

APPENDIX A;

MEMORANDUM AFFIRMING

LOWER COURTS DECISION

NOT FOR PUBLICATION

FILED

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JUL 17 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RICK NEGRETTE,

Appellant,

v.

PHU V. PHAM; UNITED STATES
TRUSTEE,

Appellees.

No. 24-1053

D.C. No. 5:23-cv-01732-RGK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted July 15, 2025**

Before: SILVERMAN, TALLMAN, and BUMATAY, Circuit Judges.

Rick Negrette appeals pro se from the district court's judgment affirming the bankruptcy court order imposing fines and damages under 11 U.S.C. § 110. We have jurisdiction under 28 U.S.C. § 158(d)(1). We review de novo a district

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

court's decision on appeal from a bankruptcy court and apply the same standards of review applied by the district court. *Motor Vehicle Cas. Co. v. Thorpe Insulation Co.* (*In re Thorpe Insulation Co.*), 677 F.3d 869, 879 (9th Cir. 2012).

We affirm.

The bankruptcy court properly found that Negrette was a bankruptcy petition preparer ("BPP") within the meaning of 11 U.S.C. § 110(a)(1) and that he had failed to comply with § 110's disclosure requirements and practice prohibitions for BPPs. *See* 11 U.S.C. §§ 110(a)(1), (2) (defining a BPP as "a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation" a "petition or any other document prepared for filing by a debtor in a United States bankruptcy court . . . in connection with a case under this title"); 110(b)(1) (requiring BPPs to sign and print their name and address on documents for filing); 110(c)(1), (c)(2)(A) (requiring BPPs to provide their Social Security account number on documents for filing); 110(f) (prohibiting BPPs from using the word "legal" in advertisements); 110(g) (prohibiting BPPs from collecting or receiving payment from the debtor for court fees in connection with filing a bankruptcy petition); *Frankfort Digit. Servs. v. Kistler* (*In re Reynoso*), 477 F.3d 1117, 1120 (9th Cir. 2007) (setting forth standard of review).

The bankruptcy court did not abuse its discretion in imposing the maximum

penalty allowed under 11 U.S.C. § 110(l) for Negrette's violations of § 110's disclosure requirements and practice prohibitions. *See* 11 U.S.C. §§ 110(l)(1) (providing that a BPP "who fails to comply with any provision of [11 U.S.C. § 110] subsection (b), (c), . . . (f) [or] (g) . . . may be fined not more than \$500 for each such failure"); 110(l)(2)(D) (providing that "[t]he court shall triple the amount of a fine assessed under [11 U.S.C. § 110(l)(1)] in any case in which the court finds that a bankruptcy petition preparer . . . prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer"); *Frankfort Digit. Servs., Ltd. v. Neary (In re Reynoso)*, 315 B.R. 544, 550 (B.A.P. 9th Cir. 2004), *aff'd*, 477 F.3d 1117 (9th Cir. 2007) (setting forth standard of review).

AFFIRMED.

APPENDIX B;
ORDER DENYING THE
REQUEST TO STAY THE MANDATE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 4 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RICK NEGRETTE,

Appellant,

v.

PHU V. PHAM and UNITED STATES
TRUSTEE,

Appellees.

No. 24-1053

D.C. No. 5:23-cv-01732-RGK
Central District of California,
Riverside

ORDER

Before: SILVERMAN, TALLMAN, and BUMATAY, Circuit Judges.

The motion (Docket Entry Nos. 27, 29) to stay the mandate is denied. *See*
Fed. R. App. P. 41(b). The mandate will issue in due course.

No further filings will be entertained in this closed case.

**APPENDIX C;
MANDATE ENTERED
ON AUGUST 12TH 2025**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 12 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RICK NEGRETTE,

Appellant,

v.

PHU V. PHAM and UNITED STATES
TRUSTEE,

Appellees.

No. 24-1053

D.C. No.
5:23-cv-01732-RGK

Central District of California,
Riverside
MANDATE

The judgment of this Court, entered July 17, 2025, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to
Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS6

CIVIL MINUTES - GENERAL

Case No. 5:23-cv-01732-RGK

Date January 5, 2024

Title *In Re Phu V. Pham*Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Joseph Remigio

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Appellant:

Attorneys Present for Appellee:

Not Present

Not Present

Proceedings: **(IN CHAMBERS) Order Re: Amended Notice of Appeal and Motion for Relief from a Judgment or Order [DEs 2, 19]****I. INTRODUCTION**

On August 25, 2023, pro se Appellant Rick Negrette filed a Notice of Appeal with this Court seeking review of a bankruptcy court's August 9, 2023 Order imposing fines and other penalties upon him for numerous violations of 11 U.S.C. § 110 ("§ 110"). The United States Trustee opposed the Appeal. For the following reasons, the Court **AFFIRMS** the Order.

II. JURISDICTION

A district court has jurisdiction to hear an appeal from a bankruptcy court's final order. 28 U.S.C. § 158(a)(1). An order to pay a fine for a violation of § 110 is a final order. *In re Jackson*, 2014 WL 5575293, at *7 (B.A.P. 9th Cir. Nov. 3, 2014).

III. FACTUAL BACKGROUND

The following facts are undisputed unless noted otherwise:

On December 7, 2022, Phu Van Pham ("Debtor") filed a Petition for Chapter 7 bankruptcy. (Ex. 5 at 20, ECF No. 17-6 at 20.) To file the petition, Debtor enlisted Negrette, a paralegal associated with a business called 1-2-1 Legal Solutions. (*Id.* at 15, 17.) Negrette prepared and submitted the Petition on Debtor's behalf. (*Id.* at 15.) Negrette instructed Debtor not to tell anyone that he had received help with his bankruptcy paperwork. (*Id.*)

Although the parties dispute the exact amount, they agree that Debtor paid Negrette at least \$300 for his services. (Ex. 6 at 3, ECF No. 17-7.) In addition to this fee, Negrette collected Debtor's filing fee, which Negrette in turn submitted to the court. (Ex. 5 at 15.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS6

CIVIL MINUTES - GENERAL

Case No. 5:23-cv-01732-RGK

Date January 5, 2024

Title *In Re Phu V. Pham*

On May 4, 2023, the United States Trustee filed a Motion alleging that Negrette had engaged in numerous violations of § 110, which penalizes individuals who negligently or fraudulently prepare bankruptcy petitions. (Ex. 5.) The United States Trustee asked the bankruptcy court to (1) assess fines and damages for these violations and (2) order Negrette to forfeit the fees Debtor had paid him.

On July 25, 2023, the bankruptcy court detailed its findings in a tentative order. (Ex. 8, ECF No. 17-9.) Specifically, the bankruptcy court determined that Negrette had failed to disclose his identity when he prepared the Petition and committed eight violations of § 110 as follows:

- Three violations of § 110(b)(1) for failing to sign and print his name and address on the bankruptcy petition, schedules, and statement of financial affairs;
- Three violations of § 110(c)(1) for failing to report his social security number on the same three documents;
- One violation of § 110(g)(1) for collecting Debtor's filing fee; and
- One violation of § 110(f) for advertising his business as a "legal" business.

The court expressed its intention to impose a \$500 fine for each violation, which would be tripled pursuant to § 110(1)(2) to total \$12,000.

The bankruptcy court held a hearing shortly after issuing its tentative order. (Ex. 10, ECF No. 17-11.) During that hearing, Negrette asked the court to exercise its discretion and lower the fines due to several mitigating factors. Most notably, Negrette claimed he lacked adequate financial means to pay a \$12,000 fine because he had limited savings, received government assistance, and earned approximately \$300 per week as an Uber driver. On August 9, 2023, the Court granted the Motion and ordered Negrette to pay a \$12,000 fine, in addition to other penalties which Negrette does not challenge on Appeal. (Ex. 9, ECF No. 18-10.)

