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8 Attorneys for Defendants  
9 WILLIAM W. HUTCHINS and ANNE HUTCHINS

10 UNITED STATES BANKRUPTCY COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 In re: ) Case No. ND 01-11549 RR  
13 REED E. SLATKIN, )  
14 Debtor. ) CHAPTER 11  
15 ) Adv. No. 02-1164  
16 )  
17 R. TODD NEILSON, Trustee of ) MOTION FOR ORDER COMPELLING  
18 the Chapter 11 Bankruptcy ) TURNOVER OF TRANSCRIPTS OF  
19 Estate of Reed E. Slatkin, ) REED E. SLATKIN EXAMINATION  
20 ) AND CERTIFICATION OF GOOD  
21 Plaintiff, ) FAITH ATTEMPT TO RESOLVE  
22 vs. ) DISPUTE UNDER FED. RULE CIV.  
23 ) PROCEDURE 26 (B) (3);  
24 ) MEMORANDUM OF POINTS AND  
25 ) AUTHORITIES IN SUPPORT  
26 ) THEREOF; DECLARATION OF  
27 ) RICHARD M. MONEYMAKER IN  
28 ) SUPPORT THEREOF  
29 )  
30 ) DATE: [TO BE SET]  
31 ) TIME:  
32 ) PLACE: 1415 State Street  
33 ) Courtroom 201  
34 ) Santa Barbara, CA  
35 ) 93101

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1 TO THE HONORABLE ROBIN L. RIBLET, UNITED STATES BANKRUPTCY JUDGE  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA:

3 COME NOW William W. and Anne Hutchins, the defendants herein  
4 ("Defendants"), and move this court for an order compelling the  
5 Trustee to turnover to the Defendants all volumes of the  
6 examination of Reed E. Slatkin that the Trustee took sometime in  
7 or during the year of 2002, and for grounds respectfully  
8 represents as follows:

9 1. The Trustee previously examined Reed E. Slatkin under  
10 oath in or about May and June of 2002.

11 2. The Trustee subsequently filed a partial motion for  
12 summary judgment against the Defendants that is based almost  
13 entirely on a plea agreement that Mr. Slatkin submitted in the  
14 criminal proceedings against him.

15 3. The Defendants have attempted to examine Mr. Slatkin but  
16 have been unable to do so because of the pending criminal  
17 proceedings against Mr. Slatkin.

18 4. Based on the timing of Mr. Slatkin's sentencing hearing,  
19 which is not set to take place until April of 2003, the  
20 Defendants will be unable to depose Mr. Slatkin prior to the  
21 January 17, 2003 hearing on the Trustee's motion for partial  
22 summary judgment.

23 5. The examination the Trustee took of Mr. Slatkin contains  
24 testimony that contradicts the assertions made by the Trustee in  
25 his summary judgment motion, which again is based almost  
26 entirely on Mr. Slatkin's plea agreement. The testimony by Mr.  
27 Slatkin in his examination creates disputed facts regarding the

1 nature of Mr. Slatkin's business arrangements that should  
2 prevent the Trustee from obtaining a grant of summary judgment  
3 in this matter.

4 6. The Trustee has refused to turnover to the Defendants  
5 the examination of Mr. Slatkin that is in his possession.

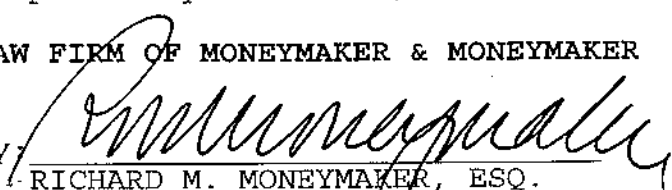
6 7. Without the examination, the Defendants will not be able  
7 to properly defend themselves against the Trustee's partial  
8 summary judgment motion.

9 WHEREFOR, for the foregoing reasons and for the reasons set  
10 forth in the accompanying declaration of Richard M. Money maker,  
11 the attached memorandum of points and authorities filed herewith  
12 and incorporated herein, the Defendants respectfully pray that:

13 1. The Court grant the Defendants' motion and order the  
14 Trustee to turnover copies of all volumes of the examination or  
15 examinations of Reed E. Slatkin that the Trustee has conducted  
16 of Mr. Slatkin in this matter, including, but not limited to,  
17 any examinations of Mr. Slatkin that have been conducted by  
18 counsel for the Trustee.

