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5 UNITED STATES BANKRUPTCY COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
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8 In re ) Case No. 13-28174-C-7  
9 ) Docket Control No. UST-2  
10 FRANCES E. BRANCH, )  
11 Debtor. )  
\_\_\_\_\_ )

12 MEMORANDUM OPINION AND DECISION

13 This Contested Matter ("Motion") commenced by the U.S. Trustee  
14 requests an order requiring David L. Bryant ("Bryant") to:  
15 (1) disgorge fees received as a bankruptcy petition preparer,  
16 (2) pay fines for his conduct as a bankruptcy petition preparer,  
17 and (3) grant the Debtor, Frances E. Branch ("Branch"), statutory  
18 damages in connection with services provided to Branch in this  
19 bankruptcy case. This Motion focuses on the business of Bryant  
20 which provided loan modification services to Branch for three loans  
21 secured by real property. It is asserted that these services  
22 included Bryant preparing documents for Branch to file with the  
23 United States Bankruptcy Court.

24 The court finds (1) that Bryant is a bankruptcy petition  
25 preparer as defined in 11 U.S.C. § 110(a), (2) that Bryant has not  
26 complied with the requirements of 11 U.S.C. § 110(b) in this case,  
27 and (3) based on such noncompliance, the disgorgement of fees,  
28 imposition of fines, and awarding of statutory damages is proper.

1 No request for, or evidence of, actual damages suffered by Branch  
2 has been made to the court as part of this Motion.

### 3 **JURISDICTION**

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

### 15 **PRESENTATION OF EVIDENCE AT EVIDENTIARY HEARING**

16 Pursuant to the Order setting this Evidentiary Hearing,<sup>1</sup> non-  
17 hostile witness testimony for each party was presented by  
18 alternative direct testimony pursuant to Local Bankruptcy Rule  
19 9017-1.<sup>2</sup>

20 The U.S. Trustee's Direct Testimony Statement and exhibits  
21 were required to be lodged with the court and served by October 28,  
22 2013. The U.S. Trustee submitted the following Direct Testimony

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23  
24 <sup>1</sup> Order, Dckt. 72.

25 <sup>2</sup> This court addressed Local Bankruptcy Rule 9017-1 and the use  
26 of Alternative Direct Testimony Statements in its Memorandum Opinion  
27 and Decision for the U.S. Trustee's motion to impose fines and  
28 disgorge fees for Bryant's alleged violations of 11 U.S.C. § 110 in  
the *Vladimir and Snezhanna Semchenko* bankruptcy case. Bankr. E.D.  
Cal. 11-44878, DCN: UST-1 FN 33, Dckt. 275. The court incorporates by  
reference Footnote 33 of that Memorandum Opinion and Decision by this  
reference.

1 Statements and Exhibits in support of its case in chief:

2 **DIRECT TESTIMONY STATEMENTS**

- 3 1. Frances E. Branch (Chapter 7 Debtor).  
4 2. Ralph Johnson.

5 **EXHIBITS (Identified by Exhibit Number)**

- 6 3. Payment for services by David L. Bryant Letter  
7 Dated November 5, 2012, Winchester Consulting, LLC  
Letterhead, David L. Bryant, Managing Member.  
8 4. Deposit Slips for David L. Bryant Bank of America  
9 Account \*\*\*\*-6597.  
10 5. Bank of America Deposit Receipt Dated December 28,  
2012, for \$1,500.00 Deposit in Bryant Account \*\*\*\*-  
11 6597.  
12 6. Bank of America Deposit Receipt Dated March 4,  
2013, for \$1,500.00 Deposit in Bryant Account \*\*\*\*-  
13 6597.  
14 7. Carbon of Check From Branch dated February 5, 2013,  
to Bryant for \$1,500.00.  
15 8. Carbon of Check From Branch dated March 27, 2013,  
to Bryant for \$1,500.00.  
16 9. Receipt Dated March 4, 2013, From Winchester  
17 Consulting, LLC for Receipt of \$1,500.00 from  
Branch, signed by David L. Bryant, Managing Member.  
18 10. Not Admitted.  
19 11. Certified Copy of bankruptcy court docket for  
20 Branch bankruptcy case 13-28174.  
21 12. Certified Copy of Petition, Summary of Schedules,  
22 Schedule A, and Statement of Intention filed in  
Branch bankruptcy case 13-28174.  
23 13. Certified Copy of Verification of Master Address  
List filed in Branch bankruptcy case 13-28174.  
24 14. Certified Copy of Application to Pay Filing Fees in  
25 Installments filed in Branch bankruptcy case 13-  
26 28174.  
27 15. Certified Copy of Amendment Cover Sheet and  
Amended Verification of Master Mailing List filed  
28 in Branch bankruptcy case 13-28174.

16. Certified Copy of Amended Summary of Schedules, Amended Statistical Summary, Exhibit D - Debtor's Statement of Compliance, Amended Schedule A, Schedule B, Schedule C, Schedule D, Schedule E, Schedule F, Schedule G, Schedule H, Schedule I, Schedule J, Declaration Concerning Debtor's Schedules, Statement of Financial Affairs, and Amended Statement of Intention filed in Branch bankruptcy case 13-28174.
17. Certified Copy of Chapter 7 Statement of Current Income (Form 22A) filed in Branch bankruptcy case 13-28174.
18. Certified Copy of Amended Chapter 7 Statement of Current Income (Form 22A) filed in Branch bankruptcy case 13-28174.
19. Certified Copy of Notice of Substitution of Counsel filed in Branch bankruptcy case 13-28174.
20. Blank Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer Form (Form B19).
21. Certified Copy of Complaint for Injunctive Relief, Adv. No. 12-02573, Paragraph 11 Admitted.
22. Certified Copy of Answer of Bryant to Complaint in Adv. No. 12-02573, ¶ 11 Admitted, Admitting Paragraph 11 of the Complaint.
23. Deposition Transcript, October 15, 2013 Deposition of Bryant, Pages 1-4 and Page 48 Admitted.
24. Not Admitted.
25. Not Admitted.
26. Certified Copy of Motion For Fines, Fee Disgorgement, and Damages, DCN: UST-2, filed in Branch bankruptcy case 13-28174.
27. Certified Copy of Bryant Response to Motion, DCN: UST-2, filed in Branch bankruptcy case 13-28174.
28. Not Admitted.
29. Exhibits to Motion, DCN: UST-2, Admitted all except pages 3-5 and 13-15.
30. Certified Copy of Notice of Related Cases filed in Branch bankruptcy case 13-28174.
31. Certified Copy of Evidentiary Hearing Order for

1 Motion, DCN: UST-2, filed in Branch bankruptcy case  
2 13-28174.

3 Bryant's Direct Testimony Statements and Exhibits were  
4 required to be lodged with the court and served by November 4,  
5 2013. Bryant did not lodge with the court or serve any Direct  
6 Testimony Statements. Bryant lodged with the court two binders of  
7 unauthenticated exhibits. Of those, only Exhibit 46 was admitted  
8 into evidence. Bryant did not present, as permitted under Local  
9 Bankruptcy Rule 9017-1, any rebuttal witnesses. Bryant extensively  
10 cross-examined and also presented into evidence direct examination  
11 testimony of the U.S. Trustee witnesses as part of Bryant's case in  
12 chief.

13 **BANKRUPTCY CODE STATUTORY REQUIREMENTS AND REMEDIES**

14 This Motion is based on the obligations and remedies created  
15 by Congress under 11 U.S.C. § 110 - Penalty for persons who  
16 negligently or fraudulently prepare bankruptcy petitions. Congress  
17 has statutorily defined a "bankruptcy petition preparer" in  
18 11 U.S.C. § 110(a) as follows,

19 (a) In this section--

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

23 (2) "document for filing" means a petition or any  
24 other document prepared for filing by a debtor in a  
25 United States bankruptcy court or a United States  
district court in connection with a case under this  
title.

26 This statutory definition is very broad in scope, excluding only an  
27 attorney for a debtor or an employee of, and directly supervised  
28 by, the attorney for a debtor.

1 The bankruptcy petition preparer must sign and print the  
2 preparer's name and address on the document which was prepared for  
3 a debtor to be filed with a United States bankruptcy court or  
4 United States district court.<sup>3</sup> In addition, the bankruptcy  
5 petition preparer shall provide the debtor a written notice that a  
6 bankruptcy petition preparer is not an attorney and may not  
7 practice law or give legal advice. The written notice must be  
8 signed by the debtor and, under penalty of perjury, by the  
9 bankruptcy petition preparer.<sup>4</sup>

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

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

19 A. A bankruptcy petition preparer shall not execute any  
20 document on behalf of a debtor.

21 B. A bankruptcy petition preparer may not offer a potential  
22 bankruptcy debtor any legal advice, including, without  
23 limitation,

24 1. whether-

25 a. to file a petition under this title; or

26 b. commencing a case under chapter 7, 11, 12, or

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27 <sup>3</sup> 11 U.S.C. § 110(b)(1).

28 <sup>4</sup> 11 U.S.C. § 110(b)(2).

<sup>5</sup> 11 U.S.C. § 110(c).

13 is appropriate;

2. whether the debtor's debts will be discharged in a case under this title;
3. whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;
4. concerning-
  - a. the tax consequences of a case brought under this title; or
  - b. the dischargeability of tax claims;
5. whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;
6. concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or
7. concerning bankruptcy procedures and rights.

11 U.S.C. § 110(e). (All of the above collectively referred to as "Prohibited Services" in this Memorandum Opinion and Decision.) The bankruptcy petition preparer is also prohibited from using the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term.<sup>6</sup>

This statute further provides that the Supreme Court by rule or the Judicial Conference of the United States by guidelines may set the maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer is required to notify a debtor of any such maximum amount before preparing any document for filing for that debtor or accepting any fee from, or on behalf of, ///

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<sup>6</sup> 11 U.S.C. § 110(f).

1 that debtor.<sup>7</sup> The bankruptcy petition preparer's declaration shall  
2 include a certification that the bankruptcy petition preparer  
3 provided notification of the maximum fee set by rule or guidelines  
4 which may be charged by the bankruptcy petition preparer. In the  
5 Eastern District of California the reasonable maximum fee charged  
6 by a bankruptcy petition preparer is presumptively \$125.00.<sup>8</sup>

7 A bankruptcy petition preparer's disclosure of fees is not  
8 limited to only those fees which the bankruptcy petition preparer  
9 allocates for the preparation of documents to be filed with the  
10 court. A bankruptcy petition preparer also must file a declaration  
11 under penalty of perjury disclosing any fee received from or on  
12 behalf of a debtor within 12 months immediately prior to the filing  
13 of the case, and any unpaid fee charged to the debtor.<sup>9</sup>

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

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23  
24 <sup>7</sup> 11 U.S.C. § 110(h) (1) .

25 <sup>8</sup> *Guidelines Pertaining to Bankruptcy Petition Preparers in*  
26 *Eastern District of California Cases*, dated October 20, 1997, ¶ 2.  
27 <http://www.caeb.uscourts.gov/documents/forms/Guidelines/GL.Prep.pdf>.

28 <sup>9</sup> 11 U.S.C. § 110(h) (2) .

<sup>10</sup> 11 U.S.C. § 110(h) (3) (A) .



1 bankruptcy petition preparer engaging in Prohibited Services "may"  
2 (not "shall") be forfeited.<sup>11</sup>

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

6 A. the debtor's actual damages;

7 B. the greater of-

8 1. \$2,000; or

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

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

13 11 U.S.C. § 110(i)(1). If the trustee or creditor moves for  
14 damages on behalf of the debtor under this subsection, the  
15 bankruptcy petition preparer "shall" (not "may") be ordered to pay  
16 the movant the additional amount of \$1,000.00, plus reasonable  
17 attorneys' fees and costs.<sup>12</sup>

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

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

25 B. advised the debtor to use a false Social Security account  
26 number;

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

28 <sup>12</sup> 11 U.S.C. § 110(i)(2).

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

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

5 11 U.S.C. § 110(1)(1), (2). Fines imposed under § 110(1) shall be  
6 paid to the United States Trustee, who shall deposit an amount  
7 equal to such fines in the United States Trustee Fund.

8 The Ninth Circuit Court of Appeals addressed issues relating  
9 to bankruptcy petition preparers in *Frankfort Digital Servs. v.*  
10 *Kistler (In re Reynoso)*, 477 F.3d 1117 (9th Cir. 2007). Services  
11 provided by bankruptcy petition preparers are strictly limited to  
12 typing bankruptcy forms.<sup>13</sup> Services or goods which do more than  
13 merely fill in forms with information provided by the debtor exceed  
14 the permitted activities for a bankruptcy petition preparer. In  
15 *Frankfort*, the Court of Appeals affirmed the determination that  
16 software provided by a bankruptcy petition preparer which chose the  
17 exemptions to be used by the debtor was similar to other goods and  
18 services provided by a bankruptcy petition preparer which made  
19 decisions for the debtor (rather than merely filing out documents  
20 with information from the debtor) that violate 11 U.S.C. § 110.  
21 This includes providing software programs to consumers which  
22 “determines” the exemptions that the consumer should elect for his  
23 or her bankruptcy schedules. There is not even a requirement that  
24 the bankruptcy petition preparer personally meet or interact with  
25 the consumer for the input of the information or use of the  
26  
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28 <sup>13</sup> *Id.* at 1125.

1 software to generate the documents for filing.<sup>14</sup>

2 **DETERMINATION THAT DAVID L. BRYANT IS A**  
3 **BANKRUPTCY PETITION PREPARER AND THAT HE FAILED**  
4 **TO COMPLY WITH 11 U.S.C. § 110**

5 The U.S. Trustee asserts that Bryant engages in the business  
6 of being a bankruptcy petition preparer, and that he failed to  
7 comply with 11 U.S.C. § 110 in this case. From the evidence  
8 presented, the court finds that Bryant is a bankruptcy petition  
9 preparer and that he failed to comply with several of the  
10 provisions of 11 U.S.C. § 110 in providing those services to  
11 Branch.

12 While finding that Bryant is a bankruptcy petition preparer,  
13 those activities were only part of the services that he sold to  
14 Branch. The evidence presented clearly establishes that Bryant was  
15 engaged to assist Branch in obtaining modifications for three loans  
16 secured by real properties owned by Branch. The fee charged by  
17 Bryant for these services was \$4,000.00 per property. From the  
18 testimony provided by Branch and Ralph Johnson ("Johnson"), and the  
19 evidence presented by the U.S. Trustee, the court finds that  
20 \$12,000.00 in payments were made by Branch to Bryant.

21 The evidence shows that Johnson, assisting Branch as her  
22 financial advisor,<sup>15</sup> provided to Bryant extensive information  
23 concerning the three properties and their values. Further, that

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24 <sup>14</sup> *Id.* at 1123-24.

25 <sup>15</sup> The financial advisor and personal relationship between Branch  
26 and Johnson was not clearly disclosed in the testimony. However,  
27 Johnson did testify that his residence was the same as Branch's  
28 residence. From the testimony provided the court infers that Johnson  
was not an independent, third-party investment advisor, but provided  
that assistance based on the personal relationship between Johnson and  
Branch.

1 Johnson and Bryant had extensive communications concerning Bryant's  
2 activities relating to obtaining the loan modifications for Branch.

3 One of the properties for which Branch sought a loan  
4 modification was her residence. On June 17, 2013, Bryant contacted  
5 Johnson and advised him that the lender had not agreed to a  
6 modification of the loan secured by the residence. Further, that  
7 the lender was proceeding with a non-judicial foreclosure sale and  
8 that Branch needed to file a bankruptcy case to stop the  
9 foreclosure sale.

10 Bryant elicited testimony from Johnson and Branch, and Bryant  
11 argued at the hearing (though he did not testify) that it was known  
12 by Branch and Johnson that the filing of a bankruptcy case might  
13 cause the lender to enter into the loan modifications which Bryant  
14 was working on obtaining for Branch. Bryant asked a series of  
15 questions to elicit responses from the witnesses to confirm that:

16 (1) Bryant attended the foreclosure sale,

17 (2) Bryant stated that he was told by the "crier" at the non-  
18 judicial foreclosure sale that the filing of a bankruptcy case,  
19 even after the non-judicial foreclosure sale was conducted could  
20 lead to the lender rescinding the foreclosure sale and entering  
21 into a loan modification, and

22 (3) that the bankruptcy case was filed by Branch as part of  
23 Bryant's services in attempting to obtain the loan modifications  
24 for Branch.

25 Johnson testified that when Bryant called to advise him that  
26 a bankruptcy case needed to be filed to protect the property and  
27 try and obtain the loan modification it was a "911 emergency call"  
28 requiring immediate action. Johnson contacted Branch and a meeting

1 was hastily arranged for Branch and Johnson to meet one of Bryant's  
2 employees at a Jack in the Box restaurant to be provided with the  
3 documents necessary for Branch to commence her bankruptcy case.  
4 Branch met Bryant's employee at the restaurant, obtained the  
5 documents, and was driven to the bankruptcy court so the bankruptcy  
6 documents prepared by Bryant could be filed with the court.  
7 Branch, using the documents prepared by Bryant, commenced her  
8 bankruptcy case on June 17, 2013 (the Petition, Dckt. 1, bearing  
9 the time stamp of 3:00 p.m.).

10 Subsequently, Branch filed additional documents with the  
11 court, including Schedule C, the exemptions claimed by Branch in  
12 the bankruptcy case. Completing Schedule C requires the selection  
13 of not only which property and the dollar amounts which may be  
14 claimed as exempt, but the further legal determination which of two  
15 statutory exemption schemes available under California law should  
16 be selected by a debtor.<sup>16</sup> Branch obtained the completed Schedule C  
17 filed in this case from Bryant.

18 Branch went to Bryant's office, which he maintains at his  
19 home, to pick up the Schedule C filed with the Bankruptcy Court.  
20 With Branch sitting with Bryant in his office, Bryant printed off  
21 the completed Schedule C for Branch to sign and file with the  
22 court. Branch did not participate in the preparation of Schedule C  
23 (other than having previously provided Bryant with asset and  
24 liability information), nor did Branch select, or participate in  
25 the decision to select, the exemption scheme and the specific  
26 exemptions which were stated on Schedule C. Bryant made the

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27  
28 <sup>16</sup> California Code of Civil Procedure § 703.140(b) or §§ 704.010,  
704.210, 704.720, and 704.930 et seq.

determination of which of the two exemption schemes under California law would be used by Branch and Bryant determined the amount which should be claimed in the specific assets.

Determining whether someone should file bankruptcy is engaging in the practice of law. Determining the proper exemptions to be claimed and amount of exemptions is the providing of legal services - not merely completing forms with information provided by a debtor. *Frankfort Digital Services v. Kistler (In re Reynoso)*, 477 F.3d 1117 (9th Cir. 2007); *In re Gabrielson*, 217 B.R. 819, 827 (Bankr. Ariz. 1998). In advising that Branch needed to or should file bankruptcy, and by preparing and providing the completed Schedule C to Branch, Bryant provided legal services to Branch. Bryant is not, and does not assert to be, a licensed attorney in California (or any other state, district, or territory).

The documents prepared by Bryant, or his employees, for Branch to be filed with the bankruptcy court which are the subject of this Contested Matter are:

1. Voluntary Petition
2. Summary of Schedules
3. Statistical Summary
4. Schedule A
5. Chapter 7 Statement of Intention
6. Verification of Master Address List
7. Application to pay fees in installments
8. Verification of Master Address List
9. Summary of Schedules
10. Statistical Summary
11. Exhibit D - Debtor's Statement of Compliance Credit

1 Counseling Requirement

2 12. Schedules A-J (10 separate "documents")<sup>17</sup>

3 13. Declaration Concerning Schedules

4 14. Statement of Financial Affairs

5 15. Chapter 7 Individual Debtor's Statement of Intention

6 16. Form B22C.

7  
8 **ALLOCATION OF FEES FOR BANKRUPTCY PETITION  
PREPARER SERVICES**

9 Bryant charged \$4,000.00 in fees for each of the three  
10 properties owned by Branch - with a total of \$12,000.00 in fees  
11 paid to Bryant. It is Bryant's argument that all of the fees were  
12 paid only for his services in attempting to obtain the loan  
13 modifications. The preparation of the bankruptcy documents, and  
14 telling Branch that filing for bankruptcy was proper and could  
15 assist in obtaining the loan modifications, are asserted by Bryant  
16 to be mere ancillary acts for which none of the fees paid to Bryant  
17 related. In substance, Bryant argues (not having presented any  
18 testimony) that he did not charge for bankruptcy petition preparer  
19 services, but merely did it due to the "emergency" need to file a  
20 bankruptcy case. Bryant contends that he then subsequently  
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22 <sup>17</sup> The court gives Bryant the "benefit" of counting the Schedules  
23 as one "document," though each schedule could be counted as a separate  
24 document. The U.S. Trustee seeks the full award of \$500.00 per  
25 document for each of the 25 individual documents which Bryant prepared  
26 and gave to Branch for filing with this court. Even if the court were  
27 to compute the fines on the larger number of documents, the deterrent  
28 effect of the award would be limited. The court has already awarded  
\$42,000.00 in fines, \$10,000.00 in statutory damages, and disgorgement  
of \$5,000.00 in fees (for a total of \$57,000.00) to be paid by Bryant  
in the *Semchenko* case. Even with the lower number of documents (or if  
the court ordered less than the full \$500.00 fine for each of the  
25 documents), the fines in this case, after trebling, are \$38,100.00  
- a very substantial amount.

1 attempted to have Branch engage the services of a bankruptcy  
2 attorney to take over her case.

3       These arguments of Bryant are not credible and not supported  
4 by the evidence. Bryant elicited testimony that the filing of  
5 bankruptcy could well be not only an important part of obtaining a  
6 loan modification, but be the action which would cause the lender  
7 to modify the loan. The preparation of the bankruptcy documents  
8 for Branch to file with the court were part of the services for  
9 which Bryant was paid the \$12,000.00 fees by Branch.

10 **California Civil Code § 2944.7 Does Not Require**  
11 **A Finding That The \$12,000.00 Of Fees**  
12 **Are For Services As A Bankruptcy Petition Preparer**

13       The U.S. Trustee asserts that none of the \$12,000.00 of fees  
14 paid to Bryant could relate to the loan modification services  
15 because receiving such payments would violate California law.

16       § 2944.7. Unlawful activities in conjunction with  
17 mortgage loan modification; Punishment; Permissible  
18 activities; Applicability

19       (a) Notwithstanding any other provision of law, it shall  
20 be unlawful for any person who negotiates, attempts to  
21 negotiate, arranges, attempts to arrange, or otherwise  
22 offers to perform a mortgage loan modification or other  
23 form of mortgage loan forbearance for a fee or other  
24 compensation paid by the borrower, to do any of the  
25 following:

26       (1) Claim, demand, charge, collect, or receive any  
27 compensation until after the person has fully performed  
28 each and every service the person contracted to perform  
or represented that he or she would perform....

      (b) A violation of this section by a natural person is a  
public offense punishable by a fine not exceeding ten  
thousand dollars (\$10,000), by imprisonment in the county  
jail for a term not to exceed one year, or by both that  
fine and imprisonment, or if by a business entity, the  
violation is punishable by a fine not exceeding fifty  
thousand dollars (\$50,000). These penalties are  
cumulative to any other remedies or penalties provided by  
law....



1 (d) This section shall apply only to mortgages and deeds  
2 of trust secured by residential real property containing  
four or fewer dwelling units.

3 California Civil Code § 2944.7.

4 The California Legislature also enacted the following  
5 provision concerning the disclosures required of anyone who  
6 provides loan modification services for a fee.

