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20 UNITED STATES BANKRUPTCY COURT  
21 CENTRAL DISTRICT OF CALIFORNIA  
22 NORTHERN DIVISION

23 In re  
24 REED E. SLATKIN,  
25 Debtor.

CASE NO. ND 01-11549-RR  
CHAPTER 11  
A.P. NO. 02-1166

26 R. TODD NEILSON, Trustee of the  
27 Chapter 11 Bankruptcy Estate of Reed E.  
28 Slatkin,  
Plaintiff,

TRUSTEE'S NOTICE OF MOTION  
AND MOTION FOR PARTIAL  
SUMMARY JUDGMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES

DOES

Date: January 17, 2003  
Time:  
Place: 1415 State Street  
Courtroom 201  
Santa Barbara, CA 93101  
[Judge Riblet]

Defendants.

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 **PLEASE TAKE NOTICE** that on January 17, 2002, at 10 a.m. in Courtroom  
3 201, Plaintiff R. Todd Neilson will move the Court for Partial Summary Judgment on  
4 the issue of Actual Intent to Defraud. This issue relates to all counts alleged in the  
5 Trustee's complaint in which actual fraud is an element. This Motion will be  
6 supported by this Notice and Memorandum of Points and Authorities; the concurrently  
7 served Statement of Uncontroverted Facts and Conclusions of Law In Support of  
8 Trustee's Motion for Partial Summary Judgment, the Declaration of R. Alexander  
9 Pilmer In Support of Trustee's Motion for Partial Summary Judgment, and the Request  
10 for Judicial Notice; all pleadings, papers and other matters on file with the Court; and  
11 such other and further matters as may be presented to the Court at the time of hearing.

12 As discussed further in the accompanying Memorandum of Points and  
13 Authorities, the Motion for Partial Summary Judgment should be granted because  
14 there is no triable issue of fact with respect to whether Reed Slatkin possessed "actual  
15 intent to hinder, delay, or defraud" any of his creditors under Cal. Civ. Code  
16 § 3439.04(a). There can be no triable issue of fact on that issue because Reed Slatkin  
17 pled guilty and confessed that he had actual intent to defraud his creditors from about  
18 1986 to May 1, 2001.



1 investments; (4) investments would be held in Slatkin's name or in the names of  
2 companies, partnerships, and other entities that Slatkin owned or controlled; and (5)  
3 Slatkin would maintain an accurate accounting of individual investor portfolios. See  
4 id. ¶ 27.

5 Slatkin generally did not purchase the securities he represented he was  
6 purchasing on his investors' behalf. He invested only a small percentage of investor  
7 funds, typically on speculative and ultimately unprofitable ventures he never disclosed  
8 to the investors. Slatkin also misappropriated investor funds and used them for his  
9 own benefit and the benefit of his family, friends, and business associates. See id.  
10 ¶¶ 23, 24

11 Because Slatkin's investments did not generate sufficient income to meet  
12 investors' periodic requests for payments, Slatkin used newly-invested funds from  
13 some investors to pay other investors. Slatkin intended these payments to induce  
14 existing investors to entrust him with new funds and to expand his pool of investors  
15 through referrals. See id. ¶ 26. Slatkin did not maintain separate accounts for  
16 investors; he commingled investors' funds and treated them as his personal funds. See  
17 id.

18 Slatkin sent quarterly account statements to investors which listed the account  
19 number, any deposits and withdrawals for the quarter, and the ending balance. Some  
20 investors also received annual statements which purported to show the itemized  
21 securities they held, the proceeds from the purchase and sale of those securities, and  
22 the overall performance of their portfolio. The account statements were misleading,  
23 deceptive, and inaccurate. The account statements falsely represented that Slatkin held  
24 a large portfolio of securities on behalf of his investors. See id. ¶¶ 24, 25. Slatkin  
25 fabricated the percentage of return represented to various investors and devised a false  
26 trading history for various securities.

27 In or about November 1999, the SEC initiated a formal investigation of Slatkin's  
28 investment activities. In order to obstruct the SEC investigation, and to conceal the

1 fact that he was operating a massive Ponzi scheme, Slatkin, and others at his direction,  
2 provided materially false information to the SEC. See id. at 31.

3 Ultimately, Slatkin's fraud was discovered and his scheme collapsed. The Ponzi  
4 scheme came to an end on May 1, 2001, when Slatkin filed for bankruptcy. The  
5 Trustee was appointed on or about May 16, 2001.

