

JUN 22 2010

SUSAN M SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No.	NC-09-1402-MkHDu
		)		
6	LARRY T. HEAL and KANDY K.	)	Bk. No.	09-13026
	HEAL,	)		
7		)		
	Debtors.	)		
8	_____	)		
		)		
9	PATRICK BULMER,	)		
		)		
10	Appellant,	)		
		)		
11	v.	)	<b>MEMORANDUM*</b>	
		)		
12	LARRY T. HEAL; KANDY K.	)		
	HEAL,	)		
13		)		
	Appellees.	)		
14	_____	)		

Argued And Submitted On  
March 17, 2010, at San Francisco, California

Filed: June 22, 2010

Appeal From The United States Bankruptcy Court  
for the Northern District of California

Honorable Alan Jaroslovsky, Bankruptcy Judge, Presiding

Before: MARKELL, HOLLOWELL and DUNN, Bankruptcy Judges.

**INTRODUCTION**

Appellant Patrick Bulmer ("Bulmer") has appealed the  
bankruptcy court's order granting the motion brought by debtors

\_\_\_\_\_  
\*This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.

1 Larry and Kandy Heal ("Debtors") for a protective order  
2 ("Protective Order"), which declared that Debtors were not  
3 required under § 521(e)(2)<sup>1</sup> to produce a copy of their tax return  
4 to Bulmer. The Protective Order also struck all papers that  
5 Bulmer had filed in the Debtors' bankruptcy case, and effectively  
6 barred Bulmer from filing future papers therein, except through a  
7 licensed attorney. The Protective Order is founded upon the  
8 determination that an assignment to Bulmer from his limited  
9 liability company was invalid. Since we find that this  
10 determination was the product of reversible error, the Protective  
11 Order shall be VACATED, and this matter shall be REMANDED for  
12 further proceedings.

#### 13 **FACTS**

14 Several years before the present bankruptcy, Kandy Heal  
15 worked for a temporary staffing company, at first named Workforce  
16 Services and later named Workwell. Both companies were owned and  
17 operated by a man named Tim Pelzel. According to Ms. Heal,  
18 Pelzel abruptly ceased doing business and left California. She  
19 then started her own temporary staffing company, called Heal  
20 Staffing, Inc.

21 Pelzel, either individually or through his staffing  
22 business, left unpaid creditors and liabilities. One such  
23 liability, owed to the Guidiville Indian Rancheria ("Rancheria")  
24 has been reduced to judgment (the "Rancheria Claim"). Another,

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25  
26 <sup>1</sup>Unless specified otherwise, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
28 all rule references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037.

1 apparently arising from some sort of financing arrangement  
2 between Pelzel and Flexible Funding, LLC ("Flexible Funding"),  
3 has not been reduced to judgment (the "Flexible Funding Claim").

4 Bulmer does business as a debt collector, specializing in  
5 obtaining recoveries on judgments. Bulmer is not, however,  
6 licensed to practice law. At one time, he did business through a  
7 company he owned, California Judgment Recovery, LLC (the "LLC"),  
8 but he contends that he ceased doing business through the LLC  
9 near the end of 2002. Thereafter, he operated his debt  
10 collection business as a sole proprietorship.

11 According to Bulmer:

12 Due to business concerns not related to my  
13 claim in this case, I ceased doing any  
14 substantial business under the limited  
15 liability company and began to wind down that  
16 entity in the end of 2002, choosing instead  
17 to operate from that point forward as a sole  
18 proprietor. I did retain use of the trade  
19 name "California Judgment Recovery", and any  
20 judgments or claims held by [the LLC] were  
21 assigned to me as an individual.