7 § 2944.6. Notice provided to borrower; Translation;  
8 Fine; Applicability

9 (a) Notwithstanding any other provision of law, any  
10 person who negotiates, attempts to negotiate, arranges,  
11 attempts to arrange, or otherwise offers to perform a  
12 mortgage loan modification or other form of mortgage loan  
13 forbearance for a fee or other compensation paid by the  
14 borrower, shall provide the following to the borrower, as  
15 a separate statement, in not less than 14-point bold  
16 type, prior to entering into any fee agreement with the  
17 borrower:

18 It is not necessary to pay a third party to  
19 arrange for a loan modification or other form of  
20 forbearance from your mortgage lender or servicer.  
21 You may call your lender directly to ask for a  
22 change in your loan terms. Nonprofit housing  
23 counseling agencies also offer these and other  
24 forms of borrower assistance free of charge. A list  
25 of nonprofit housing counseling agencies approved  
26 by the United States Department of Housing and  
27 Urban Development (HUD) is available from your  
28 local HUD office or by visiting [www.hud.gov](http://www.hud.gov)....

(c) A violation of this section by a natural person is a  
public offense punishable by a fine not exceeding ten  
thousand dollars (\$10,000), by imprisonment in the county  
jail for a term not to exceed one year, or by both that  
fine and imprisonment, or if by a business entity, the  
violation is punishable by a fine not exceeding fifty  
thousand dollars (\$50,000). These penalties are  
cumulative to any other remedies or penalties provided by  
law....

(e) This section shall apply only to mortgages and deeds  
of trust secured by residential real property containing  
four or fewer dwelling units.

California Civil Code § 2944.6.

While the U.S. Trustee attempts to impute an intention on

1 Bryant's part not to violate California law, such a contention runs  
2 contrary to the evidence in this Contested Matter. The testimony  
3 clearly establishes that Bryant charged and collected \$12,000.00 in  
4 fees for providing his services in attempting to obtain loan  
5 modifications for Branch. These services included preparation of  
6 bankruptcy documents for Branch to file with this court. These  
7 fees were paid by Branch to Bryant before Bryant "fully performed  
8 each and every service [the loan modifications] the person  
9 contracted to perform or represented that he or she [Bryant] would  
10 perform." Cal. Civ. § 2944.7(a). The court finds that Bryant  
11 charged and collected, in advance of Branch obtaining any loan  
12 modifications, \$12,000.00 of fees for his services in representing  
13 Branch in trying to obtain the three loan modifications. No loan  
14 modifications have been obtained by Bryant for Branch.

15 The evidence presented establishes that Branch requested that  
16 Bryant provide her with a written contract for the services  
17 provided. The evidence also establishes that Bryant refused, not  
18 merely failed, to provide Branch with such a contract. There was  
19 no evidence presented that Bryant provided Branch with the notice  
20 required under California Civil Code § 2944.6.

21 By not providing a contract, Bryant creates the present  
22 situation where there is not a clear statement by Bryant as to what  
23 portion of the \$12,000.00 in fees related to the preparation of the  
24 bankruptcy documents he prepared for Branch to file with the court.  
25 Having failed to provide such a contract, the court is left to make  
26 that determination based upon the evidence presented.

27 The court finds that the bankruptcy case was filed as one of  
28 the services provided by Bryant in connection with the loan

1 modification services for the three properties. The court properly  
2 allocates a portion of the \$12,000.00 in fees to the non-bankruptcy  
3 petition preparer services.

4 Bryant contends that Branch and Johnson have come to this  
5 Contested Matter and are before the court to recover a "big payday"  
6 under the statutory damages provisions which provide for a debtor  
7 to recover two-times the fees paid the bankruptcy petition  
8 preparer. The U.S. Trustee asserts that such amount would be  
9 \$24,000.00, premised on all \$12,000.00 of the fees being allocated  
10 to the bankruptcy petition preparer services and nothing allocated  
11 to the significant loan modification services provided by Bryant.  
12 In rejecting the U.S. Trustee's argument that a portion of the fees  
13 could not relate to what would be an illegal act under California  
14 law, this court precludes there being any "big payday" for the  
15 Debtor. Instead, this court gives effect to the statutory  
16 provisions of 11 U.S.C. § 110 and orders the disgorgement of fees  
17 and determination of statutory damages based on only the portion of  
18 the fees which related to the bankruptcy petition preparer  
19 services.

20 In determining the amount of fees for the bankruptcy petition  
21 preparer services provided by Bryant, the court finds the testimony  
22 of Branch and Johnson credible. They testified to the loan  
23 modification and bankruptcy petition preparer services provided by  
24 Bryant, much of which testimony was elicited by Bryant in  
25 conducting hostile witness direct and cross-examination. Further,  
26 the testimony is consistent with the arguments of Bryant in this  
27 Contested Matter that he has provided substantial loan modification  
28 services. While higher than the presumptive \$125.00 amount, this

1 amount is consistent with the substantial bankruptcy petition  
2 preparer services provided by Bryant.

3 Based on the evidence provided, the court properly allocates  
4 \$450.00 of the fees paid to the bankruptcy petition preparer  
5 services. (The court does not determine whether the \$450.00 amount  
6 is proper or could be retained by this bankruptcy petition  
7 preparer, if it had been disclosed.)

