

Dated: March 29, 2024
The following is ORDERED:



A handwritten signature in black ink, appearing to read "Denise E. Barnett".

Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Shannetria Renee Newberry,
Debtor.

Case No. 23-20515
Chapter 7

OPINION AND ORDER GRANTING, IN PART, THE
UNITED STATES TRUSTEE'S MOTION FOR SUMMARY
JUDGMENT ON THE UNITED STATES TRUSTEE'S AMENDED
MOTION TO EXAMINE ATTORNEY FEES UNDER 11 U.S.C. § 329
AND FOR RETURN OF FEES UNDER 11 U.S.C. § 526-528 FOR
FAILURE TO HAVE WRITTEN CONTRACT FOR ATTORNEY SERVICES

The matters before the Court stem from the United States Trustee's ("UST") efforts to address a consumer bankruptcy attorney's dilatory actions in the case. On January 25, 2024, at 10:00 a.m., the Court heard arguments on the United States Trustee's (the "UST's") Motion for Summary Judgment as to the UST's Amended Motion to Examine Attorney Fees and For a

Return of Fees.¹ The Court also heard arguments on other ancillary motions and responses that will be further described in this Opinion and Order.

The ultimate issue before the Court is whether Curtis D. Johnson, Jr. (“Mr. Johnson”) complied with the provisions of Bankruptcy Rule 2016(b) disclosure requirements and the mandate of 11 U.S.C. §§ 526-528 to have a written contract. For the reasons explained in this Opinion, the Court finds that the UST’s is entitled summary judgment, in part, on its Amended Motion to Examine Attorney Fees Under 11 U.S.C. § 329 and For a Return of Fees under 11 U.S.C. §§ 526-528 for Failure to Have a Written Contract for Attorney Services.

I. FACTUAL AND PROCEDURAL BACKGROUND

Initial Disclosures and UST’s Motion to Examine Transaction.

On January 31, 2023, Mr. Johnson filed a Chapter 7 petition on behalf of his client Shannetria Renee Newberry (“Ms. Newberry”). Mr. Johnson also filed an Initial Disclosure to Compensation Statement (“First Disclosure Statement”), listing \$3,800 for his services.² On March 28, 2023, the United States Trustee filed the Motion to Examine Attorney Fees under 11 U.S.C. § 329 (“Original Motion”) contending that Mr. Johnson failed to properly disclose the compensation he received from Ms. Newberry.³ The same day, Mr. Johnson filed an Amended

¹ ECF Nos. 80 and 95.

² Because the Chapter 13 “no look” fee is \$3,800 it appears that this amount was inadvertently listed in the disclosure statement.

³ ECF No. 23.

Disclosure to Compensation (“Second Disclosure Statement”) listing the fee charged as \$1,200 and stating that \$300 of that amount was paid, leaving a \$900 balance.⁴

*Settlement of the Stay Violation Action
and Receipt of Additional Attorneys’ Fees.*

On March 29, 2023, Debtor filed a Motion for Sanctions for a violation of the Automatic Stay, against Debtor’s landlord, Revid Property Management (“Landlord”).⁵ On April 24, 2023, counsel for the Landlord emailed Mr. Johnson offering to settle the Motion for Sanctions for \$2,500.⁶ On April 25, 2023, Mr. Johnson emailed Landlord’s counsel “I will agree to \$2,500.00 to settle the [362 Sanctions Motion].” (“Revid Settlement”).⁷

On June 8, 2023, Debtor signed a Release finalizing the Revid Settlement in the amount of \$2,500.⁸ On that same day, June 8, 2023, Mr. Johnson sent an email to “Shannetria” (“June 8 Email”) that stated:

It looks like the filing fee on the chapter 7 case is \$338.00. You should pay it immediately once you receive your check. I will have the check and release for you tomorrow on the sanctions motion. As I noted, the balance to you will be approximately \$1,500.00, after deduction of our fees and costs. Also, as you know when you hired us to represent on your case, the total fee was \$1,2000.00 for the filing of the petition. I am waiving the remainder of that fee and you will have a zero balance with our office. I wish you the best on your future endeavors.⁹

⁴ ECF No. 25.