19 DATED: December 30, 2002 Respectfully submitted,

20 LAW FIRM OF MONEYMAKER & MONEYMAKER

21 By   
22 RICHARD M. MONEYMAKER, ESQ.  
23 Attorneys for Defendants,  
24 WILLIAM W. HUTCHINS and  
25 ANNE HUTCHINS  
26  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 PRELIMINARY STATEMENT

4 On December 20, 2002 this court made an order requiring the  
5 Defendants and their counsel to return all copies of Reed E.  
6 Slatkin's examination that were in their possession to the  
7 Trustee. The Defendants are filing, concurrently with this  
8 motion, a motion for the court to reconsider that ruling based  
9 on a number of reasons. Assuming, however, that the court  
10 refuses to reconsider its order of December 20, 2002 then, the  
11 Defendants are filing this motion to compel the Trustee to turn  
12 over all such transcripts pursuant to Fed. R. Civ. Proc. 26  
13 (b) (3).

14 II.

15 ARGUMENT

16 Fed. R. Civ. Proc. 26 (b) (C) reads in pertinent part;  
17 Subject to the provisions of subdivision  
18 (b) (4) of this rule, a party may obtain  
19 discovery of documents and tangible things  
20 otherwise discoverable under subdivision  
21 (b) (1) of this rule and prepared in  
22 anticipation of litigation or for trial or for  
23 another party or by or for another party's  
24 representation (including the other party's  
25 attorney...) only upon a showing that the  
26 party seeking discovery has a substantial need  
27 of the materials in preparation of the party's

1 case and that the party is unable without  
2 undue hardship to obtain substantial  
3 equivalent materials by other means.

4 The Defendants are in substantial need of the transcripts of Mr.  
5 Slatkin's examination. The two volumes of Mr. Slatkin's  
6 examination that have been reviewed are completely at variance  
7 with the statement of facts in the plea agreement and  
8 demonstrate that Slatkin had substantial incomes from legitimate  
9 business operations and that he did not necessarily intend to  
10 defraud all of his creditors, including these Defendants.

11 There is no need to discuss the requirement of undue  
12 hardship "of substantial equivalent materials", since the  
13 Defendants cannot obtain any equivalent materials at all in this  
14 matter. Furthermore, it should be noted that the Defendants  
15 joined in an earlier motion by other defendants to continue the  
16 hearing upon the Trustee's motion for partial summary judgment,  
17 but the Trustee opposed the motion for a continuance and the  
18 court denied the continuance.

19 The Trustee's decision to bring on his partial summary  
20 judgment motion for hearing before the Defendants could depose  
21 Mr. Slatkin, and to then oppose the Defendants' motion for a  
22 continuance so that Mr. Slatkin could be deposed, should estop  
23 the Trustee from opposing this motion to obtain the transcripts  
24 of Mr. Slatkin's examination that are in the Trustee's  
25 possession. Additionally, in reviewing the transcripts, it is  
26 clear that the transcripts do not contain any notes or comments  
27 by the Trustee's counsel. The Defendants are seeking only the

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1 verbatim answers of Mr. Slatkin to questions posed to him  
2 regarding the nature and value of his investments and business  
3 transactions.

4 Simply put, there is no alternative means of gathering this  
5 information prior to January 17, 2002 given the pendency of the  
6 criminal proceedings against Mr. Slatkin and the U.S. Attorney's  
7 denial of access to Mr. Slatkin. Thus the case authorities  
8 clearly support, a turnover of the examination of Mr. Slatkin.  
9 See Varuzza By Zarillo v. Bulk Materials, Inc. 169 F.R.D. 254,  
10 257 (N.D.N.Y. 1996).

11 III.

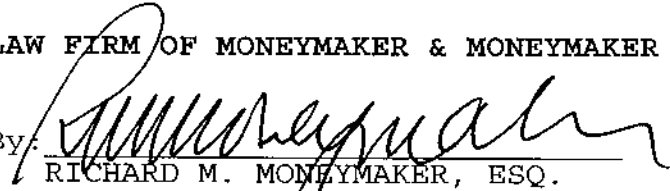
12 CONCLUSION

13 Given that Mr. Slatkin's deposition cannot be taken until  
14 after he is sentenced in April of 2003, the Court should grant  
15 the Defendants' motion and require the Trustee to turnover to  
16 the Defendants the transcripts of the examination that was taken  
17 of Mr. Slatkin by the Trustee.

18 DATED: December 30, 2002

Respectfully submitted,

19 LAW FIRM OF MONEYSMAKER & MONEYSMAKER

20  
21 By:   
22 RICHARD M. MONEYSMAKER, ESQ.  
23 Attorneys for Defendants,  
24 WILLIAM W. HUTCHINS and  
25 ANNE HUTCHINS  
26  
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1 pursuant to Federal Rule of Civil Procedure 26(b)(3).

2 7. My reading of the two transcripts in my possession  
3 demonstrates that the testimony of Mr. Slatkin in the  
4 transcripts is considerably different from the statement of  
5 facts in his plea agreement. He has testified under oath to the  
6 Trustee that he had substantial assets and legitimate business  
7 dealing with a number of people. In his examination, Mr.  
8 Slatkin completely refutes the Trustee's central contention that  
9 Mr. Slatkin intended to defraud each and every one of his  
10 creditors, or that all of his business dealings were a Ponzi  
11 scheme. As a result, Mr. Slatkin's testimony in his examination  
12 is essential to the Defendants' opposition to the motion for  
13 partial summary judgment because it will establish disputed  
14 facts such that the partial summary judgment motion cannot be  
15 granted.

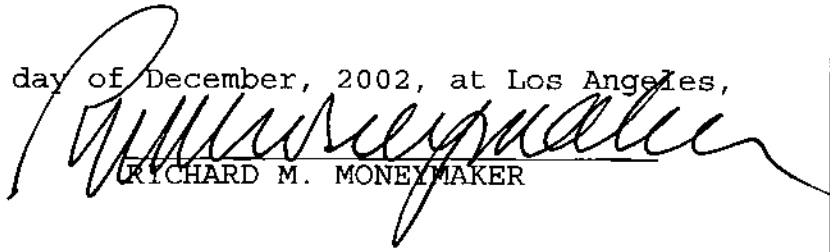
16 8. On December 23, 2002, at approximately 11:45 a.m., I  
17 placed a telephone call to Timothy Jafek at the law firm of  
18 Kirkland & Ellis. I told him that I wanted to meet and confer  
19 with him in an effort to avoid filing a motion with this court,  
20 pursuant to Federal Rule of Civil Procedure 26(b)(3), for an  
21 order to obtain the use of all four volumes of the transcripts  
22 of Mr. Slatkin's testimony, which was taken by counsel for the  
23 Trustee sometime in May and June, 2002. I informed Mr. Jafek  
24 that we were facing a hearing on motion for partial summary  
25 judgment on January 17, 2003, but we had been denied access to  
26 Mr. Slatkin and had no opportunity to depose him regarding the  
27 Statement of Facts contained in his plea agreement, and we

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1 needed the use of the examination transcripts. Mr. Jafek  
2 declined to give me permission to use any of the transcripts and  
3 stated we should file a motion under Federal Rule of Civil  
4 Procedure 56 for a continuance. I told him we had and that it  
5 had been denied. He stated, "Well that's it".

6 9. Accordingly, we are filing this motion in good faith.  
7 I declare under penalty of perjury that the foregoing is  
8 true and correct.

9 Executed this 30th day of December, 2002, at Los Angeles,  
10 California.



RICHARD M. MONEYMAKER

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9 CENTRAL DISTRICT OF CALIFORNIA  
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12 REED E. SLATKIN, )  
13 Debtor. ) CHAPTER 11  
14 ) Adv. No. 02-1164  
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16 R. TODD NEILSON, Trustee of ) PROPOSED ORDER SHORTENING  
17 the Chapter 11 Bankruptcy ) TIME ON DEFENDANTS' MOTION  
18 Estate of Reed E. Slatkin, ) FOR RECONSIDERATION OF  
19 Plaintiff, ) PROTECTIVE ORDER AND MOTION  
20 vs. ) FOR ORDER COMPELLING TURNOVER  
21 ) OF TRANSCRIPTS OF REED E.  
WILLIAM W. HUTCHINS, an ) SLATKIN EXAMINATION  
22 individual, and ANNE )  
23 HUTCHINS, an individual ) DATE: [TO BE SET]  
24 ) TIME:  
25 ) PLACE: 1415 State Street  
26 ) Courtroom 201  
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