6 On March 26, 2002, Slatkin executed a "Plea Agreement for Defendant Reed E.  
7 Slatkin" which was filed in the United States District Court, Central District of  
8 California the same day. See SUF 1.

9 On April 29, 2002, Slatkin appeared with his attorneys before Judge Morrow for  
10 arraignment. See SUF 8. Judge Morrow gave Slatkin a written statement outlining  
11 Slatkin's constitutional rights and informing him that, if he pled guilty, the court would  
12 question him to confirm his plea was voluntary. The statement also cautioned Slatkin  
13 not to plead guilty unless he was, in fact, guilty of the charges against him. Slatkin  
14 acknowledged in writing that he read and understood his rights and the information in  
15 the statement. Slatkin's attorney, Brian Sun, also acknowledged in writing that he was  
16 satisfied Slatkin read and understood the statement. See SUF 9.

17 Slatkin pled guilty in open court to the charges against him.<sup>1</sup> See SUF 10. The  
18 court found the plea was voluntary and knowledgeable and accepted Slatkin's guilty  
19 plea to all charges. See SUF 11.

### 20 ARGUMENT

21 Federal Rule of Bankruptcy Procedure 7056 incorporates in its entirety Federal  
22 Rule of Civil Procedure 56. That rule authorizes the entry of summary judgment when  
23 "there is no genuine issue as to any material fact and . . . the moving party is entitled to  
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25  
26 <sup>1</sup> The Trustee requests that the Court take judicial notice of Slatkin's plea agreement.  
27 See Fed. R. Evid. 201; see, e.g., Scholes v. Lehman, 56 F. 3d 750, 762 (7<sup>th</sup> Cir.  
28 1995) (approving district court's judicial notice of Ponzi scheme principal's plea  
agreement).

1 judgment as a matter of law.” Fed. R. Civ. P. 56(c). The Court may also award  
2 summary judgment for part of a claim. Fed. R. Civ. P. 56(a).

3 After Celotex Corp. v. Catrett, 477 U.S. 317 (1986), the burden on the party  
4 moving for summary judgment is only to demonstrate that the record does not disclose  
5 a genuine dispute with regard to a material fact. Once this is done, the movant’s  
6 burden is discharged, and it is then the respondent’s burden to set forth affirmative  
7 evidence and specific facts showing that there is a genuine dispute on a material issue.  
8 Celotex, 477 U.S. at 322-23. If the respondent fails to carry that burden, summary  
9 judgment should be granted. A mere showing by the opposing party that there is some  
10 “metaphysical doubt as to one of the material facts” is insufficient. Matsushita Elec.  
11 Industry Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

12 **I. THE TRUSTEE HAS PROVEN ACTUAL INTENT TO DEFRAUD**  
13 **UNDER CALIFORNIA CIVIL CODE SECTION 3439.04(A).**

14 **A. California Law Applies To The Fraudulent Transfers At Issue In The**  
15 **Trustee’s Adversary Proceedings.**

16 Bankruptcy Code § 544(b) empowers the bankruptcy trustee with the state law  
17 avoidance rights of a creditor. See 11 U.S.C. § 544(b); In re United Energy Corp., 944  
18 F.2d 589, 593 (9<sup>th</sup> Cir. 1991) (“A bankruptcy trustee has the power to avoid fraudulent  
19 transfers pursuant to state law and/or the provisions of the Bankruptcy Code”).

20 Accordingly, the Trustee may utilize California state law to avoid Slatkin’s fraudulent  
21 transfers.

22 **B. Slatkin’s Guilty Plea Re Fraudulent Intent Is Dispositive.**

23 A transfer made by a debtor “with actual intent to hinder, delay, or defraud any  
24 creditor of the debtor,” is a fraudulent transfer. See Cal. Civ. Code § 3439.04(a). The  
25 test for determining actual intent requires an inquiry into the debtor’s subjective state  
26 of mind. See In re Cohen, 199 B.R. 709, 716 (BAP 9<sup>th</sup> Cir. 1996). Actual intent can  
27 be established through direct evidence or circumstantial evidence.  
28