22 October 20, 2009, Declaration of Patrick Bulmer, at ¶ 4.

23 Bulmer claims to hold legal title to the Rancheria Claim  
24 through a series of three assignments: (1) an assignment from  
25 Rancheria to a "J. Veerhees dba Summit Judgment Recovery," which  
26 assignment is memorialized in a written acknowledgment of  
27 assignment of judgment dated May 5, 2000; (2) an assignment from  
28 Jeff Verhees dba Summit Judgment Recovery to Bulmer's LLC, which  
is memorialized in a written acknowledgment of assignment of  
judgment dated March 3, 2001; and (3) an assignment from  
Bulmer's LLC to Bulmer individually, which is memorialized in a  
written acknowledgment of assignment of judgment dated

1 January 2, 2003. Bulmer also claims to hold legal title to the  
2 Flexible Funding Claim. According to Bulmer, Flexible Funding  
3 assigned this claim to Bulmer directly in July 2004.<sup>2</sup>

4 All of the above-referenced assignments might qualify as  
5 assignments for collection purposes. Bulmer certainly has urged  
6 for the assignments to be so characterized. His arguments are  
7 expressly based on collection assignment cases; the above-  
8 referenced assignments all refer to and/or are structured to  
9 address matters of collection; and, he expressly states that the  
10 assignments were entered into for collection purposes: "It is  
11 clear here that BULMER, Guidiville Indian Rancheria and Flexible  
12 Funding, LLC agreed and intended to enter into agreements to  
13 assign choses in action for collection . . . ." February 22,  
14 2010, Reply Brief, at 9:20-23. Nothing in the record counters  
15 the notion that the subject assignments were collection

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16  
17 <sup>2</sup>The written agreement for the assignment from Flexible  
18 Funding to Bulmer was not presented to the bankruptcy court  
19 before it entered the Protective Order. Rather, it was submitted  
20 to the bankruptcy court for the first time as an Exhibit to the  
21 Proof of Claim that Bulmer filed on his own behalf on January 19,  
22 2010. Bulmer has requested that we take judicial notice of his  
23 Proof of Claim, but we see no basis to depart from the general  
24 rule that we will not consider matters not presented to the  
25 bankruptcy court at or before the time of entry of the order on  
26 appeal. Oyama v. Sheehan (In re Sheehan), 253 F.3d 507, 512 n.5  
27 (9th Cir. 2001). Accordingly, while we note the existence of the  
28 Flexible Funding assignment, our analysis does not rely on the  
written assignment agreement. Bulmer also requests that we take  
judicial notice of the Debtors' chapter 13 plan filed on  
September 17, 2009. While the plan was filed in the Debtors'  
bankruptcy case before the bankruptcy court entered the  
Protective Order, there is no indication that the plan was  
presented to or considered by the court as part of the  
proceedings leading up to the entry of the Protective Order.  
Accordingly, both judicial notice requests are hereby denied.

1 assignments. Further, at oral argument, Debtors' counsel  
2 similarly characterized the assignments as collection  
3 assignments. However, one of the fundamental concerns presented  
4 by this appeal is the absence of real evidence in the bankruptcy  
5 court record regarding these assignments.

6 In July 2004, at about the same time that Bulmer alleges  
7 that he received the assignment of the Flexible Funding Claim,  
8 Bulmer filed a pro se Complaint in Mendocino County Superior  
9 Court against Kandy Heal and Heal Staffing, among others, for  
10 fraudulent transfer, bulk sale liability, unjust enrichment,  
11 conversion, conspiracy, interference with prospective economic  
12 advantage, unfair competition and punitive damages.  
13 Case No. SCUK-CVPO-04-92901 (the "State Court Lawsuit").

14 Neither party provided to the bankruptcy court a detailed  
15 account of the nature and history of the State Court Lawsuit. The  
16 bankruptcy court's and our knowledge of this lawsuit is limited  
17 to a copy of the caption page, and a few paragraphs in Bulmer's  
18 declaration testimony. Bulmer's allegations suggest that, when  
19 Pelzel's company ceased doing business, Kandy Heal took some of  
20 Pelzel's company's assets without providing any consideration,  
21 and used those assets to establish and operate Heal Staffing.  
22 Bulmer further alleges that, after five years of litigation, he  
23 was two weeks away from trial on at least some of his causes of  
24 action, and had received a favorable interlocutory ruling  
25 concerning the alleged "destruction of relevant documentary  
26 evidence," when the Debtors commenced their bankruptcy case.

