NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SAN FERNANDO VALLEY DIVISION

In re: PETER RIOS, Debtor.	Case No.: 1:10-bk-18107-MB Chapter 7
PETER RIOS, Plaintiff, vs. NANA BAIDOOBONSO-IAM, et al., Defendants.	Adv. Proc. No. 1:12-ap-01346-MB
In re: ANITA RIOS, Debtor.	Case No.: 1:10-bk-18107-MB Chapter 7
ANITA RIOS, Plaintiff, vs. NANA BAIDOOBONSO-IAM, et al., Defendants.	Adv. Proc. No. 1:12-ap-01347-MB **MEMORANDUM OF DECISION FOLLOWING TRIAL**

On May 13, 2016, the Court conducted a joint trial in the two adversary proceedings captioned above on the *Adversary Complaint for Relief Under Bankruptcy Code §§ 110(i)(1) & 526(c)(2)* as augmented by the Bill of Particulars Adding Additional Allegations, etc. (collectively, the "Complaint") filed by Plaintiffs Peter Rios and Anita Rios (collectively, the "Debtors") in their respective proceedings. Adv. 1346 Dkt. 1 & 74; Adv. 1357 Dkt. 1 & 80.[1] In 2014, the Court entered a *Default Judgment Granting Relief Under Bankruptcy Code §110(i)(1)* in these adversary proceedings against defendants Nana Baidoobonso-Iam ("Baidoobonso-Iam"), Maria Conception Gonzales ("Maria Gonzales") and Michael Anthony Gonzales ("Michael Gonzales"), jointly and severally, and awarding Peter damages in the amount of $12,296.00 and awarding Anita damages in the amount of $7,246.00. Adv. 1346 Dkt. 37; Adv. 1347 Dkt. 46. The gravamen of the trial was whether the remaining defendants, Espranza Corporation and Enrique Suarez ("Suarez") are either directly liable under section 110(i) or vicariously liable for the conduct by Baidoobonso-Iam, Maria Gonzales and Michael Gonzales which the Court has already determined violative of section 110(i).

The Debtors were represented at trial by Jerome Zamos; Espranza Corporation and Suarez were represented at trial by Grace White. At trial, the Court heard live direct testimony from Peter Rios, Maria Gonzales and Suarez, and afforded each party an opportunity to cross-examine each other's witnesses. Based on this live presentation, the Court was able to observe the witnesses and assess their credibility. Following that presentation, and legal argument, the Court ordered supplemental briefing. Based on its review and consideration of the evidence adduced at trial, the arguments of counsel, and the post-trial briefing—for the reasons set forth below—the Court concludes that Debtors have not met their burden of proof to demonstrate that Suarez or Espranza Corporation are directly liable under section 110(i), nor have they demonstrated that section 110(i) authorizes the Court to find a person vicariously liable for the misconduct of Baidoobonso-Iam,

[1] Unless otherwise noted, the pleadings filed by Peter Rios in his adversary proceeding were virtually identical to the pleadings filed by Anita Rios in her adversary proceeding.

Maria Gonzales or Michael Gonzales. Accordingly, the Court will enter judgment in favor of Espranza Corporation and Suarez.

I. PROCEDURAL HISTORY

On July 6, 2010, Peter Rios ("Peter") and Anita Rios ("Anita")[2] each filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code. Although married to each other, and therefore eligible to file a joint bankruptcy petition, the Debtors filed separate petitions and thereby commenced the bankruptcy cases of *In re Peter Rios* (1:10-bk-18107) and *In re Anita Rios* (1:10-bk-19961). The Debtors' case commencement papers do not list either counsel or a bankruptcy petition preparer. On July 19, 2010, the Debtors converted their cases to chapter 7.

On September 28, 2012, each of the Debtors, through their present counsel, filed an adversary complaint "for relief under Bankruptcy Code §§ 110(i)(1) & 526(c)(2)" in their respective cases. Each complaint named as defendants Baidoobonso-Iam, Maria Gonzales, Michael Gonzales, Espranza Corporation, Enrique Suarez and Adam John Landa. In all material respects, the Debtors' two complaints are identical.

