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UNITED STATES BANKRUPTCY COURT EASTERN  
DISTRICT OF CALIFORNIA

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

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9 In re ) Case No. 11-44878-E-7  
10 VLADIMIR V. SEMCHENKO and ) DCN. UST-1  
11 SNEZHANNA SEMCHENKO, )  
12 Debtor(s). )  
\_\_\_\_\_ )

**This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.**

**MEMORANDUM OPINION AND DECISION**

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17 This Contested Matter ("Motion") commenced by the U.S. Trustee  
18 requests an order requiring David L. Bryant to: (1) disgorge fees  
19 received as a bankruptcy petition preparer, (2) pay fines for his  
20 conduct as a bankruptcy petition preparer, and (3) compensate the  
21 Debtors, Vladimir V. Semchenko and Snezhanna Semchenko  
22 (collectively the "Semchenkos"), for actual and statutory damages  
23 in connection with services provided for the Semchenkos in three  
24 bankruptcy cases. This Motion focuses on the business owned and  
25 operated by David L. Bryant, which provided services to consumers  
26 seeking to retain possession of residential real property when  
27 faced with a pending or completed foreclosure sale, and eviction  
28 from such property. The court finds (1) that David L. Bryant is a

1 bankruptcy petition preparer as defined in 11 U.S.C. § 110(a),  
2 (2) that David L. Bryant has not complied with the requirements of  
3 11 U.S.C. § 110(b) in this case, and (3) based on such non-  
4 compliance, the disgorgement of fees, imposition of fines, and  
5 awarding of statutory damages is proper. The court further  
6 concludes that the U.S. Trustee has not shown that actual damages  
7 were incurred by the Semchenkos which should be awarded pursuant to  
8 11 U.S.C. § 110(i) (1) (A).

9 **JURISDICTION**

10 The rights, obligations, and duties that are the subject of  
11 this Motion arise under the Bankruptcy Code itself, 11 U.S.C.  
12 § 110. Federal court jurisdiction for this Motion exists pursuant  
13 to 28 U.S.C. § 1334(a), (b). The claims being asserted and rights  
14 being determined were created by Congress as part of the Bankruptcy  
15 Code. This is a core proceeding arising under the Bankruptcy Code.  
16 In this core proceeding Motion the bankruptcy judge issues all  
17 orders and the final judgment. See 28 U.S.C. § 157(b) (1), (2), and  
18 the referral of bankruptcy cases and all related matters to the  
19 bankruptcy judges in this District, E.D. Cal. Gen. Order 182, 223.

20 **PROSECUTION OF MOTION AND DISCOVERY IN THIS CONTESTED MATTER**

21 The U.S. Trustee filed on March 29, 2012, this Motion to  
22 disgorge fees, impose fines, and for payment of damages to the  
23 Semchenkos. David L. Bryant had not filed a responsive pleading to  
24 the Motion as of the continued August 16, 2013 fourth scheduled  
25 hearing on the Motion. The hearings had been continued multiple  
26 times pursuant to a series of stipulations between the U.S. Trustee  
27 and David L. Bryant. See, Stipulation to Continue Hearing filed  
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1 April 6, 2012;<sup>1</sup> Second Stipulation to Continue Hearing filed May 4,  
2 2012;<sup>2</sup> and Third Stipulation to Continue Hearing filed July 13,  
3 2013.<sup>3</sup> After being presented with the Third Stipulation to  
4 Continue Hearing, the court issued an order which continued the  
5 hearing as requested, and required David L. Bryant to file a  
6 response to the Motion by August 24, 2013.<sup>4</sup> On September 5, 2013,  
7 David L. Bryant belatedly filed his opposition to the Motion.<sup>5</sup>

8 The court conducted a Status and Scheduling Conference at the  
9 September 6, 2013 fifth scheduled hearing on the Motion. From that  
10 Scheduling Conference the court issued a Pre-Evidentiary Conference  
11 scheduling order (the equivalent of a "pre-trial order" in an  
12 adversary proceeding).<sup>6</sup> With the participation of the parties at  
13 the Scheduling Conference, and taking into account that the Motion  
14 had already been pending for five months and discovery was ongoing,  
15 the court set the close of discovery (including the hearing of  
16 discovery motions) for December 14, 2012, and the Pre-Evidentiary  
17 Hearing Conference for January 9, 2013.<sup>7</sup>

18 Substantial discovery occurred for this Motion. On April 11,  
19 2012 (thirteen days after the Motion was filed) David L. Bryant  
20 filed a motion to conduct 2004 examinations and for the production  
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22 <sup>1</sup> Dckt. 73.

23 <sup>2</sup> Dckt. 89.

24 <sup>3</sup> Dckt. 133.

25 <sup>4</sup> August 10, 2013 Order, Dckt. 154.

26 <sup>5</sup> Dckt. 181.

27 <sup>6</sup> Order, Dckt. 186.

28 <sup>7</sup> *Id.*

1 of documents for Vladimir V. Semchenko (Debtor), Tatyana  
2 Chernyetsky (David L. Bryant former employee), Alena Tsiberman  
3 (David L. Bryant former employee), Julia Young (David L. Bryant  
4 former employee attorney), Stacie Power (David L. Bryant former  
5 employee attorney), and Kyle D. Smith (David L. Bryant former  
6 employee).<sup>8</sup> The motion states that the discovery is necessary in  
7 connection with the U.S. Trustee's motion in this Motion. On  
8 May 2, 2012, David L. Bryant filed a Notice of Withdrawal of the  
9 motion for 2004 examinations.<sup>9</sup>

10 On May 13, 2012, Stacie Power filed a motion to quash a  
11 subpoena for her deposition.<sup>10</sup> The court denied the motion to  
12 quash, but limited the scope of the documents to be produced to  
13 those relating to the Motion and for the time-period on or after  
14 March 1, 2011.<sup>11</sup>

15 On June 25, 2012, David L. Bryant filed a motion to compel the  
16 deposition of Julia Young.<sup>12</sup> On June 29, 2012, David L. Bryant  
17 filed an amended motion to compel the deposition of Julia Young.<sup>13</sup>  
18 The U.S. Trustee filed an opposition to the motion to compel the  
19 deposition of Julia Young.<sup>14</sup> The court granted David L. Bryant's  
20 motion and ordered Julia Young to appear for her deposition on  
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22 <sup>8</sup> Dckt. 77.

23 <sup>9</sup> Dckt. 85.

24 <sup>10</sup> Dckt. 93.

25 <sup>11</sup> Order, Dckt. 108.

26 <sup>12</sup> Dckt. 110.

27 <sup>13</sup> Dckt. 119.

28 <sup>14</sup> Dckt. 138.

1 August 27, 2012.<sup>15</sup> The court vacated the order compelling the  
2 attendance of Julia Young due to David L. Bryant subsequently  
3 advising the court that he was unable to take the August 27, 2012  
4 deposition and requested the court order, without further notice,  
5 hearing, or agreement, that the deposition be continued to another  
6 date.<sup>16</sup>

7 On July 10, 2012, David L. Bryant filed a motion to compel the  
8 "deposition duces tecum" of Kyle Smith.<sup>17</sup> The U.S. Trustee filed  
9 an opposition to the motion to compel the deposition of Kyle  
10 Smith.<sup>18</sup> The court granted David L. Bryant's motion and ordered  
11 Kyle Smith to appear for his deposition on August 28, 2012.<sup>19</sup> The  
12 court vacated the order compelling the attendance of Kyle Smith due  
13 to David L. Bryant subsequently advising the court that he was  
14 unable to take the August 28, 2012 deposition and requested the  
15 court order, without further notice, hearing, or agreement, that  
16 the deposition be continued to another date.<sup>20</sup>

17 On August 17, 2012, David L. Bryant filed an *ex parte* motion  
18 to stay all proceedings in this Motion.<sup>21</sup> The court denied without  
19 prejudice the *ex parte* motion to stay these proceedings.<sup>22</sup>

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21 <sup>15</sup> Order, Dckt. 152.

22 <sup>16</sup> Order Vacating, Dckt. 168.

23 <sup>17</sup> Dckt. 127.

24 <sup>18</sup> Dckt. 138.

25 <sup>19</sup> Order, Dckt. 153.

26 <sup>20</sup> Order Vacating, Dckt. 170.

27 <sup>21</sup> Dckt. 163.

28 <sup>22</sup> Order, Dckt. 172.

1 On October 9, 2012, the U.S. Trustee filed a pleading entitled  
2 "United States Trustee Response to David L. Bryant's Request for  
3 Production of Documents, Electronically Stored Information, and  
4 Tangible Things, For Inspection and Other Purposes From United  
5 States Trustee."<sup>23</sup> On October 15, 2012, the U.S. Trustee filed a  
6 motion for protective order with respect to the ongoing discovery  
7 being conducted by David L. Bryant.<sup>24</sup> David L. Bryant notified the  
8 court by letter<sup>25</sup> that service on him of the motion for protective  
9 order had been delayed, and thereon the court continued the hearing  
10 to November 13, 2012.<sup>26</sup> The Civil Minutes for the November 13, 2012  
11 hearing on the U.S. Trustee's motion for protective order surveys  
12 the discovery previously conducted for this Motion.<sup>27</sup> As stated in  
13 the Civil Minutes, extensive discovery was undertaken by David L.  
14 Bryant for this Motion, beginning in April 2012.<sup>28</sup> The court  
15 granted limited relief pursuant to the motion, and ordered the U.S.  
16 Trustee to respond to specific discovery relating to this Motion.<sup>29</sup>

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18 <sup>23</sup> Dckt. 193.

19 <sup>24</sup> Dckt. 195.

20 <sup>25</sup> Dckt. 205

21 <sup>26</sup> Order, Dckt. 208.

22 <sup>27</sup> Civil Minutes, Dckt. 225.

23 <sup>28</sup> A portion of the Civil Minutes from the November 11, 2012  
24 hearing showing the extent of Mr. Bryant's discovery in this Motion is  
25 attached to the Memorandum Opinion and Decision in Appendix A due to  
26 the size of this excerpt. This is in addition to the 2004  
27 examinations noticed In April 2012 by David L. Bryant. The additional  
28 discovery, which was the subject of the motion for protective order  
was: (1) 272 interrogatories on the U.S. Trustee with a due date of  
October 22, 2012; (2) 50 interrogatories on non-party Debtor Snezhanna  
Semchenko; (3) interrogatories on U.S. Trustee; and (4) 269  
interrogatories on non-party Debtor Vladimir Semchenko.

<sup>29</sup> Order, Dckt. 230.

1 On November 14, 2012, David L. Bryant filed a motion to strike  
2 alleged fact #28 in the U.S. Trustee's Motion.<sup>30</sup> The court denied  
3 the motion to strike without prejudice.<sup>31</sup>

4 **PRESENTATION OF EVIDENCE AT EVIDENTIARY HEARING**

5 The court delayed setting the evidentiary hearing,  
6 notwithstanding the close of discovery on December 14, 2012, due to  
7 medical treatments which David L. Bryant began receiving in  
8 December 2012. This court ultimately issued the Evidentiary  
9 Hearing Order on July 2, 2013, which set the Evidentiary Hearing  
10 for September 23, 2013.<sup>32</sup> Pursuant to the Hearing Order, non-  
11 hostile witness testimony for each party was to be presented by  
12 alternative direct testimony pursuant to Local Bankruptcy Rule  
13 9017-1.<sup>33</sup>

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15 <sup>30</sup> Dckt. 221.

