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 10 Chapter 11 Trustee

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 ND01-11549RR

DEBTOR:
 SLATKIN, REED E
 JUDGE: HON. R. Riblet - 464
 TRUSTEE:
 CHAPTER: 11 AD02-01164

CLERK, U.S. BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIF. ID: 302
 RECEIPT NO: ND-004189 \$ 150.00

11 **UNITED STATES BANKRUPTC**
 12 **CENTRAL DISTRICT OF CAL**
 13 **NORTHERN DIVISION**

14 In re
 15 REED E. SLATKIN,

16 Debtor.

CASE NO. ND 01-11549-RR

CHAPTER 11

A.P. NO. 02-1164

**COMPLAINT ON CLAIMS TO SET
 ASIDE AND RECOVER
 FRAUDULENT TRANSFERS, TO
 SET ASIDE AND RECOVER
 PREFERENTIAL PAYMENTS, AND
 FOR TURNOVER [WITH EXHIBITS]**

17 R. TODD NEILSON, Trustee of the
 18 Chapter 11 Bankruptcy Estate of Reed E.
 19 Slatkin,

[Date and time to be set by Court.]

~~Bankruptcy Court~~ **SEP 24 2002**
 Date: **OCT 24 2002**
 Time: **10:00 AM**
 Place: **Santa Barbara, CA 93101**
 [Judge Riblet]

Hrg: **DEC 20 2002 at 10:00 AM**

20 Plaintiff R. Todd Neilson, trustee of the chapter 11 bankruptcy estate of Reed E.
 21 Slatkin, alleges:

22 **JURISDICTION AND VENUE**

23 1. This Court has jurisdiction under 28 U.S.C. §§ 157 and 1334(b) of the
 24 subject matter of this proceeding because the claims asserted herein arise under Title
 25 11 of the United States Code and are related to a case pending under Title 11 in the

1 United States Bankruptcy Court for the Central District of California, Northern
2 Division (the "Bankruptcy Court"). That case is In re Reed E. Slatkin, Bk. Case No.
3 ND 01-11549-RR (the "Slatkin Case").

4 2. This is a core proceeding under 28 U.S.C. § 157(b). Regardless of
5 whether this is a core proceeding, consent is hereby given to the entry of final orders
6 and judgment by the Bankruptcy Court. Each defendant is hereby notified that
7 Fed.R.Bankr.P. 7008(a) requires each defendant to plead whether this proceeding is
8 core or non-core and, if non-core, whether consent is given to the entry of final orders
9 and judgment by the Bankruptcy Court.

10 3. Pursuant to 28 U.S.C. § 1409, venue is proper in the Central District of
11 California, Northern Division, because the Slatkin Case is pending in this district and
12 division.

13 PARTIES

14 4. The plaintiff is R. Todd Neilson in his capacity as the trustee ("Trustee")
15 of the bankruptcy estate (the "Estate") of Reed E. Slatkin ("Slatkin"). Because the
16 Trustee was not appointed until after Slatkin filed bankruptcy, the Trustee does not
17 have personal knowledge of the facts alleged in this Complaint and therefore alleges
18 those facts on information and belief.

19 and
20 w
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22 individual, associate, corporate, or otherwise) of defendants Does 1 through 10, or any
23 of them, and therefore sues said defendants, and each of them, by such fictitious names
24 and will amend this Complaint to include their true names and capacities, when
25 ascertained, together with appropriate charging allegations.

26 7. Each of the Doe defendants is an immediate or mediate transferee of the
27 fraudulent, preferential, or other avoidable transfers alleged in this Complaint, or of the
28 proceeds of such fraudulent, preferential, or other avoidable transfers, and did not take

1 such transferred property for value, in good faith, and without knowledge of the
2 voidability of such transfers.

3 GENERAL ALLEGATIONS

4 **Slatkin's Ponzi Scheme**

5 8. Beginning no later than 1986 and continuing to on or about April 30,
6 2001, Slatkin obtained millions of dollars from hundreds of individuals and entities
7 purportedly for the purpose of investing such funds for the benefit of those persons. In
8 fact, Slatkin obtained those funds under false pretenses because such funds were used
9 by Slatkin for his personal benefit and for the benefit of other persons; and at all times
10 since 1986, Slatkin operated a Ponzi scheme using the money obtained from investors
11 to pay money to other investors. As part of his Ponzi scheme, Slatkin took money
12 from investors for the purported purpose of making specific investments for them, but
13 did not use such funds to ~~make the investments that~~
14 that he would make on their behalf.

