Dated: June 27, 2019
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
JOSEPH B. SHARP, II,
Debtor.

Case No. 12-26412-L
Chapter 13

Joseph B. Sharp, II,
Plaintiff/Counter-Defendant,
v.
Amy Sharp,
a/k/a Amy Deevers Long,
Defendant/Counter-Plaintiff.

Adv. Proc. No. 18-00193

ORDER GRANTING MOTION FOR SANCTIONS

Defendant Amy Deevers Long ("Ms. Long") seeks sanctions against the Plaintiff Joseph B. Sharp, II ("Mr. Sharp" or "Debtor") for his failure to answer interrogatories pursuant to Federal Rule of Civil Procedure 37(a)(3)(B)(iii), and failure to provide written responses and to produce documents pursuant to Federal Rule of Civil Procedure 37(a)(3)(B)(iv), both made applicable in bankruptcy pursuant to Federal Rule of Bankruptcy Procedure 7037 ("Rule 7037"). Ms. Long is

represented by Attorney Paul A. Matthews, and Mr. Sharp is represented by Attorney Bruce A. Ralston. The Court conducted four hearings on the motions to compel filed by Mr. Matthews on March 14 and March 18, 2019, the most recent being May 16. These motions give rise to the request for sanctions.

PROCEDURAL HISTORY

This adversary proceeding was commenced on August 15, 2018, when Mr. Sharp filed a Complaint to Determine Discharge of Marital Debt. It is related to a Chapter 13 bankruptcy case commenced by Mr. Sharp on June 19, 2012. Mr. Sharp is nearing the end of his Chapter 13 plan and seeks a declaration that certain obligations arising out of the parties' Marital Dissolution Agreement will be discharged pursuant to 11 U.S.C. § 523(a)(15) upon completion of his payments. During their marriage the parties were involved in various business enterprises including two boutique clothing stores known as Indigo, LLC and Indigo LR, LLC.

Mr. Matthews filed an answer and counterclaim on behalf of Ms. Long on December 3, 2018. He served his first set of interrogatories on Mr. Sharp on December 14, 2018. They expressly stated that answers should be served on or before January 14, 2019, to permit Mr. Matthews to make initial disclosures and prepare his pretrial statement both of which were due on January 18. Mr. Ralston failed to timely provide Mr. Sharp's answers to the first set of interrogatories, so Mr. Matthews filed a motion to extend deadlines, which was granted by order entered January 23, 2019. Adv. Proc. Dkt. No. 13. The order extended the deadline to make initial disclosures and file the joint pretrial statement to February 20 and continued the scheduling conference to February 28.

On January 16, Mr. Matthews served Ms. Long's first request for production of documents. Mr. Matthews again specified the need to receive a timely response to permit him to make initial disclosures and prepare the pretrial statement as ordered by the Court.

On January 24, Mr. Ralston filed Mr. Sharp's answer to Ms. Long's counterclaim, approximately three weeks late.

On February 6, Mr. Ralston filed a motion to dismiss the counterclaim on behalf of Mr. Sharp.

On February 20, Mr. Matthews filed Ms. Long's portion of the pretrial statement and made disclosures on her behalf pursuant to Federal Rule of Civil Procedure 26(a), made applicable in bankruptcy by Federal Rule of Bankruptcy Procedure 7026 ("Rule 7026"). Mr. Ralston did neither. Moreover, he ignored a telephone message left by Mr. Matthews on February 14, and an email sent by him on February 15, both asking for a conference to discuss discovery.

On February 27, Mr. Sharp produced copies of a few incomplete tax returns, a printout of the Chapter 13 trustee's 13Network report outlining the financial history of the Chapter 13 case, and the Marital Dissolution Agreement, all of which Mr. Ralston described as "partially responsive" to Ms. Long's requests. No written response to the request for production accompanied these documents.

On February 28, the Court conducted a scheduling conference and granted Mr. Sharp an extension to make his Rule 7026(a) disclosures and to provide the information needed for the parties to file their joint pretrial statement. The Court entered a Pretrial Order and Notice of Scheduling Conference that directed each party to respond to outstanding requests for production of documents by March 21, 2019. Adv. Proc. Dkt. No. 20.

On March 14, Mr. Matthews filed a motion to compel with respect to the requests for production of documents. Adv. Proc. Dkt. No. 23. Accompanying the motion was a certificate of compliance with Local Bankruptcy Rule 7026-1(b) stating that a reasonable effort had been made to reach agreement on disputed issues before the motion was filed. Adv. Proc. Dkt. No. 24.

At some point, Mr. Ralston served Mr. Sharp's responses to Ms. Long's first set of interrogatories. The verification of Mr. Sharp's signature appears to be dated in February, but the certificate of service is not dated. Memorandum Updating and Supporting Defendant and Counter-Plaintiff's Motions to Compel (Dkt. 23 and Dkt. 27) (the "Memorandum"), Adv. Proc. Dkt. No. 45, Ex. D, pp. 6-7. Mr. Matthews asserts in his timeline that they were not served until March 15. *Id.*, p. 3. In any event, the answers were late, and Mr. Matthews advised Mr. Ralston that he considered Mr. Sharp's responses to Interrogatories 4, 7, 8, and 10 to be inadequate. Mr. Ralston did not respond, and Mr. Sharp did not supplement his responses.

On March 18, Mr. Matthews filed a motion to compel with respect to the interrogatory responses. Adv. Proc. Dkt. No. 27.

On March 21, the new deadline for the joint pretrial statement, Mr. Ralston provided his portions of the statement to Mr. Matthews who incorporated them into a joint pretrial statement that was filed that day. Mr. Ralston also provided additional documents, which he said were responsive to the requests for production; Mr. Matthews said that in many cases, they were duplicates of documents produced on February 27. Mr. Ralston also served a written response to the requests for production of documents.

On March 22, the day after the extended deadline, Mr. Ralston made Rule 7026(a) disclosures on behalf of Mr. Sharp.

On March 28, the first hearing on the motions to compel were scheduled. The hearings were continued for unspecified reasons to April 11.

On April 11, the Court conducted a hearing which Mr. Matthews and Mr. Ralston attended but their clients did not. The Court asked Mr. Ralston for Mr. Sharp's response to the motions to compel because no written responses were filed. The following colloquy occurred:

> MR. RALSTON: First of all, Your Honor, I want to say plainly we have no desire to delay this. We want to give him everything we have. We have given him everything that we have. Our responses really boil down to a couple of points which I'm sure the court has heard many times before that, A, we've already given him everything we have; and, B, that some of what they are asking they already have access to.
>
> These two parties even though they are divorced are both partners in this business and they essentially have equal access to whatever records, historical records are in the business.
>
> THE COURT: Well, who is the keeper of the records?
>
> MR. RALSTON: I couldn't say, precisely, but I mean –
>
> THE COURT: Mr. Ralston, how can you not tell me who is the keeper of the records if you partially responded to a discovery request?
>
> MR. RALSTON: As far as the business goes? I mean, they –
>
> THE COURT: Uh-huh.
>
> MR. RALSTON: I gave the request to my client and we discussed it and he gave me what he had. There is some that I already had, but I'm not sure if I'm – maybe not understanding the question.

Hearing Transcript, April 11, 2019, p. 3, l. 13-p. 4, l. 18.

The Court then turned to an examination of the individual requests:

> THE COURT: Okay. Let's go through it. Let's go through everything. Number 1: At page 2 of Mr. Matthews' updated memorandum, Sharp failed to provide the following portions of his federal tax returns for 2011 to present, any IRS forms K-1. We know that he has them. We know that he is a partner or he's a member of at least two LLCs.

> MR. RALSTON: And I don't do taxes, Your Honor. I don't do my own taxes. I'm not familiar with tax forms. I thought we had given him everything on this list. I could be wrong.
>
> THE COURT: Okay. This is just not acceptable. When can you come back with your client?

