UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re: ATTORNEY DISCIPLINE PROCEEDING OF ERIC A. JIMENEZ,	Case No.: 11-mp-00114 **MEMORANDUM OF DECISION**

I. INTRODUCTION

At the request of one of its members, this Court has convened a disciplinary panel to consider the conduct of attorney Eric Jimenez. The Honorable Meredith A. Jury has written an extensive memorandum of decision ("Jury Memorandum") imposing sanctions upon Mr. Jimenez and referring him to this disciplinary panel. *See* Exhibit 1. This panel has considered the Jury Memorandum and conducted an extensive hearing on June 27, 2011 regarding the troubling matters discussed in the Jury Memorandum. For the reasons discussed below, this panel concludes that Mr. Jimenez shall be suspended from practicing law before this Court for one year and, thereafter, may apply for reinstatement upon satisfactory completion of certain continuing legal education requirements.

II. CHAPTER 13

Chapter 13 of the United States Bankruptcy Code provides an important opportunity for homeowners who fall behind in paying their mortgages to take steps to cure an arrearage and avoid foreclosure. Debtors who invoke this procedure in good faith can take corrective action when financial problems arise. Unfortunately, chapter 13 has become a magnet for abusive filings. Chapter 13 cases often are filed to delay an eviction or a foreclosure sale with no intention or ability to cure arrearages.

A large portion of the cases are filed as emergency filings with incomplete case initiation documents. Many of those are routinely dismissed fourteen days later when debtors fail to file the remaining case initiation documents. Many debtors file their documents timely and truthfully. Other debtors who want to extend their cases beyond fourteen days (and continue to enjoy the benefits of the automatic stay) often file fraudulent documents which are not discovered or analyzed by the Court until a month or more later, e.g., at confirmation hearings.

This Court, like many others, faces a daunting challenge to sort out the "honest, but unfortunate" debtors who have viable cases from the ones who misuse the system simply to delay creditors. In order to do so, the Court relies extensively upon the integrity and competence of the lawyers who practice before the Court. The integrity of the chapter 13 process depends, in large part, upon the attorneys involved.

In light of the significant lapse of judgment that occurred with respect to Mr. Jimenez and numerous chapter 13 cases in which he represented debtors, suspension is appropriate.

III. SUMMARY OF FACTS

The attached Jury Memorandum contains a thorough discussion of the chapter 13 practice of Mr. Jimenez. In summary, in 2009, Mr. Jimenez commenced representing Herrera Sindell Group Incorporated ("HSGI"). In time, Mr. Jimenez agreed to accept referrals from HSGI of clients of HSGI who needed bankruptcy assistance. Eventually, an "onslaught" of referrals occurred.

Most of the cases were emergency chapter 13 cases filed with minimal documents to stop a foreclosure sale. Mr. Jimenez admitted that many cases were filed with inaccuracies and inconsistencies. Over time, the law practice of Mr. Jimenez degenerated into a chapter 13 petition mill that routinely failed to produce viable cases.

As stated in the Jury Memorandum (page 12, lines 5-11), "[b]y the fall, [Mr. Jimenez] describes his practice with HSGI referrals as mass chaos. Too many cases were being filed, pro se or incomplete or both. Clients did not cooperate with his staff; the staff tried to cope but made numerous errors. It is apparent from the filings described above that the staff was just putting numbers into schedules and plans without trying to verify their accuracy. Information about attorney's fees charged and collected was wildly inaccurate. And, worse, none of the cases achieved a confirmed plan. The Chapter 13 trustee asserted that of the 12 cases monitored in Riverside, all were dismissed or converted before confirmation."

In the middle of the "chaos", the FBI raided the offices of HSGI. When that occurred, Mr. Jimenez terminated his association with HSGI. However, the adverse repercussions of the relationship continued.

The chapter 13 trustee in Riverside and the Office of the United States Trustee ("OUST") investigated Mr. Jimenez. Ultimately, three disgorgement motions were filed. And, for the reasons stated in the Jury Memorandum, the Court granted them.

IV. MR. JIMENEZ ROUTINELY FILED INACCURATE OR FALSE DOCUMENTS.

The OUST provided an extensive record in support of the three disgorgement motions. The OUST also provided a similarly extensive record in connection with this disciplinary proceeding. That record includes numerous documents filed in approximately seventy-one chapter 13 cases in which Mr. Jimenez acted as the attorney of record. The Jury Memorandum concludes that Mr. Jimenez was "practicing law in the last half of 2010 without any regard to accuracy of schedules and chapter 13 plans . . . ." *See* Exhibit 1, page 16, lines 23-24. The record sustains this statement amply.

The Jury Memorandum contains an extensive discussion of the cases in which the chapter 13 trustee filed a disgorgement motion and numerous errors in the documents filed by Mr. Jimenez have been identified. Moreover, in connection with this disciplinary proceeding, the panel reviewed many of the documents filed in the seventy-one chapter 13 cases. That review revealed very troubling patterns.

It is apparent that the chapter 13 cases handled by Mr. Jimenez often involved fabricated information. An extensive review of his cases reveals that Mr. Jimenez and his staff often filed documents without obtaining correct information from debtors. Instead, the documents contained plug numbers and plug asset descriptions that were simply used repeatedly. Little or no effort was made to file accurate schedules. Data listed on numerous documents were obviously false and simply copied from one case to the next. Asset descriptions, asset values and other numbers were falsely listed on a variety of documents including schedule A,[1] schedule B[2] and chapter 13

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[1] For example, the panel has reviewed the schedule A filed in fifty-one of the seventy-one cases. Of the fifty-one documents, six of the cases list a "primary residence" worth $200,000 subject to a secured claim of $200,000. Fifteen of the cases list a "primary residence" worth $215,000 subject to a secured claim of $215,000. Five of the cases list a "primary residence" worth $250,000 subject to a secured claim of $250,000. Thus, more than half of the fifty-one cases list real property valued at $200,000, $215,000 or $250,000. Clearly, plug numbers were being used.

In addition, on every one of the fifty-one schedule As filed by Mr. Jimenez, the amount of the secured debt equals (precisely) the value of the property. No effort was apparently made to identify and list the correct amount of the secured debt.

[2] A review of schedule B filed in cases handled by Mr. Jimenez revealed startling similarity. In approximately two-thirds of the cases, pages 1 and 2 of schedule B contain very similar descriptions of assets and values. For example, every schedule B prepared by Mr. Jimenez that was reviewed by the Court (with one exception) lists the following assets on page 1: "Bedroom Set 1" and "Bedroom Set 2". In thirty-three instances, Mr. Jimenez listed "Bedroom Set 1" with a value of $410 and in thirty-three instances he listed "Bedroom Set 2" with a value of $375. In twenty-nine instances, Mr. Jimenez listed "Checking Acct." with a value of $2,000.00. In thirty instances, Mr. Jimenez listed on page 1 of schedule B that the debtors owned "Audio Video Equipment" worth $675. In twenty-nine instances, Mr. Jimenez listed on page 1 of schedule B that the debtors owned a "Bedroom Set 3" worth $425 and "Computer, Printer, FAX" worth $820.

