

SO ORDERED.

SIGNED this 20th day of November, 2024.



Benjamin A. Kahn

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)	
)	
Shemeika Ann Fuller,)	Chapter 7
)	Case No. 24-10051
Debtor.)	
_____)	
)	
John Paul H. Cournoyer,)	
)	
U.S. Bankruptcy Administrator,)	
)	
Plaintiff,)	
)	
v.)	Adv. No. 24-02009
)	
Adrian Nathaniel Buckner,)	
)	
Defendant.)	
_____)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT**

This adversary proceeding came before the Court for hearing on October 15, 2024 (the "Hearing"), on the Motion for Default Judgment filed by the U.S. Bankruptcy Administrator ("Plaintiff")

or the "BA") on September 25, 2024. ECF No. 13¹ (the "Motion"). Plaintiff requests that the Court enter default judgment against Adrian Nathaniel Buckner ("Defendant") under Fed. R. Civ. P. 55(b)(2), made applicable to this adversary proceeding by Rule 7055² of the Federal Rules of Bankruptcy Procedure. Appearing at the Hearing were counsel for Plaintiff and counsel for Shemeika Ann Fuller, the debtor in the above-captioned chapter 7 case ("Debtor").³ Defendant did not appear. At the conclusion of the Hearing, the Court took the matter under advisement. The Court will grant Plaintiff's Motion for Default Judgment and enter judgment as set forth herein.

PROCEDURAL BACKGROUND

Debtor filed a voluntary pro se petition for relief under chapter 7 with this Court on January 29, 2024. Case No. 24-10051, ECF No. 1. On March 18, 2024, Debtor filed a notice of appearance of counsel in her case, Case No. 24-10051, ECF No. 24, and on April 30, 2024, Debtor, via counsel, filed a motion to convert her case to chapter 13. Case No. 24-10051, ECF No. 40. The Court granted Debtor's motion to convert on May 28, 2024. Case No. 24-10051,

¹ All "ECF" numbers refer to the above-captioned adversary proceeding (Adv. No. 24-02009) unless otherwise specified.

² All references to "Rule __" herein refer to the Federal Rules of Bankruptcy Procedure, unless otherwise specified.

³ 11 U.S.C. § 110(i) provides that the BA may seek actual and statutory damages on behalf of a debtor.

ECF No. 43. On September 13, 2024, and before any chapter 13 plan was confirmed, Debtor voluntarily reconverted her case back to chapter 7. Case No. 24-10051, ECF No. 62.

On June 28, 2024, Plaintiff commenced this adversary proceeding by filing the Complaint, ECF No. 1 (the "Complaint") alleging that Defendant, who is not an attorney, violated various sections of title 11 through his actions in connection with Debtor's chapter 7 case. Id. Plaintiff seeks (1) forfeiture and turnover of fees, damages, and triple fines for violations of 11 U.S.C. § 110; (2) damages under 11 U.S.C. § 526(c)(2) for violations of 11 U.S.C. §§ 526, 527, and 528; and (3) injunctive relief under 11 U.S.C. §§ 110(j) and 526(c)(5). Id.

The Clerk of Court properly issued a summons on Defendant on July 2, 2024. ECF No. 3. Plaintiff properly and timely served a copy of the summons on Defendant on July 3, 2024. ECF No. 4. Defendant failed to timely file an answer or any other pleading.⁴ On August 14, 2024, Plaintiff moved for entry of default against Defendant, ECF No. 5, and the Clerk of Court entered default against Defendant on August 15, 2024.⁵ ECF No.

⁴ "[T]he defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court." Fed. R. Bankr. P. 7012.

⁵ "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55 (made applicable to this adversary proceeding by Fed. R. Bankr. P. 7055). Plaintiff's motion for entry of default includes Plaintiff's affidavit that "the time to

7. On September 25, 2024,⁶ Plaintiff filed its Motion seeking default judgment against Defendant, and on October 15, 2024, this Court held a hearing on the Motion under Federal Rule of Civil Procedure 55(b)(2).⁷ ECF No. 22. Plaintiff properly served both the motion for entry of default and the motion for default judgment on Defendant. Defendant did not respond to either motion.

JURISDICTION AND AUTHORITY

The Court has jurisdiction over the subject matter of this proceeding under 28 U.S.C. § 1334(b) as a proceeding arising under title 11 and statutory authority to hear and determine this proceeding under 28 U.S.C. §§ 151 and 157 and Local Rule 83.11 entered by the United States District Court for the Middle District of North Carolina. This matter is a core proceeding⁸ under 28 U.S.C. § 157(b)(2), in which this Court has constitutional authority to enter final orders and judgments.

file an answer or other pleading has expired and no answer or other pleading has been filed." ECF No. 5, at 5.

⁶ On September 13, 2024, Debtor filed a motion to intervene in this adversary proceeding, ECF No. 10, and on September 25, 2024, Plaintiff filed a response in opposition to Debtor's motion to intervene. ECF No. 14. Subsequently, on October 14, 2024, Debtor withdrew her motion to intervene. ECF No. 21.

⁷ When a plaintiff's claim is not for a sum certain, the plaintiff must apply to the court for a default judgment and the court may conduct a hearing on the matter. Fed. R. Civ. P. 55(b); and ECF No. 22, at 00:02:50-00:03:00.

⁸ "Cases 'arise under' Title 11 when the cause of action or substantive right claimed is created by the Bankruptcy Code. . . ." Burns v. Dennis (In re Se. Materials, Inc.), 467 B.R. 337, 346 n.4 (Bankr. M.D.N.C. 2012).

Plaintiff properly served Defendant with the Complaint in this matter, and the Court obtained personal jurisdiction over Defendant. See Fed. R. Bankr. P. 7004(b), (d), and (f). The Clerk of this Court properly issued a summons on Defendant on July 2, 2024. ECF No. 3. Plaintiff properly and timely served a copy of the summons on Defendant and filed a certificate of service on July 3, 2024. ECF No. 4.

