UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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In re:

JAMIE L. SHADLEY, aka
Jami Potter, aka Jami Matthews,

Debtor.

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

****

DANIEL McDERMOTT,
UNITED STATES TRUSTEE,

Plaintiff,

v.

EDWARD JONAK, 3RD MILLENNIUM SYSTEMS, INC., d/ba Affordable Law Center, Affordable Court Services, Action Plan RX, Christian Discount Attorney Services, American Lawworx,

Defendants.

BKY 10-50795

ADV 10-5031

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At Duluth, Minnesota
March 29, 2013.

This adversary proceeding is an action for declaratory, injunctive, and monetary relief under provisions of the Bankruptcy Code that govern the role and function of bankruptcy petition preparers (11 U.S.C. § 110) and debt relief agencies (11 U.S.C. § 526). It came before the court on the Plaintiff's motion for summary judgment. The Plaintiff ("the U.S. Trustee") appeared by Sarah J. Wencil. Defendants Jonak and 3rd Millennium Systems, Inc. ("3rd Millennium") appeared by their attorney, Karla Kluzak. Jonak and 3rd Millennium opposed the U.S. Trustee's motion, but they did not make a cross-motion for such relief. The following memorializes the decision on the U.S. Trustee's motion.

PARTIES

The U.S. Trustee is an official of the United States Department of Justice, and an appointee of the Attorney General of the United States. 28 U.S.C. § 581. He has various duties under law. 28 U.S.C. § 586(a). They include the supervision of cases and trustees under chapter 7, which is performed among other ways by "monitoring the progress of cases under [the Bankruptcy Code] and taking such actions as [he] deems to be appropriate to prevent undue delay in such progress . . . ." 28 U.S.C. § 586(a)(3)(G).

Under one of the statutes he invokes, the United States Trustee is expressly granted standing to seek relief to enforce the statute's prescriptions. 11 U.S.C. §§ 110(h)(4), 110(i)(1), 110(j)(1), 110(*l*)(3), and 110(*l*)(4)(A). More generally, "[t]he United States trustee may raise and may appear and be heard on any issue in any case or proceeding under . . . [the Bankruptcy Code]." 11 U.S.C. § 307. As a technical matter, this adversary proceeding is captioned in one bankruptcy case. However, the U.S. Trustee alleges that Jonak and 3rd Millennium violated the relevant statutes in eighteen (18) identified bankruptcy cases, and he seeks relief in favor of the debtors and the estates in all of them.

Jonak is a resident of Blaine, Minnesota. 3rd Millennium is a corporation; Jonak is its sole shareholder, its president, and its only operating principal. At various times, 3rd Millennium has used the trade names of "Affordable Law Center" (from some prior date until the U.S. Trustee commenced this adversary proceeding); "Affordable Court Services" (adopted after the U.S. Trustee commenced this adversary proceeding and before the U.S. Trustee amended his complaint); "Christian Discount Attorney Services" (prior to 2007); and, possibly, "Action Plan Rx."[1]

[1] In deposition testimony, Jonak was asked about this last-noted business name. He never quite admitted to using it himself. Instead, he demurred about how the name and some sort of ownership interest in it had been jointly held (and apparently used) by himself and one Karen Cummings. He testified that the name, the right to use it, and whatever business interests or operations were associated with it, were then the subject of arbitration after a falling-out between himself and Cummings.

At the times relevant to this adversary proceeding, Jonak through 3rd Millennium used the name "Affordable Law Center" to hold himself out as a provider of "legal plans" to individual members of the consuming public who had problems that might require the application of bankruptcy law, family law, or other substantive areas, and who might need to commence proceedings in a court to protect or advance their interests.[2]

NATURE OF ADVERSARY PROCEEDING

As the named plaintiff, the U.S. Trustee seeks to enforce and vindicate various provisions of 11 U.S.C. §§ 110 and 526. He maintains that ALC functioned as a bankruptcy petition preparer, § 110(a)(1); a debt relief agency, §§ 101(12A) and 526(a); or both, in its contacts with all of the debtors in the underlying bankruptcy cases and in the activity on their behalf for which ALC charged and received a fee from them.

The U.S. Trustee accuses ALC of violating various requirements of the two statutes. He alleges several derelictions: failing to see that ALC's status, its involvement with those debtors, and the terms of their relationships were disclosed in the ensuing bankruptcy filings; engaging in fraudulent, unfair, or deceptive conduct in its advertising and in its dealings with those debtors; engaging in the unauthorized practice of law in ALC's service provision; and fostering untrue and misleading disclosures in the bankruptcy filings in which it was involved.

To vindicate the rulings he seeks on those points, the U.S. Trustee requests relief against ALC in the form of disgorgement, forfeiture, and turnover of all compensation ALC received from the debtors in question; the assessment of damages payable to each debtor; injunctive relief against such conduct in the future; and the imposition of fines for each case.

For their part, Jonak and 3rd Millennium deny that they have the status of either bankruptcy petition preparer or debt relief agency. Hence, they maintain, the statutory regulation

[2] "Affordable Law Center" is a registered business name for 3rd Millennium. It is also the trade cognomen that was used in advertising and other public relations to attract financially-distressed individuals to 3rd Millennium, in all the bankruptcy-related transactions cited by the U.S. Trustee in his amended complaint. Thus, the Defendants will be termed "ALC" when the emphasis of a given reference is on the business *activity* that Jonak carried on through 3rd Millennium as an instrumentality.

does not even apply to them. Most of the theory of their defense builds out from this basic denial, on which they would have the U.S. Trustee denied all relief.

JURISDICTION AND JUDICIAL AUTHORITY

In commencing suit in the bankruptcy court, the U.S. Trustee invokes the bankruptcy jurisdiction of the federal courts under 28 U.S.C. § 1334(b).[3] Jonak and 3rd Millennium admit this jurisdictional allegation, in their answer. That concession was appropriate. All of the facts pleaded by the U.S. Trustee go to circumstances, events, or acts that have a close connection with the underlying bankruptcy cases. The subject matter arose or occurred just prior to the filing of the bankruptcy petitions by the debtors in question, or after the commencement of their cases. As his basis for relief, the U.S. Trustee cites two provisions of the Bankruptcy Code, title 11 of the United States Code. For governing rules of decision, he cites only those two statutes.[4]

So, this adversary proceeding is undeniably--and exclusively--a "proceeding arising under title 11," i.e., the Bankruptcy Code. *In re Farmland Industs., Inc.*, 567 F.3d 1010, 1018 (8th Cir. 2009) (claims "arising under" Title 11 are "those proceedings that involve a cause of action created or determined by a statutory provision of title 11 . . ." (citation and interior quotes omitted)). Given its origin in activities of Jonak and ALC that were directly connected with the commencement

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[3]This statute provides, in pertinent part:

> . . . [N]otwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under [the Bankruptcy Code], or arising in or related to cases under [the Bankruptcy Code].

[4]11 U.S.C. § 110(e)(2)(A) prohibits a bankruptcy petition preparer from "offer[ing] a potential bankruptcy debtor any legal advice, including any legal advice described in" § 110(e)(2)(B). This prohibition is a corollary to a ban of the unauthorized practice of law, which is generally regulated by state law. However,

> [n]othing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

11 U.S.C. § 110(k). This recognizes that state law applies independently to the conduct of a bankruptcy petition preparer, unaffected by the governance of § 110. That, in turn, underlines that § 110(e)(2) is purely federal law.

and prosecution of bankruptcy cases, it would also qualify as a "proceeding . . . arising in . . . a case under title 11 . . ." *Id*. (claims that "arise in" bankruptcy case are "claims that, by their nature, not their particular factual circumstance, could only arise in the context of a bankruptcy case . . ." (citation and interior quotes omitted)).

In any proceeding for judicial relief commenced in the bankruptcy court, however, that is only the threshold point going to the matter of forum and adjudicative authority. There is a "division of labor" within the jurisdictional framework for bankruptcy, *Stern v. Marshall*, 564 U.S. ____, ____, 131 S.Ct. 2594, 2620 (2011). All parties must address that division at the initial stage of pleading. They must expressly state their position as to whether the proceeding in question is a "core proceeding" under 28 U.S.C. § 157(b), or a "non-core proceeding."[5] Fed. R. Bankr. P. 7008(a) and 7012(b); *In re Polaroid Corp.*, 451 B.R. 493, 497 (Bankr. D. Minn. 2011).

The U.S. Trustee's counsel did this, by citing 28 U.S.C. § 157(b)(2)(A) ("matters concerning the administration of the estate") for her classification.[6]

Defense counsel did *not* comply with her responsive duty to plead explicitly. Instead, she summarily denied "the rest and remainder" of the paragraph in which jurisdictional allegations were made, after admitting that "the court has jurisdiction over this proceeding."

28 U.S.C. § 157(b)(2)(A) is one of two "catchall" provisions for core proceeding status. 28 U.S.C. § 157(B)(2)(O) ("other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor . . . relationship, . . .") is the other. The Eighth Circuit has long cautioned against an expansive reading of these provisions, to avoid crossing the constitutional boundaries laid down in *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 495 U.S. 50 (1982). *In re Cassidy Land and Cattle Co., Inc.*, 836 F.2d 1130, 1132 (1988).

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[5] A "non-core proceeding" is generally understood to be a "related proceeding" under 28 U.S.C. § 157(c)(1), if the bankruptcy jurisdiction does actually lie.

[6] The frame of reference, of course, encompasses the bankruptcy cases of all of the debtors named in the text of the complaint, and the estates in them.

However, classifying this adversary proceeding under either of the nominal catchall provisions does not trigger that risk at all. An adversary proceeding to enforce the prescriptions of § 110 is a matter "concerning the administration of the estate," and hence it is a core proceeding under 28 U.S.C. § 157(b)(2)(A). *In re Garrison*, 208 F.3d 217 (table), 2000 WL 276975 *2 (8th Cir. 2000) (unpublished). Given the breadth of 28 U.S.C. § 157(b)(2)(O) and its reference to the bigger functions of bankruptcy, that catchall provision is even better-matched to a proceeding brought under law that regulates two sorts of participants in the processes of bankruptcy.

This adversary proceeding is a core proceeding, under the proper sensibility of the statute under which the U.S. Trustee classifies it. It is therefore subject to entry of final judgment at a bankruptcy judge's order.[7]

MOTION AT BAR

After a discovery process, the U.S. Trustee has moved for summary judgment on all counts of his complaint.[8]

Under the governing rule, a movant for summary judgment that seeks a grant of affirmative relief in its favor must "point out," *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986), the extant evidence that demonstrates there is no genuine dispute as to any material fact, Fed. R. Civ. P. 56(a). Then it must establish that governing substantive law entitles it to judgment on those

[7]The discussion on this issue is prompted by the defense's apparent denial of core-proceeding classification. It is unknown whether the pleading really had that much thought to it. In any case, a presiding bankruptcy judge has the power to address the issue *sua sponte*, 28 U.S.C. § 157(b)(3), and has the obligation to do so on such ambiguous pleading. The complicating factor was defense counsel's failure to voice consent or non-consent to final adjudication by the assigned bankruptcy judge. This is an issue of special sensitivity since *Stern v. Marshall*. Under longstanding pre-*Stern* precedent and post-*Stern* appellate pronouncement alike, the failure to object could be deemed a waiver of objection, or an "implied consent" to a bankruptcy judge's dispositive authority. *In re Rose*, 483 B.R. 540, 545 (B.A.P. 8th Cir. 2012) (citing *Abramowitz v. Palmer*, 999 F.2d 1274, 1280 (8th Cir. 1993) and *In re Bellingham Ins. Agency, Inc.*, 702 F.3d 553, 567 (9th Cir. 2012)). On the chance that the Eighth Circuit might not deem *Abramowitz v. Palmer* viable in the wake of *Stern v. Marshall*, it is prudent to expressly address the issue--even where it is only hinted from ambiguous pleadings and "without so much as a peep," *Bellingham Ins. Agency, Inc.*, 702 F.3d at 570, from the parties. It is unfortunate that defense counsel's pleading was so guarded in such a blunt but uninformed way.

