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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re: ) MEMORANDUM DECISION  
)  
CHRISTINE KAITANGIAN, Debtor )  
Case No. 96-01692-B7 )  
\_\_\_\_\_)  
)  
DIXIE R. HENRY, Debtor )  
Case No. 96-06354-M7 )  
\_\_\_\_\_)  
)  
CORRIE RUTH BAKER, Debtor )  
Case No. 96-07367-H7 )  
\_\_\_\_\_)  
)  
CAROLYN A. CAMERA, Debtor )  
Case No. 96-09272-A7 )  
\_\_\_\_\_)  
)  
SCOTT T. HANSEN and )  
THERESA M. HANSEN, Debtors )  
Case No. 96-08789-M7 )  
\_\_\_\_\_)  
)  
CHRISTINA M. MCMARTIN, Debtor )  
Case No. 96-08788-A7 )  
\_\_\_\_\_)  
)  
TILLIE SANCHEZ, Debtor )  
Case No. 96-07639-A7 )  
\_\_\_\_\_)

The United States Trustee ("UST") filed a motion for  
imposition of fines and disgorgement of fees for violations of  
11 U.S.C. § 110,<sup>1</sup> and for declaratory relief regarding the

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<sup>1</sup> Unless otherwise indicated, all statutory references herein are to Title 11 of the United States Code ("Bankruptcy Code").

1 unauthorized practice of law against U.S. Paralegal Service  
2 ("USPS"), Ronald V. Filippone ("Filippone"), and Ronald V.  
3 Filippone, II ("Filippone II") (collectively the "Filippones").

4 This proceeding is a contested matter pursuant to Federal  
5 Rule of Bankruptcy Procedure ("FRBP") 9014. The above-referenced  
6 bankruptcy cases were consolidated for an evidentiary hearing  
7 which was held on November 18 & 19, 1997.<sup>2</sup>

8 This Court has jurisdiction to determine this matter  
9 pursuant to 28 U.S.C. §§ 1334 and 157(b)(1) and General Order  
10 No. 312-D of the United States District Court for the Southern  
11 District of California. This is a core proceeding pursuant to  
12 28 U.S.C. § 157(b)(2)(A).

13  
14 FACTS

15  
16 According to the stipulated facts contained in the Joint  
17 Pre-Trial Order entered July 30, 1997, USPS is the fictitious  
18 business name of Filippone and the Filippones are bankruptcy  
19 "petition preparers" as defined under § 110(a)(1).<sup>3</sup> During 1995  
20 through 1997, USPS advertised its services in the North County  
21 Times and in the "Paralegals" section of the Pacific Bell Smart  
22 Yellow Pages ("Yellow Pages").

23 Communications between the UST's office and Filippone began  
24 over three years ago. Assistant UST John Patrick Boyl ("Boyl")  
25 testified that he began reviewing case files to determine which

26 \_\_\_\_\_  
27 <sup>2</sup> The UST was unable to secure the attendance of debtor Dixie R.  
28 Henry. Accordingly, the Court did not consider any violations in that case.

<sup>3</sup> Section 110(a)(1) defines a "bankruptcy petition preparer" as "a  
person, other than an attorney, who prepares for compensation a document for  
filing."

1 petition preparers were in compliance with the newly enacted  
2 § 110 which became effective for cases filed after October 22,  
3 1994. On December 6, 1994, Boyl sent Filippone a letter  
4 ("December 1994 Letter") with a copy of the Congressional Record  
5 of October 4, 1994, which included the entire text of § 110. The  
6 December 1994 Letter stated:

7 Re: Christopher and Brenda Bickerstaff  
8 Bankruptcy Case Number 94-11582-B7

9 Dear Mr. Filippone:

10 A review of documents prepared by your office in the  
11 above-referenced case indicates that those documents were  
12 not prepared in accordance with the provisions of Section  
13 308 of the BANKRUPTCY REFORM ACT OF 1994 and TITLE 11  
14 U.S.C. SECTION 110.

15 You are urged to comply immediately with all  
16 sections of the new law and be advised that this office  
17 is prepared to file the appropriate motions and  
18 complaints to enforce this law, should your firm and  
19 individuals therein continue to ignore the law.

20 Should you have any questions about this  
21 correspondence, please contact the undersigned at (619)  
22 235-4798. Thank you.<sup>4</sup>

23 Although the December 1994 Letter to Filippone did not  
24 identify specific violations of § 110, subsequent testimony and  
25 documentary evidence reveal that in late 1994, Boyl was concerned  
26 about Filippone's practice of overcharging clients for preparing  
27 the bankruptcy petition and schedules and collecting filing fees  
28 from debtors. Apparently, Filippone charged his clients \$200.00  
whereas the UST's office claimed that \$50.00 was a reasonable fee

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26 <sup>4</sup> Filippone testified in his declaration that it was he who  
27 initiated the contact with the UST's office. Specifically, he testified that  
28 on December 4, 1994, he called Boyl's office regarding § 110 and wanted a copy  
of the new regulations. He testified that two days later he received the  
letter from Boyl, dated December 6, 1994. On cross-examination, Boyl  
adamantly denied Filippone's contention that he had initiated the contact with  
Boyl. This Court takes judicial notice that December 4, 1994, was a Sunday.

1 to charge for typing a bankruptcy petition, schedules and  
2 statement of affairs. After receiving the December 1994 Letter,  
3 Filippone stopped reporting the \$200.00 fee for preparing the  
4 petition, schedules and statement of affairs and began reporting  
5 a \$50.00 charge to prepare these same documents and \$150.00 to  
6 file the documents with the bankruptcy court.

7 On April 17, 1995, Boyl and David Ortiz ("Ortiz"), a staff  
8 attorney for the UST's office, met with Filippone at the UST's  
9 office. On April 27, 1995, Boyl sent Filippone a letter ("April  
10 1995 Letter") memorializing the April 17, 1995, meeting and  
11 advising Filippone that his practice of itemizing the \$200.00 fee  
12 to reflect a \$50.00 charge for preparing the petition, schedules  
13 and statement of affairs and \$150.00 to file these documents with  
14 the bankruptcy court, was unacceptable. Boyl further advised  
15 Filippone that, "the bankruptcy courts in this district have held  
16 that \$50.00 is a reasonable fee to charge for typing a petition,  
17 schedules and statement of affairs." Boyl also advised Filippone  
18 that § 110 precluded him from accepting filing fees from debtors  
19 and charging to file the petition, schedules and statement of  
20 affairs. Boyl suggested that Filippone, "confine [his]  
21 bankruptcy practices to those allowed by law and to seek  
22 counseling on the law itself if [he did] not understand how it  
23 affect[ed] [his] practice."

24 Filippone testified that he continued to attempt to resolve  
25 the alleged violations of § 110 with the UST. According to  
26 Filippone, on September 5, 1996, he had a telephone conference  
27 with Ortiz and they agreed on charges which they could both live  
28 with. However, Filippone offered no specifics and, apparently,

1 no agreement was reached since the UST initiated the current  
2 motion on December 30, 1996.

3  
4 DISCUSSION

5  
6 I. THE CONSTITUTIONAL ISSUES.

7 A. RESTRAINT OF TRADE.

8 Filippone contends the provisions of § 110 are an  
9 unconstitutional restraint on trade. The party challenging the  
10 statute has the burden of proving that it is unconstitutional.  
11 In re Rausch, 197 B.R. 109, 117 (Bankr. D. Nev. 1996). The Court  
12 notes that Filippone offers no specifics and cites no authority  
13 to support his contention which makes it impossible for this  
14 Court to address it. To the extent Filippone is claiming that  
15 the provisions of § 110 are unconstitutional in that they deny  
16 him the right to pursue his chosen calling or profession in  
17 violation of the Equal Protection Clause that argument must fail.  
18 See Madarang v. Bermudes, 889 F.2d 251, 253 (9th Cir. 1989)  
19 cert. denied 489 U.S. 814 (1990) (right to pursue a calling is  
20 not a fundamental right for purposes of the Equal Protection  
21 Clause); In re Adams, 214 B.R. 212, 218 (9th Cir. BAP 1997)  
22 (right to pursue calling as petition preparer not a fundamental  
23 right). Accordingly, the Court finds that Filippone has failed  
24 to meet his burden on this issue.

25  
26 B. FIRST AMENDMENT VIOLATIONS.

27 Filippone contends that § 110(f)(1), which prohibits a  
28 bankruptcy petition preparer from using "the word 'legal' or any

1 other similar term in advertisements, or advertising, under any  
2 category that includes the word 'legal' or any similar term" is  
3 an unconstitutional restraint of his First and Fourteenth  
4 Amendment rights. In support of his position, Filippone cites  
5 Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991)<sup>5</sup> and PruneYard  
6 Shopping Center v. Robins, 447 U.S. 74 (1980).<sup>6</sup> Both decisions  
7 are distinguishable from these cases.

8 Section 110(f)(1) involves the regulation of advertising.  
9 Advertising is "commercial speech" for purposes of constitutional  
10 analysis. Commercial speech is defined as expression related to  
11 the economic interests of the speaker and its audience, generally  
12 in the form of a commercial advertisement for the sale of goods  
13 and services. See Bolger v. Youngs Drug Products Corp., 463 U.S.  
14 60, 66-67 (1983); Central Hudson Gas & Elec. Corp. v. Public  
15 Serv. Comm'n of New York, 447 U.S. 557, 561 (1980). The First  
16 Amendment, however, has never been held to protect commercial  
17 speech that is inherently misleading or deceptive. In re  
18 R. M. J., 455 U.S. 191, 203 (1982); Virginia State Bd. of  
19 Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S.  
20 748, 771-72 (1976).

21 The use of the word "paralegal" in Filippone's advertising  
22 creates the misleading impression that the Filippones and the  
23 USPS staff are qualified to give legal advice, when in reality,  
24 they can lawfully provide none. See In re Hobbs, 213 B.R. 207,  
25 215 (Bankr. D. Me. 1997) (term "paralegal" fosters consumer

26 \_\_\_\_\_  
27 <sup>5</sup> Court found nude dancing could be regulated without violating  
First Amendment.

28 <sup>6</sup> The Court found that California Constitution permits individuals  
to exercise free speech and petition rights on privately owned property to  
which public is invited.

1 confusion); In re Calzadilla, 151 B.R. 622, 626 (Bankr. S.D. Fla.  
2 1993) (typing service may not advertise in a misleading fashion  
3 which leads reasonable lay person to believe the typing service  
4 offers the public legal services, legal advice or legal  
5 assistance regarding bankruptcy services). The Court finds that  
6 the tenor of Filippone's advertisement in the North County Times  
7 is that the bankruptcy services offered by USPS are not limited  
8 to simple clerical functions. The advertisement gives the  
9 distinct impression that USPS is able to provide all services,  
10 including legal services, associated with a debtor's bankruptcy.  
11 Specifically, the advertisement states that USPS is the "only  
12 paralegal company in San Diego that is able to handle your  
13 bankruptcy." The advertisement also contains the phrase, "no  
14 lawyers involved save money." The use of the word "paralegal,"  
15 coupled with the representation that USPS is "able to handle your  
16 bankruptcy" creates the impression that USPS personnel can  
17 provide legal advice, but at a lower cost than a lawyer.

18 The declarations of Camera, Hansen, McMartin and Sanchez  
19 all support the UST's contention that the Filippones and USPS  
20 were providing legal services. As more fully set forth infra,  
21 these debtors came to USPS with little or no knowledge of  
22 bankruptcy law and relied upon USPS to provide guidance in all  
23 aspects of their bankruptcy case including assistance in  
24 determining which Chapter to file, assistance in selecting  
25 exemptions and assistance in classifying and reaffirming debt.  
26 Accordingly, the Court concludes that Congress, acting within the  
27 bounds of the First Amendment, may constitutionally restrict  
28 USPS' misleading commercial speech.

1           II.   SELECTIVE PROSECUTION.

2           Filippone alleges that the UST's office has conspired  
3 against and harassed the Filippones and USPS and has selectively  
4 prosecuted them.<sup>7</sup> (Filippone Memorandum of Law 6:19-20 and  
5 Filippone Declaration 3:26-28). In support, Filippone argues  
6 that the UST's office promised to dismiss a similar motion filed  
7 against Raelyn Guyer ("Guyer") in exchange for Guyer's testimony  
8 in this matter.<sup>8</sup> The UST's office evidently told Guyer that if  
9 she testified truthfully in this case, it would dismiss its  
10 motion against her alleging violations of § 110.

11           Filippone has the burden of proving selective prosecution.  
12 U.S. v. Benny, 786 F.2d 1410, 1419 (9th Cir. 1986) (citations  
13 omitted). Filippone must demonstrate (1) that others similarly  
14 situated have not been prosecuted, and (2) that he was selected  
15 for prosecution on the basis of an impermissible ground such as  
16 race, religion or exercise of constitutional rights. Id.  
17 Filippone does not meet his burden. This Court found Guyer's  
18 testimony to be both forthright and credible. Guyer testified  
19 that she did not believe that the UST's case against her hinged  
20 on how she testified in this matter. Guyer also testified that  
21 she closed her office and no longer does paralegal work.  
22 Further, the Court notes that it has had similar motions filed by  
23 the UST's office against petition preparers, paralegals or typing

24  
25 \_\_\_\_\_  
26           <sup>7</sup>       The Court notes that selective prosecution arguments frequently  
27 appear in a criminal context. The Court is doubtful that such an argument  
applies in an injunctive proceeding such as this.

28           <sup>8</sup>       Guyer and Filippone had previously been involved in a contractual  
arrangement whereby Guyer could use the business name of U.S. PARALEGAL  
SERVICES OF ESCONDIDO for one and a half years and would receive assistance  
from Filippone in the operation and startup of her paralegal business.

1 services for violations of § 110 before it.<sup>9</sup> Finally, Filippone  
2 raised no issues regarding his selective prosecution on  
3 impermissible grounds such as race, religion or exercise of  
4 constitutional rights.

