

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re:

Debtor(s).

No.

**ORDER GRANTING MOTION TO STRIKE BANKRUPTCY CASE
AND TO ANNUL THE AUTOMATIC STAY**

THIS MATTER is before the Court on the Motion to Strike Bankruptcy Case and to Annul the Automatic Stay (the “Motion to Strike”) filed by Debtor’s attorney on *[insert date]*. *[Insert name of the debtor on the petition uploaded in error]* (the “Debtor”) asks the Court to strike this bankruptcy case commenced by the filing of a voluntary petition for relief (the “Petition”) on *[insert date]* as Docket No. 1 with the legal effect that no bankruptcy case was commenced by the filing of the Petition, and to annul the automatic stay resulting from the filing of the Petition. Upon review of the Motion to Strike and the record of this proceeding and based on the representations of counsel submitting this order, the Court FINDS:

A. On *[insert case opening date]*, the Debtor’s attorney filed the Petition and opened a bankruptcy under Chapter *[insert chapter 7, 13, etc.]* of the Bankruptcy Code in CM-ECF, the Court’s electronic filing system. The result was the commencement of a case under Title 11 assigned Case No. *[insert case number]* (the “Bankruptcy Case”).

B. Counsel of record for the Debtor by submitting this order represents to the Court:

(1) That [specifically identify documents, e.g., petition, schedules, statement of financial affairs, and statement of monthly income (B122A) and signature page in the name of John Doe] electronically filed on [insert case opening date] as Docket No. 1 were uploaded into CM-ECF in error resulting in a case being commenced for the wrong debtor.

(2) Counsel promptly filed the Motion to Strike upon having learned of the error.

(3) The Debtor has not given notice to any creditor or party in interest of the commencement of the Bankruptcy Case.

(4) *If applicable:* A case pending under chapter [insert chapter number] is already pending for the Debtor in the United States District Court for the District of New Mexico, Case No. [insert case number].

C. The Clerk has not served the notice of commencement of this case (Official Form 309).

D. Under the circumstances, entry of this order is appropriate.

WHEREFORE, IT IS HEREBY ORDERED that the documents filed on [insert case opening date] as Docket No. 1 are stricken with the legal effect that the Bankruptcy Case was not commenced. The stay arising by operation of 11 U.S.C. § 362 upon commencement of the Bankruptcy Case is annulled with the legal effect that no such stay went into effect. The appointment of the case trustee in this Bankruptcy Case is void *ab initio*. The Clerk is directed to close this case.

IT IS FURTHER ORDERED that this Order shall serve as notice of no Bankruptcy Case having been commenced, and that notice of this Order be limited to the Debtor's attorney, the case trustee, and the United States Trustee.

END OF ORDER

Submitted electronically by:
(name of debtor's attorney)

Copies to:
(name of case trustee) (name of U. S. trustee)