[8]The U.S. Trustee filed his motion after the close of discovery. The defense does not dispute that there was adequate time for that discovery process. The defense does not invoke Fed. R. Civ. P. 56(d), *as incorporated by* Fed. R. Bankr. P. 7056, to seek more time or additional avenues for its response to the motion. Given that, the merits of the U.S. Trustee's motion are properly considered.

established facts. Fed. R. Civ. P. 56(a). If such a movant makes out a prima facie case in its favor on the evidence it has put into the record, the burden of production shifts to the respondent. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Wood v. SatCom Marketing, LLC*, ___ F.3d ___, ___, 2013 WL 514273 *5 (8th Cir. Feb. 13, 2013), and cases cited therein. If the respondent asserts "that a fact . . . is genuinely disputed, [it] must support the assertion by . . . citing to particular parts of materials in the record, including depositions, documents, . . . affidavits or declarations, stipulations, . . . admissions, interrogatory answers, or other materials . . . ." Fed. R. Civ. P. 56(c)(1)(A). If such materials would support findings in its favor on one or more of the essential elements of the movant's case, there is a "genuine issue for trial," *Anderson v. Liberty Lobby, Inc.*, 477 at 256, and the motion must be denied. *Cf*. *Haigh v. Gelita USA, Inc.*, 632 F.3d 464, 468 (8th Cir. 2011) (analyzed in context where jury would be the fact-finder, an "issue of material fact exists if a reasonable jury could return a verdict for the party opposing the motion") (interior quotes and citation omitted). If the respondent does not (or if it affirmatively concedes all of the facts that the movant relies on), it may still argue that the law does not entitle the movant to relief.

Early in their responsive briefing, Jonak and 3rd Millennium argue that "there are still genuine issues of fact."[9] Counsel identifies the "disputes" as: "1) whether or not the Defendants administers [sic] a legal plan that has value beyond the scope of bankruptcy, 2) whether or not plan members have access to program attorneys and when in the process that relationship is available or nurtured, 3) whether any attorney provided advice or assistance to any of the plan members named in the complaint, and 4) whether the legal advice a handful of the named Debtors stated they received from Defendants on their "Questionnaire of Debtors without Attorneys" actually came from a program attorney and not directly from the Defendants." Defendants' Ntc. of Opp., pp. 2-3 [Dkt. No. 57].

This line of resistance fails for two different reasons.

[9]The noun now used by the rule is "dispute."

The first three cited points are not material under the U.S. Trustee's theory of suit. The possibility of an independent "value" in the "legal plan" parlayed by Jonak, in the form of hypothetical access to or actual involvement by "program attorneys," has nothing logically to do with the U.S. Trustee's cause of action: actual, direct violations of statutory prescriptions and prohibitions that the U.S. Trustee attributes directly to Jonak, in his personal contact with the debtors toward their entry into bankruptcy. Even if such infractions occurred within ALC's performance under a "legal plan" that was otherwise not illegal, the point is not material. *See Anderson v. Liberty Lobby, Inc*., 477 U.S. at 248 (materiality of facts at issue under summary judgment motion turns on whether they are outcome-determinative under governing substantive law).

The fourth point is not a block to summary judgment either, because Jonak and 3rd Millennium did not carry their respondent's burden; they did not produce any evidence to counter the content of statements made under oath by various debtors. This content fully supports findings that Jonak or another non-attorney at ALC's offices--and *not* a "program attorney"--gave the advice alleged by the U.S. Trustee. This point of fact is a keystone of the U.S. Trustee's theory of suit. *See* further development, *infra* at Finding of Fact 24 and pp. 33-36.

As framed by the U.S. Trustee's complaint, the material facts pertain to two main subjects. The first is ALC's "business model," to use a phrase that Jonak bantered about: the way in which Jonak held ALC out to the public; the content of that publicity; and the nature of the service ALC purported to provide to its customers. The second is the actual contact that ALC and Jonak had with the debtors in the subject cases--the things that Jonak and others at ALC's offices said and did when the debtors contacted ALC.

The evidence going to the first subject is uncontested. It consists of advertising in public media, photographs of posted signage, and various statements (admissions) by Jonak. The evidence going to the second is ultimately not subject to genuine dispute either. The debtors' statements in the record unequivocally support findings as to what Jonak said to them and did for

them. In his deposition Jonak did not speak to a single bit of that content. The response to this motion is not verified; it does not contain any specific denial of any of the debtors' statements. More to the point, the response is not supported by affidavit from Jonak at all, let alone one in which he denies any of the debtors' statements.[10]

Finally, the parties stipulated to a number of threshold facts [Dkt. No. 55].

The findings to be made on this record are somewhat lengthy. However, they are drawn in a straightforward fashion and ultimately they are based on uncontroverted evidence. Thus, there is no genuine dispute as to any material fact going to the threshold issues--whether ALC qualifies as a bankruptcy petition preparer or as a debt relief agency under applicable statute--or to the nature of its actions in the underlying cases that would be material were it to qualify as either or both.

UNDISPUTED FACTS

1. ALC maintains or has maintained offices in four locations in Minnesota: Hibbing, Blaine, Brainerd, and Bloomington. Stip. of Facts, ¶ 4.

2. Jonak is not an attorney admitted to practice before the United States District Court for the District of Minnesota. Stip. of Facts, ¶ 5. He has a high school education. Since high school he has worked in "auto part sales, auto body shops, . . . real estate investment, [and] appliance repair," other than the work he terms "prepaid legal representative, . . . prepaid legal plans, [and] administration." He also owns a "surplus shop." Tr. of Depo. of Edward Jonak (May 13, 2011), 5 (Exh. 1 to Affidavit of Sara J. Wencil, Esq. [Dkt. No. 23]) ("Jonak Depo. Tr.").[11]

3. ALC is not a law firm composed of licensed attorneys. It does not itself employ an attorney who is admitted to practice before the United States District Court for the District of Minnesota. Stip. of Facts, ¶ 5.

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[10] As to the propriety of taking the content of the debtors' testimony as evidentiary material for this motion, *see* n.14, p. 15, *infra*.

[11] Further citations to the exhibits from this deposition will use the form "Exh. ___, Jonak Depo. Tr."

4. Jonak and 3rd Millennium are not licensed by the Minnesota Department of Commerce as a debt settlement service. Stip. of Facts, ¶ 18, or as a "credit services organization," Jonak Depo. Tr. 26.

5. Jonak characterizes his business through ALC as a provider of "legal services plans." Stip. of Facts, ¶ 7.

6. To publicize ALC, Jonak placed or posted advertising of several sorts:

a. a website, www.affordablelawcenter.com. On the front page of the site,

i. ALC's mission is declared to be "to provide low cost legal aid to those seeking to avoid potentially costly and unnecessary legal fees";

ii. among its identified services are "Bankruptcy Programs" and "Program Attorneys," and "a range of services from bankruptcy and credit repair to debt settlement programs at a reasonable cost to those seeking help";

iii. ALC touts its ability to enable debtors to obtain "a low cost bankruptcy discharge" and to avoid "contend[ing] with overly expensive bankruptcy fees charged by many attorneys and lawyers";

b. local telephone directory entries under the classification heading "Attorneys-Bankruptcy," with detail such as "bankruptcy/credit restoration/$580";

c. roadside or street signs at Princeton, Zimmerman, Blaine, and Goodland, Minnesota;[12]

[12]The record includes a photograph of a trailer-mounted portable sign standing in the snow beside an unidentified road. Its wording is:

Divorce $570
$680 Bankruptcy

d. building signs outside its Brainerd, Blaine, and Hibbing offices;

e. a Craig's List entry under "Legal Services," posted for the areas of Minneapolis, Duluth, Bemidji, and Mankato, with the line "Bankruptcy $591 Includes Credit Restoration Assistance";

f. numerous classified- and display-type advertisements in locally-based "shopper" newspapers published in the areas of its office locations, which include representations such as "Bankruptcy $580," "Compassionate Assistance!!," and "pay less, better results, thousands assisted. Call 24/7. Sleep tonight."

Stip. of Facts, ¶ 8; Exhs. 1-5, Jonak Depo. Tr. and Jonak Depo. Tr. 12-13.

7. According to Jonak, ALC has its initial contact with its debtor-customers through calls made by the customers to one of its offices, in response to ALC's advertising. Jonak Depo. Tr. 14-15. Jonak (or another person answering) would tell the caller that ALC had "different programs to assist with pretty much any legal issue." If the caller wished to go forward, an appointment would be scheduled for "about two-thirds" of such callers. For the others, further contact would be had in writing via postal service or e-mail. Jonak Depo. Tr. 15.

8. During the subsequent contact, Jonak would "explain the program and how it works," take an "application" from the customer, and "go over the benefits and acknowledgment" for the "legal services program" that the customer was to contract with ALC. Jonak Depo. Tr. 15.

9. The written form for the "benefits and acknowledgment" is titled "PROGRAM BENEFITS." Its introductory paragraph reads:

> Affordable Court Services programs are a very efficient and cost-effective way to navigate today's complicated legal system. With the many benefits of our program, your costs are always under control.

Court Services
218-422-8207.

Exh. 2, Jonak Depo. Tr.

> Most uncontested issues can be accomplished without retaining the program attorney.
> In the event YOU determine an independent attorney needs to be retained, you will have the peace of mind knowing a concerned program attorney will assist you at a *discounted rate!*

"[S]ome of the immediate benefits" a customer is "entitled to" were to include:

> • ***Personal/Business Legal Consultations!***
> **Just pick up the telephone and we will provide you an independent attorney for your free consultation**. Peace of mind for your decisions! Once you have your options, choosing how to proceed is much easier. You may precede [sic] Pro Se or retain the program attorney at *discounted rates*.
>
> • ***Letters and Telephone Calls by the Provider Law Firm Can Make the Difference in Resolving Your Issue!***
> If the independent attorney determines that they will assist you in resolving your legal issues, there is no charge to you for this letter or telephone call. Additional letters will be at discounted rates.
>
> . . . .
>
> • ***Substantial Discount on Attorney Fees!***
> "When you don't want to go it alone" even on pre-existing issues! You may retain the independent attorney as often as you wish; *hourly rates are discounted* substantially less than normal fees.

The form ended with a signature-acknowledgment from the customer that he "[understood] that all of the above Program Benefits are included with my Legal Plan." Exh. 7, Jonak Depo. Tr.

10. For those customers who responded to ALC's bankruptcy-oriented publicity, Jonak purports to have "a bankruptcy program that covers them for a full year and provides them with all the necessary procedures to get through the bankruptcy." Jonak purports to "let them know [he's] the administrator, but [ALC has] attorneys that contract to provide the legal counsel or representation." Jonak Depo. Tr. 16.

11. The "Application" form that customers would sign included the following proviso for services:

> ***All filing/court fees are additional and paid directly to the county or federal court!!!***
>
> ☐ Financial Plan $476.00 - $476.00 pmt. - Plan Benefits - balance due within 60 days!
> - $718.00 pmt. - Attorney and Process fee's - paid separately

Debt negotiation guidance — Post Bankruptcy credit restoration guidance
Bankruptcy processing (Start to Finish) — Social Security / Disability assistance

(Chpt 7 as requested) (Chpt. 13 - additional fee's) ***1 year Program Benefits / including above benefits**[13]

12. A separate page associated with the "Application," titled "Acknowledgment" and to be signed by the customer, provided in pertinent part:

> 1. Affordable Court Services is a membership group allowing access to resources for all legal, tax, financial issues. Membership is 12 months unless otherwise indicated.
>
> 2. **WE PROVIDE ATTORNEYS. WE ARE A RESOURCE CENTER**.
> **I understand that AFFORDABLE COURT SERVICES Program's** [sic] **and Document Centers is** [sic**] a resource organization. The staff can give no legal advice. Any legal advice or representation is provided through a program attorney. Educational materials are provided by private organization / law firms independent of Affordable Court Services.** Referrals to private, independent resource organizations are a member benefit; any administration assistance by Affordable Court Services is not construed as legal assistance or advice on behalf of these referrals. A member holds (ACS) harmless on all services provided by independent organizations / law firm assigned.
>
> **3. SERVICE GUARANTEE.**
> Affordable Court Services is in good standing with the BBB with an A rating for over 15 years as a resource center. We provide the most affordable assistance at the highest quality available compared to any similar legal organization, guaranteed. Once an Application is accepted all programs are non-refundable.
> *****The goal of AFFORDABLE COURT SERVICES Program Attorney's [sic] and Document Centers is to help individuals navigate the legal system at a reasonable cost.
>
> . . . .
>
> **5. BANKRUPTCY.**
> Program Attorney's [sic] provide legal advice.
> I have not received legal advice by Affordable Court Services staff regarding Bankruptcy laws or exempt property.
> I understand that Bankruptcy is my right as a consumer to discharge debt under Federal Bankruptcy Code.
> I understand that as a resource center, referrals to private organizations independent of Affordable Court Services for Document Preparation, Pre-Bankruptcy Credit Courses, Post-Bankruptcy Courses, or assigned to a Program

[13] This text is verbatim from the document.

> Attorney are all benefits provided with the Financial Program.