5  
6 *III. UNAUTHORIZED PRACTICE OF LAW.*

7 "Section 110(k) provides that the ability of nonlawyers to  
8 practice before bankruptcy courts in a given jurisdiction will  
9 be governed by '[relevant state] law, including rules and laws  
10 that prohibit the unauthorized practice of law,' as well as by §  
11 110 itself." 2 Collier on Bankruptcy ¶ 110.12 (15th ed. 1997).  
12 Cal. Bus. & Prof. Code § 6125 states: "No person shall practice  
13 law in this State unless he is an active member of the State  
14 Bar." Cal. Bus. & Prof. Code § 6126, subdivision (a) provides:  
15 "Any person advertising or holding himself or herself out as  
16 practicing or entitled to practice law or otherwise practicing  
17 law who is not an active member of the State Bar, is guilty of a  
18 misdemeanor." The Cal. Bus. & Prof. Code does not provide a  
19 definition for the term "practicing law."

20 The California Supreme Court has noted that,

21 [A]s the term is generally understood, the  
22 practice of law is the doing and performing  
23 services in a court of justice in any matter  
24 depending therein throughout its various  
25 stages and in conformity with the adopted  
26 rules of procedure. But in a larger sense it  
27 includes legal advice and counsel and the  
28 preparation of legal instruments and  
contracts by which legal rights are secured  
although such matter may or may not be  
depending in a court.

27 . . .

28 \_\_\_\_\_  
<sup>9</sup> The Court will take judicial notice of specific cases submitted by  
the office of the UST if this becomes necessary.

1 In close cases, the courts have determined  
2 that the resolution of legal questions for  
3 another by advice and action is practicing  
4 law "if difficult or doubtful legal questions  
are involved which, to safeguard the public,  
reasonably demand the application of a  
trained legal mind."

5 Baron v. City of Los Angeles, 2 Cal.3d 535, 541-42 (1970).

6 In deciding whether an eviction service was engaged in the  
7 unauthorized practice of law, the appellate court in People v.  
8 Landlords Professional Services, 215 Cal.App.3d 1599, 1608 (4th  
9 Dist. 1989) found:

10 [T]hat such services do not amount to the  
11 practice of law as long as the service  
12 offered by [Landlords Professional Service]  
13 was merely clerical, *i.e.*, the service did  
14 not engage in the practice of law if it made  
15 forms available for the client's use, filled  
16 the form in at the specific direction of the  
17 client and filed and served those forms as  
18 directed by the client. Likewise, merely  
19 giving a client a manual, even a detailed one  
20 containing specific advice, for the  
21 preparation of an unlawful detainer action  
22 and the legal incidence of an eviction would  
23 not be the practice of law if the service did  
24 not personally advise the client with regard  
25 to a specific case.

19 The court further commented:

20 The advertisement used by LPS implies its  
21 eviction services were not limited to  
22 clerical functions. The tenor of the  
23 advertisement was that the service  
24 accomplished evictions. The advertisements'  
25 statement "Call & talk to us" was a general  
invitation for clients to discuss the matter  
of eviction with LPS. Bill Watts' LPS  
business card listed his title as  
"Counselor." In short, LPS cast about itself  
an aura of expertise concerning evictions.

26 Id. at 1608.

27 ///

28 ///

1           The UST contends that the Filippones provided the following  
2 services: (1) giving advice and selecting exemptions for  
3 debtors; (2) giving advice regarding the selection of the  
4 appropriate bankruptcy Chapters; (3) giving advice regarding  
5 reaffirmation of debts; (4) giving advice regarding the timing of  
6 filing bankruptcy; (5) giving advice regarding the classification  
7 of debt; and (6) giving advice regarding the dischargeability of  
8 student loans. For the reasons set forth below, the Court finds  
9 that the various services which the Filippones performed  
10 constitute the unauthorized practice of law.

11  
12           A.   CALIFORNIA EXEMPTION LAW.

13           Baker, Camera, Hansen,<sup>10</sup> McMartin, Kaitangian and Sanchez  
14 testified that they had no prior knowledge of California  
15 exemption law nor did they instruct the Filippones which  
16 California exemption they wished to select.<sup>11</sup> The debtors also  
17 testified that they were not provided with any written  
18 information describing exemptions available under bankruptcy law  
19 in California by anyone at USPS. The debtors testified that  
20 after filling out a questionnaire supplied by USPS, they would  
21 receive a telephone call to return to the USPS office to sign  
22 their bankruptcy pleadings which were to be filed with the  
23  
24  
25

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26           <sup>10</sup>       Although Scott and Theresa Hansen filed a joint petition, only  
27 Theresa Hansen testified in this proceeding. Therefore, all references herein  
28 to Hansen are to Theresa Hansen.

28           <sup>11</sup>       California offers two sets of exemptions. California Code of  
Civil Procedure ("CCP") § 704 and CCP § 703.140. The latter is commonly known  
as the California "federal" exemption and incorporates, for the most part, the  
exemptions offered debtors under § 522(d).

1 bankruptcy court.<sup>12</sup> When the debtors returned to sign the  
2 pleadings, a specific California exemption was claimed on their  
3 Schedule C. In other words, the Filippones chose the exemptions  
4 for the debtors.

5 Filippone II provided further clarification in his  
6 declaration:

7 [t]he software package that I use for  
8 bankruptcy is Specialty Software. I do not  
9 pick the exemptions for customers. I enter  
10 the item such as tools of trade at a value of  
11 \$500.00, and that is all I have to do, the  
12 computer selects the proper exception [sic].  
13 I remind each and every customer that I am  
14 not an attorney and I will not and can not  
15 [sic] give them any legal advise [sic].

16 The testimony of Guyer corroborates this procedure of  
17 selecting exemptions for clients. Guyer testified:

18 In addition, with regards to exemptions, I  
19 observed both Ronald Filippone Sr., and  
20 Ronald Filippone II, interview prospective  
21 debtors and explain which set of exemptions  
22 should be used in a particular bankruptcy.  
23 Specifically, if the debtors owned a home,  
24 California Code of Civil Procedure § 704  
25 (System "1") was selected for them as the  
26 basis for any property claimed exempt. If  
27 the debtors did not own a home, California  
28 Code of Civil Procedure § 703.140 (System  
"2") was selected for them as the basis for  
any property claimed exempt.

29 The Court finds that Filippone II's contention that the  
30 Bankruptcy Speciality Software "does it all" is disingenuous.  
31 Plugging in solicited information from questionnaires and  
32 personal interviews to a pre-packaged bankruptcy software program  
33 constitutes the unauthorized practice of law. Moreover, advising  
34 of available exemptions from which to choose, or actually

---

35 <sup>12</sup> The exception was Baker who testified that Filippone II had a  
36 questionnaire that he used to ask her questions. The only portion of the  
37 questionnaire she could recall completing was the section that asked for her  
38 name and address.

