

1 **II. STATEMENT OF FACTS**

2 **A. Slatkin's Investments with the Elvin Parties**

3 Prior to his bankruptcy, Slatkin and Elvin had been business associates since at least
4 1992. Ex. 9 (Elvin Exam, pp. 55-56). They formed several entities including Aviarian
5 Partners, LP ("Aviarian LP") and Orno Partners, LP ("Orno LP"), both of which were
6 involved in making investments for the direct or indirect benefit of, primarily, Slatkin and
7 Elvin. Ex. 9 (Elvin Exam, pp. 56-57, 60-61). Over the years, Slatkin and Elvin had
8 invested millions of dollars in and had received millions of dollars from these entities which
9 had substantial value.

10 As of January 1, 2000, the assets and liabilities of Aviarian LP were transferred to
11 Aviarian, and the assets and liabilities of Orno LP were transferred to Orno. Ex. 9 (Elvin
12 Exam, pp. 23, 27-28); Settlement, ¶¶ 7a(ii) and 7a(iii). Through its ownership of Aviarian
13 and Orno, Raptor acquired the assets and liabilities of Aviarian LP and Orno LP.

14 Mary Jo Slatkin (Slatkin's wife) was also a Manager of and received income from
15 Aviarian LP and Raptor. Rotter Decl., ¶¶ 8, 10 and Ex. 4 (Raptor Operating Agreement,
16 p. 19), Exs. 6, 7 (W-2 Statements). In addition, Raptor adopted pension plans which had
17 been originally formed under Aviarian LP and into which contributions were made on
18 behalf of Slatkin and Mary Jo Slatkin. Ex. 9 (Elvin Exam, pp. 72-82).

19 **B. The Slatkin Bankruptcy**

20 On May 1, 2001, Slatkin filed his voluntary chapter 11 petition for relief; and on
21 May 16, 2001, Neilson was appointed the Trustee for Slatkin's bankruptcy Estate. Rotter
22 Decl., ¶ 2.

23 **C. The Trustee's Investigations Concerning Raptor**

24 In Autumn 2001, the Trustee began his investigation of Slatkin's investment with the
25 Elvin Parties. In connection therewith, the Trustee and his professionals reviewed Slatkin's
26 files and financial records that were identified as relating to Slatkin's investments with
27 Elvin. Judd Decl., ¶ 3.

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1 On November 23, 2001, the Court entered its Order granting the Trustee's
2 resubmitted Rule 2004 Motion for the production of documents by Elvin, Raptor, related
3 entities, and certain of their professionals and for the oral examination of Elvin. Rotter
4 Decl., ¶ 7. Subsequently, subpoenas and copies of the Rule 2004 Order were served on the
5 examinees identified in that order, including Elvin, Raptor, Aviarian LP, and Orno. The
6 Trustee also served Rule 2004 subpoenas on Hertz Herson & Company, LLP, an
7 accounting firm that performed audit and other services for one or more of the Slatkin-Elvin
8 entities, and on National Pension Service, Inc., a pension plan administrator that appears to
9 have administered pension plans established Slatkin and Elvin, first through Aviarian LP
10 and then through Raptor. Settlement, ¶ 2j. Collectively, the examinees produced five
11 boxes of documents, which included the entities' books and records, including voluminous
12 financial information. Rotter Decl., ¶ 7; Settlement, ¶¶ 2j, 7b(i). The Trustee's accountant
13 reviewed those books and records and financial information, as well as Slatkin's records
14 pertaining to his business relationship with Elvin and entities owned or controlled by them.
15 Judd Decl., ¶ 3.

16 In June 2002, the Trustee's counsel and accountant traveled to New York to meet
17 with Elvin and his counsel and to examine Mr. Elvin under oath pursuant to
18 Fed.R.Bankr.P. 2004. During that meeting and examination, the Trustee's professionals
19 obtained further information about Slatkin's investment in Raptor and negotiated the
20 settlement which is the subject of this Motion. Rotter Decl., 13; Judd Decl., ¶ 4.

21 As discussed above and based on the Trustee's investigations and information
22 provided by Elvin, it appears that the Estate and a limited liability company controlled by
23 Elvin each own a 50% interest in Raptor. Raptor, in turn, owns 100% of Aviarian and
24 approximately 93% of Orno. (The remaining interest in Orno is owned by FPC Trust, the
25 Trustee's of which are Virginia Elvin and John P. Dee, a lawyer in Buffalo, New York.
26 Rotter Decl., ¶ 11 and Ex. 8 (Orno Operating Agreement, p. 17), Ex. 9 (Elvin Exam, pp.
27 16, 28).)