The disclosures on page 2 of schedule B are equally as similar. In sixteen instances, Mr. Jimenez prepared page 2 of schedule B by listing the following assets and values: "Dining Room Set" worth $500, "Family Room" worth $430, "Garden Tools" worth $150, "Kitchen Appliances" worth $450, "Laundry Appliances" worth $373, "Linens and Things" worth $250, "Living Room Set" worth $369, "Small Kitchen Appliances" worth $250, "Family Clothing" worth $485 and "Jewelry" worth $715. In other words, in sixteen instances the types of assets and the values of those assets listed on page 2 of schedule B were identical (to the penny).

Page 3 of schedule B in cases filed Mr. Jimenez were probably the most problematic. Not because they consistently listed assets with the same descriptions and same value but for the opposite reason. Almost none of Mr. Jimenez's clients listed any assets on page 3. In forty-two instances, Mr. Jimenez filed a schedule B which listed no assets in paragraphs 8 through 24 of schedule B. If these schedules are to be believed, the vast majority of Mr. Jimenez's clients did not own any firearms, sports equipment, cameras, hobby equipment, insurance policies, alimony or any other property described in paragraphs 8 through 24.

plans.[3]

During the disciplinary proceeding, Mr. Jimenez admitted on the record that incorrect information was repeatedly used. To cope with the volume of cases, Mr. Jimenez began to rely on computer software templates. Rather than ascertain from his clients the correct descriptions and value of assets, his staff would simply use a "template" in computer software to prepare petitions and schedules. His staff would often leave the plug numbers unmodified, resulting in schedules that were nearly identical across cases, as well as internally inconsistent.

V. THE COURT HAS AMPLE AUTHORITY TO DISCIPLINE COUNSEL.

This Court possesses the broad inherent authority to "police itself" and regulate the conduct of its officers. *Chambers v. Nasco,* 501 U.S. 32 (1991). Sanctions may be imposed upon attorneys for behavior that is to the detriment of the judicial system. This is especially appropriate where attorneys have acted "in bad faith, vexatiously, wantonly, or for oppressive reasons." *Aleyska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975). This inherent power has been outlined in 11 U.S.C. § 105(a), which allows that the court may, *sua sponte*, "[take] any action or [make] any determination necessary or appropriate to enforce or implement court orders or rules or to prevent an abuse of process." This power has been limited to civil, and not punitive, sanctions. In the context of a disciplinary action against an attorney, such civil sanctions have included suspension or disbarment of the attorney. The standard for bad faith by which behavior is to be judged is not exceedingly high, as "a court may also sanction upon a finding of willfulness, recklessness, or other fault by the offending party, and if a bad faith finding is required, an implicit finding will suffice." *In re Lehtinen*, 332 B.R. 404, 415 (9th Cir. BAP

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[3] Of the forty-eight chapter 13 plans reviewed by the Court, twenty-two listed a class two arrearage claim of $6,000. In addition, thirty-three of the forty-eight plans listed a class two arrearage claim in an even thousand figure (i.e. $10,000 or $12,000 or $16,000). Again, this data indicates that plug numbers were used, not the actual amounts of the arrearage claims.

Also, forty-three of the forty-eight cases provided for payment of 1% of unsecured claims. When 90% of the cases filed by an attorney propose the precise same payment to unsecured creditors (1%) it is self-evident that counsel is not actually evaluating the cases on an individual basis. Although the bankruptcy code requires that chapter 13 repayment plans be tailored to the specific requirements of a debtor's assets and debts, such analysis was lacking in these cases.

2005).

Bankruptcy Courts are also explicitly authorized to impose sanctions under Rule 9011 of the Federal Rules of Bankruptcy Procedure, which requires that documents filed in court be verified as accurate and intended for a proper purpose. Courts have used this rule to impose sanctions upon attorneys who were found to have made bad faith filings. *In re Rainbow Magazine,* 77 F.3d 278 (9th Cir. 1996). Rule 9011 was derived from Rule 11 of the Federal Rules of Civil Procedure which does not impose a subjective bad-faith standard. Instead, it "imposes an objective standard of reasonable inquiry which does not mandate a finding of bad faith." *Chambers v. Nasco,* 501 U.S. 32 (1991). Rule 9011 does not abridge or modify the court's inherent power outlined above, but can serve as a separate basis for sanctions.

Attorneys have a duty to provide their clients with adequate legal representation. In consumer bankruptcy cases, attorneys sometimes prefer to focus on a high-volume of simple, flat fee cases. However, this does not mean that their professional duty should be any less rigorous. In *In re Clark*, 223 F.3d 859 (8th Cir. 2000), an attorney was recognized as a high-frequency bankruptcy petition filer who charged a low fee, but would rarely meet with clients, filed fraudulent and inconsistent documents, and generally did very little work on his cases. The court stated that the attorney had "failed to properly represent the debtors or perform the legal services contemplated by the fee, and that he had done so in bad faith" and ordered disgorgement and sanctions. *Id.* at 862.

Likewise, a similar result occurred in *In re Thao Tran Nguyen*, 447 B.R. 268 (9th Cir. BAP 2011). *Nguyen* involved an attorney who solicited a high volume of cases but spent very minimal time on each one. He met with clients only briefly, left his staff to collect their financial information, and was careless as to the accuracy of schedules and statements of financial affairs as well as filing deadlines. The court found that this attitude was unacceptable and that the attorney "did not understand the fundamentals of how to represent a debtor." *Id.* 279. The court noted that the attorney "did not understand the fundamental importance of the bankruptcy schedules and his role in preparing them – a task that is integral to a bankruptcy case and 'goes to the integrity of the bankruptcy system.'" *Id.* Sanctions were imposed in order to ensure the attorney spent

adequate time with clients, accurately recorded their finances and adequately represented his clients' needs.

Likewise, Mr. Jimenez's behavior demonstrates the same problem. He and his staff consistently filed false schedules and other documents. This demonstrated a failure to understand his obligations under Rule 9011 and his role in preserving the integrity of the bankruptcy system.

And while some of the misconduct by Mr. Jimenez arises from the fact that his practice grew exponentially within a very short time period, this is not a defense. If an attorney does not have the expertise or staffing to handle dozens of new cases (or even just one) he has a duty to decline the representation. Accepting too many cases to the point that it causes an attorney to resort to filing false documents is a self-inflicted wound, the consequences of which must naturally fall upon the attorney who voluntarily placed himself in that position.

For example, in *In re Bost*, 341 B.R. 666 (Bankr. E.D. Ark. 2006), an attorney filed 150 new cases during the two week period prior to the effective date of BAPCPA. This attorney was very inexperienced in the field of bankruptcy law and lacked properly trained staff to assist him. The attorney made several errors, such as filing last-minute cases as skeleton petitions. He was increasingly unresponsive to clients and was unable to complete the workload by himself. Relying upon both Bankruptcy Rule 9011 and 11 U.S.C. § 105(a), the court emphasized the attorney's own role in creating such an unmanageable situation. "He had neither the expertise nor the staff to represent these clients, but he nevertheless accepted the representation." *Id.* at 690. The result was that the attorney filed several fraudulent documents in court, exploited the judicial system, and harmed debtors, most of whom needed to file a second or third case to achieve a discharge of debts. *See also In re McDermitt*, 2006 Bankr. LEXIS 1054 (D. Vt. 2006). As in *Bost*, Mr. Jimenez was under no obligation to accept all of these cases referred to him. In fact, a reasonably competent attorney would have refused to the extent necessary to preserve a high quality of work.

