

8-26-2011

## Grazer v. Jones Clerk's Record v. 2 Dckt. 38852

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Vol. 2 of 6

**IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO**

**Docket No. 38852**

**ALLEN F. GRAZER**

Plaintiff/Appellant

vs.

**LAW CLERK**

**GORDON A. JONES et al**

Defendants/Respondents

**DAVID C. NYE** District Judge

Appealed from the District Court of the SIXTH  
Judicial District of the State of Idaho, in and for  
FRANKLIN County.

**LINCOLN HOBBS**

Attorney for Appellants

**LANE V. ERICKSON**

Attorney for Respondents

Filed this **FILED - COPY** day of July, 2011

**AUG 26 2011**

Clerk  
Deputy

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**38852**

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Docket No. 38852

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FILED

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FRANKLIN COUNTY CLERK

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K. Jones  
DEPUTY

IN THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR FRANKLIN COUNTY, STATE OF IDAHO

ALLEN F. GRAZER, an individual,  
Plaintiff,

v.

GORDON A. JONES, an individual; LINDA G.  
JONES, an individual; J&J LIVESTOCK, LLC,  
a Utah Limited Liability Company; and John  
Does 1-10,  
Defendants.

**MEMORANDUM IN OPPOSITION TO  
GORDON A. JONES'  
MOTION TO DISMISS**

Civil No. CV-2005-183

Plaintiff Allen F. Grazer, by and through counsel, hereby submits his Memorandum in  
Opposition to Gordon A. Jones' Motion to Dismiss.

**INTRODUCTION**

Defendant's contention that all causes of action raised by Plaintiff are barred by  
applicable bankruptcy law and should be dismissed is a distortion of the bankruptcy proceedings  
in this case. The January 20, 2009 Order granting the Discharge of Debtor has no effect on the  
causes of action brought or the property sought by Plaintiff Allen Grazer ("Mr. Grazer") in the  
above-captioned proceedings.

Gordon A. Jones' Estate's interests in certain real property, personal property and intangibles, and causes of action or claims relating to fraudulent transfers, were specifically excluded from and carved out of the bankruptcy estate by virtue of a settlement agreement entered into by the trustee for Mr. Jones in the bankruptcy and Mr. Grazer and approved by the Bankruptcy Court. These property interests which are involved in this dispute, and in fact the Plaintiff's claims in this action, were abandoned by the trustee of Mr. Jones' Estate long before his debt was discharged and consequently, the property which is subject to this action was not affected by the Bankruptcy Court's discharge of Mr. Jones' personal debt. Accordingly, the Order granting the Discharge of Debtor has no effect on Plaintiff's Foreign Judgment in this case and is not an appropriate basis for dismissal.

### **STATEMENT OF FACTS**

1. On July 7, 2005, the Honorable Michael G. Allphin of Davis County District Court awarded judgment in the amount of \$1,889,727.87 in favor of Mr. Grazer against Gordon A. Jones ("Mr. Jones") and Richard Barney ("Mr. Barney"), arising from claims related to breaches of contract and the negligent construction of Mr. Grazer's home.
2. In anticipation of the judgment and shortly after the court awarded the judgment, Mr. Jones and Mr. Barney transferred assets, in Utah and Idaho, to family members and others, in an attempt to avoid the judgment.
3. Upon discovery of these fraudulent transfers, Mr. Grazer filed a Lis Pendens and Uniform Fraudulent Transfer action in this Court.
4. Mr. Grazer caused a Notice of Foreign Judgment to be recorded in Franklin County, Idaho on August 5, 2005. The judgment was recorded with the Franklin County, Idaho

Recorder on September 23, 2005. As a result of this recording, Mr. Grazer asserted that he held a judgment lien against all real property owned by Mr. Jones in Franklin County, Idaho.

5. Mr. Jones filed for Chapter 7 bankruptcy in the District of Utah on April 18, 2006.

6. Mr. Grazer was the principal creditor in the bankruptcy action.

7. The Trustee of Mr. Jones' Estate and Mr. Grazer entered into a Settlement Agreement on or about January 31, 2007. (A copy of the Settlement Agreement, which is attached to Trustee's Motion to Approve Settlement Agreement and For Order Authorizing Abandonment of Property of Estate, dated February 16, 2007, is attached as Exhibit "A").

8. The Settlement Agreement states that

Upon the Effective Date of the Agreement, except for the reserves set forth in paragraph 2 of this Agreement, any and all property of the Debtor's bankruptcy estate of any kind whatsoever, known and unknown, tangible and intangible, including, but not limited to real property...personal property...causes of action...[including] the Idaho Fraudulent Transfer Action...shall be deemed abandoned and no longer property of the Debtor's bankruptcy estate and Grazer shall be deemed to have relief from the stay to pursue any and all state court remedies against the Debtor and such property.

*See* Exhibit "A," Settlement Agreement, p. 10.

9. The Settlement Agreement specifically covers real property and personal property located in Idaho, including the Idaho Ranch. *Id.* at 4,5.

10. The Settlement Agreement further states that "Grazer shall be entitled to fully pursue all his rights and claims against the aforesaid property, which rights and claims are not altered, amended or affected in any way by this Agreement or by the filing of the Debtor's Bankruptcy Case." *Id.* at 10.

11. The Settlement Agreement was approved by the Bankruptcy Court in an Order dated April 19, 2007. (A copy of the Order Approving Settlement Agreement and Authorizing Trustee's Abandonment of Property of Estate, dated April 19, 2007, is attached as Exhibit "B").

12. The Order specifically includes the Idaho Fraudulent Conveyance Action (this current action) and "Fraudulent Conveyance Actions or any other action that could have been filed by a creditor prior to the filing of the Debtors bankruptcy case...to recover property owed to the Debtor or transferred to third parties by the Debtor" as property that was abandoned by the Bankruptcy Estate and/or for which Mr. Grazer obtained relief from the automatic stay. *See* Exhibit "B," 4, 8.

13. On January 20, 2009, the Honorable Judith A. Boulden issued an Order granting a discharge of Mr. Jones' remaining debt under 11 USC § 727.

### **ARGUMENT**

#### **The Property and Causes of Action at Issue Were Not Affected By the Order Granting the Discharge of Debtor**

Mr. Jones argues that the Order granting the Discharge of Debtor nullifies Mr. Grazer's Foreign Judgment and the related causes of action against Mr. Jones. This claim is incorrect as it fails to recognize the effect of the Settlement Agreement between Gary Jubber ("Mr. Jubber"), the Trustee of Mr. Jones' Estate, and Mr. Grazer. The Settlement Agreement abandoned all property of the estate, including but not limited to, real property, personal property, and causes of action, including real and personal property in Idaho, and specifically this Idaho Fraudulent Transfer Action. *See* Fact 8, *supra*. In addition, Mr. Grazer was granted relief from stay "to pursue any and all state court remedies with respect to such property." *See* Exhibit "B," p. 3.

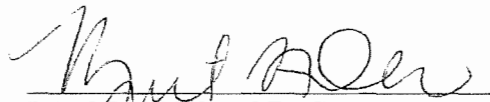
The result of this settlement agreement is that the property in question did not belong to Mr. Jones at the time of the Order granting the Discharge of Debtor. Consequently, this property was not affected by the Order. The discharge, to the extent it had any applicability, only discharged those assets which had not been fraudulently transferred by the Defendant and consequently were not abandoned by his trustee in the settlement agreement.

### CONCLUSION

Based on the foregoing, Mr. Jones' motion to dismiss should be denied. The Order granting the Discharge of Debtor did not affect the assets and claims at issue in this case and therefore does not bar or justify dismissal of Mr. Grazer's claims against Mr. Jones.

DATED this 8 day of June, 2009.

HOBBS & OLSON, L.C.



LINCOLN W. HOBBS

MARGARET H. OLSON

Attorneys for Plaintiff Allen F. Grazer

**CERTIFICATE OF DELIVERY**

I hereby certify that on the 6<sup>th</sup> day of June, 2009, I caused a true and correct copy of the foregoing to be mailed, first class, postage prepaid, to the following:

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David J. Shaffer, Esq.  
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Linda B. Ogden

# EXHIBIT A



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Attorneys for Gary E. Jubber,  
Chapter 7 Bankruptcy Trustee

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

|                  |   |                                    |
|------------------|---|------------------------------------|
| In re:           | ) |                                    |
|                  | ) | Bankruptcy No. 06-21277 JAB        |
|                  | ) | (Chapter 7)                        |
| GORDON A. JONES, | ) |                                    |
|                  | ) | <b>TRUSTEE'S MOTION TO APPROVE</b> |
| Debtor.          | ) | <b>SETTLEMENT AGREEMENT AND</b>    |
|                  | ) | <b>FOR ORDER AUTHORIZING</b>       |
|                  | ) | <b>ABANDONMENT OF PROPERTY OF</b>  |
|                  | ) | <b>ESTATE</b>                      |
|                  | ) |                                    |
|                  | ) |                                    |

---

Gary E. Jubber, the duly-appointed Chapter 7 Trustee ("Trustee"), through his counsel Fabian & Clendenin, hereby moves this Court, pursuant to Fed. R. Bankr. P. 9019 and 11 U.S.C. §§ 105, 362 and 554(a) for an order approving a Settlement Agreement, dated January 31, 2007, a copy of which is attached hereto as Exhibit "A" (the "Settlement Agreement")<sup>1</sup> between the

---

<sup>1</sup> The Settlement Agreement is incorporated herein by reference. Creditors and other parties-in-interest should refer to the Settlement Agreement for all the terms and conditions thereof. In the event of a conflict between the contents of this Motion and the Settlement Agreement, the Settlement Agreement controls.

Trustee and Allen F. Grazer ("Grazer"), a creditor herein. In support of the motion, the Trustee represents as follows:

### **BACKGROUND**

1. The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on April 18, 2006. Gary E. Jubber was thereafter appointed as the Chapter 7 trustee.
2. This Court has jurisdiction over this motion pursuant to 28 U.S.C. § 1334. Venue in this Court is proper pursuant to 28 U.S.C. § 1409. This Motion consists of a "core proceeding" under 28 U.S.C. § 157(b)(2).
3. At the time of the filing of the Debtor's petition, the bankruptcy estate included the Debtor's interests in following real property:
  - (i) residential property located at 235 West 1400 North, Bountiful, Davis County, Utah, (the "Residence");
  - (ii) A condominium unit located at 1851 South Maple View Drive, Bountiful, Davis County, Utah (the "Maple Hills Condo");
  - (iii) The Mountain View Apartments located at 175 East State Street, Farmington, Davis County, Utah (the "Apartments");
  - (iv) Parcels of undeveloped real property located in West Bountiful, Davis County, Utah ("West Bountiful Lots");
  - (v) Real Property located in Sanpete County, Utah ("Sanpete Property"); and
  - (vi) Real property and improvements located at or about 3369 No. Westside Hwy., Clifton, Idaho (the "Idaho Ranch").

4. As more particularly described in the Settlement Agreement, at the time of the filing of the Bankruptcy Case, the Debtor also disclosed an interest in various vehicles, equipment and other personal property located in Utah and Idaho, including a 1955 Ford T-Bird. In addition, has a 70% interest in Gordon Jones Construction, LLC ("Construction LLC") which may have notes receivable in the face amount of \$389,000 (the "Notes Receivable").

5. On July 11, 2005 the Second Judicial District Court of Davis County, Farmington Department entered a judgment in favor of Grazer and against the Debtor in the amount of \$1,866,727.87, plus pre and post judgment interest, attorneys' fees and costs, (the "Judgment") in the case *Gordon Jones et al. v. Allen Grazer*, Consolidated Civil No. 020700570 CN (the "State Court Action"). Grazer has filed a proof of claim in the Debtor's bankruptcy case, asserting that the Judgment has a balance owed of \$2,100,124.00, plus any applicable interest, fees and costs pursuant to 11 U.S.C. § 506(b) (the "Grazer Claim"). The Judgment is also against Richard Barney ("Barney") who is thirty percent (30%) co-owner of the Apartments.

6. Prior to the filing of the Debtor's bankruptcy petition, Grazer (a) recorded the Judgment with the Davis County Recorder on July 18, 2005, (b) recorded the Judgment with the Sanpete County Recorder on October 3, 2005, and (c) filed a Notice of Foreign Judgment in Franklin County, Idaho on August 5, 2005. Accordingly, Grazer asserts that that he holds a judgment lien against the Residence, the Maple Hills Condo, the Apartments, the West Bountiful Lots, the Sanpete Property and the Idaho Ranch.

7. Grazer obtained writs of execution pursuant to the Judgment on September 19, 2005 directing execution of all non-exempt personal property in Salt Lake County, including the 1955 Ford T-Bird.

8. The validity of the Grazer's lien against the Debtor's interest in real and personal property is subject to dispute. No final judgment was entered in the State Court Action. The Trustee could argue that absent a final judgment, the Judgment is not a lien on the Debtor's interest in the real and personal property. On the other hand, the Grazer contends that pursuant to Utah Code Ann. § 78-22-1, a judgment need not be final in order to create a lien on real property.

9. Pursuant to the Court's *Order Approving Sale of Properties Free and Clear of Liens and for Approval of Compromise Regarding Sale of Co-Owner's Interest and Homestead Exemption Claims*, entered on September 14, 2006, and with Grazer's consent, the Trustee sold the Maple Hills Condo and the Debtor's interest in the Residence, with Grazer's consent. Pursuant to *Order Approving Sale of Property* entered on October 25, 2006, and with Grazer's consent, the Trustee sold the 1955 Ford T-Bird, with Grazer's consent. The Trustee has also been collecting rents from the Apartments.

10. As a result of liquidation of assets and the collection of rents, as of January 31, 2007, there is \$243,011.46 in the estate. Most of the funds are proceeds from the sale of the Maple Hills Condo, the Residence and the 1955 Ford T-Bird. Grazer asserts a lien on the funds held by the Estate.

11. On August 24, 2006, the Trustee filed a complaint commencing Adversary Proceeding No. 06-02449 (the Trustee's 727 Action") in which the Trustee objected to the Debtor's discharge pursuant to 11 U.S.C. § 727.

12. Pursuant to *Notice of Assets and Deadline to File a Proof of Claim*, the Court fixed September 15, 2006 as the deadline for the filing of proofs of claim in this Bankruptcy Case. Five proofs of claim have been filed:

| <u>Claim No.</u> | <u>Claimant</u>          | <u>Amount</u>                      |
|------------------|--------------------------|------------------------------------|
| 1                | Babcock, Scott & Babcock | \$ 26,473.00 unsecured             |
| 2                | Grazer                   | \$ 2,100,124.00 secured            |
| 3                | G.S. Jones Construction  | \$ 20,000.00 unsecured             |
| 4                | Linda G. Jones           | \$ 36,000.00 unsecured             |
| 5                | Steven E. Barton         | \$ 2,300.00 unsecured <sup>2</sup> |
|                  |                          | <hr/> \$ 2,184,897.00              |

13. The Trustee has investigated assets of the estate and believes that if he liquidated all estate assets (excluding the Debtor's interest in Construction LLC, but including all real and personal property, causes of action and intangibles), the gross proceeds of the liquidation would not exceed \$1,300,000, and administrative expenses would have to be paid before any distribution to unsecured creditors. Based on the Trustee's investigation of the Notes Receivable due Construction LLC to date, the Trustee does not know whether any amounts can be collected on the notes, but is highly doubtful that a significant amount can be collected. Of the \$389,000 face

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<sup>2</sup> Claim No. 5 lists \$2,300.00 as both a priority and general unsecured claim. The Trustee and Grazer believe that the total claim is \$2,300.00, and that the claim is not entitled to priority status.

amount of the notes, an unknown portion is believed to be an obligation of the Debtor himself, and \$198,000 is owed by the Apartments. The obligation of the Apartments is either uncollectible due to Grazer's judgment lien, or would reduce the amount received from the sale of the Apartments. \$82,000 of the Notes Receivable is owed by G.S. Jones Construction, Inc., a creditor herein (Claim No. 3). Although the information as to the collectability of the Notes Receivable is limited, the Trustee believes that a very optimistic recovery would yield no more than an additional \$130,000 to the estate.

14. The Trustee estimates that even if the Grazer Claim is determined to be an unsecured claim, the distribution to unsecured creditors would not exceed sixty-five cents on the dollar (65%) and would probably be materially less.<sup>3</sup> In such event, Grazer would hold approximately 95% of the unsecured claims. If the Grazer Claim is determined to be a secured claim, unsecured creditors would probably not receive any distribution and it is possible, if not probable, that the estate would be administratively insolvent.

15. The Trustee and Grazer believe that litigation regarding the validity of Grazer's secured claim would require the expenditure of resources that would decrease the funds available to be used to pay unsecured creditors. Moreover, since even if the Trustee prevails and Grazer's claim is deemed unsecured, Grazer would still hold 95% of the unsecured claims, the Trustee and Grazer have agreed, after protracted negotiations, to compromise issues regarding Grazer's claim and the disposition of property of the estate pursuant to the terms of the Settlement

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<sup>3</sup> The 65% estimate is the very best case, assuming maximum recovery and minimal administrative expenses and no taxes.

Agreement. The Trustee believes, in the exercise of his business judgment, that the Settlement is in the best interests of the Estate and creditors of the Estate.

### SUMMARY OF THE SETTLEMENT AGREEMENT

16. The Settlement Agreement provides that upon the Effective Date, the funds held by the Trustee shall be used and reserved according to the following priority:

- i. An Administrative Expense Reserve of \$192,000.00 shall be established to pay administrative expenses of the estate, including taxes. Assuming the Settlement Agreement is approved, the Trustee, his counsel (Fabian & Clendenin "F&C") and accountants (PricewaterhouseCoopers, LLC "PwC") have agreed to seek fees and costs totaling no more than \$110,000.00, provided no appeal is filed. PwC has estimated that the taxes incurred by the estate should be no more than \$82,000.00. Any funds not used to pay tax due from the administration of the bankruptcy estate shall be paid, first to fund any unfunded portion of the Unsecured Creditors' Reserve (described below), and then to Grazer. If the allowed fees and costs for the Trustee, F&C and PwC are less than \$110,000.00, the difference shall be paid to Grazer.
- ii. An Unsecured Creditors' Reserve of \$63,579.76 shall be established to pay allowed unsecured claims, Claim Nos. 1, 3, 4 and 5. Provided the reserve is fully funded, allowed unsecured claimants shall be paid 75% of

the allowed amount of these claims. If the reserve is not fully funded, then the percentage paid will be reduced pro rata. To the extent that any claim is disallowed, the amount of the Unsecured Creditors' Reserve shall be reduced by 75% (or the lesser percentage if not fully funded) for each dollar of disallowed claims, and such amount shall be paid to Grazer.

- iii. Monies due Grazer from 30% of rents collected from the Apartments attributable to Barney's interest in the apartments. Grazer shall obtain a writ of execution on Barney's 30% interest in the rents and after fully funding of the Administrative Expense Reserve and the Unsecured Creditors' Reserve, any surplus funds shall be paid to Grazer.

17. Pursuant to the Settlement Agreement, the Trustee has agreed (a) that Grazer has a valid, enforceable security interest in all remaining property of the estate except for the reserves described in paragraph 16 above, and (b) that there is not equity in such property for the benefit of unsecured creditors. The Trustee has further agreed to abandon all property of the Debtor's bankruptcy estate on the Effective Date of the Settlement Agreement except for the reserves described in paragraph 16 above. The Settlement Agreement provides that Grazer shall have relief from the automatic stay imposed under 11 U.S.C. § 362 and that Grazer may pursue any and all state court remedies against the Debtor and the abandoned property.

18. The Trustee will dismiss the Trustee's 727 Action if the Settlement Agreement is approved.



19. Pursuant to the Settlement Agreement, except as otherwise expressly provided in the Settlement Agreement, Grazer releases any and all claims against the Debtor's bankruptcy estate. Grazer specifically retained the right, *inter alia*, to prosecute his non-dischargeability action against the Debtor and to exercise all of his rights to collect on the Judgment in the State Court Action (or any other action) with respect to the property abandoned by the Trustee.

20. Grazer shall have 150 days from the Effective Date of the agreement to file objections to the claims of any unsecured creditors. In the event a claim is disallowed, Grazer shall be entitled to distribution as provided in paragraph 14 (ii) above.

21. Pursuant to the Settlement Agreement, the Trustee disclaims any interests in any fraudulent transfers and the Trustee shall not pursue any preference actions under 11 U.S.C. § 547. Grazer shall have relief from the stay to pursue such actions or any action that Grazer could have pursued against parties other than the Debtor.

#### **BASIS FOR THE SETTLEMENT AGREEMENT**

22. Bankruptcy Rule 9019(a) provides that, "[o]n motion by the trustee and after a notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. Pro. 9019(a). "[A] bankruptcy court's approval of a compromise may be disturbed only when it achieves an unjust result amounting to a clear abuse of discretion." *Reiss v. Hagmann*, 881 F.2d 890, 891-92 (10th Cir. 1989).

23. The decision to approve a settlement or compromise lies within the discretion of the Court and is warranted when the settlement is found to be reasonable and fair in light of the particular circumstances of the case. *See, Protective Comm. for Indep. Stockholders of TMT*

*Trailer Ferry v. Anderson (TMT Trailer)*, 390 U.S. 414, 424-25 (1968); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 604 (5th Cir. 1980); *In re Bicoastal Corp.*, 164 B.R. 1009, 1016-17 (Bankr. M.D. Fla. 1993). Courts generally weigh the following factors in considering whether a proposed compromise is fair and equitable: (1) the probability of success in the litigation; (2) the potential difficulty in collecting on a judgment; (3) the complexity and expense of the litigation; and (4) the best interests of creditors. *See, TMT Trailer, supra* at 424-25; see also, *Kopp v. All American Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (10th Cir. B.A.P. 1997). The court is to make an informed decision “based upon an objective evaluation of developed facts.” *In re Kopexa Realty Venture Co.*, 213 B.R. 1020 (10<sup>th</sup> Cir. 1997) quoting *Reiss v. Hagmann*, 881 F.2d 892 (10<sup>th</sup> Cir. 1989).

24. The Trustee submits that in applying the foregoing standard to the Settlement Agreement, there is strong basis for approval of the agreement for the following reasons:

**A. Probability of Success in the Litigation**

The Trustee believes that he may prevail in an action against Grazer to have Grazer’s judgment lien declared invalid; however, there is a risk that the Trustee may not prevail. There is no Utah case directly on point, creating additional risks. In the event the Trustee did prevail, he would then proceed to liquidate the remaining property in the estate. As noted previously, the Trustee believes that the value of the estate would not exceed \$1,300,000.00, and possibly considerably less, and the Grazer Claim would comprise approximately 95% of the unsecured claims. Even in the most optimistic of estimates, the distribution to unsecured creditors would not exceed 65%, and would probably be significantly less. In the event the Trustee did not

prevail, the estate would probably be administratively insolvent and unsecured creditors would get nothing. The Settlement Agreement facilitates a greater return to unsecured creditors and eliminates the downside risk associated with the litigation.