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1 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

2 Pursuant to the Settlement: (1) the Elvin Parties will pay the Estate \$7,464,776 plus
3 accrued interest on a portion of that sum (Settlement, ¶ 5a); (2) the Estate will receive either
4 the actual recovered value or an agreed-upon value of assets held in accounts in the name of
5 Aviarian at Wedbush Morgan Securities, Inc.) (id., ¶ 5b(i));^{2/} (3) Elvin will cause a
6 debenture issued by Headstrong Group, Inc. ("Headstrong") to Aviarian Partners to be
7 assigned to the Estate (id., ¶ 5b(ii)); (4) Elvin will cause one share of Wacom Company Ltd.
8 stock to be transferred to the Estate (id., ¶ 5b(iii)); (5) Elvin will cause 10,000 shares of
9 Virtual Resources Communications, Inc. common stock to be transferred to the Estate (id.,
10 ¶ 5b (iv)); (6) Elvin will cause to be transferred to the Estate a promissory note made by
11 CSL Lighting Manufacturing, Inc. ("CSL"), payable to Aviarian Partners in the unpaid
12 principal balance of \$33,334.00 (id., ¶ 5b(v));^{3/} (7) the Trustee will transfer the Estate's
13 membership interest in Raptor to Elvin (id., ¶ 6);^{4/} and (8) the Trustee and the Elvin Parties
14 will exchange mutual general releases (id., ¶ 8). The Settlement does not affect or alter any
15 rights relating to the Slatkins' purported interests in their Raptor pension plans, including
16 the Trustee's right to assert that the Slatkins' share of the assets in those plans is property of
17 the Estate. Id., ¶ 8c.

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19 ^{2/} The approximate value of the Aviarian Accounts is currently
20 approximately \$75,000. Judd Decl., ¶ 5. Under the terms of the Settlement, if Elvin
21 does not liquidate and close the Aviarian Accounts as by September 30, 2002, he will
22 pay the Estate their value as of April 30, 2001 or December 31, 2001, whichever is
23 less. Settlement, ¶ 5b(i). The approximate values of those accounts as of those dates
24 were \$161,663 and \$190,156, respectively. Judd Decl., ¶ 5.

25 ^{3/} Some of the instruments and securities which will be transferred to the
26 Estate pursuant to the Settlement may have little or no value. For example, Elvin's
27 representatives have informed the Trustee's counsel that Headstrong and CSL went
28 bankrupt several years ago. Rotter Decl., ¶ 14.

^{4/} The Trustee requests that transfer of the Estate's interest in Raptor to
Elvin be free and clear of all monetary liens, and interests. A UCC search conducted
on June 26, 2002 revealed no liens against that interest. Rotter Decl., ¶ 15.

1 concluded that the proposed settlement represents the fair value of Slatkin's interest in
2 Raptor and its affiliates. Judd Decl., ¶ 7. The Trustee concurs. Rotter Decl., ¶ 6.
3 Finally, in the Settlement Agreement, Mr. Elvin has represented that the financial
4 information provided to the Trustee regarding Raptor and its affiliates is accurate, thereby
5 further assuring the Trustee that his assessment of the value of Slatkin's interest is not the
6 result of tainted information. Settlement, ¶¶ 7b(i), 7b(ii).

7 In addition, the Trustee's accountants have reviewed Slatkin's business records to
8 identify transfers that Slatkin may have made to the Elvin Parties other than for Slatkin's
9 investment in Raptor and its affiliates (including their predecessors). With the possible
10 exception of contributions made to pension plans established by Aviarian LP and later
11 adopted by Raptor, it appears that there are no such payments which might be recoverable
12 by the Estate. Judd Decl., ¶ 6. (As mentioned, under the Settlement, the Trustee will not
13 waive or release any such pension plan claims. Settlement, ¶ 8c.)

14 Given these facts, there is no reason to believe that litigation or further investigation
15 and analysis of Raptor or its affiliates would lead to a greater recovery by the Estate. In
16 fact, based on the information available to the Trustee, it appears that further action would
17 serve only to increase the Estate's administrative costs.

18 **B. Difficulties in Collection**

19 It appears from the Trustee's investigations that Raptor and its affiliates have
20 substantial assets, including substantial cash or other liquid assets, that could be used to
21 satisfy any judgment that the Estate might obtain. Accordingly, collection difficulties do
22 not appear to be relevant to this analysis. However, if the Trustee were required to litigate
23 claims against the Elvin Parties, it cannot be assured that the money which is now available
24 to fund the proposed Settlement would still be readily available to pay a judgment, and the
25 Estate would undoubtedly incur additional expense in attempting to enforce a judgment
26 which might well be for no more than or less than the amount of the proposed settlement
27 payment.

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