



Dated: December 21, 2023
The following is ORDERED:

A handwritten signature in cursive script that reads "Jennie D. Latta".

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
JOY ZETTIE FIELDS,
Debtor.

Case No. 22-24717-L
Chapter 7

Paul A. Randolph,
Acting United States Trustee, Region 8,
Plaintiff,

v.
Joy Zettie Fields,
Defendant.

Adv. Proc. No. 23-00005

ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Before the Court is the *United States Trustee's Motion for Partial Summary Judgment* filed by the Plaintiff, Paul A. Randolph, Acting United States Trustee for Region 8, on October 6, 2022 [ECF No. 22]. The Plaintiff's *Complaint to Deny Discharge Pursuant to 11 U.S.C. § 727* [ECF No.1] seeks the denial of Defendant's discharge under several theories as the result of her failure to properly disclose and account for a Paycheck Protection Program ("PPP") loan obtained before

the filing of her petition. By this Motion, the Plaintiff seeks summary judgment as to Count III of the Complaint which alleges that the Defendant should be denied a discharge in bankruptcy pursuant to 11 U.S. C. § 727(a)(4)(A) because she knowingly and fraudulently or with reckless disregard for the truth made false statements, false oaths, or omissions during her bankruptcy case.

Upon the filing of the motion for partial summary judgment the Court issued its *Order and Notice of Plaintiff's Motion for Partial Summary Judgment* [ECF No. 25] allowing the Defendant thirty days, until November 9, 2023, to file a written response and advising the parties that unless requested, oral argument would not be scheduled in this proceeding. The deadline for filing a written response has expired. No written response nor request for oral argument has been filed. The matter is ripe for decision.

JURISDICTION, AUTHORITY, AND VENUE

Jurisdiction over a complaint arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The determination of objections to discharge are core proceedings arising under the Bankruptcy Code. See 28 U.S.C. § 157(b)(2)(J). Accordingly, the bankruptcy court has authority to enter its judgment regarding the Plaintiff's motion for partial summary judgment as to his objection to discharge subject only to appellate review under section 158 of title 28. 28 U.S.C. § 157(b)(1). Venue of this proceeding is proper to the Western District of Tennessee because it arises in a bankruptcy case pending in this district. See 28 U.S.C. § 1409(a).

SUMMARY JUDGMENT STANDARD

Federal Rule of Civil Procedure 56 made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7056 provides that summary judgment is appropriate if the movant can show that there is no genuine dispute as to any material fact and thus, the movant is entitled to judgment as a matter of law. See, *Pazdzierz v. First American Title Ins. Co. (In re Pazdzierz)*, 718 F.3d 582, 586 (6th Cir. 2013), quoting *Mazur v. Young*, 507 F.3d 1013, 1016 (6th Cir.2007).

Substantive law will identify which facts are material and a genuine issue of material fact exists only when, “there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). When deciding a motion for summary judgment, the court does not weigh the evidence to determine the truth of the matter asserted but to determine whether a genuine issue for trial exists. *Id.* In reaching its decision, the court views the evidence in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986).

The moving party bears the initial burden of proof that there are no genuine issues that might affect the outcome of the action under governing law. *In re Oliver*, 414 B.R. 361, 367 (Bankr. E.D. Tenn. 2009), citing, *Anderson v. Liberty Lobby, Inc.*, at 249, 126 S. Ct. at 2510; Fed. R. Civ. P. 56(a), incorporated at Fed. R. Bankr. P. 7056. “However, to survive summary judgment, the [nonmoving party] must present affirmative evidence sufficient to show a genuine issue for trial. *Anderson*, 477 U.S. at 249, 106 S. Ct. 2505. Therefore, “[i]f evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 249-50, 106 S. Ct. 2505.” *White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472, 475-76 (6th Cir. 2010).