**B. Potential Difficulty in Collecting Judgment**

To the extent the Trustee prevailed in an action challenging the validity of Grazer's lien, any such determination by the Court would be self-executing and therefore "collection" is not an issue.

**C. Complexity and Potential Expense of the Litigation**

Any action by the Trustee against Grazer would be contested and expensive. As discussed above, there is no binding precedent. Appeals could possibly also add to the expense and delay. As such, the potential expense of the litigation weighs in favor of the settlement, particularly when the upside of prevailing probably does not increase recovery for the unsecureds above the recovery provided by this Settlement Agreement, and in fact is probably less. (See "D" below.)

**D. Best Interests of Creditors and the Estate**

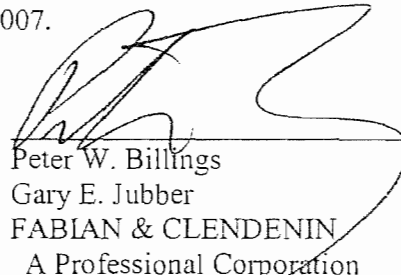
The Trustee submits that the terms of Settlement Agreement are fair and equitable. The agreement makes funds available for distribution to unsecured creditors without the expense or

or risk of litigation and probably<sup>4</sup> provides for a better return than if the Trustee prevailed. Moreover, if the Trustee prevailed and liquidated the assets, tax consequences from the sale of assets could further reduce the distribution to creditors. The settlement resolves the dispute regarding the Grazer Claim without the risk or expense of continued litigation. Accordingly, the Trustee respectfully submits that the settlement is in the best interest of creditors and the estate.

WHEREFORE, the Trustee requests that the Court, pursuant to Fed. R. Bankr. P. Rule 9019 and 11 U.S.C. § 554, enter an order:

- A. Approving the Settlement Agreement;
- B. Authorizing the abandonment of estate property as provided in the Settlement Agreement;
- D. Authorizing the Trustee to execute such documents as may be necessary and appropriate to effect, implement and consummate the Settlement Agreement; and
- F. For such other and further relief as the court deems just and equitable.

DATED this 16<sup>th</sup> day of February, 2007.

  
Peter W. Billings  
Gary E. Jubber  
FABIAN & CLENDENIN  
A Professional Corporation  
Attorneys for Gary E. Jubber, Trustee

<sup>4</sup> The Trustee's accountants have estimated worst case for taxes under the settlement to be \$82,000.00, although the accountant believes this worst case to be unlikely. If the taxes are in fact that high, the unsecured creditors would receive approximately 59%.

Peter W. Billings, A0330  
Gary E. Jubber, A1758  
FABIAN & CLENDENIN  
A Professional Corporation  
Twelfth Floor  
215 South State Street  
P.O. Box 510210  
Salt Lake City, Utah 84151  
Telephone: 531-8900

Attorneys for Gary E. Jubber,  
Chapter 7 Bankruptcy Trustee

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re:

GORDON A. JONES,

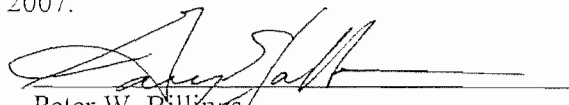
Debtor.

)  
)  
) Bankruptcy No. 06-21277 JAB  
) (Chapter 7)  
)

)  
) **EXHIBIT "A" TO**  
) **TRUSTEE'S MOTION TO APPROVE**  
) **SETTLEMENT AGREEMENT AND**  
) **FOR ORDER AUTHORIZING**  
) **ABANDONMENT OF PROPERTY OF**  
) **ESTATE**  
)

Attached hereto is Exhibit "A" to the *Trustee's Motion to Approve Settlement Agreement and for Order Authorizing Abandonment of Property of Estate.*

DATED this 20<sup>th</sup> day of February, 2007.

  
Peter W. Billings  
Gary E. Jubber  
FABIAN & CLENDENIN  
A Professional Corporation  
Attorneys for Gary E. Jubber, Trustee

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into as of the 31<sup>st</sup> day of January 2007, by and between Gary E. Jubber (the "Trustee"), Trustee of the Chapter 7 Bankruptcy Estate of Gordon A. Jones, d/b/a J&J Livestock, d/b/a Gordon Jones Construction, L.C. Case No. 06-21277, and Allen F. Grazer ("Grazer"). The foregoing are individually referred to as "Party" and collectively referred to as the "Parties."

### RECITALS

- A. Gordon A. Jones, d/b/a J&J Livestock, d/b/a Gordon Jones Construction, L.C. (the "Debtor") filed a voluntary petition under Chapter 7 of the Bankruptcy Code on April 18, 2006, commencing Case Number 06-21277 (the "Bankruptcy Case") in the United States Bankruptcy Court for the District of Utah ("Bankruptcy Court"). The Trustee is the duly appointed and acting Chapter 7 Trustee of the Debtor's bankruptcy estate.
- B. The Debtor's bankruptcy estate holds, formerly held, or may hold, an interest in real property (along with all improvements and fixtures attached thereto), including, but not limited to the following;

- (i) A condominium located at 175 East State Street, Bountiful, Utah (the "Maple Hills Condominium"), more particularly described as follows:

1851 MAPLE VIEW DRIVE BOUNTIFUL  
UNIT 106, RIDGEWOOD OF MAPLE HILLS COND PHASE V.  
TAX SERIAL NO.: 05-087-0106

- (ii) A residence located at 235 West 1400 North, Farmington, Utah (the "Residence"), more particularly described as follows:

All of Lot 147 Bay, View Park Subdivision, Plat E, according to the official plat thereof

TAX SERIAL NO.: 03-013-0147

ADDRESS: 235 West 1400 North Bountiful, Utah 84010

SUBJECT TO easements, restrictions, covenants and rights of way appearing of record or enforceable in law or equity.

- (iii) The Mountain View Apartments of Farmington located at 175 East State Street, Farmington, Utah (the "Apartments"), more particularly described as follows:

BEGINNING AT A POINT 82.50 FEET WEST ALONG THE NORTH LINE OF A STREET FROM THE SOUTHEAST CORNER OF LOT 1, BLOCK 12, PLAT "A", FARMINGTON TOWNSITE SURVEY, IN THE CITY OF FARMINGTON, THENCE WEST 32.5 FEET; THENCE NORTH 00°04'38" WEST 65.00 FEET; THENCE NORTH 45°02'19" WEST 42.46 FEET; THENCE WEST 85.00 FEET TO THE WEST LINE OF PROPERTY CONVEYED IN WARRANTY DEED IN BOOK 984 AT PAGE 838 IN THE RECORDS OF DAVIS COUNTY, UTAH; THENCE NORTH 00°04'38" WEST 153.86 FEET, MORE OR LESS, TO THE NORTH LINE OF LOT 2 OF SAID BLOCK 12; THENCE NORTH 89°59'37" EAST 263.00 FEET ALONG SAID NORTH LINE OF LOT 2 TO THE WEST LINE OF A STREET; THENCE SOUTH 00°04'38" EAST 156.00 FEET ALONG SAID STREET; THENCE WEST 115.00 FEET; MORE OR LESS, TO THE WEST LINE OF THE EAST HALF OF SAID LOT 1; THENCE SOUTH 00°04'38" EAST 92.89 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 07-031-0075

- (iv) Parcels of real property located in Davis County, Utah, including:

- (a) Tax Parcel I.D. No. 06-027-0006, with the following legal

description:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN: BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 33 FEET; FT CENTER OF SAID SECTION 14, THENCE NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 166.0 FEET; THENCE SOUTH 0°21'31" EAST 502.14 FEET; THENCE WEST 169.17 FEET TO AN EXISTING FENCE; THENCE ALONG SAID EXISTING FENCE 501.35 FEET TO THE POINT OF BEGINNING.

("West Bountiful Parcel 6").

- (b) Two Tax Parcel Nos. 06-027-0117, 0123 (fka 06-027-

0007) and 06-027-0116, 0122, 0123 (fka 06-027-0008), with the following legal

descriptions:

A PART OF SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 33 FEET AND NORTH 89°43'58" EAST 166.02 FEET FROM CENTER OF SAID SECTION 14, THENCE NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 0°21'31" EAST 502.61 FEET; THENCE WEST 100 FEET; THENCE NORTH 502.14 FEET TO THE POINT OF BEGINNING. (Parcel No. 06-027-0117, 0123 (fka 06-027-0007))

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN; BEGINNING ON SAID RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD SAID POINT BEING SOUTH 68.33 FEET AND EAST 33 FEET AND NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 366.02 FEET FROM CENTER OF SAID SECTION 14, THENCE SOUTH 89°43'58" WEST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 0°21'31" EAST 502.61 FEET; THENCE EAST 100 FEET; THENCE NORTH 0°21'31" WEST 503.08 FEET TO THE POINT OF BEGINNING. (Parcel No. 06-027-0116, 0122, 0123 (fka 06-027-0008))

("West Bountiful Parcels 7 and 8"); and

(c) Tax Parcel No. 06-027-0118, 024, 0125 (fka 06-027-0009),

with the following legal description:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 399.02 FEET FROM THE CENTER



OF SAID SECTION 14 AND RUNNING THENCE NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 0°21'31" EAST 503.55 FEET; THENCE WEST 100 FEET; THENCE NORTH 0°21'31" WEST 503.08 FEET TO THE POINT OF BEGINNING.

(Parcel No. 06-027-0118, 024, 0125 (fka 06-027-0009))

("West Bountiful Parcel 9").

- (v) Real property located in Sanpete County, Utah, more particularly described as follows:

LOT 3, SEC J, INDIAN RIDGE RANCH, CONT. 1.13 AC

- (vi) Real property and improvements located at or about 3369 No. Westside Hwy, Clifton, Idaho (the "Idaho Ranch"), more particularly described as follows:

COMMENCING AT A POINT 53-3/4 RODS NORTH OF THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 38 EAST OF THE BOISE MERIDIAN, FRANKLIN COUNTY, IDAHO, AND RUNNING THENCE WEST 240 RODS, THENCE NORTH 53-3/4 RODS, THENCE EAST 240 RODS; THENCE SOUTH 53-3/4 RODS TO THE PLACE OF BEGINNING.

EXCEPTING AND RESERVING A RIGHT-OF-WAY FOR ANY AND ALL IRRIGATION DITCHES AND CANALS, AND PUBLIC ROADS NOW EXISTING OR IN USE UPON AND ACROSS SAID PREMISES, AND EXCEPTING AND RESERVING THEREFROM A STRIP OF LAND 3 RODS WIDE ALONG THE EAST SIDE OF THE ABOVE-DESCRIBED LAND.

ALSO, THE SOUTH HALF OF THE SOUTHWEST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 14 SOUTH, RANGE 38 EAST OF THE BOISE MERIDIAN, FRANKLIN COUNTY, IDAHO.

TOGETHER WITH 36 SHARES OF THE CAPITAL STOCK OF TWIN LAKES CANAL COMPANY.

TAX SERIAL NO:

ADDRESS:

SUBJECT TO easements, restrictions, covenants and rights of way appearing of record or enforceable in law or equity.

- C. The Trustee has recently learned that the Debtor's 70% interest in Gordon Jones Construction LLC ("Construction LLC") may possibly have some value. Investigation to date indicates that Construction LLC may have notes receivable in the face amount of approximately \$389,000. Of this face amount, an unknown portion is believed to be an obligation from the Debtor himself, and \$198,000 is purportedly owed by Mountain View Apartments. The obligation of Mountain View Apartments is either uncollectible due to Grazer's judgment lien or would reduce what is collectible from selling the Mountain View Apartments. In addition, \$82,000 of the notes receivable is a note from G. S. Jones Construction, Inc., which is owned by the Debtor's son and an unsecured creditor in this case. Based on investigation to date, the Trustee does not know whether any amounts can be collected on these notes, but is highly doubtful that a significant portion can be collected.
- D. At the time of the filing of the Bankruptcy Case, the Debtor disclosed an interest in various vehicles, equipment and other personal property located in Utah and Idaho, including a 1955 Ford T-Bird.
- E. On July 11, 2005, the Second Judicial District Court, Davis County, Utah, presiding over Case No. 02-0700570 (the "State Court Case"), entered Judgment which favored Grazer and against the Debtor and Richard Barney ("Barney") in the amount of \$1,886,727.87, plus pre- and post-judgment interest and reasonable costs and attorneys' fees expended in collection of the judgment after May 31, 2005 (the "Judgment"). Grazer has filed a proof of claim in the Debtor's bankruptcy estate, asserting that the Judgment has a balance owing of \$2,100,124.00, plus any applicable interest fees or costs as permitted by 11 U.S.C. § 506(b) (the "Grazer Claim").
- F. The Judgment and the Judgment Information Statement were recorded by the Davis County Recorder on July 18, 2005. As a result of that recording, Grazer asserts that he holds a judgment lien against all real property located in Davis County owned by the Debtor, including the Residence, the Maple Hills Condominium, the West Bountiful Lots and the Apartments.
- G. The Judgment was recorded by the Sanpete County Recorder on October 3, 2005. As a result of that recording, Grazer asserts that he holds a judgment lien against all real property owned by the Debtor located in

Sanpete County, including the Indianola Property.

- H. A Notice of Foreign Judgment was recorded in Franklin County, Idaho on August 5, 2005. The Judgment was recorded with Franklin County, Idaho Recorder on September 23, 2005. As a result of that recording, Grazer asserts that he holds a judgment lien against all real property owned by the Debtor in Franklin County, Idaho, including the Idaho Ranch.
- I. On or about October 4, 2005, Writs of Execution on the Judgment were served, which had been issued by the Court presiding over the State Court Action, on September 19, 2005, directing execution of all non-exempt personal property located in Salt Lake County, including the 1955 Ford T-Bird.
- J. Prior to the filing of the Bankruptcy Case, Grazer filed a fraudulent transfer action against Gordon A. Jones, Linda G. Jones, and J&J Livestock, LLC in the Sixth Judicial District Court in and for Franklin County, Idaho, commencing Civil Action No. CV-2005-183, which causes of action were amended in the proposed Amended Complaint pursuant to the court's Order to Amend dated January 22, 2005 against these Defendants and Jason Jones, (the "Idaho Fraudulent Transfer Action"). The Trustee removed the Idaho Fraudulent Conveyance Action to the Bankruptcy Court, but the action has been subsequently remanded back to state court.
- K. On or about August 5, 2005, Grazer commenced an action in the Second District Court of Davis County, State of Utah against the Debtor, Linda G. Jones, Richard Barney and Renae Carnon Barney, and the Linda G. Jones Family Partnership, which causes of action were amended in the Amended Complaint dated January 5, 2006 against these Defendants and Jason Jones; GS Jones Construction, Inc.; J&J Livestock, LLC; Cheryl J. Gudmundson; G. Scott Jones; Richillyn Woodin, and Rochelle C. Barney (the "Utah Fraudulent Transfer Action"). The Trustee removed the Utah Fraudulent Conveyance Action to the Bankruptcy Court, but the action has been subsequently remanded back to state court.
- L. Grazer believes that the Debtor has fraudulently transferred funds, personal property, and real property, in addition to the transfers referenced in the Utah Fraudulent Transfer Action and the Idaho Fraudulent Transfers Action (the "Other Fraudulent Transfer Actions").
- M. The validity of the Grazer's lien against the Debtor's interest in real and personal property is subject to dispute. Specifically, the Trustee could argue that the lien against real property is not valid because no final judgment was entered in the State Court Case. On the other hand, while execution under Rule 64E of the Utah Rules of Civil Procedure requires

entry of a "final judgment" before a writ of execution may issue, Utah Code Ann. § 78-22-1 provides that a "judgment" properly recorded creates a lien against real property. The Trustee is not aware of any basis by which Grazer would have a lien on the Debtor's 70% interest in Construction LLC. However, the Trustee recognizes that even if Grazer is deemed unsecured, he would hold over 96% of the unsecured claims.

- N. Time for filing proofs of claim has expired, and, other than the claim of Grazer, unsecured claims total \$84,773.00 and consist of: (1) a claim filed by Kent B. Scott of Babcock & Scott, in the amount of \$26,473.00; (2) a claim filed by G.S. Jones, Construction Inc., an entity purportedly owned by the Debtor's son, in the amount of \$20,000.00 (there may be an offset to this claim due to the 70% interest in the \$82,000 note receivable held by Construction LLC); (3) a claim filed by Linda G. Jones, the Debtor's spouse, in the amount of \$36,000.00; and (4) a claim filed by Steven Barton in the amount of \$2,300.00.<sup>1</sup> As the claimants set forth in (2) and (3) are insiders, the total of non-insider unsecured creditors is therefore \$28,773.00.
- O. Pursuant to an Order of the Bankruptcy Court entered September 14, 2006, with the consent of Grazer, the Trustee sold the Maple Hills Condominium for \$265,000.00. The order also provided for the sale of the estate's interest in the Residence to Linda Jones for \$72,500.00. Grazer asserts a lien on the proceeds of the sale of the Maple Hills Condominium and the Residence.
- P. Pursuant to an Order of the Bankruptcy Court entered October 25, 2006, with the consent of Grazer, the Trustee sold the 1995 Ford T-Bird, generating net proceeds of \$19,170.50. Grazer asserts a lien on those proceeds.
- Q. Based upon the Trustee's investigation and information now available to the Trustee, the Trustee estimates that, if all property of the Debtor's bankruptcy estate (excluding the Debtor's interest in Construction LLC, but including, but not limited to real and personal property, causes of action, intangibles, etc.) is properly and timely liquidated, such property would generate no more than \$1,300,000.00, less the costs, such as fees for the Trustee and his professionals and other costs of administering the estate and liquidating the property of the estate. Although the Trustee's information is limited as to the collectability of the notes receivable in Construction LLC, the Trustee believes that even a very optimistic recovery would be no more than an additional \$130,000 for the estate.
- R. All pre-petition claims, including Grazer's Claim and the unsecured

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<sup>1</sup> Barton filed a Proof of Claim, Claim number 5, listing \$2,300.00 as both a priority and general unsecured claims. The parties believe that the total claim is \$2,300.00 and is not entitled to priority status.

claims set forth in "Recital N" of this Agreement, total \$2,184,897.00.

- S. Accordingly, the Trustee estimates that, with accruing administrative expenses, even if Grazer's Claim were deemed an unsecured claim (which Grazer denies), then distribution to unsecured creditors would be no more than sixty-five cents on the dollar (65%) and probably less. In the event that Grazer's Claim was deemed to be secured, distribution to unsecured creditors would likely be zero and the estate would likely be administratively insolvent.
- T. The Trustee and Grazer believe that litigation regarding the validity of Grazer's secured claim would involve costs and fees that would decrease the possible funds available to be paid to unsecured creditors.
- U. After arm's-length, good faith negotiations, the Trustee and Grazer agreed to resolve and compromise any and all claims and disputes which currently exist between them regarding Grazer's Claim and how to deal with all property of the bankruptcy estate of the Debtor, pursuant to the terms and conditions more fully set forth in this Agreement.

NOW, THEREFORE, based upon the foregoing recitals, which are incorporated into this Agreement, and for good and valuable consideration, including the covenants set forth herein, and subject to approval of this Agreement by the Bankruptcy Court, the Parties agree as follows:

1. Effectiveness of Agreement. This Agreement shall become effective on the second business day following ten days after the entry of an order by the Bankruptcy Court in the Debtor's Bankruptcy Case approving this Agreement, unless the order is stayed prior to the expiration of such period. (hereinafter, the "Effective Date"). The order approving this Agreement described herein shall be in a form expressly approved in writing by Grazer. In the event that the order approving this Agreement is stayed, the Trustee and Grazer shall each, independently, have the right to cancel this Agreement by filing a Notice of Cancellation with the Bankruptcy Court in the Bankruptcy Case. Upon filing of a Notice of Cancellation, this Agreement shall become null and void and the Trustee and Grazer shall each retain all rights and remedies that they would hold if this Agreement did not exist.

2. Priority for Use of Estate Cash and Reserves

The Trustee estimates that as of January 31, 2007, the estate will have approximately \$242,850.00 in cash primarily from the sale of assets and rents received. At the Effective Date, the cash shall be used and reserved in following priority:

First: An Administrative Expense Reserve of \$192,000 shall be established to pay administrative expenses, including taxes. PricewaterhouseCoopers, the Trustee's accountants estimate that the "worst case" for taxes incurred by the estate is \$82,000.00, assuming this Settlement is approved and there is no further liquidation of estate assets. The current best estimate of administrative expenses through the Effective Date is \$110,000.00, assuming this Settlement is approved. Assuming this Settlement is approved, the Trustee, his counsel and his accountants agree to seek court approval of final fees and costs of administrative claims of no more than \$110,000.00, provided, however, if the Trustee incurs additional fees and costs related to defending any appeal of the order approving this Agreement, such additional fees and costs, to the extent they are allowed by the Bankruptcy Court, may be added to the \$110,000.00 maximum fee. To the extent that such administrative fees and costs are allowed by the Bankruptcy Court as reasonable and necessary costs of administering the bankruptcy estate, the Trustee may pay the allowed administrative expenses from the Administrative Expense Reserve. The Trustee shall file all necessary tax returns pursuant to 11 U.S.C. § 505(b)(2). Provided the Trustee's accountant has the necessary information, the Trustee shall prepare such returns within thirty (30) days after the Effective Date. Before filing any income tax return for the Debtor's bankruptcy estate, the Trustee shall give Grazer not less than fifteen (15) days to review the return. Upon expiration of the time periods set forth in 11 U.S.C. § 505(b)(2), the balance of the Administrative Expense Reserve, including any funds not used to pay the amount of tax due from administration of the Debtor's bankruptcy estate, shall be paid first to fund any unfunded portion of Unsecured Creditors Reserve (less any amount of unsecured claims disallowed pursuant to Paragraph 9) and then to Grazer. If the allowed final fees and costs for the Trustee, his attorneys and his accounts are less than \$110,000.00, then the difference between the total of the final allowed such fees, costs and the \$110,000.00 shall be paid to Grazer.

Second: An Unsecured Creditors' Reserve of \$63,579.75 shall be established to pay the allowed unsecured claims of those creditors set forth in Recital N. Provided the Unsecured Creditors' Reserve is fully funded, each allowed claim shall be paid 75% of the allowed amount. If the Unsecured Creditors' Reserve is not fully funded after the expiration of the time period under 11 U.S.C. § 505(b)(2), then there shall be a pro rata reduction of the percentage paid. By way of example only, if the Unsecured Creditors' Reserve is funded in the amount of \$50,839.80, then the each allowed claim shall be paid 60% of the allowed amount. To the extent that any unsecured claims have been disallowed pursuant to Paragraph 9, the amount of Unsecured Creditors' Reserve shall be reduced by 75% (or the lesser percentage if not fully funded) for each dollar of disallowed claims, and such amount shall be paid to Grazer.

