

2009

# Joseph Billings v. Paul James Toscano : Brief of Appellee

Utah Court of Appeals

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Peter Guyon; attorney for respondent.

Joseph Billings; pro se.

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IN THE UTAH COURT OF APPEALS

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JOSEPH BILLINGS,	:	BRIEF OF APPELLEES
Plaintiff and Appellant,	:	
-vs-	:	
PAUL JAMES TOSCANO;	:	
PAUL TOSCANO, P.C., and:	:	Case No. 20091000-CA
Does 1-50,	:	
Defendants and Appellees.	:	

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**Brief of Defendants and Appellees in Opposition  
to the Pending Appeal of Plaintiff and Appellant to the Court of Appeals  
From an Order on Pending Matters Entered on February 24, 2010  
by the Third District Court of Salt Lake County  
in Civil Proceeding 090907164  
the Honorable Denise P. Lindberg Presiding**

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**FILED  
UTAH APPELLATE COURTS**

**JUL 08 2010**

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I.

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## II.

### APPELLATE COURT JURISDICTION

Although this Court has asserted it maintains jurisdiction to decide this matter as embodied in its ORDER DENYING MOTION TO DISMISS APPEAL dated June 09, 2010 (the “June 09, 2010 Ruling”), Defendants urge the Court to reconsider its June 09, 2010 Ruling and conclude that Rule 4( c ), Utah Rules of Appellate Procedure, does not save this appeal from dismissal and that to invoke the jurisdiction of this Court Plaintiff was required to file a notice of appeal from the February 24, 2010 final order of the district court.

## III.

### STATEMENT OF ISSUES PRESENTED FOR REVIEW

This appeal was filed *pro-se* by Plaintiff, a disbarred former California attorney<sup>1</sup> who sued Defendants and Appellees in the Third District Court action from when this appeal springs in a failed attempt to avoid Plaintiff’s obligations under a settlement agreement (which Plaintiff had agreed to in open court) in Plaintiff’s sister’s bankruptcy proceeding (wherein Defendants served as Plaintiff’s sister’s bankruptcy counsel), which settlement agreement was approved by the order of the US Bankruptcy Court, the Honorable Judith A. Boulden presiding. The Third District Court action was dismissed by the Honorable Denise P. Lindberg upon Defendants’ motions for summary judgment in the

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<sup>1</sup>See *In re Billings*, 50 Cal.3d 358, 787 P.23 617, 267 Cal.Rptr. 319 (1990)

state action.

Defendants object to Plaintiff's characterization and identification of the issues for review. Plaintiff has attempted to raise a myriad of issues which are not properly before the Court and which should result in the dismissal of the appeal and the imposition of sanctions and attorney fees against Plaintiff, as discussed immediately hereafter:

Rule 24(k), Utah Rules of Appellate Procedure, is very explicit about the allowable content of briefs filed in appeals:

All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or *sua sponte* by the court, and the court may assess attorney fees against the offending lawyer.

Plaintiff's Opening Brief fairly exudes inaccurate, burdensome, irrelevant and immaterial issues, alleged facts and arguments. For example, in his Amended Docketing Statement dated November 20, 2009 (the "Amended Docketing Statement"), rather than simply identifying the issues on appeal, Plaintiff engages in a 2 ½ page diatribe over what allegedly went wrong in the State Court and how the trial court and counsel allegedly misunderstood res judicata and collateral estoppel ( Amended Docketing Statement, ¶ 9); how Judge Lindberg allegedly misunderstood the "sham settlement agreement" Plaintiff agreed to in the Bankruptcy Court (Amended Docketing Statement, ¶ 10); and how Defendants allegedly failed to file Statements of Undisputed Facts in support

of both motions for summary judgment (Amended Docketing Statement, ¶ 11) before actually attempting to identify four (4) issues on appeal (Plaintiff's Opening Brief, p. 5, line 18), which eventually expand into five (5) issues (Plaintiff's Opening Brief, pp. 5-7).

Plaintiff's Opening Brief itself contains five (5) issues which appear, at least in some cases, to correspond to several of the five (5) issues Plaintiff purports to identify in his Amended Docketing Statement. However, the rambling, overbroad, imprecise and all-inclusive nature of Plaintiff's alleged identification of issues on appeal in his Opening Brief makes it difficult, if not entirely impossible, to identify exactly what issues Plaintiff claims to appeal.

Regardless of what issues Plaintiff *purports* to appeal, Defendants believe that the only *possible* issues on appeal are those framed by his First Amended Complaint for (1) Abuse of Process, (2) Fraud, and (3) Negligence dated August 31, 2009 (the "First Amended Complaint"), and which Defendants suggest can be more than adequately framed as follows:

1. Whether the trial court properly granted Defendants' Motion for Summary Judgment by ruling that all claims asserted by Plaintiff concerning the Bankruptcy Court's approval of the settlement agreement which binds Plaintiff cannot be collaterally attacked in the Third District Court; and
2. Whether the trial court properly granted Defendants' Motion for Summary Judgment by ruling at all claims asserted against Defendants were extinguished

by the terms of the settlement agreement which binds Plaintiff.

In view of Plaintiff's hazy, imprecise and overbroad attempts to identify issues on appeal to include everything but the proverbial kitchen sink, Defendants suggest that the Court adopt the two (1) issues identified immediately above by Defendants as the actual issues on appeal.

#### IV

#### STATEMENT OF THE CASE

##### **A. Nature of the Case, Course of Proceedings and Disposition in the Third District Court:<sup>2</sup>**

1. Plaintiff filed the underlying action on or about April 30, 2009 in the Third District Court of Salt Lake County (hereafter the "State Action") as a one-count complaint (the "Original Complaint") for abuse of process against Defendants. The claims asserted by Plaintiff in the Original Complaint arise from Defendants' actions in filing a Chapter 7 Bankruptcy Proceeding in the US Bankruptcy Court for the District of Utah, Central Division, styled *In re Antoinette Billings*<sup>3</sup> and numbered 08-22447 (the "Chapter 7 Proceeding.") [R, 2-10]

2. Defendants moved the Third District Court to dismiss the Original Complaint *via* their Motion to Dismiss for Lack of Personal Jurisdiction and for Lack of

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<sup>2</sup>All references to the record of this case are by the use of a capital "R," followed by the pages of the record designated in the docket sheet prepared by the Third District Court.

<sup>3</sup>Antoinette Billings is Plaintiff's sister.

Subject Matter Jurisdiction and For Costs and Attorney Fees on or about May 8, 2009 (the “Motion to Dismiss”) [R, 11-13], which Plaintiff opposed [R, 102-106 and 107-114].

3. On or about August 21, 2009 Defendants filed Defendants’ Motion for Summary Judgment (the “First Motion for Summary Judgment”) [R, 142-144], which was likewise opposed by Plaintiff in the form of his Opposition to Defendants’ Motions for Summary Judgment [R, 209-216], his [second] Opposition to Defendants’ Motions for Summary Judgment [R, 217-224], his Memorandum of Points and Authorities in Support of Opposition to Defendants’ Motions for Summary Judgment [R, 225-233] and his Separate Statement of Disputed Facts and Genuine Issues as to Material Facts in Support of Opposition to Defendant’s Motion for Summary Judgment [R, 234-235].

4. Concurrently with the last two (2) filings identified immediately above, Plaintiff filed his First Amended Complaint For (1) Abuse of Process, (2) Fraud, and (3) Negligence on August 31, 2009 (the “First Amended Complaint”) [R, 246-261], in which Plaintiff expanded his abuse of process claims to three (3) separate counts and added one (1) fraud claim and one (1) negligence claim.

Count 1 of Plaintiff’s abuse of process claim appears to parallel the abuse of process claim in the Original Complaint in that it relates to Defendants’ filing of Plaintiff’s sister’s bankruptcy case. Count 2 of the First Amended Complaint arises from Defendants’ unsuccessful attempt to remove the Third District Court proceeding to the Bankruptcy Court and Count 3 relates to Defendants’ drafting and filing of the settlement



agreement in the US Bankruptcy Court, which included Plaintiff as a party and which ultimately extinguished all of Plaintiff's claims. The fraud allegation in the First Amended Complaint also arises from Defendants' activities surrounding the drafting and filing of the settlement agreement by which Plaintiff does not want to be bound, and the negligence claim apparently relates to the same activities, although its allegations are less clearly drafted.

5. Defendants then filed their Motion to Consolidate and for Summary Judgment and for Fees and Costs on or about September 17, 2009 (the "Second Motion for Summary Judgment" [R, 303-305] wherein Defendants sought to consolidate their pending Motions for Summary Judgment to encompass Plaintiff's First Amended Complaint for purposes of a ruling by the Third District Court. The First Motion for Summary Judgment and the Second Motion for Summary Judgment are at times hereafter collectively referred to as the "Summary Judgment Motions."

6. Plaintiff filed a number of documents in opposition to the Second Motion for Summary Judgment, including the following, all of which were filed on or about August 31, 2009:

- A. Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment of the First Amended Complaint [R, 225-233];
- B. Affidavit of Joseph Billings Controverting Defendants' Statement of

Undisputed Facts in Support of Defendant's Motion for Summary Judgment of the First Amended Complaint [R, 209-216 and 217-224]; and

- C. Separate Statement of Disputed Facts and Genuine Issues as to Material Facts in Support of Opposition to Defendant's Motion for Summary Judgment [R, 234-245].

7. The Third District Court heard oral argument on the pending matters on September 1, 2009 and issued its Ruling on October 27, 2009 (the "Ruling") [R, 389-402], wherein, *inter alia*, it made findings of fact and conclusions of law and granted Defendants' Motion to Consolidate and Defendants' Motions for Summary Judgment.

8. Plaintiff filed a Notice of Appeal of the Ruling on or about November 23, 2009 [R, 403-404]

9. In the meantime, this Court, *sua sponte*, questioned the finality of the Ruling, after which Defendants' counsel prepared and submitted to the Third District Court that certain Order on Pending Matters, which was signed and entered on or about February 24, 2009 [R, 422-424]

10. Defendants on or about May 25, 2010 filed Defendants' Motion to Dismiss and in the Alternative for Extension to File Brief upon the premise that Plaintiff's intention was to appeal the Ruling, which was a non-final order, instead of the Order on Pending Matters, which was a final order, and that he was not saved from his failure to

appeal the Order on Pending Matters by Rule 4( c ), Utah Rules of Appellate Procedure.

11. This Court denied the Motion to Dismiss on June 9, 2010 by its Order Denying Motion to Dismiss Appeal and granted the motion to extend the filing date for Defendants' brief to July 9, 2010.

**B. Statement of Facts Relevant to Issues Presented for Review:**

1. Defendants filed their Summary Judgment Motions based upon the fact that as part of a settlement agreement in the Chapter 7 Proceeding, Plaintiff had waived all claims made by Plaintiff against Defendants in the Original Complaint and then in the First Amended Complaint. As part of their First Motion for Summary Judgment Defendants attached a copy (and on the day of the hearing presented to Judge Lundberg a certified copy) of Judge Boulden's AMENDED ORDER APPROVING SETTLEMENT AMONG DEBTOR ANTOINETTE BILLINGS, DEBTOR'S COUNSEL, JOSEPH M. BILLINGS, JOHN H. BILLINGS, AND CHAPTER 7 TRUSTEE ELIZABETH LOVERIDGE dated August 21, 2009 and entered on August 23, 2009 in the Chapter 7 Proceeding (the "Bankruptcy Court Order Approving Settlement"). [Addendum 1]<sup>4</sup>

2. Attached to the Bankruptcy Court Order Approving Settlement and incorporated therein was that certain SETTLEMENT AGREEMENT AMONG ANTOINETTE BILLINGS, PAUL TOSCANO AND PAUL TOSCANO, P.C., ELIZABETH LOVERIDGE AND JOSEPH H. BILLINGS (the "Settlement Agreement")

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<sup>4</sup>The certified copy of Judge Boulden's order is also found at R, 181-308. A non-certified order is found at R, 152-180.

and attachments, which bears the following statement on the signature page: “Effective upon Court approval on March 30, 2009.” [Addendum 1]

3. The Settlement Agreement contains, *inter alia*, the following language pertinent to this appeal:

This Settlement Agreement . . . is entered into among the following parties: . . . Paul Toscano and Paul Toscano, P.C., Debtor’s counsel; [and] Joseph M. Billings, pro se . . . (Settlement Agreement, first paragraph, page 1)

. . . the Parties, desiring to settle and resolve all disputes among them and to mutually release each other against the others any and all claims and cases of action extant among them, including claims and causes of action for malicious prosecution and abuse of process against the Debtor and Debtor’s Counsel, . . . (Settlement Agreement, page 7)

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the exchange of mutual releases of all claims and causes of action, including claims and causes of action for malicious prosecution and abuse of process against the Debtor and Debtor’s Counsel as set forth below, . . . (pp. 7-8, Settlement Agreement Terms)

This Agreement is subject to approval by the United States Bankruptcy Court for the District of Utah, . . . (¶ 1.b. Conditions Precedent, page 8)

Effective upon the performance of the obligations set forth in paragraphs 2 and 3 above, the Parties hereby mutually release each other from any and all claims, debts, obligations, actions, demands, liabilities, costs, expenses, attorneys fees, damages, real property or controversies of any kind or nature whatsoever, including any actions for abuse of process or malicious prosecution, whether grounded in law or equity, whether known or unknown, in any way relating to or arising out of the claims and defenses raised in the Lawsuit, the Adversary Proceeding, or any motions or actions in any court, tribunal, administrative proceeding, of any kind or any nature whatsoever, . . . (¶ 4, page 11)

This settlement agreement shall become effective and binding upon the Parties upon Bankruptcy Court’s entry of the Order approving this

Settlement. (¶ 6.b., page 12)

4. On September 01, 2009, Plaintiff filed an untimely appeal to the US District Court for the District of Utah, Central Division, in Case No. 2:09-cv-00828-TC [Addendum 3] of the Bankruptcy Court Order Approving Settlement [Addendum 2, Dkt. No. 121], followed by a motion to extend the time for appeal [Addendum 2, Dkt. No. 129], which was denied by the Bankruptcy Court's ORDER RE: JOSEPH M. BILLINGS' MOTION FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL dated October 07, 2009 in Bankruptcy No. 08-22447 (the "Order Denying Motion to Extend Time to Appeal"). [Addendum 2, Dkt. No. 160]

5. Plaintiff then filed an Amended Notice of Appeal to the US District Court for the District of Utah, Central Division in Case No. 2:09-cv-00993-TC [Addendum 4], on October 13, 2009 in an attempt to appeal the Bankruptcy Court's Order Denying Motion to Extend Time to Appeal. [Addendum 2, Dkt. No. 164] Both cases pending in the US District Court were consolidated under case no. 2:09-cv-00828-TC. [Addendum 3, Dkt. No. 8]

6. Although Judge Lindberg's Ruling was made on October 27, 2009, oral argument was held on September 1, 2009, at which time Judge Lindberg was aware of Plaintiff's appeal in the US District Court; therefore, by the following language, Judge Lundberg's Ruling specified that it was not a final order depending on the outcome of Plaintiff's appeal to the US District Court for the District of Utah, Central Division:

. . . because there is an appeal pending or [sic] Judge Boulden's August 29, 2009 Order, the dismissal of the claims is granted without prejudice to Plaintiff in the event he prevails on his appeal to the District Court of those issues. [R.,           ]

7.       On December 21, 2009, the US District Court affirmed the decision of the Bankruptcy Court. [Addendum 2, Dkt No. 12] No appeal was taken from that order.  
[Addendum 2]

8.       On January 7, 2010 Defendants filed in the Third District Court their Notice of Dismissal of Plaintiff's Bankruptcy Appeal and Request for Clarifying Order, upon which no further action has been taken.

**C.       Defendants' Objections to Plaintiff's Statement of Relevant Facts.**

Defendants object to Plaintiff's alleged "Statement of Facts" (Plaintiff's Brief, pp. 16-27) because he attempts to introduce into this proceeding a plethora of extraneous, irrelevant, immaterial, conclusory, often superfluous and potentially misleading statements which appear to be designed to focus this Court's attention on anything other than the issues at hand. The issues on appeal arise out of the District Court's orders granting summary judgment in favor of Defendants, and should not be allowed to be expanded or mis-stated to provide a forum from which Plaintiff can spew arguments which he has already lost in the US Bankruptcy Court, or make allegations or raise innuendo which can only produce a thick haze of misinformation which Plaintiff seems bound to attempt to create. Predictably, Plaintiff has attempted to sidestep the real issues, which are that he agreed to the terms of the settlement agreement that was

ultimately confirmed by the Bankruptcy Court, and his only escape from that inconvenient fact is to allege fraud and “sham” agreement. In any event, Defendants’ objections to each paragraph of Plaintiff’s purported Statement of Facts follow:

1. (First paragraph, pp.16-17) This paragraph is largely argument and not facts. Although it is true that Defendants filed a bankruptcy proceeding, Defendants’ intent (lines 3-4 and 5-8, p. 17) in so doing is falsely stated and nothing more than innuendo.

2. (First full paragraph, pp. 17-18) Although Plaintiff’s alleged knowledge of bankruptcy law may have been helpful before the US Bankruptcy Court, the allegation that Defendants filed the Chapter 7 petition wrongfully has little, if anything, to do with this appeal.

3. (First full paragraph, p. 18) This paragraph is entirely Plaintiff’s argument concerning Defendants’ alleged obligations under the Bankruptcy Code, and has nothing whatsoever to do with this appeal.

4. (Second paragraph, p. 18-19) Again, this paragraph is entirely Plaintiff’s arguments and spurious allegations concerning Defendants’ alleged wrongful actions, none of which have ever been proved, but which Plaintiff continues to assert as if they were facts.

5. (First full paragraph, p. 19) This paragraph contains nothing but allegations, all of which Defendants deny and none of which has ever been proven.

6. (First full paragraph, p. 20-21) Aside from the fact that Plaintiff admits he entered into the settlement agreement at issue, this paragraph is nothing more than Plaintiff's stated view of what the settlement agreement contained. Since the settlement agreement at issue is unambiguous on its face, Plaintiff's opinion of what it contains is irrelevant to this proceeding.

7. (First full paragraph, p. 21) Aside from Plaintiff's admission that he agreed to be bound by the settlement agreement and "dismissed his causes of action against the debtor with prejudice," this paragraph reflects only Plaintiff's version of circumstances surrounding the Chapter 7 Proceeding, all of which are contested and all of which Plaintiff asserted to the Bankruptcy Court before the settlement agreement was confirmed.

8. (Second full paragraph, p. 21) This paragraph again reflects nothing more than Plaintiff's allegations of what he apparently believes happened concerning certain matters, but contains no facts relevant to this proceeding.

9. (First full paragraph, p. 22) This paragraph contains allegations that Defendants altered the settlement agreement that Plaintiff had entered into and Plaintiff's response, but again no facts relevant to this appeal.

10. (Second full paragraph, p. 22-24) This lengthy paragraph variously charges Defendants with abuse of the judicial process (p. 23, lines 2-3) and filing groundless motions (p. 23, lines 3-4) and then adds more argument about what Defendants



did or did not know and what Defendants should have done or did not do. The paragraph is entirely bereft of facts relevant to this appeal.

11. (First full paragraph, p. 24) Plaintiff in this paragraph alleges that Defendants attempted to intimidate Plaintiff (p. 24, line 3); that Defendants declined to favor Plaintiff with legal citations (p. 24, lines 9-12); and makes his argument about Defendants' motivations. Nowhere is there a statement of facts relevant to this appeal.

12. (First full paragraph, p. 25) This paragraph again alleges that Defendants changed the settlement agreement and contains Plaintiff's unsupported claims of wrongful actions on the part of Defendants and ends with Plaintiff's version of the reason he filed his First Amended Complaint. In all events, there are no factual allegations as contemplated by the Utah Rules of Appellate Procedure.

13. (Second full paragraph, p. 25-26) This paragraph reflects Plaintiff's version of Defendants' attempt to remove the State Action to US Bankruptcy Court, but provides no facts relevant to this appeal.

14. (First full paragraph, p. 26-27) This paragraph acknowledges that the US Bankruptcy Court approved the settlement agreement (which Plaintiff refers to as the "sham settlement agreement"), but asserts that it was altered by Defendants and did not accurately reflect what Plaintiff had agreed to. Such arguments were unsuccessfully made by Plaintiff in the Bankruptcy Court but have no basis here.

Based upon Plaintiff's utter failure to provide the Court relevant facts as

required by the Utah Rules of Appellate Procedure, Defendants ask the Court to accept those facts as set forth in the “Relevant Facts” section of Appellees’ brief as the facts pertinent to this appeal.

V.

SUMMARY OF ARGUMENTS

Plaintiff entered into a settlement agreement in open court in the US Bankruptcy Court for the District of Utah, Central Division, on or about January 28, 2009 pursuant to the unambiguous terms of which Plaintiff waived any and all claims against both Defendants, including all those claims made by Plaintiff in his First Amended Complaint in the State Court Action.

