ORDERED.

Dated: February 03, 2021

Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Benjamin H. Yormak,

Debtor.
_____/

Case No. 2:15-bk-04241-FMD
Chapter 7

ORDER (1) GRANTING DEBTOR'S MOTION FOR SUMMARY JUDGMENT AS TO CREDITOR'S UNLICENSED PRACTICE OF LAW; (2) SUSTAINING DEBTOR'S SECOND AMENDED OBJECTION TO CLAIM AND DISALLOWING CLAIM NO. 4-2; (3) DENYING CREDITOR'S MOTION FOR SUMMARY JUDGMENT REGARDING UNLICENSED PRACTICE OF LAW; (4) DENYING DEBTOR'S MOTION TO BAR CREDITOR'S PROPOSED EXPERT WITNESS; AND (5) DENYING CREDITOR'S MOTION TO RESCIND PROTECTIVE ORDERS
[Doc. Nos. 818, 397, 798, 794, and 833]

This case involves two attorneys, a father and his son. As early as 2007, a Canadian attorney, "Dad," was interested in developing a law practice in Florida. In 2009, "Son," the debtor in this Chapter 7 case, graduated from law school and was admitted to practice law in Florida.

In 2011 and 2012, Dad and Son entered into oral, and then written, "consulting" agreements (the "Consulting Agreements"). In the Consulting Agreements, Dad and Son agreed to develop a law practice in Florida (the "Law Firm"), for Son and the Law Firm to pay Dad "consulting fees," and for Dad to be paid 70% of the attorney's fees to be generated by the Law Firm in two significant cases, a class action case and a qui tam case. Together, Dad and Son successfully built the Law Firm; they

represented numerous clients, including the class representative in the class action case and the whistleblower in the qui tam case.

But when Dad and Son's relationship deteriorated, Dad terminated the Consulting Agreements and sued Son for breach of contract. In his lawsuit, Dad sought to recover the consulting fees he claimed he was due and to recover his share of the attorney's fees that the Law Firm expected to receive in the class action case and the qui tam case.

While Dad's lawsuit was pending, Son filed a petition for relief under Chapter 13 of the Bankruptcy Code and, a few months later, converted the case to a Chapter 7 case. Dad filed a proof of claim in the bankruptcy case for the amounts he claimed he was due under the Consulting Agreements.[1] Son objected to Dad's claim on several grounds, including on the ground that the Consulting Agreements are void and unenforceable because they provide for the unlicensed practice of law (the "UPL Issue").[2]

Dad and Son then embarked on years of litigation in the bankruptcy court.[3] This litigation has involved numerous discovery disputes; the parties' combined thirteen motions for summary judgment;[4] Dad's eight appeals of this Court's rulings to the District Court;[5] and Dad's three appeals to the Eleventh Circuit Court of Appeals.[6]

[1] Claim No. 4-1 and amended Claim No. 4-2.
[2] Doc. No. 397.
[3] As of the date of this opinion, there are 850 docket entries in Son's bankruptcy case, the vast majority relating to Son's dispute with Dad.
[4] Dad has filed eight motions for summary judgment (Doc. Nos. 70, 94, 328, 329, 428, 493, 575, and 798); Son has filed five motions for summary judgment (Doc. Nos. 77, 290, 418, 465, and 818).
[5] United States District Court, Middle District of Florida Case Nos. 2:17-cv-00073-SPC, 2:18-cv-00309-JES, 2:18-cv-00793-JES, 2:19-mc-00015-JES-MRM, 2:19-mc-00016-SPC-MRM, 2:19-cv-00258-SPC, 2:20-cv-00384-JES, and 2:20-cv-00385-JES.
[6] United States Court of the Appeals for the Eleventh Circuit Case Nos. 17-13239, 18-12623, and 19-12681.

At a January 23, 2020 hearing, after consultation with the parties,[7] the Court set Son's objection to Dad's claim for trial on the dispositive issue of whether the Consulting Agreements are void and unenforceable because they provided for the unlicensed practice of law.[8] In the parties' most recent motions for summary judgment, the Court is presented, for the first time, with undisputed facts regarding the nature of Dad and Son's professional relationship and Dad's performance under the Consulting Agreements.

After careful consideration of the record, the Court concludes that the undisputed facts establish, as a matter of law, that the Consulting Agreements provided for Dad's unlicensed practice of law. Therefore, the Court finds that the Consulting Agreements are void as a matter of public policy and unenforceable. Accordingly, the Court will grant Son's motion for summary judgment,[9] deny Dad's motion for summary judgment,[10] and sustain Son's objection to Dad's proof of claim.[11]

I. THE MOTIONS FOR SUMMARY JUDGMENT

A. The Motions

Both parties have moved for summary judgment on the UPL Issue. Dad contends that the services he performed for the Law Firm were either permissible under federal law or permissible supportive services, such as consulting with and mentoring Son. Dad further contends that Son remained the supervising lawyer, and that Dad's expert witness has concluded that Dad did not engage in the unlicensed practice of law.[12]

---

[7] Doc. No. 708, Transcript of January 23, 2020 hearing.
[8] Doc. No. 704. The trial date was continued from time to time due to COVID-19 pandemic restrictions and was cancelled when the Court took the pending summary judgment motions under advisement (Doc. No. 824).
[9] Doc. No. 818.
[10] Doc. No. 798.
[11] Doc. No. 397.
[12] Doc. No. 798. Dad attached twenty exhibits to his motion. The exhibits include the expert report of Richard A. Greenberg, Esquire, deposition transcripts, emails, primarily between Dad and Son, a letter from Son to The Florida Bar, and the declaration of Stephen Fortune.

Son's response to Dad's motion for summary judgment includes a cross-motion for summary judgment on the UPL Issue.[13] Son asserts that Dad's claim in the bankruptcy case should be disallowed because it arises from Dad's unlicensed practice of law.

The parties have each raised additional issues in their motions, primarily relating to whether the Consulting Agreements were terminable under the "at will" doctrine. Because the Court finds that its determination on the UPL Issue is dispositive of the motions, the Court does not address the secondary issues.

B. Dad's Request that the Court Exclude Son's Evidence

In his response to Son's motion for summary judgment, Dad complains that Son withheld documents that were responsive to Dad's discovery requests—primarily Dad's own notes and emails between Dad and Son—and that Son has now filed these documents as exhibits in support of Son's motion.[14] Dad contends that the documents attached to Son's motion should not be considered by the Court for two reasons: first, because Son previously withheld the documents from production on the grounds that they were protected by the attorney-client privilege; and second, because Son "cherry-picked" the documents from Law Firm client files to present the view most favorable to Son's position.[15]

The Court denies Dad's request to exclude the documents for the following reasons:

First, Dad has not shown that Son failed to produce the emails and notes in discovery. On August 3, 2020, Dad filed his *Motion to Rescind Protective Orders Relating to Debtor Clients Based on Debtor Waiver of Attorney-Client Privilege in His Response Cross-Motion for Summary Judgment, and Permit Creditor Discovery and Contact Including Subpoenas and Depositions, and for Sanctions*

[13] Doc. No. 818. Son separately filed 108 exhibits to his motion. The exhibits include emails, deposition excerpts, handwritten notes, affidavits, and other documents. (Doc. No. 822).
[14] Doc. Nos. 825, 848.
[15] Doc. No. 825, p. 12.

Against Debtor and His Counsel(s) (the "Motion to Rescind").[16] In his response to the Motion to Rescind, Son asserts unequivocally that "[a]ll 108 exhibits attached to [Son's] Motion for Summary Judgment were either Bates-labeled and previously served to [Dad] on September 30, 2019 or were [deposition] transcripts."[17] Son's assertion is consistent with the Court's September 18, 2019 order that directed Son to produce the documents requested by Dad by September 30, 2019.[18] And the Court notes that the documents attached to Son's motion are Bates-stamped "B.Yormak*****," which is also consistent with Son's production of the documents to Dad.

Second, the documents are relevant to the dispositive issue presented by the motions—whether Dad engaged in the unlicensed practice of law. The challenged emails and notes all relate to the Law Firm's clients and Dad's involvement in their cases, including his efforts to gather information about the cases and his advice and instructions to Son about the clients' claims. In fact, in Dad's own summary judgment motion, Dad submitted emails between Dad and Son relating to specific client cases.[19] As the Court in *In re Brent* stated, the "principal reason for admitting all relevant evidence is that the probability of ascertaining the truth increases as the trier's knowledge grows."[20]

Third, in determining whether to exclude documents that were produced after a discovery deadline, courts may consider the prejudice or surprise to the party against whom the evidence is offered.[21] Here, the emails submitted by Son are primarily between Dad and Son, and between Dad and other lawyers working on the clients' cases. In *Reiner v. Eringer*, the court held that a party

[16] Doc. Nos. 833, 848, ¶ 3.
[17] Doc. No. 836, ¶ 11.
[18] Doc. No. 643, ¶ 2.d.
[19] Doc. Nos. 798-8, 798-15.
[20] *In re Brent*, 539 B.R. 788, 797 (Bankr. S.D. Ohio 2015)(quoting 2 Jack B. Weinstein & Margaret, *Weinstein's Federal Evidence*, § 402.02 (3d ed. 2015)(citations omitted), and citing Fed. R. Evid. 401, 402).
[21] *Reiner v. Eringer*, 2020 WL 1172726, at *2 (C.D. Cal. Jan. 2, 2020)(quoting *Lanard Toys Ltd. V. Novelty, Inc.*, 375 F. App'x 705, 713 (9th Cir. 2010)).

"cannot claim any prejudice regarding his own emails."[22] Similarly, the handwritten notes submitted by Son are Dad's own notes made during client meetings or during Dad's review of client files. Dad cannot claim that he is prejudiced by the Court's consideration of his own notes.

Fourth, in determining whether a discovery violation is harmless, courts may consider the ability of the affected party to cure the prejudice.[23] Here, Dad has had ample opportunity to address the emails and notes that were attached as exhibits to Son's motion, both in his response to Son's summary judgment motion and in his sur-reply.[24] In his response and sur-reply, Dad does not deny that he made the statements contained in the emails, and he never asserts that the emails and notes are not accurate copies of the original documents. In fact, Dad's response includes a "point by point" commentary on Son's motion that refers to a number of the exhibits submitted by Son,[25] and Dad appears to adopt the substance of the emails and notes by stating that Son's motion, comprised of "86 pages and 108 exhibits," actually supports Dad's position.[26] The Court finds that Dad was not prejudiced by Son's attachment of the documents to his summary judgment motion.

For the foregoing reasons, the Court will deny Dad's Motion to Rescind.