1 The Debtors filed their chapter 13 bankruptcy on September  
2 17, 2009, and Debtors' bankruptcy schedules listed Bulmer as the  
3 holder of a disputed claim in the amount of \$211,384.20 that was  
4 the subject of a pending lawsuit, Case No. SCUk-CVPO-xx-x2901.  
5 This appears to be the same State Court Lawsuit mentioned in  
6 Bulmer's papers.<sup>3</sup>

7 Shortly after Debtors commenced their bankruptcy case,  
8 Bulmer made a written request to Debtors pursuant to § 521(e)(2)  
9 for the Debtors to produce a copy of their federal income tax  
10 return (the "Tax Return Request"). Bulmer filed a copy of his  
11 Tax Return Request in the bankruptcy court on October 5, 2009,  
12 fifteen days prior to the date set for the Debtors' § 341 meeting  
13 of creditors. On or before October 13, 2009, the deadline under  
14 § 521(e)(2) for the Debtors to provide their tax return to the  
15 chapter 13 trustee and Bulmer, the Debtors produced a copy of  
16 their tax return to the trustee, but not to Bulmer. Three days  
17 later, apparently in lieu of providing Bulmer a copy of their tax  
18 return, Debtors filed a motion for protective order seeking a  
19 ruling that they did not have to provide Bulmer with the return.

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21 <sup>3</sup>On November 13, 2009, Debtors filed an amended schedule F.  
22 In the amendment, Debtors listed a contingent, unliquidated and  
23 disputed claim held by Bulmer, allegedly arising from a judgment  
24 against Pelzel with a balance of \$68,000. It is unclear whether  
25 the Debtors intended the amendment as a new, additional claim of  
26 Bulmer's, distinct from the claim of his listed in their original  
27 schedules or as a replacement/correction of that originally-  
28 listed claim. Regardless of what Debtors intended, our analysis  
herein is not affected. Debtors filed a motion to augment the  
record on appeal to include this amended schedule F. While the  
amended schedule F is not material to our decision, we see no  
reason to deny the motion to augment the record. Accordingly,  
Debtors' motion to augment the record is hereby granted.

1           On October 9, 2009, just before they filed their motion for  
2 protective order, Debtors filed an objection to Bulmer's claim.  
3 Because Bulmer had not yet filed a proof of claim in the  
4 bankruptcy case, Debtors requested that the bankruptcy court  
5 treat the Tax Return Request as an informal proof of claim. By  
6 way of the motion for protective order and the objection to  
7 claim, Debtors sought a determination that Bulmer was not really  
8 a creditor of theirs and a declaratory ruling based thereon that  
9 they were not obligated under § 521(e)(2) and Rule 4002(b)(4) to  
10 produce a copy of their tax return to Bulmer.

11           In response, Bulmer filed several different papers in  
12 propria persona, including but not limited to, an opposition to  
13 the motion for protective order, an opposition to the claim  
14 objection, a declaration in support of those oppositions, and an  
15 objection to Debtors' plan. He also filed a motion to dismiss  
16 Debtors' bankruptcy case based on their noncompliance with  
17 § 521(e)(2).

18           According to Bulmer, he unequivocally was entitled to  
19 production of Debtors' tax return under § 521(e)(2) because  
20 Debtors had admitted that Bulmer was a creditor holding a  
21 disputed claim in their bankruptcy schedules. Bulmer further  
22 asserted that any determination of his disputed claim would  
23 require an evidentiary hearing following discovery.

24           The Debtors opposed Bulmer's motion to dismiss. They urged  
25 that the bankruptcy court determine that Bulmer was not their  
26 creditor, that he had no claim, that he was attempting to  
27 represent others, that he was engaging in the unauthorized  
28

1 practice of law, and that the State Court Lawsuit was filed by  
2 Bulmer in his representative capacity, rather than for himself.

3 Bulmer then filed a reply and an additional declaration in  
4 support of his motion to dismiss, in which Bulmer provided a bit  
5 more information regarding the State Court Lawsuit and divulged  
6 to the bankruptcy court for the first time the existence of the  
7 Flexible Funding Claim.