Third: Monies due to Grazer from 30% of rents collected from the apartments pursuant to Paragraph 3 below, which monies shall be paid as provided in paragraph 3 below.

3. Apartments. The Trustee has been collecting rents from the administration of the Apartments. After paying all costs associated with the Apartments (which costs do not include fees and costs of the Trustee, his attorneys or accountants), the Trustee acknowledges that from the net proceeds generated from the Apartments seventy percent (70%) of the funds are property of the estate and the other thirty percent (30%) are the property of Barney, who is also subject to the Judgment in favor of Grazer. Upon approval of this Agreement and the full funding of the Administrative Expense Reserve and the Unsecured Creditors' Reserve, the aforesaid 70% of the funds (or any portion thereof after the funding of the reserves) shall be paid to Grazer. Grazer shall obtain a writ of execution on the aforesaid 30% of the funds and, upon service of the execution, the funds shall be paid to Grazer.
4. Stipulation Abandonment/Relief From Stay. Except for the reserves and as otherwise expressly provided herein, the Trustee stipulates and agrees that Grazer has a valid, enforceable security interest in all the remaining property of the Debtor's bankruptcy estate and that there is no equity in said property for the benefit of unsecured creditors. Upon the Effective Date of the Agreement, except for the reserves set forth in paragraph 2 of this Agreement, any and all property of the Debtor's bankruptcy estate of any kind whatsoever, known and unknown, tangible and intangible, including, but not limited to real property (including, but not limited to that real property set forth in "Recital B" of this Agreement), personal property (including, but not limited to, the Debtor's interest in Construction LLC), causes of action (including, but not limited to, claims or causes of action against Barney and including, but not limited to, the Other Fraudulent Transfer Actions, the Utah Fraudulent Transfer Action and the Idaho Fraudulent Transfer Action) and accounts receivable (including, but not limited to, notes or accounts receivable in Construction LLC), shall be deemed abandoned and no longer property of the Debtor's bankruptcy estate, and Grazer shall be deemed to have relief from the stay to pursue any and all state court remedies against the Debtor and such property. Upon the Effective Date of this Agreement, Grazer shall be entitled to fully pursue all his rights and claims against the aforesaid property, which rights and claims are not altered, amended or affected in any way by this Agreement or by the filing of the Debtor's Bankruptcy Case.
5. Relief From Stay From Fraudulent Transfer Actions. Upon the Effective Date, the Trustee shall disclaim any interest in any and all fraudulent

transfer actions, known and unknown, and Grazer shall be deemed to have relief from the stay to pursue said fraudulent transfer actions including, but not limited to, the Utah Fraudulent Transfer Action, the Idaho Fraudulent Transfer Action, and the Other Fraudulent Transfer Actions, and all such actions shall no longer be the property of the Debtor's bankruptcy estate.

6. Non-Dischargeability Claims. Upon the Effective Date, the Trustee shall dismiss the non-dischargeability adversary proceeding (Adv. No. 06-2449) filed by the Trustee. Dismissal of that adversary proceeding shall in no way affect or prejudice the claims or causes of action for denial of discharge under 11 U.S.C. §§ 523 and 727 set forth by Grazer against the Debtor in Adversary Proceeding No. 06-02411.
7. Preference Actions. The Trustee shall not pursue actions under 11 U.S.C. § 547. To the extent that the facts may give rise to a preference action under state law or federal law (other than 11 U.S.C. § 547), then the Trustee disclaims any interest in such claims; Grazer shall be deemed to have relief from the stay to pursue any preference claims under state law or federal law (other than 11 U.S.C. § 547).
8. Effective Date and Distributions to Grazer. Upon the Effective Date, any funds of the Debtor's bankruptcy estate held by the Trustee or his professionals in excess of the amount contained in the Administrative Expense Reserve and the Unsecured Creditors' Reserve, as established under paragraph 2 of this Agreement, shall be distributed to Grazer for payment on his secured claim. If after the Effective Date, any surplus in the bankruptcy estate above that amount needed to fully fund the reserves in Paragraph 2 shall be paid to Grazer.
9. Distribution to Unsecured Creditors. Grazer shall have 150 days from the Effective Date to file an objection to the claims of any or all unsecured creditors, including, but not limited to those set forth in "Recital N" of this Agreement. In the event that such claims are disallowed, Grazer shall be entitled to distribution of any amounts due Grazer under the provisions of Paragraph 2 of this Agreement. If an unsecured claim set forth in "Recital N" is not the subject of an objection within 150 days of the Effective Date of this Agreement, then such claim shall be deemed allowed and such creditor shall be entitled to be paid on the creditor's claim under the provisions of Paragraph 2 of this Agreement. The Trustee agrees not to close the Bankruptcy case until all claims have been finally allowed or disallowed.
10. Release of Claims by Grazer. Except as otherwise expressly provided in this Agreement, upon the Effective Date Grazer releases any and all claims against the Debtor's bankruptcy estate, including, but not limited to, the right to assert a deficiency claim or any an unsecured claim against



the Debtor's bankruptcy estate; provided, however, that Grazer shall have the unconditional and absolute right and to be able to assert, pursue and prosecute any and all claims and rights of any kind whatsoever against the Debtor in Grazer's non-dischargeability action against the Debtor and shall have the unconditional and absolute right to enforce and execute in the State Court Case against the property abandoned by the bankruptcy estate pursuant to paragraph 4 of this Agreement. Except as otherwise expressly provided in this Agreement, upon the Effective Date, Grazer further releases and forever discharges the Trustee, attorneys, accountants and agents of the Trustee from any and claims, counterclaims, cross-claims, actions, demands, liabilities and responsibilities of every kind and nature whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, matured or unmatured, and whether existing now or in the past.

11. Release of Claims by the Trustee. Except as otherwise expressly provided in this Agreement, upon the Effective Date, the Trustee, on behalf of himself and Debtor's bankruptcy estate, herein releases and forever discharges Grazer and Grazer's successors, assigns, subsidiaries, affiliates, related entities, attorneys, accountants and agents, of and from any and all claims, counterclaims, cross-claims, actions, demands, liabilities, and responsibilities of any kind in nature whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, matured or unmatured, and whether existing now or in the past.
12. Amendment. This Agreement may not be modified, except by written instrument signed by all of the Parties.
13. Reservation of Rights. Nothing contained herein shall be deemed a waiver or release by any Party against any person or entity, other than as against a Party hereto and other than as against the persons and entities affiliated with a Party that are identified in the releases above, with respect to any rights, choses in action or claims that such Party may have against any other such person or entity. Grazer expressly reserves all claims, rights and causes of action of any nature whatsoever known or unknown, fixed or contingent, against the Debtor, and all other persons or entities not expressly released in paragraph 10 of this Agreement, including, but not limited to, the claims and causes of action set forth in the Complaint objecting to discharge of Adversary Proceeding No. 06-02411 pending in this Bankruptcy Case. This reservation of all claims, rights and causes of action of any nature whatsoever known or unknown, fixed or contingent, by Grazer includes any and all claims, rights and causes of action of any nature whatsoever known or unknown, fixed or contingent, against any person or entity not expressly released in paragraph 10 of this Agreement. Such persons or entities against whom Grazer is reserving any and all

claims, rights and causes of actions of any nature whatsoever known or unknown, fixed or contingent, against include, but are not limited to, creditors of the Debtor or the Bankruptcy Case, Renae Carnon Barney, Barney and Barney's family and other insiders of Barney, the Debtor, the Debtor's family, insiders of the Debtor, the children of the Debtor, J&J Livestock, Carvell Shaffer, G.S. Jones Construction, Inc., George Jones Construction, Construction LLC, Mountain View Apartments of Farmington and Linda Jones. Nothing contained herein shall in any way alter, affect, amend or change Grazer's claim against the Debtor or in any alter, affect, amend or change any judgment which Grazer may have against the Debtor or any other person or entity. Nothing contained herein shall in any way alter, affect, amend or change Grazer's right to execute in the State Court Case against the property abandoned by the bankruptcy estate pursuant to paragraph 4 of this Agreement.

14. No Intended Third-Party Beneficiaries. There are no intended third-party beneficiaries of this Agreement.
15. Attorneys' Fees and Costs. The Trustee's attorneys' fees and other costs incurred in negotiating, executing, obtaining approval of this Agreement and implementing this Agreement shall be included in the Administrative Expense Reserve set forth in paragraph 2 of this Agreement and shall be paid therefrom if the Bankruptcy Court allows such fees and costs as an administrative claim (with such fees and costs being limited as set forth in paragraph 2 of this Agreement). Grazer shall bear his own attorneys' fees and costs. However, if legally permissible, Grazer reserves the right to add to his claim and to seek an augmentation of the judgment in state court for the attorneys' fees and costs incurred in conjunction with this Agreement and with dealing with all issues that arose because of the Debtor's filing of his Bankruptcy Case.
16. Bankruptcy Court Approval. The Parties acknowledge that this Agreement is subject to notice to creditors in the Debtor's Bankruptcy Case and approval of the Bankruptcy Court. Within ten (10) days of the date of the execution of this Agreement, the Trustee shall cause to be drafted and filed in the Bankruptcy Case a motion seeking Bankruptcy Court approval of this Agreement and the Trustee shall set such motion for hearing as soon as possible.
17. Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and governed by the internal laws of the State of Utah, except to the extent such laws are superseded by the laws of the United States of America, and, in such instances, the laws of the United States shall be controlling.
18. Binding Effect. Entire Agreement. Amendment. Subject to the reservation

of rights as set forth in paragraph 13 of this Agreement, this Agreement is binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, assigns, subsidiaries, affiliates, related entities, officers, directors, employees, agents, attorneys and representatives, subrogees, and to all persons or entities claiming by, through or under them, including any successor trustee for the Debtor's bankruptcy estate, and the Debtor. This Agreement is fully integrated and represents the entire understanding between the Parties, and there are no written or oral agreements between them which are not set forth herein. None of the provisions of this Agreement may be changed, discharged or terminated orally and may be modified or amended. Likewise, the rights available to each of the Parties under this Agreement cannot be waived or released orally, and may be waived or released only by an instrument, in writing, signed by the Party whose rights will be diminished or adversely affected by the waiver.

19. No Admissions. This Agreement has been drafted for settlement purposes only. Nothing in this Agreement, including the Recitals set forth herein, shall be deemed an admission of law or fact by any Party for any purpose, other than the settlement contemplated in this Agreement. If this Agreement is not approved by the Bankruptcy Court, it shall be null and void, and thereafter this Agreement may not be used by any Party for any purpose.
20. Advice of Counsel. Each Party acknowledges that it has been represented by counsel in the negotiation and preparation of this Agreement and that such Party (and, if applicable, such Party's counsel) have participated in and contributed to drafting of this Agreement. Accordingly, neither this Agreement, nor any portion hereof, may be construed against any of the Parties on the basis that such Party or such Party's counsel was the drafter hereof.
21. Construction. The headings are for reference and convenience only and shall not affect the construction or interpretation of any of the terms of this Agreement.
22. Authorization. The persons executing this Agreement on behalf of a Party hereby represent and warrant that they are duly authorized and empowered to execute the same, that they have carefully read this Agreement, and that this Agreement represents a binding and enforceable obligation of such Party. Each Party represents and warrants that they have not assigned any of the claims being released under this Agreement.
23. No Inducement. The Parties represent, warrant and agree that upon executing and entering into this Agreement, they, and each of them, are not relying upon and have not relied upon any representation, promise or

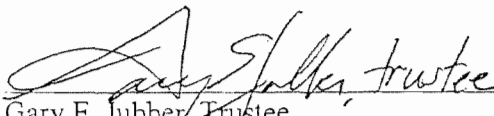
statement made by anyone which is not recited, contained or embodied in this Agreement.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same Agreement. Facsimile signatures shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, the parties have each executed this Agreement as of the date first set forth above.

GARY E. JUBBER, Trustee of the Chapter 7 Bankruptcy  
Estate of Gordon A. Jones, d/b/a J&J Livestock, d/b/a  
Gordon Jones Construction, L.C.

By:

  
\_\_\_\_\_  
Gary E. Jubber, Trustee  
FABIAN & GLENDENIN  
215 South State Street, 12th Floor  
Salt Lake City, Utah 84151  
Telephone: (801) 531-8900

ALLEN F. GRAZER

\_\_\_\_\_

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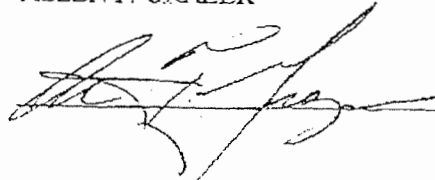
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GARY E. JUBBER, Trustee of the Chapter 7 Bankruptcy  
Estate of Gordon A. Jones, d/b/a J&J Livestock, d/b/a  
Gordon Jones Construction, L.C.

By: \_\_\_\_\_

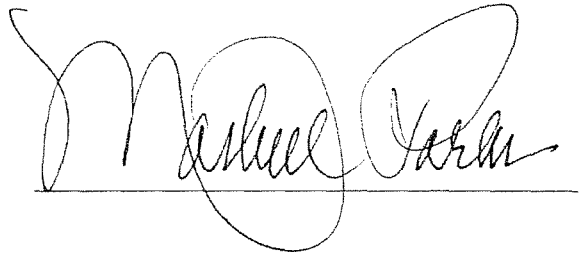
Gary E. Jubber, Trustee  
FABIAN & CLENDENIN  
215 South State Street, 12th Floor  
Salt Lake City, Utah 84151  
Telephone: (801) 531-8900

ALLEN F. GRAZER

A handwritten signature in dark ink, appearing to read "Allen F. Grazer", is written over a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that on the 20<sup>th</sup> day of February, 2007, I caused to be served a true and correct copy of *Exhibit "A" to Trustee's Motion to Approve Settlement Agreement and for Order Authorizing Abandonment of Property of Estate* via first class mail, postage pre-paid to all parties on the attached mailing matrix.

A handwritten signature in black ink, appearing to read "Michael J. Vahan", is written over a horizontal line.

Label Matrix for local noticing  
1088-2  
Case 05-21277  
District of Utah  
Salt Lake City  
Tue Feb 20 12:17:20 MST 2007

Arthur Timothy  
1169 N. 275 W.  
Centerville UT 84014

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Cohne Rappaport & Segal  
257 East 200 South, Suite 700  
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Salt Lake City, UT 84147-0008

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Attorney at Law  
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P.O. Box 17  
Teasdale, UT 84773

Farmington City  
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Farmington UT 84025

Allen Grazer  
c/o Lincoln Hobbs  
Hobbs & Olson  
525 South 300 East  
Salt Lake City, UT 84111

Gordon A. Jones  
235 West 1400 North  
Bountiful, UT 84010 U.S.A.

Julie Bryan  
Cohne, Rappaport & Segal  
257 E. 200 S., Ste. 700  
Salt Lake City UT 84111

Kirsten Nilssen  
7300 South 300 West #106  
Midvale UT 84047

John W. Lish  
Wilde & Lish  
1424 S. Legend Hills Dr.  
Suite 120  
Clearfield, UT 84015

A-1 Disposal  
624 N. 300 E.  
SLC UT 84103

Benchland Water District  
485 E. Shepard Lane  
Kaysville UT 84037

Carvel Shaffer  
Shaffer Law Office  
Key Bank Building  
562 South Main  
Bountiful, UT 84010

Davis County Treasurer  
P.O. Box 618  
Farmington, UT 84025

G.S. Jones Construction  
400 West 100 South  
Bountiful, UT 84010

Lincoln W. Hobbs  
Hobbs & Olson  
466 East 500 South  
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Gary E. Jubber  
Fabian and Clendenin  
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Salt Lake City, UT 84151

Kasteler & Associates  
1838 E. Fort Union Blvd.  
Salt Lake City, Utah 84121

LeRoy Taylor, M.D.  
520 E. Medical Drive #210  
Bountiful, UT 84010

Robert B. Lochhead  
Parr Waddoups Brown Gee & Loveless  
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Salt Lake City, UT 84111-1536

Allen F. Grazer  
c/o Lincoln Hobbs  
Hobbs & Olson  
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Bountiful City  
790 South 100 East  
Bountiful, UT 84010

Countrywide Home Loans, Inc.  
c/o McCalla Raymer, LLC  
BK Dept.  
1544 Old Alabama Rd.  
Roswell GA 30076

Dish Network  
PO Box 9033  
Littleton CO 80160

Grant Bishop, M.D.  
425 Medical Drive #110  
Bountiful, UT 84010

Intermountain Health Care  
P.O. Box 27128  
Salt Lake City, UT 84127

Gary E. Jubber tr  
Fabian & Clendenin  
215 South State Street  
12th Floor  
P.O. Box 510210  
Salt Lake City, UT 84151

Kent B. Scott  
Babcock Scott & Babcock  
505 E. 200 S., Suite 300  
Salt Lake City UT 84102

Linda G. Jones  
235 W. 1400 N.  
Bountiful UT 84010

Douglas J. Payne  
Fabian & Clendenin  
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12th Floor  
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Salt Lake City, UT 84151

PricewaterhouseCoopers L.L.P.  
One Utah Center  
201 South Main Street  
Suite 900  
Salt Lake City, UT 84111

Questar Gas  
P.O. Box 45841  
Salt Lake City, UT 84139

Qwest  
P.O. Box 2560  
Omaha, NE 68103-2560

Richard Barney  
155 N. Terrace Dr.  
Clearfield UT

Richard W. Jones  
Helgeson Waterfall & Jones  
Centennial Bank Building, 3rd Floor  
4605 Harrison Boulevard  
Ogden UT 84403

Ridgewood Owners Association  
175 E. 400 S., Ste 1000  
SLC UT 84111

Steven E. Barton  
1562 South 1000 West  
Syracuse, UT 84075

D. Kip Swan  
2150 S. 1300 E. Ste. 518  
SLC, UT 84106

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

Utah Power  
1033 NE 6th Ave.  
Portland OR 97256

Verizon  
P.O. Box 96088  
Bellevue, WA 98009

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Countrywide Home Loans Inc.

(u)Paul Thronsdon

|                     |    |
|---------------------|----|
| End of Label Matrix |    |
| Mailable recipients | 40 |
| Bypassed recipients | 2  |
| Total               | 42 |

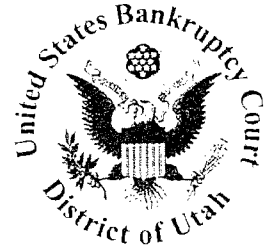


# EXHIBIT B

The below described is **SIGNED**.

**Dated: April 19, 2007**

**JUDITH A. BOULDEN**  
U.S. Bankruptcy Judge



Peter W. Billings, A0330  
FABIAN & CLENDENIN  
A Professional Corporation  
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Salt Lake City, Utah 84151  
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Attorneys for Gary E. Jubber, Chapter 7 Bankruptcy Trustee

Julie A. Bryan (Bar No. 4805)  
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Facsimile: (801) 532-1813  
e-mail: [julie@crslaw.com](mailto:julie@crslaw.com)

Attorneys for Allen F. Grazer

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re:

GORDON A. JONES,

Debtor.

Bankruptcy No. 06-21277 JAB  
(Chapter 7)

**ORDER APPROVING SETTLEMENT  
AGREEMENT AND AUTHORIZING  
TRUSTEE'S ABANDONMENT OF  
PROPERTY OF ESTATE**

*The Trustee's Motion to Approve Settlement Agreement and For Order*

*Authorizing Abandonment of Property of Estate* filed by Gary E. Jubber, Chapter 7 Trustee ("Trustee") on February 16, 2007 ("Motion") came on for hearing before the Honorable Judith A. Boulden on March 28, 2007. Peter W. Billings, Fabian & Clendenin, appeared on behalf of the Trustee. Joseph M.R. Covey, Parr, Waddoups, Brown, Gee & Loveless appeared for the Debtor. Julie A. Bryan, Cohne, Rappaport & Segal and Lincoln W. Hobbs, Hobbs & Olson appeared for Allen Grazer. David J. Shaffer, Shaffer Law Offices, P.C. appeared for the Estate of Richard Barney. Other appearances, if any, were noted on the record

The Court having reviewed the pleadings on file, admitting evidence and hearing arguments presented, entered detailed findings of fact and conclusions of law on the record, which findings and conclusions are incorporated herein, and include, but are not limited to, the following:

FINDINGS AND CONCLUSIONS:

1. Gordon A. Jones, d/b/a J&J Livestock, d/b a Gordon Jones Construction, L.C. (the "Debtor") filed a voluntary petition under Chapter 7 of the Bankruptcy Code on April 18, 2006, commencing Case Number 06-21277 (the "Bankruptcy Case") in the United States Bankruptcy Court for the District of Utah ("Bankruptcy Court"). Gary Jubber (the "Trustee") is the duly appointed and acting Chapter 7 Trustee of the Debtor's bankruptcy estate.
2. That notice of the Motion and the hearing thereon was properly given to the Debtor and all parties-in-interest as required under the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure.

3. Objections to the Motion were filed by the Debtor and by the Estate of Richard Barney. The Objections are overruled.
4. The Settlement Agreement was negotiated at arms' length and in good faith.
5. The Trustee's entry into the Settlement Agreement as a fair, reasonable and proper exercise of the Trustee's business judgment.
6. The Settlement Agreement and the relief requested in the Motion are reasonable, fair, equitable and in the best interest of the estate and its creditors.
7. That in considering this matter, the Court has reviewed and applied the standards set forth in the case of In re Kopexa Realty Venture Co., 213 B.R. 1020, 1022 (10th Cir. BAP 1997).

IT IS HEREBY ORDERED:

1. The Motion is granted and the Settlement Agreement is approved;
2. The Trustee is authorized to execute such documents as may be necessary and appropriate to effect, implement and consummate the Settlement Agreement. Except for the reserves set forth in the Settlement Agreement, the Trustee is authorized to abandon all property of the estate, as provided in the Settlement Agreement, and Grazer shall be deemed to have relief from the stay to pursue any and all state court remedies with respect to such property. Upon the Effective Date of the Settlement Agreement, the property that has been abandoned or for which Grazer has obtained relief from stay shall no longer be considered property of the Debtor's bankruptcy estate. Grazer shall be entitled to fully pursue all his rights and claims against the

aforesaid property in any State or Federal Court what would have jurisdiction absent the filing of the Debtor's bankruptcy; and

3. The property abandoned and/or for which Grazer has obtained relief from the automatic stay shall include but not be limited to the following:

A. **Estate's Interests in real property (along with all improvements and fixtures attached thereto), including, but not limited to the following:**

- (i) The Mountain View Apartments of Farmington located at 175 East State Street, Farmington, Utah (the "Apartments"), more particularly described as follows:

BEGINNING AT A POINT 82.50 FEET WEST ALONG THE NORTH LINE OF A STREET FROM THE SOUTHEAST CORNER OF LOT 1, BLOCK 12, PLAT "A", FARMINGTON TOWNSITE SURVEY, IN THE CITY OF FARMINGTON, THENCE WEST 32.5 FEET; THENCE NORTH 00°04'38" WEST 65.00 FEET; THENCE NORTH 45°02'19" WEST 42.46 FEET; THENCE WEST 85.00 FEET TO THE WEST LINE OF PROPERTY CONVEYED IN WARRANTY DEED IN BOOK 984 AT PAGE 838 IN THE RECORDS OF DAVIS COUNTY, UTAH; THENCE NORTH 00°04'38" WEST 153.86 FEET, MORE OR LESS, TO THE NORTH LINE OF LOT 2 OF SAID BLOCK 12; THENCE NORTH 89°59'37" EAST 263.00 FEET ALONG SAID NORTH LINE OF LOT 2 TO THE WEST LINE OF A STREET; THENCE SOUTH 00°04'38" EAST 156.00 FEET ALONG SAID STREET; THENCE WEST 115.00 FEET; MORE OR LESS, TO THE WEST LINE OF THE EAST HALF OF SAID LOT 1; THENCE SOUTH 00°04'38" EAST 92.89 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 07-031-0075

Parcels of real property located in Davis County, Utah, including:

Tax Parcel I.D. No. 06-027-0006, with the following legal description:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN: BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 33 FEET; FT CENTER OF SAID SECTION 14, THENCE NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 166.0 FEET; THENCE SOUTH 0°21'31" EAST 502.14 FEET; THENCE WEST 169.17 FEET TO AN EXISTING FENCE; THENCE ALONG SAID EXISTING FENCE 501.35 FEET TO THE POINT OF BEGINNING.