1 choosing an exemption for the debtor with no explanation,  
2 requires the exercise of legal judgment beyond the capacity and  
3 knowledge of lay persons. In re Herren, 138 B.R. 989, 995  
4 (Bankr. D. Wyo. 1992); In re McCarthy, 149 B.R. 162, 166 (Bankr.  
5 S.D. Cal. 1992); In re Webster, 120 B.R. 111, 113 (Bankr. E.D.  
6 Wis. 1990). Accordingly, the Court finds that the Filippones  
7 engaged in the unauthorized practice of law with respect to  
8 selecting exemptions for the debtors in these proceedings.

9  
10 B. ADVICE REGARDING SELECTION OF APPROPRIATE BANKRUPTCY  
11 CHAPTERS.

12 Hansen testified that Filippone II advised her, "that my  
13 husband and I would be better off filing a Chapter 7 proceeding  
14 rather than a Chapter 13 proceeding as we had intended."

15 Hansen's testimony was un rebutted.

16 Hansen testified that she and her husband voluntarily  
17 dismissed their Chapter 7 case in response to a motion brought by  
18 the UST's office pursuant to § 707(b). Pursuant to Federal Rule  
19 Evidence 201, the Court takes judicial notice of the UST's motion  
20 to dismiss filed in the Hansens' case on September 26, 1996. The  
21 motion states, inter alia, that the claims listed were all  
22 consumer debts and that the Hansens had \$2,037.00 monthly  
23 disposable income which could be used to satisfy their scheduled  
24 obligations at 100% in less than two years. As Hansen put it,  
25 "the effect of this was that all of the time, effort and money we  
26 had spent with USPS was for nothing."

27 McMartin also testified that Filippone explained to her the  
28 difference between Chapters 7 and 13 (emphasis added). Once

1 again, this testimony was un rebutted.

2 Finally, Filippone admits this course of conduct in his  
3 Joint Memorandum of Law which states "[t]he debtors are given a  
4 [sic] information form explaining the difference between a  
5 chapter 7 and a chapter 13 and which they sign after reading  
6 [sic]."

7 "The question of whether to file a petition pursuant to  
8 Chapter 7 or Chapter 13 of the Code, involves the analysis of a  
9 complex and highly sophisticated series of statutory and common  
10 law provisions." Matter of Arthur, 15 B.R. 541, 546 (Bankr. E.D.  
11 Pa. 1981). Such "advice requires the use of legal judgment  
12 requiring legal knowledge, training, skill, and ability beyond  
13 those possessed by the average layman." Id. at 547.  
14 Accordingly, the Court finds that the Filippones' advice and  
15 explanations regarding differences between Chapter 7 and  
16 Chapter 13 of the Code constitutes the unauthorized practice of  
17 law.

18  
19 *C. ADVICE REGARDING REAFFIRMATION OF DEBTS.*

20 McMartin testified that Filippone explained to her the  
21 concept of "reaffirmation" of debts in reference to her car.  
22 Specifically, McMartin testified:

23 During my meeting with Mr. Filippone, he  
24 looked over the questionnaires and asked what  
25 I wanted to do about the car. I told him I  
26 wanted to keep the car. He then told me that  
I could re-affirm the debt and keep the car.  
I did not know what re-affirming a debt  
meant. So he explained it to me.

27 Filippone then prepared the "Statement of Intention" for  
28 McMartin reaffirming her automobile debt.

1 Baker testified that during the course of her meeting with  
2 Filippone II, she told him that she wanted to keep her van. She  
3 testified that Filippone II said that she could do that, but that  
4 she would have to reaffirm the debt and keep making the payments.  
5 Baker further testified that although she understood she had to  
6 reaffirm the debt to keep her van, she was not familiar with  
7 which Bankruptcy Code section dealt with reaffirmation nor did  
8 she tell Filippone to use a Bankruptcy Code section on the  
9 Statement of Intention. On redirect examination, Baker testified  
10 that she did not know what § 524 meant. Baker's Statement of  
11 Intention states:

<u>Description of Property</u>	<u>Creditor's Name</u>	<u>Intention</u>
1995 Toyota Previa LE/SC	Toyota Motor Credit Corp.	Reaffirm 524(c)*

\*524(c): Debt will be reaffirmed pursuant to Sec. 524(c).

16 Although there is no direct testimony on point, the Court  
17 finds that when Baker signed her bankruptcy pleadings, including  
18 the Statement of Intention, the language regarding § 524 had been  
19 typed in by Filippone II, or by employees of USPS who had been  
20 instructed to do so by Filippone II.

21 Finally, Hansen testified that after she had signed her  
22 bankruptcy pleadings and upon further review of the conformed  
23 copies of the bankruptcy pleadings, she noticed a document  
24 entitled "Chapter 7 Debtor's Statement of Intention" which  
25 appeared to state that she and her husband had "reaffirmed"  
26 certain debts. She further testified that she had never been  
27 advised about "reaffirmation" by Filippone II, did not know what  
28 it meant, and had not prepared the "Statement of Intention."

1 In connection with preparing legal documents, such as the  
2 Statement of Intention, providing clients with explanations or  
3 definitions of such legal terms of art such as "reaffirmation"  
4 is, by itself, giving legal advice. See Herren, 138 B.R. at 995  
5 (providing clients with definitions of legal terms of art is  
6 giving legal advice). Accordingly, the Court finds that the  
7 Filippones and USPS have engaged in the unauthorized practice of  
8 law by explaining to debtors the legal term "reaffirmation" as  
9 the term is used in § 524(c).

10  
11 D. ADVICE REGARDING THE TIMING OF FILING CHAPTER 7  
12 PETITIONS.

13 Hansen testified that she met with Filippone II and  
14 discussed the timing for filing her Chapter 7 petition. Hansen  
15 testified that she asked Filippone II whether it would be better  
16 to file a marital separation before or after the bankruptcy  
17 proceedings and that he told her that she should file bankruptcy  
18 first. The testimony is unrebutted. The evidence also reflects  
19 that Hansen followed Filippone II's advice and allowed USPS to  
20 file the bankruptcy prior to her marital separation petition.

21 It is clear that Hansen not only sought Filippone II's  
22 advice, but relied on it as well. One court noted "[s]uch advice  
23 about the timing of an anticipated bankruptcy filing is a matter  
24 which requires legal expertise, since from that date flows  
25 numerous consequences including the dischargeability of certain  
26 debts such as student loans and taxes, entitlement to discharge,  
27 recoverability of preferences, and maximization of exemptions."  
28 Herren, 138 B.R. at 995. Furthermore, the interplay between the

1 bankruptcy laws and the marital dissolution laws complicates  
2 these issues. Accordingly, the Court finds that Filippone II  
3 engaged in the unauthorized practice of law by giving advice to  
4 Hansen regarding whether she should file for bankruptcy prior to  
5 filing for separation.

6  
7 *E. CLASSIFICATION OF DEBT.*

8 McMartin testified that she did not know whether a debt on a  
9 house which she had previously owned with her husband should be  
10 listed on her bankruptcy papers. She testified that as part of a  
11 divorce decree the house was quitclaimed to her husband.

