus
✓11/25/2013	0.1	DNG	email to James Haller re: Writ of Mandamus
~~11/25/2013~~	1	DNG	drafting and filing motion to extend time to file complaint
~~11/26/2013~~	3	DNG	drafting complaint
~~11/27/2013~~	0.1	DNG	email from James Haller re: motion to extend time to file complaint
~~11/27/2013~~	0.1	DNG	email to James Haller re: motion to extend time to file complaint
✓11/28/2013	0.5	DNG	review motion for leave to file appeal filed by Respondent
~~12/2/2013~~	3	DNG	research on legal malpractice
✓12/4/2013	3.5	DNG	legal research re: appeal
~~12/5/2013~~	3	DNG	drafting complaint
~~12/8/2013~~	4	DNG	drafting complaint
~~12/9/2013~~	1	DNG	meeting with Paul Randolf and Peter Lamaghui at office of UST re: possible subpoena for depositions of former Critique clients taken in previous trials
✓12/9/2013	0.5	DNG	review of records for appeal
✓12/10/2013	3	DNG	revisions to appeallate documents; filing response to motion for leave to appeal and memorandum of law
✓12/12/2013	5	DNG	revisions to motion to dismiss appeal and memorandum of law; filing of the same
✓12/17/2013	0.2	DNG	review of dismissal re: writ of mandamus
~~1/27/2014~~	4	DNG	prepation for settlement conference
~~1/28/2014~~	8	DNG	settlement conference
~~1/29/2014~~	1	DNG	draft notes from settlement conference; telephone call with client re settlement conference
~~1/31/2014~~	0.1	DNG	email to Ross Briggs re: status of settlement agreement
~~1/31/2014~~	0.1	DNG	email from Ross Briggs re: status of settlement agreement
~~1/31/2014~~	0.1	DNG	email to Ross Briggs re: status of settlement agreement
~~1/31/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement

18.1 hours included in sanctions 15.1

~~1/31/2014~~	0.2	DNG	email to Ross Briggs re: settlement agreement
~~2/3/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/4/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/5/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/5/2014~~	0.1	DNG	phone call with Rebecca Case re: settlement agreement
~~2/5/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/5/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/6/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/7/2014~~	0.5	DNG	email from Ross Briggs re: settlement agreemnt (with proposed language)
~~2/7/2014~~	0.2	DNG	email to Ross Briggs re: settlement agreement
~~2/7/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/7/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~2/7/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~2/7/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~2/8/2014~~	0.5	DNG	review of Order Imposing Sanctions Upon Respondent James Robinson for Violating the Order Imposing Additional Sanctions
~~2/10/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/11/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/14/2014~~	0.5	DNG	review of Notice of Satisfaction entered by the Court
~~2/18/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~2/18/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~2/18/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~2/19/2014~~	0.1	DNG	email to Ross Briggs and Elbert Walton re: status of D. Gunn to draft settlement agreement
~~2/19/2014~~	0.1	DNG	email from Ross Briggs re: status of D. Gunn to draft settlement agreement
~~2/21/2014~~	0.1	DNG	email from Rebecca Case re: contested matter
~~2/25/2014~~	4	DNG	drafting settlement agreement
~~2/25/2014~~	0.3	DNG	email to Willaim Mueller and James Haller re: settlement agreement
~~2/25/2014~~	0.2	DNG	email to Ross Briggs and Elbert Walton re: settlement agreement
~~2/26/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/26/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/26/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/26/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/26/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~2/26/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~2/26/2014~~	0.2	DNG	email to client re: settlement agreement
~~2/26/2014~~	0.1	DNG	email from client re: settlement agreement
~~2/26/2014~~	0.1	DNG	email to client re: settlement agreement
~~2/26/2014~~	0.1	DNG	email from client re: settlement agreement
~~2/28/2014~~	0.1	DNG	email from client re: settlement agreement
~~2/28/2014~~	0.1	DNG	email to client re: settlement agreement
~~2/28/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/3/2014~~	0.1	DNG	email proposed settlement agreement to Ross Briggs and Elbert Walton