("West Bountiful Parcel 6").

- (iii) Two Tax Parcel Nos. 06-027-01 17, 0123 (fka 06-027-0007) and 06-027-01 16, 0122, 0123 (fka 06-027-0008), with the following legal descriptions:

A PART OF SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 33 FEET AND NORTH 89°43'58" EAST 166.02 FEET FROM CENTER OF SAID SECTION 14, THENCE NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 00°21'31" EAST 502.61 FEET; THENCE WEST 100 FEET; THENCE NORTH 502.14 FEET TO THE POINT OF BEGINNING. (Parcel No. 06-027-0117, 0123 (fka 06-027-0007))

A PART OF SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN; BEGINNING ON SAID RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD SAID POINT BEING SOUTH 68.33 FEET AND EAST 33 FEET AND NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 366.02 FEET FROM CENTER OF SAID SECTION 14, THENCE SOUTH 89°43'58" WEST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 0°21'31" EAST 502.61 FEET; THENCE EAST 100 FEET; THENCE NORTH 0°21'31" WEST 503.08 FEET TO THE POINT OF BEGINNING.

(Parcel No. 06-027-01 16, 0122, 0123 (fka 06-027-0008))

("West Bountiful Parcels 7 and 8"); and

- (iv) Tax Parcel No. 06-027-01 18, 024, 0125 (fka 06-027-0009), with the following legal description:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 399.02 FEET FROM THE CENTER OF SAID SECTION 14 AND RUNNING THENCE NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 0°21'31" EAST 503.55 FEET; THENCE WEST 100 FEET; THENCE NORTH 0°21'31" WEST 503.08 FEET TO THE POINT OF BEGINNING. (Parcel No. 06-027-01 18, 024, 0125 (fka 06-027-0009))

("West Bountiful Parcel 9").

- (v) Real property located in Sanpete County, Utah, more particularly described as follows: LOT 3, SEC J, INDIAN RIDGE RANCH, CONT. 1.13 AC

- (vii) Real property and improvements located at or about 3369 No. Westside Hwy, Clifton, Idaho (the "Idaho Ranch"), more particularly described as follows:

COMMENCING AT A POINT 53-3/4 RODS NORTH OF THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 38 EAST OF THE BOISE MERIDIAN, FRANKLIN COUNTY, IDAHO, AND RUNNING THENCE WEST 240 RODS, THENCE NORTH 53-3/4 RODS, THENCE EAST 240 RODS; THENCE SOUTH 53-3/4 RODS TO THE PLACE OF BEGINNING.

EXCEPTING AND RESERVING A RIGHT-OF-WAY FOR ANY AND ALL IRRIGATION DITCHES AND CANALS, AND PUBLIC ROADS NOW EXISTING OR IN USE UPON AND ACROSS SAID PREMISES, AND

EXCEPTING AND RESERVING THEREFROM A STRIP OF LAND 3 RODS WIDE ALONG THE EAST SIDE OF THE ABOVE-DESCRIBED LAND.

ALSO, THE SOUTH HALF OF THE SOUTHWEST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 14 SOUTH, RANGE 38 EAST OF THE BOISE MERIDIAN, FRANKLIN COUNTY, IDAHO.

TOGETHER WITH 36 SHARES OF THE CAPITAL STOCK OF TWIN LAKES CANAL COMPANY.

TAX SERIAL NO:

ADDRESS:

SUBJECT TO easements, restrictions, covenants and rights of way appearing of record or enforceable in law or equity.

B. **Personal Property or intangibles of the Debtor's bankruptcy estate of any kind whatsoever including but not limited to:**

- (i) accounts receivable;
- (ii) vehicles and equipment that have not been liquidated as part of the Debtors bankruptcy estate.
- (iii) The interest of the Debtor in any entity which the Debtor held (and may still hold) including but not limited to Gordon Jones Construction LLC.



C. **Causes of Action or Claims including but not limited to:**

- (i) A fraudulent transfer action against Gordon A. Jones, Linda G. Jones, and J&J Livestock, LLC in the Sixth Judicial District Court in and for Franklin County, Idaho, commencing Civil Action No. CV-2005-183 (the "Idaho Fraudulent Conveyance Action"). The Idaho Fraudulent Conveyance Action which may now be pursued by Grazer in the Idaho Court in which it was filed or in any other Court with proper jurisdiction.
- (ii) An action in the Second District Court of Davis County, State of Utah against the Debtor, Linda G. Jones, Richard Barney and Renae Camon Barney, and the Linda G. Jones Family Partnership, which causes of action were amended in the Amended Complaint dated January 5, 2006 against these Defendants and Jason Jones; GS Jones Construction, Inc.; J&J Livestock, LLC; Cheryl J. Gudmundson; G. Scott Jones; Richillyn Woodin, and Rochelle C. Barney (the "Utah Fraudulent Transfer Action"). The Utah Fraudulent Transfer Action may be pursued by Grazer in the Utah Second District Court of Davis County in which it was filed or in any other Court with proper jurisdiction.
- (iii) Fraudulent Conveyance Actions or any other action that could have been filed by a creditor prior to the filing of the Debtors bankruptcy case, or by the Trustee after the filing of the Debtor's bankruptcy case, to recover property owed to the Debtor or transferred to third parties by the Debtor. Such actions may be pursued by Grazer in any court with proper jurisdiction.

4. The Trustee shall dismiss Adversary Proceeding No 06-2449 filed by the Trustee. Dismissal of that adversary proceeding shall in no way affect or prejudice the claims or causes of action for denial of discharge under 11 U.S.C. §§ 523 and 727 set forth by Grazer against the Debtor in Adversary Proceeding No. 06-02411.

APPROVED AS TO FORM:



Joseph M. R. Covey  
Parr Waddoups Brown Gee & Loveless  
Attorneys for Debtor, Gordon A. Jones

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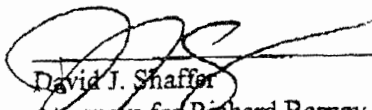
David J. Shaffer  
Attorneys for Richard Barney

[END OF DOCUMENT]

APPROVED AS TO FORM:

---

Joseph M. R. Covey  
Parr Waddoups Brown Gee & Loveless  
Attorneys for Debtor, Gordon A. Jones



---

David J. Shaffer  
Attorneys for Richard Barney

[END OF DOCUMENT]

**CLERK OF THE COURT CERTIFICATE OF MAILING**

The undersigned hereby certifies that a true and correct executed copy of the foregoing  
**ORDER APPROVING SETTLEMENT AGREEMENT AND AUTHORIZING**  
**TRUSTEE'S ABANDONMENT OF PROPERTY OF ESTATE** was mailed, postage fully  
prepaid, this \_\_\_\_\_ day of April, 2007 to the following:

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

Peter W. Billings  
Gary E. Jubber  
P.O. Box 510210  
Salt Lake City, UT 84151

Gordon A. Jones  
235 West 1400 North  
Bountiful, UT 84010

Joseph M. R. Covey  
Parr Waddoups Brown Gee & Loveless  
185 South State Street  
Suite 1300  
Salt Lake City, UT 84111-1536

Linda G. Jones  
235 West 1400 North  
Bountiful, UT 84010

Julie Bryan  
Cohne, Rappaport & Segal  
257 E. 200 S., Ste. 700  
Salt Lake City, UT 84111

Lincoln W. Hobbs  
Hobbs & Olson  
466 East 500 South  
Suite 300  
Salt Lake City, UT 84111

David J. Shaffer  
Key Bank Building  
562 South Main Street  
Bountiful, UT 84010

Lane V. Erickson (ISB#: 5979)  
RACINE, OLSON, NYE,  
BUDGE & BAILEY, CHARTERED  
P.O. Box 1391  
Pocatello, Idaho 83204-1391  
Telephone: (208)232-6101  
Fax: (208)232-6109

*Attorney for Defendant Gordon A. Jones*

FILED

09 JUN 19 AM 11:35

FRANKLIN COUNTY CLERK

K. Jones  
DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF FRANKLIN

ALLEN F. GRAZER, an individual,  
  
Plaintiff,

vs.

GORDON A. JONES, an individual;  
LINDA G. JONES, an individual; J&J  
LIVESTOCK, LLC, a Utah limited  
liability company, and John Does, 1-10,

Defendants.

Case No. CV-05-183

**DEFENDANT GORDON A. JONES'**  
**REPLY TO**  
**MEMORANDUM IN OPPOSITION**  
**AND**  
**MOTION FOR SANCTIONS**

COMES NOW, Defendant Gordon A. Jones (hereafter "Defendant Jones"), by and through his attorney of record, Lane V. Erickson, and hereby Replies to the Memorandum in Opposition filed by Plaintiff Allen F. Grazer (hereafter "Plaintiff"), and files his Motion for Sanctions pursuant to Rule 11(a)(1) of the Idaho Rules of Civil Procedure.

Defendant Jones' Motion for Sanctions is based upon the grounds and for the reasons that any and all causes of action raised by Plaintiff against Defendant Jones are forever barred by applicable Bankruptcy law. All the facts and circumstances supporting this Motion for Sanctions are evidenced by the Affidavit of Lane V. Erickson in Support of Defendants Gordon A. Jones' Motion to Dismiss (hereafter "Erickson Affidavit"), and by the rulings, decisions, and judgments

made and entered in the Utah state court and Utah bankruptcy court proceedings and by the documents attached to Plaintiff's Memorandum in Opposition.

## **FACTS AND BACKGROUND**

Defendant Jones incorporates by reference all of the facts, documents and law set forth in his Motion to Dismiss and the accompanying Erickson Affidavit, which will not be restated here, but which Defendant Jones respectfully requests the Court take notice of. Defendant Jones also incorporates the facts, arguments and attached documents set forth in the Memorandum in Opposition filed by Plaintiff's attorneys which is the subject of this Motion for Sanctions. The facts, arguments and attached documents set forth by Plaintiff's attorneys in the Memorandum in Opposition support Defendant Jones' Motion for Sanctions.

Additionally, attached to the Supplemental Affidavit of Lane V. Erickson filed herewith is a true and correct copy of Plaintiff's Bankruptcy Complaint Objecting to Discharge (hereafter "Bankruptcy Complaint"), as Adversary Proceeding No. 06-02411, which was dismissed by the Bankruptcy Court as set forth in Defendant Jones' Motion to Dismiss. This Bankruptcy Complaint contains the same allegations and causes of action that are made by the Plaintiff in the present case.

## **ARGUMENT**

### **I. Standard of Review**

Under the applicable reasonableness standard, Plaintiff's attorneys should be sanctioned for the arguments set forth in their Memorandum in Opposition to Gordon A. Jones' Motion to Dismiss wherein they claim they have a right to continue with the present litigation because they

make this claim with full knowledge that they do not have this right. Rule 11(a)(1) of the Idaho Rules of Civil Procedure states in pertinent part that either a party or an attorney must sign all pleadings or other documents that are filed with a court. By signing pleadings an attorney makes a certificate that they have read the pleading and

that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

I.R.C.P. Rule 11(a)(1).

Whether a pleading, or motion or other signed document is sanctionable under this rule must be based on an assessment of the knowledge of the relevant facts and law that reasonably could have been acquired at the time the document was submitted to the court. Landvik v. Herbert, 130 Idaho 54, 61, 936 P.2d 697, 705 (Ct. App. 1997). An attorney is *required* to perform a pre-filing inquiry into both the facts *and the law* to satisfy the affirmative duty imposed by this rule and reasonableness under the circumstances, and a duty to make reasonable inquiry prior to filing a pleading or other paper, is the appropriate standard to apply when evaluating an attorney's conduct. Id. (Italics added.) A court's imposition of Rule 11 sanctions is limited by two factors: sanctions may be imposed on an attorney when the attorney actually signs a pleading, motion or other paper; and sanctions may be imposed when the attorney's actions fail to comply with the rule at the time the document was signed. Young v. Williams, 122 Idaho 649, 653, 837 P.2d 324, 328 (Ct. App. 1992).

In the present case, the applicable facts and law, and the evidence on the record before this Court demonstrates two things. First, that Plaintiff's right to continue any efforts to collect on the Utah pre-bankruptcy judgment is forever discharged by the Utah Bankruptcy Court. Second, that

Plaintiff's attorneys knew that they couldn't take any action to continue collection but that they deliberately filed their Memorandum in Opposition anyway in an attempt to deceive this Court into allowing them to move forward with their collection efforts. The remainder of the argument of this Reply by Defendant Jones will discuss the bankruptcy discharge that was entered and its effect on the Plaintiff's Utah pre-bankruptcy judgment. The argument will then refer to the record before this Court to demonstrate how Plaintiff's attorneys' Memorandum in Opposition is a knowing violation of Rule 11(a)(1) and is therefore sanctionable.

## **II. Applicable Law**

The dismissal of Plaintiff's Bankruptcy Complaint and the entering of the bankruptcy discharge prohibits Plaintiffs attorneys from seeking to collect in any way their Utah pre-bankruptcy judgment. A discharge in a bankruptcy case voids any pre-bankruptcy judgment to the extent that such judgment is a determination of the personal liability of the debtor. 11 U.S.C. § 524(a)(1). Additionally, a discharge operates as an injunction against the commencement or continuation of any action, the employment of any process, or any act, to collect, recover, or offset any such debt as a personal liability of the debtor. 11 U.S.C. § 524(a)(2). A party can seek an order from the bankruptcy court declaring that a debt is not dischargeable pursuant to 11 U.S.C. §§ 523 or 727. This type of order is sought for and obtained by filing a complaint in an adversary action opposing discharge for any of the reasons set forth in 11 U.S.C. §§ 523 or 727. If no judgment is entered denying discharge then any effort of any type to pursue collection is strictly prohibited. 11 U.S.C. § 524.

According to applicable Utah bankruptcy law a discharge under 11 U.S.C. § 524,

affords broad benefits to the debtor, and the injunction [in § 524(a)(2)] is to give complete effect to the discharge and to eliminate any doubt concerning



the effect of the discharge as a total prohibition on debt collection efforts. . . . Bankruptcy courts, acting as courts of equity, cannot disregard § 524, or circumvent §§ 523(a) and 727 by refusing to apply the discharge to certain debts. *The only way to avoid application of § 524 is to obtain a judgment denying a debtor's discharge pursuant to § 727(a), to obtain a judgment excepting a specific debt from discharge under §§ 523(a) and 727(b), or to obtain a judgment revoking a discharge that has been granted under § 727(d).*

Pritner v. COFCO Credit Co., L.L.C. (In re Pritner), 2005 Bankr. LEXIS 404 (B.A.P. 10th Cir. Mar. 21, 2005)(Italics added).

In the present case, in 2005 Plaintiff and Defendant Jones were involved in a lawsuit in Utah concerning construction of a residential home. (Erickson Affidavit paragraph 2.) This litigation resulted in a pre-bankruptcy judgment from Utah courts in favor of Plaintiff and against Defendant Jones. (See Erickson Affidavit paragraph 3, and attached Exhibit "A".) On May 12, 2005, Plaintiff filed the present case in an attempt to enforce and/or collect upon the Utah pre-bankruptcy judgment described above. (Erickson Affidavit paragraphs 4 and 5, and attached Exhibit "B".)

On April 8, 2006, Defendant Jones filed a Chapter 7 Bankruptcy in Utah. (Erickson Affidavit paragraph 6, and attached Exhibit "C".) On July 28, 2006, Plaintiff filed the Bankruptcy Complaint as Adversary Proceeding No. 06-02411 seeking a judgment declaring that the Utah pre-bankruptcy judgment would not be discharged. (Erickson Affidavit paragraph 8, and attached Exhibit "B" docket entry between Nos. 37 and 38 on page 12.) In the Bankruptcy Complaint, Plaintiff makes the same allegations and causes of action that are in the complaint filed in the present case. (Supplemental Erickson Affidavit, and attached Exhibit "F".)

Plaintiff's attorneys' failed to meet certain deadlines in the bankruptcy case. As a result, on January 20, 2009, U.S. Bankruptcy Judge Judith A. Boulden dismissed Plaintiff's Bankruptcy Complaint and the pending Adversary Proceeding No. 06-02411. (Erickson Affidavit paragraph

11. and attached Exhibit "D".) On this same date, Defendant Jones was granted a bankruptcy discharge in his Chapter 7 Bankruptcy proceedings. (Erickson Affidavit paragraph 12, and attached Exhibit "E".) These two actions by the U.S. Bankruptcy Judge prohibit Plaintiff's attorneys from taking any action of any type to collect on the Utah pre-bankruptcy judgment against Defendant Jones.

Plaintiff's attorneys were aware of these facts and the applicable laws independent of this action. Additionally, Plaintiff's attorneys received a copy of Defendant Jones' Motion to Dismiss which details all of these facts and provides copies of all applicable documents including court orders. By receiving the Motion to Dismiss and all associated documents, Plaintiff's attorneys were aware that Defendant Jones was seeking a dismissal in the present action without any hearings so as to avoid additional attorney fees, costs and expenses. However, rather than allowing a dismissal to be entered in the present case by operation of law, Plaintiff's attorneys, filed their Memorandum in Opposition, contrary to the applicable law, wherein they knowingly make false statements and claims to this Court that they still somehow have the right to pursue the present case against Defendant Jones.

Plaintiff's attorneys attach a copy of a Settlement Agreement for this Court to review in an attempt to support their claim that they can still somehow proceed in the present case against Defendant Jones. However, as the applicable law sets forth above, none of these documents has any legal effect on the dismissal of the Bankruptcy Complaint and the discharge that was entered by the bankruptcy court in its January 20, 2009, order.

In an attempt to deceive this Court as to the legal effect of the Settlement Agreement Plaintiff's attorneys cite to sections 4 and 5 (pages 10-11) of the Settlement Agreement. Plaintiff's attorneys deliberately claim to this Court that these sections of the Settlement

Agreement allow them to proceed against Defendant Jones in the present case. However, Plaintiff's attorneys do not quote other pertinent sections of the Settlement Agreement which evidence that their claims are false. For instance, section 6 of the Settlement Agreement specifically states that Adversary Proceeding No. 06-02411 was still valid as of the date the Settlement Agreement was signed. Additionally, section 13 states that Plaintiff specifically reserved all its "claims and causes of action set forth in the [Bankruptcy] Complaint objecting to discharge of Adversary Proceeding No. 06-02411 pending in this Bankruptcy Case."

The language in these sections of the Settlement Agreement evidences that Plaintiff's attorneys knew that the only way they could pursue Defendant Jones was through the Bankruptcy Complaint in the pending Adversary Proceeding No. 06-02411. Plaintiff's attorneys now know that the Bankruptcy Complaint and the pending Adversary Proceeding No. 06-02411 were dismissed and that the bankruptcy discharge exists, prohibiting them from taking any further action against Defendant Jones. Additionally, Plaintiff's attorneys know that no applicable law supports their argument. This is evidenced by the fact that Plaintiff's attorneys quote no authority to this Court in their Memorandum in Opposition to support their position. The only thing Plaintiff's attorneys do is rely on small portions of the language of a Settlement Agreement that they know does not apply.

This is not a case of attorneys misunderstanding the law. This is not a case of attorneys not knowing all of the applicable facts. This is not a case of inexperienced attorneys not understanding the applicable legal procedure. There is no authority or good faith argument anywhere in any portion of Plaintiff's attorneys' Memorandum in Opposition as required by Rule 11(a)(1). Plaintiff's attorneys disregarded the dismissal of their Bankruptcy Complaint and the discharge entered by the bankruptcy court by filing their Memorandum in Opposition. In the

Memorandum in Opposition Plaintiff's attorneys make untrue statements and arguments to this Court in an effort to mislead this Court into allowing them to proceed in the present case against Defendant Jones. Without any facts or authority supporting their position, the only possible reasons Plaintiff's attorneys could have had in filing their Memorandum in Opposition is to harass or to cause unnecessary delay or needless increase in the cost of litigation against Defendant Jones in violation of Rule 11(a)(1).

Defendant Jones is now required to respond to Plaintiff's attorneys' false arguments, to schedule a hearing and to make oral arguments before this Court to obtain the dismissal that is warranted by applicable laws. For these actions, Plaintiff's attorneys should be sanctioned pursuant to Rule 11(a)(1).

### **III. Appropriate Sanctions**

This Court should award Defendant Jones all his attorney fees and costs associated with his Motion to Dismiss and should further enter an appropriate sanction against Plaintiff's attorneys for their violation of Rule 11(a)(1). The amount of sanctions against a party should be reasonably based upon the party's conduct and the total expenses paid by the opposing party. Attorney fees and costs incurred by the aggrieved party may serve as a guide for determining an amount of sanctions and is not an abuse of discretion. See generally, Campbell v. Kildew, 141 Idaho 640, 115 P.3d 731 (2005). Sanctions against an attorney may be properly imposed because I.R.C.P. Rule 11(a)(1) was specifically designed to be a management tool by which the district court could, among other things, punish actions of an attorney who violates the rule. See generally, Lester v. Salvino, 141 Idaho 937, 120 P.3d 755 (Ct. App. 2005).

Defendant Jones seeks sanctions against Plaintiff's attorneys in an amount determined to

be appropriate by the Court. In reviewing appropriate sanctions, Defendant Jones respectfully requests that the Court consider all the applicable facts and law and the actions of Plaintiff's attorneys. Additionally, Defendant Jones in no way seeks to hold Plaintiff ALLEN F. GRAZER individually responsible for the actions of his attorneys and only seeks sanctions against Plaintiff's attorneys.

#### **IV. Attorneys Fees and Costs**

In addition to dismissing the above captioned litigation, and entering sanctions against Plaintiff's attorney, Defendant Jones is also seeks from the Court an order awarding him all of his attorney fees and costs in this matter. Idaho Code § 12-120 (1) states that "in any action where the amount pleaded is twenty-five thousand (\$25,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the Court as attorney's fees." I.C. § 12-120(1). Additionally, Idaho Code § 12-121 provides the Court with the inherent ability to award attorneys fees and costs to the prevailing party in any litigation.

Given the facts, history, background and circumstances of this case and the actions Plaintiff's attorneys have taken in the present litigation, Defendant Jones respectfully requests that this Court grant an award of attorney fees in its favor and against Plaintiff in this matter.

#### **CONCLUSION**

Based upon the facts, documents and law set forth above and for the reasons set forth herein, the undersigned requests that its Motion to Dismiss be granted, that Plaintiff's attorneys be appropriately sanctioned, and that Defendant Jones be awarded his attorney fees and costs in this

matter.

Dated this 16<sup>th</sup> day of June, 2009.

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

By Lane V. Erickson  
LANE V. ERICKSON  
Attorney for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of June, 2009, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Lincoln Hobbs  
Margaret Olson  
HOBBS & OLSON, LC  
466 East 500 South, Suite 300  
Salt Lake City, Utah 84111  
*Attorneys for Plaintiff*

Kent L. Hawkins  
MERRILL & MERRILL CHARTERED  
P.O. Box 991  
Pocatello, Idaho 83204-0991  
*Attorney for Defendant Linda G. Jones*

Lane V. Erickson  
LANE V. ERICKSON

Lane V. Erickson (ISB#: 5979)  
RACINE. OLSON, NYE,  
BUDGE & BAILEY, CHARTERED  
P.O. Box 1391  
Pocatello, Idaho 83204-1391  
Telephone: (208)232-6101  
Fax: (208)232-6109

*Attorney for Defendant Gordon A. Jones*

FILED

09 JUN 19 AM 11:35

FRANKLIN COUNTY CLERK

K. Jones  
DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF FRANKLIN

ALLEN F. GRAZER, an individual,

Plaintiff,

vs.

GORDON A. JONES, an individual;  
LINDA G. JONES, an individual; J&J  
LIVESTOCK, LLC, a Utah limited  
liability company, and John Does, 1-10,

Defendants.

Case No. CV-05-183

**SUPPLEMENTAL AFFIDAVIT  
OF  
LANE V. ERICKSON**

STATE OF IDAHO                     )  
  : ss  
County of Bannock                 )

LANE V. ERICKSON, (hereafter "Affiant"), after first being duly sworn on oath, deposes  
and states as follows:

1. Affiant is the attorney for the Defendant Gordon A. Jones in the above-captioned

proceedings; is 18 year so age or older; is competent to testify and makes the following statements under oath upon the best of his knowledge and belief;

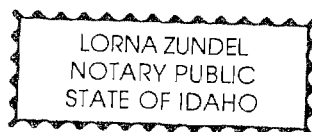
2. On July 28, 2006, pursuant to applicable Bankruptcy Code sections, Plaintiff filed a Bankruptcy Complaint in Adversary Proceeding No. 06-02411 for the purpose of obtaining a Judgment against Defendant Jones that would allow Plaintiff to pursue his claims in the present case. A true and correct copy of Plaintiff's Bankruptcy Complaint is attached hereto as Exhibit "F" and is incorporated herein by reference as if set forth fully.

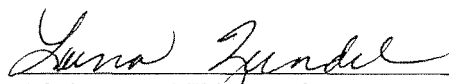
FURTHER SAITH AFFIANT NAUGHT.

DATED this 16<sup>th</sup> day of June, 2009.

  
\_\_\_\_\_  
LANE V. ERICKSON

SUBSCRIBED AND SWORN TO before me on this 16<sup>th</sup> day of June, 2009.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at: \_\_\_\_\_ Pocatello, Idaho  
Commission expires: 4-10-2012



CERTIFICATE OF SERVICE

I hereby certify that on the 18<sup>th</sup> day of June, 2009, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Lincoln Hobbs  
Margaret Olson  
HOBBS & OLSON, LC  
466 East 500 South, Suite 300  
Salt Lake City, Utah 84111  
*Attorneys for Plaintiff*

Kent L. Hawkins  
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*Attorney for Defendant Linda G. Jones*

  
\_\_\_\_\_  
LANE V. ERICKSON

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Attorneys for Allen F. Grazer

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

|  |   |
|--|---|
| ALLEN F. GRAZER,<br><br>Plaintiff,<br><br>v.<br><br>GORDON A JONES,<br><br>Debtor/Defendant. | <b>COMPLAINT OBJECTING TO<br/>DISCHARGE</b><br><br>Bankruptcy No. 06-21277<br>(Chapter 7)<br><br>Judge Judith A. Boulden<br><br>Adversary Proceeding No.<br><br><i>[FILED ELECTRONICALLY]</i> |
|--|---|

Allen F. Grazer (the "Plaintiff"), by and through counsel, hereby complains of the Defendant, Gordon A Jones (the "Debtor") as follows:

**I. PARTIES**

1. Plaintiff is a creditor of the Debtor.
2. Debtor is an individual.
3. The Debtor filed a voluntary petition under Chapter 7 of the United States Bankruptcy

Code on April 18, 2006.

## II. JURISDICTION AND VENUE

4. This adversary proceeding arises out of and relates to the Chapter 7 bankruptcy case of the Debtor currently pending in the United States Bankruptcy Court for the District of Utah, Central Division.

5. This is a core proceeding under 28 U.S.C. § 157(b)(2)(J).

6. The United States Bankruptcy Court for the District of Utah, Central Division, has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a), DUCivR 83-7.1, the general order of reference, and pursuant to 11 U.S.C. §§ 523 and 727.

7. Venue is proper in the District of Utah, Central Division, pursuant to 28 U.S.C. § 1409.

## III. GENERAL ALLEGATIONS

8. On or about November 1, 2002, the Debtor filed an action against the Plaintiff seeking to collect invoices allegedly owed him, as general contractor, for construction of a home in Davis County, Utah commencing case number 020700570 in Second Judicial District Court, Davis County, Utah (the "State Court Case").

9. Grazer counterclaimed against the Debtor in the State Court Case and engineering reports found life-threatening defects in the home constructed by the Debtor.

10. The State Court Case was tried on April 26-29, 2005.

11. On April 26, 2005, ruling from the bench, the Court presiding over the State Court Case dismissed the claims commenced by the Debtor against the Plaintiff.

12. On April 29, 2005, after close of evidence, the Court presiding over the State Court case ruled from the bench in favor of the Plaintiff and against the Defendant in the State Court Case.

13. The ruling in the State Court Case was reduced to findings of fact and conclusions of law on June 17, 2006.

14. Judgment in the State Court case in the initial amount of \$1,886,727.87, and augmented by the Court with interests, fees and costs in the additional sum of \$222,584.32, was awarded in favor of the Plaintiff and against the Debtor and Richard Barney ("Barney") on July 11, 2005. A copy of the Judgment is attached hereto as Exhibit "A" (the "Judgment").

**IV. FIRST CAUSE OF ACTION**  
**(11 U.S.C. § 727 - Bank Accounts)**

15. Plaintiff incorporates all prior allegations of this Complaint as if fully set forth herein.

16. On or about July 14, 2005 (three days after the Judgment was entered), funds that were property of the Debtor in the amount of \$9,500.00 (the "\$9,500"), held in an account at Barnes Bank in the name of "Mountain View Apartments," a dba of the Debtor and Richard Barney, were transferred, by check written by the Debtor's spouse, Linda Jones.

17. On or about July 15, 2005 (four days after the Judgment was entered) funds in the amount of \$8,000.00 (the "\$8,000.00") that were property of the Debtor, held in a Barnes Bank account in the name of "Mountain View Apartments," were transferred to "Gordon Jones Construction LLC" by check written by the Debtor's spouse.

18. On or about July 17, 2005 (six days after the Judgment was entered) the last funds, in the Barnes Bank account held in the name of "Mountain View Apartments" totaling approximately \$1,600.00 (the "Mountain View Account Closing Funds"), which were property of the Debtor, were withdrawn and concealed or were transferred to the Debtor's spouse, Linda Jones.

19. Upon information and belief, within a year of the filing of his petition in bankruptcy, Debtor made transfers of funds that were property of the Debtor from bank accounts, including but not limited to accounts held at Wells Fargo Bank and/or Barnes Bank in the name of, *inter alia*, Gordon Jones Construction and the Mountain View Apartments (the "Additional Bank Account Funds").

20. The \$9,500.00 was transferred, removed or concealed by the Debtor, or was permitted by the Debtor to be transferred, removed or concealed, with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

21. The \$8,000.00 was transferred, removed or concealed by the Debtor, or was permitted by the Debtor to be transferred, removed or concealed, with intent to hinder delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

22. The Mountain View Account Closing Funds were transferred, removed or concealed by the Debtor, or were permitted by the Debtor to be transferred, removed or

concealed, with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

23. The Additional Bank Account Funds were transferred, removed or concealed by the Debtor, or were permitted by the Debtor to be transferred, removed or concealed, with intent to hinder delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

24. The Debtor's discharge should be denied pursuant to 11 U.S.C. § 727(a)(2).

**V. SECOND CAUSE OF ACTION**  
**(11 U.S.C. § 727 - Real Property)**

25. Plaintiff incorporates all prior allegations of this Complaint as if fully set forth herein.

26. On May 6, 2005 (a week after the Court's ruling in the State Court Action) the Debtor recorded, or permitted to be recorded, deeds transferring his interests in real property and improvements including:

(a) Parcels of real property in West Bountiful, Utah (the "West Bountiful Property"), which were transferred to the Debtor's spouse, Linda Jones, and to Barney's spouse, Renae Barney, from "Gordon Jones Construction" (an entity alternately treated by the Debtor as a sole proprietorship of the Debtor or a partnership between Barney and the Debtor) or from joint title held in the name of Debtor and Barney or the

Debtor, Barney and Linda Jones. Copies of the Deeds transferring said property are attached hereto as Exhibits "B";

(b) Real property and improvements commonly known as "The Mountain View Apartments" (the "Apartments"), located in Farmington Utah, which were transferred from the Debtor and Barney to Linda Jones, the Debtor's Spouse, and to Renae Barney, Barney's spouse. A copy of the Deed transferring the Mountain View Apartments is attached hereto as Exhibit "C"; and

(c) Real Property located at 235 West 1400 North, Bountiful Utah, (the "Residential Property") which was transferred from the Debtor and his spouse, Linda Jones, to the Debtor and Linda Jones, as Trustees of the Gordon and Linda Jones Family Trust. A copy of the Deed transferring the Residential Property is attached hereto as Exhibit "D".

27. The West Bountiful Property was transferred by the Debtor, or was permitted by the Debtor to be transferred, with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

28. The Apartments were transferred by the Debtor, or were permitted by the Debtor to be transferred, with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

29. The Residential Property was transferred by the Debtor, or was permitted by the Debtor to be transferred, with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

30. The Debtor's discharge should be denied pursuant to 11 U.S.C. § 727(a)(2).

**VI. THIRD CAUSE OF ACTION**  
**(11 U.S.C. § 727 - J&J Livestock)**

31. Plaintiff incorporates all prior allegations of this Complaint as if fully set forth herein.

32. Prior to December 2004 the Debtor and his spouse acquired over 200 acres of real property and improvements in Franklin County, Idaho, identified as Parcels Nos. 908.00, 908.01 and 915.00, more particularly described as:

COMMENCING AT A POINT 53-3/4 RODS NORTH OF THE  
SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF  
SECTION 35, TOWNSHIP 14 SOUTH, RANGE 38 EAST OF THE  
BOISE MERIDIAN, FRANKLIN COUNTY, IDAHO, AND RUNNING  
THENCE WEST 240 RODS, THENCE NORTH 53-3/4 RODS,  
THENCE EAST 240 RODS; THENCE SOUTH 53-3/4 RODS TO THE  
PLACE OF BEGINNING.

EXCEPTING AND RESERVING A RIGHT-OF-WAY FOR ANY AND  
ALL IRRIGATION DITCHES AND CANALS, AND PUBLIC ROADS  
NOW EXISTING OR IN USE UPON AND ACROSS SAID PREMISES,  
AND EXCEPTING AND RESERVING THEREFROM A STRIP OF  
LAND 3 RODS WIDE ALONG THE EAST SIDE OF THE ABOVE-  
DESCRIBED LAND.

ALSO, THE SOUTH HALF OF THE SOUTHWEST QUARTER, THE  
NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, AND  
THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF  
SECTION 34, TOWNSHIP 14 SOUTH, RANGE 38 EAST OF THE



BOISE MERIDIAN, FRANKLIN COUNTY, IDAHO.

TOGETHER WITH 36 SHARES OF THE CAPITAL STOCK OF TWIN LAKES CANAL COMPANY.

(hereinafter "the Franklin County Property").

33. The Franklin County Property includes two homes, a barn, a shop and real property improvements consistent with farming and raising livestock.

34. Debtor conducted operations known as "J&J Livestock," a sole proprietorship of the Debtor, on the Franklin County Property.

35. As Debtor's sole proprietorship, J&J Livestock collected rents for one of the homes located on the Franklin County Property.

36. As Debtor's sole proprietorship, J&J Livestock owned a "breeding stock" of cattle including 13 cows and a bull, and raised and sold cattle for income.

37. As Debtor's sole proprietorship, J&J Livestock owned farming equipment including, but not limited to, a Dodge Truck, three tractors, wheel line and sprinkling systems.

38. As Debtor's sole proprietorship, J&J livestock generated rents from the rental of one of the homes on the Franklin County Property.

39. As a sole proprietorship, J&J Livestock paid wages to the Debtor's son, Jason Jones, and permitted him to live on the home on the Franklin County Property in return for services rendered in connection with the farming and livestock business.

40. The funds for purchase of the Franklin County Property, the livestock of J&J Livestock, as a sole proprietorship of the Debtor, and the equipment and vehicles of J&J Livestock came primarily, if not solely, from the Debtor's construction business, or from other business ventures of the Debtor, including the Apartments.

41. The Debtor maintained a bank account in the name of the dba J&J Livestock. Checks into the account were often payable to the Debtor and the Debtor withdrew funds at will from the account.

42. In or about December 2004, the Debtor purported to create an LLC called J&J Livestock LLC, whose members were the Debtor and his spouse, Linda Jones.

43. On or about December 28, 2004 the Debtor and his spouse quit claimed the Franklin Property to J&J Livestock LLC.

44. During and after the trial held in the State Court Case, within a year prior to the filing of the Debtor's bankruptcy, the Debtor actively concealed transfers of property connected with J&J Livestock. Specifically, the Debtor testified at the trial held in the State Court Case that there was no water owned in connection with the Franklin County Property, when, in fact, there are water shares connected with the Franklin County Property and less than eight weeks earlier the Debtor had transferred all or part of that water, consisting of 33 shares of water in the Twin Lakes Canal Company (the "Water Stock"), to his son, Jason Jones.

45. Within the year prior to the filing of the Debtor's petition in bankruptcy, the Debtor actively concealed his interest in the real property and equipment associated

with J&J Livestock, including, but not limited to, testifying in June 2005 that he and his son, Jason Jones, owned all buildings on the Franklin County Property (including the two homes) and the equipment used in conjunction with J&J Livestock.

46. In the year prior to the filing of his petition in bankruptcy, the Debtor maintained control over all property, real property, livestock and equipment of J&J Livestock, including, but limited to, the real property, personal property, equipment and the water stock or water interest owned in J&J Livestock, either as a dba or as J&J Livestock LLC.

47. The Debtor's concealment of the transfer of the Water Stock constitutes continuing transfer and concealment of the Debtor's interest in property with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

48. The Debtor's continued concealment of his interest in the livestock, buildings improvements and equipment associated with the farming and livestock operation on the Franklin County Property (whether referred to as J&J Livestock, a dba of the Debtor or as J&J Livestock LLC) has been with the intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

49. Allegations that his son "owns" the buildings, homes, improvements, livestock and equipment on the Franklin County Property when, in fact, such property was purchased and is "owned" by the Debtor (or has been transferred through transfers that

have not been disclosed to or uncovered by the Plaintiff) constitutes continuing transfer and concealment of such property, which is property of the Debtor.

50. The Debtor's transfer of the Water Stock, and his continued concealment of the transfer, were with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

51. The Debtor has actively transferred, removed or concealed property of the Debtor, or has permitted such transfer, removal or concealment, with intent to hinder delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

52. The Debtor's discharge should be denied pursuant to 11 U.S.C. § 727(a)(2).

**VII. FOURTH CAUSE OF ACTION**  
**(11 U.S.C. § 727 - GS Jones Construction LLC)**

53. Plaintiff incorporates all prior allegations of this Complaint as if fully set forth herein.

54. Prior to June 2005, the Debtor, as a general contractor, did business under the name of "Gordon Jones Construction," an alleged partnership owned 70% by the Debtor and 30% by Barney, or an alleged LLC in which the Debtor was a 70% owner and Barney was 30% owner, or as a dba of the Debtor.

55. Regardless of the alleged structure of the business under which the Debtor operated as "Gordon Jones Construction," the Debtor maintained control of all operations

of the business and used funds from the business to pay for personal expenses and expenses associated with other properties or business owned by the Debtor, including the Franklin County Property, J&J Livestock (as a sole proprietorship or LLC), the West Bountiful Property, the Residential Property and the Apartments.

56. In June 2005, after the court ruled in the Plaintiff's favor and against the Debtor and Barney in the State Court Case, a company was created known as "GS Jones Construction, Inc."

57. The Debtor's son, Scott Jones, is alleged to be the owner and manager of GS Jones Construction, Inc.

58. GS Jones Construction, Inc., was created in the middle of construction projects being performed by Gordon Jones Construction and with substantial accounts receivable owed to Gordon Jones Construction.

59. The Debtor did not inform customers that any new business was created to finish the work of Gordon Jones Construction or that there was a new general contractor on the projects, and continued to do business exactly as it was done under Gordon Jones Construction.

60. GS Jones Construction, Inc., is not an entity separate and independent from the Debtor but is an alter ego entity of the Debtor used by the Debtor, or permitted to be used by the Debtor, during the year prior to the filing of the Debtor's bankruptcy, to transfer and conceal income and property of the Debtor with intent to hinder, delay or

defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

61. In the year prior to the filing of the Debtor's Petition in Bankruptcy, the Debtor, with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case, directed parties who owed accounts receivable to George Jones Construction which were property of the Debtor, to direct payment to GS Jones Construction, Inc., including, but not limited to, \$80,000.00 paid by Mr. and Mrs. Harry Sayama and approximately \$200,000.00 paid by Gregory and Suzanne Duce in or about September, 2005.

62. GS Jones Construction, Inc., pays a limited "salary" to the Debtor, and has done so since the entity was created in June 2005, as the Debtor understands that this "salary" may be (and has been) garnished by the Plaintiff and, instead, with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or the Trustee of the Debtor's bankruptcy case, the Debtor causes, or permits, GS Jones Construction, Inc., to pay funds of the Debtor to pay personal expenses of the Debtor, including, but not limited to, making payments to counsel who represented the Debtor in the State Court Case, and paying the "retainer" in the Debtor's bankruptcy case.

63. Upon information and belief, the Debtor causes or permits GS Jones Construction to transfer funds of the Debtor to third parties, including but not limited to, the Debtor's family members or entities owned or controlled by the Debtor or his family members, for ultimate use and benefit of the Debtor, with intent to hinder, delay or

defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

64. The Debtor's discharge should be denied pursuant to 11 U.S.C. § 727(a)(2).

**VIII. FIFTH CAUSE OF ACTION**  
**(11 U.S.C. § 727 - Other Transfers)**

65. Plaintiff incorporates all prior allegations of this Complaint as if fully set forth herein.

66. The Debtor, doing business as the Mountain View Apartments, collected rents from the rental of apartments in the Apartments.

67. After entry of the Judgment, the Plaintiff caused a Writ of Garnishment to be served to direct that rents be paid to the Plaintiff.

68. Thereafter, and within a year of the filing of the Debtor's bankruptcy case, with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case, the Debtor directed, or permitted to be directed, parties who rented apartment in the Apartments, or the manager of the Apartments, to transfer rental payments that were property of the Debtor directly to Linda Jones, the Debtor's spouse and which were then concealed by Linda Jones.

69. The Debtor collected firearms and maintained an antique firearm collection.

70. Upon information and belief, after entry of the Judgment, and within a year prior to the filing of the Debtor's bankruptcy case, the Debtor transferred, or permitted to be transferred, the firearms to the Debtor's children, with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case.

71. Upon information and belief, after entry of the Judgment, and within a year prior to the filing of the Debtor's bankruptcy case, with intent to hinder, delay or defraud the Plaintiff, as a creditor of the Debtor and/or to hinder, delay or defraud the Trustee of the Debtor's bankruptcy case, the Debtor transferred, or permitted to be transferred, cash, personal property and real property to the Debtor's spouse, Linda Jones, the Debtor's children, Scott Jones, Jason Jones and Cheryl Gudmunson or to entities owned or controlled by the Debtor, which transfers are yet unknown to the Plaintiff.

72. The Debtor's discharge should be denied pursuant to 11 U.S.C. § 727(a)(2).

**IX. SIXTH CAUSE OF ACTION**  
**(11 U.S.C. § 727 - False Oath)**

73. Plaintiff incorporates all prior allegations of this Complaint as if fully set forth herein.

74. In response to Questions 1 and 2 of the Statement of Financial Affairs filed by the Debtor in this case (the "Statements"), the Debtor stated that in the two years prior to the filing of the Debtor's petition in bankruptcy, the Debtor earned income of



\$2,538.34 from Gordon Jones Construction LLC and GS Jones Construction, Inc., and stated that the Debtor had no other income.

75. In Schedule I filed by the Debtor in this case, the Debtor represented that his income from employment is \$2,538.34 and that he has no other income.

76. In fact, in the two years prior to the filing of the Debtor's bankruptcy, the Debtor's income from both Gordon Jones Construction (whether as a partnership, a sole proprietorship or an LLC) was substantially more than \$2,538.34, and was often concealed in the form of payment of obligations of the Debtor (including, but not limited to, approximately \$23,000 paid in July and August 2005 to the Debtor's counsel in the State Court Action and \$20,000.00 paid to the Debtor's current bankruptcy counsel in April 2005) or to transfer to the Debtor's family members or business and investment ventures of the Debtor including the Apartments and J&J Livestock.

77. In the two years prior to the filing of the bankruptcy case, the Debtor had income from sources other than Gordon Jones Construction (whether as a partnership, a sole proprietorship or an LLC) and GS Jones Construction, Inc., including, but not limited to: (a) Rental from the condominium located at 1851 South Ridgewood Way, Bountiful, Utah, which generated approximately \$1,200.00 per month; (b) Income from the Apartments, which generated more than approximately \$500.00 per month for each of 16 apartments; (c) income from J&J Livestock (whether as a sole proprietorship or an LLC) which, in 2004, generated approximately \$60,000.00 and generated an unknown like sum

in 2005, and payments to third parties or to or for business and personal and investment ventures such as J&J Livestock.

78. The Debtor's income from GS Jones Construction is more than \$2,538.34 and he continues to have other sources of income, including, but not limited to, income from rentals and operations of J&J Livestock.

79. The representations made by the Debtor in response to Questions 1 and 2 in the Statements are false and were made knowingly and fraudulently, under oath, in connection with this bankruptcy case.

80. The representations made by the Debtor regarding his income in Schedule "I" filed in this bankruptcy case are false and were made knowingly and fraudulently, under oath, in connection with this bankruptcy case.

81. In response to Question 7 of the Debtor's Statements, the Debtor alleged that he had made no gifts in the year prior to the filing of bankruptcy.

82. In response to Question 10 of the Statements, the Debtor asserted that the only transfer of property made by the Debtor out of the ordinary course of business (apart from transfers made to a "self settled trust or similar device"), to any third party, was the transfer of the Water Stock.

83. In fact, in the year prior to filing of his bankruptcy, the Debtor either retained undisclosed interests in or made multiple "gifts" of personal property, including, but not limited to, livestock and equipment associated with J&J Livestock or J&J

Livestock LLC, which the Debtor now claims belong to his son, Jason Jones as well as gifts of firearms which the Debtor now claims are owned by his children.

84. In fact, the Debtor made multiple transfers outside the ordinary course of business in the two years prior to the filing of his bankruptcy case including, but not limited to: (a) transfers of property listed in ¶ 83 *supra*; (b) transfers of funds in bank accounts to his spouse, Linda Jones, as set forth in the First Cause of Action in this Complaint, *supra*; (c) transfer of \$300,000.00 held in a Wells Fargo bank account in the name of Gordon Jones Construction to a personal account in the names of the Debtor's spouse, Linda Jones and the Debtor's daughter, Cheryl Gudmunson; (d) transfer of accounts receivable owed to Gordon Jones Construction to GS Jones Construction LLC, as set forth in the Fourth Cause of Action in this Complaint *supra*; (e) transfers associated with J&J Livestock as set forth in the Third Cause of Action in this Complaint *supra*; and (f) transfers of rents from the Apartments to the Debtor's spouse.

85. The representations made by the Debtor in response to Questions 7 and 10 in the Statements are false and were made knowingly and fraudulently, under oath, in connection with this bankruptcy case.

86. In response to Question 11 on the Statements, the Debtor provides information regarding four (4) bank accounts that were closed in the year preceding the filing of the Debtor's bankruptcy.

87. In fact, upon information and belief, the Debtor closed (and transferred money from) other bank accounts not disclosed including, but not limited to, a bank account held at Wells Fargo Bank in the name of Gordon Jones Construction.

88. The representations made by the Debtor in response to Question 11 in the Statements are false and were made knowingly and fraudulently, under oath, in connection with this bankruptcy case.

89. In Schedule "B" filed by the debtor the Debtor discloses:

- (a) firearms with a value of \$300.00;
- (b) no interests in incorporated or non-incorporated businesses and an interest in only one partnership or joint venture – specifically, a 70% interest in Gordon Jones LLC;
- (c) four vehicles;
- (d) equipment used in business worth only \$1,000.00;
- (e) two animals (a bull and a horse);
- (f) four items of farming equipment;
- (g) no farming supplies; and
- (h) no other personal property of value.

90. The property disclosed by the Debtor in Schedule "B" filed in this bankruptcy case is incomplete and inaccurate for reasons including, but not limited to:

(a) the Debtor maintains a collection of firearms (or has transferred those firearms in a manner not disclosed), a gun safe and a slot machine;

(b) the Debtor holds undisclosed interests in entities including, but not limited to, J&J Livestock (or J&J Livestock LLC); the Mountain View Apartments; Gordon Jones Construction and GS Jones Construction LLC;

(c) the Debtor owns undisclosed interests in vehicles, including but not limited to, a Dodge truck;

(d) the Debtor, a general contractor, owns construction equipment used in business with a value that greatly exceeds \$1,000.00;

(e) the Debtor holds an undisclosed interest in cattle and pigs maintained on the West Bountiful Property and on the Franklin County Property;

(f) the Debtor holds an undisclosed interest in farming equipment including, but not limited to, two tractors, a bale wagon and wheel line sprinklers;

(g) the Debtor holds an undisclosed interest in farming supplies at the West Bountiful Property and the Franklin County Property;  
and

(h) the Debtor holds an undisclosed interest in building materials including, but not limited to, those stored at the West Bountiful Property.

91. The representations made by the Debtor in Schedule "B" filed in the instant bankruptcy case are false and were made knowingly and fraudulently, under oath, in connection with this bankruptcy case.

92. The Debtor's discharge should be denied pursuant to 11 U.S.C. § 727(a)(4).

**X. SEVENTH CAUSE OF ACTION**  
**(11 U.S.C. § 727 - Records)**

93. Plaintiff incorporates all prior allegations of this Complaint as if fully set forth herein.

94. From and after the entry of the Judgment, the Plaintiff has endeavored to obtain records and information from the Debtor regarding the Debtor's assets and financial condition.

95. The Debtor has consistently failed to provide records and much of the records thus far obtained by the Plaintiff have been obtained by subpoenas to third party sources.

96. The Debtor has concealed, destroyed, mutilated, falsified or failed to keep or preserve, records, including, but not limited to, documents evidencing purchases and sale of assets, personal accounting records, personal banking records, business accounting

records, business banking records, and documents evidencing personal and business income.

97. The Debtor's discharge should be denied pursuant to 11 U.S.C. § 727(a)(3).

**XI. SEVENTH CAUSE OF ACTION**  
**(11 U.S.C. § 727 - Concealment of Property)**

98. Plaintiff incorporates all prior allegations of this Complaint as if fully set forth herein.

99. Upon information and belief, since the filing of the Debtor's petition in bankruptcy the Debtor has transferred, removed, destroyed, mutilated, concealed, or has permitted to be transferred, removed, destroyed, mutilated or concealed property of the Debtor's bankruptcy estate, including, but not limited to, concealing income from operations on the Franklin County Property doing business under J&J Livestock or J&J Livestock LLC, with intent to hinder, delay or defraud the Plaintiff and/or the Trustee of the Debtor's bankruptcy case.

100. The Debtor's discharge should be denied pursuant to 11 U.S.C. § 727(a)(4).

**XII. NINTH CAUSE OF ACTION**  
**(11 U.S.C. § 523 - Malicious Injury)**

101. Plaintiff incorporates all prior allegations of this Complaint as if fully set forth herein.

102. Since the time that the Debtor learned that he may be liable to pay substantial damages to the Plaintiff, the Debtor has engaged in a pattern of transferring and concealing his property, and concealing, destroying or failing to maintain records that would reveal his property, with the express and malicious intent of injuring the Plaintiff by avoiding payment of any judgment and increasing the fees and costs associated with collection to a point beyond Plaintiff's ability to pay.

103. Since the entry of the Judgment, as a direct result of the Debtor's scheme to transfer and conceal property and the Debtor's concealment, destruction and/or failure to maintain records, the Plaintiff has incurred attorneys fees and costs associated specifically with reversing transfers of property, attempting to prevent the Debtor from further transfers and obtaining records regarding the Debtor's assets from third party sources, in an amount to be determined at trial, but in any event, not less than \$166,069.55 (the "Malicious Injury Damages").

104. The Malicious Injury Fees should be excepted from the Debtor's discharge pursuant to 11 U.S.C. § 523(a)(6).

WHEREFORE, Plaintiff respectfully requests this court enter its Order,

- (a) denying the Debtor's discharge pursuant to 11 U.S.C. § 727;
- (b) excepting the Malicious Injury Damages from the Debtor's discharge pursuant to 11 U.S.C. § 523;
- (c) for costs and attorney's fees as permitted by law; and



(d) for such other and further relief as the court deems just.

DATED this 28<sup>th</sup> day of July, 2006.

COHNE, RAPPAPORT & SEGAL, P.C.

/s/ Julie A. Bryan

Julie A. Bryan

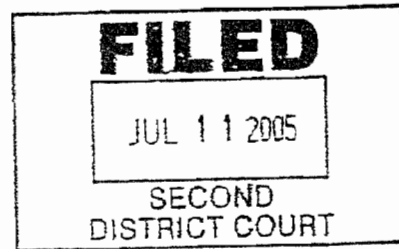
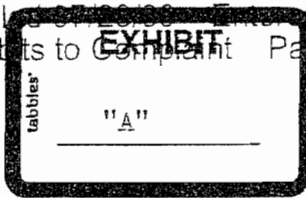
Attorneys for Allen F. Grazer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, First Class postage fully prepaid, in the United States Mail on the 28<sup>th</sup> day of July to the following:

United States Trustee  
Suite 100,  
Boston Building  
9 Exchange Place  
Salt Lake City, Utah  
84111

/s/ Lori Gutierrez



LINCOLN W. HOBBS, ESQ. (4848)  
MARGARET H. OLSON, ESQ. (6296)  
TAMARA K. PRINCE, ESQ. (5224)  
HOBBS & OLSON, L.C.  
Attorneys for Defendant/Counterclaim  
Plaintiff Allen F. Grazer  
525 South 300 East  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
FARMINGTON DEPARTMENT, STATE OF UTAH

GORDON JONES, an individual; and  
RICHARD BARNEY, an individual,

Plaintiffs,

v.

ALLEN GRAZER, an individual,

Defendant.

ALLEN F. GRAZER,

Counterclaim Plaintiff,

v.

GORDON A. JONES; and RICHARD  
BARNEY,

Counterclaim Defendants.

GORDON JONES, an individual; and  
RICHARD BARNEY, an individual;

Third Party Plaintiffs,

v.

JUDGMENT AGAINST  
COUNTERCLAIM DEFENDANTS  
GORDON A. JONES AND RICHARD  
BARNEY

Civil No. 020700570 CN

Judge Michael G. Allphin

4685 001 JudgmentsCounterclaim Defs

JUDGMENT ENTERED

BY 

Judgment against Counterclaim Defendants Gordon A



JD18539733

020700570

NU-TREND ELECTRIC COMPANY,

251

---

R W DESIGN, INC., a Utah corporation;  
ROBERT W. SPEIRS PLUMBING, INC.,  
a Utah corporation; SCOTT SESSIONS, an  
individual; and NU-TREND ELECTRIC  
COMPANY, a Utah corporation,

Third Party Defendants.

---

The above-entitled matter was tried before The Honorable Michael G. Allphin on April 26 through 29, 2005. Plaintiffs were represented by their counsel, David A. Van Dyke and Kent B. Scott; Defendant was represented by his counsel, Lincoln W. Hobbs and Tamara K. Prince.

Having heard the testimony, having reviewed the exhibits offered to and received by the Court, and having considered the law, and the Court having entered Findings of Fact and Conclusions of Law on June 17, 2005.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant Allen F. Grazer be awarded judgment against Gordon A. Jones and Richard Barney, jointly and severally, in the amount of \$1,585,000.00 plus additional consequential damages of \$40,669.97 for the contractor's fee, \$ 31,062.50 for payments to Vanel for repairs, \$9,968.41 for moving and storage expenses, \$133,512.61 for reasonable attorney's fees and costs through May 31, 2005, \$1,783.12 for direct legal costs through April 24, 2005, \$1,457.81 for direct legal costs after April 24, 2005, \$7,305.00 paid to expert Matthew Roblez, P.E., and prejudgment interest in the amount of \$75,968.45 through June 22, 2005 for a total amount of \$1,886,727.87;
2. Together with interest at the at the prejudgment rate accruing at the rate of \$70.59 until the date of judgment;

CERTIFICATE OF DELIVERY

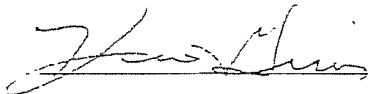
I hereby certify that on the 1 day of July, 2005, I caused a true and correct copy of the foregoing to be sent via facsimile and to be and mailed, first class, postage prepaid, to the following:

David A. Van Dyke, Esq.  
2900 West Highway 24  
Post Office Box 17  
Teasdale, UT 84773  
Attorney for Plaintiffs/Counterclaim  
Defendants/Third Party Plaintiffs  
Gordon A. Jones and Richard Barney  
FAX #435-425-3329

Kent B. Scott, Esq.  
BABCOCK, SCOTT & BABCOCK  
505 East 200 South, Suite 300  
Salt Lake City, UT 84102  
Co-Counsel for Plaintiffs/Counterclaim  
Defendants/Third Party Plaintiffs  
Gordon A. Jones and Richard Barney  
FAX #531-7060

Stephen F. Noel, Esq.  
SMITH KNOWLES P.C.  
4723 Harrison Blvd., Suite 200  
Ogden, UT 84403  
Attorneys for Third-Party Defendants  
R W Design, Inc. and Robert W. Speirs  
Plumbing, Inc.  
FAX #476-0399

Nu-Trend Electric Company  
57 West 200 North  
Bountiful, UT 84010  
Third-Party Defendant *Pro Se*  
Scott Sessions  
289 West Tobe Drive  
Centerville, UT 84014  
Third-Party Defendant *Pro Se*

  
\_\_\_\_\_

3. Together with post-judgment interest accruing at the judgment rate, until paid;

IT IS FURTHER ORDERED that this Judgment shall be augmented by reasonable costs and attorneys' fees expended in connection with efforts that have been incurred since May 31, 2005 and that are necessitated in collecting this Judgment by execution or otherwise as shall be established by Affidavit.

DATED this 7<sup>th</sup> day of July, 2005.

BY THE COURT:

Michael G. Alphin  
HON. MICHAEL G. ALPHIN  
District Court Judge

APPROVED AS TO FORM:

BABCOCK, SCOTT & BABCOCK

Kent B. Scott  
Kent B. Scott  
David A. Van Dyke  
Attorneys for Plaintiffs

STATE OF UTAH }  
COUNTY OF DAVIS } ss.

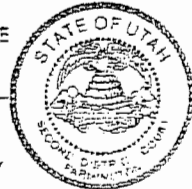
I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL ON FILE IN MY OFFICE.

DATED THIS 15 DAY OF July 2005

ALYSON E. BROWN  
CLERK OF THE COURT

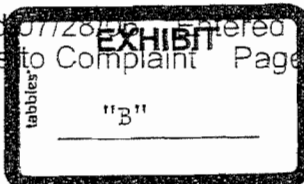
BY Alyson Brown DEPUTY

PAGE 3 OF 4



HOBBS & OLSON

Tamara K. Prince  
Lincoln W. Hobbs & Olsen  
Margaret H. Olson  
Tamara K. Prince  
Attorneys for Defendant



E 2071737 B 3783 P 1172  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
05/06/2005 03:24 PM  
FEE \$10.00 Pgs: 1  
DEP RT REC'D FOR SHAFFER LAW OFFIC  
ES

Mail Tax Notice To:  
Grantee

25 W. 1400 N

BTH

### QUIT-CLAIM DEED

LINDA G. JONES, Grantor of Bountiful, Davis County, State of Utah, hereby QUIT CLAIMS to THE LINDA G. JONES FAMILY PARTNERSHIP an undivided seventy per cent (70%) interest for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following described tract of land in Davis County, State of Utah:

BEGINNING AT A POINT 82.50 FEET WEST ALONG THE NORTH LINE OF A STREET FROM THE SOUTHEAST CORNER OF LOT 1, BLOCK 12, PLAT "A", FARMINGTON TOWNSITE CURVES, IN THE CITY OF FARMINGTON, THENCE WEST 32.5 FEET; THENCE NORTH 00°04'38" WEST 65.00 FEET; THENCE NORTH 45°02'19" WEST 42.46 FEET; THENCE WEST 85.00 FEET TO THE WEST LINE OF PROPERTY CONVEYED IN WARRANTY DEED IN BOOK 984 AT PAGE 838 IN THE RECORDS OF DAVIS COUNTY, UTAH; THENCE NORTH 00°04'38" WEST 153.86 FEET, MORE OR LESS, TO THE NORTH LINE OF LOT 2 OF SAID BLOCK 12; THENCE NORTH 89°59'37" EAST 263.00 FEET ALONG SAID NORTH LINE OF LOT 2 TO THE WEST LINE OF A STREET; THENCE SOUTH 00°04'38" EAST 156.00 FEET ALONG SAID STREET; THENCE WEST 115.00 FEET; MORE OR LESS, TO THE WEST LINE OF THE EAST HALF OF SAID LOT 1; THENCE SOUTH 00°04'38" EAST 92.89 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 07-031-0075

SUBJECT TO easements, restrictions, covenants and rights of way appearing of record or enforceable in law or equity.

WITNESS the hand of said Grantors this 6 day of May, 2005.

LINDA G. JONES

STATE OF UTAH :

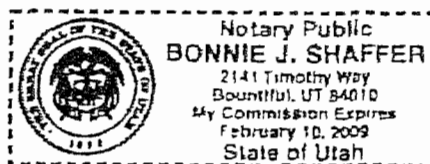
: ss :

COUNTY OF DAVIS :

On the 6 day of May, personally appeared before me LINDA G. JONES who duly acknowledged she is the signer of the foregoing Deed.

NOTARY PUBLIC

C:\OFFICE\Users\Gordon\QCD-G&R-LTOTRUST1.wpd



255

SE 14 2n-1w

RETURNED

MAY 06 2005

Mail Tax Notice To:  
Grantee

E 2071741 B 3783 P 1176  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
05/06/2005 03:24 PM  
FEE \$10.00 Pgs: 1  
DEP RT REC'D FOR SHAFFER LAW OFFIC  
ES

235 W 1400 N.

BTH

QUIT-CLAIM DEED

*See Sign*  
GORDON JONES CONSTRUCTION, of Bountiful, Davis County, State of Utah, hereby  
QUIT CLAIMS to LINDA G. JONES as to an undivided seventy percent (70%) interest and  
RENAE CARNON BARNEY as to an undivided thirty percent (30%) interest for the sum of TEN  
DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following  
described tract of land in Davis County, State of Utah:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2  
NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; BEGINNING  
AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING  
GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 33  
FEET; FT CENTER OF SAID SECTION 14, THENCE NORTH 89° 43' 58" EAST  
ALONG AN EXISTING FENCE 166.0 FEET; THENCE SOUTH 0° 21' 31" EAST  
502.14 FEET; THENCE WEST 169.17 FEET TO AN EXISTING FENCE;  
THENCE ALONG SAID EXISTING FENCE 501.35 FEET TO THE POINT OF  
BEGINNING.

PARCEL NO. 06-027-0006

SUBJECT TO easements, restrictions, covenants and rights of way appearing of  
record or enforceable in law or equity.

WITNESS the hand of said Grantors this 6 day of May, 2005.

*Gordon A. Jones*  
GORDON A. JONES dba  
GORDON JONES CONSTRUCTION

*Richard H. Barney*  
RICHARD H. BARNEY dba  
GORDON JONES CONSTRUCTION

STATE OF UTAH :  
: ss :  
COUNTY OF DAVIS :

On the 6 day of May, personally appeared before me GORDON A. JONES  
dba GORDON JONES CONSTRUCTION and RICHARD H. BARNEY dba GORDON  
JONES CONSTRUCTION who duly acknowledged they are the signers of the foregoing Deed.

*Bonnie J. Shaffer*  
NOTARY PUBLIC Notary Public  
BONNIE J. SHAFFER  
2141 Timothy Way  
Bountiful UT 84010  
My Commission Expires  
February 10, 2009  
State of Utah



RETURNED

MAY 06 2005

Mail Tax Notice To:  
Grantee

235W 1400N.

b4e

E 2071739 B 3783 P 1174  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
05/06/2005 03:24 PM  
FEE \$11.00 Pgs: 1  
DEP RT REC'D FOR SHAFFER LAW OFFIC  
ES

### QUIT-CLAIM DEED

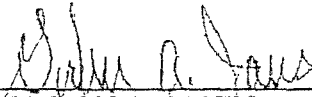
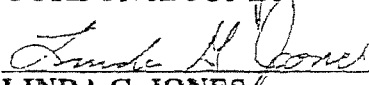

**GORDON A. JONES, LINDA G. JONES and RICHARD H. BARNEY**, of Bountiful, Davis County, State of Utah, hereby QUIT CLAIM to **LINDA G. JONES** as to an undivided seventy percent (70%) interest and **RENAE CARNON BARNEY** as to an undivided thirty percent (30%) interest for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following described tract of land in Davis County, State of Utah:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN: BEGINNING ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 33 FEET AND NORTH 89° 43' 58" EAST ALONG AN EXISTING FENCE LINE 366.02 FEET FROM THE CENTER OF SAID SECTION 14; THENCE SOUTH 89° 43' 58" WEST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 0° 21' 31" EAST 502.61 FEET; THENCE EAST 100 FEET ; THENCE NORTH 0° 21' 31" WEST 503.08 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 06-027-0008 0116, 0122, 0123



SUBJECT TO easements, restrictions, covenants and rights of way appearing of record or enforceable in law or equity.

WITNESS the hand of said Grantors this 6 day of May, 2005.

  
\_\_\_\_\_  
GORDON A. JONES  
  
\_\_\_\_\_  
LINDA G. JONES  
  
\_\_\_\_\_  
RICHARD H. BARNEY

STATE OF UTAH :  
: ss :  
COUNTY OF DAVIS :

On the 6 day of May, personally appeared before me **GORDON A. JONES, LINDA G. JONES and RICHARD H. BARNEY** who duly acknowledged they are the signers of the foregoing Deed.

  
\_\_\_\_\_  
NOTARY PUBLIC  
  
Notary Public  
**BONNIE J. SHAFFER**  
2141 Timothy Way  
Bountiful, UT 84010  
My Commission Expires  
February 10, 2009  
State of Utah

SE 14 2n-1w

*see sign*

RETURNED

MAY 06 2005

2071738 8 3783 P 1173  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
05/06/2005 03:24 PM  
FEE \$10.00 Pgs: 1  
DEP RT REC'D FOR SHAFFER LAW OFFICE

Mail Tax Notice To.  
Grantee

235 W 1400 N

Btlr 84010

**QUIT-CLAIM DEED**

**GORDON JONES CONSTRUCTION**, of Bountiful, Davis County, State of Utah, hereby QUIT CLAIMS to **LINDA G. JONES** as to an undivided seventy percent (70%) interest and **RENAE CARNON BARNEY** as to an undivided thirty percent (30%) interest for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following described tract of land in Davis County, State of Utah:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 399.02 FEET FROM THE CENTER OF SAID SECTION 14 AND RUNNING THENCE NORTH 89° 43' 58" EAST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 0° 21' 31" EAST 503.55 FEET; THENCE WEST 100 FEET; THENCE NORTH 0° 21' 31" WEST 503.08 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 06-027-0009 0118, 0124, 0125

SUBJECT TO easements, restrictions, covenants and rights of way appearing of record or enforceable in law or equity.