Even if Defendant were entitled to adjudication of this proceeding by an Article III court, he has waived it. “[A]s a personal right, Article III’s guarantee of an impartial and independent federal adjudication is subject to waiver, just as are other personal constitutional rights’—such as the right to a jury—that dictate the procedures by which civil and criminal matters must be tried.” Wellness Int’l Network, Ltd. v. Sharif, 575 U.S. 665, 675 (2015) (quoting Commodity Futures Trading Comm’n v. Schor, 478 U.S. 833, 848-49 (1986)). It is well-settled that the Seventh Amendment’s right to a jury trial does not survive default due to waiver. See, e.g., Benz v. Skiba, Skiba & Glomski, 164 F.R.D. 115, 116-17 (D. Me. 1995) (“Caselaw dating back to the eighteenth century, however, makes clear that the constitutional right to jury trial does not survive the entry of default.” (and cases cited therein)).

As indicated by the Supreme Court in Wellness, the right to adjudication before an Article III court is no less waivable than

is the right to a jury trial. 575 U.S. at 675. The notice, provided on Director's Form B 250B (12/09)⁹ and served upon Defendant, is sufficient to put Defendant on notice of his right to refuse consent to entry of a judgment by this Court. Defendant's failure to respond constituted a waiver of any right to have these claims heard by an Article III court, and, due to this waiver, the Court has the constitutional authority to enter judgment on the claims over which it has subject matter jurisdiction, statutory authority, and personal jurisdiction. See In re Dierschke, No. 689-60047-12, 1992 WL 333904, at *6-7 (N.D. Tex. Feb. 25, 1992) (where defendant defaults, bankruptcy court could enter judgment because default constituted waiver); aff'd sub nom. Matter of Dierschke, 975 F.2d 181, 185 (5th Cir. 1992) (affirming judgment, and stating that, even assuming that the defendant had a constitutional right to a jury trial, "he waived that right when he purposefully chose not to answer the suit"). Thus, by failing to respond to the summons and complaint, Defendant waived any right to judgment by a court established under Article III of the United States Constitution and is subject to entry of final judgment by this Court.

⁹ Director's Form B 250B (12/09) provides (emphasis in the original): "**IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.**"

FINDINGS OF FACT¹⁰

In August or September of 2023,¹¹ Debtor contacted Defendant to obtain his assistance in preparing and filing a chapter 7 bankruptcy petition. ECF No. 22, at 00:06:35-00:06:46. During their initial conversations, Debtor informed Defendant of her interest in certain real property located at 7062 E. Fork Road, High Point, North Carolina (the "Real Property"), which she owns with her grandmother as joint tenants with rights of survivorship. ECF No. 22, at 00:12:30-00:13:30. Debtor does not live in the Real Property, and it is unencumbered. Id. Also, during the initial conversations, Debtor expressed to Defendant her apprehension to file a chapter 7 petition due to concern that the Real Property may be liquidated. Id. at 00:44:30-00:45:00. In response to her concern, Defendant advised Debtor that the Real Property could not be liquidated due to its joint ownership by Debtor and her grandmother. Id. Defendant then prepared Debtor's

¹⁰ These facts are derived from the well-pleaded allegations in Plaintiff's Complaint and Debtor's testimony at the Hearing. See Fed. R. Civ. P. 55(b)(2) (a court may hold a hearing to "(A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter); see also Krochonis v. Regent Asset Mgmt. Sols., Inc., No. 1:10-CV-00788-WCO-AJB, 2010 U.S. Dist. LEXIS 155967, at *27, n.1 (N.D. Ga. Nov. 30, 2010) (deriving findings of fact from "the well-pleaded allegations in Plaintiff's complaint and Plaintiff's testimony at the hearing on the motion for default judgment.")

¹¹ Debtor is unable to recall the exact date upon which she first contacted Defendant. ECF No. 22, at 00:06:35-00:06:46.

petition, schedules, and statements,¹² Case No. 24-10051, ECF No. 1, using Debtor's credit report and a form on which she listed her monthly bills and expenses. ECF Nos. 1, ¶ 13, & 22, at 00:10:09-00:10:45. Debtor did not participate at all in filling out the contents of the documents themselves. ECF No. 22, at 00:10:00-00:22:35. After preparing Debtor's Petition Documents, Defendant instructed Debtor where to put her signature, and Debtor so signed the documents without substantive review of their contents. ECF No. 22, at 00:10:00-00:11:00.

Defendant never informed Debtor of the limitations on the services he could provide as a non-attorney. ECF Nos. 1, ¶ 13, & 22, at 00:26:24-00:26:30. Specifically, Defendant never told Debtor that he could not give her legal advice. Id. Defendant failed to attach Official Form 119 (Bankruptcy Petition Preparer's Notice, Declaration, and Signature), as well as Official Form 2800 (Bankruptcy Petition Preparer's Disclosure of Compensation) to Debtor's petition. ECF No. 1, ¶ 8. There is no reference in Debtor's Petition Documents of Defendant's participation in preparing the documents nor is there any reference to Defendant's receipt of a fee in exchange for his preparation of the

¹² Defendant prepared Debtor's Voluntary Petition (101), Summary of Assets and Liabilities (106Sum), Schedule A/B (106A/B), Schedule C (106C), Schedule D (106D), Schedule E/F (106E/F), Schedule G (106G), Schedule H (106H), Schedule I (106I), Schedule J (106J), Declaration (106Dec), Statement of Financial Affairs (107), Statement of Intention (108), and Statement of Current Monthly Income (122A-1), as well as Debtor's Creditor Matrix (collectively, the "Petition Documents"). ECF No. 22, at 00:10:00-00:11:00.

documents. Id. Further, Defendant failed to (1) discuss the costs and benefits of filing under each chapter of the Bankruptcy Code with Debtor; (2) enter into a contract with Debtor regarding the services he would provide to her or the fees he would charge for such services; and (3) sign any of the documents he prepared nor did he include his name, address, or social security number anywhere on these documents. Id. at 00:26:30-00:27:00, 00:56:25-00:59:30.