16 <sup>31</sup> Civil Minutes and Order, Dckts. 231, 233.

17 <sup>32</sup> Order, Dckt. 259.

18 <sup>33</sup> The Alternative Direct Testimony procedure for evidentiary  
19 hearings and trials has been utilized by this court for more than 20  
20 years. The Rule provides that,

21 For each witness (excluding hostile or adverse witnesses)  
22 that an attorney calls on behalf of his/her client's case,  
23 there shall be prepared in triplicate a succinct written  
24 declaration, executed under penalty of perjury, of the  
25 direct testimony which that witness would be prepared to  
26 give as though questions were propounded in the usual  
27 fashion. Each statement of fact or opinion shall be  
28 separate, sequentially numbered and shall contain only  
29 matters that are admissible under the Federal Rules of  
30 Evidence (e.g., avoiding redundancies, hearsay, and other  
31 obvious objectionable statements).

Local Bankruptcy Rule 901701(a)(3).

This Rule serves several functions. First, it allows the parties  
to clearly lay out all of the basic foundation testimony establishing  
a witness' personal knowledge, qualifications as an expert, and  
authenticating exhibits. This allows the court to focus trial and

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6 evidentiary hearing time on the substantive testimony, freeing the  
7 parties from the "mind-numbing" (this court's characterization)  
8 authentication of exhibits process when parties cannot so stipulate in  
9 advance.

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Second, the Rule allows each non-hostile witness to calmly and  
carefully consider their testimony and accurately state it for the  
court. Except for experienced expert witnesses, providing testimony  
in open court is an unusual and off-putting experience for most  
people. By allowing for the careful consideration of the testimony  
being placed in writing before it is being filed with the court, the  
witness can carefully measure his or her words for their truthfulness  
and accuracy.

Third, the court requires that the Alternative Direct Testimony  
Statements be presented in the same chronological sequence as  
testimony is presented in court. The plaintiff/movant lodges with the  
court and provides copies of the Alternative Direct Testimony  
Statements to the defendant/respondent a month prior to the trial or  
evidentiary hearing. The defendant/respondent then has two weeks to  
file his or her Alternative Direct Testimony Statements and exhibits.  
Just as with testimony and evidence submitted at trial, the  
defendant/respondent does not have to guess at the facts and issues to  
be addressed, but may do so only as necessary.

At the evidentiary hearing or trial, the witness is called and  
first he or she identifies any corrections which need to be made to  
the Alternative Direct Testimony Statement. Then that witness is  
questioned by the counsel calling the witnesses to provide live  
testimony focusing on the substantive matters set forth in the  
Alternative Direct Testimony Statement. This allows the court to  
assess the credibility of the witness and affords the witness some  
"testimony time" before being turned over for cross-examination. The  
opposing party then proceeds with cross-examination, with re-direct  
and re-cross as appropriate.

This procedure has several additional benefits beyond providing  
for the more efficient use of limited federal court resources. First,  
for the *pro se* party, he or she better understands the testimony and  
case being presented, rather than having it dramatically "sprung" on  
them at the trial. The *pro se* party can then better organize the  
testimony not only for his or her case in chief, but understand what  
testimony will need to be rebutted. Second, it requires the attorneys  
to critically assess what evidence actually exists in support of the  
case, rather than going to trial on a wing and a prayer, believing  
that in the smoke and confusion of the courtroom battlefield the  
appearance of evidence can be manufactured.

1 The U.S. Trustee's Direct Testimony Statement and exhibits  
2 were required to be lodged with the court and served by August 2,  
3 2013. The U.S. Trustee submitted the following Direct Testimony  
4 Statements and Exhibits in support of its case in chief:

5 A. DIRECT TESTIMONY STATEMENTS

- 6 1. Direct Testimony Statement of Vladimir V. Semchenko  
7 (Chapter 7 Debtor)
- 8 2. Direct Testimony Statement of Amy E. Williams
- 9 3. Direct Testimony Statement of Tatyana Chernyetsky
- 10 4. Direct Testimony of Julia M. Young
- 11 5. Direct Testimony of Douglas Whatley

12 B. EXHIBITS (Identified by Exhibit Number)

- 13 9. \$1,000.00 Check from Import Auto Performance to  
14 David L. Bryant dated September 30, 3011.
- 15 10. Receipt dated December 22, 2011, stating, "I, David  
16 Bryant, received \$1,000.00 from Vladimir  
17 Semchenko's son." The signature block for the  
18 receipt has the typed name "David Bryant" and bears  
19 a signature similar to that of David L. Bryant  
20 which appears on pleadings David L. Bryant has  
21 filed in this Motion.
- 22 11. Docket, Chapter 13 Bankruptcy Case (first  
23 bankruptcy case) for Snezhanna Semchenko, E.D. Cal.  
24 11-41623.
- 25 12. Copy of Bankruptcy Petition, Snezhanna Semchenko  
26 bankruptcy, 11-41623.
- 27 13. Verification of Master Mailing List, Snezhanna  
28 Semchenko bankruptcy, 11-41623.
14. Statement of Social Security Number, Snezhanna  
Semchenko bankruptcy, 11-41623.
15. Application to Pay Filing Fees in Installments,  
Snezhanna Semchenko bankruptcy, 11-41623.
16. Docket, Chapter 13 Case for Snezhanna Semchenko,  
E.D. Cal. 11-43492 (second Chapter 13 bankruptcy  
case).
17. Copy of Bankruptcy Petition, Snezhanna Semchenko

1 Second Chapter 13 bankruptcy case, 11-43492.  
2 (Petition does not disclose the filing for the  
3 first Snezhanna Semchenko bankruptcy case).

4 18. Verification of Master Mailing List, Snezhanna  
5 Semchenko second bankruptcy case, 11-43492.

6 19. Statement of Social Security Number, Snezhanna  
7 Semchenko second bankruptcy case, 11-43492.

8 20. Application to Pay Filing Fees in Installments,  
9 Snezhanna Semchenko second bankruptcy case, 11-  
10 41623.

11 21. Docket, Chapter 13 Case for Vladimir V. Semchenko  
12 and Snezhanna Semchenko, E.D. Cal. 11-44878  
13 (converted to current Chapter 13 Case).

14 22. Copy of Bankruptcy Petition, Vladimir V. Semchenko  
15 and Snezhanna Semchenko current third bankruptcy  
16 case, 11-44878. (Petition does not disclose the  
17 filing for the first and second Snezhanna Semchenko  
18 bankruptcy cases).

19 23. Verification of Master Mailing List, Vladimir V.  
20 Semchenko and Snezhanna Semchenko current Third  
21 Bankruptcy Case, 11-44878.

22 24. Statement of Social Security Number, Vladimir V.  
23 Semchenko and Snezhanna Semchenko current third  
24 bankruptcy case, 11-44878.

25 25. Application to Pay Filing Fees in Installments,  
26 Vladimir V. Semchenko and Snezhanna Semchenko  
27 current third bankruptcy case, 11-44878.

28 26. Application to convert Vladimir V. Semchenko and  
Snezhanna Semchenko current third bankruptcy case,  
11-44878, from a Chapter 13 to case to one under  
Chapter 7.

Chapter 7 Statement of Current Income and Means-  
Test Calculation, Schedules B-J, and Statement of  
Financial Affairs; Vladimir V. Semchenko and  
Snezhanna Semchenko current third bankruptcy case,  
11-44878.

28. Amended Schedule F and Amended Verification of  
Master Address List; Vladimir V. Semchenko and  
Snezhanna Semchenko current third bankruptcy case,  
11-44878.

29. Amended Schedules B and C, and Amended Statement of  
Financial Affairs; Vladimir V. Semchenko and  
Snezhanna Semchenko current third bankruptcy case,

1 11-44878.

2 30. U.S. Trustee Motion for Fines, Fee Disgorgement,  
3 and Damages From David L. Bryant, Vladimir V.  
4 Semchenko and Snezhanna Semchenko current third  
5 bankruptcy case, 11-44878.

6 31. David L. Bryant's Response to U.S. Trustee Motion  
7 for Fines, Fee Disgorgement, and Damages From David  
8 L. Bryant, Vladimir V. Semchenko and Snezhanna  
9 Semchenko current third bankruptcy case, 11-44878.

10 32. U.S. Trustee Memorandum of Points and Authorities  
11 in Support of Motion for Fines, Fee Disgorgement,  
12 and Damages From David L. Bryant, Vladimir V.  
13 Semchenko and Snezhanna Semchenko current third  
14 bankruptcy case, 11-44878.

15 33. Exhibits to U.S. Trustee Motion for Fines, Fee  
16 Disgorgement, and Damages From David L. Bryant,  
17 Vladimir V. Semchenko and Snezhanna Semchenko  
18 current third bankruptcy case, 11-44878.

19 34. Exhibits 1-4 in support of David L. Bryant's Notice  
20 of Motion to Compel Deposition Duces Tecum of Kyle  
21 Smith (filed July 10, 2012), Vladimir V. Semchenko  
22 and Snezhanna Semchenko current third bankruptcy  
23 case, 11-44878.

24 35. Chapter 7 Trustee's Final Account and Distribution  
25 Report, Vladimir V. Semchenko and Snezhanna  
26 Semchenko current third bankruptcy case, 11-44878.

27 36. Docket for *U.S. Trustee v. David L. Bryant*  
28 Adversary Proceeding, Bankr. E.D. Cal. No. 12-2573.

37. Complaint filed by U.S. Trustee in *U.S. Trustee v.*  
*David L. Bryant* Adversary Proceeding, Bankr. E.D.  
Cal. No. 12-2573.

38. David L. Bryant's Answer to Complaint filed by U.S.  
Trustee in *U.S. Trustee v. David L. Bryant*  
Adversary Proceeding, Bankr. E.D. Cal. No. 12-2573.

39. Declaration of David L. Bryant in support of David  
L. Bryant's motion for protective order in U.S.  
Trustee *U.S. Trustee v. David L. Bryant* Adversary  
Proceeding, Bankr. E.D. Cal. No. 12-2573.

40. Craig's List Job Listing, which states,

**Foreclosure Defense Attorney**

Date:2011-08-03, 1:50PM

1 Looking for attorney with 0-3 years experience  
2 for position in civil litigation. Practice  
3 will include civil litigation and bankruptcy.  
4 Looking for an eager and quick learner who  
5 would welcome the opportunity to take a lead  
6 role on cases quickly. Ideal candidate would  
7 be an organized take-charge personality with  
8 strong research and writing skills. Please  
9 submit resume and salary requirement.  
10 Competitive salary. Position open  
11 immediately. Resumes without salary  
12 requirements will not be considered.