BACKGROUND FACTS

The Complaint commencing this adversary proceeding was filed on January 17, 2023 [ECF No. 1]. The Complaint alleges, in essence, that the Defendant fraudulently obtained a (“PPP”) loan, which was forgiven, and that the Defendant made false statements concerning her business dealings and the loan in connection with her bankruptcy case. The Complaint asks that the Defendant’s discharge be denied pursuant to 11 U.S.C. §§ 727(a)(2)(B); 727(a)(3); 727(a)(4)(A); and 727(a)(5). The Summons in an Adversary Proceeding was issued the same day the Complaint was filed giving the Defendant, the Debtor in the related chapter 7 bankruptcy case, thirty days to file a motion or answer [ECF No. 2]. The Plaintiff filed his certificate of service on January 19, 2023 [ECF No. 3]. On February 22, 2023, the Plaintiff filed a Motion for Entry of Default [ECF No. 4]. The Clerk entered the default on February 23 and the Plaintiff filed the *United States Trustee’s Motion for Default Judgment* on February 23, 2023. [ECF Nos. 5 and 6]. The Motion for Default Judgment was set for hearing on March 23, 2023. The Defendant filed an Answer to the Complaint on March 22, 2023 [ECF. No. 10] and a *Motion to Set Aside the Clerk’s Entry of Default* on March 23, 2023 [ECF No. 12]. That same date, based on the filing of the Answer, the Court entered orders denying the Plaintiff’s Motion for Default Judgment and setting aside the Entry of Default. [ECF Nos. 13 and 14]. The Court then entered a Preliminary Pretrial Scheduling Order directing the parties to file a Joint Pretrial Statement by April 27 and setting a Scheduling Conference on May 11, 2023 [ECF No.15].

The Answer filed by the Defendant the day before the hearing on the Motion for Default Judgment admits that, prepetition, the Defendant’s application for a PPP loan for a business detailed as “Beauty Salons” was approved by the SBA based on her averment that she owned and operated a business that was more than two years old and that the PPP loan would help retain at

least one job; that PPP loan proceeds of \$18,695 were released to the Defendant; and that the PPP Loan was subsequently forgiven [ECF No. 10, ¶¶ 7-10]. The Answer further admits the omission of information concerning the PPP loans and her business dealings from her bankruptcy schedules and statement of financial affairs that she signed under the penalty of perjury [ECF No. 10, ¶¶ 11-22]. With respect to these admissions, however, the Defendant states “However, since that time [the filing of her statements and schedules], the Plaintiff [sic] has sought to amend her petition to correct those answers and include information which was not included.” Despite these statements, no corrections have been filed. The Answer further admits that the Defendant testified under oath at the 341 Meeting that the information contained in the “bankruptcy documents” was correct but also states that, “[S]he testified under oath at the meeting of creditors in regard to her business and in regard to the PPP loan that she received,” and that, “ At no time did [she] attempt to mislead the chapter 7 trustee and testified fully about her business.” [ECF No. 10, ¶ 25]. The Answer then denies that the Defendant knowingly and fraudulently or with a reckless disregard for the truth made a false oath or account in connection with the bankruptcy case. It goes on to say that the Plaintiff [sic] “mistakenly did not include the information about her previous loan with her petition however she did testify truthfully about all matters pertaining to this business at the meeting of creditors.” [ECF No. 10, ¶ 26].

Notwithstanding the denials in the Answer, the Defendant failed to participate in preparation of a Joint Pretrial Statement in April, thus, in its May Scheduling Order, the Court directed the Defendant to file a Pretrial Statement by May 25, 2023, set a discovery deadline of September 12, 2023, and set a dispositive motion deadline of October 10, 2023 [ECF No. 20].

The Defendant has not filed a Pretrial Statement. Further, according to the Plaintiff’s Statement of Undisputed Facts based upon the Affidavit of Carrie Ann Rohrscheib, counsel for

the Plaintiff, “[t]he U.S. Trustee has received no responses to the discovery propounded on the Defendant in this adversary case.” [ECF No. 22, Supplement 1, ¶ 16; ECF. No. 23]. As noted, the Defendant has not filed a Response to the Plaintiff’s Motion for Partial Summary Judgment pursuant to 11 U.S.C. § 727(a)(4)(A), filed on October 6, 2023.

In support of his Motion for Partial Summary Judgment, the Plaintiff offered the Affidavit of Carrie Ann Rohrscheib, counsel for the United States Trustee, which states in pertinent part,

4. On August 1, 2023, I mailed via U.S. Mail postage prepaid and emailed the Defendant, Joy Zettie Fields’s counsel, Curtis D. Johnson, Jr., the United States Trustee’s First Request for Production of Documents and First Set of Interrogatories Propounded Upon Defendant Joy Zettie Fields and United States Trustee’s First Request for Admissions to Defendant Joy Zettie Fields. A true and correct copy of the email attaching and letter enclosing discovery, including the discovery requests, are attached hereto as Exhibit A and incorporated herein by reference. (Affidavit of Carrie Ann Rohrscheib, Exhibit A).

5. I did not receive a timely response to the United States Trustee’s First Request for Production of Documents and First Set of Interrogatories Propounded Upon Defendant Joy Zettie Fields and United States Trustee’s First Request for Admissions to Defendant Joy Zettie Fields.

6. On September 7, 2023 I emailed Defendant, Joy Zettie Fields’s counsel, Curtis D. Johnson, Jr., regarding the past due discovery responses and provided until September 15, 2023 to provide responses to the United States Trustee’s First Request for Production of Documents and First Set of Interrogatories Propounded Upon Defendant Joy Zettie Fields and United States Trustee’s First Request for Admissions to Defendant Joy Zettie Fields. A true and correct copy of the September 7, 2023 email is attached hereto as Exhibit B and incorporated herein by reference.

7. I received no response to the September 7, 2023 email, and the Defendant, Joy Zettie Fields, did not respond by September 15, 2023 to the United States Trustee’s First Request for Production of Documents and First Set of Interrogatories Propounded Upon Defendant Joy Zettie Fields and United States Trustee’s First Request for Admissions to Defendant Joy Zettie Fields.

8. On September 19, 2023, I emailed Defendant, Joy Zettie Fields’s counsel, Curtis D. Johnson, Jr., requesting an update within 24 hours on the responses to United States Trustee’s First Request for Production of Documents and First Set of Interrogatories Propounded Upon Defendant Joy Zettie Fields and United States Trustee’s First Request for Admissions to Defendant Joy Zettie Fields. A true and

correct copy of the September 19, 2023 email is attached hereto as Exhibit C and incorporated herein by reference.

9. I receive[d] no response to the September 19, 2023 email, and the Defendant, Joy Zettie Fields, did not respond to the United States Trustee's First Request for Production of Documents and First Set of Interrogatories Propounded Upon Defendant Joy Zettie Fields and United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields.

10. To date I have received no responses to the discovery propounded on the Defendant, Joy Zettie Fields, by the United States Trustee in this adversary case, namely the United States Trustee's First Request for Production of Documents and First Set of Interrogatories Propounded Upon Defendant Joy Zettie Fields and United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields.

[ECF No. 23].

In addition to Ms. Rohrscheib's Affidavit, the Plaintiff offered, as an attachment to his Motion for Partial Summary Judgment, his Statement of Undisputed Facts which, in pertinent part, provides the following.

16. The U.S. Trustee has received no responses to the discovery propounded on the Defendant in this adversary case. (Affidavit of Carrie Ann Rohrscheib ¶ 10).

17. The discovery deadline in this case expired on September 12, 2023. (Adv. Pro. 23-00005, Docket No. 20).

18. Within the four-year period immediately before the Petition Date, the Defendant owned and operated a beauty salon or beauty salon related business. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 1).

19. On or about May 12, 2021 the Defendant applied for and received a U.S. Small Business Administration Paycheck Protection Program loan in the amount of \$18,695.00 from Prestamos CDFI, LLC for a business described as beauty salon or beauty salon related. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 2).

20. On or about October 14, 2021, the balance due on the Defendant's U.S. Small Business Administration Paycheck Protection Program loan was forgiven. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 3).

21. Within the year of the Defendant's bankruptcy filing and the two previous calendar years, the Defendant received income from the operation of a beauty salon or beauty salon related business. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 4).

22. On October 26, 2022, the Defendant filed a voluntary petition for relief (the "Petition") from her debts under chapter 7 of the Code in the Bankruptcy Case (the "Petition Date"). (Bankr. Case No. 22-24717, Docket No. 1). The Defendant signed the voluntary petition under penalty of perjury. (Bankr. Case No. 22-24717, Docket No. 1 at 6; United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 5). Along with her Petition, the Defendant filed bankruptcy schedules, statements, and forms that she signed under penalty of perjury (collectively, the "Schedules"). (Bankr. Case No. 22-24717, Docket No. 1 at 57, 63, 65 and 71; United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 5). These documents filed by the Debtor on October 26, 2022 in bankruptcy case number 22-24717 at docket numbers 1 and 4 consisting of the Voluntary Petition, Schedules, Statement of Financial Affairs and Means Test will be collectively referred to herein as "Bankruptcy Petition, Schedules, and Statements."

