



**IT IS ORDERED** as set forth below:

**Date: August 17, 2011**

**W. H. Drake**  
**U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBERS</b>
	:	
DAMON LEE BARNER	:	BANKRUPTCY CASE
	:	NO. 08-12907-WHD
Debtor.	:	
_____	:	
	:	
SARA LOVE,	:	ADVERSARY PROCEEDING
	:	NO. 09-9001
Plaintiff,	:	
	:	
v.	:	
	:	
DAMON BARNER,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is a Motion for Sanctions for Failure to Respond to Discovery, filed by Sara Love (hereinafter the "Plaintiff") in the above-captioned

adversary proceeding. The Plaintiff seeks sanctions against Damon Barner (hereinafter the “Defendant”) for his failure to comply with an Order of this Court directing the Defendant to respond to the Plaintiff's discovery requests. The Court held an evidentiary hearing on the Motion on August 16, 2011.

Having considered the Defendant's testimony and the arguments of the Plaintiff's attorney, the Court finds the Defendant had no justification for his failure to respond to the Plaintiff's interrogatories and request for production of documents, as ordered by the Court on February 2, 2011. Accordingly, the Court concludes that sanctions against the Defendant are appropriate.

While the Plaintiff urges the Court to strike the Defendant's answer and enter a default judgment against the Defendant, the Court prefers to resolve matters on their merits whenever possible. Therefore, pursuant to Rule 37(b)(2)(A)(vii) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7037 of the Federal Rules of Bankruptcy Procedure, the Court hereby finds the Defendant in contempt of the Court's February 2nd Order. Additionally, pursuant to Rule 37(b)(2)(C), the Court will order the Defendant to pay the reasonable expenses, including attorney's fees, caused by the Defendant's failure to respond.

The Plaintiff's attorneys shall, within thirty (30) days from the date of the entry of this Order, file an itemized affidavit of fees and expenses incurred as a result of

the Defendant's failure to respond. Upon the filing of the Plaintiff's attorneys' affidavit, the Court will consider whether the fees and expenses requested are reasonable and shall issue a subsequent order with regard thereto.

In the interest of moving the case along quickly, the Plaintiff shall, no later than thirty (30) days from the date of the entry of this Order, file with the Court and serve upon the Defendant a request to depose the Defendant at a particular time and place, allowing for at least one month's notice of the date and time. The Court shall then enter an order directing the Defendant to appear at that time and place for his deposition. Once the Plaintiff has concluded the deposition, the Plaintiff shall file a request for a trial date.

If the Plaintiff no longer needs to depose the Defendant, the Plaintiff shall, no later than thirty (30) days from the date of the entry of this Order, notify the Court of such fact and request a trial date.

**END OF DOCUMENT**