ø hours included in sanctions

~~3/4/2014~~	0.5	DNG	drafting and filing motion to extend time to object to discharge in bankruptcy case of D. Conners
~~3/5/2014~~	0.3	DNG	review of Order Regarding Status in Main Case and Adversary
~~3/5/2014~~	0.1	DNG	email to Ross Briggs re:Order Regarding Status in Main Case and Adversary
~~3/5/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~3/5/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/6/2014~~	0.1	DNG	phone call with client re: settlement agreement
~~3/6/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/6/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~3/6/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/6/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~3/6/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/6/2014~~	0.5	DNG	drafting and filing motion for extension of time to provide status of settlement agreement
~~3/7/2014~~	0.2	DNG	review of Order Granting Motion to Extend Time
~~3/7/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~3/7/2014~~	0.1	DNG	email from client re: settlement agreement
~~3/7/2014~~	0.2	DNG	email to client re: settlement agreement
~~3/11/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/11/2014~~	0.1	DNG	email to client re: settlement agreement
~~3/11/2014~~	0.1	DNG	email from client re: settlement agreement
~~3/11/2014~~	1.5	DNG	revisions to settlement agreement
~~3/12/2014~~	0.2	DNG	email from Ross Briggs re: settlement agreement (with revisions)
~~3/12/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/13/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/13/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~3/13/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/13/2014~~	0.1	DNG	email to client re: settlement agreement
~~3/13/2014~~	0.5	DNG	email from Elbert Walton re: settlement agreement (with draft with revisions)
~~3/13/2014~~	0.1	DNG	email to Elbert Walton and Ross Briggs re: proposed changes to settlement agreement
~~3/13/2014~~	0.5	DNG	email to Elbert Walton rejecting proposed changes and advising that the Debtor will not file a second motion to extend time regarding status of settlement agreement
~~3/14/2014~~	0.1	DNG	email from client re: settlement agreement
~~3/14/2014~~	0.1	DNG	email to client re: settlement agreement
~~3/14/2014~~	0.5	DNG	revisions to settlement agreement
~~3/14/2014~~	1	DNG	drafting and filing disclosure to the Court re: status of settlement agreement
~~3/14/2014~~	0.3	DNG	email from Elbert Walton re: settlement agreement (with draft with revisions)
~~3/14/2014~~	0.2	DNG	email to Elbert Walton accpeting settlement agreement with his revisons
~~3/17/2014~~	0.1	DNG	email from Rebecca Case re: process for Court approval of settlement agreement

~~Ø~~ hours included in sanctions

~~3/18/2014~~	0.1	DNG	email to Rebecca Case containg draft of settlement agreement accepted on 3/14/2014
~~3/18/2014~~	1	DNG	drafting joint motion for approval of settlement agreement
~~3/19/2014~~	0.5	DNG	email from Rebecca Case containing comments regarding latest version of settlement agreement
~~3/19/2014~~	0.1	DNG	email from Rebecca Case re: status of POCs filed in case
~~3/19/2014~~	0.1	DNG	email to Rebeccas Case re: latest version of settlement agreement
~~3/19/2014~~	0.1	DNG	email to Rebecca Case re: notice to creditors regarding settlement agreement
~~3/19/2014~~	0.1	DNG	email from Rebecca Case re: notice to creditors regarding settlement agreement
~~3/20/2014~~	0.1	DNG	email from Rebecca Case re: latest version of settlement agreement
~~3/20/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement (with signatures by Briggs and Conners)
~~3/20/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~3/21/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~3/21/20134~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~3/21/2014~~	0.5	DNG	email to Elbert Walton and Ross Briggs re: status of settlement agreement
~~3/22/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~3/22/2014~~	0.1	DNG	email to Rebecca Case re: settlement agreement
~~3/22/2014~~	1	DNG	drafting and filing amended disclosure to the Court regarding status of settlement agreement
~~3/24/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~3/26/2014~~	0.1	DNG	email from Rebecca Case re: status of claims in case and settlement
~~3/26/2014~~	0.1	DNG	email to Rebecca Case re: status of settlement
~~3/31/2014~~	0.1	DNG	email from client re: status of settlement
~~4/1/2014~~	0.1	DNG	email from James Haller re: settlement agreement
~~4/1/2014~~	0.1	DNG	email to Jamess Haller re: settlement agreement
~~4/1/2014~~	0.1	DNG	email to client re: status of settlement
~~4/1/2014~~	1	DNG	email from Ross Brigges (containing executed settlement agreement)
~~4/2/2014~~	0.5	DNG	email to Ross Briggs re: executed settlement agreement
~~4/2/2014~~	0.1	DNG	email from Ross Briggs re: executed settlement agreement
~~4/2/2014~~	0.1	DNG	email from Rebecca Case re: POC of Ford
~~4/2/2014~~	0.1	DNG	email to Rebecca Case re: POC of Ford
~~4/2/2014~~	0.1	DNG	email to Ross Briggs re: executed settlement agreement
~~4/3/2014~~	0.1	DNG	email from Ross Briggs re: executed settlement agreement
~~4/3/2014~~	0.1	DNG	email copy of executed settlement agreement to Rebecca Case
~~4/3/2014~~	0.1	DNG	email from Rebecca Case re: executed settlement agreement
~~4/3/2014~~	0.1	DNG	email from Rebecca Case re: executed settlement agreement
~~4/3/2014~~	0.5	DNG	revisions to motion to submit settlement agreement under seal and motion for court approval of settlement