Mr. Jimenez has also suggested that the source of some of the problems in his filings was his new and inexperienced staff and their difficulty in using the new filing software. But this is not a defense. In *In re Fahey*, 2009 Bankr. LEXIS 2601 (S.D. Texas 2009), an attorney filed

sixty-two chapter 13 bankruptcy cases within a three-month period. Ninety-two percent of these cases were dismissed without discharge, most of them for failure to file information. Similar to Mr. Jimenez, the attorney left the bulk of his work to a staff that had no formal training in bankruptcy law and who were unable to properly file most of the cases. The court found that "unreasonable delegation is itself a violation of [bankruptcy] rules." *Id.* at *20. The court noted that "[c]ompetent representation and timely filing of documents is clearly an obligation that an attorney owes a bankruptcy client." *Id.* at *17. Mr. Jimenez's reliance upon staff members and software templates does not absolve him of his duty to properly represent his clients. His own failure to effectively supervise his employees and to maintain a more manageable workload was a major contributing factor to the failure of his chapter 13 cases.

Mr. Jimenez also abused the bankruptcy system in a larger sense by facilitating the high volume filing of nonviable chapter 13 cases. None of Mr. Jimenez's cases were confirmed and virtually all were filed simply to delay a foreclosure sale. Such bad faith filings, meant only to delay foreclosure and based on fraudulent or incomplete documents, are sanctionable under both Rule 9011 and 11 U.S.C. § 105. *In re Robinson*, 36 Fed. Appx. 329 (9th Cir. 2002).

In addition, as discussed at length in the Jury Memorandum, Mr. Jimenez repeatedly misreported his legal fees on Rule 2016(b) statements. Mr. Jimenez had arranged with HSGI to receive $1,500 upfront for every filing, allegedly to be paid from HSGI with money that the client had already given HSGI. In completing the Rule 2016(b) statements, however, Mr. Jimenez inserted whatever amount a particular client claimed to have paid, which would often differ from the pre-arranged $1,500.

In doing this, Mr. Jimenez claims that his intentions were honest. As stated above, however, Bankruptcy Rule 9011 is an objective, not subjective, standard. This means that "the attorney must only fail to meet the standard of a competent attorney admitted to practice before the [pertinent] court." *In re Sanford*, 403 B.R. 831 (D. Nev. 2009). In many cases filed by Mr. Jimenez, the attorney's fees listed differ significantly from what he actually received, without any further explanation. This violates Rule 9011.

Moreover, the 2016(b) statement requires disclosure of not only the amount but also the source of attorney's fees. Mr. Jimenez did not mention or explain his odd arrangement with HSGI and instead represented the fee as having come from the clients themselves. This is improper.

In *In re Park-Helena Corp.*, 6 F.3d 877 (9th Cir. 1995), an attorney for a corporation received payment for his services from the personal account of the corporation's president. The attorney stated on filings that the retainer came from the corporation itself and later argued that this was accurate because the president had previously received a loan from the corporation in an amount exceeding the retainer fee. The court ruled that the attorney violated Federal Rules of Bankruptcy Procedure 2014 and 2016 because "[r]egardless of whether the funds used to pay the retainer were, in some sense, [the corporation]'s funds," an attorney has a firm duty to fully disclose known information so that courts might recognize any conflicts of interest. Similarly, Mr. Jimenez had a duty to fully disclose all aspects of his compensation arrangement with HSGI.

VI. DISCIPLINE IS ALSO APPROPRIATE PURSUANT TO THE ABA GUIDELINES.

For all the reasons stated above, sufficient grounds exist to suspend Mr. Jimenez for a year pursuant to the inherent powers of the Court and Rule 9011. In addition, although the Court is not required to follow the ABA Standards when disciplining attorneys (*see In re Thao Tran Nguyen*, 447 B.R. 268 (9th Cir. BAP 2011)), this panel finds that all four of those standards support discipline in this case. According to the BAP, the "ABA Standards dictate consideration of four criteria: (1) whether the duty violated was to a client, the public, the legal system, or the profession, (2) whether the attorney acted intentionally, knowingly or negligently, (3) the seriousness of the actual or potential injury caused by the attorney's misconduct, and (4) the existence of aggravating and mitigating factors." Nguyen, 447 B.R. at 277.

First, repeatedly filing fabricated and false documents violates a duty that an attorney owes to his client, the public, the legal system and the profession. Indeed, Rule 9011(b)(3) specifically prohibits the filing of any document unless the "factual contentions" in the document "have evidentiary support . . . ." This standard was repeatedly violated by Mr. Jimenez.

Second, Mr. Jimenez did act intentionally, knowingly and negligently. Each of the false documents filed by Mr. Jimenez was intentionally filed in a false condition or was filed as result of negligence by Mr. Jimenez in supervising his staff. Both types of violations require discipline.

Third, the misconduct was quite serious. The integrity of the bankruptcy system depends heavily upon debtors filing accurate financial information. The entire system is based upon the assumption that debtors will voluntarily disclose all material information regarding their financial affairs in order to obtain a fresh start. A law office that repeatedly generates false financial documents floods the court system with bad faith filings that fundamentally undermine the administration of justice.

Fourth, the aggravating and mitigating factors weigh in favor of discipline. During the hearing, Mr. Jimenez provided evidence that the death of a close family member (a person he considered a father figure) during the crucial "chaos" period contributed substantially to a distracted frame of mind. In aggravation, however, the sheer number of cases involving fabricated documents militates against this contributing factor. In simple terms, attorneys need to immediately step away from the practice of law (after arranging for appropriate assistance to existing clients) and refrain from handling legal matters if they are unable to do so. At a minimum, they need to reduce their case load to a manageable point. No explanation was provided by Mr. Jimenez regarding why he did not do so in this instance.

VII. CONCLUSION.

Accordingly, in conclusion, the court hereby disciplines Mr. Jimenez as follows:

1. Mr. Jimenez is suspended from practicing in the United States Bankruptcy Court for the Central District of California commencing on October 31, 2011.

2. On or after November 1, 2012, Mr. Jimenez may apply for an order lifting the suspension if he can demonstrate that he has successfully completed (a) twenty hours of continuing legal education on the subject of bankruptcy law (of which at least ten hours must address consumer bankruptcy law), (b) ten hours of continuing legal education on the subject of

legal ethics and (c) ten hours of continuing legal education on the subject of law office management.

IT IS SO ORDERED.

Dated: 9/29/11

Ellen Carroll

Ellen Carroll, Presiding

United States Bankruptcy Judge

Dated: 9/29/11

Victoria S. Kaufman

United States Bankruptcy Judge

Dated: 9/29/11

Wayne E. Johnson

United States Bankruptcy Judge

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re Attorney Discipline Procedures in Bankruptcy Court for Eric A. Jimenez, , Respondent.	Case No. RS MJ 11-mp-00114 REFERRAL TO DISCIPLINE OF RESPONDENT ERIC A. JIMENEZ

Bankruptcy Judge Meredith A. Jury does hereby initiate a disciplinary proceeding pursuant to Third Amended General Order 96-05 against respondent attorney Eric A Jimenez. The Statement of Charges is set forth in the Memorandum of Decision, attached to this Referral as Exhibit A.