- Location Gold River
- Principals only. Recruiters, please don't contact this job poster.
- Please, no phone calls about this job!
- Please do not contact this job poster about other services, products or commercial interests.

Original URL:

<http://sacramento.craigslist.org/lgl/2528422017.html>

- 13 41. Receipt dated October 28, 2011, for \$3,000.00 from  
14 Fernando Celario signed by David L. Bryant,  
15 Fernando Celario, and Celia Celario. It states,  
16 "Today, I David Bryant, received \$3,000.00 from  
17 Fernando Celario. The total amount due for  
18 services is \$9,500.00. Future monthly payments are  
19 as follows: [lists \$500.00 a month payments for the  
20 months November 2011 through December 2012]."  
21 Declaration of David L. Bryant in support of David  
22 L. Bryant's motion for protective order in U.S.  
23 Trustee *U.S. Trustee v. David L. Bryant* Adversary  
24 Proceeding, Bankr. E.D. Cal. No. 12-2573.
- 25 42. Receipt dated July 20, 2011, from David L. Bryant  
26 to Norma Madriaga for \$5,000.00. The receipt has  
27 the notation, "Received in Sacramento BK Court  
28 Building." The signature block for the receipt has  
the typed name "David Bryant" and bears a signature  
similar to that of David L. Bryant which appears on  
pleadings David L. Bryant has filed in this Motion.
43. Receipt dated September 2011, from David L. Bryant  
to Norma Madriaga for \$3,000.00. The signature  
block for the receipt has the typed name "David  
Bryant" and bears a signature similar to that of  
David L. Bryant which appears on pleadings David L.  
Bryant has filed in this Motion.
44. Receipt dated September 2011, from David L. Bryant  
to Norma Madriaga for \$2,500.00. The signature  
block for the receipt has the typed name "David

1 Bryant" and bears a signature similar to that of  
2 David L. Bryant which appears on pleadings David L.  
Bryant has filed in this Motion.

3 45. Receipt dated October 2011, from David L. Bryant to  
4 Norma Madriaga for \$2,000.00. The signature block  
5 for the receipt has the typed name "David Bryant"  
6 and bears a signature similar to that of David L.  
Bryant which appears on pleadings David L. Bryant  
has filed in this Motion.

7 46. Docket from California Superior Court Action,  
8 Sacramento County, *David L. Bryant v. Alena*  
9 *Tsiberman*, case no. 34-2013-00135042 ("*Bryant v.*  
*Tsiberman* Action"). David L. Bryant's attorney is  
listed as Paul R. Bartleson and Alena Tsiberman's  
attorney is listed as Julia M. Young.

10 47. Motion by David L. Bryant (in *pro se*) to disqualify  
11 Julia M. Young as attorney of record, in camera  
12 review of declaration of David L. Bryant, and for  
protective order in the *Bryant v. Tsiberman* Action.

13 48. Request for Judicial Notice for Motion by David L.  
14 Bryant (in *pro se*) to disqualify Julia M. Young as  
15 attorney of record, in camera review of declaration  
16 of David L. Bryant, and for protective order in the  
17 *Bryant Tsiberman* Action.

18 49. Verified Cross-Complaint filed by David L. Bryant  
19 (in *pro se*) against Alena Tsiberman in the  
20 *Tsiberman v. Bryant* Action.

21 David L. Bryant's Direct Testimony Statements and Exhibits  
22 were required to be lodged with the court and served by August 16,  
23 2013. David L. Bryant did not lodge with the court or serve any  
24 Direct Testimony Statements or Exhibits, and did not present any in  
25 support of his case in chief. David L. Bryant did present himself  
26 as a rebuttal witness and testified at the Evidentiary Hearing. No  
27 other rebuttal witnesses were presented and David L. Bryant did not  
28 subpoena any other persons to testify at the Evidentiary Hearing.<sup>34</sup>

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<sup>34</sup> At the hearing the U.S. Trustee elected not to call several witnesses for whom Direct Testimony Statements had been filed. That testimony was excluded by the court. Counsel for the U.S. Trustee stated that he elected not to present the additional witnesses due to

1                   **BANKRUPTCY CODE STATUTORY REQUIREMENTS AND REMEDIES**

2           This Motion is based on the obligations and remedies created  
3 by Congress under 11 U.S.C. § 110 - Penalty for persons who  
4 negligently or fraudulently prepare bankruptcy petitions. Congress  
5 has statutorily defined a "bankruptcy petition preparer" in  
6 11 U.S.C. § 110(a) as follows,

7           (a) In this section--

8                   (1) "bankruptcy petition preparer" means a person,  
9 other than an attorney for the debtor or an employee of  
10 such attorney under the direct supervision of such  
11 attorney, who prepares for compensation a document for  
12 filing; and

13                   (2) "document for filing" means a petition or any  
14 other document prepared for filing by a debtor in a  
15 United States bankruptcy court or a United States  
16 district court in connection with a case under this  
17 title.

18 This statutory definition is very broad in scope, excluding only an  
19 attorney for a debtor or an employee of, and directly supervised  
20 by, that attorney for a debtor.

21           The bankruptcy petition preparer must sign and print the  
22 preparer's name and address on the document which was prepared for  
23 a debtor to be filed with a United States bankruptcy court or  
24 United States district court.<sup>35</sup> In addition, the bankruptcy  
25 petition preparer shall provide the debtor a written notice that a

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26 the time scheduled for trial. David L. Bryant had not subpoenaed any  
27 witnesses, but stated that he had wanted to cross-examine the  
28 witnesses which were not called by the U.S. Trustee. In light of all  
of the subpoenas issued during discovery by David L. Bryant and the  
very limited nature of the direct testimony statements, any cross-  
examination would have been very limited. For any substantive  
testimony, if the witnesses had substantive testimony relevant to this  
Motion which David L. Bryant wanted as part of his case in chief, the  
court concluded that he would have subpoenaed them.

<sup>35</sup> 11 U.S.C. § 110(b) (1).

1 bankruptcy petition preparer is not an attorney and may not  
2 practice law or give legal advice. The written notice must be  
3 signed by the debtor and, under penalty of perjury, by the  
4 bankruptcy petition preparer.<sup>36</sup>

5 The bankruptcy petition preparer is also required to provide  
6 an identifying number, after the preparer's signature, which  
7 identifies the individual who prepared the document. This  
8 identifying number is the Social Security account number of each  
9 individual bankruptcy petition preparer, or the officer, principal,  
10 responsible person, or partner if the bankruptcy petition preparer  
11 is not an individual.<sup>37</sup>

12 Congress created specific limitations on the services provided  
13 by, and the conduct of, a bankruptcy petition preparer.

14 A. A bankruptcy petition preparer shall not execute any  
15 document on behalf of a debtor.

16 B. A bankruptcy petition preparer may not offer a potential  
17 bankruptcy debtor any legal advice, including, without  
18 limitation,

19 1. whether-

- 20 a. to file a petition under this title; or  
21 b. commencing a case under chapter 7, 11, 12, or  
22 13 is appropriate;

23 2. whether the debtor's debts will be discharged in a  
24 case under this title;

25 3. whether the debtor will be able to retain the  
26 debtor's home, car, or other property after  
27 commencing a case under this title;

28 4. concerning-

- a. the tax consequences of a case brought under  
this title; or

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<sup>36</sup> 11 U.S.C. § 110(b)(2).

<sup>37</sup> 11 U.S.C. § 110(c).

1           b.    the dischargeability of tax claims;

2           5.    whether the debtor may or should promise to repay  
3           debts to a creditor or enter into a reaffirmation  
          agreement with a creditor to reaffirm a debt;

4           6.    concerning how to characterize the nature of the  
5           debtor's interests in property or the debtor's  
          debts; or

6           7.    concerning bankruptcy procedures and rights.

7 11 U.S.C. § 110(e). (All of the above collectively referred to as  
8 "Prohibited Services" by the court in this Memorandum Opinion and  
9 Decision.) The bankruptcy petition preparer is also prohibited  
10 from using the word "legal" or any similar term in any  
11 advertisements, or advertise under any category that includes the  
12 word "legal" or any similar term.<sup>38</sup>

13           This statute further provides that the Supreme Court by rule  
14 or the Judicial Conference of the United States by guidelines, may  
15 set the maximum allowable fee chargeable by a bankruptcy petition  
16 preparer. A bankruptcy petition preparer is required to notify a  
17 debtor of any such maximum amount before preparing any document for  
18 filing for that debtor or accepting any fee from, or on behalf of,  
19 that debtor.<sup>39</sup> The bankruptcy petition preparer's declaration shall  
20 include a certification that the bankruptcy petition preparer  
21 provided notification of the maximum fee set by rule or guidelines  
22 which may be charged by the bankruptcy petition preparer. In the  
23 Eastern District of California the maximum fee charged by a  
24 bankruptcy petition preparer is \$125.00.<sup>40</sup>

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26           <sup>38</sup> 11 U.S.C. § 110(f).

27           <sup>39</sup> 11 U.S.C. § 110(h)(1).

28           <sup>40</sup> *Guidelines Pertaining to Bankruptcy Petition Preparers in  
Eastern District of California Cases*, dated October 20, 1997, ¶ 2.

1 A bankruptcy petition preparer's disclosure of fees is not  
2 limited to only those fees which the bankruptcy petition preparer  
3 allocates for the preparation of documents to be filed with the  
4 court. A bankruptcy petition preparer must also file a declaration  
5 under penalty of perjury disclosing any fee received from or on  
6 behalf of a debtor within 12 months immediately prior to the filing  
7 of the case, and any unpaid fee charged to the debtor.<sup>41</sup>

8 If a bankruptcy petition preparer charges any fee in excess of  
9 the value of any services rendered by the bankruptcy petition  
10 preparer during the 12-month period immediately preceding the date  
11 of the filing of the petition; or which is in violation of any rule  
12 or guideline, the court "shall" (not "may") disallow and order the  
13 immediate turnover of such fee, in excess of the amount permitted,  
14 to the bankruptcy trustee.<sup>42</sup> The consequences are more severe for  
15 a bankruptcy petition preparer determined by the court to have  
16 engaged in any Prohibited Services. All fees charged by such  
17 bankruptcy petition preparer engaging in Prohibited Services "may"  
18 (not "shall") be forfeited.<sup>43</sup>

19 A bankruptcy petition preparer who violates § 110 or commits  
20 any act that the court finds to be fraudulent, unfair, or deceptive  
21 "shall" (not "may") be ordered by the court to pay to the debtor,

- 22 A. the debtor's actual damages;  
23 B. the greater of-

24  
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<http://www.caeb.uscourts.gov/documents/forms/Guidelines/GL.Prep.pdf>.

26 <sup>41</sup> 11 U.S.C. § 110(h) (2) .

27 <sup>42</sup> 11 U.S.C. § 110(h) (3) (A) .

28 <sup>43</sup> 11 U.S.C. § 110(h) (3) (B) .

