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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**BELLE FRANCIA DAILEY
HARLEY JOSEPH DAILEY,**

Debtors.

Case No. **15-61088-7**

CAROL BETH EMERSON,

Debtor.

Case No. **16-60056-7**

O R D E R

At Butte in said District this 11th day of February, 2020.

In the above-captioned Chapter 7 cases¹, the United State Trustee (“UST”) filed on September 1, 2016, a “Motion for an Order (I) Requiring Debtor’s Attorneys to Disgorge Funds; (II) Enjoining Violations of 11 U.S.C. § 526 and Imposing Civil Penalties; and (III) Granting Related Relief” (“Motion”). The UST filed on May 17, 2019, in *In re Emerson*, Case no. 16-60056-7, at ECF No. 166, a “First Amended Motion for an Order (I) Requiring Debtor’s Attorneys to Disgorge Funds; (II) Enjoining Violations of 11 U.S.C. § 526 and Imposing Civil Penalties; and (III) Granting Related Relief” (“Amended Motion”). The UST alleges, among other things, that Law Solutions Chicago LLC d/b/a UpRight Law LLC (“UpRight Law”) and a former Montana local “Partner” “failed to disclose completely and accurately the compensation arrangement in this case” and have engaged in numerous violations of the Montana Rules of

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure.

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Professional Conduct (and their counterparts in the American Bar Association’s Model Rules of Professional Conduct).

In response, UpRight Law has discontinued internet marketing in Montana, has stopped accepting new clients in Montana, and has refunded more than \$300,000 to clients and former clients in Montana. ECF No. 228, p. 2 of 11. UpRight Law represents that it is “now essentially shut down in Montana.” *Id.* Notwithstanding the foregoing, the UST seeks a permanent injunction under § 526 prohibiting UpRight Law from operating in Montana. *See* ECF No. 257, p.4 of 13.

UpRight Law and the UST have been engaged in ongoing discovery disputes since 2016. On June 21, 2019, the UST filed a third motion to compel, requesting, in part, that UpRight Law be ordered to produce “all audio recordings, including but not limited to recorded calls, call logs of communications between UpRight Law and” certain identified Montana consumers. UpRight Law objected to the UST’s third motion to compel. On August 28, 2019, the Court entered an Order granting the UST’s third motion to compel and granted UpRight Law through September 10, 2019, to produce the requested audio recordings as to 104 Montanans who had waived their attorney-client privilege (“August Order”). In September of 2019, UpRight Law produced sets of audio files for 48 of 104 Montana Consumers who had waived their attorney-client privilege. ECF No. 205, p. 4.

On December 18, 2019, at ECF No. 283, UpRight Law filed a Motion for Protective Order Regarding Call Recordings (“Motion for Protective Order”), arguing it had taken all reasonable efforts to comply with the Court’s Order of August 28, 2019, and that recovery of additional call recordings was neither feasible nor proportionate to the needs of this case

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considering the relief sought.² The UST opposes UpRight Law's Motion for Protective Order arguing missing "gap" and "onboarding" calls are at the heart of the UST's Amended Motion. In its opposition, the UST requests an award of the fees and costs for responding to UpRight Law's Motion for Protective Order. The UST also filed on January 9, 2020, at ECF 293 a Motion for Reopen Discovery. A hearing on that matter is currently scheduled for March 3, 2020.

At a hearing held February 4, 2020, in Billings, on UpRight Law's Motion for Protective Order, Olga Baltmiskis ("Olga") and David Menditto ("David"), both of whom work for UpRight Law, testified. Olga and David were forthright and credible witnesses. Olga testified extensively as to how she searched UpRight Law's audio recordings by using various iterations of the Montana consumers' known telephone numbers. Olga also testified that just last week she uncovered 21 additional phone recordings related to 11 of the 48 Montana consumers. Olga recovered the additional phone recordings by listening to numerous audio recordings. The Court commends Olga for her diligence and conscientiousness. However, Olga's most recent efforts undermine UpRight Law's Motion for Protective Order. Indeed, during his testimony, David expressed regret that Olga's efforts were not undertaken sooner and conceded that UpRight Law needs to comply with the Court's August Order. David explained that the production of additional audio recordings would require a large amount Olga's time, and thought the UST should bear some of the associated costs.

Nothing has changed since the Court entered the August Order.³ UpRight Law was

² The Federal Rules of Civil Procedure allows discovery of all relevant evidence. F. R. Civ. P. 26. The Committee Notes from the 2015 amendments to Rule 26 allow a court to limit discovery when "the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation."

³ The August Order compelled discovery of the phone recordings. At that time, UpRight Law

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granted through September 10, 2019, to produce the requested audio recordings, which it has admittedly not done. “[T]he party resisting discovery carries a heavy burden of showing why discovery should be denied.” *In re Datacom Sys*, 2014 Bankr. LEXIS 5348, *6 (Bankr. D. Nev.) (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975)). At this late date, after the Court has already ordered turnover of the audio recordings, UpRight Law has not satisfied its burden of showing that specific prejudice or harm would result if its Motion for Protective Order is not granted. *See In re Roman Catholic Archbishop*, 661 F.3d 417, 424 (9th Cir. 2011). After considering the testimony, the Court deems UpRight Law’s Motion for Protective Order to more appropriately be a request for additional time to comply with the Court’s August Order. The UST agreed to assist UpRight Law by providing UpRight Law with the information leading the UST to the conclude that there are missing calls. Thus, in accordance with the Court’s oral ruling,

IT IS ORDERED that UpRight Laws Motion for Protective Order filed at ECF No. 283 is denied. The UST’s request for its fees and costs is denied.

IT IS FURTHER ORDERED that during the next 60 days, the UST shall provide UpRight Law with the information that led the UST to conclude that there were missing “initial” and “gap” audio recordings. Between now and April 6, 2020, UpRight Law shall produce, on a rolling basis, the audio recordings they are able to locate.

IT IS FURTHER ORDERED that within 14 days after April 6, 2020, the UST and UpRight Law shall meet and confer regarding the audio recordings produced and file a status

opposed production on the basis of privilege and that “the time-intensive and expensive review would cause an undue burden.” In the August Order the Court addressed whether production of the recordings would be “disproportional and burdensome” and concluded that the call recordings of 104 Montana Consumers must be produced by UpRight Law.

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report by May 4, 2020. No additional discovery motions may be filed in this case until the parties first contact the undersigned.

IT IS FURTHER ORDERED that the hearing on the UST's Motion to Reopen Discovery filed on January 9, 2020, at ECF 293, scheduled for March 3, 2020, is continued to **Tuesday, May 26, 2020, at 09:00 a.m.**, or as soon thereafter as the parties can be heard, in the ELLA KNOWLES COURTROOM, 4TH FLOOR ROOM 4805, JAMES F. BATTIN UNITED STATES COURTHOUSE, 2601 2ND AVENUE NORTH, BILLINGS, MONTANA

FINALLY, IT IS ORDERED that on or before April 20, 2020, the UST shall summarize Exhibits 5, 6 and 7, found at ECF No. 221 in Case No. 16-60056, showing a side by side progression of the produced audio recordings. Also by April 20, 2020, the UST shall file a table showing the districts in which the UST was or still is in litigation with UpRight Law, the relief requested in each of those districts and the resolution, if any, that has been reached in each of those districts.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana