

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**BELLE FRANCIA DAILEY
HARLEY JOSEPH DAILEY,**

Debtors.

CAROL BETH EMERSON,

Debtor.

Case No. **15-61088-7**

Case No. **16-60056-7**

**ORDER APPROVING AGREED MOTION TO RESOLVE THE UNITED STATES
TRUSTEE'S MOTIONS TO DISGORGE FUNDS, CANCEL RETAINER
AGREEMENTS, ENJOIN VIOLATIONS OF 11 U.S.C. § 526, IMPOSING CIVIL
PENALTIES AND GRANTING RELATED RELIEF**

A hearing was held March 9, 2021 on the parties' *Agreed Motion to Resolve The United States Trustee's Motions to Disgorge Funds, Cancel Retainer Agreements, Enjoin Violations of 11 U.S.C. § 526, Imposing Civil Penalties and Granting Related Relief* (the "Agreed Motion") (*Dailey* ECF No. 356 and *Emerson* ECF No. 271). Appearances were noted on the record and counsels' answers to the Court's questions satisfactorily clarified certain items for the Court. Having reviewed the Agreed Motion and with the agreement of the parties, the Court finds that jurisdiction is proper, venue is proper, this is a core proceeding, and no further or other notice of the Agreed Motion or entry of this Order is necessary. Accordingly,

IT IS ORDERED that the Agreed Motion is GRANTED and APPROVED IN ITS ENTIRETY as are the stipulations, releases, and agreements of the parties which are set forth in the Agreed Motion including the following:

UpRight Law stipulates, agrees, represents, and warrants that the following facts are accurate to the best of its information, knowledge, and belief:

UpRight Law's Operations

1. Kevin Chern ("Chern") and Jason Allen ("Allen"), were the principals of UpRight Law, and actively involved in the management of UpRight Law, during the pendency of the Sperro Program (as hereinafter described). Allen ceased performing his job responsibilities on or around June 1, 2018, and his separation papers were signed on July 18, 2018. Subsequently, on February 26, 2019, Chern resigned from UpRight Law. Neither Chern nor Allen have any remaining control over, or ownership interest in, UpRight Law.

2. During the time the Sperro Program was created and operated, Chern was the managing partner of UpRight Law and had, via his controlling interest in UpRight Law, decision-making authority over management of the company. Even before Chern and Allen divested their interests in UpRight Law, it established a management committee that votes on firm initiatives.

3. In July of 2018, UpRight Law retained an independent monitor to evaluate and monitor UpRight Law's system of policies and procedures implemented to encourage ethical behavior and to reasonably prevent, detect, and respond to potential issues involving the conduct of the firm's attorneys, partners and employees.

4. UpRight Law conducted business within the State of Montana from February 2015 through July 2018.

5. In July 2018, UpRight Law ceased accepting new clients whose cases would be filed in the District of Montana.

6. Law Solutions Chicago LLC, now known as Deighan Law LLC, filed articles of organization with the Illinois Secretary of State on October 10, 2008.

7. Deighan Law LLC, (previously defined as “UpRight Law”) is an Illinois limited liability company registered to do business in Montana as UpRight Law LLC. Under its former existence as Law Solutions Chicago LLC, UpRight Law did business in Montana as UpRight Law LLC. UpRight Law previously operated in other jurisdictions under various other assumed names, including Jason Allen Law, LLC, Allen Chern Law, and Chern Law LLC, among others.

8. The principal office address of UpRight Law is 79 W. Monroe St., Suite 1006, Chicago, IL 60603.

9. When a prospective client searches the Internet for a bankruptcy attorney and comes across UpRight Law, the client generally reaches out one of two ways: (a) they call UpRight Law directly; or (b) request information through an online form. A request for information through an online form, in turn, prompts a call back from a member of UpRight Law’s intake department. From 2015 until January 2017, UpRight Law had a bifurcated client intake process involving primarily non-attorney personnel in Chicago called “client consultants” and “senior client consultants.” Client consultants were junior employees whose job it was to gather basic information and probe whether the prospect was really interested in filing for bankruptcy, whether the prospect had the ability to pay for services, and whether the prospect was the decision maker for the family. If those qualifications were met, the prospect was passed to a senior client consultant. Senior client consultants were usually former client consultants who had been promoted after a period of time. No client consultants were attorneys, and senior client consultants were generally not attorneys.

