

Charles M. Walker
U.S. Bankruptcy Judge

Dated: 3/13/2018



**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

IN RE:)	
)	
ANDY LAMAR ALLMAN,	)	Case No. 3:17-bk-03085
	)	Chapter 7
Debtor.	)	Judge Charles M. Walker

AGREED ORDER WAIVING DISCHARGE OF DEBTOR AND DISMISSING CASE

This matter is before the Court upon the *Joint Motion for Entry of Agreed Order Denying Discharge of Debtor and Dismissing Case* (the “Joint Motion”) submitted for entry by the Debtor Andy Lamar Allman, the Chapter 7 Trustee over the Debtor’s estate, and Creditors Inge Goodson and Cathy Brown, (along with the U.S. Trustee, collectively, the “Parties”), wherein the Parties request entry of an order dismissing this bankruptcy case and waiving the discharge of the Debtor pursuant to 11 U.S.C. § 727 and Fed. R. Bankr. P. 4004.

Andy Lamar Allman acknowledges that his attorney has thoroughly explained the consequences of waiving his discharge. Andy Lamar Allman waives all right to appeal the entry of this Agreed Order, and the waiver of his discharge in bankruptcy. The Parties further agree that should the Court reject this Agreed Order for any reason, the Parties shall be free to proceed with the trial of any adversary proceeding.

The Parties acknowledge and agree that this Agreed Order contains the entire agreement between the Parties. The Parties further acknowledge that no Party has made, nor has given any other representations, promises, inducements, or rewards to Andy Lamar Allman or anyone else on his behalf as consideration for his waiver of discharge.

The Court conducted a hearing on the Joint Motion on February 8, 2018. At the hearing, the Court asserted that, due to the pendency of the Debtor’s appeal of a prior ruling of this Court converting this case from one under chapter 13 to one under chapter 7 (the “Appeal”), this Court

lacked jurisdiction to enter the order proposed by the Movants. The Court also informed the Movants at the hearing that before it would enter any order granting the Joint Motion, the order would need to include supplemental information regarding (a) the investigation into the recoverable assets of the Debtor done by the United States Trustee and the Chapter 7 Trustee, and (b) available resources to the various creditors in the case for assisting in claim liquidation and recovery outside of bankruptcy (collectively, the “Supplements”).

On February 27, 2018, the Debtor and all other parties to the Appeal filed an *Agreed Stipulation of Dismissal* pursuant to Fed. R. Bankr. P. 8023. That same day, following submission of the *Agreed Stipulation of Dismissal*, the United States District Court for the Middle District of Tennessee (the “District Court”) entered an order dismissing the Appeal. The Debtor has filed a notice of filing of the *Agreed Stipulation of Dismissal* and the District Court’s order dismissing the Appeal. [Docket No. 201]. Accordingly, the Court holds that it has jurisdiction to enter this Order. After consideration of the terms in the Joint Motion and the arguments of counsel at the hearing thereon, and considering the Supplements submitted by the Movants, which are attached to and incorporated into this Order, the Court finds the Joint Motion to be well-taken. Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that the bankruptcy case is hereby DISMISSED, subject to the conditions stated herein:

1. Andy Lamar Allman WAIVES his discharge pursuant to 11 U.S.C. § 727(a)(10) of the Bankruptcy Code. Andy Lamar Allman’s waiver of his discharge is accepted and approved by this Court. Andy Lamar Allman will not receive a bankruptcy discharge in chapter 7 case number 17-03085.

2. All pending adversary proceedings in this case shall be dismissed without prejudice, with leave for the plaintiffs to file new actions in a court of appropriate jurisdiction under applicable non-bankruptcy law.

3. Andy Lamar Allman is barred from filing any bankruptcy case under any chapter in any district for two years from the date of entry of this Order.

4. Nothing in this Order shall operate as a final decision regarding any liability that the Debtor may owe to any of his creditors, nor shall it make any determinations regarding the extent or validity of any claims asserted against the Debtor. Rather, this Order merely waives the discharge with respect to any debts owed to any scheduled creditors to the extent such creditors hold valid claims under applicable non-bankruptcy law. Nothing in this Order shall preclude or prevent the Debtor from disputing or challenging the validity or extent of any claim asserted against him.

5. This Order is the result of an agreed negotiation between the Parties. Nothing in this Order shall be construed as an admission of any wrongdoing by the Debtor or of any facts that may give rise to a denial of discharge under 11 U.S.C. § 727.

6. Nothing in this Order shall modify or affect the order of the Chancery Court for Sumner County, Tennessee entered December 22, 2016 in the Matter of Andy Lamar Allman, Chancery Court of Sumner County Case Number 2016-CV-160, appointing Dennis Powers (the “Receiver”) as receiver over certain assets and receivables of the Debtor (the “Receivership Order”), nor shall it affect any of the rights, duties, and obligations of the Receiver under the Receivership Order.

7. Notwithstanding any Bankruptcy Rule or Local Rule to the contrary, this Order shall take effect immediately upon its entry.

8. Within seven (7) days of entry of this Order, counsel for the Debtor shall serve a copy of the Order and the attached Supplements on the entire creditor matrix in this case.

IT IS SO ORDERED.

THIS ORDER WAS SIGNED AND ENTERED
ELECTRONICALLY AS INDICATED AT THE TOP OF THIS PAGE.

APPROVED FOR ENTRY:

/s/ Ned Hildebrand

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Samuel K. Crocker
U.S. Trustee, Region 8

/s/ Megan Seliber

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/s/ Robert H. Waldschmidt

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Chapter 7 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

IN RE:)	
)	
ANDY LAMAR ALLMAN,	)	Case No. 3:17-bk-03085
	)	Chapter 7
Debtor.	)	Judge Charles M. Walker

SUPPLEMENT 1 TO AGREED ORDER
WAIVING DISCHARGE OF DEBTOR AND DISMISSING CASE

**SUMMARY OF EFFORTS TAKEN BY
UNITED STATES TRUSTEE AND CHAPTER 7 TRUSTEE**

United States Trustee

The U.S. Trustee has reviewed Mr. Allman’s Statements and Schedules and has conducted a review of his assets. The U.S. Trustee discussed this bankruptcy with the Chapter 7 Trustee Robert Waldschmidt, Russ Willis, the Disciplinary Counsel for the Litigation Board of Professional Responsibility of the Supreme Court of Tennessee and Dennis Powers, the appointed state court receiver, as well as several of Mr. Allman’s former clients. The U.S. Trustee has compared Mr. Allman’s schedules to an independent search engine review of his assets. The U.S. Trustee has also questioned Mr. Allman at his 341a meeting of creditors. Based on the U.S. Trustee’s review of this case, it appears that some of Mr. Allman’s assets may have been undervalued, but there is no indication that any assets contain any equity for the estate due in part to a large IRS lien on all assets. Given that there are no assets for distribution, the U.S. Trustee believes that the Agreed Order is in the best interest of the estate because the waiver of the discharge and the two-year bar to refiling insures that all creditors have the opportunity to collect any debt owed from Mr. Allman if he makes additional money in the future.

Chapter 7 Trustee

Upon his appointment as interim trustee, the Chapter 7 Trustee had his paralegal run a real property search, obtained initial evaluations of the two parcels of real property, and check all liens of record in the Sumner County Register's office. The result of the lien review was as follows:

D/T on Bonita Parkway	\$339,726.00	SWBC Mortgage Corp	Book 3867 pg 421 - 11/8/13
D/T on Revere Pkwy	\$71,550.00	Roger & Lee Bailey	Book 4114 pg 104 - 5/18/15
HOA Lien – Bonita Pkwy	\$599.00	Homeowners Assoc.	Book 4225 pg 874 - 12 11 15
Fed Tax Lien	\$19,001.92	IRS	Book 4232 pg 757 - 12/28/15
Fed Tax Lien	\$91,948.19	IRS	Book 4236 pg 46 - 1/4/16
Fed Tax Lien	\$11,939.37	IRS	Book 4249 pg 619 - 2/2/16
Fed Tax Lien	\$31,166.28	IRS	Book 4331 pg 833 - 6/1/16
Judgment Lien	\$12,429.94	Nat. Ct. Reporters	Book 4431 pg 301 - 11/28/16
Judgment Lien	\$107,062.25	Pinnacle Bank	Book 4455 pg 766 - 1/3/17
Judgment Lien ***	\$3,166.96	Capital One Bank	Book 4517 pg 561 - 4/20/17
TN State Tax Lien ***	???	TN Dept Employ. Sec.	Book 4539 pg 426 - 5/26/17

The last two liens are probably avoidable, one under 11 U.S.C. §547, and the other under 11 U.S.C. §549. However, the remaining liens appear to be valid and unavoidable.