In addition to the waiver of claims against Defendants, the Settlement Agreement provides that upon the confirmation of the Settlement Agreement by the Bankruptcy Court the Settlement Agreement would be deemed executed by the parties without the necessity of actually executing the Settlement Agreement and binding upon the parties thereto upon the entry by the Bankruptcy Court of its order approving the settlement. The Bankruptcy Court’s Amended Order Approving Settlement was signed and entered on or about August 21, 2009.

On September 01, 2009 Plaintiff filed an untimely appeal of the Bankruptcy Court’s Order Approving Settlement, after which he sought an order from the US Bankruptcy Court allowing his untimely appeal, which was also denied on October 07,

2009. Plaintiff then appealed the order denying his untimely appeal to the US District Court for the District of Utah, Central Division, which appeal was likewise denied. Plaintiff did not appeal the decision of the US District Court. Accordingly, all appeals in the Federal system that could possibly be made by Plaintiff are exhausted.

Judge Lindberg correctly characterized Plaintiff's claims in the State Action as either (1) claims that challenge what happened before the Bankruptcy Court in order to get that Court's approval of the settlement agreement or (b) claims that would be extinguished by the settlement agreement. The first group of claims must be dismissed because they constitute a collateral attack upon the Bankruptcy Court's decision to approve the settlement agreement and any such complaint is the exclusive province of the US Bankruptcy Court, which issued the order, or the District Court on appeal. The second group of claims must be dismissed because they were extinguished by the unambiguous terms of the Settlement Agreement as a matter of law.

Plaintiff attempts to argue the matters before this Court with reference to res judicata and/or collateral estoppel, but essentially ignores the mandatory provisions of Rule 56, Utah Rules of Civil Procedure. Regardless of the theory employed by the parties or by the Court, to avoid summary judgment Plaintiff was obliged by Rule 56 to demonstrate to the trial court that there was a question of material fact requiring a trial.<sup>5</sup>

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<sup>5</sup>The trial Court's decision can be affirmed on any theory apparent in the record, even if it was not the theory relied upon by the trial Court. See, for example, *Dipoma v. McPhie*, 2001 UT 61, 29 P.3d 1225, 1230 (Utah 2001) and authorities cited therein.

The documents filed by Plaintiff in opposition to the Motions for Summary Judgement are conclusory, without foundation, argumentative and do not raise material questions of fact. Accordingly, the trial court's order cannot be successfully attacked.

## VI.

### ARGUMENTS

The District Court Ruling of October 27, 2009 does not identify exactly what claims in the First Amended Complaint the Ruling refers to when it categorizes Plaintiff's claims as "either (a) claims that challenge what happened before the Bankruptcy Court in order to get that Court's approval of the settlement agreement, or (b) claims that would be extinguished by the settlement agreement," but it does make two (2) statements on page 3 of the Ruling which clarify that categorization as follows:

. . . Plaintiff cannot collaterally attack in this Court the Bankruptcy Court's decision to approve the settlement. Plaintiff's relief from that Order, if any, must come from the Bankruptcy Court or from the reviewing District Court. [citation omitted] This Court must accept the Bankruptcy Court's ruling that the settlement is acceptable; it will not consider argument regarding the enforceability of a settlement agreement that another Court has ratified. There, all of Plaintiff's claims that challenge the court-approved settlement agreement itself must be dismissed. Those issues are reserved solely to the Bankruptcy Court or the District Court on Appeal.

. . . it is also not appropriate for this Court to consider those claims by Plaintiff that are/were extinguished by the terms of the settlement agreement. Those claims must also be dismissed.

As the following discussion will show, it was not necessary for the District Court to specifically identify which claims were claims which constitute a collateral attack

on the Bankruptcy Court Order Approving Settlement and which claims were extinguished by the terms of the settlement agreement itself, as all claims made by Plaintiff fall into either one category or the other, and possibly both.

**A. The District Court Properly Granted Summary Judgment that the Settlement Agreement Could not be Collaterally Attacked in the District Court**

In the case of *Olsen v. Board of Education*, Utah, 571 P.2d 1336, 1338 (1977) the Utah Supreme Court adopted the rather broad definition of “collateral attack” from the Restatement of Judgments (1942) Section 11, Comment A as follows:

Where a judgment is attacked in other ways than by proceedings in the original action to have it vacated or revised or modified or by a proceeding in equity to prevent its enforcement, the attack is a “**Collateral Attack.**” [emphasis in original]

The entry of the Bankruptcy Court Order Approving Settlement is the triggering event of all the woes of which Plaintiff complains. While Plaintiff strains to characterize his claims as separate and distinct from that order, they are not. For example, Plaintiff’s First Cause of Action for Abuse of Process contains three (3) counts.<sup>6</sup> The First Count of Abuse of Process [pp. 2-5] arises out of Defendants filing of the Chapter 7 Proceeding and completion of the Means Test Form B22 in the Bankruptcy Court, which Plaintiff characterizes as a misuse of judicial proceedings. [First Amended Complaint, ¶

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<sup>6</sup>Citations are from Plaintiff’s First Amended Complaint (R, 246-261) for (1) Abuse of Process, (2) Fraud, and (3) Negligence dated August 31, 2009 and to specific pages (pp.) and paragraphs (¶) thereof.

17] The Second Count of Abuse of Process [pp. 5-7] claims Defendants continued to misuse judicial proceedings to attempt to remove Plaintiff's state court action to the US Bankruptcy Court [¶ 26]. The Third Count of Abuse of Process [pp. 7-11] arises from the entry of the Settlement Agreement in the US Bankruptcy Court, which Plaintiff admits agreeing to [¶ 28], but which Plaintiff alleges Defendants changed [¶ 37].

The Second Cause of Action alleges Fraud, again arising directly from the Bankruptcy Court Order Approving Settlement, which Plaintiff alleges Defendants changed. [¶ 46]

The Third Cause of Action for Negligence arises from the same set of facts surrounding the entry of the Bankruptcy Court Order Approving Settlement [¶¶ 49 and 51]

The point, of course, is that Plaintiff's attempts to characterize his claims as separate state claims are merely extensions of the claims he unsuccessfully made in the Bankruptcy Court, but whatever he call them, they constitute a collateral attack upon the Bankruptcy Court Order Approving Settlement and bring into play the doctrines of res judicata and collateral estoppel.

To return to the *Olsen* case at 1337-1338, the Utah Supreme Court stated as follows:

The principles of res judicata apply to judgments in condemnation proceedings as to matters therein litigated. [citing] 30 *C.J.S. Eminent Domain* §§ 328, 414 Just as with the rules governing the application of the doctrine of res judicata to judgments generally, [citing] *Belliston v. Texaco, Inc.*, Utah, 521 P.2d 379 (1974) the parties thereto are concluded as to all matters that were put in issue, or might have been put in issue, or were

necessarily implied in the decision, such as the right to condemn and the necessity thereof. [citing] *Public Utility Dist. No. 1 of Chelan County v. Washington Water Power Co.*, 43 Wash.2d 639, 262 P.2d 976 (1953) The doctrine renders a final judgment, on the merits, by a court of competent jurisdiction, conclusive upon the parties and is a bar to subsequent litigation on the same issues. [emphasis added]

Obviously, the *Olsen* decision was a condemnation proceeding, but the principles apply to this action nonetheless. What Plaintiff tries to characterize as separate claims and causes of action in the State Action are nothing more than “matters that were put in issue, or might have been put in issue, or were necessarily implied in the decision,” in the Chapter 7 Proceeding. As in the *Olsen* case, this case involves a final judgment on the merits by a court of competent jurisdiction, which is conclusive on the parties and is a bar to subsequent litigation over “all matters that were put in issue, or might have been put in issue, or were necessarily implied in the decision.” *Id.*

Furthermore, each claim is inextricably connected to the Chapter 7 Proceeding and arises out of it. Plaintiff did not even file the State Action until after the hearing of March 30, 2009 before the Bankruptcy Court, at which Plaintiff was present, which ultimately resulted in the entry of the Bankruptcy Court Order Approving Settlement on August 21, 2009. The imminent entry of the Bankruptcy Court Order Approving Settlement triggered the filing of the state law claims by Plaintiff, and Plaintiff’s sole remedy, if he did not like the judgment of the US Bankruptcy Court, was to apply to that court for relief, which he attempted – unsuccessfully. In all events, his present attempts to gain from the Third District Court what he was unsuccessful in

obtaining from the US Bankruptcy Court – and then the US District Court on his ill-fated appeal – should not be allowed.

Plaintiff argues (Appellant’s Opening Brief, pp. 38-41) that res judicata and collateral estoppel were either waived by Defendants or wrongly applied by Judge Lindberg. As will be discussed more in detail below, Defendants did not waive res judicata or collateral estoppel, but what seems to escape Plaintiff is the reasoning of the *Olsen* case cited above, which extends to “all matters that were put in issue, or might have been put in issue, or were necessarily implied in the decision.” Thus Plaintiff’s argument (Appellant’s Opening Brief, p. 40) that there was no judgment on the merits “of any cause of action alleged in the First Amended Complaint” is without foundation. Those claims are clearly within the reach of claim preclusion and perhaps even issue preclusion by Plaintiff’s own authorities.

But even if some of the claims asserted by Plaintiff in the State Action are claims which this Court believes do not constitute a collateral attack on the Bankruptcy Court Order Approving Settlement, those claims have been extinguished by the terms of the settlement agreement as discussed immediately below.

**B. The District Court Properly Granted Summary Judgment by  
Summarily Concluding that All Claims Asserted by Plaintiff were  
Extinguished by the Settlement Agreement**

Judge Lindberg had the authority to interpret the settlement agreement



according to the following rules set out in the recent Utah case of *Giusti v. Sterling*

*Wentworth Corp.*, 2009 UT 2, ¶ 44:

Under basic rules of contract interpretation, courts first look to the writing alone to determine its meaning and the intent of the contracting parties. [citing] *Deep Creek Ranch, LLC v. Utah State Armory Bd.*, 2008 UT 3, ¶ 15, 178 P.3d 886. “If the language within the four corners of the contract is unambiguous, the parties’ intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law.” [citing] *Green River Canal Co. v. Thayn*, 2003 UT 50, ¶ 17, 84 P.3d 1134. Only where there is ambiguity in the terms of the contract may the parties’ intent “be ascertained from extrinsic evidence.” [citing] *Deep Creek Ranch*, 2008 UT 3, § 16. “A contractual term or provision is ambiguous if it is capable of more than one reasonable interpretation because of uncertain meanings of terms, missing terms, or other facial deficiencies.” [citing] *Daines v. Vincent*, 2008 UT 51, ¶ 25, 190 P.3d 1269.

The Settlement Agreement is decidedly unambiguous. It clearly names the Defendants in this action, *i.e.*, Paul Toscano and Paul Toscano, P.C., Debtor’s counsel, and Joseph M. Billings, the Plaintiff in this action, as contracting parties. (Settlement Agreement, first paragraph, page 1) The Settlement Agreement clearly “settle[s] and resolve[s] all disputes among them and . . . mutually release[s] each other against the others [from] any and all claims and cases of action extant among them, including claims and causes of action for malicious prosecution and abuse of process against the Debtor and Debtor’s Counsel, . . .” (Settlement Agreement, page 7) The Settlement Agreement recites “good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the exchange of mutual releases of all claims and causes of action, including claims and causes of action for malicious prosecution and abuse of

process against the Debtor and Debtor's Counsel as set forth below, . . .” (pp. 7-8, Settlement Agreement Terms)

Subject to “approval by the United States Bankruptcy Court for the District of Utah,” . . . (¶ 1.b. Conditions Precedent, page 8)<sup>7</sup>, the Settlement Agreement is “[e]ffective upon the performance of the obligations set forth in paragraphs 2 and 3 above, [and] the Parties hereby mutually release each other from any and all claims, debts, obligations, actions, demands, liabilities, costs, expenses, attorneys fees, damages, real property or controversies of any kind or nature whatsoever, including any actions for abuse of process or malicious prosecution, whether grounded in law or equity, whether known or unknown, in any way relating to or arising out of the claims and defenses raised in the Lawsuit, the Adversary Proceeding, or any motions or actions in any court, tribunal, administrative proceeding, of any kind or any nature whatsoever, . . .” (¶ 4, page 11) (emphasis added)

Furthermore, the Bankruptcy Court Order Approving Settlement contains the following language at page 2:

All parties agreed on the record in open court to the execution of the [Settlement] Agreement and to the approval of the order approving the [Settlement] Agreement by default; that is, the Parties agreed that, in lieu of executing the Agreement and approving the Order Approving the [Settlement] Agreement by affixing signatures thereto, the Parties agreed that the Order Approving the Agreement would be deemed approved and the [Settlement] Agreement would be deemed executed and binding upon the Parties upon entry of the Order Approving the [Settlement] Agreement, if no

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<sup>7</sup>As pointed out above, this approval was given on August 21, 2009.

objection to the entry of such Order were filed by a Party thereto within 10 days after service upon all Parties to the [Settlement] Agreement of a copy of the proposed Order approving the [Settlement] Agreement and a copy of the [Settlement] Agreement. (emphasis added)

**C. None of the Documents Filed by Plaintiff Raised a Question  
of Material Fact to Preclude Summary Judgment Against Him**

In response to the Summary Judgment Motions, Plaintiff filed four (4) documents which Plaintiff contends raise questions of material fact, which documents are identified as follows:

1. Declaration of Joseph Billings in Support of Opposition to Defendants' Motions for Summary Judgment dated August 27, 2009 (the "Declaration") [R., 209-216 and 217-224]
2. Separate Statement of Disputed Facts and Genuine Issues as to Material Facts in Support of Opposition to Defendant's Motion for Summary Judgment dated August 31, 2009 (the "Separate Statement") [R. 234-245];
3. Memorandum of Points and Authorities in Support of Opposition to Defendants' Motions for Summary Judgment dated August 31, 2009 (the "Memorandum") [R., 225-233]; and
4. First Amended Complaint for (1) Abuse of Process, (2) Fraud, and (3) Negligence dated August 31, 2009 (the "Amended Complaint") [ R., 246-261]

According to Plaintiff,

Plaintiff's affidavits contained testimony that respondent Toscano repudiated and breached the January 28, 2009 settlement agreement (as amended on March 30, 2009) on April 10, 2009. The affidavits also contained testimony that Plaintiff notified respondent Toscano in writing on April 10, 2009 that Plaintiff had withdrawn his offer to waive claims for abuse of process committed by respondent Toscano in 2008 because Toscano had repudiated and breached the January 28, 2009 settlement agreement (as amended March 30, 2009) and demanded unilateral material changes to the parties' agreement. Plaintiff also plainly alleged that he had rejected in writing respondent's altered version of the parties' January 28, 2009 settlement agreement (as amended March 30, 2009) [Plaintiff's Opening Brief, p. 33]

As the following discussion will show,<sup>8</sup> none of the allegations in the documents identified above raises a material question of fact, primarily because none of them rises to the level contemplated by Rule 56(e), which mandates the following:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. . . .

1. The Declaration

(¶¶ 1 through 5)<sup>9</sup> ¶ 1 contains the statement that Plaintiff has "personal knowledge of the facts set forth herein," but none of the alleged factual allegations is pertinent to the then-pending motion for summary judgment. Rather, they contain a number of statements concerning Plaintiff's receipt of notice of the summary judgment

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<sup>8</sup>The discussion identifies specific paragraphs of each document by the paragraph (¶) sign.

<sup>9</sup>There are two (2) paragraphs numbered 5, both of which suffer from the same inadequacies as the other.

motions; the fact that Plaintiff lives in China; allegations concerning contacts about the motions with Defendants' counsel; and Plaintiff's alleged travel difficulties occasioned by the fact he lives in China. Insofar as the summary judgment issue is concerned, these allegations are irrelevant and fail to raise an issue of material fact, even if they were admissible.

(¶¶ 6 & 7) Paragraph 6 of the Declaration identifies selected uncontroverted facts alleged by Defendants' in the First Motion for Summary Judgment and in paragraph 7 makes the statement that "[t]he foregoing claims are false." This conclusory statement is nothing but Plaintiff's opinion or supposition, which is entirely devoid of foundation and fact, making the statement inadmissible.

(¶ 8) This paragraph of the Declaration alleges in conclusory fashion that Defendants' claims are based upon a "sham settlement agreement." Again, this allegation is nothing but opinion and conjecture without foundation, making it inadmissible.

(¶ 9) This paragraph rambles on in legal conclusory fashion that Defendants breached the "legitimate" settlement agreement, but fails to provide any foundation for such a statement or Plaintiff's competency to testify about it, making the statement inadmissible.

(¶ 10). This paragraph states that Plaintiff told Defendant Toscano on April 10, 2009 that "I was no longer willing to release him from liability . . . in light of his breach of our January 29, 2009 agreement." This is irrelevant and inadmissible in that the

Bankruptcy Court ruled that the settlement agreement was enforceable; therefore, something that Plaintiff allegedly told Defendants would have to have been raised in the Bankruptcy Court and not in this Court.

(¶ 11) This states that Plaintiff told Defendant Toscano on April 10, 2009 of his disagreement with alleged unilateral changes in the settlement agreement and then states as a legal conclusion that there was no settlement agreement at all, making the statement inadmissible. Furthermore, none of the alleged unilateral changes is identified and this allegation is also irrelevant, as it is the settlement agreement the parties actually entered into which is pertinent to this case, and the Bankruptcy Court had already found it enforceable.

(¶ 12) This paragraph states that there is no agreement to settle abuse of process claims with Defendants. Like its predecessors, it is conclusory and irrelevant, since the Bankruptcy Court already found that there was such an agreement. Neither is there a statement establishing any underlying facts or Plaintiff's competency to make the statements he does. Therefore, the statements are inadmissible.

(¶¶ 13 through 27) These paragraphs, inclusive, do not even purport to make factual allegations in opposition to summary judgment. Rather, they contain largely arguments, opinion and bare allegations which appear calculated to restate Plaintiff's arguments and positions, making them all inadmissible.

## 2. The Separate Statement

The entire Separate Statement, consisting of 39 paragraphs, is entirely made up of arguments of Plaintiff; legal conclusions; factual conclusions; rambling complaints; and Plaintiff's arguments. Nowhere in this mass of naked allegations, entirely lacking in foundation in the evidentiary sense, is there even one (1) fact to be found which is admissible in evidence as a material fact to controvert Defendants' Motions for Summary Judgment. Neither is there any affirmative statement of Plaintiff's competency to make any such statements, if they existed.

3. The Memorandum

The Memorandum is made up entirely of Plaintiff's arguments; contains no statement of personal knowledge of the allegations by Plaintiff; contains no facts which would be admissible in evidence or foundation to support such facts; and fails to show affirmatively that Plaintiff is competent to testify concerning them. In short, the Memorandum in its entirety fails to rise to the level contemplated by Rule 56(e), Utah Rules of Civil Procedure.

4. The First Amended Complaint

The First Amended Complaint contains 54 separate paragraphs encompassing Plaintiff's claims of Abuse of Process (3 counts); Fraud; and Negligence. The trouble with the First Amended Complaint from an evidentiary standpoint is that it contains no factual allegations which are admissible in evidence which would controvert Defendants' Motions for Summary Judgment. Neither are there any foundational

allegations to support such facts if they existed or any affirmative showing or allegation of competence by Plaintiff to testify concerning these matters. Lastly, the allegations are irrelevant, because the Bankruptcy Court had already found the settlement agreement to be enforceable, which disposed of Plaintiff's claims as a matter of law.

**D. Plaintiff's Arguments Seek to Wrongfully Expand the Pertinent  
Legal and Factual Issues Before This Court and Wrongfully  
Request this Court to Second-Guess the US Bankruptcy Court**

Plaintiff's arguments attempt to expand the issues actually before this court through the introduction of irrelevant, immaterial and unrelated matters into his arguments, and is attempting to invite this Court to second-guess the US Bankruptcy Court's rulings, which this Court should not do. Defendants' responses and objections to those arguments follow:

1. Plaintiff's First Argument (Plaintiff's Opening Brief, p. 32)

The gist of Plaintiff's first argument is that Judge Lindberg erred in granting summary judgment on Count One of Plaintiff's First Cause of Action for Abuse of Process because Plaintiff had raised genuine issues of material fact which precluded summary judgment. As discussed in the section above, Plaintiff did not raise questions of material fact in the 4 documents he filed. Plaintiff's opinions, arguments and conclusions are not "facts" as contemplated by Rule 56(e). The enforceability of the settlement agreement had already been determined in the Bankruptcy Court as a matter of law, and when that



happened, Plaintiff's claims against Defendants were extinguished. Plaintiff apparently believes that this Court can review the scope and extent of the US Bankruptcy Court Order, which the district court specifically found was the exclusive province of the Bankruptcy Court and could not be raised in the district court. (District Court Ruling, pp. 2-3 quoted above)

2. Plaintiff's Second Argument. (Plaintiff's Opening Brief, p. 34)

While it is true that Defendants argued in the district court that res judicata and/or collateral estoppel were not controlling, that was only argument and did not constitute a waiver as alleged by Plaintiff. Case law in Utah is clear that a waiver is "the intentional relinquishment of a known right." *Moler v. CW Management Corp.*, 1008 UT 46, 190 P.3d 1250, 1254 (Utah 2008) To establish a waiver, according to the *Moler* case, the party asserting waiver must show the following elements: (1) an existing right, (2) knowledge of its existence, and (3) an intent to relinquish the right. [citing] *Soter's, Inc. v. Deseret Fed. Sav. & Loan Ass'n*, 857 P.2d 935, 939-42 (Utah 1993) During oral argument in the State Action Defendants' counsel stated that

. . . this is not a question of res judicata. It's not a question of collateral estoppel, it's a question that Mr. Billings bargained away, whatever claims he may have had and that boat sailed, those claims are no longer and for that reason, he does not have a right to assert them in this case and that's why we're asking for summary judgment.<sup>10</sup>

However, later on Defendants' counsel also made the following argument:

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<sup>10</sup>Plaintiff's Addendum; transcript of Motion Hearing September 9, 2009 before the Honorable Denise P. Lindberg, p. 8, lines 5-11.