Turning to the contents of the Petition Documents, Defendant indicated on Debtor's Schedule A/B that Debtor owned no real property. Case No. 24-10051, ECF No. 1, at 13. On Debtor's Schedule C, despite federal exemptions not being permitted under North Carolina law pursuant to N.C. Gen. Stat. § 1C-1601, Defendant indicated that Debtor was claiming federal exemptions, determined the amount of exemptions Debtor was entitled to, and cited 11 U.S.C. § 522(b)(2) in support of the claimed exemptions.¹³ Id. at 23. Although Defendant never asked Debtor to provide him with a complete list of creditors, on Debtor's Schedules D and E/F, Defendant determined which creditors had secured claims and which creditors had priority and nonpriority unsecured claims, but

¹³ Section 522(b)(2) provides that an individual debtor may exempt the property specified under § 522(d) unless applicable state law does not so authorize. 11 U.S.C. § 522(b)(2). Under North Carolina law, "[t]he exemptions provided in The Bankruptcy Code, 11 U.S.C. § 522(d), are not applicable to residents of [North Carolina]." N.C. Gen. Stat. § 1C-1601(f).

failed to include all creditors that had unsecured claims against Debtor on Schedule E/F. ECF No. 22, at 00:15:35-00:18:00 & 00:55:00-00:56:00; see Case No. 24-10051, ECF No. 1, at 29-45. Notwithstanding the fact that Defendant is not authorized to practice law, Defendant classified Debtor's debts as primarily consumer debts on Debtor's Statement of Financial Affairs, Case No. 24-10051, ECF No. 1, at 61; determined that Debtor intended to enter into a reaffirmation agreement on Debtor's Statement of Intention, id. at 71; and advised Debtor on how the reaffirmation process would work, instructing her to call her creditor and let them know she wanted to enter into a reaffirmation agreement. ECF No. 22, at 00:18:20-00:21:00 & 00:37:30-00:38:30. Finally, Defendant falsely indicated on Debtor's Voluntary Petition and Declaration that Debtor did not pay or agree to pay someone who is not an attorney to help fill out her bankruptcy forms. Case No. 24-10051, ECF No. 1, at 9, 57.

Using the documents prepared by Defendant, Debtor filed her petition, and paid the filing fee of \$338.00.¹⁴ See ECF Nos. 1 & 4. Upon filing her petition, the Clerk's Office provided Debtor with a blank Official Form 91C on which to list her claims for property exemptions. ECF No. 22, at 00:29:14-00:31:55. Debtor

¹⁴ Along with her petition, Debtor filed an Application to Pay Filing Fee in Installments. Case No. 24-10051, ECF No. 4. The Court granted Debtor's application on January 30, 2024. Case No. 24-10051, ECF No. 7. Debtor timely paid the filing fee pursuant to the Court's order.

promptly sent the blank Official Form 91C to Defendant and Defendant instructed Debtor on how to fill the form out. Id. Specifically, Defendant instructed Debtor to claim a \$72,000.00 exemption in the Real Property even though North Carolina law only allows exemptions for property a debtor uses as a residence for a maximum amount of \$35,000.00. Id. at 00:37:00-00:40:20; see N.C. Gen. Stat. § 1C-1601(a)(1).

At Debtor's first 341 meeting of creditors on March 4, 2024, the chapter 7 trustee informed Debtor that she could not exempt the Real Property because she did not use it as a residence, and that he intended to liquidate her interest in the Real Property.¹⁵ ECF No. 1, ¶ 9. Also at this meeting, in response to questioning by counsel for the BA, Debtor testified that Defendant helped her prepare her Petition Documents. Id. ¶ 10. Debtor further testified that she did not pay Defendant to prepare her documents, but that Defendant was simply a friend of a friend who was doing her a favor. Id. At the Hearing, Debtor testified that she made these statements at the instruction of Defendant, who had told Debtor to claim that she did not receive any help in preparing her documents. ECF No. 22, at 00:32:30-00:33:20. After the 341 meeting, counsel for the BA received a phone call from a local bankruptcy attorney who was consulting with Debtor about

¹⁵ Also on March 4, 2024, the chapter 7 trustee filed an objection to Debtor's claim for property exemptions. Case No. 24-10051, ECF No. 15.

representing her in her case. ECF No. 1, ¶ 11. This attorney informed counsel for the BA that Debtor had in fact paid Defendant for his services. Id.

On April 8, 2024, Debtor returned to a continued 341 meeting for additional examination regarding Defendant's participation in her case. Id. ¶ 12. At this meeting, Debtor testified that she initially paid Defendant \$600.00, which included \$100.00 toward the filing fee. Id. Defendant told Debtor that this payment was a contribution to his non-profit. Id. Debtor explained that in exchange for this payment, Defendant was going to prepare and file the Petition Documents on Debtor's behalf. Id. However, Defendant subsequently refunded to Debtor \$150.00¹⁶ of the \$600.00 payment when he realized Debtor would have to file the documents herself. Id. Debtor then testified about the services Defendant provided to her. Id. ¶ 13. Finally, Debtor testified that she would not have filed her case had she known that she would not be able to exempt the Real Property. Id. ¶ 14. At the Hearing, Debtor testified that following the continued 341 meeting, Debtor sent a text message to Defendant, informing him of the errors he had made in the Petition Documents, and requesting a full refund from Defendant. ECF No. 22, at 00:40:30-00:42:30. Since sending

¹⁶ Debtor testified that this \$150.00 refund consisted of the \$100.00 payment Debtor made toward the filing fee plus \$50.00 for Debtor's "trouble." ECF No. 1, ¶ 12.

this text message, Debtor has not had any further contact with Defendant or received any refund on the remaining \$450.00 that she paid to him. Id.

Debtor subsequently retained counsel and converted her case to chapter 13 to protect her interest in the Real Property. ECF No. 22, at 00:42:00-00:43:30; Case No. 24-10051, ECF Nos. 24 & 43.¹⁷ However, Debtor was unable to confirm a chapter 13 plan because she could not afford the plan payment and had to reconvert her case to chapter 7. ECF No. 22, at 00:43:05-00:43:45; Case No. 24-10051, ECF No. 68. Through this process, Debtor paid her attorney \$800.00. Id. at 00:48:30-00:49:10. Debtor is an hourly employee and is paid approximately \$22.00 per hour. Id. at 00:45:15-00:45:45. Debtor missed one hour of work attending the first 341 meeting, 30 minutes of work attending the continued 341 meeting, five hours of work meeting with her attorney, and two and a half hours of work driving to and from Greensboro in order to meet with her attorney and attend the 341 meetings. Id. at 00:45:50-00:49:00. Thus, Debtor missed a total of eight hours of work for which she would have made \$176.00. Id. Additionally, Debtor accrued mileage worth \$40.00 from the trips she made to and

¹⁷ Debtor's debts consist primarily of consumer debts, and the value of her nonexempt property is less than \$226,850.00. ECF No. 22, at 00:18:30-00:19:10; Case No. 24-10051, ECF No. 64.

from Greensboro to meet with her attorney and attend the 341 meetings.¹⁸ Id.