⁵ ECF No. 27.

⁶ ECF No. 80, Ex. 2.

⁷ *Id.*

⁸ Mot. for Summary Judgment, ECF No. 80, Ex.2 (with redaction).

⁹ *Id.*

The parties filed a consent order withdrawing Debtor's Motion for Sanctions on September 6, 2023.¹⁰

*Disclosure of Additional Attorneys' Fees
and UST's Amended Motion to Examine Fees.*

During a hearing on August 29, 2023, the Court was advised of the settlement and asked Mr. Johnson if he had amended his disclosure statement. Mr. Johnson stated that the Motion for Sanctions "was a separate proceeding." The Court clarified that because the settlement took place while Debtor was in bankruptcy, Mr. Johnson needed to amend the disclosure statement. Mr. Johnson agreed and stated that he had "no problem doing that."

At the next hearing, on September 12, 2023, the Court again mentioned that Mr. Johnson needed to file a supplemental disclosure and explained that as long as the case remains open, Rule 2016 (b) requires a continuing duty to supplement within 14 days of receiving additional payment. Mr. Johnson stated that the amended disclosure had not been filed, "but we should have it done by the end of the day."

On September 20, 2023, the United States Trustee filed the Amended Motion to Examine Attorney Fees under 11 U.S.C. 329 and For a Return of Fees Under 11 U.S.C. §§ 526-528 for Failure to Have a Written Contract for Attorney Services ("Amended Motion").¹¹

It appears that Mr. Johnson's second Amended Disclosure statement ("Third Disclosure Statement"), which he filed on September 25, 2023, was voided by the Clerk's Office because it

¹⁰ ECF No. 58.

¹¹ ECF No. 80.

did not state that it was “amended” in the title. Mr. Johnson, to date, has not filed an amended disclosure statement that correct the deficiency.

On September 29, 2023, the Court entered its Order Scheduling Trial on the Amended Motion to Examine Attorney Fees.¹² The response deadline in the scheduling order was 21 days from its entry, which was October 20, 2023. The pre-trial conference was set for January 9, 2024, and the matter was set for a half-day trial on January 25, 2024.

*UST’s Motion for Summary Judgment,
Discovery Issues, Last-Minute Filings, and Ancillary Matters.*

On December 29, 2023, the United States filed a Motion for Summary Judgment,¹³ an Affidavit in Support of the Motion for Summary Judgment,¹⁴ Brief in Support of Motion of Summary Judgment,¹⁵ and Statement of Undisputed Facts in Support of Motion for Summary Judgment.¹⁶ In its Motion for Summary Judgment, the United States Trustee alleges that the underlying Amended Motion to Examine Attorney Fees and for a Return of Fees concerns liability for a return of attorney’s fees by Debtor’s attorney to the Debtor under 11 U.S.C. § 329 due to inaccurate, inadequate, and untimely disclosures; and under 11 U.S.C. §§ 526-528 for Mr. Johnson’s failure to have a written contract with Ms. Newberry.

¹² ECF No. 88.

¹³ ECF No. 95.

¹⁴ ECF No. 96.

¹⁵ ECF No. 97.

¹⁶ ECF No. 98.

On January 9, 2024, Debtor filed a Motion for Additional Time to Respond to Discovery¹⁷ and a Motion to Continue the Hearing on Motion for Summary Judgment.¹⁸ The Court set the hearing on those motions to January 25, 2024, at 10 a.m.

On January 22, 2024, the United States filed a response to Debtor's motion to Continue Hearing, stating that the Court should not grant further continuances beyond the January 25 date.¹⁹ The United States Trustee also filed an Objection to Debtor's Motion for Additional Time to Respond to Discovery.²⁰

On January 24, 2024, on the eve before the trial at 9:23 p.m., Debtor filed a Response to the United States Amended Motion to Examine Attorney Fees.²¹

At 4:57 a.m. on the morning of trial, on January 25, Mr. Johnson filed a Motion to Withdraw Admissions.²²

At 6:11 a.m. on the morning of trial, on January 25, Mr. Johnson filed a Response to the United States Trustee's Motion for Summary Judgment²³ and Brief in Support of Response to the United States Motion for Summary Judgment.²⁴ Mr. Johnson filed another Response to the

¹⁷ ECF No. 101.