On February 26, 2013, the Court entered default judgments (the "Default Judgments") in favor of the Debtors and against Baidoobonso-Iam, Maria Gonzales and Michael Gonzales, jointly and severally. In Peter's case, the judgment was entered for $12,296, consisting of $2,350 in actual damages, $4,700 in statutory penalties under section 110(i)(1)(B)(ii), and $5,246 in attorneys' fees and costs. In Anita's case, the judgment was entered for $7,246, consisting of the statutory penalty of $2,000 under section 110(i)(1)(B)(i), and $5,246 in attorneys' fees and costs. Defendant Adam John Landa was dismissed from the adversary proceedings without prejudice on July 29, 2013. Adv. 1346 Dkt. 47; Adv. 1347 Dkt. 52. (Debtors' Exs. 13 and 14).

On November 14, 2014, the Court granted the motion of Espranza Corporation and Suarez for a more definite statement and ordered the Debtors to file a bill of particulars setting forth the

[2] Because both of the Debtors share the same surname, the Court refers to them by their first names to identify them, where necessary. No disrespect is intended by their first name references.

factual basis for their claims against the remaining defendants. Debtors filed their bills of particulars on November 21, 2014.

On May 13, 2016, the Court conducted a joint trial regarding the remaining defendants, Espranza Corporation and Suarez, on the claims asserted in their amended complaints, as supplemented by their bills of particulars.

II. FACTUAL SUMMARY

By their pretrial orders, the parties admit that Diamond Real Estate is a fictitious business name used by Espranza Corporation, and that Suarez is a California real estate broker and the designated responsible officer of Espranza Corporation under California Business & Professions Code §§ 10211 and 10159.2. At all relevant times, Maria Gonzales was employed by Espranza Corporation as both an office manager and a real estate agent. Pretrial Orders, Adv. 1346 Dkt. 105 & Adv. 1347 Dkt.108.

During the summer of 2010, the Debtors were facing the foreclosure of their home. They saw a commercial on television for a business saying that it helped people with foreclosure and providing a 1-800 telephone number. Anita called the 1-800 telephone number and spoke with Maria Gonzales. Suarez testified that Espranza Corporation has never advertised on either television or radio and essentially denies that the Debtors saw an advertisement for Espranza Corporation. Peter does not recall the name of the business in the commercial. Maria Gonzales admits speaking with Anita on the telephone, but she claims Anita's 1-800 call went to an unrelated business known as the Herrera Sindell Group in Sherman Oaks, and not to Espranza Corporation. Maria Gonzales testified that she was visiting the Herrera Sindell offices to pick up papers on an unrelated matter and, when the Herrera Sindell telephone rang, she answered it and spoke with Anita.[3] During that conversation, Maria arranged for the Debtors to meet with her and

[3] The Court did not find Maria Gonzales' explanation about the telephone call credible and did not consider the balance of her testimony credible. The Court did find Suarez' testimony about Espranza Corporation never having advertised on television credible, however.

Baidoobonso-Iam in Espranza Corporation's Downey office, which is the office Maria manages and where she works.

Sometime after Anita and Maria Gonzales' telephone conversation, the Debtors met with Maria and Baidoobonso-Iam in the Downey office at approximately 7:00 p.m.. The parties agree that during that meeting, Maria Gonzales advised the Debtors that Baidoobonso-Iam might have the ability to save their home from foreclosure by assisting them with the filing of a bankruptcy case and that Baidoobonso-Iam was "handling foreclosure related matters in bankruptcy courts." Maria introduced Baidoobonso-Iam to the Debtors as "the attorney that helps people with foreclosures." Pretrial Orders, ¶4(e) and Transcript, May 13, 2016, at 13:8-12. During this initial meeting, Maria Gonzales also introduced the Debtors to her brother, Johnny Landa, as someone who could help them with all the paperwork. Maria also gave the Debtors a business card for "Mike Gonzales" of "Diamond." (Debtors' Ex. 1). During that initial meeting the Debtors retained the services of Baidoobonso-Iam to save their home, paid $2,000 against a $3,500 retainer, and were given a receipt in return. (Debtors' Ex. 3).