C. Summary Judgment Standard

Under Federal Rule of Civil Procedure 56(a), a party "may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Summary judgment is appropriate when the moving party shows that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law.[27] A factual dispute

[22] 2020 WL 1172726, at *2.
[23] *Id.*
[24] Doc. Nos. 825, 848.
[25] Doc. No. 825, pp. 22-42.
[26] Doc. No. 825, p. 6.
[27] Fed. R. Civ. P. 56(a), made applicable to this contested matter by Fed. R. Bankr. P. 9014(c).

is genuine if the evidence is such that the fact finder could return a verdict for the nonmovant. Facts are material if, under applicable law, they would affect the outcome of the suit.[28]

The moving party bears the initial burden of showing the absence of a genuine issue of material fact by identifying portions of the pleadings, depositions, answers to interrogatories, admissions, and affidavits that support the motion.[29] In deciding whether the movant has met this burden, the court must view all record evidence and draw all reasonable inferences in favor of the nonmoving party.[30] If the movant makes such an affirmative showing, the burden then shifts to the nonmoving party to go beyond the pleadings and to designate specific facts showing there is a genuine issue of material fact.[31]

The standard is the same for cross-motions for summary judgment.[32] In such cases, the court must evaluate each motion on its own merits and draw all reasonable inferences against the party whose motion is under consideration. However, in evaluating cross-motions, courts may "assume that there is no evidence which needs to be considered other than that which has been filed by the parties."[33]

II. THE UNDISPUTED FACTS

Having carefully considered both parties' filings, the Court concludes that there are no factual disputes. The undisputed facts are summarized as follows.

---

[28] *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986)(cited in *In re Yormak*, 2019 WL 10744973, at *1 (Bankr. M.D. Fla. June 6, 2019)).
[29] *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)(cited in *In re Yormak*, 2019 WL 10744973, at *1).
[30] *In re Harwell*, 628 F.3d 1312, 1316 (11th Cir. 2010)(citing *Loren v. Sasser*, 309 F.3d 1296, 1301-02 (11th Cir. 2002)(cited in *In re Yormak*, 2019 WL 10744973, at *1).
[31] *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993)(cited in *In re Yormak*, 2019 WL 10744973, at *1).
[32] *In re Van Arsdale*, 2017 WL 2267021, at *2 (Bankr. N.D. Cal. May 18, 2017)(citing *Taft Broadcasting Co. v. United States*, 929 F.2d 240, 248 (6th Cir. 1991)).
[33] *In re Van Arsdale*, 2017 WL 2267021, at *2(quoting *Greer v. United States*, 207 F.3d 322, 326 (6th Cir. 2000)).

A. Background

In 1979, Dad graduated from the University of Western Ontario School of Law in Canada. He opened a law firm in 1981, and has been licensed to practice law in Ontario, Canada, for more than 35 years. In 2013, Dad was admitted to practice law in the State of Massachusetts. Dad claims to specialize in litigation, disability, employment, and workers' compensation matters.

On June 14, 2007, while Son was a student at the University of Maine School of Law, Dad asked him to research some preliminary issues under Florida law for the creation of "SRY Consulting."[34] Specifically, Dad asked Son to research business registrations in Florida and Florida Bar regulations:

> . . . which I might encounter a difficulty with my consulting firm (*Obviously the consulting firm cannot be seen to be doing attorney work – merely advising*).[35]

On June 15, 2007, Dad sent Son an email asking him to conduct additional research:

> As discussed pl. research all case law (Fla.) re: defining what is considered "legal" i.e. prosecutions involving illegal practice of law by non-lawyers and out of state lawyers.
> How did Court define "practicing law"?
>
> Another question is parameter i.e. limits for out of state lawyers to render advise [sic]-
>
> You may also resource Florida Bar proceedings. (Discipline proceedings by Fla. Bar. Assn.)[36]

In 2009, Son graduated from law school and he was admitted to The Florida Bar in September 2009. Son initially worked in the employment litigation practice of a small law firm in Fort Myers, Florida, but the law firm terminated that practice in 2010.[37]

---

[34] Dad's initials are "SRY."
[35] Doc. No. 822-3 (emphasis added). NOTE: Doc. No. 822 consists of the exhibits to Son's summary judgment motion and response to Dad's summary judgment motion. The exhibits were filed under seal to protect client confidentiality pursuant to the Court's Order dated July 17, 2020 (Doc. No. 821).
[36] Doc. No. 822-4.
[37] Doc. No. 818, ¶ 14.

B. The Formation of the Law Firm

On October 19, 2010, when Son had been licensed to practice law in Florida for just over a year, Dad sent him an email saying,

> I have come up with what may be a brilliant idea to address your situation on a number of fronts, *as well as mine*. Let's see if we can talk tomorrow.[38]

On October 25, 2010, Son sent Dad an email under the subject "BHY Disability Group" which referred to an attachment with "typed up notes."[39] The typed notes included a "Proposal to BWB" on one page,[40] and an outline titled "BHY/SRY Arrangement" (referring to Son and Dad) on the following pages.[41]

The "BHY/SRY Arrangement" included the following terms:

(1) "SRY will act as consultant to BHY Disability Group;"

(2) "SRY will charge monthly fee of $10,000, which may be adjusted in the course of business based upon BHY gross receipts;"

(3) "Unofficially, fees received will be split" in different percentages between SRY and BHY depending on whether pleadings are filed in the representation;

(4) "Advertising costs will be split evenly between BHY and SRY;"

(5) "SRY will have same physical address as BHY;"

(6) "SRY keeps fees generated from SSD [Social Security Disability] cases;" and

(7) "SRY will keep track of his own hours."[42]

[38] Doc. No. 822-5 (emphasis added).
[39] Doc. No. 822-6. Son's initials are BHY.
[40] Doc. No. 822-6, p. 2. BWB appears to refer to an unrelated law firm.
[41] Doc. No. 822-6, pp. 3-6.
[42] Doc. No. 822-6, p. 3.

Under the heading "Promotion," the typed notes listed the Yellow Pages, with "SRY to use corner of BHY ad" and "SRY to advertise in Veteran's Affairs," and "Website – James to provide more info."[43] The "BHY/SRY Arrangement" also included a "BHY TO DO" list.[44]

In March 2011, Son formed Yormak Disability Law Group (the "Law Firm"), with an office in Bonita Springs, Florida.[45] A website, www.yormaklaw.com, was created for the Law Firm. The website included pictures and biographical information for both Son and Dad, describing Son (at that time a two-year lawyer) as "Benjamin H. Yormak, Esq., J.D., A.B. – Founding and Managing Partner," and Dad as "Steven R. Yormak, B.A., Dip. J., L.L.B. – Office Manager & Senior Consultant." The website listed Dad's biographical information as:

> A [sic] extensive career in litigation, disability and worker's compensation that has spanned nearly 30 years, Mr. Yormak is now a professional consultant here in Florida. A native of New York City, he received his undergraduate degree from Tufts University before graduating from the University of Western Ontario School of Law. Mr. Yormak has always been committed to fighting for the rights of the injured and disabled, opening his own firm in 1981. Having recently moved to the Sunshine State, and acting as a consultant in Florida, Mr. Yormak's successes in this highly complex and challenging field have been unparalleled. His advice is often sought out by other attorneys for his depth of knowledge and experience in disability insurance and litigation. Mr. Yormak is a member of the Association of Trial Lawyers of America (ATLA), now known as the American Association for Justice (AAJ). The Yormak Employment & Disability Law is fortunate to have such an industry asset, being able to draw on his experience with thousands of insurance claims all over North America.[46]

The Law Firm advertised in the Yellow Pages as:

YORMAK
Disability Law Group
Your SW Fla. Attorneys

[43] Doc. No. 822-6, p. 5.
[44] Doc. No. 822-6, p. 6. Dad attached the single sheet "BHY TO DO" list to his motion as Exhibit 18 (Doc. No. 798-19).
[45] Doc. No. 818, ¶ 15.
[46] Doc. No. 822-12.

The Yellow Pages advertisement prominently stated in a large bold font, "With 30 Years Experience, We Know The Income Benefits You Should Be Getting." One corner of the ad listed Son with his office telephone number, address, and website address. The opposite corner of the advertisement listed "SRY Consulting, Inc." above "Social Security, Veteran's Affairs, Government Benefits," and offered a free consultation at a telephone number different from that listed for the Law Firm.[47]

Business cards were printed for Dad. On his business cards, Dad's name appears under the Law Firm's name, "Yormak Disability Law Group," as

Steven R. Yormak *B.A., Dip. J., L.L.B.*

Dad's business card did not describe Dad's position with the Law Firm as "Office Manager" or "Senior Consultant." The address and telephone number on the business card were the same as that listed for the Law Firm in the Yellow Pages advertisement.[48]

C. Dad and Son enter into the Consulting Agreements.

On August 18, 2012, Son and Dad executed three separate written agreements, collectively referred to as the "Consulting Agreements."

The first agreement, titled *Consulting Agreement* (the "Main Consulting Agreement"),[49] recites that it confirms "a previous ongoing oral agreement" between Son and Dad, that Dad has expertise and experience in areas beneficial to Son, that Son had retained the expert services of Dad since May 1, 2011, that Son confirms the retention of Dad as consultant since May 1, 2011, and that Dad "will continue to provide services and has been compensated and will continue to be compensated at the agreed rate of $20,000 per calendar month payable since May 1, 2011."

[47] Doc. No. 822-17.
[48] Doc. No. 822-10.
[49] Claim No. 4-2, p. 11.

The Main Consulting Agreement also provides for a "payment plan" whereby Dad "will be paid bi-annually for fees incurred and owed to [Dad] according to Schedule A1 and A2."[50] In the event of termination, the Main Consulting Agreement provided for Dad to be paid ". . . on the basis of hours expended . . . (1100 hours to July 1, 2012), at the rate of $600/hour" pursuant to attached schedules.[51] Schedule A1 to the Main Consulting Agreement is a "2012 calculation," Schedule A2 is a "2013 and ongoing calculation," and Schedule A3 is a "consultant payment plan" under which Son agreed to pay Dad an amount based on 67% of the gross fees received by Son from seven named files and "[a]ny other files by mutual agreement and/or any files [Dad] has provided services on."[52]

The second agreement, titled *Consulting Agreement Re: Funari Class Action* (the "Class Action Agreement"),[53] relates to attorney's fees anticipated to be earned by the Law Firm in connection with the CBL Class Action discussed below. The Class Action Agreement recites that Son desires to retain the expert services of Dad, "which [Son] has determined is essential and key to the successful completion of this matter [the CBL Class Action] as a key participant to render advise [sic] in the best interests of the firm and client." Under the Class Action Agreement, Son agreed to pay "70% of fees received in this file to a charitable organization as directed and designated by" Dad, and Son and Dad agreed to execute a partnership agreement when Dad "becomes a member of any State bar in the U.S."

The third agreement, titled *Consulting Agreement Re: Barnes Qui Tam* (the "Qui Tam Agreement"),[54] is identical in form and content to the Class Action Agreement, except that it relates to the Qui Tam Action described below.

[50] Claim No. 4-2, p. 12.
[51] Claim No. 4-2, p. 13.
[52] Claim No. 4-2, pp. 15-20.
[53] Claim No. 4-2, pp. 23-24.
[54] Claim No. 4-2, pp. 25-26.

D. Dad provides services to the Law Firm's clients.

On February 28 and March 1, 2011, Dad and Son communicated by email to coordinate the opening of the Law Firm.[55] Son asked Dad when he wanted to meet with two identified new clients, and plans were made to meet with the clients the same week.[56] On March 2, 2011, Dad sent Son his drafts of the Law Firm's initial "client documents," including an acknowledgement and retainer agreement to be signed by the Law Firm's clients.[57] Over the next eighteen months, Dad and Son met with at least twenty Law Firm clients and Dad actively participated in the management of their cases. Two primary cases in which Dad was involved are the CBL Class Action and the Qui Tam Action.

1. The CBL Class Action

In August 2011, Dad met with Son and a potential client, Thomas Funari.[58] Mr. Funari initially approached the Law Firm regarding his possible wrongful termination claim against his former employer, CBL & Associates Properties, Inc. ("CBL"), a national shopping mall operator. Dad asserts that during this initial conference with Mr. Funari, he (Dad) recognized the elements of a putative class action against CBL to be brought on behalf of tenants of shopping malls owned or operated by CBL (the "CBL Class Action").[59]

The CBL Class Action arose from allegations that CBL and a survey company engaged in a conspiracy to defraud CBL's tenants by marking up their electric rates and inflating their kilowatt hour usage.[60] As Dad testified at his March 11, 2020 deposition,

Q: How did you know it was a class action?

A: I discovered that in one of the meetings previously.

---

[55] Doc. No. 822-9.
[56] Doc. No. 822-9, pp. 2-3.
[57] Doc. No. 822-78. Dad later directed changes to the Law Firm's client documents in January 2012 (Doc. No. 822-87).
[58] Doc. No. 822-72, p. 2.
[59] Doc. No. 825, pp. 135-36.
[60] Doc. No. 733, pp. 5-6.

> Q: You discovered that it was a class action or you – that [Son] told you it was a class action?
>
> A: *Oh, for gosh sakes, no. He [Son] had no idea*. He was interviewing Mr. Furnari [sic] on the basis of a normal employment file, and I was listening as usual. And he asked me to attend in case there was a psychological disability issue. And I was listening to all the features that jumped out at me.
>
> This was a class action, and he didn't know it. I said: Can we just interrupt for a section – a second.
>
> We went out in the hallway, and I said: Do you realize what Tom Furnari [sic] is telling you? *This is a ready-made class action, and we need to ask about that*.[61]

Between August 2011 and July 2012, Dad asserts that he was involved in at least seven meetings in which the subject was the CBL Class Action, and at least twenty-five emails in which the subject was Mr. Funari, the CBL Class Action, or the review of leases for the CBL Class Action.[62] In an email exchange with Son dated March 22, 2012, Dad rejects the proposal of a law firm to serve as co-counsel in the CBL Class Action, stating that, "We need to canvass greener fields at a real partnering situation."[63]

On August 28, 2012, Dad made handwritten notes regarding CBL's shopping mall locations, the identification of specific tenants as potential plaintiffs, and the consideration of attorneys to serve as co-counsel.[64] On September 10, 2012, Dad sent an email to Matthew Mustokoff, a Pennsylvania attorney, with the subject line "Possible Class Action," in preparation for a telephone conference with Mr. Mustokoff. Dad signed the email "Steven Yormak, Attorney."[65] And on September 24, 2012, Dad

[61] Doc. No. 798-5, p. 25, l. 15 – p. 26, l. 8 (emphasis added).
[62] Doc. Nos. 822-2, p. 2, 822-72 (*Summary of Hours for Consultant S. Yormak 2011 to July 1, 2012*, prepared by Dad).
[63] Doc. No. 822-88.
[64] Doc. No. 822-27.
[65] Doc. No. 822-18.

emailed Son about the "energy survey people," and later wrote that he would like to speak to them [the energy survey people] before the meeting with the other lawyers.[66]

On September 28, 2012, Dad traveled to Philadelphia—without Son—to meet Mr. Mustokoff and his associates regarding their law firm's potential engagement as co-counsel in the CBL Class Action. At this meeting, Dad represented the interests of both the Law Firm and the Law Firm's client. Dad documented the meeting in a six-page memorandum in which he wrote:

> We are still are [sic] the "posturing" stage to some degree between this Phil. firm and us. . . .
>
> When I posed the question to Matt/Naumon neither one could come up w a defence [sic], reasonable or otherwise to the co. overcharging for energy. I pointed out (later confirmed by Joe) that this represents a statutory violation which while not setting up its own independent remedy is still clearly a statutory violation and as such the defendants are liable. . . .
>
> I agreed we would provide the following which I would want you to send me, then I would forward it on, namely:
>
> 1) Written results of FPL energy audit;
> 2) Copy or cite of Delaware case;
> 3) Summary of FPL energy usage and charge as compared to actual being charged. . . .
>
> . . .
>
> He [Joe] said they have an associate who is a State Senator and has political connections.
> I said he would at least give us a lay of the land (given the fact our Circuit in Fl. is not good, Mass. is not very promising nor is Pa.)
>
> I replied-
> -We are not referring anything to them
> -We are partnering, not referring a file
> -*We are delivering a class action "gift wrapped"*
>
> . . .
>
> -Somewhat (but not really) tongue in cheek I said in our firm's history we do not take less than 33 1/3%

[66] Doc. No. 822-99.

> -Since we are partnering we would be contributing significantly in lawyers time (unlike his referral lawyers)
>
> . . .
>
> As we discussed if they have likely at anytime 3-10 lawyers (including associates) working on this file to our 2, at best we would share only 20-40% of lawyers time which would likely mean almost no increase to our guaranteed 20%. . . .
>
> . . .
>
> We, Matt, Naumon and I [agreed] that we do only need 1 putative plaintiff which we already have.
>
> . . .
>
> We agreed when I become barred in Mass. we will reflect this new co-counsel agreement w me at that point.
>
> . . .
>
> All in all a harmonious meeting among 3 lawyers (Matt, Naumon, myself) until Joe entered . . . .[67]

Dad's memorandum described—in Dad's own words—that Dad was the Law Firm's sole representative in negotiating a "partnership" with the Philadelphia attorneys ("I said in our firm's history we do not take less than 33 1/3%") and that his discussions with the Philadelphia attorneys included his analysis of: (a) the merits of the CBL Class Action, including allegations that CBL illegally overcharged for energy; (b) the selection of the venue in which in which to file the CBL Class Action ("our Circuit in Fl. is not good, Mass. is not very promising nor is Pa."); and (c) the number of required putative plaintiffs for the class action.

Ultimately, two law firms[68] (the "Class Counsel Firms") were retained as co-counsel to the Law Firm; the Law Firm and Class Counsel Firms filed a complaint captioned *Wave Lengths Hair Salons of Florida, Inc. d/b/a Salon Adrian, on behalf of itself and all others similarly situated v. CBL &*

[67] Doc. No. 822-26 (emphasis added).
[68] Buckner & Miles, P.A., and Hagens Berman Sobol Shapiro LLP.

Associates Properties, Inc., CBL & Associates Management, Inc., CBL & Associates Limited Partnership, and JG Gulf Coast Town Center, LLC, in the United States District Court for the Middle District of Florida.[69]

2. The Qui Tam Action

In late 2011 or early 2012, Dad and Son met with a potential client, Mariela Barnes. Ms. Barnes had been referred to the Law Firm in connection with her employment discrimination claim against her former employer, 21st Century Oncology.[70] In connection with that representation, Ms. Barnes provided information to Dad and Son that 21st Century Oncology and four urologists had submitted claims to Medicare and Tricare for "FISH" tests that were not medically necessary.[71] Dad and Son began developing a qui tam claim under the False Claims Act[72] (the "Qui Tam Action.").[73]

In June 2012, Dad was involved in at least ten communications regarding the Qui Tam Action and negotiations with the law firm of Duane Morris, LLP ("Duane Morris") as potential co-counsel,[74] and Dad participated in two meetings regarding Ms. Barnes and the Qui Tam Action.[75]

---

[69] Case No. 2:16-cv-00206-PAM-MRM. The complaint in the CBL Class Action alleged that CBL's conduct violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), and Florida's RICO statutes.

[70] Doc. No. 818, ¶ 51.

[71] Doc. No. 733, pp. 3-5.

[72] 31 U.S.C. § 3729 *et seq.*

[73] Doc. No. 818, ¶ 52.

[74] Doc. No. 822-72, *Summary of Hours for Consultant S. Yormak 2011 to July 1, 2012*, prepared by Dad. Page 7 of Dad's Summary includes ten entries related to the Qui Tam Action: (1) "June 13, 2012 Review of draft letter to Duane Morris, discussion;" (2) "June 29, 2012 Copy letter (qui tam);" (3) "June 25, 2012 E-mail from Duane Morris (2/3-1/3);" (4) "June 26, 20120 [sic] E-mail from Duane Morris;" (5) "June 25, 2012 - E-mail confirming Duane Morris;" (6) "June 2012 – Tel with Duane Morris, discussion;" (7) "June 21, 2012 – From BY (qui tam), discussion, review file;" (8) "June 19, 2012 – From BY -3- (quit tam) [sic] file review;" (9) "June 18, 2012 – Discussion, review qui tam;" and (10) "June 12, 2012 – From BY – Qui Tam."

[75] Doc. No. 822-72, *Summary of Hours for Consultant S. Yormak 2011 to July 1, 2012*, prepared by Dad. Pages 5 and 6 of Dad's Summary include the following entries: (1) "June 21, 2012 – attend qui tam – 3 hours;" and (2) "June 25, 2012 – attend meeting (M.B.) – 2 hours." In addition, page 2 of the Summary includes an undated entry for an appointment with Ms. Barnes and discussion with Son that lasted a total of five hours. (Doc. No. 822-72, p. 2).

On September 29, 2012, Dad—again without Son—met in Philadelphia with Ms. Barnes and two Duane Morris attorneys regarding the Qui Tam Action. In her deposition, Ms. Barnes testified that she understood that Dad attended the meeting with her in order to answer her questions about the case and to interpret the discussion if needed.[76]

In the five-hour meeting at Duane Morris, as Dad documented in his own memorandum written the same day, Dad presented the merits of the case to the Duane Morris attorneys and disagreed at times with their analysis. In his memorandum, Dad stated that (a) the Duane Morris lawyers were uncertain of the liability of one of the potential defendants, but that Dad argued to the lawyers, based on evidence from the client, that the potential defendant was the primary beneficiary of the wrongful acts; (b) the Duane Morris lawyers encouraged "us" (referring to Dad and Son) to proceed with a separate employment case, (c) Son "may want to write to" the doctor about Ms. Barnes' losses based on her mental anguish; and (d) Son should forward the letter to Dad before sending it to the doctor "so I can insert some thoughts we came up with at the Phil. meeting."[77]

After the meeting in Philadelphia, Dad corresponded with the Duane Morris attorneys by email regarding the draft engagement agreement with Ms. Barnes, at times providing his own suggested edits as well as Ms. Barnes' suggested revisions.[78]

Thereafter, in 2013, Duane Morris and the Law Firm, as co-counsel, filed the Qui Tam Action on behalf of Ms. Barnes, as relator, in the United States District Court for the Middle District of Florida.[79]

[76] Doc. No. 822-16, pp. 3, 10.
[77] Doc. No. 822-29.
[78] Doc. Nos. 822-31, 822-32, 822-33.
[79] United States District Court for the Middle District of Florida, Case No. 2:13-cv-00228-SPC-MRM.