Dated: May 2, 2011

MEREDITH A. JURY
United States Bankruptcy Judge

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re Leopoldo Saenz Gomez, Debtor.	Case No. RS 10-44474 MJ
In re Antonio Cruz Garcia, Debtor.	Case No. RS 10-44718 MJ Case No. RS 10-44027 MJ MEMORANDUM OF DECISION RE MOTION FOR DISGORGEMENT AND REFERRAL TO DISCIPLINARY PANEL AGAINST RESPONDENT ERIC A. JIMENEZ (CONSOLIDATED HEARINGS)
In re Elbia L. Olivarria, Debtor.	DATE: January 24, 2011 TIME: 3:30 P.M. CTRM: 301

The consolidated hearings on the Motion to Disgorge Attorney Fee filed by Chapter 13 Trustee Rodney Danielson in each of the captioned cases came on before the Honorable Meredith A. Jury on January 24, 2011 in courtroom 301. These three cases were initially assigned to three different judges in the Riverside Division. However, because similar motions against the same respondent attorney Eric A. Jimenez had been simultaneously filed, all cases were transferred to Judge Jury and all hearings set for the same date and time. Appearances were as stated on the record. After argument of counsel, the matter was submitted for decision. This Memorandum of Decision shall serve as the court's findings of fact and conclusions of law. For the reasons set forth below, this court shall order disgorgement of attorney's fees from respondent to each of the debtors and shall refer respondent for further proceedings before a disciplinary panel as provided for in Third Amended General Order 96-05.

ELBIA L. OLIVARRIA

1. Elbia L. Olivarria filed case no. 10-44027 on October 21, 2010. The initial filing was done pro se and was a face sheet filing consisting of only the petition.

2. On November 4, 2010 respondent Eric A. Jimenez substituted in as attorney of record for Olivarria and filed the balance of the schedules, statement of financial affairs, related case initiation documents and the chapter 13 plan. All of the documents filed on November 4 were dated and signed on October 21, 2010, the same day the petition was filed pro se.

3. The means test showed income of $2963.43, below median.

4. The Statement of Related Cases revealed no prior cases. In fact, Ms. Olivarria had filed a prior chapter 13 in 2003 and received a discharge, but this case was not disclosed.

5. Schedule A reflected a single family residence on Sharon Street in Riverside with a value of $215,000 and secured debt of $215,000.

6. Schedule B had an extensive list of personal property and $2000 cash on hand. Schedule

C, using the exemptions available under Code of Civil Procedure §704, exempted all meaningful personal property with the same detail as on Schedule B.

7. Schedule D showed the secured creditor on the Sharon Street property as American Home Mortgage with a debt of $280,000, inconsistent with Schedule A.

8. Schedule F had minimal debt of $1900.00 on two credit cards.

9. Schedule I showed debtor employed as a nanny and co-debtor employed in construction with total joint income of $2963.43 with no withholdings.

10. Schedule J listed a house payment of $1500.00 and total expenses of $2855, leaving an excess income of $108.43.

11. The Disclosure of Compensation of Attorney For Debtor ("2016(b) Statement") showed total fees due to Jimenez of $4000.00, with $2500.00 already paid and $1500.00 remaining due.

12. The Chapter 13 plan called for a payment of $163 per month for 60 months, paying 1% to unsecured creditors. Per the plan, attorney's fees of $2750.00 were to be paid through the plan (inconsistent with the 2016(b) Statement) and an arrearage of $6000.00 was to be paid to American Home Mortgage. The miscellaneous provisions stated: "A motion to sell real property and suspend mortgage payments is pending. A motion to avoid lain [sic] on primary residence is pending." No such motions were pending or ever filed in this case.

13. No Rights and Responsibilities Agreement (RARA) was filed in this case.

14. On November 19, 2010 Deutsche Bank filed an objection to the plan, arguing that the arrearage was $32, 533.72, not the $6000.00 shown in the plan, and that the plan was not feasible.

15. On December 1, 2010 respondent, on behalf of the debtor, filed a Request for Voluntary Dismissal, stating as the reason that debtor "cannot put forth a feasible Chapter 13 plan." The court entered a dismissal order based on this request on December 2, 2010.

16. After the confirmation hearing on December 2, 2010 the case was again dismissed without prejudice, this dismissal order entered on December 7, 2010.

17. On December 9, 2010, Rodney Danielson, the Chapter 13 Trustee, filed his Motion to Disgorge Attorney Fees, which is the subject of this Memorandum of Decision. The motion stated that the debtor had appeared at the 341(a) creditor meeting on December 2, 2010, but her attorney Jimenez did not appear there or at the confirmation hearing that afternoon. In addition, Jimenez had not provided any of the documents required at the creditor meeting. The debtor testified that she did not know where her attorney was and that she was not advised to bring any funds (plan payment, mortgage payment) to the meeting. She further testified that she had paid her attorney $2500.00 and still owed him $2500.00. The motion further asserted that the plan was not feasible due to the claim from Deutsche Bank and that it contained the above-quoted provision about a motion to sell and a motion to avoid lien and none was pending. The motion requested disgorgement of the attorney's fees paid to Jimenez and for referral to discipline because this case was one of 12 petitions filed in Riverside with similar problems.

18. On January 5, 2011 respondent filed his Objection to Motion to Disgorge, which shall be discussed below.

LEOPOLDO SAENZ GOMEZ

19. Mr. Gomez filed a chapter 13 petition in 2005 which resulted in a discharge. He filed a subsequent chapter 7 in 2009, 09-16896 BB, which was closed without a discharge. During this case the automatic stay as to Deutsche Bank was terminated after motion.

20. On September 24, 2010, Mr. Gomez filed case No. 10-40886 DS, a chapter 13 case, pro se, a face sheet filing only.

21. On October 13, 2010 without filing a substitution of attorney, respondent filed the balance of the schedules, statement of financial affairs, and other case related documents.

22. The means test in this case stated an income of $0.00.

23. The statement of related case did not disclose Mr. Gomez's prior bankruptcy filings.

24. The Summary of Schedules listed real property assets with a value of $215,000.00 and

secured debt of $362,000.00. Income on the Summary was $2741.00 despite the $0.00 on the means test and expenses were $2657.00.

25. Schedule A showed a house in Adelanto with a value of $215,000.00 and secured debt of $215,000.00. Schedules B and C in the first Gomez case was almost identical to those filed in the Olivarria case, with the same $2000.00 in cash on hand.

26. Schedule D showed American Home Mortgage as first trust deed holder on the Adelanto house with a debt of $362,000.00. No second trust deed was listed.

27. Schedule F was blank, showing no unsecured debt.

28. The 2016(b) Statement revealed a total attorney's fee of $4000.00 with $1250.00 previously received and $2750.00 still due. Respondent executed this document on September 29, 2010.

29. The Chapter 13 plan was also filed on October 13, 2010. It proposed to pay $163.00 per month over 60 months, paying 1% to unsecured creditors (note there were none in Schedule F and no second trust deed to strip). Attorney's fees to be paid through the plan were $2750.00. The plan showed an arrearage to American Home Mortgage of $6000.00. The same miscellaneous provision about a motion to sell was pending and lien avoidance would be filed was included, although these motions were not pending nor filed.

30. On October 15, 2010 this case was dismissed because of filing deficiencies, including lack of credit counseling certificate.