Before the schedules were filed (and within the first few weeks after his appointment) the Chapter 7 Trustee determined that the values of the two parcels of real property would never exceed the liens against the property. The schedules eventually filed by the Debtor in December, 2017 asserted a much lower figure for the value of the real property than the valuations of the Trustee, but the Chapter 7 Trustee did not rely upon those numbers for his conclusions.

The Trustee also reached a similar conclusion concerning the personal property of the Debtor. Considering the size and value of the Debtor's residence, it is likely that the value of the personal property exceeds the amounts listed by the Debtor on his schedules. However, the liens outlined above would make it impossible to ever convey clear title to any property under 11 U.S.C. §363(f).

Further, within the first few days after his appointment, the Chapter 7 Trustee met with Dennis Powers, the State Court Receiver for the Debtor's law practice. They discussed the transactions from the Debtor's various bank accounts. Mr. Powers had reviewed everything in some depth, and had concluded that there had been no transfers to any hidden account, but that the money had just been spent. He provided the Trustee with the bank account records, and the Trustee personally reviewed all of those bank records as well. That review by the Trustee did not reveal any fund or assets to recover. Further, most transactions took place outside the 90-day preference period to non-insiders, so they would not be preferences, and the other transactions were either fairly small, or clearly appeared to be for consideration, such that they could not be avoided as fraudulent conveyances.

The Trustee has also spoken to numerous claimants, all of whom make allegations against the Debtor concerning his law practice. Most of those calls have revealed that the claimants have a difficult time understanding the bankruptcy process; many of them think that the court operates like a criminal enforcement agency which will launch an in-depth investigation of the affairs of Mr. Allman and produce a return of money to them. However, none of these claimants have pointed to or revealed any unencumbered assets which could be administered for their benefit. Further, any recovery would go to the priority non-dischargeable tax claimants, so over \$150,000 would have to be recovered before any unsecured claimants could receive a dividend.

The Trustee has filed an action under 11 U.S.C. §727 to deny the discharge of the Debtor and has also filed an Objection to the Exemptions claimed under Schedule C. The exemption objection was not intended as any indication that there are assets that can be administered, but rather to preserve the rights of the bankruptcy estate, in case anything is subsequently revealed.

Based on the Trustee' review of the recorded records, his discussions with the State Court Receiver, his discussions with claimants, his review of bank records, his review of the Statements and Schedules, his discussions with various counsel, and his attendance and inquiries at the §341heairng, he is convinced that this bankruptcy proceeding will not produce any meaningful results for the claimants who feel like they have been victimized, and could actually have a negative effect on these claimants, if they do not pursue a §523 action at their own expense.

A dismissal of this case with a waiver of discharge prevents any possibility that the Debtor can discharge any valid obligations to his former clients. Further, a dismissal would not allow unencumbered assets to escape administration, since it does not appear that there are any such assets. Therefore, the Trustee believes that a dismissal is in the best interests of the creditors in this case.

Samuel K. Crocker
U.S. Trustee, Region 8

/s/ Megan Seliber

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Chapter 7 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

IN RE:)	
)	
ANDY LAMAR ALLMAN,	)	Case No. 3:17-bk-03085
	)	Chapter 7
Debtor.	)	Judge Charles M. Walker