Hearing Transcript, April 11, 2019, p. 5, l. 24-p. 6, l. 15. The Court rescheduled the hearing for the following week, April 18.

On April 10, Mr. Matthews filed a Memorandum Updating and Supporting Ms. Long's motion to compel with respect to the requests for production of documents. Adv. Proc. Dkt. No. 35. Attached to it was a copy of Mr. Sharp's written response to the request for production.

On April 16, Mr. Ralston provided to Mr. Matthews some of Mr. Sharp's IRS Forms W-2 in response to the requests for production.

On April 17, Mr. Ralston on behalf of Mr. Sharp provided to Mr. Matthews: (a) some IRS Forms K-1; (b) some proofs of claim; (c) a partially signed First Amendment to the Operating Agreement of Indigo, LLC; (d) a 2003 incomplete Assignment of Promissory Notes of Jessica Raines and Kelly Gault; (e) a partially-signed Assignment of Indigo, LLC Membership Interest in Indigo America, LLC to Mr. Sharp and Ms. Long; (f) a partially signed Consent to Assignment; and (g) a Cadence Bank statement dated March 25, 2012, for Inland Properties Partners, G.P. Mr. Matthews maintained that items (c) through (g) were not responsive to any request for production.

On April 18, the second hearing on the motions to compel was scheduled. Mr. Matthews and Mr. Ralston and their clients attended. Mr. Ralston was given an opportunity to explain his efforts in the prior week:

> MR. RALSTON: So we have – Mr. Buchanon and I have worked diligently over the last week along with Mr. Sharp as well together with everything that we could as far as we could focusing right now on the request for production of documents.

THE COURT: Uh-huh.

MR. RALSTON: So we have – we have produced everything that we believe exists. Mr. Buchanon – I'm sorry – Mr. Sharp's accountant in the worse possible week of the year to be doing this went out of his way to get him the rest of the tax documents and we have just overnight given those to Mr. Matthews.

So he has not had time to review them and I'm going to keep apologizing for how this is playing out, but we really are doing our best. And we also supplemented somewhat as to explanations as to which claims we're arguing about, and Mr. Matthews had asked for documents and correspondence regarding those specific joint debts. And we simply – I mean, there is nothing.

The case was filed almost seven years ago and there has been no bills in the mean time, no collection letters. All we have is the proof of claim that were [sic] submitted and it just occurred to me recently that that might be a good source of information.

So I went and found those proofs of claims and I just again just yesterday sent those to Mr. Matthews.

Hearing Transcript, April 18, 2019, p. 4, l. 7-p. 5, l. 8. The Court reminded the parties that discharge is a privilege, not a right. Mr. Matthews was then given an opportunity to review the responses he had received.

MR. MATTHEWS: Good morning, Your Honor. Paul Matthews, Your Honor for Amy Long. With respect to the motion to compel documents, Your Honor, we – I received three emails in the late evening last night and one email this morning from Mr. Ralston with a revised – a new response to request for production.

THE COURT: Okay.

MR. MATTHEWS: And a lot of documents, I mean, this.

THE COURT: Well, it's a start.

MR. MATTHEWS: What was not clear, and I've asked him this morning if he could identify what's new and what's not.

THE COURT: Uh-huh.

MR. MATTHEWS: And I think I understand that these are all the new documents or I guess there are some new documents.

MR. RALSTON: There are some new documents as well in there.

Hearing Transcript, April 18, 2019, p. 7, l. 8-p. 8, l. 3. The Court then walked through each of the concerns raised in the motions to compel with counsel. For ease of discussion, these will be discussed together with subsequent follow up under separate headings below. The Court directed Mr. Ralston and Mr. Sharp to supplement some of their responses and continued the hearing on the motions to compel to May 2.

On April 30, Mr. Ralston on behalf of Mr. Sharp provided to Mr. Matthews balance sheets and financial statements for Indigo, LLC and Indigo LR, LLC for certain years but not for 2011. He also provided the book value for Indigo, LLC and Indigo LR, LLC and Mr. Sharp's interest in them for the years 2012-2014, and 2016-2017, but not 2011 or 2015.

On May 1, Mr. Ralston on behalf of Mr. Sharp provided to Mr. Matthews a copy of an Operating Agreement for Indigo, LLC dated January 1, 2003, that was supposed to be responsive to the request for documents related to the sale of Jessica Raines' 10% interest in Indigo, LLC to Mr. Sharp and Ms. Long.

On May 2, the Court conducted the rescheduled hearing on the motions to compel. Mr. Ralston admitted that he did not read the document he provided to Mr. Matthews the day before and that it was not responsive to the request. Mr. Ralston also handed Mr. Matthews amended answers to the first set of interrogatories. After receiving further information and hearing argument, the Court orally ruled that Ms. Long is entitled to reimbursement of some or all of her attorney fees in connection with the motions to compel and invited Mr. Matthews to supplement the record with an affidavit concerning his fees. The Court also indicated that further sanctions would be considered, including the denial of discharge. The Court invited Mr. Matthews to amend

his motions to make clear to Mr. Ralston and Mr. Sharp that he was seeking denial of discharge as a sanction. The hearing on the motions to compel was continued to May 16.

On May 10, Mr. Matthews filed his affidavit setting forth the itemization of his time and expenses in connection with the motions to compel. Adv. Proc. Dkt. No. 39. The itemization shows 29.1 hours worked at a rate of $350 per hour for a total of $10,185.00, and expenses for photocopying of $4.05.

On May 14, Mr. Ralston on behalf of Mr. Sharp served on Mr. Matthews a second amended response to the first requests for production of documents and a second amended, but unverified response to the first set of interrogatories. With the responses were a number of documents already produced together with some additional promissory notes, financial statements, and balance sheets for Indigo, LLC for 2011 through 2017, and for Indigo LR, LLC for 2012 through 2017. The unverified response to the first set of interrogatories included additional information concerning attempts by Mr. Sharp to locate a copy of the agreement with Jessica Raines.

On May 15, Mr. Matthews on behalf of Ms. Long filed his Memorandum (Adv. Proc. Dkt. No. 45), which includes a useful timeline of the events set forth in this order. Mr. Matthews also filed a motion to amend Ms. Long's counterclaim, which was granted over the objection of Mr. Sharp.

On May 16, the Court conducted the fifth scheduled hearing on the motions to compel. Mr. Matthews noted that documents had been produced on at least eight different occasions, often with a number of duplications and no attempt to identify the request to which each document responded. Mr. Matthews noted that the Jessica Raines agreement and some of the business tax returns have not been produced. He acknowledged that Mr. Sharp has now indicated in his interrogatory response that the Jessica Raines agreement cannot be found but said that Mr. Sharp

nevertheless failed to provide the terms of that agreement and related information requested in the relevant interrogatory. Mr. Matthews indicated that the discovery process had been extremely frustrating and had caused his client to incur unnecessary expense. He stated that in addition to the time itemized in his affidavit of May 10, he had spent an additional 7 hours reviewing the documents produced by Mr. Ralston and preparing for and attending the May 16 hearing. Mr. Matthews asked that Mr. Ralston stipulate that Mr. Sharp is a sophisticated businessman with an accounting degree and a business degree from Mississippi College. Hearing Transcript, May 16, 2019, p. 14, ll. 4-19. Mr. Ralston agreed. Hearing Transcript, May 16, 2019, p. 42, ll. 22-23. Mr. Matthews asked that in addition to reimbursement of attorney fees and expenses, denial of discharge of the marital debts or even of the general discharge would be an appropriate sanction to impose on Mr. Sharp.