LEGAL STANDARD

Obtaining default judgment is a two-step process. Clemson Grande Lakefront Condos, LLC v. First Fin. Equities Commer., LLC (In re Clemson Grande Lakefront Condos. LLC), 472 B.R. 703, 704 (Bankr. D.S.C. 2012). First, the Clerk must enter a default and second, a motion for judgment on the default must be filed. Id. at 705; see also Fed R. Civ. P. 55. A court must consider the motion and grant default judgment if appropriate. Id.

Upon the entry of such default, the defaulted party is deemed to have admitted all well-pleaded factual allegations in the complaint, except those relating to the amount of damages. See Ryan v. Homecomings Fin. Network, 253 F.3d 778, 780 (4th Cir. 2001); see also TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987); In re Heard, No. 09-95011-MGD, 2010 WL 3397458, at *1 (Bankr. N.D. Ga. June 2, 2010) ("Defendant's default constitutes admissions of the complaint's material facts under Rule 8(b)(6) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7008 of the Federal

¹⁸ At the Hearing, the Court took judicial notice of the standard mileage rate for 2024 set by the Internal Revenue Service, which is \$0.67 per mile. ECF No. 22, at 00:52:00-00:52:35; see also Standard mileage rates, IRS, <https://www.irs.gov/tax-professionals/standard-mileage-rates> (last visited Nov. 20, 2024).

Rules of Bankruptcy Procedure.”).¹⁹ However, the defaulted party is not deemed to have admitted conclusions of law, nor is the entry of default “treated as an absolute confession by the defendant of his liability and of the plaintiff’s right to recover.” Ryan, 253 F.3d at 780 (quoting Nishimatsu Constr. Co., Ltd. v. Hous. Nat’l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975)).

In determining whether to enter judgment on the default, the court “must determine whether the well-pleaded allegations in the complaint support the relief sought.” Upstate Mobile Tire, LLC v. Tread Conn. Int’l, LLC, No. 3:23-cv-00076-RJC-SCR, 2024 U.S. Dist. LEXIS 136689, at *3 (W.D.N.C. July 31, 2024); see DirectTV, Inc. v. Pernites, 200 F. App’x 257, 258 (4th Cir. 2006) (a “defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law”) (quoting Nishimatsu Constr. Co., Ltd., 515 F.2d at 1206); 10 A Wright, Miller & Kane, Federal Practice and Procedure § 2688 (3d ed. Supp. 2010) (“liability is not deemed established simply because of the default . . . and the court, in its discretion, may require some proof of the facts that must be established in order to determine liability”). The court may conduct an evidentiary hearing to determine damages but may also

¹⁹ “An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied.” Fed. R. Civ. P. 8(b)(6) (made applicable to this adversary proceeding by Rule 7008). A responsive pleading to these allegations was required. See supra n.4. Therefore, all facts in the Complaint are deemed admitted by Defendant.

rely on affidavits and other documentary evidence in the record. Upstate Mobile Tire, LLC, 2024 U.S. Dist. LEXIS 136689, at *4.

The Fourth Circuit has “repeatedly expressed a strong preference that, as a general matter, defaults be avoided and that claims and defenses be disposed of on their merits.” Colleton Preparatory Acad., Inc. v. Hoover Universal, 616 F.3d 413, 417 (4th Cir. 2010) (citations omitted). Nonetheless, default judgment is appropriate “when the adversary process has been halted because of an essentially unresponsive party.” SEC v. Lawbaugh, 359 F. Supp. 2d 418, 421 (D. Md. 2005).

CONCLUSIONS OF LAW

At the Hearing, Plaintiff asked the Court to enter a judgment by default on each of Plaintiff’s three causes of action. ECF No. 22, at 01:02:00-01:03:00. In the first cause of action, Plaintiff alleges that Defendant, in acting as a bankruptcy petition preparer, violated 11 U.S.C. § 110. Id. at 01:02:00-01:19:32. Thus, Plaintiff requests that the Court order (1) Defendant to turn over the \$450.00 fee paid to Defendant by Debtor; (2) Debtor to be awarded actual damages in the amount of \$1,354.00 plus statutory damages in the amount of \$2,000.00; and (3) Defendant to pay a total of \$7,500.00 in fines. Id. In the second cause of action, Plaintiff asks the Court to find that Defendant, as a debt relief agency, negligently violated 11 U.S.C. §§ 526, 527, and 528. Id. at 01:19:32-01:25:47. In the third cause of action,

Plaintiff asks the Court to enjoin Defendant from engaging in further violations of title 11, from further acting as a bankruptcy petition preparer, and from further engaging in any other fraudulent, unfair, or deceptive conduct under 11 U.S.C. § 110(j)(2)(A). Id. at 01:25:47-01:33:20. Also at the Hearing, counsel for Debtor asked the Court to: (1) require that Defendant pay a portion of the damages within a specified amount of time and order that if Defendant fails to do so, then Defendant will be held in civil contempt;²⁰ and (2) forward a copy of this order to the relevant state authorities overseeing the unauthorized practice of law. Id. at 00:59:38-01:01:48.

I. Violations of 11 U.S.C. § 110.

A. Defendant acted as a bankruptcy petition preparer as defined by 11 U.S.C. § 110(a)(1).

A "bankruptcy petition preparer" is "a person, other than an attorney for the debtor or an employee of such attorney . . . who prepares for compensation a document for filing." 11 U.S.C. § 110(a)(1). A "document for filing" includes "a petition or any other document prepared for filing by a debtor in a United States

²⁰Counsel for Debtor stated at the Hearing that in determining if this form of relief is appropriate, this Court should follow the rationale in In re Johnson, No. 16-30809, 2016 WL 5417367 (Bankr. W.D.N.C. Sept. 28, 2016). In Johnson, the court found a defendant to be in civil contempt for failing to appear at a hearing as ordered. Id. at *7. The court stated that "to purge his contempt," the defendant must remit \$1,000.00 to the Clerk of Court prior to a certain date. Id. In this case, Defendant's failure to appear or otherwise respond resulted in the entry of a default; however, unlike the defendant in Johnson, Defendant here is not in civil contempt and the Court therefore will not grant this form of relief requested by counsel for Debtor.

bankruptcy court . . . in connection with a case under [title 11]. 11 U.S.C. § 110(a)(2). Defendant is not an attorney and is not employed by an attorney. ECF No. 1, ¶ 2. Nonetheless, Debtor paid Defendant \$600.00 to prepare and file her Petition Documents, id. ¶ 12, and these documents were filed with this Court on January 29, 2024. Case No. 24-10051, ECF No. 1. Therefore, Defendant acted as a bankruptcy petition preparer as that term is defined by 11 U.S.C. § 110(a)(1).

B. Defendant violated 11 U.S.C. § 110(b)(1).

Section 110(b)(1) requires a bankruptcy petition preparer to sign and print their name and address on any document they prepare for filing. 11 U.S.C. § 110(b)(1). Defendant failed to sign, print his name, or print his address anywhere on the Petition Documents. See ECF No. 1, ¶ 8. Therefore, Defendant violated § 110(b)(1).

C. Defendant violated 11 U.S.C. § 110(b)(2)(A) & (B).

Section 110(b)(2)(A) requires a bankruptcy petition preparer to provide the debtor with written notice on Official Form 119²¹ before preparing any document for filing or accepting any fee. 11 U.S.C. § 110(b)(2)(A). Section 110(b)(2)(B) sets forth the required contents of the written notice, which includes inter alia

²¹ Official Form 119 is the form approved by the Judicial Conference and required under Bankruptcy Rule 9009. See Judicial Conference Comm. on Rules of Practice and Procedure, September 2015 Report of the Judicial Conference (Sept. 1, 2015); <https://www.uscourts.gov/rules-policies/archives/committee-reports/reports-judicial-conference-september-2015>.

informing the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice. 11 U.S.C. § 110(b)(2)(B). Section 110(b)(2)(B)(iii) further requires both the bankruptcy petition preparer and the debtor to sign the required notice and that the notice be filed with the court. 11 U.S.C. § 110(b)(2)(B)(iii). Defendant failed to provide Debtor with any notice, written or oral, that he was not permitted to give legal advice, and no such notice was signed by Defendant or Debtor or filed with the Court as required under § 110(b)(2)(B)(iii). See ECF No. 1, ¶ 13. Therefore, Defendant violated § 110(b)(2)(A) and (B).

D. Defendant violated 11 U.S.C. § 110(c)(1).

Section 110(c)(1) requires a bankruptcy petition preparer to place an identifying number on any document the preparer prepares for filing. 11 U.S.C. § 110(c)(1). For individuals acting as bankruptcy petition preparers, the identifying number shall be the preparer's Social Security number. 11 U.S.C. § 110(c)(2)(A). Defendant did not include his Social Security number on any of the documents he prepared. ECF No. 22, at 00:56:30-00:57:30. Therefore, Defendant violated § 110(c)(1).

E. Defendant violated 11 U.S.C. § 110(e)(2).

Under § 110(e)(2)(A), a bankruptcy petition preparer is prohibited from offering a debtor any legal advice. 11 U.S.C. § 110(e)(2)(A). Legal advice can include advising a debtor on, for

example, whether the debtor should file a petition, which chapter to file under, whether the debtor's debts will be discharged, whether the debtor will be able to retain real or personal property, whether the debtor should enter into a reaffirmation agreement, how to characterize the debtor's debts or interests in real property, and advice regarding bankruptcy procedures and rights. 11 U.S.C. § 110(e)(2)(B). Defendant provided Debtor with a considerable amount of legal advice in violation of § 110(e)(2). Relying on the information provided to him by Debtor, Defendant characterized certain claims against Debtor as secured and unsecured and made determinations as to the priority of unsecured claims. ECF No. 22, at 00:15:35-00:16:30. Defendant also classified Debtor's debts as primarily consumer debts. Id. at 00:18:20-00:19:00. Defendant instructed Debtor on how to fill out her claims for property exemptions and advised Debtor to list the value of the Real Property at \$72,000.00, and to claim a \$72,000.00 exemption in the Real Property. Id. at 00:37:00-00:40:20. Further, Defendant incorrectly informed Debtor that her interest in the Real Property would not be affected by the bankruptcy. Id. at 00:44:30-00:45:00. Finally, on Debtor's Statement of Intention, Defendant indicated that Debtor would enter into a reaffirmation agreement regarding a vehicle and even instructed Debtor on how to communicate her intention to enter into such agreement with the creditor. Id. at 00:19:25-00:21:00;

see Case No. 24-10051, ECF No. 1, at 71. Therefore, Defendant provided legal advice about procedures and rights under the Bankruptcy Code in violation of § 110(e).

F. Defendant violated 11 U.S.C. § 110(h) (2) .

Section 110(h) (2) requires a bankruptcy petition preparer to file together with the petition “[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, and any unpaid fee charged to the debtor.” 11 U.S.C. § 110(h) (2). The Petition Documents do not contain any such declaration disclosing the fee Defendant received from Debtor. See Case No. 24-10051, ECF No. 1. Therefore, Defendant violated § 110(h) (2) .

G. Damages under 11 U.S.C. § 110.

First, Plaintiff is entitled to forfeiture and turnover to the chapter 7 trustee²² of the remaining amount of the \$600.00 payment that has not been refunded by Defendant to Debtor, in the amount of \$450.00. Section 110(h) (3) (B) provides “[a]ll fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or

²² Plaintiff’s Complaint states that “Plaintiff is entitled to forfeiture and turnover to the chapter 13 trustee of all fees paid to the Defendant by the Debtor.” ECF No. 1, ¶ 25. However, after the Complaint was filed, Debtor’s case was converted to chapter 7. See Case No. 24-10051, ECF No. 62. Thus, the fees would necessarily be turned over to the chapter 7 trustee.

(g).” 11 U.S.C. § 110(h)(3)(B). Defendant violated § 110(b), (c), (d), and (e). Therefore, Defendant is required to remit the remaining \$450.00 received from Debtor to the chapter 7 trustee in Debtor’s bankruptcy proceeding.