1           1.    \$ 2,000; or

2           2.    twice the amount paid by the debtor to the  
3                bankruptcy petition preparer for the preparer's  
              services; and

4           C.    Reasonable attorneys' fees and costs in moving for  
5                damages under 11 U.S.C. § 110.

6 11 U.S.C. § 110(i)(1). If the trustee or creditor moves for  
7 damages on behalf of the debtor under this subsection, the  
8 bankruptcy petition preparer "shall" (not "may") be ordered to pay  
9 the movant the additional amount of \$ 1,000.00, plus reasonable  
10 attorneys' fees and costs.<sup>44</sup>

11           Congress provides in 11 U.S.C. § 110(1)(1) and (2) additional  
12 fines in an amount of not more than \$500.00 which "may" (not  
13 "shall") be imposed for each Prohibited Service at issue in this  
14 Motion. In addition, the amount of such fines "shall" (not "may")  
15 be trebled if the court finds that a bankruptcy petition preparer,

16           A.    advised the debtor to exclude assets or income that  
              should have been included on applicable schedules;

17           B.    advised the debtor to use a false Social Security account  
18                number;

19           C.    failed to inform the debtor that the debtor was filing  
20                for relief under this title; or

21           D.    prepared a document for filing in a manner that failed to  
22                disclose the identity of the bankruptcy petition  
              preparer.

23 11 U.S.C. § 110(1)(1), (2). Fines imposed under § 110(1) shall be  
24 paid to the United States Trustee, who shall deposit an amount  
25 equal to such fines in the United States Trustee Fund.

26           The Ninth Circuit Court of Appeals addressed issues relating  
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28           <sup>44</sup> 11 U.S.C. § 110(i)(2).

1 to bankruptcy petition preparers in *Frankfort Digital Servs. v.*  
2 *Kistler (In re Reynoso)*, 477 F.3d 1117 (9th Cir. 2007). Services  
3 provided by bankruptcy petition preparers are strictly limited to  
4 typing bankruptcy forms.<sup>45</sup> Services or goods which do more than  
5 merely fill in forms with information provided by the debtor exceed  
6 the permitted activities for a bankruptcy petition preparer. In  
7 *Frankfort*, the Court of Appeals affirmed the determination that  
8 software provided by a bankruptcy petition preparer which chose the  
9 exemptions to be used by the debtor was similar to other goods and  
10 services provided by a bankruptcy petition preparer which made  
11 decisions for the debtor (rather than merely filing out documents  
12 with information from the debtor) that violate 11 U.S.C. § 110.  
13 This includes providing software programs to consumers which  
14 “determines” the exemptions that the consumer should elect for his  
15 or her bankruptcy schedules. There is not even a requirement that  
16 the bankruptcy petition preparer meet or interact with the consumer  
17 for the input of the information or use of the software to generate  
18 the documents for filing.<sup>46</sup>

19 **DETERMINATION THAT DAVID L. BRYANT IS A**  
20 **BANKRUPTCY PETITION PREPARER AND THAT HE HAS FAILED**  
21 **TO COMPLY WITH 11 U.S.C. § 110**

22 The U.S. Trustee asserts that David L. Bryant engages in the  
23 business of being a bankruptcy petition preparer, and that he  
24 failed to comply with 11 U.S.C. § 110 in this case. From the  
25 evidence presented, the court finds that David L. Bryant is a  
26 bankruptcy petition preparer and that he failed to comply with

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27 <sup>45</sup> *Id.* at 1125.

28 <sup>46</sup> *Id.* at 1123-24.

1 several of the provisions of 11 U.S.C. § 110 in providing those  
2 services to the Semchenkos.

3 In 2011 and continuing thereafter, David L. Bryant has  
4 operated a business out of his home on Kibbie Lake Way. The garage  
5 and several of the bedrooms were set up to be "offices." This  
6 business included assisting consumers who were facing foreclosure  
7 or eviction from their homes. No testimony was provided as to any  
8 other business activities being conducted at the Kibbie Lake Way  
9 residence/office.

10 Some of the persons employed by David L. Bryant were members  
11 of the Russian community in the Sacramento area, including Alena  
12 Tsiberman and Tatyana Chernyetsky (who are sisters). Testimony was  
13 also presented that David L. Bryant marketed to the local Russian  
14 community, using his Russian employees as translators for the  
15 services he was providing to consumers who had limited ability to  
16 communicate in English.

17 Ms. Chernyetsky's testimony as to how David L. Bryant operated  
18 this business was credible. Consumers, such as the Semchenkos,  
19 hired David L. Bryant to help the consumer stave off foreclosure or  
20 eviction from their home. For the Semchenkos, this service  
21 consisted of preparing documents to file a series of three  
22 bankruptcy cases. No evidence was presented of any other services  
23 being provided by David L. Bryant or his attorney and non-attorney  
24 employees to the Semchenkos.

25 David L. Bryant maintained and utilized the EZ-Filing software  
26 program for generating bankruptcy petitions, schedules, and other  
27 documents to file bankruptcy cases. David L. Bryant directed and  
28 instructed Tatyana Chernyetsky to prepare bankruptcy petitions and

1 supporting pleadings using his software. When a bankruptcy  
2 petition was generated for one of David L. Bryant's clients using  
3 the EZ-Filing software, it would list David L. Bryant as the  
4 "attorney" on the petition. David L. Bryant instructed his  
5 employees to "white-out" (cover up) his name on this page of the  
6 petition, photocopy the white-out page, and then replace the page  
7 listing "David L. Bryant, attorney" printed from the EZ-Filing  
8 software with the copy of the white-out page with that information  
9 covered up. Without regard to whether David L. Bryant was, or was  
10 not, performing services as an attorney, this demonstrates that  
11 David L. Bryant had and used bankruptcy petition and document  
12 preparation software as part of this business with his consumer  
13 clients.

14 As part of this business, David L. Bryant attempted to employ  
15 attorneys to work for David L. Bryant as part of this business  
16 providing services to his consumer clients. These attorneys  
17 included Julia P. Young, Daniel J. Hanecak, Amy E. Williams,  
18 Stacie L. Power, and Kyle Smith. David L. Bryant used a Craig's  
19 List on-line advertisement to obtain new law school graduates to  
20 work in his business. From the testimony provided, David L. Bryant  
21 would pay his staff and employees in cash. No copies of employee  
22 checks or other documentation of these non-attorneys and attorneys  
23 were provided by the U.S. Trustee or David L. Bryant.

24 Amy Williams is one of the attorneys who was employed by  
25 David L. Bryant and appears as representative of the type of  
26 attorney David L. Bryant sought to employ for his business.  
27 Ms. Williams was licensed as an attorney in California in June  
28 2011. In August 2011, she responded to David L. Bryant's Craig's

1 List advertisement. Though David L. Bryant adamantly denies it,  
2 Ms. Williams testifies that David L. Bryant told her that he  
3 graduated from Ohio State University School of Law.

4 Ms. Williams was employed by David L. Bryant for approximately  
5 14 working days. During that time David L. Bryant paid her a  
6 weekly salary in cash. She worked on items for David L. Bryant's  
7 clients as instructed by David L. Bryant. The court finds credible  
8 the testimony of Ms. Williams and Tatyana Chernyetsky, and finds  
9 that David L. Bryant instructed both his non-attorney and attorney  
10 employees which items to work on and what services, nonlegal and  
11 legal (if any), to provide to David L. Bryant's clients. From the  
12 attorneys who are identified as having been employed by David L.  
13 Bryant, it is clear that David L. Bryant hired new, inexperienced  
14 attorneys who had little if any legal, business, or practical  
15 experience in representing clients. The inference made by David L.  
16 Bryant that these various attorneys were in fact making legal  
17 decisions for his clients is not credible. Furthermore, there is  
18 no evidence before this court that any attorney provided legal  
19 advice to or represented the Semchenkos in, or as part of, their  
20 three bankruptcy cases.

21 A common theme running through David L. Bryant's defense is  
22 that his former employees, non-attorneys and attorneys alike, are  
23 allied against him and in league with the U.S. Trustee to persecute  
24 him. However, David L. Bryant has failed to produce one current or  
25 former employee, one current or former lawyer, or one current or  
26 former client to step forward and testify in support of, or  
27 corroborate any of the contentions made by, David L. Bryant. The  
28 court does not find credible David L. Bryant's arguments and

1 testimony, to the extent provided at the Evidentiary Hearing and in  
2 the various David L. Bryant pleadings and declarations in  
3 connection with this Motion, that the case against him has been  
4 fabricated by former employees, clients, and the U.S. Trustee.

5 The court does not find credible David L. Bryant's arguments,  
6 and testimony to the extent provided, that he is not able to  
7 assemble documents and witnesses because his former employees have  
8 stolen his documents. To the extent that David L. Bryant has  
9 argued that fees he was paid by clients were for legal services  
10 provided by lawyers who worked for David L. Bryant (which in and of  
11 itself raises significant legal and ethical issues for David L.  
12 Bryant and the attorneys), David L. Bryant offers no evidence as to  
13 what constituted these "legal services." To the extent that  
14 actions were commenced, the court where such action was filed would  
15 have in its files the documents evidencing the legal work for such  
16 actions. Even easier, David L. Bryant's various clients could  
17 testify to the legal services they received from any of the  
18 attorneys who worked for David L. Bryant. Again, David L. Bryant  
19 offers no evidence or testimony, other than his contention that  
20 significant legal services were provided.

21 As a rebuttal witness, David L. Bryant took the stand and  
22 provided testimony that he has difficulty with his eyesight and  
23 problems reading. While he was able to read documents presented in  
24 court, he testified that after reading for a while his eyesight  
25 "will close up." David L. Bryant also testified that he hired the  
26 attorneys "to supervise his business." Further, David L. Bryant  
27 testified that the way he employed the attorneys may have resulted  
28 in illegal fee splitting, "but that is the attorneys' problem," not

1 David L. Bryant's problem.

2 The court does not find the asserted eyesight problem to be a  
3 credible explanation or excuse for how David L. Bryant organized,  
4 managed, and provided services for his bankruptcy petition preparer  
5 business. It is without doubt that David L. Bryant has and  
6 continues to suffer from various significant medical maladies.  
7 However, for this Motion and other non-bankruptcy proceedings  
8 David L. Bryant has prepared and filed extensive written pleadings.  
9 The cross-complaint David L. Bryant (*in pro se*) prepared in the  
10 *Tsiberman v. Bryant* Action is 25 pages in length and very detailed.  
11 This was filed in the Sacramento Superior Court April 26, 2013.<sup>47</sup>

12 Even more recently, David L. Bryant prepared documents seeking  
13 to have this judge recuse himself from hearing this Motion.  
14 David L. Bryant filed these pleadings in the *U.S. Trustee v.*  
15 *David L. Bryant* Adversary Proceeding on the afternoon of Friday,  
16 September 20, 2013. These consist of a nine-page Affidavit of  
17 David L. Bryant and 293 pages of documents for which judicial  
18 notice is requested.<sup>48</sup> It appears that these extensive pleadings

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19  
20 <sup>47</sup> U.S. Trustee Exhibit 49.