12 McMartin testified that Filippone advised her "that by including  
13 the debt on the house in my bankruptcy, I could 'sever my ties'  
14 with the house." McMartin also testified that prior to meeting  
15 with Filippone she did not know what an unsecured debt was and  
16 where these debts should be listed on her bankruptcy papers. She  
17 testified that Filippone "did that for me as well." Giving  
18 advice about whether a debt is secured or unsecured requires  
19 legal expertise. In re Harris, 152 B.R. 440, 445 (Bankr. W.D.  
20 Pa. 1993). Accordingly, the Court finds that Filippone's advice  
21 and recommendations to McMartin on how to classify her debt  
22 constitute the unauthorized practice of law.

23  
24 *F. ADVICE REGARDING DISCHARGEABILITY OF STUDENT LOANS.*

25 Baker testified that she discussed her student loan with  
26 Filippone and that he told her he did not believe it would be  
27 discharged in her bankruptcy. The Court finds that advising  
28 debtors on dischargeability issues constitutes the unauthorized

1 practice of the law. Arthur, 15 B.R. at 547.

2       The above incidents were not isolated events. A course of  
3 conduct involving the unauthorized practice of law by the  
4 Filippones was corroborated by Guyer. Guyer testified that as  
5 part of her agreement with Filippone, she was provided with  
6 copies of a "customer questionnaire" to be used in the  
7 preparation of bankruptcy cases. She testified that the  
8 questionnaire was not simply a blank copy of the bankruptcy  
9 petition, schedules, Statement of Financial Affairs, and  
10 Statement of Intention. The questionnaire did not ask the  
11 debtors for information necessary to fill out Schedule C  
12 (Exemptions), Schedule D (Secured Creditors), Schedule E  
13 (Priority Creditors), Schedule F (Unsecured Creditors),  
14 Schedule G (Executory Contracts and Unexpired Leases), or  
15 Schedule H (Co-Debtors). In addition, the questionnaire's  
16 "Financial Affairs" section did not contain all the questions  
17 found in the official form "Statement of Financial Affairs."

18       Guyer further testified that her training included sitting  
19 in on debtor interviews with the Filippones. She observed the  
20 Filippones solicit information from the debtors that was not  
21 included in the questionnaire. She testified that Filippone  
22 would ask debtors whether they wanted to keep a credit card  
23 account and/or the property purchased with a credit card or  
24 surrender the property. This information was then used to  
25 prepare the "Statement of Intention." Guyer testified that  
26 during her training period, she also observed the Filippones  
27 explain to prospective debtors the difference between Chapter 7  
28 and Chapter 13. The Court has previously discussed Guyer's

1 testimony regarding the Filippones' process of selecting  
2 exemptions for debtors.

3         Although the Filippones deny that they ever practiced law  
4 and testified about disclaimers given both orally and in writing,  
5 the evidence contradicts these assertions. The Filippones had  
6 personal contact with the debtors during which the Filippones  
7 explained forms, procedures and terms such as "reaffirmation,"  
8 selected exemptions, advised debtors on whether to file a  
9 Chapter 7 or Chapter 13, and advised debtors on the timing of  
10 their anticipated bankruptcy. The personal contact coupled with  
11 the explanations and advice gave rise to a relationship of trust  
12 between the parties that is tantamount to that of an attorney-  
13 client. The Filippones analyzed the factual information received  
14 on the debtors' questionnaires and from personal interviews. The  
15 Filippones then exercised legal judgment in making various  
16 decisions for the debtors as set forth above. Given the extent  
17 of the personal contact, advice and counseling, it is apparent  
18 that a relationship of trust and confidence developed between the  
19 parties with the debtors trusting that the Filippones would  
20 prepare their bankruptcy petitions and related pleadings  
21 correctly. See Landlords' Professional Services, 215 Cal.App.3d  
22 at 1599 (court found personal contact was a key factor in finding

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1 defendant engaged in the unauthorized practice of law).<sup>13</sup>

2 Finally, portions of the House Report on the Bankruptcy  
3 Reform Act of 1994 regarding § 110 make it clear that the  
4 services of bankruptcy petition preparers are strictly limited to  
5 typing bankruptcy forms. Specifically, the House Report states:

6 This section adds a new section to Chapter 1  
7 of title 11 United States Code to create  
8 standards and penalties pertaining to  
9 bankruptcy petition preparers. Bankruptcy  
10 petition preparers not employed or supervised  
11 by any attorney have proliferated across the  
12 country. While it is permissible for a  
13 petition preparer to provide services solely  
14 limited to typing, far too many of them also  
15 attempt to provide legal advice and legal  
16 services to debtors. These preparers often  
17 lack the necessary legal training and ethics  
18 regulation to provide such services in an  
19 adequate and appropriate manner. These  
20 services may take unfair advantage of persons  
21 who are ignorant of their rights both inside  
22 and outside the bankruptcy system....

23 (H.R. 103-834, 103rd Cong., 2d Sess. ¶ 40-41, 140 Cong. Rec.  
24 H10770 (Oct. 4, 1994). The evidence shows that the Filippones'  
25 services far exceeded those of a typing service. As previously  
26 discussed in Part I(B) supra, the tenor of Filippone's  
27 advertisement in the North County Times is that the bankruptcy  
28 services offered by USPS were not limited to simple clerical  
functions. The declarations of Camera, Hansen, McMartin and  
Sanchez and Guyer support the UST's contention that the

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24 <sup>13</sup> The court in Landlords Professional Services reviewed similar cases  
25 in other jurisdictions. For example, in Oregon State Bar v. Gilchrist, 272  
26 Or. 552, 538 P.2d 913 (1975) the court concluded that it was not an  
27 unauthorized practice of law to advertise and sell divorce kits so long as the  
28 service had no personal contact with a client. In New York Lawyers' Assn. v.  
Dacey, 21 N.Y.2d 694, 234 N.E.2d 459, 287 N.Y.S.2d 422 (1967), the court found  
sale of Norman F. Dacey's book "How To Avoid Probate" was not an unauthorized  
practice of law since there was no personal contact or relationship with any  
particular individual so that there was no relationship of competence and  
trust established which is so necessary to the status of attorney and client.

1 Filippones and USPS were providing legal services.

2  
3 IV. VIOLATIONS OF 11 U.S.C. § 110.

4 A. FALSE STATEMENTS OF COMPENSATION RECEIVED IN VIOLATION  
5 OF § 110(h)(1).

6 11 U.S.C. § 110(h)(1) provides:

7 Within 10 days after the date of the filing  
8 of a petition, a bankruptcy petition preparer  
9 shall file a declaration under penalty of  
10 perjury disclosing any fee received from or  
on behalf of the debtor within 12 months  
immediately prior to the filing of the case,  
and any unpaid fee charged to the debtor.

11 The uncontradicted evidence reveals that Filippone charged  
12 Baker, Hansen, McMartin, Kaitangian, and Sanchez \$200.00 each for  
13 the preparation and filing of their respective bankruptcies.  
14 Camera was charged \$253.00. However, on the Disclosure of  
15 Compensation of Bankruptcy Petition Preparer form ("Statement of  
16 Compensation"), prepared in each of the cases, only \$53.00 was  
17 disclosed. Filippone declared that, "in each and every case I  
18 have disclosed a \$53.00 for the typing of the forms...." In  
19 other words, Filippone contends that of the \$200.00 received from  
20 each debtor, and of the \$253.00 received from Camera, only \$53.00  
21 related to the actual typing of the forms. Filippone apparently  
22 believes that a literal reading of the Statement of Compensation,  
23 "For document preparation services, I have agreed to accept . . .  
24 \$\_\_\_\_\_, " only requires him to disclose his actual charges for  
25 typing the bankruptcy petition and other pleadings and does not  
26 require him to disclose the balance of the compensation received  
27 from each debtor.