Well, the bottom line is I think for our purposes, Judge, is that we've stated and showed the Court that all these claims were agreed by Mr. Billings, that they disappeared. There are no such claims and because there are no such claims, the claim that he's trying to bring in this Court has disappeared also, as a matter of law. So regardless of whether the Court uses the issue of res judicata or collateral estoppel, or summary judgment, Rule 56 requires Mr. Billings to, by sworn affidavit, [to] create a question of material fact, not just a question of fact but it has to be a material fact and I would simply point out to the Court that all of the material facts are uncontroverted and that is that Mr. Billings was bound by the agreement and that it was – became part of the order in the Bankruptcy Court and the Bankruptcy Court confirmed that and it's binding against him as a matter of law.<sup>11</sup> [emphasis added]

There is simply nothing on the record which supports the contention that Defendants intended to waive any of their rights whatsoever, including res judicata and collateral estoppel.

While Plaintiff tries to make much out of the idea that Defendants did not plead res judicata or collateral estoppel and for that reason have also waived the defenses, the fact is that Defendants have never filed an answer to the First Amended Complaint and therefore have never yet been obliged to assert affirmative defenses as contemplated by Rule 8( c ), Utah Rules of Civil Procedure. As the record will reflect, Defendants opted to file a motion for summary judgment pursuant to Rule 56 rather than filing an answer to the First Amended Complaint. Therefore, there can be no showing on Plaintiff's part that Defendants in any way intended to relinquish any right to assert res judicata or collateral estoppel.

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<sup>11</sup>Plaintiff's Addendum; transcript of Motion Hearing September 9, 2009 before the Honorable Denise P. Lindberg, p. 21 line15 - p. 22 line 5.

3. Plaintiff's Third Argument (Plaintiff's Opening Brief, p. 36)

This argument asserts that even if Defendants did not waive res judicata and/or collateral estoppel, summary judgment is precluded by material issues of fact raised by Plaintiff's affidavits. The argument drones on for some seven (7) pages before concluding at page 42 that "[t]he trial court should not have given res judicata and collateral estoppel effect to the bankruptcy court order settling the debtor's estate because respondent explicitly disclaimed these affirmative defenses and the order in any case did not satisfy the requirements of these special defenses."

As discussed above, Plaintiff's "affidavits" as he refers to them do not raise any questions of material fact. They are largely arguments, opinions, contentions, allegations and conclusions, but they are decidedly not facts within the meaning of Rule 56(e), Utah Rules of Civil Procedure.

Furthermore, Plaintiff's arguments against the application of the doctrines of res judicata and/or collateral estoppel must fail, particularly in the context of Plaintiff's collateral attack upon the final judgment of the Bankruptcy Court. Clearly, under the authorities cited by Plaintiff, claim preclusion, if not issue preclusion, clearly applies, resulting in the extinguishment of Plaintiff's claims.

4. Plaintiff's Fourth Argument (Plaintiff's Opening Brief, p. 43)

This argument appears to be procedural and based upon the false allegation that Defendants did not file a statement of undisputed facts with their Second Motion for

Summary Judgment. This argument evidences a fundamental lack of understanding of the pertinent Utah Rules of Civil Procedure and of the material facts of the case. In fact, Defendants' position as stated in the First Motion for Summary Judgment was that all claims asserted by Plaintiff in the original Complaint were extinguished by the settlement agreement. Although it is true that Plaintiff's First Amended Complaint alleged additional causes of action, the fact is that even his new causes of action were barred by the settlement agreement and the Bankruptcy Court Order Approving Settlement, so there was no necessity on the part of Plaintiffs to restate the same uncontroverted facts for the Second Summary Judgment Motion. Furthermore, the consolidation of the First Summary Judgment Motion and the Second Summary Judgment Motion made them into one single motion, supported by the original statement of undisputed facts.

5. Plaintiff's Fifth Argument. (Plaintiff's Opening Brief, p. 5)

Plaintiff's fifth argument consists of a one-page allegation that Judge Lindberg "overlooked" that count 3 of Plaintiff's First Cause of Action alleges that the Bankruptcy Court Order Approving Settlement was obtained through "fraud and malfeasance" and that Plaintiff had "filed a detailed affidavit outlining the continuing fraud committed by respondent Toscano." (Plaintiff's Brief, p. 45)

The reality is that Judge Lindberg recognized that any allegations that Plaintiff had concerning the viability and enforceability of the settlement agreement that Judge Boulden enforced in the Bankruptcy Court were brought up there and could not be

second-guessed by the state court.

Conspicuously missing from Plaintiff's arguments is any argument that the settlement agreement somehow does not extinguish Plaintiff's claims against Defendants. Indeed, in the event this Court determines that collateral attacks, res judicata or collateral estoppel somehow do not apply to the facts of this case, the inconvenient (to Plaintiff) and immutable fact is that Plaintiff gave up all his claims against Defendants in the settlement agreement that was confirmed by the Bankruptcy Court. The terms of the settlement agreement were very specific and unambiguous. Plaintiff has no claims to assert against Defendants.

## VII.

### CONCLUSION

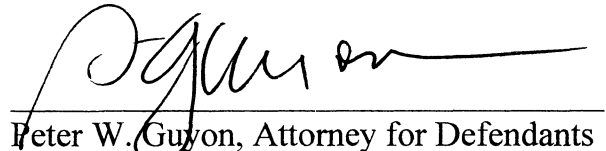
Defendants seek this Court's confirmation of the District Court's order granting summary judgment and an award of attorney fees and costs occasioned by Plaintiff's failure to follow the mandates of Rule 24(k). Plaintiff's Opening Brief is a melange of innuendo, irrelevant allegations, immaterial conclusions and arguments poorly disguised as facts. Certainly it is not what is contemplated by Rule 24(k).

On the merits, Plaintiff gave up any claims he may have had against Defendants and now is unhappy he did so. The only possible way he can justify his claims is by alleging fraud, negligence, etc., which he unsuccessfully raised in the Bankruptcy Court. Having lost there, he now seeks to re-litigate those same claims under the disguise

of different claims, which he cannot do because however he characterizes the claims, they were all either lost by Plaintiff in the Bankruptcy Court or given up in the settlement agreement and no longer exist.

Accordingly, this Court should affirm the February 24, 2010 Order on Pending Matters of the Third District Court and put an end to Plaintiff's attempts to re-litigate his claims.

DATED this 8<sup>th</sup> day of July, 2010.

  
Peter W. Guyon, Attorney for Defendants  
and Defendants


# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed, first-class postage prepaid, two (2) true and correct copies of the foregoing BRIEF OF APPELLEES to the following on this 8<sup>th</sup> day of July, 2010:

Joseph Billings  
1213 West Nanjing Road  
Building 84, Apartment 405  
Shanghai, China 200040

and hand-delivered the original and seven (7) copies to:

Utah Court of Appeals  
450 South State Street  
Salt Lake City, UT 84114

  
\_\_\_\_\_  
Peter W. Guyon, Attorney for Defendants  
and Appellees

c:\wp12\clientfiles2006\toscano\_billings\_utah\_appeal\14.appellee\_brief

VIII.

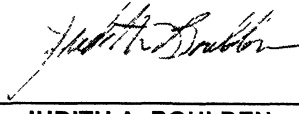
ADDENDUM





The below described is **SIGNED**.

Dated: August 21, 2009



JUDITH A. BOULDEN  
U.S. Bankruptcy Judge



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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

In re:	Bankruptcy Number: 08-22447
ANTOINETTE BILLINGS,	Chapter 7
Debtor.	

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**AMENDED ORDER APPROVING SETTLEMENT AMONG DEBTOR ANTOINETTE BILLINGS, DEBTOR'S COUNSEL, JOSEPH M. BILLINGS, JOHN H. BILLINGS, AND CHAPTER 7 TRUSTEE ELIZABETH R. LOVERIDGE**

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On or about January 30, 2009, Debtor Antoinette Billings, by and through her counsel of record, filed with this Court a Motion For Order Approving Settlement Among Antoinette Billings, Debtor's Counsel Paul Toscano, P.C., Joseph M. Billings, John H. Billings, and the Chapter 7 Trustee, Elizabeth R. Loveridge. The Motion also sought approval of the settlement between Antoinette Billings and D. W. Davis a.k.a. Dee W. Davis.

On or about January 30, 2009, Debtor Antoinette Billings, by and through her counsel of record, moved this Court *ex parte*, for an Order authorizing an expedited hearing on the aforesaid Motion.

On February 2, 2009, the Court entered its Order granting the *ex parte* Motion for an Expedited Hearing.

On February 3, 2009, Debtor filed her Certificate of Service of the Motion for Order Approving Settlement, the Notice of Hearing thereon, and other papers.

The expedited hearing on the Motion was scheduled for February 11, 2009.

On or before February 9, 2009, John H. Billings contacted the Court to indicate his intent to file his objection to the Motion.

On February 9, 2009, the Court vacated its Order authorizing an expedited hearing on the Motion and reset the hearing for March 30, 2009 at 9:30 a.m.

The hearing was held as rescheduled on March 30, 2009, at 9:30 a.m. There appeared at the hearing David Nill of the law firm of Woodbury & Kesler, P.C., attorney for Chapter 7 trustee Elizabeth R. Loveridge; Debtor Antoinette Billings; Paul Toscano of Debtor's Counsel Paul Toscano, P.C.; United States Trustee's attorney Peter J. Kuhn; Joseph M. Billings, *pro se*; and John H. Billings, *pro se*.

The Court heard the representations, arguments, and the consent to the Agreement of Debtor, Debtor's Counsel, the Chapter 7 Trustee by her attorney, and of Joseph M. Billings, *pro se*; and John H. Billings, *pro se*.

All parties agreed on the record in open court to the execution of the Agreement and to the approval of the Order approving the Agreement by default; that is, the Parties agreed that, in lieu of executing the Agreement and approving the Order Approving the Agreement by affixing signatures thereto, the Parties agreed that the Order Approving the Agreement would be deemed approved and the Agreement would be deemed executed and binding upon the Parties upon entry of the Order Approving the Agreement, if no objection to the entry of such Order were filed by a

Party thereto within 10 days after service upon all Parties to the Agreement of a copy of the proposed Order approving the Agreement and a copy of the Agreement.

Being advised of the pertinent facts and controlling provisions of law and good cause appearing, and having made its findings of fact and conclusions of law on the record,

THE COURT HEREBY ORDERS that the Settlement Agreement Between Debtor Antoinette Billings, Debtor's Counsel, Joseph M. Billings, John H. Billings, and Chapter 7 Trustee Elizabeth R. Loveridge be annexed hereto as Exhibit "1" and hereby is incorporated into this Order and approved thereby; and the Court further

ORDERS that Joseph M. Billings shall deliver the vehicle belonging to John H. Billings to John H. Billings at his residence in Montrose, Colorado within 14 days of entry of this Order; and the Court further

ORDERS that in addition to the requirements of paragraph 2.e. of the Settlement Agreement, the Debtor shall deliver the personal property items listed on Exhibit "C" to the Settlement Agreement to John H. Billings at his residence in Montrose, Colorado within 45 days of entry of this Order.

\_\_\_\_\_End of Document\_\_\_\_\_

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**SERVICE LIST**

Service of the foregoing **AMENDED ORDER APPROVING SETTLEMENT**

**AMONG DEBTOR ANTOINETTE BILLINGS, DEBTOR'S COUNSEL, JOSEPH M.**

**BILLINGS, JOHN H. BILLINGS, AND CHAPTER 7 TRUSTEE ELIZABETH R.**

**LOVERIDGE** will be effected through the Bankruptcy Noticing Center to all parties listed  
below.

John H. Billings  
P.O. Box 3573  
Montrose, CO 81402  
*Pro se Creditor*

Peter J. Kuhn  
U.S. Trustee's Office  
Ken Garff Bldg.  
405 South Main Street, Suite 300  
Salt Lake City, UT 84111

Joseph M. Billings  
1213 West Nanjing Road  
Building 85, Apartment 405  
Shanghai, China 200040  
*Pro se Creditor*

Antoinette Billings  
2123 Pinnacle Terrace Way #304  
Salt Lake City, UT 84121  
*Debtor*

Paul James Toscano  
10 Exchange Place  
Suite 614  
Salt Lake City, UT 84111  
*Counsel for Debtor*

Elizabeth R. Loveridge  
Woodbury & Kesler  
265 East 100 South, Suite 300  
P.O. Box 3358  
Salt Lake City, UT 84110-3358  
*Chapter 7 Trustee*

# **EXHIBIT “1”**

ORDER SIGNED

**SETTLEMENT AGREEMENT AMONG**  
**ANTOINETTE BILLINGS, PAUL TOSCANO AND PAUL TOSCANO, P.C.,**  
**ELIZABETH R. LOVERIDGE AND JOSEPH H. BILLINGS**

This Settlement Agreement (the "Agreement" or "Settlement Agreement") effective this 30<sup>th</sup> day of March, 2009, is entered into among the following parties: Antoinette Billings, Chapter 7 Debtor ("Debtor" or "Plaintiff"); Paul Toscano and Paul Toscano, P.C., Debtor's counsel (collectively "Debtor's Counsel"); Joseph M. Billings, *pro se*; John H. Billings, *pro se*; and Elizabeth R. Loveridge, Chapter 7 trustee (the "Trustee"), hereinafter jointly, the "Parties."

**RECITALS**

WHEREAS THE PARTIES CONCUR THAT:

A. On or about July 9, 1996, Henry Billings executed and recorded a quit claim deed naming the Debtor a joint tenant in certain real property located in San Bernardino County, California commonly known as 4212 Alta Avenue, Yucca Valley, California and more particularly described as follows:

*The Northeast 1/4 of the Southeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of Section 16, Township 1 North, Range 6 East, San Bernardino Base and Meridian; according to the official government township plat approved by the surveyor general May 28, 1903, APN 0600-281-15-000 (formerly APN 603-271-07), (hereinafter, "the Property"); and*

B. On or about December 12, 2006, Henry Billings executed (1) a subsequent quit claim deed naming the Debtor a tenant in common in the property and (2) a concomitant will purporting to devise his interest in the property to John H. Billings and Joseph M. Billings; and

C. Henry Billings died on December 27, 2006; and

D. On January 8, 2007, Henry Billings' attorney, D.M. Davis, recorded the December 12, 2006, quit claim deed in the San Bernardino County Recorder's Office;

E. California Civil Code Section 683.2 (c) pertaining to severance of joint tenancies in California real property provides as follows:

(a) Subject to the limitations and requirements of this section, in addition to any other means by which a joint tenancy may be severed, a joint tenant may sever a joint tenancy in real property as to the joint tenant's interest without the joinder or consent of the other joint tenants by any of the following means:

(1) Execution and delivery of a deed that conveys legal title to the joint tenant's interest to a third person, whether or not pursuant to an agreement that requires the third person to re-convey legal title to the joint tenant.

(2) Execution of a written instrument that evidences the intent to sever the joint tenancy, including a deed that names the joint tenant as transferee, or of a written declaration that, as to the interest of the joint tenant, the joint tenancy is severed.

....

(c) **Severance of a joint tenancy of record by deed**, written declaration, or other written instrument pursuant to subdivision (a) is not effective to terminate the right of survivorship of the other joint tenants as to the severing joint tenant's interest unless one of the following requirements is satisfied:

(1) **Before the death of the severing joint tenant**, the deed, written declaration, or other written instrument affecting the severance is recorded in the county where the real property is located. [Cal. Civ. Code § 683.2 (c), emphasis added];

and

F. Pursuant to California Civil Code Section 683.2 (c) (1), the December 12, 2006, deed is ineffective to terminate the debtor's joint tenancy in the property because it was recorded on January 8, 2007, twelve days after the death of the severing joint tenant (Henry Billings); and

G. The debtor was therefore the sole surviving joint tenant in the property under the July 9, 1996 deed after Henry Billings died on December 27, 2006; and

H. Under California law, real property held by joint tenants is not subject to testamentary transfer by a joint tenant's will; such property automatically transfers to the



surviving joint tenant by right of survivorship upon the death of a joint tenant (Riddle v. Harmon  
102 Cal.App.3d 524 (1980); and

I. Henry Billings' will executed on December 12, 2006 and any codicils,  
amendments, or subsequent changes thereto are therefore ineffective and void under California  
law; and

J. California Probate Code Section 210 (a) pertaining to transfers of California real  
property after the death of a joint tenant provides:

If title to real property is affected by the death of a person, any person may record in  
the county in which the property is located any of the following documents establishing  
the fact of the death:

(a) An affidavit of death executed by a person having  
knowledge of the facts. The affidavit shall include a  
particular description of the real property and an attested or  
certified copy of a record of the death made and filed in a  
designated public office as required by law [Cal. Probate  
Code §210 (a)];

and

K. California Probate Code Section 211 (a) (b) pertaining to transfers of California  
real property after the death of a joint tenant further provides:

(a) A document establishing the fact of death recorded pursuant to  
this chapter is subject to all statutory requirements for recorded  
documents.

(b) The county recorder shall index a document establishing the  
fact of death recorded pursuant to this chapter in the index of  
grantors and grantees. The index entry shall be for the grantor, and  
for the purpose of this index, the person whose death is established  
shall be deemed to be the grantor [Cal. Probate Code §211 (a) (b)];

and

L. Pursuant to California Probate Code Sections 210 and 211 (a) (b), the debtor recorded an Affidavit of Death of Joint Tenant and a copy of Henry Billings' death certificate in the San Bernardino County Recorder's Office on February 15, 2007; and

M. Pursuant to California Probate Code Sections 210 and 211 (a) (b) and Riddle v. Harmon 102 Cal.App.3d 524 (1980), all rights, title, and interest in the property passed to the debtor on February 15, 2007 in fee simple as the surviving joint tenant with right of survivorship; and

N. On or about February 28, 2007, Debtor filed suit against Joseph M. Billings and John H. Billings to quiet title to the property and against D.M. Davis for negligence and slander of title in the Superior Court of California, County of San Bernardino, Victorville Branch, Case Number MCVMS 08151, in a lawsuit styled *Antoinette Billings v. D. M. Davis (a.k.a. Dee M. Davis, John H. Billings, Joseph M. Billings, and all persons unknown claiming any legal or equitable right, title estate, lien, or interest in the property adverse to Plaintiff's title or any cloud on Plaintiff's title to the property and DOES 1 through 10* (hereafter the "Lawsuit" or "California Lawsuit"); and

O. On April 17, 2008, Debtor, through Debtor's Counsel, filed a Chapter 7 Bankruptcy case (08-22447) together with her Motion in her Chapter 7 Bankruptcy case for determination of whether the filing of a Chapter 7 case was not an abuse under U.S.C. Section 707(b); and

P. On or about June 9, 2008, Joseph M. Billings and John H. Billings filed in the California Lawsuit a Joint Verified Cross Complaint for (1) Quiet Title, (2) Slander of Title, (3) Cancellation of Instruments, (4) Constructive Fraud, (5) Resulting Trust, (6) Conversion, (7) Libel, (8) Intentional Infliction of Emotional Distress, (9) Malicious Interference With Attorney-

Client Relationship, (10) Abuse of Process, and (11) Negligence styled *John Billings and Joseph Billings v. Antoinette Billings, and all person unknown claiming any legal or equitable right, title estate, lien, or interest in the property adverse to cross-complainants' title or any cloud on cross-complainants' title to the property; Jeremy J. Ofseyer; Netherly & Ofseyer, LLP; Robert Warford; Reback, McAndrews & Kjar, LLP; Lawyers Mutual Insurance Company; and DOES 1-50, inclusive; and*

Q. On or about July 16, 2008, Joseph M. Billings and John H. Billings filed in the California Lawsuit a Joint First Amended Cross-complaint for (1) Quiet Title, (2) Slander of Title, (3) Cancellation of Instruments, (4) Constructive Fraud, (5) Resulting Trust, (6) Conversion, (7) Libel, (8) Intentional Infliction of Emotional Distress, (9) Malicious Interference With Attorney-Client Relationship, (10) Abuse of Process, and (11) Negligence styled *John Billings and Joseph Billings v. Antoinette Billings and all persons unknown claiming any legal or equitable right, title estate, lien, or interest in the property adverse to cross-complainants' title or any cloud on cross-complainants' title to the property; Jeremy J. Ofseyer; Netherly & Ofseyer, LLP; Robert Warford; Reback, McAndrews & Kjar, LLP; Lawyers Mutual Insurance Company; Paul James Toscano; and DOES 1-50, inclusive*, which First Amended Cross-complaint additionally alleged against Antoinette Billings and Paul Toscano a cause of action for abuse of process and alleging against Antoinette Billings causes of action for (1) Quiet Title, (2) Slander of Title, (3) Cancellation of Instruments, (4) Constructive Fraud, (5) to Establish Resulting Trust, (6) Conversion, (7) Libel, and (8) Intentional Infliction of Emotional Distress; and

R. On or about August 22, 2008, Joseph M. Billings filed a Second Amended Cross-complaint in his own behalf that alleged similar causes of action against the cross-defendants

named; and on or about September 16, 2008, with *ex parte* leave of the California Superior Court, Joseph Billings filed a Third Amended Cross-complaint also in his own behalf alleging similar causes of action against the Cross-defendants named therein; and

S. The cross-complaints brought against the Debtor and other parties in the California state court action were compulsory under California state law and brought solely to preserve certain claims under California state law, and Debtor and Debtor's Counsel were not served with the cross-complaints after cross-complainants learned of the debtor's pending Chapter 7 petition; and

T. Cross-complainants have taken no action on the cross-complaints against the Debtor or Debtor's Counsel in the California state court proceedings; and

U. The cross-complaints were not brought against the Debtor and Debtor's Counsel in willful violation of 11 U.S.C. Section 362; and

V. The cross-complaints and causes of action stated therein against the Debtor and Debtor's Counsel contained on file in the California state court proceedings (the First and Third Amended-Cross-complaints) are nevertheless null and void and enjoined pursuant to 11 U.S.C. Section 362(a) because they were filed after April 17, 2008 (the date upon which the debtor filed for relief under Chapter 7 of the U.S. Bankruptcy Code) without cross-complainants' first obtaining relief from the automatic stay in Debtor's Chapter 7 case in the District of Utah; and

W. On or about July 7, 2008, Joseph M. Billings (unsecured creditor) filed objections to the Debtor's Motion for Entry of Judgment or Order That the Debtor's Chapter 7 Petition is not an Abuse of Chapter 7 Under 11 U.S.C. Section 707(b) in the United States Bankruptcy Court for the District of Utah, Central Division; and

X. On or about July 7, 2008, Joseph M. Billings (unsecured creditor) also filed a Motion to Dismiss the Debtor's petition pursuant to 11. U.S.C. Sections 707 (b) (1); 707 (b) (2), and 707 (b) (3) in the United States Bankruptcy Court for the District of Utah, Central Division; and

Y. On or about July 18, 2008, Joseph M. Billings (unsecured creditor) also filed in the Bankruptcy Court an adversary proceeding complaint objecting to the discharge of the Debtor pursuant to 11. U.S.C. Sections 727 (a) (3), (4), and (5) and the dischargeability of particular debts pursuant to 11. U.S.C. Sections 523 (a) (4) and (6) and other grounds in the United States Bankruptcy Court for the District of Utah, Central Division, Adversary Proceeding No. 08P 2148 (JAB), to which adversary proceeding complaint Antoinette Billings filed an Answer on August 15, 2008; and

Z. The disputed real property is uninhabitable, burdensome, a liability to the Chapter 7 estate, and of inconsequential value.

THEREFORE, the Parties, desiring to settle and resolve all disputes among them and to mutually release each against the others any and all claims and causes of action extant among them, including claims and causes of action for malicious prosecution and abuse of process against the Debtor and Debtor's Counsel, as set forth in principle at the August 4, 2008, hearing held before the Honorable Judith A. Boulden, Judge of the United States Bankruptcy Court for the District of Utah, the undersigned do hereby agree to the following

**SETTLEMENT AGREEMENT TERMS:**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the exchange of mutual releases of all claims and causes of action, including claims and causes of action for malicious prosecution and abuse of process against the

Debtor and Debtor's Counsel as set forth below, the undersigned set forth their covenants as follows:

1. Conditions Precedent.
  - a. Recitals. The above Recitals are incorporated herein by reference, and shall constitute material terms of this Agreement.
  - b. Bankruptcy Court Approval. This Agreement is subject to approval by the United States Bankruptcy Court for the District of Utah, which approval has been granted at the Settlement Approval hearing held before said Court on March 30, 2009, at which hearing all Parties to this Agreement were present in persona or through counsel and which Parties gave their consent to this Settlement Agreement in open Court.
2. Upon entry of an Order approving this Settlement Agreement by the United States Bankruptcy Court for the District of Utah,
  - a. Joseph M. Billings and John H. Billings shall forthwith file in the California Lawsuit in the Superior Court of California, San Bernardino County, Victorville Branch, Case Number MCVMS 08151 a Request for Dismissal With Prejudice of the Cross-complaints and amended Cross-complaints and causes of action of Joseph M. Billings and John H. Billings against Plaintiff and Debtor's Counsel (in the form set forth in Exhibit "A1" and Exhibit "A2" annexed).
  - b. Antoinette Billings shall execute a Quit Claim Deed (in the form set forth in Exhibit "B" annexed), transferring and conveying all of her right, title, and interest in and to the Property in equal shares to Joseph M. Billings (or at his election to his designate) and to John H. Billings' designate).  
*(or at his election to his designate)*

c. Antoinette Billings shall execute the aforesaid Quit Claim Deed referenced in paragraph 2b above within ten days of Joseph M/ Billings and John H. Billings filing a Request for Dismissal With Prejudice of their Cross-complaints and amended Cross-complaints and causes of action against Debtor and Debtor's Counsel referenced in paragraph 2a above.. If Antoinette Billings fails to execute the Quit Claim Deed as provided this Agreement in paragraphs 2b within the time frame required this paragraph, Joseph M. Billings and John H. Billings shall be entitled to apply to the United States Bankruptcy Court for the District of Utah for an Order directing the clerk of the court to execute the Quit Claim Deed referenced in paragraph 2b above in Antoinette Billings' stead.

d. Antoinette Billings shall take no action now or at any time in the future to assist or cause any third party to record a lien against the Property for any indebtedness of any party or to otherwise undermine the value of the Property by any action. In the event that Antoinette Billings takes any such action, this Settlement Agreement is null and void and Joseph Billings and John H. Billings shall be entitled to proceed with all causes of actions against Antoinette Billings only, as contained in their cross-complaints, but only upon obtaining an Order of Relief From the Automatic Stay in any pending bankruptcy case of Antoinette Billings.

e. Without further documentation, but upon entry on the docket of the Bankruptcy Court for the District of Utah of its Order approving this Settlement Agreement, all of Antoinette Billings' right, title, and interest to the personal property listed on annexed Exhibit "C" shall automatically by the terms hereof be

assigned and transferred to and shall vest in and become the property of John H. Billings.

f. Antoinette Billings shall in the United States Bankruptcy Court for the District of Utah execute a written withdrawal in her Chapter 7 case of her Motion for a determination that her Chapter 7 filing is not an abuse and shall cause to be filed in due course but as soon as practicably possible a written Motion for Conversion of her Chapter 7 case to a case under Chapter 13.

3. Concurrent with the execution of the documents set forth in or required by paragraphs 2a, b, and c above and in recognition of the effect of 11 U.S.C. Section 362 (a),

a. Joseph M. Billings shall forthwith file in the California Lawsuit in the Superior Court of California, San Bernardino County, Victorville Branch, Case Number MCVMS 08151, the Request for Dismissal With Prejudice of the Complaint and causes of action of action of Antoinette Billings against Joseph M. Billings and John H. Billings (in the form set forth in Exhibit "D" annexed); and

b. Joseph M. Billings shall execute an Agreed Order of Dismissal with Prejudice of the Adversary Proceeding in the United States Bankruptcy Court for the District of Utah (08-02148) against Antoinette Billings (in the form set forth in Exhibit "E" annexed) withdrawing all objections pertaining to the Debtor's Chapter 7 estate; and Joseph M. Billings shall withdraw his Motion to Dismiss the Debtor's Chapter 7 case; and

c. Except with respect to any violations of this Agreement, Antoinette Billings shall neither initiate nor engage in any further contact of any kind



whatsoever with Joseph M. Billings and John H. Billings; and Joseph M. Billings and John H. Billings shall neither initiate nor engage in any further contact of any kind whatsoever with Antoinette Billings or her daughters, Bonnie Billings and Crystal Billings, and shall make no demands or request for mailing addresses or physical addresses of either Antoinette Billings or her above-named daughters. And Antoinette Billings, Bonnie Billings, and Crystal Billings shall make no demands or request for mailing addresses or physical addresses of Joseph M. Billings or John H. Billings from any person.

4. Effective upon the performance of the obligations set forth in paragraphs 2 and 3 above, the Parties hereby mutually release each other from any and all claims, debts, obligations, actions, demands, liabilities, costs, expenses, attorneys fees, damages, real property or controversies of any kind or nature whatsoever, including any actions for abuse of process or malicious prosecution, whether grounded in law or equity, whether known or unknown, in any way relating to or arising out of the claims and defenses raised in the Lawsuit, the Adversary Proceeding, or any motions or actions in any court, tribunal, administrative proceeding, of any kind or any nature whatsoever, provided that the Chapter 7 Trustee retains the right to file an administrative claim against the Debtor for reasonable costs and attorney's fees in any subsequent bankruptcy case of the Debtor, but waives the right to administer the Disputed Property as an asset of this or any subsequent Chapter 7 estate or to encumber the Disputed Property with any attachment, lien, or security instrument for the Chapter 7 trustee's administrative claim for reasonable costs and fees incurred in this Chapter 7 case.

5. Effective upon the performance of the obligations set forth in paragraphs 2, 3, and 4, the Chapter 7 Trustee agrees not to object to the Motion of Debtor to convert Debtor's Chapter 7 case to a case under Chapter 13, shall pay to the Debtor's Chapter 13 trustee the sum of \$677.59, which is the sole property in the Debtor's Chapter 7 estate, and shall file in Debtor's Chapter 13 case Trustee's administrative claim for her reasonable fees and costs incurred in the administration of Debtor's Chapter 7 case; in the event Debtor's subsequent Chapter 13 case fails, that Chapter 13 case will be reconverted to a case under Chapter 7, rather than be dismissed.

6. Effective upon the performance of the obligations set forth in paragraphs 2, 3, and 4, but not later than 10 days following the execution of the documents listed in paragraphs 2 and 3 above,

a. The Parties receiving the benefits of any judgment, property transfers and dismissals contemplated herein or set forth in said documents shall cause to be filed such documents as soon as practicably possible in the appropriate venues and shall pay any requisite fees for the filing thereof;

b. This settlement agreement shall become effective and binding upon the Parties upon Bankruptcy Court's entry of the Order approving this Settlement.

c. Upon discharge of the foregoing provisions and other conditions to this Agreement, any of the Parties is entitled to enforcement of the Agreement and may apply for judgment according to its terms by application to the United States Bankruptcy Court for the District of Utah with notice to all parties at their last known addresses or email addresses.

7. Jurisdiction to Enforce Settlement Agreement. The Parties agree that the United States Bankruptcy Court for the District of Utah shall retain jurisdiction for the purpose of enforcing this Agreement.
8. No Admission of Liability. The willingness of any of the undersigned to enter into this Agreement shall not constitute or be construed on the part of any signatory as an admission of liability, of wrongdoing, or as a waiver of rights or defenses, acceptance of service of process, or submission to the jurisdiction of any court whatsoever.
9. Governing Law. This Agreement and any issue arising under or relating to the Chapter 7 case of Antoinette Billings shall be construed under the law of the State of Utah, while any issue arising under or relating to the real property in California shall be construed under the law of the State of California, without resort to the choice of laws or other conflicts of laws principles of either State.
10. Successors Bound. All covenants, agreements, representations and warranties set forth in this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their successors and assigns, heirs, executors, administrators and personal or legal representatives.
11. Entire Agreement. This Agreement contains the entire understanding of the Parties, and no other prior or contemporaneous agreement, statement, promise or conduct (whether oral or written) by any Party hereto shall have any legal force or effect or be used in any way to vary, explain, modify or abrogate any of the terms of this Agreement. All negotiations relating to this Agreement are hereby superseded.
12. Interpretation of Agreement. The Parties to this Agreement agree that they have mutually contributed to the drafting of this Agreement. No provision of this Agreement

shall be construed against any of the undersigned on the ground that such or its counsel drafted the provision at issue or that the provision at issue contains a covenant of such.

13. Advice of Counsel. Each of the undersigned hereto acknowledges that he or she has either obtained the advice of experienced legal counsel of their own choosing in connection with the negotiations and execution of this Agreement and with respect to all matters set forth in this Agreement or that otherwise relate to this Agreement or, in the alternative, has waived such right to consult experienced legal counsel in executing this Agreement.

14. Execution of Documents. The undersigned each covenant and agree to execute timely and completely any and all documents as may reasonably be required to implement and carry out the intent of this Agreement, which execution may be accomplished according to the alternative provision of paragraph 15 below.

15. Execution in Counterparts and by Facsimile or Consent by Default. This Agreement may be executed in two or more counterparts and shall be deemed to be fully executed either (1) when signed by a Party to the Agreement, in which case a facsimile signature shall be considered an executed original or (2) when, in the alternative, after 10 days' notice to all Parties to this Agreement of a copy of the proposed Order approving this Agreement together with a copy of this Agreement, any Party to this Agreement, in lieu of a signature, shall express binding consent to the Agreement and its terms by withholding such Party's objection to the entry of the Order of the United States Bankruptcy Court for the District of Utah incorporating and approving the Agreement.

16. Headings and Captions. The headings and captions of the various paragraphs of this Agreement are for convenience or reference only and shall in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

Effective upon Court approval the 30<sup>th</sup> day of March, 2009

BY ANTOINETTE BILLINGS

\_\_\_\_\_/S/ 

BY PAUL TOSCANO and PAUL TOSCANO, P.C.

\_\_\_\_\_/S/\_\_\_\_\_  
Individually, and on behalf of the law office of Paul Toscano, P.C.,  
a Utah professional corporation

BY ELIZABETH R. LOVERDIGE, CHAPTER 7 TRUSTEE

\_\_\_\_\_/S/\_\_\_\_\_

BY JOSEPH M. BILLINGS

\_\_\_\_\_/S/\_\_\_\_\_

BY JOHN H. BILLINGS

\_\_\_\_\_/S/\_\_\_\_\_

**EXHIBIT LIST**

1. Exhibit "A1": Form to be executed by Joseph M. Billings of his Request for Dismissal With Prejudice of the Cross-complaint and amended Cross-complaints of Joseph M. Billings against Debtor /Plaintiff Antoinette Billings and Debtor's Counsel.

Exhibit "A2": Form to be executed by John M. Billings of his Request for Dismissal With Prejudice of The Cross-complaint and amended Cross-complaints of John H. Billings against Debtor/Plaintiff Antoinette Billings and Debtor's Counsel.

2. Exhibit "B": Form of Quit Claim Deed to be executed by Antoinette Billings in favor of Joseph M. Billings (or at his election, his designate) and John H. Billings' designate) in equal shares.  
*(or at his election his*

3. Exhibit "C": List of Property Assigned to John H. Billings.

4. Exhibit "D": Form to be executed by Antoinette Billings of her Request for Dismissal With Prejudice of her Complaint against Joseph M. Billings and John H. Billings.

5. Exhibit "E": Form to be executed by Joseph M. Billings of Order of Dismissal of his Adversary Proceed (08-02148) against Antoinette Billings in the United States Bankruptcy Court for the District of Utah.

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) <i>Antoinette Billings</i>		TELEPHONE NO	FOR COURT USE ONLY
ATTORNEY FOR (Name) Insert name of court and name of judicial district and branch court if any San Bernardino County Superior Court Victorville Branch			
PLAINTIFF/PETITIONER ANTOINETTE BILLINGS  DEFENDANT/RESPONDENT D.M. DAVIS, et al			
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other QUIET TITLE, LEGAL <input type="checkbox"/> Family Law MALPRACTICE, SLANDER OF TITLE <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Other (specify) _____			CASE NUMBER MCVMS08151
<b>- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -</b>			

1 TO THE CLERK Please dismiss this action as follows

a (1) ☒ With prejudice (2) ☐ Without prejudice

b (1) ☐ Complaint (2) ☐ Petition  
(3) ☒ Cross-complaint filed by (name) *Joseph M. Billings* on (date)  
(4) ☐ Cross-complaint filed by (name) on (date)  
(5) ☐ Entire action of all parties and all causes of action  
(6) ☐ Other (specify) \*

Date

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)  
Attorney or party without attorney for

\* If dismissal requested is of specified parties only of specified causes of action only or of specified cross-complaints only so state and identify the parties causes of action or cross-complaints to be dismissed

☐ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross - complainant

2 TO THE CLERK Consent to the above dismissal is hereby given \*\*

Date

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)  
Attorney or party without attorney for

\*\* If a cross-complaint or Response (Family Law) seeking affirmative relief is on file the attorney for cross complainant (respondent) must sign this consent consent if required by Code of Civil Procedure section 581(f) or (j)

☐ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross - complainant

(To be completed by clerk)

3 ☐ Dismissal entered as requested on (date)

4 ☐ Dismissal entered on (date) as to only (name)

5 ☐ Dismissal not entered as requested for the following reasons (specify)

6 ☐ a Attorney or party without attorney notified on (date)  
b Attorney or party without attorney not notified Filing party failed to provide  
☐ a copy to conform ☐ means to return conformed copy

Date

Clerk, by \_\_\_\_\_, Deputy

Exhibit "A1"

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) <b>Antoinette Billings</b>	TELEPHONE NO	FOR COURT USE ONLY
ATTORNEY FOR (Name) Insert name of court and name of judicial district and branch court, if any San Bernardino County Superior Court Victorville Branch		
PLAINTIFF/PETITIONER: ANTOINETTE BILLINGS		
DEFENDANT/RESPONDENT: D.M. DAVIS, et al.		
<b>REQUEST FOR DISMISSAL</b> <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other QUIET TITLE, LEGAL <input type="checkbox"/> Family Law MALPRACTICE, SLANDER OF TITLE <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Other (specify):		CASE NUMBER MCVMS08151
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -		

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) ☒ With prejudice (2) ☐ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition  
(3) ☐ Cross-complaint filed by (name):  
(4) ☒ Cross-complaint filed by (name): **John H. Billings**  
(5) ☐ Entire action of all parties and all causes of action  
(6) ☐ Other (specify):\*

on (date):

on (date):

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:

\* If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed

☐ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross - complainant

2 TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:

\*\* If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent consent if required by Code of Civil Procedure section 581(f) or (j)

☐ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross - complainant

(To be completed by clerk)

- 3 ☐ Dismissal entered as requested on (date):
4. ☐ Dismissal entered on (date): as to only (name):
5. ☐ Dismissal not entered as requested for the following reasons (specify):
6. ☐ a Attorney or party without attorney notified on (date):  
b Attorney or party without attorney not notified. Filing party failed to provide  
☐ a copy to conform ☐ means to return conformed copy

Date

Clerk, by \_\_\_\_\_, Deputy

Exhibit "A1"



RECORDING REQUESTED BY  
Joseph M. Billings  
AND WHEN RECORDED MAIL TO

Name Joseph M. Billings  
Street Post Office Box 3573  
Address  
City, State Montrose, CO 81402  
Zip

Order No. \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## QUITCLAIM DEED

THE UNDERSIGNED GRANTOR(s) DECLARE(s)

Documentary Transfer Tax is \$ [ ]

City of [ ]  
Conveyance Tax is \$ [ ]  
Parcel No [ ]

☐ computed on full value of interest or property conveyed, or,  
☐ full value less value of liens or encumbrances remaining at  
the time of sale

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
ANTOINETTE BILLINGS, a single person,

do(es) hereby REMISE, RELEASE AND FOREVER QUITCLAIM to  
HENRY J. BILLINGS and JOSEPH M. BILLINGS as joint tenants and not as tenants in common  
the following real property in the city of Yucca Valley,  
county of San Bernadino, state of California: 4212 Alta, Yucca Valley, California 92284, more particularly described as:

The Northeast ¼ of the Southeast ¼ of the Northeast ¼ of the Northwest ¼ of Section 16, Township 1 North, Range 6 East, San  
Bernardino Base and Meridian. APN 603-271-07

Dated: \_\_\_\_\_

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

S.S. [ ]

On \_\_\_\_\_ before me,

[ ]

a Notary Public, personally appeared

[ ]

[ ]

Who proved to me on the basis of satisfactory evidence to be the  
person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies) and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State  
of California that the foregoing paragraph is true and correct

(This area for official notarial seal)

WITNESS my hand and official seal.