21 <sup>48</sup> Adv. Pro. No. 12-02573 Dckts. 240, 241). The affidavit and  
22 293 pages of documents were filed on the afternoon of Friday,  
23 September 20, 2013, but were not filed in this Motion. These  
24 documents were filed only in the adversary proceeding filed by the  
25 U.S. Trustee naming David L. Bryant as the defendant. However, the  
26 court considered the request for recusal in connection with this  
27 Motion, it being brought to the court's attention at the commencement  
28 of the 9:30 a.m. Monday, September 23, 2013 Evidentiary Hearing.  
Applying the objective standards required by 28 U.S.C. § 455, the  
court concluded that grounds for recusal did not exist for this  
Motion. *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032, (9th  
Cir. 2011); *Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. 2011). In  
addition to there being no objective facts provided, the contentions  
first being raised mere business hours before the Evidentiary Hearing  
was set to start raises further issues for David L. Bryant as to  
whether the request for recusal was made in good faith as opposed to a

1 were quickly prepared for filed on the eve of the Evidentiary  
2 Hearing for this Motion. In this Motion, David L. Bryant has  
3 actively filed other extensive pleadings and documents, and  
4 conducted extensive discovery. David L. Bryant has, and has been  
5 able, to file detailed documents and extensive pleadings when  
6 attempting to advance his interest in connection with proceeding  
7 or seeking to delay the prosecution of this Motion. Based on the  
8 testimony and evidence provided, and his active prosecution of  
9 discovery and pleadings filed in this Motion, David L. Bryant's  
10 eyesight has not been a limitation on his ability to respond to the  
11 Motion or present his case for the Evidentiary Hearing.

12 The court also does not find credible David L. Bryant's  
13 testimony that he hired the attorneys to "supervise his business."  
14 The evidence shows that the attorneys were hired to be supervised  
15 and directed in their activities by David L. Bryant. The attorneys  
16 hired demonstrated no legal, business, or supervisory experience or  
17 knowledge. Further, "turning over supervision" of David L.  
18 Bryant's business to newly minted attorneys is inconsistent with  
19 the hands-on, personal involvement of David L. Bryant demonstrated  
20 in this Motion and the state court litigation presented by the U.S.  
21 Trustee.

22 Vladimir Semchenko, one of the debtors in this bankruptcy  
23 case, provided detailed testimony of his dealings with David L.  
24 Bryant and David L. Bryant's business. He met with David L. Bryant  
25 and Alena Tsiberman (David L. Bryant employee) at David L. Bryant's  
26 Kibbie Lake Way residence/business. Mr. Semchenko provided

27 \_\_\_\_\_  
28 litigation tactic to delay the Evidentiary Hearing. *In re Kensington  
Int'l, Ltd*, 368 F.3d 289 (3rd Cir. 2004).

1 David L. Bryant with papers that the Semchenkos had received from  
2 their lender stating they had to vacate their home. David L.  
3 Bryant reviewed the papers and told Mr. Semchenko that David L.  
4 Bryant could keep the Semchenkos in their house for one and one-  
5 half to two years. The fee that David L. Bryant was to receive for  
6 keeping the Semchenkos in their home for up to two years was  
7 \$9,500.00.<sup>49</sup>

8 To fund the retention of their home, the Semchenkos delivered  
9 \$3,000.00 cash to David L. Bryant as a down-payment. In early  
10 September 2011, Mr. Semchenko was contacted by Alena Tsiberman and  
11 was told that David L. Bryant needed to meet with him.  
12 Mr. Semchenko then had a series of meetings and conversations with  
13 David L. Bryant and his non-lawyer employees at which they told  
14 Mr. Semchenko that Mrs. Semchenko had to file bankruptcy for the  
15 Semchenkos to retain possession of their home. Other than telling  
16 Mr. Semchenko that Mrs. Semchenko would have to take a credit  
17 counseling course, no information about what the filing of  
18 bankruptcy entailed was provided to the Semchenkos.

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20  
21 <sup>49</sup> As many attorneys learn over the years, quite often an  
22 attorney gets the client he or she deserves. The same appears true in  
23 this relationship between David L. Bryant and the Semchenkos. Here,  
24 while Mr. Semchenko's testimony as to his dealings with David L.  
25 Bryant are credible, he is not the "innocent consumer lamb" who was  
26 led to the "bankruptcy slaughter." Mr. and Mrs. Semchenko appear to  
27 have readily signed under penalty of perjury whatever documents  
28 David L. Bryant put in front of them - so long as whatever they signed  
let them stay in their home. On cross-examination David L. Bryant  
probed at the incomplete and inaccurate disclosure of business assets  
(automobile repair tools) and the value of these assets. On the one  
hand, Mr. and Mrs. Semchenko signed under penalty of perjury the  
Schedules which inaccurately described and valued these assets. On  
the other hand, the cross-examination exposed David L. Bryant's  
procedures in preparing bankruptcy documents which allowed, and quite  
possibly promoted, inaccurate statements under penalty of perjury by a  
consumer to advance that consumer's financial game plan.

1 On September 6, 2011, Mr. Semchenko met Alena Tsiberman  
2 (David L. Bryant employee) at the bankruptcy court. September 6,  
3 2011, is the same day that Snezhanna Semchenko filed the bankruptcy  
4 petition to commence the First Chapter 13 Bankruptcy Case, No. 11-  
5 41623. The First Chapter 13 Bankruptcy Case was dismissed on  
6 September 27, 2011, for failure to file the basic bankruptcy  
7 documents required to prosecute a Chapter 13 case. These documents  
8 included the Chapter 13 Plan, Form 22C, Schedules A-J, and  
9 Statement of Financial Affairs.<sup>50</sup> On September 29, 2011 (two days  
10 after dismissal of the First Chapter 13 Bankruptcy Case),  
11 Mr. Semchenko was contacted by either Alena Tsiberman or Tatyana  
12 Chernyetsky, both employees of David L. Bryant, and told that  
13 Mrs. Semchenko needed to file another bankruptcy case or the  
14 Semchenkos might be kicked out of their home the next day. Later  
15 that day, Mr. Semchenko met with another (unidentified) person from  
16 David L. Bryant's office at the IKEA Home Depot parking lot and was  
17 given the papers for Mrs. Semchenko to sign so the Semchenkos could  
18 file a second bankruptcy case. On September 30, 2013, Snezhanna  
19 Semchenko filed the bankruptcy petition she received from David L.  
20 Bryant's employee and commenced the Second Chapter 13 Bankruptcy  
21 Case. On October 18, 2011, the Second Chapter 13 Bankruptcy Case  
22 was dismissed for failure to file the basic pleadings necessary to  
23 prosecute a Chapter 13 bankruptcy case. As with the First  
24 Chapter 13 Case, the missing basic pleadings were the Chapter 13  
25 Plan, Form 22C, Schedules B-J, and the Statement of Financial

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26  
27  
28 <sup>50</sup> Notice of Incomplete Filing, Order Dismissing; 11-41623 Dckts.  
3, 16.

1 Affairs.<sup>51</sup>

2       Shortly before the October 18, 2011 dismissal, Mr. Semchenko  
3 was called by someone from David L. Bryant's office to schedule a  
4 meeting with David L. Bryant. At this meeting David L. Bryant  
5 asked for financial information about the Semchenkos' credit card  
6 debt. He then told Mr. Semchenko that a third bankruptcy case  
7 needed to be filed, this time by both Mr. and Mrs. Semchenko. The  
8 documents were prepared by David L. Bryant or his employees, and  
9 Tanya (David L. Bryant employee) met Mr. Semchenko at the Panera  
10 Bread parking lot to deliver the bankruptcy documents.

11       The petition to commence the Third Chapter 13 Bankruptcy Case  
12 was filed by the Semchenkos on October 19, 2011. The Third  
13 Chapter 13 Bankruptcy Case was converted, at the election of the  
14 Semchenkos, to a case under Chapter 7 on November 3, 2011.<sup>52</sup> This  
15 election to convert the case to one under Chapter 7 was done upon  
16 the instruction from Alena Tsiberman or Tanya (David L. Bryant  
17 employees). David L. Bryant met with Mr. Semchenko to review how  
18 to respond at the First Meeting of Creditors. When Schedule C was  
19 prepared, the exemptions being claimed and choice of applicable  
20 California law were provided by David L. Bryant and not chosen by  
21 Mr. or Mrs. Semchenko.

22       Mr. Semchenko testifies that a total of \$5,000.00 was paid by  
23 the Semchenkos to David L. Bryant for the bankruptcy services  
24 provided by David L. Bryant's business.

25       The evidence clearly establishes that David L. Bryant operates  
26

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27 <sup>51</sup> Notice of Incomplete Filing, Order; 11-43492 Dckts. 3, 15.

28 <sup>52</sup> Notice of Conversion, Dckt. 15.

1 a business that meets the definition of a bankruptcy petition  
2 preparer.<sup>53</sup> David L. Bryant, personally, with his EZ-Filing  
3 computer program, and through his employees, prepared documents for  
4 the Semchenkos to file in three different bankruptcy cases. These  
5 documents were not prepared by an attorney, as part of some "legal  
6 representation" by an attorney, or by an employee of an attorney.  
7 David L. Bryant is not an attorney and is not an employee of an  
8 attorney. Merely because David L. Bryant hired attorneys to do  
9 some work for David L. Bryant and for David L. Bryant providing  
10 services to his clients, that does render David L. Bryant's  
11 bankruptcy petition preparer business and services exempt under the  
12 attorney or employee of an attorney exemption found in 11 U.S.C.  
13 § 110(a)(1).

14 The court finds that David L. Bryant, acting through his  
15 business as a bankruptcy petition preparer, prepared and was paid  
16 for preparing the following documents:

- 17 A. Bankruptcy Case No. 11-41623 (First Bankruptcy Case),  
18 Snezhanna Semchenko:
- 19 1. Bankruptcy Petition (Dckt. 1), Exhibit 12.
  - 20 2. Debtor's Statement of Compliance Credit Counseling  
21 Requirement (Dckt. 1), Exhibit 12.
  - 22 3. Verification of Master Address List (Dckt. 4),  
23 Exhibit 13.
  - 24 4. Statement of Social Security Number (Dckt. 5),  
25 Exhibit 14.
  - 26 5. Application to Pay Filing Fee in Installments  
27 (Dckt. 6), Exhibit 15.
- 28 B. Bankruptcy Case No. 11-43492 (Second Bankruptcy Case),  
Snezhanna Semchenko:

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<sup>53</sup> 11 U.S.C. § 110(a)(1), (2).

