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Elizabeth A. Brown
Clerk of Supreme Court

7
8 SUPREME COURT
9 STATE OF NEVADA

10 RONALD J. ROBINSON,
11 Appellant,

No. 83250

12 vs.

APPELLANT'S APPENDIX VOL. 3

13 STEVEN A. HOTCHKISS,
14
15 Respondent.

16 RONALD J. ROBINSON,
17 Appellant,
18

19 vs.

20 ANTHONY WHITE, ROBIN
SUNTHEIMER, TROY
21 SUNTHEIMER, STEPHENS
GHESQUIERE, JACKIE STONE,
22 GAYLE CHANY, KENDALL
SMITH, GABRIELE
23 LA VERMICOCCA, ROBERT
KAISER.

24
25 Respondents.
26
27
28

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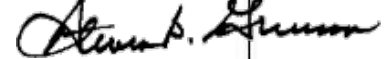
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1 MTN
2 T. LOUIS PALAZZO, ESQUIRE
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4 PALAZZO LAW FIRM
5 A PROFESSIONAL LAW CORPORATION
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8 Tele: 702/385-3850
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10 *Attorney for Defendants,*
11 **JULIE MINUSKIN, JOSH STOLL**
12 **and RETIRE HAPPY, LLC**

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 IN THE MATTER BETWEEN,

Case No. A-17-763003-C

12 Anthony White, Robin Suntheimer, Troy
13 Suntheimer, Stephens Ghesquiere, Jackie
14 Stone, Gayle Chany, Kendall Smith, Gabriele
15 Lavernicocca and Robert Kaiser,

Dept. 24

16 Plaintiff,

MOTION FOR DETERMINATION OF
GOOD FAITH SETTLEMENT ON
ORDER SHORTENING TIME

17 vs.

18 Ronald J. Robinson, Vernon Rodriquez,
19 Virtual Communications Corporation,
20 Wintech, LLC, Alisa Davis, Julie Minuskin,
21 Josh Stoll, Retire Happy LLC, and DOES 1-
22 10 and ROES 1-10, inclusively,

23 Defendants.

24 COME NOW the Defendants, RETIRE HAPPY, LLC, JULIE MINUSKIN, and JOSH
25 STOLL (together referred to as Defendants herein) by and through their attorney, T. LOUIS
26 PALAZZO, ESQ., of PALAZZO LAW FIRM, hereby submits their Motion for Determination of
27 Good Faith Settlement.

1 This Motion is made and based upon the attached Memorandum of Points and Authorities,
2 the pleadings and papers on file herein, and any further evidence and oral argument this Honorable
3 Court may wish to consider at the time of the hearing of said Motion.

4
5 DATED this 5th day of April, 2019.

6 PALAZZO LAW FIRM
7 A PROFESSIONAL LAW CORPORATION

8 
9 J. LOUIS PALAZZO, ESQ.
Nevada Bar No. 4128

10 520 South Fourth Street, Second Floor
11 Las Vegas, Nevada 89101
12 *Attorney for Defendants,*
JULIE MINUSKIN, JOSH STOLL
and RETIRE HAPPY, LLC.

13
14 ORDER SHORTENING TIME

15 This matter having come before the Court, and good cause appearing therefore,

16 IT IS HEREBY ORDERED that the time for hearing on Motion for Determination of Good
17 Faith Settlement is hereby shortened to be heard in Department 24 on the 23rd day of
18 APRIL, 2019, at the hour of 9:00 a.m./p.m., or as soon thereafter as counsel may be
19 heard. OPPOSITION DUE 4/16/19. REPLY DUE 4/18/19. COPIES OF BRIEFING TO DC24 4/12/19 @ 10 AM.
20

21 Dated this 8 day of April, 2019.

22 
23 DISTRICT COURT JUDGE
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1 **DECLARATION OF LOUIS PALAZZO, ESQ.**
2 **IN SUPPORT OF ORDER SHORTENING TIME**

3 LOUIS PALAZZO, ESQ., hereby declares as follows:

4 1. The Affiant is an attorney duly licensed to practice law in the County of Clark, State of
5 Nevada with the law firm of Palazzo Law Firm, and counsel for Defendants RETIRE HAPPY, LLC.
6 JULIE MINUSKIN, and JOSH STOLL in the above entitled matter;

7 2. I have personal knowledge of the matters stated herein;

8 3. On October 4, 2018, Plaintiff filed a Complaint alleging, *inter alia*, various violations of
9 Nevada Uniform Securities Act and Fraud, against all named Defendants, including Defendants
10 RETIRE HAPPY, LLC., JULIE MINUSKIN, and JOSH STOLL;

11 4. As of the date of filing this motion, Defendants RETIRE HAPPY, LLC., JULIE
12 MINUSKIN, and JOSH STOLL have not filed an answer pending the outcome of the instant motion;

13 5. Pre-Trial Conference is currently scheduled on April 23, 2019;

14 6. Calendar Call is currently scheduled on May 16, 2019;

15 7. Bench Trial is currently set for May 20, 2019;

16 8. The undersigned believes that it would be beneficial to resolve this matter before Trial
17 commences to avoid needlessly delaying proceedings;

18 9. The undersigned believes that an Order Shortening Time will facilitate the resolution of
19 this matter and keep the settling parties from needlessly incurring additional and avoidable costs and
20 fees; and
21 ...

22 ...

23 ...

1 10. For the reasons set forth above, it is respectfully requested this matter be heard on an
2 Order Shortening Time.

3 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND
4 CORRECT.

5 DATED this 5 day of April, 2019.
6 
7 LOUIS PALAZZO, ESQ.
8

9
10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. FACTUAL BACKGROUND**

12 This case arises out of a dispute between Plaintiffs and Defendants with regard to an alleged
13 material breach of the terms of a series of promissory notes, in varying amounts, allegedly entered
14 into by and between Plaintiffs individually and Defendants Robinson and Virtual Communications
15 Corporation. The aggregate amount of the notes equate to \$440,000.00.

16
17 On October 4, 2018, Plaintiffs filed a Complaint alleging, *inter alia*, various violations of
18 Nevada Uniform Securities Act and Fraud against all named Defendants, including Retire Happy,
19 LLC., Julie Minuskin, and Josh Stoll. Defendants have asserted a number of affirmative defenses.

20
21 As of the date of filing this motion, Defendants Retire Happy, LLC., Julie Minuskin, and
22 Josh Stoll have not filed an answer pending the outcome of the instant motion.

23 On October 22, 2018, Plaintiff Robert Kaiser filed a notice releasing all claims against
24 Defendants Retire Happy, LLC., Julie Minuskin, and Josh Stoll. And, on November 11, 2018,
25 Anthony White filed a notice releasing all claims against Defendants Retire Happy, LLC., Julie
26 Minuskin, and Josh Stoll. Additionally, Plaintiffs Jackie Stone and Kendall Smith have formally
27 released their respective claims against Defendant Josh Stoll, solely.
28

1 **II. LEGAL ARGUMENT IN SUPPORT OF DETERMINATION**
2 **OF GOOD FAITH SETTLEMENT**

3 N.R.S. Section 17.245 provides that when a release is given in good faith to one or two or
4 more persons liable in tort for the same injury, it discharges the tortfeasor to whom it is given from
5 all liability for contribution and for equitable indemnity to any other tortfeasor. The Supreme Court
6 of Nevada has provided this Court with additional guidance in *Doctors Company v. Vincent*, 120
7 Nev. 644, 98 P.3d 681 (2004) for determining whether a proposed good faith settlement effectively
8 extinguishes claims for contribution and equitable indemnity.
9

10 Although the term "good faith" is not defined in this section, the Supreme Court of Nevada
11 has held that "the determination of good faith should be left to the discretion of the trial court based
12 upon all relevant facts available." (*Veliscol Chemical Corp. v. Davidson*, 107 Nev. 356, 360, 811,
13 P.2d 561 (1991).)
14

15 "A settling defendant seeking protection from contribution and implied indemnity claims has
16 the burden of proving that the settlement was in good faith." *Doctors Company v. Vincent*, 120 Nev.
17 644, 651-652, 98 P.3d 681, 690 (2004). As such, Defendants will address the factors outlined for
18 consideration by the Court as identified in *In re MGM Grand Hotel Fire Litigation*, 570 F. Supp.
19 913, 927 (D. Nev. 1983), as well as in *Veliscol Chemical Corp. v. Davidson, supra*.
20

21 The factors to consider are:

- 22 1. The amount paid in settlement;
23 2. The allocation of the settlement proceeds;
24 3. The insurance policy limits of settling defendants;
25 4. The financial condition of settling defendants'; and
26 5. The existence of collusion, fraud or tortious conduct aimed to injure the interests of
27 non-settling defendants.
28

1 Examination of the proposed settlement, subject to these five factors, leads to the conclusion
2 the arms-length settlement at issue, between the parties, was, in fact, reached in good faith.

3 1. The Amount Paid in Settlement:

4 Defendants Retire Happy, LLC., Julie Minuskin, and Josh Stoll agree to pay a total of thirty
5 seven thousand five hundred dollars (\$37,500.00) as their contribution for the full and final
6 settlement and release of all claims against Defendants Retire Happy, LLC., Julie Minuskin, and Josh
7 Stoll, including any future claims by the parties against these named Defendants.
8

9 This amount was reached after arms-length negotiations and the consideration of the totality
10 of the circumstances, including all claims alleged against the settling Defendants. In deciding to
11 resolve this matter and reach the agreed-to settlement amount, Defendants took into consideration
12 their limited involvement in the subject transactions. As such, Defendants submit the settlement
13 amount to be paid in settlement is fair and reasonable given the disputed damages at issue in the
14 litigation, as compared to the settling Defendants limited involvement in the subject transactions at
15 issue in the pending litigation. Indeed, Retire Happy, LLC., received 10% of the amounts represented
16 by each promissory note at issue in the subject litigation.
17

18 2. The Allocation of the Settlement Proceeds:

19 The entire settlement amount, comprised solely of Defendants contribution, will be made
20 directly to Plaintiffs Robin Suntheimer, Troy Suntheimer, Stephens Ghesquiere, Jackie Stone, Gayle
21 Chany, Kendall Smith, and Gabriele Lavermicocca. As such, this particular factor is not relevant to
22 a determination of good faith status of the pending settlement.
23

24 3. There is no insurance policy at issue in connection with the proposed resolution by these
25 settling Defendants.
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4. The Financial Condition of the Settling Defendants' assets are not at issue in this action, such settling Defendants are able to fund the settlement. As such, Defendants' financial condition was not a significant factor in reaching the settlement terms.

5. The settlement between Plaintiff and these settling Defendants was reached as a result of good faith and arms-length negotiations. Moreover, there has not been any collusion between the settling parties.

6. Settlement will also have the effect of precluding any cross claims which could have been asserted by and against Retire Happy, LLC., Julie Minuskin, and Josh Stoll, as well as any claims which could have been asserted by and against Defendants Ronald Robinson, Wintech, LLC., Alisa Davis, Virtual Communications Corporation, and Vernon Rodriguez.

In the interest of buying their peace and avoiding further defense fees and costs, these settling Defendants are contributing thirty seven thousand five hundred dollars (\$37,500.00) in order to settle the claims of Plaintiffs Robin Suntheimer, Troy Suntheimer, Stephens Ghesquiere, Jackie Stone, Gayle Chany, Kendall Smith, and Gabriele Lavermicocca. Such is the total sum Defendant Retire Happy, LLC., received in connection with the promissory note transactions at issue in the instant litigation. No other party will be harmed by the determination of Defendants' good faith settlement. As such, there was not any collusion, fraud or tortious conduct involved in the global settlement of Plaintiffs' claims, as against these settling Defendants.

IV. CONCLUSION

Defendants are contributing a settlement sum of thirty seven thousand five hundred dollars (\$37,500.00), as full and final settlement of all pending claims, demands and causes of action alleged against the settling Defendants by Plaintiffs Robin Suntheimer, Troy Suntheimer, Stephens Ghesquiere, Jackie Stone, Gayle Chany, Kendall Smith, and Gabriele Lavermicocca , in exchange for a Settlement Release Agreement and Dismissal with Prejudice. The settlement agreement

1 between the parties to this settlement includes the release of any and all claims and demands, known
2 and unknown, contractual or non-contractual, filed or otherwise, by Plaintiffs Robin Suntheimer,
3 Troy Suntheimer, Stephens Ghesquiere, Jackie Stone, Gayle Chany, Kendall Smith, and Gabriele
4 Lavermicocca, including any and all claims for costs, expenses and/or attorney's fees.
5

6 The parties to this settlement seek complete resolution of this litigation involving these
7 settling Defendants. Therefore, in recognition of this good faith settlement, Defendants Retire
8 Happy, LLC., Julie Minuskin, and Josh Stoll ask this Honorable Court rule any future claim, action,
9 cause of action and/or lawsuit concerning the allegations set forth in this case be forever barred as
10 they pertain to these settling Defendants.
11

12 Based upon the foregoing, Defendants assert their contribution to the settlement with
13 Plaintiffs Robin Suntheimer, Troy Suntheimer, Stephens Ghesquiere, Jackie Stone, Gayle Chany,
14 Kendall Smith, and Gabriele Lavermicocca have been made in good faith. The settlement reached
15 between the Plaintiffs Robin Suntheimer, Troy Suntheimer, Stephens Ghesquiere, Jackie Stone,
16 Gayle Chany, Kendall Smith, and Gabriele Lavermicocca and these settling Defendants is fair,
17 equitable and reasonable in light of the dispute that exists with regard to the claims alleged against
18 Defendants Retire Happy, LLC., Julie Minuskin, and Josh Stoll.
19

20 Therefore, Defendants respectfully request this Court grant their Motion for Determination
21 of Good Faith Settlement pursuant to N.R.S. Section 17.245 and dismiss with prejudice and bar all
22 claims, now pending or prospective, against Defendants Retire Happy, LLC., Julie Minuskin, and
23

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1 Josh Stoll by any of the remaining parties to this action, including any and all present or future third-
2 party claims or cross-claims against Retire Happy, LLC., Julie Minuskin, and Josh Stoll for
3 contribution or equitable indemnity pursuant to NRS 17.245.
4

5 Dated this 5th day of April, 2019.

6 PALAZZO LAW FIRM
7 A PROFESSIONAL LAW CORPORATION

8 

9 T. LOUIS PALAZZO, ESQ.

10 Nevada Bar No. 4118

11 520 South Fourth Street, Second Floor

12 Las Vegas, Nevada 89101

13 *Attorney for Defendants,*

14 ***JULIE MINUSKIN, JOSH STOLL***

15 ***and RETIRE HAPPY, LLC.***
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CERTIFICATE OF SERVICE

Pursuant of NRCP 5(b), I hereby certify that I am an employee of PALAZZO LAW FIRM, P.C., and that on the 10th day of April, 2019, I served a true and correct copy of the foregoing by:

☐ Mail on all parties listed below, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below.

☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.

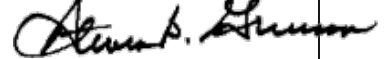
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☒ Electronically through the Eighth Judicial District Court electronic filing system.

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/s/ Celina Moore
An employee of PALAZZO LAW FIRM



RPLY

HAROLD P. GEWERTER, ESQ.
Nevada Bar No. 499
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Las Vegas, Nevada 89101
Tel: (702) 382-1714
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Email: harold@gewerterlaw.com
Attorneys for Defendants, Ronald J. Robinson,
Vern Rodriguez, and Alisa Davis

DISTRICT COURT

CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN,
Steven A. Hotchkiss,

PLAINTIFF,

vs.

RONALD J. ROBINSON, VERN
RODRIGUEZ, VIRTUAL
COMMUNICATIONS CORPORATION,
WINTech, LLC, RETIRE HAPPY,
LLC, JOSH STOLL, FRANK YODER,
ALISA DAVIS, and DOES 1-10 and
ROES 1-10, inclusive,

Defendants.

CASE NO.: A-17-762264-C
DEPT NO.: VIII

HEARING DATE: April 23, 2019

HEARING TIME: 8:00 a.m.

REPLY TO OPPOSITION TO PARTIAL MOTION TO DISMISS

COME NOW Defendants, Ronald J. Robinson, Vern Rodriguez and Alisa Davis
(hereinafter "Defendants"), by and through their attorney of record, HAROLD P. GEWERTER,
ESQ. of HAROLD P. GEWERTER, ESQ. LTD., and hereby file their Reply to the Partial Motion
to Dismiss.

1 This instant Reply is based upon the following Memorandum of Points and Authorities,
2 all pleadings and papers on file herein, and the oral arguments scheduled to be heard on April 23,
3 2019.

4 Dated this 15th day of April, 2019.

5 HAROLD P. GEWERTER, ESQ., LTD.

6 /s/ Harold P. Gewerter, Esq.

7 HAROLD P. GEWERTER, ESQ.

8 Nevada Bar No. 499

9 1212 S. Casino Center Blvd.

10 Las Vegas, Nevada 89101

11 Tel: (702) 382-1714

12 Fax: (702) 382-1759

13 Email: harold@gewerterlaw.com

14 Attorneys for Defendants, *Ronald J. Robinson,*
15 *Vern Rodriguez, and Alisa Davis*

16 MEMORANDUM OF POINTS AND AUTHORITIES

17 I. Plaintiff's Opposition is wholly unpersuasive

18 As noted in their original Motion, Defendants now move that Plaintiff's first, second, and
19 third causes of action be dismissed. All of said causes of action are based upon the premise that
20 the subject promissory note was a "security" as defined by the Nevada Revised Statutes, which
21 has been put into question by the Court. *See generally*, Defendants' Motion.

22 Plaintiff's four (4) page Opposition fails to demonstrate that, in light of the Court's
23 February 25, 2019 Order, his causes of action based upon securities law should not be dismissed
24 because he cannot prove **any** set of fact which would entitle him to relief pursuant to NRCF
25 12(b)(5). In critiquing Defendants' Motion, Plaintiff **fails to set forth any arguments that the**
26 **subject promissory note is a security**. In fact, Plaintiff's Motion fails to analyze the note under
27 the *Friend* test and ignores the subject altogether.

28 a) Defendants have not wrongly "categorized" the Court's Order

1 Instead of arguing that the subject promissory note is a security, Plaintiff first contends
2 that Defendants' Motion is guilty of "mis-categorizing" the Court's February 25, 2019 Order.
3 Plaintiff's Motion, page 2. This is entirely untrue. With respect to said Order, Defendants'
4 Motion stated that:

5 [T]he Court analyzed the subject promissory note pursuant to *State v. Friend*, 118
6 Nev. 115, 40 P.3d 436 (2002) and found that a reasonable trier of fact could rule
7 that VCC's promissory note was not a security.

8 Defendants' Motion, page 4. Turning to the actual language of the Court's Order, the Court held
9 that:

10 [A] reasonable trier of fact could apply the *Friend* analysis and rebut the
11 presumption that VCC's note was a security; therefore summary judgment is not
12 appropriate on the issue of whether VCC's note was a security.

13 February 25, 2019 Order, at ¶ 7. Clearly, Defendants' Motion did not commit a "mis-
14 categorizing" of the Court's Order, as such, Plaintiff's first point in opposing Defendants' Motion
15 is totally without merit.

16 b) Defendants have not referred to the Hotchkiss note as a security

17 Plaintiff next wrongly contends that Defendants have referred to "the Note" as a security
18 in numerous documents. Plaintiff's Opposition, page 2. Yet Plaintiff fails to point to **any**
19 **instances** where Defendants have referred to the **subject promissory note** as a security.

20 In attempting to mislead the Court, Defendants present as an Exhibit a screen from a power
21 point presentation which, as Plaintiff admits, was presented to "potential investors during the
22 solicitation process." Plaintiff's Opposition, page 2; Exhibit B. Said Exhibit, which is an
23 Offering Summary, does indeed refer to "notes" in soliciting investments from the public at large.
24 *Id.*, at Exhibit B. Clearly, *those* promissory notes would be securities.
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1 Unfortunately for Plaintiff, he is not included in the group of “potential investors during
2 the solicitation process.” As stated in Defendants’ Motion, and as the Court is well aware,
3 Provident Trust gave VCC a short-term loan strictly for the purposes of assisting in VCC’s cash-
4 flow difficulties. Provident Trust/Plaintiff Hotchkiss were never “potential investors” in VCC.
5 As such, the fact that VCC used the term “notes” in its public solicitation of investors is of no
6 relevance in the instant matter.
7

8 c) Judge Williams’ Order is not precedent in this case

9 Next, Plaintiff argues that Defendants’ Motion should be denied because a sister court
10 issued a finding of fact in a completely different case that a promissory note issued by VCC was
11 a security. Plaintiff’s Opposition, page 2; Exhibit A. Said finding of fact, contained in a Findings
12 of Fact, Conclusions of Law, and Order issued by the Honorable Judge Williams on December
13 11, 2018, Case No. A-15-725246-C, has no bearing in the instant matter. The issue before the
14 Court in Department 16 was whether Defendant Robinson was a personal guarantor on the
15 promissory note in that case, **not** whether the note was a security. *Id.*, at Exhibit A. Secondly,
16 the circumstances between the note in Case No. A-15-725246-C and the one in the instant matter
17 are entirely different. In Case No. A-15-725246-C, the purchaser of the note was an investor, he
18 had been publically solicited, the repayment date, interest, and amount of the note was different,
19 etc. Accordingly, since the entire facts of Case No. A-15-725246-C are different than those in
20 the instant matter, Judge Williams’ finding of fact is of no consequence.
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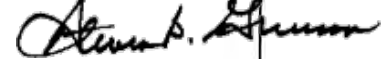
Dated this 15th day of April, 2019

/s/ Harold P. Gewerter, Esq.
HAROLD P. GEWERTER, ESQ.
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Attorneys for Defendants, *Ronald J. Robinson,*
Vern Rodriguez, and Alisa Davis

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David Liebrader, Esq.
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Las Vegas, NV 89106

/s/Sonja Howard
An Employee of Harold P. Gewerter, Esq., Ltd.



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9 Fax: 702/385-3855
10 *Attorney for Defendants,*
11 **JULIE MINUSKIN, JOSH STOLL**
12 *and RETIRE HAPPY, LLC*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 IN THE MATTER BETWEEN,

Case No. A-17-763003-C

12 Anthony White, Robin Suntheimer, Troy
13 Suntheimer, Stephens Ghesquiere, Jackie
14 Stone, Gayle Chany, Kendall Smith, Gabriele
15 Lavernicocca and Robert Kaiser,

Dept. 24

16 Plaintiff,

17 vs.

18 Ronald J. Robinson, Vernon Rodriquez,
19 Virtual Communications Corporation,
20 Wintech, LLC, Alisa Davis, Julie Minuskin,
21 Josh Stoll, Retire Happy LLC, and DOES 1-
22 10 and ROES 1-10, inclusively,

Defendants.

23 **ORDER GRANTING DEFENDANTS RETIRE HAPPY, LLC., JULIE MINUSKIN, AND**
24 **JOSH STOLL'S UNOPPOSED MOTION FOR DETERMINATION OF GOOD FAITH**
25 **SETTLEMENT PURSUANT TO NRS 17.245 AND DISMISSING ALL CLAIMS AGAINST**
SAID DEFENDANTS WITH PREJUDICE

26 This Court, having considered Defendants Retire Happy, LLC., Julie Minuskin, and Josh
27 Stoll's Motion for Determination of Good Faith Settlement on Order Shortening Time, at a hearing
28 on April 23, 2019, at the hour of 9:00 a.m., no opposition having been filed by Defendants Ronald

1 J. Robinson, Vernon Rodriguez, Virtual Communications Corporation, Wintech, LLC, and Alisa
2 Davis;

3 **IT IS ORDERED** that Defendant's Motion for Determination of Good Faith Settlement
4 pursuant to *N.R.S.* Section 17.245, is hereby GRANTED.
5

6 **IT IS FURTHER ORDERED** that based upon such good faith settlement, any and all
7 claims or causes of action advanced against Defendants Retire Happy, LLC., Julie Minuskin, and
8 Josh Stoll are hereby dismissed with prejudice.

9 DATED this 23 day of April, 2019.

10
11 
12 DISTRICT COURT JUDGE

13 Respectfully Submitted:

14 PALAZZO LAW FIRM, P.C.

15 
16 T. LOUIS PALAZZO, ESQ.

17 Nevada Bar Number 4128

18 *Attorney for Defendants,*

19 **RETIRE HAPPY, LLC. JULIE MINUSKIN,**
20 **and JOSH STOLL**

21 Reviewed and approved as to form and content:

22 
23 HAROLD P. GEWERTER, ESQ.

24 Nevada Bar Number 499

25 *Attorney for Defendants,*

26 **RONALD J. ROBINSON,**
27 **VIRTUAL COMMUNICATIONS CORP.,**
28 **WINTech, LLC., VERNON RODRIGUEZ,**
AND ALISA DAVIS

29 
30 DAVID LIEBRADER, ESQ.

31 Nevada Bar Number 5048

32 *Attorney for Plaintiffs*

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CERTIFICATE OF SERVICE

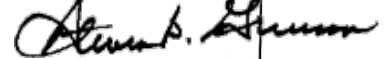
Pursuant of NRCP 5(b), I hereby certify that I am an employee of PALAZZO LAW FIRM, P.C., and that on the 23 day of April, 2019, I served a true and correct copy of the foregoing by:

- ☐ Mail on all parties listed below, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below.
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Harold Gewerter, Esq.
Gewerter Law Office
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/s/ Celina Moore
An employee of PALAZZO LAW FIRM



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9 Fax: 702/385-3855
10 **Attorney for Defendants,**
11 **JULIE MINUSKIN, JOSH STOLL**
12 **and RETIRE HAPPY, LLC**

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 IN THE MATTER BETWEEN,

Case No. A-17-763003-C

12 Anthony White, Robin Suntheimer, Troy
13 Suntheimer, Stephens Ghesquiere, Jackie
14 Stone, Gayle Chany, Kendall Smith, Gabriele
Lavernicocca and Robert Kaiser,

Dept. 24

NOTICE OF ENTRY OF ORDER

15 Plaintiff,

16 vs.

17 Ronald J. Robinson, Vernon Rodriquez,
18 Virtual Communications Corporation,
19 Wintech, LLC, Alisa Davis, Julie Minuskin,
20 Josh Stoll, Retire Happy LLC, and DOES 1-
10 and ROES 1-10, inclusively,

21 Defendants.

22 NOTICE IS HEREBY GIVEN that an Order was entered on the 23rd day of April, 2019.

23 A copy of said Order is attached hereto.

24 DATED this 23rd day of April, 2019.

25 /s/ T. Louis Palazzo

26 T. LOUIS PALAZZO, ESQUIRE
27 Nevada Bar No. 4128

28 **Attorney for Defendants,**
JULIE MINUSKIN, JOSH STOLL
and RETIRE HAPPY, LLC .

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/s/ Celina Moore
An employee of PALAZZO LAW FIRM



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10 *Attorney for Defendants,*
11 **JULIE MINUSKIN, JOSH STOLL**
12 *and RETIRE HAPPY, LLC*

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 IN THE MATTER BETWEEN,

Case No. A-17-763003-C

12 Anthony White, Robin Suntheimer, Troy
13 Suntheimer, Stephens Ghesquiere, Jackie
14 Stone, Gayle Chany, Kendall Smith, Gabriele
15 Lavernicocca and Robert Kaiser,

Dept. 24

16 Plaintiff,

17 vs.

18 Ronald J. Robinson, Vernon Rodriquez,
19 Virtual Communications Corporation,
20 Wintech, LLC, Alisa Davis, Julie Minuskin,
21 Josh Stoll, Retire Happy LLC, and DOES 1-
22 10 and ROES 1-10, inclusively,

Defendants.

23 **ORDER GRANTING DEFENDANTS RETIRE HAPPY, LLC., JULIE MINUSKIN, AND**
24 **JOSH STOLL'S UNOPPOSED MOTION FOR DETERMINATION OF GOOD FAITH**
25 **SETTLEMENT PURSUANT TO NRS 17.245 AND DISMISSING ALL CLAIMS AGAINST**
26 **SAID DEFENDANTS WITH PREJUDICE**

27 This Court, having considered Defendants Retire Happy, LLC., Julie Minuskin, and Josh
28 Stoll's Motion for Determination of Good Faith Settlement on Order Shortening Time, at a hearing
on April 23, 2019, at the hour of 9:00 a.m., no opposition having been filed by Defendants Ronald

1 J. Robinson, Vernon Rodriguez, Virtual Communications Corporation, Wintech, LLC, and Alisa
2 Davis;

3 **IT IS ORDERED** that Defendant's Motion for Determination of Good Faith Settlement
4 pursuant to *N.R.S.* Section 17.245, is hereby GRANTED.
5

6 **IT IS FURTHER ORDERED** that based upon such good faith settlement, any and all
7 claims or causes of action advanced against Defendants Retire Happy, LLC., Julie Minuskin, and
8 Josh Stoll are hereby dismissed with prejudice.

9 DATED this 23 day of April, 2019.

10
11 
12 DISTRICT COURT JUDGE

13 Respectfully Submitted:

14 PALAZZO LAW FIRM, P.C.

15 
16 T. LOUIS PALAZZO, ESQ.

Nevada Bar Number 4128

17 *Attorney for Defendants,*

18 **RETIRE HAPPY, LLC. JULIE MINUSKIN,**
and JOSH STOLL

19
20 Reviewed and approved as to form and content:

21 
22 HAROLD P. GEWERTER, ESQ.

23 Nevada Bar Number 499

24 *Attorney for Defendants,*

25 **RONALD J. ROBINSON,**
VIRTUAL COMMUNICATIONS CORP.,
26 **WINTECH, LLC., VERNON RODRIGUEZ,**
27 **AND ALISA DAVIS**
28

29 
30 DAVID LIEBRADER, ESQ.

Nevada Bar Number 5048

Attorney for Plaintiffs

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CERTIFICATE OF SERVICE

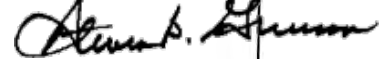
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Gewerter Law Office
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/s/ Celina Moore
An employee of PALAZZO LAW FIRM



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9 *Attorney for Defendants,*
10 **JOSH STOLL and RETIRE HAPPY, LLC**

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 IN THE MATTER BETWEEN,

Case No. A-17-762264-C

14 Steven A. Hotchkiss,

Dept. 9

15 Plaintiff,

16 vs.

17 Ronald J. Robinson, Vernon Rodriquez,
18 Virtual Communications Corporation,
19 Wintech, LLC, Retire Happy, LLC, Josh
20 Stoll, Frank Yoder, Alisa Davis and DOES 1-
21 10 and ROES 1-10, inclusively,

22 Defendants.

23 **ORDER GRANTING DEFENDANTS RETIRE HAPPY, LLC., AND JOSH STOLL'S**
24 **UNOPPOSED GOOD FAITH SETTLEMENT PURSUANT TO NRS 17.245 AND**
25 **DISMISSING ALL CLAIMS AGAINST SAID DEFENDANTS WITH PREJUDICE**

26 This Court, having considered Defendants Retire Happy, LLC., and Josh Stoll's Motion for
27 Determination of Good Faith Settlement on Order Shortening Time, at a hearing on April 9, 2019,
28 at the hour of 9:00 a.m., no opposition having been stated in open Court by Defendants Ronald J.
Robinson, Vernon Rodriquez, Virtual Communications Corporation, Wintech, LLC, Frank Yoder,
and Alisa Davis;

1 **IT IS ORDERED** that Defendant's Motion for Determination of Good Faith Settlement
2 pursuant to N.R.S. Section 17.245, is hereby GRANTED.
3

4 **IT IS FURTHER ORDERED** that based upon such good faith settlement, any and all
5 claims or causes of action advanced against Defendants Retire Happy, LLC., and Josh Stoll are
6 hereby dismissed with prejudice.

7 DATED this 18th day of May, 2019.

8 
9 _____
DISTRICT COURT JUDGE

10 Respectfully Submitted:

11 PALAZZO LAW FIRM, P.C.

12 
13 _____
14 T. LOUIS PALAZZO, ESQ.

Nevada Bar Number 4128

15 *Attorney for Defendants,*

16 **RETIRE HAPPY, LLC. and JOSH STOLL**

17 Reviewed and approved as to form and content:

18
19
20 _____
21 HAROLD P. GEWERTER, ESQ.

Nevada Bar Number 499

22 *Attorney for Defendants,*

RONALD ROBINSON,

23 **VIRTUAL COMMUNICATIONS CORP.,**

24 **VERNON RODRIGUEZ, WINTech, LLC.,**

FRANK YODER, AND ALISA DAVIS

25
26
27 
28 _____
DAVID LIEBRADER, ESQ.

Nevada Bar Number 5048

Attorney for Plaintiff

STEVEN A. HOTCHKISS

1 **IT IS ORDERED** that Defendant's Motion for Determination of Good Faith Settlement
2 pursuant to *N.R.S.* Section 17.245, is hereby GRANTED.

3 **IT IS FURTHER ORDERED** that based upon such good faith settlement, any and all
4 claims or causes of action advanced against Defendants Retire Happy, LLC., and Josh Stoll are
5 hereby dismissed with prejudice.
6

7 DATED this ____ day of April, 2019.

8
9 _____
DISTRICT COURT JUDGE

10 Respectfully Submitted:

11 PALAZZO LAW FIRM, P.C.

12
13 _____
14 T. LOUIS PALAZZO, ESQ.
15 Nevada Bar Number 4128
16 Attorney for Defendants,
17 **RETIRE HAPPY, LLC. and JOSH STOLL**

18 Reviewed and approved as to form and content:

19 _____
20 HAROLD P. GEWERTER, ESQ.
21 Nevada Bar Number 499
22 Attorney for Defendants,
23 **RONALD ROBINSON,**
24 **VIRTUAL COMMUNICATIONS CORP.,**
25 **VERNON RODRIGUEZ, WINTech, LLC.,**
26 **FRANK YODER, AND ALISA DAVIS**

27 _____
28 DAVID LIEBRADER, ESQ.
Nevada Bar Number 5048
Attorney for Plaintiff
STEVEN A. HOTCHKISS

1 **CERTIFICATE OF SERVICE**

2 Pursuant of NRCp 5(b), I hereby certify that I am an employee of PALAZZO LAW FIRM,
3 P.C., and that on the 20th day of May, 2019, I served a true and correct copy of the foregoing by:
4

5 ☐ Mail on all parties listed below, by placing a true copy thereof enclosed in a sealed
6 envelope in a designated area for outgoing mail, addressed as set forth below.

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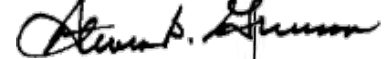
9 ☐ Courtesy copy by facsimile on the parties in said action by causing a true copy thereof
10 to be telecopied to the number indicated after the address(es) noted below.

11 ☒ Electronically through the Eighth Judicial District Court electronic filing system.
12

13 David Liebrader, Esq.
14 The Law Office of David Liebrader , APC
15 601 S. Rancho Dr., Ste. D-29
16 Las Vegas, Nevada 89106

17 Harold Gewerter, Esq.
18 Gewerter Law Office
19 1212 Casino Center Blvd.
20 Las Vegas, Nevada 89104

21 /s/Celina Moore
22 An employee of PALAZZO LAW FIRM
23
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1 T. LOUIS PALAZZO, ESQUIRE
2 Nevada Bar No. 4128
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5 520 South Fourth Street, Second Floor
6 Las Vegas, Nevada 89101
7 Tele: 702/385-3850
8 Fax: 702/385-3855
9 *Attorney for Defendants,*
10 **JOSH STOLL and RETIRE HAPPY, LLC**

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 IN THE MATTER BETWEEN,

Case No. A-17-762264-C

14 Steven A. Hotchkiss,

Dept. 9

15 Plaintiff,

NOTICE OF ENTRY OF ORDER

16 vs.

17 Ronald J. Robinson, Vernon Rodriquez,
18 Virtual Communications Corporation,
19 Wintech, LLC, Retire Happy, LLC, Josh
20 Stoll, Frank Yoder, Alisa Davis and DOES 1-
21 10 and ROES 1-10, inclusively,

22 Defendants.

23 NOTICE IS HEREBY GIVEN that an Order was entered on the 20th day of May, 2019. A
24 copy of said Order is attached hereto.

25 DATED this 20th day of May, 2019.

26 /s/ T. Louis Palazzo

27 T. LOUIS PALAZZO, ESQUIRE

28 Nevada Bar No. 4128

520 South Fourth Street, Second Floor

Las Vegas, Nevada 89101

Attorney for Defendants,

JOSH STOLL and RETIRE HAPPY, LLC.

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1 T. LOUIS PALAZZO, ESQUIRE
2 Nevada Bar No. 4128
3 PALAZZO LAW FIRM
4 A PROFESSIONAL LAW CORPORATION
5 520 South Fourth Street, Second Floor
6 Las Vegas, Nevada 89101
7 Tele: 702/385-3850
8 Fax: 702/385-3855
9 *Attorney for Defendants,*
10 **JOSH STOLL and RETIRE HAPPY, LLC**

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DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN,

Case No. A-17-762264-C

Steven A. Hotchkiss,

Dept. 9

Plaintiff,

vs.

Ronald J. Robinson, Vernon Rodriquez,
Virtual Communications Corporation,
Wintech, LLC, Retire Happy, LLC, Josh
Stoll, Frank Yoder, Alisa Davis and DOES 1-
10 and ROES 1-10, inclusively,

Defendants.

**ORDER GRANTING DEFENDANTS RETIRE HAPPY, LLC., AND JOSH STOLL'S
UNOPPOSED GOOD FAITH SETTLEMENT PURSUANT TO NRS 17.245 AND
DISMISSING ALL CLAIMS AGAINST SAID DEFENDANTS WITH PREJUDICE**

This Court, having considered Defendants Retire Happy, LLC., and Josh Stoll's Motion for
Determination of Good Faith Settlement on Order Shortening Time, at a hearing on April 9, 2019,
at the hour of 9:00 a.m., no opposition having been stated in open Court by Defendants Ronald J.
Robinson, Vernon Rodriquez, Virtual Communications Corporation, Wintech, LLC, Frank Yoder,
and Alisa Davis;

IT IS FURTHER ORDERED that based upon such good faith settlement, any and all claims or causes of action advanced against Defendants Retire Happy, LLC., and Josh Stoll are hereby dismissed with prejudice.

DISTRICT COURT JUDGE

T. LOUIS PALAZZO, ESQ.
Nevada Bar Number 4128
Attorney for Defendants,
RETIRE HAPPY, LLC. and JOSH STOLL

~~HAROLD P. GEWERTER, ESQ.
Nevada Bar Number 499
Attorney for Defendants,
RONALD ROBINSON,
VIRTUAL COMMUNICATIONS CORP.,
VERNON RODRIGUEZ, WINTech, LLC.,
FRANK YODER, AND ALISA DAVIS~~

DAVID LIEBRADER, ESQ.
Nevada Bar Number 5048
Attorney for Plaintiff
STEVEN A. HOTCHKISS

IT IS ORDERED that Defendant's Motion for Determination of Good Faith Settlement pursuant to *N.R.S.* Section 17.245, is hereby **GRANTED**.

IT IS FURTHER ORDERED that based upon such good faith settlement, any and all claims or causes of action advanced against Defendants Retire Happy, LLC., and Josh Stoll are hereby dismissed with prejudice.

DATED this _____ day of April, 2019.

DISTRICT COURT JUDGE

Respectfully Submitted:

PALAZZO LAW FIRM, P.C.

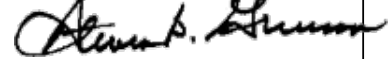
T. LOUIS PALAZZO, ESQ.
Nevada Bar Number 4128
Attorney for Defendants,
RETIRE HAPPY, LLC. and JOSH STOLL

Reviewed and approved as to form and content:

HAROLD R. GEWERTER, ESQ.
Nevada Bar Number 499
Attorney for Defendants,
RONALD ROBINSON,
VIRTUAL COMMUNICATIONS
VERNON RODRIGUEZ, WINT
FRANK YODER, AND ALISA D

DAVID LIEBRADER, ESQ.
Nevada Bar Number 5048
Attorney for Plaintiff
STEVEN A. HOTCHKISS

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DAVID LIEBRADER, ESQ.
STATE BAR NO. 5048
THE LAW OFFICES OF DAVID LIEBRADER, APC
601 S. RANCHO DR. STE. D-29
LAS VEGAS, NV 89106
PH: (702) 380-3131
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

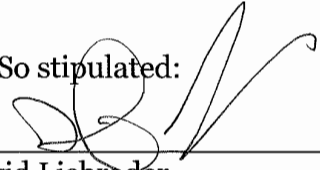
IN THE MATTER BETWEEN	)	Case No. A-17-762264-C
)	
Steven A. Hotchkiss,	)	Dept.: 9
)	
PLAINTIFF,	)	STIPULATION AND ORDER
	)	CONSOLIDATING CASES
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Virtual)	
Communications Corporation, Wintech, LLC,)	
Retire Happy, LLC, Josh Stoll, Frank Yoder, Alisa)	
Davis and DOES 1-10 and ROES 1-10, inclusively)	
)	
DEFENDANTS)	

STIPULATION


It is hereby stipulated by and between counsel for Plaintiff and counsel for Defendants that case A-17-763003-C pending in Dept. 24 titled Anthony White et al. v. Ronald J. Robinson et al. shall be consolidated with this case.

The parties acknowledge that the issues in both cases are identical, and involve the same Defendants and same causes of action. Consolidating the two cases would save time and money, and is in the interest of the parties and the Eighth Judicial District Court.

So stipulated:


By: 
David Liebrader
Attorney for Plaintiff

Dated: 6.10.19

By: 
Harold Gewerter
Attorney for Defendants

Dated:

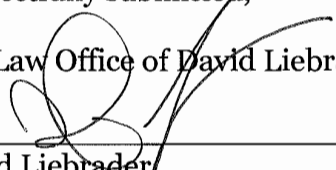
SO ORDERED

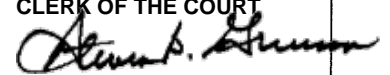

Hon. Cristina Silva
District Court Judge Dept. 9

Dated: June 8, 2019

Respectfully submitted,

The Law Office of David Liebrader, Inc.

By: 
David Liebrader
Attorney for Plaintiff



DAVID LIEBRADER, ESQ.
STATE BAR NO. 5048
THE LAW OFFICES OF DAVID LIEBRADER, APC
601 S. RANCHO DR. STE. D-29
LAS VEGAS, NV 89106
PH: (702) 380-3131
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN	)	Case No. A-17-762264-C
)	
Steven A. Hotchkiss,	)	Dept.: 8
)	
PLAINTIFF,	)	PRE TRIAL MEMORANDUM
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Frank)	
Yoder, Alisa Davis and DOES 1-10 and ROES 1-)	
10, inclusively	)	CONSOLIDATED WITH
)	
DEFENDANTS	)	Case No. A-17-763003-C
)	
Anthony White, Robin Suntheimer, Troy)	
Suntheimer, Stephens Ghesquiere, Jackie Stone,)	
Gayle Chany, Kendall Smith, Gabriele)	
Lavermicocca and Robert Kaiser)	
)	
PLAINTIFFS)	
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Virtual)	
Communications Corporation, Frank Yoder, Alisa)	
Davis and DOES 1-10 and ROES 1-10, inclusively)	
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PRE-TRIAL MEMORANDUM

COME NOW the Plaintiffs by and through counsel David Liebrader, to submit this
Pre-Trial Memorandum.

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1 After this litigation commenced former Defendant VCC filed for bankruptcy after a motion
2 for summary judgment was granted against them in a companion EJDC case (Waldo v.
3 Robinson; A-15-725246-C), with the same underlying issues. As a result of the bankruptcy
4 filing and subsequent plan confirmation, all of the Plaintiffs' claims against VCC are subject
5 to a seprate bankruptcy order/discharge and are not at issue in this matter. The same Order
6 carved out an exception permitting the Plaintiffs to pursue claims against the VCC officers.
7 These officers, Ronald Robinson and Vern Rodriguez are Defendants in this case.

8 In addition, claims against Defendants Retire Happy, LLC, Julie Minuskin and Josh
9 Stoll have been settled, and those Defendants have been dismissed.

10 The sole remaining Defendants are Ronald Robinson, Vern Rodriguez, Alisa Davis
11 and Frank Yoder.

12 II.

13 **LIST OF ALL CLAIMS**

- 14 1. Fraud, misrepresentations and omissions
15 2. Violation of Nevada securities licensing and registration laws NRS 90.310, 90.460 and
16 90.660
17 3. Violation of Nevada Securities laws (misrepresentations and omissions) 90.570 and
18 90.660
19 4. Breach of written contract

20 III.

21 **LIST OF AFFIRMATIVE DEFENSES**

22 Various affirmative defenses were asserted

23 IV.

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V.

1. Plaintiffs' promissory notes and demand letters; Hotchkiss Trial Exhibits 001-040.
2. Email communications between Julie Minuskin and Ronald Robinson/Net worth Statement, VCC Retire Happy contract VCC RJ Robinson Agreement; Hotchkiss Trial Exhibits 041- 048
3. Email communications Hotchkiss and VCC . Hotchkiss Trial Exhibits 049- 056.
4. Emails and Power Point Presentation 1.3 between Frank Yoder, Julie Minuskin and Ronald Robinson; Hotchkiss Trial Exhibits 057-075.
5. Email communications between Alisa Davis and Julie Minuskin re: Robinson's initials and signature; Hotchkiss Trial Exhibits 076-083.
6. Email communications between Alisa Davis and Julie Minuskin re: updated power point presentation and prom note; Hotchkiss Trial Exhibits 086-106.
7. Updated VCC PowerPoint presentation; Hotchkiss Trial Exhibits 084-085; 107-122.
8. VCC Investor List with interest payment information Hotchkiss Trial Exhibits 0123-132.
9. Frank Yoder VCC/Wintech Board Information Hotchkiss Trial Exhibits 0350-0356.
10. Alisa Davis Affidavit; Hotchkiss Trial Exhibits 133-134.
11. Nevada Secretary of State certificate of absence of record/ list of officers filed with

1 NV SOS; Hotchkiss Trial Exhibits 135-152.

2 12. VCC financial statements dated September 30, 2014; Hotchkiss Trial Exhibits 153-
3 164.

4 13. VCC Private Placement Memorandum dated February 22, 2016; Hotchkiss Trial
5 Exhibits 165-207.

6 14. VCC Preliminary Offering Circular dated August 17, 2015; Hotchkiss Trial Exhibits
7 208-316.

8 15. Judgment, Waldo v. Robinson; Complaint for forfeiture, stipulation and order in case
9 A-09-596643-C/ Pleadings from Minuskin adv. Robinson filed in EJDC; Hotchkiss Trial
10 Exhibits 317-349

11 16. Deposition transcript Vern Rodriguez in Waldo v. Robinson.

12 17. Reporter's Transcript Alisa Davis testimony in Waldo v. Robinson.

13 18. Reporter's Transcript Ronald Robinson testimony in Waldo v. Robinson

14
15 VI.

16 **AGREEMENTS TO LIMIT OR EXCLUDE EVIDENCE**

17 None.

18 VII.

19 **LIST OF WITNESSES**

20 Steven A. Hotchkiss
21 C/o Dave Liebrader
22 601 S. Rancho Dr. Ste D-29
23 Las Vegas, NV 89106
24 (702) 380-3131

25 Who will testify as to the events and circumstances set forth in the complaint and
26 answer.

1 Gayla Hotchkiss
2 C/o Dave Liebrader
3 601 S. Rancho Dr. Ste. D-29
4 Las Vegas, NV 89106
5 (702) 380-3131
6 Who will testify as to the events and circumstances set forth in the complaint and
7 answer.

8 Anthony White
9 C/o Dave Liebrader
10 601 S. Rancho Dr. Ste D-29
11 Las Vegas, NV 89106
12 (702) 380-3131
13 Who will testify as to the events and circumstances set forth in the complaint and
14 answer.

15 Steve Ghesquiere
16 C/o Dave Liebrader
17 601 S. Rancho Dr. Ste D-29
18 Las Vegas, NV 89106
19 (702) 380-3131
20 Who will testify as to the events and circumstances set forth in the complaint and
21 answer.

22 Troy Suntheimer
23 C/o Dave Liebrader
24 601 S. Rancho Dr. Ste D-29
25 Las Vegas, NV 89106
26 (702) 380-3131
Who will testify as to the events and circumstances set forth in the complaint and
answer.

Robin Suntheimer
C/o Dave Liebrader
601 S. Rancho Dr. Ste D-29
Las Vegas, NV 89106
(702) 380-3131
Who will testify as to the events and circumstances set forth in the complaint and
answer.

Jackie Stone
C/o Dave Liebrader
601 S. Rancho Dr. Ste D-29
Las Vegas, NV 89106
(702) 380-3131
Who will testify as to the events and circumstances set forth in the complaint and
answer.

1 answer.

2 Gayle Chany
3 C/o Dave Liebrader
4 601 S. Rancho Dr. Ste D-29
5 Las Vegas, NV 89106
6 (702) 380-3131

7 Who will testify as to the events and circumstances set forth in the complaint and
8 answer.

9 Kendall Smith
10 C/o Dave Liebrader
11 601 S. Rancho Dr. Ste D-29
12 Las Vegas, NV 89106
13 (702) 380-3131

14 Who will testify as to the events and circumstances set forth in the complaint and
15 answer.

16 Robert Kaiser
17 C/o Dave Liebrader
18 601 S. Rancho Dr. Ste D-29
19 Las Vegas, NV 89106
20 (702) 380-3131

21 Who will testify as to the events and circumstances set forth in the complaint and
22 answer.

23 Gabriele LaVermicocca
24 C/o Dave Liebrader
25 601 S. Rancho Dr. Ste D-29
26 Las Vegas, NV 89106
(702) 380-3131

Who will testify as to the events and circumstances set forth in the complaint and
answer.

Ron Robinson
c/o Harold Gewerter, Esq.
Gewerter Law Office
1212 Casino Center Boulevard
Las Vegas, NV 89104

Who will testify as to the events and circumstances set forth in the complaint and
answer.

Vern Rodriguez
c/o Harold Gewerter, Esq.
Gewerter Law Office
1212 Casino Center Boulevard

1 Las Vegas, NV 89104

2 Who will testify as to the events and circumstances set forth in the complaint and
3 answer.

4 Alisa Davis

5 c/o Harold Gewerter, Esq.

6 Gewerter Law Office

7 1212 Casino Center Boulevard

8 Las Vegas, NV 89104

9 Who will testify as to the events and circumstances set forth in the complaint and
10 answer.

11 PMK Accounting/Finance Dept. for Virtual Communications Corp

12 c/o Harold Gewerter, Esq.

13 Gewerter Law Office

14 1212 Casino Center Boulevard

15 Las Vegas, NV 89104

16 Who will testify as to the events and circumstances set forth in the complaint and
17 answer.

18 PMK Accounting/Finance Dept. for Wintech LLC

19 c/o Harold Gewerter, Esq.

20 Gewerter Law Office

21 1212 Casino Center Boulevard

22 Las Vegas, NV 89104

23 Who will testify as to the events and circumstances set forth in the complaint and
24 answer.

25 Frank Yoder

26 3055 Red Mountain, Unit 93

Mesa, AZ 85207

Who will testify as to the events and circumstances set forth in the complaint and
answer.

Julie Minuskin

C/o Louis Palazzo, Esq.

Palazzo Law Firm

520 S 4th St #200

Las Vegas, NV 89101

Who will testify as to the events and circumstances set forth in the complaint and
answer.

Josh Stoll

C/o Louis Palazzo, Esq.

Palazzo Law Firm

520 S 4th St #200
Las Vegas, NV 89101

Who will testify as to the events and circumstances set forth in the complaint and answer.

Timothy Eacobacci
c/o Nevada Secretary of State
555 E Washington Ave. Ste. 5200
Las Vegas, NV 89101
(702) 486-2440

Who will testify to the lack of registration of the VCC Securities at issue in this case.

VIII.

PRINCIPAL ISSUES OF LAW

1. Whether or not the VCC Promissory Note is a security under Nevada law;

Plaintiff's position: Pursuant to the State v. Friend "Family Resemblance Test", SEC v. Howey, 328 US 293 (1946), as well as Defendants' conduct in referring to the Promissory Notes as Securities, the Court should make a finding that the Notes are Securities under Nevada law

Defendant's position

Defendants contend that the Notes are not securities

2. Whether Ronald Robinson is a guarantor under the terms of the promissory note

Plaintiff's position: Robinson intended to guarantee the notes, and knew that his granddaughter, Defendant Alisa Davis, was sending blank notes bearing his signature to Retire Happy for them to use to sell the Notes to investors.

Defendant's position

Unknown

1 3. Whether VCC is in default under the terms of the promissory note

2 **Plaintiff's position:** Both Ronald Robinson and Vern Rodriguez have
3 acknowledged that VCC is in default under the note terms.

4 **Defendant's position**

5 Same.

6 4. Whether Ronald Robinson and Vern Rodriguez are liable as control persons

7 **Plaintiff's position:** Ronald Robinson and Vern Rodriguez both meet the
8 statutory definition of control person under Nevada Administrative Code
9 section 90.035 because they were both officers and directors of VCC and were
10 in a position to influence the decision-making processes of VCC.

11 **Defendant's position**

12 Defendants deny control person status and liability.

13 IX.

14 **TIME REQUIRED FOR TRIAL**

15 Plaintiff and Defendants both agree that the estimate for this bench trial time is 3-4
16 days. If the Defendants will stipulate that because the notes are identical, and are all in
17 default, it will not be necessary for all the Plaintiffs to testify in person. This will save 1-
18 1/2 days of testimony/trial time, and provide more flexibility in scheduling on the trial
19 stack.

20 X

21 **OTHER MATTERS**

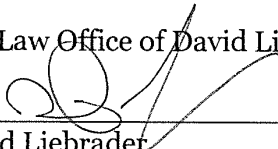
22 Plaintiffs' counsel provided this pretrial memorandum (and supporting Exhibits) to
23 Defendants' counsel asking for comments. After receiving none, Plaintiffs' counsel
24

1 followed up by leaving a message, but as of this date, Defendants' counsel has not
2 responded.

3
4 Dated: January 21, 2020

Respectfully submitted,

5 The Law Office of David Liebrader, Inc.

6 By: 
David Liebrader
7 Attorney for Plaintiff

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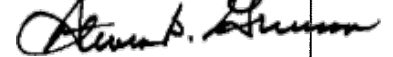
CERTIFICATE OF MAILING

I hereby certify that on the 21st day of January, 2020, I mailed a copy of the foregoing
Pretrial memo
to the following

Harold Gewerter, Esq.
Gewerter Law Firm
1212 Casino Center Boulevard
Las Vegas, NV 89104



An Employee of The Law Office of David Liebrader



1 **PTIF**

2 HAROLD P. GEWERTER, ESQ.

3 Nevada Bar No. 499

4 1212 S. Casino Center Blvd.

5 Las Vegas, Nevada 89101

6 Tel: (702) 382-1714

7 Fax: (702) 382-1759

8 Email: harold@gewerterlaw.com

9 Attorneys for Defendants, Ronald J. Robinson,

10 Vern Rodriguez, and Alisa Davis

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 ***

14 Steven A. Hotchkiss,

15 **PLAINTIFF,**

16 vs.

17 RONALD J. ROBINSON, VERN
18 RODRIGUEZ, VIRTUAL
19 COMMUNICATIONS CORPORATION,
20 WINTECH, LLC, RETIRE HAPPY,
21 LLC, JOSH STOLL, FRANK YODER,
22 ALISA DAVIS, and DOES 1-10 and
23 ROES 1-10, inclusive,

24 Defendants.

CASE NO.: A-17-762264-C

DEPT NO.: IX

CONSOLIDATED WITH

Case No. A-17-763003-C

DEFENDANTS' PRETRIAL
MEMORANDUM

25 AND ALL CONSOLIDATED ACTIONS

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DEFENDANTS' PRE-TRIAL MEMORANDUM

COME NOW, Defendants, RONALD J. ROBINSON, VERN RODRIGUEZ, AND ALISA DAVIS, by and through their attorney of record, HAROLD P. GEWERTER, ESQ., of HAROLD P. GEWERTER, ESQ., LTD., and hereby submit this Pre-Trial Memorandum.

I.
BRIEF DESCRIPTION OF THE ACTION AND CLAIMS FOR RELIEF (OR DEFENSES)

This is an action to recovery money owed as a personal guaranty securing promissory notes. Plaintiff loaned the funds to VCC and VCC subsequently defaulted on the loan. VCC filed for Chapter 11 bankruptcy and the plan was approved. Therefore, Plaintiffs claims against VCC can no longer proceed. The claims remaining against Defendants Robinson and Davis are limited to Robinson's liability on the personal guaranty and fraud, misrepresentation and omission claims against Davis and Rodriguez. Moreover, all claims against all Defendants must be dismissed because Plaintiffs failed to name an indispensable party.

II.
LIST OF ALL CLAIMS

1. Fraud, misrepresentations and omissions
2. Violation of Nevada securities licensing and registration laws NRS 90.310, 90.460 and 90.660
3. Violation of Nevada Securities laws (misrepresentations and omissions) 90.570 and 90.660
4. Breach of written contract

**III.
LIST OF WITNESSES WITH BRIEF SUMMARY OF EXPECTED
TESTIMONY:**

Ron Robinson
c/o Gewerter Law Office
1212 Casino Center Blvd.
Las Vegas, NV 89104

Mr. Robinson is expected to testify to the events and circumstances surrounding the allegations set forth in the Complaint.

Alisa Davis
c/o Gewerter Law Office
1212 Casino Center Blvd.
Las Vegas, NV 89104

Ms. Davis is expected to testify to the events and circumstances surrounding the allegations set forth in the Complaint.

Vern Rodriguez
c/o Gewerter Law Office
1212 Casino Center Blvd.
Las Vegas, NV 89104

Mr. Rodriguez is expected to testify to the events and circumstances surrounding the allegations set forth in the Complaint.

Steve A. Hotchkiss
c/o Dave Liebrader
601 S. Rancho Dr., Ste. D-29
Las Vegas, NV 89104

Mr. Hotchkiss is expected to testify to the events and circumstances surrounding the allegations set forth in the Complaint.

Anthony White
c/o Dave Liebrader
601 S. Rancho Dr., Ste. D-29
Las Vegas, NV 89104

1 Mr. White is expected to testify to the events and circumstances surrounding the
2 allegations set forth in the Complaint.

3 Defendant reserves the right to call as a witness any witness listed in Plaintiff's Pre-
4 Trial Memorandum.

5
6 **IV.**
LIST OF EXHIBITS TO BE RELIED UPON

7 Joint exhibits will be submitted by the parties.

8
9 **V.**
ANTICIPATED ISSUES OF LAW AND EVIDENCE

10 **A. Any reference to allegations of misuse of corporate funds must be excluded.**

11 The Court must exclude any reference, testimony or evidence of allegations of misuse
12 of funds because the probative value is vastly outweighed by the highly prejudicial value.
13

14 NRS 48.035 allows the district court to exclude evidence if the probative value of
15 the evidence is substantially outweighed by the danger of unfair prejudice or undue delay. Even
16 if evidence is otherwise admissible, a trial court may exclude the evidence after striking a
17 proper balance between the probative value of the evidence and its prejudicial dangers. *Elsbury*
18 *v. State*, 90 Nev. 50, 53, 518 P.2d 599, 601 (1974). A district court's decision whether
19 to exclude or admit evidence will only be reversed if it is "manifestly wrong." *Daly v. State*, 99
20 Nev. 564, 567, 665 P.2d 798, 801 (1983).
21

22 To merit exclusion, the evidence must unfairly prejudice an opponent, typically by
23 challenging the emotional and sympathetic tendencies of a jury, not the jury's intellectual
24 ability to evaluate evidence. Fed.R.Evid. 403 advisory committee's note. In the present case,
25 reference, testimony or evidence of allegations against Defendant Robinson related to misuse
26 of VCC funds would unfairly prejudice Robinson.
27
28

1 The alleged misuse of VCC funds bear no relationship to Plaintiff's allegations
2 regarding securities fraud relating to the sale of the Promissory Note. The alleged misuse of
3 VCC funds, likewise, bear no relationship to the Robinson personal guaranty.

4 **B. The facts do not support claims against Alisa Davis or Vern Rodriguez**

5 Alisa Davis worked as an entry-level administrative assistant for Virtual
6 Communications Corporation (hereinafter referred to as "VCC") performing menial tasks as
7 directed. She is neither an officer nor director of VCC currently or during the timeframe
8 relevant to this case. As an administrative assistant, Ms. Davis was not included in the
9 decision-making or leadership of VCC. She was ignorant of management-level information.
10 Ms. Davis' involvement with VCC was restricted to following orders regarding minor clerical
11 tasks. Ms. Davis' typical day involved "pushing papers", one of which was a facsimile of a
12 draft, proposed corporate promissory note from Defendant Ronald J. Robinson. Unaware of
13 Defendant Robinson's intent regarding the draft, proposed corporate promissory note, Ms.
14 Davis complied with Robin Minuskin's request for a copy of the facsimile. It was the belief of
15 Ms. Davis that Robin Minuskin was a trustworthy businesswoman assisting VCC. Ms. Davis,
16 in the normal course of her administrative assistant job, accommodated Robin Minuskin's
17 request for a copy of a draft PowerPoint document regarding VCC. Ms. Davis never met
18 Plaintiff nor had any contact with Plaintiff.

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23 (i) A Fraud Cause of Action is Not Stated Against Alisa Davis or Vern Rodriguez With Specificity

24 Plaintiff may not seek relief from Defendant Alisa Davis as she did not have requisite
25 knowledge or intent to harm Plaintiff. Furthermore, Ms. Davis was not in a position to harm
26 Plaintiff. The solicitation of Plaintiff was made by Julie Minuskin and Retire Happy, LLC.
27 Plaintiff's harm and damages were caused by Plaintiff's financial advisor, Julie Minuskin and
28

1 Retire Happy, LLC, not by Defendant Alisa Davis. Ms. Davis never met or spoke with
2 Plaintiff.

3 Plaintiff's Complaint concerns an alleged default on a corporate promissory note. Ms.
4 Davis was neither the promisor nor promisee of the corporate promissory note. Ms. Davis did
5 not contact Plaintiff at any time regarding such corporate promissory note. Ms. Davis was
6 unaware of the finances of VCC. Ms. Davis was not working for Retire Happy, LLC or Robin
7 Minuskin. Ms. Davis did not possess either knowledge or intent to harm Plaintiff when she
8 complied with the requests of Ms. Minuskin.
9

10 Ms. Davis was genuinely an entry-level administrative assistant paid a standard
11 administrative assistant income. Her pay grade with VCC was low in accordance with her lack
12 of skills, knowledge, information, responsibility or involvement with VCC. It is not
13 uncommon for job seekers to ask their friends and family for a job. It is also not uncommon for
14 employees to have a friend or family member offer a job opportunity, especially when the job
15 is an entry-level position.
16

17 The first element of a fraud cause of action is that the defendant made a false
18 representation. Plaintiffs misrepresentations regarding Ms. Davis' intent or knowledge are not
19 determinative of her liability. Ms. Davis did not make a misrepresentation to Plaintiffs as she
20 never communicated with Plaintiffs. Plaintiff must prove each and every element of the fraud
21 cause of action by clear and convincing evidence. If an essential element is absent, the facts as
22 to the other elements of fraud are immaterial and summary judgment is proper. See, *Barnettler*
23 *v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382 (1998); *Bulbman v. Nevada Bell*, 108 Nev.
24 105, 825 P.2d 588 (1992). Plaintiff's pleadings warrant summary judgment, or, in the
25 alternative, dismissal and a judgment on the pleadings, due to their legally insufficiency.
26
27
28

1 Plaintiff fails to create a genuine issue of material fact regarding Defendant Ms. Davis by
2 simply stating in a bullet-point format that Plaintiff relied upon misrepresentations from her
3 financial advisor, Julie Minuskin. Nevada law requires summary judgment if one of the
4 essential elements of a fraud cause of action is missing. In Plaintiff's Complaint for Damages,
5 Plaintiffs do not even allege three of the five elements of fraud: (1.) Defendant Alisa Davis
6 made a fraudulent statement; (2.) Defendant Alisa Davis knew or believed that her
7 representation was false or defendant had an insufficient basis of information for making the
8 representation; (3.) Defendant Alisa Davis intended to induce Plaintiff to act or refrain from
9 acting upon Defendant Alisa Davis' false statement. Plaintiffs' fraud count fails to state a
10 genuine issue of material fact, in addition to failing to please the essential elements of a fraud
11 cause of action. Defendant Ms. Davis' dismissal is warranted as a matter of law.
12

13
14 (ii) Nevada Uniform Securities Act NRS 90.310, 90.460 and 90.660

15 Dismissal is necessary for Defendants Alisa Davis and Vern Rodriguez because Plaintiff
16 fails to allege the elements of the Nevada Uniform Securities Act causes of action against Ms.
17 Davis or Mr. Rodriguez. Furthermore, Plaintiff does not present any factual allegations, or even
18 specious allegations, that Ms. Davis or Mr. Rodriguez "sold unregistered securities". Plaintiff
19 offends the pleading requirements of both NRCP 56 and NRS 78.747 by simply pleading "VCC
20 Defendants sold unregistered securities through unlicensed sales representatives (Minuskin and
21 Retire Happy) via a general solicitation..." Ms. Davis certainly never "sold" anything as menial,
22 clerical assistant of her corporate employer.
23

24
25 (1.) NRS 90.310

26 Plaintiff does not even accuse Defendants Ms. Davis or Mr. Rodriguez of being a "broker-
27 dealer, sales representative, or transfer agent". In order to allege a cause of action under NRS
28

1 90.310, the defendant must be a “broker-dealer, sales representative or transfer agent” or an
2 “issuer” of securities. Therefore, dismissal on behalf of Ms. Davis and Mr. Rodriguez are
3 required pursuant to NRS 90.310. Plaintiff does not present an allegation nor facts supporting
4 an allegation that Ms. Davis, a clerical employee, was a “broker-dealer, sales representative or
5 transfer agent”.

6
7 (2.) NRS 90.460

8 Plaintiff does not even allege that Defendant Ms. Davis or Mr. Rodriguez offered to sell
9 or sold any security. In order to allege a cause of action under NRS 90.460, the defendant must
10 be a person who offered to sell or sold a security not registered or exempt under the Nevada
11 Uniform Securities Act. Therefore, dismissal on behalf of Ms. Davis and Mr. Rodriguez is
12 required pursuant to NRS 90.460. Plaintiff does not present an allegation nor facts supporting
13 an allegation that Ms. Davis, a clerical employee, offered to sell or sold a security nor the
14 corporate promissory note. The allegations against Ms. Davis involve her performing only
15 clerical work.
16

17
18 (3.) NRS 90.660

19 Plaintiff does not even allege that Defendant Ms. Davis or Mr. Rodriguez offered to sell
20 or sold any security. In order to allege a cause of action under NRS 90.660, the defendant must
21 be a person who offers or sells a security. Furthermore, a cause of action under NRS 90.660
22 requires that the Plaintiff allege that the defendant “offers or sells a security in violation of
23 Subsection 1 of NRS 90.310 or NRS 90.460 or Subsection 2 of NRS 90.570. Therefore, dismissal
24 on behalf of Ms. Davis and Mr. Rodriguez is required pursuant to NRS 90.660. Plaintiff does
25 not present an allegation nor facts supporting an allegation that Ms. Davis, a clerical employee,
26 offered to sell or sold a security nor the corporate promissory note. The allegations against Ms.
27
28

1 Davis involve her performing only clerical work. As stated above, dismissal is required pursuant
2 to NRS. 90.310 and 90.460. NRS 90.570 will be discussed below.

3 (iii) Nevada Uniform Securities Act NRS 90.570

4 Plaintiff has, again, failed to allege the essential elements of a violation of NRS 90.570,
5 nor provided facts to support an allegation. Dismissal is required when Plaintiff fails to allege
6 the essential elements necessary for a violation of a law. Defendant Ms. Davis did not “sell” the
7 corporate promissory note or a security. Secondly, as a clerical employee she did not:

9 (1.) “employ any device, scheme or artifice to defraud;

10 (2.) “Make an untrue statement of a material fact or omit to state a material fact necessary
11 in order to make the statements made not misleading in the light of the circumstances under
12 which they are made; or
13

14 (3.) Engage in an act, practice or course of business which operates or would operate as
15 a fraud or deceit upon a person.”

16 Plaintiff simply lumps all the defendants together with a one-sentence allegation that
17 “Defendants withheld material information about the VCC investment and the VCC corporation
18 as described above.” Plaintiffs fail to present any facts indicating Ms. Davis or Mr. Rodriguez
19 knowingly and intentionally defrauded the Plaintiff. Defendant Ms. Davis has only been alleged
20 to have “*sen[t] preprinted, presigned Notes bearing Robinson’s signed guarantee for Minuskin’s*
21 *use in soliciting investors (including Plaintiff).*” **Plaintiffs have not provided specific facts,**
22 **demonstrating that administrative assistant Ms. Davis or Mr. Rodriguez knowingly and**
23 **intentionally defrauded Plaintiff, a person with whom Ms. Davis and Mr. Rodriguez never**
24 **had any contact.** Plaintiff appears to be inappropriately indulging in speculation, conjecture and
25 whimsy in order to sue Ms. Davis because she worked for the defendant corporation, VCC. There
26
27
28

1 is no genuine issue of material fact because if the Court accepts Plaintiff's plead facts as true,
2 there is still not a cause of action against Defendant under the Nevada Uniform Securities Act
3 NRS 90.310, 90.460, 90.570 or 90.660.

4 (iv) Plaintiff Fails to Plead that Ms. Davis and Mr. Rodriguez Should be Individually
5 Liable for the Corporation

6 Plaintiff failed to plead that Ms. Davis should be individually liable for liability of VCC,
7 a corporation. Nevada Revised Statutes 78.747 provides three bases for a stockholder, director
8 or officer to be found an "alter ego" of the corporation. In Nevada case law, five factors must be
9 present to piece the corporate veil. Plaintiffs have not properly plead that Ms. Davis and Mr.
10 Rodriguez should be held individually liable for any liability of the corporation.

12 **C. Ronald J. Robinson is discharged of his obligations under the alleged personal**
13 **guaranty.**

14 This is a case of an extinguished superseding legal obligation, the VCC promissory notes.
15 Once the superseding legal obligation is extinguished, so is the personal guaranty. The Defendant
16 Robinson's personal guaranty is presently unenforceable. The underlying debt allegedly secured
17 by the personal guaranty of Defendant Robinson is included in the VCC bankruptcy filing. There
18 has been a resolution of that underlying debt making the alleged personal guaranty unenforceable.
19 Over 80% of the secured promissory note holders have approved a plan of reorganization
20 whereby VCC's superseding legal duty to pay on the promissory notes has been altered without
21 Defendant Robinson's consent.

22 The general rule is that an agreement between a creditor and debtor that supersedes and
23 replaces their prior agreement is a novation and makes a guaranty of the prior agreement
24 unenforceable. 38 Am.Jur.2d Guaranty, §67; 38A C.J.S.2d Guaranty §89. This principal is well
25 established in Nevada. In the present case, the personal guaranty may be deemed unenforceable
26 by the Bankruptcy Court's resolution of the underlying debt, effectively an agreement between
27 creditor and debtor that supersedes and replaces the prior obligation.

1 The present case is analogous to *Marion Properties, Ltd. v. Goff*, 108 Nev. 946, 840 P.2d
2 1230 (1992). In *Marion Properties, Ltd.*, the plaintiff alleged that Americana Construction
3 ("Americana") had entered into an agreement with Marion Properties, Ltd. ("Marion") to build
4 condominiums on Marion's property, that Americana had breached its contract with Marion, that
5 Americana's officers, directors, shareholders or owners had signed personal guaranties agreeing
6 to indemnify Americana's creditors and that such individuals were liable on the guaranties. The
7 defendants moved to dismiss the Complaint on the ground that the plaintiff's claim was barred
8 due to a stipulated judgment between Americana and Marion in another case whereby each
9 dismissed with prejudice its claims against the other relating to the construction agreement.

10 The District Court granted the motion to dismiss. On appeal, the Supreme Court affirmed.
11 It stated:

12 It is well-settled that guarantors and sureties are exonerated if the creditor alters
13 the obligation of the principal without the consent of the guarantor or surety.
14 *Williams v. Crusader Disc. Corp.*, 75 Nev. 67, 70-71, 334 P.2d 843, 846 (1959);
15 *Howard v. Associated Grocers*, 123 Ariz. 593, 595, 601 P.2d 593, 595 (1979)
(discharge of the debtor's obligation to the creditor without consent of the
guarantor discharges the obligation of the guarantor).

16 In this case, the debt has been completely extinguished as between Marion and
17 Americana. The discharge of Americana's obligation to Marion, without the
18 consent of respondents, discharged the obligation of respondents as guarantors
19 and as sureties. We therefore conclude that the district court correctly dismissed
Marion's complaint, and we affirm the order of the district court. *Id.* at 108
Nev. 948-949, 840 P.2d 1231-1232 (footnote omitted).

20 In the present case, a personal guaranty of Defendant Robinson has been exonerated
21 because the creditor, VCC, through the Chapter 11 bankruptcy remedies, altered the obligation
22 without Defendant Robinson's consent.

23 The Bankruptcy Court adjudicated VCC debt to Plaintiff and determined that VCC is not
24 obligated to make payment. Over 80% of the promissory note holders voted to confirm a plan
25 of reorganization whereby the underlying obligation has been altered. When there is no
26 underlying obligation compelling VCC to pay Plaintiff, then Defendant Robinson cannot be
27
28

1 personally liable on the alleged guaranty. Otherwise, Plaintiff would essentially obtain a windfall
2 – judgment against Defendant Robinson for the VCC debt in state court while also receiving
3 equity as imposed by the reorganization in Bankruptcy Court.

4 The Court should apply Defendants’ proposed Jury Instruction regarding personal
5 guaranty. See attached Exhibit 6. The Defendants Proposed Jury Instruction provides as follows
6 and is supported by Nevada case law:
7

8 A guaranty is a collateral promise by one person to answer for the payment of some debt
9 in case of the default of a third party who, in the first instance, is liable for such payment.
10 If there is no primary liability on the part of the third party, there is nothing to guarantee
11 and there can be no contract of guaranty. If there is no obligation by the debtor, there is
12 no obligation by the guarantor. Story Prom. Notes, par. 457. *Kilbride v. Moss*, 113 Cal.
13 432, 45 P. 812, 54 Am.St.Rep. 361; *Dykes v. Clem Lumber Co.*, 58 Ariz. 176, 118 P.2d
14 454 (1941); *Williams v. 949 Crusader Disc. Corp.*, 75 Nev. 67, 70–71, 334 P.2d 843,
15 846 (1959); *Howard v. Associated Grocers*, 123 Ariz. 593, 595, 601 P.2d 593, 595 (1979)
16 cited by *Marion Properties, Ltd. by Loyal Crownover v. Goff*, 108 Nev. 946 (1992).

17 In the present case, there is no primary liability on the part of the third party VCC on the
18 promissory notes. As such, there is nothing to guarantee and there can be no contract of guaranty.
19 Because there is no obligation by the debtor, VCC, on the promissory notes, there is no obligation
20 by the alleged guarantor.

21 Accordingly, the Court should find in favor of Defendant Robinson because the evidence
22 and law supports the conclusion that Defendant cannot be liable on a personal guaranty when the
23 superseding obligation is satisfied whether by notation or by order of the Bankruptcy Court. This
24 is especially true where the obligation is altered without the Defendant’s consent, as in the present
25 case, where the obligation is altered by order of the Bankruptcy Court.

26 **D. The Entire Complaint Against All Defendants Should be Dismissed for Failure
27 to Name an Indispensable Party.**

28 Rule 17 of the Nevada Rules of Civil Procedure provides: “Every action shall be
prosecuted in the name of the real party in interest.” NRCP 17(a). Trustees of trust funds “are
real parties in interest, under NRCP 17(a), as trustees of an express trust which is a third party

beneficiary of the agreement.” *Back Streets, Inc. v. Campbell*, 95 Nev. 651, 601 P.2d 54 (1979).
A trustee of an express trust may sue in the trustee’s own name without joining the party for
whose benefit the action is brought. *See* NRCP 17(a). However the reverse does not hold, i.e. a
beneficiary is unable to sue in the beneficiary’s own name without joining the trust or trustee.

Trustee is defined as “the person holding property in trust and includes trustees, a
corporate as well as a natural person and a successor or substitute trustee.” NRS 163.020. Notably
absent from this definition of trustee is “beneficiary.” Beneficiaries are not trustees.

In the absence of the real party in interest, complete relief cannot be accorded. Pursuant
to Rule 19:

A person who is subject to service of process and whose joinder will
not deprive the court of jurisdiction over the subject matter of the
action **shall** be joined as a party in the action if (1) in the person’s
absence complete relief cannot be accorded among those already
parties, or (2) the person claims an interest relating to the subject of
the action and is so situated that the disposition of the action in the
person’s absence may (i) as a practical matter impair or impede the
person’s ability to protect that interest or (ii) leave any of the persons
already parties subject to a substantial risk of incurring double,
multiple, or otherwise inconsistent obligations by reason of the
claimed interest.

NRCP 19(a) (emphasis added). If a party is necessary to an action but cannot be joined, that party
is indispensable. *See Potts v. Vokits*, 101 Nev. 90, 692 P.2d 1304 (1985). If the necessary party
is not able to be joined, “the court must decide whether in equity and good conscience the action
should proceed. If in equity and good conscience the action cannot proceed without the necessary
party, that party is ‘indispensable’ and the case must be dismissed.” *Id.* In fact, “[f]ailure to join
an indispensable party is fatal to a judgment.” *Schwob v. Hemsath*, 98 Nev. 293, 646 P.2d 1212
(1982). Also a Motion for failure to join indispensable party may even be raised by an appellate
court. *Id.*

Nevada Rules permit a pleader to move to dismiss an action based on failure to join a
party under Rule 19. *See* NRCP 12(b)(6). A defense of failure to join a party indispensable under
Rule 19 may be made by motion for judgment on the pleadings. *See* NRCP 12(h)(2).

1. Provident Trust is an indispensable party.

Here, it is undisputed that Provident Trust was the trustee, as it held property in trust for

1 beneficiary Plaintiffs. It is further undisputed that Plaintiffs are not a trustees of Provident Trust;
2 Plaintiffs are a beneficiary. As such, Plaintiffs are devoid of power to make investments on behalf
3 of Provident Trust, nor does Plaintiffs possess authority to bring legal action on behalf of the
4 trust. As such, pursuant to NRCP 17, the real party in interest is a trustee for Provident Trust.

5 Essentially, Plaintiffs lacks standing. The trustees of Provident Trust are the real parties
6 in interest. Without the real party in interest, complete relief cannot be accorded among those
7 already parties. As such, Provident Trust is indispensable and Plaintiffs case must be dismissed.

8
9 **VI.**

10 **RELIEF SOUGHT**

11 The Court should prohibit Plaintiff from referencing any allegation of misuse of VCC funds
12 against Defendant Robinson in his opening or closing statements and any questioning. The Court
13 should further exclude any testimony or evidence regarding the allegations of misuse of funds
14 against Defendant Robinson.

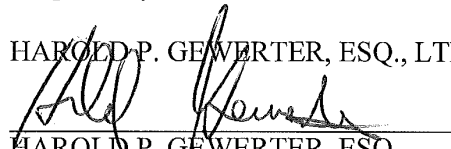
15 The entire Complaint against all Defendants should be dismissed because Plaintiffs fail to
16 mention an indispensable party, i.e. Provident Trust.

17 The Court should direct a verdict in favor of Defendants Davis and Rodriguez as the facts do
18 not support the allegations of fraud and securities violations contained in Plaintiffs' Complaint.

19 DATED this 27th day of January, 2020.

20 Respectfully submitted,

21
22 HAROLD P. GEWERTER, ESQ., LTD.

23 
24 HAROLD P. GEWERTER, ESQ.

25 Nevada Bar No. 499

26 1212 S. Casino Center Blvd.

27 Las Vegas, Nevada 89101

28 Tel: (702) 382-1714

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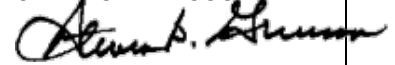
Attorneys for Defendants, *Ronald J. Robinson and*
Alisa Davis

1 **CERTIFICATE OF SERVICE**

2 Certification is hereby made that a true and correct copy of **DEFENDANTS' PRE**
3 **TRIAL MEMORANDUM** was served this 27th day of January, 2020, by electronic service via
4 the court's electronic filing and electronic service and/or via U.S. Mail to the counsel set forth
5 on the service list, and listed below, pursuant to Administrative Order 14-2, NEFCR 9 (a), and
6 EDCR Rule 7.26.

7 David Liebrader, Esq.
8 The Law Offices of David Liebrader, APC
9 601 S. Rancho Dr., Ste. D-29
Las Vegas, NV 89106

10
11
12 /s/Sonja Howard
13 An Employee of Harold P. Gewerter, Esq., Ltd.
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LAS VEGAS, NV 89106
PH: (702) 380-3131
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN	)	Case No. A-17-762264-C
)	
Steven A. Hotchkiss,	)	Dept.: 8
)	
PLAINTIFF,	)	TRIAL BRIEF
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Frank)	
Yoder, Alisa Davis and DOES 1-10 and ROES 1-)	
10, inclusively	)	CONSOLIDATED WITH
)	
DEFENDANTS	)	Case No. A-17-763003-C
)	
Anthony White, Robin Suntheimer, Troy)	
Suntheimer, Stephens Ghesquiere, Jackie Stone,)	
Gayle Chany, Kendall Smith, Gabriele)	
Lavermicocca and Robert Kaiser)	
)	
PLAINTIFFS)	
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Virtual)	
Communications Corporation, Frank Yoder, Alisa)	
Davis and DOES 1-10 and ROES 1-10, inclusively)	
)	
)	
)	

COME NOW Plaintiffs by and through counsel to submit this Trial Brief.

BRIEF STATEMENT OF FACTS

This is an action to recover money owed under a promissory note. The ten

1 Plaintiffs loaned a total of \$474,000 to Virtual Communications Corporation (**"VCC"**)
2 over the period January, 2013 through December, 2014. VCC agreed to make
3 monthly 9% interest payments on the Notes, which all had identical terms and
4 repayment provisions, save the date(s) and amount(s) of investments and the
5 repayment date(s). VCC agreed to repay **Plaintiffs'** principal three years from the
6 date of the investments. In February, 2015 VCC went into default on the payment of
7 interest. Subsequently all of the Plaintiffs notified VCC that it was in default, and
8 they demanded repayment of their principal, accrued interest and attorneys' fees due
9 under the Notes.

10 Counsel for Defendants has agreed to stipulate, based upon prior deposition
11 and trial testimony in a related case, that VCC received Plaintiffs' funds, paid interest
12 per the Note terms, and is in default.¹ As a result, breach of contract is not an issue for
13 trial. The sole issue related to the breach of contract cause of action is whether Mr.
14 Robinson is liable as the guarantor.