23. On her Petition, the Defendant answered the question requiring disclosure of "Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years [Include trade names and doing business as names]" by checking the box indicating "I have not used any business names or EINs." (Bankr. Case No. 22-24717, Docket No. 1 at 2 (question no. 4)).

24. The Defendant was required to disclose the name and Employer Identification Number of her beauty salon or beauty salon related business on her Bankruptcy Petition, Schedules, and Statements on the *Voluntary Petition for Individuals Filing for Bankruptcy*. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 6).

25. On *Schedule A/B: Property* ("Schedule A/B"), the Defendant answered the question "Do you own or have any legal or equitable interest in [...] Non-publicly traded stock and interest in incorporated and unincorporated businesses, including an interest in an LLC, partnership, or joint venture" by checking the box "No." (Bankr. Case No. 22-24717, Docket No. 1 at 12 (question no. 19)).

26. The Defendant was required to disclose her interest in a beauty salon or beauty salon related business on her Bankruptcy Petition, Schedules, and Statements on *Schedule A/B: Property*. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 7).

27. On *Schedule I: Your Income* ("Schedule I"), the Defendant answered she had \$0.00 in income in the month of the filing on Line 8a. for "Net income from rental

property and from operating a business, profession or farm.” (Bankr. Case No. 22-24717, Docket No. 1 at 53).

28. The Defendant was required to disclose her income from her beauty salon or beauty salon related business on her Bankruptcy Petition, Schedules, and Statements on *Schedule I: Your Income*. (United States Trustee’s First Request for Admissions to Defendant Joy Zettie Fields, Request No. 8).

29. On *Official Form 107: Statement of Financial Affairs for Individuals Filing for Bankruptcy* (“SOFA”), the Defendant answered the question “Did you have any income from employment or from operating a business during this year or the two previous calendar years?” by checking the boxes for “Wages, commissions, bonuses, tips” and not checking the boxes for “Operating a business.” (Bankr. Case No. 22-24717, Docket No. 1 at 58-59 (question no. 4)).

30. The Defendant was required to disclose her income from her beauty salon or beauty salon related business in the year of the bankruptcy filing and the two previous calendar years on her Bankruptcy Petition, Schedules, and Statements on the *Official Form 107: Statement of Financial Affairs for Individuals Filing for Bankruptcy* in response to Question No. 4. (United States Trustee’s First Request for Admissions to Defendant Joy Zettie Fields, Request No. 9).

31. On SOFA, the Defendant answered the question “Did you receive any other income during this year or the two previous calendar years? [Include income regardless of whether that income is taxable. Examples of *other income* are alimony; child support; Social Security, unemployment, and other public benefit payments; pensions; rental income; interest; dividends; money collected from lawsuits; royalties; and gambling and lottery winnings...]” by checking the box “No.” (Bankr. Case No. 22-24717, Docket No. 1 at 59 (question no. 5)).

32. The Defendant was required to disclose her income from the U.S. Small Business Administration Paycheck Protection Program loan on her Bankruptcy Petition, Schedules, and Statements on the *Official Form 107: Statement of Financial Affairs for Individuals Filing for Bankruptcy* in response to Question No. 4 or 5. (United States Trustee’s First Request for Admissions to Defendant Joy Zettie Fields, Request No. 10).

33. On SOFA, the Defendant answered the question “Within 4 years before you filed for bankruptcy, did you own a business or have any of the following connections to any business?” by checking the box “No. None of the above applies.” (Bankr. Case No. 22-24717, Docket No. 1 at 63 (question no. 27)).

34. The Defendant was required to disclose her ownership of or connection to her beauty salon or beauty salon related business on her Bankruptcy Petition, Schedules, and Statements on the *Official Form 107: Statement of Financial Affairs for Individuals Filing for Bankruptcy* in response to Question No. 27. (United States

Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 11).

35. On *Official Form 122A-1: Chapter 7 Statement of Your Current Monthly Income* ("Means Test") the Defendant answered she had \$0.00 in income in the month of the 6 full months before the Petition date on Line 5 for "Net income from operating a business, profession or farm." (Bankr. Case No. 22-24717, Docket No. 4 at 1).

36. That the Defendant was required to disclose her income from her beauty salon or beauty salon related business in the six full months prior to the month of the filing on her Bankruptcy Petition, Schedules, and Statements on *Official Form 122A-1: Chapter 7 Statement of Your Current Monthly Income*. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 12).

37. The Defendant testified under oath at the 11 U.S.C. § 341 meeting of creditors that her Bankruptcy Petition, Schedules, and Statements were true and correct. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 13).