1. Bankruptcy Petition (Dckt. 1), Exhibit 17.
  2. Debtor's Statement of Compliance Credit Counseling Requirement (Dckt. 1), Exhibit 17.
  3. Summary of Schedules (Dckt. 1), Exhibit 17.
  4. Statistical Summary of Certain Liabilities and Related Data (Dckt. 1), Exhibit 17.
  5. Schedule A (Dckt. 1), Exhibit 17.
  6. Schedule F (Dckt. 1), Exhibit 17.
  7. Declaration Concerning Debtor's Schedules (Dckt. 1), Exhibit 17.
  8. Verification of Master Address List (Dckt. 4), Exhibit 18.
  9. Statement of Social Security Number (Dckt. 5), Exhibit 19.
  10. Application to Pay Filing Fee in Installments (Dckt. 6), Exhibit 20.
- C. Bankruptcy Case No. 11-44878 (Third Bankruptcy Case), Vladimir V. Semchenko and Snezhanna Semchenko.
1. Bankruptcy Petition (Dckt. 1), Exhibit 22.
  2. Debtors' Statements of Compliance Credit Counseling Requirement (two statements, Dckt. 1), Exhibit 22.
  3. Summary of Schedules (Dckt. 1), Exhibit 22.
  4. Statistical Summary of Certain Liabilities and Related Data (Dckt. 1), Exhibit 22.
  5. Schedule A (Dckt. 1), Exhibit 22.
  6. Schedule F (Dckt. 1), Exhibit 22.
  7. Declaration Concerning Debtor's Schedules (Dckt. 1), Exhibit 22.
  8. Verification of Master Address List (Dckt. 4), Exhibit 23.
  9. Statement of Social Security Number (Dckt. 5), Exhibit 24.
  10. Application to Pay Filing Fee in Installments (Dckt. 6), Exhibit 25.

- 1 11. Motion to Convert Case Under Chapter 13 to Chapter
- 2 7 (Dckt. 15), Exhibit 26.
- 3 12. Chapter 7 Statement of Current Monthly Income and
- 4 Means-Test Calculation (Dckt. 17), Exhibit 27.
- 5 13. Summary of Schedules (Dckt. 17), Exhibit 27.
- 6 14. Statistical Summary of Certain Liabilities and
- 7 Related Data (Dckt. 17), Exhibit 27.
- 8 15. Schedule B (Dckt. 17), Exhibit 27.
- 9 16. Schedule C (Dckt. 17), Exhibit 27.
- 10 17. Schedule D (Dckt. 17), Exhibit 27.
- 11 18. Schedule E (Dckt. 17), Exhibit 27.
- 12 19. Schedule G (Dckt. 17), Exhibit 27.
- 13 20. Schedule I (Dckt. 17), Exhibit 27.
- 14 21. Schedule J (Dckt. 17), Exhibit 27.
- 15 22. Declaration Concerning Debtor's Schedules (Dckt
- 16 17), Exhibit 27.
- 17 23. Statement of Financial Affairs (Dckt. 17), Exhibit
- 18 27.
- 19 24. Chapter 7 Individual Debtor's Statement of
- 20 Intention (Dckt. 17), Exhibit 27.
- 21 25. Amended Schedule F (Dckt. 18), Exhibit 28.
- 22 26. Amended Declaration Concerning Debtor's Schedules
- 23 (Dckt. 18), Exhibit 28.
- 24 27. Amended Schedule B (Dckt. 22), Exhibit 29.
- 25 28. Amended Schedule C (Dckt. 22, Exhibit 29.
- 26 29. Amended Statement of Financial Affairs (Dckt. 22),
- 27 Exhibit 29.
- 28 30. Amended Declaration Concerning Debtor's Schedules
- (Dckt. 22), Exhibit 29.
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1                   **COMPUTATION OF FINES, FORFEITURES, AND DAMAGES**

2                   **Failure to Disclose Identify**  
3                   **of Bankruptcy Petition Preparer**

4                   No disclosure is made in any of the three bankruptcy cases or  
5 for any of the above documents that David L. Bryant (directly or  
6 through his business employees) is providing services as a  
7 bankruptcy petition preparer. The U.S. Trustee requests that the  
8 court impose fines in the amount of \$500.00 for each of the  
9 16 documents prepared by David L. Bryant for the Semchenkos to file  
10 with the bankruptcy court. These fines total \$8,000.00, imposed  
11 pursuant to 11 U.S.C. § 110(b)(1)(1), for failure to comply with  
12 11 U.S.C. § 110(b)(1). The U.S. Trustee's calculation of the  
13 number of documents is intentionally conservative (counting single  
14 docket entries for multiple documents as one "document" rather than  
15 each document filed). The number of actual documents prepared by  
16 David L. Bryant for filing by the Semchenkos with the bankruptcy  
17 court is significantly greater, comprising at least 45 documents.

18                   The court accepts the U.S. Trustee's lower count and orders  
19 \$500.00 in fines for each of the 16 "documents" filed, for an  
20 aggregate fine of \$8,000.00 for the violation of § 110(b)(1).<sup>54</sup>  
21 David L. Bryant established and runs a sophisticated business using  
22 software and various employees to prepare documents as a bankruptcy  
23 petition preparer for clients, including the Semchenkos. Through  
24 the multiple documents prepared for the Semchenkos to file in the  
25 three bankruptcy cases, David L. Bryant failed on multiple

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26  
27  
28                   <sup>54</sup> By the court's calculation of at least 45 documents improperly  
prepared by David L. Bryant, the effective fine is \$177.77 per  
document actually filed.

1 occasions to provide the required disclosures of his services as a  
2 bankruptcy petition preparer. Based on the lack of substantive  
3 response, indifference to his obligations as a bankruptcy petition  
4 preparer, and David L. Bryant's defense of blaming employees and  
5 newly licensed attorneys he hired off of Craig's List, even if  
6 there were only 16 documents, the maximum fine of \$500.00 for each  
7 document is warranted and necessary.

8  
9 **Fine For Failure to Disclose Fees Paid to  
The Bankruptcy Petition Preparer**

10 The U.S. Trustee next requests that the court also impose a  
11 fine of \$500.00 for each of the three bankruptcy cases in which  
12 David L. Bryant received fees to provide services as a bankruptcy  
13 petition preparer and his failure to disclose those fees. David L.  
14 Bryant's failures to file Official Form 19B for each of the three  
15 Semchenko bankruptcy cases constitute violations of 11 U.S.C.  
16 § 110(b)(2)(A).

17 In light of the sophisticated business operation maintained by  
18 David L. Bryant, the imposing of a \$500.00 fine for each of the  
19 three cases is appropriate. David L. Bryant is not an  
20 unsophisticated, simple person who inadvertently tripped over the  
21 law. David L. Bryant is an experienced litigator, as shown by the  
22 extensive discovery conducted and motions filed in this Motion, as  
23 well as filing an extensive cross-complaint and other pleadings  
24 from the *Tsiberman v. Bryant* action presented as exhibits by the  
25 U.S. Trustee. From the evidence presented, the court concludes  
26 that not only did David L. Bryant fail to disclose the fees, but  
27 intentionally failed to provide that information and fulfill his  
28 obligations as a bankruptcy petition preparer. Therefore, the

1 court imposes an additional \$1,500.00 in fines (\$500.00 fine for  
2 each of the three bankruptcy cases) for David L. Bryant's failure  
3 to disclose compensation received as a bankruptcy petition  
4 preparer.

5  
6 **Fine for Failure to Disclose Fees Received in the  
12-Month Period Preceding Commencement of Bankruptcy Cases**

7 The U.S. Trustee requests that the court impose \$1,500.00 in  
8 fines, consisting of \$500.00 for each of the Debtor's three  
9 bankruptcy cases, for David L. Bryant's failure to disclose the  
10 fees received from the Debtors in the 12-month period preceding the  
11 commencement of each of the bankruptcy cases. 11 U.S.C.  
12 § 110(h)(2). This disclosure is different from merely disclosing  
13 that David L. Bryant was the bankruptcy petition preparer or the  
14 fee he received for the services as a Document Petition Preparer.  
15 This requires disclosure of all fees, and provides a check in the  
16 system so that creditors, bankruptcy trustee, and U.S. Trustee are  
17 aware of all of the dealings between the bankruptcy petition  
18 preparer and the Debtors. Then, if appropriate, an inquiry can be  
19 made to determine if the other fees were for *bona fide* services, or  
20 merely disguised "fees" intended to circumvent the cap on fees that  
21 a bankruptcy petition preparer may charge a client. Imposing the  
22 full \$1,500.00 in fines (\$500.00 for each of the three cases) is  
23 warranted for the non-disclosure of fees by David L. Bryant.

24  
25 **Fines for Failure to Disclose Social  
Security Identification Number**

26 The U.S. Trustee requests that the court impose \$8,000.00  
27 (\$500.00 x 16 documents) in additional fines for the failure of  
28 David L. Bryant to disclose his Social Security number on the

1 documents prepared as a bankruptcy petition preparer. Again, the  
2 U.S. Trustee requests this fine only for the 16 docket entries, not  
3 all of the documents prepared by David L. Bryant (personally or  
4 through his employees and software). David L. Bryant established  
5 and runs a sophisticated bankruptcy petition preparer business,  
6 employs newly licensed attorneys and non-attorneys, and actively  
7 hides his participation in the preparation of the documents for  
8 debtors to file with the bankruptcy court. In so engaging in  
9 business, David L. Bryant has committed wholesale, well organized  
10 violations of this provision of 11 U.S.C. § 110(c)(1), (2).

11 Being presented with such violations, the court would be well  
12 warranted in imposing \$8,000.00 in fines (\$500.00 for each of the  
13 16 documents). However, the court first considers that it is  
14 imposing fines of \$500.00 for each of the 16 documents for which  
15 David L. Bryant did not disclose that he was the bankruptcy  
16 petition preparer and the trebling of the fines. Clearly, the  
17 court should address these violations and David L. Bryant should  
18 not be given a "pass" for not disclosing his Social Security number  
19 because he completely hid his activities as a bankruptcy petition  
20 preparer for the court. However, doubling up the \$500.00 per  
21 document sanction does not strike the court as appropriate under  
22 these circumstances. Therefore, the court imposes sanctions of  
23 only \$200.00 per document for each of the 16 documents. This  
24 results in there being fines of \$3,200.00 for the violations of  
25 11 U.S.C. § 110(c)(1) and (2) in the three Semchenko bankruptcy  
26 cases.

27 **Fine for Improperly Providing Legal Advice**

28 The U.S. Trustee requests that the court impose a \$500.00 fine

1 for David L. Bryant, who is not an attorney, providing legal advice  
2 in the form of selecting the exemptions used on Amended Schedule C  
3 filed in the Third Chapter 13 Case. In addition, the testimony  
4 indicates that legal advice may have been given in connection with  
5 telling Mr. Semchenko that his Chapter 13 case should be converted  
6 to one under Chapter 7. The court declines to rule on this issue,  
7 reserving determination of the issue of whether David L. Bryant  
8 has engaged in the unlicensed practice of law for a future day, if  
9 at all, in another Motion or adversary proceeding.

10 The court declines the request to address the issue in this  
11 Motion for several reasons. First, this Motion has been fraught  
12 with discovery disputes and the issues inflated beyond the scope of  
13 whether David L. Bryant acted as an undisclosed bankruptcy petition  
14 preparer. At the start of this Evidentiary Hearing the court made  
15 it clear that the proceedings would relate to the alleged conduct  
16 of David L. Bryant as a bankruptcy petition preparer. This  
17 appeared to resolve David L. Bryant's consternation as to the  
18 matters before the court and his concern that the U.S. Trustee was  
19 advancing a case that David L. Bryant was engaging in the  
20 unlicensed practice of law.

