

25-6209

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

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RICK R. NEGRETE -Pro Se Petitioner

v.

PHU V. PHAM ET AL—Respondent(S)

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FILED

OCT 14 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

*On Petition for Writ of Certiorari of the  
United States Court of Appeals  
for the Ninth Circuit*

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## PETITION FOR WRIT OF CERTIORARI

RICK R. NEGRETE

39520 Murrieta Hot Springs Road

Suite 219-83

Murrieta, CA 92563

951-532-5211

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## QUESTIONS PRESENTED

**The following issues are to be respectfully presented before this right honorable court:**

In addition to those listed below, two main issues arise before this right honorable court,

- **The lower court had the absolute right** under the law and that of U.S.C, §110 to lower any fines, fees levied on the pro se petitioner as the law states “may issue,”
- **Any fines and fees levied** on the pro se petitioner should be weighed against the ability of said petitioner’s ability to pay said fines, fees,
- ANY and all matters pertaining to the failure of the petitioner to sign off on a bankruptcy form could had easily be cured via an amended complaint; saved the taxpayers the tens of thousands of dollars avoiding all this needless time and expense.
- In addition;
  1. The lack of any prior incidences, history of alleged said conduct, that this was the first (and only) time that the appellant had been before this, or any bankruptcy court regarding this matter, having no other prior history or alleged involvement with the alleged subject matter.
  2. That the court refused to case law cited by the appellant that substantiates setting a lower fine amount, the inability of the defendant to pay the fines, fees requested by the trustee.
  3. That the appellant shut down the alleged Google ad shortly after this matter was brought before him,

4. That the appellant was fully willing to do what it took to remedy this matter in the most favorable way possible.
5. That the appellant, being on full California public assistance, averaging a weekly earnings of \$300.00 a week, would be unable to pay the \$12,000.00 proposed by the Trustee's office or pay any portion of..
6. That it would financially ruin the appellant, subject him to financial ruin, leave him with no choice but to file for Bankruptcy knowing that the \$12,000.00 fine is not subject to discharge.

## **LIST OF PARTIES**

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- Phu V. Pham; 3446 Bryce Canyon Way Perris, CA 92570
- Everett L. Green; Office of the United States Trustee

3801 University Avenue Suite 720

Riverside, CA 92501

- Leslie A. Skorheim' Office of the United States Trustee Southern Division

411 West 4<sup>th</sup> Street Suite 7160

Santa Ana, CA 92701

- Nancy S. Goldenberg United States Trustee Office

411 West Fourth Street Suite 7160

Santa Ana, CA 92701

- Peter C. Anderson U.S. Trustee

3801 University Avenue Suite 720

Riverside, CA 92501

## RELATED CASES

- **6:22-bk-14570-RB** Phu Van Pham

**Case type:** bk **Chapter:** 7 **Asset:** No **Vol:** v **Judge:** Magdalena Reyes

Bordeaux

- **5:23-cv-01732-RGK** In Re Phu V. Pham

R. Gary Klausner, presiding

**Date filed:** 08/25/2023

**Date terminated:** 01/05/2024

**Date of last filing:** 08/12/2025

- Court of Appeals Docket #: 24-1053

Nature of Suit: 3422 Bankruptcy Appeals Rule 28 USC 158

Negrette v. Pham, et al.

Appeal From: Riverside, Central California

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## **I. PETITION FOR WRIT OF CERTIORARI**

Rick R. Negrette petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

## **II. OPINIONS BELOW**

The Ninth Circuit's unpublished opinion affirming the lower court's decision against the petitioner, attached as Appendix 1. The district court's order denying Petitioner's motion is unreported, and attached as Appendix 2.

## **III. JURISDICTION**

The Ninth Circuit entered judgment on July 17<sup>th</sup> 2025. See Appendix 1. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

#### **IV. STATUTORY PROVISIONS INVOLVED**

§ 904.108 Factors considered in assessing civil penalties, addresses assessing fines and fees based upon the ability of the defendant to pay. It states;

- Factors to be taken into account in assessing a civil penalty, depending upon the statute in question, may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior violations, and ability to pay; and such other matters as justice may require.
- in consideration of a respondent's ability to pay, increase or decrease a civil penalty from an amount that would otherwise be warranted by the other relevant factors. A civil penalty may be increased if a respondent's ability to pay is such that a higher civil penalty is necessary to deter future violations, or for commercial violators, to make a civil penalty more than a cost of doing business. A civil penalty may be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate civil penalty amount.