15 investors to pay artificially high returns
16 ~~make other investments, to pay "cor~~

17 9. In or about 2002, Slatkin
18 his Ponzi scheme. On or about March 26, 2002, in United States of America v. Reed
19 E. Slatkin, Case No. CR 02-313, pending in the United States District Court for the
20 Central District of California, Slatkin executed a plea agreement pursuant to which he
21 agreed to plead guilty to 15 felony counts. In his plea agreement, Slatkin admitted to
22 having operated a Ponzi scheme since 1986. A copy of Slatkin's plea agreement is
23 **Exhibit 1.**

24 **Slatkin's Bankruptcy**

25 10. On May 1, 2001, Slatkin filed a voluntary petition for relief under chapter

26 11.

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1 **Appointment of the Trustee**

2 11. On or about May 16, 2001, R. Todd Neilson was appointed as Trustee of

13 **FIRST CLAIM FOR RELIEF**

14 **(Against All Defendants; to Avoid Intentionally Fraudulent Transfers**
 15 **of Money and Other Property under 11 U.S.C. §§ 544(b) and 550(a),**
 16 **and Cal. Civ. Code §§ 3439.04(a) and 3439.07)**

17 13. The Trustee incorporates by reference and realleges ¶¶ 1-12 of this
 18 Complaint.

19 14. During the seven-year period immediately preceding May 1, 2001, the
 20 date on which Slatkin filed his bankruptcy petition, Slatkin made transfers of his
 21 property, i _____ benefit of the defendants that exceeded the
 22 total amo _____ kin prior to and during such time period.
 23 That exce _____ s the "Slatkin 7-Year Transfers." **Exhibit 2**
 24 summarizes the currently known money transfers made by Slatkin to or for the benefit
 25 of the defendants during this period that are part of the Slatkin 7-Year Transfers. At
 26 this time, the Trustee lacks sufficient information to specify the total amount of money
 27 and other property that comprise all of the Slatkin 7-Year Transfers. The Trustee will
 28 seek leave to amend this Complaint when he has additional information concerning the

1 money and other property that Slatkin transferred to or for the benefit of the
2 defendants.

3 15. The Slatkin 7-Year Transfers were made by Slatkin with the actual intent
4 to hinder, delay, or defraud his creditors. Slatkin made these transfers to or for the
5 benefit of the defendants as purported profits on investments made for the benefit of
6 the Hutchins. In fact, the profits and the investments were fictitious, and Slatkin paid
7 money to or for the benefit of the defendants in furtherance of Slatkin's Ponzi scheme.

8 16. The defendants did not take any of the Slatkin 7-Year Transfers for a
9 reasonably equivalent value and/or did not take such transfers in good faith.

10 17. At all relevant times, the Slatkin 7-Year Transfers were voidable under
11 Cal. Civ. Code §§ 3439.04(a) and 3439.07 by one or more creditors who held and hold
12 unsecured claims against Slatkin that were and are allowable against his Estate under
13 11 U.S.C. § 502 or that were and are not allowable only under 11 U.S.C. § 502(e).

14 These creditors include, without limitation, the members of the Official Creditors
15 Committee and hundreds of other creditors who have filed proofs of claim against the
16 Estate, including bank creditors, trade creditors, and persons who gave Slatkin money
17 to invest for them.

18 18. At all relevant times, Slatkin concealed from one or more of his creditors,
19 including one or more of the creditors identified in ¶ 17 above, that he had made the
20 Slatkin 7-Year Transfers or that the Slatkin 7-Year Transfers were made as part of his
21 Ponzi scheme with the intent to hinder, delay, or defraud one or more of such creditors;
22 and such fraudulent transfers alleged in this claim for relief could not have reasonably
23 been discovered sooner than one year prior to the filing of Slatkin's bankruptcy
24 petition.

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SECOND CLAIM FOR RELIEF

(Against All Defendants; to Avoid Intentionally Fraudulent Transfers of Money and Other Property under 11 U.S.C. §§ 544(b) and 550(a), and Cal. Civ. Code §§ 3439.04(a) and 3439.07)

19. The Trustee incorporates by reference and realleges ¶¶ 1-12 of this Complaint.

20. During the four-year period immediately preceding May 1, 2001, the date on which Slatkin filed his bankruptcy petition, Slatkin made transfers of his property, including money, to or for the benefit of the defendants that exceeded the total amount of such transfers to and during such time period. That excess is set forth in "Slatkin 4-Year Transfers." Exhibit 2 summarizes the currently known transfers made by Slatkin to or for the benefit of the defendants during this period that are part of the Slatkin 4-Year Transfers. At this time, the Trustee lacks sufficient information to specify the total amount of money and other property that comprise all of the Slatkin 4-Year Transfers. The Trustee will seek leave to amend this Complaint when he has additional information concerning the money and other property that Slatkin transferred to or for the benefit of the defendants.

21. The Slatkin 4-Year Transfers were made by Slatkin with the actual intent to hinder, delay, or defraud his creditors. Slatkin made these transfers to or for the benefit of the defendants as purported profits on investments made for the benefit of the Hutchins. In fact, the profits and the investments were fictitious, and Slatkin paid money to or for the benefit of the defendants in furtherance of Slatkin's Ponzi scheme.

22. The defendants did not take any of the Slatkin 4-Year Transfers for a reasonably equivalent value and/or did not take such transfers in good faith.

23. At all relevant times, the Slatkin 4-Year Transfers were voidable under Cal. Civ. Code §§ 3439.04(a) and 3439.07 by one or more creditors who held and hold unsecured claims against Slatkin that were and are allowable against his Estate under

1 11 U.S.C. § 502 or that were and are not allowable only under 11 U.S.C. § 502(e).
2 These creditors include, without limitation, the members of the Official Creditors
3 Committee and hundreds of other creditors who have filed proofs of claim against the
4 Estate, including bank creditors, trade creditors, and persons who gave Slatkin money
5 to invest for them.

6 THIRD CLAIM FOR RELIEF

7 **(Against All defendants; to Avoid Constructively Fraudulent Transfers of Money**
8 **and Other Property under 11 U.S.C. §§ 544(b) and 550(a) and**
9 **Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07)**

10 24. The Trustee incorporates by reference and realleges ¶¶ 1-12 and 20 of this
11 Complaint.

12 25. By virtue of the fact that Slatkin operated a Ponzi scheme, at all relevant
13 times: (a) Slatkin was insolvent, or became insolvent as a result of each such transfer;
14 (b) Slatkin was engaged in or was about to engage in a business or a transaction for
15 which his remaining assets were unreasonably small in relation to the business or
16 transaction; or (c) Slatkin intended to incur, or believed or reasonably should have
17 believed that he would incur, debts beyond his ability to pay as they became due.

18 26. At all relevant times, the Slatkin 4-Year Transfers were voidable under
19 Cal. Civ. Code §§ 3439.04(b) or 3439.05 and Cal. Civ. Code § 3439.07 by one or more
20 creditors who held and hold unsecured claims against Slatkin that were and are
21 allowable against his Estate under 11 U.S.C. § 502 or that were and are not allowable
22 only under 11 U.S.C. § 502(e). These creditors include, without limitation, the
23 members of the Official Creditors Committee and hundreds of other creditors who
24 have filed proofs of claim against the Estate, including bank creditors, trade creditors,
25 and persons who gave Slatkin money to invest for them.

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FOURTH CLAIM FOR RELIEF

**(Against All Defendants; to Avoid and Recover Intentionally
Fraudulent Transfers of Money and Other Property
under 11 U.S.C. §§ 548(a)(1)(A) and 550(a))**

27. The Trustee incorporates by reference and realleges ¶¶ 1-12 of this Complaint.

28. During the one-year period immediately preceding May 1, 2001, the date on which Slatkin filed his bankruptcy petition, Slatkin made transfers of his property, including money, to or for the benefit of the defendants that exceeded the total amount _____ and during such time period. That excess _____ in 1-Year Transfers.” Exhibit 2 summarizes the currently known money transfers made by Slatkin to or for the benefit of the defendants during this period that are part of the Slatkin 1-Year Transfers. At this time, the Trustee lacks sufficient information to specify the total amount of money and other property that comprise all of the Slatkin 1-Year Transfers. The Trustee will seek leave to amend this Complaint when he has additional information concerning the money and other property that Slatkin transferred to or for the benefit of the defendants.

29. The Slatkin 1-Year Transfers were made by Slatkin with the actual intent to hinder, delay, or defraud his creditors. Slatkin made these transfers to or for the benefit of the defendants as purported profits on investments made for the benefit of the Hutchins. In fact, the profits and the investments were fictitious, and Slatkin paid money to or for the benefit of the defendants in furtherance of Slatkin’s Ponzi scheme.

30. The defendants did not take any of the Slatkin 1-Year Transfers for a reasonably equivalent value and/or did not take such transfers in good faith.

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FIFTH CLAIM FOR RELIEF

**(Against All Defendants; to Avoid and Recover Constructively
Fraudulent Transfers of Money and Other Property
under 11 U.S.C. §§ 548(a)(1)(B) and 550(a))**

31. The Trustee incorporates by reference and realleges ¶¶1-12 and 28 of this Complaint.

32. any of the Slatkin 1-Year Transfers for a reasonably not take such transfers in good faith.

33. By virtue of the fact that Slatkin operated a Ponzi scheme, at all relevant times: (a) Slatkin was insolvent on the date that each such transfer was made, or became insolvent as a result of each such transfer; (b) Slatkin was engaged in or was about to engage in a business or a transaction for which any property remaining with Slatkin was an unreasonably small capital; or (c) Slatkin intended to incur, or believed that he would incur, debts beyond his ability to pay as they matured.

SIXTH CLAIM FOR RELIEF

**(Against All Defendants; to Avoid and Recover Preferential Transfers
of Money and Other Property under 11 U.S.C. §§ 547(b) and 550(a))**

34. The Trustee incorporates by reference and realleges ¶¶1-12 of this Complaint.

35. During the 90-day period immediately preceding May 1, 2001, the date on which Slatkin filed his bankruptcy petition, Slatkin trans "Slatkin 90-Day Transfers") to or for the benefit of the defendants. To the extent, if any, to which the Slatkin 90-Day Transfers were in payment of an obligation that Slatkin owed to the defendants, such obligation was a antecedent debt.

36. As a result of the Slatkin 90-Day Transfers, the defendants received from Slatkin more than they would have received if such transfers had not been made and this case were a case under chapter 7 of the Bankruptcy Code.

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SEVENTH CLAIM FOR RELIEF

(Against All Defendants; to Recover Fraudulent and Preferential Transfers of Money and Other Personal Property under 11 U.S.C. § 550(a)(2))

37. The Trustee incorporates by reference and realleges ¶¶ 1-12 of this Complaint.

38. To the extent _____ other defendants, named and unnamed, are not the initial transferees of the transfers referred to in this Complaint, they are immediate or mediate _____ of the initial transferee of such payments.

39. To the extent that _____ defendants, named and unnamed, are immediate or mediate transferees of the initial transferee of the transfers referred to in this Complaint, such defendants did not receive such transfers in good faith and without knowledge of the voidability of such transfers.

40. Each of the transfers referred to in this claim for relief is recoverable from the Hutchins and the other defendants, named and unnamed, as an immediate or mediate transferee of the transfers that Slatkin made to others with the actual intent to hinder, delay, and defraud his creditors, including but not limited to the members of the Official Creditors Committee and hundreds of other creditors who have filed proofs of claim against the Estate, including bank creditors, trade creditors, and persons who gave Slatkin money to invest for them.

WHEREFORE, the Trustee prays for judgment against the defendants as follows:

1. On the first claim for relief, for a judgment against the defendants that (a) avoids the Slatkin 7-Year Transfers from Slatkin to or for the benefit of the defendants, (b) imposes a constructive trust on the Slatkin 7-Year Transfers and any proceeds thereof, and (c) requires the defendants to convey the Slatkin 7-Year Transfers, the proceeds of the Slatkin 7-Year Transfers, or the value of the Slatkin 7-Year Transfers, to the Trustee;

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1 2. On the second claim for relief, for a judgment against the defendants that
2 (a) avoids the Slatkin 4-Year Transfers from Slatkin to or for the benefit of the
3 defendants, (b) imposes a constructive trust on the Slatkin 4-Year Transfers and any
4 proceeds thereof, and (c) requires the defendants to convey the Slatkin 4-Year
5 Transfers, the proceeds of the Slatkin 4-Year Transfers, or the value of the Slatkin 4-
6 Year Transfers, to the Trustee;

7 3. On the third claim for relief, for a judgment against the defendants that
8 (a) avoids the Slatkin 4-Year Transfers from Slatkin to or for the benefit of the
9 defendants, (b) imposes a constructive trust on the Slatkin 4-Year Transfers and any
10 proceeds thereof, and (c) requires the defendants to convey the Slatkin 4-Year
11 Transfers, the proceeds of the Slatkin 4-Year Transfers, or the value of the Slatkin 4-
12 Year Transfers, to the Trustee;

13 4. On the fourth claim for relief, for a judgment against the defendants that
14 avoids the Slatkin 1-Year Transfers from Slatkin to or for the benefit of the defendants,
15 and that directs the defendants to return those transfers and their proceeds, or their
16 value, to the Trustee;

17 5. On the fifth claim for relief, for a judgment against the defendants that
18 avoids the Slatkin 1-Year Transfers from Slatkin to or for the benefit of the defendants,
19 and that directs the defendants to return those transfers and their proceeds, or their
20 value, to the Trustee;

21 6. On the sixth claim for relief, for a judgment against the defendants that
22 avoids the Slatkin 90-Day Transfers from Slatkin to or for the benefit of the
23 defendants, and that directs the defendants to return those transfers and their proceeds,
24 or their value, to the Trustee;

25 7. On the seventh claim for relief, for judgment against all defendants that
26 requires them to return to the Trustee all transfers avoided by this Complaint;

27 8. For interest at the legal rate on all damages and sums awarded to the
28 Trustee; and