8 The bankruptcy court held a joint hearing on the motion for  
9 protective order and the motion to dismiss. Both the Rancheria  
10 Claim and the Flexible Funding Claim were referred to during the  
11 hearing, but no party offered any additional evidence. After the  
12 parties made their respective arguments, the bankruptcy court  
13 took both matters under submission.

14 On November 27, 2009, the bankruptcy court issued its  
15 Memorandum re Unlicensed Practice of Law (the "Memorandum"). In  
16 the Memorandum, the bankruptcy court found that the assignment of  
17 claim between the LLC and Bulmer indisputably was a sham  
18 undertaken by Bulmer for the purpose of attempting to represent  
19 the interests of others in court. It also concluded that it had  
20 the authority to prohibit Bulmer from practicing law before the  
21 bankruptcy court. Relying on this one finding of fact and this  
22 one conclusion of law, the bankruptcy court granted the Debtors'  
23 motion for protective order, struck all papers that Bulmer had  
24 filed in the bankruptcy case, and prohibited Bulmer from filing  
25 any further papers except through a licensed attorney.<sup>4</sup>

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26  
27 <sup>4</sup>Whereas the bankruptcy court said it was striking Bulmer's  
28 "pleadings" it is fairly clear from the entire record that the  
(continued...)



1 The bankruptcy court entered the Protective Order on  
2 December 3, 2009, and appellant timely appealed thirteen days  
3 later, on December 16, 2009.<sup>5</sup> Bulmer also filed a motion for  
4 leave to appeal, which we address below.

5 **JURISDICTION**

6 The bankruptcy court had jurisdiction under 28 U.S.C.  
7 §§ 1334 and 157(b)(2).

8 Under the pragmatic approach to finality applicable to  
9 bankruptcy appeals, an order is considered final for appeal  
10 purposes if it "1) resolves and seriously affects substantive  
11 rights and 2) finally determines the discrete issue to which it  
12 is addressed." Bonham v. Compton (In re Bonham), 229 F.3d 750,  
13 761 (9th Cir. 2000) (quoting Law Offices of Nicholas A. Franke v.  
14 Tiffany (In re Lewis), 113 F.3d 1040, 1043 (9th Cir. 1997));  
15 Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.),  
16 177 F.3d 774, 779-80 (9th Cir. 1999).

17 "Protective" orders typically are interlocutory, discovery-  
18 related rulings, but the substance of the Protective Order here  
19 resolved and seriously affected Bulmer's substantive rights to  
20 represent himself in federal court pursuant to 28 U.S.C. § 1654,  
21 and his right to a copy of Debtors' tax return under § 521(e)(2).  
22 Furthermore, the Protective Order determined the discrete issue

23 \_\_\_\_\_  
24 <sup>4</sup>(...continued)  
25 bankruptcy court meant its ruling to apply to any paper that  
26 Bulmer filed, including his motions, his oppositions, and his Tax  
Return Request.

27 <sup>5</sup>Pursuant to amendments effective as of December 1, 2009,  
28 Rule 8002 now gives an appellant fourteen days from entry of a  
judgment or order to file a notice of appeal.

1 of Debtors' obligations under § 521(e)(2). Thus, the Protective  
2 Order is final for appeal purposes under the flexible finality  
3 standard applicable to bankruptcy appeals, and we have  
4 jurisdiction to hear this appeal under 28 U.S.C. § 158.

5 Because we have concluded that the order on appeal is a  
6 final order, Bulmer's motion for leave to appeal is hereby denied  
7 as unnecessary.

#### 8 ISSUES

- 9 1. Did the bankruptcy court err when it determined that the  
10 assignment to Bulmer from his LLC was invalid?
- 11 2. Did the bankruptcy court err when it excused Debtors from  
12 giving Bulmer a copy of their tax return, and when it struck  
13 all pro se papers Bulmer already had filed or might file in  
14 the future?