A third page also required the customer to "check and initial" a number of separate statements, including:

> _____ ☐ Affordable Court Services are not attorneys, we are Administrators. Attorneys are provided through the Benefits Plan. The Benefits Plan is for all issues.
>
> _____ ☐ Affordable Court Services does NOT prepare your court documents, this is done by a Specialized Independent Processor.
>
> _____ ☐ I understand I can file Bankruptcy, Divorce or any court matter on my own and not have to pay anyone.
>
> . . . .
>
> _____ ☐ No one at Affordable Court Services can give legal advice, any guidance is strictly procedural and process overview.
>
> _____ ☐ I have not been directed by anyone to ask legal strategy questions, knowing Affordable Court Services staff are not attorneys. Attorneys are provided through the Benefits Plan.
>
> _____ ☐ I do not believe the advertizing [sic] I responded to was misleading in anyway. I have read and reviewed all the Benefits prior to proceeding. Affordable Court Services do not advertize [sic] court fees.

INSERT CITE.

13. Jonak identifies the "necessary procedures" performed by ALC for its bankruptcy-related customers as "[g]athering all their information for the processing center, doing their pre-bankruptcy counseling, and speaking with the attorney if they find it necessary at that time." Jonak Depo. Tr. 16.

14. For the cases relevant to this adversary proceeding,[14] the "processing center" was a person in another state, who used commercial software to prepare (i.e., type) a bankruptcy petition and schedules for ALC customers. Jonak Depo. Tr. 16-17, 23, 29-30. Jonak would not give contact information for the out-of-state typist until the customer paid ALC the full fee for the "program." Jonak Depo. Tr. 22-23; e.g., Carter Tr. 9, Shadley Tr. 12. "Justin Jurist" charged and was paid a separate fee to type the completed forms for the bankruptcy filing. Jonak Depo. Tr. 23 ("Pay the processer separately . . .").

15. For all but one of the cases relevant to this adversary proceeding, the out-of-state typist identified himself on the petition under the name of "Justin Jurist" and the trade name of "Aleutian Enterprises," and gave addresses in the state of Maine. For the one other case, one "Alana Strother," giving an address in Georgia, was identified as the typist. Jonak Depo. Tr. 29.

16. In the eighteen cases identified in the U.S. Trustee's complaint, the debtors paid ALC fees on the contracts they signed for "legal plans." The fees varied in amount from $363.00 to $680.00. For about half of the cases, the fee related in rough proportion to the magnitude of the household net income stated on the Schedule I for the case, as follows. Two of the three debtors who paid $363.00 stated net income of less than $1,500.00 per month. The debtors in two-thirds of the cases (twelve in total) paid ALC either $511.00 or $580.00. Most of that

[14] Many of the following findings are based on testimony given by the debtors at meetings of creditors in the cases. The transcripts of all the meetings of creditors are in the record for this motion, as Exhibits 2-18 to the Affidavit of Sarah J. Wencil, Esq. [Dkt. No. 23]. Further citations to the content of the transcripts will be in a bare-bones format: by surname of debtor, "Tr.," and page. (The Wencil affidavit enumerates the exhibit numbers and order of all of the transcripts.) This testimony is properly considered as the equivalent of a written affidavit by a prospective witness. The debtors were all under oath when they testified (as required by 11 U.S.C. § 343), at the meetings of creditors required by 11 U.S.C. § 341(a). The United States Trustee is the custodian of the audio-recorded examination at meetings of creditors. Fed. R. Bankr. P. 2003(c). The transcripts were all certified by a Certified Shorthand Reporter, who attested in the certification to having "taken down" the transcription from the U.S. Trustee's audio tape "in stenograph, . . . and . . . thereafter reduced [the content] to computer-aided transcription under [her] direction." This authenticates the content of the transcript. *United States v. McMillan*, 508 F.2d 101, 105 (8th Cir. 1974); *United States v. Bentley*, 706 F.2d 1498, 1507-1508 (8th Cir. 1983). Then, Jonak and 3rd Millennium stipulated to the inclusion of all of the transcripts in the record for this motion. This is deemed a waiver of all objections to the evidentiary use of the transcripts' content, including all hearsay objections. *Blodgett v. Cmr. of Internal Revenue*, 394 F.3d 1030, 1040 (8th Cir. 2005). Jonak and 3rd Millennium have not provided any evidence to challenge the content or to support findings contrary to those urged by the U.S. Trustee on the basis of the content. Thus, there is no genuine dispute as to any of the facts to be gleaned from the testimony.

group (eight in total) had stated net income that ranged from about $2,100.00 per month to about $3,900.00 per month. The debtors in two cases who paid $680.00 had stated income of about $4,000.00 and $5,400.00 per month, respectively. Stip. of Facts, ¶ 9.[15]

17. The experience that the debtors in the eighteen cases had with ALC and the out-of-state typist varied, in nature, scope, and intensity. In all of the cases, Jonak gave the debtor(s) blank forms for the collection of the information necessary to complete a bankruptcy petition and schedules. What happened after that, differed among the cases.

18. In at least five of the cases, ALC acted directly in the forwarding of the completed information forms to the out-of-state typist. This was done either by ALC physically receiving the forms from the customer and then sending them on to the typist, Kersting Tr. 8, Cavanagh Tr. 12, and Bushman Tr. 12; or by giving the customer a prepared mailing envelope to use when sending the form to "Jurist," Smith Tr. 12 and Shadley Tr. 14.

19. In other cases, the customer received the forms from ALC and after completing them sent them directly to "Jurist." Sinn Tr. 9; Cohen Tr. 7; Carter Tr. 8; Perry Tr. 16; Rytty Tr. 14. *See also* Jonak Depo. Tr. 16.

20. Some of the debtors gave information for their bankruptcy filings to ALC, by telephone, in person, or via e-mail, from which someone from ALC completed the information form. Bushman Tr. 12; Mattfield Tr. 10; Cavanaugh Tr. 8-9.

21. The customer's contact with the out-of-state typist was invariably by a remote means--e-mail or telephone or a combination. The typist would deliver the prepared documents to the debtor-customers via e-mail attachment. *E.g.*, Smith Tr. 9.

22. At least six of the debtors were confused as to whether ALC was a law firm or Jonak was a lawyer. Within this group, the confusion spanned the time when individual debtors first contacted ALC, as they were committing to a customer-relationship with ALC, or even after

[15] ¶ 9 of the Stipulation of Facts identifies the debtors and their cases by name and number. It is not necessary to give a full enumeration by individuals at this stage. The dispositive term of this order and its judgment will do so, to accord relief with precision.

ALC rendered its purported services to them. Rytty Tr. 10; Smith Tr. 6, 11; Bushman Tr. 9; Gjestvang Tr. 13; Mattfield Tr. 13; Pankiewicz Tr. 22.

23. Most of the debtors described the bankruptcy-related service they understood they were to receive from ALC in very vague language:

a. ALC "would help me through the process of the bankruptcy," and give the "paperwork that I needed, the correct paperwork that I needed to fill out and if I had any questions that I would be able to find somebody that would answer them . . ." Shadley Tr. 13.

b. ALC was "not attorneys, . . . but somebody just to . . . get you started . . . ." Rytty Tr. 10.

c. Though another debtor "couldn't tell you what [ALC] did" in actuality, he thought ALC "would just bring me through the process and then, you know, get me the paperwork that I needed, and then I would file." Bushman Tr. 10-11.

d. ALC "would help me through the process of the bankruptcy, although they couldn't tell me what to put down and what to do . . . ." Cavanagh Tr. 9-10.

e. "They just told me they can get the papers started, help me with the paperwork or give me what I needed to do . . ." Cohen Tr. 6.

f. " . . . if you had a question," while completing the information forms that ALC provided, "you could contact" Jonak. Sinn Tr. 9-10.

g. ALC's fee was charged for "future legal services"; but as to the bankruptcy filing, when queried by a debtor as to "what did we pay for, . . . [Jonak] said, to handle the papers, . . . and that's as far as I could get from him, so I don't know what happened." Freeman Tr. 17-19.

h. Though the payment to ALC was to be "just for the paperwork," after Jonak "gave me the paperwork that I had to fill out and if I had a question I could call him and he could answer it . . . ." Carter Tr. 9-11.

i. The fee paid to ALC was "getting a way for me to walk myself through the bankruptcy process without having to spend 1,500, 2,000 . . . ." Wilson Tr. 16.

j. One debtor "didn't really know if [Jonak] would come to court [i.e., the meeting of creditors] . . . well, I kind of did . . . when I first went there." Boutin Tr. 12.

k. For its fee, ALC was to "help us afterwards, like a financial planning deal . . . ." Perry Tr. 14, 17.

24. In his initial or subsequent communications with debtors in the eighteen cases, Jonak said things to them that addressed numerous aspects of the bankruptcy process:

a. As to the matter of claiming exemptions for a bankruptcy filing, "we could only do one or the other, we couldn't do both, state or federal . . . ." Gjestvang Tr. 15.

b. As to (in the U.S. Trustee's query) ". . . how the exemptions work," Jonak "just showed me numbers, what each of them meant . . . ." Cohen Tr. 8.

c. ". . . how it all worked, I just kind of wanted to make sure, . . . and [Jonak] just kind of explained it to me, and I kind of went from there on my deciding that I'd do it . . . ." Sinn Tr. 11.

d. As to claiming the homestead exemption of 11 U.S.C. § 522(d)(1), Jonak "probably explained it to me, and I went by what [Jonak] said," after Jonak "asking me about how much all my stuff was worth . . . [and] I told [him] what it was worth . . . ." Mattfield Tr. 12-13.

e. "That I could either file federal or state" as to claiming exemptions, "but with my home, [Jonak] said that I should probably file state," which statement (from Jonak) the debtor termed "giving [me] some advice in that regard." Pankiewicz Tr. 21.

f. That, by proceeding under Chapter 13, "on my child support that you know, I'm in arrears 39 thousand over my payment plan, I would

pay 12 thousand, and that would be it, it would go away." Pankiewicz Tr. 26.[16]

g. That a debtor who used a four-wheeler "at work at times, because I'm a project superintendent, so I cover a lot of territory," should "put that under like tools" as exempt--"or, you know, there was a state write-down for allotment for tools and stuff like that, [Jonak] told me to put the four-wheeler under that . . . ." Pankiewicz Tr. 28.

h. That the debtor could "keep" his or her house while going through bankruptcy. Boutin Tr. 14; Mattfield Tr. 14; Pankiewicz Tr. 27.

i. " . . . what chapter 7 is and what is 13 . . . ." Carter Tr. 13.

j. " . . . because I filed some student loan papers on there, student loan ones and [Jonak] said those may not be dischargeable . . . ," Carter Tr. 13, and nonetheless, "to just put them down just in case I can get them discharged . . . ." *Id*. 14.[17]

k. ". . . if I wanted to keep my home, because I was behind on my, some payments, that I would have to of course catch them up . . . ." Carter Tr. 14.

l. ". . . I shouldn't have no problem with my bankruptcy because I owe up so much that I can hardly make any payments . . . ." Mattfield Tr. 15.

[16]Debtor Alan F. Pankiewicz, BKY 10-51033, was the only one in the eighteen cases to file for relief under Chapter 13 rather than under Chapter 7.

[17]Jonak also told this debtor, Cheryl Ann Carter, BKY 10-50983, that "he does have some other paperwork that I can get and fill out for those . . . ." *Id*.

25. At least one debtor received several calls from ALC after her bankruptcy filing "to see if things were going alright now." Kersting Tr. 10.[18] Jonak directed ALC's debtor-customers to call him before they went to the meetings of creditors in their cases. Jonak Depo. Tr. 18.

26. Only one of the debtors in the eighteen cases hired an attorney after the involvement with ALC at the initiation of the bankruptcy process.[19] The debtors in the remaining seventeen cases proceeded *pro se*. All of them received a discharge under Chapter 7. Stip. of Facts, ¶¶ 15, 25.

27. Several of the debtors came away from their experience with ALC thinking that they had been misled as to the nature of service they would receive; that they had received significantly less in "assistance" than they had been led to expect; that they had been overcharged for little service; or that they otherwise had been served poorly by Jonak. Pankiewicz Tr. 15-23; Smith Tr. 11-13, 15; Gjestvang Tr. 10, 13-14; Boutin Tr. 12; Freeman Tr. 16-19; Kersting Tr. 11-14. Several of them stated that they had no real understanding of what Jonak and ALC had done for them, for the fee charged. Bushman Tr. 11; Sinn Tr. 11-12. One thought that ALC had served him well enough. Mattfield Tr. 18.

28. Over a several-year period, Jonak enlisted a number of Minnesota-licensed attorneys for a relationship with ALC under written contract. The attorneys were to provide legal advice or other attorney's services to ALC's customers. Stip. of Facts, ¶ 22. Jonak described these services as "[t]he benefit of [the customers'] contractual agreement, free consultations, and discounts for representation." Jonak Depo. Tr. 28. For two of the attorneys, ALC made numerous small-denomination payments directly to them for service provision, in fixed sums "per client [they]

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[18] This debtor was the only one whose filing identified Alana Strother in the disclosures for the involvement of a bankruptcy petition preparer. Stip. of Facts, ¶ 16, n.3. After that debtor "gave the paperwork to . . . Jonak, and he was supposed to have mailed them to [Strother], and somewhere between her and back to us, everything was lost, all the original copies." Kersting Tr. 8. After a delay of several months without receiving the documents she expected, this debtor "threatened to go to the attorney general if [Jonak] didn't complete the process . . . and within like four days we had all the papers, except for the original documents." Kersting Tr. 9.

[19] That one was debtor Alan Pankiewicz, the only one who filed under Chapter 13. He retained an attorney not affiliated with ALC to represent him after complications emerged in his case.

assisted." Jonak Depo. Tr. 32-33. By mid-2011, neither of these lawyers were participating with ALC under this arrangement. *Id*. As of then, ALC was referring "clients" to a half-dozen other attorneys, apparently on terms that the attorney would give a "free consultation" and then could take an engagement to represent the client with the client paying the lawyer directly. Stip. of Facts, ¶ 22; Jonak Depo. Tr. 33-37.

29. The involvement of Jonak and ALC in the initiation of the bankruptcy process was disclosed in the documents for only three cases out of the eighteen. In those three cases,[20] a payment to ALC was disclosed in item 9 of the Statement of Financial Affairs. In none of the eighteen cases is Jonak or ALC named on the petition or on any of the forms in which disclosure and certification is to be made by a bankruptcy petition preparer pursuant to § 110.

30. Before founding ALC, Jonak and one Jeanne Smith, his wife, acting together under the trade name of "Christian Legal Services," were enjoined from acting as a bankruptcy petition preparer by the United States Bankruptcy Court for the District of Colorado. Defendants' Answer ¶ 114 [Dkt. No. 8]; Jonak Depo. Tr. 37-38; Stip. of Facts, ¶ 26.

CONCLUSIONS OF LAW

1. In their own right and under the trade names of Affordable Law Center, Affordable Court Services, Action Plan Rx, Christian Discount Attorney Services, and American Lawworx, Defendants Edward Jonak and 3rd Millennium Systems, Inc. acted jointly and severally as a bankruptcy petition preparer within the meaning of 11 U.S.C. § 110(a)(1), by participating in the preparation of documents for filing within the meaning of § 110(a)(2), for the cases of the following debtors:

Name	Case No.
Gayle Kersting	10-50379
Cheryl Carter	10-50983
Larry and Karmen Wilson	10-50972
Alan Pankiewicz	10-51033
Robert Mattfield	10-51042

[20] Those for Cheryl Carter, BKY 10-50983; Gayle Kersting, BKY 10-50379; and Albert Bushman, BKY 10-50794.

Lorna Boutin	10-51032
Arne and Linda Rytty	10-50838
Michael Gjestvang	10-51084
Kim and Kristi Francisco	10-51095
Jami Shadley	10-50795
Albert Bushman	10-50794
Kevin Cavanaugh	10-50837
Michaele and Stephen Charnley	10-51104
Telaine Cohen	10-51118
Michelle and Clark Perry	10-35329
Jessica Sinn	10-45429
Jennifer Smith	10-45585
Thomas and Stella Freeman	10-45120

2. In the cases of all of the debtors noted in Conclusion of Law 1, Defendants Edward Jonak and 3rd Millennium Systems, Inc. violated 11 U.S.C. § 110 in the following respects:

a. by failing to sign, and to disclose their names and address on, documents for which they participated in the preparation, specifically the petition, statements, and schedules, 11 U.S.C. § 110(b)(1);

b. by themselves failing to provide the debtors a form in compliance with Fed. R. Bankr. P. 9009, 11 U.S.C. § 110(b)(2);

c. by failing to see that identifying numbers for themselves were included in disclosures on documents for which they participated in the preparation, 11 U.S.C. § 110(c);

d. by using the words “legal,” “court,” “law,” “attorney,” and other terminology readily identifiable to the performance of the professional practice of law, in their trade names, advertising to the public, materials they distributed to the debtors, and oral communications with the debtors, 11 U.S.C. § 110(f);

e. by failing to see that the debtors filed a declaration by those Defendants, to disclose all fees paid to the Defendants within the twelve months immediately preceding the filing of the debtors’ bankruptcy petitions, 11 U.S.C. § 110(h)(2).

3. In the cases of the following debtors, Defendants Edward Jonak and 3rd Millennium Systems, Inc. violated 11 U.S.C. § 110(3)(a), by offering and giving the debtors legal

advice as to the bankruptcy process, the substantive law of bankruptcy, and the effect of both on those debtors' options in filing for bankruptcy:

Name	Case No.
Michael Gjestvang	10-51084
Telaine Cohen	10-51118
Jessica Sinn	10-45429
Robert Mattfield	10-51042
Alan Pankiewicz	10-51033
Cheryl Carter	10-50983

4. In the cases of the debtors identified in Conclusion of Law 3, Edward Jonak and 3rd Millennium Systems, Inc. engaged in the unauthorized practice of law within the scope of Minn. Stat. § 481.02(1), contrary to the contemplation of 11 U.S.C. § 110(k), and gave legal advice, in violation of 11 U.S.C. § 110(e)(2).

5. By giving legal advice to the debtors identified in Conclusion of Law 3, by failing to comply with the requirements of conduct and disclosure per Conclusion of Law 2, and by the way they described the nature and extent of services they were to perform for all of the debtors identified in Conclusion of Law 1, Defendants Edward Jonak and 3rd Millennium Systems, Inc. engaged in fraudulent, unfair, and deceptive conduct as to the debtors involved, 11 U.S.C. § 110(j)(2)(A)(i)(III), throughout the time relevant to the cases identified in Conclusion of Law 1.

6. In their own right, under the trade names of Affordable Law Center, Affordable Court Services, Action Plan Rx, Christian Discount Attorney Services, and American Lawworx, Defendants Edward Jonak and 3rd Millennium Systems, Inc. acted jointly and severally as a debt relief agency within the meaning of 11 U.S.C. § 101(12A) for the cases of all of the debtors identified in Conclusion of Law 1.

7. In the cases of the debtors noted in Conclusion of Law 1, Defendants Edward Jonak and 3rd Millennium Systems, Inc. failed to perform services that they informed the debtors they would provide in connection with a bankruptcy filing and case, 11 U.S.C. § 526(a)(1).

8. In participating in the production of documents for a bankruptcy filing for all of the debtors identified in Conclusion of Law 1, when the documents failed to include the

disclosures required of Defendants Edward Jonak and 3rd Millennium Systems, Inc. as bankruptcy petition preparers, Defendants Edward Jonak and 3rd Millennium Systems, Inc. caused those debtors to make statements in filed documents that were untrue and misleading, 11 U.S.C. § 526(a)(2).

9. By promising, contracting, and purporting to provide the services of legal advice and counsel, credit counseling, debt settlement, and credit restoration which they were not licensed to provide, Defendants Edward Jonak and 3rd Millennium Systems, Inc. made misrepresentations barred by 11 U.S.C. § 523(a)(3).

10. Via the advertising and promotional material they used throughout the time relevant to the cases identified in Conclusion of Law 1; in the preliminary forms they provided to all of the debtors identified in Conclusion of Law 1; in the content of documents for filing for which they participated in the preparation; and in all other pre- and post-filing contact and communication they had with the debtors identified in Conclusion of Law 1, Defendants Edward Jonak and 3rd Millennium Systems, Inc. intentionally, or at the very least negligently, violated 11 U.S.C. § 526.

11. In the conduct identified in Conclusion of Law 10, Defendants Edward Jonak and 3rd Millennium Systems, Inc. engaged in a clear and consistent pattern of violating the requirements of 11 U.S.C. § 526.

12. In the advertising and promotional material they used throughout the time relevant to the cases identified in Conclusion of Law 1, Defendants Edward Jonak and 3rd Millennium Systems, Inc. failed to clearly and conspicuously use the follow statement: “We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code,” 11 U.S.C. §§ 528(a)(4) and 528(b)(2)(B).

13. As to all debtors identified in Conclusion of Law 1, Defendants Edward Jonak and 3rd Millennium Systems, Inc. failed to take action themselves to provide the written notice(s) required by 11 U.S.C. §§ 527(a)(1) - (2).

14. The contracts for a "legal program" that Defendants Edward Jonak and 3rd Millennium Systems, Inc. entered with all of the debtors identified in Conclusion of Law 1 failed to clearly describe and explain the services that those Defendants were to provide to those debtors, and the fees and charges to be imposed on them, in violation of 11 U.S.C. § 528(a)(1).

15. The contracts for a "legal program" between Defendants Edward Jonak and 3rd Millennium Systems, Inc. and all of the debtors identified in Conclusion of Law 1 are unenforceable and void, 11 U.S.C. § 526(c)(1).

16. As sanctions for the violations of 11 U.S.C. §§ 110 and 526 committed by Defendants Edward Jonak and 3rd Millennium Systems, Inc. in a clear and consistent pattern, it is appropriate to require those Defendants to forfeit all compensation they received from the debtors in the cases identified under Conclusion of Law 1, and to turn over those monies to the trustees in the cases; to enjoin those Defendants from all future conduct of the sorts adjudged as violations; and to award statutory damages to the debtors in all of the cases.

DISCUSSION

I. Bankruptcy Petition Preparer: 11 U.S.C. § 110.

For a participant in the bankruptcy process to be subject to the regulation of 11 U.S.C. § 110, it must fall within the classification of "bankruptcy petition preparer." The statute has a definition:

> In this section --
>
> > (1) "bankruptcy petition preparer" means a person, other than an attorney for the debtor or any employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing; and
> >
> > (2) "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in

> connection with a case under [the Bankruptcy Code].

11 U.S.C. § 110(a).

Almost all of the courts that have addressed the scope of this definition have given it a broad construction.

There is no question that the act of physically or digitally completing blanks or fields for the relevant information on the official forms to commence a bankruptcy case, in hard-copy or digital format, or typing or otherwise transcribing those documents, is conduct within the scope of § 110(a)(1). *E.g.*, *In re Martinez*, 72 F.Appx. 138, 141 (5th Cir. 2003); *In re Rose*, 314 B.R. 663, 695 (Bankr. E.D. Tenn. 2004); *In re Guttierez*, 248 B.R. 287, 297-298 (Bankr. W.D. Tex. 2000); *In re Kaitangian*, 218 B.R. 102, 110 (Bankr. S.D. Cal. 1998).

Jonak's and 3rd Millennium's defense is factually premised on the fact that they did not do this--and that they farmed their customers out to a provider in a distant state for this clerical service. Their legal theory is summarized most succinctly in the first sentence of their response to the motion at bar: "The Defendants sell legal plans to the public." Built out from that conclusory (and non-illuminating) declaration, the position is that ALC's self-described role as a "resource center" perforce took Jonak and 3rd Millennium out of the status of bankruptcy petition preparer. The notion is that ALC's "program" for referral to typists such as "Jurist" and to "program attorneys" for backup advice, plus certain flourishes of other "service," made its product something like a prepaid legal services plan. Jonak and 3rd Millennium classify themselves as only a conduit toward a panel of service providers, for which Jonak was a distanced "administrator."[21] Thus, as they carp in the introduction to their response, "[t]he Defendants did not prepare a document for filing in any of the named Debtor's [sic] cases."

This argument is a failed diversion away from the material factors and the real facts. It elides the structural dimension of ALC's "business model" and the functional aspect of its actual,

[21] In deposition, Jonak was quite insistent in brandishing this title for himself. Jonak Depo. Tr. 14, 40-41.

proven performance for the debtors within the eighteen cases. As such, it necessarily fails. Jonak and his whole enterprise structure qualify as a bankruptcy petition preparer because of what he actually *did*, regardless of what he *called* his operation.

Under several courts' construction of § 110(a), it is not necessary that a party have "in-person interactions with [its] customers" to qualify as a bankruptcy petition preparer. *In re Reynoso*, 477 F.3d 1117, 1123 (9th Cir. 2007).[22] The provision by a non-attorney of component services that include "meet[ing] with clients, provid[ing] blank bankruptcy forms for them to fill out, provid[ing] them use of [a] computer for internet research, advis[ing] them regarding exemptions, submit[ting] their papers to the bankruptcy court, provid[ing] consulting services, provid[ing] copies of sample petitions completed by an attorney, answer[ing] questions and explain[ing] the bankruptcy process" can cumulate to bankruptcy petition preparer status, even if the provider him- or herself does not put fingers to keyboard or pen to hard-copy forms. *In re Grissett*, 2008 WL 4553083 at *3 (Bankr. E.D. Mich. Oct. 8, 2008). *See also In re Thomas*, 315 B.R. 697, 703-704 (Bankr. N.D. Ohio 2004); *In re Jolly*, 313 B.R. at 300 ("The fact that the person does not place the data or numbers on the form does not excuse that person from advising the court of their participation in the process of preparing the documents . . . ."). The Eighth Circuit had this very thought, when it held that a person acted as a bankruptcy petition preparer when he "'caused' the papers to be typed," after significant conversation with a prospective debtor regarding the merits

[22] Courts have imposed the status of bankruptcy petition preparer on:

1. the authors of instructional books, *In re Crowe*, 243 B.R. 43 (B.A.P. 9th Cir. 2000), *aff'd*, 246 F.3d 673 (9th Cir. 2000);

2. the seller of a "bankruptcy kit" that has step-by-step instructions on how to file for bankruptcy without a lawyer, *In re Jolly*, 313 B.R. 295 (Bankr. S.D. Iowa 2004);

3. a provider of petition preparation software for a debtor's own use in completing the forms, *In re Springs*, 358 B.R. 236 (Bankr. M.D.N.C. 2006); and

4. the owners and purveyors of websites that provide web-based forms for debtors to complete themselves, *In re Reynoso*, 477 F.3d at 1117; *In re Bagley*, 433 B.R. 325 (Bankr. D. Mont. 2010); and *In re Pillot*, 286 B.R. 157 (Bankr. C.D. Cal. 2002).

of filing for bankruptcy and the receipt of money in conjunction with the consultation. *In re Garrison*, 2000 WL 276975, at *1.

There is every bit of sense to this approach, if the statute is construed from a holistic as well as a functional perspective--as is most appropriate given the congressional intent.[23] The documents for a bankruptcy filing are complicated, in the nature and the breadth of the information they require. (This is particularly so since the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub.L. No. 109-8.)

The organization of the required disclosures is comprehensible to a trained and licensed attorney, at least if one understands the relevant substantive considerations of the bankruptcy process.

But, that organization is not intuitively obvious to a lay person unlettered in the law. Simply assembling the raw source information in adequate detail is a daunting task, for which most consumer-debtors require substantial guidance. And then there is the need to divine with specificity, exactly what is to be stated for the more nuanced inquiries of the Statement of Financial Affairs, the disclosure of executory contracts and unexpired leases, or the many other documents that call for answers beyond the mere enumeration of current debts and assets. The vocabulary of the forms' instructions is not always comprehensible to all consumer-debtors, or even most of them.[24]

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[23]There were no House or Senate committee reports for the Bankruptcy Reform Act of 1994, Pub.L. No. 103-394, in § 308 of which 11 U.S.C. § 110 was enacted. To the extent that the floor statements in the House of Representatives, 140 Cong. Rec. H 10,764 (daily ed. Oct. 4, 1994) can be considered, they do express a legislative recognition that "far too many of them [bankruptcy petition preparers] also attempt to provide legal advice and legal services to debtors," while at the same time "lack[ing] the necessary legal training and ethics regulation to provide such services in an adequate and appropriate manner." Finally, they express concern that "[t]hese services may take unfair advantage of persons who are ignorant of their rights both inside and outside the bankruptcy system."

[24]The federal judiciary is currently in the later stages of a project to revise the forms for a bankruptcy filing. The challenge is large, however, given the counterintuitive nature of some aspects of the bankruptcy process under current law. Schedules A through E are the debt and asset disclosures for a bankruptcy filing. Their disclosures are certainly the least complicated of those required; and even there, an understanding of the complex nature of contingent liability and intangible property is necessary to ensure full, proper disclosure.

All of this underlines the fact that the "preparation" of documents to commence a bankruptcy case goes greatly beyond the *end* task, of putting words into the forms. First one must translate the language of the current instructions to one's own understanding. Proper completion requires a search for relevant documents; the plumbing of memory for non-documented facts; choice applied to the fruits of that, based on their relevancy to the forms' instructions; and organization of all of the distilled information, according to the sequence of the forms' requirements. Many debtors do this themselves, or try to; but reliance on a third party's explanation gives a higher level of comfort with an abstract, alien task. It hastens the submission to the court.

Not a bit of that involves the actual typing onto or into the forms, but it all plays into their eventual completion. Functionally, the "preparation" of a bankruptcy petition starts with the first inquiry to a debtor, as to why they would need the relief. *In re Guttierez*, 248 B.R. at 297-298 (petition preparation under § 110 may include "virtually all conduct falling into the category of guidance or advice . . .").[25] It can go through the several actions just identified, all the way to and through the clerical act of producing completed forms for submission to the clerk of a bankruptcy court. Doing the typing alone is enough to make a participant a bankruptcy petition preparer; but multi-party, interactive engagement with a future debtor, in active and directed support of the necessary typing, can impose the status on other sorts of participants in the causal chain toward the filing--even if they do not perform the culminating act of the typing. *In re Alloway*, 401 B.R. 43, 46 (Bankr. D. Mass. 2009). Even acting as a passive conduit toward someone who does the actual typing, via ostensible "referral" in the role of a "resource center," is enough to tie a participant into

[25]The *Guttierez* court recited "suggesting bankruptcy as an available remedy for a debtor's financial problems" as the "guidance or advice" that may, if given, bestow a party with petition-preparer status. This citation to *Guttierez* is not an endorsement of the idea that such "suggesting" alone can constitute petition preparation under the regulation of § 110. "Suggesting" bankruptcy is obviously among the actions taken during the "briefing . . . that . . . assisted [a debtor] in performing a related budget analysis" required of individual debtors by 11 U.S.C. § 109(h)(1). The program and activity of any "approved nonprofit budget and credit counseling agency" that assists debtors in such pre-bankruptcy analysis is separately governed by 11 U.S.C. § 111; the programs of such providers are vetted by the United States Trustee pursuant to § 111(b). There is no defensible statutory construction that would have a participant within the scope of § 111, snared additionally into the regulation of § 110--unless it did significantly more toward a bankruptcy filing than merely evaluate financial condition and suggest bankruptcy to its debtor-client.

petition preparer status--where the intermediary receives payment and certainly where the channeling is directly to a single typist without the offer of a choice.[26]

The last such role would have been enough, but it is significantly *less* than what Jonak and 3rd Millennium did for its debtor-customers. Jonak's acts through ALC were much more intrusive into the process, as to each and every one of the debtors identified by the U.S. Trustee. Some of ALC's customers would have been able to do these things themselves. But, all of them obviously wanted third-party help in the preparation toward the filing. They paid Jonak for that help. Jonak himself readily supplied direct support. If he had to, Jonak would have called that support ample--however hackneyed its surface flourishes and however shallow and incomplete it was.

In re Duran, 347 B.R. 760 (Bankr. D. Colo. 2006) addresses similar (though not identical) circumstances and arguments. *Duran* shows in detail why the defense's argument would fail even if ALC functioned solely as the conduit it describes.

Duran involved an elaborate, multi-party structure, largely undisclosed on the face of filed documents, through which a debtor's bankruptcy filing was supported and prepared. An entity that remained covert, "Legal Aid Network," had received an undisclosed payment of $300.00 from the debtor. One Brown was the manager and part owner of "Legal Aid Network". One Johnson typed the filed documents. Her name and signature were on the documents, apparently where appropriate for a petition preparer. However, contrary to what Brown asserted, the *Duran* court found that his operation "was more than a referral agency and . . . Johnson was not an independent contractor" for the ostensible task of petition preparation. 347 B.R. at 763-765. In reaching this conclusion, the *Duran* court found that "Legal Aid Network" served as the point of contact for potential customers, who had been drawn in via its advertising. It found that "Legal Aid Network" selected the person (Johnson) to complete the documentary requirements for a

[26]This is the clear thrust of the Eighth Circuit's observation in *Garrison*. And an odd, tangential bit of statutory text supports the notion that more than one participant, and more than one type of participation, can qualify as "bankruptcy petition preparer." The statutory requirement of disclosure of "the identifying number of a bankruptcy petition preparer," includes the identifying numerals for "each individual who prepared the document *or who assisted in its preparation*." 11 U.S.C. § 110(c)(2)(A) (emphasis added).

bankruptcy filing; that "Legal Aid Network" set the fee for that preparation work and collected it; and that Brown directed all of the activities of "Legal Aid Network" including all of the actions that culminated in Johnson doing the typing. 347 B.R. at 765-766.

The *Duran* court clearly reached its ruling by tracing back from the performance of the typing, to the origination of the assisted bankruptcy filing in Brown's advertising campaign for "Legal Aid Network." It tagged Brown and "Legal Aid Network" with bankruptcy petition preparer status, based on a continuum of facilitation toward the bankruptcy filing. And finally, the *Duran* court clearly found pivotal connectivity in the way Brown directly funneled the typing work to Johnson, without tendering other options for typing to the customer.

The salient facts at bar are broader than those in *Duran*: Jonak's large involvement in the preparation and structuring of the relevant information, not to mention his direct intervention in the debtors' substantive elections and choices for the bankruptcy process. [27] Those made him and 3rd Millennium a bankruptcy petition preparer within the meaning of § 110(a)(1). Virtually every act that he performed aided the physical preparation of the bankruptcy petitions that his customers eventually filed.[28]

The issue needs no more discussion than that: the defense's denial of the status is without merit, on the uncontroverted facts at bar. In everything that they did for the debtors in the

---

[27] This active support undoubtedly went back to a point very early in the first consultations. At some point, each inquiring customer had to be encouraged to go ahead in the process of bankruptcy; or at the least there had to be no discouragement. A debtor's decision to go ahead is part of the process; a bankruptcy filing may not be the only, or the most appropriate, option for a debtor who is insolvent in a balance-sheet sense, particularly if the debtor is protected from garnishment or levy ("judgment proof").

[28] But even if the demonstrated degree of interaction were lacking, *Duran* would furnish a fully-defensible rationale for classifying Jonak and 3rd Millennium as a bankruptcy petition preparer. One commonality is particularly striking: Jonak's direction of ALC's customers directly to one typist of his choosing alone. *Duran* apparently involved no separate payment by its debtor to the typist. But, ALC's direct "referral" was implemented by Jonak withholding the typist's contact information until the customer paid ALC in full for ALC's own (and significantly larger) initial charge. Jonak clearly took advantage of his unwitting clients' unfamiliarity with the presence of multiple other typists out in the market. So notwithstanding the facade of separate contracting for what were ostensibly different services, ALC exploited an unbroken process of facilitation that was not materially distinguishable from the one in *Duran*. (A later decision from the same court appeared to reach a different result, through a different construction of the statute. *In re Soberanis-Soberanis*, 67 CBC 2d 828 (Bankr. D. Colo. 2012). Neither decision is precedential. The *Duran* analysis is simply the preferable one.)

eighteen specimen cases, Jonak and 3rd Millennium functioned as a bankruptcy petition preparer within the definition of § 110(a)(1). Hence, they were subject to the regulation of § 110 when they performed their ostensible services for these debtors.

II. Violation of Requirements of 11 U.S.C. §§ 110(b) - (g).

In their answer, Jonak and 3rd Millennium admitted that they did not comply with the requirements of the following regulatory provisions of § 110:

a. § 110(b)(1) (bankruptcy petition preparer "shall sign the document and print on the document the preparer's name and address"; if bankruptcy petition preparer "is not an individual," a representative (designated by specific official capacities for the non-individual entity) shall give same disclosures, Defendants' Answer ¶ 94;

b. §§ 110(b)(2)(A) - (B) (bankruptcy petition preparer "shall provide to the debtor a written notice . . . on an official form prescribed by the Judicial Conference of the United States," in which debtor acknowledges that bankruptcy petition preparer "is not an attorney and may not practice law or give legal advice"), and which gives examples of legal advice that are under this prohibition), Defendants' Answer ¶ 95;

c. § 110(c)(1) (bankruptcy petition preparer "shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document"--with that identifying number then defined under § 110(c)(1) as the social security number "of each individual who prepared the document or assisted in its preparation"), Defendants' Answer ¶ 96; and

d. § 110(h)(2) (bankruptcy petition preparer shall disclose, by separate declaration filed with the petition, "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"), Defendants' Answer ¶ 98.[29]

Beyond that, the record establishes that the form of the trade name, advertising, and publicity exploited by Jonak and 3rd Millennium were in violation of § 110(f) (barring bankruptcy petition preparer from using "the word 'legal' or any similar term in any advertisements, or advertis[ing] under any category that includes the word 'legal' or any similar term"). In this regard, Jonak's substitution of the word "Court" for "Legal" in ALC's public image after this litigation was commenced, was ineffectual to purge the earlier violation, or to cure ALC's image under the statute. The noun-modifier "Court" unequivocally classifies as "any similar term." So, too, does the pitch in ALC's "Program Benefits" page, touting ALC's assistance "to navigate today's complicated *legal* system." (Emphasis added). *In re Ali*, 230 B.R. 477, 482 (Bankr. E.D.N.Y. 1999) (use of "law" and "court" give impression to layperson that bankruptcy petition preparer's services were those of a legal professional).

So, undeniably, Jonak and 3rd Millennium violated their obligations of disclosure under statute, in numerous ways.

III. Offering and Furnishing Legal Advice and Unauthorized Practice of Law: 11 U.S.C. §§ 110(e)(2), 110(k), and Minn. Stat. § 481.02, Subd. 1.

11 U.S.C. § 110(e)(2) provides:

> (A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).
>
> (B) The legal advice referred to in subparagraph (A) includes advising the debtor--
>
> (i) whether--
>
> (I) to file a petition under [the Bankruptcy Code]; or
>
> (II) commencing a case under chapter 7,

[29]The concession in pleading was prudent. The full initial documents filed for all of the cases are in the record pursuant to the parties' Stipulation of Exhibits [Dkt. No. 56]. The indicated disclosures are entirely absent from the petitions and schedules, making the failure of compliance undeniable.

> 11, 12, or 13 is appropriate;
>
> (ii) whether the debtor's debts will be discharged in a case under [the Bankruptcy Code];
>
> (iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under [the Bankruptcy Code];
>
> (iv) concerning--
>
> > (I) the tax consequences of a case brought under [the Bankruptcy Code]; or
> >
> > (II) the dischargeability of tax claims;
>
> (v) 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;
>
> (vi) concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or
>
> (vii) concerning bankruptcy procedures and rights.

In addition, 11 U.S.C. § 110(k) provides:

> Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

The matchup between the sorts of advisories that Jonak gave to various ALC customers, *see* Finding of Fact 24, to the types of advice expressly prohibited by § 110(e)(2)(B), is almost eerie. Every one of these statements was made to prompt ALC customers toward a bankruptcy filing. All of them fell into one of three categories: an explanation (however shallow) of laws that would govern the customer's status and options in bankruptcy; an evaluation and opinion

as to bankruptcy's effect on the customer's debts or assets; or an advisory as to what actions or positions to take in response to specific disclosures or declarations to be made on the documents for a bankruptcy filing. Jonak made all of these statements under conditions where the customer could be expected to rely and act on what he said. As a matter of federal law that is independently and directly applicable to bankruptcy petition preparers, Jonak and 3rd Millennium were blatantly and multiply in violation.

On the other hand, the enactment of § 110(k) seems to respond to the concerns of federalism; it is counter-preemptive. It expresses a congressional intent to not supersede extrinsic statutory regulation of the practice of law, a matter of local (state) concern, as it may apply to parties that might otherwise qualify as bankruptcy petition preparers. Thus, a bankruptcy petition preparer that may otherwise be operating within the defined limitations of § 110, may be subject to sanction by local authorities. Put another way, § 110 does not displace the power of state or local governments to prevent unauthorized persons from providing services to the public that are to be provided only by licensed (and hence regulated) lawyers. Nor does it prohibit the application of state statutory regulation to bankruptcy petition preparers in collateral proceedings.

The U.S. Trustee invokes § 110(k), but not toward that, more obvious end. Rather, he accuses Jonak of having engaged in the unauthorized practice of law in the past, in the things that Jonak did for ALC's customers in relation to prospective bankruptcy filings by them. On the basis of that past, demonstrated misconduct in relation to a legal process under the exclusive jurisdiction of a (federal) court, he requests that Jonak and his instrumentalities be enjoined from acting similarly in the future.

As such, all of Jonak's statements fell within the express prohibition of Minnesota law:

> **Prohibitions**. It shall be unlawful for any person or association of persons, except members of the bar of Minnesota admitted and licensed to practice as attorneys at law, to . . . by word, sign, letter, or advertisement, to hold out as competent or qualified to give legal advice or counsel, or to prepare legal

> documents, . . . *or, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services*, . . . for a fee or any consideration, to prepare for another person, firm, or corporation, any other legal document . . . .

Minn. Stat. § 481.02, Subd. 1 (emphasis added). Though this is a statute that creates a criminal offense, it does define what constitutes the unauthorized practice of law in Minnesota, and that is just what § 110(k) refers to.

Actions in violation of the Minnesota statute are properly considered as abuses of the bankruptcy process, in the civil sense. 11 U.S.C. § 105(a) vests a bankruptcy judge with "broad authority . . . to take any action that is necessary or appropriate, 'to prevent an abuse of process . . . .'" *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 375 (2007).

To prevent Jonak from continuing to abuse the bankruptcy process, it is fully warranted to restrain him, 3rd Millennium, and him through any future entity he may form, from performing the role of a licensed attorney for those who consult him in relation to a bankruptcy filing. On the uncontroverted proof that Jonak has done so in the past, the U.S. Trustee is entitled to a permanent injunction against such conduct on Jonak's part, as a matter of law.

IV. Fraudulent, Unfair, and Deceptive Acts in ALC's Service Provision: 11 U.S.C. § 110(i)(1).

11 U.S.C. § 110(i) permits the imposition of various sanctions on a bankruptcy petition preparer that has "commit[ted] any act that the court finds to be fraudulent, unfair, or deceptive . . ."

A bankruptcy petition preparer's engagement in the unauthorized practice of law is perforce a fraudulent, unfair, or deceptive act within the scope of this provision. *In re Doser*, 292 B.R. 652, 659 (Bankr. D. Idaho 2003); *In re Dunkle*, 272 B.R. 450, 456 (Bankr. W.D. Pa. 2002); *In re Moffett*, 263 B.R. 805, 813 (Bankr. W.D. Ky. 2001). In regards to that, a threshold point seems so obvious that it does not need explanation. But, nonetheless: if actual professional advice as to a party's legal or factual merits in a prospective court case is required to evaluate whether to start the case, and how to go about structuring it; a person who is not a licensed lawyer knowingly

purports to give that advice for pay, toward reliance by the advised party in going ahead; and proceeding in that reliance would create material risks to the legally-cognizable interests of the advised party, how could the tender of the advice *not* be a fraudulent, unfair, or deceptive act?

In addition, there was a broader engagement in fraudulent, unfair, or deceptive acts, in the misrepresentation of the services to be provided to ALC's "members." This was pervasive throughout ALC's publicity and the committing documentation that it required customers to sign, in two different ways.

First, once prospective customers contacted ALC, Jonak sold its product as a "legal plan." He puffed this term in stipulation and deposition as if it had been some sort of prepaid legal services plan. Stip. of Facts, ¶ 7; Jonak Depo. Tr. 22, 28, 31-32, 37, 40-41. The whole thrust of Jonak's in-person pitch was that ALC would provide to its customers ready access to reliable guidance "to navigate today's complicated legal system," and "at low cost," ready whenever they needed it. Yet, nowhere do any of the eighteen debtors in question attest to having had consistent services from a lawyer through ALC's offices. ALC certainly never provided an attorney who was bound contractually through ALC to be counsel of record for a bankruptcy filing. None of the eighteen debtors ever pursued using a "program attorney" on the ostensibly "discounted" fee basis touted by ALC. Rather, the common narrative throughout is characterized by Jonak himself dispensing legal advice and giving guidance as to how to meet the disclosure requirements of the bankruptcy process--with no deference toward consulting a licensed lawyer. It is not clear what service was provided to ALC's other customers by the couple of "program attorneys" who did receive multiple payments from ALC for some months. Given the low denomination of compensation, it could not have been much and it could not possibly have been *consistent* as is needed throughout a bankruptcy case.

Thus, the touting of ALC as a ready conduit to needed representation by a licensed lawyer under the guise of a "legal services plan" was a significant misrepresentation. The conclusion is inescapable, given how those words would have been taken by a layperson unaware

of the complications of current bankruptcy law and the nuances of ethical rules governing the attorney-client relationship, the "unbundling" of legal services, and the like.

And then there is the initial, backdrop fraudulence, in the wording of the public advertising that drew customers in. None of ALC's outside advertising even mentions a "legal plan" or a "legal services plan" as such. Rather, the image presented there is a fee-for-service mode of provision. The advertising thus was a deception on top of the deception. The terse linking of the proffered "bankruptcy" service to a flat price was deceptive as well; there is no mention of a further cost for typing services; the prospect of a court filing fee; or the "discounted" fees for "program attorney consultations" that were later flogged as the "benefit" of "membership."

And, finally, there is the grotesquely self-serving nature of the disclaimers that Jonak inserted into the documents that committed the customers to ALC, quoted verbatim at Finding of Fact 12. By this facile attempt to insulate ALC's "program" from regulation under § 110, through forced admissions from customers, Jonak only compounded the fraudulent, unfair, and deceptive acts he inflicted on them.

As ALC's whole program was projected in public media and private contract alike, Jonak and 3rd Millennium materially misrepresented the basic nature of what ALC would provide. This was a pervasive and patent violation of § 526(a)(3).

V. Debt Relief Agency: 11 U.S.C. §§ 526-528.

For a participant of the bankruptcy process to be subject to the regulation of 11 U.S.C. §§ 526-528, it must fall within the classification of "debt relief agency." The Bankruptcy Code provides the definition:

> The term "debt relief agency" means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under [11 U.S.C. §] 110, . . .

11 U.S.C. § 101(12A).[30] Again, Jonak and 3rd Millennium deny that they have the status, on the same argument--throwing the cloak of "resource center" or "legal plan" between themselves and the statute's reach.

The ruling under § 110 makes one issue easy of resolution. The definition under § 101(12A) automatically brings in 3rd Millennium, given its status as a bankruptcy petition preparer. *Milavetz, Gallop & Milavetz, P.A. v. United States*, ___ U.S. ___, ___, 130 S.Ct. 1324, 1332 (2010) (pointing out "explicit inclusion of 'bankruptcy petition preparer[s]'" in definition of debt relief agency under § 101(12A)).

One need not rely on this per se classification, however. The undisputed facts on ALC's function still place 3rd Millennium into the class of debt relief agency. The debtors in the eighteen cases are all "assisted persons" within the definition of 11 U.S.C. § 101(3); the debt structures recited in their bankruptcy schedules "consist primarily of consumer debts"; and their asset and exemption schedules recite that their non-exempt property did not exceed $175,750.00 in value.[31] The actions that Jonak and others on behalf of 3rd Millennium performed for these debtors perforce were "services sold or otherwise provided . . . with the . . . purpose . . . of . . . providing information, advice, counsel, document preparation, or filing . . . or providing legal representation with respect to a case or proceeding under [the Bankruptcy Code]." Essentially *everything* that Jonak and 3rd Millennium did for these people facilitated their bankruptcy filings, however incomplete or shoddy it was. Thus, ALC's "service" was "bankruptcy assistance." 11 U.S.C. § 101(4A). It is immaterial that Jonak's de facto *acts* were performed within the flimsy

[30]The specific statutory cross-references in the exclusory provisions of this definition are irrelevant and hence are omitted.

[31]The statements and schedules for all eighteen cases are in the record as Exhibits 22 through 39 of the Second Affidavit of Sarah J. Wencil [the Second Affidavit being Dkt. No. 24; Exhs. 22-39 being separate Dkt. Nos. 27-48]. Of all of the cases, only those for debtors Gjestvang [Dkt. Nos. 37-38] and Bushman [Dkt. No. 41] had scheduled assets of an aggregate value that exceeded the amount of the statutory maximum; and the claimed (and ultimately allowed) exemptions in those two cases reduced the scheduled values for potentially-nonexempt assets below the maximum.

structure of a self-styled "legal plan."[32] Even without the statute's per se classification from its bankruptcy petition preparer status, 3rd Millennium qualified as a debt relief agency from the statute's functional considerations. *In re Spence*, 411 B.R. 230, 239 (Bankr. D. Md. 2009) (person "may be rendered" a debt relief agency "if it provides *any* 'bankruptcy assistance' to an 'assisted person' in return for the payment of money . . ." (emphasis in original)).

VI. Violation of Requirements of 11 U.S.C. §§ 526-528.

As to the U.S. Trustee's case on noncompliance with §§ 526-528, the defense's response is light. After another denial of most everything, the defense focuses on the U.S. Trustee's allegations about ALC's advertising, and the matter of its falsity or deceptiveness. In the end, the defense's general denial is simply wrong.[33] And those few points that the defense recognizes in play are also resolved in the U.S. Trustee's favor.

The regulatory provisions of §§ 526-528 are lengthy and intensely detailed. The U.S. Trustee focuses on a limited number of their prescriptions. The facts that go to 3rd Millennium's compliance are not disputed on the record for this motion. They evidence violations of multiple duties of disclosure and conduct imposed on a debt relief agency.

A. Clear and Conspicuous Disclosures in Advertising: §§ 528(a)(3) - (4).

3rd Millennium's most obvious violation was in the advertising that it used to attract customers. 11 U.S.C. §§ 528(a)(3) - (4) require that,

> [a] debt relief agency shall--

---

[32] In her brief, defense counsel tries to shoehorn 3rd Millennium into the exceptions from the status of debt relief agency that are found in §§ 101(12A)(A) - (D). The argument is founded on the notion of being a "legal plan," that "works in conjunction with petition preparers [i.e., the typists] and bankruptcy attorneys." The point apparently is that those other participants do have the status of debt relief agency, but ALC can not. As counsel would have it, Jonak's and 3rd Millennium's "close relationships with 'debt relief agencies' alone," should trigger one of the exceptions. This slight argument does not acknowledge the very specific wording of the categories of exception under §§ 110(12A)(A) - (E). Section 110(12A)(A) does except Jonak personally from the status (as an "officer, director, employee, or agent of" a qualified debt relief agency). But, none of the other provisions would include a flimsily-structured "legal plan" that exists to funnel its "members" into bankruptcy.

[33] Had Jonak and 3rd Millennium admitted noncompliance with the various facial requirements of disclosure and disclaimer, they would have been much more ingenuous. The defense's pleading on these points markedly contrasts with its candid admissions on the same sorts of requirement under § 110.

> . . .
>
> (3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under [the Bankruptcy Code]; and
>
> (4) clearly and conspicuously use the following statement in such advertisement: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code." or a substantially similar statement.

The print and Web-based advertising in the record does not contain either recitation. There is no specific statement that ALC's services were offered "with respect to bankruptcy relief" under the federal law of the Bankruptcy Code, § 528(a)(3). More bluntly, the admission of status prescribed by § 528(a)(4) is lacking throughout ALC's publicity.[34]

B. Clear and Conspicuous Disclosure of Services to be Rendered, § 528(a)(1)(A); Misrepresentation of Services to be Provided, § 526(a)(3).

Debt relief agencies are required to enter into formal agreements with their assisted persons. Between the first date on which a debt relief agency provides bankruptcy-related services and the date of the associated bankruptcy filing, it is to enter into

> . . . a written contract with such assisted person that explains clearly and conspicuously--
>
> (A) the services such agency will provide to such assisted person; and

[34] As to § 528(a)(3), one might quibble that there is no other way to interpret the references to "bankruptcy" and "a low cost bankruptcy discharge." The statute, however, is very literal in its directive. It is appropriate to apply this provision as literally as its text is worded, given the Supreme Court's no-nonsense, plain-language approach to the scope of § 101(12A) in *Milavetz*, ___ U.S. at ___ n.3, 130 S.Ct. at 1331-1332 n.3.

> (B) the fees or charges for such services, and the terms of payment.

11 U.S.C. § 528(a)(1).

The key to the U.S. Trustee's contention here is the verb "will." The various parts of ALC's written engagement promise to provide "Debt negotiation guidance" and "Post-bankruptcy credit restoration guidance." However, Jonak and 3rd Millennium admit that they lack the required state licensure to provide debt settlement services or credit counseling services. The U.S. Trustee argues that ALC's written documentation does not comply with § 528(a)(1)(A), because it commits Jonak and 3rd Millennium to providing "Plan Benefits" that they were not legally licensed to perform.

This point segues back into § 526(a), which contains various proscriptions of activity in which a debt relief agency might otherwise engage for the public. A debt relief agency is forbidden from:

> misrepresent[ing] to any assisted person or prospective assisted person, directly or indirectly, affirmative or by material omission, with respect to--
>
> > (A) the services that such agency will provide to such person; or
> >
> > (B) the benefits and risks that may result if such person becomes a debtor in a case under [the Bankruptcy Code]; . . .

11 U.S.C. § 526(a)(3). By purporting to contract that it would provide these ameliorative or advisory services when it was not legally authorized to do so, 3rd Millennium violated this statute. And, of course, the pervasive misrepresentation of the nature of ALC's whole program, treated under § 110 *supra* at pp. 37-39 was also a misrepresentation within the scope of § 526(a)(3).

C. Fostering Filing of Completed Bankruptcy Form that was Untrue or Misleading, 11 U.S.C. § 526(a)(2).

A debt relief agency "shall not--

> . . .
>
> make any statement, or counsel or advise any assisted person or prospective assisted person to

> make a statement in a document filed in a case or proceeding under [the Bankruptcy Code], that is untrue or misleading, or that upon the exercise of reasonable care, should have been known by any such agency to be untrue or misleading . . .

11 U.S.C. § 526(a)(2). It is undisputed that the filings in all but three of the eighteen bankruptcy cases failed to disclose that Jonak and 3rd Millennium had been involved from the outset of the debtors' effort toward bankruptcy filings. Also lacking was the disclosure that Jonak and 3rd Millennium had received a substantial fee for whatever they did. Jonak gave the debtors advice on the completion of the forms; the typist prepared the petitions using the information forms that ALC passed out to the debtors; and Jonak shepherded the petitions through to filing. There was plenty of opportunity to ensure that the disclosure was made, as to ALC.

To cap the point, all of the Statements of Financial Affairs disclosed the involvement and compensation of "Jurist" for his service. That evidences that the debtors were made aware of a disclosure requirement by some means--and possibly by advice from Jonak. But, there is no disclosure of the debtors' much larger pre-bankruptcy financial outlay--to ALC. The strongest inference from this is that Jonak, or someone at his direction, actively counseled or advised the nondisclosure. At the very least, Jonak passively permitted the debtors to omit disclosure of ALC's involvement, knowing that the typist's involvement would be disclosed.

One way or the other, this violated § 526(a)(2). The violation is all the more salient because ALC mulcted so much more money from the debtors for its "Plan Benefits" than the typist charged for directly enabling the bankruptcy filing.[35]

[35] It bears mention that Jonak actively advised at least one debtor to cover up ALC's involvement, when she was responding to a questionnaire for *pro se* debtors that her panel trustee asked her to complete. He also proffered "some money back" at the same time. Kersting Tr. at 14-15. Jonak does not deny doing this. This point does not bear directly on § 526(a)(2), which goes to documents formally filed with the court. But it does suggest a consistent effort on Jonak's part to avoid his customers' disclosure of his involvement.

D. Failing to Provide Various Notices and Disclosures to Debtor-Customers, 11 U.S.C. §§ 527(a) - (b).

A debt relief agency is required to give various written notices and disclosures to an assisted person. They include the written advisory under 11 U.S.C. § 342(b) regarding the forms of bankruptcy relief and the duty to truthfully make the disclosures required of all debtors under law. 11 U.S.C. § 527(a)(1). They also include a "clear and conspicuous written notice" that:

> . . .
>
> (A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;
>
> (B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 must be stated in those documents where requested after reasonable inquiry to establish such value;
>
> (C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13 of this title, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and
>
> (D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction, including a criminal sanction.

11 U.S.C. §§ 527(a)(2).

During the discovery process for this adversary proceeding, the U.S. Trustee requested 3rd Millennium to provide copies of all such disclosures that it had provided to ALC's customers who filed for bankruptcy, particularly the debtors in the eighteen cases at issue here. 3rd Millennium did not produce any. The U.S. Trustee was not able to recover any such forms from the debtors in question. 3rd Millennium has not produced any evidence that it did give the notices.

It is uncontroverted, then, that 3rd Millennium did not do so. As a result, it is undisputed that 3rd Millennium violated §§ 527(a)(1) - (2) as to all of the debtors.[36]

VII. Relief to be Granted and Sanctions to be Imposed Under 11 U.S.C. §§ 110(h) and 526(b) - (d).

Jonak and 3rd Millennium parlayed a smarmy facade to conceal their central role in counseling the debtors and preparing the documents in the eighteen cases, and in facilitating their filing under specific theories of law and fact. They then maintained that flimsy construct to rationalize their actions in the defense of this lawsuit. Given the patent, multiple nature of the violations, the imposition of all available sanctions under § 110 is appropriate.

A. Forfeiture and Turnover of Fees Received, 11 U.S.C. § 110(h)(3).

Under the authority of § 110(h)(4), the U.S. Trustee has moved for relief against Jonak and 3rd Millennium in relation to the fees they extracted from the debtors in the eighteen cases. When such a motion is made, fees paid by a debtor to a bankruptcy petition preparer are subject to disallowance and turnover to the trustee, where the amount of the fee is:

> "found to be in excess of the value of any services rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition; . . .

11 U.S.C. § 110(h)(3)(A)(i). More readily to the point for the cases at bar,

> [a]ll fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

11 U.S.C. § 110(h)(3)(B).

There is everything to be said for the U.S. Trustee's argument that ALC's "legal plan" had no apparent value independent from the services that were illegal under § 110 (and hence non-compensable). Jonak and 3rd Millennium never made an effort to quantify a value for the illusory role of "resource center," a unidirectional conduit to providers of much more palpable and effective

[36] To make it clear: given the independent applicability of §§ 526-528 to ALC, it does not matter if "Jurist" or another typist gave these disclosures to the ALC customers.

service toward a bankruptcy filing. It is entirely merited to order disgorgement under § 110(h)(3)(A)(i), then.

In any event, given the number and breadth of the violations of § 110, it is appropriate to use the discretionary power of § 110(h)(3)(B), and to require Jonak and 3rd Millennium to surrender these monies.[37] The parties stipulated to an itemization of the amounts paid by the debtor(s) in each case. *See* Stip. of Facts, ¶ 9 [Dkt. No. 55]. It is not necessary to reprise that itemization before it is merged into the dispositive terms of this order. The statute requires payment to the trustee in a given debtor's case and the U.S. Trustee requests that disposition.[38] It will be ordered.

B. Injunction, 11 U.S.C. § 110(j).

The U.S. Trustee is authorized to "bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of [§ 110] or from further acting as a bankruptcy petition preparer." 11 U.S.C. § 110(j)(1). Upon a finding of conduct in violation of § 110 or any provision of the Bankruptcy Code; of misrepresentation of "the preparer's experience or education as a bankruptcy petition preparer"; or of engagement in "any other fraudulent, unfair, or deceptive conduct," "the court may enjoin the bankruptcy petition preparer from engaging in such conduct." 11 U.S.C. § 110 (j)(2)(A). A finding of "continual[ ] engage[ment]" in violations of the statute, plus other aggravated acts of nonresponse to a narrower injunction, enables the court to "enjoin the person from acting as a bankruptcy petition preparer" across the board. 11 U.S.C. § 110(j)(2)(B).

It is the clear sense of the statute that the general principles of equity be applied, and a first injunction tailored narrowly to prohibit a bankruptcy petition preparer from repeating its past, proven, and multiple infractions. Jonak's multiple violations merit the issuance of an injunction

[37] The specific provision now applied uses the verb "forfeit" rather than the verbs used in the immediately-preceding provision. There is no content-specific definition given for the variant of verb "forfeit." Both provisions are parts of a comprehensive remedy that is both restorative and punitive in nature. Thus, "forfeit" should be construed *in pari materia*--and given the same effect as the operative verbs of § 110(h)(3)(A).

[38] A debtor may claim an exemption for the disgorged funds if he or she has a basis in law to do so. 11 U.S.C. § 110(h)(3)(C).

against 3rd Millennium and him, personally and through the instrumentality of any other artificial business entity, to prohibit him and them from committing such violations of any proviso of § 110 in the future. That has been done in the structure of the injunction to issue as a part of the judgment in favor of the U.S. Trustee. In particular, it is appropriate to style injunctive relief against Jonak further performing the role of a lawyer in bankruptcy matters pursuant to both federal law (§ 110(e)(2)) and Minnesota state law, given the interlocking effect of the substantive law of both jurisdictions.

C. Award of Damages, 11 U.S.C. § 110(i).

The U.S. Trustee is also authorized to seek an award of damages for any debtor in whose case a bankruptcy petition preparer violates any provision of § 110, or commits any fraudulent, unfair, or deceptive act. 11 U.S.C. § 110(i)(1). Here, the U.S. Trustee's showing of multiple grounds under either rubric, applicable across the board to all of the debtors in all of the eighteen cases,[39] triggers a statutory mandate for an award of damages.[40]

The measure of damages is prescribed in the statute. Of the three varieties, only one is applicable here, liquidated damages under § 110(i)(1)(B).[41]

That provision mandates an award to the debtor(s) in each case, of the greater of $2,000.00 or twice the amount of the fee paid by the debtor(s) in each case to Jonak and 3rd Millennium. The largest such fee, per the parties' Stipulation of Facts, ¶ 9, was $680.00. Thus, the

[39] Under one instance or another, and with multiple instances in every single case, there were findings to establish grounds under § 110(h). It is immaterial that the collective infractions did not occur in every single case. For instance, there was not an utter failure of nondisclosure of ALC's involvement in the three cases identified at Finding of Fact 29; but even in those cases Jonak and 3rd Millennium did not make the formal disclosures required of a bankruptcy petition preparer, on a separately-signed document that included the personal identifier.

[40] The mandate is in the statutory verb: "the court *shall* order the bankruptcy petition preparer to pay to the debtor . . ." (emphasis added).

[41] There is no proof of "actual damages" for any of the debtors in question, § 110(i)(1)(A), in the sense of out-of-pocket loss caused by ALC's conduct. Because the U.S. Trustee is the moving party (and not the various debtors), there is no right (or sense) to an award of attorney's fees and costs, § 110(i)(1)(C).

greater amount of $2,000.00, per case, is the measure of damages mandated by the statute. This award is payable to the ALC customer(s) for each case.

The U.S. Trustee has not requested the entry of a money judgment directly in favor of the debtors at this time, only a mandate to make payment to them. The mandate will be made now, to both Jonak and 3rd Millennium in their status as violators joint and several. Any debtor who wants the entry of a supplemental, specific judgment later may obtain it, if Jonak and 3rd Millennium do not voluntarily pay the damages.

D. Injunction or Penalties, 11 U.S.C. § 526(c)(5).

On a court's finding that a person classified as a debt relief agency "intentionally violated" any of the prescriptions or proscriptions of § 526, "or engaged in a clear and consistent pattern or practice of violating" § 526, the court may enjoin future such violations or "impose an appropriate civil penalty against such person" on motion of the U.S. Trustee. 11 U.S.C. § 526(c)(5).

The U.S. Trustee suggested the grant of such remedies only "if the court determined that Jonak and 3rd Millennium were not a bankruptcy petition preparer."[42]

Given the rulings under § 110 in favor of the U.S. Trustee, it is not warranted to impose additional monetary consequences by way of "civil penalty" under § 526(c)(5)(B); the disgorgement and awards of damages will serve enough of a punitive function. Given the relative narrowness of activity open to them in the future under the injunction under § 110, it is not clear what else they could do as non-legal professionals to still "provide[ ] bankruptcy assistance" that would fall under §§ 526-528. Nonetheless, they persistently elided their status under the statute, through the artifice of a "legal plan" that provided virtually no benefit for what they extracted in payment. So, a separate injunction to mandate their future compliance with the disclosure and conduct requirements of §§ 526-528 is warranted.

[42]The suggestion was very much in line with the permissive character of the operative verb in the statute.

CONCLUSION

To make the underpinned sense of this decision clear: filing for bankruptcy is serious business, even for a consumer-debtor with modest assets and a debt structure that seems straightforward. The gravity and complexity of seeking bankruptcy relief have risen greatly since the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub.L. No. 109-8. The number of abstruse pre- and post-filing issues is now considerable. They are both functional in nature (e.g., the daunting length of the necessary forms; the heightened statutory obligation to be complete and accurate in answering every last bit of it; timely dealing with the trustee's requirements and the demands of secured creditors) and legal (e.g., recognizing and properly scheduling and treating interests in intangible assets; electing a claim of exemptions between state and federal law, which is still an option in Minnesota and a crucial one for debtors of modest means).

All of this is best, most safely, and most predictably handled through representation by a licensed attorney. Members of the legal profession, and only they, are presumptively competent to protect a debtor's interests under the onus of such complications. As an ultimate backstop, an attorney is subject to objective professional standards of conduct and performance, which protect the general interests of the public and the personal interests of clients. And as an officer of the court, an attorney is obligated to promote the courts' need to orderly manage their dockets. This structure functions to see that it is done right, for consumer-debtors in bankruptcy, from the beginning.

Over the last decade and more, a substantial increase in the perceived need for bankruptcy remedies led to an influx of non-lawyers into the arena of consumer involvency. They have offered aid and assistance to financially-distressed persons on the representation of adequate quality but at lower costs than an attorney charged. State and federal law do not impose any certification or licensure requirements for the providers of such less-formal service.

Section 110 was enacted in 1994 and amended in 2005, to regulate such service provision, at least to the extent that providers fall within the definition of bankruptcy petition preparer under § 110(a). Properly construed, the statute limits the permissible activity of non-attorneys to simply typing--and pretty much limited to the transcription of the debtor-client's own attempts to respond directly to the official forms, without the interposition of any organization or prompting via separately-organized and -worded information forms. *In re Guttierez*, 248 B.R. at 297-298, cited with approval in *In re Martinez*, 72 F.Appx. 138 (5th Cir. 2003) (unpublished); *In re Hennerman*, 351 B.R. 143, 152 (Bankr. D. Colo. 2006).

Such service cannot infringe on the practice of law, by the very definition. The large irony is the intrinsic, inevitable tension in the situation of a non-attorney who would facilitate a bankruptcy filing for a debtor-customer: *it is virtually impossible to avoid giving legal advice*, to a customer eager to make a bankruptcy filing. Debtors will always ask for guidance; even people of advanced education will not know or grasp all the nuances under current law. More to the point, it is inevitable that *they will need it*.

When presented with such entreaties, the non-attorney preparer will simply not be able to resist. That is a matter of normal commercial motivation: the customer will expect it, the preparer who doesn't give it won't succeed. And there is the operation of basic human nature: when someone wants help, how can one turn it down if one thinks it can be given?

These observations may not leave even a very narrow place for bankruptcy petition preparers that is viable under § 110, given the utter prohibition of legal advice. That issue is not before the court. What is clear, is that Jonak and 3rd Millennium pervasively violated the statutory governance of their purported role in the bankruptcy process. The law mandates significant consequences for them. It is particularly appropriate to impose them, given Jonak's past brush with the same legal regulation in the District of Colorado.

ORDER FOR JUDGMENT

On the memorandum of decision just rendered,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The Plaintiff's motion for summary judgment is granted.

2. Pursuant to 11 U.S.C. §§ 110(h)(3)(B) and 526(c)(2), Defendants Edward Jonak and 3rd Millennium Systems, Inc. shall pay the following sums to the respective trustees in the following cases, in forfeiture of the fees they charged and received from the respective debtors:

Name	Case No.	Amounts
Gayle Kersting	10-50379	$363.00
Cheryl Carter	10-50983	$363.00
Larry and Karmen Wilson	10-50972	$580.00
Alan Pankiewicz	10-51033	$680.00
Robert Mattfield	10-51042	$511.00
Lorna Boutin	10-51032	$580.00
Arne and Linda Rytty	10-50838	$580.00
Michael Gjestvang	10-51084	$511.00
Kim and Kristi Francisco	10-51095	$680.00
Jami Shadley	10-50795	$511.00
Albert Bushman	10-50794	$363.00
Kevin Cavanaugh	10-50837	$511.00
Michaele and Stephen Charnley	10-51104	$580.00
Telaine Cohen	10-51118	$463.00
Michelle and Clark Perry	10-35329	$511.00
Jessica Sinn	10-45429	$580.00
Jennifer Smith	10-45585	$511.00
Thomas and Stella Freeman	10-45120	$511.00

3. Defendants Edward Jonak and 3rd Millennium Systems, Inc. shall make all payments directed under Term 2 by *12:00 noon on May 17, 2013*. By *12:00 noon on May 22, 2013*, Defendants Edward Jonak and 3rd Millennium Systems, Inc. shall file an unsworn declaration in this adversary proceeding, verifying the completion of those payments, with documentary proof that payment has been made.

4. If Defendants Edward Jonak and 3rd Millennium Systems, Inc. do not timely comply with Terms 2 and 3 as to all of the identified cases, the Plaintiff may move for the imposition on those Defendants of a further fine of $500.00 for each case in which payment is not made, pursuant to 11 U.S.C. § 110(h)(5).

5. Pursuant to 11 U.S.C. § 110(i)(1)(B), Defendants Edward Jonak and 3rd Millennium Systems, Inc. shall pay to the debtor(s) in each case identified in Term 2, the sum of $2,000.00 per case.

6. Defendants Edward Jonak and 3rd Millennium Systems, Inc. shall make all payments directed under Term 5 by *12:00 noon on June 28, 2013*. By *12:00 noon on July 3, 2013,* Defendants Edward Jonak and 3rd Millennium Systems, Inc. shall file an unsworn declaration in this adversary proceeding, verifying the completion of those payments, with documentary proof that payment has been made.

7. If Defendants Edward Jonak and 3rd Millennium Systems, Inc. do not timely comply with Terms 5 and 6 as to all of the identified cases, the debtor(s) in any case in which they fail to make payment may obtain entry of a supplemental judgment in their favor. They shall do so by filing and serving on Defendants Edward Jonak and 3rd Millennium Systems, Inc., and those parties' counsel of record for this adversary proceeding, a verified application that sets forth the circumstances of noncompliance. If Defendants Edward Jonak and 3rd Millennium Systems, Inc. do not file an objection (with notice of hearing on the objection) within fourteen (14) days after the filing of the application, the court will order the entry of a supplemental judgment in favor of the applying debtor(s).

8. Pursuant to 11 U.S.C. §§ 110(j)(2)(A) and 526(c)(5), Defendants Edward Jonak and 3rd Millennium Systems, Inc., in their own capacity and through the action of any other entity in which they own an interest or from which they derive a pecuniary benefit, are enjoined from the following acts or conduct:

a. accepting any fee from any person in connection with a bankruptcy case venued in the District of Minnesota, until the Defendants fully comply with Terms 2 and 5 and file full evidence of that compliance pursuant to Terms 3 and 6;

b. advertising in public or private media of any sort of their provision to the public of services in connection with a bankruptcy case, for any

service other than the simple typing of the official forms for a bankruptcy filing;

c. advertising in public or private media of any sort, for the provision of services in connection with a bankruptcy case, in any way that does not identify typing services by specific words, and typing services only;

d. giving explanation or advice to any individual on any factual or legal aspect of participating in the bankruptcy process under federal law, including but not limited to explanation of the differences among bankruptcy relief under chapters 7, 11, 12, or 13 of the Bankruptcy Code and the possible discharge of debts under them; advice on which chapter under which to file for relief; advice on the consequences of a bankruptcy filing on tax liability; advice on how to complete the petition, statements, schedules, and lists to commence a bankruptcy case; advice on how to claim assets exempt from the bankruptcy estate (including the relative merits of electing exemptions under Minnesota state law or federal law); advice on how to testify or to respond in any way to inquiries, requests, or directives from the United States Bankruptcy Court, panel or standing trustees, or the United States Trustee; and advice on how to deal with the claims of secured creditors in a bankruptcy case (including reaffirmation on prepetition debt or negotiations on repayment of such debt);

e. engaging in any act for any person that constitutes the unauthorized practice of law within the meaning of Minn. Stat. § 481.02, Subd. 1, for any person who seeks advice, counsel, or representation about the merits of filing for relief under the Bankruptcy Code, 11 U.S.C. § 101 et seq., or for the filing of a petition under the Bankruptcy Code;

f. engaging in bankruptcy petition preparation within the meaning of § 110(a) without ensuring that all disclosures of their engagement and involvement are fully and truthfully made in all documents filed, in compliance with 11 U.S.C. §§ 110(b)(1), 110(c), and 110(h)(2);

g. providing any bankruptcy assistance within the meaning of § 101(4A) to an assisted person for compensation, without giving all disclosures required by 11 U.S.C. §§ 527 and 528(a), with the full wording and content specified by those provisions;

h. representing to any individual that Defendants Edward Jonak and 3rd Millennium Systems, Inc. are associated with an attorney at law or that any fee paid to Defendants Edward Jonak and 3rd Millennium Systems, Inc. will entitle the paying individual to the provision of legal services by an attorney at a discounted rate of compensation or otherwise;

i. representing to any individual that Defendants Edward Jonak and 3rd Millennium Systems, Inc. may, for a fee, provide referrals to third parties that provide typing services for bankruptcy petition preparation, pre-bankruptcy credit counseling, post-bankruptcy debtor education, or legal services of any sort; and

j. accepting a fee from any individual in consideration for a referral to any third party that provides typing services for bankruptcy petition preparation, pre-bankruptcy credit counseling, post-bankruptcy debtor education, or legal services of any sort.

9. Pursuant to 11 U.S.C. §§ 110(j)(2)(A) and 526(c)(5), Defendants Edward Jonak and 3rd Millennium Systems, Inc. shall, ***forthwith***:

a. cease their placement and publication of all advertising in any public or private medium (including print- and Web-based), in which they offer any form of assistance toward the filing of a bankruptcy petition to members of the public other than simple typing services;

b. terminate the operation and maintenance of (i.e., fully take down and remove) all websites through which they publicize and facilitate their provision of such assistance, under any name and through any entity whatsoever, which shall include but not be limited to: www.affordablelawcenter.com;

c. terminate all advertising and publicity for themselves that they have maintained in telephone service directories under categories such as “legal services,” “attorneys,” “attorneys-bankruptcy,” and any other title that states or suggests that Defendants Edward Jonak and 3rd Millennium Systems, Inc. are attorneys at law or can provide legal services to the public themselves or by referral to third-party attorneys; and

d. disconnect all telephone numbers listed in any advertisement of the sorts noted in Term 9.a. - c.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

/e/ Gregory F. Kishel

GREGORY F. KISHEL
CHIEF UNITED STATES BANKRUPTCY JUDGE