21 Second, the U.S. Trustee is prosecuting an adversary  
22 proceeding, *U.S. Trustee v. David L. Bryant*, in which the U.S.  
23 Trustee is seeking to enjoin David L. Bryant from providing any  
24 services as a bankruptcy petition preparer. The court may well be  
25 addressing the issue of whether David L. Bryant has and is engaging  
26  
27  
28

1 in the unlicensed practice of law in that adversary proceeding.<sup>55</sup>  
2 The court chooses not to address this issue, it being only a minor  
3 monetary and conduct issue (in light of the other allegations) in  
4 this Motion.

5 Therefore, the court makes no determination on the issue of  
6 whether David L. Bryant, who is not licensed to practice law,  
7 provided legal advice to the Debtors in this case. To be clear,

8 NO PARTY MAY REPRESENT TO ANY PERSON OR COURT THAT THE  
9 COURT DETERMINED FOR THIS MOTION THAT DAVID L. BRYANT DID  
OR DID NOT ENGAGE IN THE UNLICENSED PRACTICE OF LAW.

10 **Statutory Trebling of the § 110 Fines**

11 The U.S. Trustee requests that the court treble the fines  
12 imposed by the court, as provided by 11 U.S.C. § 110(1)(2)(D).  
13 This statute provides that the court "shall" (not "may") triple the  
14 fines issued for violation 11 U.S.C. § 110(b), (c), (d), (e), (f),  
15 (g), or (h), if a bankruptcy petition preparer,

16 (A) advised the debtor to exclude assets or income that  
17 should have been included on applicable schedules;

18 (B) advised the debtor to use a false Social Security  
19 account number;

---

20 <sup>55</sup> In that complaint, the U.S. Trustee alleges,

21 (1) David L. Bryant having stated that he is not an attorney in  
22 California (but intimating that he is an attorney in another  
state),

23 (2) David L. Bryant having claimed to be an attorney,

24 (3) David L. Bryant identified on several websites as "David  
25 Leigh Bryant Esq.,"

26 (4) David L. Bryant's caller ID for his number ending in -1228  
showing as "law office," and

27 (5) David L. Bryant advertising his business as "My Home Law at  
28 www.myhomelaw.com."

1 (C) failed to inform the debtor that the debtor was  
2 filing for relief under this title; or

3 (D) prepared a document for filing in a manner that  
4 failed to disclose the identity of the bankruptcy  
petition preparer.

5 11 U.S.C. § 110(1)(2)(D)

6 It is the fourth ground which is applicable to the conduct of  
7 David L. Bryant as an undisclosed bankruptcy petition preparer for  
8 trebling the fines. It has been demonstrated that David L. Bryant  
9 has prepared (either personally, with his computer software, or  
10 through his employees) documents for filing with the bankruptcy  
11 court which failed to disclose the identity of David L. Bryant as  
12 a bankruptcy petition preparer for the Semchenkos. While trebling  
13 of the fines is mandatory, even if it was discretionary the court  
14 finds that the conduct of David L. Bryant warrants the trebling of  
15 the fines. As the testimony showed, David L. Bryant had his  
16 employees alter the Petition to "white out" his name from appearing  
17 on the Petition. It has been demonstrated that David L. Bryant  
18 intentionally and actively hid his participation in the preparation  
19 of the documents from the court, trustees, creditors, and U.S.  
20 Trustee.

21 The fines imposed by the court total \$14,200.00. These fines  
22 are trebled pursuant to 11 U.S.C. § 110(1)(2)(D) to \$42,600.00.

23 **Statutory Forfeiture of Fees**

24 Congress has further provided that a bankruptcy petition  
25 preparer who fails to comply with the provisions of 11 U.S.C.  
26 § 110(b), (c), (d), (e), (f), or (g), or (h) may be ordered to  
27 forfeit all fees in any cases for which the failures occurred.  
28 Here, David L. Bryant has received \$5,000.00 in fees, and failed to

1 comply with the provisions of 11 U.S.C. § 110(b), (c), and (h).  
2 The court is permitted, but not required, to order the forfeiture  
3 of fees.

4 The Chapter 7 Trustee in this case has filed his final report,  
5 having distributed \$18,901.26 on claims of \$24,576.00 filed in this  
6 case (73% dividend). Whether the Trustee will pursue the forfeited  
7 fees is an open question. The costs of such recovering the fees  
8 may exhaust the value to the estate. Further, the Trustee would be  
9 competing with the Semchenkos and the U.S. Trustee in their  
10 respective efforts to enforce this court's order and recover the  
11 statutory damages and fines. If the case is closed, then the  
12 \$5,000.00 fee forfeiture could be abandoned to the Debtors, to add  
13 to their \$10,000.00 statutory damages award.

14 It is clear to the court that David L. Bryant established his  
15 business as a bankruptcy petition preparer, camouflaged it, and  
16 then failed to make the required statutory disclosures to hide his  
17 activities from the bankruptcy trustees, U.S. Trustee, creditors,  
18 and the court. For the fees received, David L. Bryant filed two  
19 skeletal Chapter 13 petitions which were quickly dismissed. The  
20 third Chapter 13 case was filed, and then quickly converted to one  
21 under Chapter 7.

22 Notwithstanding the questionable ethics of the Semchenkos in  
23 providing information to David L. Bryant and his employees to be  
24 used in completing the Schedules and then in making inaccurate  
25 statements under penalty of perjury to the Chapter 13 Trustee,  
26 creditors, U.S. Trustee, and the court, this court in good  
27 conscious cannot allow David L. Bryant to retain the \$5,000.00 in  
28 fees he received from the Debtors. If the Chapter 7 Trustee

1 determines that collection of the \$5,000.00 from David L. Bryant is  
2 not in the best interests of the estate, that is his decision, not  
3 the court's. He may decide to sell the rights to the Debtors or a  
4 third-party debt buyer. He may decide to use a contingent fee  
5 collection service (such as a collection agency or collection  
6 attorney) to recover some portion of the fees for creditors.

7 Pursuant to 11 U.S.C. § 110(h) (3) (B) (A) (I); as separate and  
8 independent grounds, the court orders that David L. Bryant forfeits  
9 the \$5,000.00 in fees that he received from the Semchenkos for  
10 preparing documents as a bankruptcy petition preparer and that  
11 David L. Bryant pay \$5,000.00 to Douglas M. Whatley, the Chapter 7  
12 Trustee, forthwith. The Trustee, or his successor, may enforce the  
13 \$5,000.00 forfeiture of fees as a monetary award in that amount  
14 against David L. Bryant in the same manner as a judgment.

15 **Computation of Actual or Statutory Damages**

16 In addition to the fines, Congress provides for debtors to  
17 recover their actual damages and statutory damages when a  
18 bankruptcy petition preparer fails to comply with the requirements  
19 of 11 U.S.C. § 110. The U.S. Trustee asserts that the Semchenkos  
20 have suffered actual damages in the amount of \$24,576.00. This is  
21 what the Chapter 7 Trustee obtained from liquidating the non-exempt  
22 property of the estate, which includes the inaccurately described  
23 and valued tools, a tax refund not disclosed on Schedule B, and  
24 inaccurately disclosed vehicles. The court finds that the non-  
25 exempt values of these bankruptcy estate assets do not represent  
26 "actual damages" caused by the conduct of David L. Bryant as the  
27 bankruptcy petition preparer.

28 First, in this case the Chapter Trustee recovered only the

1 non-exempt equity to which the estate was entitled. In the latest  
2 Amended Schedule C<sup>56</sup> the Semchenkos exhausted their wildcard and  
3 tools of the trade exemptions protecting cash, bank accounts,  
4 automotive account, Mercedes Benz, tools, automobile life, large  
5 tool boxes, compressor, and office equipment. This is not a  
6 situation where the Semchenkos, due to the bankruptcy petition  
7 preparer's conduct, failed to use exemptions and lost assets they  
8 should have otherwise retained.

9 Second, on Amended Schedule F filed by the Semchenkos, they  
10 state under penalty of perjury that their general unsecured claims  
11 total \$243,812.00. However, this appears to understate the claims,  
12 as ten (10) are listed at a value of \$1.00. Without commencing the  
13 bankruptcy case, the Semchenkos (who had already lost their house  
14 to foreclosure) were facing creditors with more than a quarter of  
15 a million dollars in claims coming after the Semchenkos' assets.  
16 The bankruptcy appears to have benefitted the Semchenkos (though  
17 not due to the proper conduct of David L. Bryant), allowing them to  
18 protect their exempt assets, preserve their business, and minimize  
19 the "loss" of non-exempt assets to only those which do not impair  
20 the Semchenkos' ability to operate their business in the future.

21 Third, the Semchenkos have been willing to sign whatever  
22 papers are put in front of them under penalty of perjury, so long  
23 as it served their goal to stay in possession of the house,  
24 irrespective of the truth or accuracy of the statement or act. To  
25 the extent that the Semchenkos assert they "lost" non-exempt equity  
26 in assets which were property of the bankruptcy estate, the  
27

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28 <sup>56</sup> Dckt. 43.

1 Semchenkos chose to "pay" those assets in exchange for retaining  
2 possession of the house without paying rent or mortgage payments.

3 On May 24, 2012, Bank of America, N.A. ("Bank") filed a motion  
4 for relief from the automatic stay in this case.<sup>57</sup> The Bank sought  
5 relief from the automatic stay so that it could proceed with an  
6 unlawful detainer proceeding in state court to obtain possession of  
7 the house in which the Debtors lived. The address for the real  
8 property in the motion is the same as listed on the petition as the  
9 Debtors' street address. The motion alleges that the non-judicial  
10 foreclosure sale occurred on May 11, 2011. The court's order  
11 granting relief from the stay was filed on July 2, 2013.<sup>58</sup>

12 For purposes of this Motion, the court assumes a monthly rent  
13 of \$1,500.00 for the house.<sup>59</sup> Beginning with the September 6, 2011  
14 filing of the First Chapter 13 Case, the Semchenkos have lived in  
15 a house rent and mortgage free. For better or worse, the  
16 bankruptcy petition preparer services obtained from David L. Bryant  
17 provided the Semchenkos with at least 24 months of free rent. The  
18 value of this free rent is computed to be \$36,000.00 (\$1,500.00 a  
19 month x 24 months). The Semchenkos' three bankruptcy filings,  
20 using the many documents prepared by David L. Bryant and his  
21 employees, resulted in the Semchenkos receiving a substantial  
22 economic benefit, well in excess of any alleged "damages," and  
23 profited from these multiple bankruptcy filings.

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24  
25 <sup>57</sup> Dckt. 98.

26 <sup>58</sup> Dckt. 116.

27 <sup>59</sup> The court uses the \$1,500.00 estimate for demonstrative  
28 purposes only and does not make a determination as to the fair rental  
value of the property. The \$1,500.00 is not an unreasonable monthly  
rental payment for a home in the Sacramento, California, area.

1 The U.S. Trustee has not provided the court with sufficient  
2 evidence to establish that the Semchenkos suffered actual damages  
3 which may be awarded pursuant to 11 U.S.C. § 110(i)(1)(A).