¹⁸ ECF No. 102.

¹⁹ ECF No. 107.

²⁰ ECF No. 108.

²¹ ECF No. 111.

²² ECF No. 112.

²³ ECF No. 113.

²⁴ ECF No. 114.

United States Trustee's Motion for Summary Judgment,²⁵ which the Court docketed at 10:27 a.m., after the trial had started.

The Court held a hearing on all matters on January 25, 2024, at 10 a.m. The United States Trustee made an *Ore Tenus* motion to strike Debtor's Response to the United States Amended Motion to Examine Attorney Fees, Motion to Withdraw Admissions, and Response to the United States Trustee's Motion for Summary Judgment for being untimely.

Mr. Johnson further asked for the Court to allow him to respond to the request for admissions, and for additional time to do so.

In sum, in addition to UST's motion to examine transaction and related summary judgment motion, the following matters were on the Court's calendar: (1) Debtor's²⁶ Motion for Additional Time to Respond, (2) UST's Objection to Debtor's Motion for Additional Time to Respond, (3) Debtor's Motion to Continue the Hearing, (4) UST's Response to Debtor's Motion to Continue, (5) Debtor's Response to Amended Motion to Examine Attorney Fees, (6) Debtor's Motion to Withdraw Admissions, and (7) Debtor's Response to Motion for Summary Judgment.

*Summary of Arguments Regarding 11 U.S.C. § 329,
Bankruptcy Rule 2016, and 11 U.S.C. §§ 526-528.*

At the outset, the Court inquired of the parties regarding the pivotal issues before the Court, steering the parties away from peripheral issues. Counsel for the United States Trustee, clarified that, pursuant to 11 U.S.C. § 329, the United States Trustee's concern focuses on Mr.

²⁵ ECF No. 118.

²⁶ The Court notes that while the pleadings are titled as "debtor's" pleadings and responses, they concern only Mr. Johnson.

Johnson's acceptance of an additional \$1,000 dollars from the proceeds of a settlement with Debtor's landlord, Revid Property Management, and his failure to disclose the additional fees.

Furthermore, the United States Trustee asserts that Mr. Johnson has failed to provide any evidence of an actual written contract with Ms. Newberry and thus seeks a return of fees under 11 U.S.C. §§ 526-528. On the other hand, Mr. Johnson asserted that he had filed an amended disclosure of compensation and sent it to the United States Trustee and that there are written communications showing that Mr. Johnson and Ms. Newberry have a contract. Mr. Johnson alleges that has filed three amended Disclosure of Compensation statements and the fees have been reasonable. As to the written contact, Mr. Johnson argues that section 526 merely voids the contract but does not require a disgorgement of fees. He does not assert that a written contract exists between him and Ms. Newberry, however, Mr. Johnson stated that he has emails and text messages with his client.

II. ISSUES

After ferreting through various pleadings and arguments the Court is left with two fundamental issues. First, whether Mr. Johnson complied with the provisions of Bankruptcy Rule 2016(b) by filing timely disclosure statement. Second, whether Mr. Johnson violated the requirements of 11 U.S.C. §§ 526-528 to have a written contract and is now subject to sanctions in the form of a disgorgement of fees. These issues will be the basis for this Court's conclusions and rulings.

III. DISCUSSION²⁷

Rule 56 of the Federal Rules of Civil Procedure (as incorporated into Bankruptcy Rule 7056) allows a court to grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as matter of law.”²⁸ The party seeking summary judgment must be able to demonstrate all the elements of the underlying cause of action to prevail.²⁹ A summary judgment motion must be construed in the light most favorable to the party opposing it.³⁰ The nonmoving party may oppose a summary judgment motion by providing evidence.³¹ The nonmoving party has the burden to showing, with specificity, that there are genuine issues of fact.³²

²⁷ The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. § 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The following shall constitute the court’s findings of fact and conclusions of the law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

²⁸ Fed. R. P. 56; Fed. R. Bankr. P. 7056.