31. On October 15, 2010 respondent, on behalf of Mr. Gomez, filed another chapter 13 case, 10-44474. Despite the fact that complete schedules had been filed in the immediate prior case, this case was also a face sheet filing

31. On November 12, 2010 the schedules, statement of financial affairs, chapter 13 plan and other case initiation documents were filed. The means test showed $3200.00 in income. Form 1015-2 revealed the 2010 chapter 13 but not the other two prior cases.

32. The summary of schedules showed real property worth $200,000.00 with a secured debt obligation of $200,000.00.

33. Schedule A listed real property with a value of $200,000.00 and secured debt on the house of $200,000.00. However, Schedule D showed the real property lender as American Home Mortgage with a $300,000.00 secured claim. Schedules B & C were identical to those in the Olivarria case. Schedule F reflected $26,000.00 in unsecured debt as opposed to the $0.00 in the prior case.

34. Schedule I showed the debtor as unemployed but had employment income of $3466.00. The house payment in Schedule J was $2500.00, whereas it had been $1800.00 in the prior case.

35. The 2016(b) Statement in this case showed total fees of $4000.00 due, with $2500.00 already paid and $1500.00 still owed. The plan, however, called for $2750.00 in fees to be paid as a priority claim. No RARA was filed.

36. The chapter 13 plan provided a plan payment of $167.00 per month, to pay 1% to unsecured creditors, with an arrearage of $6000.00 on the first trust deed lender to be paid through the plan. In the miscellaneous provisions the plan also stated a lien strip motion and a sale motion were pending. No such motions were filed.

37. The 341(a) meeting and confirmation hearing were set for December 6, 2010, with the meeting to commence at 8:00 a.m. and the confirmation hearing scheduled for 1:30 p.m. At 11:48 a.m. on December 6, 2010, a request for voluntary dismissal was filed by the debtor. Since no one attended the confirmation hearing, the court dismissed the case with a bar to refiling at the confirmation hearing that afternoon.

38. On December 9, 2010 the Chapter 13 Trustee filed a Motion to Disgorge Attorney Fee which alleged similar shortcomings in performance of duties by respondent as in the motion filed on December 9 in the Olivarria case. The motion noted that 12 cases had been filed by respondent, none of them confirmed and the majority dismissed or converted at confirmation or before.

39. On December 21, 2010 and January 20 and 21, 2011 respondent filed an opposition and supplemental opposition to the disgorgement motion, which will be discussed in more detail below.

ANTONIO CRUZ GARCIA

40. On September 27, 2010 Mr. Garcia filed a face sheet chapter 13 petition pro se.

41. On October 15, 2010, without substituting into the case, respondent filed the balance of the case initiation documents for Mr. Garcia. He did not file a RARA.

42. The means test showed $1000.00 employment income, $3800.00 for foster kids, and $1000.00 in rent for a total of $5800.00. The summary of schedules stated debtor had $330,000.00 in real property and $946,679.00 in secured debt. However, Schedule A listed a home worth $200,000.00 with secured debt of $210,000.00. It listed an additional house with a value of $120,000.00 and secured debt of $120,000.00. Schedules B and C contained almost identical property and values as in the Gomez and Olivarria cases.

43. In contrast to Schedule A, Schedule D listed a secured debt to Aurora of $538,000.00 on the family residence and a secured debt to Bank of America of $390,000.00 on the other house. Schedule F totaled $70,000.00 of unsecured debt, all credit card.

44. Schedule I indicated that debtor was unemployed but showed employment income of $1000.00, along with $1000.00 rental income and $3800.00 for the foster kids. Schedule J had a house payment on one house of $3300.00 and total expenses of $5702.00, leaving disposable income of $97.23.

45. The 2016(b) Statement showed total attorney's fees of $4500.00, $1250.00 already paid and $3250.00 still due.

46. The chapter 13 plan called for a monthly payment of $185.00 for 60 months, paying 1% to unsecured creditors. Attorney's fees to be paid through the plan were $3250.00. The arrearage on the residence was again $6000.00 and the same miscellaneous provision about a short sale motion

pending and a lien strip pending was included. No motions were filed in this case either.

47. On October 18, 2010 this case was dismissed by the court for deficient documents, the credit counseling certificate.

48. A second Garcia case, 10-44718 was filed on October 27, 2010, a face sheet filing by respondent, despite the almost complete documents in the prior case.

49. On November 11, 2010, the missing case initiation documents were filed. The new means test showed $1000.00 in income and $3800.00 for foster kids but no rental income. The size of household, 8 in the prior Garcia means test, was now 4.

50. Schedules A, B, C and D were the same as in the prior case. Schedule I again had the rental income of $1000.00, missing from the means test. Schedule J was the same and the net disposable funds was $98.00.

51. The 2016(b) Statement in this case reflected attorney's fees of $4000.00, with $2500.00 already paid and $1500.00 due. No RARA was ever filed.

52. The chapter 13 plan was almost identical, with $3250.00 of attorney's fees still to be paid through the plan despite the 2016(b) Statement. This plan, however, added a $6000.00 arrearage to the second lender to be cured through the plan.

53. On November 24, 2010, Aurora filed an objection to confirmation, alleging an arrearage of $84,000.00.

54. On December 3 respondent filed a motion to convert but used the wrong conversion form (used the chapter 7 to chapter 13 form), so the automatic conversion did not occur.

55. At the confirmation hearing on December 8, 2010, a minute sheet was entered showing the debtor had requested 10 days to convert to a chapter 7 or the case would be dismissed. The conversion never occurred, so the dismissal entered on January 3, 2011.

56. On December 9, 2010, the Chapter 13 Trustee filed a similar Motion for Disgorgement of Attorney Fee, alleging similar shortcomings as in the other cases.

57. On December 21, 2010, respondent filed an opposition to the motion and on January 20 and 21, 2011, he filed a supplemental opposition, which will be discussed below.

RESPONDENT'S OPPOSITIONS

Respondent Jimenez filed similar oppositions to the three disgorgement motions and filed supplemental oppositions which added detailed declarations from his debtor clients in each case. These oppositions told the tale of a business venture which led respondent to provide unproductive services to his chapter 13 clients. The court has no reason to disbelieve the facts as described by respondent and summarizes his oppositions in the following narrative.

In the fall of 2009 respondent was engaged to provided legal services to a business known as Herrera Sindell Group Incorporated (HSGI), which was known to respondent as a real estate acquisition firm in Sherman Oaks, California. Respondent's papers reflect that at this time he did not know the business model of HSGI, other than his knowledge that it had a portfolio of approximately 200 properties. Apparently HSGI was pleased with respondent's service because in June, 2010, it approached him to determine whether he would accept referrals of clients who were in the need of bankruptcy services. Respondent said "yes" to the inquiry and HSGI said it would send him referrals soon.

In mid July, 2010, the first such referral arrived at respondent's office, seeking bankruptcy assistance. The initial interview with the client went normally until respondent started to discuss his fee arrangement with the prospective client. The client stopped him and said he had already paid the attorney's fees to HSGI. Without further inquiry, respondent concluded that interview. However, within a couple of days another client arrived at his office and the pattern regarding fees was repeated.