10. During this period, senior client consultants were paid a base salary or an hourly rate, plus commission. Commissions were based upon various performance metrics, which included, in part, the number of prospective clients who spoke with the senior client consultant

and ultimately retained UpRight Law, the amount of fees paid by a client at the time of retention and shortly thereafter, and the total number of calls placed to, or taken from, clients.

11. In 2014, UpRight Law began recruiting attorneys in Montana to file cases in Montana. Montana attorneys who agreed to become UpRight Law local partners were given a partnership agreement to sign.

12. On October 22, 2015, Charles A. Smith, an attorney licensed to practice in the State of Montana, signed a partnership agreement with UpRight Law. Chern signed the partnership agreement on behalf of UpRight Law.

13. On November 13, 2015, Colleen Herrington (“Herrington”), an attorney licensed to practice in the State of Montana, signed a partnership agreement with UpRight Law. Chern signed the partnership agreement on behalf of UpRight Law.

14. UpRight Law is a debt relief agency as defined in 11 U.S.C. § 101(12A) and provided bankruptcy assistance, as defined by 11 U.S.C. § 101(4A), to the Daileys and to Ms. Emerson. The Daileys, Ms. Emerson, and other Montana clients of UpRight Law were, at all relevant times, assisted persons as defined in 11 U.S.C. § 101(3).

The “Sperro Program”

15. UpRight Law participated in a program offered by a third party to pay their clients’ attorney’s fees and court costs. This program, which became known as the Sperro Program, was

developed by Brian Fenner¹ (“Fenner”), and was implemented through an Indiana company, Sperro, LLC² (“Sperro”), which Fenner owned and operated.

16. UpRight Law began its business relationship with Sperro in 2015 after Chern met Fenner at the National Association of Consumer Bankruptcy Attorneys’ Annual Convention. Fenner explained that Sperro could help pay the fees and court costs for UpRight Law’s clients by facilitating the surrender of the client’s car to the lien holder. Chern was interested in the Sperro Program because many of UpRight Law’s clients pay their fees over time through an installment payment plan.

17. In May 2015, Chern asked UpRight Law’s then-General Counsel, David Leibowitz (“Leibowitz”), to review the risks and rewards of participating in the Sperro Program. Leibowitz spoke with Fenner regarding the Sperro Program and then approved UpRight Law’s participation in it. Subsequently, Chern informed Fenner that UpRight Law was prepared to refer its clients to Sperro. On May 11, 2015, Fenner provided Chern with Sperro’s standard towing and storage agreement. On May 12, 2015, Fenner sent a follow-up email further explaining how the process would work:

To perfect our lien process, we hold the car for 30 days. This is a state statute. At the 31st day the account would be in default status. This will generate the lien process. We then send both the consumer and the lien holder notification by certified letter via US post office. We follow the lien process accordingly to witch [sic] state we are storing the collateral. At this time, the lien holder will make their choice on how they wish to move forward.

¹ In connection with the Sperro Program, Fenner has been indicted for conspiracy to commit mail and wire fraud, 13 counts of mail and wire fraud, and 3 counts of money laundering. An indictment is only a charge and not evidence of guilt. All defendants are presumed innocent until proven otherwise in federal court.

² Fenner conducted business through Collateral Services of Indiana LLC until approximately May 22, 2015, when he began conducting business as Sperro LLC. The name change occurred after Chern sent Fenner a copy of a replevin suit against an Ohio company named Collateral Services LLC.

I believe that if you put in the BK petition that Fenner & Associates paid for the BK and that the collateral is stored at Collateral Services of Indiana LLC with our address, collaterals [sic] location. This should be more than enough notification to the lien holder and the court the intent, location and status of the collateral.

We have to hold the vehicle so many days before we can perfect our lien by state law. We also need some time to generate a profit margin. I would prefer not to send notification to the lien holder from the existing attorney up front. The Lien holder would already be notified in the petition. Any attempts to speed the process would eliminate our perfection of the lien as well as cutting our profit.

18. On May 18, 2015, Chern emailed Fenner asking for samples of: (a) correspondence that other attorneys using the Sperro Program use to inform lienholders that their collateral is in Sperro's possession; and (b) a sample bankruptcy petition showing how other law firms disclose their compensation from Sperro. Fenner responded that: (a) other law firms did not send such correspondence; (b) the entity paying the fees should be disclosed as Fenner & Associates; and (c) correspondence should not be sent to the lienholder until five days after Sperro had collected the vehicle to allow sufficient time for the vehicle to reach Sperro's storage facility.

