



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

**Date: July 6, 2016**

**W. Homer 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>
	:	
DANNY EUGENE PERRY,	:	BANKRUPTCY CASE
	:	13-12692-WHD
Debtor.	:	
_____	:	
	:	
GUY G. GEBHARDT, ACTING	:	ADVERSARY PROCEEDING
UNITED STATES TRUSTEE,	:	NO. 16-1005
Plaintiff,	:	
	:	
v.	:	
	:	
DANNY EUGENE PERRY,	:	IN PROCEEDINGS UNDER
Defendant.	:	CHAPTER 7 OF THE
	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Motion for Default Judgment filed by Guy G. Gebhardt (hereinafter the “U.S. Trustee”), Acting United States Trustee for Region 21, against

Danny Eugene Perry (hereinafter the “Debtor”). This matter arises in connection with the U.S. Trustee’s complaint seeking to revoke the Debtor’s discharge. This is a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(a), (b)(2)(J) & 1334.

### **Discussion**

The U.S. Trustee filed his complaint on March 3, 2016, and served the complaint and summons on the Debtor on March 7, 2016. The Debtor has not filed an answer. Consequently, the Clerk entered default on May 6, 2016. The U.S. Trustee filed the instant motion for default judgment on June 6, 2016.

#### A. Default Judgment Standard

“Entry of default judgment is only warranted when there is ‘a sufficient basis in the pleadings for the judgment entered.’” *Surtain v. Hamlin Terrace Foundation*, 789 F.3d 1239, 1245 (11th Cir. 2015) (quoting *Nishimatsu Constr. Co. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)). The “sufficient basis” standard is similar to that employed when evaluating the sufficiency of a complaint against a motion to dismiss under Rule 12(b)(6), that is, “whether the complaint contain[s] sufficient factual matter...to state a claim to relief that is plausible on its face.” *Id.* (first alteration in original) (internal quotation marks omitted) (quoting *Ashcroft v.*

*Iqbal*, 556 U.S. 662, 678 (2009)); *see also* Fed. R. Civ. P. 12(b)(6); Fed. R. Bankr. P. 7012(b). Because the defendant has not responded to the complaint, the court deems the plaintiff's factual allegations admitted. *See Giovanni v. Fabec*, 804 F.3d 1361, 1366 (11th Cir. 2015). However, the defendant is not deemed to have admitted "facts that are not well-pleaded or to admit conclusions of law." *Surtain*, 789 F.3d at 1239 (quoting *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005)). With these guiding principles in mind, the Court turns to the U.S. Trustee's complaint.

#### B. The U.S. Trustee's Allegations

The Debtor filed his voluntary petition under Chapter 7 on October 25, 2013. Griffin E. Howell, III (hereinafter the "Trustee") was appointed to serve as trustee for the Debtor's bankruptcy estate.

The meeting of creditors prescribed by § 341 of the Bankruptcy Code<sup>1</sup> was held on November 22, 2013. At the meeting, the Trustee inquired about the Debtor's 2013 tax refund. The Trustee told the Debtor that he intended to assert an interest in that refund. He told the Debtor not to spend it without first talking to his attorney.

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<sup>1</sup> 11 U.S.C. § 101 *et seq.*

On February 4, 2014, the Debtor received his discharge, but the case remained open as the Trustee continued to investigate the potential recovery of assets. On August 14, 2014, the Trustee filed a Motion to Compel Debtor to Perform Section 521 Duties.<sup>2</sup> The Trustee asserted that he repeatedly had sent requests for the Debtor's 2013 state and federal tax returns, but had not received them. The Trustee requested that the Court order the Debtor to provide the tax returns.

On October 2, 2014, the Court granted the Trustee's motion, ordering the Debtor to provide the tax returns by November 1, 2014. The Debtor did not comply with this Order, prompting the Trustee to file a Motion for Contempt for Failure to Obey Court's Order. The Court granted that motion on June 23, 2015, finding that the Debtor had willfully and contemptuously violated the Court's order, and directed the Debtor to produce the returns within fourteen days. On August 4, 2015, the Trustee filed a status report showing that the Debtor had still not provided his tax returns. As of the filing of the U.S. Trustee's complaint, the Debtor had still failed to do so.

Based on these facts, the U.S. Trustee concludes that the Debtor has

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<sup>2</sup> Section 521(a) requires a debtor to cooperate with the trustee and surrender to the trustee "any recorded information, including books, documents, records, and papers, relating to property of the estate." 11 U.S.C. § 541(a)(3)-(4).

knowingly failed to obey the Court's orders, and therefore requests that the Court revoke the Debtor's discharge pursuant to § 727(d)(3).

### C. Revocation of Discharge

Section 727(e) empowers the U.S. Trustee to seek the revocation of a debtor's discharge. *See* 11 U.S.C. § 727(e). When the U.S. Trustee seeks to revoke a discharge pursuant to § 727(d)(3), the proceeding must be initiated before the later of “(A) one year after the granting of such discharge; or (B) the date the case is closed.” 11 U.S.C. § 727(e)(2). Here, the Debtor's bankruptcy case remains open, so the U.S. Trustee's complaint is timely.

Section 727(d)(3) provides that a court may revoke a discharge if “the debtor committed an act specified in subsection (a)(6) of [§ 727].” 11 U.S.C. § 727(d)(3). Section 727(a)(6), in turn, addresses situations where “the debtor has refused, in the case—(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify.” 11 U.S.C. § 727(a)(6).

Here, the Debtor has violated two lawful orders of the Court. On October 2, 2014, the Court ordered the Debtor to produce his 2013 tax returns, and he failed to so. On June 23, 2015, the Court found the Debtor in contempt of the Court's October 2nd order, and once more ordered the Debtor to produce his 2013 tax

returns. Again, the Debtor failed to do so. Accordingly, the Court finds sufficient facts in the U.S. Trustee's allegations to support the revocation of the Debtor's discharge.

### **Conclusion**

As the allegations in the U.S. Trustee's complaint, taken as admitted due to the Debtor's default, are sufficient to support a claim under § 727(d)(3), it is hereby **ORDERED** that the U.S. Trustee's Motion for Default Judgment is **GRANTED**. The Debtor's discharge received in Bankruptcy Case 13-12692-WHD is revoked. Judgment will be entered in accordance with this Order.

The Clerk is **DIRECTED** to serve this Order on the U.S. Trustee, the Debtor, and the Trustee.

**END OF DOCUMENT**