Concerned about the fee issues, respondent met with HSGI representatives the following week and learned more about its fee collection policies. He was told that HSGI charged it clients

upfront fees for various services and that it included in those fees any attorney's fees for bankruptcy which might be needed. After learning this, respondent perceived that he would be paid by HSGI with funds held in trust by it for its client's needs and thus he would be indirectly paid by the client. Satisfied that this was not fee splitting, he then proposed to charge chapter 13 clients a total of $4000.00 to file a case, with $1250.00 up front paid by HSGI from the client's funds and the balance of $2750.00 to be paid through the chapter 13 plan post petition. HSGI agreed with this arrangement.

After this meeting, an onslaught of clients needing bankruptcy services began arriving at respondent's doorstep. The majority of them were in some emergency situation, with a foreclosure sale pending on their house. Some had already filed face sheet filings pro se and were in imminent danger of their cases being dismissed if the balance of case initiation documents was not filed promptly. Others had not filed yet, but needed a case filed because a foreclosure sale was set within a day or two of their first meeting with respondent. Alarmed at this situation, respondent contacted HSGI to find out what was going on and learned more about its business model. He learned the firm sought out homeowners whose homes were in distress in an effort to make a short sale offer on their property. If the lender agreed to accept the short sale, respondent and his clients gave different versions of what happened next. Respondent said that HSGI would be the property buyer and then would invest, improve and resell the property in a flipping fashion. Respondent's clients said that HSGI told them if the short sale was successful they could remain in the house, paying rent until they could repurchase the property in the future. The clients' declarations confirmed that they paid substantial sums up front to HSGI for its services. If the short sale was refused or delayed, however, then HSGI would send the homeowner to respondent to file a bankruptcy to stop a pending foreclosure sale.

After being told of this business plan by HSGI, respondent apparently concluded that filing chapter 13's for such homeowners was an appropriate use of bankruptcy proceedings. Therefore, he

continued to accept a high volume of referrals, so many that he had to move his office to a larger location and hire new staff to handle the cases. The percentage of new clients who had already filed pro se increased, but respondent agreed to step into those cases to file the case initiation documents and otherwise move them toward confirmation. Even in those cases, however, the clients insisted that they had already paid the full or partial attorney's fees to HSGI. Again, respondent contacted HSGI to confirm whether the client's statements were true and was again advised that the firm had a deposit on hand from the clients, from which his prepetition fees would be paid. After reiterating to HSGI that he would not pay a referral fee and having satisfied himself that this arrangement was not fee splitting, respondent continued to accept these clients.

Despite his pleas to HSGI to send him the clients earlier, the last-minute trend did not abate and respondent and his staff were put under extreme pressure to complete the filing paperwork. Adding to their difficulties were often uncooperative clients who seemed unconcerned if the first case was dismissed - "I can just file another one" - and new, untrained staff often working with very little supervision because respondent was at creditor's meetings and in court. Respondent admits that many cases were filed with inaccuracies and inconsistencies, which the court's summary of the filings for these three debtors above confirms.

But it got worse for respondent. He was surprised when a client answered an inquiry from the chapter 13 trustee staff attorney about how much fees he had paid up front: $5000.00. Taking an immediate recess, respondent learned from the client that in fact she thought he had charged her $5000.00, paid from funds on hand at HSGI. After further questioning by respondent, the client backed off the $5000.00 figure but still insisted she had paid $2500.00 for the bankruptcy filing, a number that was then corrected on the record with the trustee's attorney. Respondent agreed to amend his 2016(b) Statement to reflect the $2500.00, even though he knew that was not his agreement with HSGI.

HSGI claimed this was a miscommunication with this one client, but the scene was repeated

with other debtors and eventually respondent filed 2016(b) Statements with the sum of $2500.00 already received, even though that number was incorrect and false. The court notes that this figure is inconsistent with the amount respondent asked to be paid through the plan in each of the instant cases. Moreover, respondent admits he did not receive $2500.00 in a single case he filed.

By the fall, respondent describes his practice with HSGI referrals as mass chaos. Too many cases were being filed, pro se or incomplete or both. Clients did not cooperate with his staff; the staff tried to cope but made numerous errors. It is apparent from the filings described above that the staff was just putting numbers into the schedules and plans without trying to verify their accuracy. Information about attorney's fees charged and collected was wildly inaccurate. And, worse, none of the cases achieved a confirmed plan. The Chapter 13 Trustee asserted that of the 12 cases monitored in Riverside, all were dismissed or converted before confirmation.

In November, 2010, the FBI raided the HSGI offices. The court is presently unaware of what has come of that firm. Respondent, however, wisely then terminated his business relationship with the firm and faced the onslaught of consequences, including these disgorgement motions. Respondent maintains in his oppositions, however, that he did not file these cases in bad faith as he was trying to assist debtors in danger of losing their homes to foreclosure.

In late January 2011 each of the debtors in these three cases filed a declaration to support respondent's opposition to the disgorgement motions. Respondent stated in his oppositions and confirmed at oral argument that his clients were largely Spanish speaking. The three declarations are in English, lengthy and typed. Upon inquiry, respondent admitted the he had written the declarations based on information from the debtors and obtained the signatures on the documents. It was unclear to the court whether he had read and translated the declarations word by word for the debtors before they signed them.

Ms. Olivarria declared that she had heard ads about HSGI in August 2009 and consulted with it at that time regarding its short sale program. Under the program, HSGI would negotiate a short

sale on property and then lease the home to the selling debtor. When Ms. Olivarria signed up with HSGI, she understood that the Law Firm of Castaneda and Associates would be attorneys on the short sale and that J. Smith would be the attorney if a bankruptcy was needed. HSGI negotiated a short sale on her house for a year, ultimately unsuccessfully. Just prior to foreclosure, HSGI told her to consider a bankruptcy option and that she would need to pay $5000.00 for those services. When she said she did not have that much money, they agreed she could pay $2500.00 up front and she made the check out to Pacific Coast.

What followed was a typical case with respondent, where she rushed in just before foreclosure sale, could not get all information to the law firm in time, and filed face sheet. She later met with respondent, talked to him about the $2500.00 deposit on fees, and also decided she could not complete the chapter 13. She and respondent agreed the case would be dismissed, but respondent did not tell her she did not need to attend the 341(a) meeting. She did appear, without counsel, so her case was dismissed twice, as described above.

Debtor Gomez was drawn to HSGI by a Spanish language infomercial for a short sale program which would allow the selling debtors to remain in their homes after sale. Mr. Gomez made up front payments to HSGI in September 2009, which began negotiating with his lender for a short sale, again with an unsuccessful conclusion. To stop the foreclosure sale, Mr. Gomez filed a petition pro se with HSGI assistance and waited for "the attorney" to call. He had already paid $2500.00 to HSGI for these legal services, with the understanding the total bankruptcy fee would be $5000.00. An emergency meeting with respondent transpired, fees of $4000.00 were discussed, he told respondent that he had already paid $2500.00, but the fees and payment schedule were never pinned down. By then, it was too late to salvage his first case, which was dismissed, and a new case was filed.

Soon after the second case was filed, Mr. Gomez and respondent determined that he could not successfully complete a chapter 13 and he asked that the case be dismissed. Respondent filed the

request for voluntary dismissal on December 6, but a dismissal with a bar to refiling was entered on the same date because of nonappearance at the 341(a) meeting and confirmation hearing. The Gomez declaration makes it clear he was unaware of the bar to refiling and even apparently unaware the case was dismissed, because in the declaration he asked the court to convert the case to chapter 7, a service that respondent purportedly agreed to perform for no further fees. No chapter 7 has been filed for Mr. Gomez.