WITNESS the hand of said Grantors this 6 day of May, 2005.

*Gordon A. Jones*

**GORDON A. JONES dba  
GORDON JONES CONSTRUCTION**

*Richard H. Barney*

**RICHARD H. BARNEY dba  
GORDON JONES CONSTRUCTION**

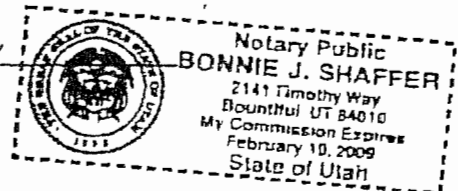
STATE OF UTAH :

: ss :

COUNTY OF DAVIS :

On the 6 day of May, personally appeared before me **GORDON A. JONES dba GORDON JONES CONSTRUCTION** and **RICHARD H. BARNEY dba GORDON JONES CONSTRUCTION** who duly acknowledged they are the signers of the foregoing Deed.

*Bonnie J. Shaffer*  
**NOTARY PUBLIC**



SE 14 21-1W

RETURNED,

MAY 06 2005

RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
05/06/2005 03:24 PM  
FEE \$11.00 Pgs: 1  
DEP RT REC'D FOR SHAFFER LAW OFFIC  
ES

Mail Tax Notice To  
Grantee

235W 1400N.

BIR 84010

## QUIT-CLAIM DEED

**GORDON A. JONES, LINDA G. JONES and RICHARD H. BARNEY**, of Bountiful, Davis County, State of Utah, hereby QUIT CLAIM to **LINDA G. JONES** as to an undivided seventy percent (70%) interest and **RENAE CARNON BARNEY** as to an undivided thirty percent (30%) interest for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following described tract of land in Davis County, State of Utah:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 33 FEET AND NORTH 89° 43' 58" EAST 166.02 FEET FROM THE CENTER OF SAID SECTION 14; THENCE NORTH 89° 43' 58" EAST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 0° 21' 31" EAST 502.61 FEET; THENCE WEST 100 FEET; THENCE NORTH 502.14 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 06-027-0007 0117, 0123

SUBJECT TO easements, restrictions, covenants and rights of way appearing of record or enforceable in law or equity.

WITNESS the hand of said Grantors this 6 day of May, 2005.

*Gordon A. Jones*  
GORDON A. JONES

*Linda G. Jones*  
LINDA G. JONES

*Richard H. Barney*  
RICHARD H. BARNEY

STATE OF UTAH :

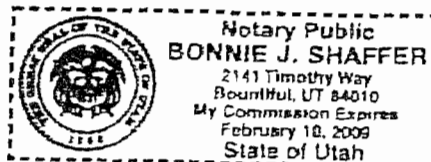
: ss :

COUNTY OF DAVIS :

On the 6 day of May, personally appeared before me **GORDON A. JONES, LINDA G. JONES and RICHARD H. BARNEY** who duly acknowledged they are the signers of the foregoing Deed.

*Bonnie J. Shaffer*  
NOTARY PUBLIC

C:\OFFICE\Users\Gordon\QCD-FARM31.wpd



259

Mail Tax Notice To:  
Grantee Linda Jones  
25 W 1400 N  
Htl

MAY 06 2005

E 2071736 B 3783 P 1171  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
05/06/2005 03:24 PM  
FEE \$10.00 Pgs: 1  
DEP RT REC'D FOR SHAFFER LAW OFFIC  
ES

### QUIT-CLAIM DEED

**GORDON A. JONES and RICHARD H. BARNEY**, Grantors of Bountiful, Davis County, State of Utah, hereby QUIT CLAIM to **LINDA G. JONES** an undivided seventy per cent (70%) interest and **RENAE CARNON BARNEY** an undivided thirty percent (30%) interest for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following described tract of land in Davis County, State of Utah:

BEGINNING AT A POINT 82.50 FEET WEST ALONG THE NORTH LINE OF A STREET FROM THE SOUTHEAST CORNER OF LOT 1, BLOCK 12, PLAT "A", FARMINGTON TOWNSITE CURVES, IN THE CITY OF FARMINGTON, THENCE WEST 32.5 FEET; THENCE NORTH 00°04'38" WEST 65.00 FEET; THENCE NORTH 45°02'19" WEST 42.46 FEET; THENCE WEST 85.00 FEET TO THE WEST LINE OF PROPERTY CONVEYED IN WARRANTY DEED IN BOOK 984 AT PAGE 838 IN THE RECORDS OF DAVIS COUNTY, UTAH; THENCE NORTH 00°04'38" WEST 153.86 FEET, MORE OR LESS, TO THE NORTH LINE OF LOT 2 OF SAID BLOCK 12; THENCE NORTH 89°59'37" EAST 263.00 FEET ALONG SAID NORTH LINE OF LOT 2 TO THE WEST LINE OF A STREET; THENCE SOUTH 00°04'38" EAST 156.00 FEET ALONG SAID STREET; THENCE WEST 115.00 FEET; MORE OR LESS, TO THE WEST LINE OF THE EAST HALF OF SAID LOT 1; THENCE SOUTH 00°04'38" EAST 92.89 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 07-031-0075

SUBJECT TO easements, restrictions, covenants and rights of way appearing of record or enforceable in law or equity.

WITNESS the hand of said Grantors this 6 day of May, 2005.

Gordon A. Jones  
GORDON A. JONES

Richard H. Barney  
RICHARD H. BARNEY

STATE OF UTAH :  
: ss :  
COUNTY OF DAVIS :

On the 6 day of May, personally appeared before me **GORDON A. JONES** and **RICHARD H. BARNEY** who duly acknowledged they are the signers of the foregoing Deed.

Bonnie J. Shaffer  
NOTARY PUBLIC  
Notary Public  
BONNIE J. SHAFFER  
2141 Timothy Way  
Bountiful UT 84010  
My Commission Expires  
February 10, 2009  
State of Utah

Mail Tax Notice To  
Grantee *tl*

25W 1400 N.  
BTH

RETURNED  
MAY 06 2005

E 2071735 B 3783 P 1170  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
05/06/2005 03:24 PM  
FEE \$11.00 Pgs: 1  
DEP RT REC'D FOR SHAFFER LAW OFFICE  
ES

### QUIT-CLAIM DEED

**GORDON A JONES and LINDA G. JONES**, Grantors of Bountiful, Davis County, State of Utah, hereby QUIT CLAIMS to **THE GORDON A. JONES and LINDA G. JONES as Trustees of THE GORDON A. JONES and LINDA G. JONES FAMILY TRUST** dated **October 14, 2004**, for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following described tract of land in Davis County, State of Utah:

All of Lot 147 Bay View Park Subdivision Plat E according to the official plat thereof

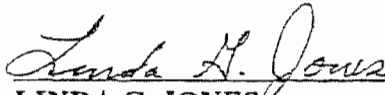
TAX SERIAL NO: 03-013-0147

ADDRESS: 235 West 1400 North Bountiful, Utah 84010

SUBJECT TO easements, restrictions, covenants and rights of way appearing of record or enforceable in law or equity.

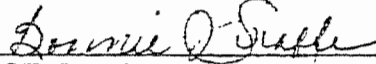
WITNESS the hand of said Grantors this 16 day of March, 2005.

  
GORDON A. JONES

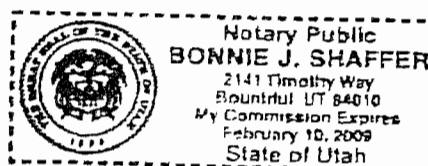
  
LINDA G. JONES

STATE OF UTAH :  
: SS :  
COUNTY OF DAVIS :

On the 16 day of March, personally appeared before me Gordon A. Jones and Linda G. Jones who duly acknowledged they are the signers of the foregoing Deed.

  
NOTARY PUBLIC

C:\OFFICE\Jones\Gordon\quit trust.wpd



Dave R. Gallafent  
Kent L. Hawkins  
**MERRILL & MERRILL, CHARTERED**  
109 North Arthur - 5th Floor  
P.O. Box 991  
Pocatello, ID 83204-0991  
(208) 232-2286  
(208) 232-2499 Telefax  
Idaho State Bar #1745, 3791

FILED  
09 JUL -2 AM 10: 01  
FRANKLIN COUNTY CLERK  
K. Jones  
DEPUTY

Attorneys for Defendant Linda G. Jones

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

|  |   |                                     |
|--|---|-------------------------------------|
| ALLEN F. GRAZER, an individual,          | ) |                                     |
|  | ) |                                     |
| Plaintiff,                               | ) | Case No. CV-05-183                  |
|  | ) |                                     |
| vs.                                      | ) |                                     |
|  | ) |                                     |
| GORDON A. JONES, an individual;          | ) | <b>DEFENDANT LINDA G. JONES'</b>    |
| LINDA G. JONES, an individual; J&J       | ) | <b>JOINDER IN MOTION TO DISMISS</b> |
| LIVESTOCK, LLC, a Utah limited liability | ) |                                     |
| company, and John Does, 1-10,            | ) |                                     |
|  | ) |                                     |
| Defendants.                              | ) |                                     |
| _____                                    | ) |                                     |

COMES NOW the Defendant, Linda G. Jones, by and through her counsel of record, Merrill & Merrill, Chartered, and hereby joins in Defendant, Gordon A. Jones' Motion to Dismiss. In addition to joining in the motion, Defendant Linda Jones submits the following arguments and claims made therein as support for her and Gordon Jones' dismissal.

Plaintiff's entire action is predicated on his desire to collect on a debt. Plaintiff was granted a judgment in the underlying matter against Gordon Jones, but not against Livestock, LLC and not against Linda Jones. The debt, which is the basis for this entire action, has now, by virtue of Mr. Jones' bankruptcy, been discharged and no collection can be attempted or continued. The effect of such discharge is that it "discharges the debtor from all debts that arose before the date of the order

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for relief under this chapter.” 11 U.S.C. §727(b). Plaintiffs had the opportunity to object to Mr. Jones’ discharge before it occurred and the case was closed, but he failed to do so. In allowing the discharge order to be entered without properly pursuing an objection through his adversary proceeding, Plaintiff has eliminated any claim upon which relief may be granted and any other plausible claim in the action at hand.

Plaintiff’s complaint in the matter before the court is based on the Uniform Fraudulent Transfer Act. As to remedies under that act, the code sets out that “in an action for relief against a transfer or obligation under this act, a *creditor*, subject to the limitations in § 55-917, may obtain . . .” Idaho Code § 55-916 (emphasis added). The code then lists such a creditor’s remedies. A creditor is defined quite simply as “a person who has a claim.” Idaho Code § 55-910(4). A claim, in turn, is defined as “a right to payment whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” Idaho Code § 55-910(3). There is no mention of a discharged right to payment. For purposes of the act under which Plaintiff brought suit, he is not now a creditor and cannot, therefore, continue his action under the Uniform Fraudulent Transfer Act. Indeed, the logical extension of this statute is that Plaintiff is no longer a creditor, and therefore lacks standing. Additionally, as set out in the arguments made by Gordon Jones regarding violation of bankruptcy law in continuing an action for collection of a discharged debt dictates that the entire cause of action should be dismissed.

Where the underlying debt and judgment are now nullified, clearly this dismissal would extend to all parties involved because Plaintiff is attempting to collect on a debt that no longer exists. It is important to note that neither Linda Jones nor Livestock, LLC appear on the judgment that is the basis for the collection. Since the action against them in the case at bar is based entirely on Plaintiff’s claim against Gordon Jones and since the bankruptcy discharge makes that claim no longer enforceable, there cannot be any further collection efforts against either Mrs. Jones or Livestock, LLC in this matter.

Plaintiff contends that the settlement agreement protects him from discharge. But, as articulated in Mr. Jones’ reply, this contention is either reckless or devious. A review of the settlement agreement and the order accompanying it, attached by Plaintiff to his memorandum, show the true nature of the agreement. Plaintiff correctly sets out that the agreement granted him relief from the automatic stay. This much is clear from the documentation available. Relief from stay

allows a creditor to pursue a claim for payment of his debt during the pendency of the bankruptcy. However, if a creditor would like to avoid the discharge of his debt, there is a different path that must be taken. Plaintiff was free to pursue collection of the debt following the entry of the order on this agreement, but he would have had to pursue the adversary proceeding he began and become an exception to the discharge in order to still be able to collect on his debt following the debtor's discharge. He has not done that.

Mr. Jones' motion for sanctions in this matter appears appropriate. The distinction between relief from stay and the court granting an objection to discharge is quite bright and should not be mistaken by any attorney. Surely, these attorneys understood the arguments they were making. Defendant Linda Jones joins in Defendant Gordon Jones' motion to dismiss and respectfully requests that such motions be granted.

DATED this 1 day of <sup>July</sup>~~June~~, 2009.

MERRILL & MERRILL, CHARTERED

By Kent L. Hawkins  
Kent L. Hawkins  
Attorneys for Defendant Linda G. Jones



## CERTIFICATE OF SERVICE

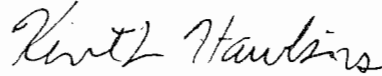
I, Kent L. Hawkins, the undersigned, one of the attorneys for the Defendant, Linda G. Jones, only, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing was this 1 day of <sup>Suly</sup>~~June~~, 2009, served upon the following in the manner indicated below:

Lincoln W. Hobbs  
Margaret H. Olson  
HOBBS & OLSON, L.C.  
466 E. 500 S., Ste #300  
Salt Lake City, Utah 84111

☒ U.S. Mail  
☐ Hand Delivery  
☐ Overnight Delivery  
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Lane V. Erickson  
Racine, Olson, Nye, Budge & Bailey, Chtd.  
P.O. Box 1391  
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Kent L. Hawkins

LINCOLN W. HOBBS (ID BAR # 07325)  
MARGARET H. OLSON (ID BAR #04680)  
Of Counsel  
HOBBS & OLSON, L.C.  
Attorneys for Plaintiff Allen F. Grazer  
466 East 500 South, Suite 300  
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Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

FILED  
09 JUL 22 AM 10:15  
FRANKLIN COUNTY CLERK  
K. Jones  
DEPUTY

IN THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR FRANKLIN COUNTY, STATE OF IDAHO

ALLEN F. GRAZER, an individual,  
Plaintiff,

v.

GORDON A. JONES, an individual; LINDA  
G. JONES, an individual; J&J LIVESTOCK,  
LLC, a Utah Limited Liability Company; and  
John Does 1-10.

Defendants.

**MEMORANDUM IN OPPOSITION TO  
LINDA G. JONES' JOINDER IN  
MOTION TO DISMISS**

Civil No. CV-2005-183

Judge Stephen S. Dunn

Plaintiff, Allen F. Grazer, by and through counsel, hereby respectfully submits this Memorandum in Opposition to the Defendant Linda G. Jones' Joinder in Motion to Dismiss ("Joinder").

The Defendant's Joinder seeks to have this Court dismiss claims against Linda G. Jones, who was not a party to Gordon A. Jones' bankruptcy, based solely upon the discharge of Mr. Jones as a debtor. The Plaintiff has, by separate Memorandum, set forth reasons why Mr. Jones himself should not be discharged; it is equally (perhaps even more clear) that the claims against Ms. Jones should not be dismissed based upon the discharge of Mr. Jones.

First, as is set forth in the Plaintiff's Memorandum in Opposition to Motion for

Sanctions, filed herewith, the discharge did not affect the Plaintiff's ability to pursue the claims against Gordon Jones' property, which are asserted in this action. In light of the arguments set forth therein, and the Plaintiff's unquestioned ability to pursue the judgment lien which was perfected well in advance of the bankruptcy, the claims against the co-debtor/spouse relating to the improper transfer of that property would not be discharged.

Furthermore, it is abundantly clear that a discharge does not provide benefit to a third party. In the case of FDIC v. Davis, 733 F.2d 1083 (4<sup>th</sup> Cir 1984), the Court reaffirmed that "Once a bankruptcy court case has been closed, creditors having unavowed liens on fraudulently conveyed property can pursue their state law remedies independently of the trustee in bankruptcy...a judgment lien is enforceable against property which the bankruptcy debtor has fraudulently conveyed, even where the lien was acquired within four months of the debtor's petition for bankruptcy, if the lien has not been avoided in the bankruptcy proceeding..." (internal citations omitted). In this case, the Plaintiff's liens against the Defendant's Idaho property were not set aside in the bankruptcy; in the absence of their having been set aside, they continue to exist, and the Plaintiff can pursue both the liens themselves and the fraudulent conveyances which were made in connection with the encumbered property.

Ms. Jones' arguments respecting the Uniform Commercial Code shed no light on the issues before the Court; the Plaintiff continues to have a valid and collectible claim arising from his lien, even though the personal liability of Gordon Jones has been discharged.<sup>1</sup>

---


<sup>1</sup> Ms. Jones and Mr. Jones both argue, speculatively, that the Plaintiff inadvertently allowed his adversary proceeding and the discharge to go forward. This speculation, which is entirely inadmissible, is simply untrue; there was no reason for the Plaintiff to continue pursuit of the adversary proceeding in the bankruptcy court when the Plaintiffs' rights to pursue these matters had been specifically released by the trustee in bankruptcy. Indeed, the Utah Court may likely not even had jurisdiction to determine the issues before this Court.

### CONCLUSION

Ms. Jones' arguments respecting the dismissal of the claims against her are unwarranted. The judgment against Gordon Jones remains valid and in effect and the Plaintiff has a right to pursue it; furthermore the Plaintiff clearly has a right to pursue the fraudulent transfers which were made to Ms. Jones prior to the bankruptcy. The bankruptcy is entirely irrelevant to the claims against Mr. Jones who was not a party to the bankruptcy and receives no benefit from the discharge thereof.

DATED this 20 day of July, 2009.

HOBBS & OLSON, L.C.

  
\_\_\_\_\_  
LINCOLN W. HOBBS  
MARGARET H. OLSON  
Attorneys for Plaintiff Allen F. Grazer

**CERTIFICATE OF DELIVERY**

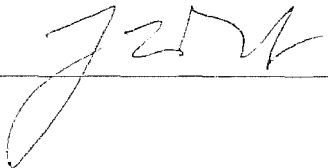
I hereby certify that on the 20 day of July, 2009, I caused a true and correct copy of the foregoing to be served on the following in the manner indicated:

Kent L. Hawkins  
MERRILL & MERRILL CHARTERED  
109 n Arthur – 5<sup>th</sup> Flr  
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Attorneys for Defendant Linda G. Jones

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☐ Fed Ex  
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Lane V. Erickson  
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Pocatello, ID 83204-1391  
Attorneys for Defendants Gordon A. Jones and  
J&J Livestock, LLC

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☐ Fax 801-621-4436  
☐ Fed Ex  
☐ Hand Delivery  
☐ Personally Served



FILED

09 JUL 22 AM 10:15

FRANKLIN COUNTY CLERK

K Jones

DEPUTY

LINCOLN W. HOBBS (ID BAR # 07325)  
MARGARET H. OLSON (ID BAR #04680)  
Of Counsel  
HOBBS & OLSON, L.C.  
Attorneys for Plaintiff Allen F. Grazer  
466 East 500 South, Suite 300  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

IN THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR FRANKLIN COUNTY, STATE OF IDAHO

ALLEN F. GRAZER, an individual,  
  
Plaintiff,

v.

GORDON A. JONES, an individual; LINDA  
G. JONES, an individual; J&J LIVESTOCK,  
LLC, a Utah Limited Liability Company; and  
John Does 1-10.

Defendants.

**PLAINTIFF'S MEMORANDUM IN  
OPPOSITION TO DEFENDANT  
GORDON A. JONES' MOTION FOR  
SANCTIONS**

Civil No. CV-2005-183

Judge Stephen S. Dunn

Plaintiff, Allen F. Grazer, respectfully submits this Memorandum in Opposition to the "Motion for Sanctions" which was filed in connection with Defendant Gordon A. Jones' Reply to the Motion to Dismiss.<sup>1</sup>

**STATEMENT OF ADDITIONAL FACTS**

1. Plaintiff filed his Complaint in this action on May 12, 2005 seeking to set aside fraudulent transfers.

<sup>1</sup> Plaintiff's counsel did not receive a copy of the Reply Memorandum via mail, as is set forth on the Certificate of Service; indeed Plaintiff's counsel became aware of the Reply and the Motion for Sanctions only after Plaintiff's counsel received a copy of Linda G. Jones' Joinder in the Motion, on July 6, 2009. At that time the Plaintiff's counsel contacted Defendant Gordon Jones' counsel; Defendant Gordon Jones' counsel and his secretary apologized for not providing a copy of the Reply Memorandum. Based upon the fact that the Reply Memorandum was not received until July 6, 2009, this Memorandum in Opposition to the Motion for Sanctions was not due until today.

2. On July 27, 2005, counsel for Plaintiff and Defendants entered into a Stipulation for Prejudgment Writ of Attachment and Injunctions.

3. On July 29, 2005, Plaintiff filed a Notice of Filing Foreign Judgment.

4. Defendant's Prejudgment Writ of Attachment and Injunctions was entered on August 22, 2005.

5. A copy of the Plaintiff's Utah Judgment against the Defendants was recorded in Franklin County on September 23, 2005 at 3:15 p.m. (Exhibit "A.")

## **ARGUMENT**

### **POINT I**

The Plaintiff, in response to the Defendant's Motion to Dismiss, provided the Court with a copy of the underlying Parties Settlement Agreement and Bankruptcy Order of the Utah Bankruptcy Court which released all of the Plaintiff's claims against the Defendant Gordon A. Jones from the possession of the bankruptcy trustee and abandoned them to the Plaintiff. Plaintiff assumed that the filing of that document would put the issue of Defendant Gordon Jones' bankruptcy to rest; ironically it resulted in the filing of an unwarranted and speculative argument by the Defendant that the Plaintiff had somehow abandoned his rights and claims against Defendant Gordon Jones.

The Defendant's argument suggests that "Plaintiff's attorneys failed to meet certain deadlines in the bankruptcy case," (Defendant's Memo at 5) and speculates thereon that that was an oversight. It ignores, however, that the Utah adversary proceeding became unnecessarily duplicative of this action and a pending fraudulent transfer action in the State of Utah, both of which had been specifically approved by and affirmed by the Utah Bankruptcy Court. Nothing

in any of the Bankruptcy Court's orders suggests that the Plaintiff's right to pursue those claims somehow expired with the discharge; indeed even in the absence of the agreement which was referenced the Plaintiff would still have a right to pursue his perfected judgment. See, Point II below.

The purpose for the filing of the adversary proceeding in the bankruptcy court was to establish the potential for non-discharge of the Plaintiff's personal claims against Gordon Jones. Plaintiff's counsel filed the action in that proceeding, before the trustee had abandoned virtually all of Gordon Jones' estate; at that time it was assumed that the Plaintiff may wish to pursue Gordon Jones personally for the debt. It was also revealed during the course of the bankruptcy, however, that Mr. Jones had retired; in light of the fact that all of his property was abandoned by the trustee, it became apparent that there was no reason to seek an ability to collect against him personally.<sup>2</sup>

## **POINT II**

### **THE DISCHARGE DOES NOT AFFECT THE JUDGMENT**

The Plaintiff's initial Memorandum did not devote time or effort to respond to the improper legal arguments presented by the Defendant's initial Motion to Dismiss based upon the fact that the settlement agreement seemed to clearly establish Plaintiff's right to proceed. The existence of the Motion for Sanctions, however, coupled with the Defendant's misreading of bankruptcy law, necessitates that the Plaintiff point out the fact that Idaho law is absolutely clear in establishing that a judgment which is not set aside, can be pursued following the bankruptcy

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<sup>2</sup> Should it subsequently be determined that Mr. Jones had assets that were not abandoned, good cause would likely exist to reopen the bankruptcy based upon the fraudulent statements made therein.



discharge of a debtor's personal liability. In the case of Johnson v. Minidoka County, 386 BR 272 (D Ida 2008), the Idaho bankruptcy court affirmed the fact that the State of Idaho, which had a not-yet perfected lien for Medicaid reimbursement, was not precluded, following the discharge of the debtor, from pursuing the liens which it held against the debtor. The Idaho court set forth the clear law under Sec. 524 of the Bankruptcy Code:

A discharge in bankruptcy affects only a debtor's personal liability on a debt... 'Valid perfected liens that have not been disallowed or avoided survive the bankruptcy discharge of the underlying debt...' 'So long as the creditor is not collecting the debt as a personal liability of the debtor, there is no violation under Section 524(a)(2) (Id. at 281) (internal citations omitted).'


The only effect of the debtor's discharge in bankruptcy is to establish that the Plaintiff cannot pursue him individually; the Plaintiff in this action does not seek to do so. Rather the Plaintiff only seeks to enforce the judgment lien which he obtained upon Defendant's property prior to filing of bankruptcy and which was not set aside by the trustee. In fact, as was set forth in the settlement agreement, that property was expressly abandoned to the Plaintiff by the trustee.

### CONCLUSION

The Defendant's Motion to Dismiss in this case is unwarranted under Idaho law, as is the Motion for Sanctions. The Defendant's Motion to Dismiss ignores clear Idaho precedent establishing Plaintiff's right to pursue the Defendant, and ignores the effect of the settlement agreement in this case; if sanctions are warranted at all, they would be warranted against the Defendant's counsel whose arguments are contrary to law and based upon unwarranted speculation and inadmissible conclusions.

DATED this 20 day of July, 2009.

HOBBS & OLSON, L.C.

  
\_\_\_\_\_  
LINCOLN W. HOBBS  
MARGARET H. OLSON  
Attorneys for Plaintiff Allen F. Grazer

**CERTIFICATE OF DELIVERY**

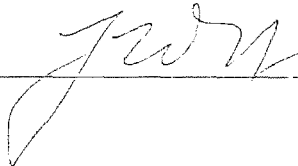
I hereby certify that on the 29 day of July, 2009, I caused a true and correct copy of the foregoing to be served upon the following in the manner indicated:

Kent L. Hawkins  
MERRILL & MERRILL CHARTERED  
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Pocatello, ID 83204-0991  
Attorneys for Defendant Linda G. Jones

☐ Email  
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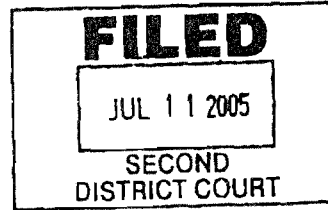
Lane V. Erickson  
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P.O. Box 1391  
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Attorneys for Defendants Gordon A. Jones and  
J&J Livestock, LLC

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[ltz@racinelaw.net](mailto:ltz@racinelaw.net)  
☒ Mail  
☐ Fax 801-621-4436  
☐ Fed Ex  
☐ Hand Delivery  
☐ Personally Served



# EXHIBIT “A”

231395 1-4



LINCOLN W. HOBBS, ESQ. (4848)  
MARGARET H. OLSON, ESQ. (6296)  
TAMARA K. PRINCE, ESQ. (5224)  
HOBBS & OLSON, L.C.  
Attorneys for Defendant/Counterclaim  
Plaintiff Allen F. Grazer  
525 South 300 East  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
FARMINGTON DEPARTMENT, STATE OF UTAH

GORDON JONES, an individual; and  
RICHARD BARNEY, an individual,

Plaintiffs,

Y.

ALLEN GRAZER, an individual,

Defendant.

ALLEN F. GRAZER.

Counterclaim Plaintiff.

4.

GORDON A. JONES; and RICHARD  
BARNEY.

Counterclaim Defendants.

GORDON JONES, an individual; and  
RICHARD BARNEY, an individual;

Third Party Plaintiffs.

4.

**JUDGMENT AGAINST  
COUNTERCLAIM DEFENDANTS  
GORDON A. JONES AND RICHARD  
BARNEY**

Recorded at the request of

HOBBS & OLSON

\_\_\_\_a.m. SEP 23 2005 p.m. <sup>3:15</sup>\_\_\_\_\_

V. ELLIOTT LARSEN, RECORDER  
By Shauna Geddes Deputy  
FRANKLIN COUNTY, IDAHO

Civil No. 020700570 CN

Judge Michael G. Allphin

4685 *Journal of Management Studies* 36(26)

JUDGMENT ENTERED

BY   X  

**Judgment against Counterclaim Defendants Gordon &**



JD18539733

020700570

NU-TREND ELECTRIC COMPANY.

R W DESIGN, INC., a Utah corporation;  
ROBERT W. SPEIRS PLUMBING, INC.,  
a Utah corporation; SCOTT SESSIONS, an  
individual; and NU-TREND ELECTRIC  
COMPANY, a Utah corporation.

Third Party Defendants.

The above-entitled matter was tried before The Honorable Michael G. Allphin on April 26 through 29, 2005. Plaintiffs were represented by their counsel, David A. Van Dyke and Kent B. Scott; Defendant was represented by his counsel, Lincoln W. Hobbs and Tamara K. Prince.

Having heard the testimony, having reviewed the exhibits offered to and received by the Court, and having considered the law, and the Court having entered Findings of Fact and Conclusions of Law on June 17, 2005.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant Allen F. Grazer be awarded judgment against Gordon A. Jones and Richard Barney, jointly and severally, in the amount of \$1,585,000.00 plus additional consequential damages of \$40,669.97 for the contractor's fee, \$ 31,062.50 for payments to Vanel for repairs, \$9,968.41 for moving and storage expenses, \$133,512.61 for reasonable attorney's fees and costs through May 31, 2005, \$1,783.12 for direct legal costs through April 24, 2005, \$1,457.81 for direct legal costs after April 24, 2005, \$7,305.00 paid to expert Matthew Roblez, P.E., and prejudgment interest in the amount of \$75,968.45 through June 22, 2005 for a total amount of \$1,886,727.87;

2. Together with interest at the at the prejudgment rate accruing at the rate of \$70.59 until the date of judgment;

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7-13-2005 09:08CERTIFICATE OF DELIVERY

I hereby certify that on the 1 day of July, 2005, I caused a true and correct copy of the foregoing to be sent via facsimile and to be and mailed, first class, postage prepaid, to the following:

David A. Van Dyke, Esq.  
2900 West Highway 24  
Post Office Box 17  
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Defendants/Third Party Plaintiffs  
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FAX #435-425-3329

Kent B. Scott, Esq.  
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Co-Counsel for Plaintiffs/Counterclaim  
Defendants/Third Party Plaintiffs  
Gordon A. Jones and Richard Barney  
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Stephen F. Noel, Esq.  
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Plumbing, Inc.  
FAX #476-0399

Nu-Trend Electric Company  
57 West 200 North  
Bountiful, UT 84010  
Third-Party Defendant *Pro Se*  
  
Scott Sessions  
289 West Tobe Drive  
Centerville, UT 84014  
Third-Party Defendant *Pro Se*





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09 JUL 31 PM 2:28

FRANKLIN COUNTY CLERK

*L Hampton*  
DEPUTY

*Lincoln W. Hobbs (ID Bar #7325)*

MARGARET H. OLSON (ID BAR #04680)

Of Counsel

HOBBS & OLSON, L.C.

Attorneys for Plaintiff Allen F. Grazer

525 South 300 East

Salt Lake City, Utah 84111

Telephone: (801) 519-2555

Facsimile: (801) 519-2999

IN THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR FRANKLIN COUNTY, STATE OF IDAHO

ALLEN F. GRAZER, an individual,

Plaintiff,

v.

GORDON A. JONES, an individual;  
LINDA G. JONES, an individual;  
JASON JONES, an individual, J&J  
LIVESTOCK, LLC, a Utah Limited  
Liability Company; and John  
Does 1-10,

Defendants.

~~(Proposed)~~ AMENDED COMPLAINT

Case No. CV-2005-183

Judge Don L. Harding

Plaintiff hereby complains of Defendants as follows:

1. This is an action under the Uniform Fraudulent Transfer Act, Title 55, Chapter 9 of the Idaho Code. In anticipation of judgment, Defendants Gordon A. and Linda G. Jones formed a limited liability company and transferred real property located in Franklin County, Idaho to that LLC. This action seeks to avoid the transfer, attach the property and enjoin further

disposition by Defendants of the Franklin County property or of other property.

2. In further anticipation of that Judgment, Gordon A. Jones transferred 66 water shares in the Twin Lakes Canal Company to his wife Linda G. Jones and Jason Jones. This action also seeks to avoid the transfer of water shares and attach the property.

#### PARTIES AND JURISDICTION

3. Plaintiff Allen Grazer is an individual residing in Missoula County, State of Montana.

4. Defendants Gordon A. Jones and Linda G. Jones (collectively "Jones") are husband and wife residing in Davis County, State of Utah. Gordon and Linda own real property in Franklin County, State of Idaho "the Franklin County property." Gordon and Linda acquired the Franklin County property by Warranty Deed dated November 8, 2002.

5. In connection therewith, Gordon A. Jones obtained 66 shares in the Twin Lakes Canal Company on April 2, 2003 ("the water shares").

6. Defendant Jason Jones is the son of Gordon and Linda. Jason Jones is a resident of Franklin County, Idaho and lives on

the Franklin County property owned by his parents.

7. Defendant J&J Livestock, LLC is a Utah Limited Liability Company in good standing in the state of Utah. On information and belief, J&J Livestock, LLC does business in Franklin County, State of Idaho.

8. Jurisdiction over Defendants is proper under I.C. 5-514c(c).

9. Venue is proper in this county under I.C. 5-401(1).

GENERAL ALLEGATIONS

10. Beginning in 2002, Jones owned over 200 acres of land in Franklin County, Idaho. These parcels are identified as Parcels Nos. 908.00, 908.01 and 915.00 with the legal description:

COMMENCING AT A POINT 53-3/4 RODS NORTH OF THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 38 EAST OF THE BOISE MERIDIAN, FRANKLIN COUNTY, IDAHO, AND RUNNING THENCE WEST 240 RODS, THENCE NORTH 53-3/4 RODS, THENCE EAST 240 RODS; THENCE SOUTH 53-3/4 RODS TO THE PLACE OF BEGINNING.

EXCEPTING AND RESERVING A RIGHT-OF-WAY FOR ANY AND ALL IRRIGATION DITCHES AND CANALS, AND PUBLIC ROADS NOW EXISTING OR IN USE UPON AND ACROSS SAID PREMISES, AND EXCEPTING AND RESERVING THEREFROM A STRIP OF LAND 3 RODS WIDE ALONG THE EAST SIDE OF THE ABOVE-DESCRIBED LAND.

ALSO, THE SOUTH HALF OF THE SOUTHWEST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER,

AND THE SOUTHWEST QUARTER OF THE SOUTHEAST  
QUARTER OF SECTION 34, TOWNSHIP 14 SOUTH, RANGE  
38 EAST OF THE BOISE MERIDIAN, FRANKLIN COUNTY,  
IDAHO.

TOGETHER WITH 36 SHARES OF THE CAPITAL STOCK OF  
TWIN LAKES CANAL COMPANY.

(hereinafter "the Franklin County property").

11. Commencing in 1993 Jones, as general contractor, built a home for Grazer, the Plaintiff in this case, in Davis County, Utah.

12. On November 1, 2002 Jones initiated litigation against Grazer seeking to collect approximately \$17,000 of unpaid invoices. Grazer counterclaimed alleging construction defects, negligence and breaches of contract and warranty. This action is known as *Gordon Jones and Richard Barney v. Allen Grazer*, Second District Court, Davis County, Farmington Department, State of Utah, Case No. 020700570 CN ("the civil case").

13. The parties commenced the discovery phase of the civil case. In late 2004 Grazer and his experts began to discuss significant construction defects in the home, and began advising counsel for Gordon Jones of the severity of these defects.

14. On December 15, 2004, the Judge in the civil case sent a notice of trial, scheduling the matter for trial on April 26-29,

2005.

15. On December 22, 2004 Jones transferred, by quit claim deed, the Franklin County property to J&J Livestock, LLC. See Exhibit "A" ("the quit claim deed"). The deed was recorded on December 27, 2004.

16. J&J Livestock, LLC was formed in the state of Utah on December 28, 2004.

17. On March 7, 2005 Gordon Jones transferred the water shares to his wife and son, Linda and Jason Jones.

18. The Jones made other transfers in the State of Utah relating to significant assets in the State of Utah during this same time period.

19. On April 26-29, 2005 Judge Alphin of the Second District Court in Utah heard the civil case. On April 26, 2005 Judge Alphin dismissed the claims brought by Jones and ruled in favor of Grazer on Jones' claims. On April 29, 2005 Judge Alphin declared his preliminary intention to award judgment in favor of Grazer and against Jones on Grazer's counterclaim. Judgment was entered on July 7, 2005 in the amount of \$1,886,727.87. See Exhibit "B" hereto.

20. Beginning immediately after the trial, Grazer began to

discover that the defendants in the civil case had been transferring assets to insiders. On May 18, 2005 Grazer filed a fraudulent transfer action in Utah for transfers occurring in that jurisdiction. See Exhibit "C" hereto. On May 11, 2005 Grazer filed this action for transfers occurring in Idaho. See Complaint dated May 11, 2005.

21. On the advice of counsel, many of the transfers involved in the Utah and Idaho fraudulent transfer cases were "undone." As a part of this, the Franklin County property was deeded back to Gordon and Linda Jones.

22. Defendants claimed at the time of trial that no water rights existed for the Franklin County property. Since that time the existence of the water shares, and the fraudulent conveyance of the water shares to insiders has been confirmed.

23. On September 23, 2005 the Judgment from the Utah case was docketed and recorded in the Franklin County Recorder's Office and became a lien upon the Franklin County property.

FIRST CLAIM FOR RELIEF  
(Declaratory Judgment)

24. Grazer realleges and incorporates by reference paragraphs 1 - 20 above.

25. The quit claim deed from Jones to J&J Livestock, LLC was recorded on December 27, 2004.

26. J&J Livestock, LLC did not exist until December 28, 2004.

27. The quit claim deed, which purports to transfer all right, title and interest in the Franklin County property is void ab initio.

28. This court has the power under the Uniform Declaratory Judgment Act, I.C. 10-1201 et seq. to declare the deed void and to declare title to the Franklin County property remained at all times in the Jones, grantors under the quit claim deed.

SECOND CLAIM FOR RELIEF  
(Uniform Fraudulent Transfer Act)

29. Grazer realleges and incorporates by reference paragraphs 1 - 28 above.

30. As manager, member and registered agent, Jones materially controls, and at all times material hereto has controlled, J&J Livestock, LLC.

31. J&J Livestock, LLC was formed for the purpose of holding title to the Franklin County property.

32. Jones' quit claim deed to J&J Livestock, LLC was made at

a time in discovery when Jones became aware of the extent of his potential and likely liability to Grazer.

33. Jones' transfer of the water shares to his wife and son on March 7, 2005 was made at a time in discovery when Jones became aware of the extent of his potential and likely liability to Grazer.

34. Jones transferred the Franklin County property to J&J Livestock, LLC and transferred the water shares to his wife and son with actual intent to hinder, delay and defraud Grazer in the collection of a judgment.

35. At the time of the quit claim deed and transfer of water shares, Jones had received Grazer's expert's report, was facing a trial date on Grazer's claims and believed or reasonably should have believed that a judgment was imminent.

36. On information and belief, Jones did not receive a reasonably equivalent value in exchange for the transfer to J&J Livestock, LLC and did not receive a reasonably equivalent value in exchange for the transfer to his wife and son of the water shares.

37. Grazer is entitled to an avoidance of the transfers of the Franklin County property and the water shares to the extent



necessary to satisfy his judgment.

38. This Court should attach the Franklin County property and the water shares pursuant to I.C. 55-916(b) and I.C. 8-505.

39. Defendants and each of them should be enjoined from further disposing of property, real and personal, held in Franklin County, State of Idaho.

WHEREFORE Plaintiff prays for relief as follows:

1. For a declaratory order declaring the quit claim deed void ab initio and vesting title to the Franklin County property in Jones.

2. For judgment avoiding the transfer of the Franklin County property from Jones to J&J Livestock, LLC under the Uniform Fraudulent Transfer Act, I.C. 55-916(a).

3. For judgment avoiding the transfer of the water shares from Jones to his wife and son under the Uniform Fraudulent Transfer Act, I.C. 55-916(a).

4. For a writ of attachment attaching the Franklin County property to satisfy Grazer's judgment against Jones.

5. For a writ of attachment attaching the water shares to satisfy Grazer's judgment against Jones.

6. For an injunction prohibiting Jones, J&J Livestock, LLC

and each of them from further disposing of property, real and personal held in Franklin County, State of Idaho.

7. For an order of execution against the Franklin County property and the water shares in satisfaction of the Judgment in the civil case.

8. For attorneys' fees and costs pursuant to (I.C. 12-121, 10-1201) and the parties' contract.

9. For such other and further relief as this Court deems just and equitable.

DATED this 31 day of July, ~~2005~~ 2008

HOBBS & OLSON, L.C.

MARGARET H. OLSON, ESQ. #7325  
Of Counsel  
Attorneys for Plaintiff  
Allen F. Grazer

Plaintiff's address:

Allen F. Grazer  
c/o Hobbs & Olson, L.C.  
466 East 500 South  
Salt Lake City, UT 84111

FILED

09 AUG 21 PM 12:15

FRANKLIN COUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

*Hampton*  
DEPUTY

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

\*\*\*\*\*

ALLEN F. GRAZER, an individual,

Plaintiff,

Case No. CV-05-183

vs

MINUTE ENTRY AND ORDER

GORDON A. JONES, an individual;  
LINDA G. JONES, an individual; J&J  
LIVESTOCK, LLC, a Utah limited  
Liability company, and John Does, 1-10,

Defendant.

**DATE:** August 10, 2009**COURT REPORTER:** Stephanie Morse**APPEARANCES:** Lincoln Hobbs, Attorney for Plaintiff  
Lane Erickson, Attorney for Defendant  
Dave Gallafant, Attorney for Defendant**MATTER BEFORE THE COURT:** Motion to Dismiss

**PROCEEDINGS:** This matter came before the Court as regularly scheduled for hearing on Mr. Erickson's Motion to Dismiss. The Court advised the parties of the Court's association with Mr. Dave Gallafant. The parties voiced no concerns. Mr. Erickson presented argument on his motion with responses from Mr. Hobbs. The Court has concerns about the sequence of filing the documents in this case. There is no Amended Complaint filed. The Court took a brief recess for the parties to review the file. After the recess Mr. Hobbs filed his Amended Complaint. Mr. Erickson

requested a continuance on this matter due to the late filing of the Amended Complaint. Mr. Hobbs objected to the continuance. Mr. Gallafant concurred with Mr. Erickson in his request for a continuance.

The Court vacated the hearing taking issue of the cost of today's hearing under advisement and shall address this later. It is further ordered that Mr. Erickson shall notice back up his motion. Mr. Erickson noted that there are no exhibits attached and Mr. Hobbs will provide those exhibits. Once documents are filed the Court shall send out the standard form for getting it on the Court's calendar for trial.

DATED 31<sup>st</sup> day of July, 2009.



DAVID C. NYE  
District Judge

**CERTIFICATE OF MAILING/SERVICE**

I hereby certify that on the 21 day of August, 2009, I mailed/served/faxed a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):

Method of Service:

Lincoln W. Hobbs  
Attorney for Plaintiff

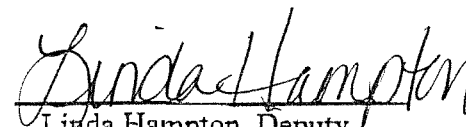
Faxed: (801) 519-2999

Lane V. Erickson  
Attorney for Defendant G. Jones

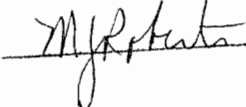
Faxed: 232-6109

Dave Gallafant  
Attorney for Defendant L. Jones

Faxed: 232-2499

BY:   
Linda Hampton, Deputy

LINCOLN W. HOBBS (ID BAR #07325)  
MARGARET H. OLSON (ID BAR #04680)  
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FILED  
09 NOV -4 AM 10:09  
FRANKLIN COUNTY CLERK  
  
DEPUTY

IN THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR FRANKLIN COUNTY, STATE OF IDAHO

ALLEN F. GRAZER, an individual,  
Plaintiff,

v.

GORDON A. JONES, an individual; LINDA  
G. JONES, an individual; J&J LIVESTOCK,  
LLC, a Utah Limited Liability Company; and  
John Does 1-10,  
Defendants.

**MOTION TO FILE SECOND AMENDED  
COMPLAINT**

**Hearing Requested**

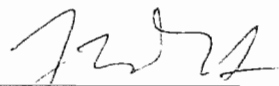
Civil No. CV-2005-183

Judge David C. Nye

Plaintiff Allen F. Grazer, by and through counsel and pursuant to Idaho R. Civ. P. 15(a),  
moves the Court for leave to file its Second Amended Complaint attached hereto. This motion is  
based on the Memorandum of Points and Authorities filed herewith.

DATED this 2 day of <sup>November</sup> ~~October~~, 2009.

HOBBS & OLSON, L.C.

  
\_\_\_\_\_  
LINCOLN W. HOBBS  
MARGARET H. OLSON  
Attorneys for Plaintiff Allen F. Grazer

**CERTIFICATE OF DELIVERY**

I hereby certify that on the 2 day of <sup>Nov</sup>~~October~~, 2009, I caused a true and correct copy  
of the foregoing to be served upon the following in the manner indicated:

Kent L. Hawkins  
MERRILL & MERRILL CHARTERED  
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☐ Email  
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☐ Fax 208-232-2499  
☐ Fed Ex  
☐ Hand Delivery  
☐ Personally Served

Lane V. Erickson  
RACINE, OLSON, NYE, BUDGE & BAILEY  
CHARTERED  
P.O. Box 1391  
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J&J Livestock, LLC

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