19. On June 18, 2015, Chern sent an email to UpRight Law's partners explaining the "New Car Custody Program at UpRight Law." In that email, Chern stated the following:

- a. Fifteen percent of senior client consultants had begun to offer a new program to clients which allowed them to surrender a vehicle to a towing and storage company in exchange for payment of their attorney's fees and court costs.
- b. Clients qualified for the program if: (1) they sought Chapter 7 relief; (2) they had a vehicle they wished to surrender; (3) there was no equity in their vehicle; and (4) the value of their vehicle exceeded \$5,000.
- c. Senior client consultants would advise clients to contact Sperro to schedule a vehicle pick-up. At the vehicle pickup, the client would sign a

Transporting and Storage Authorization Agreement with Sperro. Chern represented that under the towing agreement, Sperro would load the vehicle, tow it to a facility, store it and maintain it until such time as the finance company picked up the vehicle.

- d. Chern represented that Sperro charged “customary and reasonable fees for these services (e.g., \$75 loading fee, \$1.50 per mile towing, \$45/day storage, etc.).”
- e. Chern represented that within a few days after Sperro picked up the vehicle, UpRight Law would send the lienholder correspondence stating that Sperro had custody of the vehicle, the location of the storage facility, contact information for Sperro, and instructions on how to retrieve the vehicle quickly to avoid mounting storage charges.
- f. Chern represented that UpRight Law’s clients benefitted from this program because: (1) Sperro would pay their attorney fees and court costs; (2) they no longer had to pay insurance on the vehicle; (3) they do not have to worry about the costs of taking care of the vehicle; (4) they do not have to worry about a repossession agent showing up at their home or place of business; (5) they do not have to be worried that the lienholder will refuse to pick up the vehicle; and (6) creditors could be referred to Sperro in regards to the status of the vehicle.

20. On June 18, 2015, after receiving Chern’s June 18, 2015, email described in paragraph 18 above, one of UpRight Law’s partners, Mark Steinberg, emailed Chern asking whether Sperro demands payment from the finance company to release the vehicle. In response,

Chern stated, “Yes. [Sperro] hold[s] the car in one of three states that allow for mechanic’s liens that trump the 1st lien. 60% of the time, they pick up the car and satisfy the charges. 40% of the time they just abandon the vehicle. Sperro really makes its money when the finance company abandons and Sperro auctions it off.” This was an acknowledgement that UpRight Law knew Sperro was towing cars out of certain states, and into others, to establish a mechanic’s lien while charging the lienholder for towing and storage.

21. UpRight Law’s clients were offered participation in the Sperro Program prior to speaking with an attorney associated with UpRight Law. Some clients surrendered their cars to Sperro before speaking to an attorney.

22. On or about November 18, 2015, UpRight Law terminated its relationship with Sperro. Two events triggered this termination: (a) a lawsuit brought by Ally Financial alleging that Sperro had converted its collateral; and (b) the time between when Sperro collected a vehicle and when UpRight Law received payment had increased significantly.

The Dailey Case

23. On the Dailey Petition Date, UpRight Law, through Charles A. Smith (“Smith”), filed a petition on behalf of the Daileys.

24. Two months prior to the Petition Date, in September of 2015, the Daileys contacted UpRight Law to determine whether bankruptcy relief was appropriate for their circumstances. During this telephone conversation, the Daileys spoke with attorney Alex Aksenchik,³ one of UpRight Law’s senior client consultants. Aksenchik and the Daileys discussed bankruptcy relief and the Daileys’ inability to pay a lump sum for representation. Aksenchik informed the Daileys that they could use the Sperro Program to pay for their bankruptcy.

³ Mr. Aksenchik was not licensed to practice law in Montana.

25. There is no record that the Daileys and UpRight Law ever signed an “Attorney Client Base Retainer Agreement for Chapter 7 Bankruptcy Related Services.”

26. Records produced by UpRight Law in discovery show September 9, 2015, as the date on which the Daileys hired UpRight Law to file their bankruptcy case.

27. On or about September 14, 2015, the Daileys surrendered their fully encumbered 2015 Chevrolet Silverado 2500 Duramax to Sperro in Helena, Montana. At the time of this transfer, Mr. Dailey signed a Transporting and Storage Authorization Agreement with Sperro. The agreement Mr. Dailey signed was a standardized form previously provided by Fenner to Chern.

28. At the time the Daileys decided to file bankruptcy and surrendered their vehicle to Sperro, the Daileys had not yet spoken with an attorney who was licensed to practice in the State of Montana.