After this initial meeting, the Debtors made several trips to the Downey office to fill out paperwork and to sign legal papers provided to them by Johnny Landa. At times, the Debtors would meet Johnny Landa in the Bankruptcy Court parking lot to sign papers before Landa filed them with the Court. Each time they met with Baidoobonso-Iam, the Debtors asked him if he was really an attorney and each time Baidoobonso-Iam assured them that he was. Peter testified that the Debtors believed in Baidoobonso-Iam, trusted him, and only started to figure out that Baidoobonso-Iam was a phony at the very end of there experience with him, when Baidoobonso-Iam failed to come through on his promises and the Rios' lost their home. Transcript, May 13, 2016, at 42:22-43:6. The Court finds Peter's testimony credible.

Suarez testified that he had never seen the Debtors prior to trial, he never prepared any papers for them, and never entered into any service agreements with them. Transcript, May 13, 2016, at 108:2-10. Peter also testified that had had never met Suarez prior to the trial. Transcript, May 13, 2016, at 27:16-18. Suarez testified that he did not know who Baidoobonso-Iam was and Peter testified that Baidoobonso-Iam never told the Debtors that he was an employee of Espranza

Corporation. Transcript, May 13, 2016, at 41:23-25, 108:23-25. Suarez also testified that he knew Johnny Landa as Maria's brother and had seen him at the Downey office a half of a dozen times, surfing the internet or checking his email on one of the old computers located in the office. Transcript, May 13, 2016, at 109:1-17. Suarez further testified that Espranza Corporation only handles residential real estate sales, does not prepare bankruptcy papers and does not provide loan modification services of any kind. Transcript, May 13, 2016, at 110:23-112:13, 113:12-15.

III. JURISDICTION

The Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b). Venue is proper under 28 U.S.C. § 1409(a). This proceeding is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A), and the Court has constitutional authority to enter final judgment on all of the claims asserted herein. *Stern v. Marshall*, 564 U.S. 462 (2011).

IV. LEGAL STANDARD

In 1994, "Congress enacted § 110 in response to the proliferation of bankruptcy petition preparers nationwide. As stated in the legislative history of § 110:

> While it is permissible for a petition preparer to provide services solely limited to typing, far too many of them also attempt to provide legal advice and legal services to debtors. These preparers often lack the necessary legal training and ethics regulation to provide such services in an adequate and appropriate manner. These services may take unfair advantage of persons who are ignorant of their rights both inside and outside the bankruptcy system.

In re Agyekum, 225 B.R. 695, 701 (B.A.P. 9th Cir. 1998), *quoting* H.R. Rep. 103–834, 103rd Cong., 2nd Sess. 40–41 (Oct. 4, 1994); 140 Cong. Rec. H10770 (Oct. 4, 1994).

Bankruptcy Code section 110 establishes a set of requirements for bankruptcy petition preparers and empowers the courts to sanction preparers who violate the statute by limiting compensation, levying fines, and even enjoining preparers. "Bankruptcy petition preparer" is defined as "a person, other than an attorney for the debtor ... who prepares for compensation a

document for filing" in a United States bankruptcy court. 11 U.S.C. § 110(a)(1). The term "document for filing" means "a petition or any other document prepared for filing by a debtor in a United States bankruptcy court ... in connection with a case under [Title 11]." 11 U.S.C. § 110(a)(2).

An individual petition preparer is required by section 110 to, among other things, "sign the document and print on the document the preparer's name and address." 11 U.S.C. § 110(b)(1). Before preparing any document or accepting any fees from a debtor, a petition preparer must "provide to the debtor a written notice which shall be on an official form" that informs the debtor that the petition preparer "is not an attorney and may not practice law or give legal advice." That notice must "be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer," and must be filed with the other documents. 11 U.S.C. § 110(b)(2)(A) & (B). A petition preparer must file a declaration under penalty of perjury "disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case ...." 11 U.S.C. § 110(h)(2). An individual petition preparer must place an "identifying number" on each document she prepares. 11 U.S.C. § 110(c)(1). A petition preparer is statutorily prohibited from executing any document on behalf of a debtor, 11 U.S.C. § 110(e)(1), and may not give legal advice. 11 U.S.C. § 110(e)(2).

Section 110(i) provides for an award to the debtor of (1) actual damages (§ 110(i)(1)(A)); (2) the greater of $2,000 or twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services (§ 110(i)(1)(B)); and (3) reasonable attorneys' fees and costs in moving for damages under this subsection (§ 110(i)(1)(C)).

By its Default Judgments entered on February 26, 2013, the Court determined that Maria Gonzales, Michael Gonzales and Baidoobonso-Iam are bankruptcy petition preparers within the meaning of Bankruptcy Code section 110(a)(1) and awarded statutory damages and attorneys' fees and costs to Anita under section 110(i)(1)(B) and (C), and actual damages, statutory damages and attorneys' fees and costs to Peter under section 110(i)(1)(A), (B) and (C).

V. DISCUSSION

A. Espranza Corporation and Suarez Are Not Bankruptcy Petition Preparers.

Defendant Espranza Corporation is not a bankruptcy petition preparer and neither is Suarez. The Debtors did not produce evidence that Espranza Corporation is in the business of preparing bankruptcy petition forms. Suarez testified repeatedly that Espranza Corporation was only in the business of residential real estate sales and the Debtors did not present any evidence to controvert his claims. The Debtors did not present evidence that the preparation of bankruptcy petition forms was within the scope of Maria Gonzales' employment as an office manager and real estate agent employed by Espranza Corporation. The Debtors presented no evidence regarding Michael Gonzales' employment by Espranza or the scope or nature of his duties. The Debtors did not present any evidence that either Landa or Baidoobonso-Iam were employed by Espranza Corporation. Further, Peter admitted that Baidoobonso-Iam never represented to the Debtors that he was employed by Espranza Corporation.

Similarly, Suarez did not prepare any of the Debtor's bankruptcy documents, did not counsel the Debtors to file for bankruptcy, and did not authorize or instruct any agent working for Espranza Corporation to do so. Indeed, the uncontroverted evidence is that Suarez never met or spoke with the Debtors prior to the trial.

The evidence adduced at trial and the record before the Court reflect that Baidoobonso-Iam, working in concert with Landa and Maria Gonzales, misrepresented to the Debtors that Baidoobonso-Iam was an attorney. The Debtors believed in and trusted Baidoobonso-Iam and it was in reliance on this belief that Peter paid Baidoobonso-Iam the sum of $2,000 as a down payment on a $3,500 legal retainer. The Debtors were duped into trusting Baidoobonso-Iam by his false representations of being an attorney, not by the incidental fact that they were introduced to him at an after-hours meeting in the Downey office of Espranza Corporation. On this record, the Debtors have not established that either Espranza Corporation or Suarez are bankruptcy petition preparers within the meaning of Bankruptcy Code section 110.

B. Neither Espranza Corporation Nor Suarez Are Vicariously Liable for the Judgment Against Baidoobonso-Iam, Maria Gonzales or Michael Gonzales.

1. Suarez Is Not Vicariously Liable as a Matter of Law Based on California Business & Professions Code section 10159.2

The Debtors contend that section 10159.2 of California's Business & Professions Code and the Ninth Circuit holding in *Holley v. Crank*, 400 F.3d 667, 671 (9th Cir. 2005) ("Holley II") make Suarez, as the licensed real estate broker employing Maria Gonzales, liable for her violation of Bankruptcy Code section 110 "as a matter of law." Plaintiffs' Closing Argument, Adv. 1346 Dkt. 114 and Adv. 1347 Dkt. 117 at pp. 7-8. Section 10159.2 states, in pertinent part,

> (a) The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

Cal. Bus. & Prof. Code § 10159.2 (emphasis added).

On its face, section 10159.2 does not apply to Maria Gonzales' activities as a bankruptcy petition preparer because those activities are not "acts for which a real estate license is required." Cal. Bus. & Prof. Code § 10159.2(a). Nor could compliance with Bankruptcy Code section 110 reasonably be construed as "compliance with the provisions of [the real estate] division" of the California Business & Professions Code. *Id*.

The Debtors' reliance on *Holley II* is similarly misplaced. The Debtors argue that *Holley II* stands for the proposition (based on the above-cited statute) that when a broker delegates responsibilities to another he necessarily creates an agency relationship between himself and that person and that the broker becomes vicariously liable for all actions of his delegate as a matter of law. Debtor/Plaintiff's Closing Argument, Adv. 1346 Dkt. 114 and Adv. 1347 Dkt. 117 at pp. 7-8.

In *Meyer v. Holley*, 537 U.S. 280 (2003), the Supreme Court expressly rejected the interpretation of California Business & Professions Code section 10159.2 offered by the Debtors.[4]

In the *Holley* cases, an interracial couple living in California (the Holleys) sued their corporate real estate broker and its affiliated licensed real estate broker (Meyer) for the actions of an employee real estate salesperson (Crank). The Holleys alleged that Crank "prevented the Holleys from obtaining [their desired house] for racially discriminatory reasons" causing the Holleys to file suit in federal court alleging, among other things, violations of the Fair Housing Act, 42 U.S.C. § 3601 *et seq*. *Meyer v. Holley*, 537 U.S. 280, 283 (2003). In a separate action, the Holleys sued Meyer, arguing that both the Federal Housing Act and California Business & Professions Code section 10159.2 imposed personal vicarious liability on Meyer (as a corporate officer and licensed real estate broker) for the racially discriminatory acts of Crank. *Id*.

The two actions were consolidated and all but the Fair Housing Act claims were dismissed. The district court held that the Holleys had not presented theories that justified holding Meyer personally liable. In *Holley I* the Ninth Circuit reversed on multiple theories, including that Meyer, as Crank's broker, was vicariously liable for Crank's discriminatory acts based on California Business & Professions Code section 10159.2. *Id*. at 284. On appeal to the Supreme Court, the Holleys argued that "California law itself [section 10159.2] creates what amounts, under ordinary common-law principles, to an employer/employee or principal/agent relationship between (a) a corporate officer designated as the broker under a real estate license issued to the corporation, and (b) a corporate employee/salesperson." *Id*. at 291.

The Supreme Court rejected the Holley's interpretation of section 10159.2 and their conclusions about its implications for vicarious liability theories:

> Insofar as this argument rests <u>solely</u> upon the corporate broker/officer's <u>right to control</u> the employee/salesperson, the Ninth Circuit considered and accepted it. 258

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[4] *Meyer v. Holley*, 537 U.S. 280 (2003) vacated and remanded *Holley v. Crank*, 258 F.3d 1127 (9th Cir. 2001) ("*Holley I*"). *Holley II* was decided by the Ninth Circuit upon remand from the Supreme Court.

> F.3d at 1134-1135. But we must reject it given our determination . . . that the "right to control" is insufficient by itself, under traditional agency principles, to establish a principal/agent or employer/employee relationship.

Id. (Emphasis in original). The Supreme Court reversed and remanded, leaving the application of traditional vicarious liability rules to the Ninth Circuit. *Id.*

On remand, the Ninth Circuit ultimately found that Meyer was liable for Crank's discriminatory acts, concluding "that Meyer intended to turn the real estate business over to Crank so that Meyer could pursue another career . . . it was agreed that Meyer would remain . . . [the] designated officer/broker until Crank got his own broker's license. . . . There is therefore evidence of an agreement to delegate this personal duty as an officer/broker, to be filled on a day to day basis by Crank, to assure that state and federal laws were being observed in the operation of [the] real estate business." *Holley II*, 400 F.3d at 673-74. The Ninth Circuit did not conclude – as the Debtors argue here – that California Business & Professions Code section 10159.2 makes a broker liable for the acts of his salesperson as a matter of law. The Ninth Circuit's decision was based on specific factual circumstances established on summary judgment regarding the nature of the relationship between Meyer and Crank and not solely by operation of section 10159.2.[5]

[5] Notably, in *Holley II*, the Ninth Circuit found that "Crank acted within the scope of his agency when he committed the act of discrimination . . . [and] was within the scope of duty [Meyer] delegated to Crank." *Holley II*, 400 F.3d at 674. In the *Holley* cases, the acts that violated the federal statute occurred in the scope of Crank's duties as a real estate sales person representing the Holleys in the purchase of a home. Here, the Debtors have not demonstrated that Maria Gonzales' actions in introducing the Debtors to Baidoobonso-Iam and Landa fell within the scope of her duties as an agent of Suarez. The uncontroverted evidence establishes that neither Espranza Corporation nor Suarez prepare bankruptcy petitions nor offer legal advice and Suarez had no knowledge of who Baidoobonso-Iam was. As detailed below, vicarious liability theories do not apply to statutory damage claims under section 110 of the Bankruptcy Code. However, even if such theories were viable, on this record, the Court could not conclude that, by introducing the Debtors to Baidoobonso-Iam, Maria Gonzales was acting within the scope of duties delegated to her by Suarez such that Suarez is vicariously liable for the Default Judgments entered against her.

2. The Express Language of Section 110 Only Allows the Court to Order Awards Against Bankruptcy Petition Preparers

The Debtors' Default Judgments are based on Bankruptcy Code section 110(i), which makes a bankruptcy petition preparer liable for actual damages, a statutory penalty, and statutory attorneys' fees and costs. 11 U.S.C.§ 110(i). Neither the Supreme Court nor the Ninth Circuit have held that traditional tort principles such as vicarious liability apply to violations of section 110 or to awards based on section 110(i). It is far from clear that Congress intended courts to read tort concepts such as vicarious liability into the statutory remedies provided in section 110(i).

A similar provision of the Bankruptcy Code is found in section 303(i), which provides statutory remedies for alleged debtors who defeat involuntary bankruptcy petitions, awarding them actual damages, punitive damages, and reasonable attorneys' fees and costs. In *In re Miles*, the Ninth Circuit held that section 303(i) completely preempts all common law tort causes of action for damages based on the filing of an involuntary petition and that "Congress's authorization of certain sanctions under § 303(i) for involuntary bankruptcy petitions filed in bad faith suggests that Congress rejected other penalties, including the kind of substantial damage awards that might be available in state court tort actions." *In re Miles*, 430 F.3d 1083, 1090 (9th Cir. 2005). In *In re Maple-Whitworth,* the Ninth Circuit rejected the viability of vicarious liability concepts under section 303(i) and cautioned against the consequences of importing common tort principles into statutory causes of action:

> The BAP's use of common law tort principles to interpret § 303(i) and to impose joint and several liability on all petitioners as a class is contrary to the individualized exercise of discretion unambiguously authorized by the statute, and ignores the consideration of the totality of the circumstances in imposing liability required by our precedent. (Citation omitted). As aptly observed in the BAP dissent:
>
> > The majority's thorough discussion of joint and several liability, contribution and indemnity highlights the mischief that can occur by the wholesale application of common law tort concepts into an exclusively bankruptcy statutory cause of action.

In re Maple-Whitworth, 556 F.3d 742, 745–46, (9th Cir. 2009), *opinion corrected sub nom,. In re Maple-Whitworth, Inc.,* 559 F.3d 917 (9th Cir. 2009).

By contrast, some courts outside of this Circuit have held employers jointly and severally liable under Bankruptcy Code section 110. See *In re Gaftick*, 333 B.R. 177, 185-86 (Bankr. E.D.N.Y. 2005); *In re Moore*, 2012 WL 4659873, *14 (Bankr. E.D.N.Y., Sept. 28, 2012). These decisions rely in part on the Supreme Court's determination in *Meyer v. Holley* that an action under the Fair Housing Act "is, in effect a tort action" and that "when Congress creates a tort action, it legislates against a legal background of ordinary tort-related vicarious liability rules and consequently intends its legislation to incorporate those rules." *Meyer v. Holley*, 537 U.S. at 285.

Despite scattered references to fraudulent acts, however, it not evident that a cause of action under Bankruptcy section 101 should be deemed a "tort action." 11 U.S.C. § 110(i)(1), (j)(2)(A). Based on the cautionary admonitions of the Ninth Circuit in *In re Miles* and *In re Maple-Whitworth* against reading tort concepts into statutory causes of action under the Bankruptcy Code, this Court is not inclined to read vicarious liability theories into section 110(i). Indeed, doing so would run contrary to the express language of section 110(i), which states that only a bankruptcy petition preparer can be liable for an award of damages, statutory penalties or attorneys' fees:

> If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on motion of the debtor, trustee, United States trustee . . . and after notice and a hearing, **the court shall order the bankruptcy petition preparer to pay to the debtor –**
>
> (A) the debtor's actual damages;
>
> (B) the greater of (i) $2,000; or (ii) twice the amount paid by the debtor to the bankruptcy petition prepare for the preparer's services; and
>
> (C) reasonable attorneys' fees and costs in moving for damages under this subsection.

11 U.S.C. § 110(i)(1) (emphasis added).

If Congress intended for the principals of a bankruptcy petition preparer to be liable for damage awards against the preparer, Congress could have expressly said so in the statute itself. It

did not. More importantly, Congress could have omitted the limiting language of subsection (i)(1) that "the bankruptcy petition preparer" is to pay the award and instead stated that the court shall award actual damages, penalties and attorneys' fees to the debtor.[6] Congress chose neither course and instead drafted the statute to expressly limit liability to "the bankruptcy petition preparer." There is no ambiguity in the language of the statute. Therefore, "[s]tatutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 252 (2004) (quoting *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985) (internal quotation marks omitted)).

Congress also drafted Bankruptcy Code section 101 to be equally applicable to corporate entities who qualify as "bankruptcy petition preparers." Congress defined "bankruptcy petition preparer" to apply to any "person," other than an attorney who prepares bankruptcy documents for filing. § 110(a)(1). A "person" is defined under the Code to include "individual, partnership, and corporation." § 101(41). Section 110 therefore applies equally to partnerships and corporations. See *Frankfort Digital Servs., Ltd. v. Kistler* (*In re Reynoso)*, 477 F.3d 1117, 1123 n. 5 (9th Cir. 2007) (corporation selling software for filing bankruptcy qualified as a bankruptcy petition preparer and was liable for violations of section 110). Additionally, section 110(b)(1) governs who is required to sign documents for filing where the bankruptcy petition preparer is an partnership or a corporation. This further illustrates Congress' intent that section 110 be equally applicable to corporations as to individuals. By not limiting the definition of bankruptcy petition preparers to individuals, Congress made partnerships and corporations directly—not vicariously—liable for violations of section 110. If the Debtors had established that Espranza Corporation qualifies as a bankruptcy petition preparer for purposes of section 110, then it would be directly liable under

[6] By comparison, section 3613(c) of the Fair Housing Act (the relevant federal statute in the *Holley* cases) empowers a court to "award to the plaintiff actual and punitive damages" and does not attempt to identify or categorize or limit who shall be liable for such an award. 42 U.S.C. § 3613(c).

section 110(i)(1). As detailed above, however, the Debtors have failed to make that showing as to either Espranza Corporation or Suarez.

Because the language of Bankruptcy Code section 110(i) expressly limits who the Court may assess an award against to "bankruptcy petition preparers," the Court will not blithely assume that it may hold third parties liable on a vicarious liability theory.

VI. CONCLUSION

For the reasons set forth above, the Court will enter a separate judgment in favor of Defendants Espranza Corporation and Suarez on the Complaint.

# # #

Date: March 16, 2017

Martin R. Barash
United States Bankruptcy Judge