Second, Debtor is entitled to recover actual and statutory damages. Once a court determines that a bankruptcy petition preparer has violated § 110, it shall order the petition preparer to pay the debtor the sum of the debtor’s actual damages; the greater of \$2,000.00 or twice the amount paid by the debtor to the petition preparer; and reasonable attorney’s fees. 11 U.S.C. § 110(i)(1). See, e.g., In re Torres, No. 14-50122, 2015 Bankr. Lexis 221 (Bankr. S.D. Tex. Jan. 23, 2015). As set forth above, Debtor’s actual damages amount to \$800.00 in attorney’s fees, \$176.00 in lost wages, and \$40.00 in mileage costs. Additionally, because Debtor would not have filed her initial chapter 7 petition had she known she was unable to exempt the Real Property, the \$338.00 filing fee that Debtor paid is included in her actual damages. Thus, under § 110(i)(1)(A), Debtor is entitled to recover \$1,354.00 from Defendant in actual damages. See 11 U.S.C. § 110(i)(1)(A). Further, because \$2,000.00 is greater than the \$450.00 unrefunded payment Debtor made to Defendant, Debtor is entitled to recover from Defendant \$2,000.00 in statutory damages under § 110(i)(1)(B). See 11 U.S.C. § 110(i)(1)(B). Therefore,

Debtor is entitled to recover a total of \$3,354.00 from Defendant in actual and statutory damages.

Finally, the Court finds that Defendant will be fined \$500.00 for each violation of § 110, and the total of this fine shall be tripled because Defendant failed to disclose his identity as a bankruptcy petition preparer. Under 11 U.S.C. § 110(1)(1), “[a] bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than \$500.00 for each such failure.” 11 U.S.C. § 110(1)(1). The violations in this case are egregious and the maximum fine of \$500.00 per violation should be imposed. See In re Torres, 2015 Bankr. Lexis 221, at *39 (holding that a \$500.00 fine was appropriate based on similar conduct); see also In re Bradshaw, 233 B.R. 315, 332 (Bankr. D.N.J. 1999) (collecting cases).

Section 110(1)(2) provides “[t]he court shall triple the amount of a fine assessed under paragraph (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.” 11 U.S.C. § 110(1)(2). Tripling of the fine imposed under § 110(1)(1) is appropriate in this case because Defendant filed the Petition Documents without disclosing his identity as a bankruptcy petition preparer. As set forth above, Defendant violated § 110(b)(1),

(b) (2), (c), (d), and (e). Therefore, Defendant shall be fined \$2,500.00, or \$500.00 for each of the five violations of § 110.²³ The Court shall triple this fine pursuant to § 110(1)(2) and impose a fine against Defendant in the amount of \$7,500.00, payable to the U.S. Bankruptcy Administrator, and to be deposited as provided under 11 U.S.C. § 110(1)(4)(B).

II. Violations of 11 U.S.C. §§ 526, 527, and 528.

A. Defendant is a debt relief agency as that term is defined under 11 U.S.C. § 101(12A).

Section 101(12A) defines a "debt relief agency" as "any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under § 110." 11 U.S.C. § 101(12A). Section 101(3) defines "assisted person" as "any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than \$150,000." 11 U.S.C. § 101(3). Debtor is an assisted person, because her debts consist primarily of consumer debts and the value of her nonexempt property is less than \$150,000. ECF No. 22, at 00:18:30-00:19:10; Case No. 24-10051, ECF No. 64. Section 101(4A) defines "bankruptcy

²³ Although the Complaint alleges at least six violations of § 110, Plaintiff, at the Hearing, only requested default judgment as to five violations. See ECF Nos. 1 & 22. Each violation of the statute is subject to a fine. See In re Monson, 522 B.R. 340, 355 (Bankr. D. Utah 2014) (fining bankruptcy petition preparer \$500.00 for each of 16 violations of § 110(e)(2) for a total of \$8,000.00 in fines). However, in the Complaint and at the Hearing, Plaintiff sought only \$500.00 for Defendant's several violations of § 110(e)(2). See ECF Nos. 1 & 22.

assistance" as any services sold to an assisted person "with the express or implied purpose of providing information, advice, counsel, document preparation, or filing" 11 U.S.C. § 101(4A). Defendant provided Debtor with bankruptcy assistance because he was paid by Debtor to prepare and file the Petition Documents. ECF No. 1, ¶ 12. Because Defendant provided bankruptcy assistance to Debtor in exchange for compensation, and further because Defendant is a bankruptcy petition preparer under § 110, see supra Sec. I.A, Defendant is a debt relief agency as that term is defined under § 101(12A).

B. Defendant violated 11 U.S.C. § 526(a) (3) (B) .

Section 526(a) (3) (B) provides that "[a] debt relief agency shall not . . . misrepresent to any assisted person . . . directly or indirectly, affirmatively or by material omission, with respect to—the benefits and risks that may result if such person becomes a debtor in a case under this title" 11 U.S.C. § 526(a) (3) (b). As set forth above, Defendant incorrectly advised Debtor that her interest in the Real Property would not be liquidated if she filed a petition under chapter 7. ECF No. 22, at 00:44:30-00:45:00. Therefore, Defendant misrepresented the benefits and risks of becoming a debtor under chapter 7 of title 11 in violation of § 526(a) (3) (B).

C. Defendant violated 11 U.S.C. § 527(a) .

Section 527(a)(1) requires a debt relief agency that provides bankruptcy assistance to an assisted person to provide the assisted person with the written notice required under 11 U.S.C. § 342(b)(1). 11 U.S.C. § 527(a)(1). The required written notice must include "a brief description of-(A) chapters 7, 11, 12, and 13 and the general purposes, benefits, and costs of proceeding under each of those chapters; and (B) the types of services available from credit counseling agencies." 11 U.S.C. § 342(b)(1)(A) & (B). Defendant failed to provide Debtor with any notice as required under § 342(b)(1), and never discussed with Debtor the costs and benefits of filing under the different chapters described in § 342(b)(1). ECF No. 22, at 00:26:30-00:26:55. Defendant's failure to provide such notice constitutes a violation of § 527(a).