38. The Defendant testified under oath at the 11 U.S.C. § 341 meeting of creditors that the income information the Defendant gave to her attorney was true and correct. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 14).

39. The Defendant's ownership and operation of a beauty salon or beauty salon related business was a material fact in the Defendant's bankruptcy case. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 15).

40. The Defendant's income from the ownership and operation of a beauty salon or beauty salon related business was a material fact in the Defendant's bankruptcy case. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 16).

41. The Defendant's receipt of U.S. Small Business Administration Paycheck Protection Program loan related to her ownership and operation of a beauty salon or beauty salon related business was a material fact in the Defendant's bankruptcy case. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 17).

42. The Defendant knowingly and fraudulently failed to disclose her ownership and operation of a beauty salon or beauty salon related business in her Bankruptcy Petition, Schedules, and Statements. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 18).

43. The Defendant knowingly and fraudulently failed to disclose her income from her ownership and operation of a beauty salon or beauty salon related business in her Bankruptcy Petition, Schedules, and Statements. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 19).

44. The Defendant knowingly and fraudulent[ly] failed to disclose her receipt of U.S. Small Business Administration Paycheck Protection Program loan related to her ownership and operation of a beauty salon or beauty salon related business in her Bankruptcy Petition, Schedules, and Statements. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 20).

45. The Defendant recklessly failed to disclose her ownership and operation of a beauty salon or beauty salon related business in her Bankruptcy Petition, Schedules, and Statements. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 21).

46. The Defendant recklessly failed to disclose her income from her ownership and operation of a beauty salon or beauty salon related business in her Bankruptcy Petition, Schedules, and Statements. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 22).

47. The Defendant recklessly failed to disclose her receipt of U.S. Small Business Administration Paycheck Protection Program loan related to her ownership and operation of a beauty salon or beauty salon related business in her Bankruptcy Petition, Schedules, and Statements. (United States Trustee's First Request for Admissions to Defendant Joy Zettie Fields, Request No. 23).

[ECF No. 22, Supplement 1].

As stated, the Defendant has not responded in any way to the Motion for Partial Summary Judgment.

DISCUSSION

Discharge in bankruptcy is not a right but a privilege extended to the "honest but unfortunate debtor." *Grogan v. Garner*, 498 U.S. 279, 287, 111 S. Ct. 654, 112 L.Ed.2d 755 (1991). It depends upon debtors being "fully forthcoming about their financial affairs." *Church Jt. Venture v. Blasingame*, (*In re Blasingame*), 559 B.R. 692, 699 (B.A.P. 6th Cir. 2016), quoting, *Swartz v. Spears* (*In re Spears*), 291 B.R. 825, 829 (Bankr. C.D. Ill. 2003) (1991). Section 727(a)(4)(A) of the Bankruptcy Code provides that denial of a debtor's discharge in bankruptcy is

called for if “the debtor knowingly and fraudulently in or in connection with the case — (A) made a false oath or account [.]” “In order to deny a debtor discharge under this section, a plaintiff must prove by a preponderance of the evidence that: 1) the debtor made a statement under oath; 2) the statement was false; 3) the debtor knew the statement was false; 4) the debtor made the statement with fraudulent intent; and 5) the statement related materially to the bankruptcy case (citation omitted). Whether a debtor has made a false oath under section 727(a)(4)(A) is a question of fact. See *Williamson v. Fireman's Fund Ins. Co.*, 828 F.2d 249, 251 (4th Cir.1987).” *In re Keeney*, 227 F.3d 679, 685 (6th Cir. 2000). Debtors have an “affirmative duty” to disclose all assets to the bankruptcy court. *In re Blasingame*, 559 B.R. at 697 (citation omitted).