Mr. Garcia was also drawn to HSGI by infomercials about short sales and lease back programs. After the short sale efforts failed and a foreclosure was imminent, Mr. Garcia was also advised to seek bankruptcy assistance, told the fee would be $5000.00, and paid $2500.00 up front. Despite paying these fees, Mr. Garcia filed the first case pro se, was contacted by respondent's office too late to save it, and then filed a second case with respondent as attorney. He had similar discussions with respondent about fees, advised him of the $5000.00 quote and $2500.00 up front from HSGI but heard back from respondent of a fee of $4000.00, with $1250.00 to be paid by HSGI to respondent. It is unclear whether an agreement regarding fees was reached.

After filing, Aurora filed an objection with a large arrearage and Mr. Garcia realized he was unable to do a successful chapter 13. He asked for a conversion, but respondent filed the request as a conversion from chapter 7 to 13, which did not trigger automatic action and the case was dismissed after the confirmation hearing date. In his declaration executed on December 31, 2010, Mr. Garcia did not know his case was dismissed, because he still spoke of conversion.

U.S. TRUSTEE'S 2004 EXAMINATION

On January 14, 2011, after these motions were filed but before the consolidated hearings, the United States Trustee filed a Motion for 2004 Examination in the Gomez case. This motion sought an order allowing the examination of the debtor on the issue of fees paid to respondent in this case, among other things. The motion asserted that respondent had filed a total of 71 cases in the Central

District of California in 2010, most of them chapter 13's, and none of them with confirmed plans. With the exception of a few chapter 7's, the rest of the cases had been dismissed prior to confirmation. In support of the 2004 examination motion, the U.S. Trustee asked the court to take judicial notice of the 71 case files and filed substantial documents from each file on the Gomez case docket. Although the court's decision on these motions does not rely on any facts in those files, the court did note on the record at the hearing that the 2004 motion had been filed and granted and that the court was aware at least 71 cases had been filed by respondent with results similar to the three cases before the court.

DISCUSSION

A fee disgorgement motion is authorized under 11 USC §329, which, first, compels the attorney to file a statement disclosing fees paid with the court and, second, allows the court to order return of an excessive fee:

> (a) Any attorney representing a debtor in a case under this title,..., whether or not such attorney applies for compensation under this title, shall file with the court a statement of compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for service rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
>
> (b) If such compensation exceeds the reasonable value of any such service, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive....

See, also, Federal Rule of Bankruptcy Procedure 2017.

The Court may, in examining the payment for legal services rendered, consider all questions affecting the reasonableness of the transaction including the purpose and nature of the services

rendered. Conrad, Rubin & Lesser v Pender, 289 U.S. 472 (1933). A prepetition retainer paid by a debtor to counsel is excessive and should be ordered disgorged when the attorney does not render services that benefit either the debtors or the bankruptcy estate. Matter of Prudhomme, 43 F 3d 1000 (5th Cir. 1995); In re Lewis, 113 F 3d 1040 (9th Cir. 1997).

In addition to requesting disgorgement of fees, the Chapter 13 Trustee's motions here ask the court to take other disciplinary action against respondent, including imposing monetary sanctions against him for failing to properly represent his clients and referring him to a disciplinary panel of the Bankruptcy Court of the Central District for further sanction and possible disbarment from practicing in the bankruptcy courts of the Central District. The power of the bankruptcy court to discipline attorneys appearing before it is well-recognized. In re Tran, 2011 WL 1043898 at *9 (9th Cir. BAP 2011). Bankruptcy Courts have the inherent authority to regulate the practice of attorneys who appear before them. Chambers v NASCO,Inc., 501 U.S. 32 at 43-45 (1991); In re Lehtinen, 332 B.R. 404,411 (9th Cir. BAP 2005), aff'd 564 F 3d 1051 (9th Cir. 2009). Bankruptcy courts also have express authority under the Code and the Rules to sanction attorneys, including disbarment or suspension from practice. Lehtinen, 564 F.3d at 1058, 1062; Tran, at *9; 11 U.S.C. § 105(a); Rule 9011.

Based on these standards, this court has the authority both to order fee disgorgement and to impose further sanctions and discipline. Here, the court will do both, ordering disgorgement of the fees disclosed on the 2016(b) Statements, allowing the trustee the costs of the motions, and referring respondent to a disciplinary panel for further sanctions, including suspension or disbarment from practice.

As the factual pattern described in detail in the numbered paragraphs above shows, respondent was practicing law in the last half of 2010 without any regard to accuracy of schedules and chapter 13 plans and without due attention to the status and needs of each individual client. As noted, every plan filed in these three cases referred to identical arrearages to the secured creditors on

the family residence. Every plan intended to repay 1% to the unsecured class. Every plan had incorrect miscellaneous provisions regarding pending motions to sell and motions to avoid junior liens. These were not plans tailored to meet the needs of a particular client, based on that client's facts and circumstances. It is not hard to surmise that these numbers were just plucked out of the air in order to complete documents to avoid dismissal and gain the benefit of the automatic stay. And, contrary to respondent's assertions, these boiler plate plans were not filed only in cases where respondent took over suddenly for a pro se filers; they occurred in cases he initiated himself, often after a prior case had been dismissed and the client had been around long enough for respondent to gather true facts.

The schedules and other case documents are similarly suspect and inconsistent. In more than one case, the amount of secured debt and the real property values were not even consistent between the summary of schedules and schedules A and D. The personal property described in schedule B, down to the cash on hand, is nearly identical in each filing, as are the exemptions in schedule C. Schedules I and J are inconsistent with the summary of schedules in some instances and none of them support the plan payment proposed in the plans. Although each case does present different information about the pertinent real property and the income and employment status of the debtors, implying that some client interview and fact gathering took place, these distinctions do not dissuade the court from concluding that respondent and his staff guessed at or fabricated much of the information in the schedules.

Even more unsettling to the court was the lack of truthfulness and candor in the 2016(b) Statements and the facts surrounding the fee arrangements between respondent, HSGI, and his clients. Respondent admits openly that the fees he disclosed as paid in advance by each client had not in fact been paid by the client directly and were not in the sums indicated. Respondent regularly filed a document required to be accurate under Rule 11, knowing it was not true. Nor did he actually confirm that the money, if any and in whatever sum, he received from HSGI on a client's file was

actually from a deposit made by the client. Unquestionably, respondent did not conduct a thorough discussion of his fees in advance with his clients, nor did he verify the source of the monies he received. The court here does not intend to explore the possible violations of the California Rules of Professional Conduct pertaining to fee agreements with clients but does note that no RARA's were filed in any of these cases. The record before this court implies that respondent did not follow necessary rules and protocol in establishing his fee arrangements with his clients. The record also demonstrates that respondent violated federal rules regarding fee disclosure, a sanctionable occurrence.