#### 15 STANDARDS OF REVIEW

16 We review findings of fact for clear error and issues of law  
17 de novo. United States v. Gould (In re Gould), 401 B.R. 415, 421  
18 (9th Cir. BAP 2009). Construction of rules of procedure and the  
19 Bankruptcy Code present questions of law that we review de novo.  
20 Litton Loan Serv'g, LP v. Garvida (In re Garvida), 347 B.R. 697,  
21 703 (9th Cir. BAP 2006); Ruvacalba v. Munoz (In re Munoz),  
22 287 B.R. 546, 550 (9th Cir. BAP 2002).

23 A factual finding is clearly erroneous, when there is  
24 evidence to support it, only if we have a definite and firm  
25 conviction that a mistake has been committed. Banks v. Gill  
26 Distrib. Ctrs., Inc. (In re Banks), 263 F.3d 862, 869 (9th Cir.  
27 2001)(citing Anderson v. City of Bessemer City, N.C., 470 U.S.

1 564, 573 (1985)). Alternately stated, we must affirm the  
2 bankruptcy court's findings of fact unless those findings are  
3 "illogical, implausible, or without support in inferences that  
4 may be drawn from the record." U.S. v. Hinkson, 585 F.3d 1247,  
5 1263 (9th Cir. 2009).

#### 6 DISCUSSION

7 All of the relief granted in the Protective Order stems from  
8 a single determination of the bankruptcy court: that the  
9 assignment to Bulmer from his LLC was a sham and therefore was  
10 invalid. We examine this determination first.

#### 11 **A. Determination That The Assignment To Bulmer From His LLC Was 12 Invalid.**

13 According to the bankruptcy court's Memorandum, the 2003  
14 assignment of the Rancheria Claim from the LLC to Bulmer was a  
15 sham that Bulmer arranged for the improper purpose of evading the  
16 rule that a non-lawyer principal may not represent his company in  
17 court. As the bankruptcy court stated: "A company cannot avoid  
18 the effect of this rule by 'assignment' of its rights to a  
19 principal. If it could, the rule would be rendered meaningless  
20 and every corporation, partnership or other fictitious entity  
21 could appear pro se merely by assigning its right to a  
22 principal." Memorandum at p. 2:12-15. Based on its conclusion  
23 that the LLC/Bulmer assignment was a sham, the bankruptcy court  
24 disregarded this assignment and held that Bulmer improperly was  
25 attempting to represent before the court the rights of his LLC.

26 The bankruptcy court's invalidation of the LLC/Bulmer  
27 assignment was erroneous as a matter of law and fact.  
28

1 We are not aware of any law generally prohibiting  
2 assignments from a company to its principals or employees. To  
3 the contrary, California law, which governs Bulmer's substantive  
4 rights as against the Debtors, generally encourages the free  
5 assignability of property. See Essex Ins. Co. v. Five Star Dye  
6 House, Inc., 38 Cal.4th 1252, 1259, 137 P.3d 192, 195 (2006).  
7 California has long upheld assignments of choses of action,  
8 specifically where the assignments have been made for purposes of  
9 facilitating collection by a third party. Ledoux v. Credit  
10 Research Corp., 52 Cal.App. 3d 451, 453-55, 125 Cal.Rptr. 166,  
11 167-69 (1975); see also Greig v. Riordan, 99 Cal. 316, 323,  
12 33 P. 913, 916 (1893); Grant v. Heverin, 77 Cal. 263, 264-65,  
13 19 P. 493 (1888); Clark v. Andrews, 109 Cal.App. 2d 193, 198-99,  
14 240 P.2d 330, 333-34 (1952); Cohn v. Thompson, 128 Cal.App.Supp.  
15 783, 787, 16 P.2d 364, 365 (1932).

16 One common variation of this type of assignment, upheld  
17 under California law, is an assignment from the business to one  
18 of its employees. As stated long ago in Leitch v. Marx,  
19 21 Cal.App. 208, 131 P. 328 (1913):

20 The plaintiff was an employé of the  
21 corporation, and it is clearly apparent from  
22 his testimony that the assignment to him of  
23 the claim against the defendant was merely  
24 for the purposes of collection. Assignments  
25 for such purposes are of frequent occurrence,  
26 and the defendant in an action by an assignee  
of a claim against him is only concerned to  
know that the assignment is of such a  
character as to bind the assignor. That the  
assignor in this case will be bound by the  
assignment is a fact, as before stated,  
clearly inferable from the testimony.

27 Id. at 213; 208 P. 330.

1           Moreover, as a factual matter, Bulmer disputed that the  
2 LLC/Bulmer assignment was made for the purpose of enabling him to  
3 represent the interests of his LLC, and he presented evidence to  
4 support his position. According to his declaration testimony,  
5 the assignment between his LLC and himself was made years before  
6 the Debtors' bankruptcy filing and was related to his winding  
7 down of his LLC, as he had decided to pursue his collection  
8 business as a sole proprietorship.

9           The Debtors argued that the LLC/Bulmer assignment and the  
10 winding down of Bulmer's LLC were all part of a scheme by Bulmer  
11 to prosecute collection claims belonging to others without  
12 retaining a lawyer. However, there was no dispositive evidence  
13 in the record tying the LLC/Bulmer assignment to any such alleged  
14 scheme. The evidence Debtors presented was highly circumstantial  
15 in nature. It consisted of evidence regarding Bulmer's debt  
16 collection practices and the general nature of his debt  
17 collection business. In any event, even if we assume that there  
18 was sufficient evidence to support Debtors' argument, there is no  
19 indication that the bankruptcy court weighed all of the relevant  
20 evidence; rather, it appears that it simply disregarded the  
21 evidence that Bulmer offered.

22           Licht v. Am. W. Airlines, Inc. (In re Am. W. Airlines, Inc),  
23 164 B.R. 315 (9th Cir. BAP), aff'd in part and vacated in part,  
24 40 F.3d 1058 (9th Cir. 1994), offers some instructive analysis.  
25 In Licht, the appellant Licht filed a pro se motion seeking to  
26 disband the appellee equity security holders committee, and the  
27 committee moved to strike Licht's motion and to bar Licht from  
28

1 appearing pro se. According to the committee, Licht improperly  
2 was attempting to represent his company's interests in the  
3 America West bankruptcy. After holding a hearing, the bankruptcy  
4 court agreed with the committee and granted the relief requested.  
5 On appeal before the BAP, Licht argued that the bankruptcy court  
6 erred because he only was representing himself. After carefully  
7 reviewing the evidence in the record, the BAP concluded that the  
8 bankruptcy court did not clearly err in finding that Licht was  
9 attempting to represent his company. The BAP pointed out that a  
10 \$10,000 debenture in Licht's name (rather than in the name of his  
11 company) was the only evidence that Licht offered in support of  
12 his argument. Further, the BAP noted that the debenture was  
13 dated eight days after the bankruptcy court's oral ruling on the  
14 motion. According to the BAP, the timing of the debenture, on  
15 the heels of the bankruptcy court's adverse ruling, showed "a  
16 blatant attempt by Licht to circumvent the bankruptcy court."  
17 Id. at 317. The BAP also noted that there was ample evidence  
18 showing that Licht was attempting to represent his company,  
19 including a number of documents he filed which stated that he was  
20 acting on behalf of his company. Id.

21 In contrast to the facts presented in Licht, the LLC/Bulmer  
22 assignment was dated January, 2, 2003, almost seven years before  
23 the Debtors filed bankruptcy, and there is uncontroverted  
24 evidence in the record offered by Bulmer tending to show that the  
25 LLC/Bulmer assignment was made in relation to Bulmer's winding  
26 down of his LLC, and his decision to conduct his business as a  
27 sole proprietorship, rather than in response to a challenge to  
28

1 his appearing in court in propria persona. Further, all of the  
2 papers filed by Bulmer in the bankruptcy court stated that he was  
3 acting on his own behalf.<sup>6</sup>

4 Most importantly, the record here reflects that the  
5 bankruptcy court did not weigh the relevant evidence before it.  
6 In its Memorandum, the bankruptcy court characterized as  
7 "undisputed" the so-called fact that Bulmer made the LLC/Bulmer  
8 assignment for the improper purpose of representing his LLC's  
9 interests in court. We must reverse a finding of fact of the  
10 bankruptcy court as clearly erroneous if it is "illogical,  
11 implausible, or without support in inferences that may be drawn  
12 from the record." Hinkson, 585 F.3d at 1263. The bankruptcy  
13 court's finding here that Bulmer's motivation for the LLC/Bulmer  
14 assignment indisputably was to attempt to appear in court on  
15 behalf of his LLC was clearly erroneous under this standard.