4 Even if there are not actual damages, the court shall (not  
5 "may") award statutory damages which are computed to be the greater  
6 of either (1) \$2,000.00 or (2) twice the amount paid by the Debtors  
7 to David L. Bryant for his services. 11 U.S.C. § 110(i)(1)(B).  
8 The evidence presented to the court is that \$5,000.00 was paid by  
9 or for the Semchenkos to David L. Bryant for his services as the  
10 bankruptcy petition preparer. Though David L. Bryant has argued  
11 that there were other "legal things" going on, he has not provided  
12 the court with sufficient evidence for any amount of the fees to be  
13 allocated to the other "legal things." The evidence is that the  
14 only work being done was preparing the various documents for filing  
15 with the bankruptcy court to delay the Semchenkos having to vacate  
16 their house. The court awards Vladimir V. Semchenko and Snezhanna  
17 Semchenko, jointly, \$10,000.00 in statutory damages pursuant to  
18 11 U.S.C. § 110(i)(1)(B)(ii).

19 **No Other Relief Requested by the U.S. Trustee**

20 In his Motion, the U.S. Trustee only requested relief in the  
21 form of fines, forfeiture of fees, and damages for the Semchenkos.  
22 The U.S. Trustee did not request any other monetary relief to the  
23 extent permissible under 11 U.S.C. § 110. No other relief is  
24 granted by the court.

25 **CONCLUSION**

26 The court finding that David L. Bryant is a bankruptcy  
27 petition preparer; that he provided services as a bankruptcy  
28 petition preparer to Snezhanna Semchenko in bankruptcy cases E.D.

1 Cal. 11-41623 and 11-43492, and to Vladimir V. Semchenko and  
2 Snezhanna Semchenko in bankruptcy case E.D. Cal. 11-44878; and that  
3 David L. Bryant failed to comply with the provisions of 11 U.S.C.  
4 § 110(b), (c) and (h) for services provided as a bankruptcy  
5 petition preparer;

6 A. The court imposes \$42,600.00 in fines which shall be paid  
7 by David L. Bryant to the United States Trustee for  
8 Region 17;

9 B. The court awards statutory damages in the amount of  
10 \$10,000.00 to Vladimir V. Semchenko and Snezhanna  
11 Semchenko, jointly, and against David L. Bryant;

12 C. The court orders the fees in the amount of \$5,000.00 paid  
13 to David L. Bryant are forfeited, and that David L.  
14 Bryant pay the sum of \$5,000.00 to Douglas M. Whatley.

15 This Memorandum Opinion and Decision constitutes the court's  
16 findings of fact and conclusions of law pursuant to Federal Rule of  
17 Civil Procedure 52 and Federal Rules of Bankruptcy Procedure 7052,  
18 9014. The court shall issue a separate order consistent with this  
19 Decision.

20 Dated: October 22, 2013

21  
22 /s/  
23 RONALD H. SARGIS, Judge  
24 United States Bankruptcy Court  
25  
26  
27  
28

1                   **APPENDIX A TO MEMORANDUM OPINION AND DECISION**  
2                   **11-44878, Contested Matter UST-1**

3 **Excerpt of November 13, 2012 Civil Minutes**  
4 **U.S. Trustee Motion for Protective Order**  
5 **In re Semchenko, Case No. 11-44878 Dckt. 225**

6 [Commencing at the bottom of page 6 of the Civil Minutes]

7           The U.S. Trustee has provided as exhibits the various  
8 discovery requests. These include the following by way of  
9 example.

- 10           A.    Depositions taken by David L. Bryant of,
- 11               1.    May 1, 2012 Deposition of Tatyana Chernyetsky.
  - 12               2.    May 1, 2012 Deposition of Alena Tsiberman.
  - 13               3.    July 25, 2012 Deposition of Alena Tsiberman.
  - 14               4.    May 15, 2012 Deposition of Douglas Whatley.
  - 15               5.    May 30, 2012 Deposition of Stacie Lynn Power.
  - 16               6.    July 26, 2012 Deposition of Stacie Power.
  - 17               7.    August 8, 2012 Deposition of Daniel Jacob Hanecak.
- 18           B.    May 18, 2012 Subpoena to U.S. Trustee to produce  
19 documents provided by the U.S. Trustee to,
- 20               1.    Stacie Power.
  - 21               2.    Tatyana Chernyetsky.
  - 22               3.    Kyle Smith.
  - 23               4.    Vladimir V. Semchenko.
  - 24               5.    Julia Young.
  - 25               6.    Kaleena Guillen.
  - 26               7.    Vanessa Guittierez.
  - 27               8.    Gina Marquis.
- 28

- 1 C. July 18, 2012 Subpoena on Liliya Walsh to produce  
2 documents identified as,
- 3 1. All Correspondence, Communications, and Documents  
4 from January 1, 2011 to date of deposition by and  
5 between the following persons,
- 6 a. Andrey Kishchenko.  
7  
8 b. Stacie Powers.  
9  
10 c. U.S. Trustee.  
11  
12 d. U.S. Trustee for the Eastern District of  
13 California.  
14  
15 e. U.S. Trustee for the Northern District of  
16 California.  
17  
18 f. Any employee of either of the above U.S.  
19 Trustee Offices.
- 20 2. All Documents from January 1, 2011 to date of  
21 deposition by and between the parties identified  
22 below,
- 23 D. August 13, 2012 Change of Deposition Notice of Gina  
24 Marquis.
- 25 E. July 3, 2012, Subpoenas to Verizon Cellco Partnerships,  
26 for copies of text messages and emails for the period  
27 January 1, 2011 through July 20, 2012, between:
- 28 1. Kaleena Guillen and 7 persons.  
2. Gina Marquis and 7 persons.  
3. Alena Tsiberman and 7 persons.  
4. Vanessa Guittierez and 7 persons.
- F. From AT&T, Copies of text messages and emails for the  
period January 1, 2011 through July 20, 2012, between:
1. Stacy Powers and 7 persons.  
2. Kyle Smith and 7 persons.  
3. Julia Young and 7 persons.  
4. Tatyana Chernyetsky and 7 persons.

1 G. September 7, 2012, 49 Interrogatories and Document  
2 Production Request From the U.S. Trustee documents,

3 1. Supporting alleged Facts, specifically identified  
4 as Fact #1 through Fact #28. (Which appear to be  
5 a reference to the allegations set forth in  
6 paragraphs 1-28 of *Section II. Facts* set forth in  
7 the U.S. Trustee's Motion, pg. 2:10-28, 3:1-28,  
8 4:1-28, 5:1-28, 6:1-28, 7:1-28, 8:1-6.)

9 2. Documents received from Alena Tsiberman,

10 3. Documents provided to Alena Tsiberman.

11 4. Documents received from Tatyana Chernyetsky,

12 5. Documents provided to Tatyana Chernyetsky,

13 6. Documents received from Selma Kelly,

14 7. Documents provided to Selma Kelly,

15 8. Documents received from Vladimir V. Semchenko,

16 9. Documents provided to Vladimir V. Semchenko,

17 10. Documents received from Snezhanna Semchenko,

18 11. Documents provided to Snezhanna Semchenko,

19 12. Documents received from Stacie Powers,

20 13. Documents provided to Stacie Powers,

21 14. Documents received from Julia Young,

22 15. Documents provided to Julia Young,

23 16. Documents received from Kyle Smith,

24 17. Documents provided to Kyle Smith,

25 18. Documents received from the State Bar of  
26 California,

27 19. Documents provided to the State Bar of California,

28 20. Documents received from Sacramento County District  
Attorney,

Documents provided to the Sacramento County  
District Attorney,

22. Documents received from Sacramento County  
Sheriff's Department,

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2 23. Documents provided to the Sacramento County  
Sheriff's Department.

3 H. September 21, 2012, 272 interrogatories served on the  
4 U.S. Trustee which request items or information such as  
5 the persons or documents which support the specific  
contentions in the Motion are to be specifically  
identified, and how the Debtors have been damaged.

6 I. September 7, 2012, 50 Interrogatories and Requests for  
7 production of documents from Snezhanna Semchenko which,

8 1. Support each of the 28 Facts alleged in the Motion  
by the U.S. Trustee,

9 2. Documents received from Alena Tsiberman,

10 3. Documents provided to Alena Tsiberman.

11 4. Documents received from Tatyana Chernyetsky,

12 5. Documents provided to Tatyana Chernyetsky,

13 6. Documents received from Selma Kelly,

14 7. Documents provided to Selma Kelly,

15 8. Documents received from Vladimir V. Semchenko,

16 9. Documents provided to Vladimir V. Semchenko,

17 10. Documents received from Snezhanna Semchenko,

18 11. Documents provided to Snezhanna Semchenko,

19 12. Documents received from Stacie Powers,

20 13. Documents provided to Stacie Powers,

21 14. Documents received from Julia Young,

22 15. Documents provided to Julia Young,

23 16. Documents received from Kyle Smith,

24 17. Documents provided to Kyle Smith,

25 18. Documents received from the State Bar of  
California,

26 19. Documents provided to the State Bar of California,

27 20. Documents received from Sacramento County District  
28 Attorney,

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2 21. Documents provided to the Sacramento County  
District Attorney,

3 22. Documents received from Sacramento County  
4 Sheriff's Department,

5 23. Documents provided to the Sacramento County  
Sheriff's Department.

6 24.

7 J. October 1, 2012, 40 Contention Interrogatories to the  
U.S. Trustee seeking responses to:

8 1. Whether the U.S. Trustee believes Mr. Bryant has,

9 a. Committed a crime under any laws of the  
10 United States of America. Interrogatory #1.

11 b. Committed an act in violation of a federal  
statute. Interrogatory #9.

12 c. Committed an act in violation of any federal  
13 code. Interrogatory #17.

14 d. Committed an act in violation of any federal  
regulation. Interrogatory #25.

15 e. Committed an act in violation of any Local  
16 Bankruptcy Rule of the Eastern District of  
California. Interrogatory #33.

17 f. All of the intervening interrogatories  
18 request (1) the facts supporting the  
19 contention, (2) identify of documents  
supporting the contention, and (3) identify  
20 of persons who have knowledge of the  
contention.

21 2. Whether the U.S. Trustee believes Mr. Bryant has,

22 a. Committed a crime under any laws of the State  
of California. Interrogatory #5.

23 b. Committed an act in violation of a State  
24 statute. Interrogatory #13.

25 c. Committed an act in violation of any State  
code. Interrogatory #21.

26 d. Committed an act in violation of any State  
27 regulation. Interrogatory #29.

28 e. Committed an act in violation of any Local  
State Court Rules. Interrogatory #37.

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f. All of the intervening interrogatories request (1) the facts supporting the contention, (2) identify of documents supporting the contention, and (3) identify of persons who have knowledge of the contention.

K. October 1, 2012, 269 Factual and Contention Interrogatories to Vladimir V. Semchenko requesting information concerning persons and documents relating to each of the 28 Facts alleged in the U.S. Trustee's Motion.