²⁹ *In re Jasin*, 80 B.R. 418, 419 (Bankr. N.D. Ohio, W.D. 1987) (citing *In re Hartwig Poultry, Inc.*, 57 B.R. 549, 551 (Bankr. N. D. Ohio 1986) (“Movant must be able to demonstrate all the elements of a cause of action in order to prevail.”)).

³⁰ *Id.* (citing *In re Weitzel*, 72 B.R. 253 (Bankr. N.D. Ohio 1987)).

³¹ *Celotex Corp v. Catrett*, 477 U.S. 317, 322-23 (1986) (“Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves, and it is from this list that one would normally expect the nonmoving party to make the showing to which we have referred.”)

³² *Celotex*, 477 U.S. at 324 (“Rule 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’”).

**A. Bankruptcy Rule 2016(b) –
Requirement to Supplement Disclosure Statement.**

Under section 329 of the Bankruptcy Code, a debtor’s attorney is required to file a statement of compensation with the Court, outlining the amount already paid or future payments, for services rendered in connection with the case.³³

Rule 2016(b) requires that every attorney file a disclosure of compensation that details the financial arrangement between the debtor and attorney.³⁴ The disclosure statement must be supplemented “*within 14 days after any payment or agreement not previously disclosed.*”³⁵

It is well established in the Sixth Circuit that a bankruptcy attorney has an affirmative duty to disclose all fee arrangements and payments.³⁶ Courts have found that failure to timely

³³ 11 U.S.C. § 329: (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation 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—

(1) the estate if the property transferred—

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment.

Section 329 is implemented by Bankruptcy Rules 2014, 2016(b) and 2017.

³⁴ Bankruptcy Rule 2016(b) reads:

(b) Disclosure of compensation paid or promised to attorney for debtor

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

³⁵ Fed. R. Bankr. P. 2016(b) (emphasis added).

³⁶ *Henderson v. Kisseberth (In re Kisseberth)*, 273 F.3d 714, 720 (6th Cir.2001) (citing *In re Plaza Hotel Corp.*, 111 B.R. 882, 883 (Bankr. E.D. Cal. 1990)) (“An attorney in a bankruptcy case has an affirmative duty to disclose fully

disclose fees and compensation is a basis for entry of an order denying compensation and requiring return of sums already paid, even in cases where the failure was negligent and not willful.³⁷

After the Court’s suggestion and the filing of the UST’s amended motion, Mr. Johnson filed an amended disclosure statement on September 25, 2023, which was marked “VOIDED” because it was not properly labeled as “Amended.” No corrected amended disclosure was ever filed.³⁸ Even if the Court accepts the amended disclosure statement, it was untimely. The amended disclosure statement was filed outside of the fourteen (14) day period required by Bankruptcy Rule 2016(b)—which is 14 days after any payment is received. On June 8, 2023, Mr. Johnson emailed Ms. Newberry about receipt of \$2,500 from the Revid Settlement, explaining to the Debtor that \$1,500 would be sent to her and he would keep \$1,000. Although Mr. Johnson, on September 6, 2023, filed a consent order withdrawing Debtor’s motion for sanctions, it appears that he received the funds in June 2023. So, the voided amended disclosure was untimely.

and completely all fee arrangements and payments.”). *See also Mapother & Mapother, P.S.C. v. Cooper (In re Downs)*, 103 F.3d 472 (6th Cir. 1996); *In re Milldeton Arms, L.P.*, 934 F.2d 723 (6th Cir. 1991).

³⁷ *In re Downs*, 103 F.3d at 477 (quoting *In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 575 (Bankr. N.D. Tex. 1986)) (“[T]he bankruptcy court should deny all compensation to an attorney who exhibits a willful disregard of his fiduciary obligations to fully disclose the nature and circumstances of his fee arrangement under § 329 and Rule 2016.”); *In re Kisseberth*, 273 F.3d at 721 (“Disgorgement may be proper even though the failure to disclose resulted . . . from negligence or inadvertence.”); *see also Matter of Prudhomme*, 43 F.3d 1000, 1003 (5th Cir. 1995) (holding that the Court may disgorge fees as a sanction against the debtor’s counsel for failing to disclose fees). *In re Park-Helena Corp.*, 63 F.3d 877, 882 (9th Cir. 1995) (“Even a negligent or inadvertent failure to disclose fully relevant information [in a Rule 2016 statement] may result in a denial of all requested fees.”); *In re Lewis*, 113 F.3d 1040 (9th Cir. 1997) (affirming bankruptcy court’s denial of fees for debtor-in-possession’s counsel’s failure to supplement Rule 2016(b) statement disclosing post-petition payments).

