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10 of the "Estate of Reed E. Slatkin and Substantively
11 Consolidated Affiliates Topsisight Oregon, Inc. and
12 Reed Slatkin Investment Club, L. P. Liquidating Trust"

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

16 In re
17 REED E. SLATKIN and Substantively
18 Consolidated Affiliates TOPSIGHT
19 OREGON, INC. and REED SLATKIN
20 INVESTMENT CLUB, L.P.,
21 Reorganized Debtors.

22 _____
23 RONALD RAKOW and DENISE DEL
24 BIANCO,
25 Plaintiffs,
26 v.
27 R. TODD NEILSON, Chapter 11 Trustee,
28 Defendant.

_____ and related Counter-Claim.

Bk. No.: ND 01-11549-RR
[substantively consolidated with
former Case No. ND 01-12990-RR]

CHAPTER 11

Adv. No. AD 02-01083-RR

**TRUSTEE'S STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW**

**[Notice of Motion and Motion and
Declarations and Exhibits are
concurrently filed under separate covers]**

**Hearing Date: To Be Set by the Court
Pursuant to Concurrently Filed Trustee's
Request for Hearing Date**

Status Conference:

DATE: October 30, 2007

TIME: 11:00 a.m.

**PLACE: 1415 State Street
Courtroom 201
Santa Barbara, CA 93101
[Judge Riblet]**

1 **TO THE HONORABLE ROBIN L. RIBLET, UNITED STATES BANKRUPTCY**
2 **JUDGE, AND TO COUNTER-DEFENDANTS RONALD RAKOW AND DENISE**
3 **DEL BIANCO AND THEIR ATTORNEYS OF RECORD, IF ANY:**

4 Pursuant to Federal Rule of Civil Procedure 56(a), made applicable herein by Federal
5 Rule of Bankruptcy Procedure 7056, and Local Bankruptcy Rule 9013(e), plaintiff R. Todd
6 Neilson, trustee of the “Estate of Reed Slatkin and Substantively Consolidated Affiliates
7 Topsight Oregon, Inc. and Reed Slatkin Investment Club, L.P. Liquidating Trust” submits
8 this Statement of Uncontroverted Facts and Conclusions of Law in support of his Motion for
9 Summary Judgment against Counter-defendants Ronald Rakow and Denise Del Bianco.

10
11 DATED: October 25, 2007

Respectfully submitted,

GUMPORT | REITMAN

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14 By: 

Peter J. Mastan

15 Attorneys for Plaintiff, R. Todd Neilson, Trustee of
16 the “Estate of Reed Slatkin and Substantively
17 Consolidated Affiliates Topsight Oregon, Inc. and
18 Reed Slatkin Investment Club, L.P. Liquidating
19 Trust”
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STATEMENT OF UNCONTROVERTED FACTS

	<u>FACT</u>	<u>SOURCE</u>
1. 4 5 6 7 8 9 10 11 12 13 14 15	Beginning in or about 1986 and continuing to the filing of his bankruptcy petition on May 1, 2001, Reed E. Slatkin ("Slatkin") obtained millions of dollars from hundreds of individuals and entities purportedly for the purpose of investing such funds for their benefit. Slatkin obtained those funds under false pretenses because Slatkin used them for his personal benefit and for the benefit of other persons.	Slatkin Decl., ¶ 3; Ex. 1, pp. 23-28 and 35-40; Ex. 33. ¹
16 17 18 19 20 21	At all times from 1986 to the filing of his bankruptcy petition on May 1, 2001, Slatkin operated a Ponzi scheme (the "Ponzi Scheme") using money obtained from investors to pay money to other investors.	

¹ All exhibits cited herein are attached to and identified in the Trustee's Declarations of Reed E. Slatkin, Peter J. Mastan, David H. Judd, John Poitras, and Basil Honikman, and Exhibits filed in support of the Trustee's Motion for Summary Judgment (the "Motion").

<p>1 2 3 4 5 6 7 8 9 10 11 12</p>	<p>2. As part of his Ponzi Scheme, Slatkin took money from investors for the purported purpose of making investments for them, but he did not use such funds to make the investments which he represented to his investors that he would make on their behalf. Instead, Slatkin used the money paid by later investors to pay artificially high returns to earlier investors, to make other investments, and to pay personal expenses.</p>	<p>Slatkin Decl., ¶ 3; Ex. 1, pp. 23-28 and 35-40.</p>
<p>13 14 15 16 17 18 19 20 21</p>	<p>3. On or about March 26, 2002, in <u>United States of America v. Reed E. Slatkin</u>, Case No. CR 02-313 in the United States District Court for the Central District of California, Slatkin executed a plea agreement pursuant to which he agreed to plead guilty to 15 felony counts and admitted that he operated the Ponzi Scheme.</p>	<p>Ex. 1; Slatkin Decl., ¶ 3; Mastan Decl., ¶ 2(g).</p>
<p>22 23 24 25 26 27 28</p>	<p>4. On September 2, 2003, Slatkin was sentenced pursuant to his plea agreement to 14 years in prison.</p>	<p>Ex. 28; Mastan Decl., ¶ 2(g).</p>

5.	Rakow is a long time business associate of Slatkin. Slatkin met Rakow in approximately 1985 through a mutual acquaintance and fellow member of the Church of Scientology, David Walker.	Slatkin Decl., ¶ 2; Ex. 38 (Rakow Exam.), p. 95.
6.	In or about 1985 or 1986, Rakow invested money with Slatkin. By 1988, Rakow's account with Slatkin was closed and Slatkin had paid back all of the money that Rakow had invested with Slatkin.	Slatkin Decl., ¶ 4.
7.	Rakow is a two time convicted felon.	<u>See</u> Exs. 34-36; Mastan Decl., ¶ 3. Slatkin Decl., ¶ 5.
8.	By no later than 1986, Rakow had been convicted of a felony in connection with a "multilevel marketing program" (i.e., a form of Ponzi scheme) known as Culture Farms.	Ex. 34; Slatkin Decl., ¶ 5; Mastan Decl., ¶¶ 3(a) and (b).
9.	As a result of his activities in Culture Farms, Rakow owed "millions" to the IRS.	Slatkin Decl., ¶ 5.

	<p>In or after 1996, the IRS first asserted tax liens against Rakow's assets as a result of his non-payment of a tax deficiency issued against him and, over the twelve year period from 1985-1997, Rakow owed to the IRS a total approximately \$2.2 million, including penalties and interest. As of October 2003, Rakow's amount due to the IRS had grown to over \$3.3 million.</p>	<p>Stevens Decl., ¶¶ 6-9.</p>
<p>10.</p>	<p>After Rakow was released from prison in or about 1987, Rakow asked Slatkin to help him make sure that all of his money did not go to the IRS.</p>	<p>Slatkin Decl., ¶ 5.</p>
<p>11.</p>	<p>In July 2006, Rakow was convicted for "evading and defeating the payment of tax." The criminal indictment on which he was convicted related in large part to Rakow's activities with Slatkin.</p>	<p>Exs. 35 and 36.</p>
<p>12.</p>	<p>Del Bianco's post high school education consists of city college for two years taking general education classes, and attending United States International University for four months studying theater and dance.</p>	<p>Ex. 37 (Del Bianco Exam.), pp. 8-9.</p>

1	13.	Del Bianco worked for the Church of	Ex. 37 (Del Bianco Exam.), pp. 15, 79-
2		Scientology (the "Church") for 16 years,	80.
3		from approximately 1978 until fall	
4		1994. When she stopped working for	
5		the Church, Del Bianco had no funds in	
6		her bank account.	
7	14.	Del Bianco has no skill in either	Ex. 37 (Del Bianco Exam.), pp. 133,
8		evaluating businesses or making	142, 177-79.
9		investments. Rakow made investment	
10		decisions for Del Bianco.	
11	15.	Del Bianco was married and divorced	Ex. 37 (Del Bianco Exam.), pp. 35, 57.
12		twice. From her first divorce, Del	
13		Bianco received a settlement of "half a	
14		set of china and crystal." From her	
15		second divorce in 1993 or 1994, Del	
16		Bianco received nothing by way of a	
17		property settlement. She has not	
18		received any inheritance from her	
19		parents.	
20	16.	Slatkin first met Del Bianco in 1988 or	Slatkin Decl., ¶ 13.
21		1989 at the Scientology Center in Los	
22		Angeles.	

1	17.	Rakow and Del Bianco met in approximately 1990 through Scientology. During the early 1990s, Rakow and Del Bianco developed a personal, romantic relationship. They moved in together and have lived together as a family unit since approximately 1996.	Ex. 37 (Del Bianco Exam.), pp. 72, 77-78, Slatkin Decl., ¶ 14.
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9	18.	At about the time that Rakow and Del Bianco moved in together, Rakow told Del Bianco about his tax problems, including the existence of tax liens.	Ex. 37 (Del Bianco Exam.), pp. 77-78.
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13	19.	Although they were living together, Del Bianco claims that in 1996 she had no idea how Rakow made a living or paid his bills.	Ex. 37 (Del Bianco Exam.), pp. 217-18.
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17	20.	During the time that Del Bianco was employed by the Church, she received an "allowance" of no more than \$50 per week, and earned commissions of not more than \$1,000 in any one year from the sale of books.	Ex. 37 (Del Bianco Exam.), pp. 57-59.
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23	21.	Prior to 1994, Del Bianco never owned a business, never invested in the stock market, had never taken a course in investing, and never borrowed any money from any one.	Ex. 37 (Del Bianco Exam.), pp. 60, 196.
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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15</p>	<p>22. In approximately 1994, Del Bianco started “Denise Del Bianco Business Services” (“DDBBS”). During 1994, DDBBS had only one client Vicki Stanfield (“Stanfield”). Del Bianco’s services to Stanfield consisted of organizing Stanfield’s paperwork in connection with the preparation of taxes. This was Del Bianco’s sole source of income until Rakow became a client in January 1995. For 1994, Del Bianco’s gross income was \$2,000 and when she left the Church’s employ in 1994, she had nothing in her bank account.</p>	<p>Ex. 37 (Del Bianco Exam.), pp. 60-63, 66, 79-80.</p>
<p>16 17 18 19 20 21 22 23 24 25</p>	<p>23. In January 1995, Rakow became a client of DDBBS. Rakow paid Del Bianco approximately \$1,000 per month. Her services to Rakow were “organizing the paper work to prepare taxes,” structuring his office, and organizing his “administrative life.” Del Bianco did not actually assist in the preparation of any tax returns. During 1995, Del Bianco earned less than \$20,000.</p>	<p>Ex. 37 (Del Bianco Exam.), pp. 66, 68, and 77.</p>

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<p>1 2 3 4</p>	<p>24. During 1996, Del Bianco did not report earning the minimum income sufficient to trigger the requirement for filing of a tax return for the year 1996.</p>	<p>Stevens Decl., ¶ 12.</p>
<p>5 6 7 8 9 10 11 12 13</p>	<p>25. During 1997, Del Bianco performed the same services for Rakow and Christian Hunter (“Hunter”) as she performed during 1996 and received the same compensation for those services. Her compensation from Hunter and Rakow was her sole source of income during 1996. According to her 1997 tax return, she made only \$16,239 during the year.</p>	<p>Ex. 37 (Del Bianco Exam.), pp. 83-85; Stevens Decl., ¶ 12.</p>
<p>14 15 16 17 18</p>	<p>26. During 1998, Del Bianco received the same compensation from Rakow and Hunter that she received in previous years. This was her sole source of income during 1998.</p>	<p>Ex. 37 (Del Bianco Exam.), p. 85.</p>

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27.	In 1998, Del Bianco and Rakow purportedly entered into a prenuptial agreement (although they never married) pursuant to which Rakow purported to transfer to Del Bianco his stock holdings in Earthlink and American Interactive Media (“AIME”). Notwithstanding that purported transfer, Rakow - not Del Bianco - selected the brokerage firms where these securities would be held. Rakow - not Del Bianco - made all decisions with respect to these brokerage accounts. It was Rakow - not Del Bianco - who communicated buy and sell orders to the brokers.	Ex. 37 (Del Bianco Exam.), pp. 86, 95-97, 133, 288-89.
28.	In 1999, the same year that the United States Securities and Exchange Commission (the “SEC”) notified Slatkin this it was initiating an investigation into his activities and the same time period that Slatkin testified that he needed to find a new method of getting money to Rakow, Del Bianco reported income of \$1,704,367. In 2000, Del Bianco reported income of \$1,512,438.	Stevens Decl., ¶ 12; Slatkin Decl., ¶¶ 25-28.
29.	In addition to the stock purportedly	Ex. 38 (Rakow Exam.), pp. 179, 313-16,

1 transferred pursuant to the prenuptial
2 agreement, Del Bianco received other
3 assets acquired by or due to Rakow.

4 Specifically, these transfers include:

5 (i) money owed to Rakow
6 was paid to Del Bianco;

7 (ii) Del Bianco signed
8 Rakow's name on checks issued
9 to Rakow;

10 (iii) Bid.com stock acquired
11 by Rakow was placed in Del
12 Bianco's account;

13 (iv) Rakow owned
14 securities accounts that he placed
15 in Del Bianco's name;

16 (v) Rakow's purported right
17 to acquire certain paintings from
18 Slatkin was transferred to Del
19 Bianco in order for that right to
20 be exercised;

21 (vi) Rakow
22 negotiated the acquisition
23 of stock in Century Direct
24 Marketing ("CDM")
25 through contacts he had,
26 but made the acquisition
27 in the name of a company
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352-55, 453, 584, 599-600, 602; Ex. 37
(Del Bianco Exam.), pp. 102-04, 106-08,
112-14.

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	<p>owned of record by Del Bianco, while Rakow provided consulting services to CDM (again through a Del Bianco company) to provide business advice and introduce potential investors to CDM; and</p> <p>(vii) The Del Bianco company that acquired the CDM stock was Gulf United Technical Services, the name for which was suggested by Rakow and Rakow suggested placing the CDM stock in the name of that company.</p>	
<p>30.</p>	<p>In or about approximately 1987, Slatkin disclosed to Rakow that Slatkin was not making all of the investments or investment returns that he had reported to his investors. In or about 1988-89, Slatkin specifically told Rakow that he was using money that he received from investors for other purposes, including to pay inflated returns to other investors.</p>	<p>Slatkin Decl., ¶¶ 6 and 7.</p>

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31.	<p>During 1988-2001, Rakow and Slatkin continued to discuss aspects of Slatkin's fraudulent investment scheme.</p> <p>Specifically, Slatkin told Rakow that:</p> <p>(1) Slatkin was continuing to use money that he received from investors to make investments for the benefit of himself and Rakow;</p> <p>(2) Slatkin did not tell his investors that their money was not actually going to be invested on their behalf as Slatkin represented to them;</p> <p>(3) the number of shares of stock and the purported gains on sales of stock that Slatkin reported to his investors was inaccurate;</p> <p>(4) Slatkin did not have sufficient capital available to pay to his investors their requested withdrawals and that Slatkin was using newly invested money to pay returns to older investors; and</p> <p>(5) Slatkin was using money that he obtained from his investors, purportedly to invest on their behalf in publicly traded securities as reported to them, to make undisclosed investments for the benefit of Slatkin and Rakow.</p>	Slatkin Decl., ¶ 8.
32.	Also during 1988-2001, Slatkin had	Slatkin Decl., ¶ 8.

1 numerous discussions with Rakow
2 concerning the fact that false account
3 statements were being sent to investors.
4 In fact, Rakow sometimes assisted
5 Slatkin in preparing false account
6 statements by commenting to Slatkin on
7 the amount of returns shown on those
8 statements, making adjustments to those
9 statements, and requesting certain
10 returns for certain investors. Rakow
11 assisted Slatkin in preparing false
12 account statements for, among others,
13 Robert and Karen Rakow and/or their
14 company the Highlands Group, Rick
15 and Cindy Jackson, Steve and Linda
16 Besserman, Peter Coyote, Arlo Gordon,
17 and Linda Berman. Rakow and Slatkin
18 specifically discussed that the reported
19 investment returns on investor account
20 statements were inaccurate and that they
21 did not reflect the true value of the
22 investments that Slatkin actually held
23 for investors. During that time period,
24 Slatkin told Rakow many times that he
25 had to cover withdrawal requests from
26 investors with money received from
27 other or new investors and that new
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	money had to be raised.	
33.	By no later than 1988, Slatkin had enlisted Rakow's assistance in promoting Slatkin's fraudulent investment scheme. Slatkin considered Rakow his partner in his fraudulent investment scheme. Rakow agreed to assist Slatkin in finding investors for Slatkin's scheme and to keep investors that Rakow knew or that Rakow had brought into the scheme from withdrawing money from their purported investment accounts with Slatkin. In exchange for this assistance, Slatkin made payments to Rakow, or to others as requested by him, and invested in various business ventures as requested by him. Slatkin made the payments requested by Rakow because (a) Rakow was his partner in his fraudulent investment scheme, (b) Rakow knew so much about the Ponzi scheme, (c) Rakow had relationships with many of the largest investors in Slatkin's scheme, and (d) Slatkin believed that Rakow's continuing cooperation and assistance was essential to the continuation of his fraudulent	Slatkin Decl., ¶ 9.

1 2 3 4	investment scheme and that, if Slatkin did not do those things, Rakow might withhold his help or disclose Slatkin's scheme.	
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>34. In or about September or October 1999, Slatkin learned that he was being investigated by the United States Securities and Exchange Commission (the "SEC"). Slatkin was notified of this investigation through a letter that he received from the SEC. Slatkin was very concerned that the SEC's investigation into his investment program would reveal the fraudulent nature of that scheme. Upon receiving the letter from the SEC, Slatkin telephoned Rakow and met with him at his home to discuss the letter. At that meeting, Slatkin and Rakow specifically discussed that there were portions of Slatkin's bookkeeping that would not withstand scrutiny. They also discussed ways that they could delay or avoid the SEC investigation. Rakow recommended to Slatkin that Slatkin concoct a story to tell his lawyer who would then pass it on to the SEC. One of the delay tactics that Rakow and</p>	Slatkin Decl., ¶ 47.

1		Slatkin discussed was telling the SEC, through Slatkin's lawyer, that investor funds were tied up overseas.	
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4	35.	For purposes of delaying the SEC's investigation, Slatkin followed Rakow's advice. Slatkin told the SEC (through his lawyer) that investors' money was being held overseas by a company known as "NAA." NAA, however, did not exist.	Slatkin Decl., ¶ 48.
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11	36.	Although Rakow assisted Slatkin in formulating the idea of investors' money being held overseas as a tactic to delay the SEC investigation, Slatkin did not tell Rakow the details of that story. Instead, Slatkin kept the details of the story to himself (and a select few people other than Rakow) so that he could use Rakow to meet and communicate with persons in Europe whose identifies and roles were created by Slatkin or persons working with Slatkin, and so that Rakow could report back to Slatkin's lawyer (and thus the SEC) concerning those meetings and communications.	Slatkin Decl., ¶ 49.
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26	37.	In addition to concocting the NAA story, Rakow and Slatkin also discussed that they should create the false	Slatkin Decl., ¶ 50; Ex. 21.
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	<p>appearance that Slatkin was “winding up” his investment program. The hope was that, if the SEC believed that the program was not ongoing, it would not investigate (or investigate as diligently) Slatkin’s past transactions. To that end, Rakow created one or more false documents to support their story that Slatkin was “winding up” his investment program.</p>	
38.	<p>Slatkin compensated Rakow in various ways for his assistance in promoting and concealing Slatkin’s Ponzi scheme, including (a) directly as a consultant, (b) indirectly through other individuals, (c) by moving money to companies that he was managing or supervising, (d) through private investments made for his benefit, (e) through Del Bianco, and (f) through “loans” in the foregoing categories.</p>	<p>Slatkin Decl., ¶ 17.</p>
39.	<p>Initially, Slatkin and Rakow agreed that Rakow’s job in Slatkin’s Ponzi scheme was to raise money, find investments, and keep investors happy, for which Rakow received as compensation a portion of the profits and/or fees that Slatkin received.</p>	<p>Slatkin Decl., ¶ 18.</p>

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<p>40.</p>	<p>In 1987-88, at about the same time that Slatkin told Rakow that investor statements were not accurate, Rakow's job was expanded to include his obtaining additional funds from existing investors with whom he had a relationship and influencing investors to not request withdrawals from investment accounts. Rakow's compensation became tied to the total amount of money that Slatkin received as a result of Rakow's promotion of Slatkin's fraudulent investment program.</p>	<p>Slatkin Decl., ¶ 18.</p>
<p>41.</p>	<p>Another method by which Slatkin compensated Rakow for promoting and concealing his Ponzi scheme was through private investments. Rakow (or in some cases his cousin Robert Rakow) brought to Slatkin potential investments that Rakow wanted to make. Generally, Slatkin fronted 100% of the funds needed to make the investment with the understanding that, if the investment was successful, Slatkin would be reimbursed for the amount of the investment and Rakow and Slatkin (or Rakow, Robert Rakow, and Slatkin in</p>	<p>Slatkin Decl., ¶ 19. <u>see e.g.</u> Ex. 38 (Rakow Exam.), pp. 426-38, 444-49, 457-59, 462-67.</p>

	<p>some cases) would share equally in the profits from those investments.</p>	
<p>42.</p>	<p>Because these private investments did not result in regular, periodic income, Rakow asked Slatkin for regular, monthly payments as “draws” on monies that would in the future become due to him as a result of the private investments. Slatkin complied with that request and, during August 1990 through January 1997, made approximately monthly payments to Rakow. Rakow was to keep records of these payments and the profits from their mutual investments so that the amounts could be reconciled at a later date. On occasion, Rakow would request additional funds from Slatkin and Slatkin transferred to Rakow the amounts he requested as purported distributions of profits from private investments (made with investor money). Each of these monthly “draws” and “profit distributions” was compensation to Rakow for his assistance in promoting and concealing Slatkin’s Ponzi scheme.</p>	<p>Slatkin Decl., ¶¶ 19-21; Exs. 3-4.</p>
<p>43.</p>	<p>Slatkin’s payments to Rakow made</p>	<p>Slatkin Decl., ¶¶ 20-21; Exs. 3-6.</p>

	<p>during the seven years preceding his bankruptcy filing as draws and purported profit distributions from private investments total \$802,167.00. Each of these transfers was made, or caused to be made, by Slatkin from an account in his name containing primarily the commingled funds of Slatkin's investors and was made to Rakow as compensation, or for compensation and reimbursement of expenses, for Rakow's promoting and concealing Slatkin's Ponzi scheme.</p>	
<p>44.</p>	<p>In or about the end of 1996 or the beginning of 1997, Slatkin became concerned about his potential exposure as a result of Rakow (who had told Slatkin that he owed the IRS millions of dollars) receiving compensation from him. Specifically, Slatkin was concerned that the IRS would ultimately want to see his financial records and Slatkin knew (and discussed with Rakow) that his financial records would not withstand IRS scrutiny.</p>	<p>Slatkin Decl., ¶ 22.</p>
<p>45.</p>	<p>As a result, Rakow, Robert Rakow, and Slatkin agreed that Slatkin would pay compensation to Rakow through Robert</p>	<p>Slatkin Decl., ¶ 22; Exs. 7-10.</p>

1 Rakow and/or his company The
2 Highlands Group (“Highlands”). In an
3 effort to conceal Rakow’s continued
4 participation with Slatkin in Slatkin’s
5 fraudulent investment scheme and the
6 compensation that Slatkin intended to
7 pay to Rakow through Robert Rakow, in
8 January 1997, Rakow purported to
9 resign from his business affiliation with
10 Slatkin. Notwithstanding that purported
11 resignation, Slatkin continued to
12 compensate Rakow for promoting and
13 concealing his Ponzi scheme.
14 Specifically, among other things, during
15 June through December 1997 (i.e.,
16 within the four years preceding
17 Slatkin’s bankruptcy filing), Slatkin
18 paid \$125,000.00 to Highlands for the
19 benefit of Rakow (Slatkin inadvertently
20 transferred \$55,000.00 of this amount to
21 Karen Rakow (Robert Rakow’s wife)
22 instead of Highlands). This
23 \$125,000.00 consists of the following
24 transfers: (a) June 9, 1997 in the amount
25 of \$55,000.00, (b) July 7, 1997 in the
26 amount of \$20,000.00, (c) August 5,
27 1997 in the amount of \$20,000.00, and
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	<p>(d) September 9, 1997 in the amount of \$30,000.00. Slatkin made the \$125,000.00 in transfers for Rakow's benefit as part of Slatkin's agreement with Rakow and Robert Rakow and was compensation to Rakow for his promotion and concealment of Slatkin's Ponzi scheme. Slatkin made the \$125,000.00 in transfers at Rakow's request from an account in Slatkin's name consisting of the commingled funds of his investors.</p>	
46.	<p>Another way that Slatkin provided compensation to Rakow for his promotion and concealment of Slatkin's Ponzi scheme was through payments to entities owned by Rakow, including Spectrum Financial ("Spectrum") and Pacific Images ("Pacific").</p>	Slatkin Decl., ¶ 23.
47.	<p>Rakow was the owner of Spectrum.</p>	Slatkin Decl., ¶ 23(a).
48.	<p>Slatkin made two transfers to Spectrum, the first in March 1996 in the amount of \$10,100.00 and the second in or about August 1996 in the amount of \$5,000.00.</p>	Slatkin Decl., ¶ 23(a); Ex. 12.
49.	<p>Slatkin made each of these transfers to Spectrum at Rakow's request and for</p>	Slatkin Decl., ¶ 23(a).

1		Rakow's benefit.	
2	50.	Slatkin made each of these transfers to	Slatkin Decl., ¶ 23(a).
3		Spectrum as compensation to Rakow for	
4		his promotion and concealment of	
5		Slatkin's Ponzi scheme. Slatkin made	
6		each of these transfers from an account	
7		in Slatkin's name that consisted	
8		primarily of the commingled funds of	
9		Slatkin's investors.	
10	51.	Rakow also owned Pacific. In February	Slatkin Decl., ¶ 23(b) and (c); Exs. 13,
11		1996, Slatkin transferred \$25,000.00 to	37 (Del Bianco Exam.), pp. 446-47.
12		Pacific. In April 1996, Slatkin	
13		transferred \$21,500.00 to Pacific. In or	
14		about May 1996, Slatkin made two	
15		transfers to Pacific, one in the amount	
16		of \$9,875.00 and the other in the	
17		amount of \$30,000.00. In or about	
18		November 1996, Slatkin transferred	
19		\$20,000.00 to Pacific.	
20	52.	Each of these transfers to Pacific was	Slatkin Decl., ¶ 23(b).
21		made at Rakow's request and for	
22		Rakow's benefit.	
23	53.	Slatkin made each of these transfers	Slatkin Decl., ¶ 23(b).
24		from an account in his name that	
25		consisted primarily of the commingled	
26		funds of his investors. Slatkin made	
27		each of these transfers to Pacific as	
28		compensation to Rakow for his	

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14</p>	<p>promotion and concealment of Slatkin’s Ponzi scheme. Although Slatkin may have received a piece of jewelry or a print from Pacific, in general these transfers to Pacific were not for the purchase of art or jewelry. Instead, the amounts transferred to Pacific resulted from amounts that Rakow wanted Slatkin to pay him (i.e., not on the basis of the value of any piece purchased from Pacific) for his assistance in Slatkin’s Ponzi scheme. Any purchase by Slatkin of a print or jewelry from Pacific was only for show.</p>	
<p>15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>54. Certain of Slatkin’s transfers to Pacific and Spectrum were recorded by him in his financial records as loans. They were recorded in this manner at Rakow’s request. Rakow told Slatkin that Rakow wanted them recorded as loans so that there would not be any taxable consequence to the entity receiving the money. Although recorded as loans, they were not true loans. Rakow and Slatkin discussed that there was generally no intention that the “loans” ever be repaid; the “loans” would only be repaid in the</p>	<p>Slatkin Decl., ¶ 23(b).</p>

	event that it was expedient for Rakow to do so.	
55.	During approximately the late 1990's, Robert Rakow told Slatkin that he was concerned about the flow of money through Highlands to Rakow. He told Slatkin that he thought that there was too much money too fast and that this was a red flag to the taxing authorities. Robert Rakow told Slatkin that he was concerned that the IRS would see Highlands as being involved with Rakow.	Slatkin Decl., ¶ 25.
56.	As a result of Robert Rakow's concerns, and particularly beginning in or about 1999 when the SEC initiated its investigation into Slatkin's activities, Rakow and Slatkin agreed that Slatkin would flow through new channels substantial funds to Rakow for his assistance in continuing to conceal Slatkin's Ponzi scheme, not only from investors, but also from the SEC. They agreed to do so by making various types of transfers through Del Bianco and/or entities owned or controlled of record by Del Bianco.	Slatkin Decl., ¶ 26.
57.	One of the ways that Slatkin and Rakow	Slatkin Decl., ¶ 27.

	<p>agreed to flow substantial funds to Rakow for his assistance in promoting and concealing Slatkin's Ponzi scheme (including concealing that scheme from the SEC) was through Slatkin entering into a "consulting agreement" with Del Bianco or a company owned of record by Del Bianco.</p>	
<p>58.</p>	<p>In or about October 1999, Rakow arranged for Del Bianco to "work" for Slatkin. Del Bianco knew that Slatkin was under investigation by the SEC. She "worked" for Slatkin for approximately six months without pay and without knowing what she would be paid for her services. Del Bianco did not keep any records of her time and generally arrived at Slatkin's office at 9:30 or 10:00 in the morning and left at about 3:00 or 4:00 in the afternoon. No one reported to Del Bianco. She did not have a desk, but instead "worked around the office" talking to people on the telephone while in the reception area or in the kitchen at Slatkin's office. Del Bianco's services to Slatkin, if any, were menial.</p>	<p>Ex. 37 (Del Bianco Exam.), pp. 225-226, 235-37, 245-48, 294-95; Slatkin Decl., ¶ 27.</p>
<p>59.</p>	<p>In approximately June 2000, at Rakow's</p>	<p>Slatkin Decl., ¶ 27; Ex. 14; Ex. 37 (Del</p>

	<p>instruction, Slatkin entered into such a “consulting agreement.” Slatkin discussed the consulting agreement with Rakow, not Del Bianco.</p>	<p>Bianco Exam.), pp. 225-6, 234-7, 244-9.</p>
<p>60.</p>	<p>The purpose of the consulting agreement, however, was not to obtain services from Del Bianco. In fact, Slatkin did not expect Del Bianco to provide any services to him under the consulting agreement. Although Del Bianco did at times provide some menial office support services, they were minimal and of no consequence to Slatkin; they were not the basis for any of the transfers that Slatkin made to her or any of her companies. Instead, the purpose of Slatkin’s consulting agreement with Del Bianco was to create a pretext for Slatkin to transfer money to Del Bianco for Rakow’s use and benefit.</p>	<p>Slatkin Decl., ¶ 27(a).</p>
<p>61.</p>	<p>Pursuant to the consulting agreement, Slatkin was to pay \$1.325 million to Del Bianco. Notwithstanding that Del Bianco purported to be the “contracting consultant,” Rakow told Del Bianco that her portion of the \$1.325 million would be only \$225,000.00.</p>	<p>Ex. 37 (Del Bianco Exam.), p. 234; Slatkin Decl., ¶ 27; Ex. 15.</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14</p>	<p>62. Slatkin actually made or caused to be made to Del Bianco in connection with the consulting agreement transfers totaling \$1 million as follows: (i) July 2000 wire transfer of \$200,000.00, (ii) July 2000 wire transfer of \$50,000 (which Slatkin combined with \$75,000.00 that he paid to Del Bianco as a purported loan in a single \$125,000.00 wire transfer), (iii) September 2000 wire transfer of \$250,000.00, (iv) October 2000 wire transfer of \$250,000.00, and (v) January 2001 wire transfer of \$250,000.00.</p>	<p>Slatkin Decl., ¶ 27(d); Ex. 16.</p>
<p>15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>63. The payments that Slatkin made in connection with the consulting agreement were for Rakow's helping Slatkin through the then pending SEC investigation by assisting him in concealing the true nature of Slatkin's scheme. The funds transferred by Slatkin were not compensation for services provided to him by Del Bianco, but instead compensation to Rakow for his assistance in promoting and concealing Slatkin's Ponzi scheme. The \$1 million in transfers was made from a bank account in Slatkin's name</p>	<p>Slatkin Decl., ¶ 27(d).</p>

	containing primarily the commingled funds of his investors.	
64.	<p>In addition to Slatkin’s transfers to Del Bianco under the “consulting agreement,” Slatkin made substantial transfers to Del Bianco that he recorded in his financial records as loans. These “loans” totaled an additional \$1.475 million and were made as follows: (a) \$200,000.00 by check dated December 8, 1999 payable to Del Bianco, (b) \$400,000.00 by wire transfer to Del Bianco in April 2000, (c) \$500,000.00 by wire transfer to Del Bianco in April 2000, (d) \$75,000.00 by wire transfer to Del Bianco in July 2000, and (e) \$300,000.00 by wire transfer to Del Bianco in July 2000.</p>	Slatkin Decl., ¶ 28; Ex. 17.
65.	<p>It was Rakow who suggested that Del Bianco take the loans from Slatkin. The loan was “negotiated” by Rakow, not Del Bianco. Rakow drafted a “collateralization agreement” that purported to give Slatkin an interest in four brokerage accounts in Del Bianco’s name, but Slatkin never received that security interest and Rakow never told the brokers controlling the four</p>	Ex. 37 (Del Bianco Exam.), pp. 109-111, 194; Ex. 38 (Rakow Exam.), pp. 265-66, 360-63, 368-69.

	<p>brokerage accounts about the purported security interest. At the time this “loan” was made, Del Bianco’s only occupation was working for Slatkin, keeping her and Rakow’s books, and “running the household.”</p>	
<p>66.</p>	<p>Although the \$1.475 million in transfers were recorded by Slatkin as loans, they were not true loans. They were recorded in this manner at Rakow’s instruction so that there would not be any taxable consequence to the person or entity receiving the money.</p>	<p>Slatkin Decl., ¶ 28.</p>
<p>67.</p>	<p>Rakow, Del Bianco, and Slatkin discussed that there was no intention that the “loans” ever be repaid; except that the “loans” would only be repaid in the event that it was expedient for Rakow to do so. In fact, these “loans” to Del Bianco were transfers to or for the benefit of Rakow to compensate him for promoting and concealing Slatkin’s Ponzi scheme.</p>	<p>Slatkin Decl., ¶ 28.</p>
<p>68.</p>	<p>Each of the transfers totaling \$1.475 million to Del Bianco was made from a bank account in Slatkin’s name that contained primarily the commingled funds of Slatkin’s investors.</p>	<p>Slatkin Decl., ¶ 28.</p>

<p>1 2 3 4 5 6 7 8</p>	<p>69. Another way that Slatkin transferred money to Rakow as compensation for promoting and concealing Slatkin's Ponzi scheme was through an entity called Launch Media. Rakow established Launch Media in Del Bianco's name (i.e., it was his company but Del Bianco was the record owner).</p>	<p>Slatkin Decl., ¶ 29.</p>
<p>9 10 11 12 13 14 15 16 17 18 19</p>	<p>70. In January 2000, at Rakow's instruction, Slatkin transferred \$325,000.00 to Launch Media. Slatkin made this transfer for the benefit of Rakow and Del Bianco as compensation to Rakow for his promotion and concealment of Slatkin's Ponzi scheme. The transfer was made from an account in Slatkin's name containing primarily the commingled funds of Slatkin's investors.</p>	<p>Slatkin Decl., ¶ 29; Ex. 18.</p>
<p>20 21 22 23 24 25 26</p>	<p>71. On at least two occasions, Slatkin transferred money (whether directly to a company or to an intermediary such as Del Bianco or one of her companies) at Rakow's instruction for an investment to be made by Rakow separate and apart from Slatkin.</p>	<p>Slatkin Decl., ¶ 30.</p>
<p>27 28</p>	<p>72. On January 3, 1996, Slatkin wired \$115,000.00 to Rakow for his purchase</p>	<p>Slatkin Decl., ¶ 30(a); Ex. 19.</p>

	<p>of an interest (either a stock interest or for the purchase of stock options) in a Canadian company known as Grandma Lee. Slatkin made this transfer from an account in his name that contained primarily the commingled funds of his investors. Slatkin made this transfer at Rakow's request as compensation to Rakow for his promotion and concealment of Slatkin's Ponzi scheme.</p>	
<p>73.</p>	<p>On September 6, 2000, Slatkin transferred \$100,000.00 to Corporate Development International ("CDI"). Slatkin did so at Rakow's instruction because Rakow and Del Bianco wanted to make an investment in CDI in Del Bianco's name. Slatkin made this transfer to CDI as compensation to Rakow for his promotion and concealment of Slatkin's Ponzi scheme. Slatkin made this transfer from an account in his name that primarily contained the commingled funds of Slatkin's investors.</p>	<p>Slatkin Decl., ¶ 30(b); Ex. 20.</p>
<p>74.</p>	<p>In addition to Slatkin's actual transfers to Highlands/Karen Rakow for Rakow's benefit, Slatkin made transfers of funds to Rakow through bogus distributions</p>	<p>Slatkin Decl., ¶ 24; Exs. 4 and 11.</p>

1 from the Highlands investment account.
2 Specifically, at various times during
3 1996 through 2000, Slatkin would write
4 or cause to be written checks payable to
5 Robert Rakow that were not sent to
6 Robert Rakow. Instead, those checks
7 were sent to or picked up by either
8 Rakow or Del Bianco and endorsed by
9 Rakow. These checks were not
10 intended to be received by Robert
11 Rakow, but were prepared at the request
12 of Rakow and/or Robert Rakow. These
13 checks total not less than \$86,500.00
14 and were drawn on and cleared through
15 a bank account in Slatkin's name that
16 contained primarily the commingled
17 funds of Slatkin's investors. Although
18 Slatkin recorded each of these transfers
19 in his financial records as a distribution
20 from Highlands' investment account,
21 they were not distributions from that
22 account because Highlands' account
23 was bogus and did not actually contain
24 any investments. In fact, these transfers
25 were from the commingled funds of
26 Slatkin's investors. Of this \$86,500.00,
27 \$74,500.00 was transferred within the
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	<p>four years preceding Slatkin's bankruptcy and \$8,000.00 was transferred within the one year preceding Slatkin's bankruptcy.</p>	
75.	<p>In or about August 1999, at Rakow's request, Slatkin opened an investment account (the "Del Bianco Account") for Del Bianco. The returns that Slatkin reported with respect to that account were fictitious. Rakow knew that the returns reported in Del Bianco's account were false because Slatkin had told him so and because Rakow was an active participant in Slatkin's Ponzi scheme.</p>	<p>Slatkin Decl., ¶ 15; Ex. 37 (Del Bianco Exam.), pp. 399-400.</p>
76.	<p>Del Bianco purported to open that account with \$76,084.60 that she borrowed from her mother.</p>	<p>Ex. 37 (Del Bianco Exam.), pp. 301-304.</p>
77.	<p>During the first part of 2000, after the SEC investigation began, Slatkin was having difficulty paying investors the withdrawals that they were requesting. To facilitate his ability to meet those demands, Slatkin asked Rakow to (a) provide Slatkin with funds to use for that purpose, and (b) find new investor money.</p>	<p>Slatkin Decl., ¶ 51.</p>
78.	<p>In response to Slatkin's request, Rakow arranged with Sam and Michael Azeez</p>	<p>Slatkin Decl., ¶ 51(a); Ex. 38 (Rakow Exam.), pp. 229-36.</p>

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	<p>for a \$10 million loan to Slatkin.</p> <p>Rakow told Michael Azeez that Slatkin was experiencing a delay in getting money back from Europe, and that Slatkin needed a loan. To support this story, Slatkin created false documents for Rakow to show to Michael Azeez. Rakow, in fact, showed those false documents to Michael Azeez in support of the story concocted by Rakow and Slatkin. Rakow and Slatkin intended that the \$10 million to be received from the Azeez would be one of the sources of funds to pay money to Del Bianco (and indirectly to Rakow) in connection with her bogus “consulting agreement.”</p>	
<p>79.</p>	<p>Rakow also told Slatkin that Rakow would transfer funds to Slatkin in the form of assets held by Rakow in Del Bianco’s name. Rakow specifically told Slatkin that Rakow maintained investments in Del Bianco’s name, and that Del Bianco was “standing in front for him.” Among the assets that Rakow transferred to Slatkin in connection with his request for funds from Rakow were (1) 65,000 shares of stock in London Pacific, (2) \$500,000 in cash, and (3)</p>	<p>Slatkin Decl., ¶ 51(b).</p>

1	130,000 shares of stock in Informix.	
2	In July 2000, Slatkin received 65,000	Slatkin Decl., ¶ 51(b)(1).
3	shares of stock in London Pacific	
4	ostensibly from Del Bianco. Of the	
5	65,000 shares of London Pacific stock	
6	that Slatkin received from Del Bianco,	
7	12,000 shares were received on July 14,	
8	2000, 30,000 shares were received on	
9	July 17, 2000, and 23,000 shares were	
10	received on July 18, 2000.	
11	London Pacific shares closed (a) on July	Mastan Decl., ¶ 7; Ex. 41.
12	14, 2000 at \$13 1/2 (i.e., \$13.50) per	
13	share, (b) on July 17, 2000 at \$15 15/16	
14	(approx. \$15.94) per share, and (c) on	
15	July 18, 2000 at \$16 3/16 (approx.	
16	\$16.19) per share.	
17	The London Pacific shares received by	Slatkin Decl., ¶ 51(b)(1); Mastan Decl.,
18	Slatkin from Del Bianco had a total	¶ 7; Ex. 41.
19	value upon their receipt by Slatkin of	
20	\$1,012,437.50.	
21	In July 2000, Slatkin received 130,000	Slatkin Decl., ¶¶ 51(b)(1) and (2).
22	shares of Informix stock ostensibly from	
23	Del Bianco. Of the 130,000 shares of	
24	Informix stock that Slatkin received	
25	from Del Bianco, 80,000 shares were	
26	received on July 17, 2000 and 50,000	
27	shares were received on July 18, 2000.	
28	Informix shares closed on July 17, 2000	Mastan Decl., ¶ 7; Ex. 42.

	<p>at \$5 5/8 (i.e., approx. \$5.63) per share, and closed on July 18, 2000 at \$5 3/8 (i.e., approx. \$5.38) per share.</p>	
	<p>The Informix shares received by Slatkin from Del Bianco had a total value upon their receipt by Slatkin of \$718,750.00.</p>	<p>Slatkin Decl., ¶¶ 51(b)(1) and (2); Mastan Decl., ¶ 7; Ex. 42.</p>
<p>80.</p>	<p>Prior to Slatkin receiving the London Pacific and Informix stock discussed above, that stock was held in Del Bianco's name subject to certain obligations, including margin debt. In order to obtain the delivery of the London Pacific and Informix stock, Slatkin made the following transfers to the brokerage houses holding those securities in payment of Del Bianco's margin obligations "versus" the delivery of that stock: (a) \$289,000.00 to Prudential Securities versus the delivery of 40,000 shares of Informix and 12,000 shares of London Pacific, (b) \$124,000.00 to Morgan Stanley Dean Witter versus the delivery of 50,000 shares of Informix and 23,000 shares of London Pacific, and (c) \$357,000.00 to Raymond James versus the delivery of 40,000 shares of Informix and 30,000 shares of London Pacific. Slatkin made</p>	<p>Slatkin Decl., ¶ 51(b)(4); Ex. 38 (Rakow Exam.), pp. 524-30; Exs. 22 and 25; Ex. 37 (Del Bianco Exam.), pp. 310-12, 315-19.</p>

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<p>these transfers (totaling \$770,000.00) to those brokerage firms for Del Bianco's benefit (i.e., in satisfaction of margin debt that she owed) and as compensation to Rakow for his assistance in promoting and concealing Slatkin's Ponzi scheme.</p> <p>Notwithstanding that Del Bianco admittedly signed the instructions to her brokerage firms instructing them to deliver the stock "versus payment" from Slatkin, Del Bianco testified that she does not know what "versus payment of" means.</p>	
<p>Prior to receiving the London Pacific and Informix stock, Slatkin discussed the transfer of that stock to him with Rakow. Slatkin did not discuss it with Del Bianco. Rakow and Slatkin discussed that Slatkin would sell the London Pacific and Informix stock in order to make payments to Slatkin's investors. They discussed that the stock would be deposited with Slatkin and that the proceeds of those shares would be allocated on paper to Del Bianco's investment account so that Slatkin would have an apparently legitimate</p>	<p>Slatkin Decl., ¶¶ 51(b)(1) and (2).</p>

	way to reimburse Rakow for that stock.	
81.	<p>In or about June 2000, Slatkin received a transfer of \$500,000.00 ostensibly from Del Bianco. Slatkin and Rakow discussed that this transfer was being made to Slatkin to shore up Slatkin's Ponzi scheme (i.e., to enable Slatkin to pay investors distributions that they requested and continue to conceal the Ponzi scheme) and not actually for the purpose of investing on behalf of Del Bianco. Slatkin did not discuss this transfer with Del Bianco prior to its being made.</p>	Slatkin Decl., ¶ 51(b)(3).
82.	<p>Rakow claims that, in November 2000, he received a telephone call at home from "a gentleman with a Latin accent asking me to meet him." Rakow did not know and did not ask for the person's name. Rakow suggested that they meet at his office on Ortega in Santa Barbara.</p>	Ex. 38 (Rakow Exam.), pp. 39-40.
83.	<p>The "Latino" arrived at Rakow's office carrying a cardboard carton. The entirety of Rakow's conversation with this unknown man was as follows:</p> <p style="padding-left: 40px;">Latino Man: "Hello. Are you Ron Rakow?"</p> <p style="padding-left: 40px;">Rakow: "Yes."</p>	Ex. 38 (Rakow Exam.), pp. 39-43.

	<p>Latino Man: After handing the cardboard carton to Ronald Rakow, "Thank you." [Latino man leaves.]</p>	
<p>84.</p>	<p>Rakow had never met or heard from this mysterious man either before or since. The Latino did not tell Rakow why he was calling and Rakow didn't know why he was calling. The Latino did not identify himself in any way to Rakow and Rakow did not ask who he was. The Latino did not tell Rakow what was in the cardboard carton. The Latino did not say to whom it belonged. The Latino did not tell Rakow either to open the carton or to not open the carton. The Latino did not say why he was giving the carton to Rakow.</p>	<p>Ex. 38 (Rakow Exam.), pp. 40-43.</p>
<p>85.</p>	<p>After the Latino left Rakow's office, Rakow opened the carton to find \$400,000.00 in cash, all banded in \$20 and \$100 denominations. Although he purportedly knew nothing about the money, he used approximately \$20,000.00 of that money.</p>	<p>Ex. 38 (Rakow Exam.), pp. 44-45, 60-61.</p>
<p>86.</p>	<p>In June 2001, the United States of</p>	<p>Ex. 38 (Rakow Exam.), p. 35; Ex. 37</p>

	<p>America seized approximately \$386,385.00 (the "Seized Cash") in cash from the residence utilized by Rakow and Del Bianco. Of this amount, \$380,000.00 was seized from a closet in Del Bianco's bedroom with the balance seized from a drawer in that same room. Del Bianco claims that, prior to its seizure, she did not know that the \$380,000.00 was in her closet.</p>	<p>(Del Bianco Exam.), pp. 238-39.</p>
<p>87.</p>	<p>After its seizure from Del Bianco's closet, Del Bianco discussed the Seized Cash with Rakow. Rakow told her that two briefcases were in the closet containing the cash. Del Bianco didn't ask Rakow how the money got in her closet because "that had nothing to do me [i.e., Del Bianco]" and she "figured that would be between he [i.e., Rakow] and his lawyer."</p>	<p>Ex. 37 (Del Bianco Exam.), pp. 239-40.</p>
<p>88.</p>	<p>Rakow testified that he did not claim an interest in the Seized Cash.</p>	<p>Ex. 38 (Rakow Exam.), pp. 418-19.</p>
<p>89.</p>	<p>Pursuant to a stipulation entered Order entered September 21, 2001, the Seized Cash was turned over to the Trustee.</p>	<p>Ex. 46.</p>
<p>90.</p>	<p>On or about April 29, 2001 (two days before Slatkin's bankruptcy filing), Del Bianco was present at the Slatkin</p>	<p>Ex. 37 (Del Bianco Exam.), pp. 256-58, 262, 264.</p>

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	<p>residence with Slatkin, Mary Jo Slatkin and Del Bianco's son Jimmy when several paintings were removed from the walls in Slatkin's residence, placed in Del Bianco's van, and taken by Del Bianco. After the paintings were removed from the home, Mary Jo Slatkin hung other paintings in their place. According to Rakow, these paintings had a value of \$1.2 million.</p>	
<p>91.</p>	<p>Jimmy drove away from the Slatkin home with the paintings. Del Bianco thought that Jimmy was taking those paintings to Rakow's office. Del Bianco saw the paintings at Rakow's office at approximately the end of May/beginning of June 2001. She did not know where the paintings were after that time and was not told where they were. She never insured the paintings, and the only person who did insure those paintings was Slatkin. Notwithstanding this, Del Bianco contended that she owned the paintings and that Rakow had a 50% "profit" interest in those paintings to the extent that Del Bianco sold them for more than \$1.2 million. Specifically, Del Bianco</p>	<p>Ex. 37 (Del Bianco Exam.), pp. 265-68, 272, 274, 279, 340-341; Exs. 31-32.</p>

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	<p>contends that she acquired the art from Slatkin, along with the forgiveness of her \$1.2 million loan obligation to Slatkin, in return for her delivery to Slatkin of the Informix stock. This agreement was purportedly made in January 2001 and was put in writing by Rakow. She never discussed this purported agreement with Slatkin. Del Bianco, however, never filed or recorded any document with the California Secretary of State or published anything in the newspaper concerning the paintings. The Court previously ruled that the paintings belonged to the Trustee, not Rakow or Del Bianco.</p>	
92.	<p>On May 1, 2001, Slatkin commenced this case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code, <u>In re Reed E. Slatkin</u>, case no. ND 01-11549-RR.</p>	<p>Mastan Decl., ¶ 2(a).</p>
93.	<p>By order entered May 16, 2001, Mr. Neilson was appointed to administer Slatkin’s chapter 11 bankruptcy estate.</p>	<p>Mastan Decl., ¶ 2(b).</p>
94.	<p>On September 13, 2001, in his capacity as the Chapter 11 Trustee, Mr. Neilson caused Topsight Oregon, Inc.</p>	<p>Mastan Decl., ¶ 2(c).</p>

	<p>(“Topsight”) to file a voluntary petition for relief in <u>In re Topsight Oregon, Inc.</u>, case no. ND 01-12990-RR in the Bankruptcy Court. Mr. Neilson was appointed as the chapter 7 trustee of the Topsight bankruptcy estate.</p>	
<p>95.</p>	<p>By order entered April 25, 2003, the Slatkin bankruptcy estate was substantively consolidated with that of Topsight and the Reed Slatkin Investment Club, L.P.</p>	<p>Mastan Decl., ¶ 2(j).</p>
<p>96.</p>	<p>As of the date of Slatkin’s bankruptcy petition, Slatkin had unsecured creditors whose claims were allowable under 11 U.S.C. § 502. Those creditors include, without limitation, John Poitras, Basil Honikman’s Keogh account, Basil and Linda Honikman, Gregory Abbott, Michael Azeez, Stuart Stedman, and Anthony Podell.</p>	<p>Mastan Decl., ¶ 2(d); Honikman Decl., ¶¶ 2-4; Poitras Decl., ¶¶ 3-5.</p>
<p>97.</p>	<p>By order entered June 20, 2003, the Court confirmed a plan of reorganization (the “Plan”). The Effective Date of the Plan was July 1, 2003. By virtue of the Plan, all assets of the consolidated bankruptcy estate were transferred to the Liquidating Trust and all claims against the Slatkin bankruptcy</p>	<p>Mastan Decl., ¶ 2(k).</p>

	<p>estate were transferred and assigned to the Liquidating Trust.</p>	
<p>98.</p>	<p>Throughout May 1, 1994 through the filing of his bankruptcy petition, Slatkin had creditors. For example, by May 8, 1991, Basil Honikman's Keogh account became a creditor when he deposited \$5,000.00 with Slatkin. The Honikman Keogh account remained a creditor without interruption through the filing of Slatkin's bankruptcy petition and has an allowed claim against the Slatkin bankruptcy estate (now the Liquidating Trust) of \$142,520.84. Basil Honikman and his wife Linda opened an investment account in their own names in January 1991. Since July 23, 1993, the Honikmans have had a net principal balance due from Slatkin of \$26,000.00; and they have an allowed claim in that amount against the Slatkin bankruptcy estate.</p>	<p>Honikman Decl., ¶¶ 2-4.</p>
<p>99.</p>	<p>John K. Poitras ("Poitras") became a creditor on December 28, 2000 when he invested \$5,000,000.00 with Slatkin. Poitras remained a creditor through the filing of Slatkin's bankruptcy petition and has an allowed claim against the</p>	<p>Poitras Decl., ¶¶ 2-6.</p>

	Slatkin bankruptcy estate of \$15,000,000.	
100.	In February and March 2001, Mr. Poitras demanded the return of his \$15,000,000. Because Slatkin did not return Mr. Poitras' money, Mr. Poitras commenced a state court action against Slatkin for fraud and obtained a Temporary Restraining Order and an Attachment Lien against Slatkin.	Poitras decl., ¶ 4.
101.	Mr. Poitras was unable to discover Slatkin's transfers to his investors until at least December 28, 2000 when Mr. Poitras became a creditor of Slatkin.	Poitras decl., ¶ 5.
102.	In addition, Slatkin had hundreds of other creditors, as evidenced by the allowed claims filed against the consolidated Slatkin bankruptcy estate (the "Estate") (predecessor-in-interest to the Liquidating Trust), of which the Court may take judicial notice.	Mastan Decl., ¶ 2(d)
103.	In or about February 2002, Rakow filed proof of claim number 401 (the "Rakow Claim") in the amount of \$4,030,000.00. The Rakow Claim purportedly seeks to recover Rakow's portions of purported profits from six joint ventures that he entered into with	Ex. 26.

	<p>Slatkin, including joint ventures in (1) AIME, (2) National Media, (3) Grandma Lee, (4) Bid.com, (5) Bank of Rifle, and (6) Pennsylvania PCS.</p>	
<p>104.</p>	<p>In or about 1995-96, Slatkin, Rakow, and Robert Rakow entered into a joint venture for the acquisition of 1.6 million shares of American Interactive Media Enterprises (i.e., AIME). The shares were acquired for \$350,000.00 using the commingled funds of Slatkin's investors. Slatkin, Rakow, and Robert Rakow agreed that the shares would be held in Slatkin's name. Slatkin, Rakow and Robert Rakow were each entitled to 1/3 of the net profits of the joint venture (with Slatkin being entitled to return of his capital as well). For his 1/3 of the profits from this joint venture, Rakow was an "interface" between Robert Rakow and Slatkin and Rakow negotiated the interest in AIME.</p>	<p>Ex. 38 (Rakow Exam.), pp. 426-29, 432-33, 437; Slatkin Decl., ¶ 31.</p>
<p>105.</p>	<p>Slatkin, Rakow, and Robert Rakow entered into a joint venture for the acquisition of an equity interest in National Media. Rakow had a 20% profit interest, Robert Rakow had a 30% profit interest, and Slatkin had a 50%</p>	<p>Ex. 38 (Rakow Exam.), p. 438-41.</p>

	<p>profit interest. Slatkin paid for the joint venture's shares in National Media and Slatkin held those shares. For his 20% profit interest, Ronald Rakow "interfaced" with Robert Rakow, visited National Media three times in Philadelphia, and met with its president at LAX.</p>	
<p>106.</p>	<p>Slatkin, Rakow, and Robert Rakow entered into a joint venture for the acquisition of an equity interest in Grandma Lee. Each of them had a 1/3 net profit interest in the joint venture. Slatkin paid for the joint venture's shares in Grandma Lee and Slatkin held those shares.</p>	<p>Ex. 38 (Rakow Exam.), pp. 444-45, 449.</p>
<p>107.</p>	<p>Slatkin, Rakow, and Robert Rakow entered into a joint venture for the acquisition of an equity interest in Bid.com. The Bid.com shares were acquired using money that Slatkin transferred to Robert Rakow for that purpose. Slatkin held all of the Bid.com shares.</p>	<p>Ex. 38 (Rakow Exam.), pp. 450-52, Slatkin Decl., ¶ 40.</p>
<p>108.</p>	<p>In or about 1997-98, Rakow and Slatkin entered into a joint venture to acquire an equity interest in the Bank of Rifle. Slatkin and Rakow each had a 50%</p>	<p>Ex. 38 (Rakow Exam.), pp. 457-59.</p>

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	<p>profit interest in the joint venture. Slatkin paid for the joint venture's interest in Bank of Rifle. For his 50% profit interest, Rakow "put the transaction together." The Bank of Rifle shares were issued to Slatkin and Slatkin controlled them. Subsequently, Bank of Rifle merged into Norwest Bank and the joint venture became the owner of Norwest Bank shares. Norwest Bank then merged into Wells Fargo Bank.</p>	
<p>109.</p>	<p>Rakow and Slatkin entered into a joint venture for the acquisition of a PCS bandwidth through an auction by the U.S. government. The Rakow/Slatkin joint venture joined with a group lead by Sam Azeez to acquire a PCS bandwidth for the Lancaster, Pennsylvania area. In return for an equity interest, that PCS bandwidth was transferred to a cellular company. Slatkin paid \$10,000.00 for the acquisition of the equity interest in the cellular company. The shares were issued to Slatkin. Rakow understood that he was entitled to a 50% interest in the Rakow/Slatkin joint venture.</p>	<p>Ex. 38 (Rakow Exam.), pp. 462-63, 465-67.</p>

1 2 3 4 5 6 7	110. In or about February 2002, Del Bianco filed proof of claim number 444 (the “Del Bianco Claim”) in the amount of \$3,657,436.49 for “[r]ecovery of invested funds and income, [b]reach of [c]ontract, [b]reach of [f]iduciary [d]uty.”	Ex. 27.
8 9 10 11 12 13 14 15 16 17	111. Del Bianco claims \$869,555.16 for “Investments with Reed Slatkin.” The Del Bianco Claim provides no basis as to how this amount was calculated. In fact, Del Bianco provided to Slatkin for investment purposes only \$186,084.60 (consisting of \$10,000.00 on or about July 12, 1993, \$76,084.60 on or about August 18, 1999, and \$100,000.00 on or about October 14, 1999).	Ex. 27; Judd Decl., ¶ 4.
18 19 20 21 22 23 24 25 26	112. In addition, in June 2000, Del Bianco transferred \$500,000.00 to Slatkin. Although booked as a deposit into Del Bianco’s account, this was the proceeds of her sale of 3Com stock and was provided at Slatkin’s request to Rakow as a capital infusion to support Slatkin’s Ponzi scheme during the SEC investigation.	Slatkin Decl., ¶ 51(b)(3).
27 28	113. Del Bianco claims \$938,663.00 for “Breach of Contract re Sale of Palm/3	Ex. 27; Ex. 24.

	Com Stock.” That claim is based upon a handwritten note signed by Slatkin dated June 18, 2000.	
114.	That handwritten note is a sham document. Although Slatkin wrote the note, he did not do so on the date stated. Instead, he signed it at Rakow’s instruction while sitting in Rakow’s car after the date on which he filed bankruptcy.	Slatkin Decl., ¶ 51(b)(3).
115.	In reality, Slatkin told Rakow that he needed money to sure up the Ponzi scheme and so that he could make payments to investors who were demanding their money. Slatkin told Rakow that the \$500,000.00 would be credited on paper to Del Bianco’s investment account so that Slatkin would have an ostensibly legitimate reason for paying that money back to Rakow/Del Bianco. In fact, Rakow and Del Bianco both knew that the funds were not intended to be invested on their (or either of their) behalf.	Slatkin Decl., ¶ 51(b)(3); Ex. 38 (Rakow Exam.), pp. 185-190.
116.	Rakow and Slatkin discussed that the funds would be the proceeds of Rakow/Del Bianco’s sale of 3 Com stock and that 3 Com was preparing to	Slatkin Decl., ¶ 51(b)(3).

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	<p>spin off its Palm division. They also discussed that Slatkin would repay to Rakow the value of that stock (which Rakow expected to increase). The purported agreement contained in Exhibit 24 (i.e., that Slatkin would repay the \$500,000 plus an increased amount if Palm/3 Com stock increased in value) was requested by Rakow after Slatkin's bankruptcy to help substantiate the prior transaction.</p>	
117.	<p>Del Bianco claims \$333,333.33 for the breach of the consulting agreement. Del Bianco provides no information concerning the calculation of that claim. As set forth in above, the consulting agreement was a sham in that it was not intended to provide a basis for any services to Slatkin by Del Bianco, but instead to constitute a pretext for Slatkin's payment of compensation to Rakow for his assistance in concealing and promoting Slatkin's Ponzi scheme.</p>	Ex. 27.
118.	<p>Del Bianco asserts a claim for \$6,885.00 that was seized from her home by the United States of America and turned over to the Trustee pursuant to Court order. These funds are in</p>	Ex. 27.

	addition to the \$400,000.00 that was delivered to Rakow by the mysterious, unknown Latino.	
119.	On June 4, 2002, Del Bianco and Rakow commenced this Adversary Proceeding by filing a Complaint against the Trustee seeking declaratory relief as to the ownership of certain paintings.	Ex. 29.
120.	On July 3, 2002, the Trustee filed a Counter-Claim against Rakow and Del Bianco for, among other things, the avoidance and recovery of fraudulent and preferential transfers.	Ex. 30.
121.	On November 21, 2002, the Court entered summary judgment in favor of the Trustee and against Rakow and Del Bianco on their Complaint for declaratory relief determining that the paintings at issue were property of the Slatkin bankruptcy estate.	Exs. 31-32.
122.	On June 2, 2003, the Court began an extended evidentiary hearing on a proposed plan of reorganization (the "Plan") proposed jointly by the Trustee and the Official Committee of Unsecured Creditors. More than 120 individuals and entities objected to the	Mastan Decl., ¶ 2(k); Ex. 33.

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	<p>Plan based on their contention that Slatkin was a “stockbroker,” as that term is used in the Bankruptcy Code, and was therefore ineligible to be a debtor under Chapter 11. After a five-day trial, and after considering extensive briefs, more than 33 hours of live testimony from 10 witnesses, more than 700 exhibits totaling thousands of pages (not all of which were admitted into evidence), and several hours of closing arguments, the Court overruled the stockbroker objection, found that Slatkin had operated a Ponzi scheme, and confirmed the Plan.</p>	
<p>123.</p>	<p>In or about November 2004, Rakow and Del Bianco were indicted on felony charges arising out of their activities with Slatkin. That case is <u>United States of America v. Rakow and Del Bianco</u>, U.S.D.C. Case No. CR 04-01563. Rakow was charged with evading and defeating the payment of his income taxes. Specifically, the United States alleged that Rakow, against whom significant tax liens existed, placed assets generated by him in the name of Del Bianco or entities controlled by Del</p>	<p>Ex. 35, pp. 5-10.</p>

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	Bianco to avoid the IRS' liens attaching to those assets.	
124.	In July 2006, Rakow was convicted of tax evasion.	Ex. 36.
125.	On December 8, 2004, BNI Holdings, Inc. ("BNI") filed an interpleader action entitled <u>BNI Holding, Inc. v. Denise Del Bianco, et al.</u> , S.B.S.C. Case No. 1164773 (the "BNI Action"). In that action, BNI sought a determination as to whom to pay more than \$2 million resulting from the buy-out of an equity interest in BNI held of record by Del Bianco through her sole proprietorship Gulf United Technical Commerce. As the record holder of the equity interest, Del Bianco claimed an entitlement to those funds. The IRS, however, had levied on that interest asserting that Del Bianco was the "nominee, agent, holder of beneficial interest for, trustee, transferee, or alter ego of Ronald L. Rakow."	Mastan Decl., ¶ 6(a); Ex. 39; Ex. 38 (Del Bianco Exam.), pp. 112-13.
126.	In or about January 2005, the IRS removed the BNI Action to the United States District Court for the Central District of California and it was assigned Case No. CV 05-0055 DDP.	See Exs. 37 and 38; Ex. 39; Ex. 40, pp. 22-24, 33.

1 In the context of the IRS' motion for
2 summary judgment, the District Court
3 considered "whether there are triable
4 issues of material fact as to whether
5 Rakow 'has engaged in a sort of legal
6 fiction, for federal tax purposes, by
7 placing legal title to property in the
8 hands' of Del Bianco and GUTC, while
9 in actuality retaining all or some of the
10 benefits of being the true owner." By
11 order entered June 4, 2007, based
12 largely upon the Rule 2004 testimony of
13 Rakow and Del Bianco in the Slatkin
14 bankruptcy case, the District Court
15 granted summary judgment in favor of
16 the IRS determining that Del Bianco
17 was a mere nominee/alter ego of
18 Rakow.

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21 **CONCLUSIONS OF LAW**

22 **Jurisdiction and Venue**

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

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

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

2 **Standard for Summary Judgment**

3 4. Summary judgment is appropriate if “there is no genuine issue as to any material
4 fact and . . . the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P.
5 56(c) (incorporated by Fed. R. Bankr. P. 7056).

6 **Fraudulent Transfers**

7 **Actual Fraudulent Transfers Under Cal. Civ. Code § 3439.04(a)(1), 11 U.S.C.**
8 **§§ 544(a), 548(a)(1)(A) and 550(a)**

9 5. Under California law, transfers made by a debtor with the actual intent to hinder,
10 delay, or defraud any creditor of the debtor are voidable by a creditor, whether the creditor’s
11 claim arose before or after the transfer was made. See Cal. Civ. Code § 3439.04(a)(1). A
12 trustee has the power to set aside such transfers pursuant to 11 U.S.C. § 544(a) and to
13 recover such transfers pursuant to 11 U.S.C. § 550(a).

14 6. Under 11 U.S.C. § 548(a)(1)(A), the “trustee may avoid any transfer of an
15 interest of the debtor in property . . . that was made or incurred on or within one year before
16 the date of the filing of the petition,” if the debtor made such transfer with the actual intent to
17 hinder, delay, or defraud any entity to which the debtor was or became indebted. A trustee
18 has the power to recover such transfers pursuant to 11 U.S.C. § 550(a).

19 7. The principal of a Ponzi scheme has the actual, subjective intent to defraud his
20 creditors. See In re Cohen, 199 B.R. 709, 717 (BAP 9th Cir. 1996) (“Proof of a Ponzi
21 scheme is sufficient to establish the Ponzi operator’s actual intent to hinder, delay, or defraud
22 creditors for purposes of actually fraudulent transfers . . .”); In re Agricultural Research and
23 Technology Group, Inc., 916 F.2d 528, 535 (9th Cir. 1990) (“Agricultural Research”
24 (same)).

25 8. Slatkin specifically admitted that he operated a Ponzi scheme and “knowingly
26 and with intent to defraud, planned and executed a scheme to defraud approximately 800
27 investors throughout the United States of over \$593 million.” Ex. 1, pp. 23, 25; Slatkin
28 Decl., ¶ 3. Slatkin’s Plea Agreement and declaration testimony establish his actual intent to

1 defraud his creditors from about 1986 to May 1, 2001. See Scholes v. Lehman, 56 F. 3d 750,
2 762 (7th Cir. 1995) (“Taken together, the facts just recited, most of which came right out of
3 Douglas’s plea agreement . . . and of which the district court properly took judicial notice . . .
4 established the defendants’ liability. . . .”); Agricultural Research, 916 F.2d at 535 (“The
5 mere existence of a Ponzi scheme . . . has been found to fulfill the requirement of actual
6 intent on the part of the debtor”).

7 9. For purposes of 11 U.S.C. § 1141(a), at all relevant times Rakow and Del Bianco
8 were “creditors” of Slatkin and, therefore, are bound by the provisions of the plan of
9 reorganization confirmed in the Slatkin bankruptcy case. Trulis v. Barton, 107 F.3d 685, 691
10 (9th Cir. 1995); In re Chattanooga Wholesale Antiques, 930 F.2d 458 (6th Cir. 1991); 11
11 U.S.C. §§ 101(5) and (10).

12 10. Under California law, actual fraudulent transfers may be avoided under Cal. Civ.
13 Code § 3439.04 unless the transferee took in good faith and for a reasonably equivalent
14 value. See Cal. Civ. Code § 3439.08(a).

15 11. There is no reasonably equivalent value given for false profits received pursuant
16 to a Ponzi scheme. See In re United Energy Corp., 944 F.2d 589, 595 n.6 (9th Cir. 1991)
17 (“United Energy”) (“such excess amounts would be avoidable because the debtor would not
18 have received reasonably equivalent value for them”).

19 12. A contract made for an illegal purpose is void and does not constitute reasonably
20 equivalent value. In re Fink, 217 B.R. 614, 619 and 622 (Bankr. C.D. Cal. 1997). An
21 agreement to defraud creditors is void. Severance v. Knight-Counihan Co., 29 Cal.2d 561,
22 567 (1947).

23 13. To constitute reasonably equivalent value, the value must be received by the
24 debtor in exchange for the debtor’s transfer. Cal. Civ. Code § 3439.04(a)(2); 11 U.S.C. §
25 548.

26 14. A defendant lacks good faith when he or she is “possessed of enough knowledge
27 of the actual facts to induce a reasonable person to inquire further about the transaction. . . .
28 Such inquiry notice suffices on the rationale that some facts suggest the presence of others to

1 which a transferee may not safely turn a blind eye.” In re Cohen, 199 B.R. at 709. “[F]or
2 purposes of the UFTA, a transferee lacks good faith if he or she (1) colludes with the debtor
3 or otherwise actively participates in the debtor’s fraudulent scheme, or (2) has actual
4 knowledge of facts which would suggest to a reasonable person that the transfer was
5 fraudulent.” Cybermedia, Inc. v. Symantec Corp., 19 F.Supp.2d 1070, 1075 (N.D. Cal.
6 1998).

7 **Limitations Period for Actual Fraudulent Transfers**

8 15. A cause of action under California law to set aside an actual fraudulent transfer
9 may be brought up to four years after the transfer was made or one year after the transfer
10 could reasonably be discovered, but in no event after seven years. See Cal. Civ. Code
11 § 3439.09; 11 U.S.C. § 544.

12 16. 11 U.S.C. § 548(a)(1)(A) authorizes a trustee to set aside an actual fraudulent
13 transfer made within one year before the debtor’s bankruptcy.

14 17. 11 U.S.C. § 546(a)(1)(A) authorizes a trustee to bring an action to set aside
15 fraudulent transfers under California and bankruptcy law within two years after the entry of
16 the order for relief.

17 **Constructive Fraudulent Transfers Under Cal. Civ. Code § 3439.05, 11 U.S.C.**
18 **§§ 544(a), 548(a)(1)(B) and 550(a)**

19 18. Under California law (Cal. Civ. Code § 3439.05) transfers made by a debtor may
20 also be set aside and recovered if the debtor did not receive reasonably equivalent value in
21 exchange for the transfer or obligation, and the debtor was insolvent at the time of the
22 transfer or became insolvent as a result of the transfer. A trustee has the power to set aside
23 such transfers pursuant to 11 U.S.C. § 544(a) and to recover such transfers pursuant to
24 11 U.S.C. § 550(a).

25 19. A cause of action under California law to set aside a constructive fraudulent
26 transfer may be brought up to four years after the transfer was made. See Cal. Civ. Code
27 § 3439.09(b); 11 U.S.C. § 544.
28

1 20. Under 11 U.S.C. § 548(a)(1)(B), a trustee may avoid transfers made by the
2 debtor within one year before bankruptcy if the transfer was for less than a reasonably
3 equivalent value and the debtor was insolvent when the transfer was made or became
4 insolvent as a result of the transfer. A trustee has the power to recover such transfers
5 pursuant to 11 U.S.C. § 550(a).

6 21. There is no reasonably equivalent value given for false profits in a Ponzi scheme.
7 See United Energy, 944 F.2d at 595 n.6 (“such excess amounts would be avoidable because
8 the debtor would not have received reasonably equivalent value for them”).

9 22. A contract made for an illegal purpose is void and does not constitute reasonably
10 equivalent value. In re Fink, 217 B.R. 614, 619 and 622 (Bankr. C.D. Cal. 1997). An
11 agreement to defraud creditors is void. Severance v. Knight-Counihan Co., 29 Cal.2d 561,
12 567 (1947).

13 23. To constitute reasonably equivalent value, the value must be received by the
14 debtor in exchange for the debtor’s transfer. Cal. Civ. Code § 3439.04(a)(2); 11 U.S.C. §
15 548.

16 24. Slatkin was insolvent from the beginning of his Ponzi scheme. See Scholes v.
17 Lehman, 56 F. 3d at 755 (holding that the claims of investors made a Ponzi scheme insolvent
18 from inception); In re Randy, 189 B.R. 425, 441 (N.D. Ill. 1995) (“Having been convicted of
19 a Ponzi scheme, Randy was insolvent from its inception as a matter of law”); In re
20 Independent Clearing House, 77 B.R. 843, 871 (D. Utah 1987) (“By definition, an enterprise
21 engaged in a Ponzi scheme is insolvent from day one”).

22 25. To avoid a transfer or obligation under Cal. Civ. Code § 3439.05, the debtor
23 must have had a creditor who had a claim against the debtor at the time the transfer was
24 made.

25 **Limitations Period for Constructive Fraudulent Transfers**

26 26. A cause of action to avoid a constructive fraudulent transfer under California law
27 may be brought within four years after the transfer was made. See Cal. Civ. Code
28 § 3439.09(b). The Trustee is authorized to bring an action to set aside and recover such

1 fraudulent transfers under 11 U.S.C. §§ 544 and 550 within two years after the entry of the
2 order for relief. See 11 U.S.C. § 546(a)(1)(A).

3 27. 11 U.S.C. § 548(a)(1)(B) authorizes a trustee to file an action to set aside as a
4 constructive fraudulent transfer, transfers made within one year before bankruptcy. The
5 action must be filed within two years after entry of the order for relief. 11 U.S.C.
6 § 546(a)(1)(A).

7 **Affirmative Defenses**

8 28. The defendant bears the burden of introducing affirmative evidence and specific
9 facts showing that there is a genuine dispute on a material issue. Celotex Corp. v. Catrett,
10 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). “The plain language of Rule
11 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon
12 motion, against a party who fails to make a showing sufficient to establish the existence of an
13 element essential to that party’s case, and on which that party will bear the burden of proof at
14 trial.”

15 29. With respect to intentional fraudulent transfers claims, the reasonably equivalent
16 value and good faith defense is an affirmative defense on which the defendants have the
17 burden of proof. In re Agricultural Research and Technology Group, Inc., 916 F.2d 528, 535
18 (9th Cir. 1990) (“The appellants [i.e., defendants] bear the burden of proof in establishing that
19 Palm Seedlings-A received the transfer in good faith”); In re Cohen, 199 B.R. 709, 718-19
20 (9th Cir. BAP 1996) (“The issue of good faith under UFTA § 8(a) is a defensive matter as to
21 which the defendants asserting the existence of good faith have the burden of proof”); In re
22 Bay Plastics, Inc., 187 B.R. 315, 336 (Bankr. C.D. Cal. 1995) (“[A] good faith transferee for
23 value has enjoyed an affirmative defense to the cause of action.”).

24 30. There is no reasonably equivalent value defense for fictitious profits paid as part
25 of a Ponzi scheme. See United Energy, 944 F.2d at 595 n.6 (“such excess amounts [like the
26 fictitious profits the Trustee seeks to avoid here] would be avoidable because the debtor
27 would not have received reasonably equivalent value for them”).
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1 31. A contract made for an illegal purpose is void and does not constitute reasonably
2 equivalent value. In re Fink, 217 B.R. 614, 619 and 622 (Bankr. C.D. Cal. 1997). An
3 agreement to defraud creditors is void. Severance v. Knight-Counihan Co., 29 Cal.2d 561,
4 567 (1947).

5 32. To constitute reasonably equivalent value, the value must be received by the
6 debtor in exchange for the debtor's transfer. Cal. Civ. Code § 3439.04(a)(2); 11 U.S.C. §
7 548.

8 33. There is no defense based on an argument that Slatkin was a "stockbroker" under
9 the Bankruptcy Code as that term is used in 11 U.S.C. § 101(53A). The Court has already
10 ruled that Slatkin was not a stockbroker. See Reitman Decl., ¶ 2(i); Ex. 19. Artra Group,
11 inc. v. Salomon Brothers Holding Company, 1996 WL 637595; Arvay v. Hyman, 187 B.R.
12 743, 745 (M.D. Fl. 1995).

13 34. A defendant lacks good faith when he or she is "possessed of enough knowledge
14 of the actual facts to induce a reasonable person to inquire further about the transaction. . . .
15 Such inquiry notice suffices on the rationale that some facts suggest the presence of others to
16 which a transferee may not safely turn a blind eye." In re Cohen, 199 B.R. at 709. "[F]or
17 purposes of the UFTA, a transferee lacks good faith if he or she (1) colludes with the debtor
18 or otherwise actively participates in the debtor's fraudulent scheme, or (2) has actual
19 knowledge of facts which would suggest to a reasonable person that the transfer was
20 fraudulent." Cybermedia, Inc. v. Symantec Corp., 19 F.Supp.2d 1070, 1075 (N.D. Cal.
21 1998).

22 Recovery of Fraudulent Transfers

23 35. Avoided fraudulent transfers may be recovered for the benefit of the estate from
24 "the initial transferee of such transfer or the entity for whose benefit the such transfer was
25 made; or . . . any immediate or mediate transferee of such initial transferee." 11 U.S.C. §
26 550(a)(1) and (2).

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1 **Slatkin's Transfers**

2 **36.** Slatkin's transfers to or for the benefit of Rakow of \$4,920,142.00, which
3 occurred between May 1, 1994 and May 1, 2001, constitute fraudulent transfers that are
4 avoidable under Cal. Civ. Code §§ 3439.04(a)(1) and 3439.07 and 11 U.S.C. § 544 and are
5 recoverable from Rakow under 11 U.S.C. § 550(a).

6 **37.** Slatkin's transfers to or for the benefit of Del Bianco of \$3,670,000.00, which
7 occurred between May 1, 1994 and May 1, 2001, constitute fraudulent transfers that are
8 avoidable under Cal. Civ. Code §§ 3439.04(a)(1) and 3439.07 and 11 U.S.C. § 544 and are
9 recoverable from Del Bianco under 11 U.S.C. § 550(a).

10 **38.** Slatkin's transfers to or for the benefit of Rakow of \$3,869,500.00, which
11 occurred between May 1, 1997 through May 1, 2001, constitute fraudulent transfers that are
12 avoidable under Cal. Civ. Code §§ 3439.04(a)(1), 3439.04(a)(2), 3439.05 and 3439.07 and
13 11 U.S.C. § 544 and are recoverable from Rakow under 11 U.S.C. § 550(a).

14 **39.** Slatkin's transfers to or for the benefit of Del Bianco of \$3,670,000.00, which
15 occurred between May 1, 1997 through May 1, 2001, constitute fraudulent transfers that are
16 avoidable under Cal. Civ. Code §§ 3439.04(a)(1), 3439.04(a)(2), 3439.05 and 3439.07 and
17 11 U.S.C. § 544 and are recoverable from Del Bianco under 11 U.S.C. § 550(a).

18 **40.** Slatkin's transfers to Rakow of \$2,253,000.00, which occurred between May 1,
19 2000 through May 1, 2001, constitute fraudulent transfers that are avoidable under 11 U.S.C.
20 §§ 548(a)(1)(A) and 548(a)(1)(B), and are recoverable from Rakow under 11 U.S.C. §
21 550(a).

22 **41.** Slatkin's transfers to Del Bianco of \$2,245,000.00, which occurred between May
23 1, 2000 through May 1, 2001, constitute fraudulent transfers that are avoidable under 11
24 U.S.C. §§ 548(a)(1)(A) and 548(a)(1)(B), and are recoverable from Del Bianco under 11
25 U.S.C. § 550(a).

26 **42.** The Trustee is entitled to recover pre-judgment interest from the date of the
27 filing of the Counter-Complaint through the date of entry of judgment herein, plus post-
28 judgment interest at a rate to be set pursuant to 28 U.S.C. § 1961.

1 **Mandatory Subordination of Claims**

2 43. A proof of claim “arising from the purchase or sale” or “a security of the debtor
3 or of an affiliate of the debtor” “shall be subordinated to all claims or interests that are senior
4 to or equal the claim or interest represented by such security . . .” 11 U.S.C. § 510(b).

5 44. A joint venture whose property is controlled by the debtor is an “affiliate of the
6 debtor.” In re Basin Resources Corp., 190 B.R. 824, 826-27 (Bankr. N.D. TX 1996).

7 **Equitable Subordination of Claims**

8 45. The Court is empowered to “subordinate for purposes of distribution all or part
9 of an allowed clam to all or part of another allowed claim or all or part of an allowed interest
10 to all or part of another allowed interest.” 11 U.S.C. § 510(c).

11 46. “Three findings are generally required before equitable subordination will be
12 granted: (1) that the claimant engaged in some type of inequitable conduct, (2) that the
13 misconduct injured creditors or conferred unfair advantage on the claimant, and (3) that
14 subordination would not be inconsistent with the Bankruptcy Code.” In re Lazar, 83 F.3d
15 306, 309 (9th Cir. 1996).

16 **Denial of Proof of Claim Under 11 U.S.C. § 502(d)**

17 47. The Court shall “disallow any claim of any entity from which property is
18 recoverable under section . . . 550 . . . of this title or that is a transferee of a transfer
19 avoidable under section . . . 544 . . . 548 of this title, unless such entity or transferee has paid
20 the amount . . . For which such entity or transferee is liable under section . . . 550 . . .” 11
21 U.S.C. § 502(d).

22 **Denial of Proof of Claim as Fraudulent Obligation**

23 48. An obligation incurred by the debtor the actual intent to hinder, delay, or defraud
24 any creditor of the debtor is avoidable as a fraudulent obligation. Cal. Civ. Proc. Code §
25 3439.04(a); 11 U.S.C. § 544.

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1 **Denial of Claims for Bogus Profits**

2 49. A proof of claim is not allowable to the extent that it seeks to recover fictitious
3 profits of a Ponzi scheme. See In re United Energy Corp., 944 F.2d 589, 595 n.6 (9th Cir.
4 1991).

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Gumport | Reitman, 550 South Hope Street, Suite 825, Los Angeles, CA 90071-2627.

On **October 26, 2007**, in the manner indicated below, the foregoing document described as: **TRUSTEE’S STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW** was served on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

[SEE ATTACHED SERVICE LIST]


X **(FIRST CLASS MAIL -- AS NOTED ON ATTACHED)** I caused such envelope(s) to be mailed by first class mail by depositing them in an "OUT" box in the office of my employer, following this business's ordinary practice, with which I am readily familiar. On the same day correspondence is placed for collection and mailing in that "OUT" box, such correspondence is deposited in the ordinary course of business with the United States Postal Service by Desmond Mail Delivery Service pursuant to its contract with Gumport | Reitman. (C.C.P. § 1013(a)(3)).

* * * * *

___ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made.

EXECUTED **October 26, 2007**, at Los Angeles, California.



TRAVIS MICHAEL TERRY

SERVICE LIST
[BY FIRST CLASS U.S. MAIL]

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