28 Although neither Filippone or Filippone II testified as to

1 what the remainder of the fee was used for, in their Joint  
2 Memorandum of Law in Opposition to the UST's motions, Filippone  
3 lists a hypothetical ¶ 9 of a Statement of Affairs for a  
4 hypothetical debtor named John Doe. Paragraph 9 of the Statement  
5 of Affairs is entitled "9. Payments Related to Debt Counseling  
6 or Bankruptcy." With respect to the payment portion, Filippone  
7 discloses the following:

8 Payor: John Doe

9 Payment/Value: \$53.00 Filling Out of Forms

10 \$40.00 Currier [sic] Fees

11 \$21.50 BK Forms

12 \$76.80 128 Copies

13 \$ 8.70 Assembly/Hole Punching

14  
15 The Court takes judicial notice that the total of the  
16 hypothetical charges is \$200.00. The Court also notes that the  
17 Filippone offered no evidence to corroborate the various  
18 charges. For example, there were no invoices from courier  
19 services itemizing a \$40.00 courier charge (apparently for filing  
20 the debtors' bankruptcy pleadings with the bankruptcy court).  
21 The charge for copies amounts to \$.60 per page, 3 times the \$.20  
22 per page authorized in the UST Guidelines for this district.<sup>14</sup>  
23 Further, it was disclosed that Filippone does not purchase  
24 bankruptcy forms, but generates the forms on his Speciality  
25 Software Bankruptcy Package.

26 Apparently, Filippone began reporting only \$53.00 of the  
27 \$200.00 received because of opposition from the UST's office.

28  

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<sup>14</sup> Guideline No. 4, Office of the United States Trustee, Southern District of California.

1 [See April 1995 Letter - Exhibit "82"]. Hansen's testimony  
2 corroborates the Court's finding. Hansen testified that while  
3 she was reviewing the contents of the paperwork, she noticed that  
4 the Statement of Compensation said that she had only paid \$53.00  
5 to have the documents prepared. Hansen made a point of returning  
6 to the offices of USPS and spoke directly with Filippone  
7 regarding the discrepancy. Hansen testified that Filippone told  
8 her, "that the fee had to be documented that way because the  
9 Court did not allow them to charge more than \$53.00. I was then  
10 told for the first time that the balance of the \$200.00 fee over  
11 the \$53.00 was for 'copy costs, messenger and miscellaneous  
12 services and overhead.'" <sup>15</sup>

13 Guyer also testified:

14 In addition to the paralegal training I  
15 received, I also received training on how to  
16 prepare the disclosure of compensation  
17 required in each case. Specifically, I was  
18 told by both Ronald Filippone Sr., and Ronald  
19 Filippone, II, that \$53.00 was the amount to  
20 indicate as fees, because the courts did not  
21 allow higher fees. And, that any additional  
22 fees up to the Two Hundred Dollar fee that  
23 was charged, should be classified as assorted  
24 expenses such as forms pack, copies, and  
25 mailing/delivery to bankruptcy court.

26 The Court is troubled by the conduct of the Filippones who  
27 intentionally failed to disclose the entire \$200.00 fee received  
28 from the debtors. The testimony of Boyl and the April 1995  
Letter indicate that the UST objected to Filippone charging  
\$200.00 for preparing the bankruptcy schedules and petitions over  
two years ago. Yet, Filippone continued the practice and simply  
itemized the charges differently assuming he would avoid

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<sup>15</sup> Except for Hansen who inquired about the fees, none of the other debtors were ever advised what the balance of the fee was for.

1 detection by adopting the practice of not disclosing on either  
2 the Statement of Compensation or in ¶ 9 of the Statement of  
3 Affairs any fee received in excess of \$53.00. Most troubling is  
4 the fact that the Statement of Compensation is signed under  
5 penalty of perjury.

6 Section 110(h)(1) requires the petition preparer to  
7 disclose, "any fee received from or on behalf of the debtor  
8 within 12 months immediately prior to the filing of the case, and  
9 any unpaid fee charged to the debtor." (Emphasis added). The  
10 plain language of the statute does not limit the fee received to  
11 only fees incurred in connection with typing the petition and  
12 schedules. Filippone testified:

13 My failure to show or demonstrate that I have  
14 violated 11 U.S.C. § 110, if I have, is  
15 because of my ignorance of the law and the  
UST's failure to direct me as to what they  
are trying to enforce.

16 This testimony is plainly contradicted. As noted previously,  
17 Boyl initially identified the problem to Filippone in his April  
18 1995 Letter. In an effort to circumvent the Trustee's objection,  
19 the Filippones adopted the strategy of intentionally not  
20 disclosing all fees received from debtors in connection with  
21 their cases. Filippone's feigned ignorance is not supported by  
22 the evidence. Besides, "ignorance of the law, even if true,  
23 would not be reasonable cause to vitiate the imposition of  
24 fines." In re Murray, 194 B.R. 651, 658 (Bankr. D. Ariz. 1996).

25 The deceptive disclosure, or lack thereof, in the case of  
26 Camera is particularly egregious. Filippone charged Camera  
27 \$253.00 in addition to the \$175.00 filing fee. Camera could only  
28 raise \$153.00 of the \$253.00 fee. Camera's case was subsequently

1 filed with the \$100.00 balance due and owing USPS. The Statement  
2 of Compensation, signed by Filippone II, listed the entire charge  
3 to be \$53.00 and revealed a "Balance Due of \$0.00." Camera filed  
4 bankruptcy in July 1996. In October, she received a bill for  
5 \$100.00 for the balance owed. Camera testified she was unable to  
6 raise the \$100.00. In December 1996, she received another bill  
7 for \$100.00 with the notation typed on the bottom of the bill:  
8 "THIS WILL BE YOUR FINAL STATEMENT [sic] PLEASE PAY AMOUNT DUE OR  
9 WE WILL BE FORCED TO SERVE YOU WITH A LAWSUIT. FINAL NOTICE."  
10 Fortunately for Camera, the UST's office was investigating the  
11 case and she was advised by attorney Ortiz not to pay the bill.  
12 In Camera's case, Filippone not only violated § 110(h)(1), but  
13 also violated § 524 by attempting to collect a pre-petition  
14 dischargeable debt. In re Hines, 198 B.R. 769 (9th Cir. BAP  
15 1996).<sup>16</sup>

16 USPS is Filippone's sole proprietorship. Therefore, to the  
17 extent USPS has violated any statutory provisions, Filippone is  
18 personally liable. Filippone II testified that he has worked for  
19 USPS for approximately three years as an employee and receives a  
20 salary. The Court finds that Filippone has violated § 110(h)(1)  
21 by deliberately concealing the fact that he received an  
22 additional \$147.00 from the debtors in these cases (\$200.00 in  
23 the case of Camera). The penalty for violations under  
24 § 110(h)(2) requires the Court to disallow and order the  
25 immediate turnover to the bankruptcy trustee of any fee referred  
26 to in § 110(h)(1) if the fees are in excess of the value of  
27 services rendered for the documents prepared. Since the Court  
28

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<sup>16</sup> Camera received her discharge on October 17, 1996.