1 The direct evidence of Slatkin's state of mind is Slatkin's guilty plea and  
2 confession that, beginning about 1986, he "knowingly and with intent to defraud,  
3 planned and executed a scheme to defraud approximately 800 investors . . . of over  
4 \$593 million." See SUF 7. Slatkin's guilty plea is a criminal conviction and, like a  
5 jury verdict, is conclusive of every element of the crimes charged. See Boykin v.  
6 Alabama, 395 U.S. 238, 242 (1969) ("A plea of guilty is more than a confession which  
7 admits that the accused did various acts; it is itself a conviction."); Sieling v. Eyman,  
8 478 F.2d 211, 213 (9<sup>th</sup> Cir. 1973) ("A plea of guilty is itself a conviction. Like a  
9 verdict of a jury it is conclusive" (internal quotation marks omitted)); People v. Jones,  
10 52 Cal. 2d 636, 651 (1959).<sup>2</sup>

11 The lesson of Boykin is the importance of insuring that constitutional safeguards  
12 are properly administered by trial courts when taking guilty pleas. "What is at stake  
13 for an accused facing death or imprisonment demands the utmost solicitude of which  
14 courts are capable in canvassing the matter with the accused to make sure he has a full  
15 understanding of what the plea connotes and of its consequence." Boykin, 395 U.S. at  
16 243-44. Here, the district court followed the direction of the United States Supreme  
17 Court and concluded that Slatkin's guilty plea was knowing and voluntary. "When the  
18 judge discharges that function, he leaves a record adequate for any review that may  
19 later be sought . . . *and forestalls the spin-off of collateral proceedings that seek to*  
20 *probe murky memories.*" Id. at 244 (emphasis added, citations omitted). Indeed, the  
21 Supreme Court noted that "a majority of criminal convictions are obtained after a  
22 guilty plea. If these convictions are to be insulated from attack, the trial court is best  
23

24 <sup>2</sup> This is consistent with the Federal Rules of Evidence, which provide that  
25 "[e]vidence of a final judgment, entered after a trial or upon a plea of guilty" is  
26 admissible as non-hearsay "to prove any fact essential to sustain the judgment."  
27 See Fed. R. Evid. 803(22); see also Scholes, 56 F. 3d at 762 (stating that contents of  
28 a Ponzi scheme principal's plea agreement are admissible as non-hearsay in civil  
action against persons other than principal).

1 advised to conduct an examination” to ensure the defendant’s guilty plea is knowing  
2 and voluntary. Id. at 244 n.7 (citations omitted).

3 The specifics of Slatkin’s guilty plea demonstrate that he had the subjective  
4 intent necessary to satisfy Civil Code Section 3439.04(a). Slatkin pled guilty to crimes  
5 including mail fraud and wire fraud, which both include “intent to defraud” as  
6 elements. See 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud); Schreiber  
7 Distributing Co. v. Serv-Well Furniture Co., Inc., 806 F.2d 1393, 1400 (9<sup>th</sup> Cir. 1986).  
8 Furthermore, Slatkin’s Plea Agreement informed Slatkin that both mail fraud and wire  
9 fraud include “intent to defraud” as an element. See Plea Agreement, ¶¶ 3(a) and (b).

10 Slatkin’s subjective intent to defraud was mirrored by the objective fraudulent  
11 acts which he carried out. Slatkin admitted to a number of fraudulent acts in his Plea  
12 Agreement. Those fraudulent acts include the following:

- 13 • Slatkin did not use the vast majority of investor funds to purchase securities  
14 and cash instruments (See Plea Agreement, p. 27);
- 15 • Slatkin used investor funds for speculative business ventures or  
16 misappropriated investor funds for his personal benefit and the benefit of his  
17 family, friends, and business associates (See id.);
- 18 • Slatkin had to pay most investor withdrawals with funds solicited from other  
19 investors (See id.);
- 20 • Slatkin sent account statements to investors which were misleading,  
21 deceptive, and materially inaccurate (See id. at 26).

22 None of the defendants can dispute, with any amount of discovery, that Slatkin’s  
23 guilty plea establishes that he had the subjective “intent to defraud” his creditors. See  
24 In re Benskin, 161 B.R. 644, 648 (Bankr. W.D. Tenn. 1993) (in a trustee’s action to  
25 recover transfers made by debtors involved in a Ponzi scheme, “[t]he debtors’ intent to  
26 defraud creditors *was established* by the guilty pleas to the related criminal charges  
27 and *preclusive effect* may be given to those guilty pleas as factual findings to the  
28 extent that the debtors’ intent to defraud creditors is required in this adversary

1 proceeding” (emphasis added)); see also In re Randy, 189 B.R. 425, 439 (Bankr. N.D.  
2 Ill. 1995) (holding that a criminal conviction for activities relating to a debtor’s Ponzi  
3 scheme was sufficient to establish the debtor’s intent to defraud in subsequent civil  
4 action by trustee).<sup>3</sup>

5 Slatkin’s actual intent to defraud is proved also by his operation of a Ponzi  
6 scheme. Importantly, however, the Trustee does not need to prove the existence of a  
7 Ponzi scheme to prevail on this motion. Slatkin admitted to actually intending to  
8 defraud creditors, separate from his operation of a Ponzi scheme.

9 Still, Slatkin’s confession that he operated a Ponzi scheme confirms he had the  
10 actual, subjective intent to defraud his creditors. See In re Agricultural Research and  
11 Tech. Group, Inc., 916 F.2d at 535 (“The mere existence of a Ponzi scheme . . . has  
12 been found to fulfill the requirement of actual intent on the part of the debtor.”);  
13 Conroy v. Shott, 363 F.2d 90, 91-92 (6<sup>th</sup> Cir. 1966) (given a Ponzi scheme, the  
14 “question of intent is not debatable.”); In re Cohen, 199 B.R. at 717 (“Proof of a Ponzi  
15 scheme is sufficient to establish the Ponzi operator’s actual intent to hinder, delay, or  
16 defraud creditors for purposes of actually fraudulent transfers . . . .”); Floyd v. Dunson  
17 (In re Ramirez Rodriguez), 209 B.R. 424, 433 (Bankr. S.D. Tex. 1997) (“As a matter  
18 of law, the fraudulent transfers were made to the defendant with the actual intent to  
19 hinder, delay or defraud later investors in debtors’ scheme.”); Martino v. Edison  
20 Worldwide Capital (In re Randy), 189 B.R. 425, 439 (Bankr. N.D. Ill. 1995) (operation  
21 of Ponzi scheme fulfills actual intent element); Emerson v. Maples (In re Benskin),  
22 161 B.R. 644 (Bankr. W.D. Tenn. 1993) (same); In re Taubman, 160 B.R. 964, 983  
23 (Bankr. S.D. Ohio 1993) (“It is appropriate to find actual intent from the Debtor’s

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25 <sup>3</sup> Some of the defendants have at least acknowledged that Slatkin pled guilty to  
26 “avoid certain criminal prosecution and prison time.” See Pilmer Decl., Ex. 8  
27 (Rosen Opp. To Writ of Attach. 18: 2). Slatkin’s guilty plea did not allow him to  
28 “avoid prison time.” It sent him to jail, where he has been for more than six  
months, and may remain for another decade.

1 active participation in a ponzi scheme.”); Merrill v. Abbott (In re Independent Clearing  
2 House Co.), 77 B.R. 843, 860 (D. Utah 1987) (actual intent inferred from Ponzi  
3 scheme -- “no other reasonable inference is possible.”); Scholes v. Lehman, 56 F. 3d  
4 750, 762 (7<sup>th</sup> Cir. 1995) (“Taken together, the facts just recited, *most of which came*  
5 *right out of Douglas’s plea agreement* . . . and of which the district court properly  
6 took judicial notice . . . *established the defendants’ liability*. . . .”)

## 7 **II. THE TRUSTEE’S MOTION IS PROCEDURALLY PROPER**

### 8 **A. Partial Summary Judgment Is Proper When There Can Be No** 9 **Disputed Fact Regarding A Particular Issue.**

10 The Federal Rules of Civil Procedure acknowledge and contemplate summary  
11 adjudication of narrow issues like the one presented in this motion. See Fed. R. Civ. P.  
12 56(a) (permitting a party to move for summary judgment “upon all or any part” of a  
13 claim). “Partial summary judgment that falls short of a final determination, even of a  
14 single claim, is authorized by Rule 56 in order to limit the issues to be tried.” See  
15 State Farm Fire & Cas. Co. v. Geary, 699 F. Supp. 756, 759 (N.D. Cal. 1987) (citing  
16 Lies v. Farrell Lines, Inc., 641 F.2d 765, 768-69 & n.3 (9<sup>th</sup> Cir. 1981)). Motions like  
17 this one “should have an economical effect in that ‘the length and complexity of trial  
18 on the remaining issues are lessened, all to the advantage of the litigants, the courts,  
19 those waiting in line for trial, and the American public in general.’” Moore’s Federal  
20 Practice Guide 3d, § 56.40[2] (Matthew Bender 2002) (quoting Calpetco 1981 v.  
21 Marshall Exploration, Inc., 989 F.2d 1408, 1415 (5<sup>th</sup> Cir. 1993)).