Ø hours included in sanctions

~~4/3/2014~~	0.2	DNG	filing motion to submit settlement agreement under seal
~~4/3/2014~~	1	DNG	meeting with client and execution of settlement agreement
~~4/4/2014~~	0.5	DNG	review of Notice Regarding Sanctions and Notice to Elbert Walton Regarding Sanctions entered by Court
~~4/4/2014~~	0.1	DNG	email from James Haller re: motion to approve settlement agreement
~~4/4/2014~~	0.1	DNG	email to James Haller re: motion to approve settlement agreement
~~4/4/2014~~	0.1	DNG	review of Order Granting Motion to Submit Settlement Agreement Under Seal
~~4/5/2014~~	0.5	DNG	review of Order Psecifying June 2, 2014 as date to execute summons in adversary
~~4/6/2014~~	2	DNG	drafting notice to the Court regarding acceptance of discovery and revisions to motion for court approval of settlement
~~4/6/2014~~	0.2	DNG	email notice to the Court regarding discovery and motion to approve settlement to William Mueller and James Haller
~~4/8/2014~~	0.3	DNG	review of Order Directing Debtor to File Affidavit Regarding Attorney Fees
~~4/8/2014~~	0.1	DNG	email to Eva Kozney re: settlement of Ford claim
~~4/8/2014~~	0.2	DNG	email from Elbert Walton re: settlement agreement
~~4/8/2014~~	0.3	DNG	email to Elbert Walton re: settlement agreement
~~4/9/2014~~	0.1	DNG	email to William Mueller and James Haller re: settlement agreement
~~4/9/2014~~	0.2	DNG	email from James Haller re: settlement agreement
~~4/9/2014~~	0.5	DNG	email from Elbert Walton re: settlement agreement (including proposed revisions)
~~4/10/2014~~	0.5	DNG	email to Elbert Walton re: settlement agreement
~~4/10/2014~~	0.1	DNG	email to Ross Briggs re: settlement agreement
~~4/10/2014~~	0.1	DNG	email from Ross Briggs re: settlement agreement
~~4/10/2014~~	0.1	DNG	email from Jim Haller re: agreed motion to withdraw filed by Elbert Walton
~~4/10/2014~~	1	DNG	delivery of sealed settlement agreement to bankruptcy clerk's office
~~4/10/2014~~	0.5	DNG	drafting and filing motion to extend time to submit affidavit regarding fees
~~4/11/2014~~	0.3	DNG	drafting Notice to the Court Regarding Order Directing the Debtor to Accept Discovery
~~4/11/2014~~	0.3	DNG	email to James Haller re: status of settlement agreement
~~4/12/2014~~	0.2	DNG	review of Order Striking Notice of Dismissal
~~4/14/2014~~	0.2	DNG	email from Rebecca Case re: settlement agreement
~~4/14/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~4/15/2014~~	0.1	DNG	email to Rebecca Case re: settlement of Ford claim
~~4/15/2014~~	0.1	DNG	email from Rebecca Case re: settlement agreement
~~4/15/2014~~	0.1	DNG	email to Eva Kozney re: offer to settle of Ford claim
~~4/15/2014~~	0.1	DNG	email to Rebecca Case re: settlement of Ford claim
~~4/22/2014~~	6.5	DNG	review of case records to prepare affidaivt regarding attorney fees

~~Ø~~ hours included in sanctions

~~4/23/2014~~	7.4	DNG	review of case records to prepare affidaivt regarding attorney fees
~~4/23/2014~~	0.5	DNG	drafting affidavit for James Haller
~~4/23/2014~~	0.2	DNG	drafting affidavit for David Gunn
	241.71		

→ Ø hours included in sanctions

Total hours included in sanctions in this Affidavit:

Mr. Gunn → 3.3 hours
23.0
20.0
18.1
64.4 hours

Mr. Haller → 4.0 hours

Total hours included in sanctions based on all documents:

Mr. Gunn → (Gunn Fee Affidavit) 64.4 hours
@ $200./hr.
= $12,880.00

Mr. Haller → (Haller Fee Affidavit) 17.9 hours
(Exhubit 7) .9
(Gunn Fee Affidavit) 4.0
22.8 hours
@ $300/hr.
= $6,840.00

* Gunn + Haller fees for inclusion in sanctions → $12,880.00
6,840.00
$ 19,720.00