#### **STATEMENT OF THE CASE**

Petitioner Ricky Rene Negrette, hereinafter (Petitioner) respectfully submits this Petition for a Writ of Certiorari with the upmost honor and respect. Having the highest esteem for THE highest court in the land, and knowing that it is an honor to have this right honorable court affording myself the opportunity for certiorari, It is indeed hoped and this court will fully address the issues presented within this petition and that this honorable court will somewhat take some

2. That the court refused to case law cited by the appellant that substantiates setting a lower fine amount, the inability of the defendant to pay the fines, fees requested by the trustee.
3. That the appellant shut down the alleged Google ad shortly after this matter was brought before him,
4. That the appellant was fully willing to do what it took to remedy this matter in the most favorable way possible.
5. That the appellant, being on full California public assistance, having been terminated from his position with North County Ford, would be unable to pay the \$12,000.00 proposed by the Trustee's office or pay any portion of..
6. That it would financially ruin the appellant, subject him to financial ruin, leave him with no choice but to file for Bankruptcy knowing that the \$12,000.00 fine is not subject to discharge.

B. Standards of Review

Under established local procedure in this judicial district, a careful review has been made of the pro se notice of appeal. This court is required to liberally construe pro se pleadings. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Such pro se pleadings are held to a less stringent standard than those drafted by attorneys, *id.*; *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Cruz v. Beto*, 405 U.S. 319 (1972). In evaluating a pro se complaint, the plaintiff's allegations are assumed to be true. *Erickson*, 551 U.S. at 93 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007)).

When this Court reviews a decision of the bankruptcy court, it reviews the factual findings for clear error and the legal conclusion *de novo*. Fed. R. Bankr. P. 8013; Liberty Nat'l Enters. v. Ambanc La Mesa L.P. (In re Ambanc La Mesa L.P.), 115 F.3d 650, 653 (9th Cir. 1997); United States v. Mc Connery, 728 F.2d 1195, 1200-02 (9th Cir.1984) (en banc).

Where findings of fact are challenged on a civil appeal, the appellate court is bound by the elementary, but often overlooked principle of law, that the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support the findings below; the court must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. Lenk v. Total-Western, Inc. (App. 5 Dist. 2001) 108 Cal.Rptr.2d 34, 89 Cal.App.4th 959, review denied. 3458; 3460; 3936, Review of findings is normally obtained by appeal from the ensuing judgment or order. In re S.B. (2009) 94 Cal.Rptr.3d 24, 46 Cal.4th 529, 207 P.3d 525. 3401

On July 25th, 2023, this court held a hearing per the trustee's motion for disgorgement of fees pursuant to 11 U.S.C. §110, (Doc. No. 54). Appellant Rick R. Negrette submitted a brief in support of denial of trustee's motion, served trustee with said motion, and argued against trustees motion for fines, fees, denial of trustees motion. Appellant Negrette also argued that he is on Medical and Calfresh, (was at the time) making an average of \$300.00 a week, that he was and would be unable to pay the full, requested amount of \$12,000.00, and that this court had discretion to lower fines and fees based upon the inability to pay.

This court found in favor of the trustee's motion and ordered appellant Negrette to pay a total of \$12,000.00. Appellant Negrette then proceeded to verbally request a stay, only to have this court ignore his request and move on to the next case.

## SUMMARY OF ARGUMENT

Appellant Negrette testified that he had never been in front of this court before at all, regarding this or any other related subject matter, accusation, implication of a “bankruptcy petitioner.” Appellant also testified that this was a one-time occurrence based upon the death of Mr. Pham’s wife, that he had never before sold himself as a “BPP” nor had he sold himself as a Bankruptcy professional. This was a first time, one time, occurrence that did not warrant penalty and fines totaling \$12,000.00. Appellant Negrette cited valid, non-flagged, cases that fined those found in violations thousands less citing judges in those respective cases, stating that courts DID have discretion to award less than the maximum fine. Sanchez, 446 B.R. at 540; see also In re Hernandez, No. 10-41290 SBB, 2011 WL 5239238, at \*12 (Bankr.D.Colo. Oct. 31, 2011) The factors courts have examined to determine the appropriate amount of a fine include the nature of the violations and whether the bankruptcy petition preparer had previously been before the court to answer for violations of § 110. Sanchez, 446 B.R. at 540; as cited in, In re Monson, United States Bankruptcy Court, D. Utah. November 24, 2014522 B.R. 340.