Signature \_\_\_\_\_

MAIL TAX STATEMENTS TO PARTY SHOWN ON THE FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name

Street Address

City & State

quiltclal (rev. 07/17/98)

Exhibit "B"

LIST OF PERSONAL PROPERTY ASSIGNED TO JOHN H. BILLINGS

1. Original slides in a gray plastic container of the Mexico trip
2. Small clay Indian pot with neck, in whole condition
3. Large Indian pot/ wide opening in pieced, glued together condition as parent's had repaired it.
4. Large Indian grinding rock with hand stone
5. Box of about 10 (?) 8 mm film father had given me that I had put on video. Subject/ young family
6. Box of about 20 (?) 8 mm film. I have never viewed, but believe subject/ father's fishing trips, etc.
7. A green photo album of landscape photos taken by my father.
8. Poem written by "Keyes" found in glove compartment of father's car mixed w/ old papers.
9. Personal religious records

Exhibit "C"

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Antoinette Billings 2123 Pinnacle Terrace Way Suite 304 Salt Lake City, UT 84121-5075		TELEPHONE NO	FOR COURT USE ONLY
ATTORNEY FOR (Name) Antoinette Billings, in propria persona Insert name of court and name of judicial district and branch court, if any San Bernardino County Superior Court Victorville Branch			
PLAINTIFF/PETITIONER ANTOINETTE BILLINGS  DEFENDANT/RESPONDENT D.M. DAVIS, et al.			
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other QUIET TITLE, LEGAL <input type="checkbox"/> Family Law MALPRACTICE, SLANDER OF TITLE <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Other (specify):			CASE NUMBER MCVMS08151
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -			

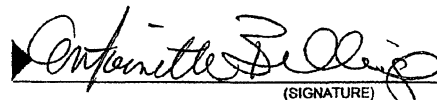
1 TO THE CLERK: Please dismiss this action as follows

- a. (1) ☒ With prejudice (2) ☐ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition  
(3) ☐ Cross-complaint filed by (name): on (date)  
(4) ☐ Cross-complaint filed by (name): on (date)  
(5) ☐ Entire action of all parties and all causes of action  
(6) ☒ Other (specify)\* Defendant D. M. DAVIS, ONLY, in exchange for waivers.

Date:

Antoinette Billings

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☒ PARTY WITHOUT ATTORNEY)

  
(SIGNATURE)

Attorney or party without attorney for: Antoinette Billings, in propria persona


☒ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross - complainant

\* If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed

2. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date.

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

  
(SIGNATURE)  
Attorney or party without attorney for

☐ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross - complainant

\*\* If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent consent if required by Code of Civil Procedure section 581(i) or (j)

(To be completed by clerk)

- 3 ☐ Dismissal entered as requested on (date)  
4 ☐ Dismissal entered on (date): as to only (name).  
5 ☐ Dismissal not entered as requested for the following reasons (specify):  
  
6 ☐ a Attorney or party without attorney notified on (date)  
b Attorney or party without attorney not notified Filing party failed to provide  
☐ a copy to conform ☐ means to return conformed copy

Date

Clerk, by \_\_\_\_\_, Deputy

Exhibit 'D'

Joseph Billings, *pro se*  
P.O. Box 3574  
Montrose, CO 81402  
China Telephone (86) 13761232797  
USA Telephone (310) 382-6151  
Email: [josephbillings@gmail.com](mailto:josephbillings@gmail.com)

Paul James Toscano, Bar #3280  
Paul Toscano, P.C.  
Newhouse Building, #614  
10 Exchange Place  
Salt Lake City, Utah 84111  
Telephone: (801) 359-1313  
Facsimile: (801) 359-1370  
[ptoscano@expresslaw.com](mailto:ptoscano@expresslaw.com)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

In re:  ANTOINETTE BILLINGS  Debtor	Case No.: 08-22447 Chapter: 7  FILED ELECTRONICALLY
JOSEPH BILLINGS  Plaintiff  v.  ANTOINETTE BILLINGS  Defendant	Adversary Proceeding No. 08-02148

ORDER OF DISMISSAL

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Based upon the terms, conditions, and requirements of the Court-approved Settlement

Exhibit "E"

Agreement and Order filed in the above-captioned Chapter 7 case of debtor Antoinette Billings,

THE COURT HEREBY ORDERS that above-captioned Adversary Proceeding against  
Antoinette Billings be and hereby is dismissed with prejudice.

**SERVICE LIST**

All parties requesting ECF service and on Joseph Billings at his email address  
josephbillings@googlemail.com and John Billings at his email address jbill\_93454@yahoo.com.

Certificate of Service Page 29 of 28  
**CERTIFICATE OF NOTICE**

District/off: 1088-2  
Case: 08-22447

User: mkp  
Form ID: pdfor1

Page 1 of 1  
Total Noticed: 6

Date Rcvd: Aug 21, 2009

The following entities were noticed by first class mail on Aug 23, 2009.

db +Antoinette Billings, 2123 Pinnacle Terrace Way #304, Salt Lake City, UT 84121-5075  
aty Elizabeth R. Loveridge, Woodbury & Kesler, 265 East 100 South, Suite 300, P.O. Box 3358,  
Salt Lake City, UT 84110-3358  
aty +Paul James Toscano, 10 Exchange Place, Suite 614, Salt Lake City, UT 84111-5120  
cr +John H. Billings, PO Box 3573, Montrose, CO 81402-3573  
Joseph M. Billings, 1213 West Nanjing Road, Building 85, Apartement 405, Shanghai, 200040,  
CHINA  
cr +Joseph M. Billings, PO Box 3573, Montrose, CO 81402-3573

The following entities were noticed by electronic transmission.

NONE.

TOTAL: 0

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Aug 23, 2009

Signature: \_\_\_\_\_

*Joseph Speetjens*



**U.S. Bankruptcy Court  
District of Utah (Salt Lake City)  
Bankruptcy Petition #: 08-22447**

*Assigned to:* Judith A. Boulden  
Chapter 13  
Previous chapter 7  
Voluntary  
Asset

*Date filed:* 04/17/2008  
*Date converted:* 08/20/2009

***Debtor***

**Antoinette Billings**  
2123 Pinnacle Terrace Way #304  
Salt Lake City, UT 84121  
SSN / ITIN: xxx-xx-2335

represented by **Paul James Toscano**  
10 Exchange Place  
Suite 614  
Salt Lake City, UT 84111  
(801)359-1313  
Fax : (801) 359-1370  
Email: ptoscano@expresslaw.com

**Peter W. Guyon**  
614 Newhouse Bldg.  
10 Exchange Place  
Salt Lake City, UT 84111  
(801) 322-5555  
Fax : (801) 322-5558  
Email: pguyon@yahoo.com

***Trustee***

**Elizabeth R. Loveridge tr**  
Woodbury & Kesler  
265 East 100 South  
Suite 300  
P.O. Box 3358  
Salt Lake City, UT 84110-3358  
(801) 364-1100  
*TERMINATED: 08/25/2009*

represented by **Elizabeth R. Loveridge**  
Woodbury & Kesler  
265 East 100 South  
Suite 300  
P.O. Box 3358  
Salt Lake City, UT 84110-3358  
(801) 364-1100  
Fax : (801) 359-2320  
Email: eloveridge@wklawpc.com

**Elizabeth R. Loveridge tr**  
Woodbury & Kesler  
265 East 100 South  
Suite 300  
P.O. Box 3358  
Salt Lake City, UT 84110-3358  
(801) 364-1100  
Email: eloveridge@wklawpc.com

***Trustee***

**Kevin R. Anderson tr**  
405 South Main Street  
Suite 600  
Salt Lake City, UT 84111  
(801) 596-2884

***U.S. Trustee***

**United States Trustee**  
Ken Garff Bldg.  
405 South Main Street  
Suite 300  
Salt Lake City, UT 84111

represented by **Peter J. Kuhn tr**  
US Trustees Office  
Ken Garff Bldg.  
405 South Main Street  
Suite 300  
Salt Lake City, UT 84111  
(801) 524-5735  
Fax : (801)524-5628  
Email: Peter.J.Kuhn@usdoj.gov

Filing Date	#	Docket Text
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06/17/2010	<u>191</u>	Trustee's Claims Report (Chapter 13) <i>PRELIMINARY</i> (x8Anderson tr, Kevin) (EOD: 06/17/2010)
05/17/2010		Adversary Case 2:08-ap-2148 Disposed. (djf) (EOD: 05/17/2010)
05/10/2010		Trustee's Withdrawal of Document filed by Trustee (related document(s): <u>183</u> Trustee's Chapter 13 Motion to Dismiss filed by Trustee.). (x8Anderson tr, Kevin) (EOD: 05/10/2010)
05/05/2010	<u>190</u>	Debtor's Declaration Re: Claims Review (Toscano, Paul) (EOD: 05/05/2010)
05/03/2010	<u>189</u>	Notice of Hearing (related document(s): <u>184</u> Objection to Claim, <u>185</u> Objection to Claim, <u>186</u> Objection to Claim, <u>187</u> Objection to Claim, <u>188</u> Objection to Claim) Filed by Paul James Toscano on behalf of Antoinette Billings Hearing scheduled for 6/16/2010 at 09:30 AM at US Bankruptcy Court. (Toscano, Paul) (EOD: 05/03/2010)
05/03/2010	<u>188</u>	Objection to Claim Number(s): <u>9</u> . by Claimant Mountain America Credit Union. filed by Debtor. (Toscano, Paul) (EOD: 05/03/2010)
05/03/2010	<u>187</u>	Objection to Claim Number(s): <u>8</u> . by Claimant Mountain America Credit Union. filed by Debtor. (Toscano, Paul) (EOD: 05/03/2010)
05/03/2010	<u>186</u>	Objection to Claim Number(s): <u>7</u> . by Claimant Mountain America Credit Union. filed by Debtor. (Toscano, Paul) (EOD: 05/03/2010)
05/03/2010	<u>185</u>	Objection to Claim Number(s): <u>6</u> . by Claimant eCAST Settlement Corporation. filed by Debtor. (Toscano, Paul) (EOD: 05/03/2010)
05/03/2010	<u>184</u>	Objection to Claim Number(s): <u>5</u> . by Claimant Mountain America Credit Union. filed by Debtor. (Toscano, Paul) (EOD: 05/03/2010)
05/03/2010	<u>183</u>	Trustee's Chapter 13 Motion to Dismiss filed by Trustee. Objection to Dismissal due by 05/27/2010. (x8Anderson tr, Kevin) (EOD: 05/03/2010)
01/29/2010	<u>182</u>	Certificate of Service Re: Order. (related document(s): <u>181</u> Order Confirming Chapter 13 Plan) Service Date 01/29/2010. (Admin.) (EOD: 01/29/2010)
01/27/2010	<u>181</u>	Order Confirming Chapter 13 Plan following Contested Confirmation Hearing (deed) (EOD: 01/27/2010)
01/26/2010		Chapter 7 Trustee's Report of No Distribution: I, Elizabeth R. Loveridge tr, having been appointed trustee of the estate of the above-named debtor(s), report that this case was dismissed, converted, or reassigned. I collected funds totaling: \$677.46. All funds have been returned or transferred to the successor trustee. All bank statements and canceled checks, if any, have been submitted to the United States Trustee. The bank statements reflect a final zero balance and no other funds or assets of the estate remain in my custody. Pursuant to Fed R Bank P 5009, I hereby certify that the chapter 7 estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 5 months. Assets Abandoned: Not Applicable, Assets Exempt: Not Applicable, Claims Scheduled: Not Applicable, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment: Not Applicable. (Loveridge tr, Elizabeth) (EOD: 01/26/2010)
01/25/2010		Remark. (related document(s): <u>121</u> Notice of Appeal, <u>148</u> Notice of Appeal) Please Note: Appeal Filing Fees waived by District Court. (jww) (EOD: 01/25/2010)
01/13/2010	<u>180</u>	Pending Order (Confirmation Orders) BATCH Filed by: (x2Anderson tr, Kevin) (EOD: 01/13/2010)
12/21/2009	<u>179</u>	Copy of Final Order By District Court Judge Tena Campbell, Re: Appeal on Civil Action Number: 2:09-cv-828, Ruling: The decision of the Bankruptcy Court is Affirmed and the appeal of the August 21, 2009 judgment is Dismissed. (related document(s): <u>121</u> Notice of Appeal) (jww) (EOD: 12/21/2009)
12/08/2009		Minute Entry Re: Confirmation of Chapter 13 Plan. Confirmation granted. Plan terms are as follows: \$1,047.00 per month until 100% of unsecured have been paid and such portion of allowed attorney's fees are available. If the parties become aware that plan is unfeasible and the trustee needs to adjust and reduce the amount being paid on attorney's fees in order to make sure that unsecured creditors receive 100% on the dollar, then that adjustment will be made. OTF-Rick. (related document(s): <u>168</u> Application for Compensation filed by Antoinette Billings. Fees of \$16,065.87 allowed. \$3,065.87 was paid pre-petition. Balance will be paid through the plan. <u>169</u> Amended Chapter 13 Plan filed by Antoinette Billings) Appearances: Paul James Toscano (db); Jocelyn Rick (tr) (JAB,kmc,klc) (EOD: 12/09/2009)

11/23/2009	<u>178</u>	Transcript regarding Hearing Held 09/22/09 RE: Motion to Extend Time to File THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING, TRANSCRIPT RELEASE DATE IS 2/22/2010. Until that time the transcript may be viewed at the Bankruptcy Court or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Carolyn Erickson, Telephone number 801-523-1186. (related document(s): <u>148</u> Notice of Appeal filed by Creditor Joseph M. Billings) Notice of Intent to Request Redaction Deadline Due By 11/30/2009. Redaction Request Due By 12/14/2009. Redacted Transcript Submission Due By 12/24/2009. Transcript access will be restricted through 2/22/2010. (jww) (EOD: 11/25/2009)
11/23/2009	<u>177</u>	Transcript regarding Hearing Held 09/22/09 RE: Motion To Extend Time To File. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING, TRANSCRIPT RELEASE DATE IS 2/22/2010. Until that time the transcript may be viewed at the Bankruptcy Court or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Carolyn Erickson, Telephone number 801-523-1186. (related document(s): <u>129</u> Motion Extend Time filed by Creditor Joseph M. Billings) Notice of Intent to Request Redaction Deadline Due By 11/30/2009. Redaction Request Due By 12/14/2009. Redacted Transcript Submission Due By 12/24/2009. Transcript access will be restricted through 2/22/2010. (lph) (EOD: 11/24/2009)
11/19/2009	<u>176</u>	Request for Transcript Signed by Transcriptionist Filed by Joseph M. Billings Transcript Due by 12/21/2009. (jww) (EOD: 11/23/2009)
11/18/2009	<u>175</u>	Request for Transcript Filed by Joseph M. Billings Transcript Due by 12/18/2009. (jww) (EOD: 11/23/2009)
11/11/2009	<u>174</u>	Certificate of Service Re: Order. (related document(s): <u>172</u> Order Continuing Confirmation Hearing) Service Date 11/11/2009. (Admin.) (EOD: 11/11/2009)
11/10/2009	<u>173</u>	Copy of Order By District Court Judge Tena Campbell Consolidating Cases. Re: Appeal on Civil Action Number: 2:09-cv-828 Ruling: Case number 2:09-cv-993 is Consolidated with case number 2:09-cv-828. (related document(s): <u>121</u> Notice of Appeal, <u>148</u> Notice of Appeal) (jww) (EOD: 11/10/2009)
11/09/2009	<u>172</u>	Order Continuing Confirmation Hearing following Contested Confirmation Hearing (deed) (EOD: 11/09/2009)
11/05/2009		Clerk's Notification of Transmittal. District Court Number:2:09-cv-993 (related document(s): <u>148</u> Notice of Appeal) [Copies of Notice of Appeal, Motion for Leave to Appeal, Election to District Court, In Forma Pauperis Application, Appellant Designation of Record, Order being appealed, Amended Notice of Appeal, Amended Election to District Court, party list, and docket sheet sent electronically to District Court.] (jww) (EOD: 11/06/2009)
10/28/2009	<u>171</u>	Notice of Hearing (related document(s): <u>168</u> Application for Compensation, <u>169</u> Amended Chapter 13 Plan) of <i>October 16, 2009</i> Filed by Paul James Toscano on behalf of Antoinette Billings Hearing scheduled for 12/8/2009 at 02:30 PM at US Bankruptcy Court. (Toscano, Paul) (EOD: 10/28/2009)
10/28/2009	<u>170</u>	Pending Order Continued Confirmation(Hearing Held) BATCH Filed by: (x6Anderson tr, Kevin) (EOD: 10/28/2009)
10/27/2009		Withdrawal of Document (related document(s): <u>166</u> Amended Chapter 13 Plan) filed by Debtor(s) Reason for Withdrawal: incorrect content of plan (Toscano, Paul) (EOD: 10/27/2009)
10/26/2009	<u>169</u>	Amended Chapter 13 Plan of <i>October 16, 2009</i> filed by Debtor(s). (Toscano, Paul) (EOD: 10/26/2009)
10/26/2009	<u>168</u>	Application for Compensation for Paul James Toscano, Debtor's Attorney, period: 8/13/2008 to 8/10/2009, fee: \$17,775.00, expenses: \$131.64. Filed by Paul James Toscano (Toscano, Paul) (EOD: 10/26/2009)
10/20/2009		Minute Entry Re: Confirmation of Chapter 13 Plan. Hearing Continued. OTF Rick. (JAB,arb,kc) (related document(s): <u>166</u> ) Appearances: Paul James Toscano DB, Jocelyn Rick TR. Hearing scheduled for 12/08/2009 at 02:30 PM at US Bankruptcy Court. (arb) (EOD: 10/20/2009)
10/16/2009	<u>167</u>	Certificate of Service of <i>Petition Date bank statements on Trustee</i> filed by Debtor(s). (Toscano, Paul) (EOD: 10/16/2009)
10/16/2009	<u>166</u>	Amended Chapter 13 Plan of <i>October 16, 2009</i> filed by Debtor(s). (Toscano, Paul) (EOD: 10/16/2009)
10/13/2009	<u>165</u>	Amended Election of Appeal to District Court (related document(s): <u>150</u> Election of Appeal to District Court) Filed by Joseph M. Billings (jww) (EOD: 10/13/2009)
10/13/2009	<u>164</u>	Amended Notice of Appeal (related document(s): <u>148</u> Notice of Appeal) Filed by Joseph M. Billings (jww) (EOD: 10/13/2009)

10/09/2009	<u>163</u>	Certificate of Service Re: Order. (related document(s): <u>160</u> Order on Motion to Extend Time) Service Date 10/09/2009. (Admin.) (EOD: 10/09/2009)
10/07/2009	<u>162</u>	Certificate of Service (related document(s): <u>157</u> Amended Chapter 13 Plan <i>on parties on mailing matrix and parties requesting ECF notice, Plan of October 7, 2009</i> filed by Debtor(s). (Toscano, Paul) Modified on 10/8/2009 (deed) (EOD: 10/07/2009)
10/07/2009	<u>161</u>	Response to (related document(s): <u>155</u> Trustee's Objection to Confirmation of Chapter 13 Plan) <i>Debtor's Response to Trustee's Objection to Confirmation</i> Filed by Antoinette Billings (Toscano, Paul) (EOD: 10/07/2009)
10/07/2009	<u>160</u>	Order Denying Joseph M. Billings' Motion to Extend Time to File Notice of Appeal (Related Doc # <u>129</u> ) (deed) Modified on 10/7/2009 (deed). (EOD: 10/07/2009)
10/07/2009	<u>159</u>	Amended Document <i>Rule 2016(b) Compensation Statement of Debtor's counsel clarifying fees paid, fees incurred</i> filed by Debtor(s) (Toscano, Paul) (EOD: 10/07/2009)
10/07/2009	<u>158</u>	Amended Statement of Financial Affairs <i>amending answer to question 10, clarifying Debtor's counsel's fees</i> filed by Debtor(s) (Toscano, Paul) (EOD: 10/07/2009)
10/07/2009	<u>157</u>	Amended Chapter 13 Plan <i>amended October 7, 2009</i> filed by Debtor(s). (Toscano, Paul) (EOD: 10/07/2009)
10/07/2009	<u>156</u>	Amended Schedules I & J <i>explaining reason for additional tax payment of \$292</i> filed by Debtor(s). (Toscano, Paul) (EOD: 10/07/2009)
10/07/2009	<u>155</u>	Trustee's Objection to Confirmation of Chapter 13 Plan. (x12Anderson tr, Kevin) (EOD: 10/07/2009)
09/25/2009	<u>154</u>	Certificate of Service Re: Order. (related document(s): <u>147</u> Unsigned Order) Service Date 09/25/2009. (Admin.) (EOD: 09/25/2009)
09/25/2009	<u>153</u>	Notice of Transcript Order on Appeal (related document(s): <u>148</u> Notice of Appeal filed by Creditor Joseph M. Billings) Filed by Joseph M. Billings (jww) (EOD: 09/25/2009)
09/25/2009	<u>152</u>	Appellant Designation of Record and Statement of Issues of Appeal (related document(s): <u>148</u> Notice of Appeal) Filed by Joseph M. Billings Appellee designation due by 10/5/2009. Transmission of Designation Due by 10/26/2009. (jww) (EOD: 09/25/2009)
09/25/2009	<u>151</u>	Motion to File Appeal In Forma Pauperis (related document(s): <u>148</u> Notice of Appeal) Filed by Joseph M. Billings (jww) (EOD: 09/25/2009)
09/25/2009	<u>150</u>	Election of Appeal to District Court (related document(s): <u>148</u> Notice of Appeal) Filed by Joseph M. Billings (jww) (EOD: 09/25/2009)
09/25/2009	<u>149</u>	Motion for Leave to Appeal (related document(s): <u>148</u> Notice of Appeal) Filed by Joseph M. Billings Responses due by 10/7/2009. (jww) (EOD: 09/25/2009)
09/25/2009	<u>148</u>	Notice of Appeal (Order being appealed has not yet been entered.) Filed by Joseph M. Billings Appellant Designation due by 10/5/2009. Certificate of Readiness Due Date 11/4/2009. [Copies of Notice of Appeal, Motion for Leave to Appeal, Election to District Court, Motion to File Appeal In Forma Pauperis, Appellant's Designation of Record, Notice of Transcript Order on Appeal, docket sheet, and appeal guidelines sent via electronic mail to Joseph Billings, USTR, Loveridge, Anderson, and Toscano, and via U.S. mail to John Billings.] (jww) (EOD: 09/25/2009)
09/23/2009	<u>147</u>	Unsigned Order (related document(s): <u>129</u> Motion Extend Time) Reason Order Was Unsigned: Alternate order to be signed. Eorder number: 115873 (deed) (EOD: 09/23/2009)
09/22/2009		Minute Entry Re: Motion to Extend Time to File Notice of Appeal. Motion denied. Findings of fact and conclusions of law made on the record. OTF Toscano. (JAB,km,kc) (related document(s): <u>129</u> ) Appearances: Paul Toscano and Peter Guyon DB, Joseph Billings PROSE CR arb) (EOD: 09/23/2009)
09/22/2009	<u>146</u>	Certificate of Service (related document(s): <u>145</u> ) <i>on Chapter 13 Trustee of Domestic Support Obligations questionnaire, Declaration of Filed Tax Returns, Payment advices from August 11 to September 22, 2009, 2008 federal and state tax returns, and Copy of check returning funds to debtor from Elizabeth R. Loveridge</i> filed by Debtor(s). (Toscano, Paul) Modified on 9/23/2009 (deed). (EOD: 09/22/2009)
09/22/2009	<u>145</u>	Declaration/Affidavit Re: Tax Returns filed by Debtor(s). (Toscano, Paul) (EOD: 09/22/2009)

09/22/2009	<u>144</u>	Pending Order (Hearing Held) related documents(s) <u>129</u> Motion Extend Time Filed by (Toscano, Paul) [Order# 116948] (EOD 09/22/2009)
09/22/2009		Minute Entry Re (related document(s) <u>129</u> Motion Extend Time filed by Joseph M Billings) Motion denied OTF-Toscano Appearances Paul James Toscano (db), Peter Guyon (db), Joe Billings (cr/telephonic) (JAB,kmc,klc) (EOD 09/22/2009)
09/18/2009	<u>143</u>	Request to Appear by Telephone (related document(s) <u>131</u> Notice of Hearing filed by Creditor Joseph M Billings) Filed by John H Billings (jww) (EOD 09/18/2009)
09/18/2009	<u>142</u>	Declaration and Amended Certificate of Service Filed by John H Billings (jww) (EOD 09/18/2009)
09/18/2009	<u>141</u>	Amended Objection to Motion for Extension of Time to File Notice of Appeal and Amended Certificate of Service and Objection to Motion to File Appeal In Forma Pauperis (related document(s) <u>138</u> Objection, <u>124</u> Motion to File Appeal In Forma Pauperis) Filed by John H Billings (jww) (EOD 09/18/2009)
09/18/2009	<u>140</u>	Amended Opposition to Motion for Leave to File Appeal (related document(s) <u>139</u> Objection) Filed by John H Billings (jww) (EOD 09/18/2009)
09/15/2009		Clerk's Notification of Transmittal District Court Number 2 09-cv-828 (related document(s) <u>121</u> Notice of Appeal) [Copies of Notice of Appeal, Election to District Court, Motion for Leave to Appeal, Motion to File Appeal In Forma Pauperis, Notice of Late Filed Appeal, Motion for Extension of Time to File Appeal, Memorandum in Support, Notice of Hearing, Affidavit, Pending Order, Objection to Motion to Extend Time, Appellant Designation of Record, Amended Designation of Record, Notice of Transcript Order, Objection to Motion for Extension, Objection to Motion for Leave, docket sheet, orders being appealed, and party list sent electronically to District Court ] (jww) (EOD 09/15/2009)
09/14/2009	<u>139</u>	Objection to Motion for Leave to Appeal (related document(s) <u>122</u> Motion for Leave to Appeal filed by Creditor Joseph M Billings) Filed by John H Billings (jww) (EOD 09/14/2009)
09/14/2009	<u>138</u>	Objection to Motion for Extension of Time to file Notice of Appeal (related document(s) <u>129</u> Motion Extend Time filed by Creditor Joseph M Billings) Filed by John H Billings (jww) (EOD 09/14/2009)
09/09/2009	<u>137</u>	Notice for Transcript Order on Appeal Filed by Joseph M Billings Transcript Due by 10/9/2009 (cjf) Modified on 9/10/2009 (cjf) Additional attachment(s) added on 9/10/2009 (cjf) (EOD 09/10/2009)
09/09/2009	<u>136</u>	Amended Appellant's Designation of Record (related document(s) <u>135</u> Appellant Designation) Filed by Joseph M Billings (cjf) (EOD 09/10/2009)
09/09/2009	<u>135</u>	Appellant Designation of Record and Statement of Issues of Appeal (related document(s) <u>121</u> Notice of Appeal) Filed by Joseph M Billings Appellee designation due by 9/21/2009 Transmission of Designation Due by 10/9/2009 (cjf) (EOD 09/10/2009)
09/09/2009	<u>134</u>	Objection to (related document(s) <u>129</u> Motion Extend Time filed by Creditor Joseph M Billings) Filed by Antoinette Billings (Toscano, Paul) (EOD 09/09/2009)
09/03/2009	<u>133</u>	Pending Order (Other) related documents(s) <u>129</u> Motion Extend Time Filed by (mtm) [Order# 115873] (EOD 09/04/2009)
09/03/2009	<u>132</u>	Affidavit in support of Motion for Extension of Time To file Notice of Appeal (mtm) (EOD 09/04/2009)
09/03/2009	<u>131</u>	Notice of Hearing (related document(s) <u>129</u> Motion Extend Time) Filed by Joseph M Billings Hearing scheduled for 9/22/2009 at 02 00 PM at US Bankruptcy Court (mtm) (EOD 09/04/2009)
09/03/2009	<u>130</u>	Memorandum in Support (related document(s) <u>129</u> Motion Extend Time) Filed by Joseph M Billings (mtm) (EOD 09/04/2009)
09/03/2009	<u>129</u>	Motion For Extension of Time To file Notice of Appeal Filed by Joseph M Billings (mtm) (EOD 09/04/2009)
09/02/2009	<u>128</u>	Chapter 13 Plan filed by Debtor(s) (Toscano, Paul) (EOD 09/02/2009)
09/02/2009	<u>127</u>	Amended Document (related document(s) <u>4</u> Chapter 7 Means Test) <i>Amended Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income</i> filed by Debtor(s) (Toscano, Paul) (EOD 09/02/2009)
09/02/2009	<u>126</u>	Amended Schedules filed by Debtor(s) (No Fee) Changes indicated statement of affairs amended (Toscano, Paul) (EOD 09/02/2009)

09/02/2009	<u>125</u>	Notice that the appeal filed (#121) on 9/1/09 was late (related document(s) <u>121</u> Notice of Appeal filed by Creditor Joseph M Billings, <u>122</u> Motion for Leave to Appeal filed by Creditor Joseph M Billings, <u>123</u> Election of Appeal to District Court filed by Creditor Joseph M Billings, <u>124</u> Motion for Ex Parte Relief filed by Creditor Joseph M Billings) Filed by Paul James Toscano on behalf of Antoinette Billings (Toscano, Paul) (EOD 09/02/2009)
09/01/2009	<u>124</u>	Motion to File Appeal In Forma Pauperis (related document(s) <u>121</u> Notice of Appeal, <u>122</u> Motion for Leave to Appeal) Filed by Joseph M Billings (jww) (EOD 09/02/2009)
09/01/2009	<u>123</u>	Election of Appeal to District Court (related document(s) <u>121</u> Notice of Appeal) Filed by Joseph M Billings (jww) (EOD 09/02/2009)
09/01/2009	<u>122</u>	Motion for Leave to Appeal (related document(s) <u>121</u> Notice of Appeal) Filed by Joseph M Billings Responses due by 9/14/2009 (jww) (EOD 09/02/2009)
09/01/2009	<u>121</u>	Notice of Appeal (related document(s) <u>107</u> Order on Motion for Entry of Judgment/Order, <u>109</u> Amended Order) (Please Note Notice of Appeal also refers to Adversary 08-2148 ) [Notice sent via electronic mail to USTR, Loveridge, Toscano, and Joseph Billings and via U S Mail to John Billings ] Filed by Joseph M Billings (jww) (EOD 09/02/2009)
08/27/2009	<u>120</u>	341 Meeting Notice (see image for details) and BNC Certificate of Service (related document(s) <u>115</u> Notice of Meeting of Creditors Chapter 13) Service Date 08/27/2009 (Admin ) (EOD 08/27/2009)
08/27/2009	<u>119</u>	BNC Certificate of Service dated 8/22/09 (related document(s) <u>107</u> Order Approving Settlement Among Debtor Antoinette Billings, Debtor's Counsel, Joseph Billings, John H Billings and Chapter 7 Trustee Elizabeth R Loveridge (Related Doc # 68 Debtor's Motion for an Order Enforcing the Settlement Agreed in Open Court) (BNC DOCKET EVENT FAILED TO AUTO DOCKET on 8/22/09) (jtt) Additional attachment(s) added on 8/27/2009 (jtt) (EOD 08/27/2009)
08/26/2009	<u>118</u>	Certificate of Service of documents served on John H Billings with copies attached filed by Debtor(s) (Toscano, Paul) (EOD 08/26/2009)
08/26/2009	<u>117</u>	Certificate of Service of documents served on Joseph M Billings with copies attached filed by Debtor(s) (Toscano, Paul) (EOD 08/26/2009)
08/26/2009	<u>116</u>	Notice of Withdrawal of Motion (related document(s) <u>7</u> filed by Debtor Antoinette Billings) (Docket No 7) Filed by Paul James Toscano on behalf of Antoinette Billings (Toscano, Paul) Modified on 8/26/2009 (deed) (EOD 08/26/2009)
08/25/2009	<u>115</u>	Notice of Meeting of Creditors 341(a) meeting to be held on 9/25/2009 at 405 South Main Proofs of Claims due by 12/24/2009 Ch 13 Obj to Dischargeability 11/24/2009 Confirmation hearing to be held on 10/20/2009 at 02 30 PM at USBC Rm 341 Government Proof of Claim due by 10/14/2008 (dlg) (EOD 08/25/2009)
08/23/2009	<u>114</u>	Certificate of Service Re Order (related document(s) <u>109</u> Amended Order) Service Date 08/23/2009 (Admin ) (EOD 08/23/2009)
08/22/2009	<u>113</u>	Certificate of Service Re Order (related document(s) <u>108</u> Order on Motion to Convert Case To Chapter 13) Service Date 08/22/2009 (Admin ) (EOD 08/22/2009)
08/22/2009	<u>112</u>	Certificate of Service Re Order (related document(s) <u>106</u> Unsigned Order) Service Date 08/22/2009 (Admin ) (EOD 08/22/2009)
08/22/2009	<u>111</u>	Certificate of Service Re Order (related document(s) <u>105</u> Unsigned Order) Service Date 08/22/2009 (Admin ) (EOD 08/22/2009)
08/22/2009	<u>110</u>	Certificate of Service Re Order (related document(s) <u>104</u> Unsigned Order) Service Date 08/22/2009 (Admin ) (EOD 08/22/2009)
08/21/2009	<u>109</u>	Amended Order (related document(s) <u>107</u> Order Approving Settlement Among Debtor Antoinette Billings, Debtor's Counsel, Joseph Billings, John H Billings and Chapter 7 Trustee Elizabeth R Loveridge) (mkp) (EOD 08/21/2009)
08/20/2009	<u>107</u>	Order Approving Settlement Among Debtor Antoinette Billings, Debtor's Counsel, Joseph Billings, John H Billings and Chapter 7 Trustee Elizabeth R Loveridge (Related Doc # 68 Debtor's Motion for an Order Enforcing the Settlement Agreed in Open Court) Joseph M Billings shall deliver the vehicle belonging to John H Billings & at his residence in Montrose, Colorado within 14 days of entry of this order Debtor shall deliver the personal property items to John H Billings at his residence in Montrose, Colorado within 45 days of entry of this order

		(mkp) (EOD: 08/20/2009)
08/20/2009		Minute Entry Re: Debtor's Motion for an Order Converting the Debtor's Chapter 7 Case to One Under Chapter 13. Motion granted, the case is converted to one under Chapter 13. If the debtor is unsuccessful in a Chapter 13 the case will be reconverted to a Chapter 7 and not dismissed. The adversary case 08-2148 will be held in abeyance pending completion of a chapter 13 plan or upon reconversion to a Chapter 7. The Court will prepare an Order. (JAB,cjf,kc)(related document(s): <u>70</u> ) Appearances: Paul Toscano, Peter Guyon (DB), John Billings-telephonically (CR-pro se), Joseph Billings (CR-pro se), Peter Kuhn (U.S. TR). (cjf) (EOD: 08/21/2009)
08/20/2009		Minute Entry Re: Debtor's Alternative Motion for Order Granting Leave to Remove Utah State Court Action to the United States Bankruptcy Court for the District of Utah. Motion denied. OTF-Billings. (JAB;cjf,kc)(related document(s): <u>77</u> ) Appearances: Paul Toscano, Peter Guyon (DB), John Billings-telephonically (CR-pro se), Joseph Billings (CR-pro se), Peter Kuhn (U.S. TR) (cjf) (EOD: 08/21/2009)
08/20/2009		Minute Entry Re: Debtor's Motion for an Order Imposing Sanctions Upon Joseph M. Billings and/or John H. Billings for Violations of the Automatic Stay. Motion denied. OTF-Billings. (JAB;cjf,kc)(related document(s): <u>69</u> )Appearances. Paul Toscano, Peter Guyon (DB), John Billings-telephonically (CR-pro se), Joseph Billings (CR-pro se), Peter Kuhn (U.S. TR). (cjf) (EOD: 08/21/2009)
08/20/2009		Minute Entry Re: Debtor's Motion for Order Determining that the Filing of Cross-Complaint by Joseph Billings Against Antoinette Billings and Antoinette Billings' Utah Bankruptcy Counsel in the California Superior Court Violated the Automatic Stay and is Void and that the Filing of a Complaint for Abuse of Process Against Paul Toscano, P.C. and Paul Toscano in the Third Judicial District Court of Salt Lake County Violates the Automatic Stay and is Void. The motion regarding the California Superior Court is moot. The Motion regarding the Third Judicial District Court of Salt Lake County is denied. Exhibits received. OTF-Billings. (JAB,cjf,kc)(related document(s): <u>67</u> ) Appearances: Paul Toscano, Peter Guyon (DB), John Billings-telephonically (CR-pro se), Joseph Billings (CR-pro se), Peter Kuhn (U.S. TR). (cjf) Modified on 8/21/2009 (cjf). Modified on 8/25/2009 (kmc). (EOD: 08/21/2009)
08/20/2009	<u>108</u>	Order Granting Motion to Convert Case to Chapter 13 (Related Doc # <u>70</u> ). The case will be reconverted to chapter 7 if the Debtor fails to confirm or complete a chapter 13 plan. Adversary proceeding 08-2148 shall be held in abeyance until either completion of the Debtor's chapter 13 case, in which the case the adversary proceeding shall be dismissed, or reconversion to chapter 7, in which case the adversary proceeding may be revisited. (mkp) (EOD: 08/20/2009)
08/20/2009	<u>106</u>	Unsigned Order (related document(s): <u>92</u> Motion for Examination Under Rule 2004) Reason Order Was Unsigned: Superseded by approved stipulation. Eorder number: 114515 (lb) (EOD: 08/20/2009)
08/20/2009		Minute Entry Re: Debtor's Response to (1) Joseph Billing's Objection to Proposed Order Re: Return of Vehicle by Joseph Billings to John Billings and Request to Set Order to Show Cause Re: Sanctions Against the Debtor's Attorney, Paul Toscano, Pursuant to Federal Rules of Bankruptcy Procedure 9011 and (2) Joseph Billings' Objection to Proposed Order Approving Settlement Among Debtor Antoinette Billings, Debtor's Counsel, Joseph Billings, John Billings, and Chapter 7 Trustee Elizabeth Loveridge. The Motion for an Order Enforcing the Settlement Agreed to in Open Court was granted. The prior Order of the Court is modified as indicated on the record. The Court will prepare an Order. (JAB;cjf,kc)(related document(s): <u>66</u> ) Appearances: Paul Toscano, Peter Guyon (DB), John Billings-telephonically (CR-pro se), Joseph Billings (CR-pro se), Peter Kuhn (U.S. TR). (cjf) (EOD: 08/20/2009)
08/20/2009		Minute Entry Re: Debtor's Motion for an Order Enforcing the Settlement Agreed to in Open Court. Motion granted. The prior Order of the Court is modified as indicated on the record. The Court will prepare an Order. (JAB;cjfk)(related document(s): <u>68</u> ) Appearances: Paul Toscano, Peter Guyon (DB), John Billings-telephonically (CR-pro se), Joseph Billings (CR-pro se), Peter Kuhn (U.S. TR). (cjf) (EOD: 08/20/2009)
08/20/2009	<u>105</u>	Unsigned Order (related document(s): <u>99</u> Objection) Reason Order Was Unsigned:Duplicate Order. Eorder number: 114562 (deed) (EOD: 08/20/2009)
08/20/2009	<u>104</u>	Unsigned Order (related document(s): <u>95</u> Motion for Examination Under Rule 2004) Reason Order Was Unsigned:Duplicate Order. Eorder number: 114518 (deed) (EOD: 08/20/2009)
08/20/2009	<u>103</u>	Request to Appear by Telephone for Several Matters on August 20, 2009 and be Continued for 60 days.(related document(s): <u>66</u> Response, <u>67</u> Debtor's Motion <u>68</u> Motion for an order. <u>69</u> Motion for Sanctions for Violation of the Automatic Stay, <u>70</u> Motion to Convert Case to Chapter 13, <u>77</u> Motion for Entry of Judgment/Order) Filed by John H. Billings Modified on 8/20/2009 (deed). (EOD: 08/20/2009)
08/19/2009	<u>102</u>	Objection to (related document(s): <u>95</u> Motion for Examination Under Rule 2004 filed by Creditor Joseph M. Billings) Filed by Antoinette Billings (Toscano, Paul) (EOD: 08/19/2009)

08/17/2009	<u>101</u>	Pending Order (Other) related documents(s) <u>99</u> Objection Filed by (djf) [Order# 114562] (EOD 08/18/2009)
08/17/2009	<u>100</u>	Objection to Defendant Paul Toscano's Motion to Remove State Court Action to Federal Bankruptcy Court Filed by Joseph M Billings (djf) (EOD 08/18/2009)
08/17/2009	<u>99</u>	Objection to (related document(s) <u>68</u> Motion to Enforce Proposed Settlement (Designated 3/30/2009) filed by Debtor Antoinette Billings) Filed by Joseph M Billings (djf) (EOD 08/18/2009)
08/17/2009	<u>98</u>	Objection to Debtor's Motion for Order Determining That the Filing of a Complaint Against Defendant Paul Toscano in the Third Judicial District Court of Salt Lake County Violates the Automatic Stay and is Void Filed by Joseph M Billings (djf) (EOD 08/18/2009)
08/17/2009	<u>97</u>	Pending Order (Other) related documents(s) <u>95</u> Motion for Examination Under Rule 2004 Filed by (deed) [Order# 114518] (EOD 08/18/2009)
08/17/2009	<u>96</u>	Memorandum in Support (related document(s) <u>95</u> Motion for Examination Under Rule 2004) Filed by Joseph M Billings (deed) (EOD 08/18/2009)
08/17/2009	<u>95</u>	Motion for Examination Antoinette Billings and Relevant Third Parties and Production of Documents Under Rule 2004 Filed by Joseph M Billings (deed) (EOD 08/18/2009)
08/17/2009	<u>94</u>	Pending Order (Other) related documents(s) <u>92</u> Motion for Examination Under Rule 2004 Filed by (deed) [Order# 114515] (EOD 08/18/2009)
08/17/2009	<u>93</u>	Memorandum in Support (related document(s) <u>92</u> Motion for Examination Under Rule 2004) Filed by Joseph M Billings (deed) (EOD 08/18/2009)
08/17/2009	<u>92</u>	Motion for Examination Antoinette Billings and Relevant Third Parties and Production of Documents Under Rule 2004 Filed by Joseph M Billings (deed) (EOD 08/18/2009)
08/17/2009	<u>91</u>	Opposition to Debtor's Motion to Convert to Chapter 13 (related document(s) <u>70</u> filed by Debtor Antoinette Billings)(Please note Pleading has Adversary Caption ) ( Possible Duplicate ) Filed by Joseph M Billings (deed) Modified on 8/18/2009 (deed) (EOD 08/18/2009)
08/17/2009	<u>90</u>	Opposition to Debtor's Motion to Convert (related document(s) <u>70</u> filed by Debtor Antoinette Billings) (Please note Pleading has Adversary Caption ) Filed by Joseph M Billings (deed) Modified on 8/18/2009 (deed) (EOD 08/18/2009)
08/17/2009	<u>89</u>	Joseph Billings' (Unsecured Creditor) Request to Introduce Evidence in Support of Opposition to Debtor's Motion to Enforce Proposed Settlement Agreement(Possible Duplicate) (related document(s) <u>64</u> Objection) Filed by Joseph M Billings (deed) Modified on 8/18/2009 (deed) (EOD 08/18/2009)
08/17/2009	<u>88</u>	Joseph Billings' (Unsecured Creditor) Request to Introduce Evidence in support of Opposition to Debtor's Motion to Enforce Proposed Settlement Agreement (related document(s) <u>64</u> Objection) Filed by Joseph M Billings(Possible Duplicate) (deed) (EOD 08/18/2009)
08/17/2009	<u>87</u>	Joseph Billings' (Unsecured Creditor) Request to Introduce Evidence in Support of Opposition to Debtor's Motion to Enforce Proposed Settlement Agreement (related document(s) <u>64</u> Objection) Filed by Joseph M Billings (deed) (EOD 08/18/2009)
08/17/2009	<u>86</u>	Response to (related document(s) <u>70</u> Motion to Convert Case to Chapter 13) <i>and Debtor's Motion for Order Enforcing the Settlement Agreed to in Open Court</i> Filed by Elizabeth R Loveridge tr (Loveridge tr, Elizabeth) Modified on 8/18/2009 (deed) (EOD 08/17/2009)
08/15/2009	<u>85</u>	Certificate of Service Re Order (related document(s) <u>84</u> Order on Motion to Continue/Reschedule Hearing) Service Date 08/15/2009 (Admin ) (EOD 08/15/2009)
08/13/2009	<u>84</u>	Order Denying John H Billings' Request for Continuance & Allowing Appearance by Telephone (Related Doc # <u>80</u> ) Mr Billings may appear at the 08/20/2009 hearings telephonically although the Court will not permit the presentation of evidence telephonically Mr Billings may contact Austin Bugni by 08/19/2009 to make arrangements to appear telephonically (mkp) (EOD 08/13/2009)
08/10/2009	<u>83</u>	Notice of Breach of Settlement Agreement by Debtor and Response to Debtor's Motion for Order enforcing Settlement Agreed to in Open Court, Request for Order to Show Cause as to why Debtor and or her Attorney Paul J Toscano should not be found in breach of Settlement agreement and or in Contempt of Court's Order of March 30, 2009 and Request for Sanctions (related document(s) <u>65</u> Order on Motion to Approve Compromise under Rule 9019) Filed by John H Billings (deed) Additional attachment(s) added on 8/11/2009 (deed) (EOD

		08/11/2009)
08/10/2009	<u>82</u>	Objection to (related document(s): <u>65</u> Order on Motion to Approve Compromise under Rule 9019) Filed by John H. Billings (deed) (EOD: 08/11/2009)
08/10/2009	<u>81</u>	Objection to Order RE: Return of Vehicle by Joseph M. Billings to John H. Billings, and Request For Order to Show Cause As To Why sanction Should Not Be Imposed Against unsecured Creditor, Joseph M. Billing and Debtor's Counsel. Filed by John H. Billings Filed by John H. Billings (deed) Modified on 8/11/2009 (deed). (EOD: 08/11/2009)
08/10/2009	<u>80</u>	Request for Continuance of August 20, 2009 on Hearing (related document(s): <u>63</u> Objection, <u>65</u> Order on Motion to Approve Compromise under Rule 9019, <u>69</u> Motion for Sanctions for Violation of the Automatic Stay) Filed by John H. Billings (deed) (EOD: 08/11/2009)
08/10/2009	<u>79</u>	Unsecured Creditor, John H. Billings Response to Joseph M. Billings (related document(s): <u>64</u> Objection) Filed by John H. Billings (deed) (EOD: 08/11/2009)
07/29/2009	<u>78</u>	Notice of Hearing (related document(s): <u>77</u> Motion for Entry of Judgment/Order) ( <i>see description in docket entry for Motion</i> ) Filed by Paul James Toscano on behalf of Antoinette Billings Hearing scheduled for 8/20/2009 at 02:00 PM at xBoston 1st Flr. (Toscano, Paul) (EOD: 07/29/2009)
07/29/2009	<u>77</u>	Debtor's Alternative Motion <i>for order granting leave to remove Utah State Court the action to the US Bankruptcy Court action replicates the allegations made by Joseph Billings in his pending Adversary Proceeding</i> Filed by Antoinette Billings (Toscano, Paul) Modified on 7/29/2009 (deed). (EOD: 07/29/2009)
05/21/2009	<u>76</u>	Certificate of Service Re: Order. (related document(s): <u>75</u> Order on Motion for Entry of Judgment/Order) Service Date 05/21/2009. (Admin.) (EOD: 05/21/2009)
05/19/2009	<u>75</u>	Order Regarding Debtor's Motion for Order Determining that the Filing of Cross-Complaint by Joseph M. Billings Against Antoinette Billings and Antoinette Billings' Utah Bankruptcy Counsel in the California Superior Court and the Filing of a Complaint for Abuse of Process against Debtor's counsel in the Third Judicial District Court of Salt Lake County Violates the Automatic Stay and is Null and Void Filed by Antoinette Billings (Related Doc # <u>46</u> ) (deed) Modified on 8/20/2009 (deed). (EOD: 05/19/2009)
05/18/2009	<u>74</u>	Certificate of Service <i>of returned mail from Joseph M Billings address currently filed with Court</i> Filed by Antoinette Billings (Toscano, Paul) (EOD: 05/18/2009)
05/04/2009		Remark. Order entered regarding Debtor's Motion for Order Approving Settlement between Antoinette Billings and Dee W. Davis, see #65, dated 4/30/2009. (deed) Modified on 5/4/2009 (deed). Modified on 5/6/2009 (deed). (EOD: 05/04/2009)
05/02/2009	<u>73</u>	Certificate of Service Re: Order. (related document(s): <u>65</u> Order on Motion to Approve Compromise under Rule 9019) Service Date 05/02/2009. (Admin.) (EOD: 05/02/2009)
04/30/2009	<u>72</u>	Certificate of Service <i>of Courtesy Copies to Court of Orders subject to the Objections of Joseph M. Billings</i> Filed by Antoinette Billings (Toscano, Paul) (EOD: 04/30/2009)
04/30/2009	<u>71</u>	Notice of Hearing (related document(s): <u>66</u> Response, <u>67</u> Motion for Entry of Judgment/Order, <u>68</u> Motion for Entry of Judgment/Order, <u>69</u> Motion for Sanctions for Violation of the Automatic Stay, <u>70</u> Motion to Convert Case to Chapter 13) Filed by Paul James Toscano on behalf of Antoinette Billings Hearing scheduled for 8/20/2009 at 02:00 PM at US Bankruptcy Court (Toscano, Paul) Modified on 5/1/2009 (lph). (EOD: 04/30/2009)
04/30/2009	<u>70</u>	Motion to Convert Case to Chapter 13 Filed by Antoinette Billings (Toscano, Paul) (EOD: 04/30/2009)
04/30/2009	<u>69</u>	Motion For Sanctions for Violation of the Automatic Stay Against Joseph M. Billings and John H. Billings Filed by Antoinette Billings (Toscano, Paul) (EOD: 04/30/2009)
04/30/2009	<u>68</u>	Debtor's Motion for an Order Enforcing the Settlement Agreed in Open Court Filed by Antoinette Billings (Toscano, Paul) Modified on 5/1/2009 (lph). (EOD: 04/30/2009)
04/30/2009	<u>67</u>	Debtor's Motion for Order Determining that the Filing of Cross-Complaint by Joseph M. Billings Against Antoinette Billings and Antoinette Billings' Utah Bankruptcy Counsel in the California Superior Court and the Filing of a Complaint for Abuse of Process against Debtor's counsel in the Third Judicial District Court of Salt Lake County Violates the Automatic Stay and is Void Filed by Antoinette Billings (Toscano, Paul) Modified on 5/1/2009 (lph). (EOD: 04/30/2009)



04/30/2009	<u>66</u>	Response to (related document(s): <u>63</u> Objection, <u>64</u> Objection) <i>OBJECTIONS of Joseph Billings</i> Filed by Antoinette Billings (Toscano, Paul) (EOD: 04/30/2009)
04/30/2009	<u>65</u>	Order Regarding Debtor's Motion for Order Approving Settlement Between Antoinette Billings and Dee W. Davis (Related Doc # <u>45</u> ) (deed) (EOD: 04/30/2009)
04/21/2009	<u>64</u>	Objection to Proposed Order Approving Settlement Among Debtor Antoinette Billings, Debtor's Counsel, Joseph Billings, John Billings, and Chapter 7 Trustee Elizabeth R. Loveridge. Filed by Joseph Billings. (Please note: Objection filed in main case as per chambers. See Adversary Case Number 08-2148) (deed) Modified on 4/28/2009 (deed). (EOD: 04/28/2009)
04/21/2009	<u>63</u>	Objection to Proposed Order Re: Return of Vehicle by Joseph Billings to John Billings and Request to Set Order to Show Cause Re: Sanctions Against the Debtor's Attorney, Paul Toscano, Pursuant to Federal Rules of Bankruptcy Procedure 9011. Filed by Joseph Billings. (Please note: Objection filed in main case as per chambers. See Adversary Case Number 08-2148) Filed by Joseph M. Billings (deed) Modified on 4/28/2009 (deed). (EOD: 04/28/2009)
04/15/2009	<u>62</u>	Pending Order (Hearing Held) related documents(s): <u>46</u> Motion for Entry of Judgment/Order Filed by: (Toscano, Paul) [Order# 106887] (EOD: 04/15/2009)
04/15/2009	<u>61</u>	Pending Order (Hearing Held) related documents(s): <u>45</u> Motion to Approve Compromise under Rule 9019 Filed by: (Toscano, Paul) [Order# 106884] (EOD: 04/15/2009)
03/30/2009		Minute Entry Re: Motion for Order Approving Settlements. Motion granted. OTF Toscano. (related document(s): <u>45</u> ) Appearances: Paul James Toscano DB, John Billings CR, Joe Billings CR, David Nill TR, Peter Kuhn USTR (arb) (EOD: 03/30/2009)
03/30/2009		Minute Entry Re: Motion for Order Determining that the Filing of Cross-Complaint by John Billings Against Antoinette Billings and Antoinette Billings' Utah Bankruptcy Counsel in the California Superior Court Violated the Automatic Stay and Is Void. Motion granted. OTF Toscano. (related document(s): <u>46</u> ) Appearances: Paul James Toscano DB, John Billings CR, Joe Billings CR, David Nill TR, Peter Kuhn USTR (arb) (EOD: 03/30/2009)
03/19/2009	<u>60</u>	Certificate of Service Re: Order. (related document(s): <u>58</u> Order For Telephonic Hearing) Service Date 03/19/2009. (Admin.) (EOD: 03/19/2009)
03/19/2009	<u>59</u>	Certificate of Service Re: Order. (related document(s): <u>57</u> Unsigned Order) Service Date 03/19/2009. (Admin.) (EOD: 03/19/2009)
03/17/2009	<u>58</u>	Order Granting John H. Billings' Request to Appear By Telephone at the hearings scheduled before the Court on March 30, 2009. (Related Doc # <u>55</u> ) (mtm) (EOD: 03/17/2009)
03/17/2009	<u>57</u>	Unsigned Order (related document(s): <u>55</u> Motion for Telephonic Hearing) Reason Order Was Unsigned: Alternate order to be signed. Eorder number: 104904 (gci) (EOD: 03/17/2009)
03/12/2009	<u>56</u>	Pending Order (Other) related documents(s): <u>55</u> Motion for Telephonic Hearing Filed by: (kpc) [Order# 104904] (EOD: 03/13/2009)
03/12/2009	<u>55</u>	Motion for Telephonic Hearing (related document(s): <u>45</u> Motion to Approve Compromise under Rule 9019 filed by Debtor Antoinette Billings) Filed by John H. Billings (kpc) (EOD: 03/13/2009)
03/12/2009	<u>54</u>	Objection to Debtor's Motion for Order Approving Settlements and Motion for Order Determining that Cross-complaint filed by John Billings in California Superior Court violated the automatic stay and is void (related document(s): <u>46</u> Motion for Entry of Judgment/Order filed by Debtor Antoinette Billings) Filed by John H. Billings (kpc) (EOD: 03/13/2009)
02/11/2009	<u>53</u>	Certificate of Service Re: Order. (related document(s): <u>52</u> Order Vacating Order) Service Date 02/11/2009. (Admin.) (EOD: 02/12/2009)
02/09/2009	<u>52</u>	Order Vacating Order Granting Motion to Expedite Hearing, Rescheduling February 11, 2009 Hearing to March 30, 2009, and Setting Scheduling Deadlines for March 30, 2009 Hearing (related document(s): <u>49</u> Order on Motion to Expedite Hearing) (kpc) (EOD: 02/09/2009)
02/04/2009	<u>51</u>	Certificate of Service Re: Order. (related document(s): <u>49</u> Order on Motion to Expedite Hearing) Service Date 02/04/2009. (Admin.) (EOD: 02/05/2009)

02/03/2009	<u>50</u>	Certificate of Service (related document(s) <u>45</u> Motion to Approve Compromise under Rule 9019, <u>46</u> Motion for Entry of Judgment/Order, <u>47</u> Motion to Expedite Hearing, <u>48</u> Pending Order) Filed by Antoinette Billings (Toscano, Paul) (EOD 02/03/2009)
02/02/2009	<u>49</u>	Order Granting Motion Expedite Hearing Regarding Motion Approving Settlements and Motion Regarding Cross-Complaint by John Billings as modified by the Court Notice of the February 11 2009 hearing must be given by February 2, 2009 (Related Doc # 47 ) Hearing scheduled for 2/11/2009 at 10 30 AM at US Bankruptcy Court (clo) Modified on 2/4/2009 (clo) (EOD 02/02/2009)
01/30/2009	<u>48</u>	Pending Order (Ex Parte) related documents(s) <u>47</u> Motion to Expedite Hearing Filed by (Toscano, Paul) [Order# 102726] (EOD 01/30/2009)
01/30/2009	<u>47</u>	Ex Parte Motion to Expedite Hearing (related document(s) <u>45</u> Motion to Approve Compromise under Rule 9019, <u>46</u> Motion for Entry of Judgment/Order) Filed by Antoinette Billings (Toscano, Paul) Modified on 2/2/2009 (lb) (EOD 01/30/2009)
01/30/2009	<u>46</u>	Motion for Entry of Judgment/Order <i>Determining that Cross-complaint filed by John Billings in California Superior Court violated the automatic stay and is void</i> Filed by Antoinette Billings (Toscano, Paul) (EOD 01/30/2009)
01/30/2009	<u>45</u>	Motion to Approve Compromise under Rule 9019 (1) <i>Settlement Between Debtor and D M Davis and (2)Settlement Among Debtor, Debtor's Counsel, Joseph Billings, and Chapter 7 Trustee</i> Filed by Antoinette Billings (Toscano, Paul) (EOD 01/30/2009)
09/25/2008	<u>44</u>	Amended Schedules filed by Debtor(s) (No Fee) Changes indicated dollar figures amended, creditors moved from one schedule to another (Toscano, Paul) (EOD 09/25/2008)
08/14/2008		Clerk's Notice of Possible Error Re (related document(s) <u>43</u> Certificate of Service, <u>42</u> Answer to Complaint) Description of Error Answer to Complaint and Certificate of Service were entered in the main case and not in adversary case #08-02148 Image of pleading specifies main case number only Attorney notified by voice message (clo, ) (EOD 08/14/2008)
08/14/2008	<u>43</u>	Certificate of Service (related document(s) <u>42</u> Answer to Complaint) <i>CERTIFICATE OF SERVICE OF ANSWER OF ANTOINETTE BILLINGS TO JOSEPH BILLINGS' COMPLAINT</i> Filed by Antoinette Billings (Guyon, Peter) (EOD 08/14/2008)
08/14/2008	<u>42</u>	Answer to Complaint <i>ANSWER OF ANTOINETTE BILLINGS TO JOSEPH BILLINGS' COMPLAINT</i> Filed by Antoinette Billings (Guyon, Peter) (EOD 08/14/2008)
08/06/2008	<u>41</u>	Certificate of Service Re Order (related document(s) <u>40</u> Unsigned Order) Service Date 08/06/2008 (Admin ) (EOD 08/06/2008)
08/04/2008	<u>40</u>	Unsigned Order (related document(s) <u>29</u> Motion for Examination Under Rule 2004) Reason Order Was Unsigned The matter was continued without date subject to renoticing Eorder number 92697 (clo, ) (EOD 08/04/2008)
08/04/2008		Minute Entry Re Motion to Dismiss Under 707(b)(1)(2)and(3) Hearing Continued Without Date OTF Toscano (JAB,arb,km) (related document(s) <u>25</u> ) Appearances Paul James Toscano DB Elizabeth Loveridge TR, Peter Kuhn USTR, Joseph Billings CR (arb) (EOD 08/04/2008)
08/04/2008		Minute Entry Re Motion for Examination of Debtor, Antoinette Billings, and Relevant Third Parties and Production of Documents Under Fed R Bankr P 2004 and Local Bankr Rule 2004-1 Hearing Continued Without Date OTF Toscano (JAB,arb,km) (related document(s) <u>29</u> ) Appearances Paul James Toscano DB, Elizabeth Loveridge TR, Peter Kuhn USTR, Joseph Billings CR (arb) (EOD 08/04/2008)
08/04/2008		Minute Entry Re Continued Hearing on Status Conference on U S Trustee's Motion to Dismiss Hearing Continued Without Date OTF Toscano (JAB,arb,km) (related document(s) <u>16</u> ) Appearances Paul James Toscano DB, Elizabeth Loveridge TR, Peter Kuhn USTR, Joseph Billings CR (arb) (EOD 08/04/2008)
08/04/2008		Minute Entry Re Continued Hearing on Motion for Order Determining Debtor's Chapter 7 Filing is Not an Abuse Within the Meaning of 11 U S C Section 707(b) Hearing Continued Without Date OTF Toscano (JAB,arb,km) (related document(s) <u>11</u> ) Appearances Paul James Toscano DB, Elizabeth Loveridge TR, Peter Kuhn USTR, Joseph Billings CR (arb) (EOD 08/04/2008)
07/28/2008	<u>39</u>	Supplemental Points and Authorities and Reply to Debtor's Response to U S Trustee's and Creditor's Motions to Dismiss Case (related document(s) <u>35</u> Objection) Filed by Joseph M Billings (clo, ) (EOD 07/29/2008)