IV. STANDARD OF REVIEW

A bankruptcy court's factual findings with respect to violations of § 110 are reviewed for clear error, while the "imposition of discretionary penalties for violations of § 110" is reviewed for abuse of discretion. *In re Reynoso*, 315 B.R. 544, 550 (B.A.P. 9th Cir. 2004). "A factual finding is clearly erroneous if the appellate court, after reviewing the record, has a firm and definite conviction that a mistake has been committed." *Id.* at 549. Reversal under the abuse of discretion standard is warranted if the appellate court reaches "a definite and firm conviction that the bankruptcy court committed a clear error of judgment in the conclusion it reached." *Id.* at 550 (quoting *In re Black*, 222 B.R. 896, 899 (B.A.P. 9th Cir. 1998)).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS6

CIVIL MINUTES - GENERAL

Case No. 5:23-cv-01732-RGK

Date January 5, 2024

Title *In Re Phu V. Pham*V. DISCUSSION

Negrette seeks a reversal of the bankruptcy court's August 9, 2023 Order requiring him to pay a \$12,000 fine for his numerous violations of § 110. Negrette does not appear to dispute the bankruptcy court's factual findings, and for good reason: there is ample evidence in the record that supports the bankruptcy court's factual determinations. Instead, Negrette argues¹ that the bankruptcy court erred when it did not exercise its discretion to lower the fine in consideration of several mitigating factors that, according to Negrette, weigh in favor of reducing the penalty. These mitigating factors include: (1) the fact that Negrette had not previously been found to be in violation of § 110; (2) the fact that Negrette had since removed the impermissible advertisement for his business; (3) the fact that Debtor was referred to Negrette through a personal connection, and not through the advertisement; and (4) Negrette's inability to pay.

In support of his Appeal, Negrette provides examples of courts who exercised their discretion to impose fines lower than the statutory maximum.² Negrette does not cite to—nor is the Court aware of—any legal authority requiring a court to impose a fine less than statutory maximum in consideration of mitigating factors. In fact, a fine prescribed by statute is presumptively constitutional. *See United States v. Bajakajian*, 524 U.S. 321, 336 (1998) (reasoning that “judgments about the appropriate punishment for an offense belong in the first instance to the legislature.”); *see also United States v. Mackby*, 221 F. Supp. 2d 1106, 1110 (N.D. Cal. 2002) (reasoning that a penalty that falls “within the range prescribed by statute” is “presumptively constitutional”). Accordingly, the bankruptcy court did not abuse its discretion when it imposed the maximum penalty allowed under § 110.

¹ The Court considers arguments advanced in Negrette's Opening Brief, which was timely filed on October 23, 2023. (ECF No. 16.) Negrette's reply, styled as “Appellant's Rebuttal of Brief of Appellee.” (sic) was untimely filed on December 20, 2023. (ECF No. 18; *see also* Min. Order, ECF No. 11 (setting filing deadline for optional reply brief as December 8, 2023).) The Court struck the untimely reply and does not consider the arguments advanced therein. (ECF No. 19.) It appears Negrette misunderstood the Court's Order striking the untimely brief. On January 3, 2024, Negrette filed a Motion for Relief from Order asking the Court to consider his Opening Brief. (ECF No. 21.) For the reasons explained above, Negrette's Motion is DENIED as moot.

² Negrette additionally cites to numerous authorities that are inapposite to his case. For example, Negrette cites 15 C.F.R. § 904.108, which relates to procedures concerning the National Oceanic and Atmospheric Administration. Many of the cases Negrette cites are also irrelevant, such as Negrette's citation to *Diehl v. Franklin*, 826 F. Supp. 874 (D.N.J. 1993), to support his argument that the bankruptcy court was required to consider his ability to pay the fine. Because *Diehl* involved an entirely different statute than that at issue here, it is inapplicable. Finally, Negrette cites to California state law concerning state courts' obligations to consider an individual's ability to pay in various circumstances. This law is also not relevant here.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS6

CIVIL MINUTES - GENERAL

Case No. 5:23-cv-01732-RGK

Date January 5, 2024

Title *In Re Phu V. Pham*

VI. CONCLUSION

For the foregoing reasons, the Court **AFFIRMS** the Order. The Court additionally **DENIES** Appellant's Motion for Relief from the Court's Order [21], as explained in footnote 1.

IT IS SO ORDERED.

Initials of Preparer

JRE/ak