Mr. Ralston did not file a written response to the affidavit. He has never filed written responses to the motions to compel. At the hearing, Mr. Ralston attempted to take full responsibility for the failure to cooperate in discovery:

> MR. RALSTON: So we agree in part and we disagree in part. We certainly agree that we were very slow in getting started in responding to discovery requests and I want to emphasize that was my fault. There was – I've apologized to Mr. Matthews directly several times about this
>
> THE COURT: How was it your fault?
>
> MR. RALSTON: Excuse me?
>
> THE COURT: How was it your fault?
>
> MR. RALSTON: I really would rather not say it out loud right now, but I had things going on in my life and I just wasn't able to deal with it at the time.
>
> THE COURT: Did you have documents that you didn't prepare, didn't turn over?

MR. RALSTON: I basically failed to explain to Mr. Sharp how important this was and to guide him through the process in the first stages, and that's what – that was the initial –

THE COURT: Well, I appreciate you falling on your sword, but I think Mr. Sharp is able to read.

MR. RALSTON: Well, certainly, yeah. But I do feel responsible.

THE COURT: And if we have to take proof on that I can do that, but I'm going to assume that a successful business man is able to read the court documents that are delivered to him.

MR. RALSTON: Of course. So as far as everything else, now, at every stage of the game I -- well, I guess I should also explain this is the first time I've been involved in any significant amount of discovery since the early 2000s. It just doesn't come up in my practice. And I did not foresee this coming. If I had known this was coming I may have gone a completely different way.

But – so be that as it may, you know, Mr. Matthews is an excellent litigator and I'm not. So I'm sorry that we took so long to get up to speed, but the ultimate point here is that we did get up to speed.

As Mr. Matthews says, we have now finally produced just about everything. He mentioned the Jessica Raines contract and then mentioned that in our responses that we have tried everything. Mr. Sharp has talked to Ms. Raines. He has talked to the other partner Kelly Goff (phonetic) who might have had a copy.

If they don't have copies, we have produced everything we have, so we just don't have it. And that's what we said in the answer and I think that's what the court says. If you don't have it, you don't have it and you just got to say so and that's what we did.

As for – he mentioned the 2011 tax returns. If necessary Mr. Sharp can testify to this that we did – once I got up to speed we did produce the 2012 through 2017 tax returns and he went to who he thought was the accountant at the time and it turned out it was somebody else and he had to go somewhere else.

And we did get it and when we got it we turned it over to Mr. Matthews immediately. That was only about two weeks ago, but we did get it to him as soon as we could.

Hearing Transcript, May 16, 2019, p. 24, l. 6-p. 27, l. 3.

MR. RALSTON: And then as far as Mr. Matthews' supplement that he filed last night, I don't disagree with the timing, the dates, the basic background

facts. What I disagree with is the coloring, the adjectives and the verbs. There is no misrepresentation. We have substantially complied with all of these discovery requests. Now, yes, very late, but we have complied. There is -- I don't think there is anything actually missing anymore other than those things that we have explained why we can't get it. So we were very late ringing the bell, but the bell did ring. And we've got everything in.

And I concede that Mr. Matthews did have to do a lot of extra work. I think $10,000 is an awful lot, but I don't dispute that he did a lot of extra work in this case. I just think that that's a little bit too much.

And I cannot pick at his Affidavit. I glanced down the line at all those entries on the Affidavit and they do seem to all be associated with the motions to compel and the discovery issues so I can't argue against that. I just don't think it's right to punish my client that much for –

THE COURT: Well, who should bear that burden? Ms. Long should bear it?

MR. RALSTON: I'm not quite sure that everything that Mr. Matthews did was necessary.

THE COURT: And who is going to figure that out?

MR. RALSTON: Excuse me?

THE COURT: In other words, it's not my job to inspect the Affidavit without you saying I have trouble about this or I have trouble about that.

MR. RALSTON: Well, that's another part of the problem with my business. Mr. Matthews has complained a number of times about we've given him things peace (sic) meal. And I'm sorry. That's just how my life flows. I cannot stop and take several hours out of the day to sit down and crank things out. I have to -- everything is on the fly. I mean, if I -- I have got people calling me all day long doing this and doing that. Most of the things I do are three or four or five minutes.

And I -- if I stop and do that I'm going to be ignoring lots of other people and lots of other details. ·And that's just the nature of the beast. And that's not really an excuse. It's just really an explanation.

But I'm sorry that we had to give him things one at a time, but if I -- and after the last hearing he really complained about that noticeably so I tried to wait.· And now the result was when I waited and gave him everything at once it was just two days ago and now he's saying we -- you know, we're just getting it in under the wire again.· I'm sorry. It's just the way things flow in my life.

THE COURT: Okay. So you don't have a particular concern about any of the entries in Mr. Matthews' affidavit?

MR. RALSTON: Not specifically, no. Your Honor.

Hearing Transcript, May 16, 2019, p. 29, l. 7-p. 32, l. 2.

The Court then turned to questions about other sanctions requested by Mr. Matthews on behalf of Ms. Long:

THE COURT: And what about his request that your client be prevented from opposing the relief that he sought which is in essence now a declaration that these debts are marital debts and survive discharge?

MR. RALSTON: If I could work my way through that double negative I think –

THE COURT: Mr. Matthews has asked --

MR. RALSTON: That's irrelevant. This is -- I'm sorry.

THE COURT: -- as a result of the failure to cooperate in discovery as a sanction Mr. Sharp be prevented basically from defending himself against the allegation that the debts that he owes are marital debts and not subject to discharge.

MR. RALSTON: I do recognize that that is within the court's discretion, but I think it's overkill. Now, if Mr. Matthews gets paid for his time, then that's -- he's made whole. It doesn't harm Mrs. Long at all. And it eventually punishes Mr. Sharp.

So why add the extra punishment on of denying him his discharge? There is no direct correlation there. I understand there doesn't have to be a direct correlation, but it's still -- what's the connection?

THE COURT: It's a sanction. You've made it more difficult for me. You've made it more difficult for Mr. Matthews to respond to the complaint that you filed. Let's remember how we got here. Right?

MR. RALSTON: But all I can really say is -- excuse me -- I think it's -- I think it's too much. I think if he pays the $10,000 of attorney fees then he is effectively punished.

Hearing Transcript, May 16, 2019, p. 32, l. 3-p. 33, l. 14.

Eventually the Court became concerned that Mr. Ralston was asserting that his client should be excused because he had failed to instruct him properly. Mr. Ralston said, "[Mr. Sharp] was just following my instructions and I did not do a good job of guiding him through this, and that is primarily my fault and I apologize for that." Hearing Transcript, May 16, 2019, p. 40, ll. 9-12. The Court asked whether Mr. Ralston was making a claim of ineffective assistance of counsel or something like that and asked whether he had discussed that with his client. After some additional discussion, Mr. Ralston said that was not his claim. Hearing Transcript, May 16, 2019, p. 42, ll. 1-2.

The Court took the matter under submission.

MOTION TO COMPEL ANSWERS TO INTERROGATORIES

The motion to compel with respect to interrogatories claimed that answers to Interrogatories 4, 7, 8, and 10 were incomplete and evasive. These cover three broad topics: the Jessica Raines agreement; the value of Indigo, LLC and Indigo LR, LLC; and efforts to obtain the release of Ms. Long from marital debts.

Jessica Raines Agreement. Interrogatory Number 4 asked, "With respect to the agreement of Debtor [Mr. Sharp] and Long to purchase a 10% interest in Indigo, LLC from Jessica Raines, describe in detail the exact terms and provisions of such agreement, whether said agreement was written or oral, and the extent to which each such term or provision has been performed or remains to be performed." Mr. Sharp initially responded, "The agreement to purchase a 10% interest in Indigo, LLC from Jessica Raines is a written partnership agreement to which Long is a party, and to which she has equal access." Related to Interrogatory Number 4 is Request for Production Number 10, which asked for, "Any and all correspondence, emails, reports, records, notes, correspondence, or other documents evidencing or relating to the purchase or proposed purchase

from Jessica Raines of a ten percent interest in Indigo, LLC for $48,000, or any other amount." Mr. Sharp responded: "Debtor objects to this Request on the grounds that it is overly broad and unduly burdensome. Long is an equal partner in Inland Properties Partnership and has equal rights and access to the documents requested."

In the motion to compel, Ms. Long noted that Mr. Sharp failed to provide a copy of the alleged "written partnership agreement to which Long is a party," or to specify the document that must be reviewed to enable Ms. Long to locate and identify the document, or to give Ms. Long a reasonable opportunity to examine the document and make copies, any of which would comply with Federal Rule of Civil Procedure 33(d), made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure 7033. Ms. Long further noted that with respect to the interrogatory response, Mr. Sharp failed to describe the terms of the written agreement and failed to respond to questions about "the extent to which each such term or provision has been performed or remains to be performed."

At the hearing on April 18, Mr. Matthews explained that Mr. Sharp had given Ms. Long access to a filing cabinet and told her to look in the filing cabinet for the agreement.[1] Mr. Matthews further stated that Ms. Long was prepared to testify that she did look in the filing cabinet and the agreement was not there. Hearing Transcript, April 18, 2019, p. 32, l. 8-p. 34, l. 11. Mr. Matthews explained that the requested information was relevant because it was his client's belief that Mr. Sharp had never paid for his portion of Raines' interest in the business. Hearing Transcript, April 18, 2019, p. 34, ll. 2-11. After admonishment from the Court, Mr. Ralston agreed "that we

[1] After reviewing the transcript, the Court is left with the impression that this was probably a filing cabinet in the marital home that is occupied by Ms. Long. In other words, Mr. Sharp did not give Ms. Long access to anything, but merely told her to look in the filing cabinet, reinforcing the idea that he couldn't be bothered.

can do a better job on that" and agreed that his client would supplement his responses. Hearing Transcript, April 18, 2019, p. 35, ll. 5-13.

At the hearing on May 2, 2019, Mr. Matthews told the Court that "literally a couple of minutes ago I was handed amended answers to interrogatories." With respect to Interrogatory Number 4, the amended response states: "The contract between Debtor, Long, and Jessica Raines was a written agreement to purchase Jessica Raines' 10% interest in Indigo, LLC. A copy of the agreement has been provided with Debtor's Amended Response to Document Production." Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. E, p. 3. The amended response to Request for Production Number 10 provided:

> See Exhibit B for the First Amendment to Operating Agreement. There are no other responsive documents in Debtor's custody, control, or possession. Debtor only took minimal clothing and toiletries when he left the marital home and any such documents were left there. Any email correspondence with Jessica Raines was lost when Indigo's email host suffered a simultaneous failure of both its server and backup server in 2016. Any further responsive documents were left in the control of Long, specifically in the library cabinet where all important documents were kept during the marriage.

Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. B, pp. 5-6. Mr. Matthews indicated that he was given a copy of an amended operating agreement on May 1, the day before the hearing. Mr. Matthews stated that he had read the agreement and that it did not refer in any way to the purchase of a 10 percent interest from Jessica Raines. Hearing Transcript, May 2, 2019, p. 4, ll. 14-20. In response, Mr. Ralston stated:

> MR. RALSTON: Your Honor, at some point there was a written agreement, but – and this was my mistake. We just received this last night from Mr. Sharp. He was out of town. He just got this from his business partner last night. I was under the impression that that is what this was. It is not – and that's my mistake. I think the answer to the interrogatory is it doesn't – no longer exists or it's it's [sic] not in Mr. Sharp's custody or control. He would be happy to give a description of what the terms are as he remembered them, but that's been two years ago.

Hearing Transcript, May 2, 2019, p. 5, ll. 4-16. Later in the hearing, Mr. Sharp said:

> MR. SHARP: I contacted Mrs. Raines last week. She said that she would look for it this coming weekend. And since it wasn't for this hearing I just tried to obtain it from my other partner, Kelly, the same document. But I can go back to Ms. Raines.
>
> THE COURT: All right. Let's do that. And then the written response should lay out the efforts you made to find it and that it's been found or hasn't been found.

Hearing Transcript, May 2, 2019, p. 19, ll. 10-19.

Mr. Sharp prepared another amended response to the request for production of documents that is dated May 14, 2019. At that time, Mr. Sharp's response to Request for Production Number 10 stated:

> Indigo's email server and backup server suffered a catastrophic data loss in the fall of 2015 and all email archives before that time were loss [sic]. Since the undertaking of discovery in this matter Debtor has contacted Jessica Raines, and his current business partner Kelly Gault in an attempt to obtain a copy of the Purchase Agreement transferring Ms. Raines 10% interest to Debtor and Long. Ms. Raines has not responded and Ms. Gault is not in possession of a copy of the document. More recently Debtor has contacted the law firm that he believes drafted the Purchase Agreement, Burch Porter & Johnson, and requested all partnership documents in their possession. At the time of submission of these Answers Debtor had not yet received a response from the law firm.

Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. C, p. 5. Mr. Matthews also was provided with Second Amended Answers to Counter-Plaintiff's First Set of Interrogatories on or about May 14, 2019. These responses are unverified, but state in response to Interrogatory Number 4:

> The contract between Debtor, Long, and Jessica Raines was a written agreement stipulating that Long and Debtor would jointly purchase Jessica Raines' 10% interest in Indigo, LLC. The original document was left in Long's possession when Debtor left the marital home, in the library cabinet where the couple held all important documents for safe keeping. Since the undertaking of discovery in this matter, Debtor has sought a copy of the Purchase Agreement from both Jessica Raines and Kelly Gault, the fourth and final remaining partner of Indigo, LLC. Having been unsuccessful in obtaining a copy of the Purchase Agreement, Debtor does not have the agreement in his possession, custody, or control and therefore cannot speak to specifics of the agreement.

Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. F, p. 4.

The Court believes that Mr. Sharp did eventually make an attempt to locate the agreement with Jessica Raines. The Court is less convinced that he does not remember the terms of the agreement or whether or not he has performed his part under the agreement. Ms. Long's interest is in knowing whether Mr. Sharp's part of the purchase price was paid because she is concerned that she may be jointly liable for the full purchase price. The interrogatory asked that Mr. Sharp state whether each term or provision of the agreement has been performed or remains to be performed. Mr. Sharp made no response to this portion of the interrogatory. Mr. Ralston should have done a much better job of reviewing the interrogatory with his client and reviewing his proposed response. He should have discovered that the proposed answer was incomplete and that the document produced by Mr. Sharp was not responsive. Mr. Sharp should have made a better effort to obtain the requested information. In the alternative, it is possible to conclude that this information was intentionally withheld.

Value of Indigo, LLC, and Indigo LR, LLC. Interrogatory Number 7 asked that Mr. Sharp "state the value of Indigo, LLC, and the value of Indigo LR, LLC, at year-end 2009, at the time of the bankruptcy petition [June 19, 2012], and at the present time [December 14, 2018], and describe in detail the basis for each such value." Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. D, p. 4. Mr. Sharp responded, "Debtor objects to this interrogatory as Counter-Plaintiff is an equal partner in both Indigo, LLC, and Indigo LR, LLC and has equal access to the financial statements produced and made accessible to all members of the partnership." Related to that is Interrogatory Number 8 which asked Mr. Sharp to state the value of his own interest in Indigo, LLC, and Indigo LR, LLC, at the same points in time. Mr. Sharp responded, "See answer to interrogatory 7." Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. D, p. 4.

In his motion to compel, Mr. Matthews explained that Mr. Sharp's opinion of the values of the businesses at the designated times was relevant in light of:

> (a) Sharp's denials that he grossly undervalued his interests when he asserted in his Bankruptcy Petition in mid-2012 that they were worth one dollar each and thus fraudulently claimed them as exempt assets (Dkt. 14, p. 3); (b) Sharp's apparent denial that at year-end 2009 a forensic CPA valued Indigo at $1,798,000 and Indigo LR at $852,000 (Dkt. 14, p. 3); and (c) Long's allegation on pages 9 and 10 of her Pretrial Statement (Dkt. 19) that Sharp falsely reported on his Statement of Financial Affairs in this bankruptcy case that he had not provided a financial statement to financial institutions, creditors, and other parties within two years immediately preceding commencement of his bankruptcy case, when, in actuality, apparently Sharp provided a financial statement to Cadence Bank in 2011 on which he valued his interests in Indigo at $150,000 and in Indigo LR at $95,000.