3. Dad provides services to other Law Firm clients.

In addition to his work on the CBL Class Action and the Qui Tam Action, Dad performed services for at least seventeen other clients of the Law Firm on claims ranging from manufacturers' negligence to creditors' rights. Typically, Dad and Son together met with the Law Firm's clients.[80] Dad contends that he took notes at the client meetings that he attended with Son and provided "recommendations on [client] files" to Son in his role as Son's mentor.[81] The record includes Dad's handwritten notes from the files of at least eight clients.[82]

Dad and Son also frequently communicated by email about the clients' claims, before and after client meetings, and before and after Dad reviewed client files. The record includes emails between Dad and Son from the files of at least twelve clients.[83] In fact, Dad himself acknowledged performing numerous services to the Law Firm's clients in his self-prepared, itemized 27-page breakdown of his services by description, date, and time spent on each service, titled *Summary of Hours for Consultant S. Yormak 2011 to July 1, 2012*.[84] Overall, during the period from early 2011 to July 1, 2012, Dad asserts that he spent a total of 335 hours on "Client appts./Discussions with BY" and 569.9 hours on emails concerning the Law Firm's business.[85]

The Court finds that the record evidence substantiates the services provided by Dad to the following clients:

[80] At his March 9, 2020 deposition, Son testified that he had personal knowledge of only one instance in which Dad met with a client without Son. Doc. No. 798-3, pp. 12, 14. The client was Mariela Barnes, the relator in the Qui Tam Action.
[81] Doc. No. 825, p. 19.
[82] The clients are Michael D., Jason S., Evelyn B., Gary D., Marci M., James C., Jose C., and Les Z.
[83] The clients are Michael D., Byron H., Michelle M., Jason S., James A., Gary D., Bill P., Marci M., Robin S., Client S., Client C., and Rachel A.
[84] Doc. No. 822-72.
[85] Doc. No. 818, p. 44; Doc. No. 822-2, p. 2; Doc. No. 822-72.

a. *Client Stephen Fortune*. Beginning in April 2011, Dad and Son met with Stephen Fortune regarding his potential claim under a long-term disability policy.[86] In 2011, Mr. Fortune filed a complaint with The Florida Bar alleging that Dad may have engaged in the unlicensed practice of law ("The Florida Bar Complaint").[87] In The Florida Bar Complaint, Mr. Fortune alleged that he was referred to Son for assistance with a claim under a long-term disability policy, that the Law Firm sent a letter to Standard Insurance (the only correspondence Mr. Fortune ever saw), that Dad opposed a mediated settlement of Mr. Fortune's workers' compensation claim because of perceived pressure from his insurance company, and that Dad talked to him about "what his rights and options were with regard to his disability insurance policy."

In 2012, The Florida Bar resolved The Florida Bar Complaint by sending Dad a "Letter of Advisement" which, *inter alia*, advised Dad regarding the types of activities that constitute the unlicensed practice of law in Florida, without requiring Dad to admit to any wrongdoing.[88]

In connection with Dad's pending motion for summary judgment, Dad submitted Mr. Fortune's June 18, 2020 sworn statement (the "Fortune Statement") to support Dad's contention that his services did not constitute the practice of law because Dad was assisting clients seeking Social Security disability (SSDI) benefits, and because the services were performed under Son's supervision.[89] In the Fortune Statement, Mr. Fortune states that he retained the Law Firm in 2011 to address his disability and employment claims, and then states that he personally met with Son and Dad:

> Steven Yormak asked questions regarding my disability benefits and my medical condition(s) including other income benefit plans which he said might affect any Social Security benefits I might be entitled to. . . .

[86] Doc. No. 822-28.
[87] Doc. No. 822-28.
[88] Doc. No. 493-5.
[89] Doc. Nos. 798, pp. 3-6; 798-21.

> . . .
>
> I later attended a mediation with my worker compensation (WC) lawyers. . . . Steven who was on speaker phone when asked if any of the issues being discussed including WC and employment affected social security issues gave his input noting that while the programs are separate (WC is State and SSDI is federal) and you can receive both benefits as eligibility requirements are different, the medical records and reports relied upon by one program can impact the other. . . .
>
> . . .
>
> Subsequently I met with both Mr. Yormak's at Benjamin Yormak office to discuss the interplay and reimbursement terms between the multiple income replacement plans I was receiving and potential social security benefits. . . . Steven indicated that because of the benefits I was already receiving there would not be much point in applying for social security although there was one possibility of pursuing one issue which might increase my benefits. Having heard the analysis I doubted it would help but if the law firm wished to pursue it they could. Steven indicated he would provide his input to Benjamin and the firm would to [sic] do this.
>
> . . .
>
> Steven carefully explained that when a plan requires re-imbursement in the event I would receive SSDI, this would not benefit me at the end of the day, the other plan simply reducing its payment by the same amount SSDI would pay me.[90]

Mr. Fortune further states that he was not aware when he filed The Florida Bar Complaint that a non-lawyer may "give SSDI advice and related advise [sic] or represent me."[91]

But the Fortune Statement does not support Dad's contention that the services that he performed for Mr. Fortune were allowable assistance by a non-lawyer. In *Iannaccone v. Law*, the Second Circuit Court of Appeals held that "Section 406(a) of Title 42, which permits non-attorneys to represent [Social Security] claimants, applies only to administrative proceedings before the Commissioner [of Social Security]."[92] Specifically 42 U.S.C. § 406(a)(1) provides that the "Commissioner of Social Security may prescribe rules and regulations governing the recognition of

[90] Doc. No. 798-21.
[91] Doc. No. 798-21, ¶ 11.
[92] *Iannaccone v. Law*, 142 F.3d 553, 558 (2d Cir. 1998)(citing 42 U.S.C. § 406(a)(1)).

agents or other persons, other than attorneys as hereinafter provided, representing claimants *before the Commissioner of Social Security*."[93] And under 20 C.F.R. § 404.1705(b), the implementing regulation, a Social Security claimant may appoint a non-attorney as the claimant's representative "in *dealings with us*."[94]

42 U.S.C. § 406(a)(1) and 20 C.F.R. § 404.1705(b) reflect Congress' view that qualifying non-attorneys may represent claimants in administrative proceedings involving the denial of Social Security benefits, because "such proceedings do not necessarily present the complexities present in other kinds of actions."[95] But the statute and regulation do not authorize non-attorneys to represent claimants in federal court or in matters other than administrative proceedings before the Commissioner of Social Security.

Here, The Florida Bar Complaint and the more recent Fortune Statement reflect that Dad did not represent Mr. Fortune only in dealings with the Social Security Administration. In fact, The Florida Bar Complaint, signed by Mr. Fortune under oath, speaks solely of his claim under an insurance policy and does not even mention a Social Security disability claim.[96] In addition, Dad advised Mr. Fortune during the course of a workers' compensation settlement conference—to which the Social Security Administration was not a party—and apparently advised him *not* to seek Social Security disability benefits.[97]

b. *Client Michael D*. Dad and Son first met with Michael D. on February 18, 2011, before the Law Firm opened, and again on March 3, 2011.[98] On March 19, 2011, Dad emailed Son that he

[93] 42 U.S.C. § 406(a)(1)(emphasis added).
[94] 20 C.F.R. § 404.1705(b)(emphasis added).
[95] *Machadio v. Apfel*, 276 F.3d 103, 107 (2d Cir. 2002).
[96] Doc. No. 822-28. For example, Mr. Fortune alleged that Dad "offered to write his insurance carrier and make inquiries on his behalf."
[97] Doc. No. 798-21, ¶ 10.
[98] Doc. Nos. 822-38, 822-39.

had reviewed Michael D.'s file, including his employment contract and employees' handbook, in connection with his wrongful termination claim. Dad listed the information needed from Michael D., and wrote that "we should commence asap" a breach of employment contract claim "for $44,000 (6 months), or perhaps more, plus aggravated damages, plus loss of 401K," an SSD [Social Security Disability] claim, a disability claim, and a veteran's claim. Dad also wrote that Michael D. "can answer all questions prior to our meeting w him next week."[99] Michael D.'s file includes nine pages of Dad's handwritten notes from March and April 2011.[100] In August 2011, Dad sent an email to Son with a number of detailed talking points for Son's use in negotiating Michael D.'s claims, including specific settlement amounts.[101]

On November 1, 2011, the attorney for Michael D.'s former employer sent Son the employer's mediation statement in preparation for a mediation scheduled for November 3, 2011, before the Equal Employment Opportunity Commission. Dad evaluated the statement and made written notations on it regarding issues such as whether the employment contract was "null and void" and whether the employer had demonstrated cause for the termination.[102] Dad and Son both attended the mediation conference on November 3, 2011,[103] which apparently was unsuccessful; Dad later "ghost wrote" a letter for Son's signature, rejecting the employer's offer of a nominal settlement.[104]

c. *Client Byron H*. In May 2011, Dad and Son exchanged emails regarding the representation of Byron H. and his reluctance to serve as a possible whistleblower in potential litigation. Dad wrote:

---

[99] Doc. No. 822-40.
[100] Doc. Nos. 818, pp. 34-36, 822-41. In addition, an undated, handwritten "to do" note refers to the preparation of a cover letter to Unum (Doc. No. 822-43).
[101] Doc. No. 822-42.
[102] Doc. No. 822-45.
[103] Doc. No. 822-44.
[104] Doc. No. 822-46.

> Our Policy:
> If not [sic] retainer signed, no further free advice.
> Having said that, if he has signed and is simply ignoring your advice, or, worse, is playing lawyer i.e. loss of reputation must be worth more, than [sic] we should not be representing him.

Dad also wrote that he did not intend to get into the details of Byron H.'s reluctance unless Son thinks "this file can generate fees."[105]

d. *Client Michelle M.* In May 2011, Dad and Son exchanged emails regarding Michelle M.'s disability claims. After reviewing her long-term disability insurance policy, Dad analyzed the benefits Michelle M. was receiving under the policy, made a list of questions for Son to ask her, and wrote:

> Game Plan now is confirmed:
> We assist her w her continuing obligation to provide medicals to Dallas Ins., presumably to the point they have not [sic] doubt they will have to pay Permanent Total Disability (70%).
> When we are comfortable with this process we can approach them re: lump sum.
> In the meantime we can prepare her SSD [Social Security Disability] application.[106]

e. *Client Jason S.* In June 2011, Dad and Son exchanged emails regarding an apparent fee dispute with Jason S. Son asked Dad to attend a meeting with Son and Jason S. "to discuss money and how to proceed on his case." Dad responded:

> I agree completely.
>
> But first lets [sic] get the money he owes ($2,500) including the out of pocket of $500. We will wait until his cheque clears. If I know clients well he will insist on bringing in the $2,500 at same time as we meet. Not acceptable.
>
> . . .
>
> Then we can meet w me there. I look forward to it.
> (*Nothing I like better than explaining to people the importance of their file and the value of legal work if it is so important*).[107]

[105] Doc. No. 822-80.
[106] Doc. No. 822-71.
[107] Doc. No. 822-81 (emphasis added).

Dad and Son later met with Jason S., and Dad made handwritten notes of the meeting. Attached to the notes are typewritten research materials regarding claims under 42 U.S.C. § 1983 and attorney's fees in employment cases.[108] On July 19, 2011, Dad and Son exchanged further emails in which Son asked Dad for advice regarding an additional fee question from Jason S. Dad provided the requested advice on how to answer Jason S. and instructed Son to "Send me a draft so we hit right tone and note."[109]

f. *Client James A.* In June 2011, Dad sent Son a lengthy email regarding Dad's conversation with James A. about James A.'s recent car accident:

> Just talked to James in a panic. . . . I emphasized to him how important it may be Not to get a Careless Driving conviction which could be used as a defense to his civil case.
>
> . . .
>
> I told him someone (criminal defense and civil) should get the records asap to see if they made any notation of his fainting. If not (and it is likely, not) someone should go immediately to lab to get a statement confirming his fainting, both for criminal and civil case.
>
> . . .
>
> The product liability case is potentially against Nissan (mfg.) and dealer Sutherland Nissan (installation). . . . I cautioned him that each will blame the other but that there is joint and several liability so it will not matter in court, but might hold up settlement as each one blames the other.
>
> I told him the defense will surely blame him for the accident.
>
> . . .
>
> He said his civil lawyer seems to have suggested he fabricate some phantom other driver who made him swerve . . . I told him that would be fraud.
>
> He thinks his own insurance is paying for the claim for the fire hydrant damage ($7,000) which I told him is likely, i.e. his own insurer should be respond [sic], but that he can expect a significant impact on any future insurance premiums.[110]

[108] Doc. Nos. 822-64 and 822-65.
[109] Doc. No. 822-84.
[110] Doc. No. 822-48.

Dad ends the email with an outline of a "plan" to assist James A. in connection with his legal cases.

g. *Client Evelyn B.* In June 2011, Dad and Son met with Evelyn B. regarding a potential claim under the Wrongful Death Act. Dad's handwritten notes include a "to do" list and his summary of damages:

> <u>My opinion</u>
> 1) Are entitled to $32,209.26
> 2) Medical mal
> 3) GMAC – 5,000
>] 7,000
> 2,000[111]

h. *Client Gary D.* Dad's handwritten notes refer to "[Gary D.] v. Walmart" with a trial date in August 2012. The notes describe the case as an FMLA [Family and Medical Leave Act] case, summarize the facts and evidence, and include a calculation of damages.[112] In July 2011, Dad sent Son an email stating "depending on events and how we want to play this I should likely be sitting next chair."[113]

i. *Client Bill P.* In August 2011, Dad wrote Son that the client was ready to sign a retainer on a VA [Veterans Affairs] matter, and that "following va denial we can easily bill 20% of lump plus whatever fees prior to denial." Dad stated that he would prepare the VA addendum for the retainer agreement.[114]

j. *Client Marci M.* Starting in August 2011, Dad reviewed Marci M.'s short-term disability claim under a policy with her employer. Dad's handwritten notes dated August 3, 2011, end with a summary of "Our Advice" for Marci M. to return to work and consult with a doctor.[115] On

[111] Doc. No. 822-36.
[112] Doc. No. 822-52, pp. 1-3.
[113] Doc. No. 822-53.
[114] Doc. No. 822-85.
[115] Doc. No. 822-57.

August 10, 2011, Marci M. received notice of a favorable ruling on her appeal of an earlier denial of her claim for short-term disability benefits for the month of March 2011. Son emailed a copy of the notice to Dad, and asked for advice regarding the handling of the case:

> The appeal of July-present benefits is still pending. Please advise of next steps on disability side of case.[116]

In September 2011, Dad again evaluated Marci M.'s claim.[117] On October 14, 2011, Son wrote Dad that Marci M. had not received a notice of change to the disability policy, and Dad replied with a summary of relevant caselaw and instructions regarding additional research.[118]

k. *Client Robin S.* On July 14, 2011, Son emailed Dad asking him to review Robin S.'s application for disability insurance "and approve prior to me sending this out."[119] In August 2011, Son emailed Dad with a question on a letter from the insurance carrier. Dad replied with an explanation of the letter and instructions for communicating with the client.[120]

l. *Client S.* Client S. had purchased a home containing Chinese drywall; the Law Firm sued the developer of the home for rescission of the purchase contract. On September 8, 2011, Son wrote Dad that it appeared the developer intended to transfer assets to avoid liability and asked Dad for "Strategy?" Dad's email response instructs Son to "[i]mmediately do research into creditor law and/or call colleague who may know where to direct us," and advises Son that "We have a way to bring a motion to freeze assets."[121]

m. *Client C.* Client C. filed a bankruptcy case while she was represented by the Law Firm in a pending matter. On October 10, 2011, Son forwarded Dad a letter he had received from the trustee

[116] Doc. No. 822-58.
[117] Doc. No. 822-59.
[118] Doc. No. 822-60.
[119] Doc. No. 822-68.
[120] Doc. No. 822-69.
[121] Doc. No. 822-96.

in the bankruptcy case regarding the Law Firm's prosecution of the pending matter.[122] In response, Dad directed Son to write a letter to the trustee with a list of questions regarding the procedures for the Law Firm's continued representation, the priority and payment of the Law Firm's attorney's fees, and the approvals required by the bankruptcy court. Dad closed his email with "Pl draft letter for review w above and anything else you can think of." After Dad had reviewed the letter drafted by Son, he wrote back "This is ok. You can send."[123]

n. *Client Rachel A.* In May 2012, Rachel A. approached Son about her possible wrongful termination claim. Son forwarded an email from the client to Dad, and Dad responded by listing the information that Son needed to obtain: Rachel A.'s job description, Rachel A.'s daily tasks and the identity of her supervisor, the same information from any other employees who were dismissed, and a list of anyone who might be relevant to the issues.[124]

o. *Client James C.* Beginning in June 2011, Dad worked on James C.'s file regarding the client's claims arising from a vehicle accident in which the air bags did not deploy. Dad's handwritten notes dated June 2011 and October 2011 include references to "negligence against dealership" and "negligent design."[125]

p. *Client Jose C.* In March 2011, Dad and Son met with Jose C. after he was terminated from his employment as a landscaper by a municipality. Dad's handwritten notes refer to Son's research into issues involving FMLA and Title VII, and include an initial calculation of damages for back wages.[126]

[122] Doc. No. 822-98.
[123] Doc. No. 822-98.
[124] Doc. No. 822-51.
[125] Doc. No. 822-47.
[126] Doc. No. 822-49.

q. *Client Les Z.* In April 2011, Dad and Son met with Les Z., who had been laid off by his employer after an explosion at his workplace. Dad's handwritten notes include caselaw regarding "foreseeable economic loss" and a rough calculation of the client's loss.[127]

E. The Termination of the Consulting Agreements

The record is unclear as to whether it was Dad or Son who took the first step to terminate their professional relationship. But on December 4, 2012, Dad wrote an email to Son advising that he no longer consented to Son's use of any reference to Dad in connection with the Law Firm. The email also states "if asked by clients or anyone else you will advise that I have elected to sever professional ties with the firm save and except the two ongoing matters being [the Qui Tam Action] and [the CBL Class Action] which we can continue to collaborate on."[128]

In November 2013, after termination of the Consulting Agreements, Dad was admitted to the Massachusetts Bar Association.[129]

F. Dad sues Son and the Law Firm.

In December 2013, Dad filed a complaint (the "Original Complaint") against Son and the Law Firm in the Circuit Court for Collier County, Florida.[130] In the Original Complaint, Dad generally alleged that the Law Firm was a "multijurisdictional" law practice, that its members were Dad and Son, and that Dad also provided consulting services to Son and the Law Firm.

Count I of the Original Complaint was a claim for breach of an oral partnership agreement; it alleged that Son and Dad had entered an oral partnership to conduct a multijurisdictional law practice, and that the oral partnership agreement provided for Dad to receive (1) 70% of the partnership income

[127] Doc. No. 822-66.
[128] Doc. No. 822-108.
[129] Doc. No. 822-7, p. 4; Doc. No. 822-24, ¶ 2.
[130] Doc. No. 822-101.

after repayment of expenses and payment of $100,000.00 to Son, and (2) 70% of the income from the CBL Class Action and the Qui Tam Action.

Count II of the Original Complaint was for breach of the Main Consulting Agreement; it alleged that Son agreed to pay Dad $600.00 per hour for 1,100 hours in services that Dad performed from May 2011 to July 2012.

Count III of the Original Complaint was for breach of the fiduciary duty that Dad alleges Son owed to him "as partners in a multijurisdictional practice." Counts IV and V of the Original Complaint were for specific performance and quantum meruit.

In February 2014, Son removed the Original Complaint to the District Court for the Middle District of Florida (the "District Court").[131]

G. Son's April 2015 Bankruptcy Filing and Dad's Claim

On April 24, 2015, after litigating with Dad for over a year in the District Court, Son filed a Chapter 13 bankruptcy petition in the Bankruptcy Court for the Middle District of Florida.[132]

Shortly after the bankruptcy filing, in connection with the District Court's order granting Son's motion to dismiss, Dad filed a Second Amended Complaint (the "Amended Complaint").[133] In the Amended Complaint, Dad generally alleged that Son is the sole managing member of the Law Firm and that Dad provided consulting services to Son and the Law Firm. Counts I and II of the Amended Complaint are claims for breach of the oral and written Consulting Agreements, alleging that Son retained Dad to assist him in opening and operating a law practice, that Dad provided consulting services from May 2011 to December 2012, and that Son breached the Consulting Agreements by

[131] District Court Case No. 2:14-cv-00033-JES-CM.
[132] Doc. No. 1.
[133] Claim No. 4-2, p. 4.

refusing to pay Dad "the $660,000.00 consulting fee" owed to him under the oral and written agreements. Count III of the Amended Complaint is a claim for unjust enrichment.

Dad timely filed a proof of claim in Son's bankruptcy case for "$724,275 + Qui Tam (70%) + Class Action (70%)," attaching a copy of the Amended Complaint to support the claim.[134] In July 2015, Dad filed a notice in Son's bankruptcy case of his claim for a "constructive trust and/or equitable lien" against the funds owed to Son in the Qui Tam Action and the CBL Class Action. In the notice, Dad asserted that he and Son had agreed that Dad would be paid 70% of the fees received by Son.[135]

On July 27, 2016, Son filed a notice of conversion of his Chapter 13 bankruptcy case to a case under Chapter 7,[136] and the case was converted on September 1, 2016.[137] Robert Tardif was appointed as the Chapter 7 trustee (the "Trustee").

In December 2016, Dad filed Amended Proof of Claim No. 4-2 in the converted case in the amount of "$1,095,275.00 + 70% class action + interest" (the "Claim"). The Claim states that it is for "services performed," and again attaches a copy of the Amended Complaint.

In April 2018, Son filed his *Second Amended Objection to Claim No. 4-1 Filed by Steven R. Yormak* (the "Objection").[138] In the Objection, Son asserts, *inter alia*, that the claim "is an attempt to be compensated for the unlicensed practice of law," and that the Consulting Agreements are void as a matter of public policy (the "UPL Issue").

H. The Resolution of the Qui Tam Action and the CBL Class Action

While Son's bankruptcy case was pending, the Qui Tam Action and the CBL Class Action were both resolved.

---

[134] Claim No. 4-1.
[135] Doc. No. 20.
[136] Doc. No. 121.
[137] Doc. Nos. 137, 138.
[138] Doc. No. 397.

1. The Resolution of the Qui Tam Action

In September 2015, when the settlement of the Qui Tam Action was imminent, Son filed a motion in his Chapter 13 bankruptcy case for an order directing his co-counsel, Duane Morris, to turn over the fees owed to Son in connection with the Qui Tam Action. Son alleged that Duane Morris was uncertain of its obligations because Dad had claimed an interest in the fees.[139]

In November 2015, the Court granted Son's motion for turnover and directed Duane Morris to transfer any attorney's fees earned in the Qui Tam Action that would otherwise be paid to Son or the Law Firm to the attorney who was then representing Dad in the bankruptcy case, to be held by him in trust.[140]

In December 2015, the Qui Tam Action was unsealed, and the government reported that the case had been settled for $19.75 million. As the whistleblower, Ms. Barnes was awarded $3.2 million as her portion of the recovery and Son was awarded attorney's fees in the approximate amount of $610,000.00 for the Law Firm's representation.[141] Shortly thereafter, Duane Morris remitted $610,000.00 to Dad's attorney. When Son's case was converted to a Chapter 7 case, the attorney turned the funds over to the Trustee. Approximately five years later, the Trustee continues to hold the funds—now in excess of $620,000.000—pending the Court's ruling on Son's Objection.[142]

2. The Resolution of the CBL Class Action

In 2019, after several years of litigation, a settlement was reached in the CBL Class Action. The District Court approved a $90 million common fund settlement and awarded $27 million in attorney's fees to class counsel (the Class Counsel Firms and the Law Firm).[143] A dispute arose

[139] Doc. No. 35. Dad filed a response to Son's motion for turnover (Doc. No. 57).
[140] Doc. No. 74.
[141] Doc. No. 733, pp. 4-5.
[142] Doc. No. 733, p. 5.
[143] Doc. No. 733, pp. 5-6.

between the Class Counsel Firms and the Trustee regarding the Law Firm's (and Son's) entitlement to a portion of the $27 million.

The Class Counsel Firms moved the District Court to determine the amount of fees to which Son, and therefore the Trustee, was entitled.[144] Dad filed a limited notice of appearance in the CBL Class Action in his capacity as a creditor in Son's Chapter 7 case, attaching an affidavit that outlined approximately 1,500 hours of services that Dad claimed he had performed in the CBL Class Action over the course of two years.[145] In the affidavit, Dad describes his services as including "fully developing and researching the case," obtaining and analyzing multiple commercial leases, "interviewing potential class action putative plaintiffs," and "researching the law in multiple jurisdictions."[146] Notably, in his affidavit Dad does not state that he performed these services under Son's supervision. The District Court did not consider Dad's affidavit because Dad was not a party to the CBL Class Action and, because Dad is a creditor in Son's bankruptcy case, the Trustee represents Dad's interests in connection with the fee award.[147]

In March 2020, the District Court awarded Son fees in the amount of $851,340.00 for his work in the CBL Class Action from February 2016 to August 2019.[148] Dad filed a motion in this Court for derivative standing to appeal the District Court's award, which this Court denied,[149] but Dad nevertheless appealed the District Court's ruling to the Eleventh Circuit Court of Appeals.[150] The Eleventh Circuit dismissed Dad's appeal for lack of standing.[151]

---

[144] District Court Case No. 2:16-cv-00206-PAM-MRM, Doc. No. 318.
[145] District Court Case No. 2:16-cv-00206-PAM-MRM, Doc. No. 325; Doc. No. 822-24.
[146] Doc. No. 822-24, pp. 2-3, ¶ 2[sic].
[147] Doc. No. 731, n.1.
[148] Doc. No. 731.
[149] Doc. Nos. 724, 736, 751. This Court's order denying Dad's motion for derivative standing is now on appeal to the District Court, Case No. 2:20-cv-00385-JES (Doc. Nos. 776, 783).
[150] Eleventh Circuit Court of Appeals Case No. 20-11572.
[151] Eleventh Circuit Court of Appeals Case No. 20-11752 (dismissal order entered September 9, 2020); Dad's motion for reconsideration of the dismissal order, filed December 2, 2020, is pending.

In the meantime, the Class Counsel Firms and the Trustee reached a settlement of their dispute. The Class Counsel Firms agreed to pay the Trustee $1,100,000.00, almost $250,000.00 more than had been awarded by the District Court.[152] Over Dad's objection, this Court granted the Trustee's motion to compromise under Federal Rule of Bankruptcy Procedure 9019.[153] Dad's appeal of this Court's order approving the compromise is now pending before the District Court.[154]

III. THE COURT'S PRIOR RULINGS ON THE UPL ISSUE

During the course of this litigation, this Court entered several rulings on the UPL Issue.

A. The Court permitted Son to amend his objection to Dad's proof of claim to include the UPL Issue and found that it has jurisdiction.

Son's original objection to Dad's claim primarily asserted that Dad had released his claim in a prior settlement agreement involving the ownership of a condominium; the original objection did not expressly raise the UPL Issue.[155] In November 2015, Dad filed his first summary judgment motion on Son's original objection to his claim,[156] and in January 2016, Son filed a response that included a "counter motion for summary judgment." Son's counter motion raised, for the first time, his contention that the Consulting Agreements are void as a matter of law because they provided for compensation to Dad for his unlicensed practice of law.[157]

In April 2016, the Court entered an order determining, *inter alia*, that Son's objection to Dad's claim was deemed amended to include the UPL Issue.[158] In May 20, 2016, Dad filed his second summary judgment motion, seeking judgment in his favor on the UPL Issue.[159] On January 19, 2017,

---

[152] Doc. No. 733.
[153] Doc. Nos. 734, 735, 751.
[154] Doc. Nos. 775, 782, District Court Case No. 2:20-cv-00384-JES.
[155] Doc. No. 36. The original objection included Son's assertion that Dad's claim was unenforceable as a claim "to split legal fees with a non Florida lawyer." (Doc. No. 36, ¶ 3).
[156] Doc. No. 70.
[157] Doc. No. 77.
[158] Doc. No. 88.
[159] Doc. No. 94.

the Court entered an order denying Dad's second motion.[160] Dad appealed this interlocutory ruling to the District Court,[161] and thereafter filed a motion for leave to appeal.[162] The District Court denied Dad's motion for leave to appeal.[163] Dad appealed the District Court's ruling to the Eleventh Circuit Court of Appeals,[164] and the Eleventh Circuit dismissed Dad's appeal.[165]

Thereafter, Son filed a motion to amend his objection to Dad's proof of claim to expand his defense based on the UPL Issue.[166] Dad opposed the motion on several grounds, including his contention that under the Florida Supreme Court's ruling in *Goldberg v Merrill Lynch Credit Corporation*,[167] this Court lacks jurisdiction to determine the UPL Issue unless the Florida Supreme Court "has ruled that the specified conduct at issue constitutes the unauthorized practice of law."[168]

After a hearing,[169] the Court entered an order granting Son's motion for leave to amend and established a schedule for Son to file his amended objection to Dad's proof of claim and for Dad to respond.[170] Dad appealed this interlocutory ruling to the District Court and also filed a motion for leave to appeal.[171] The District Court denied the motion for leave to appeal, stating that ". . . the Bankruptcy Court distinguished [Son's] *defense* from a claim of unauthorized practice of law from pleading an actual *claim* of unauthorized practice of law," and "the decision of the Bankruptcy Court

[160] Doc. No. 213 (footnote omitted).
[161] Doc. No. 221; District Court Case No. 2:17-cv-0073-SPC.
[162] Doc. Nos. 222, 239.
[163] Doc. No. 302.
[164] Eleventh Circuit Court of Appeals Case No. 17-13239.
[165] Doc. No. 34, District Court Case No. 2:17-cv-0073-SPC.
[166] Doc. No. 361.
[167] 35 So. 3d 905 (Fla. 2010).
[168] Doc. No. 387, p. 32(citing *Goldberg v. Merrill Lynch Credit Corporation*, 35 So. 3d at 907).
[169] Doc. Nos. 389, 390 (Transcript of January 31, 2018 hearing).
[170] Doc. Nos. 398, 400 (Transcript of April 4, 2018 hearing).
[171] Doc. Nos. 404, 405; District Court Case No. 2:18-cv-00309-JES.

is in line with current case law. . . . "[172] Dad appealed the District's Court's ruling to the Eleventh Circuit Court of Appeals;[173] the Eleventh Circuit dismissed the appeal.[174]

B. The Court found that Dad's services in connection with Social Security benefits do not constitute the practice of law.

In September 2018, Dad filed a summary judgment motion on numerous issues, including the issue of whether his representation of disability clients in actions before the Social Security Administration is specifically permitted under Florida law.[175] The Court granted the motion in part, holding that the Social Security Administration permits a non-attorney to serve as a client representative, provided the non-attorney is capable of giving valuable help in connection with a claim, is not disqualified or suspended from acting as a client representative, and is not prohibited by any law from serving as a representative. Therefore, the Court determined that any services performed by Dad in assisting clients seeking Social Security disability benefits did not constitute UPL.[176] The Court denied Dad's summary judgment motion in all other respects, finding that the record at that time did not contain any evidence regarding the nature of the services provided by Dad.[177]

IV. DISCUSSION

The Court has carefully considered the parties' extensive filings, the record evidence, and the expert report of Richard Greenberg, Esq., that Dad offers to support his contention that he did not engage in the unauthorized practice of law.

[172] Doc. No. 443, p. 8 (emphasis added).
[173] Eleventh Circuit Court of Appeals Case No. 18-12623.
[174] Doc. No. 21, District Court Case No. 2:18-cv-00309-JES.
[175] Doc. No. 493.
[176] Doc. No. 586, p. 7; 20 C.F.R. § 404.1705(b)(1), (2), and (3).
[177] Doc. No. 586, pp. 7-10.

A. The Greenberg Report

In his report, Mr. Greenberg concluded that Dad and Son entered the Consulting Agreements for Dad to provide consulting advice and "authorized legal services" to Son's law firm and its clients. Mr. Greenberg states:

> [Son] was [Dad's] supervising lawyer and was responsible for the content of his law firm's website, the work product produced by his law firm, and the conduct of all persons, particularly [Dad], associated with his law firm. [Dad] did not engage in UPL during the time he worked for [Son's] law firm.[178]

Mr. Greenberg is an attorney with many years' experience and concentrates his practice in the areas of professional responsibility, professional licensure, and criminal defense, and for over 30 years has represented attorneys in grievance matters before The Florida Bar.[179] However, while the Court may take Mr. Greenberg's opinion into consideration, the factual issues regarding Dad's and Son's actions and the legal issue of whether Dad's activities constitute the unlicensed practice of law are for this Court to decide.[180]

B. Activities that Constitute the Practice of Law

Under Florida Statute § 454.23, a person who is not licensed or otherwise authorized to practice law in Florida commits a felony if he or she "practices law" in Florida "or holds himself or herself out to the public as qualified to practice law in this state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice law" in Florida.[181] In addition, under the Rules Regulating the Florida Bar, a lawyer who is not admitted to practice in Florida may not establish an office or regular presence in Florida for the practice of law, and may not hold out to the public or otherwise represent that the

---

[178] Doc. No. 798-2, p. 8.
[179] Doc. No. 798-2, p. 2.
[180] *See In re Thilman*, 557 B.R. 294, 300 (Bankr. E.D.N.Y. 2016); *In re HHE Choices Health Plan, LLC*, 2019 WL 6112679, at *3 (Bankr. S.D.N.Y. Nov. 15, 2019).
[181] Fla. Stat. § 454.23.

lawyer is admitted to practice in Florida.[182] The purpose of the statute and rules prohibiting unlicensed persons from practicing law is "to protect the public from being advised and represented in legal matters by unqualified persons over whom the judicial department can exercise little, if any, control in the matter of infractions of the code of conduct which, in the public interest, lawyers are bound to observe."[183]

In determining whether a person's activity constitutes the practice of law, Florida courts generally are guided by the test developed in *The Florida Bar v. Sperry*.[184] In *Sperry*, the Florida Supreme Court first observed that the practice of law includes not only the representation of clients in court, but also the giving of advice to others as to their rights under the law and the preparation of legal instruments that affect others' rights.

> [I]f the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.[185]

And in *The Florida Bar v. Neiman*, the Florida Supreme Court identified specific acts that are "commonly understood to be the practice of law," including (1) holding oneself out as an attorney in dealings with others, (2) advocating the merits of a case with an attorney in the case, (3) analyzing the law and discussing it with clients and attorneys, and (4) directing law-related activities at a law firm.[186]

---

[182] R.Regulating Fla. Bar 4-5.5(b).
[183] *The Florida Bar v. Sperry*, 140 So. 2d 587, 595 (Fla. 1962)(quoted in *Morrison v. West*, 30 So. 3d 561, 565 (Fla. 4th DCA 2010)).
[184] 140 So. 2d at 587. *See The Florida Bar re Advisory Opinion – Medicaid Planning Activities by Nonlawyers*, 183 So. 3d 276, 283 (Fla. 2015).
[185] *Sperry*, 140 So. 2d at 591.
[186] *The Florida Bar v. Neiman*, 816 So. 2d 587, 594-95 (Fla. 2002).

C. Analysis of Dad's Activities and Services Provided to Law Firm Clients

The Court now analyzes Dad's activities and the services he provided to the Law Firm and the Law Firm's clients to determine whether the acts and services constitute the practice of law.

1. Holding Oneself Out as an Attorney

The promotional material for the Law Firm clearly implies that Dad was an attorney with the Law Firm. Dad's biography on the Law Firm's website states that he is a native of New York City and a graduate of Tufts University, a well-known and prestigious university in Boston. The biography also lists Dad's L.L.B. degree and that he graduated from University of Western Ontario School of Law, without stating that the law school is located in Canada. Likewise, Dad's biography states that he established his law firm in 1981, but does not disclose that his law practice was in Canada. And the biography lists Dad's membership in the Association of Trial Lawyers of America, "now known as the American Association for Justice," which surely implies that Dad was an attorney licensed to practice in the United States.[187]

In addition to the material on the website, Dad's business card listed his L.L.B. degree and a "yormaklaw" email address;[188] the Law Firm's Yellow Pages advertisement referred to "Your SW Fla. Attorneys," implying that there was more than one Florida attorney with the Law Firm;[189] and the Yellow Pages ad promoted the Law Firm as having "30 Years Experience," matching Dad's claimed litigation career.[190]

Dad also held himself out as an attorney in his personal contacts with attorneys and clients. Evidence of Dad's direct representations to attorneys include (a) his September 2012 email to attorney

[187] Doc. No. 822-12.
[188] Doc. No. 822-10.
[189] Doc. No. 822-17.
[190] Doc. No. 822-17.

Matthew Mustokoff regarding the Qui Tam Action, which he signed as "Steven Yormak Attorney,"[191] (b) his meetings with attorneys in Philadelphia in September 2012—without Son—to discuss the CBL Class Action and the Qui Tam Action;[192] and (c) his October 2012 emails to the lawyers at Duane Morris, which include statements that he reviewed and revised documents in the Qui Tam Action on behalf of Mariela Barnes.[193]

Evidence of Dad's direct representations to clients include his participation in numerous face-to-face meetings with clients, in one case after expressing his desire to explain the "value of legal work" to the client,[194] and in another case where Dad directly advised a client on the client's motor vehicle accident, careless driving charge, and products liability claim.[195] In addition, the Law Firm's client, Ms. Barnes, testified that Dad told her he was a lawyer in Canada and believed that he accompanied her to meet with the Duane Morris attorneys in Philadelphia to answer any questions that she had.[196]

A person holds himself out as an attorney by representing to the public, either personally or through advertising, that he is an attorney or that he is capable of handling matters requiring legal skill.[197] Based on the record evidence, the Court concludes that Dad held himself out as an attorney through the Law Firm's promotions and through his direct contacts with the Law Firm's clients and attorneys working on their cases.

---

[191] Doc. No. 822-18.
[192] Doc. Nos. 822-26, 822-29.
[193] Doc. Nos. 822-31, 822-32, and 822-33.
[194] Doc. No. 822-81 (Client Jason S.).
[195] Doc. No. 822-48 (Client James A.).
[196] Doc. No. 822-16, pp. 3, 6.
[197] *The Florida Bar v. Dobbs*, 508 So. 2d 326, 327 (Fla. 1987).

2. Advocating the Merits of Cases to Attorneys

The undisputed facts are that Dad—without Son—met with attorneys in Philadelphia in September 2012 regarding the attorneys' possible engagement as co-counsel in the CBL Class Action, with Dad representing the interests of both the Law Firm and the Law Firm's client. The next day, he documented his efforts in a six-page memorandum.[198]

The day after the CBL Class Action meeting, Dad met with the Duane Morris attorneys in Philadelphia—again without Son—regarding the Qui Tam Action. In a five-hour meeting, Dad affirmatively argued the merits of the case, at times in conflict with the position taken by the Duane Morris lawyers. The same day, Dad again documented his efforts in a written memorandum.[199]

In *The Florida Bar v. Neiman*,[200] a paralegal served as a law firm's primary contact with opposing counsel on a case, argued issues of liability, causation, and damages with the attorneys, and appeared to be the most knowledgeable person at the firm regarding the facts and law of the case. The Court found that the paralegal had engaged in the unlicensed practice of law by advocating the merits of cases with opposing counsel.[201] While the paralegal's advocacy in *Neiman* involved contacts with opposing counsel, rather than with co-counsel representing a common client, Dad's advocacy of the merits of the CBL Class Action and the Qui Tam Action to co-counsel—on behalf of the Law Firm's clients—required special skill beyond that possessed by normal citizens and affected the clients' rights under the law.

In addition, in the Fortune Statement, Mr. Fortune states that Dad was on the phone with Mr. Fortune's attorneys during a workers' compensation mediation conference, and "gave his input"

[198] Doc. No. 822-26.
[199] Doc. No. 822-29.
[200] 816 So. 2d 587 (Fla. 2002).
[201] *Id.* at 599.

regarding Mr. Fortune's entitlement to disability compensation from state and federal sources.[202] In his earlier Florida Bar Complaint, Mr. Fortune had stated under oath that Dad opposed the proposed settlement at the mediation conference.[203]

The Court finds that Dad engaged in the practice of law by advocating the merits of the Law Firm's clients' cases to attorneys working on those cases.

3. Analyzing the Law and Discussing it with Clients

The undisputed evidence is that Dad analyzed factual information and legal authorities and conveyed the results of his analysis to the Law Firm's clients.

In some cases, Dad conveyed his analysis directly to the clients. For example, Mariela Barnes testified at her deposition that Dad accompanied her to the Philadelphia meeting regarding the Qui Tam Action specifically in order to answer her questions and interpret the discussion if needed.[204] And in the CBL Class Action, Dad represented to the District Court that he spent approximately 1,500 hours over two years in the CBL Class Action performing exactly the types of services that one would expect an attorney—not a consultant—to perform for his client, including "fully developing and researching the case," obtaining and analyzing multiple commercial leases from various sources, "interviewing potential class action putative plaintiffs," and "researching the law in multiple jurisdictions."[205] The CBL Class Action complaint was filed in District Court in 2016.[206]

In other examples of Dad's analysis and advice, Dad took a lead role in personally advising client Stephen Fortune on his choice of disability benefits—not for use solely in an administrative proceeding before the Commissioner of Social Security—but during a workers' compensation

[202] Doc. No. 798-21.
[203] Doc. No. 822-28.
[204] Doc. No. 822-16, p. 3.
[205] Doc. No. 822-24.
[206] Case No. 2:16-cv-00206-PAM-MRM.

mediation and in a later meeting at the Law Firm's office.[207] And in his email to Son, Dad recounted his telephone conversation with client James A. during which he advised James A. on issues of joint and several liability in a potential product liability case and potential defenses to his claim.[208]

Dad also indirectly conveyed the results of his legal analysis to clients through Son. For example, in March 2011 Dad wrote to Son that he had reviewed client Michael D.'s file regarding a wrongful termination claim, and that his review included the employment contract, employees' handbook, and Michael D.'s pay stub deductions. Dad then instructed Son to request specified additional information from the client and to "call [Michael D.] to advise him we do think we should proceed [with the breach of employment claim] and sign retainer."[209]

Other examples of Dad's indirect conveyance of his legal analysis to clients include the cases of Robin S. and Jason S. Dad reviewed documentation regarding Robin S.'s disability claim, determined that the documents were "not contradictory," and directed Son to contact Robin S. to explain the documents and request a form from her doctor with specific information regarding her continuing disability.[210] And Dad instructed Son to write to Jason S. to establish the amount owed to him as back pay on an employment claim (for purposes of paying the Law Firm's fees), but for Son to send the draft letter to Dad first "so we hit right tone and note."[211] Finally, in other cases, Dad reviewed clients' files and instructed Son to obtain specific factual information from the client.[212]

Evaluating the facts relevant to a client's situation, applying those facts to the law, developing a plan to address the facts and law, and communicating the plan to the client constitute the practice of

[207] Doc. No. 798-21.
[208] Doc. No. 822-48.
[209] Doc. No. 822-40.
[210] Doc. No. 822-69.
[211] Doc. No. 822-84.
[212] *See*, for example, Doc. No. 822-71 (Michelle M.) and Doc. No. 822-51 (Rachel A.).

law under the *Sperry* and *Nieman* tests.[213] Here, the evidence shows that Dad practiced law by analyzing clients' cases and conveying the results of his analysis to the clients both directly and indirectly through Son.

4. Directing Law-Related Activities at the Law Firm

When the Law Firm began its operations in March 2011, Dad had been practicing law in Canada for more than 30 years, and Son had been licensed to practice law in Florida for only 18 months. Although Dad claims that his actions were supervised by Son, the undisputed evidence is that Dad directed the legal activities of the Law Firm.

First, Dad took the lead in drafting documents to be used by the newly formed Law Firm, and later directed Son to revise the documents in accordance with Dad's instructions. [214]

Second, Dad was the self-proclaimed mastermind of the CBL Class Action, testifying that it was he, and not Son, who recognized the class action claim in a meeting with a client.[215] Later, when the Law Firm received a proposal from a prospective co-counsel for the CBL Class Action, Dad characterized the proposal as "absurd" and told Son that "[w]e need to canvass greener fields at a real partnering situation."[216] And after Dad met with attorneys in Philadelphia, without Son, he listed a number of documents "which I would want you [Son] to send me, then I would forward it on."[217]

Third, Dad directed Son in the management of other specific cases handled by the Law Firm. Examples of Dad's management of the Law Firm's clients include:

[213] *See The Florida Bar re Advisory Opinion – Medicaid Planning Activities by Nonlawyers*, 183 So. 3d 276, 283 (Fla. 2015).
[214] Doc. Nos. 822-78 and 822-87.
[215] Doc. No. 798-5, p. 25, l. 15 – p. 26, l. 8.
[216] Doc. No. 822-88.
[217] Doc. No. 822-26.

(a) Michael D.: Dad wrote Son that "we should commence asap" a breach of employment contract claim,[218] and also drafted a letter for Son to sign that rejected a settlement offer;[219]

(b) Client James A.: Dad sent Son a lengthy email describing in detail the legal advice he gave to the client after a car accident and outlining a plan for handling the client's case;[220]

(c) Byron H.: After the client expressed reluctance to act as a whistleblower, Dad wrote Son "Our policy: If not [sic] retainer signed, no further free advice;"[221]

(d) Marci M.: Dad instructed Son to review the client's disability policy and advised Son that "notice must be in writing" and timely;[222]

(e) Robin S.: Son asked Dad for approval before submitting the client's application for disability insurance,[223] and Dad instructed Son on communicating with the client;[224]

(f) Client S.: Dad directed Son to "[i]mmediately do research into creditor law" and that "[w]e have a way to bring a motion to freeze assets;"[225] and

(g) Client C.: Dad approved a letter for Son to send to a bankruptcy trustee.[226]

Although the record evidence reflects that Son reviewed materials before they "went out,"[227] there is no record evidence that Son supervised Dad, other than Dad's self-serving deposition testimony regarding his attendance at a meeting with a client, "with [Son] sitting there as a supervising lawyer."[228] The record evidence is that Dad "ran the show" at the Law Firm, meeting with Son and

[218] Doc. No. 822-40.
[219] Doc. No. 822-46.
[220] Doc. No. 822-48.
[221] Doc. No. 822-80.
[222] Doc. No. 822-60.
[223] Doc. No. 822-68.
[224] Doc. No. 822-69.
[225] Doc. No. 822-96.
[226] Doc. No. 822-98.
[227] Doc. No. 798-3, p. 54.
[228] Doc. No. 798-5, pp. 16-17.

Florida clients and directing Son in the handling of their Florida cases. In years of legal experience, Dad was far senior to Son (30 years compared to 18 months), and Dad and Son worked together as attorneys in the context of their father/son relationship. Contrary to Mr. Greenberg's conclusion, it simply is not plausible that Son "supervised" Dad in the Law Firm's legal practice.

5. Compensation Under the Consulting Agreements

In determining whether Dad's activities constituted the practice of law, the Court has considered one additional factor: the compensation to be paid Dad under the Consulting Agreements. The Main Consulting Agreement provided for the Law Firm to pay Dad 67% of the gross fees received in connection with seven identified files and "any other files by mutual agreement and/or any files [Dad] has provided services on."[229] And the Class Action Agreement and the Qui Tam Agreement both provided for 70% of the fees earned in the CBL Class Action and the Qui Tam Action to be paid to "a charitable organization as directed and designated by [Dad]."[230]

This level of compensation is inconsistent with Dad's contention that he merely provided consulting and mentoring services to Son and the Law Firm.

D. The Consulting Agreements provide for the unlicensed practice of law.

In *Neiman*, the court found that a paralegal was engaged in the practice of law where he did not work under the supervision of a licensed attorney, and where he actually "ran the show" in the legal activities of a law firm.[231] The *Neiman* court held that the paralegal had engaged in the unlicensed practice of law because he had "at all times acted like an educated and licensed lawyer."[232]

The undisputed evidence in this case is that Dad held himself out as a Florida attorney; that Dad advocated the merits of cases to attorneys; that he analyzed the law and he discussed it with

[229] Claim No. 4-2, pp. 15-20.
[230] Claim No. 4-2, pp. 23-24 and 25-26.
[231] 816 So. 2d at 594-95.
[232] *Id.*

clients; that Dad did not work under Son's supervision; that Dad directed the law-related activities at the law firm; and that the compensation called for in the Consulting Agreements is not consistent with Dad's contention that he was merely provided consulting and mentoring services. As in *Neiman*, Dad acted as an educated and licensed lawyer and he actually "ran the show" at the Law Firm.

When Dad filed his Original Complaint against Son in Collier County Circuit Court, Dad described his professional relationship with Son; he alleged that the Law Firm was a multijurisdictional law practice and that its members were Dad and Son.[233] In *Neiman*, the court concluded, in common parlance, that the conduct of the paralegal at issue failed the "duck" test: "if it looks like a duck, and walks, talks, and acts like a duck, one can usually safely assume it is a duck."[234] Here, as in *Neiman*, this Court concludes that Dad's conduct has failed the "duck" test: Dad engaged in the unlicensed practice of law.

E. The Consulting Agreements are void and unenforceable.

An agreement to provide legal services in Florida by an attorney not licensed to practice in Florida is void *ab initio* unless the services fall into an established exception. The exceptions generally require the association of a licensed Florida attorney, or involve advice under federal law for representation in a federal administrative proceeding.[235]

The reason that such contracts with unlicensed attorneys are void rests in policy concerns related to protection of the public, and none of the exceptions permit an unlicensed attorney to advise or represent Florida clients with respect to Florida law.[236] For example, in *Vista Designs, Inc. v. Silverman,*[237] the trial court found that an attorney was not licensed to practice law in Florida, and that

[233] Doc. No. 822-101.
[234] *Id*. at 599.
[235] *Morrison v. West*, 30 So. 3d 561, 565 (Fla. 4th DCA 2010)(citing *Chandris, S.A. v. Yanakakis*, 668 So. 2d 180 (Fla. 1995) and *The Florida Bar v. Savitt*, 363 So. 2d 559 (Fla. 1978)).
[236] *Morrison v. West*, 30 So. 3d at 565.
[237] 774 So. 2d 884 (Fla. 4th DCA 2001).

a contract that he had entered into with a client was void. On appeal, the court accepted without discussion the trial court's determination that the contract was void, and therefore rejected the attorney's claim for fees "under a fee agreement which was declared void *ab initio*."[238]

Moreover, an unlicensed attorney will not be awarded quantum meruit fees for services performed under a void contract. In *Morrison v. West*, the court denied an out-of-state attorney's request for quantum meruit fees on the grounds that the unlicensed attorney's performance of services was illegal under Florida Statute § 454.23.[239] The court held that an unlicensed attorney's recovery of fees for the unauthorized practice of law is a violation of public policy, regardless of any private understanding between the parties, and that the "judicial power of this state should not be used to effectuate a violation of public policy."[240]

Here, the Court finds that the Consulting Agreements provided for Dad to perform services that constitute the unlicensed practice of law. Therefore the Consulting Agreements are void and unenforceable.

V. CONCLUSION

Dad's Amended Proof of Claim No. 4-2 (in the amount of "$1,095,275.00 + 70% class action + interest") was based on "services performed" under the Consulting Agreements. Son objected to the claim as unenforceable because the Consulting Agreements provided for the unlicensed practice of law. The Court has determined that Dad's activities constitute the practice of law, that the Consulting

[238] 774 So. 2d at 888. In *Vista Designs*, as here, the court found that the attorney had knowingly represented the client in Florida even though he was not licensed in Florida, and had performed services that clearly "went beyond mere legal support or consulting." The unlicensed attorney's contract was not simply void as noncompliant with the Rules regulating The Florida Bar, and public policy dictated the denial of all compensation to the attorney under the void contract.
[239] *Morrison v. West*, 30 So. 3d at 565-66.
[240] *Id*. at 566.

Agreements provide for the unlicensed practice of law, and that the Consulting Agreements are void and unenforceable.

On Dad's motion for summary judgment, the Court finds that Dad has not met his burden of proof to show by undisputed facts that he did not "practice law" in Florida and the Court need not address the other grounds for his motion. On Son's motion for summary judgment, the Court finds that Son has met his burden of proof to show by undisputed facts that Dad engaged in the unlicensed practice of law. The burden of proof then shifted to Dad to designate specific facts showing a genuine dispute, and Dad did not meet his burden.

Accordingly, it is

ORDERED:

1. Debtor Benjamin H. Yormak's *Motion for Summary Judgment as to Creditor's Unlicensed Practice of Law* (Doc. No. 818) is **GRANTED.**

2. Debtor Benjamin H. Yormak's *Second Amended Objection to Claim No. 4-1 Filed by Steven R. Yormak* (Doc. No. 397) is **SUSTAINED**, and Creditor Steven R. Yormak's Claim No. 4-2 is **DISALLOWED.**

3. Creditor Steven R. Yormak's *Motion for Summary Judgment Regarding Debtor Objection to Creditor Proof of Claim Regarding Unlicensed Practice of Law* (Doc. No. 798) is **DENIED.**

4. Debtor Benjamin H. Yormak's *Motion to Bar Creditor's Proposed Expert Witness* (Doc. No. 794) is **DENIED**, and the Court has considered the expert's report to the extent set forth in this Order.

5. Creditor Steven R. Yormak's *Motion to Rescind Protective Orders Relating to Debtor Clients Based on Debtor Waiver of Attorney-Client Privilege in His Response Cross-Motion for*

Summary Judgment, and Permit Creditor Discovery and Contact Including Subpoenas and Depositions, and for Sanctions Against Debtor and His Counsel(s) (Doc. No 833) is **DENIED.**

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF.