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FILED
FEB 23 2003
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY Deputy Clerk

ENTERED
FEB 24 2003
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY Deputy Clerk

12
13 **UNITED STATES BANKRUPTCY COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **NORTHERN DIVISION**

16
17 In re
REED E. SLATKIN,
18 Debtor.

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

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

AMENDED [PROPOSED] FINDINGS
OF FACT AND CONCLUSIONS OF
LAW

22 Plaintiff,

Date: January 17, 2003
Time: 10:00 a.m.
Place: 1415 State Street
Courtroom 201
Santa Barbara, CA 93101
[Judge Riblet]

23 v.

24 LINDA ROSEN, an individual, and DOES
25 1-10
26 Defendants.

27
28 ///

LOGGED
JAN 23 2003
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY Deputy Clerk

1 The motion of plaintiff R. Todd Neilson (“Trustee”), chapter 11 trustee of the
2 bankruptcy estate of Reed E. Slatkin (“Slatkin”), for partial summary judgment
3 pursuant to Fed. R. Bankr. P. 7056 against defendant Linda Rosen (“Rosen”) came on
4 regularly for hearing on January 17, 2003. R. Alexander Pilmer appeared on behalf of
5 the Trustee. Howard Kollitz appeared on behalf of Rosen. All other appearances were
6 stated on the record. The Court, having considered all of the pleadings and the
7 evidence before it, makes the following findings of fact and conclusions of law:

8 **FINDINGS OF FACT**

9 1. On or about March 26, 2002, Reed E. Slatkin executed a “Plea Agreement
10 for Defendant Reed E. Slatkin.” It was filed in the United States District Court,
11 Central District of California, Case No. CR 02-313, the same day. See Request for
12 Judicial Notice, Ex. 1 (“Plea Agreement”), p. 25.

13 2. In the Plea Agreement, Slatkin agreed to “plead guilty to a fifteen-count
14 Information,” which was attached to the Plea Agreement. See Plea Agreement, ¶ 2.

15 3. In the Plea Agreement, Slatkin pled guilty to five counts of violating 18
16 U.S.C. §§ 1341 and 1342, each of which contain as elements that Slatkin created and
17 executed a fraudulent scheme, and that Slatkin acted with intent to defraud. See Plea
18 Agreement, ¶ 3(a).

19 4. In the Plea Agreement, Slatkin pled guilty to three counts of violating 18
20 U.S.C. §§ 1343 and 1342, each of which contain as elements that Slatkin created and
21 executed a fraudulent scheme, and that Slatkin acted with intent to defraud. See Plea
22 Agreement, ¶ 3(b).

23 5. As part of the Plea Agreement, the United States Attorney’s Office and
24 Slatkin stipulated to the attached Statement of Facts. See Plea Agreement ¶ 7.

25 6. The Statement of Facts to the Plea Agreement includes Slatkin’s
26 admission that Slatkin “operate[d] a massive ‘Ponzi’ scheme whereby he defrauded his
27 investors by paying them returns largely with funds raised from other investors.” See
28 Plea Agreement, 23: 23-26.

1 7. The Statement of Facts to the Plea Agreement includes Slatkin's
2 admission that from 1986 to May 2001, Slatkin "knowingly and with intent to defraud,
3 planned and executed a scheme to defraud approximately 800 investors throughout the
4 United States of over \$593 million . . ." See Plea Agreement, 25: 21 - 25.

5 8. On or about April 29, 2002, Slatkin appeared with counsel before Judge
6 Morrow for arraignment. See Request for Judicial Notice, Ex. 4 ("Minutes"); see id.,
7 Ex. 3 ("Designation").

8 9. At his arraignment, the court gave Slatkin a Statement of Defendant's
9 Constitutional Rights ("Statement"). The Statement listed Slatkin's constitutional
10 rights and informed him that, if he pled guilty, the court would question him to
11 ascertain whether his plea was voluntary. The Statement also cautioned Slatkin not to
12 plead guilty unless he was, in fact, guilty of the charges made against him in the
13 Information. Slatkin signed an acknowledgment that he read and understood the
14 Information in the Statement. Slatkin's attorney, Brian Sun, also signed the Statement
15 to acknowledge that he was satisfied that Slatkin read and understood the statement.
16 See id., Ex. 2 ("Statement").

17 10. Slatkin pled guilty to five counts of mail fraud, three counts of wire fraud,
18 and all other counts listed in the Information. See Minutes.

19 11. The court accepted Slatkin's guilty plea after finding that the plea was
20 voluntary and knowledgeable. See Minutes.

21 CONCLUSIONS OF LAW

22 **Jurisdiction and Venue**

23 12. This Court has jurisdiction of this action under 28 U.S.C. § 1334 in that
24 this proceeding arises in a case under title 11, In re Reed E. Slatkin, Case No. ND 01-
25 11549-RR, a chapter 11 case pending in the United States Bankruptcy Court for the
26 Central District of California, Northern Division, and the claims asserted herein arise
27 under title 11.

28 13. This is a core proceeding under 28 U.S.C. § 157.

1 14. Venue in this district is proper pursuant to 28 U.S.C. § 1409(a).

2 **Standard for Summary Judgment**

3 15. Summary judgment lies when no material issue of fact exists. Fed. R.
4 Civ. P. 56(c) (incorporated by Fed. R. Bankr. P. 7056).

5 16. Partial summary judgment is also appropriate for part of a claim. Fed. R.
6 Civ. P. 56(a).

7 **Slatkin's Actual Intent to Defraud**

8 17. An element of California's fraudulent transfer law is actual intent to
9 hinder, delay, or defraud. See Cal. Civ. Code § 3439.04(a).

10 18. Mail fraud, 18 U.S.C. §§ 1341 and 1342, includes as elements the creation
11 and execution of a fraudulent scheme and intent to defraud. See Schreiber Distributing
12 Co. v. Serv-Well Furniture Co., Inc., 806 F.2d 1393, 1400 (9th Cir. 1986).

13 19. Wire fraud, 18 U.S.C. §§ 1343 and 1342, includes as elements the
14 creation and execution of a fraudulent scheme and intent to defraud. See id.

15 20. A guilty plea is a criminal conviction and, like a jury verdict, is
16 conclusive of every element of the crimes charged. See Boykin v. Alabama, 395 U.S.
17 238, 242 (1969) ("A plea of guilty is more than a confession which admits that the
18 accused did various acts; it is itself a conviction."); Sieling v. Eyman, 478 F.2d 211,
19 213 (9th Cir. 1973) ("A plea of guilty is itself a conviction. Like a verdict of a jury it is
20 conclusive." (internal quotation marks omitted)); People v. Jones, 52 Cal. 2d 636, 651
21 (1959).

22 21. Partial summary judgment is granted on the issue of Slatkin's actual intent
23 to defraud. Slatkin had the requisite actual intent to defraud from about 1986 to May
24 2001. This issue is established based on Slatkin's Plea Agreement.

25 22. This Order is the Court's final determination as to the issue of Slatkin's
26 actual intent to defraud from about 1986 to May, 2001, subject to the following
27 limitation. The Court assumes that Slatkin will not withdraw his guilty plea before
28 sentencing. If a United States District Court Judge grants a motion by Slatkin to

1 withdraw his guilty plea, then this Order shall be vacated. However, unless Slatkin
2 withdraws his guilty plea, this order shall be the Court's ruling regarding Slatkin's
3 actual intent to defraud, and that issue shall not be subject to any further proceedings in
4 this case.