07/28/2008	<u>38</u>	Request to Introduce Evidence in Support of Motion to Dismiss Case. (related document(s): <u>25</u> Motion to Dismiss Case Per 707(b)) Filed by Joseph M. Billings (clo, ) (EOD: 07/29/2008)
07/22/2008	<u>37</u>	Trustee's Response to Motion to Dismiss Case Filed by Joseph Billings filed by Trustee Re: (related document(s): <u>25</u> Motion to Dismiss Case Per 707(b)). (Loveridge tr, Elizabeth) (EOD: 07/22/2008)
07/21/2008	<u>36</u>	Objection to (related document(s): <u>29</u> Motion for Examination Under Rule 2004 filed by Creditor Joseph M. Billings) Filed by Antoinette Billings (Toscano, Paul) (EOD: 07/21/2008)
07/21/2008	<u>35</u>	Objection to (related document(s): <u>25</u> Motion to Dismiss Case Per 707(b) filed by Creditor Joseph M. Billings) Filed by Antoinette Billings (Toscano, Paul) (EOD: 07/21/2008)
07/21/2008	<u>34</u>	Objection to (related document(s): <u>16</u> Motion to Dismiss Case Per 707(b) filed by U.S. Trustee United States Trustee) Filed by Antoinette Billings (Toscano, Paul) (EOD: 07/21/2008)
07/20/2008	<u>33</u>	BNC Certificate of Service Re: Clerk's Notice (related document(s): Clerk's Notice For Creditor's to File Claims) Service Date 07/20/2008. (Admin.) (EOD: 07/20/2008)
07/18/2008	<u>32</u>	Certificate of Service Re: Order. (related document(s): <u>31</u> Order on Motion for Examination, ) Service Date 07/18/2008. (Admin.) (EOD: 07/18/2008)
07/18/2008		Clerk's Notice For Creditors to File Claims. Proofs of Claims due by 10/20/2008. (deed, ) (EOD: 07/18/2008)
07/18/2008		Complaint by Joseph Billings against Antoinette Billings <u>08-02148</u> ; Nature of Suit(s): 41 (Objection / revocation of discharge - 727(c),(d),(e)) , Fee Amount \$250. Filed by Joseph Billings . (mfm, ) (EOD: 07/18/2008)
07/17/2008		Trustee's Request for Creditors to File Claims filed by Trustee. (Loveridge tr, Elizabeth) (EOD: 07/17/2008)
07/16/2008	<u>31</u>	Order Setting Hearing and Response Deadline on Joseph Billings' Motion for Examination of Debtor, Antoinette Billings, and Relevant Third Parties and Production of Documents. Hearing is set for 8/4/08 at 10:30 a.m., Objection to the Motion shall be filed no later than Friday, July 25, 2008, and it is ordered that if no objections are timely filed, the hearing may be stricken and the proposed order may be entered. (Related Doc # <u>29</u> ) (clo, ) (EOD: 07/16/2008)
07/14/2008		Minute Entry Re: Motion for Order Determining Debtor's Chapter 7 Filing is Not an Abuse Within the Meaning of 11 U.S.C. Section 707(b). Hearing Continued. (TRC,arb,km) (related document(s): <u>11</u> ) Appearances: Laurie Cayton USTR, Paul James Toscano DB, Elizabeth Loveridge TR, Joe Billings PROSE CREDITOR. Hearing scheduled for 8/4/2008 at 10:30 AM at US Bankruptcy Court. (arb) (EOD: 07/14/2008)
07/14/2008		Minute Entry Re: Status Conference on U.S. Trustee's Motion to Dismiss. Hearing Continued. (TRC,arb,km) (related document(s): <u>16</u> ) Appearances: Laurie Cayton USTR, Paul James Toscano DB, Elizabeth Loveridge TR, Joe Billings PROSE CREDITOR. Hearing scheduled for 8/4/2008 at 10:30 AM at US Bankruptcy Court. (arb) (EOD: 07/14/2008)
07/14/2008	<u>30</u>	Pending Order (Other) related documents(s): <u>29</u> Motion for Examination Under Rule 2004 Filed by: (clo, ) [Order# 92697] (EOD: 07/14/2008)
07/14/2008	<u>29</u>	Motion for Examination of Antoinette Billings Under Rule 2004 Filed by Joseph M. Billings (clo, ) (EOD: 07/14/2008)
07/10/2008	<u>28</u>	Certificate of Service Re: Order. (related document(s): <u>24</u> Order to Employ) Service Date 07/10/2008. (Admin.) (EOD: 07/11/2008)
07/08/2008	<u>24</u>	Order to Employ (related document(s): <u>19</u> Application to Employ) Elizabeth R. Loveridge for Elizabeth R. Loveridge tr. Originally signed on 06/19/08. (clo, ) Modified on 7/8/2008 (clo, ). (EOD: 07/08/2008)
07/07/2008	<u>27</u>	Objection to Debtor's Motion for Entry of Order That the Debtor's Chapter 7 Filing is Not an Abuse of Chapter 7 Under 11 USC 707 (b).(related document(s): <u>7</u> Motion for Entry of Judgment/Order filed by Debtor Antoinette Billings) Filed by Joseph M. Billings (clo, ) (EOD: 07/08/2008)
07/07/2008	<u>26</u>	Notice of Motion to Dismiss Case Pursuant to 707 (b) (related document(s): <u>25</u> Motion to Dismiss Case Per 707(b) filed by Creditor Joseph M. Billings) Filed by Joseph M. Billings (clo, ) (EOD: 07/08/2008)
07/07/2008	<u>25</u>	Motion to Dismiss Case Per 707(b) Filed by Joseph M. Billings (clo, ) (EOD: 07/08/2008)
07/03/2008	<u>23</u>	Amended Schedules <i>Schedule B (line item 5)</i> filed by Debtor(s) (No Fee) (Toscano, Paul) (EOD: 07/03/2008)

06/27/2008	<u>22</u>	Reaffirmation Agreement Between Debtor and <i>Mountain America Federal Credit Union on a 2005 Kia Sorento</i> Filed by Mountain America Federal Credit Union (Bingham, Darwin) (EOD: 06/27/2008)
06/09/2008		Hearing Set(related document(s): <u>16</u> Motion to Dismiss Case Per 707(b)) Hearing scheduled for 7/14/2008 at 02:00 PM at US Bankruptcy Court. (djf, ) (EOD: 06/09/2008)
06/09/2008	<u>21</u>	Pending Order Authorizing the Employment of Woodbury & Kesler, P.C., Attorney for the Trustee (Ex Parte) related documents(s): <u>19</u> Application to Employ Filed by: (Loveridge tr, Elizabeth) [Order# 91027] (EOD: 06/09/2008)
06/09/2008	<u>20</u>	Affidavit/Declaration (related document(s): <u>19</u> Application to Employ) Filed by Elizabeth R. Loveridge tr (Loveridge tr, Elizabeth) (EOD: 06/09/2008)
06/09/2008	<u>19</u>	Ex Parte Application to Employ Woodbury & Kesler, P.C. as Attorney Filed by Elizabeth R. Loveridge tr (Loveridge tr, Elizabeth) (EOD: 06/09/2008)
06/06/2008	<u>18</u>	Notice of Hearing (related document(s): <u>16</u> Motion to Dismiss Case Per 707(b)) ( <i>Status Conference</i> ) Filed by Peter J. Kuhn tr on behalf of United States Trustee (Kuhn tr, Peter). Hearing scheduled for 7/14/2008 at 02:00 PM at US Bankruptcy Court. Modified on 6/9/2008 (djf, ). (EOD: 06/06/2008)
06/03/2008	<u>17</u>	Objection to (related document(s): <u>12</u> Notice of Hearing, filed by Debtor Antoinette Billings, <u>11</u> Motion for Entry of Judgment/Order filed by Debtor Antoinette Billings) Filed by United States Trustee (Kuhn tr, Peter) (EOD: 06/03/2008)
06/03/2008	<u>16</u>	Motion to Dismiss Case Per 707(b) ( <i>1</i> ), ( <i>b</i> )(2) and 707(b)(3) Filed by United States Trustee (Kuhn tr, Peter) (EOD: 06/03/2008)
06/01/2008	<u>15</u>	BNC Certificate of Service Re: Clerk's Notice (related document(s): UST Statement of Presumed Abuse, , , ) Service Date 06/01/2008. (Admin.) (EOD: 06/01/2008)
05/30/2008	<u>14</u>	Notice of Appearance and Request for Notice Filed by Darwin H. Bingham on behalf of Mountain America Federal Credit Union (Bingham, Darwin) (EOD: 05/30/2008)
05/30/2008		As required by 11 U.S.C. Sec. 704(b)(1)(A), the United States Trustee has reviewed the materials filed by the debtor(s). Having considered these materials in reference to the criteria set forth in 11 U.S.C. Sec. 707(b)(2)(A), and, pursuant to 11 U.S.C. Sec. 704(b)(2), the United States Trustee has determined that:(1) the debtor's(s') case should be presumed to be an abuse under section 707(b); and (2) the product of the debtor's current monthly income, multiplied by 12, is not less than the requirements specified in section 704(b)(2)(A) or (B). As required by 11 U.S.C. Sec. 704(b)(2) the United States Trustee shall, not later than 30 days after the date of this Statement's filing, either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States Trustee does not consider such a motion to be appropriate.Debtor(s) may rebut the presumption of abuse only if special circumstances can be demonstrated as set forth in 11 U.S.C. Sec. 707(b) (2)(B). (Kuhn tr, Peter) (EOD: 05/30/2008)
05/28/2008	<u>13</u>	Debtor's Certification of Completion of Instructional Course Concerning Financial Management (Toscano, Paul) (EOD: 05/28/2008)
05/27/2008	<u>12</u>	Notice of Hearing (related document(s): <u>11</u> Motion for Entry of Judgment/Order) <i>Determining Debtor's Chapter 7 Filing Is Not An Abuse Under 11 U.S.C. Section 707(b)</i> Filed by Paul James Toscano on behalf of Antoinette Billings Hearing scheduled for 7/14/2008 at 02:00 PM at US Bankruptcy Court. (Toscano, Paul) (EOD: 05/27/2008)
05/27/2008	<u>11</u>	Motion for Entry of Judgment/Order <i>Determining Debtor's Chapter 7 Filing Is Not An Abuse Within The Meaning of 11 U.S.C. Section 707(b)</i> Filed by Antoinette Billings (Toscano, Paul) (EOD: 05/27/2008)
05/14/2008	<u>10</u>	Certificate of Service <i>on Trustee of Debtors Bank Account Statements showing balances as of petition date</i> filed by Debtor(s). (Toscano, Paul) (EOD: 05/14/2008)
05/01/2008	<u>9</u>	341 Meeting Notice (see image for details) and BNC Certificate of Service. (related document(s): First Meeting (Chapter 7)) Service Date 05/01/2008. (Admin.) (EOD: 05/01/2008)
04/21/2008	<u>8</u>	Certificate of Service <i>on Trustee of Debtors 2007 Federal and State Tax Returns and Domestic Support Obligations Questionnaire</i> filed by Debtor(s). (Toscano, Paul) (EOD: 04/21/2008)
04/17/2008		Meeting of Creditors & Notice of Appointment of Interim Trustee Elizabeth R. Loveridge tr with 341(a) meeting to be held on 05/20/2008 at 405 South Main Objections for Discharge due by 07/21/2008. (EOD: 04/17/2008)

04/17/2008	<u>7</u>	Motion for Entry of Judgment/Order <i>Determining Debtor's Chapter 7 Filing Is Not An Abuse Under 11 U.S.C. Section 707(b)</i> Filed by Antoinette Billings (Toscano, Paul) (EOD: 04/17/2008)
04/17/2008	<u>6</u>	Payment Advices/Evidence of Payment and/or Payment Advices Certification. (Toscano, Paul) (EOD: 04/17/2008)
04/17/2008	<u>5</u>	Credit Counseling Agency Briefing Certificate (Prefiling) filed by Debtor(s). (Toscano, Paul) (EOD: 04/17/2008)
04/17/2008		Receipt of filing fee for Voluntary Petition (Chapter 7)(08-22447) [misc,volp7a] ( 299.00). Receipt number 6101245, amount 299.00. (U.S. Treasury) (EOD: 04/17/2008)
04/17/2008	<u>4</u>	Chapter 7 Statement of Current Monthly Income and Means Test Calculation - Form 22A Filed by Antoinette Billings (Toscano, Paul) (EOD: 04/17/2008)
04/17/2008	<u>3</u>	Statement of Social Security Number(s) Filed by Antoinette Billings (Toscano, Paul) (EOD: 04/17/2008)
04/17/2008	<u>2</u>	Statement of Financial Affairs and Schedules Filed by Antoinette Billings (Toscano, Paul) (EOD: 04/17/2008)
04/17/2008		Creditor(s) uploaded (11 creditors). (Toscano, Paul) (EOD: 04/17/2008)
04/17/2008	<u>1</u>	Chapter 7 Voluntary Petition. Filed by Antoinette Billings (Toscano, Paul) (EOD: 04/17/2008)

PACER Service Center			
Transaction Receipt			
06/25/2010 14:43:07			
PACER Login:	pg1478	Client Code:	toscano
Description:	Docket Report	Search Criteria:	08-22447 Fil or Ent. filed Doc From: 0 Doc To: 99999999 Term: included Format: html
Billable Pages:	14	Cost:	1.12



CLERK, CONSOLIDATED, LEAD\_CASE, NOIPT, PROSE

**Electronic Case Filing System  
District of Utah (Central)  
CIVIL DOCKET FOR CASE #: 2:09-cv-00828-TC**

Billings v. Billings  
Assigned to: Judge Tena Campbell  
Case in other court: US Bankruptcy, Dist UT, 08-22447  
Cause: 28:0158 Bankruptcy Appeal from Judgment/Order

Date Filed: 09/15/2009  
Date Terminated: 12/21/2009  
Jury Demand: None  
Nature of Suit: 422 Bankruptcy Appeal (801)  
Jurisdiction: Federal Question

**Appellant**

**Joseph M. Billings**

represented by **Joseph M. Billings**  
1213 WEST NANJING ROAD  
BUILDING 85 APARTMENT 405  
SHANGHAI 2000040  
CHINA  
(86)13611845962  
PRO SE

V.

**Appellee**

**Antionette Billings**

represented by **Paul James Toscano**  
10 EXCHANGE PL STE 614  
SALT LAKE CITY, UT 84111  
(801)359-1313  
Email: ptoscano@expresslaw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Peter W. Guyon**  
614 NEWHOUSE BLDG  
10 EXCHANGE PLACE  
SALT LAKE CITY, UT 84111  
(801)322-5555  
Email: pguyon@yahoo.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Interested Party**

**John H. Billings**  
*Creditor*

represented by **John H. Billings**  
PO BOX 3573  
MONTROSE, CO 81402  
PRO SE

**Interested Party**

**Elizabeth R. Loveridge**  
*trustee*

represented by **Elizabeth R. Loveridge**  
WOODBURY & KESLER  
265 E 100 S STE 300  
SALT LAKE CITY, UT 84111  
(801)364-1100  
Email: eloveridge@wklawpc.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Interested Party**

**US Trustee**

represented by **Peter J. Kuhn**  
US ATTORNEY  
405 S MAIN STE 300  
SALT LAKE CITY, UT 84111  
(801)524-5105  
Email: peter.j.kuhn@usdoj.gov  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Interested Party**

**Chapter 13 Trustee**

represented by **Kevin R Anderson**  
 405 S MAIN ST STE 600  
 SALT LAKE CITY, UT 84111  
 (801)596-2884  
 LEAD ATTORNEY  
 ATTORNEY TO BE NOTICED

V.

**Notice Party****Bankruptcy Clerk's Office**

represented by **Bankruptcy Clerk's Office**  
 US BANKRUPTCY COURT 84101  
 Email: UTB\_Appeals@utb.uscourts.gov  
 PRO SE

Date Filed	#	Docket Text
09/15/2009	<u>1</u>	Notice of APPEAL FROM BANKRUPTCY COURT. Bankruptcy Court case number 08-22447. No filing fee required. <b>NOTE TO COUNSEL:</b> Briefs and other subsequent documents filed with the court should contain references to bankruptcy documents using document numbers and dates., filed by Joseph M. Billings. Appellant Brief due by 9/30/2009. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Amended Order, # <u>3</u> Docket, # <u>4</u> Election to Have Appeal in District Court, # <u>5</u> IFP, # <u>6</u> Late Notice, # <u>7</u> Memorandum, # <u>8</u> Motion for Leave, # <u>9</u> Motion for Extension, # <u>10</u> Notice of Motion for Extension, # <u>11</u> Notice of Transcript, # <u>12</u> Objection of John Billings, # <u>13</u> Objection of John Billings, # <u>14</u> Debtor's Objection to Motion for Extension, # <u>15</u> Order Approving Settlement, # <u>16</u> Party List, # <u>17</u> Order Granting Extension) Assigned to Judge Bruce S. Jenkins (jlw) (Entered: 09/15/2009)
09/15/2009	<u>2</u>	DESIGNATION of Record on Appeal by Joseph M. Billings re <u>1</u> Bankruptcy Appeal (jlw) (Entered: 09/15/2009)
09/17/2009	<u>3</u>	ORDER OF RECUSAL Judge Bruce S. Jenkins recused. Case reassigned to Judge Tena Campbell for all further proceedings. Signed by Judge Bruce S. Jenkins on 9/17/09. (jmr) (Entered: 09/17/2009)
09/30/2009	<u>4</u>	MOTION for Consolidation of Bankruptcy Appeals, MOTION for Extension of Time to File Appellants Brief, filed by Appellant Joseph M. Billings (alt) (Entered: 09/30/2009)
10/13/2009	<u>5</u>	MOTION to Dismiss Joseph M. Billings Late Filed Appeal filed by Appellee Antionette Billings. (kpf) (Entered: 10/14/2009)
10/13/2009	<u>6</u>	OBJECTION to Joseph M. Billings Motion for leave to file Appeal filed by Appellee Antionette Billings. (kpf) (Entered: 10/14/2009)
10/23/2009	<u>7</u>	ORDER for Appellant to supplement record as ordered and setting briefing re the appeal of bankruptcy court's decision to deny Appellant's motion for an extension of time to file a notice of appeal. All other briefing in this case is STAYED until after disposition of Appellee's <u>5</u> Motion to Dismiss. Signed by Judge Tena Campbell on 10/23/09 (alt) (Entered: 10/23/2009)
11/10/2009	<u>8</u>	ORDER granting <u>4</u> Motion for Consolidation of case 2:09cv993 into this case. Signed by Judge Tena Campbell on 11/9/09 (alt) (Entered: 11/10/2009)
11/20/2009	<u>9</u>	Memorandum in Support of <u>1</u> Bankruptcy Appeal, filed by Appellant Joseph M. Billings (alt) (Entered: 11/23/2009)
11/23/2009	<u>10</u>	SUPPLEMENTAL Memorandum in Support of <u>1</u> Bankruptcy Appeal, filed by Appellant Joseph M. Billings (alt) (Entered: 11/23/2009)
11/23/2009	<u>11</u>	APPENDIX ON APPEAL filed by Appellant Joseph M. Billings (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5) (alt) (Entered: 11/23/2009)
12/21/2009	<u>12</u>	ORDER AND MEMORANDUM DECISION AFFIRMING the decision of the bankruptcy court. The appeal of the bankruptcy court's 8/21/09 judgment is DISMISSED - CASE CLOSED. Signed by Judge Tena Campbell on 12/18/09 (alt) (Entered: 12/21/2009)

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06/25/2010 15:04:40			
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**Electronic Case Filing System  
District of Utah (Central)  
CIVIL DOCKET FOR CASE #: 2:09-cv-00993-TC**

Billings v. Billings  
Assigned to: Judge Tena Campbell  
Case in other court: US Bankruptcy, Dist UT, 08-22447  
Cause: 28:0158 Bankruptcy Appeal from Judgment/Order

Date Filed: 11/05/2009  
Date Terminated: 11/10/2009  
Jury Demand: None  
Nature of Suit: 422 Bankruptcy Appeal (801)  
Jurisdiction: Federal Question

**Appellant**

**Joseph M. Billings**  
*Unsecured Creditor*

represented by **Joseph M. Billings**  
1213 WEST NANJING ROAD  
BUILDING 85 APARTMENT 405  
SHANGHAI 2000040  
CHINA  
(86)13611845962  
PRO SE

V

**Appellee**

**Antionette Billings**

represented by **Paul James Toscano**  
10 EXCHANGE PL STE 614  
SALT LAKE CITY, UT 84111  
(801)359-1313  
Email: ptoscano@expresslaw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Peter W. Guyon**  
614 NEWHOUSE BLDG  
10 EXCHANGE PLACE  
SALT LAKE CITY, UT 84111  
(801)322-5555  
Email: pguyon@yahoo.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Interested Party**

**US Trustee**

represented by **Peter J. Kuhn**  
US ATTORNEY  
405 S MAIN STE 300  
SALT LAKE CITY, UT 84111  
(801)524-5105  
Email: peter.j.kuhn@usdoj.gov  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Interested Party**

**Chapter 7 Trustee**

represented by **Elizabeth R. Loveridge**  
WOODBURY & KESLER  
265 E 100 S STE 300  
SALT LAKE CITY, UT 84111  
(801)364-1100  
Email: eloveridge@wklawpc.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Interested Party**

**John H. Billings**  
*Unsecured Creditor*

represented by **John H. Billings**  
PO BOX 3573  
MONTROSE, CO 81402  
PRO SE

**Interested Party**

**Chapter 13 Trustee**

represented by **Kevin R Anderson**  
405 S MAIN ST STE 600  
SALT LAKE CITY, UT 84111  
(801)596-2884  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

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**Notice Party****Bankruptcy Clerk's Office**

represented by **Bankruptcy Clerk's Office**  
US BANKRUPTCY COURT 84101  
Email: [UTB\\_Appeals@utb.uscourts.gov](mailto:UTB_Appeals@utb.uscourts.gov)  
PRO SE

Date Filed	#	Docket Text
11/05/2009	<u>1</u>	Notice of APPEAL FROM BANKRUPTCY COURT. Bankruptcy Court case number 08-22447. No filing fee required. <b>NOTE TO COUNSEL:</b> Briefs and other subsequent documents filed with the court should contain references to bankruptcy documents using document numbers and dates., filed by Joseph M. Billings. Appellant Brief due by 11/20/2009. (Attachments: # <u>1</u> Notice of Appeal, # <u>2</u> Amended Election, # <u>3</u> Docket, # <u>4</u> Election, # <u>5</u> IFP Application, # <u>6</u> Motion for Leave, # <u>7</u> Order on Motion for Extension of Time, # <u>8</u> Party List) Assigned to Judge Clark Waddoups (jlw) (Entered: 11/06/2009)
11/05/2009	<u>2</u>	DESIGNATION of Record on Appeal by Joseph M. Billings re <u>1</u> Bankruptcy Appeal,,. (jlw) (Entered: 11/06/2009)
11/10/2009		Judge Tena Campbell added per Consolidation Order. Judge Clark Waddoups no longer assigned to case (alt) (Entered: 11/10/2009)
11/10/2009	<u>3</u>	ORDER Consolidating this case into case 2:09cv828 TC. All filing must be done in the lead case and not in this case from this point forward - CASE CLOSED. Signed by Judge Tena Campbell on 11/9/09 (alt) (Entered: 11/10/2009)
11/19/2009	<u>4</u>	Mail Returned as Undeliverable. Mail sent to John H. Billings, unclaimed, unable to forward. (djs) (Entered: 11/19/2009)

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