29. As stated above, Smith became a partner of UpRight Law on October 22, 2015. On October 26, 2015, UpRight Law assigned Smith to the Dailey case. Smith met Mrs. Dailey only one time prior to filing the Daileys’ petition.⁴ The Daileys’ case was Smith’s first as a partner with UpRight Law.

30. Smith completed the Daileys’ petition, schedules, and statement of financial affairs and filed their case on November 18, 2015. The 2015 Chevrolet Silverado 2500 Duramax that was transferred to Sperro was not disclosed on the Daileys’ original petition, schedules, and statement of financial affairs. Nor was the transfer of the Duramax to Sperro disclosed.

31. On or about November 13, 2015, several days before Smith filed the Daileys’ bankruptcy case, the Bank of the West sued the Daileys and Sperro in the Marion County, Indiana

⁴ Smith and Mr. Dailey disagree as to whether Smith met with Mr. Dailey prior to the Daileys’ meeting of creditors.

Superior Court seeking a declaratory judgment and an injunction, on claims including conversion, possession and replevin, tortious interference with contract, and default on contract and repossession of the 2015 Chevrolet Silverado 2500 Duramax. This lawsuit was similarly not disclosed on the Daileys' statement of financial affairs.

32. UpRight Law was aware of Bank of the West's lien encumbering the Daileys' vehicle at the time that its agent advised the Daileys of the Sperro Program and provided the Daileys' contact information to Sperro so Sperro could make arrangements with the Daileys to take possession of the vehicle. Furthermore, UpRight Law was aware of the lien encumbering the Daileys' vehicle at the time that it prepared the Daileys' petition, schedules, and statement of financial affairs.

33. Following the meeting of creditors held on December 10, 2015, where the trustee learned of the 2015 Chevrolet Silverado 2500 Duramax, Smith filed amended schedules and an amended statement of financial affairs.

34. While the amendments disclosed the 2015 Chevrolet Silverado 2500 Duramax, they did not disclose that Sperro paid the Daileys' bankruptcy fees and filing fees.

35. On June 19, 2019, UpRight Law refunded to the Daileys the sum of \$1,885.00, which equals the amount of the attorney's fees and filing fee paid to UpRight Law.

The Emerson Case

36. On the Emerson Petition Date, UpRight Law, through Herrington, filed a petition on behalf of Emerson. In February 2015, while contemplating filing bankruptcy, Ms. Emerson reviewed UpRight Law's website and left her contact information. UpRight Law then contacted Ms. Emerson and arranged for her to make an initial \$300.00 payment for bankruptcy

representation and to pay the balance after she received a tax refund. In total, Ms. Emerson paid UpRight Law \$1,550.00 in attorney's fees and a \$335.00 filing fee over a two-month period.

37. There is no evidence that Ms. Emerson and UpRight Law ever signed an "Attorney Client Base Retainer Agreement for Chapter 7 Bankruptcy Related Services."

38. UpRight Law's records show February 25, 2015, as the date Ms. Emerson hired UpRight Law to file her bankruptcy case. At that time, UpRight Law did not have an attorney licensed in Montana in Ms. Emerson's area to file her bankruptcy case.

39. When Ms. Emerson contacted UpRight, she was subject to a wage garnishment from a medical debt judgment. This garnishment was disclosed to UpRight Law during Ms. Emerson's initial client intake communication.

40. Ms. Emerson testified at her meeting of creditors that UpRight Law told her that her garnishment would stop as soon as she made her initial attorney's fee payment of \$300.00.

41. At the meeting of creditors, Ms. Emerson testified that her wages were being garnished approximately \$1,000.00 per month. Ms. Emerson further testified that because of the garnishment, she had to learn to live on \$600.00 per month.

42. In early March 2015, soon after she hired UpRight Law, Stuart Whitehair, Montana lawyer and UpRight Law partner, contacted Ms. Emerson. Stuart Whitehair, however, terminated his relationship with UpRight Law on or about October 19, 2015. Ms. Emerson paid UpRight Law's attorney and filing fees in full on April 1, 2015. At that point Ms. Emerson's wages were still being garnished. Ms. Emerson asserts that between March 2015 and October 2015, she never heard from Stuart Whitehair. At the time of his termination, Stuart Whitehair had not filed Ms. Emerson's bankruptcy petition, and her wages were still being garnished.

43. In early October 2015, Ms. Emerson sent an email to UpRight Law expressing her frustration with the unreasonable delay in her case being filed. On October 20, 2015, shortly after Stuart Whitehair's termination as a partner attorney, UpRight Law told Ms. Emerson that there were no partner attorneys in her area and to call back in two weeks for a status update.

44. On November 12, 2015, Ms. Emerson called UpRight Law regarding the status of her bankruptcy filing, but again UpRight Law told her it did not have a lawyer available in Montana to represent her. However, UpRight Law told Ms. Emerson it would have someone available to represent her in Montana soon.

45. In an email to UpRight Law dated November 24, 2015, Ms. Emerson stated that she could not continue to wait for a new partner attorney to be assigned because her wages continued to be garnished and she was unable to pay her bills.

46. Also, on November 24, 2015, in response to Ms. Emerson's email, UpRight Law advised her that Montana lawyer Phillip DeFelice would be her new lawyer. Phillip DeFelice, however, never contacted Ms. Emerson or answered any of her emails.

47. On December 15, 2015, Ms. Emerson was forced to contact UpRight Law again and UpRight Law again told her that it would get her another Montana lawyer. During this time, Ms. Emerson's wages continued being garnished.

48. Also, on December 15, 2015, UpRight Law called Ms. Emerson and told her that Herrington would be the third UpRight Law partner to represent her. Herrington contacted Ms. Emerson just a few hours later.

49. Herrington filed Ms. Emerson's case on February 4, 2016, 309 days after Ms. Emerson had paid her attorney and filing fees in full.

50. After first contacting UpRight Law in February 2015 and waiting nearly one year while UpRight Law assigned three different Montana local partner attorneys to file her bankruptcy petition, \$6,697.99 was garnished from Ms. Emerson's wages. From the date she hired UpRight Law, Ms. Emerson made it very clear that her wages were being garnished.

51. On June 19, 2019, UpRight Law paid the chapter 7 trustee in the Emerson case, Joseph V. Womack, \$1,885.00, which is the amount of attorney's fees and filing fee paid by Ms. Emerson. UpRight Law also paid Womack \$6,697.99, which is the amount garnished from Ms. Emerson during the delay in getting her bankruptcy case filed.

52. UpRight Law agrees and stipulates that it violated sections 329, 526(a)(2), and 528(a) of the Bankruptcy Code by its use of the Sperro Program and for its failure to disclose Sperro in the Dailey's schedules and statement of financial affairs. UpRight Law further agrees and stipulates that it violated section 528(a) of the Bankruptcy Code by not providing the Daileys and Ms. Emerson with a fully executed copy of a retainer agreement.

53. The UST asserts that UpRight Law violated section 526(a)(3)(A) by misrepresenting to Ms. Emerson that it had a sufficient number of local partner attorneys available to represent her in her bankruptcy cases to be filed in the District of Montana. UpRight Law admits that it misrepresented to Ms. Emerson that it had local partner attorneys available to represent her in her bankruptcy case to be filed in the District of Montana and that such conduct is violative of 11 U.S.C. § 526(a)(3)(A).

UpRight Law's Treatment of Montana Consumers

54. The UST asserts that, during the period from February 2015 through July 2018, UpRight Law's conduct in relation to its representation of the Daileys, Ms. Emerson, as well as other prospective assisted persons residing in the District of Montana ("Montana Consumers")

who hired UpRight Law to file bankruptcy cases for them constituted a pattern or practice of violating sections 526(a)(3) and 528 of the Bankruptcy Code within the meaning of section 526(c)(5). The UST further asserts that, through documents and audio recordings adduced in the discovery process, the facts of UpRight Law's conduct with respect to the Dailey and Emerson cases and UpRight Law's practices with respect to other Montana Consumers establish a pattern and practice of UpRight Law's dealings, whether in handling cases or in providing refunds, that include one or more of the following: (1) misrepresenting that the firm had a sufficient number of local Montana partner attorneys available to provide adequate bankruptcy representation, which caused harm to assisted persons, including delays in getting cases timely filed; (2) misrepresenting the legal services to be provided and the fees and costs associated with those services, which caused harm to assisted persons, including significant delays in appropriate and timely refunds being made; (3) failing to timely provide Montana assisted persons with written retainer agreements within the timeframe and in the manner prescribed by section 528(a) of the Bankruptcy Code; (4) failing to discuss non-bankruptcy alternatives with Montana assisted persons; (5) failing to adequately supervise non-attorney staff, some of whom engaged in the unauthorized practice of law; (6) providing erroneous legal advice regarding exemptions available to residents of Montana; and (7) failing to adequately supervise local partner attorneys. For purposes of this settlement, UpRight Law does not contest the facts adduced through discovery as summarized above, but disputes that such facts are representative of its dealings with all Montana consumers who retained the firm and that they constitute a pattern or practice of violating sections 526(a)(3) or 528 of the Bankruptcy Code within the meaning of section 526(c)(5).

55. Based on the documents and information produced by UpRight Law during the course of discovery, between January 2015 and July 2018, approximately 521 Montana Consumers

retained UpRight Law for representation in bankruptcy cases, on account of whom UpRight Law received attorney's fees and costs totaling approximately \$575,000.00. As of July 2018, UpRight Law had filed 109 cases on behalf of those Montana Consumers. As of July 30, 2019,⁵ of the 412 Montana Consumers for whom UpRight Law did not file a bankruptcy case, UpRight Law's records reflect that 364 paid all or a part of the attorney and filing fees, while the remaining 48 Montana Consumers for whom UpRight Law did not file a bankruptcy case had not paid anything toward the fees.

56. Significant delays were commonplace in the 109 cases that UpRight Law did file. In those cases, on average 102 days passed from the date a Montana Consumer paid all fees due ("PIF") to filing.⁶ The Emerson case far exceeded this average, having been filed 309 days after the PIF date. At least 11 of the 109 cases were filed more than 200 days from PIF date, and in one instance, the delay in filing from the PIF date was 503 days.⁷ UpRight Law contends that not all delays were attributable to its conduct and were at times attributable to circumstances outside of its control.

57. UpRight Law represents and stipulates that, as of the date of this Motion, based on discovery conducted and produced in this litigation, it has approved refunds for, or made refunds to, Montana Consumers for whom UpRight Law did not file a bankruptcy case in the total amount of at least \$300,000.00.⁸

⁵ These figures are derived from Bates # 6303-A produced to the UST by UpRight Law.

⁶ Documents Bates #s 3289-3291 indicate the following average times from PIF to filing for 2015, 2016, and 2017: 2015, Ave. 161 days; 2016, Ave. 113 days; 1Q2017, Ave. 103 days; 2Q2017, Ave. 110 days; 3Q 2017, Ave. 74 days; 4Q 2017, Ave. 55 days.

⁷ These figures are derived from Bates #s 003289 – 003291 produced to the UST by UpRight Law.

⁸ This approximate figure represents the best efforts of UpRight Law based upon the most up-to-date information available. This figure does not include the \$6,697.99 amount that was garnished from Ms. Emerson's wages, for which UpRight Law issued a reimbursement check to Womack.

58. UpRight Law further represents and stipulates that, as of the date of this Motion, it retained fees paid by Montana Consumers for whom UpRight Law did not file a bankruptcy case in the amount of at least \$43,180.00.⁹ UpRight Law further represents that the amounts retained were determined based on its good faith efforts to determine the work it performed on behalf of the clients and the portions of the fees paid that were earned and unearned.

59. UpRight Law further represents and stipulates that of the Montana Consumers for whom UpRight Law did not file a bankruptcy case and who paid a part or all of the attorney and filing fees to UpRight Law:

- a. Approximately 145 paid \$500.00 or less.
- b. Approximately 36 paid between 500.01 and \$1,000.00.
- c. Approximately 189 were approved for or received full refunds.
- d. Approximately 105 received a partial or no refund and paid \$500.00 or less in attorney and filing fees.¹⁰

60. In the interest of resolving the litigation in these matters, the UST and UpRight Law agree that the issues addressed in the UST Motions are resolved pursuant to the terms described herein. Those terms include, but are not limited to, UpRight Law's agreement to both a practice moratorium before the United States Bankruptcy Court for the District of Montana and monetary relief.

⁹ This approximate figure represents the best efforts of UpRight Law based upon the most up-to-date information available.

¹⁰ This approximate figure represents the best efforts of UpRight Law based upon the most up-to-date information available.