16 The bankruptcy court's reliance on the invalidity of the  
17 LLC/Bulmer assignment also is problematic because only the  
18 Rancheria Claim came to Bulmer by way of an assignment from his  
19 LLC. According to Bulmer's declaration testimony, the Flexible  
20 Funding Claim was assigned to him directly from a third party.

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22 <sup>6</sup>Bulmer's Tax Return Request did reference in the upper  
23 left-hand corner of the caption page, just below Bulmer's name,  
24 "California Judgment Recovery." However, the body of the Tax  
25 Return Request stated that Bulmer himself was making the request  
26 as a creditor and party in interest, and the signature block at  
27 the end of the Tax Return Request referred to Bulmer personally  
28 and not as an officer or agent of his LLC. In addition, Bulmer  
explained in his declaration testimony that "California Judgment  
Recovery" (without the "LLC" term) was his duly-registered  
fictitious business name through which he sometimes did business  
as a sole proprietor. See 10/20/09 Bulmer Decl. at pp. 1-2.

1 Bulmer further set forth in his declaration that the majority of  
2 his rights against the Debtors originate from the Flexible  
3 Funding Claim. The bankruptcy court did not take this into  
4 account. If it had done so, its determination that Bulmer was  
5 attempting to represent his LLC in court would have needed to be  
6 factually based on something in addition to the invalidity of the  
7 LLC/Bulmer assignment. But the record reflects that the  
8 LLC/Bulmer assignment was the sole factual basis for the  
9 bankruptcy court's determination.

10 The evidentiary problems that the bankruptcy court  
11 encountered are, perhaps, in part the consequence of the summary  
12 nature of the bankruptcy court proceedings. Certain aspects of  
13 the relief sought and/or granted via the motion for protective  
14 order arguably were in the nature of injunctive and declaratory  
15 relief. Assuming without deciding that an adversary proceeding  
16 was not necessary (see Rule 7001(2), (7), (9)), the motion for  
17 protective order at minimum qualified as a contested matter.  
18 See Rule 9014. Both adversary proceedings and contested matters  
19 afford parties many of the same procedural entitlements,  
20 including the opportunity to take discovery, and most importantly  
21 here, the holding of a trial or evidentiary hearing on disputed  
22 factual issues. No such trial or evidentiary hearing was held  
23 here, even though Bulmer requested one in his papers.

24 We are not saying that bankruptcy courts need an adversary  
25 proceeding to prohibit a non-attorney from practicing law. We  
26 only note that the complexity and type of issues presented, and  
27  
28



1 the contested nature of the key factual issues, made this matter  
2 a questionable candidate for summary procedures.<sup>7</sup>

3 Based on the analysis set forth above, the bankruptcy court  
4 erred when it determined that the LLC/Bulmer assignment was  
5 invalid. We now turn our attention to the relief granted in the  
6 Protective Order.

7 **B. Effect of Bankruptcy Court's Determination On Relief Granted**  
8 **in the Protective Order.**

9 The Protective Order declared that Debtors were not required  
10 under § 521(e)(2) to deliver a copy of their tax return to  
11 Bulmer. The Protective Order also effectively barred all pro se  
12 papers Bulmer already had filed in the bankruptcy court, or might  
13 file in the future.

14 All of the relief granted was founded upon the bankruptcy  
15 court's erroneous determination that the LLC/Bulmer assignment  
16 was invalid. Therefore, the Protective Order must be vacated in  
17 its entirety.<sup>8</sup>

18 According to the bankruptcy court, because the LLC/Bulmer  
19 assignment was invalid, Bulmer improperly was attempting to  
20 assert the rights of others before the bankruptcy court. While  
21 the bankruptcy court characterized this as an issue regarding the

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22 <sup>7</sup>Because we are vacating the Protective Order on other  
23 grounds, we need not reach the constitutional issue of whether  
24 Bulmer's due process rights were violated. See Meinhold v. Dept.  
of Defense, 34 F.3d 1469, 1474 (9th Cir. 1994).

