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United States Bankruptcy Court, E.D. California,
Fresno Division.

In re Julie BLACK, Debtor.

No. 11–18491–B–7. | DC
No. UST–1. | July 30, 2012.

Attorneys and Law Firms

Robin Tubesing, Esq., appeared on behalf of the Acting United States Trustee, August B. Landis, Esq.

Henry D. Nunez, Esq., appeared on behalf of himself.

Opinion

MEMORANDUM DECISION FOLLOWING HEARINGS ON ORDER TO SHOW CAUSE AND MOTION FOR REVIEW OF FEES

W. RICHARD LEE, United States Bankruptcy Judge.

***1** This memorandum decision follows a hearing on the court's order to appear and show cause why respondent, Henry D. Nunez, Esq. ("Nunez"), should not be sanctioned and ordered to reimburse the United States Trustee ("UST") for his costs incurred in the investigation of this matter (the "OSC"). The OSC was heard together with the UST's motion for review of fees paid to Nunez in connection with this case (the "Fee Motion"). The issue arose out of Nunez's failure to supervise a non-attorney employee in his office and the unauthorized use of his electronic case filing ("ECF") login and password. For the reasons set forth below, Nunez will be sanctioned in the amount of $2,000 and ordered to reimburse the UST for his costs.

This memorandum decision contains the court's findings of fact and conclusions of law required by Federal Rule of Civil Procedure 52(a), made applicable to this contested matter by Federal Rules of Bankruptcy Procedure 7052 and 9014(c). The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, 11 U.S.C. § 105, and General Order Nos. 182 and 330 of the U.S. District Court for the Eastern District of California. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A). [1]

Background and Findings of Fact.

On July 27, 2011, a petition was filed in this court initiating a chapter 7 case on behalf of the debtor Julie Black ("Black"). The petition listed Nunez as Black's attorney of record. Nunez's virtual electronic signature, "/s/ Henry D. Nunez," appeared on the signature line where the petition required the signature of counsel. The petition, along with the completed schedules and statements, were electronically filed using Nunez's registered account with the court's ECF system. Nunez's virtual signature also appeared on all of the documents that required the attorney's signature, including the Disclosure of Compensation of Attorney for Debtor(s) required by § 329(a) and Rule 2016(b).

At the time of the filing, however, Nunez had no knowledge of who Black was, he had not consulted with her, and he had not agreed to represent Black in her bankruptcy. Black worked for a company located next door to Nunez's office, where she had developed a friendship with Nunez's secretary, Norma Rodriguez ("Rodriguez"). When Black told Rodriguez about her financial troubles, Rodriguez offered to assist Black in completing and filing her bankruptcy petition, schedules, statement of financial affairs, and other related documents. Rodriguez did so without obtaining approval or consent from Nunez and without accepting any compensation from Black. Rodriguez was neither a licensed attorney nor a bankruptcy petition preparer.

At first, Rodriguez intended to file the petition to show Black's status as a pro se debtor, but the court's ECF system does not accept electronic filings from pro se debtors because they are not registered to e-file and do not have an ECF account. Rodriguez had been given the password and authorization to use Nunez's ECF account in order to file documents for Nunez's clients, so she decided to use his account to file Black's petition. Rodriguez proceeded to put Nunez's virtual signature on the pleadings, thereby misrepresenting the fact that Nunez had actually reviewed, approved and signed the documents. She then filed the petition using Nunez's ECF account and listing Nunez as Black's attorney of record. She intended to later file a substitution of attorney to hide what she had done by giving the impression that Nunez had withdrawn from the case, but she never did so and Nunez remained Black's attorney of record in the ECF system.

***2** On July 28, 2011, the court issued its Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors & Deadlines which

was served by first-class mail on both Nunez and Black. The meeting of creditors was initially set for September 6, 2011, but Black and Nunez both failed to appear. That prompted the chapter 7 trustee to file and serve on Nunez and Black a motion to dismiss the case on September 14. An opposition to the trustee's motion was filed on behalf of Black on October 4, which included a declaration from Black explaining that personal medical issues had prevented her from appearing. Both the opposition and the declaration displayed Nunez's name as Black's attorney of record in the caption and the signature line, and both pleadings were, again, electronically filed using Nunez's ECF account.