Motion for Order: (1) Compelling Plaintiff and Counter-Defendant to Answer Interrogatories 4, 7, 8, and 10 of First Set of Interrogatories; and (2) Awarding Attorney Fees and Expenses, Adv. Proc. Dkt. No. 27, pp. 4-5. Mr. Matthews further noted that merely pointing to financial statements does not express Mr. Sharp's opinion of the value of his interest in the businesses.

Request for Production Number 9 asked that Mr. Sharp produce: "Any and all correspondences, emails, notices, or other documents relating to the value of Debtor's interest in Indigo, LLC, and Indigo LR, LLC at the time of the filing of Debtor's petition in bankruptcy and/or at present." Mr. Sharp responded, "Debtor objects to this Request on the grounds that it is overly broad and unduly burdensome. Long is an [sic] partner in Indigo LLC, and Indigo LR, LLC and has equal rights and access to the documents requested."

By the hearing on April 18, 2019, Mr. Sharp had amended his response to Request for Production Number 9 saying, "There are no such responsive documents in Debtor's possession, custody, or control. Debtor has not had his interest in Indigo, LLC or Indigo LR, LLC appraised and no one has made an offer to buy Debtor's interest of [sic] those businesses." Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. B, p. 5.

At the hearing, the Court asked whether balance sheets were prepared in connection with preparation of tax returns. Mr. Matthews also indicated that his client had previously produced a financial statement that Mr. Sharp had given to a lender that put considerable value on his business interests. Mr. Ralston claimed that he was at a loss when it came to tax preparation. The Court reminded him that his client and his client's accountant would know about the preparation of balance sheets and other financial statements for the businesses. Mr. Ralston agreed that he would make contact with his client's accountant and produce all relevant documents. With respect to the interrogatories, the Court instructed Mr. Sharp and Mr. Ralston that questions about Mr. Sharp's valuation of the businesses and his interests in them needed to be answered. Mr. Ralston agreed that the answers would be supplemented. Hearing Transcript, April 18, 2019, p. 41, l. 20-p. 43, l. 22.

At the hearing on May 2, 2019, Mr. Ralston handed Mr. Matthews amended answers to the first set of interrogatories. In response to Interrogatory Number 7, Mr. Sharp gave the following response:

> These figures were calculated by Indigo's accounting firm for the purposes of filing federal and state taxes each year.

YEAR:	INDIGO, LLC:	INDIGO LR, LLC:
2012	$643,930.00	$552,528.00
2013	$725,810.00	$512,871.00
2014	$782,259.00	$534,161.00
2015	$771,872.00	$504,728.00
2016	$763,659.00	$589,546.00
2017	$682,079.00	$576,817.00

Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. E, pp. 4-5. With respect to Interrogatory Number 8, Mr. Sharp gave a similar response:

> These figures were calculated by Indigo's accounting firm for the purposes of filing federal and state taxes each year.

YEAR:	INDIGO, LLC:	INDIGO LR, LLC:
2012	$241,474.00	$248,638.00
2013	$272,179.00	$230,792.00
2014	$294,097.00	$240,381.00
2016	$286,372.00	$265,296.00
2017	$255,780.00	$259,568.00

Debtor is not in possession, custody, or control of records before 2012.

Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. E, p. 5.

Mr. Matthews pointed out that the answers provided did not cover the year 2011, a year that he had asked for; did not include a statement to the effect that these were Mr. Sharp's opinions as to the value of the businesses and his interests in them at various points in time; did not specifically address the time of filing, which was mid-year 2012; and did not address the present time, i.e., 2019. With respect to Mr. Sharp's interests in the businesses, Mr. Matthews noted that the percentages used to calculate those values were not given.

In response to questions by the Court, Mr. Sharp said that his current accountant only had records for the period 2012 forward, and that he had made no effort to contact the Internal Revenue Service to obtain copies of earlier returns or summaries of them. When Mr. Ralston volunteered that information that old would have to be specifically requested and mailed to the tax payer, the Court asked whether he had made that request. He said, "No, Your Honor. … We'll do that immediately. It simply hasn't crossed my mind." Hearing Transcript, May 2, 2019, p. 13, ll. 13-23.

In the unverified amended responses to interrogatories delivered May 14, 2019, Mr. Sharp made the following responses to Interrogatories 7 and 8:

> ANSWER [TO INTERROGATORY NO. 7]: These figures were calculated by an independent accounting firm for the purpose of each respective LLC's internal record keeping and are reflected in the financial statements provided in Exhibit D attached to Debtor's Response to Request for Production.

YEAR:	INDIGO, LLC:	INDIGO LR, LLC:
2011	$705,871.00	$362,562.00
2012	$727,963.00	$552,528.00
2013	$725,810.00	$512,871.00
2014	$784,260.00	$534,162.00
2015	$761,872.00	$504,278.00
2016	$763,659.00	$589,546.00
2017	$682,080.00	$576,819.00

ANSWER [TO INTERROGATORY NO. 8]: These figures were calculated by an independent accounting firm for the purpose of each respective LLC's internal record keeping and are reflected in the financial statements provided in Exhibit D attached to Debtor's Response to Request for Production.

YEAR:	INDIGO, LLC $/%:	INDIGO LR, LLC $/%:
2011	$264,701.00 / 37.5%	$135,220.00 / 37.2%
2012	$272,986.00 / 37.5%	$247,555.00 / 45%
2013	$270,754.00 / 37.5%	$231,702.00 / 45%
2014	$292,702.00 / 37.5%	$241,281.00 / 45%
2015	$288,057.00 / 37.5%	$228,037.00 / 45%
2016	$289,977.00 / 37.5%	$266,343.00 / 45%
2017	$254,385.00 / 37.5 %	$260,616.00 / 45%

Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. F, pp. 5-6.[2]

At the hearing on May 16, 2019, Mr. Matthews stated that although he had been provided with some of the business tax returns, not all of them had been provided. Moreover, despite the amendments to the interrogatory responses, Mr. Sharp had declined to express an opinion about the value of the businesses.

Mr. Sharp should have fully answered all portions of the interrogatories or asked for protection from the court. Mr. Ralston should have guided Mr. Sharp in making his responses to ensure they were complete. No excuse was given for Mr. Sharp's refusal to answer these questions.

[2] Single underlines appear in Sharp's document. Double underlines were added by the Court where there were changes from prior figures not underlined by Sharp. No explanation was given for the changes in figures provided in the previous responses.

Based upon the information in the unsworn interrogatory responses, the book values of Mr. Sharp's interests at or near the time of filing were in excess of $200,000. In his bankruptcy schedules, he valued his interests at $1.00 each. The attorney for the Chapter 13 trustee advised the Court at the beginning of the May 16 hearing that the trustee had turned over this information to the United States Trustee for possible criminal referral.

Actions Taken to Obtain the Release of Ms. Long from Martial Debts. Interrogatory Number 10 asked that Mr. Sharp "[d]escribe in detail all actions you have taken relating to obtaining the release of Long from any debts or other obligations, with whom you communicated about such release, when you communicated with such person(s), and the results of said efforts, if any." Mr. Sharp initially responded: "Debtor has made every reasonable effort to abide by the terms of the Marital Dissolution Agreement, to the best of his ability. Any failure to do so has been due to the financial hardship resulting in the current Chapter 13 bankruptcy." Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. D, pp. 5-6. Mr. Matthews complained that this answer amounted to "spin" and was not responsive to the request. Related to Interrogatory Number 10 was Request for Production Number 13, which asked for: "Any and all reports, records, notes, correspondences, emails, notices, or other documents evidencing or relating to any efforts Debtor made to obtain the release of Long from any joint debts with Debtor and the results of any such efforts." Mr. Sharp responded: "None at this time, but Debtor reserves his right to amend his answer to this Request before trial." Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. A, p. 5.

In his amended responses to interrogatories dated May 2, 2019, Mr. Sharp changed his answer to Interrogatory Number 10, stating, "Debtor suffered significant financial setbacks following the dissolution of the marriage and as such has been able to make no actions relating to

obtaining the release of Long from any debts or other obligations." Memorandum, May 15, 2019, Adv. Proc. Dkt. No. 45, Ex. E, p. 6. That response stayed the same in the second amended responses dated May 14, 2019.

It appears that Mr. Sharp completely answered Interrogatory Number 10 with his first amended response – he has taken no steps to comply with the portion of the Marital Dissolution Agreement that required him to protect the financial interests of Ms. Long. No explanation was given for the change in his answers, however. The amended answer provided information that was known to him when his first responses were prepared. Mr. Sharp's first answer does amount to "spin" and was in fact false. Mr. Ralston should have guided him in preparing a factually accurate response the first time. Mr. Ralston should have been able to ascertain that Mr. Sharp's answer was false by asking specific questions about Mr. Sharp's efforts.

MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Ms. Long's concerns about Mr. Sharp's responses to the requests for production of documents relate to the timing of his responses, the lack of written responses, the failure to identify documents produced to specific requests, and the duplication of production.

Timeliness of Response. According to Mr. Matthews, although the First Request for Production of Documents was served on Mr. Sharp on January 16, 2019, the first documents were not provided to Mr. Matthews until February 27, 2019. Federal Rule of Civil Procedure 34(b)(2)(A), made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure 7034 ("Rule 7034"), specifies that "[t]he party to whom the request is directed must respond in writing within 30 days after being served …. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court." Without a stipulation or order, Mr. Sharp's responses were due on February 15, 2019. Mr. Matthews specifically asked that the documents be timely produced

to permit him to use the documents in making his Rule 7026(a) Disclosures and in preparing his pretrial statement by February 20. His request was ignored. Mr. Matthews made Ms. Long's disclosures and prepared her pretrial statement without the requested documents. Mr. Ralston did not make Mr. Sharp's disclosures pursuant to Rule 7026(a) nor did he prepare his portion of the pretrial statement. Mr. Sharp produced some documents on February 27, twelve days after they were due. No explanation was given by Mr. Ralston as to why the documents were produced late, so the Court does not know whether to allocate blame to Mr. Sharp or to Mr. Ralston. Mr. Ralston did say in response to the Court's question that he did not fail to timely produce documents that were provided to him. From this it is reasonable to conclude that Mr. Sharp did not provide documents to Mr. Ralston until after they were due. The Court nevertheless does not know why they were late or why Mr. Ralston failed to request additional time to respond.

No Written Response. Rule 7034(b)(2)(A) specifies that the party to whom a request is directed must respond in writing. Rule 7034(b)(2)(B) makes clear that this written response is separate from the production of responsive documents: "For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons." Mr. Ralston did not serve a written response to the requests for production until March 21, 2019, thirty-four days after the response was due. No explanation was given for this failure.

Failure to Identify Documents to Specific Requests. Rule 7034(b)(2)(E) specifies that documents be produced "as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request." Mr. Ralston and Mr. Sharp did neither of these things. According to Mr. Matthews, documents were produced on at least eight different

occasions in piecemeal fashion. They were not labeled to correspond to the categories in the request. No explanation was given for this failure.

Duplication of Production. In many cases the packages of documents provided to Mr. Matthews included documents previously produced. Mr. Matthews was compelled to compare each of the newly produced documents to ones previously produced to ensure that they were in fact the same. In some cases, Mr. Sharp produced documents that were responsive to none of the requests made by Ms. Long. These had to be sifted out as well. No explanation was given for this failure except that Mr. Ralston admitted that he did not review the operating agreement to determine whether it was responsive to questions about the Jessica Raines agreement.

REQUESTS FOR RELIEF

Courts have broad discretion in determining whether to impose sanctions for discovery abuse. *Beil v. Lakewood Eng'g and Mfg. Co.*, 15 F.3d 546, 551-52 (6th Cir. 1994). "Sanctioning a party for discovery abuse functions as both a punishment for the party committing the abuse and as a deterrent to others who might commit such abuse in the future." *In re LTV Steel Co., Inc.*, 307 B.R. 37, 45 (Bankr. N.D. Ohio 2004), citing, *National Hockey League v. Metropolitan Hockey Club, Inc.,* 427 U.S. 639, 643, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976). Whether or not an order granting a motion to compel discovery has been issued, the court may issue "such orders as are just" for failure to comply with discovery requests. Fed. R. Civ. P. 37(d); *U.S. v. Reyes*, 307 F.3d 451, 457-58 (6th Cir. 2002). Such orders may include reimbursement of expenses under Rule 7037(a)(5)(A) and actions under Rule 7037(b)(2)(A)(i)-(vii). *See In re LTV Steel Co., Inc.*, 307 B.R. 37, 44-45; *Waldschmidt v. Columbia Gulf Trans. Co.*, 15 B.R. 52 (Bankr. M.D. Tenn. 1981).

Attorney's Fees and Expenses. On behalf of his client, Mr. Matthews has asked for an award of attorney's fees in the amount of $10,185.00 together with an additional seven hours at

$350 per hour or $2,450.00, for a total attorney's fee of $12,635.00. He has also asked for reimbursement for photocopying expenses in the amount $4.05. Reimbursement of the movant's reasonable expenses, including attorney fees, is an appropriate remedy when a motion to compel is granted or discovery is provided after the motion is filed. Rule 7037 provides:

> **(5) Payment of Expenses; Protective Orders.**
>
> **(A) If the Motion is Granted (or Disclosure or Discovery Is Provided After Filing).** If the motion is granted – or if the disclosure or requested discovery is provided after the motion was filed – the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable attorney's fees. But the court must not order this payment if:
>
> (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
>
> (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or
>
> (iii) other circumstances make an award of expenses unjust.

Mr. Matthews asserts that Mr. Sharp's initial answers to the first set of interrogatories were served two months after service of the interrogatories. The first set of interrogatories was served on December 14, 2018. Mr. Sharp's answers were due January 14, 2019. The certificate of service on the copy provided to the Court is unsigned and undated. The verification, however, bears a date of February 12 or perhaps February 18, 2019. In his motion to compel, Mr. Matthews says that he sent an email on February 4, and made comments in open court on February 28, to the effect that he considered Mr. Sharp's answers to Interrogatories 4, 7, 8, and 10 to be inadequate. The motion to compel was filed on March 18. Although the timing is somewhat confused, the Court finds that Mr. Sharp served his answers to interrogatories in mid-February. Mr. Matthews is correct, however, in saying that the answers given by Mr. Sharp were inadequate. Mr. Ralston admitted as much, and Mr. Sharp did too through his subsequent amendments.

Mr. Matthews' first request for production of documents was served on January 16, making responses due on February 15. Mr. Ralston provided the first documents on February 27, and did not file a written response until March 21, after Mr. Matthews' motion to compel was filed on March 14. The documents provided on February 27 were by no means completely responsive to the requests, as evidenced by the seven subsequent additional productions. Mr. Ralston admitted that the first production was a partial response.

Clearly the requirements for an award of reasonable expenses are met. The responses to discovery either were not given or were incomplete prior to the filing of the motions to compel. Mr. Matthews attempted a resolution before filing his motions. In response, Mr. Ralston said that he had things going on in his life so that he was not able to deal with the requests; that his practice is not set up to handle large discovery requests; and that he failed to impress upon his client the importance of the requests. None of these amounts to "substantial" justification for the failures to timely and adequately respond to discovery. Mr. Ralston has identified no other circumstances that would make an award of expenses unjust. The Court is particularly impressed by the fact that the bankruptcy case and this adversary proceeding were commenced by Mr. Sharp in order to avoid certain financial commitments made in the parties' Marital Dissolution Agreement. As the Court said repeatedly during the hearings, full disclosure and cooperation are expected when the party's goal is discharge of debt. Discharge is not a right but a privilege. *U.S. v. Kras*, 409 U.S. 434, 446-47, 93 S. Ct. 631 (1973); *In re Krohn*, 886 F.2d 123, 127 (6th Cir. 1989). It would be unjust to compel Ms. Long to bear the expense of pursuing documents and responses that arguably should have been made available by Mr. Sharp in his initial disclosures without the need for a request.

Mr. Ralston has not disagreed but has said that he believes the amount asked for is too high. He has not, however, pointed to any particular entry in Mr. Matthews' affidavit that he felt was unjustified. Mr. Matthews' time is billed in tenths of an hour. His affidavit recites that $350 is the rate for this particular engagement and the rate that he charges most clients on most matters. He also says that he is familiar with the rates of attorneys in the Memphis area and that his hourly rate is a reasonable one for lawyers in the Memphis area with comparable education, training, and experience. Mr. Matthews has practiced law for 40 years. He is licensed to practice in both Tennessee and Mississippi. He has been a certified specialist in bankruptcy law since 1999. Mr. Ralston offered no competing affidavit or testimony. The Court has reviewed Mr. Matthews' individual time entries. None of them exceeds 2.7 hours in length. Each of them is related to the discovery dispute and corresponds with the docket entries in the court's record. The entries begin with the drafting of the motion to compel responses to requests for production, and do not include any time for efforts prior to that. The Court finds the attorney fees requested by Mr. Matthews would not have been necessary but for the misconduct of Mr. Ralston and Mr. Sharp. *See Goodyear Tire & Rubber v. Haeger*, __ U.S. __, 137 S. Ct. 1178, 1187 (2017) ("The court's fundamental job is to determine whether a given legal fee – say, for taking a deposition or drafting a motion – would or would not have been incurred in the absence of the sanctioned conduct."); *Jackson v. Nissan Motor Corp.,* 888 F. 2d 1391, 1989 WL 128639, at *6 (6th Cir. 1989) (In ruling on a motion for sanctions for failure to cooperate in discovery, court should explain the basis for its satisfaction that the expenses claimed and awarded were limited to those incurred by the movant as a consequence of the opposing party's misconduct.). The motions to compel were made necessary by Mr. Sharp's and Mr. Ralston's failure to respond to the discovery requests and the reasonable efforts of Mr. Matthews to gain their cooperation.

Rule 7037(a)(5)(A) provides that the court **must,** after giving an opportunity to be heard, require the party whose conduct necessitated the motion, the attorney advising the conduct, or both to pay the moving party's reasonable expenses in making the motion. In this case, Mr. Ralston has done an admirable job of taking responsibility upon himself for the failures to timely and adequately respond to discovery. If, however, the importance of making full and complete disclosures was not clear to Mr. Sharp prior to his first meeting with the Court on April 18, it was certainly clear to him from that point forward. At that hearing, the Court said:

> THE COURT: So the reason I was upset last time is – and you know this, Mr. Ralston. Discharge is a privilege, not a right. And I felt that it was very reasonable for an ex-spouse who possibly bears the brunt of this discharge to know the status. I thought that was a reasonable request.
>
> And so to ask this court for a discharge and at the same time not provide the documents from which she could determine what her liability might be, seemed utterly unreasonable to me. And that – I probably should have articulated that a little better [at the last hearing].
>
> But I was reflecting on it later. I said, why were you so upset about that? What's the – but that's the deal. That's the deal. Discharge is a privilege. And granted, Mr. Sharp has made his payments and that's a good thing, but it's not unreasonable for someone who is jointly liable with you to say what am I liable for? What does this mean to me at the end of the day. So that's what I think we need to get to. I think that's a reasonable request.
>
> MR. RALSTON: And I could not disagree.

Hearing Transcript, April 18, 2019, p. 5, l. 9-p. 6, l. 10. Even so, Mr. Sharp went out of town and waited until the night before the May 2 hearing to obtain a copy of a document that did not respond to the request, which Mr. Ralston provided to Mr. Matthews without reading! Mr. Sharp made three additional productions of documents after the May 2 hearing. Most of these, according to Mr. Matthews, were documents previously produced. Mr. Ralston stipulated that Mr. Sharp is a sophisticated businessman with degrees in accounting and business. It is difficult for the Court to

believe that Mr. Sharp did not from the very beginning understand the seriousness of the proceeding and his responsibility to fully respond and cooperate.

The Court does not have an affidavit from Mr. Ralston but knows him to be an attorney with many years of experience in consumer bankruptcy. Mr. Ralston attempts to excuse his failures with respect to these discovery requests by saying, in essence, that he doesn't generally handle such complex matters. The Court does not find these requests to be particularly complex. If they were, or if they were simply beyond Mr. Ralston's ability to respond for personal or other reasons, it was incumbent upon him to seek appropriate help. He could, for example, have asked for additional time to respond. He did not do that. He could have associated more experienced counsel. He did not do that. Mr. Ralston is correct that he bears some responsibility for his client's failure to timely and adequately respond to discovery.

There is no reasonable basis in the record to divide responsibility for the misconduct of Mr. Sharp and his attorney in large part because Mr. Ralston did not file written responses to the motions to compel or to Mr. Matthews' affidavit. The Court thus finds that they bear equal responsibility for the extra expenses incurred by Ms. Long and should be jointly and severally liable for paying them.

Other Sanctions. Pursuant to Rule 7037(d)(1)(A)(ii), the Court may issue orders that include the following actions enumerated in Rule 7037(b)(2)(A) as sanctions for the failure to comply with discovery requests:

(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 matters in evidence;
(iii) striking pleadings in whole or in part;
(iv) staying further proceedings until the order is obeyed;
(v) dismissing the action or proceeding 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 except an order to submit to a physical or mental examination.

Dismissal of the action or proceeding in whole or in part pursuant to this Rule is considered the ultimate sanction and should only be ordered when the party's noncompliance is due to willfulness, bad faith, or fault. *LTV Steel* at 45, citing, *Societe Internationale v. Rogers,* 357 U.S. 197, 212, 78 S. Ct. 1087, 1096 2 L. Ed. 2d 1255 (1958). When deciding whether to impose the ultimate sanction of dismissal, courts are directed to consider these four factors:

> (1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered. *Reyes,* 307 F.3d at 458 (quoting *Knoll v. AT&T,* 176 F.3d 359, 363 (6th Cir. 1999)).

Id. In this context, "[w]illfulness has been defined as '[a] conscious or intentional failure to act, as distinguished from an accidental or involuntary noncompliance....' *Braxton v. Howard University*, 472 A.2d 1363, 1365 (D.C. 1984). 'Although no one factor is dispositive, dismissal is proper if the record demonstrates delay or contumacious conduct.' *Reyes, 307 F.3d at 458." LTV Steel* at 45-46.

Mr. Matthews has not asked for dismissal of the complaint, but has asked for serious additional sanctions. Specifically, Mr. Matthews has asked the Court, pursuant to Rule 7037(b)(2)(A):

> (a) to direct that all obligations of Sharp to Long as set forth in the Marital Dissolution Agreement ("MDA") and the Final Decree of Divorce between the parties, including but not limited to the obligation of Sharp to pay, and indemnify and hold Long harmless from, marital or joint debts, be taken as established to be: (i) in the nature of alimony, maintenance, or support and thus constitute domestic support obligations under 11 U.S.C. Section 101(14A), (ii) non-dischargeable under 11 U.S.C. Section 523(a)(5), and (iii) not discharged under 11 U.S.C. Section 1328;

> (b) to prohibit Sharp from supporting claims that his obligations to Long under the MDA and the Final Decree of Divorce between the parties, including but not limited to the obligation of Sharp to pay, and indemnify and hold Long harmless from, marital or joint debts: (i) are not in the nature of alimony, maintenance, or support and thus do not constitute domestic support obligations under 11 U.S.C. Section 101(14A), (ii) are not exceptions to discharge under 11 U.S.C. Section 523(a)(5), and (iii) are discharged under 11 U.S.C. Section 1328;
>
> (c) to prohibit Sharp from opposing Long's claims that all obligations of Sharp to Long as set forth in the MDA and the Final Decree of Divorce between the parties, including but not limited to the obligation of Sharp to pay, and indemnify and hold Long harmless from, marital or joint debts, are: (i) in the nature of alimony, maintenance, or support and thus constitute domestic support obligations under 11 U.S.C. Section 101(14A), (ii) non-dischargeable under 11 U.S.C. Section 523(a)(5), and (iii) not discharged under 11 U.S.C. Section 1328; and
>
> (d) to stay discharge of Sharp in this bankruptcy case until: (i) Sharp has paid whatever award of expenses the Court makes in connection with Motions to Compel, and (ii) Long, the Chapter 13 Trustee, and/or the U.S. Trustee have an opportunity to seek denial of discharge of Sharp in this case based upon Sharp's fraud and/or misrepresentations in his bankruptcy petition, including Sharp's claim of exemptions for his interests in Indigo, LLC and Indigo LR, LLC as being properly valued at one dollar each, and his concealment of income, other wrongful acts and omissions, and bad faith.

Supplement to Defendant and Counter-Plaintiff's Motions to Compel, Adv. Proc. Dkt. No. 40, p. 4, n. 1 omitted.

Essentially Ms. Long asks that Mr. Sharp's obligations under the Marital Dissolution Agreement to indemnify her and hold her harmless with respect to debts ordered to be paid by him in the Marital Dissolution Agreement be excepted from discharge, and that Mr. Sharp's general discharge be delayed until he has paid the expenses awarded to Ms. Long in this order and the Chapter 13 trustee and/or the United States Trustee have had an opportunity to seek denial of his general discharge.

The Court has thought carefully about Ms. Long's request. One of the reasonable requests that Ms. Long made that has not been previously discussed was a request to have Mr. Sharp identify the obligations under the Marital Dissolution Agreement that he was seeking to discharge,

the amount owed at the time of filing, the amount paid during the bankruptcy case, and the amount remaining to be paid. Interrogatory Numbers 2 and 3. Mr. Sharp was also asked to identify the legal basis for Ms. Long's liability on the claims. Mr. Ralston was reluctant to commit to a definitive list of marital debts that would be discharged through the Chapter 13 plan. Hearing Transcript, April 18, 2019, pp. 14-18. It was not until May 14 that Mr. Sharp provided more complete answers to the interrogatories, and even then he did not identify the basis of Ms. Long's liability, if any, as requested. He did not object to that portion of the interrogatory. He simply ignored it. Other failures and evasions have been described in earlier portions of this opinion.

At the final hearing, Mr. Matthews described his experience with Mr. Ralston and Mr. Sharp as "a game of catch me if you can." Hearing Transcript, May 16, 2019, p. 9, ll. 18, 20; p. 15, ll. 2, 7, 9; p. 16, ll. 2-3. The Court agrees. After reviewing all of the transcripts and all of the responses filed by Mr. Ralston and Mr. Sharp, the Court is not left with a feeling of satisfaction that they have earnestly endeavored to cooperate in the discovery process and provide the information needed for Ms. Long to respond to the complaint filed by Mr. Sharp. Instead, the Court is left with a feeling of anxiety that important information remains hidden and will not be revealed unless Mr. Sharp is somehow caught with it. The Court said numerous times in the hearings with the parties and their attorneys that this proceeding is not a game. Hearing Transcript, April 11, 2019, p. 4, l. 22; April 18, 2019, p. 43, ll. 7, 12-13; May 2, 2019, p. 18, ll. 12, 17; p. 28, l. 11. Bankruptcy relief is intended for the honest but unfortunate debtor. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 54 S. Ct. 695 (1934). It is not intended to shield individuals from their just obligations when they have the ability to pay them. More than enough has come to light in the discovery process to call into question Mr. Sharp's honesty in dealing with the Court and his creditors. It appears, for example, that he woefully undervalued major assets and the income

derived from them in his original schedules. In the ordinary course, had he fully cooperated in discovery, there would have been a trial to determine whether in fact he was entitled to discharge the debts owed to Ms. Long. As it is, however, the Court has no confidence that Ms. Long has been given the information that she needs to prepare for such a trial. With respect to the *Societe Internationale* factors, the Court finds:

> (1) Mr. Sharp's actions were willful and part of his overall scheme to avoid financial responsibility to Ms. Long.
>
> (2) Ms. Long has been and will be prejudiced by Mr. Sharp's conduct. By his own admission, he has made no effort to fulfill his responsibilities and his refusal to cooperate in discovery simply furthers his intention not to fulfill his responsibilities.
>
> (3) Mr. Sharp was warned by the Court on April 18 and May 2 that failure to cooperate could result in denial of discharge. The Court instructed Mr. Matthews to amend his motion to make clear to Mr. Sharp that he was seeking denial of discharge as a sanction. There is no question that Mr. Sharp was warned.
>
> (4) While the Court did not impose less severe sanctions prior to the entry of this order, it certainly considered whether less drastic sanctions would be adequate. For the reasons stated, however, the Court has no confidence that Mr. Sharp can be trusted to provide information needed to proceed with trial.

The Court believes and finds that each of the *Societe Internationale* factors is satisfied.

Therefore, it is reasonable to sanction Mr. Sharp by finding that the obligations to Ms. Long, both direct and indirect, established in the Marital Dissolution Agreement, are not discharged and cannot in any future bankruptcy proceeding be discharged. *In re LTV Steel Co., Inc.*, 307 B.R. at 48. To reiterate, this is a sanction. It is not based upon a complete factual or

legal determination after trial, but upon a settled determination that a fair trial of the issues is not possible because of Mr. Sharp's evasive and uncooperative conduct.

The Court does not find it necessary, however, to delay the entry of Mr. Sharp's general discharge. If it is later determined that Mr. Sharp's discharge was obtained by fraud, it may be revoked. *See* 11 U.S.C. § 1328(e). Mr. Sharp's obligation to reimburse Ms. Long for her attorney fees and expenses is not an obligation provided for in his Chapter 13 plan, and thus is not subject to discharge in this Chapter 13 case. Moreover, because the award is in the nature of a sanction, failure to promptly pay it is potentially punishable by contempt.

CONCLUSION

For the foregoing reasons, sanctions are awarded against Mr. Ralston and Mr. Sharp, jointly and severally, in favor of Ms. Long in the amount of $12,639.05, which shall bear interest at the rate of 1.98%[3] until paid in full.

Further, all obligations of Mr. Sharp to Ms. Long, direct and indirect, established by their Marital Dissolution Agreement, are excepted from discharge and shall survive this and any future bankruptcy discharge obtained by Mr. Sharp.

cc: Debtor/Plaintiff/Counter-Defendant
Attorney for Debtor/Plaintiff/Counter-Defendant
Defendant/Counter-Plaintiff
Attorney for Defendant/Counter-Plaintiff
Chapter 13 Trustee

[3] 28 U.S.C. § 1961 governs civil and bankruptcy adversary judgment interest. The current rate for civil judgments entered June 24-30, 2019, is 1.98%. The interest rate published by the Federal Reserve System can be found at https://www.federalreserve.gov/releases/h15/default.htm (last visited June 25, 2019).