1 has previously found that Filippone has engaged in the  
2 unauthorized practice of law, all fees received shall be  
3 disgorged as fruits of illegal and improper actions, irrespective  
4 of the quantum meruit value of such services. In re Gavin, 181  
5 B.R. 814, 821 (Bankr. E.D. Pa. 1995) (citation omitted).  
6 Filippone is ordered to turn over all fees collected from each  
7 debtor (with the exception of Henry) to the respective bankruptcy  
8 trustees in each case within 30 days of service of this Court's  
9 order.<sup>17</sup>

10  
11 B. RECEIPT OF COURT FILING FEES IN VIOLATION OF 11 U.S.C.  
12 § 110(g)(1).

13 11 U.S.C. § 110(g)(1) provides:

14 A bankruptcy petition preparer shall not  
15 collect or receive any payment from the  
16 debtor or on behalf of the debtor for the  
court fees in connection with filing the  
petition.

17 The un rebutted evidence reveals that USPS collected the  
18 \$175.00 court filing fee from each debtor in these cases.  
19 Further, Boyl's April 1995 Letter advised Filippone that the law  
20 precluded him from accepting the filing fees from the debtor and  
21 charging to file the petition. Filippone was further advised to  
22 seek legal advice if he did not understand the law and how it  
23 affected his practice. Filippone offered no evidence that he  
24 sought legal advice on the subject despite testifying that, "we  
25 work with many attorneys in the North County, James Beal, Diane  
26

27  
28 <sup>17</sup> It should be noted that if the bankruptcy petition preparer fails  
to comply with the turnover order within 30 days of service of such order,  
then the Court shall also fine the bankruptcy petition preparer for not more  
than \$500.00 for each failure to comply with the Court's order. 11 U.S.C. §  
110(h)(4).

1 Templen, Greg Doan and Michael Lesby, to name a few.... We  
2 constantly ask advise [sic] from these attorneys." Filippone  
3 presented no evidence that he sought advice on this particular  
4 issue and/or that the advice was contrary to Boyl's notification  
5 that Filippone was in violation of § 110. Filippone simply  
6 ignored Boyl's advice and warning and continued to collect the  
7 filing fees from the debtors. Filippone's argument of ignorance  
8 of the law or confusion with respect to these violations is  
9 likewise meritless.

10 Accordingly, the Court imposes the statutory fine of \$500.00  
11 against Filippone for each violation pursuant to § 110(g)(2) for  
12 a total of \$3,000.00.

13  
14 C. FAILURE TO PROVIDE DEBTORS WITH COPIES OF DOCUMENTS  
15 PREPARED FOR FILING AT THE TIME THE DOCUMENTS WERE PRESENTED TO  
DEBTORS FOR SIGNATURE.

16 Section 110(d)(1) provides:

17 A bankruptcy petitioner shall, not  
18 later than the time at which a document for  
19 filing is presented for the debtor's  
signature, furnish to the debtor a copy of  
the document.

20 Baker, Hansen and McMartin testified that they did not  
21 receive copies of their respective Petition for Relief, Schedules  
22 A through J, Statement of Financial Affairs, and Statements of  
23 Intention at the time they signed the documents. The testimony  
24 was un rebutted. McMartin did not receive her copies until one  
25 week after the July 29, 1996, 341(a) meeting, and only after she  
26 had requested them. Hansen was not provided copies of her  
27 pleadings until two weeks after she signed them. Baker was not  
28 provided with copies of the documents prepared for filing in her

1 case until 5 or 6 weeks after she had signed them. Again,  
2 Filippone's alleged lack of comprehension of the law is no  
3 excuse, particularly since the UST's office had put Filippone on  
4 notice almost two years prior to the instant motions being filed.

5 "Reasonable cause" to violate a statutory requirement has  
6 been found in cases where the violation is unavoidable through no  
7 fault of the violator.'" Rausch, 197 B.R. at 197. The  
8 Filippone's feeble excuses for their conduct such as being  
9 ignorant of or confused by the law fall far short of this  
10 standard. Accordingly, the Court imposes a fine of \$500.00  
11 against Filippone for each violation pursuant to § 110(d)(2) for  
12 a total of \$1,500.00.

13  
14 D. USING THE WORD "LEGAL" IN ADVERTISEMENTS IN VIOLATION OF  
15 11 U.S.C. § 110(f)(1).

16 Section § 110(f)(1) provides:

17 A bankruptcy petitioner shall not use  
18 the word "legal" or any similar term in any  
19 advertisement, or advertise under any  
category that includes the word "legal" or  
any similar term.

20 The evidence shows that Filippone has violated and continues  
21 to violate § 110(f)(1) in two respects. First, he uses the word  
22 "legal" in his fictitious name of USPS. In addition, he  
23 advertises in the Yellow Pages under the category Paralegal. The  
24 UST requests that the Court impose the statutory fine of five  
25 hundred dollars (\$500.00) for each of Filippone's violations  
26 under this subsection. However, the UST did not discuss what  
27 constitutes a separate violation under this section. The Court  
28 concludes that advertising in a publication, by itself,

1 constitutes a single violation. See Hobbs, 213 B.R. at 215 (use  
2 of the term "paralegal" in each advertisement constitutes a  
3 separate violation). In addition, a reasonable interpretation  
4 of § 110(f)(2) requires that the person using the services of the  
5 bankruptcy petition preparer must have read the advertisement.  
6 See In re Gavin, 181 B.R. at 814 (Bankr. E.D. Pa. 1995) (court  
7 found the Legal Aid Services ("LAS") liable for two violations of  
8 this subsection for using the word "legal" in its name where two  
9 debtors testified as to how they were misled by LAS' name);  
10 People v. Forest E. Olson, Inc., 137 Cal.App.3d 137 (1982)  
11 (reasonable interpretation of statute prohibiting false and  
12 misleading advertising would be that a single publication  
13 constitutes a minimum of one violation with as many additional  
14 violations as there are persons who read the advertisement or who  
15 responded to the advertisement by purchasing the advertised  
16 product or service or by making inquiries concerning the product  
17 or service).

18 Camera and Hansen testified that they came to USPS after  
19 seeing the USPS ad in the Yellow Pages. The other debtors either  
20 did not testify regarding the Yellow Pages or North County Times  
21 advertisement or in the case of Baker, came to USPS based on a  
22 referral from a friend. Accordingly, the Court finds there are  
23 four violations of § 110(f)(1) in this case. Each single  
24 publication in the Yellow Pages and the North County Times count  
25 as one violation each with the two remaining violations supported  
26 by the testimony of Hansen and Camera who went to USPS based on  
27 the USPS advertisement in the Yellow Pages. The Court imposes a  
28 fine of \$500.00 for each violation for a total of \$2,000.00.

1 E. FRAUDULENT, UNFAIR OR DECEPTIVE ACTS IN VIOLATION OF  
2 11 U.S.C. § 110(i)(1).

3 Section 110(i)(1) provides in pertinent part:

4 [i]f a bankruptcy petition preparer violates  
5 this section or commits any fraudulent,  
6 unfair, or deceptive act, the bankruptcy  
7 court shall certify that fact to the district  
8 court, and the district court, on motion of  
9 the debtor, the trustee, or a creditor and  
10 after a hearing, shall order the bankruptcy  
11 petition preparer to pay to the debtor--

9 Although the Court cannot find that any of the debtors  
10 suffered monetary damages other than the payment of excessive  
11 fees which the Court has ordered refunded, the Court finds that  
12 the intentional failure of the Filippones to disclose all fees  
13 paid by the debtors under penalty of perjury constitutes an  
14 unfair and deceptive act within the meaning of § 110(i)(1).  
15 Therefore, the Court certifies the foregoing facts to the United  
16 States District Court for further proceedings. The Court  
17 recommends to the district court that Filippone be assessed the  
18 statutory damage of \$2,000.00 per case as set forth in §  
19 110(i)(1)(B) for a total of \$12,000.00. The Court recommends  
20 that Filippone II be assessed the statutory damage of \$2,000.00,  
21 in the cases of Baker, Camera, the Hansens, Kaitangian and  
22 McMartin, for a total of \$10,000.00 because Filippone II falsely  
23 signed the Statement of Compensation in those cases.

24 The Court views § 110(i)(1) as a two step process. Once the  
25 Court finds an unfair and deceptive act, the statute mandates  
26 certification of that fact to the district court. After  
27 certification, the statute requires that a debtor, trustee or  
28 creditor bring a motion in the district court. The Court

1 recognizes that the UST cannot pursue such a motion in the  
2 district court because the statute cannot be read to find the UST  
3 synonymous with a trustee in these cases. See In re Schweitzer,  
4 196 B.R. 620, 625 (Bankr. M.D. Fla. 1996); see also In re  
5 Leavitt, 209 B.R. 935, 942 (9th Cir. BAP 1997) ("The starting  
6 point in every case involving construction of a statute is the  
7 language itself") (citation omitted). "When the language is  
8 plain, 'the sole function of the courts is to enforce it  
9 according to its terms.'" Id. (citation omitted).

10 Pursuant to 18 U.S.C. § 3057(a), this Court will advise the  
11 United States Attorney regarding the Filippones' violations of  
12 18 U.S.C. § 152.

13  
14 V. INJUNCTIVE RELIEF.

15 Injunctive relief is expressly authorized by both §  
16 110(j)(1) and (j)(2)(B). Although the UST has not requested  
17 injunctive relief, this Court, *sua sponte*, enjoins the Filippones  
18 from acting as bankruptcy petition preparers.<sup>18</sup> The facts in  
19 these consolidated cases satisfy the requirements of §  
20 110(j)(2)(A)(i)(I) and (III).

21 As noted above, the UST placed Filippone on notice of his  
22 violations of § 110 in late 1994 and continuing through 1995.  
23 Rather than comply with the law, Filippone attempted to find  
24 creative ways of avoiding the specific requirements of § 110,  
25 including resorting to fraudulent and deceptive conduct by  
26 intentionally failing to disclose the correct amount of fees he

27 \_\_\_\_\_  
28 <sup>18</sup> The Court has taken into consideration the fact that bankruptcy is  
but just one of eight categories of paralegal services offered by USPS in its  
Yellow Pages' ad. USPS provides other services in the area of contracts,  
corporations, divorce, immigration, probate, small claims and trust/wills.

1 actually received from each of the debtors. Despite being  
2 advised by the UST to seek legal advice regarding § 110, he  
3 apparently refused to do so. He also engaged in the unauthorized  
4 practice of law despite a plethora of bankruptcy and state cases  
5 dealing with similar, if not identical, situations.

6 Filipponne attempted to justify his practices by arguing that  
7 none of the debtors had complained about his services and that  
8 there is no evidence of negligence adduced against him.<sup>19</sup>  
9 Regardless of the accuracy of the Filipponnes' advice, or the lack  
10 of complaints, a debtor who files a bankruptcy petition acting  
11 pursuant to advice rendered by one unqualified to practice law,  
12 runs the risk of suffering grave and injurious consequences.

13 There is no reason to think that Filipponne will drop the  
14 reference to bankruptcy in the USPS Yellow Pages advertisement or  
15 cease the unauthorized practice of law unless enjoined, as  
16 required by § 110(j)(2)(A)(ii). However, the Court will follow  
17 the method of injunctive relief utilized in Gavin, 181 B.R. at  
18 814 (Bankr. E.D. Pa. 1995) by allowing USPS to obtain permission  
19 to assist debtors in filing bankruptcy cases in this jurisdiction  
20 by paying all sums directed under order of this Court, by  
21 deleting reference to bankruptcy in its Yellow Pages  
22 advertisement and thereafter petitioning this Court and obtaining  
23 express permission to resume his practice as a bankruptcy  
24 petition preparer.

25 ///

26 ///

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28

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<sup>19</sup> Filipponne obviously has forgotten the testimony of Hansen regarding her displeasure over being guided into a Chapter 7 which she later had to dismiss in response to the UST's § 707(b) motion.

1 CONCLUSION

2

3 The total amount of sanctions imposed against Filippone for  
4 violations of § 110 are \$6,500.00. This amount shall be payable  
5 to Barry K. Lander, Clerk of the Court, United States Bankruptcy  
6 Court, 325 West "F" Street, San Diego, CA, 92101, for deposit  
7 into the United States treasury within thirty (30) days of the  
8 entry of the order in these cases. These monetary sanctions are  
9 in addition to the disgorgement of all fees collected from the  
10 debtors (with the exception of Henry) in these cases and the  
11 injunction as outlined above.

12 In addition, the Court will certify to the district court  
13 the intentional failure of the Filippones to disclose all fees  
14 paid by the debtors under penalty of perjury. The Court  
15 recommends that Filippone be assessed \$12,000.00 and Filippone II  
16 be assessed \$10,000.00 for their unfair and deceptive act.

17 Although the sanctions in these cases may appear harsh, the  
18 Court is particularly bothered by the Filippones' blatant  
19 disregard and disrespect for the law. Apparently feeling they  
20 were "above the law," the Filippones continued on a course of  
21 conduct that was willful and intentional despite being put on  
22 notice by the UST's office and given ample opportunity to correct  
23 the violations.

24 This Memorandum Decision constitutes findings of fact and  
25 conclusions of law pursuant to Federal Rule of Bankruptcy  
26 Procedure 7052. The UST is directed to file with this Court an

27 ///

28 ///

1 order in conformance with this Memorandum Decision within ten  
2 (10) days from the date of entry hereof.

3

4 Dated: January 23, 1998

5

S/John J. Hargrove  
JOHN J. HARGROVE  
United States Bankruptcy Judge

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