Statements made in bankruptcy schedules, the statement of financial affairs, the 341 meeting of creditors, and testimony given at Rule 2004 exams are made under oath. See, e.g., *Hamo v. Wilson (In re Hamo)*, 233 B.R. 718, 725 (B.A.P. 6th Cir.1999). Statements are material if they concern the discovery of assets or the existence and disposition of a debtor’s property. *In re Keeney*, 227 F.3d at 686 (citation omitted). The debtor had knowledge of the statement if “the debtor knew the truth, but nonetheless failed to give the information or gave contradictory information.” *In re Hamo*, 233 B.R. at 725 (quotation marks and citation omitted). “[A] knowingly false statement or omission made by the Debtor with reckless indifference to the truth will suffice as grounds for the denial of a Chapter 7 general discharge.” *Id.*

Id., quoting, *Montedonico v. Beckham (In re Beckham)*, 2009 WL 1726526 at *9, 421 B.R. 602 (6th Cir. BAP 2009). “[C]ourts may deduce fraudulent intent from all the facts and circumstances of a case.” *In re Keeney* at 685. Indeed, “... once it reasonably appears that the oath is false, the burden falls upon the bankrupt to come forward *with evidence* that he has not committed the offense charged. . . . The trier of fact may rely upon reasonable inferences as well as direct evidence. Thus, the trier may infer fraudulent intent from an unexplained false statement . . .” *Kremen v. Slattery (In re Slattery)*, 333 B.R. 340, 344 (Bankr. D. Md. 2005), quoting, *Noble v. Renner (In re Renner)*, 45 B.R. 414, 416 (Bankr. D. Md. 1984).

In this proceeding, the Defendant's Answer admits the factual allegations of the Complaint, but states that she will correct the deficiencies in her schedules and statements and that she testified truthfully about her business at the first meeting of creditors. The Answer also denies that the Defendant knowingly and fraudulently or with a reckless disregard for the truth made a false oath or account in connection with the bankruptcy case. The Defendant has not, however, corrected her schedules and statement of financial affairs, provided a declaration or affidavit or any evidence in opposition to this Motion or provided any responses to the Plaintiff's requests for admissions. "It is not enough to amend (or promise to amend) bankruptcy schedules once one has been caught in making a false oath." *Church Joint Venture v. Blasingame (In re Blasingame)*, 2015 WL 1513106325, *24 (Bankr. W.D. Tenn. 2015), citing, *Clean Cut Tree Service v. Costello (In re Costello)*, 299 B.R. 882, 890 (Bankr. N.D. Ill. 2003). Moreover, as noted by the *Slattery* court, the Defendant's "failure to respond to the Plaintiff's requests for admissions is also damning." 333 B.R. at 345. "The failure to respond to a request for admissions in a proceeding in which the nonresponding party was represented by counsel may result in a material fact being deemed to be admitted and thereby subject the party to an adverse grant of summary judgment." *Id.* Federal Rule of Civil Procedure Rule 36 made applicable here by Federal Rule of Bankruptcy Procedure 7036, "provides fair warning to counsel and client that a matter will be deemed admitted unless within 30 days the opposing party provides its answer or objection to the request. Fed. R. Civ. P. 36(a)." *Id.* According to the court of appeals for the Sixth Circuit,

Rule 36 permits one party to request admissions as to a broad range of matters by another party, including ultimate facts and the application of law to fact. *United States v. Petroff-Kline*, 557 F.3d 285, 293 (6th Cir. 2009). By operation of law, "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Fed. R. Civ. P. 36(a)(3) (emphasis added). Further, "[a] matter admitted under this rule is conclusively established unless the court, on motion, permits withdrawal or

amendment of the admission.” Fed. R. Civ. P. 36(b). . . . Further, such conclusive admissions ‘cannot be overcome at the summary judgment stage by contradictory affidavit testimony or other evidence in the record.’ *Williams v. Wells Fargo Bank, N.A.*, 560 Fed. Appx. 233, 244 (5th Cir. 2014).

Goodson v. Brennan, 688 Fed. Appx. 372, 375 (6th Cir. 2017). By failing to respond to the Plaintiff’s requests for admissions, the Defendant is deemed to have admitted all the statements in the requests for admissions. *Id.* By her own admission, Defendant knowingly and fraudulently or with reckless indifference to the truth, made material false statements and oaths or omissions on her Schedules and Statement of Financial Affairs and during her bankruptcy case concerning her receipt of income from a PPP loan, her ownership and operation of a beauty salon or related business, and her receipt of income from the business. As a result, she has forfeited her claim to discharge. The Plaintiff has shown that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law.

CONCLUSION

From the foregoing, the *United States Trustee’s Motion for Partial Summary Judgment* is **GRANTED**. The Debtor’s discharge is **DENIED** pursuant to 11 U.S.C. § 727(a)(4)(A). The Clerk is directed enter a separate judgment consistent with this order.

cc: Debtor/Defendant
Attorney for Debtor/Defendant
Plaintiff
Attorney for Plaintiff
Chapter 7 Trustee