Agreed Upon Terms

61. To resolve the dispute between the UST and UpRight Law, the parties agree to the following specific terms:

- a. **Effective Date:** The “Effective Date” as used below, is the fifteenth day after entry of the appended agreed order resolving the UST Motions (the “Order”).
- b. **Intake Moratorium:** Beginning July 2, 2018, and continuing through and including July 2, 2024, UpRight Law, directly or indirectly, shall be prohibited from undertaking the representation of or accepting any funds from any person for whom proper venue of a bankruptcy case would be the United States Bankruptcy Court for the District of Montana.
- c. **Practice Moratorium:** Beginning July 2, 2018 and continuing through and including July 2, 2024, UpRight Law, directly or indirectly, shall not accept or represent clients (including by referring potential clients to any attorney, whether affiliated with UpRight Law or not) or render services in connection with bankruptcy cases or matters brought in, pending before, or for which proper venue would be the United States Bankruptcy Court for the District of Montana (the “Practice Moratorium”), including the preparation and filing of bankruptcy petitions. The Practice Moratorium shall not apply to the practice or case filing(s) of local partner attorneys acting separate and apart from their affiliation with UpRight Law.
 - i. **Limitation on Advertising/Solicitation:** UpRight Law shall not solicit or advertise the firm’s provision of bankruptcy related services or seek to be retained in connection with contemplated or pending bankruptcy filings

before the United States Bankruptcy Court for the District of Montana during the Practice Moratorium and shall not accept any fees or payments in any form from any individual for whom proper venue for a bankruptcy filing is the District of Montana. In the event an assisted person has a change in circumstances that results in venue being proper in the District of Montana, UpRight Law shall notify the client that it is unable to serve the client, and that client shall be refunded all fees.

ii. Disclosure on Website: During the Practice Moratorium, UpRight Law shall include a conspicuous statement on the UpRight Law website homepage disclosing that it cannot provide bankruptcy related services to, or file bankruptcy cases on behalf of, clients for whom proper venue for a bankruptcy filing is the United States Bankruptcy Court for the District of Montana.

d. **Monetary Relief**: In addition to the refunds already made to date, UpRight Law agrees to pay monetary relief of \$12,000.00.

i. Of this total monetary relief, UpRight Law shall pay \$950.00 to Montana Consumer #1 and \$741.00 to Montana Consumer #2.¹¹ On or before the Effective Date, UpRight Law shall provide certified funds payable to Montana Consumer #1 and Montana Consumer #2. These funds shall be delivered to the Acting United States Trustee, Gregory M. Garvin at:

Office of the U.S. Trustee
1961 Stout Street, #12-200

¹¹ The names of these Montana Consumers are on Exhibit A to the Agreed Motion, which has been filed under seal. These two Montana Consumers testified under oath in depositions taken in July of 2019 that they had not received any legal services.

Denver, CO 80294

- ii. The Office of the U.S. Trustee will assure delivery of the certified funds to Montana Consumer #1 and Montana Consumer #2.
 - iii. UpRight Law shall pay the remaining amount of \$10,309.00 to the United States Treasury within 90 days after the Effective Date as a civil penalty under section 526(c)(5) of the Bankruptcy Code.
- e. **Post-Moratorium Effect:** At the conclusion of the Practice Moratorium:
- i. If UpRight Law wishes to resume practice in the District of Montana as otherwise permitted by applicable law, nothing in the Order shall be construed to waive any rights of the UST to challenge UpRight Law's post-moratorium filings or engagements, and the UST shall not be estopped or in any way impaired in subsequent litigation from introducing any relevant evidence in such action including, but not limited to, evidence related to UpRight Law's representation of the Daileys and Ms. Emerson.
 - ii. After the conclusion of the Practice Moratorium and prior to soliciting as clients, entering into a representation agreement with, or accepting any fees from any resident of the District of Montana, UpRight Law shall file on the docket of the Dailey and Emerson cases written notice of its intention to solicit as new clients, enter into representation agreements with, or accept any fees from prospective bankruptcy debtors for whom venue would be proper in the District of Montana. This notice must include a declaration signed under penalty of perjury by a manager of

UpRight Law authorized to bind the company certifying that UpRight Law has a sufficient number of partner attorneys licensed and located within the state of Montana to file bankruptcy cases without undue delay, and is not, directly or indirectly, participating in any program from which it derives fees as a result of prospective clients being advised to impair collateral or incur new debt for the purpose of paying such fees.

f. **Miscellaneous Provisions:**

- i. By operation of the Order, all claims, causes of action, and requests for relief that were brought or could have been brought in the Dailey and Emerson proceedings, as of the date of the filing of the Order approving this Motion, by the UST will be fully and finally resolved and released. However, such resolution shall not (a) be an admission by the UST that UpRight Law, as currently structured, constitutes a “partnership” or “professional association” for purposes of 11 U.S.C. § 504, or that it is properly organized, maintained, and/or structured as a “law firm,” or (b) otherwise bar or preclude any party to the Order from contesting in any jurisdiction any present or future conduct or business practices of UpRight Law, or any of its current or future partners, members, independent contractors, attorneys, employees, officers, agents, subsidiaries, insurers, or other representatives.
- ii. The United States Bankruptcy Court for the District of Montana shall retain exclusive jurisdiction over all matters in the Order, including

disputes arising under, and the construction, interpretation, modification, and enforcement of the Order.