25 <sup>8</sup>In light of our disposition of this appeal, we need not  
26 reach the issue of which of Bulmer's filings might have  
27 constituted the unauthorized practice of law. See generally  
Bigelow v. Brady (In re Bigelow), 179 F.3d 1164, 1165 (9th Cir.  
28 1999)(holding that filing notice of appeal does not constitute  
practice of law).

1 unauthorized practice of law, we perceive it to be in the first  
2 instance an issue of constitutional and prudential standing:  
3 (1) whether Bulmer has factually established the injury in fact,  
4 the causation, and the redressability necessary for standing  
5 under Article III; and (2) whether Bulmer has factually  
6 established that he is asserting his own legal rights and not the  
7 rights of others. See Sprint Commc'ns Co., L.P. v. APCC Servs.,  
8 Inc., 128 S.Ct. 2531, 2535, 2544 (2008)(evaluating constitutional  
9 and prudential standing of collection assignee of "dial-around  
10 compensation" claims).

11 The standing issue is, at its heart, a factual inquiry into  
12 the nature of the rights asserted. See, e.g., Sprint, 128 S.Ct.  
13 at 2534-35; In re Hwang, 396 B.R. 757, 769 (Bankr. C.D. Cal.  
14 2008). Here, the bankruptcy court record was not sufficiently  
15 developed to definitively conclude whose rights Bulmer was  
16 attempting to assert: Rancheria's; Flexible Funding's; his LLC's;  
17 his own; some of the above; or, all of the above. To the extent  
18 that Bulmer obtained all of his alleged rights against the  
19 Debtors by way of assignments for collection purposes, an  
20 argument can be made that he was attempting to assert the  
21 interests of Rancheria and Flexible Funding, as their agent  
22 and/or fiduciary. See, e.g., Harrison v. Adams, 20 Cal.2d 646,  
23 650, 128 P.2d 9, 12 (1942); Greig v. Riordan, 99 Cal. 316, 323,  
24 33 P. 913, 916 (1893); Clark v. Andrews, 109 Cal.App. 2d 193,  
25 198-99, 240 P.2d 330, 333-34 (1952). On the other hand, a  
26 counter-argument can be made that he was representing his own  
27 interests to the extent he was entitled to a percentage of the  
28

1 collection recovery. Thus, it might be argued that he was  
2 asserting his own rights as a beneficial interest holder. See,  
3 e.g., Builders' Control Serv. of N. Cal., Inc. v. N. Am. Title  
4 Guar. Co., 205 Cal.App.2d 68, 74-75, 22 Cal.Rptr. 712, 716  
5 (1962).

6 It would be premature for us to attempt to resolve the  
7 issues regarding whose rights Bulmer is attempting to assert, and  
8 to what extent he can represent himself in court if he also is  
9 attempting to assert the rights of others. After an evidentiary  
10 hearing is noticed and held, and after all of the relevant  
11 admissible evidence is considered, the bankruptcy court can  
12 determine whose rights Bulmer is attempting to represent. If the  
13 bankruptcy court concludes that Bulmer is attempting to represent  
14 partly his own rights and partly the rights of others, the  
15 bankruptcy court then can consider how to balance the prohibition  
16 against the unauthorized practice of law against Bulmer's  
17 statutory entitlement to represent himself under 28 U.S.C.  
18 § 1654.<sup>9</sup>

#### 19 CONCLUSION

20 For all of the reasons set forth above, the Protective Order  
21 shall be VACATED, and this matter shall be REMANDED for further  
22 proceedings.  
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26 <sup>9</sup>It also would be premature for us to determine whether  
27 § 521(e)(2)(C) applies to the facts presented in this case. The  
28 bankruptcy court presumably will consider the merits of Bulmer's  
motion to dismiss under § 521(e)(2) after it determines whose  
interests Bulmer is representing in the bankruptcy case.