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8 UNITED STATES BANKRUPTCY COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 NORTHERN DIVISION

11	<b>In re</b>	)	Case No. ND-01-11549-RR
12	<b>REED E. SLATKIN,</b>	)	Chapter 11
13	<b>Debtor.</b>	)	<b>A.P. No. AD-02-01164-RR</b>
14	_____		) Judge: Hon. Robin L. Riblet
15	<b>R. TODD NEILSON, Trustee Of The Chapter 11 Bankruptcy Estate Of Reed E. Slatkin,</b>	)	<b>DEFENDANTS' OBJECTION TO ADMISSIBILITY OF THE DECLARATION OF REED E. SLATKIN</b>
16	<b>Plaintiff,</b>	)	
17	<b>vs.</b>	)	Date: October 25, 2002
18	<b>WILLIAM W. and ANNE HUTCHINS, individually, and Does 1 - 10,</b>	)	Time: 10:00 a.m.
19	<b>Defendants.</b>	)	Place: 1415 State Street Courtroom 201 Santa Barbara, California
20	_____		)

21 **TO PLAINTIFF R. TODD NEILSON, TRUSTEE OF THE CHAPTER 11 BANKRUPTCY**  
22 **ESTATE OF REED E. SLATKIN, AND BY AND THROUGH HIS ATTORNEYS OF**  
23 **RECORD:**

23 PLEASE TAKE NOTICE that defendants WILLIAM W. HUTCHINS and ANNE  
24 HUTCHINS (collectively, the "Defendants") hereby object to the admissibility of the Declaration  
25 Of Reed E. Slatkin In Support Of The Trustee's Ex Parte Application For A Right To Attach Order  
26 And Order For Issuance Of Writ Of Attachment (the "Declaration"), filed August 28, 2002 in the  
27 adversary proceeding entitled R. Todd Neilson v. Anthony and Margaret Hitchman, et al.,  
28 adversary proceeding number ND-02-01111-RR, by plaintiff R. TODD NEILSON ("Plaintiff"),

1 trustee of the Chapter 11 bankruptcy estate of Reed E. Slatkin ("Debtor") in connection with  
2 Plaintiff's Application For Right To Attach Order And Order For Issuance Of Writ Of Attachment  
3 (the "Application") in this adversary proceeding. Defendants object to the admissibility of the  
4 Declaration as follows:

5 **STATEMENT**

6 In Plaintiff's Notice Of Motion And Motion Of The Trustee's Application For A Right To  
7 Attach Order And Order For Issuance Of Writ Of Attachment; Memorandum Of Points And  
8 Authorities; And Declarations Of Grant Newton And Timothy B. Jafek In Support Thereof (the  
9 "Motion"), Plaintiff states as follows:

10 "Second, he [Slatkin] admitted to running a Ponzi scheme, and  
11 described it in more detail, in a declaration filed in support of the  
12 Trustee's application for a right to attach order in a different case.  
13 See Jafek Decl. at ¶ 2; Ex. 1, ¶¶ 3-7."

14 *See Motion at p.5, ln. 27 – p.6, ln. 1.*

15 **SOURCE**

16 Plaintiff states that the source of such statement is the Declaration, which is attached as an  
17 exhibit to the declaration to Timothy B. Jafek filed in support of the Application.

18 **OBJECTIONS**

19 **Irrelevant – FRE 401, 402**

20 Defendants object to Plaintiff's use of the Declaration on the grounds that the Declaration  
21 contains statements not relevant to the Application in that such statements do not have any  
22 tendency to make the existence of any fact that is of consequence to the determination of the action  
23 more probable or less probable than it would be without the evidence. Federal Rule of Evidence  
24 ("FRE") 401. The Declaration contains statements that the Debtor was involved in a Ponzi scheme  
25 and that Anthony Hitchman was aware of such scheme, in addition to statements regarding Mr.  
26 Hitchman's investments, his knowledge of the financial records and statements given by the Debtor  
27 to his investors, and Mr. Hitchman's involvement with the SEC investigation of the Debtor. The  
28 information contained in the Declaration expressly relates to the actions of the defendant therein,  
Anthony Hitchman, not these Defendants. The Declaration contains no statement with respect to

1 Defendants or any investments that they may or may not have made with the Debtor. Nor does the  
2 Declaration state that any transfers from the Debtor to Defendants were in connection with the  
3 alleged Ponzi scheme. As such, the Debtor's statements regarding his conduct with respect to Mr.  
4 Hitchman as an alleged co-conspirator, the Debtor's use of Mr. Hitchman's money, and Mr.  
5 Hitchman's involvement in the Debtor's alleged Ponzi scheme are not relevant to the Debtor's  
6 conduct with respect to the Defendants and the transfers, if any, they received from the Debtor.