15 All of the identical Notes bear the signature of VCC Chief Executive Officer
16 Ronald Robinson as guarantor. Mr. Robinson claims that his signature was used
17 without his permission, and that he did not intend to guarantee the Notes. In
18 addition to claims for breach of contract and fraud, Plaintiffs seek damages under the
19 Nevada Securities Act under two theories; that the VCC Promissory notes were (1)
20 unregistered securities sold via (2) misrepresentations and omissions. In addition to
21 seeking to hold VCC liable for these statutory violations, Plaintiff also seeks to hold
22 Mr. Robinson and Mr. Rodriguez (VCC's CFO) liable as control persons for the sale of

23 ¹ VCC filed for bankruptcy after a finding that the Notes were securities in a related case.
24
25
26

1 unregistered securities.

2 The Plaintiff seeks statutory damages under the Nevada Securities Act, as well
3 as damages provided for under the note terms.

4
5 TRIABLE ISSUES

6 Issue One: The VCC Note was a Security

7 Plaintiffs contend that the Notes at issue are securities pursuant to NRS
8 §90.295, and State v. Friend, 40 P. 3d 436; 118 Nev. 115 (2002). Plaintiffs seek a
9 determination that, as a matter of law, the VCC promissory notes are securities.

10
11 Issue Two: The VCC Note was neither registered nor exempt from
12 registration

13 As securities, the VCC Note offering needed to be registered or exempt from
14 registration prior to offer or sale. Neither was the case, as the Certificate of Absence
15 of Record from the Nevada Secretary of State, and Mr. Robinson's own sworn
16 testimony attest. As a result, Plaintiffs seek a ruling that the VCC Note was sold in
17 **violation of the Nevada Securities Act's registration provisions**, specifically NRS
18 90.460.

19
20 Issue Three: Mr. Robinson and Mr. Rodriguez were **"Control Persons"**

21 Plaintiffs seek a determination that for purposes of NRS §90.660, Ronald
22 Robinson and Vern Rodriguez are control persons. It is indisputable that Mr.
23 Robinson was the Chairman of the Board for VCC, while Vern Rodriguez was the

Chief Financial Officer and Treasurer.

Issue Four: Ron Robinson Guaranteed the Investments

All of the identical Notes bear Ron Robinson's signature as guarantor. Through the life of this case and two others Mr. Robinson has claimed that he did not intend to guarantee the Notes, and that his signature was used without his permission. This claim is belied by numerous official documents issued by VCC (reporting documents, financial statements, private placement memorandums) that irrefutably state that Mr. Robinson is the guarantor of the notes. Mr. Robinson's own granddaughter also testified in a previous case that Mr. Robinson signed a blank note that was intended to be reused by fund raiser Retire Happy to raise funds for VCC.

SUPPORTING EVIDENCE

ISSUE ONE: The Notes are Securities

The Nevada Securities Act's definition of a security under NRS §90.295 includes a "Note" in the same form that was sold to Plaintiffs. In addition to meeting the traditional "Howey" test of being: 1) an investment of money in, 2) a common enterprise with, 3) the expectation of profits from, 4) the efforts of others (See SEC v. W J Howey & Co., 328 U.S. 293; 66 S. Ct. 1100 (1946)), the VCC Note meets the "family resemblance test" standard adopted by Nevada in State v. Friend, 40 P. 3d 436; 118 Nev. 115 (2002).

NRS 90.295 provides the statutory definition of a security:

1 NRS 90.295 “Security” defined. **“Security” means a note,**
2 stock, bond, debenture, evidence of indebtedness, certificate of interest
3 or participation in a profit-sharing agreement, a limited partnership
4 interest, an interest in a limited-liability company, collateral-trust
5 certificate, preorganization certificate or subscription, transferable
6 share, investment contract, viatical settlement investment, voting-trust
7 certificate, certificate of deposit for a security, fractional undivided
8 interest in an oil, gas or other mineral lease or in payments out of
9 production of such a lease, right or royalty, a put, call, straddle or
10 option on a security.”

11 NRS § 90.295 (Emphasis added).

12 In State v. Friend, the Nevada Supreme Court adopted the use of the “family
13 resemblance test” to determine whether a note would be considered to be a security
14 under the Act.

15 The “family resemblance” test was established in Reves v. Ernst and Young 494
16 U.S. 56, 57, 110 S. Ct. 945 (1990) to help the court determine when a note is a
17 security. There are two components to the test, with four subparts to the second
18 component. The Note sold by VCC meets all of the requirements to be considered to
19 be a security.

20 The test begins with a presumption that all Notes are securities except for
21 those Notes which traditionally have been used in consumer financing, or among
22 sophisticated investors such as large commercial banks. These exceptions include
23 mortgage notes, interbank loans or accounts receivables. See, Friend 40 P. 3d at 440.
24 None of those apply here.

25 If the Note is not deemed to belong to the class of financing that has not
26 traditionally been considered to be a security, the first component of the test is
completed. The next step is to apply four factors to the investment at issue:

- 1) What are the motivations of the buyer and sellers to enter into the transaction;

- 2) What manner was the Note made available to the public;
- 3) Did the purchaser view the Note as an investment; and,
- 4) Is there a need for regulatory protections.

See Friend generally, 40 P. 3d at 439-441.

Step One: The Motivation test:

The first step is to analyze what motivations would prompt a reasonable seller and buyer to enter into the transaction. "If the seller's purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a `security.'"

Friend at 439-440.

Step Two: The Distribution test

The second step examines the distribution of the note "" to determine whether it is an instrument in which there is common trading for speculation or investment." Common trading occurs when the instrument is "offered and sold to a broad segment of the public."

Friend at 440.

Step Three The “Investor Expectation test”

The third step of the analysis considers "whether ... [the notes] are reasonably viewed by purchasers as investments." Under this step, we must determine if the seller of the notes calls them investments and, if so, whether it is reasonable for a prospective purchaser to believe them.

1 Friend at 441.

2 Step Four: The need for Regulation

3 “The final step of the analysis examines the adequacy of other regulatory
4 schemes in reducing the risk to the lender.” “Although Friend has been charged with
5 two counts of obtaining money under false pretenses, we conclude that there is a need
6 for securities laws in Nevada. The purpose of the federal securities acts was “ to
7 eliminate serious abuses in a largely unregulated securities market.” Recognizing “the
8 virtually limitless scope of human ingenuity ... by those who seek the use of the
9 money of others on the promise of profits, Congress broadly defined the scope of
10 securities laws. Like Congress, it appears that the Nevada Legislature recognized a
11 similar need for such broad security regulations. We will give effect to that
12 determination.”

13 Friend at 441.

14 Here; the VCC Notes were not in the category that are traditionally exempt
15 such as mortgage **notes or notes used in consumer financing.** VCC’s “Motivation” for
16 participating in the offering was to raise funds for use in developing its proprietary
17 technology, while Plaintiff was motivated by the 9% interest payable over 18 months.
18

19 VCC used unregistered broker dealer **Retire Happy to “Distribute” the Notes**
20 **to a wide section of people; According to Mr. Robinson’s sworn testimony, “between**
21 **50-100.”** The investors in this case are from Montana, Virginia, Kansas, Missouri,
22 Florida, Illinois and Florida. It is clear that the intent was to market the Notes to a
23 broad section of the public in order to raise the needed capital.
24

1 Further, Mr. Robinson referred to the Notes as investments during his
2 deposition, and Plaintiffs purchased the Notes for investment purposes, and not as
3 part of a consumer financing transaction. An email Robinson wrote to Julie
4 Minuskin confirmed this:

5 "We're in complete agreement with communication with
6 your investors. Vern will be the direct contact and in addition, we
7 would be open to make presentation of our technology anytime
8 with your investors. Naturally, Frank would be the contact for this.
9 It is our desire to make full disclosure to all investors and for that
10 reason, we are open to any suggestion that you might have in
11 accomplishing this, so don't hesitate in making the clear to your
12 contacts. "In addition, should your investors wish to contact me
13 directly, I would be happy to meet with them and show them our
14 accountant's prepared current financial statement. My present
15 worth is \$17,699,000, which is represented in cash and equities,
16 both real and personal. Ron Robinson."

17 See **Exhibit "A"**, attached.

18 Lastly, the need for regulation for this type of investment transaction triggers
19 the application of the securities laws; the Note is not of a type that would be regulated
20 by the real estate, mortgage or insurance divisions in the state. As an investment sold
21 to members of the public, it is subject to the regulations and provisions of the Nevada
22 Securities Act.

23 Because the VCC Note checks all the boxes established by the Nevada Supreme
24 Court in State v. Friend, it should be considered to be a security under Nevada law.

25 But the Court has even stronger evidence on which to base its findings; VCC
26 themselves referred to the Notes as securities in 3 separate PowerPoint presentations
for use in the note offering. See Exhibit **"B"** attached.

1 If VCC's management considered the Notes to be Securities, and told their
2 investors that the Notes were securities, they shouldn't be allowed to take a contrary
3 position now.

4 Lastly, this identical case was tried in the Eighth Judicial District Court before
5 Judge Williams in 2018. The case was Reva Waldo v. Ronald Robinson et al. Case A-
6 15-725246 ("Waldo"). Same Note, same Defendants, same guarantee. After full
7 briefing by the parties, the Judge granted Plaintiff's motion for summary
8 adjudication, finding the Notes were securities. See Exhibit "C", attached. Then, after
9 trial, Judge Williams issued Findings of Facts, and a Judgment in favor of Plaintiff,
10 including interest, penalties and **attorney's** fees. See Exhibit "D", attached.

11 Since the Notes were securities, VCC needed to register them prior to offer or
12 sale, or file a request for exemption from registration. They did neither. Nor are any
13 exemptions applicable. Defendants have not raised the issue of exemption at any
14 time in this proceeding, and should not be allowed to attempt to do so at this late
15 date. Under NRS §90.690(1), Defendants have the burden of proof when claiming an
16 exemption, and must prove each and every element. If proof is not offered as to any
17 one element, the entire exemption is lost. See *e.g.*, Sheets v. Dziabis, 738 F. Supp.
18 307 (N.D. Ind. 1990).

19 Further, Defendants cannot rely on a good faith belief that the VCC Note
20 interests were not securities, or that they **didn't need to be registered**. See *e.g.*, Kahn
21 v. State, 493 N.E.2d 790 (Ind. App. 1986). Both of these issues are questions of law,
22 and ignorance of the law is never a defense. Nor may VCC rely upon opinions of
23
24
25
26

counsel on these issues. See e.g., Smith v. Manassa, 385 F.Supp. 443 (E.D.Ky. 1974);
People v. Clem, 39 Cal. App.3d 539, 114 Cal. Rptr. 359 (1974).

ISSUE TWO : The VCC Note was sold in violation of the registration
provisions of NRS §90.460

NRS 90.460 provides that a security must be registered prior to sale.

NRS 90.460 Registration requirement. It is unlawful for a person to offer to sell or sell any security in this State unless the security is registered or the security or transaction is exempt under this chapter.

(Added to NRS by [1987, 2161](#); A [1989, 160](#))

The Nevada Secretary of State issued a Certificate of Absence of Record that stated that VCC never filed an application for registration of its note offering. Likewise, Ron Robinson testified at trial in Waldo that the Notes were never registered. See Exhibit “E” attached.

ISSUE THREE: Ronald Robinson and Vern Rodriguez are VCC “control
persons”

Nevada law defines a control person as:

NAC 90.035 **“Control person” defined.** “Control person” includes a person who:

1. Owns or controls 10 percent or more of the voting stock of a corporation;
2. Is an officer or director of a corporation; or
3. Is in a position to influence the decision-making processes of a corporation.

NAC 90.035 **“Control person” defined.**

Ronald Robinson served as Chairman of the board for VCC, and was in charge of all policies and operations of the company.” Likewise, Vern Rodrigues was the

1 Chief Financial Officer “in charge of financial policy and financial records of the
2 company” See Exhibit “F”, attached.

3 In light of these admissions it is clear that both men were in a position to
4 influence the decision making in the offering, and as such are control persons under
5 NAC §90.035.

6 Rodriguez was not named in the Waldo matter, so no determination was made
7 as to his control person status. However, Mr. Robinson was, and the Court found him
8 to be a control person.

9 NRS §90.660, the civil liability section of the Nevada Securities Act imposes
10 liability on control people:

11 “A person who directly or indirectly controls another person who is liable
12 under subsection 1 or 3 [unlicensed broker dealers, sale of unregistered
13 securities], a partner, officer or director of the person liable, a person
14 occupying a similar status or performing similar functions, any agent of the
15 person liable, an employee of the person liable if the employee materially aids
16 in the act, omission or transaction constituting the violation, and a broker-
17 dealer or sales representative who materially aids in the act, omission or
18 transaction constituting the violation, are also liable jointly and severally with
19 and to the same extent as the other person, but it is a defense that the person
20 did not know, and in the exercise of reasonable care could not have known, of
21 the existence of the facts by which the liability is alleged to exist.”

22 NRS §90.660

23 Because they were in a position to influence and direct the offering, and were
24

1 officers of the company at the time of the sale of the unregistered securities, Mr.
2 Robinson and Mr. Rodriguez should be deemed control persons, and found liable for
3 the sale of unregistered securities.

4 ISSUE FOUR: Ronald Robinson Guaranteed the Investments

5 Despite every single note bearing his signature as guarantor, Mr. Robinson
6 claims that he **didn't** intend to guarantee the Notes. To escape liability he has, in
7 turns, claimed his signature was used without his permission, that he only intended
8 to guarantee the first two promissory notes; that his granddaughter tricked him, and
9 that VCC's **former** technology officer Frank Yoder improperly included Robinson's
10 guarantee in three separate PowerPoint presentations (that Robinson knew about and
11 approved) over several years. These defenses were all on display in the Waldo case,
12 and after a full trial on the merits, Judge Williams concluded that Mr. Robinson was
13 lying; that he intended to guarantee the Notes, evidenced by six separate documents,
14 as well as the devastating testimony of his own granddaughter Defendant Alisa Davis,
15 whom he had accused of acting without his authority. See Exhibit "G", attached.

16 Robinson was able to put forth his transparent ruse because he did, in fact,
17 sign a blank promissory note for use by fundraiser Retire Happy. This was simply an
18 accommodation, to make it easier for them to close transactions. All Retire Happy
19 had to do was fill in the purchaser's name, the investment amount, and the date of
20 the purchase. In this regard, it was all pre-approved, save for VCC or Robinson
21 rejecting any of the transactions, which they never did.

22 Nevada law recognizes that a contract may become binding and enforceable where
23 the conduct of the parties demonstrates agreement to all material terms. See Merrill

1 v. DeMott, 113 Nev. 1390, 951 P.2d 1040, 1044 (1997); European Motors, Ltd. v.
2 Oden, 75 Nev. 401, 344 P.2d 195, 197 (1959).

3 “Failure of a party to disaffirm a contract over a period of time may, by itself,
4 ripen into a ratification, especially if rescission will result in prejudice to the other
5 party.” First State Bank of Sinai v. Hyland, 399 N.W.2d 894, 898 (S.D. 1987) (As
6 cited in Wynn Las Vegas, LLC v. Tofani (Nev. App., 2017)).

7 Likewise, equitable estoppel operates to prevent a party from asserting legal rights
8 that, in equity and good conscience, they should not be allowed to assert because of
9 their own conduct. Silence can raise estoppel. NGA No. 2 Ltd. Liability Co. v. Rains,
10 13 Nev. 1151, 946 P.2d 163 (1997); Vancheri v. GNLV. Corp., 105 Nev. 417, 421, 777
11 P.2d 366, 369 (1989); Pink v. Busch, 100 Nev. 684, 691 P.2d 456 (1984); Cheger, Inc.
12 v. Painters and Decorators Joint Committee, Inc., 98 Nev. 609, 655 P.2d 996 (1982).

13 ARGUMENT

14 The VCC Notes sold to Plaintiffs were securities, passing the test set forth in
15 State v. Friend, as well as by definition, Defendants’ own offering documents. As
16 securities VCC was obligated to have them registered prior to sale, or to file with the
17 SEC and Nevada Secretary of State a notice claiming an exemption. They failed to do
18 so. Since broker dealer Retire Happy was, by Robinson’s own admission, not licensed
19 to sell securities, VCC employed an unregistered broker dealer and unlicensed sales
20 representative to sell the Notes to Plaintiffs. Robinson and Rodriguez were
21 authorized to, and did in fact direct the unregistered Note offering, and are control
22 persons for purposes of liability under the securities laws.

23 Lastly, the documentary evidence proves that Robinson intended to guarantee
24 the Notes, knew that funds were being raised through the use of a blank, pre signed
25

1 Note, then perjured himself by blaming his own granddaughter Alisa Davis and
2 former coworker Frank Yoder for utilizing and publicizing the personal guarantee
3 without his permission.

4 The evidence is simply overwhelming; Mr. Robinson intended to, and did
5 guarantee the Notes, which are securities under Nevada law. As a result, Plaintiffs are
6 entitled to damages under NRS §90.660, as well as a finding that Mr. Robinson is
7 liable as a guarantor, who should be ordered to pay Plaintiffs full contract damages
8 under the Notes' terms.

9
10 Dated: January 27, 2020

Respectfully submitted,

11 The Law Office of David Liebrader, Inc.

12 By: /s/: David Liebrader
13 David Liebrader
14 Attorney for Plaintiff
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CERTIFICATE OF MAILING

I hereby certify that on the 27th day of January, 2020, I mailed a copy of the foregoing
Trial brief
to the following

Harold Gewerter, Esq.
Gewerter Law Firm
1212 Casino Center Boulevard
Las Vegas, NV 89104

/s/: Dianne Bresnahan
An Employee of The Law Office of David Liebrader

EXHIBIT “A”

Miriam

From: Robin1031@aol.com
Sent: Monday, December 10, 2012 10:50 AM
To: Julie Minuskin
Subject: Re: Agreement
Attachments: image001.png; image002.png; image003.png; image001.png; image002.png; image003.png

We are in complete agreement with our communication with you investors. Vern will be the direct contact. In addition we would be open to make a presentation of our technology at any time with your investors; naturally Frank would be the contact for this. It is our desire to make full disclosure to all investors and for this reason we are open to any suggestion that you might have in accomplishing this, so don't hesitate in making this clear to your contacts. In addition should your investors wish to contact me directly, I would be happy to meet with them and show them my Accountant's prepared current financial statement. My present net worth is \$17,699,000, which is represented in cash and equities both real and personal. Ron Robinson

In a message dated 12/10/2012 10:23:46 A.M. Pacific Standard Time, jminuskin@retirehappy.com writes:

Hi-

Thank you for your letter, but we are not going to complete this unless we have an understanding of who the investors will speak with if they ever have questions? Will it be Frank? There might be only 3-4 investors who will want to speak directly to the company, and we always have an open policy b/c some investors just need that. Ask Terry Howlett how many calls he has ever gotten....We just finished raising his funds and he might of gotten 3 or 4 calls. We need to be able to "offer" the opportunity but they rarely ever do it. And it is usually only a confirmation call, it will not be on a daily basis or frequent, if at all, as long as they are getting paid!!!

Thoughts?

Julie Minuskin

Investment Specialist | Retire Happy, LLC
4840 W. University Ave., A1 | Las Vegas, NV 89103
Direct: 702.782.1844 | Toll Free: 888.899.4700 Fax: 888.899.4700

jminuskin@retirehappy.com



Legal Disclaimer: No earnings claims, warranties, or specific investment advice is allowed to be given from this office. Any information contained in this email is for general illustrative or educational purposes only and is not intended to constitute legal, tax, or financial advice to any person or organization. Neither an attorney-client nor accountant-client.

EXHIBIT “B”

Frank Yoder

From: Frank Yoder
Sent: Monday, December 17, 2012 1:03 PM
To: Ron Robinson
Cc: Vernon Rodriguez
Subject: RE: revised note

Ron,
Is this ok?

Return:

Notes have a term of 18 months, with a 6 month extension option. Note pays 9% annual interest paid monthly.
(Escrow Agent: Provident Trust Group)

Offering Summary

Securifies: 9% Notes

Minimum Offering: \$20,000 Maximum Offering: \$1,000,000

TERMS OF SECURITIES:

Return:

Notes have a term of 18 months, with a 6 month extension option. Note pays 9% annual interest paid monthly. (Escrow Agent: Provident Trust Group)

Secured:

Notes are secured by a Promissory Note. The Guarantor of the note is Mr. R.J. Robinson, chairman & CEO of Virtual Communications Corporation. Mr. Robinson has a net worth of \$17,698,000. Financial Statement is available for inspection in the offices of Retire Happy.

Termination Date:

June 15, 2013, unless extended by the Company's board of directors. Offering is conducted pursuant to Rule 506 of Regulation D under the Securities Act of 1933 (as amended).

Frank Yoder
Wintech, LLC
311 East Warm Springs Road, Suite #100
Las Vegas, NV 89119
phone: (702) 284-7311
email: Frank.Yoder@WinTechLLC.com
web: www.ALICERceptionist.com

From: Robin1031@aol.com [mailto:Robin1031@aol.com]
Sent: Monday, December 17, 2012 11:36 AM
To: Frank Yoder
Subject: Re: revised note

Offering Summary

Securities: 9% Notes

Minimum Offering: \$20,000 **Maximum Offering:** \$1,000,000

TERMS OF SECURITIES:

Return:

Notes have a term of 18 months, with a 6 month extension option. Note pays 9% annually with interest paid monthly. (Escrow Agent: Provident Trust Group)

Secured:

Notes are secured by a Promissory Note. The Guarantor of the Notes is Mr. R. Robinson, chairman & CEO of Virtual Communications Corporation. Mr. Robinson has a net worth of \$17,698,000. Financial Statement is available for inspection in the offices of Retire Happy.

Termination Date:

June 15, 2014, unless extended by the Company's board of directors.

Offering Summary

Securities: 9% Notes

Minimum Offering: \$20,000 Maximum Offering: \$1,000,000

TERMS OF SECURITIES:

Return:

Notes have a term of 18 months, with a 6 month extension option. Note pays 9% annually with interest paid monthly.

Secured:

Notes are secured by a Promissory Note. The Guarantor of the note is Mr. R.L. Robinson, chairman & CEO of Virtual Communications Corporation. Mr. Robinson has a net worth of \$17,698,000. Financial Statement is available for inspection in the offices of Retire Happy.

Termination Date:

April 15, 2015, unless extended by the Company's board of directors.

Offering Summary

Securities: 9% Notes

Minimum Offering: \$20,000 **Maximum Offering:** \$1,000,000

TERMS OF SECURITIES:

Return:

Notes have a term of 18 months, with a 6 month extension option. Note pays 9% annually with interest paid monthly. (Escrow Agent: Provident Trust Group)

Secured:

Notes are secured by a Promissory Note. The Guarantor of the note is Mr. R.J. Robinson, Chairman of the Board for Virtual Communications Corporation. He has a net worth of \$16,723,000. Financial Statement is available for inspection in the offices of Retire Happy, LLC.

Termination Date:

18 months from promissory note execution, unless extended by the Company's Board of Directors.

EXHIBIT “C”

Steven D. Grierson

1 DAVID LIEBRADER, ESQ.
2 STATE BAR NO. 5048
3 THE LAW OFFICES OF DAVID LIEBRADER, APC
4 601 S. RANCHO DR. STE. D-29
5 LAS VEGAS, NV 89106
6 PH: (702) 380-3131
7 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN

) Case No. A-15-725246

11 Reva Waldo,

) Dept.: 16

12 PLAINTIFF,

) ORDER ON:

13 v.

) 1. PLAINTIFF'S MOTION
) FOR SUMMARY
) JUDGMENT

14 Ronald J. Robinson, Virtual Communications
15 Corporation, Retire Happy, LLC, Julie Minuskin
16 and DOES 1-10 and ROES 1-10, inclusively

) 2. PLAINTIFF'S MOTION
) FOR SUMMARY
) ADJUDICATION

17 DEFENDANTS

) 3. DEFENDANTS'
) MOTION TO DISMISS
) FOR FAILURE TO
) NAME INDISPENSIBLE
) PARTIES

4. DEFENDANT DAVIS'
MOTION TO DISMISS

18 ORDER ON MOTIONS

19 The following motions were considered by the court:

- 20 1. Plaintiff's motion for summary judgment against Defendant Virtual Communications
21 Corporation;
- 22 2. Plaintiff's motion for summary adjudication of issues;
- 23 3. Defendants Virtual Communications Corp., Alisa Davis and Ronald Robinson's
24 counter motion to dismiss Plaintiff's complaint for failure to name indispensable
25 parties;
- 26 4. Defendant Alisa Davis' motion to dismiss/motion for summary judgment/motion for

APR 16 2018

1 judgment on the pleadings.

2 The four motions were the subject of two hearings; one on March 8, 2018, the second
3 on April 5, 2018. Appearing for Plaintiff was David Liebrader; appearing for Defendants was
4 Harold Gewerter.

5
6 FINDINGS OF FACT; CONCLUSIONS OF LAW

7 After considering the briefs, oppositions, replies and supporting Declarations
8 submitted, as well as argument by counsel at the two hearings, the Court rules as follows:



- 9 1. Plaintiff entered into a valid, binding contract with Defendant Virtual
10 Communications Corporation. Based upon the sworn testimony of VCC's officers
11 Ronald Robinson and Vernon Rodriguez, VCC acknowledged that it is in default
12 under the terms of the promissory note. As a result Plaintiff's motion for summary
13 judgment against VCC is GRANTED.
- 14 2. Plaintiff raised the following issues in her motion for summary adjudication; (a) that
15 the VCC note is a security; (b) that the VCC Note was not registered nor exempt from
16 registration; (c) that VCC employed an unlicensed broker dealer to sell the VCC
17 Notes; and (d) that Ronald Robinson is a control person under the Nevada Securities
18 Act. Based upon the authorities cited by Plaintiff in her motion for summary
19 adjudication, including NRS 90.295 and State v. Friend, 40 P. 3d 436; 118 Nev. 115
20 (2002) and the certification from the Nevada Secretary of State, the Court Orders that
21 Plaintiff's motion for summary adjudication on the four issues raised is GRANTED.
- 22 3. Defendants' motion to dismiss for failure to name an indispensable party, specifically
23 Provident Trust Group was the subject of extensive briefing. In addition to the motion,
24

1 opposition and reply the court also asked for and received supplemental briefing from
2 the parties, as well as out of jurisdiction authorities lodged with the court by Plaintiff.
3 The issue of whether a self-directed IRA Custodian is a necessary party such that the
4 Plaintiff lacks standing to sue is an issue of first impression in Nevada. Based upon
5 the filings the Court finds that Provident Trust owed limited duties to Plaintiff and did
6 not direct, consent, approve or disapprove of Plaintiff's investment decisions in the
7 self-directed account. Instead, it was Plaintiff, the owner of the Provident Trust Group
8 custodial account who managed, directed and controlled the investments. See FBO
9 David Sweet IRA v. Taylor, 4 F. Supp. 3d 1282 (E.D. Ala. 2014). Because Plaintiff
10 was the sole decision maker on the account, and Provident Trust Group expressly, by
11 contract, declined to undertake any action to pursue remedies for default on the
12 investment, the Court finds that Provident Trust Group is not a necessary or
13 indispensable party and on the basis DENIES Defendant's motion.

- 14 4. The Court considered Defendant Alisa Davis' motion for summary judgment/motion
15 to dismiss/motion for judgment on the pleadings. The Court finds that Plaintiff has
16 plead sufficient material facts, including offering the sworn deposition testimony of
17 Ronald Robinson that contradicts the contentions raised in Davis' motion. Because
18 Ms. Davis' motion is contradicted by the sworn testimony of Mr. Robinson, the Court
19 rules that Ms. Davis' motion is DENIED.

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21 IT IS SO ORDERED:

22 Dated this 16th day of April, 2018

23 
24 Hon. Timothy Williams
25 District Court Judge
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Submitted by:



David Liebrader, Esq.
Attorney for Plaintiff

EXHIBIT “D”



1 DAVID LIEBRADER, ESQ.
2 STATE BAR NO. 5048
3 THE LAW OFFICES OF DAVID LIEBRADER, APC
4 601 S. RANCHO DR. STE. D-29
5 LAS VEGAS, NV 89106
6 PH: (702) 380-3131
7 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN) Case No. A-15-725246
11)
12 Reva Waldo,) Dept.: 16
13)
14 PLAINTIFF,)
15)
16 v.)
17)
18 Ronald J. Robinson, Virtual Communications)
19 Corporation, Retire Happy, LLC, Julie Minuskin)
20 and DOES 1-10 and ROES 1-10, inclusively)
21)
22 DEFENDANTS)
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27 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

28 This matter was submitted for a bench trial before the Hon. Timothy Williams
29 on June 25-27, 2018. Prior to trial there was extensive briefing on the issues,
30 specifically motions for summary judgment, a motion for summary adjudication of
31 issues, a motion to dismiss, and a motion on whether Plaintiff had standing to bring
32 her claim. Furthermore, after trial the court received post trial briefs from the parties
33 and heard oral argument on September 20, 2018.

34 **FINDINGS OF FACT; CONCLUSIONS OF LAW**

35 After considering the testimony of the parties and witnesses, the exhibits
36 offered and received into evidence, the parties' briefs, the arguments of counsel, and
37 the rulings issued by this court on previously submitted matters, the Court makes the

1 following findings:

2 That Plaintiff, Reva Waldo, loaned \$111,000 to Virtual Communications
3 Corporation ("VCC") on April 17, 2014. VCC agreed to make monthly 9% interest
4 payments on the promissory note (the "Note"), and to return Plaintiff's principal by
5 October 17, 2015.

6 That VCC stopped making payments in February, 2015. On September 7, 2015,
7 Plaintiff notified VCC that they were in default under the Note terms for failing to pay
8 interest.

9 That on April 16, 2018 the court ruled on Plaintiff's motion for summary
10 judgment, finding that VCC was in default under the terms and conditions of the
11 Note. The Court also made the following findings:

- 12 (a) that the VCC note was a security;
13 (b) that the VCC Note was not registered nor exempt from registration;
14 (c) that VCC employed an unlicensed broker dealer to sell the VCC Notes; and
15 (d) that Ronald Robinson was a control person under the Nevada Securities
16 Act.

17
18 On May 22, 2018 VCC filed for Chapter 11 bankruptcy protection, and all
19 proceedings against VCC were stayed. The case proceeded against the other,
20 nonbankrupt defendants.

21 The evidence introduced at trial proved by a preponderance of the evidence
22 that the Note bears the signature of Defendant Ronald Robinson, as guarantor. Mr.
23 Robinson claimed that his signature was used without his permission, and that he did
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1 not intend to guarantee repayment.

2 The Court found Defendant Robinson's position unpersuasive. No less than six
3 separate documents introduced at trial evidenced Mr. Robinson's intent to guarantee
4 the Note. Also, the combined testimony of witnesses Alisa Davis, Julie Minuskin and
5 Frank Yoder were contrary to Defendant Robinson's assertion that his signature was
6 used without his permission.

7 The evidence at trial established that Plaintiff, Reva Waldo, met her burden of
8 proof in establishing that Defendant Robinson knew of, and intended to guarantee
9 the Note.

10 The evidence further established that Defendant Robinson was a control person
11 of VCC, and knew his personal guarantee was being used specifically for the purpose of
12 soliciting investors.

13 The Court finds Defendant Robinson liable for violations of NRS 90.460 (sale
14 of unregistered securities) and 90.660 (civil liability under the Nevada Securities
15 Laws) as a control person for VCC.

16 The Court further finds that Defendant Robinson's conduct was in violation of
17 the Nevada Deceptive Trade Practices (NRS 598.092), and based upon clear and
18 convincing evidence, punitive damages will be considered by the court based upon
19 Plaintiff Reva Waldo's age under NRS 598.0977.


20 The Court finds that Plaintiff is entitled to compensatory damages in the
21 amount of \$111,000.00, interest at 9% per year, and penalties under the Note from
22 the time of Default.

23 Upon Motion by the Plaintiff, the Court shall set a hearing to consider and
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1 assess the award of punitive damages. After entry of judgment the court will consider
2 an award of attorney's fees.

4 IT IS SO ORDERED:

5 Dated this 4 ^{December} ~~th day of November~~, 2018

6 
7 Hon. Timothy Williams
8 District Court Judge

9 

10 Submitted by: /s/: David Liebrader
11 David Liebrader, Esq.
12 Attorney for Plaintiff

EXHIBIT “E”

11:11:57 1 in February of 2015?

2 A. It was before.

3 Q. Before.

4 Paragraph 12:

11:12:07 5 "After Retire Happy raised funds for VCC,
6 VCC found out that Julie Minuskin was a
7 convicted felon."

8 When did you find that out?

9 A. Well, I don't recall.

11:12:17 10 Q. Was it before or after VCC went into default?

11 A. I apologize for being vague, but I just don't
12 remember.

13 Q. In your -- in the white binder, Mr. Robinson,
14 can you turn to Tab 19, please.

11:13:17 15 Is it true that there was no application for
16 the registration of the promissory note securities that
17 were filed with the Nevada Secretary of State?

18 A. Yes.

19 Q. And was -- is it true that there was no
11:13:29 20 exemption that was filed with the Nevada Secretary of
21 State concerning the promissory note offering?

22 A. To the best of my knowledge, that's true.

23 Q. Okay. Is there a reason why you didn't file
24 to register these securities or ask for an exemption
11:13:42 25 from registration?

Peggy Isom, CCR 541, RMR
(702)671-4402 - CROERT48@GMAIL.COM
Pursuant to NRS 239.053, illegal to copy without payment.

11:13:44 1 A. I don't think it was my prerogative at the
2 time.
3 Q. Well, who would have been at VCC responsible
4 for doing that?
11:13:50 5 A. It was not VCC's responsibility. It was not.
6 Q. Whose --
7 A. VCC's responsibility.
8 Q. Whose responsibility --
9 A. It was either Provident Trust or Retire Happy.
11:14:00 10 They were the procuring cause.
11 Q. And did you do anything to -- so you're saying
12 it's the obligation of the unregistered broker/dealer
13 or the self-directed IRA custodian to file a
14 registration statement with the Nevada Secretary of
11:14:16 15 State?
16 A. Yes.
17 Q. Do you have any support for that?
18 A. My understanding.
19 Q. Okay. Did you did anything -- did you ask
11:14:24 20 them if they had done anything like that, file any
21 registration statement?
22 A. No.
23 Q. Did you ask them if they had filed a request
24 for exemption from registration?
11:14:35 25 A. No.

Peggy Isom, CCR 541, RMR
(702) 671-4402 - CROERT48@GMAIL.COM
Pursuant to NRS 239.053, illegal to copy without payment.

EXHIBIT “F”

PRIVATE PLACEMENT MEMORANDUM DATED FEBRUARY 22, 2016

VIRTUAL COMMUNICATIONS CORPORATION



319 E. Warm Springs Road, Suite 100
Las Vegas, NV 89119
[www. virtualcommunicationscorp.com](http://www.virtualcommunicationscorp.com)

5,000,000 shares of Common Stock

\$1 per share

This offering is inherently risky. See "Risk Factors" on page [XX].

The information provided herein is provided for informational purposes only and does not constitute an offer or a solicitation to buy, hold, or sell an interest in the issuer. Securities acquired in private placements are not publicly traded and therefore less liquid. Investing in private placements requires high risk tolerance, low liquidity concerns, and long-term commitments. Investors must be able to lose their entire investment. OfferBoard Securities does not make any express or implied representation or warranty as to the accuracy or completeness of the information contained herein. Carrollton Capital Partners, LLC d/b/a OfferBoard Securities, member FINRA/SIPC.

Frank T. Yoder, Jr.	Director		Appointed to indefinite term of office, December 31, 2012	
Michael T. Yoder	Director		Appointed to indefinite term of office, December 31, 2012	

Frank Yoder and Mike Yoder are brothers.

Ron J. Robinson, Chairman of the Board

Ron Robinson is the company's Chairman of the Board. He has held this position since 2012 and is in charge of all policy and operations of the company. From 1997 to the present, he is Managing Member of National Commercial Properties, LLC and was a Director of Oasis Residential REIT. From 2010-2013. He was Managing Member of Wintech, LLC, which is now a subsidiary of the company. Previously, Mr. Robinson served as President and CEO of CEC Industries, Inc. and President of and CEO of Crowne Ventures, Inc. He holds a BA/LLB degree from LaSalle Extension University. Mr. Robinson is a veteran of the US Air Force.

Simon Vernon Rodriguez, Chief Financial Officer

Vernon Rodriguez is the company's Chief Financial Officer. He has a background in sales, marketing and accounting strategies and systems for financial services firms. He has held this position since 2012 and is in charge of financial policy and financial records of the company. Previously (from 2004 to present) he was a commercial real estate agent at National Commercial Properties, Inc., where his responsibilities were commercial real estate, leasing and management, and prior to that he was Vice President of Crowne Ventures, Inc., where he was National Sales and Marketing Director. He holds a degree in business and political science from the University of New Mexico.

Mike Yoder, EVP and Chief Technology Officer

Mike Yoder serves as the company's Executive Vice President and Chief Technology Officer. He is responsible for product vision and development, and the development of the company's global distribution channel partner program. He has held this position since 2010. Previously, Mr. Yoder served as Chief Operating Officer of Advanced Information Systems (AIS), from 2001 to 2011. In this position, he was responsible for the development of AIS products.

Frank Yoder, EVP and Chief Information Officer

Frank Yoder serves as the company's Vice President Marketing, in which position he oversees the communications platform and sales and support teams. He has held that position since 2011. From 1987

EXHIBIT “G”

1 Q. But it is -- it is your signature on the top of the
2 page and under personal guarantee?

3 A. It is. You'll notice they're identical.

4 Q. And is it -- is it your position that -- that both
5 of these signatures were provided to Ms. Minuskin without your
6 permission on this promissory note?

7 A. I didn't give any permission of anything.

8 Q. Do you know why Ms. Davis was providing this to
9 Ms. Minuskin in September of 2013?

10 A. I have no idea.

11 Q. She was clearly doing it, though, sir, without your
12 permission; is that correct?

13 A. Yes. I was unaware of it totally.

14 Q. And if you had become aware of it or known about it
15 at the time, you would not have permitted it; is that right?

16 A. That's correct.

17 Q. And you did not -- is it your testimony that you did
18 not intend to personally guarantee this contract?

19 A. Correct.

20 Q. And so Ms. Davis sent this to Ms. Minuskin without
21 your permission?

22 A. I don't know what she did and I don't know whether
23 this document is something that actually went to her. This is
24 a copy of a document.

25 Q. This was produced to us by -- I don't -- I think it

03:50:09 1 A. Thank you.

2 Okay.

3 Q. Now, this is dated September 18, 2013. And
4 this is the email where the signatures and the initials
03:50:23 5 are contained on the promissory note; right? Familiar
6 with that?

7 A. Correct.

8 Q. And -- but just the day before, you had sent
9 her an email with just the signatures but not the
03:50:34 10 initials; right?

11 A. (No audible response.)

12 Q. And that's page 19 of Exhibit 7. "Please see
13 the attached doc with Ron's two signatures" --

14 A. Yeah, correct.

03:50:46 15 Q. It does not have his initials; right?

16 A. It does not have his initials on each page,
17 correct, as he would prefer.

18 Q. Okay. And then --

19 THE REPORTER: I'm sorry. I didn't hear the
03:50:53 20 end.

21 THE WITNESS: I just repeated a little bit of
22 it. I said it does not have his initials on each page
23 as he would prefer.

24 BY MR. LIEBRADER:

03:51:00 25 Q. Okay. And that -- but then the following day

03:51:02 1 you sent Ms. Minuskin a signed and initialed promissory
2 note, right?

3 A. Correct. That's page 23.

4 Q. 23. And so sometime -- would it be fair to
03:51:13 5 say that sometime between the 17th and the 18th you
6 went to Ron and got his initials on this document?

7 A. Yes. On the -- on -- before they started
8 raising pens, yes.

9 Q. No. This -- well, this was September 2013, so
03:51:26 10 they were already nine months into the fundraise.

11 A. Oh. Well, then, if they were nine months into
12 it, then, yeah. This was the one that we put the --
13 both initials because -- and signature. Because Julie
14 had asked us to.

03:51:39 15 Q. So you went to Ron and told -- and got him to
16 initial this document, and then you sent it to
17 Ms. Minuskin?

18 A. Well, I sent it to him. I didn't get him to
19 initial it. I had sent it to him, and if he -- he
03:51:50 20 chose to sign it, yes.

21 Q. So -- but no, I think it had already been
22 signed. So you sent it to him, he initialed it, got it
23 back to you, and then you sent it to Ms. Minuskin?

24 A. Yes.

03:51:59 25 Q. Okay. Thank you.

Peggy Isom, CCR 541, RMR

(702)671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

03:52:05 1 MR. LIEBRADER: Nothing else.
2 THE COURT: Anything else?
3 MR. GEWERTER: Nothing further, your Honor.
4 THE COURT: Okay, ma'am. You're released.
03:52:09 5 THE WITNESS: Thanks.
6 MR. LIEBRADER: At this point I'd like to call
7 Mr. Robinson as a witness.
8 MR. GEWERTER: Your Honor, it is one -- before
9 we do that, your Honor, Mr. Robinson is 86 years old
03:52:20 10 and he tells me he is fading quickly this afternoon.
11 He's the oldest person in this courtroom. And I don't
12 want to delay -- by any means I don't want to -- I
13 thought we'd finish today. It looks like tomorrow --
14 Is there another witness you can call this
03:52:32 15 afternoon?
16 MR. LIEBRADER: I don't. Mr. Robinson will be
17 my last one.
18 MR. GEWERTER: He's 86. And I've known him
19 for almost 40 years, and he is fading. And I know. I
03:52:40 20 mean, he told me he just can't any more. So I don't
21 want to delay this, but if that's his last witness, my
22 case is short, if at all, tomorrow. So with the
23 Court's permission, I would ask that we adjourn for the
24 day, which I really hate doing. I thought we'd finish
03:52:57 25 today, in all fairness.

From: alisadavis5928@hotmail.com
To: SVrodrique@aol.com, robin1031@aol.com
Sent: 9/8/2016 3:30:45 P.M. Pacific Daylight Time
Subj: Fwd: Promissory Note

See all messages below.
Thank you!

Alisa Davis
Executive Assistant
AlisaDavis5928@hotmail.com
mobile (702) 592-8886
e-fax (866) 232-5897

Begin forwarded message:
From: Alisa Q <alisadavis5928@hotmail.com>
Date: September 17, 2013 at 1:56:58 PM PDT
To: Julie Minuskin <jminuskin@retirehappy.com>
Subject: RE: Promissory Note

Julie,
Please see the attached .docx with Ron's two signatures. It does not have his initials on each page as we would prefer he does each of those after the investor info is entered.

Thank you!

Alisa Davis
AlisaDavis5928@hotmail.com
p (702) 592-8886
f (866) 232-5897
375 E. Warm Springs Road, Ste 102
Las Vegas, Nevada 89119
www.WinTechLLC.com



From: jminuskin@retirehappy.com
To: alisadavis5928@hotmail.com
Subject: Promissory Note
Date: Tue, 17 Sep 2013 20:22:13 +0800
Can you please send me the corrected prom note in Word so that we can type the investor info? Or, can you send me one that he has signed so we aren't having you sign them one at a time?
Thank you

RRVCC 001

Mirlam

From: Alisa O. <alisadavis5928@hotmail.com>
Sent: Wednesday, September 18, 2013 10:40 AM
To: Julie Minuskin; julieminuskin@yahoo.com
Subject: VCC Promissory Note
Attachments: PromissoryNote-VCC.docx

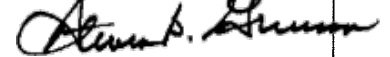


For the sake of us not having to deal with different schedules, attached is a new doc. Promissory Note for VCC WITH the initials and signatures.

Thank you!

Alisa Davis
AlisaDavis5928@hotmail.com
p (702) 592-8886
f (366) 732-5897
375 E. Warm Springs Road, Ste 102
Las Vegas, Nevada 89119
www.WinTechLLC.com





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STATE BAR NO. 5048
THE LAW OFFICES OF DAVID LIEBRADER, APC
601 S. RANCHO DR. STE. D-29
LAS VEGAS, NV 89106
PH: (702) 380-3131
Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN	)	Case No. A-17-762264-C
)	
Steven A. Hotchkiss,	)	Dept.: 8
)	
PLAINTIFF,	)	STATEMENT OF DAMAGES
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Frank)	
Yoder, Alisa Davis and DOES 1-10 and ROES 1-)	
10, inclusively	)	CONSOLIDATED WITH
)	
DEFENDANTS	)	Case No. A-17-763003-C
)	
Anthony White, Robin Suntheimer, Troy)	
Suntheimer, Stephens Ghesquiere, Jackie Stone,)	
Gayle Chany, Kendall Smith, Gabriele)	
Lavermicocca and Robert Kaiser,)	
)	
PLAINTIFFS)	
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Virtual)	
Communications Corporation, Frank Yoder, Alisa)	
Davis and DOES 1-10 and ROES 1-10, inclusively)	
)	
)	
)	

STATEMENT OF DAMAGES

Plaintiffs submit this statement of damages:

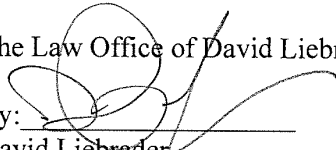
Plaintiff	Amount invested	Date of investment	9% int. x 5 years (Feb 2015 - Feb 2020)/ Total Int.	5% late fee on Int.	Total Principal, Int + Late Fee	.30 Attorney's fees
Hotchkiss	\$75,000	11/2013	\$6,750/ \$33,750	\$1,688	\$110,438	\$33,131
White	\$20,000	1/2014	\$1,800/ \$9,000	\$450	\$29,450	\$8,835
Troy Suntheimer	\$52,000	11/2013	\$4,680/ \$23,400	\$1,170	\$76,570	\$22,971
Robin Suntheimer	\$35,000	10/2013	\$3,150/ \$15,750	\$788	\$51,538	\$15,461
Ghesquiere	\$66,000	4/2014	\$5,940/ \$29,700	\$1,485	\$97,185	\$29,156
Lavermicocca	\$100,000	9/2014	\$9,000 \$45,000	\$2,250	\$147,250	\$44,175
Stone	\$35,000	1/2013	\$3,150/ \$15,750	\$788	\$51,538	\$15,461
Chany	\$59,000	9/2014	\$5,310/ \$26,550	\$1,328	\$86,878	\$26,663
Smith	\$28,000	12/2014	\$2,520/ \$12,600	\$630	\$41,230	\$12,369
Kaiser1	\$62,000	1/2013	\$5,580/ \$27,900	\$1,395	\$91,295	\$27,389
Kaiser2	\$42,000	10/2013	\$3,780/ \$18,900	\$945	\$61,845	\$18,554

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			\$18,900			
Total	\$574,000		\$258,300		\$845,217	\$253,565

Dated: February 3, 2020

Respectfully submitted,

The Law Office of David Liebrader, Inc.
By: 
David Liebrader
601 S. Rancho Dr. Ste. D-29
Las Vegas, NV 89106
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of February, 2020, I mailed a copy of the foregoing Plaintiff's updated

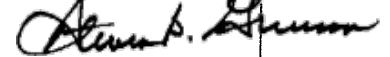
PLAINTIFF'S STATEMENT OF DAMAGES

in a sealed envelope, to the following counsel of record and that postage was fully prepaid thereon



An Employee of The Law Office of David Liebrader

Harold Gewerter, Esq.
Gewerter Law Office
1212 Casino Center Boulevard
Las Vegas, NV 89104
Attorney for Defendants



1 DAVID LIEBRADER, ESQ.
2 STATE BAR NO. 5048
3 THE LAW OFFICES OF DAVID LIEBRADER, APC
4 601 S. RANCHO DR. STE. D-29
5 LAS VEGAS, NV 89106
6 PH: (702) 380-3131
7 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN

11 Steven A. Hotchkiss,

12 PLAINTIFF,

13 v.

14 Ronald J. Robinson, Vernon Rodriguez, Frank
15 Yoder, Alisa Davis and DOES 1-10 and ROES 1-
16 10, inclusively

17 DEFENDANTS

18 Anthony White, Robin Suntheimer, Troy
19 Suntheimer, Stephens Ghesquiere, Jackie Stone,
20 Gayle Chany, Kendall Smith, Gabriele
21 Lavermicocca and Robert Kaiser

22 PLAINTIFFS

23 v.

24 Ronald J. Robinson, Vernon Rodriguez, Virtual
25 Communications Corporation, Frank Yoder, Alisa
26 Davis and DOES 1-10 and ROES 1-10, inclusively

) Case No. A-17-762264-C

) Dept.: 8

) STIPULATION FOR TRIAL

) CONSOLIDATED WITH

) Case No. A-17-763003-C

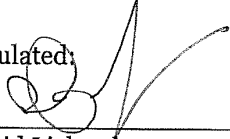
27 STIPULATION

28 It is hereby stipulated by and between counsel for Plaintiff and counsel for
29 Defendants that in lieu of live, in person testimony, to expedite the trial, and to avoid
30

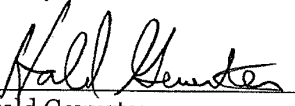
1 the hardship of travel for the Plaintiffs, all of whom live out of state, it is hereby
2 stipulated between the parties:

- 3 1. That the promissory notes contained in Exhibit 1 be admitted as genuine
4 copies of the original VCC Promissory Notes;
- 5 2. That Plaintiffs may, but are not required to appear at trial in person to give
6 sworn testimony;
- 7 3. That Plaintiffs and each of them would testify substantially as follows:
- 8 • That they each invested the specific amounts described on their VCC
9 Promissory Notes;
 - 10 • That Defendant VCC made interest payments pursuant to the Note(s)
11 terms through January, 2015 and thereafter stopped making payments;
 - 12 • That the Plaintiffs declared defaults, and sent notice to VCC and Mr.
13 Robinson;
 - 14 • That none of the Plaintiffs ever met Mr. Robinson in person;
 - 15 • That the Plaintiffs all purchased their VCC Notes through Retire Happy
16 and Josh Stoll and Julie Minuskin, and that none of them ever spoke to Mr.
17 Robinson prior to investing.

18
19 So stipulated:

20 By: 
21 David Liebrader
22 Attorney for Plaintiff

Dated:

23 By: 
24 Harold Gewerter
25 Attorney for Defendants

Dated: 1-30-20