

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	§	<b>CHAPTER 11</b>
	§	
<b>ABC DENTISTRY, P.A., et al.</b>	§	<b>CASE NO. 16-34221</b>
	§	
<b>DEBTORS</b>	§	<b>Jointly Administered</b>

**Emergency Motion to Reopen Case Number 16-34221-H2-11  
by Brewer & Pritchard, P.C., J. Mark Brewer and A. Blaire Hickman**

Under 11 U.S.C.A. § 350(b) and Bankruptcy Rule 5010, Brewer & Pritchard, P.C., J. Mark Brewer and A. Blaire Hickman move the Court to reopen jointly administered Case 16-34221-H2-11 for purposes of removing to this Court a recently filed lawsuit of Dr. Saeed Rohi (“Rohi”), creditor. Rohi filed his suit<sup>1</sup> in Harris County District Court on June 1, 2018 and the first defendant to be served was served on June 26, 2018. Rohi’s suit is an impermissible collateral attack on this Court’s November 7, 2017 Final Order. Bankruptcy Rule 9024 and F.R.Civ.P. 60. The Order was entered after Rohi, who was present for the November 7, 2017 hearing, stipulated to its entry through his counsel Charles Long. Rohi also waived appeal of the Order, on the record.<sup>2</sup>

The undersigned therefore move to reopen the above-captioned case so that the lawsuit Rohi recently filed can be removed to this Court. The reopening of the case for this purpose and the removal of Rohi’s recently filed state court case will not in any way involve the Debtors or the Plan and is not sought for any improper purpose.

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<sup>1</sup> Attached hereto as **Exhibit 1** is the lawsuit filed by Dr. Rohi.

<sup>2</sup> The Court’s order is detailed in the Minutes of the Court from the November 7, 2017 hearing, attached hereto as **Exhibit 2** and in the official transcript of the hearing attached hereto as **Exhibit 3**.

### **BACKGROUND**

1. ABC Dentistry, PA, ABC Dentistry West Orem, PLLC, ABC Dentistry Old Spanish Trail, P.L.L.C. and ABC Dentistry, P.A. filed for bankruptcy on August 26, 2016 after the entry of summary judgement against them in Case 2014-41707, 281<sup>st</sup> Judicial District Court, Harris County, Texas styled *Saeed Rohi, DDS vs. Iraj. S. Jabbary, et al.* The 281<sup>st</sup> Judicial District Court case was removed the same day. The bankruptcy cases were jointly administered by the Honorable Marvin Isgur under Case 16-34221 and closed on June 13, 2018 [Docket #384].

2. During the pendency of the bankruptcy, the Court abated the adversary proceeding and ordered the parties to mediation on October 19, 2016 [Docket #23]. The Court appointed Barbara Radnofsky to conduct the mediation with Rohi and the Debtors and the parties did mediate on November 16, 2016, settling for a total of \$3.5 million payable in equal quarterly payments ending in December 2022. Debtors immediately began paying approximately \$50,798.28 per quarter into the Court's registry. However, the State of Texas did not participate in that mediation and subsequently withheld consent to it on the basis of its dispute regarding the allocation of the proceeds between the State, Rohi and Rohi's counsel.

3. The State's allocation dispute necessitated a further court-ordered mediation on June 27, 2017. Rohi, the Debtors and the State engaged in this second mediation on July 26, 2017; however no agreement was reached with the State as to the proper allocation of the settlement proceeds between the State, Rohi and Rohi's counsel. Subsequently, the Debtors increased the total settlement proceeds to \$4 million and the Court set a November 14, 2017 trial regarding the allocation of the proceeds. The Debtors had no interest in and were never involved with the allocation dispute.

4. At the November 7, 2017 hearing which was in advance of the scheduled trial on the allocation issue, and after extensive briefing by Rohi and the State, both Rohi and the State (1) waived an evidentiary hearing; (2) consented to the Court determining the allocation of the State's share, Rohi's share and attorney fees; and (3) waived all rights to appeal. Dr. Rohi and his wife Pillar were present at the hearing, including when counsel stipulated to the waiver of the trial and evidentiary hearing; consented to the Court making the allocation determination *after the Court stated what the allocation would be*; and consented to the waiver of appeal of the Court's Order. With Rohi's and the State's express consent, the Court then proceeded to orally announce the following final order, which is reflected in the Official Transcript and the following Courtroom Minutes:

Courtroom Minutes. Hearing Held: 1:30 AM. Appearances: Omar Alaniz for the Debtors. Charles Long, Mark Brewer and Blaire Hickman for Dr. Rohi. Paul Moore, Hal Morris and Ashley Bartram for the State of Texas Attorney General Office. Phillip Hilder and Tate Williams for the Debtor. The Motion to Approve the Disclosure Statement [336] was granted. The Disclosure Statement was approved. Order signed. The Objection to Claim [252] is continued to December 13 at 1:30 PM. **The court announced and ordered the division of the proceeds of \$4,000,000.00 as follows: \$1,599,000.00 to the State of Texas; \$720,000.00 to Dr. Rohi; \$1,681,000.00 to the attorneys representing Dr. Rohi to be divided by the attorneys in accordance to their own agreements.** (mrios) Modified on 11/8/2017 (mrios). [emphasis added]

5. By mid-December 2017, Debtors had paid \$660,377.64 into the Court's registry. By this Court's December 13, 2017 Order,<sup>3</sup> all funds held in the Court's registry were ordered disbursed. On January 3, 2018, Rohi received **\$118,867.97**, the portion of the proceeds in the Court's registry allocable to him by the November 7, 2017 Final Order. On April 5, 2018, Rohi received an additional **\$32,211.92**, the allocable portion of the first 2018 quarterly payment. On June 20, 2018, Rohi received an additional **\$32,211.92**, the allocable portion of the second 2018

<sup>3</sup> Docket # 359, attached hereto as **Exhibit 4**.

quarterly payment. As of today, Rohi has received a total of **\$183,291.81** of the total \$720,000 allocated to him by the Court in its Final Order of November 7, 2017.

6. On June 1, 2018, Rohi filed suit in the 151st Judicial District Court against his former counsel, the undersigned, lodging a collateral attack on this Court's November 7, 2017 Final Order. His petition fails to mention (1) the bankruptcy; (2) his receipt of \$183,291.81; and (3) the November 7, 2017 Final Order. Instead, Rohi attempts to disguise his collateral attack with scattershot claims including under the Texas Deceptive Trade Practices Act, the Texas Theft Liability Act, and breach of fiduciary duty.

7. The Court's November 7, 2017 is clearly a final order. Moreover, Rohi and all other parties expressly waived any appeal of the November 7, 2017 Order:

THE COURT: But what I don't want to do is — seriously, I don't want to end up with an appeal. If we're going to have an appeal, I want to give you a chance — appeal.

MR. LONG [for Dr. Rohi who was present in the courtroom]: We've already waived our right to appeal.

[Official Hearing Transcript, Page 35, lines 4-8; attached hereto as **Exhibit 3.**]

8. Because it is obvious and well settled law that the Court's November 7, 2017 Order is a "final order" — including the attorneys fees payable to Rohi's counsel, it is res judicata. F.R.Civ.P. 60; *In re Coastal Plains, Inc.*, 338 B.R. 703, 713 (N.D. Tex. 2006):

For purposes of determining the finality of a bankruptcy order, each matter that arises between the filing of the bankruptcy petition and the issuing of a closing order is treated as a separate proceeding. *Smith v. Revie (In re Moody)*, 817 F.2d 365, 367–68 (5th Cir.1987). A "final" order in a bankruptcy case can be any order that "ends a discrete judicial unit in the larger case." *Id.* at 368. It is logical to apply this same standard of finality for the purposes of res judicata, especially considering that the Federal Rules of Bankruptcy Procedure define "judgment" as "any appealable order." Fed. R. Bankr. P. 9001(7). The First Circuit takes this approach, allowing any bankruptcy court order that " 'completely resolve[s] all of the issues pertaining to a discrete claim' " to satisfy the res judicata requirement of a final judgment on the merits. *Iannochino v. Rodolakis (In re Iannochino)*, 242 F.3d 36, 43 (1st Cir.2001)

(quoting *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc., (In re Integrated Res., Inc.)*, 3 F.3d 49, 53 (2d Cir.1993)).

### **CONCLUSION**

Since Rohi's suit is an impermissible attack on this Court's Final Order of November 7, 2017, Movants respectfully ask the Court to reopen the bankruptcy so that Rohi's June 1, 2018 state court suit can be removed to this Court. Movants further ask for such other and further relief to which they may be entitled.

Date: July 3, 2018

Respectfully submitted,

/s/ A. Blaire Hickman

A. Blaire Hickman, 24074407

J. Mark Brewer, 02965010

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### **CERTIFICATE OF SERVICE**

The following has been filed in accordance with the rules and served to all counsel of record using the court's CM/ECF system on July 3, 2018.

/s/ J. Mark Brewer

J. Mark Brewer