D. Defendant violated 11 U.S.C. § 527(b) .

Section 527(b) provides that a debt relief agency providing bankruptcy assistance to an assisted person must provide the assisted person with a clear and conspicuous statement containing specific information about bankruptcy assistance services from a bankruptcy petition preparer. 11 U.S.C. § 527(b). Defendant failed to provide Debtor with any such statement, ECF No. 22, at 00:26:30-00:26:55, and this failure constitutes a violation of § 527(b).

E. Defendant violated 11 U.S.C. § 527(c).

Section 527(c) provides that a debt relief agency must provide an assisted person reasonably sufficient information "on how to provide all the information the assisted person is required to provide under this title" 11 U.S.C. § 527(c). Debtor testified that Defendant never provided Debtor with any such information. ECF No. 22, at 00:55:00-00:56:00. This failure constitutes a violation of § 527(c).

F. Defendant violated 11 U.S.C. § 528(a).

Section 528(a) requires a debt relief agency to execute a written contract with any assisted person that explains clearly and conspicuously "the services such agency will provide . . . ; the fees or charges for such services, and the terms of payment." 11 U.S.C. § 528(a)(1). As explained above, Defendant failed to provide Debtor with any sort of written notice or contract, and, therefore, violated § 528(a).

G. Defendant acted negligently in failing to comply with 11 U.S.C. §§ 527 and 528.

Section 526(c)(2)(A) provides that any debt relief agency is liable to an assisted person for the amount of fees received, actual damages, and reasonable attorneys' fees and costs when the debt relief agency "intentionally or negligently failed to comply with a provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted

person.” 11 U.S.C. § 526(c)(2)(A). As a debt relief agency, Defendant had a duty to comply with the requirements of the Bankruptcy Code. See In re McCartney, 336 B.R. 588, 589 (Bankr. M.D. Ga. 2006) (“BAPCPA provides that a ‘debt relief agency’ has certain obligations and duties when ‘providing bankruptcy assistance to an assisted person.’”) (citing 11 U.S.C. §§ 526, 527 & 528). Defendant failed to comply with §§ 526(a)(3)(B), 527(a)-(c), and 528(a). Defendant acted at least negligently in failing to comply with the provisions of §§ 526, 527, and 528. Therefore, under § 526(c)(2)(A), Defendant is liable to Debtor for the fees he received from Debtor, Debtor’s actual damages, and Debtor’s reasonable attorneys’ fees. In any event, Debtor is entitled to these damages under § 110, see supra Sec. I.G, and the Court will not award duplicative damages under § 526(c)(2)(A).

III. Injunctive relief under 11 U.S.C. §§ 110(j) and 526(c)(5).

A. Plaintiff has standing²⁴ to seek injunctive relief under 11 U.S.C. §§ 110(j) & 526(c)(5).

Finally, Plaintiff requests that the Court provide injunctive relief under §§ 110(j) and 526(c)(5) in the form of an injunction prohibiting Defendant from engaging in further violations of § 110

²⁴ The Court considers standing before deciding the merits of a claim. Whitmore v. Arkansas, 495 U.S. 149, 154 (1990) (“[B]efore a federal court can consider the merits of a legal claim, the person seeking to invoke the jurisdiction of the court must establish the requisite standing to sue.”).

and other fraudulent, unfair, or deceptive conduct under § 110(j)(2)(A). ECF No. 1, ¶ 35.

Three subsections of § 110 grant the bankruptcy administrator standing to seek the turnover of fees, actual and statutory damages, and fines against persons who have violated § 110. See 11 U.S.C. § 110(h)(4), (i)(1), & (1)(3). Further, § 110(j)(3) grants the bankruptcy administrator standing to enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under § 110. 11 U.S.C. § 110(j)(3). However, § 110(j)(1), which allows certain parties in interest to move to enjoin a bankruptcy petition preparer from engaging in conduct in violation of § 110 or from further acting as a bankruptcy petition preparer, does not specifically mention bankruptcy administrators.²⁵ Similarly, § 526(c)(5) allows the court to enjoin debt relief agencies from violating the section “on its own motion or on the motion of the United States trustee or the debtor,” but does not specifically list the bankruptcy administrator. 11 U.S.C. § 526(c)(5).

²⁵ Section 110(j)(1) provides “[a] debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.” 11 U.S.C. § 110(j)(1).

Like 11 U.S.C. § 307 with respect to the U.S. Trustee, section 317(b) of the Judicial Improvements Act of 1990 states that “[a] bankruptcy administrator may raise and may appear and be heard on any issue in any case under title 11” Pub. L. No. 101-650, 104 Stat. 5089 (1990). Where a provision of title 11 omitted the bankruptcy administrator, this provision grants the bankruptcy administrator standing notwithstanding the omission. See Craddock Washabaugh v. Miller, 1:16CV694, 2016 WL 4574690, at *2 (M.D.N.C. Sept. 1, 2016).

In Craddock, the debtor argued that the bankruptcy administrator lacked standing to seek a revocation of discharge because the bankruptcy administrator is not among the individuals granted standing to seek revocation of discharge under 11 U.S.C. § 727(d).²⁶ Craddock, 2016 WL 4574690, at *2. The court disagreed, noting that although § 727(d) does not mention a bankruptcy administrator, section 317(b) of the Judicial Improvements Act of 1990 confers standing on a bankruptcy administrator to raise any issue in a case under title 11. Id. The court further noted that “[t]his provision not only mirrors the language of 11 U.S.C. § 307, which applies to and empowers United States trustees, but the legislative history of the Judicial Improvements Act also explains

²⁶ Section 727(d) provides that if certain conditions are met, then “[o]n request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section.” 11 U.S.C. § 727(d).

that section 317(b) 'amends the . . . law to give bankruptcy administrators . . . standing . . . to appear and be heard in the same manner as U.S. Trustees.'" Id. (quoting 136 Cong. Rec. S17570-02 (Oct. 27, 1990) (emphasis added)). In light of this "clear congressional intent," the court held that the bankruptcy administrator had standing to seek a revocation of discharge under § 727(d). Id.; see also 11 U.S.C. § 727(d); In re Graham, No. 02-81930C-7D, 2004 WL 1052963, at *12 (Bankr. M.D.N.C. Feb. 13, 2004) ("Under § 110(j), the debtor, a trustee, a creditor or the Bankruptcy Administrator 'may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.'" (citing 11 U.S.C. § 110(j)) (emphasis added), aff'd sub nom. Anderson v. West, No. 1:04CV0796, 2005 WL 1719934 (M.D.N.C. Apr. 14, 2005).