22 Here, one element of the Trustee’s actual fraudulent transfer claims is whether  
23 Slatkin had the actual intent to defraud. Because there can be no dispute regarding that  
24 issue, partial summary judgment should be granted. To hold a trial on whether Slatkin  
25 subjectively intended to defraud his creditors would be an inefficient use of time and  
26 resources for the Court, the estate, and the defendants.

### 27 **B. The Motion Is Timely.**

28

1 Federal Rule of Civil Procedure 56 expressly permits parties to move for  
2 summary judgment early in the life of a case: "A party seeking to recover upon a  
3 claim . . . may, at any time after the expiration of 20 days from the commencement of  
4 the action . . . move with or without supporting affidavits for a summary judgment in  
5 the party's favor upon all or any part thereof." Fed. R. Civ. P. 56(a). Under this rule,  
6 the Trustee could have filed this motion before any of the defendants answered the  
7 complaint, much less conducted discovery.

8 **C. No Amount Of Discovery Will Alter Slatkin's Confession That He**  
9 **Actually Intended To Defraud His Creditors.**

10 The Trustee recognizes that many times summary judgment motions are brought  
11 after lengthy (and often expensive) discovery has been conducted. Protracted  
12 discovery benefits the lawyers, but not the litigants. The Trustee further expects that  
13 the defendants will oppose this motion under Rule 56(f), feigning a need for discovery.  
14 Nothing defendants could learn in discovery, however, could make a difference to this  
15 motion.

16 The issue raised by this motion is whether Slatkin subjectively intended to  
17 defraud his creditors. The Trustee, based upon Slatkin's plea agreement, submits that  
18 Slatkin did have the subjective intent to defraud. To defeat this motion, therefore,  
19 defendants would have to submit evidence that Slatkin did *not* have the subjective  
20 intent to defraud. Because Slatkin's plea agreement constitutes *direct evidence* of his  
21 subjective intent, the defendants would need to come up with some direct evidence of  
22 their own to demonstrate that Slatkin actually had pure intent.

23 Presumably, therefore, defendants would seek to have Slatkin admit that he lied  
24 in his plea agreement when he confessed to having the actual intent to defraud, that he  
25 lied in his plea agreement when he confessed to running a ponzi scheme, and that he  
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1 pled guilty to crimes he didn't commit.<sup>4</sup> But here's the rub for defendants: any  
2 testimony from Slatkin that would have him "backpedal" or attempt to retract the  
3 statements in his plea agreement could not be admissible in this case, or in opposition  
4 to this motion.. Chief Judge Posner's opinion in Scholes is directly on point.

5 It is true that in affidavits submitted to the district court Douglas  
6 tried to backpedal from the admissions in his plea agreement. But  
7 just as an affidavit in which a witness tries to retract admissions  
8 that he made earlier in his deposition is normally given no weight  
9 in a summary judgment proceeding, ***so a witness should not be***  
10 ***permitted by a subsequent affidavit to retract admissions in a plea***  
11 ***agreement.*** Admissions -- in a guilty plea, as elsewhere -- are  
12 admissions; they bind a party; and the veracity safeguards  
surrounding a plea agreement that is accept as the basis for a guilty  
plea and resulting conviction actually exceed those surrounding a  
deposition.

13 Scholes, 56 F. 3d at 762. (emphasis added, citations omitted).

14 Every Circuit, including the Ninth Circuit, follows the familiar rule that "a party  
15 cannot create a triable issue of fact, and thus survive summary judgment, merely by  
16 contradicting his or her own sworn deposition testimony with a later declaration." See  
17 Disc Golf Ass'n, Inc. v. Champion Discs, Inc. 158 F. 3d 1002, 1008 (9<sup>th</sup> Cir. 1998).  
18 That rule should apply with even more force when the admission is a guilty plea. See  
19 Scholes, 56 F. 3d at 762 (Guilty pleas are more compelling than deposition testimony).

20 Thus, even if defendants deposed Slatkin and he said his plea agreement was  
21 false, the Court could not accept it in opposition to this motion. Thus, with respect to  
22 the narrow issue raised in this motion, nothing could be gained by giving defendants  
23 months and months to conduct discovery.

24 \* \* \* \* \*

25  
26 <sup>4</sup> The Trustee submits the likelihood of Slatkin backtracking on his plea agreement --  
27 in essence saying that he is serving time for crimes he didn't commit -- is laughably  
28 small.

1 The defendants -- although they will argue to the contrary, because they must --  
2 know that Slatkin was a fraud. In short, they don't even believe the story they will tell  
3 this Court. See Pilmer Decl., Ex. 7(Gorham Letter ) (calling Slatkin "an admitted liar  
4 and felon").

5 Defendants Rosen, Hutchins, Henman-Laufer and Lonstein<sup>5</sup> have even argued to  
6 this Court that Slatkin was a fraud. For example, in support of her argument that no  
7 *constructive* fraud is present, Rosen argues that "Slatkin was liable to investors *for*  
8 *fraud*. . . His payments partially satisfied these obligations. [¶] Under California law,  
9 Slatkin's investors had claims against him in tort and contract . . . California courts  
10 recognize that tort damages are permitted in contract cases *where the contract was*  
11 *fraudulently induced*. Under California law, the *false reports* from Slatkin to  
12 investors constituted an account stated to each investor . . . [¶] Under California law,  
13 *defrauded investors* have valid claims against Slatkin . . ." See Pilmer Decl., Ex. 8  
14 Rosen Opp. To Writ of Attachment at 20: 17 - 21:16 ) (emphasis added and citations  
15 omitted).<sup>6</sup> This argument Rosen makes was the precursor to a lawsuit she, and 26  
16 other net debtors, filed against Slatkin just ten days ago. See Pilmer Decl., Ex. 11  
17 ("Complaint for Money Due - Account Stated").

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19 <sup>5</sup> The Trustee moved for Right to Attach Orders and Orders for Issuance of Writs of  
20 Attachment against these defendants. These defendants are represented by  
21 Danning, Gill, Diamond & Kollitz, L.L.P., which represents the defendants in at  
22 least 28 of the actions in which this motion for partial summary judgment is  
23 brought. See Trustee v. William W. and Anne Hutchins, Adv. Proc. No. 02-1164;  
Trustee v. Henman-Laufer, Adv. Proc. No. 02-1165; Trustee v. Lonstein, Adv.  
24 Proc. No. 02-1176.

25 <sup>6</sup> Hutchins, Henman-Laufer, and Lonstein make the identical arguments. See  
26 Hutchins Opp. to Writ of Attachment at 16:17-17:16; Henman-Laufer Opp. to Writ  
27 of Attachment at 16:22-17:22; Lonstein Opp. to Writ of Attachment at 17:13-18:12.  
28 The language used in each of these oppositions regarding Slatkin's fraud is  
identical to the Rosen opposition. For the convenience of the Court, copies of these  
additional identical sections will not be submitted with this motion.

1           Indeed, Rosen, Hutchins, Henman-Laufer, Lonstein all have declared under  
2 penalty of perjury that "As an innocent investor without knowledge of or involvement  
3 with any of Slatkin's misdeeds, Plaintiff is suing me when *I am clearly a victim of*  
4 *Slatkin. . . . I am the victim.*" (Pilmer Decl., Ex. 9 (Rosen Decl. ¶ 11)).<sup>7</sup> Rosen also  
5 submitted a declaration from Jack Dirmann. Mr. Dirmann swore under oath that "the  
6 purpose of [a particular] meeting was for me to confront Slatkin with the fact that  
7 Slatkin *had been lying to investors* regarding their requests to withdraw their funds  
8 from the investment group." (Pilmer Decl., Ex. 10 (Dirmann Decl. ¶ 5)).<sup>8</sup>

9           The Court can and should adjudicate now the narrow issue presented by this  
10 motion to expedite the litigation process. If the Court does not grant this motion, it  
11 will merely delay the inevitable -- namely, a finding that Slatkin had actual intent to  
12 defraud his creditors -- and increase the likelihood that the defendants will hide or  
13 otherwise dispose of assets that should be returned to the Estate.

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22 <sup>7</sup> Hutchins Decl. ¶ 9; Henman-Laufer Decl. ¶ 9; Tony Lonstein Decl. ¶ 9, Daniel  
23 Lonstein Decl. ¶ 9, Aviran Lonstein Decl. ¶ 9, David Lonstein Decl., ¶ 9. Each of  
24 these paragraphs contains the language quoted from Rosen's ¶ 11 (with the  
25 exception that the Henman-Laufer Decl. is written in the plural). For the  
26 convenience of the Court, copies of these additional identical declarations will not  
be submitted with this motion.

27 <sup>8</sup> Hutchins, Henman-Laufer, and Lonstein also submitted the same declaration by Mr.  
28 Dirmann in their oppositions to the Trustee's motion for a right to attach order.