The opposition pleadings had been prepared days earlier on September 30. Nunez subsequently represented that his paralegal had prepared the documents, but that Nunez had approved their content and filing. However, at that time Nunez was still unaware that Black was not his client and that documents with his virtual signature were being filed with the court, that he had not actually signed, on behalf of someone who was not his client. He later blamed this failure on his "busy legal practice" and his "outside businesses," which did not allow for him to personally "remember every client's name and case." Rather, he had to "rely on [his] file notes and staff for assistance." The motion to dismiss was later denied and another meeting of creditors was rescheduled to take place on October 31, 2011.

Nunez first became aware of Black's case on or about October 31, 2011, when he noticed on his calendar that Black's meeting of creditors was scheduled for that day. Nunez still did not recognize her name even though he had purportedly reviewed and approved the pleadings filed in opposition to the dismissal motion a month earlier. In response to questioning from Nunez, Rodriguez finally informed him of the situation. Nunez instructed Rodriguez to contact Black to let her know that he would not appear at the meeting of creditors. The record reflects that Black did appear for the meeting but that Nunez did not. Since Nunez was Black's attorney of record, the meeting could not proceed. The trustee had to continue it again to November 14, 2011.

Nunez ultimately decided to represent Black in her bankruptcy case. He met with her to discuss the bankruptcy process and review her petition, schedules, and statements. The meeting of creditors was finally concluded on November 14, 2011, and the trustee filed a Report of No Distribution. Black ultimately received her discharge on January 27, 2012.

When Nunez failed to appear at the second meeting of creditors on October 31, the UST filed the Fee Motion asking the court to review and order disgorgement of any fees that had been paid to Nunez. That matter was set for hearing on December 7, 2011. Nunez filed a declaration in opposition to the Fee Motion explaining how Rodriguez had filed Black's case without his consent or knowledge. His declaration also informed the court that Nunez had given Rodriguez a "warning" for her actions.

***3** After the hearing on the Fee Motion, the court instructed the UST to conduct an investigation regarding Nunez's conduct in the handling of Black's case. The UST separately deposed Nunez and Black and informally questioned Rodriguez. On February 2, 2012, the UST filed a status report with the findings of his investigation. Based thereon, the court issued the OSC on February 28, 2012 directing Nunez to appear and to show cause why he should not be sanctioned. The sanctions suggested in the OSC included a $2,000 payment to the court and reimbursement of the costs incurred by the UST for his investigation of the matter.

In response to the OSC, Nunez filed another declaration explaining his actions, which he believed did not warrant the imposition of sanctions. Nunez appeared on his own behalf at the OSC hearing on March 22, 2012. After hearing arguments from Nunez and the UST, the court permitted Nunez to file a supplementary brief addressing the "duty of care" with respect to the supervision of non-attorney employees, which he did on April 3. Nunez contends that the incident did not breach any duty of care because Rodriguez violated his office policy and concealed her actions from him. Nunez argues that the Black case was a "one time incident," and that the matter had been "adequately handled ... so as to cause no prejudice and/or harm to the client." Nunez attempts to characterize the issue as a question of "competence" rather than professional responsibility and ethics, and he argues that Black's case was handled competently.

Analysis and Conclusions of Law.

The problem that confronts the court here is two-fold. The first, and most serious with regard to its affect on the court, lies in the fact that Nunez failed to protect and prevent the unauthorized access and use of his ECF password and document filing privileges. As a result, pleadings were filed in this court, which falsely and fraudulently represented on their face that they had been filed with the authorization and approval of a licensed attorney and authorized ECF

user. Local Bankruptcy Rule 5005.5–1 (in effect at the commencement of this case) provides for the registration of attorneys who are eligible to use the court's ECF system. Rule 5005.5–l(d) specifically prohibits the unauthorized use of a user's name and password to electronically file documents with the court and makes the registered user directly responsible for compliance:

> (1) A registered user shall not use his/her username and password to file pleadings or other documents on behalf of someone who is not a registered user.
>
> (2) No person may use a username and password without the permission of the registered user to whom they were issued. *Registered users shall protect the security and confidentiality of their username and password* and prevent their disclosure to any person other than the registered user's authorized agent.

BANKR.E.D. CAL. R. 5005.5–1(d) (emphasis added).

***4** The second problem arises from the fact that Nunez has developed a culture in his law office, due to his "busy legal practice and outside business interests," where non-attorneys are providing legal services to purported "clients" without any supervision or even the knowledge of Nunez whose name identifies the law office. An attorney admitted to practice before the federal courts in the Eastern District of California must comply with California's standards of professional conduct. *See* E.D. CAL. R. 180(e) (adopting the Rules of Professional Conduct of the State Bar of California, Rules 1–100–5–320, and the State Bar Act, codified at California Business & Professions Code §§ 6000–6238), *incorporated by* BANKR.E.D. CAL. R. 1001–1(c). This includes California Rule of Professional Conduct 1–300, which requires that an attorney "not aid any person or entity in the unauthorized practice of law." CAL. RULES OF PROF'L CONDUCT R. 1–300(A). In California, the practice of law "means more than just appearing in court." *In re Garcia,* 335 B.R. 717, 728 (9th Cir.BAP2005) (citing *Estate of Condon,* 65 Cal.App. 4th 1138, 1142 (1998)). In general, the practice of law includes "legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be pending in a court." *In re Agyekum,* 225 B.R. 695, 701 (9th Cir.BAP1998) (citation omitted) (internal quotation marks omitted); *Bluestein v. State Bar,* 13 Cal.3d 162, 173 (1974) (internal quotation marks omitted).

The Bankruptcy Court Has The Inherent Authority to Issue Sanctions to Prevent Abuse. The bankruptcy court has both the express and inherent authority to regulate and sanction attorneys who practice before it. *See Peugeot v. U.S. Tr. (In re Crayton),* 192 B.R. 970, 975 (9th Cir.BAP1996). A bankruptcy court's express sanctioning authority derives from the Code and the Rules. *In re Nguyen,* 447 B.R. 269, 281 (9th Cir.BAP2011) (en banc); *see also* BANKR.E.D. CAL. R. 1001–1(g) ("Failure of counsel ... to comply with [the Local Bankruptcy Rules, the Federal Rules of Civil Procedure, and the Federal Rules of Bankruptcy Procedure] ... may be grounds for imposition of any and all sanctions authorized by statute or [r]ule."). But in the absence of an applicable statute or rule authorizing sanctions, the bankruptcy court may rely on its inherent sanctioning authority. *In re DeVille,* 361 F.3d 539, 551 (9th Cir.2004).

The Supreme Court has recognized that the federal district courts, through their status as courts of justice, possess the inherent power to sanction. *See Chambers v. NASCO, Inc.,* 501 U.S. 32, 43–45 (1991) ("Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates." (citation omitted) (internal quotation marks omitted)). The Ninth Circuit subsequently held that bankruptcy courts also possess the same inherent power. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.),* 77 F.3d 278, 284 (9th Cir.1996). The bankruptcy court's inherent authority derives from the very creation of the court and is evidenced by Congress's grant of power to the bankruptcy court under § 105(a) to prevent any abuse of process. *Id.* at 283–84 ("By providing that bankruptcy courts could issue orders necessary 'to prevent an abuse of process,' Congress impliedly recognized that bankruptcy courts have the inherent power to sanction that *Chambers* recognized exists within Article III courts.").

***5** The court's inherent authority allows it to sanction a "broad range" of improper conduct. *Knupfer v. Lindblade (In re Dyer),* 322 F.3d 1178, 1196 (9th Cir.2003) (citing *Fink v. Gomez,* 239 F .3d 989, 992–93 (9th Cir.2001) (determining limitation of federal district court's inherent sanctioning authority)). This sanctioning authority even applies when addressing misconduct outside of the courtroom. *See W. Sys., Inc. v. Ulloa,* 958 F.2d 864, 873 (9th Cir.1992) (citing *Chambers,* 501 U.S. at 57).

The authority to sanction attorney misconduct arises not only from the court's inherent powers to manage its cases and its

courtroom, but also from the attorney's role as an officer of the court. *In re Brooks–Hamilton*, 400 B.R. 238, 247 (9th Cir.BAP2009) (citing *Chambers*, 501 U.S. at 43; *In re Snyder*, 472 U.S. 634, 643 (1985)). "When an attorney appears before a federal court, he is acting as an officer of that court, and it is that court which must judge his conduct." *Galam v. Carmen (In re Larry's Apartment, LLC)*, 249 F.3d 832, 838 (9th Cir.2001) (internal quotation marks omitted) (citing *Cord v. Smith*, 338 F.2d 516, 524 (9th Cir.1964)).

As the Ninth Circuit has noted, "With respect to the court's inherent power, ... an attorney admitted to a particular bar may be disciplined for conduct that violates that bar's *local rules of professional conduct*." *United States v. Wunsch*, 84 F.3d 1110, 1114 (9th Cir.1996) (emphasis added) (citation omitted).

Here, there is no question that Nunez failed to protect his ECF account from unauthorized use by one of his employees. If Nunez had implemented effective protective and oversight measures, Rodriguez never could have filed a petition on behalf of Black without Nunez's knowledge. Nunez declares that Rodriguez's conduct with regard to this case was a "one time incident" that violated his office policy. However, he offers no explanation or details as to what that policy is. Further, by his own admission, Nunez was too "busy" to know who his clients are or what is flowing through his office and getting filed with the court. The court finds Nunez's "one time incident" defense to be simply unbelievable.

Nunez completely ignores the fact that Rodriguez placed his virtual signature on numerous documents that he never signed, thereby perpetrating a fraud on the court. He says nothing about the office "policy" for the signing of documents and the use of virtual signatures. The fallacy in Nunez's "office policy" argument is apparent in the declaration that was filed on March 21, 2012, in response to the OSC. Nunez states that he was so busy with his legal practice and "outside business," that "I have to rely on my file notes and staff for assistance." However, it is apparent that Nunez never reviewed any "file notes" in connection with the case, even when he purportedly approved Black's opposition to the trustee' motion to dismiss. Had he attempted to do so, he certainly would have realized that either (1) there were no file notes for Black's case, or (2) the file contained e-filed documents that he had never signed. [2]

***6** In addition, it is undisputed that Rodriguez engaged in the unauthorized practice of law when she met with and advised Black, prepared Black's bankruptcy pleadings, and filed them without Nunez's review and approval. As the Bankruptcy Appellate Panel ("BAP") has observed, "Solicitation of information which is then translated into completed bankruptcy forms is the unauthorized practice of law, whether by website or otherwise, as is advising a debtor of the availability of particular exemptions or choosing those exemptions." *Frankfort Digital Servs., Ltd. v. Neary (In re Reynoso)*, 315 B.R. 544, 552 (9th Cir. BAP2004) (citations omitted).

Black had no knowledge of what she had to do in order to properly file a bankruptcy petition, so Rodriguez, as a friend, offered assistance. Without the supervision of Nunez, Rodriguez completely filled out Black's petition, schedules, and statements. By helping Black in the preparation and filing of her bankruptcy documents, Rodriguez was clearly engaging in the unauthorized practice of law. What remains for the court to decide is whether the facts and circumstances that allowed this "incident" to happen in the first place rise to the level that justifies sanctions against Nunez under the court's inherent authority.

Disciplinary Process and Due Process. As the Ninth Circuit has previously mentioned, there is "no uniform procedure for disciplinary proceedings in the federal system." *In re Lehtinen*, 564 F.3d 1052, 1062 (9th Cir.2009) (citation omitted) (internal quotation marks omitted). As a result, the "individual judicial districts are free to define the rules to be followed and the grounds for punishment." *Id.* (citation omitted) (internal quotation marks omitted). In the Eastern District of California, the bankruptcy court is empowered to supervise and discipline attorneys pursuant to L.B.R. 1001–1(c), which specifically incorporates the district court's L.D.R. 184. L.D.R. 184(a), titled "Discipline," provides, in pertinent part, the following:

> In the event any attorney subject to [the Local District Rules and Local Bankruptcy Rules] engages in conduct that may warrant discipline or other sanctions, any Judge ... may, after reasonable notice and opportunity to show cause to the contrary, take any [ ] appropriate disciplinary action against the attorney. In addition to or in lieu of the foregoing, the Judge ... may refer the matter to the disciplinary body of

> any Court before which the attorney has been admitted to practice.

E.D. CAL. R. 184(a), *incorporated by* BANKR.E.D. CAL. R. 1001–1(c). This rule states that the court "may refer" a matter involving attorney discipline to the appropriate disciplinary authority. However, a plain reading of the rule shows that such referral is only discretionary, and the bankruptcy court itself may hear the disciplinary matter. *See Lehtinen,* 564 F.3d at 1062.

While the disciplinary procedures in this district appear flexible, what is required before the court takes disciplinary action in any case is that the attorney subject to the discipline be provided with procedural due process, including reasonable notice and an opportunity to be heard. *Crayton,* 192 B.R. at 978 (citing *In re Ruffalo,* 390 U.S. 544, 550 (1968); *Rosenthal v. Justices of the Supreme Court of Cal.,* 910 F.2d 561, 564 (9th Cir.1990)); *see also* E.D. CAL. R. 184(a) (requiring "reasonable notice and opportunity to show cause to the contrary" before taking disciplinary action).

***7** *Nunez's Conduct Was Sanctionable.* "Before imposing sanctions under its inherent sanctioning authority, a court must make an explicit finding of bad faith or willful misconduct," and "bad faith or willful misconduct consists of something more egregious than mere negligence or recklessness." *Dyer,* 322 F.3d at 1196 (citing *Fink,* 239 F.3d at 992–94); *cf.* CAL. RULES OF PROF'L CONDUCT R. 1–100(A) ("For a *willful breach* of any of these rules, the Board of Governors has the power to discipline members as provided by law." (emphasis added)). "Mere ignorance or inadvertance is not enough to support a sanction award under the inherent authority." *Dyer,* 322 F.3d at 1196–97 (citing *Fink,* 239 F.3d at 992–93); *see also Zambrano v. City of Tustin,* 885 F.2d 1473, 1480 (9th Cir.1989) ("A practice that punishes mere negligence on the part of counsel is not necessary to the orderly functioning of the court system.").

While an attorney's reckless conduct alone is not sanctionable, recklessness coupled with an additional factor, such as acting for an improper purpose, is sufficient to make a finding of bad faith or willful misconduct. *Fink,* 239 F.3d at 994. Conduct that is "outrageously improper, unprofessional and unethical under any reading of California's ethical standards for attorneys" has been found to constitute willful conduct or conduct tantamount to bad faith, allowing the court to impose sanctions pursuant to its inherent authority. *Lehtinen,* 564 F.3d at 1061 (internal quotation marks omitted); *cf. Zitny v. State Bar,* 64 Cal.2d 787, 792 (1966) ("To establish a wilful breach [that justifies attorney discipline], it must be demonstrated that the person charged acted or omitted to act purposely, that is, that he knew what he was doing or not doing and that he intended either to commit the act or to abstain from committing it." (citations omitted)).

Here, it is clear that Rodriguez's handling of Black's case without Nunez's supervision constituted both (1) a violation of Local Bankruptcy Rule 5005.5–1, and (2) the unauthorized practice of law under California Rule of Professional Conduct 1–300(A).[3] Nunez argues that he was unaware of Rodriguez's conduct and therefore could not have knowingly or willfully violated Local Bankruptcy Rule 5005.5–1 nor aided Rodriguez in the unauthorized practice of law. However, the court rejects Nunez's arguments and finds that his actions, or inactions, did rise to the level of willfulness to justify the imposition of sanctions.

First, the court does acknowledge the fact that, *at the time* Rodriguez was preparing and filing Black's bankruptcy documents, and making fraudulent representations to the court regarding Nunez's roll in the case, Nunez had no *actual* knowledge of what she was doing. But therein lies the fundamental problem. Nunez maintains a law practice under his name. He has a staff of people, like Rodriguez and the paralegal who prepared Black's opposition to the trustee's motion to dismiss, who are trained to prepare and file pleadings and documents to assist him in the practice of law. However, by Nunez's own admission, his law practice is so "busy" and he has so many "outside business" interests that he does not even know who his clients are and he does not have time to supervise, or to even know about, the cases moving through his office. Nunez was served with the court's Notice of Commencement of the Case, but he obviously never looked at it. Nunez purportedly reviewed and approved the pleadings that were later filed for Black in opposition to the trustee's motion to dismiss, but he still didn't realize that Black was not his client. Nunez had no actual knowledge of this bankruptcy case until October 31, 2011, when he saw an entry on his calendar for the continued 341 meeting. Even then, he was too busy with other matters to attend the meeting.

***8** The court rejects Nunez's argument that the Black case was a "one-time" incident. Nunez has knowingly and willfully developed a culture in his law office where legal advice is being given to "clients" and legal work is being done and filed with the court, fraudulently bearing his virtual signature, because he is "too busy ." Even when Nunez did learn about the details of Black's case from Rodriguez on

October 31, he did nothing to inform the court about it. It was not until almost a month later on November 23 that he brought that information to the court's attention when he was forced to respond to the UST's Fee Motion. Nunez was well aware of the situation in his office and his failure, indeed his inability, to supervise the work flow through his office was much more than mere negligence or recklessness.

Nunez argues that his conduct in this case, and his failure to timely inform the court about the problem, was ultimately harmless since he subsequently decided to represent Black in her case, which favorably resulted in Black receiving her discharge. However, by learning of Rodriguez's misconduct in Black's case and then agreeing to become Black's attorney, Nunez was, in effect, validating Rodriguez's unauthorized conduct after the fact. As a result, Nunez was indirectly but knowingly aiding Rodriguez in the unauthorized practice of law. *Cf. Bluestein,* 13 Cal.3d at 173 (stating, based on former version of applicable rule, that attorneys were prohibited "directly or indirectly aiding or abetting the unauthorized practice of law" (emphasis omitted) (internal quotation marks omitted) (citing *Crawford v. State Bar,* 54 Cal.2d 659, 666 (1960))).

Reasonableness of Sanctions. Previously, the BAP adopted the American Bar Association Standards for Imposing Lawyer Sanctions ("ABA Standards"), using them as the minimum standard in determining the reasonableness of sanctions. *Crayton,* 192 B.R. at 980–81. The ABA Standards "promote the thorough, rational consideration of relevant factors, and help to achieve consistency when imposing attorney discipline." *Id.* at 980.

More recently, however, the BAP, sitting en banc, modified its holding in *Crayton* that required the bankruptcy court to apply the ABA Standards. *Nguyen,* 447 B.R. at 277–78. The panel reasoned that

> requiring a bankruptcy court to "slavishly intone" the ABA Standards makes little sense given that sanctions are within the sound discretion of the bankruptcy court, and that deference should be given to bankruptcy courts' choice of sanction in that they have the inherent power to run the type of courtroom that they believe best serves justice.

Id. at 277 (citation omitted) (internal quotation marks omitted). The BAP therefore held that the bankruptcy courts "remain free to consult the ABA Standards when formulating sanctions[, but] it is not reversible error if a bankruptcy court does not do so." *Id.* at 278. Yet, not having to apply the ABA Standards does not provide the bankruptcy court with unfettered discretion to impose any sanctions it desires, however severe. The court's sanctions must still be reasonable, and "reasonableness continues to require that the sanction imposed be within the scope of the bankruptcy court's authority and that the sanction be tailored to address the misconduct." *Id.* at 280.

***9** Here, a sanction of $2,000 is relatively mild in light of what happened in this case. Nunez fails to appreciate that there can be absolutely no tolerance for what happened here. It cannot be smoothed over and approved after the fact. The integrity of the bankruptcy court and the bankruptcy system itself is jeopardized when non-attorneys are permitted to give legal advice, prepare and file bankruptcy petitions, and fraudulently represent to the court that the activity has been supervised and approved by a licensed attorney. As an officer of the court, Nunez had an absolute duty to prevent that from happening in his office. Such conduct cannot be permitted under any circumstances, even once, and it cannot be excused by subsequently arguing "no harm."

It is the court's hope that a $2,000 sanction will sufficiently motivate Nunez to run his office's operations within the confines of the local and professional rules. *See Zambrano,* 885 F.2d at 1479 (allowing imposition of "relatively mild" fines under court's inherent authority); *Mark Indus., Ltd. v. Sea Captain's Choice, Inc.,* 50 F.3d 730, 733 (9th Cir.1995) (stating that "[a]n appropriate award would be, at most, $5,000 payable to the court" under court's inherent authority in that case). The reimbursement of costs incurred by the UST is appropriate to compensate the UST for the expense and effort he and his staff undertook to uncover and clarify Nunez's misconduct. *See Lehtinen,* 564 F.3d at 1059 (stating that sanctions under the inherent authority are appropriate when they are compensatory).

Conclusion.

Based on the foregoing, Nunez will be ordered to pay a sanction in the amount of $2,000 to the court within 14 days. Within 21 days, the UST shall file and serve on Nunez a statement of the costs incurred in his investigation and prosecution of this matter. Thereafter, Nunez shall have 14 days to either pay the UST's bill of costs or file an opposition,

stating specifically the basis for his opposition to each cost item, and set the matter for a noticed hearing.

With regard to the UST's Fee Motion, the record shows that Nunez did not receive any fees in connection with this case. Accordingly, there is nothing for Nunez to disgorge and the Fee Motion will be denied.

Footnotes

1 Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1330, as enacted and promulgated *after* October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub.L. No. 109–8, 119 Stat. 23 (enacted Apr. 20, 2005). All "Rule" or "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9036. All "L.B.R." or "Local Bankruptcy Rule" references are to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California (effective Jan. 29, 2010). All "L.D.R." or "Local District Rule" references are to the Local Rules of Practice for the United States District Court, Eastern District of California (effective Feb. 8, 2011).

2 Rodriguez's use of Nunez's virtual signature also violated Local Rule 9004–1(c)(1)(c) and (d) (in effect at the commencement of the case) because there was no corresponding document in the file with Nunez's actual signature. LBR 9004–1(c)(1)(c) and (d) states as follows:

> (c) *The use of "/s/Name" or a Software Generated–Electronic Signature.* The use of "/s/ Name" or a software-generated electronic signature on documents constitutes the *registered user's representation that an originally signed copy of the document exists* and is in the registered user's possession at the time of filing. (emphasis added.)
>
> (d) *Retention Requirements When "/s/Name" or a Software–Generated Electronic Signature is Used.* When "/s/Name" or a software-generated electronic signature is used in an electronically filed document to indicate the required signature(s) of persons other than that of the registered user, *the registered user shall retain the originally signed document in paper form for no less than three(3) years following the closing of the case.* On request of the Court, the registered user shall produce the originally signed document(s) for review. The failure to do so may result in the imposition of sanctions on the Court's own motion, or upon motion of the case trustee, U.S. Trustee, or other party. (emphasis added.)

3 In his supplemental brief, Nunez cited California Rule of Professional Conduct 3–110 in arguing that he did not breach the duty to supervise his non-attorney employees. While the discussion notes for that rule do mention such a duty, that relates only to the duty articulated in the rule, which is one of competence owed to a client. *See* CAL. RULES OF PROF'L CONDUCT R. 3–110(A) ("A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."). Here, the issue is not about whether Nunez's employees did something incompetently so rule 3–110 is inapplicable to the court's discussion.