SUPPLEMENT 2 TO AGREED ORDER
WAIVING DISCHARGE OF DEBTOR AND DISMISSING CASE

NOTICE OF RESOURCES AVAILABLE TO CREDITORS OF THE DEBTOR

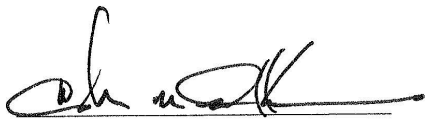
IF YOU ARE RECEIVING THIS NOTICE, PLEASE BE ADVISED THAT YOU MAY HAVE A CLAIM, DEBT, LIABILITY, OR DAMAGE AGAINST DEBTOR ANDY LAMAR ALLMAN AND MAY BE ENTITLED TO A MONEY JUDGMENT FROM MR. ALLMAN. YOU ARE ADVISED TO CONTACT AN ATTORNEY TO DETERMINE WHAT RIGHTS YOU MAY HAVE AGAINST MR. ALLMAN AND HOW BEST TO EXERCISE THOSE RIGHTS. THIS NOTICE HEREBY PROVIDES CONTACT INFORMATION FOR THE LEGAL AID SOCIETY OF MIDDLE TENNESSEE AND THE CUMBERLANDS AND THE TENNESSEE BAR ASSOCIATION. THESE RESOURCES MAY HELP YOU FIND AN ATTORNEY TO ADVISE YOU AS TO YOUR RIGHTS.

Legal Aid Society of Middle Tennessee and the Cumberland

300 Deaderick Street
Nashville, TN 37201
615-244-6610
www.las.org

Tennessee Bar Association

221 4th Avenue North, Suite 400
Nashville, TN 37219
615-383-7421
www.tba.org



Charles M. Walker
U.S. Bankruptcy Judge
Dated: 3/13/2018



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE:)	
	)	Case No: 3:17-03085
ANDY LAMAR ALLMAN,	)	Chapter 7
	)	Honorable Charles M. Walker
Debtor.)	
)	

**MEMORANDUM OPINION
ACCOMPANYING AGREED ORDER
WAIVING DEBTOR’S DISCHARGE AND
DISMISSING CASE**

THIS MATTER is before the Court on the Joint Motion to Dismiss Case and Waive Discharge of Debtor (“Motion”). The entry of the Agreed Order will dismiss the case on the request of the Debtor, the Chapter 7 Trustee, and two of the main creditors in the case. On July 27, 2017, this Court entered an Order¹ wherein it ruled that this Debtor did not have the right to dismiss his case voluntarily because he was a bad faith filer. This Opinion is to clarify for the parties and for the record that the Agreed Order does not in any way overturn, overrule, reverse, or terminate that Order. Although the Debtor appealed that Order, the appeal was dismissed by stipulation² as part of the terms of the agreement that is the basis of the Agreed Order. The Court undertakes this task in the interest of transparency and clarity given the number of *pro se* parties in interest.

¹ Order Denying Motion to Stay Proceedings, Granting Motion for Contempt, Granting Motion to Convert to Chapter 7, Denying Debtor’s Motion to Dismiss, and Rendering Trustee’s Motion to Dismiss Moot (ECF No. 49) (“Order”).

² Agreed Stipulation of Dismissal (ECF No. 203).

Background

The Debtor filed his “bare bones”³ petition for relief under Chapter 13 of the Bankruptcy Code⁴ on May 3, 2017. The Debtor, an attorney whose disbarment resulted in the appointment of a state court receiver and a criminal indictment, did not file any schedules, Statement of Financial Affairs, credit counseling certification,⁵ or creditor matrix with his original filing. When he failed to do so within the time frame required by the Federal Rules of Bankruptcy Procedure,⁶ the Chapter 13 Trustee filed a Motion to Dismiss for Unreasonable Delay Prejudicial to Creditors (ECF No. 6). Creditor Inga Goodson (“Goodson”) objected to the Trustee’s motion and filed a Motion for Conversion to Chapter 7 (ECF No. 8), alleging bad faith on the part of the Debtor in filing the petition in an attempt “to curtail the efforts of the duly appointed state court receiver.” The Chapter 13 Trustee joined in Goodson’s motion. The Debtor responded by filing a Motion to Voluntarily Dismiss (ECF No. 13) under § 1307(b), followed by a Motion to Stay Proceedings, wherein he expressed his concern that further proceedings would infringe upon his Constitutional Fifth Amendment privilege against self-incrimination. (ECF No. 42).

The Court held a hearing on July 5, 2017 on the Trustee’s motion to dismiss and Goodson’s motion to convert. The Debtor appeared and requested a continuance to allow him to retain counsel. The Court continued the hearing until July 26, 2017, and ordered the Debtor to file his schedules and statements on or before July 19, 2017. When the Debtor failed to comply with the order, Goodson filed a Motion for Contempt (ECF No. 38). At the hearing on July 26, 2017, the Court entered the Order, and the case was converted to a Chapter 7. The Debtor appealed the Order to the District Court for the Middle District of Tennessee, asserting his right to dismiss under § 1307(b).

We are now eight months down the road from the filing of that appeal, during which time no progress was made to resolve this unpleasant situation. After asserting his Fifth Amendment rights, failing to file complete schedules and statements (*see* ECF No. 152), two continuances of the meeting of creditors due to his failure to file a mailing matrix, numerous motions that

³ Term of art used to describe a bankruptcy filing to initiate a case with the barest of documentation – typically, just the first eight pages of the petition.

⁴ 11 U.S.C. § 101 *ff.* Any reference to “section” or “the Code” is a reference to the Bankruptcy Code unless another reference is stated.

⁵ 11 U.S.C. § 109(h)(1).

⁶ FED. R. BANKR. P. 1007(c), in relevant part provides: Time Limits. In a voluntary case, the schedules, statements, and other documents . . . shall be filed with the petition or within 14 days thereafter . . . [.]

delayed all proceedings (i.e. Motion to Stay Proceedings, Motion to Stay Pending Appeal, Motion to file the Creditor Matrix under seal), a resolution is now in sight.

The Joint Motion and Agreed Order

The Motion was filed by the Debtor, the Chapter 7 Trustee (“Trustee”), and creditors Cathy Brown (“Brown”) and Inge Goodson (“Goodson”) (collectively “Creditors”⁷). The United States Trustee has no objection to the Motion, however, twelve parties filed *pro se* objections. These parties are all former clients of the Debtor who each assert in their objection that they may have a claim against the Debtor (“Clients”).

Although the Agreed Order will provide for dismissal of the case, it will do so with sanction to the Debtor. First, the Debtor will waive his discharge and any right to appeal the Agreed Order. Second, the Debtor will be barred from filing for relief under the Code in any court in any jurisdiction for a period of two years. Attached to the Agreed Order is a Supplement containing a Summary of Efforts taken by the United States Trustee and the Chapter 7 Trustee. The supplement outlines the actions taken to investigate the assets of the Debtor, and the conclusion that there are no assets to be administered for the benefit of creditors. Given the “no asset” status of the case, this appears to be the best outcome for the Creditors, the Objectors, and any other parties in interest.

Prior Ruling

The Court denied the Debtor’s motion to dismiss under § 1307(b), instead granting Goodson’s motions for contempt and conversion based on its finding that the Debtor filed the motion in bad faith as part of a scheme to hinder and delay his creditors. In doing so, the Court held:

The debtor’s motion to dismiss the case is **DENIED** as having been filed in bad faith to further the debtor’s scheme to hinder his creditor’s in abuse of the bankruptcy system. The totality of the circumstances in this case, coupled with the Debtor’s stipulation on the record that the petition was filed in bad faith, and the Court’s responsibility to maintain the integrity of the bankruptcy system, require this Court to follow the line of cases holding that a debtor filing a motion to dismiss in the face of a motion to convert and for sanctions, does not have an absolute right to dismissal. *In re Youngblood*, No. 13-71071, 2013 WL 5592904 (Bankr. C.D. Ill. 2013), citing *Jacobsen v. Mosser (In re Jacobsen)*, 609 F. 3d 647 (5th Cir. 2010); *Rosson v. Fitzgerald (In re Rosson)*, 545 F. 3d 764 (9th Cir. 2008); *In re Kotche*, 457 B.R. 434 (Bankr. D. Md.

⁷ Note: Brown and Goodson are also former clients of the Debtor.

2011). “If good faith is a condition of eligibility to be a Chapter 13 debtor—and *Marrama* says that it is—then a debtor who has acted in bad faith, both before filing and with respect to the actual filing, is not eligible to be a Chapter 13 debtor. And, a debtor who is not eligible to be a Chapter 13 debtor is not entitled to the protections of Chapter 13 such as the absolute right to dismiss.” *Youngblood*, 2013 WL 5592904, at *7 referencing *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007).

The Court held that the Debtor, as a bad faith filer of a case under Chapter 13, was not entitled to the rights, privileges, and benefits afforded a Debtor seeking relief in good faith. As such, the Debtor was not entitled to voluntarily dismiss his Chapter 13 case in the face of a Motion to Convert. The Order and the findings contained therein stand. The Debtor has dismissed his appeal of the Order. Nothing in the record, nor anything in the Agreed Order changes the findings made by the Court in that Order.

Current Status

Why, then, is this bad faith Debtor *now* permitted to voluntarily dismiss his case? Herein lies the point of this opinion: to provide explanation to the parties – specifically the *pro se* Clients – as to why dismissal at the Debtor’s request is appropriate now when it was not before.

The first dismissal motion was brought by the Chapter 13 Debtor who was found to have filed his petition in bad faith. Granting that motion would have permitted him to have the benefit of the automatic stay, resulting in “holding off” his creditors – particularly the Clients – without having complied with the provisions of the Code.

The Code requires full disclosure of assets and liabilities, as well as attendance at a meeting of creditors to address questions by the Chapter 13 Trustee and interested parties. Had the Debtor complied with the Code, the disclosed information may have been beneficial to his Creditors and Clients in protecting their interests. The required disclosures are designed to provide the poor but unfortunate debtor with a fresh start by disclosing to the world the debts that are to be discharged, as well as any assets that may be liquidated for the benefit of creditors. This Debtor, however, disclosed nothing upon his initial filing except his name and address. He failed to provide any information in compliance with the Code⁸ for over eight months.

⁸ See 11 U.S.C. §§ 521 and 341, FED. R. BANKR. P. 1007.

Until now, the Debtor was the only one to benefit from the filing. The moment he filed his Chapter 13 petition, the automatic stay prohibited his creditors from pursuing any collection actions against him.⁹ That stay has remained in full force and effect since the date of filing some ten months ago.¹⁰ The Debtor has had the benefit of the stay without paying price – compliance with the Code. He then sought to exit the bankruptcy process unscathed while having stalled the Creditors and Clients to their detriment.¹¹

Now, the Debtor is a Chapter 7 Debtor. This subjected him to the scrutiny of a Chapter 7 Trustee, who investigated the possibility of administering assets for the benefit of creditors. Additionally, in order to obtain the dismissal, the Debtor is waiving his discharge and ability to appeal the Agreed Order. What this means is that there is no discharge available to him for any debt for which he is liable on the petition date. No discharge – now or in the future – for any debt for which he is responsible on the date of filing.

Additionally, he is barred from seeking relief from this or any other bankruptcy court in the country for a period of two years. The waiver of discharge and the bar to refiling are sanctions to which the Debtor has agreed, with advice of counsel. These sanctions are appropriate in this situation in that they address the concerns of the Creditors and the Objectors directly. *See In re Cusano*, 431 B.R. 726, 738 (6th Cir. 2010) citing *In re Greenburg*, 200 B.R. 763, 769-70 (Bankr. S.D.N.Y. 1996) (sanctions “should fit the situation, remedying the abuse and protecting the party most directly affected by the wrongful conduct.”).

Conclusion

The Court’s finding that the Debtor filed his Chapter 13 petition in bad faith is not contradicted by the entry of the Agreed Order dismissing the Debtor’s Chapter 7 case without a discharge and with a bar to refiling. This appears to be the best result in light of the Court’s previous findings and the interests of the Creditors and Objectors. The Joint Motion is GRANTED. The Agreed Order will be entered.

⁹ 11 U.S.C. § 362.

¹⁰ With the exception of one creditor who obtained relief from the stay.

¹¹ *i.e.* one Client represented to the Court at the hearing on February 27, 2018 that the statute of limitations had run on the claim for which she had retained the Debtor to represent her.

This Order has been electronically signed. The Judge's signature and Court's seal appear at the top of the first page.
United States Bankruptcy Court.