8 **COMPUTATION OF FINES, FORFEITURES, AND DAMAGES**

9 **Failure To Disclose Identity**  
10 **Of Bankruptcy Petition Preparer**

11 No disclosure is made in the bankruptcy case or for any of the  
12 above documents that Bryant (directly or through his business  
13 employees) is providing services as a bankruptcy petition preparer.  
14 The U.S. Trustee requests that the court impose fines in the amount  
15 of \$500.00 for each of the documents prepared by Bryant for Branch  
16 to file with the bankruptcy court. The court computes these fines  
17 based on there being 16 documents and imposing the maximum \$500.00  
18 fine for each of those documents. These fines total \$8,000.00, and  
19 are properly imposed pursuant to 11 U.S.C. § 110(b)(1)(1), for  
20 failure to comply with 11 U.S.C. § 110(b)(1).

21 **Fine For Failure To Disclose Fees Paid To**  
22 **The Bankruptcy Petition Preparer**

23 The U.S. Trustee next requests that the court also impose a  
24 fine of \$500.00 for Bryant having received fees and his failure to  
25 disclose those fees. Bryant's failure to file Official Form 19B  
26 for this bankruptcy case filed by Branch constitute violations of  
27 11 U.S.C. § 110(b)(2)(A).

28 Bryant operated, as shown by the evidence, a business for

1 which Bryant charged substantial fees (\$12,000.00) for his  
2 services. Bryant is not an unsophisticated, simple person who  
3 inadvertently tripped over the law. He professed to have  
4 specialized knowledge, connections with other professionals, and an  
5 ability to obtain loan modifications when the consumer had been  
6 unsuccessful. Imposing the \$500.00 fine for failure to disclose the  
7 fees is appropriate and so ordered by the court.

8  
9 **Fine For Failure To Disclose Fees Received In The**  
10 **12-Month Period Preceding Commencement Of Bankruptcy Case**

11 The U.S. Trustee requests that the court impose \$500.00 in  
12 fines, for Bryant's failure to disclose the \$12,000.00 in fees  
13 received from Branch in the 12-month period preceding the  
14 commencement of each of the bankruptcy cases. 11 U.S.C.  
15 § 110(h)(2). This disclosure request is different from merely  
16 disclosing that Bryant was the bankruptcy petition preparer or the  
17 fee he received for the services as a Document Petition Preparer.  
18 This requires disclosure of all fees, and provides a check in the  
19 system so that creditors, bankruptcy trustee, and U.S. Trustee are  
20 aware of all of the dealings between the bankruptcy petition  
21 preparer and the Debtors. Then, if appropriate, an inquiry can be  
22 made to determine if the other fees were for *bona fide* services, or  
23 merely disguised "fees" intended to circumvent the cap on fees that  
24 a bankruptcy petition preparer may charge a client. Imposing the  
25 full \$500.00 fine is warranted for the non-disclosure of fees by  
26 Bryant.

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1 **Fines For Failure To Disclose Social**  
2 **Security Identification Number**

3 The U.S. Trustee requests that the court impose additional  
4 fines for the failure of Bryant to disclose his Social Security  
5 number on the documents prepared as a bankruptcy petition  
6 preparer.<sup>18</sup> Clearly, the court should address these violations and  
7 Bryant should not be given a "pass" for not disclosing his Social  
8 Security number because he completely hid his activities as a  
9 bankruptcy petition preparer for the court. However, doubling up  
10 the \$500.00 per document sanction does not strike the court as  
11 appropriate under these circumstances. Therefore, the court  
12 imposes sanctions of only \$200.00 per document for each of the  
13 16 documents. This results in fines of \$3,200.00 for the  
14 violations of 11 U.S.C. § 110(c)(1) and (2) in the Branch  
15 bankruptcy case.

16 **Fine For Improperly Providing Legal Advice**

17 The U.S. Trustee requests that the court impose a \$500.00 fine  
18 for Bryant, who is not an attorney, providing legal advice in the  
19 form of selecting the exemptions used on Schedule C filed by  
20 Branch.<sup>19</sup> The uncontradicted evidence presented establishes that  
21 Bryant prepared Schedule C for Branch, Bryant made the  
22 determination of what exemption law should be chosen for Branch,  
23 and Bryant delivered the completed Schedule C to Branch for her to  
24

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25 <sup>18</sup> Though the U.S. Trustee requests the full \$500.00 fine for  
26 each of the 25 documents, the court uses the number of 16 documents  
27 times the full \$500.00 fine. If the court were to use the 25 document  
number, then an \$8,000.00 fine would be based on a fine of \$320.00 per  
document.

28 <sup>19</sup> The court notes that Bryant also provided legal advice by  
advising Branch that she should file bankruptcy.

1 sign. Branch did not participate in the determination of what  
2 exemptions law was to be selected, the assets to be claimed as  
3 exempt, or the amount to be claimed as exempt in each asset.

4 A bankruptcy petition preparer may not provide legal services  
5 to a debtor, unless that bankruptcy document preparer is also an  
6 attorney licensed to practice law. 11 U.S.C. § 110(e)(2). Bryant  
7 is not an attorney licensed to practice law. Bryant provided legal  
8 services in violation of § 110(e)(2) and the court imposes a fine  
9 of \$500.00 pursuant to 11 U.S.C. § 110(1)(1).

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

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

25 11 U.S.C. § 110(1)(2)(D).

26 It is the fourth ground which is applicable to the conduct of  
27 Bryant as an undisclosed bankruptcy petition preparer for trebling  
28 the fines. It has been demonstrated that Bryant prepared (either  
personally, with his computer software, or through his employees)  
documents for filing with the bankruptcy court which failed to

1 disclose the identity of Bryant as a bankruptcy petition preparer  
2 for Branch. The fines imposed by the court total \$12,700.00.  
3 These fines are trebled pursuant to 11 U.S.C. § 110(1)(2)(D) to  
4 \$38,100.00.

5 **Statutory Forfeiture Of Fees**

6 Congress has further provided that a bankruptcy petition  
7 preparer who fails to comply with the provisions of 11 U.S.C.  
8 § 110(b), (c), (d), (e), (f), or (g), or (h) may be ordered to  
9 forfeit all fees in any cases for which the failures occurred.  
10 Here, Bryant received \$450.00 in fees for the bankruptcy petition  
11 preparer services to Branch, and failed to comply with the  
12 provisions of 11 U.S.C. § 110(b), (c), and (h). The court is  
13 permitted, but not required, to order the forfeiture of fees. It  
14 is clear to the court that Bryant has a part of his business  
15 providing bankruptcy petition preparer services to Branch. Bryant  
16 hid these services from the court, creditors, Chapter 7 Trustee,  
17 and U.S. Trustee.

18 Pursuant to 11 U.S.C. § 110(h)(3)(A)(i) and (B); as separate  
19 and independent grounds, the court orders that Bryant forfeits the  
20 \$450.00 in fees that he received from Branch for preparing  
21 documents as a bankruptcy petition preparer and that Bryant pay  
22 \$450.00 to Susan K. Smith, the Chapter 7 Trustee, forthwith. The  
23 Trustee, or her successor, including Branch if this award is  
24 abandoned upon the closing of the case, may enforce the \$450.00  
25 forfeiture of fees as a monetary award in that amount against  
26 Bryant in the same manner as a judgment.

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28 ///



1 **Computation Of Actual Or Statutory Damages**

2 In addition to the fines, Congress provides for debtors to  
3 recover their actual damages or statutory damages when a bankruptcy  
4 petition preparer fails to comply with the requirements of  
5 11 U.S.C. § 110. The U.S. Trustee does not assert that Branch has  
6 suffered any actual damages. Even if there are not actual damages,  
7 the court shall (not "may") award statutory damages which are  
8 computed to be the greater of either (1) \$2,000.00 or (2) twice the  
9 amount paid by the Debtor to Bryant for his services. 11 U.S.C.  
10 § 110(i)(1)(B). The evidence presented to the court is that  
11 \$450.00 was paid by Branch to Bryant for his services as a  
12 bankruptcy petition preparer. The court awards Branch the greater  
13 amount of \$2,000.00 in statutory damages pursuant to 11 U.S.C.  
14 § 110(i)(1)(B)(i).

15 **No Other Relief Requested By The U.S. Trustee**

16 In his Motion, the U.S. Trustee only requested relief in the  
17 form of fines, forfeiture of fees, and statutory damages for  
18 Branch. The U.S. Trustee did not request any other monetary relief  
19 to the extent permissible under 11 U.S.C. § 110. No other relief  
20 is granted by the court.

21 **CONCLUSION**

22 The court finding that Bryant is a bankruptcy petition  
23 preparer; that he provided services as a bankruptcy petition  
24 preparer to Branch in bankruptcy case E.D. Cal. 13-28174; and that  
25 Bryant failed to comply with the provisions of 11 U.S.C. § 110(b),  
26 (c), (e), and (h) for services provided as a bankruptcy petition  
27 preparer;

28 A. The court imposes \$38,100.00 in fines (as trebled) which

1 shall be paid by David L. Bryant to the United States  
2 Trustee for Region 17;

3 B. The court awards statutory damages in the amount of  
4 \$2,000.00 to Frances E. Branch and against David L.  
5 Bryant;

6 C. The court orders the fees in the amount of \$450.00 paid  
7 to David L. Bryant are forfeited, and that David L.  
8 Bryant pay the sum of \$450.00 to Susan K. Smith, the  
9 Chapter 7 Trustee, or her successor in interest.

10 This Memorandum Opinion and Decision constitutes the court's  
11 findings of fact and conclusions of law pursuant to Federal Rule of  
12 Civil Procedure 52 and Federal Rules of Bankruptcy Procedure 7052,  
13 9014. The court shall issue a separate order consistent with this  
14 Decision.

15 Dated: January 8, 2014

16  
17 /s/  
18 RONALD H. SARGIS, Judge  
19 United States Bankruptcy Court  
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