B. Defendant engaged in fraudulent, unfair, or deceptive conduct under 11 U.S.C. § 110(j) (2) (A) .

This Court has determined that "a petition preparer who engages in the unauthorized practice of law commits an unfair or deceptive act pursuant to Section 110(i)." In re Williams, No. 21-10106, Adv. Pro. No. 21-02006, 2022 WL 19403070, at *7 (Bankr. M.D.N.C. Apr. 22, 2022). "The unauthorized practice of law includes when a bankruptcy petition preparer uses their 'discretion, experience, and knowledge to provide the Debtor with

advice and legal citations concerning the completion of his bankruptcy documents.'" Id. (citing In re Springs, 358 B.R. 236, 245 (Bankr. M.D.N.C. 2006). Moreover, under North Carolina law, it is unlawful for persons, except active members of the Bar of the State of North Carolina, to provide legal advice or counsel. N.C. Gen. Stat. § 84-4. As set forth above, Defendant engaged in the unauthorized practice of law, in violation of § 110(e). Therefore, Defendant committed fraudulent, unfair, or deceptive conduct under § 110(j)(2)(A).

C. Injunctive relief is appropriate under 11 U.S.C. § 110(j)(2)(A).

Section 110(j)(2)(A) provides that if a court finds that a bankruptcy petition preparer has violated title 11 or engaged in any other fraudulent, unfair, or deceptive conduct under § 110(j)(2)(A) and that injunctive relief is appropriate to prevent the recurrence of such conduct, then the court may enjoin the bankruptcy petition preparer from engaging in such conduct. 11 U.S.C. § 110(j)(2)(A); see In re Rankin, 320 B.R. 171, 186 (Bankr. D. Mont. 2005) (finding injunctive relief appropriate to suppress the unauthorized practice of law). As previously established, Defendant engaged in multiple violations of §§ 110, 526, 527, and 528, including the unauthorized practice of law. Therefore, the Court finds injunctive relief is appropriate to prevent Defendant from further engaging in such prohibited conduct.

D. Injunctive relief is inappropriate under 11 U.S.C. § 110(j) (2) (B) .

Section 110(j) (2) (B) provides:

If the court finds that a bankruptcy petition preparer has continually engaged in conduct [in violation of title 11, misrepresented the preparer's experience or education as a bankruptcy petition preparer, or any other fraudulent, unfair or deceptive conduct] and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, has not paid a penalty imposed under this section, or failed to disgorge all fees ordered by the court the court may enjoin the person from acting as a bankruptcy petition preparer.

11 U.S.C. § 110(j) (2) (B). The record in this case does not include any facts demonstrating that Defendant has continually engaged in the conduct described in § 110(j) (2) (A). Further, this Court has not previously imposed on Defendant a penalty under this section or ordered Defendant to disgorge any fees. Therefore, injunctive relief is not appropriate under § 110(j) (2) (B).

E. Injunctive relief is inappropriate under 11 U.S.C. § 526(c) (5) .

Section 526(c) (5) provides that if a court finds that a person intentionally violated or engaged in a clear and consistent pattern or practice of violating § 526, the court may enjoin the violation. 11 U.S.C. § 526(c) (5). "'Because direct evidence of intent is rarely available, a court may infer [] intent [] from the totality of the circumstances,' and reckless indifference may be sufficient to establish intent in some cases." Law Sols. of

Chi. LLC v. Corbett, No. 1:18-cv-00677-AKK, 2019 U.S. Dist. LEXIS 39335, at *21 (N.D. Ala. Mar. 12, 2019) (quoting In re DeJulio, 322 B.R. 456, 461 (Bankr. M.D. Fla. 2005)). However, the intent requirement does not apply to the “clear and consistent pattern or practice” category. Id. at *7. Instead, a court may find a clear and consistent pattern or practice exists if there is evidence that the violation was part of a “standard or routine way of operating.” Id. at *8. Defendant acted at least negligently in failing to comply with the provisions of the Bankruptcy Code, see supra Sec. II.G; however, there is insufficient evidence to find that Defendant acted with reckless indifference. Further, the record in this case does not demonstrate that Defendant’s violations were part of a standard or routine way of operating. Therefore, there is insufficient factual basis to conclude that Defendant engaged in a clear and consistent pattern or practice of violating § 526, and injunctive relief under § 526(c)(5) is not appropriate.

IV. The Clerk of Court shall forward a copy of these Findings of Fact and Conclusions of Law as well as the contemporaneously entered Default Judgement to state authorities overseeing the unauthorized practice of law.

As set forth above, Defendant provided Debtor with legal advice in violation of § 110(e) and engaged in the unauthorized practice of law, which is a Class 1 misdemeanor under North Carolina criminal law. N.C. Gen. Stat. § 84-8. Further, since

Defendant resides in Harrisburg, Pennsylvania, see ECF No. 1, ¶ 2, Defendant's unauthorized practice of law likely also constitutes a violation of Pennsylvania law. In similar circumstances, the United States Bankruptcy Court for the Western District of North Carolina found it appropriate to forward a copy of its order finding violations of § 110(e) that constitute the unauthorized practice of law to the state authorities that oversee the unauthorized practice of law. See In re Johnson, No. 16-30809, 2016 WL 5417367, at *8 (Bankr. W.D.N.C. Sept. 28, 2016). Given the circumstances of this case, this Court will similarly direct the Clerk of Court to forward a copy of these Findings of Fact and Conclusions of Law as well as the contemporaneously entered Default Judgement to the Authorized Practice Committee of the North Carolina State Bar and the Pennsylvania Bar Association Unauthorized Practice of Law Committee.

CONCLUSION

For the reasons set forth in these Findings of Fact and Conclusions of Law, the Court will enter its judgment granting the relief requested by Plaintiff and counsel for Debtor to the extent provided herein.

[END OF DOCUMENT]

Parties to be Served
24-02009

All parties to this adversary proceeding.