5 **IT IS SO ORDERED.**

6 Dated: FEB 23 2003, 2003

ROBIN L. RIBLET

7
8 THE HONORABLE ROBIN L. RIBLET
9 UNITED STATES BANKRUPTCY JUDGE

10 Presented by:

11
12 KIRKLAND & ELLIS

13
14 By: 

15 Richard L. Wynne

16 R. Alexander Pilmer

17 Mark T. Cramer

18 Special Litigation Counsel for R. Todd Neilson, Chapter 11 Trustee

1 PROOF OF SERVICE

2 I, Aida Ramos, declare as follows:

3 I am employed in the County of Los Angeles, State of California. I am over the age
4 of 18; my business address is Kirkland & Ellis, 777 S. Figueroa Street, Los Angeles, CA 90017.

5 On January 21, 2003, I served the document(s) described as:

6 **AMENDED [PROPOSED] FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

7 on the interested parties in this action at the addresses set forth below:

8 [X] (U.S. MAIL) By placing the documents listed above in a sealed envelope with postage
9 thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set
10 forth below. I am familiar with the firm's practice of collection and processing
correspondence for mailing by depositing with the U.S. postal service on that same day with
postage thereon fully prepaid in the ordinary course of business.

11 UNITED STATES TRUSTEE

Brian Fittipaldi
Office of the United States Trustee
Staff Attorney
128 East Carrillo Street
Santa Barbara, CA 93101

CHAPTER 11 TRUSTEE

R. Todd Neilson
Neilson Elggren LLP
10100 Santa Monica Blvd., Suite 410
Los Angeles, CA 90067

14 ATTY FOR CHAPTER 11 TRUSTEE

John P. Reitman
Gumport Reitman & Montgomery
550 S. Hope Street, Suite 825
Los Angeles, CA 90071

ATTY FOR DEBTOR

Richard Pachulski, Esq.
Eric S. Kurtzman, Esq.
Pachulski, Stang, Ziehl Young Jones
10100 Santa Monica Blvd., Suite 1100
Los Angeles, CA 90067

17 ATTY FOR DEBTOR

Jay L. Michaelson, Esq.
Joseph M. Sholder, Esq.
Michaelson Susi & Michaelson
7 West Figueroa Street, 2nd Floor
Santa Barbara, CA 93101

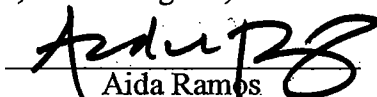
ATTORNEY FOR NET DEBTOR

Howard Kollitz
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2029 Century Park East, Third Floor
Los Angeles, CA 90067

Debra A. Hill
Osborn, Maledon
2029 N. Central Ave., Ste 2100
Phoenix, AZ 85012

23 [X] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court
24 at whose direction the service was made.

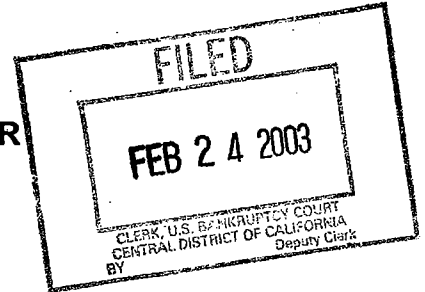
25 Executed on January 21, 2003, at Los Angeles, California.

26 
Aida Ramos

NOTE TO USERS OF THIS FORM:
Physically attach this form as the last page of the proposed Order or Judgment.
Do not file this form as a separate document.

In re REED E. SLATKIN, DEBTOR.	(SHORT TITLE)	CHAPTER 11 CASE NUMBER: ND 01-11549-RR ADVERSARY NUMBER: 02-1166
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**NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING**



TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified, pursuant to Local Bankruptcy Rule 116(1)(a)(iv), that a judgment or order entitled, *(specify)*:

**AMENDED [PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

was entered on *(specify date)*: **FEB 24 2003**

2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and entities on the attached service list on *(specify date)*:

FEB 24 2003

DATED: **FEB 24 2003**

JON D. CERETTO
Clerk of the Bankruptcy Court

by:  _____

SERVICE LIST

Mark T. Cramer
Kirkland & Ellis
777 S. Figueroa St.
Los Angeles, CA 90017