In issuing sanctions, applicable law requires the Court to exercise its discretion to impose measured and tempered sanctions. Typically, sanctions are not intended to be compensatory. Rather the Court is required to impose the “ ‘minimum that will serve to adequately deter the undesirable behavior.’ ” White v. General Motors Corp., 977 F.2d 499, 502 (10th Cir.1992)(Emphasis in original), quoting, White v. General Motors Corp., 908 F.2d 669, 685 (10th Cir.1990). One of the other factors that the Court must consider is the ability of the sanctioned party to pay the sanctions imposed. Dodd Insurances Services, Inc. v. Royal Insurance Co. Of America, 935 F.2d 1152, 1160 (10th Cir.1991). However, the burden of proving such an inability lies with the sanctioned party. Id; see In re Hazlett 2019 WL 1567751, 5,

Bkrtcy.D.Utah; In re Johnson 2016 WL 11271937, 4, Bkrtcy.S.D.Ill. In the courts determination of sanctions (In re Brodrick 04/14/2016,) “Burton could be fined up to \$500 for each of her dozens of violations of § 110(b)–(h), § 110(l)(1), and the total fine pursuant to § 110(l)(1) would be tripled because Burton prepared documents without disclosing her involvement, § 110(l)(2)(D).8 Nevertheless, the court will decline to impose sanctions to the full extent allowed by § 110.9 See Briones–Coroy, 481 B.R. at 716—17 (considering reasonableness, deterrence, ability to pay, and other factors and concluding that fining a BPP for every individual violation was not a wise exercise of discretion).”

## **ARGUMENT**

### **A. Appellant Has no History with the Trustee’s Office, Being in Front of the Bankruptcy Court for Allegations of Violation of 11 U.S.C. §110.**

As so addressed and contain within appellant’s initial response to trustees’ motion for disgorgement motion, appellant has no prior history of anything related to said violation(s), being notified by the trustees office for alleged said violation(s) of, been before the honorable court regarding violation(s) of. As addressed, this is the first and indeed last time appellant will have to address allegations of violations of the above titled statute.

As stated and addressed to the honorable court via his response motion and testimony, appellant solely accepted the petitioner’s request for assistance after the passing. The petitioner asked THREE-FOUR times for assistance with his pending bankruptcy petition only to have appellant refuse each and every time, stating that he was not a bankruptcy preparer and that he should find someone who is certified to do so. After agreeing to offer some, limited typing

assistance, appellant did offer to submit the petitioner's BK petition as a courtesy since the petitioner had been involved making arrangements for his late wife's funeral. All this was done SOLELY due to the passing of the petitioner's wife, never via personal enlistment by appellant, selling himself as a BPP, never directing the petitioner to any website, business card. And as stated, the BK petitioner's original contact to the appellant was to assist with obtaining crash footage of petitioner's Tesla; THAT WAS IT. This came via a verbal referral from an UBER driver, not via a business card or a website.

B. The Bankruptcy Court Judge refused to consider statements, case law provided, contained within defendant's response, verbal testimony.

§ 904.108 Factors considered in assessing civil penalties, addresses assessing fines and fees based upon the ability of the defendant to pay. It states;

- Factors to be taken into account in assessing a civil penalty, depending upon the statute in question, may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior violations, and ability to pay; and such other matters as justice may require.
- in consideration of a respondent's ability to pay, increase or decrease a civil penalty from an amount that would otherwise be warranted by the other relevant factors. A civil penalty may be increased if a respondent's ability to pay is such that a higher civil penalty is necessary to deter future violations, or for commercial violators, to make a civil penalty more than a cost of doing business. A civil penalty may be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate civil penalty amount.
- Financial Ability to pay Fine:

“A \$10,000 penalty imposed on fisherman for violation of Magnuson Fishery Conservation and Management Act was arbitrary and capricious to the extent that administrative law judge (ALJ), in determining penalty, failed to rule on fisherman's financial ability to pay penalty.” Magnuson Fishery Conservation and Management Act, § 308(a), as amended, 16 U.S.C.A. § 1858(a). Diehl v. Franklin, D.N.J.1993, 826 F.Supp. 874.

People v. Duenas, 30 Cal.App.5th 1157, Court of Appeal, Second District, Division 7, California, January 8th, 2019. Duenas goes though great length to discuss and address fines and fees on those unable to pay, “indigent.” It addresses the issues that defendants face when unable to pay fines. Fees, “potentially devastating consequences suffered only by indigent persons,” It goes on to state, “if imposed without a determination that the defendant is able to pay, are thus fundamentally unfair; imposing these assessments upon indigent defendants without a determination that they have the present ability to pay violates due process under both the United States Constitution and the California Constitution.4 ( \*\*277 U.S. Const. 14th Amend.; Cal. Const., art. I, § 7.)” “The principle that a punitive award must be considered in light of the defendant's financial condition is ancient.” (Adams v. Murakami (1991) 54 Cal.3d 105, 113, 284 Cal.Rptr. 318, 813 P.2d 1348.) The Magna Carta prohibited civil sanctions that were disproportionate to the offense or that would deprive the wrongdoer of his means of livelihood. (Ibid}.”