³⁸ On September 26, 2023, a notice of the deficiency was electronically provided to Mr. Johnson. At the hearing on January 25, 2024, it appears that Mr. Johnson did not address the concerns with the amended disclosure statement.

The Court, during two separate hearings (August 29 and September 12, 2023), leading up to the hearing on January 25, 2023, indicated to Mr. Johnson that he has continuing obligation to report any new compensation he receives and that, in light of the settlement, he was required to file an amended disclosure statement. Mr. Johnson acknowledged multiple times that he understood and indicated that he would file it but failed to do so. Failure to timely file an amended disclosure statement is sanctionable under Rule 2016.

The Court finds Mr. Johnson failed to timely file his amended disclosure statement and did not correct the deficiency of the late filed disclosure statement regarding the Revid Settlement proceeds used to satisfy his attorney’s fees. The nature of a consumer bankruptcy practice can be very stressful with high volume bankruptcy consumer practitioner juggling many balls. However, it is important that attorneys keep abreast of what is happening in their cases. The Sixth Circuit has held that the sanction imposed must “be commensurate with the egregiousness of the conduct” and will depend on the facts of the case.³⁹ For Mr. Johnson’s failure to timely file supplemental disclosure, the Court finds and concludes that he should disgorge \$250 back to his client, Ms. Newberry.

**B. A Compilation of Text Messages and
Emails Do Not Satisfy 11 U.S.C. § 528(a)(1)
Requirements for a Written Contract.**

The UST cites generally to 11 U.S.C. §§ 526-528 to support the argument that Mr. Johnson lacks a written contract with his client and must therefore return the fees. The relevant provision is subsection 528(a), which states:

(a) A debt relief agency shall—

³⁹ *In re Downs*, 103 F.3d at 478-480.

(1) not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, *execute a written contract* with such assisted person that explains clearly and conspicuously—

(A) the services such agency will provide to such assisted person; and

(B) the fees or charges for such services, and the terms of payment;

(2) provide the assisted person with a copy of the fully executed and completed contract[.]⁴⁰

The Supreme Court has clarified that a debtor's attorney is considered a "debt relief agency" under 11 U.S.C. § 101(12A).⁴¹ This subsection was one of the several "debtor protection" provisions that was added to the Bankruptcy Code under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").

Under section 526(c)(1), if the contract "does not comply with the material requirements" of the Code, then the contract "shall be void and may not be enforced by any Federal or State court."⁴² If an attorney fails to promptly execute a written contract, the Court may (1) require the disgorgement of fees paid, or (2) upon a showing of intentional or continuing violations, impose an injunction or civil penalties.⁴³

There is no dispute of the facts in this case. Mr. Johnson asserted that he has a series of text messages and email communication between himself of his client that constitute a written

⁴⁰ 11 U.S.C. § 528(a)(1).

⁴¹ *Milavetz, Gallop & Milavetz v. United States*, 559 U.S. 229, 235-36 (2010) ("[T]he statutory text clearly indicates that attorneys are debt relief agencies when they provide qualifying services to assisted persons."); 11 U.S.C. § 101(12A) states that "'the term debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110."

⁴² 11 U.S.C. § 526(c)(1).

⁴³ 11 U.S.C. § 526(c)(1)-(5); *In re Humphries*, 453 B.R. 261, 263-64 (D. E.D. Mich. 2011) (outlining the sanctions and remedies in section 526).

contact. The requirements under Section 528(a), however, necessitate “a written contract that explains clearly and conspicuously the services [debtor’s attorney] will provide to such assisted person, the fees or charges for such services, and the terms of payment.”⁴⁴ The texts and email communication between Mr. Johnson and Ms. Newbery do not satisfy this requirement. Mr. Johnson has not provided the United States Trustee (or the Court) with a copy of any written contract or agreement with Ms. Newberry. Therefore, the UST is entitled to partial summary judgment on the amended motion to examine attorney fees and for a refund of fees.

The Court finds and concludes that Mr. Johnson is a “debt relief agency” under 11 U.S.C. §§ 101(12A) and 528(a), and he failed to execute a written contract with his client, in violation of 11 U.S.C. § 528(a)(1). The Court concludes that, pursuant to 11 U.S.C. § 526(c)(1), an additional \$500 should be disgorged from the funds that Mr. Johnson received from the Revid Settlement and returned to his client, Ms. Newberry.

C. The Other Outlying Matters.

The Court now addresses the other matters before the Court: (1) Debtor’s Motion to Continue Hearing on Summary Judgment, (2) United States Trustee’s Response to Debtor’s Motion to Continue Hearing, (3) Motion for Additional Time to Respond to Discovery, (4) United States Trustee’s Objection to Debtor’s Motion for Additional Time to Respond, (5) Debtor’s Motion to Withdraw Admissions, (6) Debtor’s Response to the Amended Motion to Examine Attorney Fees, and (7) Debtor’s Response to the Motion for Summary Judgment.

The Court denies Mr. Johnson’s request to Continue Hearing as moot. Mr. Johnson is not entitled to additional time to respond to discovery, as the Court had set a clear deadline—within

⁴⁴ 11 U.S.C. § 528(a)(1).

21 days of the trial scheduling order. As to Mr. Johnson's request to withdraw the admissions that were deemed admitted due to his failure to timely respond, Mr. Johnson filed the motion on the morning of trial and it is untimely and shall be stricken.⁴⁵ Likewise, Debtor's responses to the underlying Motion to Examine Fees and the Motion for Summary Judgment, were also filed the morning of the trial, and the Court therefore strikes both the Debtor's Response to the Amended Motion to Examine Attorney Fees and the Response to the Motion for Summary Judgment.

III. CONCLUSION AND ORDER

For reasons stated above, the Court finds and concludes that the UST is entitled to partial summary judgment and a partial disgorgement of fees is appropriate. Mr. Johnson did not timely supplement his disclosure statement to disclose additional attorney's fees received from the Revid Settlement, in violation of 11 U.S.C. § 329. Furthermore, there is no written contract between Mr. Johnson and Ms. Newberry that complies with the provision of 11 U.S.C. § 528(a)(1). Accordingly, it is **ORDERED**:

1. The United States Motion for Summary Judgment is GRANTED, in part.
2. Mr. Johnson shall disgorge and turnover \$750 to the Debtor within 28 days of the entry of this order.

⁴⁵ While Fed. R. Civ. P. 36(b) permits a party to request to withdraw its admissions, it must not be prejudicial to the party that already relied on them. *See Kerry Steel, Inc. v. Paragon Indus., Inc.*, 106 F.3d 147, 154 (6th Cir. 1997); Fed. R. Civ. P. 36(b) (permitting withdrawal only if it would not prejudice the party requesting the admissions in maintaining or defending the action on the merits). The Court also notes, however, that the UST sent Mr. Johnson 146 Requests for Admissions, some of them on purely legal issues not appropriately addressed in a request for admission. The Court finds this to be excessive and inappropriate use of discovery.

3. The United States *Ore Tenus* Motion to Strike Debtor's Response to the Amended Motion to Examine Attorney Fees, Debtor's Response to the Motion for Summary Judgment, Debtor's Motion to Withdraw Admissions is GRANTED.
4. Debtor's Response to the Amended Motion to Examine Attorney Fees is STRICKEN.
5. Debtor's Motion to Withdraw Admissions is STRICKEN.
6. Debtor's Response to the Motion for Summary Judgment is STRICKEN.
7. Debtor's Motion to Continue Hearing is DENIED.
8. Debtor's Motion for Additional Time to Respond to Discovery is DENIED.

cc: Debtor
Chapter 7 Trustee
United States Trustee
All Creditors on the Matrix