The declarations filed by the three debtors in these cases reflect another disturbing element. Despite the facts already known from the fee disgorgement motions, the declarations make it abundantly clear that respondent had not communicated adequately with each client about the status of his or her bankruptcy case. Ms. Olivarria knew her case was going to be dismissed at her request, yet was not told she did not need to attend the 341(a) meeting. When she appeared without counsel, the case was dismissed a second time. Mr. Garcia's declaration was filed with the court by respondent on January 21, 2011 and requests the court to allow the conversion of his case to Chapter 7, weeks after the case had already been dismissed. The court hopes that by this time Mr. Garcia understands his case was dismissed, not converted, and that chapter 7 relief is not on his immediate horizon. In a strikingly similar statement, in Mr. Gomez's declaration filed on January 20, 2011 he asks the court to allow his chapter 13 to be converted to a chapter 7, notwithstanding that the case had been dismissed, purportedly at his request in early December. In the critical area of communication with his clients, respondent totally failed his duties.

Moving from the specific insufficiencies in each case as highlighted above, the court finds it necessary to comment on the "big picture" of the practice of bankruptcy law that respondent was conducting between July and December, 2010. Without sufficient inquiry about the underpinning facts and business plan of HSGI, he agreed to take referrals of potential bankruptcy clients. His

errors started with that first agreement to accept such referrals. A prudent inquiry should have been made about the nature of HSGI's business and why it, a real estate acquisition firm, would have clients with sudden bankruptcy needs. By the summer, 2010, the legal community was aware of mortgage modification scams and that innocent consumers were being taken advantage of by profit-seeking persons and entities. Despite these red flags, respondent did not make inquiry about the nature of HSGI's business and its clientele.

Matters worsened almost immediately when respondent recognized that the referred clients were in dire straights, needing urgent assistance to file a bankruptcy petition or to save an already filed case to avoid a home foreclosure. Respondent's opposition implies that almost every client referred to him had this immediate need. But rather than slow down and assess the situation, respondent took piece meal answers from HSGI about what was happening, independently determined that what he was doing was fine, and soldiered on. As the volume increased, the mistakes and bad judgment multiplied. Under the time pressures the emergency filings created, it is impossible to believe that respondent had the time and professional judgment to assess the needs of each client independently to determine if filing a chapter 13 was warranted by the facts and circumstances. Respondent argues, subjectively, that the chapter 13 filings were not done in bad faith. However, the objective facts belie this belief and show a definite bad faith pattern. Not a single one of these referrals from HSGI resulted in a confirmed chapter 13 plan. Most were dismissed before or at the initial 341(a), so there was no hope of a confirmable plan, and in most instances, the debtor did not have the necessary income to cure an arrearage and stay current with regular monthly payments to the secured creditors. Objectively, these were bad faith filings, done to obtain the benefit of the automatic stay without any other true bankruptcy purpose. Such behavior was an abuse of the system and cannot be condoned by the court.

Compounding the other bad judgment exhibited by respondent was the entire attorney's fee fiasco. Believing that HSGI held actual cash deposits from its clients, respondent made the

determination that it was appropriate for HSGI to pay him the prepetition fees on behalf of the client. Nowhere was that fee arrangement disclosed to the court. Moreover, when respondent first learned that his clients were being told by HSGI that they were being charged $5000.00 for bankruptcy services, rather than immediately stop taking the referrals or independently collecting the upfront fees, he perpetuated a lie to the court about the fees. Moreover, he persisted in filing inconsistent documents pertaining to those fees with the court - i.e. a 2016(b) Statement which showed one amount due postpetition and a proposed plan which called for a different sum to be paid. All this occurred at the same time he was fighting with HSGI about the entire fee structure. He needed to stop. He did not. One wonders how long this would have gone on if the FBI had not investigated HSGI in November.

Based on all the facts as discussed above, this court finds that disgorgement of attorney's fees is warranted and referral of respondent to a disciplinary panel is compelled by these circumstances.

By separate order, the court will award the following relief:

1. To each debtor, respondent Eric Jimenez shall pay as disgorgement the sum disclosed as already received in the 2016(b) Statement, in each instance $2500.00;

2. For each motion, respondent shall pay the Chapter 13 Trustee the sum of $250.00 as costs;

3. Respondent Eric Jimenez shall be referred to a disciplinary panel of the judges of the Central District Bankruptcy Court per the Third Amended General Order 96-05 and this Memorandum of Decision shall serve as the statement of charges for that referral.

Dated: May 2, 2011

MEREDITH A. JURY
United States Bankruptcy Judge

In re: Debtor(s).	CHAPTER: CASE NUMBER:

NOTE TO USERS OF THIS FORM:

1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
4) **Category II.** below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that the attached order was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. **SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), I, deputy clerk who is making this entry; certify that service on all parties under Section II was completed, the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. The following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

Rod (MJ) Danielson (TR)
notice-efile@rodan13.com

Eric A Jimenez on behalf of Debtor Leopoldo Gomez
eric@jimenez-esq.com

Joe M Lozano on behalf of Creditor American Home Mortgage Servicing, Inc.
notice@NBSDefaultServices.com

Mishaela J Graves on behalf of Creditor Aurora Loan Services LLC, it assignees and/or successors
bknotice@mccarthyholthus.com

Christelle N Ramseyer on behalf of Creditor Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT3, Asset-Backed Certificates, Series 2006-OPT3, it assignees and/or successors, and the servicing agent American
bknotice@mccarthyholthus.com

United States Trustee (RS)
ustpregion16.rs.ecf@usdoj.gov

☐ Service information continued on attached page

II. **SERVED BY THE COURT VIA U.S. MAIL:** I deputy clerk who is making this entry; certify that service on all parties under Section II was completed, A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

In re: Debtor(s).	CHAPTER: CASE NUMBER:

Eric A Jimenez 11434 Ventura Blvd Suite 101 Studio City, CA 91604	**Leopoldo Saenz Gomez** 11196 Renwick St Adelanto, CA 92301
United States Trustee (RS) 3685 Main Street, Suite 300 Riverside, CA 92501	**Rod (MJ) Danielson (TR)** 4361 Latham Street, Suite 270 Riverside, CA 92501
Antonio Cruz Garcia 9950 53rd St Riverside, CA 92509	**Eric A Jimenez** 5900 Sepulveda Blvd Ste 215 Sherman Oaks, CA 91411
Elbia L Olivarria 9768 Sharon Ave Riverside, CA 92503	**ABRAM FEUERSTEIN** **ASSISTANT U.S. TRUSTEE** THE LORING BUILDING 3685 MAIN STREET, SUITE 300 RIVERSIDE, CALIFORNIA 92501

☐ Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

☐ Service information continued on attached page

In re: Debtor(s).	CHAPTER: CASE NUMBER:

ADDITIONAL SERVICE INFORMATION (if needed):

PROOF OF SERVICE/CERTIFICATE OF MAILING

I, Vanessa Keith Garcia, a regularly appointed and qualified clerk of the United States Bankruptcy Court for the Central District of California, do hereby certify that in the performance of my duties as such clerk, I served on each of the parties listed below, at the addresses set opposite their respective names, a copy of the Memorandum of Decision in the within matter by placing a true copy thereof enclosed in a sealed envelope with postage thereon, fully prepaid, in the United States Mail on September 29, 2011.

Eric A. Jimenez, Esq.
Law Offices of Eric A. Jimenez
11333 Moorpark Street, Suite 459
Toluca Lake, CA 91602

United States Trustee – LA (electronically mailed)
ustpregion16.la.ecf@usdoj.gov
ron.maroko@usdoj.gov

I declare under penalty of perjury that the foregoing is true and correct.

Date: September 29, 2011

Vanessa K. Keith Garcia
(Deputy Clerk)