C. Appellant is on Public Assistance, Having Been Terminated From North County Ford.

Appellant Negrette testified that due to his economic status, earning an average of \$300.00 a week as an Uber Driver and being on full public assistance, he would be unable to pay anything remote to the \$12,000.00 that this court was inclined to order. This was also FULLY addressed in the defendant's response brief.

In “In re Bodrick,” through discussing civil penalties associated with the violation(s) of section 110 of the Bankruptcy Code, stated, “The total amount of sanctions allowed under § 110 for egregious violations can add up to a significant amount of money. See McDow v. Mayton, 379 B.R. 601, 607–08 (E.D.Va.2007) (concluding that a BPP was liable for a maximum sanction of \$45,875 (but only sanctioning the BPP in the total amount of \$3375).” In re Bodrick, United States Bankruptcy Court, W.D. North Carolina, Charlotte Division, April 14th, 2016.

While discussing fines, fees, sanctions, the court stated, “ If the court were so inclined, it might be able to sanction Burton in a record-setting amount. For example, Burton could be fined up to \$500 for each of her dozens of violations of § 110(b)–(h), § 110(l)(1), and the total fine pursuant to § 110(l)(1) would be tripled because Burton prepared documents without disclosing her involvement, § 110(l)(2)(D).8 Nevertheless, the court will decline to impose sanctions to the full extent allowed by § 110.9 See Briones–Coroy, 481 B.R. at 716—17 (considering reasonableness, deterrence, ability to pay, and other factors and concluding that fining a BPP for every individual violation was not a wise exercise of discretion).”

In the McDow v. Mayton decision, weighting the judgement of fines and fees, stated and chose, to lower the total amount of fines levied stating, “The U.S. Trustee seeks to impose the maximum potential fine of \$43,500 on the Defendant. However, because the Defendant is likely unable to pay such a fine.” The defendant was fined a total of \$3,375.00 in fines and fees.

In Pimentel v. City of Los Angeles, United States District Court, C.D. California.

September 29, 2015, court argued:

“Furthermore, while defendant may be correct that ability to pay is not a factor that plaintiffs must prove to prevail on their excessive fines claim, it is relevant to the proportionality analysis.

See, e.g., *Bajakajian*, 524 U.S. at 335-36, 118 S.Ct. at 2037 (discussing precedent requiring that fines should be “proportioned to the offense and that they should not deprive a wrongdoer of his livelihood”); *United States v. Levesque*, 546 F.3d 78, 83-84 (1st Cir. 2008) (“The Supreme Court has made it clear that the notion that a forfeiture should not be so great as to deprive a wrongdoer of his or her livelihood is deeply rooted in the history of the Eighth Amendment.”); cf. *Bajakajian*, 524 U.S. at 340, n. 15, 118 S.Ct. at 2039, n. 15 (not addressing ability to pay because “Respondent does not argue that his wealth or income are relevant ... or that full forfeiture would deprive him of his livelihood[,]” and because “the District Court made no factual findings in this respect.”). This is especially true under California law, as the California Supreme Court has stated that it considers “the defendant's ability to pay” a factor in analyzing proportionality under *Bajakajian*. See *R.J. Reynolds*, 37 Cal.4th at 728 (citing with approval *City and Cnty. of San Francisco v. Sainez*, 77 Cal.App.4th 1302, 1322 (2000) (review denied May 10, 2000), which found that “we agree, that in the case of fines ... the defendant's ability to pay is a factor under the Excessive Fines Clause.”) (internal quotation marks and citation omitted). That the court may consider plaintiffs' ability to pay further strengthens the court's conclusion that dismissal at this stage would be inappropriate.”

**D. THE COURT DOES HAVE DISCRETION TO LOWER, WAIVE FEES AND FINES  
BASED UPON THE ABILITY OF THE DEFENDANT TO PAY.**

As appellant Negrette testified and indeed cited in his testimony, this court does have discretion to lower, even waive all fines and fees based on the ability to pay. Appellant's statements can easily be verified by the trustee's office. This is not something appellant is proud of, celebrates. This is sadly the reality of appellant Negrette's livelihood. The ordered amount of

\$12,000.00 would devastate the financial status of the defendant, leaving him destitute, bankruptcy, homeless, broke, out on the streets.

In "In re Sanchez" February 11 2011, , discussing the imposition of fines and fees, the court stated, "Pursuant to 11 U.S.C. § 110(1 )(1), the Court may impose a fine of up to \$500.00 for each violation. The Court has discretion under this section to determine the amount of the fine per violation. Rojero, 399 B.R. at 921.

In, United States v. Stewart United States District Court, C.D. California. April 20, 2016, court ruled as follows:

"Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest on the restitution ordered is waived because the defendant does not have the ability to pay interest. Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

All fines are waived as it is found that the defendant does not have the ability to pay a fine in addition to restitution."

In, United States v. Antonio Bugatti [67156-1121] United States District Court, C.D. California .January 23, 201

"Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest on the restitution ordered is waived because the defendant does not have the ability to pay interest. Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g). All fines are waived as it is found that the defendant does not have the ability to pay a fine in addition to restitution; United States v. Gear United States District Court, C.D. California. November 7, 2016; United States v. Topilina United States District Court, C.D. California .December 30, 2015."

So, as it appears via the above citations, THIS court does indeed have discretion to limit, resolve all fines and fees ordered by this court, against appellant Negrette, yet for reasons unknown, this court chose not to. As anyone in the legal business knows, Judges do have discretion to rule accordingly to the merits of, whether a first-time offender if you will, the ability to pay said fines, fees, with the ability of the court to fully consider the ability of the defendant to pay.

As it so appears and is evidence through the above cited cases, courts do indeed have the full invested option of discretion in ruling, ordering, issuing fines, fees, sanctions, despite the opinion of the ordering court that "its hands are tied," does not have the ability to order lower amounts than so cited in 11U.S.C. 110.

E. The Fine Ordered by the Bankruptcy Court of \$12,000.00 Would Financially Ruin the Appellant, Subject Him to Financial Ruin, Leave Him With no Choice but to File for Bankruptcy.

Appellant has been relying on credit cards and selling his personal belongings to do his best to get by, while he seeks gainful employment. As so testified via appellant's response brief, oral testimony on the 25th of July 2023, His sole base of income is earned via driving for Uber Eats. Although paid on a weekly basis, appellant averages about \$300.00 to \$350.00 a week. The amount greatly varies based upon the availability of deliveries, times of day, days of the week. If appellant is not on a run, delivery, he does not get paid for sitting around and waiting for a delivery request. Although appellant submits resumes on a weekly basis, he has only had two formal interviews, which sadly has not resulted in a job offer. Frankly it is completely

embarrassing to have to address the severe lack of sustainable income, the inability to pay his bills in full, being behind on utilities, having to make arrangements just to keep the lights, on, water running, gas lit so that he can cook. This is not how anyone should have to live; however, it is the only thing appellant has going for himself while he constantly continues to seek gainful employment.

As of the date of this opening brief, appellant has a credit card balance totaling just short of \$35,000.. Having been involved in F&I, appellant knows firsthand how important a solid FICO score is, knows that late payments, high balance limits weights on one's credit score, and has done everything he can to make sure the minimums are paid so that he does not take a huge FICO hit; although appellant's FICO is no longer 780, now due to the high balances, has dropped to a 630. A solid FICO is everything, it is considered when renting, applying for a job, . . .

. In addition to, defendant was also informed that the home he is renting is going to be put on the market, which will result in an eviction, relocation to another residence, which will result in an expense defendant cannot afford; moving costs, higher monthly rent, higher security deposit,

If appellant was able to accept the \$3,900 settlement offer from the Trustee's office prior to the hearing, he would have done so. Appellant even tried to secure a few lines of credit only to be denied due to the high balances, percentage of credit usage on his cards. Appellant is trying his best to get back into the job market, earn more than \$300.00 a week not knowing if he will be able to evade being out on the street, financial ruin, . . .

What is troubling about all this is that there are NUMEROUS related cases where BPP's took FULL ADVANTAGE of their clients, numerous violations of related statutes, laws governing BPP's, yet they were never held to such a standard via full enforcement of fines and fees. Judges, justices, knew that a fine of a million dollars for GROSS violations of statutes, as

would be issued upon said violations, would be beyond the ability of the BPP to pay. 11 U.S.C. section 110 states "may be fined, " not shall be fined, allowing judges, justices, DISCRETION, to rule based upon the ability to pay, Yet here we are.

## **CONCLUSION AND PRAYER FOR RELIEF**

So, it is with the sincere and humble submission of this opening brief, it is so requested that this court take full consideration of the appellant's first-time offense, his poverty level income, his debt, economic hardships, and lower if not fully deny the order of the lower court to pay in full the \$12,000.00

FOR THE REASONS SO ADDRESSED, The petition for a writ of Certiorari should be granted.

Respectfully submitted this 14th day of October 2025



Rick R. Negree, Pro Se Petitioner