7 Because the Declaration and the statements contained therein are not relevant, the  
8 Declaration should not be admitted. FRE 402.

9 Exclusion Of Relevant Evidence – FRE 403

10 In the event that the Court was to determine that the Declaration contains relevant evidence,  
11 Defendants object to the admissibility of the Declaration on the grounds that the evidence  
12 contained therein is unfairly prejudicial. Although relevant, evidence may be excluded if its  
13 probative value is substantially outweighed by the danger of unfair prejudice. FRE 403. The  
14 existence of other lawsuits on similar claims should be excluded because the prejudice to the  
15 defendant outweighs the probative value of the evidence. Palmer v. Board of Regents of Univ.  
16 System of Ga., 208 F.3d 969, 973 (11<sup>th</sup> Cir. 2000). The probative value of the Declaration, if any,  
17 is substantially outweighed by the potential prejudice to Defendants.

18 First, the Declaration contains statements that the Debtor was involved in a Ponzi scheme  
19 and that Anthony Hitchman was aware of such scheme, in addition to statements regarding Mr.  
20 Hitchman's investments, his knowledge of the financial records and statements given by the Debtor  
21 to his "investors," and Mr. Hitchman's involvement with the SEC investigation of the Debtor. The  
22 Declaration contains no statement with respect to Defendants or any investments they may or may  
23 not have made with the Debtor. Nor does the Declaration state that any transfers from the Debtor  
24 to Defendants were in connection with the alleged Ponzi scheme. Nonetheless, Plaintiff is  
25 attempting to use the Declaration as a collateral estoppel "sword" at the pre-judgment attachment  
26 stage of this litigation (which is before the first status conference) to establish an issue when (a)  
27 Defendants were not a party to that action and (b) the issue of the existence of a Ponzi scheme have  
28 never been litigated or actually decided on the merits in that action, all of which are essential

1 elements for issue preclusion. Defendants face the potential prejudice of having an issue already  
2 decided by the Declaration before they are afforded the opportunity to discover facts relevant to  
3 this case that rebut Plaintiff's allegations.

4 Second, Defendants face the potential prejudice of having the same shadow of involvement  
5 cast over her that Plaintiff is attempting to cast over Mr. Hitchman. Plaintiff does not contend in  
6 this action that Defendants are co-conspirators of the Debtor. Yet, Plaintiff seeks to introduce  
7 evidence regarding an alleged co-conspirator to impute liability upon the Defendants – “non-  
8 conspirators” – in this action to justify attachment of \$5.6 million of their assets. The only  
9 probative value the Declaration offers is an admission by the Debtor that he believes he was  
10 involved in a Ponzi scheme, an admission he made to avoid countless years in prison, millions of  
11 dollars in criminal fines, and other risks of criminal prosecution. Whether the Debtor was involved  
12 in a Ponzi scheme is a key issue in this adversary proceeding to be determined in the course of  
13 litigation. Accordingly, the admission of the Declaration – regarding the involvement of a third  
14 party, which third party is alleged to be a co-conspirator with the Debtor – substantially prejudices  
15 Defendants and outweighs the minimal probative value, if any, of the Declaration. Because the  
16 Declaration is unfairly prejudicial, it should be excluded.

17 **CONCLUSION**

18 Wherefore, Defendants respectfully request that the Declaration be deemed inadmissible in  
19 connection with the Application.

20 Dated: October 16, 2002

DANNING, GILL, DIAMOND & KOLLITZ, LLP

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22  
23 By: James B. Devine  
24 James B. Devine  
25 Attorneys for Defendants  
26 William W. Hutchins and Anne Hutchins  
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