- iii. Notwithstanding the resolution of the Motion, the UST (for purposes of this paragraph, UST shall mean, and include, the UST and any other United States Trustee or Acting United States Trustee) and UpRight Law reserve all rights and relief available to them in any other case or proceeding in any jurisdiction now pending or filed subsequent hereto, including the District of Montana.
- iv. Any and all representations and warranties of UpRight Law or stipulations relating to the existence, adequacy of, or compliance by UpRight Law with UpRight Law's policies, practices, and procedures during and after the periods at issue shall be made by and constitute the representations of UpRight Law only. For the avoidance of doubt, the UST does not have direct knowledge of, has not confirmed, and is not bound by any assertions of UpRight Law made herein relating to the existence of, adequacy of, or compliance by UpRight Law with UpRight Law's policies, practices, and procedures during and after the time periods at issue. UpRight Law recognizes that the UST is entering into this agreement and the Order in reliance on the material accuracy of the factual representations set forth herein and that in the event of fraud or misrepresentation of any material fact the UST may seek relief from the Order in accordance with Fed. R. Civ. P. 60(b) and other authorities.

- v. UpRight Law consents and agrees to fully and finally release the UST and all current, and former, employees of the United States Trustee Program from any and all claims that could have been asserted in the Dailey and Emerson proceedings as of the date of the filing of the Order under the Equal Access to Justice Act, 28 U.S.C. § 2412, based on the UST's investigation and prosecution of claims related to the facts and circumstances set forth in this Motion and the Order.
- vi. On or before thirty days after the Effective Date, UpRight Law shall file in both the Dailey and Emerson cases a certification¹², under penalty of perjury, disclosing:
 - A. The date UpRight Law provided refunds to Montana Consumers, identifying each such Montana Consumer by a unique alphanumeric identifier, and a breakdown of the amount refunded/paid to each such Montana Consumer.
 - B. Montana Consumers for whom UpRight Law either (i) issued refunds but has not yet confirmed the funds were received, or (ii) has been unable to reach, identifying each such Montana Consumer by a unique alphanumeric identifier, and a breakdown of the amount approved to be refunded/paid to each such Montana Consumer.
- vii. During the sixty-day period following the Effective Date, UpRight Law will undertake to reach and issue/pay refunds to the Montana Consumers

¹² The parties agree that the referenced certification will represent the best efforts of UpRight Law based upon the most up-to-date information available at the time of the certification.

referenced in Paragraph 61(f)(vi)(B) above, and on or before sixty days after the Effective Date, UpRight Law shall file in both the Dailey and Emerson cases a certification¹³, under penalty of perjury, disclosing:

- A. The date UpRight Law provided refunds to Montana Consumers, identifying each such Montana Consumer by a unique alphanumeric identifier, and a breakdown of the amount refunded/paid to each such Montana Consumer.
- B. Montana Consumers for whom UpRight Law either (i) issued refunds but has not yet confirmed the funds were received, or (ii) has been unable to reach, identifying each such Montana Consumer by a unique alphanumeric identifier, and a breakdown of the amount approved to be refunded/paid to each such Montana Consumer.
- C. For each Montana Consumer referenced in Paragraph 61(f)(vii)(B) above, UpRight Law shall place the approved refund amount in an IOLTA account for the consumer and handle those funds in accordance with applicable Montana law regarding escheatment. UpRight shall also confirm in its certification that it has done so.

62. The Order will not bind or prejudice the rights and claims of non-parties.

63. Closure of this case shall not excuse compliance with the terms of this Motion, or the attendant Order and the parties may seek to reopen this case to enforce or otherwise seek relief under the Order.

¹³ The parties agree that the referenced certification will represent the best efforts of UpRight Law based upon the most up-to-date information available at the time of the certification.

64. If any time period in the Order is stated in days, the parties shall: (a) exclude the day of the event that triggers the period; and (b) count every subsequent day, including intermediate Saturdays, Sundays and legal holidays and include the last day of the period, but if any time period set forth in this Order expires on a Saturday, Sunday or legal holiday, such time period shall continue to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

Dated: March 9, 2021.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana