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7  
8 SUPREME COURT  
9 STATE OF NEVADA

10 RONALD J. ROBINSON,  
11 Appellant,

No. 83250

12 vs.

**APPELLANT'S APPENDIX VOL. 10**

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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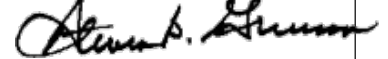
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02/24/20	Trial Exhibit 15 - Judgment, Waldo v. Robinson	9	APP001158 APP001160



**OPPS**

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*Attorneys for Defendant Vernon Rodriguez*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\* \* \*

STEVEN A. HOTCHKISS,  
  
Plaintiff,  
  
vs.

CASE NO. A-17-762264-C  
DEPT NO. IX

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,

**OPPOSITION BY DEFENDANT  
VERNON RODRIGUEZ TO  
PLAINTIFFS' MOTION FOR  
DAMAGES AND ATTORNEYS'  
FEES**

***HEARING REQUESTED***

Defendants.

ANTHONY WHITE; ROBIN  
SUNTHEIMER; TROY SUNTHEIMER;  
STEPHENS GHESQUIERE; JACKIE  
STONE; GAYLE CHANY; KENDALL  
SMITH; GABRIELE LAVERNICOCCA;  
and ROBERT KAISER,

Consolidated with

CASE NO. A-17-763003-C  
DEPT NO. IX

Plaintiffs,

vs.

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.

Opposition to Motion for Damages and Attorneys Fees FINAL 5 21 2020

1 On May 8, 2020, following a two-day trial on the merits, this Honorable Court entered its  
2 *Findings of Fact and Conclusions of Law and Order on Defendants Liability* (the “FFCL”),  
3 finding, among other things, that Virtual Communications Corporation (“VCC”) had issued un-  
4 registered securities in the form of certain promissory notes (the “Notes”), that the Notes were  
5 personally guaranteed by Defendant Ronald J. Robinson (“Robinson”), and that Mr. Robinson and  
6 Defendant Vernon Rodriguez (“Rodriguez”) were each a “control person” within the meaning of  
7 Nevada’s adoption of the Uniform Securities Act, Nev. Rev. Stat. 90.211, *et seq.*, and  
8 corresponding regulations appearing in the Nevada Administrative Code (NAC).<sup>1</sup>

9 In their *Motion for Damages and Attorneys’ Fees* (the “Motion”), Plaintiffs now seek an  
10 award of damages and attorneys’ fees against Mr. Robinson and Mr. Rodriguez, but notably *not*  
11 from VCC. As this Court was advised in the *Suggestion of Bankruptcy* filed on June 4, 2018, VCC  
12 sought relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) by  
13 commencing a voluntary case on May 22, 2018 in the United States Bankruptcy Court for the  
14 District of Nevada (the “Bankruptcy Court”), Case No. 18-12951-LEB (the “Bankruptcy Case”).

15 As more fully set forth below, proceedings in the VCC Bankruptcy Case have had a  
16 significant effect on the extent of any damages for which Mr. Rodriguez may be liable. In addition,  
17 there are common law and statutory principles that affect the extent of Mr. Rodriguez’s potential  
18 liability that have not previously been addressed by this Court, and which should now be  
19 considered in light of Plaintiffs’ Motion.

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27 <sup>1</sup> It may be necessary for Mr. Rodriguez to seek further review of this matter by a higher court. Accordingly,  
28 any discussion of prior proceedings appearing in this paper should not be deemed an admission of any fact, nor a  
concession regarding any issue of law.

MEMORANDUM OF POINTS AND AUTHORITIES

DEFENDANT'S RESPONSE TO PLAINTIFFS' REQUEST FOR DAMAGES

A. VCC's Chapter 11 Bankruptcy Case

1. Confirmation of VCC's Chapter 11 Plan

We begin with the observation that the Bankruptcy Case has been fully adjudicated. On March 14, 2019, the Bankruptcy Court issued an *Order Entering Final Decree* [ECF No. 119] stating: "It appearing that this Court's continuing jurisdiction is no longer necessary and that this case has been fully administered." A true and correct copy of this order is attached as **Exhibit 1**.

The Bankruptcy Case was closed following entry of the *Order Confirming First Amended Chapter 11 Plan of Reorganization of Virtual Communications Company* [ECF No. 75] (the "Confirmation Order"), a true and correct copy of which is attached as **Exhibit 2**. As its name implies, the Confirmation Order provided Bankruptcy Court approval of a Chapter 11 plan of reorganization proposed by VCC:

The Plan, as amended herein, is confirmed pursuant to Section 1129, and the record of the Confirmation Hearing is hereby closed. The Effective Date of the Plan shall be the latter of September 3, 2018 or the first Business Day that is more than fourteen (14) days after the entry of this Order confirming the Plan by the Court.

*Id.* at p. 6, ll. 1-4.

Significantly, the Confirmation Order provides that VCC's plan of reorganization is binding upon all parties, regardless of whether they voted in favor of the plan:

In accordance with Section 1141(a) of the Bankruptcy Code and upon the occurrence of the Effective Date, the Plan shall be binding upon and inure to the benefit of: (i) the Debtor; (ii) all Claimants and all Holders of Claims or Equity Interests (regardless of whether any such Claimants or Holders voted to accept the Plan, is Impaired under the Plan, or has filed, or is deemed to have filed, a Proof of Claim); (iii) any other Entity giving, acquiring, or receiving property under the Plan; (iv) any party to an executory contract or unexpired lease of the Debtor; and (v) each of the foregoing's respective heirs, successors, assigns, trustees, executors, administrators, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, or guardians, if any.

1 *Id.* at p. 7, ll. 14-21.

2 **2. The “Debt for Equity Swap” in VCC’s Chapter 11 Plan**

3 The *First Amended Chapter 11 Plan of Reorganization for Virtual Communications*  
4 *Corporation* [ECF No. 38] (the “Plan”) was submitted on June 13, 2018. A true and correct copy  
5 of the Plan is attached as **Exhibit 3**.

6 The Plan specifically addressed claims held by holders of unsecured promissory notes,  
7 including the Plaintiffs in this action:

8 **3. Class 3 – Unsecured Promissory Notes.**

9 Classification: Class 3 consists of all Claims held by the  
10 Unsecured Noteholders.

11 Treatment: Except to the extent that a Holder of an Allowed  
12 Class 3 Claim agrees to a less favorable treatment, in exchange for  
13 and in full and final satisfaction, compromise, settlement, release,  
14 and discharge of each Allowed Class 3 Claim, each Holder of an  
Allowed Class 3 Claim shall receive on the Effective Date, or as  
soon thereafter as reasonably practicable, (i) its ***Pro Rata share of***  
***the Common Stock Distribution*** and (ii) its ***Pro Rata Share of the***  
***Series A Preferred Distribution***.

15 *Id.* at p. 11, ll. 4-9 [underlining in original and bold italics added].

16 In short, the Plan provided a “debt for equity swap” in which holders of Notes, including  
17 the Plaintiffs, were issued two forms of stock in VCC. The “Common Stock Distribution”  
18 consisted of the following:

19 Common Stock Distribution: A distribution of  
20 approximately 1,300,093 shares of Common Stock of the  
21 Reorganized Debtor to be allocated among the Holders of Allowed  
22 Class 3 Claims on a Pro Rata basis according to the amount of  
23 contract-rate interest accrued on the principal balance included in  
24 each Holder’s respective Allowed Class 3 Claim as of the Petition  
Date, which shall be subject to adjustment to provide that the  
number of shares of Common Stock included within the Common  
Stock Distribution is equal to the total amount of all contract-rate  
interest accrued on the aggregate principal balances included within  
all Allowed Class 3 Claims as of the Petition Date.

25 *Id.* at p. 3, ll. 9-13.

26 The “Series A Preferred Distribution” was defined as follows:

27 . . .

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1                   Series A Preferred Distribution: A distribution of  
2 approximately 940,110 shares of Series A Preferred Stock of the  
3 Reorganized Debtor to be allocated among the Holders of Allowed  
4 Class 3 Claims on a Pro Rata basis according to the principal  
5 indebtedness included in each Holder's Allowed Class 3 Claim,  
6 which shall be subject to adjustment to provide that the number of  
7 shares of Series A Preferred Stock included within the Series A  
8 Preferred Distribution is equal to one-fifth (1/5th) of the total dollar  
9 amount of all principal indebtedness included within all Allowed  
10 Class 3 Claims.

11 *Id.* at p. 6, ll. 21-25.

12                   **3.     The Discharge Provided by VCC's Chapter 11 Plan**

13                   The Confirmed Chapter 11 Plan provided for a complete and comprehensive discharge to  
14 VCC, and it is worthwhile to review the relevant language in its entirety, including the permanent  
15 injunction imposed under federal law:

16                   **XI. EFFECT OF PLAN CONFIRMATION BINDING**  
17 **NATURE OF THE PLAN**

18                   THIS PLAN SHALL BIND ALL HOLDERS OF CLAIMS  
19 AGAINST AND EQUITY INTERESTS AND INTERCOMPANY  
20 INTERESTS IN THE DEBTORS TO THE MAXIMUM EXTENT  
21 PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING  
22 WHETHER OR NOT SUCH HOLDER (I) WILL RECEIVE OR  
23 RETAIN ANY PROPERTY OR INTEREST IN PROPERTY  
24 UNDER THE PLAN, (II) HAS FILED A PROOF OF CLAIM OR  
25 INTEREST IN THE CHAPTER 11 CASES OR (III) FAILED TO  
26 VOTE TO ACCEPT OR REJECT THE PLAN OR VOTED TO  
27 REJECT THE PLAN.

28                   **A. Discharge Injunction.**

                  The rights afforded in the Plan and the treatment of all  
Claims shall be in exchange for and in complete satisfaction,  
discharge, and release of all Claims of any nature whatsoever arising  
prior to the Effective Date against the Debtor and the Estate,  
including any interest accrued on such Claims from and after the  
Petition Date. Except as otherwise provided in the Plan or the  
Confirmation Order, on the Effective Date, (a) the Debtor, the  
Estate, the Reorganized Debtor and their respective property are  
discharged and released hereunder to the fullest extent permitted by  
Bankruptcy Code sections 524 and 1141 from all Claims and rights

1 against them that arose before the Effective Date, including all  
2 debts, obligations, demands, and liabilities, and all debts of the kind  
3 specified in Bankruptcy Code sections 502(g), 502(h), or 502(i),  
4 regardless of whether or not (i) a proof of Claim based on such debt  
5 is Filed or deemed Filed, (ii) a Claim based on such debt is allowed  
6 pursuant to Bankruptcy Code section 502, or (iii) the Holder of a  
7 Claim based on such debt has or has not accepted the Plan; (b) any  
8 judgment underlying a Claim discharged hereunder is void; and (c)  
9 all entities are precluded from asserting against the Debtor, the  
10 Estate, the Reorganized Debtor and their respective property, any  
11 Claims or rights based upon any act or omission, transaction, or  
12 other activity of any kind or nature that occurred prior to the  
13 Effective Date.

14 Except as otherwise provided in the Plan or the Confirmation  
15 Order, on and after the Effective Date, all entities who have held,  
16 currently hold, or may hold a Claim against the Debtor, the Estate,  
17 or the Reorganized Debtor, that is based upon any act or omission,  
18 transaction, or other activity of any kind or nature that occurred prior  
19 to the Effective Date, that otherwise arose or accrued prior to the  
20 Effective Date, or that otherwise is discharged pursuant to the Plan,  
21 are permanently enjoined from taking any of the following actions  
22 on account of any such discharged Claim, (the "Permanent  
23 Injunction"): (a) commencing or continuing in any manner any  
24 action or other proceeding against the Debtor, the Estate, the  
25 Reorganized Debtor or their respective property, that is inconsistent  
26 with the Plan or the Confirmation Order; (b) enforcing, attaching,  
27 collecting, or recovering in any manner any judgment, award,  
28 decree, or order against the Debtor, the Estate, the Reorganized  
Debtor or their respective property, other than as expressly  
permitted under the Plan; (c) creating, perfecting, or enforcing any  
lien or encumbrance against property of Debtor, the Estate, the  
Reorganized Debtor, or their respective property, other than as  
expressly permitted under the Plan; and (d) commencing or  
continuing any action, in any manner, in any place that does not  
comply with or is inconsistent with the provisions of the Plan, the  
Confirmation Order, or the discharge provisions of Bankruptcy  
Code section 1141. Any person or entity injured by any willful  
violation of such Permanent Injunction shall recover actual  
damages, including costs and attorneys' fees, and, in appropriate  
circumstances, may recover punitive damages, from the willful  
violate.



1 *Id.* at p. 39, l. 7 – p. 30, l. 6.

2 **4. The Effect of the Discharge on Mr. Robinson’s Personal Guaranty**

3 It is important to recognize that the Plan provided a complete release to and imposed a  
4 permanent injunction *in favor of VCC*, but did not purport to release any third parties. That  
5 principle was memorialized in the Confirmation Order, which provided, in relevant part:

6 . . . THE FOREGOING RELEASE SHALL NOT OPERATE TO  
7 WAIVE OR RELEASE ANY CAUSES OF ACTION (1) OF THE  
8 DEBTOR OR ITS ESTATE FOR ANY CLAIMS ARISING FROM  
9 WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; (2)  
10 CLAIMS AGAINST ANY FORMER OFFICER OR DIRECTOR  
OF THE DEBTOR; OR (3) CLAIMS THAT MAY BE ASSERTED  
BY THIRD PARTIES AGAINST PERSONS OR ENTITIES  
OTHER THAN THE DEBTOR.

11 *See* Exhibit B at p. 6, ll. 24-27.

12 This Court also considered the effect of confirmation of the VCC Chapter 11 Plan as it  
13 pertained to Mr. Robinson’s personal guarantee, and offered the following in the FFCL:

14 The Court also finds that the VCC Bankruptcy did not  
15 extinguish Mr. Robinson's personal guarantee. The Court asked  
for and received post trial briefs on this issue, and relying on the  
16 reasoning set forth in Donnell v. Perpetual Investments, Inc.  
(USDC Nevada, case 2:04-cv-01172, Decision issued 10/11/06)  
17 and Marc Nelson Oil Prods. V. Grim Logging Co., 110 P.3d 120  
(Or.App.2005) finds that the VCC bankruptcy did not extinguish  
18 Mr. Robinson's liability as guarantor of the Notes.

19  
20 *See* FFCL at p. 4, ll. 6-11.

21 Unlike Mr. Robinson, however, Mr. Rodriguez never offered a personal guarantee of the  
22 Notes. The sole theory upon which Plaintiffs seek to recover damages against Mr. Rodriguez is  
23 Nev. Rev. Stat. 90.660(4), and as discussed below, the VCC Bankruptcy Case limits the damages  
24 for which Mr. Rodriguez may be personally responsible.

25 **B. An Analysis of Nev. Rev. Stat. 90.660**

26 Under its adoption of the Uniform Securities Act, Nevada imposes *primary* liability for  
27 certain violations, including the issuance of unregistered securities, on the party that “offers or

28  
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1 sells” a security. Damages recoverable from a *primary* violator can consist only of (i) the amount  
2 paid for the security, less amounts received, or (ii) the difference between the amount paid and the  
3 amount for which it was later sold, plus interest, fees, and costs:

4 **NRS 90.660 Civil liability.**

5 1. A person who offers or sells a security in violation of any of the  
6 following provisions:

7 . . . (b) NRS 90.460;

8 . . . is liable to the person purchasing the security. Upon tender of the  
9 security, the purchaser may recover the ***consideration paid for the***  
10 ***security*** and interest at the legal rate of this State from the date of  
11 payment, costs and reasonable attorney’s fees, less the amount of  
12 income received on the security. ***A purchaser who no longer owns***  
13 ***the security may recover damages. Damages are the amount that***  
***would be recoverable upon a tender less the value of the security***  
***when the purchaser disposed of it***, plus interest at the legal rate of  
this State from the date of disposition of the security, costs and  
reasonable attorney’s fees determined by the court. Tender requires  
only notice of willingness to exchange the security for the amount  
specified.

14 [Emphasis added.]

15 Under subsection (4), liability can also attach to certain secondary “control” parties. The  
16 Honorable Philip M. Pro has recognized the distinction between a *primary* violator under  
17 Subsection (1) and a secondary party under Subsection (4). *See Baroi v. Platinum Condo. Dev.,*  
18 *LLC*, 914 F.Supp.2d 1179, 1200-01 (D. Nev. 2012) (“Pursuant to Nevada Revised Statutes §  
19 90.660(4), a person who ‘directly or indirectly controls’ a *primary* violator of Nevada securities  
20 law is jointly and severally liable for the securities violation. . .”) [emphasis added]; *see also*  
21 *Tsutsumi v. Advanced Power Techs., Inc.*, Case No. 2:12-cv-01784-MMD-VCF at \*7 (D. Nev.  
22 January 24, 2014) (complaint failed to meet pleading requirements of Fed. R. Civ. P. 9(b) where  
23 it did not detail whether corporate defendants were themselves liable or whether individual  
24 defendants were “vicariously” liable as controlling persons under Nev. Rev. Stat. 90.660(4))  
25 [unpublished decision]; *Ayers v. Lee*, Case No. 14cv542-LAB(WVG) at \*2 (S.D. Cal. March 13,  
26 2015) (“Section 90.660(1) provides that a person who offers or sells securities in violation of  
27 certain provisions of law is liable to the person who purchases the security. Section 90.660(4)

1 provides for the liability of several other classes of people. . .”) [unpublished decision].

2 The distinction between a primary violator under Subsection (1), and a secondary party  
3 liable as a “control person” under Subsection (4), is critical – particularly in this case – because a  
4 secondary party can only responsible for damages “with and to the same extent as the other person”  
5 (i.e., the original issuer):

6 **NRS 90.660 Civil liability.**

7 . . .  
8 4. A person who directly or indirectly controls another person who  
9 is liable under subsection 1 or 3, a partner, officer or director of the  
10 person liable, a person occupying a similar status or performing  
11 similar functions, any agent of the person liable, an employee of the  
12 person liable if the employee materially aids in the act, omission or  
13 transaction constituting the violation, and a broker-dealer or sales  
14 representative who materially aids in the act, omission or transaction  
15 constituting the violation, are ***also liable jointly and severally with  
and to the same extent as the other person***, but it is a defense that  
the person did not know, and in the exercise of reasonable care could  
not have known, of the existence of the facts by which the liability  
is alleged to exist. With respect to a person who directly or  
indirectly, controls another person who is liable under subsection 3,  
it is also a defense that the controlling person acted in good faith and  
did not, directly or indirectly, induce the act, omission or transaction  
constituting the violation. Contribution among the several persons  
liable is the same as in cases arising out of breach of contract.

16 [Emphasis added.]

17 The Bankruptcy Case is outcome determinative as to Mr. Rodriguez because it has  
18 absolutely and irrevocably extinguished any liability of VCC under the Notes. Pursuant the Plan,  
19 Confirmation Order, and 11 U.S.C. §§ 524 and 1141, there is now a permanent injunction against  
20 any efforts by any parties to recover any obligations of VCC that arose prior to the 2018 petition  
21 date. There is thus no primary obligor against which damages could be assessed that Mr.  
22 Rodriguez could share liability “with and to the same extent as.”

23 Even in the absence of a permanent Federal injunction prohibiting further claims against  
24 VCC, there is no evidentiary basis on which damages could be calculated. As noted above,  
25 damages recoverable under Nev. Rev. Stat. 90.660(1) can only consist of (i) the amount paid for  
26 the security, less amounts received, or (ii) the difference between the amount paid and the amount  
27 for which it was later sold, plus fees and cost. The Bankruptcy Case involved a debt for equity

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Opposition to Motion for Damages and Attorneys Fees FINAL 5 21 2020

1 swap. That scenario is simply not contemplated by Chapter 90. Moreover, even if the Court were  
2 willing to go far outside the statute and somehow attempt to value shares of VCC as a substitute  
3 for an actual sale or tender, there is nothing in the FFCL to suggest that evidence was presented  
4 regarding the value of those shares.

5 In sum, VCC cannot, as a legal or factual matter, be held primarily liable for damages to  
6 Plaintiffs. As a result, there is no measure of damages for which Mr. Rodriguez could be  
7 secondarily liable “with and to the same extent as” VCC.<sup>2</sup>

8 **C. Plaintiffs’ Claims for Damages Against Mr. Rodriguez Are Time Barred**

9 Nevada law provides a two (2) year statute of limitation with a discovery period, and a five  
10 (5) year statute of repose, for claims arising under Nev. Rev. Stat. 90.660:

11 **NRS 90.670 Statute of limitations.** A person may not  
12 sue under NRS 90.660 unless suit is brought within the earliest of 2  
13 years after the discovery of the violation, 2 years after discovery  
should have been made by the exercise of reasonable care, or 5 years  
after the act, omission or transaction constituting the violation.

14 This statute has been discussed at length by the United States District Court in Nevada in  
15 a case involving facts substantially similar to this matter.

16 **1. The *Baroi v. Platinum Condo Development* Decision**

17 *Baroi v. Platinum Condo. Dev., LLC*, 914 F.Supp.2d 1179 (D. Nev. 2012), involved the  
18 sale of condominium units subject to mandatory rental agreements. *Id.* at 1191. Judge Pro  
19 concluded that under Nevada’s adoption of the Uniform Securities Act, those investments  
20 constituted “securities” and granted partial summary judgment on that issue. *Id.* at 1198. He then  
21 turned to the timeliness of the claims asserted by the plaintiff.

22 The defendants in *Baroi* argued that the plaintiffs’ claims were time-barred because the  
23

---

24 <sup>2</sup> Mr. Rodriguez is aware that Mr. Robinson raised a similar argument regarding his personal guarantee, which  
25 the Court rejected. The critical difference is that Plaintiffs are attempting to impose vicarious liability as to Mr.  
26 Rodriguez (or, more accurately, reverse vicarious liability) for violations by VCC, the primary obligor. In issuing a  
27 personal guarantee, Mr. Robinson created a separate and independently enforceable obligation directly between  
28 himself and the noteholders. There is a significant body of case law holding that a personal guarantee constitutes a  
separate and independent obligation that remains enforceable regardless of the status of the borrower. That case law  
falls outside the scope of this Opposition, but if it would be helpful to the Court, Mr. Rodriguez is certainly willing to  
supplement this filing with appropriate points and authorities.

1 statute of limitation began to run at the time of issuance of the unregistered securities: “Defendants  
2 contend the discovery rule does not save count fifteen because Plaintiffs discovered, or should  
3 have discovered, they purchased unregistered securities at the time they executed the purchase  
4 agreements.” *Id.* at 1198. Plaintiffs naturally pointed to the discovery rule, and offered the  
5 following argument: “Nevada statutory law specifically sets forth a discovery rule for registration  
6 claims, and thus it cannot be the case that a plaintiff always can discover the fact that the offering  
7 is not a registered security at the time the purchase agreement is executed.” *Id.* Judge Pro agreed  
8 with the defendants, and entered summary judgment in their favor. His analysis is instructive.

9 Judge Pro began by noting that the relevant time periods under Nev. Rev. Stat. 90.670: “A  
10 claim under § 90.660 must be brought within the earliest of five years after the act, omission,  
11 transaction constituting the violation; two years after the plaintiff discovered the violation; or two  
12 years after the plaintiff should have discovered the violation in the exercise of reasonable care.”  
13 *Id.* at 1199. He then soundly rejected the argument by the plaintiffs that the discovery rule could  
14 apply to unregistered securities, holding that *as a matter of law*, whether a security has been  
15 registered is reasonably discoverable at the time the security is issued:

16 Whether a plaintiff has exercised reasonable care generally  
17 is a question of fact. *Bemis v. Estate of Bemis*, 114 Nev. 1021, 967  
18 P.2d 437, 440–41 (1998). However, ***the issue may be decided as a***  
19 ***matter of law*** if the “uncontroverted evidence irrefutably  
20 demonstrates plaintiff discovered or should have discovered the  
21 facts giving rise to the cause of action.” *Id.* at 440 (quotation  
22 omitted). The “focus is on the [plaintiff’s] knowledge of or access to  
23 facts rather than on her discovery of legal theories.” *Massey v.*  
24 *Litton*, 99 Nev. 723, 669 P.2d 248, 252 (1983).

25 Viewing the evidence in the light most favorable to  
26 Plaintiffs, no genuine issue of material fact remains that Plaintiffs’  
27 claims in count fifteen are untimely. Plaintiffs knew all facts giving  
28 rise to their failure to register claims no later than when they signed  
their purchase agreements in 2006 and 2007. Plaintiffs allege in the  
Third Amended Complaint, and testified at their depositions, that  
Defendants were marketing an investment. ***The securities’ status as***  
***registered or unregistered was publicly available information***  
***capable of discovery through reasonable care.*** See Nev. Rev. Stat.  
§ 90.730. ***Plaintiffs therefore had all facts necessary to bring their***  
***registration claims at the time they signed their purchase***  
***agreements, even if they did not understand the legal significance***  
***of those facts until later.*** See, e.g., *Perry H. Bacon Trust v.*  
*Transition Partners, Ltd.*, 298 F.Supp.2d 1182, 1192 (D.Kan.2004)

1 (“Here, it is evident that if plaintiffs had exercised reasonable  
2 diligence, they could have learned that the securities were not  
3 registered by checking the Kansas Securities Commissioner's  
4 office.”); *Blatt v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 916  
F.Supp. 1343, 1353 (D.N.J.1996) (stating “the seller of securities  
cannot conceal the fact that the securities he sells are not  
registered”).

5 *Id.* at 1199 [emphasis added].

## 6 2. Plaintiffs’ Claim Against Mr. Rodriguez Is Time-Barred

7 Mr. Rodriguez properly raised the statute of limitation as a defense in this matter. In  
8 *Defendant Vernon Rodriguez’s Answer to Plaintiff’s Complaint* filed October 25, 2017, he  
9 asserted: “Plaintiff is barred from relief because the deadline for the applicable statutes of  
10 limitation have passed.” *Id.* at p. 7, ll. 2-3.

11 Plaintiffs attached as Exhibit A to their Motion a copy of their *Statement of Damages NRS*  
12 § 90.660 that was originally filed with the Court on February 22, 2020. On page 2 of that  
13 document, Plaintiffs provided a chart that included a column entitled “Date of Investment.” The  
14 earliest date on that chart was January 2013 for “Kaiser2” (presumably referring to a second  
15 investment by Plaintiff Robert Kaiser). *Id.* The latest investment was December 2014 by “Smith”  
16 (presumably referring to Plaintiff Kendall Smith). If this Court adopts the *Baroi* rule announced  
17 by Judge Pro that the statute of limitation for the sale of an unregistered security begins to run on  
18 the date of issuance, the last statute of limitation applicable to the claim against Mr. Rodriguez  
19 would have run at the end of December 2016.

20 On the other hand, even if this Court were to reject the *Baroi* rule, the statute of limitation  
21 would still have passed. This Court’s FFCL includes a finding regarding the date of default:

22 After considering the testimony of the parties and witnesses,  
23 the exhibits offered and received into evidence, the parties' briefs,  
24 the arguments of counsel, and the rulings issued by this court on  
previously submitted matters, the Court makes the following  
findings:

25 That VCC stopped making payments in **February 2015** and  
26 the company and Ronald Robinson were **notified of the default,**  
27 with a **demand to bring all amounts due current, and to repay the**  
28 **principal.**

1 See FFCL at p. 2, ll. 6-15.

2 By their own admission, and as supported by the FFCL prepared by Plaintiffs and approved  
3 by this Court, Plaintiffs had *actual* knowledge of a default under the Notes and made demands for  
4 payment no later than February 2015. As noted by Judge Pro, and as held by the Nevada Supreme  
5 Court, a statute of limitation begins to run upon the discovery of *facts* giving rise to a claim, not  
6 the development of any particular legal theory. See *Baroi*, 914 F.Supp.2d at 1199 (*citing Massey*  
7 *v. Litton*, 99 Nev. 723, 669 P.2d 248, 252 (1983)). Any claims related to the Notes, whether for  
8 breach of contract or for violation of the Uniform Securities Act, would have accrued no later than  
9 February 2015. The two (2) year discovery rule set forth in Nev. Rev. Stat. 90.670 would thus  
10 have run no later than the end of February 2017. The Court's docket will reflect that Plaintiff  
11 Steven A. Hotchkiss commenced Case No. A-17-762264-C by filing his *Complaint for Damages*  
12 on September 28, 2017. Plaintiff Anthony White commenced Case No. A-17-763003-C on  
13 October 12, 2017. The consolidated actions were thus filed at least six (6) months *after* the  
14 absolute latest date on which the statute of limitation could have run. Any claim for damages that  
15 could have been made against Mr. Rodriguez pursuant to Nev. Rev. Stat. 90.660 was, and is, time-  
16 barred.

17 **DEFENDANT'S RESPONSE TO PLAINTIFF'S REQUEST FOR**  
18 **ATTORNEYS' FEE AND COSTS**

19 Plaintiffs' conclude their Motion by requesting an award of attorneys' fees and costs  
20 against Mr. Rodriguez. Interestingly, that request further illustrates the key distinction between  
21 primary and secondary parties under Nev. Rev. Stat. 90.660.

22 **A. Attorneys' Fees May Only be Assessed Against a Primary Violator Under Nev. Rev.**  
23 **Stat. 90.660(1)**

24 As noted above, Nev. Rev. Stat. 90.660(1) concerns a party that "offers or sells a security"  
25 in violation of law (i.e., a "primary violator"), and authorizes an award of interest, attorneys' fees  
26 and costs in either of the two scenarios in which damages are recoverable -- a sale or a tender:  
27 . . .

28 Opposition to Motion for Damages and Attorneys Fees FINAL 5 21 2020

**NRS 90.660 Civil liability.**

1. A person who offers or sells a security in violation of any of the following provisions:

...

(b) NRS 90.460;

...

is liable to the person purchasing the security. Upon tender of the security, the purchaser may recover the consideration paid for the security and interest at the legal rate of this State from the date of payment, ***costs and reasonable attorney's fees***, less the amount of income received on the security. A purchaser who no longer owns the security may recover damages. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, plus interest at the legal rate of this State from the date of disposition of the security, ***costs and reasonable attorney's fees determined by the court***. Tender requires only notice of willingness to exchange the security for the amount specified.

[Emphasis added.]

There is no provision in Subsection (4), which governs the secondary liability of "control persons," that allows for an award of interest, fees or costs. Rather, as discussed at length above, the damages recoverable from a secondary "control party" are limited to those "with and to the same extent as the other person" (i.e., the primary violator):

**NRS 90.660 Civil liability.**

1. A person who offers or sells a security in violation of any of the following provisions:

...

(b) NRS 90.460;

...

4. A person who directly or indirectly controls another person who is liable under subsection 1 or 3, a partner, officer or director of the person liable, a person occupying a similar status or performing similar functions, any agent of the person liable, an employee of the person liable if the employee materially aids in the act, omission or transaction constituting the violation, and a broker-dealer or sales representative who materially aids in the act, omission or transaction constituting the violation, ***are also liable jointly and severally with and to the same extent as the other person***, but it is a defense that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by which the liability is alleged to exist. With respect to a person who directly or indirectly, controls another person who is liable under subsection 3, it is also a defense that the controlling person acted in good faith and did not, directly or indirectly, induce the act, omission or transaction constituting the violation. Contribution among the several persons liable is the same as in cases arising out of breach of contract.



1 [Emphasis added.]

2 Mr. Rodriguez respectfully submits that as a result of the Bankruptcy Case, there are no  
3 damages – including attorneys’ fees or costs – that may be imposed against VCC, and thus there  
4 is no basis to impose damages, interest, fees or costs against him.

5 **B. Plaintiffs’ Request Does Not Address All *Brunzell* Factors**

6 As a final matter, Plaintiffs are correct that this Court may apply different methodologies  
7 in determining a reasonable award of attorneys’ fees and costs. Regardless of the methodology,  
8 however, any award of attorneys’ fees must be reasonable and requires an analysis of the *Brunzell*  
9 factors, including a substantive discussion of the work performed:

10 In Nevada, ‘the method upon which a *reasonable* fee is  
11 determined is subject to the discretion of the court’ which ‘is  
12 tempered only by reason and fairness.’ Accordingly, in determining  
13 the amount of fees to award, the court is not limited to one specific  
14 approach; its analysis may begin with any method rationally  
15 designed to calculate a reasonable amount, including those based on  
16 a ‘lodestar’ amount or a contingency fee. We emphasize that,  
17 whichever method is chosen as a starting point, however, the court  
must continue its analysis by considering the requested amount in  
light of the factors enumerated by this court in *Brunzell v. Golden*  
*Gate National Bank*, namely, the advocate’s professional qualities,  
the nature of the litigation, *the work performed*, and the result. In  
this manner, whichever method the court ultimately uses, the result  
will prove reasonable as long as the court provides sufficient  
reasoning and findings in support of its ultimate determination.

18 *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 548-49, 121 Nev. 837 (2005) [citations  
19 and footnotes omitted; emphasis added].

20 In their Motion, Plaintiffs seek damages from Mr. Rodriguez consisting of \$574,000 in  
21 principal, together with interest of \$164,770, for a total of \$738,770. Plaintiffs then seek 30% of  
22 that amount, or \$221,631, for a total award of \$960,402. *See* Exhibit A to the Motion at p. 2.<sup>3</sup> Mr.  
23 Rodriguez respectfully submits that this amount is manifestly unreasonable, and does not meet the  
24 *Brunzell* factor requiring a relationship between the fee sought and the work actually performed.

25 . . .

26

---

27 <sup>3</sup> This calculation differs from that set forth in the Motion by \$1, which we attribute to a rounding error.

1    **A.     The Amount Sought is Unreasonable**

2           According to the *Declaration of David Liebrader In Support of Motion for Damages and*  
3   *Attorney's Fees* filed May 11, 2020: "As I took this case on a contingency fee basis I did not keep  
4   strict track of my time. However, if I had to make an educated guess on the amount of time I spent  
5   on this case, I would estimate it is well over 250 hours." *Id.* at p. 3, ll. 4-6. If Mr. Liebrader's  
6   estimation is correct, the amount Plaintiffs are seeking, \$221,631 divided by 250 hours, equals  
7   \$886.52 per hour. Mr. Rodriguez respectfully submits that that sum exceeds market rates for Las  
8   Vegas.

9    **B.     The Fees Sought Do Not Bear Any Relationship to Work Performed With Respect to**  
10   **Mr. Rodriguez**

11           According to Plaintiffs, the work required in this matter was made more difficult as a result  
12   of actions by Mr. Robinson, *not* Mr. Rodriguez:

13                       Despite the apparent simplicity of filing a breach of contract  
14                       case, this matter was made significantly more difficult because  
15                       Defendant Robinson repeatedly lied under oath, claiming that he did  
16                       not intend to guarantee the promissory note. This required Plaintiffs  
17                       to amend the complaint and bring in third parties that Robins  
18                       claimed used his guarantee without his permission. These lies were  
19                       exposed at trial when these third parties testified that Robinson did  
20                       indeed intend to guarantee the note. Rather than honor the demand  
21                       letter sent prior to the filing of this case, Robinson required a trial  
22                       on the merits involving multiple Plaintiffs, including Mr. Hotchkiss,  
23                       who travelled from Nebraska in order to see justice done.

24           *See* Motion at p. 8, ll. 5-13.

25           Plaintiffs described efforts by Mr. Robinson – and only Mr. Robinson – to avoid liability  
26   on his personal guarantee:

27                       Mr. Robinson argued that Plaintiffs lacked standing because  
28                       the investment was made through IRAs. This was the subject of  
29                       briefing and research from other jurisdictions to assist the court in  
30                       making its decision.

31                       Robinson also claimed that the VCC Bankruptcy  
32                       extinguished his liability under the guarantee. This too was the  
33                       subject of a separate round of briefing.

34           *See* Motion at p. 8, ll. 5-13.

8 Fortunately, as noted above, Nev. Rev. Stat. 90.660(1) only authorizes fees and costs  
9 against a primary violator. Secondary “control parties” are only responsible “with and to the same  
10 extent as” the primary obligor. There is no authority to hold one control party responsible for fees  
11 incurred by a plaintiff in responding to a different secondary control party.

Based on the foregoing, Mr. Rodriguez respectfully requests that this Court find and conclude that he is not liable for damages under Nev. Rev. Stat. 90.660(4) and/or that Plaintiffs' claim for damages is time-barred pursuant to Nev. Rev. Stat. 90.670. If the Court is nevertheless inclined to award damages, Mr. Rodriguez respectfully requests that the Court deny the Motion for attorneys' fees based on Plaintiffs' failure to propose a reasonable fee and describe in reasonable detail the *Brunzell* factor concerning work performed that related to Mr. Rodriguez. Finally, Mr. Rodriguez requests such other relief as is just and proper.

20 Dated this 21<sup>st</sup> day of May, 2020.

FLEMING LAW FIRM, PLLC

28 Opposition to Motion for Damages and Attorneys Fees FINAL 5 21 2020

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 21<sup>st</sup> day of May, 2020, I caused to be served a true and correct copy of foregoing **OPPOSITION BY DEFENDANT VERNON RODRIGUEZ TO PLAINTIFFS' MOTION FOR DAMAGES AND ATTORNEYS' FEES** in the following manner:

(VIA ELECTRONIC SERVICES) The above-referenced documents were electronically filed on the dates listed above and served on May 21, 2020, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

HAROLD P. GEWERTER, ESQ.  
Nevada Bar No. 499  
1212 South Casino Center Boulevard  
Las Vegas, Nevada 89101  
*Attorney for Vernon Rodriguez*

DAVID LIEBRADER, ESQ.  
Nevada Bar No. 5048  
THE LAW OFFICES OF DAVID LIEBRADER, APC  
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Las Vegas, Nevada 89106  
*Attorney for Plaintiffs*

By /s/ Scott D. Fleming  
SCOTT D. FLEMING, ESQ.  
Nevada Bar No. 5638  
9525 Hillwood Drive  
Suite 140  
Las Vegas, Nevada 89134  
*Attorney for Vernon Rodriguez*

# EXHIBIT 1

Order Entering Final  
Decree Dated March  
14, 2019

EXHIBIT 1

NVB 5075-5 (Rev. 2/16)

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

IN RE:

VIRTUAL COMMUNICATIONS CORPORATION

BK-18-12951-abl  
CHAPTER 11

Debtor(s)

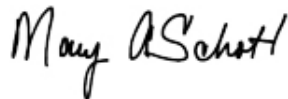
ORDER ENTERING  
FINAL DECREE

---

It appearing that this Court's continuing jurisdiction is no longer necessary and that the case has been fully administered,

**IT IS ORDERED** that a Final Decree is entered closing this case without prejudice to the reopening of this case for further administration.

Dated: 3/14/19

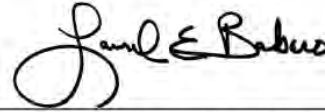


Mary A. Schott  
Clerk of Court

# EXHIBIT 2

Order Confirming First Amended Chapter 11  
Plan of Reorganization of Virtual  
Communications Corporation  
Dated September 5, 2018

# EXHIBIT 2



Honorable Laurel E. Babero  
United States Bankruptcy Judge



Entered on Docket  
September 05, 2018

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*Attorneys for Debtor Virtual  
Communications Corporation*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

\* \* \*

IN RE:

VIRTUAL COMMUNICATIONS  
CORPORATION,

Debtor.

Case No. 18-12951-leb

Chapter 11

Date of Hearing: August 14, 2018  
Time of Hearing: 9:30 a.m.

**ORDER CONFIRMING FIRST AMENDED CHAPTER 11 PLAN OF  
REORGANIZATION OF VIRTUAL COMMUNICATIONS CORPORATION**

On June 13, 2018, the Debtor filed its *First Amended Chapter 11 Plan of Reorganization for Virtual Communications Corporation* [ECF No. 38] (the "Plan") and *First Amended Disclosure Statement for Chapter 11 Plan of Reorganization for Virtual Communications Corporation* [ECF No. 39] (the "Disclosure Statement"). On June 25, 2018, the Bankruptcy Court entered its *Order (1) Conditionally Approving Adequacy of the Proposed Disclosure Statement to Accompany Plan*



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1 of Reorganization; and (2) Setting a Hearing on Confirmation of the Debtor's Chapter 11 Plan of  
2 Reorganization and Related Deadlines [ECF No. 42] (the "Disclosure Statement Order") in which  
3 the Court, among other things, (a) conditionally approved the Disclosure Statement pursuant to  
4 Local Rule<sup>1</sup> 3017(b), (b) approved the forms of ballots and procedures for notice and solicitation  
5 of votes to accept or reject the Plan, (c) set deadlines for objecting to confirmation of the Plan or  
6 final approval of the Disclosure Statement and for voting to accept or reject the Plan, and (d) set a  
7 hearing date to consider final approval of the Disclosure Statement and confirmation of the Plan.

8 On August 14, 2018 the Court conducted a hearing to consider final approval of the  
9 Disclosure Statement and confirmation of the Plan (the "Confirmation Hearing"). The Debtor  
10 appeared at the Confirmation Hearing through its counsel, Bart K. Larsen, Esq. of the law firm of  
11 Kolesar & Leatham. Interested parties Reva Waldo, Anthony White, Steven Hotchkiss, Troy  
12 Suntheimer, Robin Suntheimer, Steve Ghesquire, and Jackie Stone appeared at the Confirmation  
13 Hearing through their counsel David Liebrader, Esq. of the Law Office of David Liebrader, Inc.  
14 Edmund Gee, Esq. also appeared at the Confirmation Hearing on behalf of the Office of the United  
15 States Trustee.

16 The Court, having considered (a) the Plan and Disclosure Statement, (b) the papers and  
17 pleadings filed in connection with the Plan and Disclosure Statement, (c) the arguments presented  
18 by counsel during the Hearing, and (d) the entire record of this Chapter 11 Case; and the Court  
19 being familiar with this Chapter 11 Case, the Plan, and other relevant factors affecting this Chapter  
20 11 Case; and after due deliberation and sufficient cause appearing,

21 **THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

22 A. The Court has jurisdiction over this Chapter 11 Case pursuant to 28 U.S.C. § 1334.  
23 Venue of this case is appropriate in the District of Nevada pursuant to 28 U.S.C. §§ 1408 and 1409.  
24 Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b), and this Court has  
25 jurisdiction to enter a final order with respect thereto.

26 \_\_\_\_\_  
27 <sup>1</sup> Unless otherwise stated, all "Chapter" and "Section" references are to Title 11 of the U.S. Code (the "Bankruptcy  
28 Code"), all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"),  
and all references to "Local Rules" are to the Local Rules of Bankruptcy Practice for the U.S. District Court for the  
District of Nevada (the "Local Rules").

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1 B. On May 22, 2018 (the “Petition Date”), the Debtor filed its voluntary petition for  
2 relief under Chapter 11 of the United States Bankruptcy Code. Since the Petition Date, the Debtor  
3 has continued to operate its businesses and manage its property as a debtor and debtor in possession  
4 pursuant to §§ 1107(a) and 1108.

5 C. This Court relies upon and takes judicial notice pursuant to Rule 201 of the Federal  
6 Rules of Evidence of the docket in this Chapter 11 Case, including, without limitation, all filed  
7 pleadings and declarations, all entered orders, and all evidence and arguments made, proffered, or  
8 adduced at the hearings held before the Court during the pendency of the Chapter 11 Case, including  
9 at the Confirmation Hearing.

10 D. The Disclosure Statement contains “adequate information” within the meaning of  
11 Section 1125.

12 E. In accordance with Section 1129(a)(1), the Plan complies with all applicable  
13 provisions of the Bankruptcy Code, including the applicable requirements of Sections 1122 and  
14 1123, the Bankruptcy Rules, the Local rules, and all orders of this Court with respect to the Plan.

15 F. Good, sufficient, and timely notice of the Confirmation Hearing was given to holders  
16 of Claims and Equity Interests and to other interested parties entitled to notice in accordance with  
17 the Disclosure Statement Order, the Bankruptcy Code, and the Bankruptcy Rules. The solicitation  
18 of votes was made in good faith and in compliance with the applicable provisions of the Bankruptcy  
19 Code and all other rules, laws, and regulations, and such solicitation was conducted after disclosure  
20 of “adequate information” as defined in Section 1125. The ballots of holders of Claims entitled to  
21 vote were properly solicited and tabulated in accordance with the Disclosure Statement Order and  
22 the Bankruptcy Code. The Debtor has therefore complied with Section 1129(a)(2), including, but  
23 not limited to the requirements set forth in Sections 1125 and 1126.

24 G. The Plan and the compromises embodied therein were proposed in good faith and  
25 not by any means forbidden by law, as evidenced by, among other things, the totality of the  
26 circumstances surrounding the formulation of the Plan and the record of the Chapter 11 Case. The  
27 Plan provides the greatest opportunity to maximize the value of the Estate, and the Debtor has  
28 exercised sound and reasonable business judgment in proposing the Plan. As such, the Plan satisfies

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1 the requirements of Section 1129(a)(3).

2 H. The Plan complies with the requirements of Section 1129(a)(4) in that all payments  
3 to be made by the Debtor for services or for costs and expenses in or connected with the Chapter  
4 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, have been approved  
5 by or are subject to the approval of the Court as reasonably required.

6 I. The Plan complies with the requirements of Section 1129(a)(5) in that the Debtor  
7 has disclosed the identity, affiliation, and compensation, if any, of the principals of the Debtor under  
8 the Plan and that the appointment to, or continuance in, such office is consistent with the interests  
9 of Creditors and Equity Interest holders and with public policy.

10 J. Section 1129(a)(6) is inapplicable to the Chapter 11 Case because the Plan does not  
11 contain any rate change for which a governmental regulatory commission has jurisdiction after  
12 confirmation.

13 K. The Plan complies with Section 1129(a)(7) in that each holder of a Claim or Equity  
14 Interest in Classes 1 through 5 has voted to accept the Plan and will receive under the Plan property  
15 of a value, as of the Effective Date, that is not less than the amount that such holder would receive  
16 or retain if the Debtor were liquidated under Chapter 7.

17 L. As set forth in the *Certificate of Acceptance of Debtor's Plan of Reorganization*  
18 [ECF No. 73] filed on August 10, 2018, Creditors holding Impaired Claims in Classes 1, 2, 3, 4,  
19 and 5 voted to accept the Plan in accordance with Section 1126(c). In Class 1, 100% of Creditors  
20 holding 100% of the amount of indebtedness in Class 1 voted to accept the Plan. In Class 2, 100%  
21 of Creditors holding 100% of the amount of indebtedness in Class 2 voted to accept the Plan. In  
22 Class 3, approximately 84% of voting Creditors holding approximately 81% of the amount of the  
23 voting indebtedness in Class 3 voted to accept the Plan. In Class 4, 100% of voting Creditors  
24 holding 100% of the voting indebtedness in Class 4 voted to accept the Plan. In Class 5, 100% of  
25 voting Holders of Equity Interests holding 100% of the voting Equity Interests in Class 5 voted to  
26 accept the Plan.

27 M. Because the Plan has been accepted by Impaired Classes 1, 2, 3, 4, and 5 without  
28 including any vote in favor of acceptance by any Insider, the Plan satisfies Section 1129(a)(8).

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1 N. The Plan's treatment of unclassified priority Claims under Section 507(a) satisfies  
2 the requirements set forth in Section 1129(a)(9) because Allowed Administrative Claims and  
3 Allowed Priority Tax Claims shall be paid in full and in cash or upon such other terms as may be  
4 agreed upon by the Debtor or the Reorganized Debtor, as applicable, and the holders of such Claims.

5 O. Because Impaired Classes 1, 2, 3, 4, and 5, voted to accept the Plan without including  
6 any vote in favor of acceptance by any Insider, the Plan satisfies Section 1129(a)(10).

7 P. The Plan complies with Section 1129(a)(11) in that confirmation will not likely be  
8 followed by the liquidation or the need for further financial reorganization of the Debtor. The Plan  
9 offers a reasonable prospect of success, and it provides a reasonable probability that the provisions  
10 of the Plan can be performed. Therefore, the Plan satisfies the feasibility test set forth in Section  
11 1129(a)(11) of the Bankruptcy Code.

12 Q. The Plan complies with the requirements set forth in Section 1129(a)(12) in that the  
13 Plan provides for the payment of all fees owed pursuant 28 U.S.C. § 1930 as of the Effective Date  
14 and as they come due after the Effective Date.

15 R. Section 1129(a)(13) is satisfied as no retiree benefits (as defined in Section 1114)  
16 are affected under the Plan.

17 S. The Debtor is not required or obligated on any domestic support obligation. Thus  
18 Section 1129(a)(14) is inapplicable.

19 T. The Debtor is not an individual. Thus Section 1129(a)(15) is inapplicable.

20 U. The Debtor is a moneyed, business, or commercial entity. Thus Section 1129(a)(16)  
21 is inapplicable.

22 V. All documents and agreements necessary to implement the Plan have been  
23 negotiated in good faith, at arm's length, and are in the best interests of the Debtor, the Debtor's  
24 Estate, and the Debtor's Creditors.

25 W. The Debtor and its attorneys, accountants, and advisors have acted in good faith with  
26 respect to the solicitation of votes to accept or reject the Plan. The Debtor and its attorneys,  
27 accountants, and advisors are, therefore, entitled to the protection under Section 1125(e).

28 . . .

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1 X. The discharges and injunctions contained within the Plan comply with the  
2 Bankruptcy Code and the Bankruptcy Rules, including Section 524(e). The satisfaction, discharge,  
3 release, or other termination of Claims against the Debtor under the Plan does not affect the liability  
4 of any other Entity or Person for such Claims and does not discharge, release, or otherwise impair  
5 any Claim or cause of action that any Unsecured Noteholder may have against Ronald Robinson  
6 based upon any personal guaranty of any Unsecured Note.

7 Y. Notice of all proceedings regarding or relating to confirmation of the Plan, including  
8 without limitation of the Confirmation Hearing, was adequate under the circumstances and  
9 complied with applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

10 Z. Pursuant to Sections 105(a), 1123(b)(3), 1129, and 1141 and Bankruptcy Rules 3016  
11 and 9019, the settlements, compromises, discharges, releases, and injunctions set forth in the Plan  
12 are approved as an integral part of the Plan, are fair, equitable, reasonable, and in the best interest  
13 of the Debtor, its Estate, and the holders of Claims and Equity Interests.

14 **ACCORDINGLY, THE COURT HEREBY ORDERS AS FOLLOWS:**

- 15 1. The Disclosure Statement is approved on a final basis pursuant to Section 1125.  
16 2. The Plan, Section X.B.3., at pp. 24-25, is amended in pertinent part as follows:

17 EFFECTIVE AS OF THE CONFIRMATION DATE, THE DEBTOR AND ALL  
18 CURRENT OFFICERS AND DIRECTORS OF THE DEBTOR AS OF THE EFFECTIVE  
19 DATE SHALL RECEIVE A FULL RELEASE FROM THE DEBTOR AND ITS ESTATE  
20 FROM ANY AND ALL CAUSES OF ACTION THAT MIGHT BE ASSERTED ON  
21 BEHALF OF THE DEBTOR OR ITS ESTATE, WHETHER KNOWN OR UNKNOWN,  
22 FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT  
23 OR NONCONTINGENT, EXISTING AS OF THE EFFECTIVE DATE OF THE PLAN,  
24 WHETHER IN LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT OR  
25 OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR,  
26 INCLUDING, WITHOUT LIMITATION, IN ANY WAY RELATED TO THE CHAPTER  
27 11 CASE, THE DEBTOR'S RESTRUCTURING, THE NEGOTIATION,  
28 FORMULATION OR PREPARATION OF THE PLAN, THE DISCLOSURE  
STATEMENT, OR ANY OTHER ACT OR OMISSION RELATED THERETO  
OCCURRING DURING THIS CHAPTER 11 CASE, TO THE CONFIRMATION DATE;  
PROVIDED, HOWEVER, THAT THE FOREGOING RELEASE SHALL NOT  
OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION (1) OF THE  
DEBTOR OR ITS ESTATE FOR ANY CLAIMS ARISING FROM WILLFUL  
MISCONDUCT OR GROSS NEGLIGENCE; (2) CLAIMS AGAINST ANY FORMER  
OFFICER OR DIRECTOR OF THE DEBTOR; OR (3) CLAIMS THAT MAY BE  
ASSERTED BY THIRD PARTIES AGAINST PERSONS OR ENTITIES OTHER THAN  
THE DEBTOR.

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1           3.       The Plan, as amended herein, is confirmed pursuant to Section 1129, and the record  
2 of the Confirmation Hearing is hereby closed. The Effective Date of the Plan shall be the latter of  
3 September 3, 2018 or the first Business Day that is more than fourteen (14) days after the entry of  
4 this Order confirming the Plan by the Court.

5           4.       Fees owed pursuant to 28 U.S.C. § 1930(a)(6) are not subject to allowance as  
6 Administrative Claims under the Plan. Past due fees imposed under 28 U.S.C. § 1930(a)(6), if any,  
7 shall be paid in full before or on the Effective Date. After the Effective Date, the Debtor shall  
8 timely file quarterly reports in the form prescribed by the United States Trustee; such reports shall  
9 be filed within 20 days following the end of each calendar quarter (including any fraction thereof)  
10 until the Chapter 11 Case has been converted, dismissed, or closed by entry of a final decree. The  
11 Debtor shall pay in full when due the fees imposed under 28 U.S.C. § 1930(a)(6) for each quarter  
12 (including any fraction thereof) until this Chapter 11 Case is converted, dismissed, or closed by  
13 entry of a final decree.

14           5.       In accordance with Section 1141(a) of the Bankruptcy Code and upon the occurrence  
15 of the Effective Date, the Plan shall be binding upon and inure to the benefit of: (i) the Debtor; (ii)  
16 all Claimants and all Holders of Claims or Equity Interests (regardless of whether any such  
17 Claimants or Holders voted to accept the Plan, is Impaired under the Plan, or has filed, or is deemed  
18 to have filed, a Proof of Claim); (iii) any other Entity giving, acquiring, or receiving property under  
19 the Plan; (iv) any party to an executory contract or unexpired lease of the Debtor; and (v) each of  
20 the foregoing's respective heirs, successors, assigns, trustees, executors, administrators, affiliates,  
21 officers, directors, agents, representatives, attorneys, beneficiaries, or guardians, if any.

22           6.       On the Effective Date, title to all property rights and interests of the Estate,  
23 including, but not limited to, all claims, causes of action, and remedies the Debtor may hold against  
24 any Entity, shall vest in and be transferred to the Reorganized Debtor in accordance with the terms  
25 of the Plan.

26           7.       The Debtor is authorized to undertake or cause to be undertaken any and all acts and  
27 actions contemplated by the Plan or required to consummate and implement the provisions of the  
28 Plan, prior to, on, and after the Effective Date, including without limitation, entering, executing,

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1 delivering, filing, or recording any agreements, instruments, or documents necessary to implement  
2 the Plan.

3 8. Pursuant to Section 1146(a), any transaction arising out of, contemplated by, or in  
4 any way related to the Plan, whether occurring on or after the Effective Date, shall not be subject  
5 to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax,  
6 real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee,  
7 regulatory filing or recording fee, or other similar tax or governmental assessment, and the  
8 appropriate federal, state or local governmental officials or agents shall and are hereby directed to  
9 forego the collection of any such tax or governmental assessment and to accept for filing and  
10 recordation any of the foregoing instruments or other documents without the payment of any such  
11 tax or governmental assessment.

12 9. As of the Effective Date, all executory contracts and unexpired leases identified in  
13 Exhibit A-1 to the Plan shall be assumed as set forth in the Plan. All executory contracts and  
14 unexpired leases of the Debtor that are not identified in Exhibit A-1 to the Plan shall be rejected as  
15 set forth in the Plan.

16 10. The provisions of the Plan shall not diminish or impair in any manner the  
17 enforceability and coverage of any insurance policies that may cover Claims against the Debtor or  
18 any other Person. Nothing in the Plan shall be deemed to constitute a rejection of any insurance  
19 policies or related agreements relating to any insurance policies under Section 365 of the  
20 Bankruptcy Code to the extent such policies and agreements exist and are executory. The Debtor  
21 shall remain the insured under the Debtor's applicable insurance policies and related agreements.

22 11. The Administrative Claims Bar Date shall be forty-five (45) days after the Effective  
23 Date except for Professional Claims, which shall be filed no later than sixty (60) days after the  
24 Effective Date. Any Person that fails to file a necessary application or request for approval or  
25 payment of an Administrative Claim on or before such date shall be forever barred from asserting  
26 such Claim against the Debtor, and the holder thereof shall be enjoined from commencing or  
27 continuing any action, employment of process or act to collect, offset or recover such  
28 Administrative Claim.



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12. The Claim Objection Bar Date as to all Claims not previously Allowed under the Plan or by prior order of the Court shall be one hundred and twenty (120) days after the Effective Date.

13. Failure specifically to include or reference particular sections or provisions of the Plan or any related agreement in this Order shall not diminish or impair the effectiveness of such sections or provisions, it being the intent of the Court that the Plan be confirmed and such related agreements be approved in their entirety.

14. This Order is a final order, and the period in which an appeal must be filed shall commence immediately upon the entry hereof.

15. If any or all of the provisions of this Order are hereafter reversed, modified or vacated by subsequent order of this Court, or any other Court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Debtor's receipt of written notice of such order. Notwithstanding any such reversal, modification or vacatur of this Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Order and the Plan and all related documents or any amendments or modifications thereto.

16. From and after the Effective Date, this Court shall retain and have exclusive jurisdiction of all matters arising out of this Chapter 11 Case pursuant to, and for purposes of, Sections 105(a) and 1142 of the Bankruptcy Code, including without limitation, jurisdiction over the matters set forth in the Plan, which is incorporated herein by reference, and the enforcement of this Order.

**IT IS SO ORDERED.**

Prepared and Submitted by:  
KOLESAR & LEATHAM

/s/ Bart K. Larsen, Esq.

BART K. LARSEN, ESQ.

Nevada Bar No. 8538

400 S. Rampart Blvd., Ste. 400

Las Vegas, Nevada 89145

*Attorneys for Debtor Virtual Communications Corporation*



**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the Court's ruling and that (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below.

<u>Attorney</u>	<u>Approved</u>	<u>Disapproved</u>	<u>Failed To Respond</u>
Edmund Gee <i>Office of the U.S. Trustee</i>	X		
David Liebrader <i>Attorney for Reva Waldo, Anthony White, Steven Hotchkiss, Troy Suntheimer, Robin Suntheimer, Steve Ghesquire, and Jackie Stone</i>		X	

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

# # #

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# EXHIBIT 3

First Amended Chapter 11 Plan of  
Reorganization of Virtual Communications  
Corporation

Dated June 13, 2018

# EXHIBIT 3

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7 *Attorneys for Debtor Virtual*  
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9

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 \* \* \*

13  
14 IN RE:

15 VIRTUAL COMMUNICATIONS  
CORPORATION,

16 Debtor.  
17

Case No. 18-12951-leb

Chapter 11

18 **FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION FOR**  
19 **VIRTUAL COMMUNICATIONS CORPORATION**  
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## INTRODUCTION

Virtual Communications Corporation, as debtor and debtor in possession (“VCC” or “Debtor”), proposes this Chapter 11 Plan of Reorganization (the “Plan”) for the resolution of the outstanding Claims against, and Equity Interests in the Debtor. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code. All Holders of Claims and Interests that are entitled to vote are encouraged to read the Plan in its entirety as well as the Disclosure Statement, which was provisionally approved by the Bankruptcy Court on \_\_\_\_\_, 2018 (the “Disclosure Statement”). The Disclosure Statement discusses the Debtor’s assets and liabilities, historical financial performance, and anticipated future financial projections. The Disclosure Statement also includes a summary and analysis of this Plan and additional information concerning the classification and treatment of the Claims and Interests provided herein.

ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

### **I. DEFINED TERMS AND RULES OF INTERPRETATION**

#### **A. Defined Terms.**

Administrative Claim: A Claim for costs and expenses of administration pursuant to Bankruptcy Code sections 503(b), 507(a)(2), 507(b), or 1114(e)(2), including, without limitation: (a) the actual and necessary costs and expenses of the Estate incurred after the Petition Date; (b) Allowed Professional Claims; and (c) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

Administrative Claim Bar Date: The deadline for filing requests for payment of Administrative Claims, which shall be thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court, except with respect to Professional Claims, which shall be subject to the provisions of Article III.B.

Affiliate: As defined at section 101(2) of the Bankruptcy Code.

Allowed: Except as otherwise provided herein: (a) a Claim or Interest that is (i) listed in the Schedules as of the Effective Date as not disputed, not contingent, and not unliquidated, or (ii) evidenced by a valid Proof of Claim filed by the applicable Bar Date and as to which the Debtor, or other parties in interest have not filed an objection to the allowance thereof within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or (b) a Claim that is Allowed pursuant to the Plan or any stipulation approved by, or Final Order of, the Bankruptcy Court.

Articles of Incorporation: The articles of incorporation of the Debtor, as amended, as of the Petition Date, which shall also be adopted by and apply to the Reorganized Debtor except as expressly amended pursuant to the Plan.

Assets: All of the Debtor’s right, title and interest of any nature in property, wherever located, as specified in section 541 of the Bankruptcy Code.

1        Avoidance Actions: Any and all avoidance, recovery, subordination, or other actions or  
2 remedies that may be brought on behalf of the Debtor or its estate under the Bankruptcy Code or  
3 applicable non-bankruptcy law, including actions or remedies under Bankruptcy Code sections  
544, 547, 548, 550, 551, 552, or 553.

4        Ballot: The form of ballot provided to Holders of Claims or Interests pursuant to  
5 Bankruptcy Rule 3017(d), by which each Holder may accept or reject the Plan.

6        Bankruptcy Code: Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as may  
be amended from time to time.

7        Bankruptcy Court: The United States Bankruptcy Court for the District of Nevada having  
8 jurisdiction over the Chapter 11 Case and to the extent of the withdrawal of any reference under  
9 section 157 of title 28 of the United States Code and/or order of a district court pursuant to section  
157(a) of title 28 of the United States Code, the United States District Court for the District of  
Nevada.

10        Bankruptcy Rules: The Federal Rules of Bankruptcy Procedure as applicable to the  
11 Chapter 11 Cases, and the general, local, and chambers rules of the Bankruptcy Court.

12        Business Day: Any day, other than a Saturday, Sunday, or a legal holiday, as defined in  
13 Bankruptcy Rule 9006(a).

14        Bylaws: The bylaws of the Debtor, as amended, as of the Petition Date, which shall also  
15 be adopted by and apply to the Reorganized Debtor except as expressly amended pursuant to the  
Plan.

16        Cash: The legal tender of the United States of America or the equivalent thereof,  
17 including bank deposits and checks.

18        Causes of Action: means all actions, causes of action (including Avoidance Actions),  
19 Claims, liabilities, obligations, rights, suits, debts, damages, judgments, remedies, demands,  
20 setoffs, defenses, recoupments, crossclaims, counterclaims, third-party claims, indemnity claims,  
21 contribution claims or any other claims disputed or undisputed, suspected or unsuspected,  
22 foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in law,  
equity or otherwise, based in whole or in part upon any act or omission or other event occurring  
prior to the Commencement Date or during the course of the Chapter 11 Case, including through  
the Effective Date.

23        Chapter 11 Case: The Chapter 11 case pending for the Debtor under Chapter 11 of the  
24 Bankruptcy Code before the Bankruptcy Court.

25        Claim: As defined in Bankruptcy Code section 101(5).

26        Claimant: A Holder of a Claim.

27        Claims Bar Date: As applicable, (a) September 26, 2018, (b) the Governmental Bar Date  
28 or (c) such other period of limitation as may be specifically fixed by an order of the Bankruptcy  
Court for Filing such Claims.



1        Claims Objection Bar Date: For each Claim, the later of (a) 180 days after the Effective  
2 Date and (b) such other period of limitation as may be specifically fixed by an order of the  
3 Bankruptcy Court for objecting to such Claims; *provided, however*, that in no event shall the  
4 Claims Objection Bar Date be greater than 180 days after the Effective Date with respect to any  
5 General Unsecured Claim in Class 4.

6        Claims Register: The official register of Claims maintained by the Bankruptcy Court.

7        Class: A category of Holders of Claims or Interests pursuant to Bankruptcy Code section  
8 1122(a).

9        Common Stock: The common stock, par value \$0.001 per share, of the Reorganized  
10 Debtor issued on the Effective Date.

11        Common Stock Distribution: A distribution of approximately 1,300,093 shares of  
12 Common Stock of the Reorganized Debtor to be allocated among the Holders of Allowed Class 3  
13 Claims on a Pro Rata basis according to the amount of contract-rate interest accrued on the  
14 principal balance included in each Holder's respective Allowed Class 3 Claim as of the Petition  
15 Date, which shall be subject to adjustment to provide that the number of shares of Common Stock  
16 included within the Common Stock Distribution is equal to the total amount of all contract-rate  
17 interest accrued on the aggregate principal balances included within all Allowed Class 3 Claims  
18 as of the Petition Date.

19        Confirmation: The entry of the Confirmation Order on the docket of the Chapter 11 Case,  
20 subject to all conditions specified having been satisfied or waived.

21        Confirmation Date: The date upon which the Bankruptcy Court enters the Confirmation  
22 Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and  
23 9021.

24        Confirmation Hearing: The hearing before the Bankruptcy Court pursuant to Bankruptcy  
25 Code section 1128 on the motion for entry of the Confirmation Order.

26        Confirmation Order: The order of the Bankruptcy Court confirming the Plan pursuant to  
27 section 1129 of the Bankruptcy Code.

28        Consummation: The occurrence of the Effective Date.

Court: The Bankruptcy Court.

Creditor: As defined in Bankruptcy Code Section 101(10).

Disclosure Statement: The disclosure statement for the Plan, supplemented or modified  
from time to time, including all exhibits and schedules thereto, and as approved by the  
Bankruptcy Court pursuant to Bankruptcy Code section 1125.

Disputed Claim: Any Claim or Interest that is not yet Allowed.

Disallowed Claim: A Claim against the Debtor that: (a) is not listed on the Schedules, or  
is listed therein as contingent, unliquidated, disputed, or in an amount equal to zero, and whose

1 Holder has failed to timely File a proof of claim; or (b) has been disallowed pursuant to order of  
2 the Bankruptcy Court.

3 Distribution Agent: The Debtor or Reorganized Debtor shall serve as the Distribution  
4 Agent under the Plan.

5 Distribution Record Date: The date for determining which Holders of Claims are eligible  
6 to receive distributions under the Plan, which shall be set by order of the Bankruptcy Court.

7 Effective Date: The date that is the first Business Day after the Confirmation Date on  
8 which: (a) no stay of the Confirmation Order is in effect; and (b) all conditions precedent to the  
9 Effective Date have been satisfied or waived.

10 Entity: As defined in Bankruptcy Code section 101(15).

11 Event of Default: A material failure of the Debtor or Reorganized Debtor to fulfill the  
12 obligations required under this Plan after the Effective Date.

13 Equity Interest: Any partnership, membership, or other equity interest in the Debtor or the  
14 Reorganized Debtor.

15 Estate: The bankruptcy estate of the Debtor created pursuant to Bankruptcy Code  
16 Sections 301 and 541 upon the commencement of the Chapter 11 Case.

17 Executory Contract: A contract or lease to which one or more of the Debtors is a party  
18 that is subject to assumption or rejection under Bankruptcy Code sections 365 or 1123.

19 Fee Claim: A Claim by a Professional seeking an award by the Bankruptcy Court of  
20 compensation for services rendered or reimbursement of expenses incurred through and including  
21 the Confirmation Date under Bankruptcy Code sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4)  
22 or 503(b)(5).

23 File: To file with the Bankruptcy Court or its authorized designee in this Chapter 11 Case

24 Final Decree: The decree contemplated under Bankruptcy Rule 3022.

25 Final Order: An order or judgment of the Bankruptcy Court or other court or competent  
26 jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified, or  
27 amended, and as to which the time to appeal or seek certiorari has expired and no appeal or  
28 petition for certiorari has been timely taken, or as to which any appeal that has been taken or any  
petition for certiorari that has been or may be filed has been resolved by the highest court to  
which the order or judgment was appealed or from which certiorari was sought; provided,  
however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure,  
or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules, may be filed  
relating to such order shall not prevent such order from being a Final Order.

Governmental Unit: As defined in section 101(27) of the Bankruptcy Code.

Holder: A Person holding a Claim or Interest.

1       Initial Distribution Date: The date that is as soon as practicable after the Effective Date  
2 but no later than thirty (30) days after the Effective Date, when distributions under the Plan shall  
commence.

3       Impaired: With respect to any Class of Claims or Interests, a Claim or Interest that is not  
4 Unimpaired.

5       Insider: As defined in Bankruptcy Code section 101(31).

6       Interest: Any Equity Interest in a Debtor as defined in section 101(16) of the Bankruptcy  
7 Code, including all issued, unissued, authorized, or outstanding shares of capital stock of the  
8 Debtor together with any warrants, options, or contractual rights to purchase or acquire such  
equity securities at any time and all rights arising with respect thereto, whether or not fully-vested  
or vesting in the future, that existed immediately before the Effective Date.

9       Lien: As defined in Bankruptcy Code section 101(37).

10       New Equity Interests: The equity interests in the Reorganized Debtor to be authorized,  
11 issued, or reserved on the Effective Date pursuant to the Plan, which shall constitute all of the  
equity interests in the Reorganized Debtor.

12       Periodic Distribution Date: The Distribution Date, as to the first distribution made by the  
13 Distribution Agent, and thereafter, such Business Days as determined by the Distribution Agent.

14       Person: As defined in Bankruptcy Code section 101(41).

15       Petition Date: May 22, 2018.

16       Plan: The Plan Proponent's Chapter 11 plan as it may be altered, amended, modified, or  
17 supplemented from time to time, including the Plan Supplement and all exhibits, supplements,  
18 appendices, and schedules.

19       Plan Proponent: Virtual Communications Corporation.

20       Priority Claim: Collectively, Priority Tax Claims, and Other Priority Claims.

21       Priority Tax Claim: Any Claim of a Governmental Unit of the kind specified in  
22 Bankruptcy Code section 507(a)(8).

23       Professional: A professional: (a) employed in the Chapter 11 Cases pursuant to a Final  
24 Order in accordance with Bankruptcy Code sections 327 and 1103 and to be compensated for  
25 services rendered prior to or on the Effective Date, pursuant to Bankruptcy Code sections 327,  
328, 329, 330, and 331; or (b) for which compensation and reimbursement has been Allowed by  
the Bankruptcy Court pursuant to Bankruptcy Code section 503(b)(4).

26       Professional Compensation: All accrued fees and expenses for services rendered by all  
27 Professionals through and including the Confirmation Date to the extent any such fees and  
28 expenses have not been paid and regardless of whether a fee application has been filed for such  
fees and expenses. To the extent there is a Final Order denying some or all of a Professional's  
fees or expenses, such denied amounts shall no longer be considered Professional Compensation.

1        Proof of Claim: A proof of Claim filed against the Debtor in the Chapter 11 Case.

2        Pro Rata: The proportion that an Allowed Claim in a particular Class bears to the  
3 aggregate amount of Allowed Claims in that Class, or the proportion that a Holder's portion of an  
4 Allowed Claim of a particular Class bears to the aggregate Allowed Claim of that Class.

5        Rejection Damage Claim: A Claim against the Debtor arising under Bankruptcy Code  
6 section 365 from the rejection by the Debtor of an unexpired lease or executory contract  
7 Reorganized Debtor: The Debtor on and after the Effective Date, after giving effect to the Plan.

8        Reorganized Debtor: The Debtor, or any successor thereto, by merger, consolidation or  
9 otherwise, on or after the Effective Date.

10        Schedules: The schedules of assets and liabilities, schedules of executory contracts and  
11 unexpired leases, and statements of financial affairs filed by the Debtor pursuant to section 521 of  
12 the Bankruptcy Code and the Bankruptcy Rules.

13        Schedule of Assumed Agreements: The schedule of executory contracts and unexpired  
14 leases that the Debtor will assume on the Effective Date, which is attached to the Plan as Exhibit  
15 A-1.

16        Secured Claim: A Claim: (a) secured by a Lien on collateral to the extent of the value of  
17 such collateral, as determined in accordance with Bankruptcy Code section 506(a) or (b) subject  
18 to a valid right of setoff pursuant to Bankruptcy Code section 553.

19        Secured Tax Claim: Any Secured Claim that, absent its secured status, would be entitled  
20 to priority in right of payment under Bankruptcy Code section 507(a)(8) (determined irrespective  
21 of time limitations), including any related Secured Claim for penalties.

22        Securities Act: The Securities Act of 1933, as now in effect of hereafter amended, or any  
23 regulations promulgated thereunder.

24        Series A Preferred Stock: Preferred Stock in the Reorganized Debtor that has been  
25 specifically designated by the Debtor or Reorganized Debtor as "Series A" preferred stock  
26 pursuant to the Articles of Incorporation and Bylaws.

27        Series A Preferred Distribution: A distribution of approximately 940,110 shares of Series  
28 A Preferred Stock of the Reorganized Debtor to be allocated among the Holders of Allowed Class  
3 Claims on a Pro Rata basis according to the principal indebtedness included in each Holder's  
4 Allowed Class 3 Claim, which shall be subject to adjustment to provide that the number of shares  
5 of Series A Preferred Stock included within the Series A Preferred Distribution is equal to one-  
6 fifth (1/5<sup>th</sup>) of the total dollar amount of all principal indebtedness included within all Allowed  
7 Class 3 Claims.

8        Unexpired Lease: A lease of nonresidential real property to which one or more of the  
9 Debtors is a party that is subject to assumption or rejection under Bankruptcy Code sections 365  
10 or 1123.

11        Unimpaired: With respect to a Class of Claims or Interests, a Class of Claims or Interests  
12 that is unimpaired within the meaning of Bankruptcy Code section 1124.

1        Unsecured Claim: Any Claim against the Debtor that is neither Secured nor entitled to  
2 priority under the Bankruptcy Code or an order of the Bankruptcy Court.

3        Unsecured Noteholders: The Holders of Claims based upon or arising from any Unsecured  
4 Note or any transaction related thereto.

5        Unsecured Notes: Approximately 100 Unsecured promissory notes issued by the Debtor  
6 during 2013 and 2014 in the aggregate principal amount of approximately \$4,700,550 and made  
7 payable to Provident Trust Group, LLC as custodian for various individual lenders that elected to  
8 make loans to the Debtor through their respective self-directed individual retirement accounts.

9        U.S. Trustee: The Office of the United States Trustee for the District of Nevada.

10       U.S. Trustee Fees: Fees or charges assessed against the Estate pursuant to 28 U.S.C. §  
11 1930.

12       Voting Deadline: The date which shall be the final date by which a Holder of a Claim  
13 may vote to accept or reject the Plan.

14       Voting Record Date: The date for determining which Holders of Claims are entitled to  
15 vote to accept or reject the Plan.

16       **B. Rules of Construction.**

17       1. The rules of construction in Bankruptcy Code section 102 apply to this Plan to the  
18 extent not inconsistent herewith.

19       2. Bankruptcy Rule 9006(a) applies when computing any time period under the Plan.

20       3. A term that is used in this Plan and that is not defined in this Plan has the meaning  
21 attributed to that term, if any, in the Bankruptcy Code or the Bankruptcy Rules.

22       4. The definition given to any term or provision in the Plan supersedes and controls  
23 any different meaning that may be given to that term or provision in the Disclosure Statement.

24       5. Whenever it is appropriate from the context, each term, whether stated in the  
25 singular or the plural, includes both the singular and the plural.

26       6. Any reference to a document or instrument being in a particular form or on  
27 particular terms means that the document or instrument will be substantially in that form or on  
28 those terms. No material change to the form or terms may be made after the Confirmation Date  
without the consent of any party materially negatively affected.

      7. Any reference to an existing document means the document as it has been, or may  
be, amended or supplemented.

      8. Unless otherwise indicated, the phrase “under the Plan” and similar words or  
phrases refer to this Plan in its entirety rather than to only a portion of the Plan.

      9. Unless otherwise specified, all references to Sections or Exhibits are references to

1 this Plan's Sections or Exhibits.

2 10. The words "herein," "hereto," "hereunder," and other words of similar import refer  
3 to this Plan in its entirety rather than to only a particular portion hereof.

## 4 **II. ADMINISTRATIVE AND PRIORITY TAX CLAIMS**

### 5 **A. Administrative Claims.**

6 Each Holder of an Allowed Administrative Claim shall be paid the full unpaid amount of  
7 such Claim in Cash (a) on or as soon as reasonably practicable after the Effective Date, (b) if  
8 such Claim is Allowed after the Effective Date, on or as soon as reasonably practicable after the  
9 date such Claim is Allowed, or (c) upon such other terms as may be agreed upon by the Debtor  
10 or the Reorganized Debtor, as applicable, and such Holder or otherwise upon an order of the  
11 Bankruptcy Court; *provided, however,* that Allowed Administrative Expense Claims  
12 representing liabilities incurred by the Debtor in the ordinary course of business during the  
13 Chapter 11 Case, other than those liabilities constituting or relating to commercial tort claims or  
14 patent, trademark or copyright infringement claims, shall be paid in the ordinary course of  
15 business in accordance with the terms and subject to the conditions of any agreements governing,  
16 instruments evidencing, or other documents related to such transactions, and Holders of claims  
17 related to such ordinary course liabilities are not required to File or serve any request for  
18 payment of such Administrative Claims.

#### 14 **1. Bar Date for Administrative Claims.**

15 Except as otherwise provided in this Article II.A hereof, unless previously Filed, requests  
16 for payment of Administrative Claims must be Filed and served on the Reorganized Debtor  
17 pursuant to the procedures specified in the Confirmation Order and the notice of entry of the  
18 Confirmation Order no later than 45 days after the Effective Date. Holders of Administrative  
19 Claims that are required to File and serve a request for payment of such Administrative Claims,  
20 including, without limitation, Holders of Claims for liabilities constituting or relating to  
21 commercial tort claims or patent, trademark or copyright infringement claims who assert that  
22 such claims constitute Administrative Claims, that do not File and serve such a request by the  
23 applicable Claims Bar Date shall be forever barred, estopped and enjoined from asserting such  
24 Administrative Claims against the Debtor or the Reorganized Debtor or their Estates and  
25 property and such Administrative Claims shall be deemed discharged as of the Effective Date.  
26 Objections to such requests must be Filed and served on the Reorganized Debtor and the  
27 requesting party by the later of (a) 120 days after the Effective Date and (b) 60 days after the  
28 Filing of the applicable request for payment of Administrative Claims, if applicable, as the same  
may be modified or extended from time to time by the Bankruptcy Court and/or on motion of a  
party in interest approved by the Bankruptcy Court.

#### 25 **2. Professional Compensation and Reimbursement Claims.**

26 Retained Professionals or other Entities asserting a Fee Claim for services rendered  
27 before the Confirmation Date must File and serve on the Reorganized Debtor and such other  
28 Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of  
the Bankruptcy Court an application for final allowance of such Fee Claim no later than 60 days  
after the Effective Date; *provided* that the Reorganized Debtor shall pay Retained Professionals

or other Entities in the ordinary course of business for any work performed after the Confirmation Date. Objections to any Fee Claim must be Filed and served on the Reorganized Debtor and the requesting party by 14 days after the Filing of the applicable request for payment of the Fee Claim. To the extent necessary, the Confirmation Order shall amend and supersede any previously entered order of the Bankruptcy Court regarding the payment of Fee Claims. Each Holder of an Allowed Fee Claim shall be paid by the Reorganized Debtor in Cash within five (5) Business Days of entry of the order approving such Allowed Fee Claim.

#### **B. Priority Tax Claims.**

Each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective Date shall receive, as soon as reasonably practicable after the Effective Date, on account of such Claim: (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (2) Cash in an amount agreed to by the Debtor or Reorganized Debtor, as applicable, and such Holder; *provided, however*, that such parties may further agree for the payment of such Allowed Priority Tax Claim at a later date; or (3) at the option of the Debtor, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period not more than five years after the Commencement Date, plus simple interest at the rate required by applicable law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to by a particular taxing authority, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such claim shall be paid in full in cash in accordance with the terms of any agreement between the Debtor and such Holder, or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business. The Debtor does not have any Priority Tax Claims.

### **III. DESIGNATION OF CLASSES AND TREATMENT OF CLAIMS**

#### **A. Summary of Classifications and Claims.**

This Section classifies Claims against the Debtor – except for Administrative Claims and Priority Tax Claims, which are not classified – for all purposes, including voting, confirmation, and distribution under the Plan. A Claim against the Debtor is classified in a particular Class only to the extent that the Claim falls within the Class description. To the extent that part of the Claim against the Debtor falls within a different Class description, the Claim is classified in that different Class. The following table summarizes the Classes of Claims under the Plan:

CLASS	DESCRIPTION	IMPAIRED/ UNIMPAIRED	VOTING STATUS
None	Administrative Claims and Priority Tax Claims	Unimpaired	Not Entitled to Vote
Class 1	Secured Claim of Gewerter Law Office	Impaired	Entitled to Vote
Class 2	Secured Claim of Julie Minushkin	Impaired	Entitled to Vote
Class 3	Unsecured Promissory Notes	Impaired	Entitled to Vote
Class 4	General Unsecured Claims	Impaired	Entitled to Vote



CLASS	DESCRIPTION	IMPAIRED/ UNIMPAIRED	VOTING STATUS
Class 5	Equity Interests	Impaired	Entitled to Vote

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN, NO DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED ON ACCOUNT OF ANY CLAIM AGAINST THE DEBTOR OR THE ESTATE THAT IS NOT AN ALLOWED CLAIM.**

The treatment in this Plan is in full and complete satisfaction of the legal, contractual, and equitable rights (including any liens) that each entity holding a Claim may have against the Debtor or the Estate. This treatment supersedes and replaces any agreements or rights that any Holder of a Claim may have with or against the Debtor, the Estate, or their respective property. All distributions in respect of Allowed Claims will be allocated first to the principal amount of such Allowed Claim, as determined for federal income tax purposes, and thereafter, to the remaining portion of such Allowed Claim, if any.

**B. Classification and Treatment of Claims and Equity Interests.**

**1. Class 1 – Secured Claim Gewerter Law Office.**

Classification: Class 1 consists of the Allowed Secured Claim of Gewerter Law Office, which is estimated to be approximately \$1,000.00 and is secured by a prepetition retainer paid to Gewerter Law Office for legal services.

Treatment: Except to the extent that a Holder of an Allowed Class 1 Claim agrees to a less favorable treatment, in exchange for and in full and final satisfaction, compromise, settlement, release, and discharge of each Allowed Class 1 Claim, each Holder of an Allowed Class 1 Claim shall receive payment in full in Cash no later than the thirtieth (30th) day after the Effective Date. Any Unsecured Claim asserted by any Holder of an Allowed Class 1 Claim shall be treated as a Class 4 (General Unsecured) Claim.

Voting: Class 1 is an Impaired Class. Holders of Class 1 Claims are entitled to vote to accept or reject the Plan.

**2. Class 2 – Secured Claim of Julie Minushkin.**

Classification: Class 2 consists of the Allowed Secured Claim of Julie Minushkin, which is estimated to be approximately \$15,000.00 and is secured by certain shares of common stock of the Debtor.

Treatment: Except to the extent that a Holder of an Allowed Class 2 Claim agrees to a less favorable treatment, in exchange for and in full and final satisfaction, compromise, settlement, release, and discharge of each Allowed Class 2 Claim, each Holder of an Allowed Class 2 Claim shall receive a Cash payment in the amount of \$10,000 no later than the ninetieth (90<sup>th</sup>) day after the Effective Date. As of the Effective Date, all common stock held as collateral for any Allowed Class 2 Claim shall be cancelled and shall become null and void. Any Unsecured Claim asserted by any Holder of an Allowed Class 2 Claim shall be treated as a Class



1 4 (General Unsecured) Claim.

2 Voting: Class 2 is an Unimpaired Class. Holders of Class 2 Claims are entitled to vote to  
3 accept or reject the Plan.

4 **3. Class 3 – Unsecured Promissory Notes.**

5 Classification: Class 3 consists of all Claims held by the Unsecured Noteholders.

6 Treatment: Except to the extent that a Holder of an Allowed Class 3 Claim agrees to a  
7 less favorable treatment, in exchange for and in full and final satisfaction, compromise,  
8 settlement, release, and discharge of each Allowed Class 3 Claim, each Holder of an Allowed  
9 Class 3 Claim shall receive on the Effective Date, or as soon thereafter as reasonably practicable,  
10 (i) its Pro Rata share of the Common Stock Distribution and (ii) its Pro Rata Share of the Series A  
11 Preferred Distribution.

12 Voting: Class 3 is an Impaired Class. Holders of Class 3 Claims are entitled to vote to  
13 accept or reject the Plan.

14 **4. Class 4 – General Unsecured Claims.**

15 Classification: Class 4 consists of all General Unsecured Claims against the Debtor that  
16 are not based on or related to any Unsecured Note. The total amount of such claims is presently  
17 unknown. The Debtor estimates that the total amount of all Allowed Class 4 Claims will not  
18 exceed \$10,000.

19 Treatment: Except to the extent that a Holder of an Allowed Class 4 Claim agrees to a  
20 less favorable treatment, in exchange for and in full and final satisfaction, compromise,  
21 settlement, release, and discharge of each Allowed Class 4 Claim, each Holder of an Allowed  
22 Class 4 Claim, if any, shall receive on or before the ninetieth (90<sup>th</sup>) day after the Effective Date,  
23 the lesser of (i) a Cash payment equal to 50% of its Allowed General Unsecured Claims, if any, or  
24 (b) its Pro Rata share of a lump sum payment in the amount of \$5,000.

25 Voting: Class 4 is an Impaired Class. Holders of Class 4 Claims are entitled to vote to  
26 accept or reject the Plan.

27 **5. Class 5 – Equity Interests in the Debtor.**

28 Classification: Class 5 consists of the Holders of all Equity Interests in the Debtor.

Treatment: Except to the extent that a Holder of an Allowed Class 5 Interest agrees to a  
less favorable treatment, each Holder of an Allowed Class 5 Interest shall receive on the Effective  
Date, or as soon thereafter as reasonably practicable, New Equity Interests consisting of shares of  
Common Stock in the Reorganized Debtor in an amount equal to the number of shares of  
common stock that each Holder of an Allowed Class 5 Interest held in the Debtor as of the  
Petition Date.

Voting: Class 5 is an Impaired Class. Holders of Class 5 Interests are entitled to vote to  
accept or reject the Plan.

**IV. ACCEPTANCE OR REJECTION OF THE PLAN**

**A. Deemed Acceptance of the Plan.**

All Classes are Impaired under the Plan. Accordingly, no Class is deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code.

**B. Voting Classes.**

Each Holder of an Allowed Claim or Interest as of the Record Date in each of the Voting Classes (Classes 1, 2, 3, 4, and 5) shall be entitled to vote to accept or reject the Plan.

**C. Acceptance by Impaired Classes of Claims.**

Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted the Plan if the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class actually voting have voted to accept the Plan.

**D. Cramdown.**

The Debtor requests Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code. The Debtor reserves the right to modify the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

**E. Elimination of Vacant Classes.**

Any Class of Claims that is not occupied as of the date of commencement of the Confirmation Hearing by the Holder of an Allowed Claim or a Claim temporarily Allowed under Bankruptcy Rule 3018 (*i.e.*, no Ballots are cast in a Class entitled to vote on the Plan) shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptances or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption of Executory Contracts and Unexpired Leases.**

**1. Assumption of Agreements.**

On the Effective Date, the Reorganized Debtor shall assume all executory contracts and unexpired leases of the Debtor listed on the Schedule of Assumed Agreements.

The Debtor reserves the right to amend the Schedule of Assumed Agreements at any time prior to the Effective Date to: (a) delete any executory contract or unexpired lease and provide for its rejection under the Plan or otherwise, or (b) add any executory contract or unexpired lease and provide for its assumption under the Plan. The Debtor will provide notice of any amendment to the Schedule of Assumed Agreements to the party or parties to the agreement affected by the amendment.

The Confirmation Order will constitute a Court order approving the assumption, on the Effective Date, of all executory contracts and unexpired leases identified on the Schedule of Assumed Agreements.

## 2. Cure Payments.

Any amount that must be paid under Bankruptcy Code section 365(b)(1) to cure a default under and compensate the non-debtor party to an executory contract or unexpired lease to be assumed under the Plan, is identified as the Cure Payment on the Schedule of Assumed Agreements. Unless the parties mutually agree to a different date, such payment shall be made in cash, ten (10) days following the later of: (i) the Effective Date and (ii) entry of a Final Order resolving any dispute regarding (a) the amount of any Cure Payment, (b) the ability of the Reorganized Debtor to provide “adequate assurance of future performance” within the meaning of Bankruptcy Code section 365 with respect to a contract or lease to be assumed, to the extent required, and/or (c) any other matter pertaining to assumption.

Pending the Court’s ruling on any such dispute, the executory contract or unexpired lease at issue shall be deemed assumed by the Reorganized Debtor unless otherwise agreed by the parties or ordered by the Court.

## 3. Objections to Assumption/Cure Payment Amounts.

Any entity that is a party to an executory contract or unexpired lease that will be assumed under the Plan and that objects to such assumption (including the proposed Cure Payment) must file with the Court and serve upon parties entitled to notice a written statement and supporting declaration stating the basis for its objection. This statement and declaration must be Filed and served by the deadline fixed by the Court for such objection. Any entity that fails to timely File and serve such a statement and declaration will be deemed to waive any and all objections to the proposed assumption (including the proposed Cure Payment) of its contract or lease.

In the absence of a timely objection by an entity that is a party to an executory contract or unexpired lease, the Confirmation Order shall constitute a conclusive determination as to the amount of any cure and compensation due under the executory contract or unexpired lease, and that the Reorganized Debtor has demonstrated adequate assurance of future performance with respect to such executory contract or unexpired lease, to the extent required.

## 4. Resolution of Claims Relating to Contracts and Leases.

Payment of the Cure Payment established under the Plan, by the Confirmation Order or by any other order of the Court, with respect to an assumed executory contract or unexpired lease, shall be deemed to satisfy, in full, any prepetition or post-petition arrearage or other Claim against the Debtor (including any asserted in a Filed proof of claim or listed in the Schedules) with respect to such contract or lease (irrespective of whether the Cure Payment is less than the amount set forth in such proof of Claim or the Schedules). Upon the tendering of the Cure Payment, any such Filed or scheduled Claim shall be disallowed, without further order of the Court or action by any party.

**B. Rejections of Executory Contracts and Unexpired Leases.**

**1. Rejected Agreements.**

On the Effective Date, all executory contracts and unexpired leases that (i) have not been previously assumed or rejected and (ii) that are not set forth on the Schedule of Assumed Agreements shall be rejected. For the avoidance of doubt, executory contracts and unexpired leases that have been previously assumed or assumed and assigned pursuant to an order of the Court shall not be affected by the Plan. The Confirmation Order will constitute a Court order approving the rejection, on the Effective Date, of the executory contracts and unexpired leases to be rejected under the Plan.

**2. Bar Date for Rejection Damage Claims.**

Any Rejection Damage Claim or other Claim against the Debtor for damages arising from the rejection under the Plan of an executory contract or unexpired lease must be Filed and served upon counsel to the Reorganized Debtor within 30 days after the mailing of notice of the occurrence of the Effective Date. Any such Claims that are not timely Filed and served will be forever barred and unenforceable against the Debtor, the Reorganized Debtor, the Estate, and their respective property, and entities holding such Claims will be barred from receiving any distributions under the Plan on account of such untimely Claims.

**3. Post-petition Contracts and Leases.**

Except as expressly provided in the Plan or the Confirmation Order, all contracts, leases, and other agreements that the Debtor entered into after the Petition Date will be retained by the Reorganized Debtor and will remain in full force and effect following the Effective Date.

**VI. MEANS OF EXECUTION AND IMPLEMENTATION OF THE PLAN**

**A. Means of Effectuating the Plan.**

**1. Funding for the Plan.**

The funds necessary to satisfy the Reorganized Debtor's obligations and to ensure the Reorganized Debtor's continuing performance under the Plan after the Effective Date will be obtained from: (i) cash on hand; (ii) equity contributions; (iii) distributions of income from the business operations of the Debtor's wholly-owned subsidiary WinTech, LLC; (iv) any reserves established by the Debtor; and (v) any other contributions or financing (if any) that the Debtor may obtain on or after the Effective Date.

**2. New Corporate Existence.**

The Debtor shall continue to exist after the Effective Date as a separate corporate entity with all the powers of a corporation under the laws of the State of Nevada and pursuant to the Articles of Incorporation and Bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such Articles of Incorporation or Bylaws (or other formation documents) are amended by or in connection with the Plan or otherwise and, to the extent such documents are amended, such documents are deemed to be authorized pursuant hereto and without the need for any other approvals, authorizations, actions or consents.

1                   **3. Vesting of Assets.**

2           Except as otherwise provided herein or in any agreement, instrument or other document  
3 relating thereto, on or after the Effective Date, all property of the Estate (including, without  
4 limitation, Causes of Action) and any property acquired by the Debtor pursuant hereto shall vest  
5 in the Reorganized Debtor, free and clear of all liens, Claims, charges or other encumbrances.  
6 Except as may be provided herein, on and after the Effective Date, the Reorganized Debtor may  
7 operate its business and may use, acquire or dispose of property and compromise or settle any  
8 Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of  
9 the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the  
Plan and the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor shall  
pay the charges that it incurs after the Effective Date for Retained Professionals' fees,  
disbursements, expenses or related support services (including reasonable fees relating to the  
preparation of Retained Professional fee applications) without application to the Bankruptcy  
Court.

10                   **4. Issuance and Distribution of New Equity Interests.**

11           On or immediately after the Effective Date, the Reorganized Debtor shall issue or reserve  
12 for issuance all securities required to be issued pursuant hereto. The New Equity Interests issued  
13 under the Plan are issued under Section 1145 of the Bankruptcy Code shall be subject to all  
14 applicable state and federal laws. The Debtor makes no representation as to any restriction or  
15 requirement that may or may not apply to the sale or exchange of New Equity Interests pursuant  
16 to such laws. All of the New Equity Interests issued pursuant to the Plan shall be duly  
17 authorized, validly issued and, if applicable, fully paid and non-assessable. Each distribution and  
issuance referred to in Article VII hereof shall be governed by the terms and conditions set forth  
herein applicable to such distribution or issuance and by the terms and conditions of the  
instruments evidencing or relating to such distribution or issuance, which terms and conditions  
shall bind each Entity receiving such distribution or issuance.

18                   **5. Securities Registration Exemption.**

19           The New Equity Interests to be issued to the Debtor's Equity Interest Holders will be  
20 issued without registration under the Securities Act or any similar federal, state or local law in  
reliance upon the exemptions set forth in section 1145 of the Bankruptcy Code.

21                   **6. Certificate of Incorporation and Bylaws.**

22           The Articles of Incorporation and Bylaws of the Debtor may be amended as may be  
23 required to be consistent with the provisions of the Plan and the Bankruptcy Code or as  
24 otherwise required by, and in a form reasonably acceptable to the Reorganized Debtor. On or as  
25 soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file a new  
26 Articles of Incorporation with the Nevada Secretary of State, which, as required by section  
27 1123(a)(6) of the Bankruptcy Code, shall prohibit the issuance of non-voting securities. After  
the Effective Date, the Reorganized Debtor may file a new, or amend and restate its existing,  
Articles of Incorporation, Bylaws and other constituent documents as permitted by the relevant  
state corporate law.

1                   **7. Effectuating Documents; Further Transactions; Exemption from**  
2                   **Certain Transfer Taxes.**

3           The Debtor or the Reorganized Debtor, as applicable, may take all actions to execute,  
4           deliver, File or record such contracts, instruments, releases and other agreements or documents  
5           and take such actions as may be necessary or appropriate to effectuate and implement the  
6           provisions of the Plan, including, without limitation, the distribution of the securities to be issued  
7           pursuant hereto in the name of and on behalf of the Reorganized Debtor, without the need for  
8           any approvals, authorizations, actions or consents except for those expressly required pursuant  
9           hereto. The secretary and any assistant secretary of the Debtor shall be authorized to certify or  
10          attest to any of the foregoing actions.

11          Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant  
12          to the Plan that would otherwise require approval of the shareholders, directors or members of  
13          the Debtor shall be deemed to have been so approved and shall be in effect prior to, on or after  
14          the Effective Date (as appropriate) pursuant to applicable law and without any requirement of  
15          further action by the shareholders, directors, managers or partners of the Debtor, or the need for  
16          any approvals, authorizations, actions or consents.

17          Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant  
18          hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in  
19          the United States, and the Confirmation Order shall direct the appropriate state or local  
20          governmental officials or agents to forgo the collection of any such tax or governmental  
21          assessment and to accept for filing and recordation instruments or other documents pursuant to  
22          such transfers of property without the payment of any such tax or governmental assessment.  
23          Such exemption specifically applies, without limitation, to all documents necessary to evidence  
24          and implement the provisions of and the distributions to be made under the Plan, including the  
25          issuance of New Equity Interests.

26                   **VII. DISTRIBUTIONS UNDER THE PLAN**

27                   **A. Distributions for Claims Allowed as of the Effective Date.**

28           Except as otherwise provided in the Plan, a Final Order or as agreed to by the relevant  
29           parties, the Reorganized Debtor shall make initial distributions under the Plan on account of  
30           Claims Allowed before the Effective Date on or as soon as practicable after the Initial  
31           Distribution Date; *provided, however*, that payments on account of General Unsecured Claims  
32           that become Allowed Claims on or before the Effective Date may commence on the Effective  
33           Date.

34                   **B. Distributions on Account of Claims Allowed After the Effective Date.**

35                   **1. Payments and Distributions on Disputed Claims.**

36           Except as otherwise provided in the Plan, a Final Order or as agreed to by the relevant  
37           parties, distributions under the Plan on account of a Disputed Claim that becomes an Allowed  
38           Claim after the Effective Date shall be made on the first Periodic Distribution Date after the  
39           Disputed Claim becomes an Allowed Claim.

1                   **2. Special Rules for Distributions to Holders of Disputed Claims.**

2           Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to  
3           by the relevant parties no partial payments and no partial distributions shall be made with respect  
4           to a Disputed Claim until all such disputes in connection with such Disputed Claim have been  
5           resolved by settlement or Final Order. In the event that there are Disputed Claims requiring  
          adjudication and resolution, the Reorganized Debtor shall establish appropriate reserves for  
          potential payment of such Claims.

6                   **C. Delivery and Distributions and Undeliverable or Unclaimed Distributions.**

7                   **1. Record Date for Distributions.**

8           On the Distribution Record Date, the Claims Register shall be closed and any party  
9           responsible for making distributions shall instead be authorized and entitled to recognize only  
10          those Holders of Claims listed on the Claims Register as of the close of business on the  
11          Distribution Record Date. If a Claim is transferred twenty (20) or fewer days before the  
12          Distribution Record Date, the Distribution Agent shall make distributions to the transferee only  
          to the extent practical and, in any event, only if the relevant transfer form contains an  
          unconditional and explicit certification and waiver of any objection to the transfer by the  
          transferor.

13                  **2. Delivery of Distributions in General.**

14           Except as otherwise provided herein, the Debtor or the Reorganized Debtor, as  
15           applicable, shall make distributions to Holders of Allowed Claims at the address for each such  
16           Holder as indicated on the Debtor's records as of the date of any such distribution; *provided,*  
17           *however,* that the manner of such distributions shall be determined at the discretion of the Debtor  
18           or the Reorganized Debtor, as applicable; and *provided further,* that the address for each Holder  
          of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by  
          that Holder.

19                  **3. Distributions by Distribution Agents.**

20           The Debtor and the Reorganized Debtor, as applicable, shall have the authority, in their  
21           sole discretion, to enter into agreements with one or more Distribution Agents to facilitate the  
22           distributions required hereunder. As a condition to serving as a Distribution Agent, a Distribution  
23           Agent must (a) affirm its obligation to facilitate the prompt distribution of any documents, (b)  
24           affirm its obligation to facilitate the prompt distribution of any recoveries or distributions  
          required hereunder and (c) waive any right or ability to setoff, deduct from or assert any lien or  
          encumbrance against the distributions required hereunder that are to be distributed by such  
          Distribution Agent.

25           The Distribution Agents, and their respective agents, employees, officers, directors,  
26           professionals, attorneys, accountants, advisors, representatives and principals (collectively, the  
27           "Indemnified Parties") shall be indemnified and held harmless by the Debtor and the  
28           Reorganized Debtor, to the fullest extent permitted by law for any losses, claims, damages,  
          liabilities and expenses, including, without limitation, reasonable attorneys' fees, disbursements  
          and related expenses which the Indemnified Parties may incur or to which the Indemnified



1 Parties may become subject in connection with any action, suit, proceeding or investigation  
2 brought or threatened against one or more of the Indemnified Parties on account of the acts or  
3 omissions of the Distribution Agents solely in their capacity as such; provided, however, that the  
4 Debtor and the Reorganized Debtor shall not be liable to indemnify any Indemnified Party for  
5 any act or omission constituting gross negligence, fraud or reckless, intentional or willful  
6 misconduct. The foregoing indemnity in respect of any Indemnified Party shall survive the  
7 termination of such Indemnified Party from the capacity for which they are indemnified.

#### 4. Minimum Distributions.

8 Notwithstanding anything herein to the contrary, the Reorganized Debtor shall not be  
9 required to make distributions or payments of less than \$25 (whether Cash or otherwise) and  
10 shall not be required to make partial distributions or payments of fractions of dollars. Whenever  
11 any payment or distribution of a fraction of a dollar under the Plan would otherwise be called for,  
12 the actual payment or distribution will reflect a rounding of such fraction to the nearest whole  
13 dollar (up or down), with half dollars or less being rounded down.

14 No Distribution Agent shall have any obligation to make a distribution on account of an  
15 Allowed Claim if: (a) the aggregate amount of all distributions authorized to be made on the  
16 Periodic Distribution Date in question is or has an economic value less than \$100.00, unless such  
17 distribution is a final distribution; or (b) the amount to be distributed to the specific Holder of an  
18 Allowed Claim on such Periodic Distribution Date does not constitute a final distribution to such  
19 Holder and is or has an economic value less than \$25.00, which shall be treated as an  
20 undeliverable distribution under Article VII.C.5 below.

#### 5. Undeliverable Distributions.

##### a. Holding of Undeliverable Distributions.

21 If any distribution to a Holder of an Allowed Claim made in accordance herewith is  
22 returned to the Reorganized Debtor (or its Distribution Agent) as undeliverable, no further  
23 distributions shall be made to such Holder unless and until the Reorganized Debtor (or their  
24 Distribution Agent) are notified in writing of such Holder's then current address, at which time  
25 all currently and due missed distributions shall be made to such Holder on the next Periodic  
26 Distribution Date. Undeliverable distributions shall remain in the possession of the Reorganized  
27 Debtor, subject to Article VII.C.5(b) hereof, until such time as any such distributions become  
28 deliverable. Undeliverable distributions shall not be entitled to any additional interest, dividends  
or other accruals of any kind on account of their distribution being undeliverable.

##### b. Failure to Claim Undeliverable Distributions.

29 No later than 210 days after the Effective Date, the Reorganized Debtor shall File with  
30 the Bankruptcy Court a list of the Holders of undeliverable distributions. This list shall be  
31 maintained and updated periodically in the sole discretion of the Reorganized Debtor for as long  
32 as the Chapter 11 Case stays open. Any Holder of an Allowed Claim, irrespective of when a  
33 Claim becomes an Allowed Claim, that does not notify the Reorganized Debtor of such Holder's  
34 then current address in accordance herewith within the latest of (i) one year after the Effective  
35 Date, (ii) 60 days after the attempted delivery of the undeliverable distribution and (iii) 180 days  
36 after the date such Claim becomes an Allowed Claim shall have its Claim for such undeliverable



1 distribution discharged and shall be forever barred, estopped and enjoined from asserting any  
2 such Claim against the Reorganized Debtor or their property. In such cases, (i) any Cash held for  
3 distribution on account of Allowed Claims shall be redistributed to Holders of Allowed Claims  
4 in the applicable Class on the next Periodic Distribution Date and (ii) any Cash held for  
5 distribution to other creditors shall be deemed unclaimed property under section 347(b) of the  
6 Bankruptcy Code and become property of the Reorganized Debtor, free of any Claims of such  
7 Holder with respect thereto. Nothing contained herein shall require the Reorganized Debtor to  
8 attempt to locate any Holder of an Allowed Claim.

9  
10 **c. Failure to Present Checks.**

11 Checks issued by the Distribution Agent on account of Allowed Claims shall be null and  
12 void if not negotiated within 180 days after the issuance of such check. In an effort to ensure that  
13 all Holders of Allowed Claims receive their allocated distributions, no later than 180 days after  
14 the issuance of such checks, the Reorganized Debtor shall File with the Bankruptcy Court a list  
15 of the Holders of any un-negotiated checks. This list shall be maintained and updated  
16 periodically in the sole discretion of the Reorganized Debtor for as long as the Chapter 11 Case  
17 stay open. Requests for reissuance of any check shall be made directly to the Distribution Agent  
18 by the Holder of the relevant Allowed Claim with respect to which such check originally was  
19 issued. Any Holder of an Allowed Claim holding an un-negotiated check that does not request  
20 reissuance of such un-negotiated check within 240 days after the date of mailing or other  
21 delivery of such check shall have its Claim for such un-negotiated check discharged and be  
22 discharged and forever barred, estopped and enjoined from asserting any such Claim against the  
23 Reorganized Debtor or its property. In such cases, any Cash held for payment on account of such  
24 Claims shall be property of the Reorganized Debtor, free of any Claims of such Holder with  
25 respect thereto. Nothing contained herein shall require the Reorganized Debtor to attempt to  
26 locate any Holder of an Allowed Claim.

27 **D. Compliance with Tax Requirements/Allocations.**

28 In connection with the Plan, to the extent applicable, the Reorganized Debtor shall  
comply with all tax withholding and reporting requirements imposed on them by any  
governmental unit, and all distributions pursuant hereto shall be subject to such withholding and  
reporting requirements. Notwithstanding any provision in the Plan to the contrary, the  
Reorganized Debtor and the Distribution Agent shall be authorized to take all actions necessary  
or appropriate to comply with such withholding and reporting requirements, including  
liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to  
pay applicable withholding taxes, withholding distributions pending receipt of information  
necessary to facilitate such distributions or establishing any other mechanisms they believe are  
reasonable and appropriate. The Reorganized Debtor reserves the right to allocate all  
distributions made under the Plan in compliance with all applicable liens and encumbrances.

For tax purposes, distributions in full or partial satisfaction of Allowed Claims shall be  
allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid  
interest that accrued on such Claims.

**E. Timing and Calculation of Amounts to Be Distributed.**

On the Initial Distribution Date (or if a Claim is not an Allowed Claim on the Effective

1 Date, on the date that such a Claim becomes an Allowed Claim, or as soon as reasonably  
2 practicable thereafter), each Holder of an Allowed Claim against the Debtor shall receive the full  
3 amount of the distributions that the Plan provides for Allowed Claims in the applicable Class.  
4 Except as otherwise provided herein, Holders of Claims shall not be entitled to interest,  
dividends or accruals on the distributions provided for herein, regardless of whether such  
distributions are delivered on or at any time after the Effective Date.

5 **F. Setoffs.**

6 The Debtor and the Reorganized Debtor may withhold (but not setoff except as set forth  
7 below) from the distributions called for hereunder on account of any Allowed Claim an amount  
8 equal to any Claims, Equity Interests, rights and Causes of Action of any nature that the Debtor  
9 or the Reorganized Debtor may hold against the Holder of any such Allowed Claim. In the event  
10 that any such Claims, Equity Interests, rights and Causes of Action of any nature that the Debtor  
11 or the Reorganized Debtor may hold against the Holder of any such Allowed Claim are  
12 adjudicated by Final Order or otherwise resolved, the Debtor may, pursuant to section 553 of the  
13 Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim and the  
14 distributions to be made pursuant hereto on account of such Allowed Claim (before any  
15 distribution is made on account of such Allowed Claim), the amount of any adjudicated or  
resolved Claims, Equity Interests, rights and Causes of Action of any nature that the Debtor or  
the Reorganized Debtor may hold against the Holder of any such Allowed Claim, but only to the  
extent of such adjudicated or resolved amount. Neither the failure to effect such a setoff nor the  
allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the  
Reorganized Debtor of any such Claims, Equity Interests, rights and Causes of Action that the  
Debtor or the Reorganized Debtor may possess against any such Holder, except as specifically  
provided herein.

16 **VIII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND**  
17 **DISPUTED CLAIMS**

18 **A. Resolution of Disputed Claims.**

19 **1. Allowance of Claims.**

20 After the Effective Date, the Reorganized Debtor shall have and shall retain any and all  
21 rights and defenses that the Debtor had with respect to any Claim, except with respect to any  
22 Claim deemed Allowed under the Plan. Except as expressly provided in the Plan or in any order  
23 entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the  
Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is  
24 deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a  
Final Order, including, without limitation, the Confirmation Order, in the Chapter 11 Case  
25 allowing such Claim. All settled claims approved prior to the Effective Date pursuant to a Final  
Order of the Bankruptcy Court pursuant to Bankruptcy Rule 9019 or otherwise shall be binding  
on all parties.

26 **2. Prosecution of Objections to Claims.**

27 After the Confirmation Date the Debtor or the Reorganized Debtor, as applicable, shall  
28 have the exclusive authority to File objections to Claims, settle, compromise, withdraw or litigate

1 to judgment objections to any and all Claims, regardless of whether such Claims are in a Class or  
2 otherwise; provided, however, this provision shall not apply to Fee Claims. From and after the  
3 Effective Date, the Reorganized Debtor may settle or compromise any Disputed Claim without  
4 any further notice to or action, order or approval of the Bankruptcy Court. The Reorganized  
5 Debtor shall have the sole authority to administer and adjust the Claims Register to reflect any  
6 such settlements or compromises without any further notice to or action, order or approval of the  
7 Bankruptcy Court.

### 3. Claims Estimation.

8 After the Confirmation Date the Debtor or the Reorganized Debtor, as applicable, may, at  
9 any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to  
10 applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law,  
11 including, without limitation, section 502(c) of the Bankruptcy Code, regardless of whether the  
12 Debtor or the Reorganized Debtor has previously objected to such Claim or whether the  
13 Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain  
14 jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim, contingent Claim  
15 or unliquidated Claim, including during the litigation concerning any objection to any Claim or  
16 during the pendency of any appeal relating to any such objection. Notwithstanding any provision  
17 otherwise in the Plan, a Claim that has been expunged from the Claims Register but that is  
18 subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at  
19 zero dollars, unless otherwise ordered by the Bankruptcy Court. All of the aforementioned  
20 Claims and objection, estimation and resolution procedures are cumulative and not exclusive of  
21 one another. Claims may be estimated and subsequently compromised, settled, withdrawn or  
22 resolved by any mechanism approved by the Bankruptcy Court.

### 4. Expungement or Adjustment to Claims without Objection.

23 Any Claim that has been paid, satisfied or superseded may be expunged on the Claims  
24 Register by the Reorganized Debtor, and any Claim that has been amended may be adjusted  
25 thereon by the Reorganized Debtor, in both cases without a claims objection having to be Filed  
26 and without any further notice to or action, order or approval of the Bankruptcy Court.

### 5. Deadline to File Objections to Claims.

27 Any objections to Claims shall be Filed no later than the Claims Objection Bar Date.

#### B. Disallowance of Claims.

28 All Claims of any Entity from which property is sought by the Debtor or the Reorganized  
Debtor under section 542, 543, 550 or 553 of the Bankruptcy Code or that the Debtor or the  
Reorganized Debtor allege is a transferee of a transfer that is avoidable under section 522(f),  
522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code shall be disallowed if (i) the  
Entity, on the one hand, and the Debtor or the Reorganized Debtor, on the other hand, agree or  
the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to  
turnover any property or monies under any of the aforementioned sections of the Bankruptcy  
Code and (ii) such Entity or transferee has failed to turnover such property by the date set forth  
in such agreement or Final Order.

1       EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM  
2       AND PROOFS OF INTEREST FILED AFTER THE APPLICABLE CLAIMS BAR  
3       DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE  
4       EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER  
5       OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH  
6       CLAIMS AND EQUITY INTERESTS MAY NOT RECEIVE ANY DISTRIBUTIONS ON  
7       ACCOUNT OF SUCH CLAIMS AND EQUITY INTERESTS, UNLESS SUCH LATE  
8       PROOF OF CLAIM OR EQUITY INTEREST IS DEEMED TIMELY FILED BY A  
9       BANKRUPTCY COURT ORDER ON OR BEFORE THE LATER OF (1) THE  
10      CONFIRMATION HEARING AND (2) 45 DAYS AFTER THE APPLICABLE CLAIMS  
11      BAR DATE.

12           **C.     Amendments to Claims.**

13           On or after the Effective Date, except as otherwise provided herein, a Claim may not be  
14           Filed or amended without the prior authorization of the Bankruptcy Court or the Reorganized  
15           Debtor, and, to the extent such prior authorization is not received, any such new or amended  
16           Claim Filed shall be deemed disallowed and expunged without any further notice to or action,  
17           order or approval of the Bankruptcy Court.

18           **IX.    CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF**  
19           **THE PLAN**

20           **A.     Conditions Precedent to Confirmation.**

21           It shall be a condition to Confirmation hereof that all provisions, terms and conditions  
22           hereof are approved in the Confirmation Order.

23           **B.     Conditions Precedent to Consummation.**

24           It shall be a condition to Consummation of the Plan that the following conditions shall  
25           have been satisfied or waived pursuant to the provisions of Article IX.C hereof.

26           1.     The Plan and all Plan Supplement documents, including any amendments,  
27           modifications or supplements thereto, shall be reasonably acceptable to the Debtor.

28           2.     The Confirmation Order shall have been entered and become a Final Order in a  
form and in substance reasonably satisfactory to the Debtor. The Confirmation Order shall  
provide that, among other things, the Debtor or the Reorganized Debtor, as appropriate, is  
authorized and directed to take all actions necessary or appropriate to consummate the Plan,  
including, without limitation, entering into, implementing and consummating the contracts,  
instruments, releases, leases, indentures and other agreements or documents created in  
connection with or described in the Plan.

          3.     All actions, documents, certificates and agreements necessary to implement this  
Plan shall have been effected or executed and delivered to the required parties and, to the extent  
required, Filed with the applicable governmental units in accordance with applicable laws.

1           **C.      Waiver of Conditions.**

2           The conditions to Confirmation of the Plan and to Consummation of the Plan set forth in  
3 this Article IX may be waived by the Debtor without notice, leave or order of the Bankruptcy  
4 Court or any formal action other than proceeding to confirm or consummate the Plan.

5           **D.      Effect of Non Occurrence of Conditions to Consummation.**

6           If the Consummation of the Plan does not occur, the Plan shall be null and void in all  
7 respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a  
8 waiver or release of any claims by or Claims against or Equity Interests in the Debtor; (2)  
9 prejudice in any manner the rights of the Debtor, any Holders or any other Entity; or (3)  
10 constitute an admission, acknowledgment, offer or undertaking by the Debtor, any Holders or  
11 any other Entity in any respect.

12                   **X.      SETTLEMENT RELEASE AND RELATED PROVISIONS**

13           **A.      Compromise and Settlement.**

14           Notwithstanding anything contained herein to the contrary, the allowance, classification  
15 and treatment of all Allowed Claims and their respective distributions and treatments hereunder,  
16 takes into account the relative priority and rights of the Claims and the Equity Interests in each  
17 Class in connection with any contractual, legal and equitable subordination rights relating thereto  
18 whether arising under general principles of equitable subordination, section 510(b) and (c) of the  
19 Bankruptcy Code or otherwise. As of the Effective Date, any and all contractual, legal and  
20 equitable subordination rights, whether arising under general principles of equitable  
21 subordination, section 510(b) and (c) of the Bankruptcy Code or otherwise, relating to the  
22 allowance, classification and treatment of all Allowed Claims and their respective distributions  
23 and treatments hereunder are settled, compromised, terminated and released pursuant hereto.

24           The Confirmation Order will constitute the Bankruptcy Court's finding and determination  
25 that the settlements reflected in the Plan are (1) in the best interests of the Debtor, its estate and  
26 all Holders of Claims and Equity Interests, (2) fair, equitable and reasonable, (3) made in good  
27 faith and (4) approved by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code  
28 and Bankruptcy Rule 9019. The Confirmation Order shall approve the releases by all Entities of  
all such contractual, legal and equitable subordination rights or Causes of Action that are  
satisfied, compromised and settled pursuant hereto.

          In accordance with the provisions of this Plan, including Article VIII hereof, and  
pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, without any further  
notice to or action, order or approval of the Bankruptcy Court, after the Effective Date (1) the  
Reorganized Debtor may, in its sole and absolute discretion, compromise and settle Claims  
against them and (2) the Reorganized Debtor may, in its sole and absolute discretion,  
compromise and settle Causes of Action against other Entities.

1           **B.       Preservation of Rights of Action.**

2                   **1.       Maintenance of Causes of Action.**

3           Except as otherwise provided in the Plan or Confirmation Order, after the Effective Date,  
4 the Reorganized Debtor shall retain all rights to commence, pursue, litigate, or settle, as  
5 appropriate, any and all Causes of Action, whether existing as of the Commencement Date or  
6 thereafter arising, in any court or other tribunal including, without limitation, in an adversary  
7 proceeding Filed in the Chapter 11 Case.

8                   **2.       Preservation of All Causes of Action Not Expressly Settled or  
9 Released.**

10           Unless a claim or Cause of Action against a Holder of a Claim or an Equity Interest or  
11 other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or  
12 any Final Order (including, without limitation, the Confirmation Order), the Debtor expressly  
13 reserves such claim or Cause of Action for later adjudication by the Debtor or the Reorganized  
14 Debtor (including, without limitation, claims and Causes of Action not specifically identified or  
15 of which the Debtor may presently be unaware or which may arise or exist by reason of  
16 additional facts or circumstances unknown to the Debtor at this time or facts or circumstances  
17 that may change or be different from those the Debtor now believe to exist) and, therefore, no  
18 preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral  
19 estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or  
20 laches shall apply to such claims or Causes of Action upon or after the Confirmation or  
21 Consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation  
22 Order, or any other Final Order (including, without limitation, the Confirmation Order). In  
23 addition, the Debtor and the Reorganized Debtor expressly reserve the right to pursue or adopt  
24 any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested  
25 party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such  
26 lawsuits.

27                   **3.       Third Party Release**

28           EFFECTIVE AS OF THE CONFIRMATION DATE, THE DEBTOR AND ALL  
CURRENT OFFICERS AND DIRECTORS OF THE DEBTOR AS OF THE EFFECTIVE  
DATE SHALL RECEIVE A FULL RELEASE FROM THE DEBTOR AND ITS ESTATE  
FROM ANY AND ALL CAUSES OF ACTION THAT MIGHT BE ASSERTED ON BEHALF  
OF THE DEBTOR OR ITS ESTATE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR  
UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-  
CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE OF THE PLAN, WHETHER IN  
LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT OR OTHERWISE,  
ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR, INCLUDING,  
WITHOUT LIMITATION, IN ANY WAY RELATED TO THE CHAPTER 11 CASE, THE  
DEBTOR'S RESTRUCTURING, THE NEGOTIATION, FORMULATION OR  
PREPARATION OF THE PLAN, THE DISCLOSURE STATEMENT, OR ANY OTHER ACT  
OR OMISSION RELATED THERETO OCCURRING ON OR BEFORE THE  
CONFIRMATION DATE; PROVIDED, HOWEVER, THAT THE FOREGOING RELEASE  
SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION (1) OF THE  
DEBTOR OR ITS ESTATE FOR ANY CLAIMS ARISING FROM WILLFUL MISCONDUCT



OR GROSS NEGLIGENCE; (2) CLAIMS AGAINST ANY FORMER OFFICER OR DIRECTOR OF THE DEBTOR; OR (3) CLAIMS THAT MAY BE ASSERTED BY THIRD PARTIES AGAINST PERSONS OR ENTITIES OTHER THAN THE DEBTOR.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE RELEASES ARE (1) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS; (2) FAIR, EQUITABLE AND REASONABLE; AND (3) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING.

# **XI. EFFECT OF PLAN CONFIRMATION BINDING NATURE OF THE PLAN**

THIS PLAN SHALL BIND ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS AND INTERCOMPANY INTERESTS IN THE DEBTORS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING WHETHER OR NOT SUCH HOLDER (I) WILL RECEIVE OR RETAIN ANY PROPERTY OR INTEREST IN PROPERTY UNDER THE PLAN, (II) HAS FILED A PROOF OF CLAIM OR INTEREST IN THE CHAPTER 11 CASES OR (III) FAILED TO VOTE TO ACCEPT OR REJECT THE PLAN OR VOTED TO REJECT THE PLAN.

## **A. Discharge Injunction.**

The rights afforded in the Plan and the treatment of all Claims shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever arising prior to the Effective Date against the Debtor and the Estate, including any interest accrued on such Claims from and after the Petition Date. Except as otherwise provided in the Plan or the Confirmation Order, on the Effective Date, (a) the Debtor, the Estate, the Reorganized Debtor and their respective property are discharged and released hereunder to the fullest extent permitted by Bankruptcy Code sections 524 and 1141 from all Claims and rights against them that arose before the Effective Date, including all debts, obligations, demands, and liabilities, and all debts of the kind specified in Bankruptcy Code sections 502(g), 502(h), or 502(i), regardless of whether or not (i) a proof of Claim based on such debt is Filed or deemed Filed, (ii) a Claim based on such debt is allowed pursuant to Bankruptcy Code section 502, or (iii) the Holder of a Claim based on such debt has or has not accepted the Plan; (b) any judgment underlying a Claim discharged hereunder is void; and (c) all entities are precluded from asserting against the Debtor, the Estate, the Reorganized Debtor and their respective property, any Claims or rights based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

Except as otherwise provided in the Plan or the Confirmation Order, on and after the Effective Date, all entities who have held, currently hold, or may hold a Claim against the Debtor, the Estate, or the Reorganized Debtor, that is based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, that otherwise arose or accrued prior to the Effective Date, or that otherwise is discharged pursuant to the Plan, are permanently enjoined from taking any of the following actions on account of any such discharged Claim, (the "Permanent Injunction"): (a) commencing or continuing in any manner any action or other proceeding against the Debtor, the Estate, the Reorganized Debtor or their respective property, that is inconsistent with the Plan or the Confirmation Order; (b)

1 enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or  
2 order against the Debtor, the Estate, the Reorganized Debtor or their respective property, other  
3 than as expressly permitted under the Plan; (c) creating, perfecting, or enforcing any lien or  
4 encumbrance against property of Debtor, the Estate, the Reorganized Debtor, or their respective  
5 property, other than as expressly permitted under the Plan; and (d) commencing or continuing  
6 any action, in any manner, in any place that does not comply with or is inconsistent with the  
7 provisions of the Plan, the Confirmation Order, or the discharge provisions of Bankruptcy Code  
8 section 1141. Any person or entity injured by any willful violation of such Permanent Injunction  
9 shall recover actual damages, including costs and attorneys' fees, and, in appropriate  
10 circumstances, may recover punitive damages, from the willful violator.

## 11 XII. RETENTION OF JURISDICTION

12 Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective  
13 Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the  
14 Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the  
15 Debtor and the Plan as legally permissible, including, without limitation, jurisdiction to:

16 1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or  
17 secured or unsecured status of any Claim, including, without limitation, the resolution of any  
18 request for payment of any Administrative Claim and the resolution of any and all objections to  
19 the allowance or priority of any Claim;

20 2. Grant or deny any applications for allowance of compensation or reimbursement  
21 of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or  
22 before the Confirmation Date;

23 3. Resolve any matters related to the assumption, assignment or rejection of any  
24 Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a  
25 Debtor or Reorganized Debtor may be liable and to adjudicate and, if necessary, liquidate, any  
26 Claims arising therefrom, including, without limitation, those matters related to any amendment  
27 to the Plan after the Effective Date to add Executory Contracts or Unexpired Leases to the list of  
28 Executory Contracts and Unexpired Leases to be assumed;

4. Resolve any issues related to any matters adjudicated in the Chapter 11 Case;

5. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant  
to the provisions of the Plan;

6. Decide or resolve any motions, adversary proceedings, contested or litigated  
matters and any other Causes of Action that are pending as of the Effective Date or that may be  
commenced in the future, and grant or deny any applications involving a Debtor that may be  
pending on the Effective Date or instituted by the Reorganized Debtor after the Effective Date,  
*provided* that the Reorganized Debtor shall reserve the right to commence actions in all  
appropriate forums and jurisdictions;

7. Enter such orders as may be necessary or appropriate to implement or  
consummate the provisions of the Plan and all other contracts, instruments, releases, indentures  
and other agreements or documents adopted in connection with the Plan, the Plan Supplement or



1 the Disclosure Statement;

2 8. Resolve any cases, controversies, suits or disputes that may arise in connection  
3 with the Consummation, interpretation or enforcement of the Plan or any Entity's obligations  
4 incurred in connection with the Plan;

5 9. Hear and determine all Causes of Action that are pending as of the Effective Date  
6 or that may be commenced in the future;

7 10. Issue injunctions and enforce them, enter and implement other orders or take such  
8 other actions as may be necessary or appropriate to restrain interference by any Entity with  
9 Consummation or enforcement of the Plan, except as otherwise provided in the Plan;

10 11. Enforce any provision hereof;

11 12. Enter and implement such orders or take such others actions as may be necessary  
12 or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

13 13. Resolve any other matters that may arise in connection with or relate to the Plan,  
14 the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture  
15 or other agreement or document adopted in connection with the Plan or the Disclosure  
16 Statement; and

17 14. Enter an order concluding the Chapter 11 Case.

### 18 **XIII. MISCELLANEOUS PROVISIONS**

#### 19 **A. Payment of Statutory Fees.**

20 All fees payable pursuant to section 1930 of title 28 of the United States Code after the  
21 Effective Date shall be paid prior to the closing of the Chapter 11 Case when due.

#### 22 **B. Modification of Plan.**

23 Effective as of the date hereof and subject to the limitations and rights contained in the  
24 Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the  
25 Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order; and  
26 (b) after the entry of the Confirmation Order, the Debtor or the Reorganized Debtor, as  
27 applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance  
28 with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any  
inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent  
of the Plan.

#### 29 **C. Revocation of Plan.**

30 The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation  
Date and to File subsequent chapter 11 plans. If the Debtor revokes or withdraw the Plan, or if  
Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all  
respects; (2) any settlement or compromise embodied in the Plan, assumption or rejection of  
Executory Contracts or Unexpired Leases effected by the Plan and any document or agreement  
executed pursuant hereto shall be deemed null and void except as may be set forth in a separate  
order entered by the Bankruptcy Court; and (3) nothing contained in the Plan shall: (a) constitute  
a waiver or release of any Claims by or against, or any Equity Interests in, such Debtor or any

1 other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c)  
2 constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any  
other Entity.

3 **D. Successors and Assigns.**

4 The rights, benefits and obligations of any Entity named or referred to herein shall be  
5 binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign  
of such Entity.

6 **E. Reservation of Rights.**

7 Except as expressly set forth herein, the Plan shall have no force or effect unless and until  
8 the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement  
9 or provision contained herein, nor the taking of any action by a Debtor or any other Entity with  
10 respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1)  
any Debtor with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any  
Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

11  
12 **F. Section 1146 Exemption.**

13 Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant  
14 hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in  
15 the United States, and the Confirmation Order shall direct the appropriate state or local  
16 governmental officials or agents to forego the collection of any such tax or governmental  
assessment and to accept for filing and recordation instruments or other documents pursuant to  
such transfers of property without the payment of any such tax or governmental assessment.  
Such exemption specifically applies, without limitation, to all documents necessary to evidence  
and implement the provisions of and the distributions to be made under the Plan.

17 **G. Further Assurances.**

18 The Debtor or the Reorganized Debtor, as applicable, all Holders of Claims receiving  
19 distributions hereunder and all other Entities shall, from time to time, prepare, execute and  
20 deliver any agreements or documents and take any other actions as may be necessary or  
advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

21 **H. Severability.**

22 If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy  
23 Court to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter  
24 and interpret such term or provision to make it valid or enforceable to the maximum extent  
25 practicable, consistent with the original purpose of the term or provision held to be invalid, void  
or unenforceable, and such term or provision then will be applicable as altered or interpreted,  
26 *provided* that the Debtor, the Reorganized Debtor or any affected Entity (as applicable) may seek  
an expedited hearing before the Bankruptcy Court to address any objection to any such alteration  
27 or interpretation of the foregoing. Notwithstanding any such order by the Bankruptcy Court,  
alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in  
28 full force and effect. The Confirmation Order shall constitute a judicial determination and shall  
provide that each term and provision of the Plan, as it may have been altered or interpreted in  
accordance with the foregoing, is valid and enforceable pursuant to its terms.

**I. Service of Documents.**

Any pleading, notice or other document required by the Plan to be served on or delivered to the Debtor shall be sent by overnight mail to:

Virtual Communications Corporation  
Attn: Michael Yoder  
319 E. Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119

with copies to:

Kolesar & Leatham  
Attn: Bart K. Larsen, Esq.  
400 S. Rampart Blvd., Suite 400  
Las Vegas, Nevada 89145

**J. Return of Security Deposits.**

Unless the Debtor has agreed otherwise in a written agreement or stipulation approved by the Bankruptcy Court, all security deposits provided by the Debtor to any Person or Entity at any time after the Commencement or offset of any kind.

**K. Filing of Additional Documents.**

On or before the Effective Date, the Debtor may File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**L. Default.**

Upon the Effective Date of the Plan, in the event the Debtor fails to timely perform any of the obligations set forth in the Plan, the applicable party-in-interest shall notify the Debtor and Debtor's counsel of the default in writing in accordance with the notice provisions herein, after which the Debtor shall have: (i) twenty (20) Business Days from the date of receipt of the written notification to cure the default; or (ii) if the cure requires more than twenty (20) business days, so long as the Debtor initiates steps to cure the default within twenty (20) business days and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical. If the Debtor fails to timely cure the default as provided above, the applicable creditor shall be free to pursue any and all rights it may have under the contract(s) between the parties and/or applicable state law, without further court order or proceeding being necessary.

1 Dated this 12<sup>th</sup> day of June, 2018.

2 VIRTUAL COMMUNICATIONS CORPORATION

3  
4 /s/ Michael Yoder

By: Michael Yoder

5 Its: President

6 Prepared and Submitted by:

7 KOLESAR & LEATHAM

8 /s/ Bart K. Larsen, Esq.

9 Bart K. Larsen, Esq.

10 Nevada Bar No. 8538

400 S. Rampart Blvd., Ste. 400

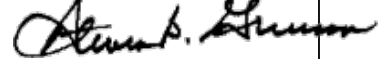
11 Las Vegas, Nevada 89145

12 *Attorneys for Debtor Virtual*  
13 *Communications Corporation*

# **EXHIBIT A-1**

**SCHEDULE OF ASSUMED AGREEMENTS**

None.



**OPPS**

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Attorneys for Defendant  
Ronald J. Robinson

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**  
\*\*\*

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.

AND ALL CONSOLIDATED ACTIONS

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

CONSOLIDATED WITH

Case No. A-17-763003-C

**DEFENDANTS' OPPOSITION TO**  
**PLAINTIFF'S MOTION FOR**  
**DAMAGES AND ATTORNEY'S FEES**  
**AND**  
**PARTIAL JOINDER TO DEFENDANT**  
**VERNON RODRIGUEZ'S OPPOSITION**  
**TO PLAINTIFF'S MOTION FOR**  
**ATTORNEY'S FEES**

COME NOW, Defendant, RONALD J. ROBINSON (hereinafter "Robinson"), by and  
through his attorney of record, HAROLD P. GEWERTER, ESQ., of HAROLD P. GEWERTER,  
ESQ., LTD., and hereby files his Opposition to Plaintiff's Motion for Damages and Attorney's

1 Fees and Partial Joinder to Defendant Vernon Rodriguez's Opposition to Plaintiff's Motion for  
2 Damages and Attorney's Fees.

3 The instant Opposition and Partial Joinder is made and based upon the following  
4 Memorandum of Points and Authorities, Rodriguez's Opposition to Plaintiff's Motion for  
5 Damages and Attorney's Fees, all pleadings and papers on file herein, and any oral arguments to  
6 be entertained by the Court.  
7

8 Dated this \_\_\_\_ day of May, 2020.

9 Respectfully submitted,

10 HAROLD P. GEWERTER, ESQ., LTD.

11 /s/: Harold P. Gewerter

12 HAROLD P. GEWERTER, ESQ.

13 Nevada Bar No. 499

14 1212 S. Casino Center Blvd.

15 Las Vegas, Nevada 89101

16 Tel: (702) 382-1714

17 Email: harold@gewerterlaw.com

18 Attorneys for Defendants

19  
20  
21  
22  
23  
24  
25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **I. Statement of Facts**

27 In the instant Opposition and Partial Joinder, Robinson joins and incorporates herein  
28 Defendant Rodriguez's Statement of Facts set forth in his Opposition. The instant Opposition  
also joins Defendant Rodriguez's legal authorities and arguments as to issues regarding securities  
law, bankruptcy, statute of limitations, and damages and attorney's fees.

**II. Legal Authorities and Arguments**

In addition to those legal authorities and arguments contained in Defendant Rodriguez's  
Opposition, Robinson sets forth the following:



1 a) The May 8, 2020 Order was improper

2 The Court's Decision filed April 27, 2020 provided as follows:

3 Within 30 days of this decision, **the parties shall meet and confer and submit**  
4 **a proposed** Findings of Fact and Conclusions of Law consistent with this  
5 Decision.

6 Court's Decision, page 6. (Emphasis added). Plaintiff's attorney **failed** to meet and confer with  
7 Defendants' respective counsel for the purposes of submitting a jointly proposed Findings of Fact  
8 and Conclusions of Law. **Instead**, Plaintiff's attorney filed an *ex parte* Findings of Fact and  
9 Conclusions of Law with the Court without any input from Defendants' counsel. The Court, not  
10 being aware that the proposed Findings of Fact and Conclusions of Law were not in compliance  
11 with its Decision, signed and entered same on May 8, 2020.

12  
13 Not only was the May 8, 2020 Findings of Fact and Conclusions of Law procedurally in  
14 violation with the Court's April 27, 2020 Decision, it is **substantively improper**. A district court  
15 decision must be supported by findings of fact and conclusions of law when the record is unclear.  
16 *Trident Const. Corp. v. West Elec., Inc.*, 105 Nev. 423, 776 P. 2d 1239 (1989); Findings of fact  
17 and conclusions of law must be accompanied by findings and conclusions "concerning the basic  
18 evidentiary facts relied upon to support the finding of ultimate fact." *Nova Horizon, Inc. v. City*  
19 *Council of Reno*, 105 Nev. 92, 98, 769 P.2d 721, 724 (1989). When the findings of fact and  
20 conclusions of law are unclear or insufficient, the Supreme Court will "remand the case to the  
21 district court, so that adequate findings of fact and conclusions of law may be made by the district  
22 judge to the end that this court may appropriately review the issues presented on this appeal."  
23 *Pease v. Taylor*, 86 Nev. 195, 467 P. 2d 109 (1970).

24  
25  
26 In the instant matter, the May 8, 2020 Findings of Fact and Conclusions of Law – which  
27 were drafted solely by Plaintiff's counsel and submitted to the Court – is a maladroitness, jumbled,  
28

1 shell of an Order. Said Findings of Fact and Conclusions of Law fail to specify which portions  
2 therein are “findings of fact” versus “conclusions of law.” Furthermore, not only are these  
3 distinctions stylistically unlabeled, even the most thorough review cannot tell, substantively,  
4 which portions of the Order pertain to facts and which pertain to law. As such, the May 8, 2020  
5 Findings of Fact and Conclusions of Law is a fugitive pleading, and more importantly,  
6 completely unappealable. Accordingly, said “Findings of Fact and Conclusions of Law” must  
7 be set aside and/or Defendants should be given an opportunity to craft a new proposed order.  
8

9 b) The May 8, 2020 Order fails to address necessary parties

10 Rule 17 of the Nevada Rules of Civil Procedure provides: “Every action shall be  
11 prosecuted in the name of the real party in interest.” NRCP 17(a). Trustees of trust funds “are  
12 real parties in interest, under NRCP 17(a), as trustees of an express trust which is a third party  
13 beneficiary of the agreement.” *Back Streets, Inc. v. Campbell*, 95 Nev. 651, 601 P.2d 54 (1979).  
14 A trustee of an express trust may sue in the trustee’s own name without joining the party for  
15 whose benefit the action is brought. *See* NRCP 17(a). However the reverse does not hold, i.e. a  
16 beneficiary is unable to sue in the beneficiary’s own name without joining the trust or trustee.  
17  
18

19 Trustee is defined as “the person holding property in trust and includes trustees, a  
20 corporate as well as a natural person and a successor or substitute trustee.” NRS 163.020. Notably  
21 absent from this definition of trustee is “beneficiary.” Beneficiaries are not trustees.  
22

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

25 A person who is subject to service of process and whose joinder will  
26 not deprive the court of jurisdiction over the subject matter of the  
27 action shall be joined as a party in the action if (1) in the person’s  
28 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).

In the instant matter, the May 8, 2020 Findings of Fact and Conclusions of Law fails address Plaintiff’s failure to join the Trustee, Provident Trust, which Robinson intends to raise on appeal. Without proper findings of fact and conclusions of law on this issue, however, which has been consistently raised by Robinson, said Findings of Fact and Conclusions of Law is **again** unappealable.

#### c) Validity of Loan Guarantee

Finally, the May 8, 2020 Findings of Fact and Conclusions of Law must be set aside because it also fails to address the claim that Robinson was somehow a guarantor. In *Marion Properties, Ltd. v. Goff*, 108 Nev. 946, 840 P.2d 1230 (1992) is still the operative law in this matter. In *Marion Properties*, the plaintiff alleged that Americana Construction ("Americana") had entered into an agreement with Marion Properties, Ltd. ("Marion") to build condominiums on Marion's property, that Americana had breached its contract with Marion, that Americana's officers, directors, shareholders or owners had signed personal guaranties agreeing to indemnify

1 Americana's creditors and that such individuals were liable on the guaranties. The defendants  
2 moved to dismiss the Complaint on the ground that the plaintiff's claim was barred due to a  
3 stipulated judgment between Americana and Marion in another case whereby each dismissed  
4 with prejudice its claims against the other relating to the construction agreement.

5 The District Court granted the motion to dismiss. On appeal, the Supreme Court affirmed.

6 It stated:  
7

8 It is well-settled that guarantors and sureties are exonerated if the creditor alters  
9 the obligation of the principal without the consent of the guarantor or surety.  
10 Williams v. Crusader Disc. Corp., 75 Nev. 67, 70-71, 334 P.2d 843, 846 (1959);  
11 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).

12 In this case, the debt has been completely extinguished as between Marion and  
13 Americana. The discharge of Americana's obligation to Marion, without the  
14 consent of respondents, discharged the obligation of respondents as guarantors  
15 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).

16 The Court's holdings in *Marion Properties* can be traced back to the decades-old decision  
17 in *Williams v. Crusader Discount Corp.*, 75 Nev. 67, 334 P. 2d 843 (1959). In *Williams*, the  
18 Court dealt with the issue of a creditor who alters the obligation of a guarantor or surety. In  
19 finding that such act exonerates the responsibilities of guarantors/sureties, the *Williams* Court  
20 stated:  
21

22 It is settled law that the novation of a contract, the performance of which is  
23 guaranteed by sureties who do not consent to the novation absolves them of their  
24 liability, which disappears with the debt 846\*846 to which it was collateral. 66  
C.J.S., Novation, § 22, 39 Am.Jur., Novation, § 27.

25 "Guarantors and sureties are exonerated if the creditor, by any act done  
26 without their consent, alters the obligation of the principal in any respect,  
27 or impairs or suspends the remedy for its enforcement. Where after breach  
28 of contract, the performance of which is guaranteed, the creditor and  
principal debtor enter into a new contract by which the amount of damages

1 then due is made payable on a future day, and upon terms different from  
2 those imposed by the original agreement, such new contract presumptively  
3 merges the old. In such a case the new obligation \* \* \* becomes the  
4 exclusive medium by which the rights of the parties in respect to the  
5 payment of damages are to be ascertained. Such a contract is not collateral  
6 to the original, but, in respect to the subject to which it appertains, it  
7 merges and supersedes the other.” *Weed S.M. Co. v. Winchell*, 107 Ind.  
8 260, 7 N.E. 881, 884.

9 “[A] surety is discharged by the novation of the debt; for he can no longer  
10 be bound for the first debt for which he was a surety, since it no longer  
11 subsists, having been extinguished by the novation; neither can he be  
12 bound for the new debt, into which the first has been converted, since this  
13 new debt was not the debt to which he acceded.” *Frost v. Harbert*, 20  
14 Idaho 336, 118 P. 1095, 1096, 38 L.R.A.,N.S., 875.

15 Not only is the Court’s holdings in *Marion Properties* rooted in established law, said  
16 holdings have since been **subsequently affirmed by the Court**. In *Southwest Securities v.*  
17 *AMFAC, Inc.*, 110 Nev. 1036, 879 P.2d 755 (1994), the Court upheld the holding of *Marion*  
18 *Properties*. In ruling in favor of the Defendant, the Court in *Southwest Securities* held:

19 “It is well-settled that guarantors and sureties are exonerated if the creditor alters  
20 the obligation of the principal without the consent of the guarantor or surety.”  
21 *Marion Properties, Ltd. v. Goff*, 108 Nev. 946, 948, 840 P.2d 1230, 1231 (1992).  
22 Thus, if [Plaintiff], as lessor-creditor, altered the obligation of Airport, the lessee-  
23 principal, without the consent of [Defendant], the guarantor, then [Defendant’s]  
24 obligation as guarantor was exonerated.

25 A review of published opinions by the undersigned reveals no other commentary on the  
26 clear holding of *William*, *Marion Properties*, and *Southwest Securities*. As such, this Court can  
27 avail itself in deciding the instant matter to the operative and current Nevada law holding that  
28 guarantors and sureties are exonerated if the creditor alters the obligation of the principal without  
the consent of the guarantor or surety.

Once again, the May 8, 2020 Findings of Fact and Conclusions of Law is unappealable  
for failing to address this issue. As such, it should be set aside so that a proper Findings of Fact  
and Conclusions of Law – agreed upon by all the parties – can be submitted to the Court.

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Dated this 27<sup>th</sup> day of May, 2020.

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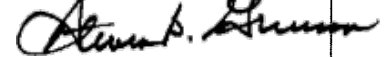
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DISTRICT COURT  
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN ) Case No. A-17-762264-C  
)  
Steven A. Hotchkiss, ) Dept.: 8  
)  
PLAINTIFF, ) REPLY TO DEFENDANT  
) VERNON RODRIGUEZ'  
v. ) OPPOSITION TO MOTION FOR  
) ATTORNEY'S FEES AND  
Ronald J. Robinson, Vernon Rodriguez, Frank ) DAMAGES  
Yoder, Alisa Davis and DOES 1-10 and ROES 1-  
10, inclusively )

DEFENDANTS

Anthony White, Robin Suntheimer, Troy ) CONSOLIDATED WITH  
Suntheimer, Stephens Ghesquiere, Jackie Stone, )  
Gayle Chany, Kendall Smith, Gabriele ) Case No. A-17-763003-C  
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

**REPLY BRIEF**

Plaintiffs file this Reply Brief to Defendant Vernon Rodriguez' Opposition to  
Plaintiffs' Motion for Attorney's Fees and Damages.



1 Mr. Rodríguez' new counsel raises three points:

- 2 1. That Mr. Rodriguez cannot be liable to Plaintiffs as a control person due  
3 to VCC's Bankruptcy;
- 4 2. That Plaintiffs' claims against Mr. Rodriguez are barred by the Statute  
5 of Limitations; and,
- 6 3. That Plaintiffs request for attorney's fees is improper.

7  
8 **1. VCC's Bankruptcy Does Not Absolve Mr. Rodriguez of Control**  
9 **Person Liability**

10 Defendant argues that NRS §90.660 provides that control persons are only  
11 liable "to the same extent" as the primary violator (VCC). Because VCC received a  
12 discharge, Rodriguez claims he cannot be liable, since his liability exists only "to the  
13 same extent" as VCC's. This novel argument ignores the underlying facts in this case,  
14 and existing case law.

15 Mr. Rodriguez' argument is identical to the one raised by control persons in  
16 Schleicher v. Wendt, 529 F. Supp. 2d 959 (S.D. Ind. 2007). There, the Plaintiffs  
17 alleged that individual "control persons" were liable for securities fraud committed by  
18 the corporate Defendant Consec. The control persons argued that they couldn't be  
19 liable, because Consec filed for bankruptcy. The Court rejected this argument.

20 The Court's analysis involved an interpretation of Section 20(a) of the  
21 Securities Exchange Act, the federal regulatory scheme upon which Nevada's  
22 Securities Act and control person statute is based. The federal statute contains  
23 identical "to the same extent" language that Mr. Rodriguez relies upon in his  
24

1 Opposition:

2 “ Every person who, directly or indirectly, controls any person liable  
3 under any provision of this chapter or of any rule or regulation thereunder  
4 shall also be liable jointly and severally with and to the same extent as such  
5 controlled person to any person to whom such controlled person is liable...”

6 15 U.S.C. § 78t(a). (Emphasis added).”

7 “ Defendants argue that they can be held liable under section 20(a) only  
8 “*to the same extent as*” Consecro is held liable. Since Consecro was discharged in  
9 bankruptcy from any potential liability under the Exchange Act, defendants  
10 argue, plaintiffs cannot state a claim against them under section 20(a).”

11 “Plaintiffs counter by citing *Kemmerer v. Weaver*, 445 F.2d 76 (7th Cir.  
12 1971). In *Kemmerer*, the alleged primary violator, an agricultural cooperative  
13 association, was dissolved by the defendants. Defendants there, like the  
14 defendants here, argued they could be held liable under section 20(a) only to  
15 the same extent as the alleged primary violator; *i.e.*, not at all. The court  
16 disposed of the defendants' argument as follows:

17 “The premise of this argument is that there is a finding of “no liability”  
18 with respect to the [alleged primary violator]. No such finding exists, it  
19 appearing instead that the [alleged primary violator] was dismissed  
20 from the suit for lack of jurisdiction due to a failure to obtain service of  
21 process. It further appears that the reason for the failure to obtain  
22 process was that the [alleged primary violator] had been dissolved on  
23 the initiative of many of the individual defendants in the present suit.  
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1 On such facts it is evident that [§ 20(a)] is of no avail to defendants.”

2 *Id.* at 78. “ (Emphasis added).

3 “While *Kemmerer* involved the alleged primary violator's dissolution  
4 rather than its bankruptcy, the Seventh Circuit's reasoning applies here.  
5 Accord, *In re CitiSource, Inc. Sec. Litig.*, 694 F. Supp. 1069, 1077 (S.D.N.Y.  
6 1988); *Elliott Graphics, Inc. v. Stein*, 660 F. Supp. 378, 381-82 (N.D. Ill. 1987).

7 **Conseco has not been found "not liable" for securities fraud. It**  
8 **would be inconsistent with the broad remedial purposes of the**  
9 **securities laws to permit senior executives of a bankrupt**  
10 **corporation — whose actions allegedly contributed to the**  
11 **bankruptcy — to avoid liability by relying on the same corporation's**  
12 **bankruptcy.**

13 Schleicher v. Wendt, 529 F. Supp. 2d 959, 980-981 (S.D. Ind. 2007). (**Emphasis**  
14 **added.**)

15 Like Conseco, VCC was put into bankruptcy by their control persons.  
16 Permitting them to escape liability for this self serving act would be an inequitable  
17 result. But, the issues before the court are even more compelling than those in  
18 Schleicher; Here, the court made a specific finding that VCC sold unregistered  
19 securities. See Findings of Fact and Conclusions of Law filed May 8, 2020. That  
20 finding applies to VCC's control persons.

21 The Court was able to make the finding because Plaintiffs had petitioned the  
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1 Bankruptcy court for permission to advance their control person claims.<sup>1</sup> Judge  
2 Barbero granted the request. See Exhibit “A”, attached. Defendants were thus aware  
3 that the claims were being prosecuted solely for the purpose of establishing facts  
4 upon which control person liability could be based.

5 Further, as acknowledged by Defendant, the bankruptcy court’s final order did  
6 not release claims against anyone other than VCC; so, neither Mr. Rodriguez nor Mr.  
7 Robinson were afforded relief by the VCC bankruptcy.

8 As in Schleicher, VCC wasn’t found “not liable”; the Chapter 11 bankruptcy  
9 filing prevented Plaintiffs from litigating and establishing its liability. Nevertheless,  
10 the District Court received evidence on the issue, and for purposes of control person  
11 liability only, made a finding that VCC sold unregistered securities. Based on that  
12 finding, control person liability was established.

13 As an additional issue, Mr. Rodriguez raises the issuance of shares in the  
14 bankruptcy to Plaintiffs in exchange for their Promissory Notes. This court ordered  
15 exchange does not affect the underlying securities law violation (sale of unregistered  
16 securities). And, because the shares are not traded, pay no income, and are essentially  
17 worthless, Plaintiffs – who were forced to accept them- do not want to keep them. As  
18 indicated in Plaintiffs’ motion for attorney’s fees, Plaintiffs are willing to (and are  
19 obliged to) turn over those shares to Defendants upon payment of the damages  
20 specified under NRS § 90.660. To the extent necessary, Plaintiffs hereby tender the  
21 shares received in exchange for the Notes. This is consistent with NRS §90.700 which  
22 states

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23 <sup>1</sup> This was done prior to the time the cases were consolidated.  
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1 NRS 90.700 Liability: General provisions.

2 1. Except as provided in NRS 90.680, a tender required under this  
3 chapter may be made before entry of judgment.

4 Based upon Schleicher, neither Mr. Rodriguez nor Mr. Robinson can escape  
5 liability (or damages) as control persons.

6 **2. The Statute of Limitations Defense is Inapplicable**

7 While it is a fact that Defendant raised the statute of limitations affirmative  
8 defense in his original answer, it is also a fact that he abandoned the defense, and did  
9 nothing to advance, argue or even attempt to prove it at trial. As a result, he failed to  
10 meet his burden of proof.

11 After a cursory assertion in his answer, Defendant never brought up the statutes  
12 of limitations again; He failed to file a motion to dismiss, motion for summary  
13 judgment or a motion in limine on the issue; he conducted no discovery on the  
14 subject, he failed to argue them in a pretrial or post trial brief; he failed to mention  
15 them in his opening statement or closing argument, and he failed to ask Plaintiff a  
16 single question in support of them. Not a single piece of evidence was introduced  
17 (or even offered) at trial in support of the defense. Now, three years later, after a  
18 change of counsel, and after the record has been closed, Defendant wants to finally  
19 argue the point, and have the court throw out its decision. This is inappropriate.  
20 Had Defendant raised the issue, or even questioned Plaintiffs on it, Plaintiffs would  
21 have opposed it by pointing to evidence in the record, whereby Defendant claimed in  
22 a PowerPoint slide that the securities were being sold in compliance with the  
23 securities laws (Exhibit 4, page 60), or where Mr. Robinson and Mr. Rodriguez  
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1 stalled Plaintiffs, by promising compensation (Exhibit 3, pages 49 and 54). Both of  
2 these pieces of evidence effectively mislead the Plaintiffs, and delayed their discovery  
3 of the violations.

4 Since the averments of an affirmative defense are taken as denied or avoided, each  
5 element of the defense must be affirmatively proved. The burden of proof clearly rests  
6 with the defendant. Res. Grp., LLC v. Nev. Ass'n Servs., Inc., 437 P.3d 154 (Nev.  
7 2019). The date on which a statute of limitations accrues is normally a question of  
8 fact, and the district court may determine that date as a matter of law only when the  
9 uncontroverted evidence irrefutably demonstrates the accrual date. Winn v. Sunrise  
10 Hosp. & Med. Ctr., 128 Nev. Adv. Op. 23, 277 P.3d at 458, 462-63 (2012). Non-  
11 compliance with a statute of limitations is a non-jurisdictional, affirmative defense,  
12 see, e.g., Dozier v. State, 124 Nev. 125, 129 (2008), and the party asserting an  
13 affirmative defense bears the burden of proof. See Nev. Ass'n Servs., Inc. v. Eighth  
14 Judicial Dist. Court, 130 Nev. Adv. Op. 94, 338 P.3d 1250, 1254 (2014).

15 The appropriate accrual date for the statute of limitations is a question of law only  
16 if the facts are uncontroverted. Day v. Zubel, 112 Nev. 972, 977, 922 P.2d 536, 539  
17 (1996); see also Bemis v. Estate of Bemis, 114 Nev. 1021 1025, 967 P.2d 437, 440  
18 (1998) ( "Dismissal on statute of limitations grounds is only appropriate 'when  
19 uncontroverted evidence irrefutably demonstrates plaintiff discovered or should have  
20 discovered' the facts giving rise to the cause of action." (quoting Nevada Power Co. v.  
21 Monsanto Co., 955 F.2d 1304, 1307 (9th Cir.1992).

22 Here, all of the Plaintiffs purchased within the five year window provided for  
23 under the statute. Plaintiffs submitted evidence showing 1. that VCC misrepresented  
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1 that the securities were being offered in compliance with the securities laws, and 2. a  
2 July, 2017 communication from Mr. Rodriguez that a subsequent securities offering  
3 would get Plaintiffs repaid (Ex. 3, page 54). This evidence - which is in the record-  
4 shows that Defendants took steps to prevent and delay Plaintiffs from discovering  
5 they had a claim for the sale of unregistered securities from the outset.

6 Further, Defendant is wrong when he states that Plaintiffs knew as early as  
7 February, 2015 that they had a claim, because they submitted demand letters to VCC.  
8 In fact, the demand letters were submitted years afterwards (See Exhibit 1, pages 4,  
9 8, 12, 19, 23 and 40).

10 Viewing all of this evidence in a light most favorable to the Plaintiffs, it is clear  
11 that the issue of when the statute began to run is controverted. Because Defendant  
12 offered nothing in support of his defense, the court need not disturb its findings.

13 Lastly, with respect to Judge Pro's decision in Baroi, had the legislature intended  
14 a hard and fast two year statute of limitation rule to apply to all unregistered  
15 securities claims, it would have written that into the statute. Instead, it effectively  
16 provided for a five year statute of repose, to allow the parties to present evidence on  
17 the date of discovery, tolling, and other relevant matters for the court to weigh in  
18 making its decision.

19 But the court need not even go that far; by failing to put forth any arguments or  
20 offer any evidence on the statute of limitations defense, Defendant abandoned his  
21 affirmative defense, and failed to meet his burden of proof.

22 **3. The Court May Award Fees Based on Counsel's Contingency Fee**  
23 **Agreement**

1 Mr. Rodriguez argues that Plaintiffs' claim for attorney's fees is unreasonable  
2 because it is based upon a contingency fee. Nevada law does not require billing  
3 records with every attorney's fees request. The law only requires the trial court to  
4 calculate "a reasonable fee." Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837,  
5 864 (2005).

6 "[I]n determining the amount of fees to award, the court is not limited to one  
7 specific approach; its analysis may begin with any method rationally designed to  
8 calculate a reasonable amount, including those based on a 'lodestar' amount or a  
9 contingency fee." Shuette, 121 Nev. at 864. The district court must properly weigh the  
10 Brunzell factors in deciding what amount to award. *Id.* at 864-65. "In this manner,  
11 whichever method the court ultimately uses, the result will prove reasonable as long  
12 as the court provides sufficient reasoning and findings in support of its ultimate  
13 determination." *Id.* at 865.

14 In Cooke v. Gove, the Nevada Supreme Court upheld an attorney fees award  
15 based on "the reasonable value" of the attorney's services, even though the case was  
16 taken on a contingency fee basis with no formal agreement. 61 Nev. 55, 61 (1941). The  
17 "evidence" to support the fee was the case file from the successful matter, some of the  
18 letters between the client and attorney, and two depositions from other attorneys  
19 about the value of the appellant's services. *Id.* at 57. The court noted that the  
20 reasonable fee was based on the trial court's evaluation of "the reasonable value of  
21 plaintiff's services from all the facts and circumstances" *Id.* at 61.

22 "Thus, the district court is not confined to authorizing an award of attorney  
23 fees exclusively from billing records or hourly statements. See Shuette, 121 Nev. at  
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1 864-65; Brunzell, 85 Nev. at 349. Rather, limiting the source for the calculation  
2 primarily to billing records is too restrictive. See generally Shuette, 121 Nev. at 864.  
3 Accordingly, a trial court can award attorney fees to the prevailing party who was  
4 represented under a contingency fee agreement, even if there are no hourly billing  
5 records to support the request.”

6 O'Connell v. Wynn Las Vegas, LLC, 429 P.3d 664 (Nev. App. 2018).

7 “Courts have recognized an additional reason that supports awarding attorney  
8 fees—the risks attorneys take by offering or accepting contingency fee agreements.  
9 See King v. Fox, 7 N.Y.3d 181, 818 N.Y.S.2d 833, 851 N.E.2d 1184, 1191-92 (2006)  
10 (“In entering into contingent fee agreements, attorneys risk their time and resources  
11 in endeavors that may ultimately be fruitless... Additionally, contingency fees allow  
12 those who cannot afford an attorney who bills at an hourly rate to secure legal  
13 representation. See King, 818 N.Y.S.2d 833, 851 N.E.2d at 1191 (“Contingent fee  
14 agreements between attorneys and their clients ... generally allow a client without  
15 financial means to obtain legal access to the civil justice system.”).

16 O'Connell v. Wynn Las Vegas, LLC, 429 P.3d 664, 672

17 District courts may take almost any sensible approach or apply any logical  
18 method to calculate “a reasonable fee” to award as long as the court weighs the  
19 Brunzell factors. See Shuette, 121 Nev. at 864-65, 124 P.3d at 548-49. As to the  
20 methods or approaches a district court may use to determine a reasonable amount,  
21 there are certainly more considerations than just hourly billing records. See Hsu v.  
22 Cty. of Clark, 123 Nev. 625, 637, (2007).

23 This case was taken on a straight 30% contingency fee, with counsel  
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1 advancing all costs. Not only was the case briefed and taken to trial on several  
2 theories (against several Defendants), counsel has borne all the risk of prosecuting  
3 the case. In light of these factors, a 30% contingency fee is customary and  
4 reasonable.

5 Mr. Rodríguez makes two additional arguments: that control persons aren't  
6 liable for attorney's fees under NRS §90.660, and that because one of the two theories  
7 exclusively involved Mr. Robinson, that he shouldn't be responsible for the full weight  
8 of the attorney's fees. As to both arguments, no legal support is provided; no statutes,  
9 no caselaw.

10 On the argument that only primary violators are liable for attorney's fees, this  
11 is a misstatement of the law, which provides for joint and several liability. NRS  
12 §90.660 provides for damages of purchase price (or if the security is no longer  
13 owned, for the difference between purchase and sales price), plus interest at the legal  
14 rate, less income received, costs and reasonable attorney's fees. Nothing in the  
15 section makes a distinction between primary and secondary violators, and Defendant  
16 cannot, and does not cite any cases in support.

17 As to the second argument, the issue underlying all causes of action was the  
18 offer and sale of unregistered securities in the form of the VCC Promissory Notes.  
19 Corporations only act through their directors, officers and agents. Mr. Rodriguez  
20 played a key role, introducing the unregistered broker dealer Retire Happy to VCC to  
21 assist with the fund raise. Testimony and documentary evidence established that he  
22 was the point person to speak with investors who had questions on the offering. He  
23 was also the CFO of the company. He played an integral role in the offering, and was  
24

1 one of three directors to vote to put VCC into bankruptcy. The claim that the fees  
2 sought do not bear any relationship to the work done with respect to Mr. Rodriguez is  
3 simply unsupported argument.

4 CONCLUSION

5 Mr. Rodriguez' arguments are novel, but unpersuasive. VCC was not found  
6 "not liable" for purposes of the securities laws. As the Court noted previously, VCC  
7 made a tactical move to file for bankruptcy, after Judge Williams affirmatively found  
8 in a prior case that they sold unregistered securities. Rodriguez and Robinson  
9 directed this filing, and were the beneficiaries of it. Defendant's attempt to avoid  
10 liability is transparent. As to the statute of limitations defense, prior counsel  
11 abandoned it, and literally did nothing to advance it, thereby failing to meet  
12 Defendant's burden of proof. As to attorney's fees and damages, NRS §90.660 clearly  
13 states that liability is joint and several, and the liability formula is damages, interest  
14 and attorney's fees, less interest received. As a control person, Mr. Rodríguez is liable  
15 for VCC's sale of unregistered securities, and the proper measure of damages is set  
16 forth in NRS §90.660.

17  
18 Dated: May 28, 2020

Respectfully submitted,

19 The Law Office of David Liebrader, Inc.

20 By: /s/ David Liebrader

21 David Liebrader

22 Attorney for Plaintiffs  
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CERTIFICATE OF MAILING

I hereby certify that on the 28th day of May, 2020, I mailed a copy of the foregoing  
Reply Brief  
to the following

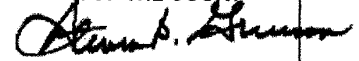
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\_\_\_\_\_  
An Employee of The Law Office of David Liebrader

## **EXHIBIT “A”**



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

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN )

11 Anthony White, )

12 PLAINTIFF, )

13 v. )

14 Ronald J. Robinson, Vernon Rodriguez, Virtual )  
15 Communications Corporation, Wintech, LLC, Frank )  
16 Yoder, Alisa Davis and DOES 1-10 and ROES 1- )  
17 10, inclusively, )

18 DEFENDANTS )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )

Case No. A-17-763003-C

Dept.: 24

**NOTICE OF BANKRUPTCY  
COURT RULING**

**NOTICE OF BANKRUPTCY COURT RULING**

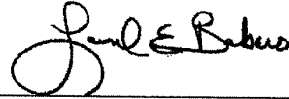
17 An order granting relief from stay from the United States Bankruptcy Court, District of  
18 Nevada in a matter that affects rights of the parties in this case is attached.

19 Dated: July 19, 2018

Respectfully submitted,

20 By:   
21 David Liebrader

22 Attorney for Plaintiff  
23  
24  
25  
26



Honorable Laurel E. Babero  
United States Bankruptcy Judge



Entered on Docket  
July 17, 2018

DAVID LIEBRADER, ESQ. SBN 5048  
THE LAW OFFICE OF DAVID LIEBRADER  
601 S. RANCHO DR. STE. D-29  
LAS VEGAS, NV 89106  
Ph: (702) 380-3131  
[DaveL@investmentloss.com](mailto:DaveL@investmentloss.com)  
Attorney for Plaintiff

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

IN RE:	)	In Re: Case No 18-12951-leb
	)	
Virtual Communications Corporation,	)	Chapter 11
	)	
Debtor,	)	
	)	

**ORDER GRANTING MOTION  
FOR RELIEF FROM STAY**

Date of Hearing: July 10, 2018  
Time of Hearing: 9:30 a.m.  
Place: Courtroom No. 3, Third  
Floor Foley Federal Building 300  
Las Vegas Blvd., S. Las Vegas, NV  
89101

Judge: Honorable Laurel E.  
Babero

**ORDER GRANTING MOTION FOR RELIEF FROM STAY**

This matter having come on before the Court for hearing on July 10, 2018 at 9:30 a.m.,  
David Liebrader appearing for moving party Anthony White, and the court having considered

1 the motion for relief from stay and noting no opposition having been filed rules as follows:

2 That the automatic stay in place concerning Virtual Communications Corporation does  
3 not apply to preclude Anthony White from pursuing the claims he has asserted against  
4 individual defendants Ronald Robinson, Alisa Davis and Vern Rodriguez in Dept. 24 of the  
5 Clark County District Court (White v. VCC et al., case A-17-763003-C) (the "State Court  
6 Action"), which is set for trial on May 20, 2019.

7 **IT IS HEREBY ORDERED** that Anthony White may proceed in his underlying  
8 lawsuit against individual defendants Ronald Robinson, Alisa Davis and Vern Rodriguez,  
9 while all further proceedings in the State Court Action as against Virtual Communications  
10 Corporation and its wholly-owned subsidiary WinTech, LLC remain subject to the automatic  
11 stay.

12 **IT IS FURTHER ORDERED** that any order or judgment entered in the State Court Action  
13 as to individual defendants Ronald Robinson, Alisa Davis and Vern Rodriguez shall not be  
14 binding upon Virtual Communications Corporation or otherwise effective against any  
15 property of Virtual Communications Corporation's bankruptcy estate.

16  
17 **IT IS SO ORDERED.**  
18

19 Prepared and Submitted By:

20 David Liebrader

21 By: /s/ David Liebrader  
22 The Law Office of David Liebrader  
23 601 S. Rancho Dr. Ste. D-29  
Las Vegas, NV 89106  
DaveL@investmentloss.com  
24  
25  
26



1 Attorney for Moving Party

2 Bart Larsen, Esq.

3 By:/s/ Bart Larsen

4 Kolesar & Leatham

400 S Rampart Blvd #400

Las Vegas, NV 89145

5 blarsen@klnevada.com

Attorney for Debtor

6  
7 LOCAL RULE 9021 CERTIFICATION

8 In accordance with LR 9021, counsel submitting this document certifies that  
the order accurately reflects the court's ruling and that (check one):

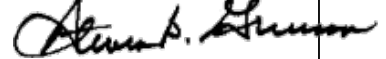
9 ☐ The court has waived the requirement set forth in LR 9021(b)(1).

10 ☐ No party appeared at the hearing or filed an objection to the motion.

11 ☒ I have delivered a copy of this proposed order to all counsel who  
12 appeared at the hearing, and each has approved or disapproved the order, or  
failed to respond, as indicated below [list each party and whether the  
13 party has approved, disapproved, or failed to respond to the document]:

14 **Attorneys for Creditor and Debtor jointly drafted the Order, which was approved for  
submission to the Court.**

15 ☐ I certify that this is a case under Chapter 7 or 13, that I have  
16 served a copy of this order with the motion pursuant to LR 9014(g), and  
that no party has objected to the form or content of the order



**ERR**

HAROLD P. GEWERTER, ESQ.  
Nevada Bar No. 499  
1212 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
Tel: (702) 382-1714  
Fax: (702) 382-1759  
Email: harold@gewerterlaw.com  
Attorneys for Defendant  
Ronald J. Robinson

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

\*\*\*

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.

AND ALL CONSOLIDATED ACTIONS

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

CONSOLIDATED WITH

Case No. A-17-763003-C

**ERRATA TO**  
**DEFENDANTS' OPPOSITION TO**  
**PLAINTIFF'S MOTION FOR**  
**DAMAGES AND ATTORNEY'S FEES**  
**AND**  
**PARTIAL JOINDER TO DEFENDANT**  
**VERNON RODRIGUEZ'S OPPOSITION**  
**TO PLAINTIFF'S MOTION FOR**  
**ATTORNEY'S FEES**

COME NOW, Defendant, RONALD J. ROBINSON (hereinafter "Robinson"), by and through his attorney of record, HAROLD P. GEWERTER, ESQ., of HAROLD P. GEWERTER, ESQ., LTD., and hereby files the instant **Errata** to his May 27, 2020 Opposition to Plaintiff's Motion for Damages and Attorney's Fees and Partial Joinder to Defendant Vernon Rodriguez's

1 Opposition to Plaintiff's Motion for Damages and Attorney's Fees and seeks to make the  
2 following factual clarifications:

3 Robinson's Opposition was filed on Opposition on May 27, 2020. After speaking with  
4 opposing counsel, it is apparent that there were factual allegations made in Robinson's  
5 Opposition which were inaccurate, to wit:

6  
7 Plaintiff's attorney failed and refused to meet and confer with Defendants'  
8 respective counsel for the purposes of submitting a jointly proposed Findings of  
9 Fact and Conclusions of Law. Instead, Plaintiff's attorney filed an ex parte  
10 Findings of Fact and Conclusions of Law with the Court without any input from  
11 Defendants' counsel.

12 Robinson's Opposition, page 3.

13 To clarify the record, Plaintiff's counsel reached out to the undersigned via email on April  
14 29, 2020, stating:

15 Harold  
16 Attached, per the Judge's Decision and Order is a proposed findings of fact for  
17 your review.  
18 Please get back to me with any comments, objections or suggestions and we can  
19 discuss.  
20 Thank you.

21 Based upon said email, the above republished portions of Robinson's Opposition are inaccurate.

22 The undersigned either never received or failed to see Plaintiff's counsel's email when it  
23 was originally sent. Plaintiff's counsel kindly forwarded a copy of said email to the undersigned  
24 following the filing of Robinson's Opposition. In any event, the undersigned apologizes to both  
25 the Court and Plaintiff's counsel for the above cited factual allegation, and respectfully asks that  
26  
27  
28

1 the instant Errata be accepted and considered by the Court so that the record of events in this  
2 matter are correctly understood.

3 Dated this 29th day of May, 2020.

4 Respectfully submitted,

5 HAROLD P. GEWERTER, ESQ., LTD.

6 /s/: Harold P. Gewerter

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 Email: harold@gewerterlaw.com

13 Attorneys for Defendants

14 **CERTIFICATE OF SERVICE**

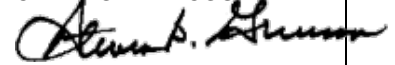
15 Certification is hereby made that a true and correct copy of the foregoing **Errata to his**  
16 **Opposition to Plaintiff's Motion for Damages and Attorney's Fees and Partial Joinder to**  
17 **Defendant Vernon Rodriguez's Opposition to Plaintiff's Motion for Damages and**  
18 **Attorney's Fee** was served this 29th day of May, 2020, by electronic service via the court's  
19 electronic filing and electronic service and/or via U.S. Mail to the counsel set forth on the service  
20 list, and listed below, pursuant to Administrative Order 14-2, NEFCR 9 (a), and EDCR Rule  
21 7.26.

22 David Liebrader, Esq.  
23 The Law Offices of David Liebrader, APC  
24 601 S. Rancho Dr., Ste. D-29  
25 Las Vegas, NV 89106

26 Scott D. Fleming, Esq.  
27 FLEMING LAW FIRM, PLLC  
28 9525 Hillwood Drive, Suite 140  
Las Vegas, Nevada 89134

/s/Sonja Howard

An Employee of Harold P. Gewerter, Esq., Ltd.



DAVID LIEBRADER, ESQ.  
STATE BAR NO. 5048  
THE LAW OFFICES OF DAVID LIEBRADER, APC  
3960 HOWARD HUGHES PARKWAY STE 500  
LAS VEGAS, NV 89169  
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,	)	REPLY TO DEFENDANT RON
	)	ROBINSON'S OPPOSITION TO
v.	)	MOTION FOR ATTORNEY'S
	)	FEES AND DAMAGES
Ronald J. Robinson, Vernon Rodriguez, Frank	)	
Yoder, Alisa Davis and DOES 1-10 and ROES 1-	)	
10, inclusively	)	
	)	
DEFENDANTS	)	
	)	CONSOLIDATED WITH
Anthony White, Robin Suntheimer, Troy	)	
Suntheimer, Stephens Ghesquiere, Jackie Stone,	)	Case No. A-17-763003-C
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	)	
	)	
	)	
	)	

**REPLY BRIEF**

Plaintiffs file this Reply Brief to Defendant Ronald Robinson's Opposition to  
Plaintiffs' Motion for Attorney's Fees and Damages.

1 Plaintiffs incorporate the facts, arguments and support from their Reply Brief  
2 filed in response to Defendant Rodríguez' Opposition.

3 As a preliminary matter Mr. Robinson has filed an untimely Opposition. Per  
4 the **Court's Order** in its Decision issued on April 27, 2020, Defendant had fourteen  
5 days to file an opposition to Plaintiffs' Motion for Damages, which Plaintiffs filed and  
6 served on May 11, 2020. By waiting to file his opposition until May 27, 2020,  
7 Defendant failed to comply with the Court's Order.

8 Defendant also claimed that **Plaintiffs'** counsel did not provide a draft of the  
9 Court's Findings of Fact filed on May 8, 2020. When Plaintiffs' counsel pointed out  
10 that this was untrue, **Defendant's** counsel conceded that he was at fault for not  
11 reviewing his email where Plaintiffs' counsel specifically asked Mr. Gerwerter for  
12 comment on the proposed Order. Recognizing his error, Defendant filed a notice of  
13 errata, withdrawing his claim that the FFCL is a fugitive document.

14 As to the merits of the Opposition, Defendant spends most of his time arguing  
15 issues that have already been decided by the Court; 1. the issue of indispensable  
16 parties and 2. Mr. Robinson's liability on the guarantee. Both of these issues were  
17 resolved pretrial, and Defendant has failed to submit new evidence, or request that  
18 the court reconsider its ruling. By suggesting that the issues will be appealed,  
19 Defendant is trying brow beat the court into reopening these resolved matters. To the  
20 extent the Court is willing to reconsider its prior rulings, Plaintiffs incorporate their  
21 prior arguments.

22 Before the Court is the issue of damages, and Defendant's brief is noteworthy  
23 for its' failure to address any of the arguments raised or cases cited. Defendant does  
24

1 not even attempt to address damages or the Brunzell factors. As a result, Defendants  
2 untimely brief is completely non responsive to Plaintiffs' motion for damages and  
3 attorney's fees.

4 CONCLUSION

5 Because Defendant filed an untimely brief (without excuse, or leave of court),  
6 and has failed to seek leave of court to submit additional evidence in support of issues  
7 previously decided, the Court should deny the arguments made in the untimely brief,  
8 and award Plaintiffs the damages and **attorney's** fees requested in their motion.

9  
10 Dated: June 1, 2020

Respectfully submitted,

11 The Law Office of David Liebrader, Inc.

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

I hereby certify that on the 1st day of June, 2020, I mailed a copy of the foregoing  
Reply Brief  
to the following

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

Scott Fleming, Esq.  
Fleming Law  
9525 Hillwood Dr. Ste. 140  
Las Vegas, NV 89134

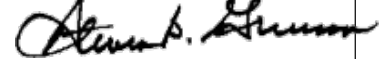
/s/: Dianne Bresnahan

\_\_\_\_\_  
An Employee of The Law Office of David Liebrader



FLEMING LAW FIRM, PLLC  
9525 Hillwood Drive, Suite 140  
Las Vegas, Nevada 89134  
(702) 743-6263

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6/22/2020 5:07 PM  
Steven D. Grierson  
CLERK OF THE COURT



MRCN  
SCOTT D. FLEMING, ESQ.  
Nevada Bar No. 5638  
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9525 Hillwood Drive  
Suite 140  
Las Vegas, Nevada 89134  
Telephone: (702) 743-6263  
E-Mail: [scott@fleminglawlv.com](mailto:scott@fleminglawlv.com)

*Attorneys for Defendant Vernon Rodriguez*

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

STEVEN A. HOTCHKISS,  
  
Plaintiff,  
  
vs.

CASE NO. A-17-762264-C  
DEPT NO. IX

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.

**MOTION BY DEFENDANT  
VERNON RODRIGUEZ FOR  
RECONSIDERATION OF JUNE 8,  
2020 MINUTE ORDER REGARDING  
PLAINTIFFS' MOTION FOR  
DAMAGES AND ATTORNEYS'  
FEES**

***HEARING REQUESTED***

ANTHONY WHITE; ROBIN  
SUNTHEIMER; TROY SUNTHEIMER;  
STEPHENS GHESQUIERE; JACKIE  
STONE; GAYLE CHANY; KENDALL  
SMITH; GABRIELE LAVERNICOCCA;  
and ROBERT KAISER,

Plaintiffs,

vs.

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.

Consolidated with

CASE NO. A-17-763003-C  
DEPT NO. IX

Rodriguez Motion for Reconsideration

1 Defendant Vernon Rodriguez (“Rodriguez”) respectfully requests that the Court vacate its  
2 *Minute Order* of June 8, 2020 concerning Plaintiffs’ *Motion for Damages and Attorneys’ Fees* (the  
3 “Motion”) and reset the Motion for oral argument.

4 The Minute Order refers to a single opposition, filed on behalf of all Defendants, that raises  
5 only one issue: “In its opposition to the motion, Defendants argue that they intend to raise the  
6 issue of the affirmative defense of failure to join a necessary party on appeal. . .” *Id.* at p. 1. It  
7 appears that the Court was unaware that Mr. Rodriguez had engaged separate counsel and had  
8 submitted an extensive brief in opposition to the Motion discussing other issues. It may be helpful  
9 to briefly review the procedural posture of the case.

#### 10 SUMMARY OF POST-TRIAL PROCEEDINGS

11 On May 8, 2020, this Court entered its *Findings of Fact, Conclusions of Law, and Order*  
12 *on Defendants Liability* (“FFCL”) and directed the parties to submit briefs regarding damages. *Id.*  
13 at p. 5, ll. 1-2. Three (3) days later, on May 11, 2020, Plaintiffs filed their Motion seeking damages  
14 and attorneys’ fees.

15 On May 21, 2020, undersigned counsel filed a *Substitution of Counsel for Vernon*  
16 *Rodriguez*. Later that same day, undersigned counsel filed the *Opposition to Defendant Vernon*  
17 *Rodriguez to Plaintiffs’ Motion for Damages and Attorneys’ Fees* (the “Rodriguez Opposition”).  
18 The Rodriguez Opposition consisted of eighteen (18) pages, with an additional fifty (50) pages of  
19 exhibits.

20 On May 27, 2020, Harold P. Gewerter, Esq., on behalf of Defendant Ronald J. Robinson  
21 (“Robinson”) only, filed *Defendants’ [sic] Opposition to Plaintiff’s Motion for Damages and*  
22 *Attorney’s Fees and Partial Joinder to Defendant Vernon Rodriguez’s Opposition to Plaintiffs’*  
23 *Motion for Damages and Attorneys’ Fees* (the “Robinson Opposition”). As the Court observed in  
24 its June 8, 2020 *Minute Order*, the Robinson Opposition indeed argued (among other things) that  
25 Plaintiffs had failed to join necessary parties. *Id.* at p. 4, l. 9, *et seq.*

26 On May 28, 2020, Plaintiffs filed their *Reply to Defendant Vernon Rodriguez’ Opposition*  
27 *to Motion for Attorney’s Fees and Damages*. Plaintiffs filed their *Reply to Defendant Ron*

28 Rodriguez Motion for Reconsideration

1 Robinson's Opposition to Motion for Attorney's Fees and Damages on June 1, 2020. The Motion  
2 was thus fully, and separately, briefed by Plaintiffs, Mr. Robinson and Mr. Rodriguez.

3 **THE RODRIGUEZ OPPOSITION**

4 The sole legal issue mentioned in the Court's Minute Order of June 8, 2020, failure to join  
5 a necessary party, was not discussed in the Rodriguez Opposition. Instead, Mr. Rodriguez  
6 discussed five (5) issues that have never been addressed in this case. Mr. Rodriguez has  
7 summarized those issues below, but respectfully requests that the Court review the Rodriguez  
8 Opposition in its entirety for a complete discussion.

9 **A. The Distinction Between a Primary Violator and a Secondary "Control" Party**

10 Under its adoption of the Uniform Securities Act, Nevada imposes *primary* liability for  
11 certain violations, including the issuance of unregistered securities, on the party that "offers or  
12 sells" a security. Damages recoverable from a *primary* violator can consist only of (i) the amount  
13 paid for the security, less amounts received, or (ii) the difference between the amount paid and the  
14 amount for which it was later sold, plus interest, fees, and costs:

15 **NRS 90.660 Civil liability.**

16 1. A person who offers or sells a security in violation of any of the  
17 following provisions:

18 . . .

19 (b) NRS 90.460;

20 . . .

21 is liable to the person purchasing the security. Upon tender of the  
22 security, the purchaser may recover the ***consideration paid for the  
security*** and interest at the legal rate of this State from the date of  
23 payment, costs and reasonable attorney's fees, less the amount of  
24 income received on the security. . .

25 [Emphasis added.]

26 Under subsection (4), liability can also attach to certain secondary "control" parties. The  
27 distinction between a primary violator under Subsection (1), and a secondary party liable as a  
28 "control person" under Subsection (4), is critical – particularly in this case – because a secondary  
party can only responsible for damages "with and to the same extent as the other person" (i.e., the  
original issuer):

Rodriguez Motion for Reconsideration

**NRS 90.660 Civil liability.**

...  
4. A person who directly or indirectly controls another person who is liable under subsection 1 or 3, a partner, officer or director of the person liable, a person occupying a similar status or performing similar functions, any agent of the person liable, an employee of the person liable if the employee materially aids in the act, omission or transaction constituting the violation, and a broker-dealer or sales representative who materially aids in the act, omission or transaction constituting the violation, are also liable jointly and severally with and *to the same extent as the other person.* . ,

[Emphasis added.]

In the Rodriguez Opposition, the Defendant explains in detail how a Chapter 11 bankruptcy filing by Virtual Communications Corporation (“VCC”), the issuer of the securities in this matter, confirmed a plan of reorganization providing a “debt for equity” swap and obtained a discharge of all liability. *Id.* at p. 3, l. 3 – p. 7, l. 24. Simply stated, VCC cannot, as a legal or factual matter, be held primarily liable for damages to Plaintiffs. As a result, there is no measure of damages for which Mr. Rodriguez could be secondarily liable “with and to the same extent as” VCC. This issue was not discussed in the Court’s Minute Order.

**B. Plaintiff’s Claims for Damages Against Mr. Rodriguez Are Time Barred**

Nevada law provides a two (2) year statute of limitation with a discovery period, and a five (5) year statute of repose, for claims arising under Nev. Rev. Stat. 90.660:

**NRS 90.670 Statute of limitations.** A person may not sue under NRS 90.660 unless suit is brought within the earliest of 2 years after the discovery of the violation, 2 years after discovery should have been made by the exercise of reasonable care, or 5 years after the act, omission or transaction constituting the violation.

The Rodriguez Opposition includes a discussion of a decision by the Honorable Philip M. Pro holding that as a matter of law, the discovery rule does apply in an action involving unregistered securities because “The securities’ status as registered or unregistered [is] publicly available information capable of discovery through reasonable care.” *See Baroi v. Platinum Condo. Dev., LLC*, 914 F.Supp.2d 1179, 1199 (D. Nev. 2012).

Plaintiffs attached as Exhibit A to their Motion a copy of their *Statement of Damages NRS*

Rodriguez Motion for Reconsideration

1 § 90.660 that was originally filed with the Court on February 22, 2020. On page 2 of that  
2 document, Plaintiffs provided a chart that included a column entitled “Date of Investment.” The  
3 latest investment was December 2014 by “Smith” (presumably referring to Plaintiff Kendall  
4 Smith). If this Court were to adopt the *Baroi* rule announced by Judge Pro that the statute of  
5 limitation for the sale of an unregistered security begins to run on the date of issuance, the statute  
6 of limitation applicable to the claim against Mr. Rodriguez would have run at the end of December  
7 2016.

8 On the other hand, the FFCL also includes a finding “That VCC stopped making payments  
9 in *February 2015* and the company and Ronald Robinson were *notified of the default*, with a  
10 *demand to bring all amounts due current, and to repay the principal.*’ See FFCL at p. 2., ll. 6-15  
11 [emphasis added]. A breach thus occurred, and a claim accrued, in February 2015, meaning that  
12 the two-year statute of limitation would have run no later than February 2017. The case against  
13 Mr. Rodriguez was filed on September 28, 2017, more than six (6) months later. The statute of  
14 limitation defense raised by Mr. Rodriguez was not addressed in the Court’s June 8, 2020 Minute  
15 Order.

16 **C. Plaintiff Failed to Demonstrate that Fees are Recoverable from a Secondary Control**  
17 **Party**

18 After discussing bars to the recovery under Nev. Rev. Stat. 99.660 and 99.670, the  
19 Rodriguez Opposition turned to Plaintiffs’ request for attorneys’ fees.

20 As noted above, Nev. Rev. Stat. 90.660(1) concerns a party that “offers or sells a security”  
21 in violation of law (i.e., a “primary violator”), and authorizes an award of interest, attorneys’ fees  
22 and costs against that party:

23 . . .

24 . . .

25 . . .

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27

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Rodriguez Motion for Reconsideration

**NRS 90.660 Civil liability.**

1. A person who offers or sells a security in violation of any of the following provisions:

... (b) NRS 90.460;

... is liable to the person purchasing the security. Upon tender of the security, the purchaser may recover the consideration paid for the security and interest at the legal rate of this State from the date of payment, *costs and reasonable attorney's fees*. . .

[Emphasis added.]

There is no provision in Subsection (4), which governs the secondary liability of “control persons,” that allows for an award of interest, fees or costs. Rather, as discussed above, the damages recoverable from a secondary “control party” are limited to those “with and to the same extent as the other person” (i.e., the primary violator). Since no award of attorneys’ fees was made against VCC, the issuer, there is no basis to impose attorneys’ fees against a secondary control party. This issue was not addressed in the Court’s Minute Order.

**D. Plaintiff Failed to Satisfy the *Brunzell* Factor Requiring that Fees Be Reasonable**

According to the *Declaration of David Liebrader In Support of Motion for Damages and Attorney’s Fees* filed May 11, 2020: “As I took this case on a contingency fee basis I did not keep strict track of my time. However, if I had to make an educated guess on the amount of time I spent on this case, I would estimate it is well over 250 hours.” *Id.* at p. 3, ll. 4-6. If Mr. Liebrader’s estimation is correct, the amount Plaintiffs are seeking, \$221,631 divided by 250 hours, equals \$886.52 per hour. Mr. Rodriguez respectfully submits that that sum exceeds market rates for Las Vegas.

The Court’s June 8, 2020 Minute Order did not include a finding regarding the reasonableness of the total fees requested by Plaintiffs.

**E. Plaintiff Failed to Satisfy the *Brunzell* Factor Requiring a Relationship Between the Fees Sought and Work Performed With Respect to Mr. Rodriguez**

The final issue discussed in the Rodriguez Opposition concerned the relationship (or lack thereof) between the fees sought by Plaintiff and the work performed that related to Mr. Rodriguez.

Rodriguez Motion for Reconsideration

1 In their Motion, Plaintiffs described efforts undertaken to respond to alleged obstructionism by  
2 Mr. Robinson. Moreover, Plaintiffs argued: “In effect, counsel was forced to try two cases, and  
3 meet two burdens of proof; breach of contract, and violations under the securities laws.” *See*  
4 Motion at p. 8, ll. 19-20. The sole theory of recovery against Mr. Rodriguez involved alleged  
5 violations of the Uniform Securities Act. It was Mr. Robinson, not Mr. Rodriguez, who offered a  
6 personal guarantee of the notes at issue in this matter. These facts, and the relevant *Brunzell* factor,  
7 were not discussed in the Court’s Minute Order.

### 8 LEGAL AUTHORITIES

9 A court has the inherent authority to reconsider its prior orders. *See Trail v. Faretto*, 91  
10 Nev. 401, 403, 536 P.2d 1026, 1027 (1975) (“[A] court may, for sufficient cause shown, amend,  
11 correct, resettle, modify, or vacate, as the case may be, an order previously made and entered on  
12 motion in the progress of the cause or proceeding.”); *see also Barry v. Lindner*, 119 Nev. 661, 670,  
13 81 P.3d 537, 543 (2003) (NRCp 54(b) permits a district court to revise orders at any time before  
14 the entry of final judgment).

### 15 CONCLUSION

16 In this case, it appears that the Court did have an opportunity to consider the Rodriguez  
17 Opposition prior to issuing its June 8, 2020 Minute Order. Given the amounts at issue, and the  
18 fact that two of the legal principles summarized above may be case-dispositive as to Mr.  
19 Rodriguez, Defendant respectfully submits that good cause exists for this Court to vacate its  
20 Minute Order and reset the Motion for oral argument. Finally, Mr. Rodriguez requests such other  
21 relief as is just and proper.

22 Dated this 22<sup>nd</sup> day of June, 2020.

23 FLEMING LAW FIRM, PLLC

24 By /s/ Scott D. Fleming  
25 SCOTT D. FLEMING, ESQ.  
26 Nevada Bar No. 5638  
27 9525 Hillwood Drive  
28 Suite 140  
Las Vegas, Nevada 89134  
Attorney for Vernon Rodriguez

Rodriguez Motion for Reconsideration

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 22<sup>nd</sup> day of June, 2020, I caused to be served a true and correct copy of foregoing **MOTION BY DEFENDANT VERNON RODRIGUEZ FOR RECONSIDERATION OF JUNE 8, 2020 MINUTE ORDER REGARDING PLAINTIFFS' MOTION FOR DAMAGES AND ATTORNEYS' FEES** in the following manner:


(VIA ELECTRONIC SERVICES) The above-referenced documents were electronically filed on the dates listed above and served on May 21, 2020, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

HAROLD P. GEWERTER, ESQ.  
Nevada Bar No. 499  
1212 South Casino Center Boulevard  
Las Vegas, Nevada 89101  
*Attorney for Vernon Rodriguez*

DAVID LIEBRADER, ESQ.  
Nevada Bar No. 5048  
THE LAW OFFICES OF DAVID LIEBRADER, APC  
601 S. Rancho Drive, Suite D-29  
Las Vegas, Nevada 89106  
*Attorney for Plaintiffs*

By /s/ Scott D. Fleming  
SCOTT D. FLEMING, ESQ.  
Nevada Bar No. 5638  
9525 Hillwood Drive  
Suite 140  
Las Vegas, Nevada 89134  
*Attorney for Vernon Rodriguez*





DAVID LIEBRADER, ESQ.  
STATE BAR NO. 5048  
THE LAW OFFICES OF DAVID LIEBRADER, APC  
3960 HOWARD HUGHES PARKWAY STE 500  
LAS VEGAS, NV 89169  
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,	)	OPPOSITION TO MOTION TO
	)	RECONSIDER
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	)	
	)	
	)	
	)	

**OPPOSITION**

Plaintiffs file this Opposition to Defendant Rodriguez' Motion asking the Court to reconsider its minute order regarding damages and attorney's fees.

1           The Motion should be denied because Defendant has not provided any new  
2 evidence or support for the Judge to consider. The sole basis for the motion is  
3 Defendant's statement that "it appears that the court was unaware that Mr.  
4 Rodriguez had engaged separate counsel and had submitted an extensive brief in  
5 opposition on the motion." Thus, Defendant claims that the court did not read the  
6 Opposition. This also implies that the court failed to read Plaintiffs' detailed Reply.  
7 There is simply no evidence for this assertion.

8           Because Defendant's motion does not provide any new evidence, and simply  
9 restates the arguments made in his prior Opposition, Plaintiffs incorporate by  
10 reference their Reply, and all arguments made therein in support of this Opposition.

11           A court may, for sufficient cause shown, amend, correct, resettle, modify, or  
12 vacate, as the case may be, an order previously made and entered on motion in the  
13 progress of the cause or proceeding. Trail v. Faretto, 91 Nev. 401, 403 (1975). Here,  
14 there is a lack of sufficient cause. The sole basis is the unsubstantiated claim that the  
15 Court failed to read and consider the Opposition (and Plaintiffs' Reply).

16           Because Defendants have not submitted any additional evidence, Plaintiffs rely  
17 on the arguments made in their original Reply to Defendant's Opposition, and ask  
18 that the Court deny the Motion to Reconsider.

19  
20 Dated: June 30, 2020

Respectfully submitted,

The Law Office of David Liebrader, Inc.

22 By:/s/ David Liebrader  
23 David Liebrader  
24 Attorney for Plaintiffs

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CERTIFICATE OF MAILING

I hereby certify that on the 30th day of June, 2020, I mailed a copy of the foregoing  
Opposition  
to the following

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

Scott Fleming, Esq.  
Fleming Law  
9525 Hillwood Dr. Ste. 140  
Las Vegas, NV 89134

/s/: Dianne Bresnahan

\_\_\_\_\_  
An Employee of The Law Office of David Liebrader

DAVID LIEBRADER, ESQ.  
STATE BAR NO. 5048  
THE LAW OFFICES OF DAVID LIEBRADER, APC  
3960 HOWARD HUGHES PARKWAY STE 500  
LAS VEGAS, NV 89169  
PH: (702) 380-3131  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN

Steven A. Hotchkiss,

PLAINTIFF,

v.

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

DEFENDANTS

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

DEFENDANTS

) Case No. A-17-762264-C

)  
) Dept.: ~~8~~ IX

)  
) CONSOLIDATED WITH

)  
) Case No. A-17-763003-C

)  
) **FINDINGS OF FACT,**  
) **CONCLUSIONS OF LAW AND**  
) **ORDER ON MOTION FOR**  
) **DAMAGES AND ATTORNEY'S**  
) **FEES**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Plaintiffs' Motion for Damages and Attorney's Fees came on for Decision by  
the Court on its June 8, 2020 Chamber's Calendar. The Court considered Plaintiffs'

1 Motion, the Oppositions filed by Defendants Vernon Rodriguez and Ron Robinson,  
2 and Plaintiffs' replies thereto. Based upon the submissions, the Court GRANTS  
3 **Plaintiff's** Motion.

4 In reaching its decision on Attorney's Fees, the Court evaluated the factors set  
5 forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455P.2d 37 (1969),  
6 including: (1) the qualities of the attorney, the attorney's ability, his training,  
7 education, experience, professional standing and skill; (2) the difficulty and character  
8 of the work to be done, including the time necessary to complete the task; (3) the  
9 work actually performed by the lawyer; and (4) the result of the work performed. The  
10 Plaintiffs' Motion sets forth how these factors are met and therefore Attorney's Fees  
11 are appropriate.

12 Because Plaintiffs prevailed on both their breach of contract claim and  
13 securities law claim against Defendant Ronald Robinson, Plaintiffs are entitled to  
14 damages and attorney's fees on both claims. The contract underlying the breach of  
15 contract claim provides for an award of **attorney's** fees, while NRS §90.660 provides  
16 for an award of attorney's fees for control person liability, which was established. As  
17 a result, Plaintiffs are awarded damages and **attorney's** fees on their breach of  
18 contract claims against Defendant Robinson in the amount of \$1,098,782 comprised  
19 of principal in the amount of \$574,000, interest in the amount of \$258,300, "**late**  
20 **fees**" of \$12,917 and attorney's fees of \$253,565, as set forth in Plaintiffs' Statement of  
21 Damages filed February 3, 2020.

22 As to Defendant Rodriguez, he is also liable as a control person, and per NRS  
23 §90.660 Plaintiffs are entitled to an award of damages and **attorney's** fees on this  
24  
25  
26

1 successful claim in the amount of \$960,401, comprised of principal in the amount of  
2 \$574,000, interest in the amount of \$164,770 and attorney's fees in the amount of  
3 \$221,631 as set forth in Plaintiffs' filed February 22, 2020 Statement of Damages.  
4  
5

6 IT IS SO ORDERED:  
Dated this 20th day of August, 2020

7 Dated this \_\_\_\_\_th day of August, 2020  
8

9   
Hon. Cristina Silva  
District Court Judge  
D4B 26A F3E2 9C07  
Cristina D. Silva  
District Court Judge  
EC

10  
11 Submitted by: /s/ David Liebrader  
12 David Liebrader, Esq.  
13 Attorney for Plaintiff  
14  
15  
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23  
24

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA  
4

5  
6 Steven Hotchkiss, Plaintiff(s)

CASE NO: A-17-762264-C

7 vs.

DEPT. NO. Department 9

8 Ronald Robinson, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

14 Service Date: 8/20/2020

15 Harold Gewerter

harold@gewerterlaw.com

16 T. Louis Palazzo, Esq.

louis@palazzolawfirm.com

17 Celina Moore

celina@palazzolawfirm.com

18 Miriam Roberts

miriam@palazzolawfirm.com

19 David Liebrader, Esq.

dliebrader@gmail.com

20 David Liebrader

DaveL@investmentloss.com

21 Vernon Rodriquez

harold@gewerterlaw.com

22 Scott Fleming

scott@fleminglawlv.com

DAVID LIEBRADER, ESQ.  
STATE BAR NO. 5048  
THE LAW OFFICES OF DAVID LIEBRADER, APC  
3960 HOWARD HUGHES PARKWAY STE 500  
LAS VEGAS, NV 89169  
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.: <del>8</del> IX
	)	
PLAINTIFF,	)	
v.	)	CONSOLIDATED WITH
	)	
Ronald J. Robinson, Vernon Rodriguez, Frank	)	Case No. A-17-763003-C
Yoder, Alisa Davis and DOES 1-10 and ROES 1-	)	
10, inclusively	)	
	)	<b>JUDGMENT</b>
DEFENDANTS	)	
<hr/>		
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	)	
	)	
DEFENDANTS	)	
<hr/>		

JUDGMENT

This matter was submitted for a bench trial before the Hon. Cristina Silva on  
February June 24-25, 2020.

The Court found Defendant Ronald J. Robinson liable as a guarantor of the



1 Virtual Communications Corporation promissory note, and also found Mr. Robinson  
2 and Defendant Vernon Rodriguez liable for violations of NRS §90.660 (civil liability  
3 under the Nevada Securities Laws) as control persons for Virtual Communications  
4 Corporation.

5 The Court finds that Plaintiffs are entitled to compensatory damages against  
6 Mr. Robinson for breach of contract, as well as under NRS §90.660. Plaintiffs are  
7 also entitled to damages under NRS §90.660 against Mr. Rodriguez.

8 Wherefore, it is hereby ordered that Plaintiffs shall have judgment against  
9 Defendant Robinson in the amount of \$1,098,782 comprised of principal in the  
10 amount of \$574,000, interest in the amount of \$258,300, **"late fees"** of \$12,917 and  
11 attorney's fees of \$253,565, as set forth in Plaintiffs' Statement of Damages filed  
12 February 3, 2020.

13 Plaintiffs shall also have judgment against Defendant Rodriguez, in the  
14 amount of \$960,401, comprised of principal in the amount of \$574,000, interest in  
15 the amount of \$164,770 and attorney's fees in the amount of \$221,631 as set forth in  
16 Plaintiffs' filed February 22, 2020 Statement of Damages.

17 **Dated this 20th day of August, 2020**

18 IT IS SO ORDERED:

19 Dated this \_\_\_\_\_th day of August, 2020

20   
21 Hon. Cristina Silva  
District Court Judge

22 Submitted by: /s/ David Liebrader  
23 David Liebrader, Esq.  
24 Attorney for Plaintiff

**EA8 6C4 A36C 74A0**  
**Cristina D. Silva**  
**District Court Judge**

EC

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Steven Hotchkiss, Plaintiff(s)

CASE NO: A-17-762264-C

7 vs.

DEPT. NO. Department 9

8 Ronald Robinson, Defendant(s)

9  
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12 Court. The foregoing Judgment was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/20/2020

15 Harold Gewerter

harold@gewerterlaw.com

16 T. Louis Palazzo, Esq.

louis@palazzolawfirm.com

17 Celina Moore

celina@palazzolawfirm.com

18 Miriam Roberts

miriam@palazzolawfirm.com

19 David Liebrader, Esq.

dliebrader@gmail.com

20 David Liebrader

DaveL@investmentloss.com

21 Vernon Rodriquez

harold@gewerterlaw.com

22 Scott Fleming

scott@fleminglawlv.com

1 DAVID LIEBRADER, ESQ.  
2 STATE BAR NO. 5048  
3 THE LAW OFFICES OF DAVID LIEBRADER, APC  
4 3960 HOWARD HUGHES PARKWAY STE 500  
5 LAS VEGAS, NV 89169  
6 PH: (702) 380-3131  
7 Attorney for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN )

Case No. A-17-762264-C

11 Steven A. Hotchkiss, )

Dept.: ~~8~~ IX

12 PLAINTIFF, )

13 v. )

CONSOLIDATED WITH

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

Case No. A-17-763003-C

17 DEFENDANTS )

**JUDGMENT**

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 )

DEFENDANTS )

**JUDGMENT**

27 This matter was submitted for a bench trial before the Hon. Cristina Silva on  
28 February June 24-25, 2020.

29 The Court found Defendant Ronald J. Robinson liable as a guarantor of the

1 Virtual Communications Corporation promissory note, and also found Mr. Robinson  
2 and Defendant Vernon Rodriguez liable for violations of NRS §90.660 (civil liability  
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4 Corporation.

5 The Court finds that Plaintiffs are entitled to compensatory damages against  
6 Mr. Robinson for breach of contract, as well as under NRS §90.660. Plaintiffs are  
7 also entitled to damages under NRS §90.660 against Mr. Rodriguez.

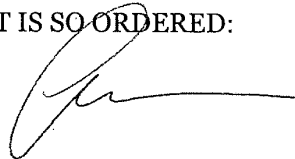
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11 attorney's fees of \$253,565, as set forth in Plaintiffs' Statement of Damages filed  
12 February 3, 2020.

13 Plaintiffs shall also have judgment against Defendant Rodriguez, in the  
14 amount of \$960,401, comprised of principal in the amount of \$574,000, interest in  
15 the amount of \$164,770 and attorney's fees in the amount of \$221,631 as set forth in  
16 Plaintiffs' filed February 22, 2020 Statement of Damages.

17 Dated this 21st day of August, 2020

18 IT IS SO ORDERED:

19 Dated this \_\_\_\_\_th day of August, 2020

20   
21 Hon. Cristina Silva  
22 District Court Judge  
23 Cristina D. Silva  
24 District Court Judge

22 Submitted by: /s/ David Liebrader  
23 David Liebrader, Esq.  
24 Attorney for Plaintiff

EC

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

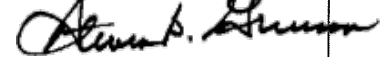
5		
6	Steven Hotchkiss, Plaintiff(s)	CASE NO: A-17-762264-C
7	vs.	DEPT. NO. Department 9
8	Ronald Robinson, Defendant(s)	
9		

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Judgment was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/21/2020

15	Harold Gewerter	harold@gewerterlaw.com
16	T. Louis Palazzo, Esq.	louis@palazzolawfirm.com
17	Celina Moore	celina@palazzolawfirm.com
18	Miriam Roberts	miriam@palazzolawfirm.com
19	David Liebrader, Esq.	dliebrader@gmail.com
20	David Liebrader	DaveL@investmentloss.com
21	Vernon Rodriquez	harold@gewerterlaw.com
22	Scott Fleming	scott@fleminglawlv.com
23		
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DAVID LIEBRADER, ESQ.  
STATE BAR NO. 5048  
THE LAW OFFICES OF DAVID LIEBRADER, APC  
3960 HOWARD HUGHES PARKWAY STE 500  
LAS VEGAS, NV 89169  
PH: (702) 380-3131  
Attorney for Plaintiffs

DISTRICT COURT  
CLARK COUNTY, NEVADA

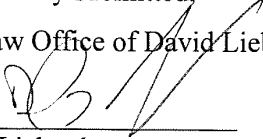
IN THE MATTER BETWEEN	)	Case No. A-17-762264-C
	)	
Steven A. Hotchkiss,	)	Dept.: 9
	)	
PLAINTIFF,	)	NOTICE OF ENTRY OF
	)	JUDGMENT
v.	)	
	)	
Ronald J. Robinson, Vernon Rodriguez, Frank	)	
Yoder, Alisa Davis and DOES 1-10 and ROES 1-	)	
10, inclusively	)	
	)	CONSOLIDATED WITH
DEFENDANTS	)	
	)	Case No. 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	)	
	)	
	)	
	)	

TO THE COURT, ALL PARTIES AND INTERESTED PERSONS: Please take notice that  
the Court's **Judgment** was filed with the Clerk on August 21, 2020. See attached.

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Dated: August 21, 2020

Respectfully submitted,  
The Law Office of David Liebrader, Inc.

By:   
David Liebrader  
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of August, 2020, I mailed a copy of the foregoing

**NOTICE OF ENTRY OF ORDER**

to the following

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

Scott Fleming, Esq.  
Fleming Law  
9525 Hillwood Dr. Ste. 140  
Las Vegas, NV 89134

/s/: Dianne Bresnahan

\_\_\_\_\_  
An Employee of The Law Office of David Liebrader



## **EXHIBIT “A”**

1 DAVID LIEBRADER, ESQ.  
2 STATE BAR NO. 5048  
3 THE LAW OFFICES OF DAVID LIEBRADER, APC  
4 3960 HOWARD HUGHES PARKWAY STE 500  
5 LAS VEGAS, NV 89169  
6 PH: (702) 380-3131  
7 Attorney for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN )

Case No. A-17-762264-C

11 Steven A. Hotchkiss, )

Dept.: ~~8~~ IX

12 PLAINTIFF, )

13 v. )

CONSOLIDATED WITH

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

Case No. A-17-763003-C

17 DEFENDANTS )

**JUDGMENT**

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 )

DEFENDANTS )

**JUDGMENT**

27 This matter was submitted for a bench trial before the Hon. Cristina Silva on  
28 February June 24-25, 2020.

29 The Court found Defendant Ronald J. Robinson liable as a guarantor of the

1 Virtual Communications Corporation promissory note, and also found Mr. Robinson  
2 and Defendant Vernon Rodriguez liable for violations of NRS §90.660 (civil liability  
3 under the Nevada Securities Laws) as control persons for Virtual Communications  
4 Corporation.

5 The Court finds that Plaintiffs are entitled to compensatory damages against  
6 Mr. Robinson for breach of contract, as well as under NRS §90.660. Plaintiffs are  
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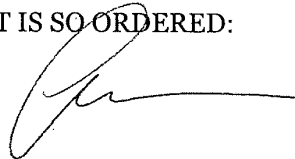
8 Wherefore, it is hereby ordered that Plaintiffs shall have judgment against  
9 Defendant Robinson in the amount of \$1,098,782 comprised of principal in the  
10 amount of \$574,000, interest in the amount of \$258,300, "late fees" of \$12,917 and  
11 attorney's fees of \$253,565, as set forth in Plaintiffs' Statement of Damages filed  
12 February 3, 2020.

13 Plaintiffs shall also have judgment against Defendant Rodriguez, in the  
14 amount of \$960,401, comprised of principal in the amount of \$574,000, interest in  
15 the amount of \$164,770 and attorney's fees in the amount of \$221,631 as set forth in  
16 Plaintiffs' filed February 22, 2020 Statement of Damages.

17 Dated this 21st day of August, 2020

18 IT IS SO ORDERED:

19 Dated this \_\_\_\_\_th day of August, 2020

20   
21 Hon. Cristina Silva  
22 District Court Judge  
23 Cristina D. Silva  
24 District Court Judge

EC

22 Submitted by: /s/ David Liebrader  
23 David Liebrader, Esq.  
24 Attorney for Plaintiff

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

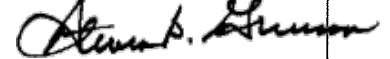
5		
6	Steven Hotchkiss, Plaintiff(s)	CASE NO: A-17-762264-C
7	vs.	DEPT. NO. Department 9
8	Ronald Robinson, Defendant(s)	
9		

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Judgment was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/21/2020

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DAVID LIEBRADER, ESQ.  
STATE BAR NO. 5048  
THE LAW OFFICES OF DAVID LIEBRADER, APC  
3960 HOWARD HUGHES PARKWAY STE 500  
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Attorney for Plaintiffs

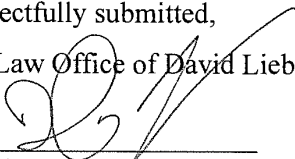
DISTRICT COURT  
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN	)	Case No. A-17-762264-C
	)	
Steven A. Hotchkiss,	)	Dept.: 9
	)	
PLAINTIFF,	)	NOTICE OF ENTRY OF ORDER
	)	
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	)	
	)	
	)	

TO THE COURT, ALL PARTIES AND INTERESTED PERSONS: Please take notice that  
the Court's **Findings of Facts and Conclusions of Law re: Damages and Attorney's Fees**  
was filed with the Clerk on August 20, 2020. See attached.

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Dated: August 21, 2020

Respectfully submitted,  
The Law Office of David Liebrader, Inc.  
By:   
David Liebrader  
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of August, 2020, I mailed a copy of the foregoing

**NOTICE OF ENTRY OF ORDER**

to the following

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

Scott Fleming, Esq.  
Fleming Law  
9525 Hillwood Dr. Ste. 140  
Las Vegas, NV 89134

/s/: Dianne Bresnahan

\_\_\_\_\_  
An Employee of The Law Office of David Liebrader

## **EXHIBIT “A”**



1 DAVID LIEBRADER, ESQ.  
2 STATE BAR NO. 5048  
3 THE LAW OFFICES OF DAVID LIEBRADER, APC  
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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

DEFENDANTS

) Case No. A-17-762264-C

) Dept.: IX

) CONSOLIDATED WITH

) Case No. A-17-763003-C

) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW AND  
) ORDER ON MOTION FOR  
) DAMAGES AND ATTORNEY'S  
) FEES

27 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

28 Plaintiffs' Motion for Damages and Attorney's Fees came on for Decision by  
29 the Court on its June 8, 2020 Chamber's Calendar. The Court considered Plaintiffs'

1 Motion, the Oppositions filed by Defendants Vernon Rodriguez and Ron Robinson,  
2 and Plaintiffs' replies thereto. Based upon the submissions, the Court GRANTS  
3 Plaintiff's Motion.

4 In reaching its decision on Attorney's Fees, the Court evaluated the factors set  
5 forth in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 455P.2d 37 (1969),  
6 including:(1) the qualities of the attorney, the attorney's ability, his training,  
7 education, experience, professional standing and skill; (2) the difficulty and character  
8 of the work to be done, including the time necessary to complete the task; (3) the  
9 work actually performed by the lawyer; and (4) the result of the work performed. The  
10 Plaintiffs' Motion sets forth how these factors are met and therefore Attorney's Fees  
11 are appropriate.

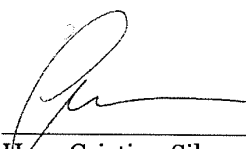
12 Because Plaintiffs prevailed on both their breach of contract claim and  
13 securities law claim against Defendant Ronald Robinson, Plaintiffs are entitled to  
14 damages and attorney's fees on both claims. The contract underlying the breach of  
15 contract claim provides for an award of attorney's fees, while NRS §90.660 provides  
16 for an award of attorney's fees for control person liability, which was established. As  
17 a result, Plaintiffs are awarded damages and attorney's fees on their breach of  
18 contract claims against Defendant Robinson in the amount of \$1,098,782 comprised  
19 of principal in the amount of \$574,000, interest in the amount of \$258,300, "late  
20 fees" of \$12,917 and attorney's fees of \$253,565, as set forth in Plaintiffs' Statement of  
21 Damages filed February 3, 2020.

22 As to Defendant Rodriguez, he is also liable as a control person, and per NRS  
23 §90.660 Plaintiffs are entitled to an award of damages and attorney's fees on this  
24  
25  
26

1 successful claim in the amount of \$960,401, comprised of principal in the amount of  
2 \$574,000, interest in the amount of \$164,770 and attorney's fees in the amount of  
3 \$221,631 as set forth in Plaintiffs' filed February 22, 2020 Statement of Damages.  
4  
5

6 IT IS SO ORDERED:  
Dated this 20th day of August, 2020

7 Dated this \_\_\_\_\_th day of August, 2020  
8

9   
Hon. Cristina Silva  
District Court Judge  
D4B 26A F3E2 9C07  
Cristina D. Silva  
District Court Judge

EC

10  
11 Submitted by: /s/ David Liebrader  
12 David Liebrader, Esq.  
13 Attorney for Plaintiff  
14  
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1 CSERV

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3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Steven Hotchkiss, Plaintiff(s) CASE NO: A-17-762264-C  
7 vs. DEPT. NO. Department 9  
8 Ronald Robinson, Defendant(s)  
9

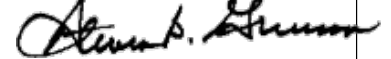
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
14 case as listed below:

15 Service Date: 8/20/2020

16 Harold Gewerter	harold@gewerterlaw.com
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22 Vernon Rodriquez	harold@gewerterlaw.com
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**MAMJ**  
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*Attorneys for Defendant Vernon Rodriguez*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\* \* \*

STEVEN A. HOTCHKISS,  
Plaintiff,

vs.

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.

CASE NO. A-17-762264-C  
DEPT NO. IX

**FIRST POST-JUDGMENT MOTION  
BY DEFENDANT VERNON  
RODRIGUEZ FOR ADDITIONAL  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND TO  
AMEND JUDGMENT PURSUANT  
TO NEV. R. CIV. P. 52(B), OR IN  
THE ALTERNATIVE, FOR  
FURTHER ACTION AFTER A  
NONJURY TRIAL PURSUANT TO  
NEV. R. CIV. P. 59(B)**

**HEARING REQUESTED**

ANTHONY WHITE; ROBIN  
SUNTHEIMER; TROY SUNTHEIMER;  
STEPHENS GHESQUIERE; JACKIE  
STONE; GAYLE CHANY; KENDALL  
SMITH; GABRIELE LAVERNICOCCA;  
and ROBERT KAISER,

Plaintiffs,

vs.

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.

Consolidated with

CASE NO. A-17-763003-C  
DEPT NO. IX

1 This is the first of three post-trial motions by Defendant Vernon Rodriguez (“Rodriguez”)  
2 that relate to the *Judgment* entered August 20, 2020 (the “Judgment”).<sup>1</sup> It concerns two issues.  
3 Mr. Rodriguez was held liable for a securities law violation as a “control person” pursuant to Nev.  
4 Rev. Stat. 90.660(4). The securities at issue, however, were the subject of a successful Chapter 11  
5 reorganization by the issuer, Virtual Communications Corporation (“VCC”). The VCC  
6 bankruptcy was addressed at trial and was subject of extensive pre- and post-trial briefing, but this  
7 Court has never issued any findings or conclusions regarding the effect of that proceeding *as it*  
8 *relates to Mr. Rodriguez*.

9 As more fully set forth below, Mr. Rodriguez submits that the effect of the VCC bankruptcy  
10 was sufficiently raised before, during and after trial so that this Court may offer additional findings  
11 of fact pursuant to Nev. R. Civ. P. 52(a). Should this Court disagree, however, Mr. Rodriguez  
12 requests that the Court treat this Motion as one requesting “further action after a nonjury trial”  
13 pursuant to Nev. R. Civ. P. 59(a)(2) so that this Court may take judicial notice of orders by the  
14 United States Bankruptcy Court.<sup>2</sup>

15 The second issue concerns the two-year statute of limitation set forth in Nev. Rev. Stat.  
16 90.670. Mr. Rodriguez raised that defense in his initial Answer, and the matter was extensively  
17 briefed in response to a motion by Plaintiffs requesting an award of damages and attorneys’ fees.  
18 This Court, however, has never issued any findings of fact or conclusions of law that address that  
19 issue.

20 At the end of each section, Mr. Rodriguez proposes additional findings. He then ends this  
21 brief by explaining that if the Court enters the requested findings, the Judgment is no longer viable  
22 with respect to him and requests that it be amended accordingly.

23 . . .

---

25 <sup>1</sup> Mr. Rodriguez respectfully suggests that the Court take up the three motions in the order  
26 in which they were presented, as a ruling on an earlier motion may render moot, in whole or in  
part, the relief sought in subsequent motions.

27 <sup>2</sup> Standards for granting such relief are set forth in the *Second Post-Judgment Motion by*  
28 *Defendant Vernon Rodriguez for a New Trial, Or in the Alternative, Further Action After a*  
*Nonjury Trial Pursuant to Nev. R. Civ. P. 59(a)*, which Mr. Rodriguez incorporates by reference.

MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY OF PRIOR PROCEEDINGS

Since this motion (this “Motion”) requests additional or amended findings of fact, it is appropriate to begin with a discussion of prior proceedings to note the issues that have been addressed by this Court and to identify issues that were raised but for which rulings have not been issued.

**A. The Pleadings**

Plaintiff Steven A. Hotchkiss (“Hotchkiss”) commenced Case No. A-17-762264-C on September 28, 2017 by filing his *Complaint for Damages* (the “Hotchkiss Complaint”). A similar action was filed by Anthony White (“White”) on October 12, 2017 as Case No. A-17-763003-C. A *Stipulation and Order Consolidating Cases* was entered July 1, 2019. Mr. White filed a *First Amended Complaint* on October 4, 2018 (the “White FAC”).<sup>3</sup>

Plaintiffs summarized their actions as follows:

This is an action for the recovery of investment losses. One investment is at issue; it is an unregistered security in the form of a promissory note that was marketed and sold by Defendants through a “general solicitation” in violation of the Nevada securities laws. The investment is a short term promissory note issued by a VCC, and personally guaranteed by Defendant Robinson.

See Hotchkiss Complaint at p. 3, ll. 11-15 (White FAC at p. 4, ll. 13-17).

Plaintiffs asserted two claims for relief against Mr. Rodriguez. Count Two sought damages for violation of the Nevada Uniform Securities Act, codified at Nev. Rev. Stat. 90.310, 90.460 and 90.660. *Id.* at p. 11, ll. 13-14 (White FAC at p. 12, l. 23 – p. 13, l. 1). Plaintiffs referred to two facts that they alleged constituted a violation of Nevada law, the sale of unregistered securities by

---

<sup>3</sup> The two original pleadings filed by Mr. Hotchkiss and Mr. White (together, “Plaintiffs”) are substantially similar, and often identical. In the *Stipulation and Order Consolidating Cases* filed July 1, 2019, the parties agreed that “the issues in both cases are identical and involve the same Defendants and the same causes of action.” *Id.* at p. 1, ll. 20-21. The Hotchkiss Complaint and White FAC occasionally differ (as noted where necessary below) primarily in that allegations against certain dismissed parties were omitted from the White FAC. In the section that follows, Mr. Rodriguez has offered citations to the Hotchkiss Complaint, with corresponding references to Mr. White’s most recent pleading in parenthesis.

1 unlicensed sales representatives: “At all times mentioned herein the VCC Defendants sold  
2 unregistered securities through unlicensed sales representatives (Stoll and Retire Happy) via a  
3 general solicitation, in violation of the Nevada Securities Act.” *Id.* at p. 12, ll. 3-5 (White FAC at  
4 p. 13, ll. 13-15 [without reference to Stoll and Retire Happy]). ***The only allegation in Count Two***  
5 ***that concerned Mr. Rodriguez was that he was a “control person” for VCC.*** *Id.* at p. 11, ll. 18-  
6 19 (White FAC at p. 13, ll. 5-6).

7 In Count Three, Plaintiffs alleged violations of the Nevada Uniform Securities Act,  
8 codified at Nev. Rev. Stat. 90.570 and 90.660. *Id.* at p. 12, ll. 8-9 (White FAC at p. 13, ll. 22-23).  
9 Plaintiffs alleged generally that “Defendants withheld material information about the VCC  
10 investment and the VCC corporation as described above. Had this information been disclosed to  
11 Plaintiff prior to the time he made his investments, he would not have purchased the VCC notes.”  
12 *Id.* at ll. 11-14 (White FAC at p. 14, ll. 2-5). Plaintiffs went on to describe specific acts and  
13 omissions by several individuals. For example, Defendants Alisa Davis (“Davis”) and Frank  
14 Yoder (“Yoder”) provided information: “At all times mentioned herein Davis and Yoder  
15 materially aided in the VCC Note transaction by providing information and the forms necessary  
16 to complete the transaction to Retire Happy (and then to Stoll), whom they knew were raising  
17 money for VCC.” *Id.* at ll. 15-18 (no corresponding allegations appears in the White FAC).  
18 Defendants VCC and Mr. Robinson were alleged to have failed to advise Plaintiffs that VCC was  
19 involved in a general solicitation:

20 Defendants VCC and Robinson also failed to inform  
21 Plaintiff that by using Retire Happy to market the VCC shares, they  
22 were engaging in a “general solicitation” of securities, in violation  
23 of state and federal securities laws. This was a material omission  
because Plaintiff would not have invested in the VCC share  
transactions had he known that VCC was violating the law in  
offering the securities to him.

24 *Id.* at p. 12, l. 21 – p. 13, l. 2 (White FAC at p. 14, ll. 8-12).

25 Plaintiffs alleged generally that “Defendants” failed to inform them that a representative of  
26 Retire Happy was a felon: “Defendants also failed to tell Plaintiff that Julie Minuskin, owner of  
27 Retire Happy was a convicted felon. This was a material omission.” *Id.* at p. 13, ll. 3-6 (no  
28 corresponding allegations appears in the White FAC).



1 Plaintiffs described a PowerPoint presentation and offered specific allegations against Ms.  
2 Davis and Mr. Yoder:

3 At all times mentioned herein, If Robinson is to be believed  
4 Davis and Yoder acted outside the scope of their employment by  
5 materially misrepresenting the nature of the guarantee on the Note  
6 offering. Yoder and Davis played significant roles in the transaction  
7 by providing detailed marketing materials to Retire Happy and  
8 providing the actual Notes for their use in soliciting clients. Both  
9 Yoder and Davis knew that Retire Happy and their prospective Note  
10 purchasers would be relying on Robinson's guarantee contained in  
11 the PowerPoint presentation and in the preprinted notes. Despite this  
12 knowledge, if Robinson is to be believed, neither Yoder, nor Davis  
13 obtained Robinson's permission to include his guarantee as part of  
14 the PowerPoint presentation or the preprinted Note transaction.

15 *Id.* at p. 13, ll. 7-16 (no corresponding allegations appear in the White FAC).

16 *As with Count Two, the only specific allegation against Mr. Rodriguez that appears in*  
17 *Count Three is that he was a “control person” for VCC. Id.* at p. 12, ll. 19-20 (White FAC at p.  
18 14, ll. 8-12).

19 *Defendant Vernon Rodriguez’s Answer to Plaintiff’s Complaint* was filed October 25, 2017  
20 in the *Hotchkiss* matter. In his response, Mr. Rodriguez asserted, among other things, that:  
21 “Plaintiff is barred from relief because the deadline for the applicable statutes of limitation have  
22 passed.” *Id.* at p. 7, ll. 2-3. Mr. Rodriguez did not raise the same affirmative defenses in response  
23 to the White Complaint or White FAC.<sup>4</sup>

24 **B. The Trial, the Court’s Decision, and the Findings of Fact and Conclusions of Law**

25 The Court conducted a bench trial of the consolidated cases on February 24 and 25, 2020.  
26 Defendants Alisa Davis and Frank Yoder were dismissed at the conclusion of the plaintiffs’ case  
27 in chief.

28 On April 27, 2020, the Court issued a written *Decision* (the “Decision”) in which it  
concluded that Mr. Rodriguez was a “control person” within the meaning of NAC 90.035:

---

<sup>4</sup> Mr. Rodriguez was initially represented in the *Hotchkiss* matter by Robert Atkinson, Esq. This Court entered an Order approving his withdrawal as counsel on November 15, 2017. Afterwards, Harold P. Gewerter, Esq. (“Gewerter”) took on the representation of Mr. Rodriguez. It is not known why Mr. Gewerter failed to offer the same affirmative defenses in the *White* case that Mr. Atkinson asserted in the *Hotchkiss* matter

1 As established above, Plaintiffs have established that VCC  
2 was issuing un-exempted, unregistered securities. Plaintiffs also  
3 alleged that Ronald Robinson and ***Vernon Rodriguez are control***  
4 ***persons***. The evidence at trial proves this allegation by more than a  
5 preponderance of the evidence. Robinson and Rodriguez were  
6 officers in the corporation. Robinson was a President, Chief  
7 Executive Officer (CEO), Chairman of the Board, and a signer on  
the financial accounts. Rodriguez spoke and gave advice to potential  
investors. According to Frank Yoder's testimony, Rodriguez was  
also fully involved in the finances of the corporation. The Court  
believes Yoder's testimony, in part because Rodriguez was listed as  
the Chief Financial Officer (CFO) in the various PowerPoints  
presented to potential investors.

8 If the plaintiff establishes that a defendant is a "controlling  
9 person," then the defendant bears the burden of proving that he  
10 "acted in good faith and did not directly or indirectly induce the act  
11 or acts constituting the violation or cause of action." *Paracor Fin.,*  
12 *Inc. v. Gen. Elec. Capital Corp.*, 96 F.3d 1151, 1161 (9th Cir. 1996)  
13 (citing 15 U.S.C. § 78t(a)); *see also Hollinger*, 914 F.2d at 1575.  
14 While the testimony of Robinson and Rodriguez suggests that they  
15 believed they were acting in good faith, based in part on an alleged  
lack of knowledge of Nevada security laws, they failed to present  
any evidence that they were not directly or indirectly involved in the  
acts regarding the violation of Nevada security regulations. Rather,  
the evidence demonstrates that they were directly and intimately  
involved in creating the material to sell the Notes; Robinson then  
served as the personal guarantor of the Notes and Rodriguez was the  
proverbial "closer" who spoke to investors when necessary.

16 *Id.* at p. 5, ll. 1-20 [footnote omitted, emphasis added].

17 The Court concluded its Decision by directing the parties to "meet and confer and submit  
18 a proposed Findings of Fact and Conclusions of Law consistent with this Decision." *Id.* at p. 6, ll.  
19 15-16.

20 Plaintiffs prepared proposed *Findings of Fact, Conclusions of Law and Order on*  
21 *Defendants Liability* (the "FFCL"), which the Court approved and filed on May 8, 2020. It is  
22 unclear whether Mr. Gewerter ever offered any comments. The substantive findings consisted of  
23 the following eight lines of text:

24 ...

25 ...

26 ...

1 That Plaintiffs invested in Virtual Communications Corporation's  
2 9% Promissory Notes which were personally guaranteed by Ronald  
3 Robinson.

4 That VCC stopped making payments in February 2015 and the  
5 company and Ronald Robinson were notified of the default, with a  
6 demand to bring all amounts due current, and to repay the principal.

7 ***That VCC filed for Chapter 11 bankruptcy protection, and all  
8 proceedings against VCC were stayed. The case proceeded against  
9 the other, nonbankrupt defendants.***

10 *Id.* at p. 2, ll. 11-18 [emphasis added].

11 The FFCL included conclusions of law on three issues, two of which refer to Mr.  
12 Rodriguez:

13 1. VCC sold unregistered nonexempt securities.

14 Applying the test set forth in *State v. Friend*, 118 Nev. 115 (2002)  
15 the Court finds that the promissory Notes offered by VCC and sold  
16 to the Plaintiffs meet the definition of a security under NRS §  
17 90.295. Further, none of the Defendants either claimed or attempted  
18 to prove that any exemption from registration applied to the offering  
19 or any of the individual transactions. As a result, the court finds that  
20 VCC sold unregistered nonexempt securities to the Plaintiff in  
21 violation of NRS § 90.460.

22 2. Ronald Robinson and Vernon Rodriguez are liable as  
23 Control Persons.

24 Nevada Administrative Code (NAC) section 90.035 defines a  
25 "control person" as an individual who (1) owns or controls 10  
26 percent or more of the voting stock of a corporation; (2) is an officer  
27 or director of a corporation; or (3) is in a position to influence the  
28 decision-making processes of a corporation.

The evidence at trial proved by more than a preponderance of the  
evidence that Mr. Robinson and Mr. Rodriguez were VCC's officers,  
and that they were in a position to, and did in fact, influence the  
unregistered Promissory Note offering.

Mr. Robinson was VCC's President, Chief Executive Officer (CEO)  
and the Chairman of the Board. Mr. Rodriguez was the CFO and  
was designated as the point of contact for investors who had  
questions about the Promissory Note offering. Both men were fully  
involved in the finances of the company, and both were aware of the  
Power Point presentations that were prepared by VCC to show to  
prospective investors.

Based upon this evidence, Plaintiffs met their burden of establishing  
that Mr. Robinson and Mr. Rodriguez were statutory control persons

1 within the definition of NAC 90.035.

2 See FFCL at p. 2, l. 20 – p. 3, l. 20.

3 The Court discussed the effect of the VCC bankruptcy filing in connection with Mr.  
4 Robinson's liability under his personal guarantee:

5 3. Mr. Robinson is liable as a guarantor

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

9 The Court found Defendant Robinson's position unpersuasive. No  
10 less than six separate documents introduced at trial evidenced Mr.  
Robinson's intent to guarantee the Note.

11 ***The Court also finds that the VCC Bankruptcy did not extinguish***  
12 ***Mr. Robinson's personal guarantee.*** The Court asked for and  
13 received post trial briefs on this issue, and relying on the reasoning  
14 set forth in Donnell v. Perpetual Investments, Inc. (USDC Nevada,  
case 2:04-cv-01172, Decision issued 10/11/06) and Marc Nelson Oil  
15 Prods. V. Grim Logging Co., 110 P.3d 120 (Or. App. 2005) fins [sic]  
that the ***VCC bankruptcy did not extinguish Mr. Robinson's***  
***liability as guarantor of the Notes.***

16 ***As Chairrnan of the Board, Robinson directed VCC to file for***  
17 ***Chapter 11 bankruptcy with full knowledge that such a filing***  
18 ***would preserve his equity position in the company, while***  
19 ***simultaneously hoping the filing would extinguish his \$4 million***  
***personal liability under the Notes. As a result, the Court finds***  
***such conduct serves as a defacto consent to the modification,***  
***which also did not increase Mr. Robinson's risk under the Note***  
***terms.***

20 As a result of the sale of unregistered securities under NRS§  
21 90.460, the Court finds control persons Robinson and Rodriguez  
22 liable for the sale of unregistered securities and finds that Plaintiffs  
are entitled to damages under NRS§ 90.660.

23 The Court further finds that VCC was in breach of contract and that  
24 as guarantor Ronald Robinson is liable to the Plaintiffs for damages  
under the Note terms.

25 See FFCL at p. 3, l. 21 – p. 4, l. 23 [emphasis added].

26 In sum, the Court issued extensive findings and conclusions regarding the effect of the  
27 VCC bankruptcy case on Mr. Robinson. No findings or conclusions were ever offered, however,  
28 regarding the effect of the VCC Chapter 11 plan of reorganization on Mr. Rodriguez and his  
purported liability as a “control person” under Nev. Rev. Stat. 90.660(4). Mr. Rodriguez

1 respectfully requests that the Court address that omission.

## 2 LEGAL AUTHORITIES AND ANALYSIS

### 3 A. Standards for Issuance of Amended or Additional Findings of Fact and Amendment 4 of a Judgment

5 Nev. R. Civ. P. 52(a) requires that a District Court enter findings of fact and conclusions  
6 of law in all actions “tried upon the facts” by the court, either by stating such findings on the record  
7 or in a written memorandum or decision:

#### 8 Rule 52. Findings and Conclusions by the Court; Judgment 9 on Partial Findings

##### (a) Findings and Conclusions.

10 (1) **In General.** In an action tried on the facts without a  
11 jury or with an advisory jury, the court must find the facts specially  
12 and state its conclusions of law separately. The findings and  
13 conclusions may be stated on the record after the close of the  
14 evidence or may appear in an opinion or a memorandum of decision  
15 filed by the court. Judgment must be entered under Rule 58. . .

16 Specific findings of fact need not be made if at the time judgment is entered, the facts are  
17 not at issue. *Britz v. Consol. Casinos Corp.*, 87 Nev. 441, 447, 488 P.2d 911, 916 (1971). The  
18 findings, however, must be sufficient to indicate the factual bases for the Court’s ultimate decision.  
19 *Bing Constr. Co. v. Vasey-Scott Eng’g Co.*, 100 Nev. 72, 73, 674 P.2d 1107, 1107 (1984). In the  
20 absence of express findings, an appellate court will imply findings when the evidence clearly  
21 supports the judgment. *Obstetrics and Gynecologists v. Pepper*, 101 Nev. 105, 107, 693 P.2d  
22 1259, 1261 (1985); *Gorden v. Gorden*, 93 Nev. 494, 496, 569 P.2d 397, 398 (1977) (*citing Hardy*  
23 *v. First Nat’l Bank of Nev.*, 86 Nev. 921, 478 P.2d 581 (1970)). When the record is not clear,  
24 however, an appellate court “will not imply findings to support the judgment” but will instead  
25 “remand the matter to the district court to set forth the basis for its award.” *Commercial Cabinet*  
26 *Co. v. Mort Wallin of Lake Tahoe, Inc.*, 103 Nev. 238, 240, 737 P.2d 515, 517 (1987) (*citing Bing*  
27 *Constr. Co. v. Vasey-Scott Eng’g Co.*, 100 Nev. 72, 73, 674 P.2d 1107 (1984). If the district court  
28 judge cannot do so, the matter will be remanded for a new trial. *Luciano v. Diercks*, 97 Nev. 637,  
638, 637 P.2d 1219, 1221 (1981) (*citing Noble v. Noble*, 86 Nev. 459, 470 P.2d 430 (1970); *Pease*  
*v. Taylor*, 86 Nev. 195, 467 P.2d 109 (1970)).

1 Nev. R. Civ. P. 52(b) provides that a Court may, within twenty-eight days following entry  
2 of a judgment, offer additional or amended findings of fact, and may amend a judgment  
3 accordingly:

4  
5 **Rule 52. Findings and Conclusions by the Court; Judgment  
on Partial Findings**

6 ...

7 (b) **Amended or Additional Findings.** On a party's motion  
8 filed no later than 28 days after service of written notice of entry of  
9 judgment, the court may amend its findings — or make additional  
findings — and may amend the judgment accordingly. The time for  
filing the motion cannot be extended under Rule 6(b). The motion  
may accompany a motion for a new trial under Rule 59.

10 Rule 52(b) is an important remedy, given the common practice of the prevailing party  
11 preparing and submitting proposed findings of fact and conclusions of law for the court. *See Foley*  
12 *v. Morse & Mowbray*, 109 Nev. 116, 123-24, 848 P.2d 519, 524 (1993); *Byford v. State*, 123 Nev.  
13 67, 156 P.3d 691, 692 (2007). A Rule 52(b) motion may also be used to suggest and/or request  
14 clarification on the record of the basis for the District Court's decision. *See Bing Constr. Co. v.*  
15 *Vasey-Scott Eng'g Co.*, 100 Nev. 72, 73, 674 P.2d 1107, 1107 (1984).

16 **B. Mr. Rodriguez Requests Additional Findings of Fact Regarding the VCC Chapter 11  
Bankruptcy Case**

17  
18 There are three key documents that include significant rulings by the United States  
19 Bankruptcy Court for the District of Nevada (the "Bankruptcy Court"), all of which were attached  
20 as Exhibits to the *Opposition by Defendant Vernon Rodriguez to Plaintiff's Motion for Damages*  
21 *and Attorneys' Fees dated May 21, 2020*. No objections were made by any party regarding the  
22 accuracy, completeness, or authenticity of those documents. For the convenience of the Court, the  
23 same documents have been reproduced again and attached as Exhibits to the *Request by Defendant*  
24 *Vernon Rodriguez for Judicial Notice in Support of Post-Trial Motions* (the "RFJN") filed  
25 contemporaneously with this Motion.

26 ...

27 ...

28

1           **1. Requested Finding No. 1: VCC's Chapter 11 Case Was Fully Administered**  
2           **and No Appeals Were Pending at the Time of Trial**

3           Mr. Rodriguez requests a finding by this Court that the VCC Chapter 11 bankruptcy case  
4 was fully administered and that no appeals were pending at the time of trial in this matter. The  
5 support for that finding consists of the *Order Entering Final Decree* [ECF No. 119] issued on  
6 March 14, 2019, which states: "It appearing that this Court's continuing jurisdiction is no longer  
7 necessary and that this case has been fully administered." A true and correct copy of this order  
8 was attached to the RFJN as **Exhibit 1**.

9           **2. Requested Finding No. 2: VCC's Chapter 11 Plan Was Confirmed by the**  
10           **United States Bankruptcy Court**

11           Mr. Rodriguez requests a finding by this Court that VCC's Chapter 11 Plan of  
12 Reorganization (the "Plan") was confirmed by the Bankruptcy Court. The support for that finding  
13 consists of the *Order Confirming First Amended Chapter 11 Plan of Reorganization of Virtual*  
14 *Communications Company* [ECF No. 75] (the "Confirmation Order"), a true and correct copy of  
15 which is attached to the RFJN as **Exhibit 2**. As its name implies, the Confirmation Order provided  
16 Bankruptcy Court approval of a Chapter 11 plan of reorganization proposed by VCC:

17                       The Plan, as amended herein, is confirmed pursuant to  
18                       Section 1129, and the record of the Confirmation Hearing is hereby  
19                       closed. The Effective Date of the Plan shall be the latter of  
20                       September 3, 2018 or the first Business Day that is more than  
21                       fourteen (14) days after the entry of this Order confirming the Plan  
22                       by the Court.

23           *Id.* at p. 6, ll. 1-4.

24           **3. Requested Finding No. 3: VCC's Chapter 11 Plan is Binding on All Parties**

25           Mr. Rodriguez requests a finding by this Court that VCC's Chapter 11 plan of  
26 reorganization is binding upon all parties, regardless of whether they voted in favor of the plan.  
27 The support for that finding appears in the Confirmation Order, which provides:  
28

...

...

...

1 In accordance with Section 1141(a) of the Bankruptcy Code  
2 and upon the occurrence of the Effective Date, the Plan shall be  
3 binding upon and inure to the benefit of: (i) the Debtor; (ii) all  
4 Claimants and all Holders of Claims or Equity Interests (regardless  
5 of whether any such Claimants or Holders voted to accept the Plan,  
6 is Impaired under the Plan, or has filed, or is deemed to have filed,  
7 a Proof of Claim); (iii) any other Entity giving, acquiring, or  
8 receiving property under the Plan; (iv) any party to an executory  
9 contract or unexpired lease of the Debtor; and (v) each of the  
10 foregoing's respective heirs, successors, assigns, trustees, executors,  
11 administrators, affiliates, officers, directors, agents, representatives,  
12 attorneys, beneficiaries, or guardians, if any.

13 *Id.* at p. 7, ll. 14-21.

14 **4. Requested Finding No. 4: VCC's Chapter 11 Plan Cancelled All Promissory Notes  
15 and Issued Common and Preferred Stock**

16 Mr. Rodriguez requests a finding by this Court that VCC's Chapter 11 plan of  
17 reorganization cancelled all promissory notes, including those held by the Plaintiffs in these  
18 consolidated cases, and provided for the issuance of common and preferred stock.

19 The support for this finding consists of the *First Amended Chapter 11 Plan of*  
20 *Reorganization for Virtual Communications Corporation* [ECF No. 38] (the "Plan") filed on June  
21 13, 2018 (and approved by the Bankruptcy Court pursuant to the Confirmation Order). A true and  
22 correct copy of the Plan was attached to the RFJN as **Exhibit 3**.

23 The Plan specifically addressed claims held by holders of unsecured promissory notes,  
24 including the Plaintiffs in this action:

25 **3. Class 3 – Unsecured Promissory Notes.**

26 Classification: Class 3 consists of all Claims held by the  
27 Unsecured Noteholders.

28 Treatment: Except to the extent that a Holder of an Allowed  
Class 3 Claim agrees to a less favorable treatment, in exchange for  
and in full and final satisfaction, compromise, settlement, release,  
and discharge of each Allowed Class 3 Claim, each Holder of an  
Allowed Class 3 Claim shall receive on the Effective Date, or as  
soon thereafter as reasonably practicable, (i) its ***Pro Rata share of***  
***the Common Stock Distribution*** and (ii) its ***Pro Rata Share of the***  
***Series A Preferred Distribution***.

*Id.* at p. 11, ll. 4-9 [underlining in original and bold italics added].

...

...



1           **5. Requested Finding No. 5: Plaintiffs in this Action Received a Pro Rata**  
2           **Distribution of 1,300,093 Shares of VCC Common Stock in Exchange for their**  
3           **Promissory Notes**

4           Mr. Rodriguez requests a finding by this Court that VCC's Chapter 11 plan of  
5 reorganization effected the transfer to Plaintiffs of a pro rata share of 1,300,093 shares of VCC  
6 common stock, a transaction known colloquially as a "debt for equity swap." The support for that  
7 finding consists of the following provision in the confirmed Plan:

8                     Common Stock Distribution: A distribution of  
9 approximately 1,300,093 shares of Common Stock of the  
10 Reorganized Debtor to be allocated among the Holders of Allowed  
11 Class 3 Claims on a Pro Rata basis according to the amount of  
12 contract-rate interest accrued on the principal balance included in  
13 each Holder's respective Allowed Class 3 Claim as of the Petition  
Date, which shall be subject to adjustment to provide that the  
number of shares of Common Stock included within the Common  
Stock Distribution is equal to the total amount of all contract-rate  
interest accrued on the aggregate principal balances included within  
all Allowed Class 3 Claims as of the Petition Date.

14           *Id.* at p. 3, ll. 9-13.

15           **6. Requested Finding No. 6: Plaintiffs in this Action Received a Pro Rata**  
16           **Distribution of 940,110 Shares of VCC Preferred Stock in Exchange for their**  
17           **Promissory Notes**

18           Mr. Rodriguez requests a finding by this Court that VCC's Chapter 11 plan of  
19 reorganization effected the transfer to Plaintiffs of a pro rata share of 940,110 shares of VCC  
20 preferred stock. The support for that finding consists of the following provision in the confirmed  
Plan:

21                     Series A Preferred Distribution: A distribution of  
22 approximately 940,110 shares of Series A Preferred Stock of the  
23 Reorganized Debtor to be allocated among the Holders of Allowed  
24 Class 3 Claims on a Pro Rata basis according to the principal  
25 indebtedness included in each Holder's Allowed Class 3 Claim,  
26 which shall be subject to adjustment to provide that the number of  
shares of Series A Preferred Stock included within the Series A  
Preferred Distribution is equal to one-fifth (1/5th) of the total dollar  
amount of all principal indebtedness included within all Allowed  
Class 3 Claims.

27           *Id.* at p. 6, ll. 21-25.

28           ...

1           **7. Requested Finding No. 7: Confirmation of the Plan Provided for a Complete**  
2           **Discharge of VCC, Enforced by a Permanent Injunction**

3           Mr. Rodriguez requests a finding by this Court that confirmation of VCC's Chapter 11 plan  
4 of reorganization effected a complete discharge of all liability by VCC for any pre-petition  
5 obligations, including the promissory notes held by Plaintiffs in this action, and that such a  
6 discharge is enforced by a permanent injunction by the Bankruptcy Court. The support for that  
7 finding consists of the following provision in the confirmed Plan:

8                   **XI. EFFECT OF PLAN CONFIRMATION BINDING**  
9                   **NATURE OF THE PLAN**

10                   THIS PLAN SHALL BIND ALL HOLDERS OF CLAIMS  
11 AGAINST AND EQUITY INTERESTS AND INTERCOMPANY  
12 INTERESTS IN THE DEBTORS TO THE MAXIMUM EXTENT  
13 PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING  
14 WHETHER OR NOT SUCH HOLDER (I) WILL RECEIVE OR  
15 RETAIN ANY PROPERTY OR INTEREST IN PROPERTY  
16 UNDER THE PLAN, (II) HAS FILED A PROOF OF CLAIM OR  
17 INTEREST IN THE CHAPTER 11 CASES OR (III) FAILED TO  
18 VOTE TO ACCEPT OR REJECT THE PLAN OR VOTED TO  
19 REJECT THE PLAN.

20                   **A. Discharge Injunction.**

21                   The rights afforded in the Plan and the treatment of all  
22 Claims shall be in exchange for and in complete satisfaction,  
23 discharge, and release of all Claims of any nature whatsoever arising  
24 prior to the Effective Date against the Debtor and the Estate,  
25 including any interest accrued on such Claims from and after the  
26 Petition Date. Except as otherwise provided in the Plan or the  
27 Confirmation Order, on the Effective Date, (a) the Debtor, the  
28 Estate, the Reorganized Debtor and their respective property are  
discharged and released hereunder to the fullest extent permitted by  
Bankruptcy Code sections 524 and 1141 from all Claims and rights  
against them that arose before the Effective Date, including all  
debts, obligations, demands, and liabilities, and all debts of the kind  
specified in Bankruptcy Code sections 502(g), 502(h), or 502(i),  
regardless of whether or not (i) a proof of Claim based on such debt  
is Filed or deemed Filed, (ii) a Claim based on such debt is allowed  
pursuant to Bankruptcy Code section 502, or (iii) the Holder of a  
Claim based on such debt has or has not accepted the Plan; (b) any  
judgment underlying a Claim discharged hereunder is void; and (c)

1 all entities are precluded from asserting against the Debtor, the  
2 Estate, the Reorganized Debtor and their respective property, any  
3 Claims or rights based upon any act or omission, transaction, or  
4 other activity of any kind or nature that occurred prior to the  
5 Effective Date.

6 Except as otherwise provided in the Plan or the Confirmation  
7 Order, on and after the Effective Date, all entities who have held,  
8 currently hold, or may hold a Claim against the Debtor, the Estate,  
9 or the Reorganized Debtor, that is based upon any act or omission,  
10 transaction, or other activity of any kind or nature that occurred prior  
11 to the Effective Date, that otherwise arose or accrued prior to the  
12 Effective Date, or that otherwise is discharged pursuant to the Plan,  
13 are permanently enjoined from taking any of the following actions  
14 on account of any such discharged Claim, (the “Permanent  
15 Injunction”): (a) commencing or continuing in any manner any  
16 action or other proceeding against the Debtor, the Estate, the  
17 Reorganized Debtor or their respective property, that is inconsistent  
18 with the Plan or the Confirmation Order; (b) enforcing, attaching,  
19 collecting, or recovering in any manner any judgment, award,  
20 decree, or order against the Debtor, the Estate, the Reorganized  
21 Debtor or their respective property, other than as expressly  
22 permitted under the Plan; (c) creating, perfecting, or enforcing any  
23 lien or encumbrance against property of Debtor, the Estate, the  
24 Reorganized Debtor, or their respective property, other than as  
25 expressly permitted under the Plan; and (d) commencing or  
26 continuing any action, in any manner, in any place that does not  
27 comply with or is inconsistent with the provisions of the Plan, the  
28 Confirmation Order, or the discharge provisions of Bankruptcy  
Code section 1141. Any person or entity injured by any willful  
violation of such Permanent Injunction shall recover actual  
damages, including costs and attorneys’ fees, and, in appropriate  
circumstances, may recover punitive damages, from the willful  
violate.

*Id.* at p. 39, l. 7 – p. 30, l. 6.

**C. Mr. Rodriguez Requests Additional Findings of Fact Regarding Dates Affecting Plaintiffs’ Claims**

Mr. Rodriguez requests that the Court offer additional findings regarding the dates on which Plaintiffs in these consolidated cases acquired interests in VCC promissory notes.

...

1           **1. Requested Finding No. 8: Plaintiffs Acquired Interests in VCC Promissory**  
2           **Notes Between January 2013 and December 2014**

3           Mr. Rodriguez requests a finding by this Court that Plaintiffs in this action acquired  
4 interests in VCC promissory notes between January 2013 and December 2014. The support for  
5 that finding consists of the *Statement of Damages* submitted by Plaintiffs on February 3, 2020.  
6 That document includes on page 2 a chart listing (among other things) the names of each Plaintiff,  
7 the Amount Invested and the Date of each investment:

Plaintiff	Amount invested	Date of Investment
Hotchkiss	\$75,000	11/2013
White	\$20,000	1/2014
Troy Suntheimer	\$52,000	11/2013
Robin Suntheimer	\$35,000	10/2013
Ghesquiere	\$66,000	4/2014
Lavermicocca	\$100,000	9/2014
Stone	\$35,000	1/2013
Chany	\$59,000	9/2014
Smith	\$28,000	12/2014
Kaiser I	\$62,000	1/2013
Kaiser2	\$42,000	10/2013

19  
20           **D. Mr. Rodriguez Requests That the Judgment Be Amended To Conform With These**  
21           **Additional Findings of Fact**

22           **1. Amendment of the Judgment to Reflect Proceedings in the VCC Bankruptcy**  
23           **Case**

24           **a. There is No Primary Obligor For Which Mr. Rodriguez Can Hold**  
25           **Secondary Liability as a “Control Person”**

26           Under its adoption of the Uniform Securities Act, Nevada imposes *primary* liability for  
27 certain violations, including the issuance of unregistered securities, on the party that “offers or  
28 sells” a security. Damages recoverable from a *primary* violator can consist only of (i) the amount  
paid for the security, less amounts received, or (ii) the difference between the amount paid and the

1 amount for which it was later sold, plus interest, fees, and costs:

2 **NRS 90.660 Civil liability.**

3 1. A person who offers or sells a security in violation of any of the  
4 following provisions:

5 ... (b) NRS 90.460;

6 ...  
7 is liable to the person purchasing the security. Upon tender of the  
8 security, the purchaser may recover the ***consideration paid for the***  
9 ***security*** and interest at the legal rate of this State from the date of  
10 payment, costs and reasonable attorney's fees, less the amount of  
11 income received on the security. ***A purchaser who no longer owns***  
12 ***the security may recover damages. Damages are the amount that***  
13 ***would be recoverable upon a tender less the value of the security***  
14 ***when the purchaser disposed of it,*** plus interest at the legal rate of  
15 this State from the date of disposition of the security, costs and  
16 reasonable attorney's fees determined by the court. Tender requires  
17 only notice of willingness to exchange the security for the amount  
18 specified.

19 [Emphasis added.]

20 Under subsection (4), liability can also attach to certain secondary "control" parties. The  
21 Honorable Philip M. Pro has recognized the distinction between a *primary* violator under  
22 Subsection (1) and a secondary party under Subsection (4). *See Baroi v. Platinum Condo. Dev.,*  
23 *LLC*, 914 F.Supp.2d 1179, 1200-01 (D. Nev. 2012) ("Pursuant to Nevada Revised Statutes §  
24 90.660(4), a person who 'directly or indirectly controls' a *primary* violator of Nevada securities  
25 law is jointly and severally liable for the securities violation. . .") [emphasis added]; *see also*  
26 *Tsutsumi v. Advanced Power Techs., Inc.*, Case No. 2:12-cv-01784-MMD-VCF at \*7 (D. Nev.  
27 January 24, 2014) (complaint failed to meet pleading requirements of Fed. R. Civ. P. 9(b) where  
28 it did not detail whether corporate defendants were themselves liable or whether individual  
defendants were "vicariously" liable as controlling persons under Nev. Rev. Stat. 90.660(4))  
[unpublished decision]; *Ayers v. Lee*, Case No. 14cv542-LAB(WVG) at \*2 (S.D. Cal. March 13,  
2015) ("Section 90.660(1) provides that a person who offers or sells securities in violation of  
certain provisions of law is liable to the person who purchases the security. Section 90.660(4)  
provides for the liability of several other classes of people. . .") [unpublished decision].

The distinction between a primary violator under Subsection (1), and a secondary party  
liable as a "control person" under Subsection (4), is critical – particularly in this case – because a

1 secondary party can only responsible for damages “with and to the same extent as the other person”  
2 (i.e., the original issuer):

3 **NRS 90.660 Civil liability.**

4 . . . .  
5 4. A person who directly or indirectly controls another person who  
6 is liable under subsection 1 or 3, a partner, officer or director of the  
7 person liable, a person occupying a similar status or performing  
8 similar functions, any agent of the person liable, an employee of the  
9 person liable if the employee materially aids in the act, omission or  
10 transaction constituting the violation, and a broker-dealer or sales  
11 representative who materially aids in the act, omission or transaction  
12 constituting the violation, are ***also liable jointly and severally with  
and to the same extent as the other person***, but it is a defense that  
the person did not know, and in the exercise of reasonable care could  
not have known, of the existence of the facts by which the liability  
is alleged to exist. With respect to a person who directly or  
indirectly, controls another person who is liable under subsection 3,  
it is also a defense that the controlling person acted in good faith and  
did not, directly or indirectly, induce the act, omission or transaction  
constituting the violation. Contribution among the several persons  
liable is the same as in cases arising out of breach of contract.

13 [Emphasis added.]

14 The Bankruptcy Case is outcome determinative as to Mr. Rodriguez because it has  
15 absolutely and irrevocably extinguished any liability of VCC under the Notes. Pursuant the Plan,  
16 Confirmation Order, and 11 U.S.C. §§ 524 and 1141, there is now a permanent injunction against  
17 any efforts by any parties to recover any obligations of VCC that arose prior to the 2018 petition  
18 date. There is thus no primary obligor against which damages could be assessed that Mr.  
19 Rodriguez could share liability “with and to the same extent as.”

20 **b. There is No Evidence Regarding the Value Received by Plaintiffs in the**  
21 **VCC Debt for Equity Swap and as a Result Any Award of Damages**  
**Against Mr. Rodriguez Would be Speculative**

22 Even in the absence of a permanent Federal injunction prohibiting further claims against  
23 VCC, there is no evidentiary basis on which damages could be calculated. As noted above,  
24 damages recoverable under Nev. Rev. Stat. 90.660(1) can only consist of (i) the amount paid for  
25 the security, less amounts received, or (ii) the difference between the amount paid and the amount  
26 for which it was later sold, plus fees and cost. The Bankruptcy Case involved a debt for equity  
27 swap. That scenario is simply not contemplated by Chapter 90. Moreover, even if the Court were  
28 willing to go far outside the statute and somehow attempt to value shares of VCC as a substitute

1 for an actual sale or tender, there is nothing in the record to suggest that evidence was presented  
2 regarding the value of those shares. In sum, Mr. Rodriguez respectfully submits that any award of  
3 damages against him in favor of Plaintiffs would be entirely speculative, and it is a bedrock  
4 principle of law that a Court may not award damages based on speculation. *See, e.g., J.J. Indus.,*  
5 *LLC v. Bennett*, 119 Nev. 269, 278, 71 P.3d 1264, 1269 (2003).

6 **2. Amendment of the Judgment to Reflect of the Statute of Limitation**

7 Nevada law provides a two (2) year statute of limitation with a discovery period, and a five  
8 (5) year statute of repose, for claims arising under Nev. Rev. Stat. 90.660:

9 **NRS 90.670 Statute of limitations.** A person may not  
10 sue under NRS 90.660 unless suit is brought within the earliest of 2  
11 years after the discovery of the violation, 2 years after discovery  
should have been made by the exercise of reasonable care, or 5 years  
after the act, omission or transaction constituting the violation.

12 This statute has been discussed at length by the United States District Court in Nevada in  
13 a case involving facts substantially similar to this matter.

14 **a. The *Baroi v. Platinum Condo Development* Decision**

15 *Baroi v. Platinum Condo. Dev., LLC*, 914 F.Supp.2d 1179 (D. Nev. 2012), involved the  
16 sale of condominium units subject to mandatory rental agreements. *Id.* at 1191. Judge Pro  
17 concluded that under Nevada's adoption of the Uniform Securities Act, those investments  
18 constituted "securities" and granted partial summary judgment on that issue. *Id.* at 1198. He then  
19 turned to the timeliness of the claims asserted by the plaintiff.

20 The defendants in *Baroi* argued that the plaintiffs' claims were time-barred because the  
21 statute of limitation began to run at the time of issuance of the unregistered securities: "Defendants  
22 contend the discovery rule does not save count fifteen because Plaintiffs discovered, or should  
23 have discovered, they purchased unregistered securities at the time they executed the purchase  
24 agreements." *Id.* at 1198. Plaintiffs naturally pointed to the discovery rule, and offered the  
25 following argument: "Nevada statutory law specifically sets forth a discovery rule for registration  
26 claims, and thus it cannot be the case that a plaintiff always can discover the fact that the offering  
27 is not a registered security at the time the purchase agreement is executed." *Id.* Judge Pro agreed  
28 with the defendants and entered summary judgment in their favor. His analysis is instructive.

1 Judge Pro began by noting that the relevant time periods under Nev. Rev. Stat. 90.670: “A  
2 claim under § 90.660 must be brought within the earliest of five years after the act, omission,  
3 transaction constituting the violation; two years after the plaintiff discovered the violation; or two  
4 years after the plaintiff should have discovered the violation in the exercise of reasonable care.”  
5 *Id.* at 1199. He then soundly rejected the argument by the plaintiffs that the discovery rule could  
6 apply to unregistered securities, holding that *as a matter of law*, whether a security has been  
7 registered is reasonably discoverable at the time the security is issued:

8 Whether a plaintiff has exercised reasonable care generally  
9 is a question of fact. *Bemis v. Estate of Bemis*, 114 Nev. 1021, 967  
10 P.2d 437, 440–41 (1998). However, *the issue may be decided as a*  
11 *matter of law* if the “uncontroverted evidence irrefutably  
12 demonstrates plaintiff discovered or should have discovered the  
13 facts giving rise to the cause of action.” *Id.* at 440 (quotation  
14 omitted). The “focus is on the [plaintiff’s] knowledge of or access to  
15 facts rather than on her discovery of legal theories.” *Massey v.*  
16 *Litton*, 99 Nev. 723, 669 P.2d 248, 252 (1983).

17 Viewing the evidence in the light most favorable to  
18 Plaintiffs, no genuine issue of material fact remains that Plaintiffs’  
19 claims in count fifteen are untimely. Plaintiffs knew all facts giving  
20 rise to their failure to register claims no later than when they signed  
21 their purchase agreements in 2006 and 2007. Plaintiffs allege in the  
22 Third Amended Complaint, and testified at their depositions, that  
23 Defendants were marketing an investment. *The securities’ status as*  
24 *registered or unregistered was publicly available information*  
25 *capable of discovery through reasonable care.* See Nev. Rev. Stat.  
26 § 90.730. *Plaintiffs therefore had all facts necessary to bring their*  
27 *registration claims at the time they signed their purchase*  
28 *agreements, even if they did not understand the legal significance*  
*of those facts until later.* See, e.g., *Perry H. Bacon Trust v.*  
*Transition Partners, Ltd.*, 298 F.Supp.2d 1182, 1192 (D.Kan.2004)  
 (“Here, it is evident that if plaintiffs had exercised reasonable  
diligence, they could have learned that the securities were not  
registered by checking the Kansas Securities Commissioner’s  
office.”); *Blatt v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 916  
F.Supp. 1343, 1353 (D.N.J.1996) (stating “the seller of securities  
cannot conceal the fact that the securities he sells are not  
registered”).

*Id.* at 1199 [emphasis added].

**b. Plaintiffs’ Claims Against Mr. Rodriguez Are Time-Barred**

Mr. Rodriguez properly raised the statute of limitation as a defense in this matter. In  
*Defendant Vernon Rodriguez’s Answer to Plaintiff’s Complaint* filed October 25, 2017, he  
asserted: “Plaintiff is barred from relief because the deadline for the applicable statutes of



1 limitation have passed.” *Id.* at p. 7, ll. 2-3.

2 As noted above, Plaintiffs filed their *Statement of Damages NRS § 90.660* with the Court  
3 on February 22, 2020. On page 2 of that document, Plaintiffs provided a chart that included a  
4 column entitled “Date of Investment.” The earliest date on that chart was January 2013 for  
5 “Kaiser2” (presumably referring to a second investment by Plaintiff Robert Kaiser). *Id.* The latest  
6 investment was December 2014 by “Smith” (presumably referring to Plaintiff Kendall Smith). If  
7 this Court adopts the *Baroi* rule announced by Judge Pro that the statute of limitation for the sale  
8 of an unregistered security begins to run on the date of issuance, the last statute of limitation  
9 applicable to the claim against Mr. Rodriguez would have run at the end of December 2016.

10 On the other hand, even if this Court were to reject the *Baroi* rule, the statute of limitation  
11 would still have passed. This Court’s FFCL includes a finding regarding the date of default:

12 After considering the testimony of the parties and witnesses,  
13 the exhibits offered and received into evidence, the parties' briefs,  
14 the arguments of counsel, and the rulings issued by this court on  
15 previously submitted matters, the Court makes the following  
16 findings:

17 That VCC stopped making payments in **February 2015** and  
18 the company and Ronald Robinson were **notified of the default,**  
19 with a **demand to bring all amounts due current, and to repay the**  
20 **principal.**

21 See FFCL at p. 2, ll. 6-15.

22 By their own admission, and as supported by the FFCL prepared by Plaintiffs and approved  
23 by this Court, Plaintiffs had *actual* knowledge of a default under the Notes and made demands for  
24 payment no later than February 2015. As noted by Judge Pro, and as held by the Nevada Supreme  
25 Court, a statute of limitation begins to run upon the discovery of *facts* giving rise to a claim, not  
26 the development of any particular legal theory. See *Baroi*, 914 F.Supp.2d at 1199 (citing *Massey*  
27 *v. Litton*, 99 Nev. 723, 669 P.2d 248, 252 (1983)). Any claims related to the Notes, whether for  
28 breach of contract or for violation of the Uniform Securities Act, would have accrued no later than  
February 2015. The two (2) year discovery rule set forth in Nev. Rev. Stat. 90.670 would thus  
have run no later than the end of February 2017. The Court’s docket will reflect that Plaintiff  
Steven A. Hotchkiss commenced Case No. A-17-762264-C by filing his *Complaint for Damages*

1 on September 28, 2017. Plaintiff Anthony White commenced Case No. A-17-763003-C on  
2 October 12, 2017. The consolidated actions were thus filed at least six (6) months *after* the  
3 absolute latest date on which the statute of limitation could have run. Any claim for damages that  
4 could have been made against Mr. Rodriguez pursuant to Nev. Rev. Stat. 90.660 was, and is, time-  
5 barred.

## 6 CONCLUSION

7 Based on the foregoing, Mr. Rodriguez respectfully requests that this Honorable Court  
8 offer the eight (8) additional findings of fact described above pursuant to Nev. R. Civ. P. 52(a).  
9 Alternatively, Mr. Rodriguez requests that this Court take “further action” after a nonjury trial  
10 pursuant to Nev. R. Civ. P. 59(b) to consider additional evidence. After consideration of those  
11 findings, Mr. Rodriguez requests that the Court amend the Judgment to vacate the finding of  
12 liability and award of damages against him. Finally, Mr. Rodriguez requests such other relief as  
13 is just and proper.

14 Dated this 16<sup>th</sup> day of September, 2020.

15 FLEMING LAW FIRM, PLLC

16 By /s/ Scott D. Fleming  
17 SCOTT D. FLEMING, ESQ.  
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19 9525 Hillwood Drive  
20 Suite 140  
21 Las Vegas, Nevada 89134  
22 *Attorney for Vernon Rodriguez*  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

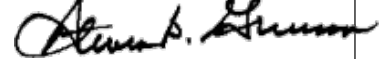
I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 16<sup>th</sup> day of September, 2020, I caused to be served a true and correct copy of foregoing **FIRST POST-JUDGMENT MOTION BY DEFENDANT VERNON RODRIGUEZ FOR ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT PURSUANT TO NEV. R. CIV. P. 52(B), OR IN THE ALTERNATIVE, FOR FURTHER ACTION AFTER A NONJURY TRIAL PURSUANT TO NEV. R. CIV. P. 59(B)** in the following manner:

(VIA ELECTRONIC SERVICES) The above-referenced documents were electronically filed on the dates listed above and served on May 21, 2020, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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*Attorneys for Defendant Vernon Rodriguez*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\* \* \*

STEVEN A. HOTCHKISS,  
  
Plaintiff,  
  
vs.

CASE NO. A-17-762264-C  
DEPT NO. IX

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.

**SECOND POST-JUDGMENT  
MOTION BY DEFENDANT  
VERNON RODRIGUEZ FOR A NEW  
TRIAL, OR IN THE ALTERNATIVE,  
FURTHER ACTION AFTER A  
NONJURY TRIAL PURSUANT TO  
NEV. R. CIV. P. 59(A)**

***HEARING REQUESTED***

ANTHONY WHITE; ROBIN  
SUNTHEIMER; TROY SUNTHEIMER;  
STEPHENS GHESQUIERE; JACKIE  
STONE; GAYLE CHANY; KENDALL  
SMITH; GABRIELE LAVERNICOCCA;  
and ROBERT KAISER,

Plaintiffs,

vs.

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.

Consolidated with

CASE NO. A-17-763003-C  
DEPT NO. IX

1 This is the second of three post-trial motions by Defendant Vernon Rodriguez  
2 (“Rodriguez”) that relate to the *Judgment* entered August 20, 2020 (the “Judgment”).<sup>1</sup> Nev. R.  
3 Civ. P. 59(a) provides that a party may request a new trial based on “irregularities,” or as an  
4 alternative, a Court may re-open proceedings to take additional evidence.

5 As more fully described below, Mr. Rodriguez did not receive a fair trial in this matter  
6 because the concurrent representation of Defendants Ronald J. Robinson (“Robinson”) and Mr.  
7 Rodriguez by Harold P. Gewerter, Esq. (“Gewerter”) presented an actual, material and  
8 irreconcilable conflict of interest under Nev. R. Prof. Cond. 1.7(a). In its *Judgment*, the Court held  
9 that Mr. Rodriguez was personally liable for a securities law violation as a “control person.” There  
10 are two statutory defenses to liability for a control person under Nev. Rev. Stat. 90.660(4), both of  
11 which could (and should) have been asserted by Mr. Rodriguez. Mr. Gewerter, however, failed  
12 to offer any testimony from Mr. Rodriguez on either defense because doing so would implicate his  
13 other client, Mr. Robinson, who denied that he offered personal guarantees of certain promissory  
14 notes issued by Virtual Communications Corporation (“VCC”). Mr. Rodriguez respectfully  
15 requests that the Court either conduct a new trial or reopen proceedings to take additional evidence  
16 regarding the defenses that should have been presented.

17 This motion (the “Motion”) is based on the attached memorandum of points and authorities  
18 and is supported by the *Omnibus Declaration of Vernon Rodriguez in Support of Post-Judgment*  
19 *Motions* (the “Rodriguez Declaration”).

## 20 MEMORANDUM OF POINTS AND AUTHORITIES

### 21 SUMMARY OF PRIOR PROCEEDINGS

22 The procedural history of this matter is discussed in detail in the *First Post-Judgment*  
23 *Motion by Defendant Vernon Rodriguez for Additional Findings of Fact and Conclusions of Law*  
24 *and to Amend Judgment Pursuant to Nev. R. Civ. P. 52(b)* (the “First Post-Judgment Motion”)  
25 filed immediately prior to this Motion. In the interest of brevity, Mr. Rodriguez respectfully  
26

---

27  
28 <sup>1</sup> Mr. Rodriguez respectfully suggests that the Court take up the three motions in the order in which they were  
presented, as a ruling on an earlier motion may render moot, on whole or in part, the relief sought in subsequent  
motions.

1 requests that the Court refer to that factual statement, which he incorporates by reference.

2 **LEGAL AUTHORITIES AND ANALYSIS**

3 **A. Standards for Relief Under Nev. R. Civ. P. 59**

4 **1. Nevada Authority**

5 Nev. R. Civ. P. 59 provides that a Court may, upon motion, grant a new trial if any of six  
6 (6) circumstances are met. Alternatively, a Court may open a judgment and take additional  
7 testimony, amend findings and conclusions, and direct the entry of a new judgment:

8 **Rule 59. New Trials; Amendment of Judgments**

9 **(a) In General.**

10 (1) **Grounds for New Trial.** The court may, on motion,  
11 grant a new trial on all or some of the issues — and to any party —  
12 for any of the following causes or grounds materially affecting the  
13 substantial rights of the moving party:

14 (A) irregularity in the proceedings of the court, jury,  
15 master, or adverse party or in any order of the court or master, or  
16 any abuse of discretion by which either party was prevented from  
17 having a fair trial;

18 (B) misconduct of the jury or prevailing party;

19 (C) accident or surprise that ordinary prudence could  
20 not have guarded against;

21 (D) newly discovered evidence material for the party  
22 making the motion that the party could not, with reasonable  
23 diligence, have discovered and produced at the trial;

24 (E) manifest disregard by the jury of the instructions of  
25 the court;

26 (F) excessive damages appearing to have been given  
27 under the influence of passion or prejudice; or

28 (G) error in law occurring at the trial and objected to by  
the party making the motion.

(2) **Further Action After a Nonjury Trial.** On a motion  
for a new trial in an action tried without a jury, the court may open  
the judgment if one has been entered, take additional testimony,  
amend findings of fact and conclusions of law or make new findings  
and conclusions, and direct the entry of a new judgment.

(b) **Time to File a Motion for a New Trial.** A motion for a  
new trial must be filed no later than 28 days after service of written  
notice of entry of judgment.

(c) **Time to Serve Affidavits.** When a motion for a new trial  
is based on affidavits, they must be filed with the motion. The  
opposing party has 14 days after being served to file opposing  
affidavits. The court may permit reply affidavits.

(d) **New Trial on the Court's Initiative or for Reasons Not  
in the Motion.** No later than 28 days after service of written notice

1 of entry of judgment, the court, on its own, may issue an order to  
2 show cause why a new trial should not be granted for any reason  
3 that would justify granting one on a party's motion. After giving the  
4 parties notice and the opportunity to be heard, the court may grant a  
5 party's timely motion for a new trial for a reason not stated in the  
6 motion. In either event, the court must specify the reasons in its  
7 order.

8  
9 (e) **Motion to Alter or Amend a Judgment.** A motion to  
10 alter or amend a judgment must be filed no later than 28 days after  
11 service of written notice of entry of judgment.

12 (f) **No Extensions of Time.** The 28-day time periods  
13 specified in this rule cannot be extended under Rule 6(b).  
14

15 The rule at common law was that a new trial would be granted when an injustice had been  
16 done. *Shute v. Big Mountain Inv. Co.*, 45 Nev. 99, 102, 198 P.227 (1921). The Nevada Supreme  
17 Court stated in dictum before the enactment of the Nevada Rules of Civil Procedure that a trial  
18 court has inherent power to grant a new trial for causes other than those enumerated by statute, but  
19 that the additional ground had to be for some ground that was good at common law. *Id.* at 99.

20 Generally, when there is a conflict in the evidence, a decision will not be disturbed unless  
21 there is plain error in the record or a showing of manifest injustice. *Frances v. Plaza Pac. Equities*,  
22 109 Nev. 91, 94, 847 P.2d 772, 725 (1993) (citing *Price v Sinnott*, 85 Nev. 600, 460 P.2d 837,  
23 (1969); *Avery v. Gilliam*, 97 Nev. 181, 625 P.2d 1166 (1981)). On the other hand, the Nevada  
24 Supreme Court has not hesitated to disturb a decision "where there is no substantial conflict in the  
25 evidence on any material point and the verdict or decision is manifestly contrary to the evidence."  
26 *Avery v. Gilliam*, 97 Nev. at 183, 625 P.2d at 1168 [citations omitted].

27 "A new trial may be granted pursuant to NRCP 59(a) where an aggrieved party's  
28 substantial rights have been materially affected by any of the [grounds stated in the rule]. The  
decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court,  
and [an appellate court] will not disturb that decision absent palpable abuse." *Edwards Inds. v.*  
*DTE/BTE, Inc.*, 112 Nev. 1025, 1035-37, 923 P.2d 569 (1996) (citing *Southern Pac. Trans. Co. v.*  
*Fitzgerald*, 94 Nev. 241, 244, 577 P.2d 1234, 1236 (1978)).

...

...

1           **2.       Conflict of Interest as a Basis for a New Trial**

2           It does not appear that the Nevada Supreme Court has ever considered a motion pursuant  
3 to Nev. R. Civ. P. 59(a) for a new trial, or for further action following a non-jury trial, based on  
4 irregularities in a proceeding caused by an attorney conflict of interest. That precise issue,  
5 however, was addressed by the Second Circuit Court of Appeals in *Dunton v. Suffolk County, State*  
6 *of N.Y.*, 729 F.2d 903 (2nd Cir. 1984), the facts of which were summarized as follows:

7                       Defendant-appellant Angela Pfeiffer attended a retirement  
8 party for a fellow employee on the evening of May 20, 1981. As the  
9 party broke up, plaintiff-appellee Emerson Dunton, Jr., a co-worker  
10 and attendee, accompanied Ms. Pfeiffer to her car. The accounts of  
11 the subsequent events differ; Ms. Pfeiffer claims that Dunton began  
12 making improper advances while they were seated in her car, while  
13 Dunton asserts that Ms. Pfeiffer willingly participated in the  
14 maneuvers. Defendant-appellant Robert Pfeiffer, Angela's husband  
15 and also a Suffolk County police officer, came upon the scene in his  
16 patrol car, threw Dunton out of Ms. Pfeiffer's car, struck him  
17 repeatedly and left him lying in the parking lot. Dunton suffered  
18 non-disabling and non-permanent injuries from the incident.

14           *Id.* at 905.

15           Shortly after the encounter, Dunton commenced an action against Suffolk County, the  
16 Suffolk County Police Department and the Pfeiffers seeking \$100 million in compensatory and  
17 punitive damages. A jury returned a \$20,000 verdict against Robert Pfeiffer for battery and held  
18 Angela Pfeiffer for \$25,000 for malicious prosecution. *Id.* at 906.

19           The Pfeiffers argued that the Suffolk County Attorney suffered from a conflict of interest  
20 based on his concurrent representation of all defendants. Specifically, the Officer Pfeiffer claimed  
21 that it was in his interest to assert immunity from Section 1983 based on good faith actions within  
22 the scope of his employment. He alleged that the attorney undermined his good faith immunity  
23 defense by repeatedly stating that Pfeiffer acted not as a police officer, but as an "irate husband,"  
24 in an effort to shield the County from liability. *Id.* at 907. The district court acknowledged that  
25 there was a conflict in Pfeiffer's representation but denied the motion for a new trial in the belief  
26 that the conflict was not prejudicial. *Id.* at 909. The Second Circuit reversed, holding that Office  
27 Pfeiffer had not received a fair trial because the conflict of interest prevented him from asserting  
28 a good faith immunity defense. *Id.* The Appellate Court vacated the judgment against Officer



1 Pfeiffer and orders dismissing Suffolk County and the Suffolk County Police Department and  
2 remanded the case for a new trial. *Id.* at 910.

3 The very same issue raised in *Dunton* is present in this case.

4 **B. The Concurrent Representation of Mr. Robinson and Mr. Rodriguez by Harold P.  
5 Gewerter, Esq. Presented an Actual Conflict of Interest**

6 Nevada’s Rules of Professional Conduct prohibit concurrent representation of multiple  
7 clients where the clients will be directly adverse to one another, or where the lawyer’s  
8 representation will be materially limited:

9 **Rule 1.7. Conflict of Interest: Current Clients.**

10 (a) Except as provided in paragraph (b), a lawyer shall not represent  
11 a client if the representation involves a concurrent conflict of  
interest. A concurrent conflict of interest exists if:

12 (1) The representation of one client will be directly adverse  
to another client; or

13 (2) There is a significant risk that the representation of one  
or more clients will be materially limited by the lawyer’s  
responsibilities to another client, a former client or a third person or  
by a personal interest of the lawyer.

14 . . .  
15

16 In this instance, an actual conflict of interest existed by virtue of statutory defenses under  
17 Nev. Rev. Stat. 90.660(4).

18 **1. Statutory Defenses for “Control Persons” Under Nev. Rev. Stat. 90.660(4)**

19 Under its adoption of the Uniform Securities Act, Nevada imposes *primary* liability for  
20 certain violations, including the issuance of unregistered securities, on the party that “offers or  
21 sells” a security:

22 **NRS 90.660 Civil liability.**

23 1. *A person who offers or sells a security in violation of any of  
the following provisions:*

24 . . .

25 (b) NRS 90.460;

26 . . .

27 *is liable to the person purchasing the security.* Upon tender of the  
security, the purchaser may recover the consideration paid for the  
security and interest at the legal rate of this State from the date of  
payment, costs and reasonable attorney’s fees, less the amount of  
income received on the security. . .  
28

1 [Emphasis added.]

2 Under subsection (4), liability can also attach to certain secondary “control” persons, unless  
3 one of two statutory defenses exist:

4 **NRS 90.660 Civil liability.**

5 . . .

6 4. A person who directly or indirectly controls another person who  
7 is liable under subsection 1 or 3, a partner, officer or director of the  
8 person liable, a person occupying a similar status or performing  
9 similar functions, any agent of the person liable, an employee of the  
10 person liable if the employee materially aids in the act, omission or  
11 transaction constituting the violation, and a broker-dealer or sales  
12 representative who materially aids in the act, omission or transaction  
13 constituting the violation, are also liable jointly and severally with  
14 and to the same extent as the other person, but *it is a defense that  
the person did not know, and in the exercise of reasonable care  
could not have known, of the existence of the facts by which the  
liability is alleged to exist.* With respect to a person who directly or  
indirectly, controls another person who is liable under subsection 3,  
*it is also a defense that the controlling person acted in good faith  
and did not, directly or indirectly, induce the act, omission or  
transaction constituting the violation.* Contribution among the  
several persons liable is the same as in cases arising out of breach of  
contract.

15 [Emphasis added.]

16 **2. The Court Noted that No Testimony Was Offered Regarding the Nev. Rev.  
Stat. 90.660(4) Statutory Defenses**

17 On April 27, 2020, the Court issued a written *Decision* (the “Decision”) in which it  
18 concluded that Mr. Rodriguez was a “control person” within the meaning of NAC 90.035, and  
19 while the Court observed that both witnesses claimed to have been acting in good faith, no  
20 evidence was offered in support of the two statutory defenses:

21 If the plaintiff establishes that a defendant is a “controlling  
22 person,” then the defendant bears the burden of proving that he  
23 “acted in good faith and did not directly or indirectly induce the act  
24 or acts constituting the violation or cause of action.” *Paracor Fin.,  
Inc. v. Gen. Elec. Capital Corp.*, 96 F.3d 1151, 1161 (9th Cir. 1996)  
(citing 15 U.S.C. § 78t(a)); *see also Hollinger*, 914 F.2d at 1575.  
25 While the testimony of Robinson and Rodriguez suggests that they  
26 believed they were acting in good faith, based in part on an alleged  
27 lack of knowledge of Nevada security laws, *they failed to present  
any evidence that they were not directly or indirectly involved in  
the acts regarding the violation of Nevada security regulations.*  
28 Rather, the evidence demonstrates that they were directly and  
intimately involved in creating the material to sell the Notes;  
Robinson then served as the personal guarantor of the Notes and  
Rodriguez was the proverbial “closer” who spoke to investors when  
necessary.

1 *Id.* at p. 5, ll. 5-20 [footnote omitted, emphasis added].

2 **3. Mr. Robinson and Mr. Rodriguez Had Incompatible Defenses**

3 In his concurrent representation of Mr. Robinson and Mr. Rodriguez, Mr. Gewerter should  
4 have found himself in an impossible situation. Throughout the case, Mr. Robinson attempted to  
5 disclaim any substantive involvement in the note issuance. For example, as the Court noted in its  
6 FFCL, “Mr. Robinson claimed that his signature was used without his permission, and that he did  
7 not intend to guarantee repayment.” The Court “found Defendant Robinson’s position  
8 unpersuasive. No less than six separate documents introduced at trial evidenced Mr. Robinson’s  
9 intent to guarantee the Note.” *Id.* at 4, ll. 3-5.

10 To the best of his recollection, Mr. Rodriguez testified at trial for less than one hour. *See*  
11 Rodriguez Declaration at p. 2, ¶ 4. He was not questioned by Mr. Gewerter about his role (or lack  
12 thereof) in the note issuance because such testimony would, of course, have required him to explain  
13 that Mr. Robinson was, in fact, responsible for that transaction. *Id.* at p. 3, ¶ 6. The assertion of a  
14 statutory defense by Mr. Rodriguez would be incompatible with the defense offered by Mr.  
15 Robinson on his personal guarantee. There was little downside to Mr. Robinson in failing to assert  
16 a “control person” defense under Nev. Rev. Stat. 90.660(4) because Plaintiffs had an independent  
17 theory of recovery: his personal guarantee. Mr. Gewerter could only assert a defense on behalf of  
18 one defendant – and he choice to advance the interests of Mr. Robinson. That actual, material, and  
19 irreconcilable conflict of interest is an irregularity that deprived Mr. Rodriguez of a fair trial and  
20 provides grounds for either a new trial, or additional action by taking supplemental testimony,  
21 under Nev. R. Civ. P. 59(a).

22 **C. Mr. Rodriguez’s Offer of Proof**

23 If this Court grants Mr. Rodriguez’s request for a new trial, or for additional action, he will  
24 present testimony on the following issues:

25 1. **Mr. Rodriguez’s Role with WinTech, LLC.** Between 2011 and 2014, Mr.  
26 Rodriguez acted at CEO for WinTech, LLC, a company developing a virtual receptionist  
27 technology referred to as “ALICE.” Mr. Rodriguez was charged with overseeing programming  
28 efforts by Frank Yoder (“Yoder”) and Michael (Mike) Yoder, as well as the development of

1 business plans, client development, sales, marketing strategies and public relations. *See* Rodriguez  
2 Declaration at p. 3, ¶ 7.

3 2. **Fundraising Exclusively by Ron Robinson.** Throughout his time at WinTech,  
4 LLC, Mr. Robinson was the sole member charged with fundraising. At its earliest stages, Mr.  
5 Robinson provided funding for WinTech by obtaining a personal loan secured by his home. Later,  
6 Mr. Robinson was the sole point of contact for potential investors in the company. *See* Rodriguez  
7 Declaration at p. 3, ¶ 8.

8 3. **The Meeting With a Representative of Provident Trust.** In the summer of 2011,  
9 Mr. Rodriguez and Frank Yoder (“Yoder”) attended a networking event at the Bali Hai Golf Club  
10 in Las Vegas. There, they met a man named Michael (Mike) Dahl, who worked for Provident  
11 Trust Group, LLC (“Provident”). Mr. Dahl explained that Provident was a custodian for investors  
12 with self-directed 401k and IRA accounts. During their conversation, the three men discussed the  
13 fact that WinTech, LLC might be interested in raising additional capital for development of its  
14 “ALICE” virtual receptionist technology. Mr. Dahl mentioned that Provident’s account holders  
15 often asked about higher yield opportunities, and that he had directed them to an investment firm  
16 called “Retire Happy, LLC” that offered lending opportunities. Mr. Rodriguez and Mr. Yoder  
17 told Mr. Dahl that Mr. Robinson handled fundraising for WinTech and suggested that he might  
18 have someone from Retire Happy, LLC contact him. Mr. Rodriguez is informed that sometime  
19 after this meeting, a woman named Julie Minuskin contacted Mr. Robinson, and the two later  
20 agreed to meet to discuss a credit transaction for the benefit of WinTech, LLC. Apart from a  
21 happenstance meeting at a golf course that led to an introduction between Mr. Robinson and a  
22 representative of Retire Happy, Mr. Rodriguez had no role whatever in seeking fundraising  
23 opportunities for WinTech, LLC. *See* Rodriguez Declaration at p. 3, ¶ 9.

24 4. **Meetings With Retire Happy.** Mr. Rodriguez attended a handful of meetings with  
25 representatives of Retire Happy prior to the note issuance in which those representatives explained  
26 how Retire Happy raised funds. Those meetings were informational only. The sole person at VCC  
27 in charge of fundraising was Mr. Robinson. *See* Rodriguez Declaration at p. 4, ¶ 10.

28 . . .

1           5.       **Requests by Retire Happy to Avoid Contact With Investors.** During their initial  
2 meetings, representatives of Retire Happy specifically asked that WinTech employees refrain from  
3 having any contact with potential investors. They explained that their investor lists were  
4 proprietary and that they were concerned that other firms managing retirement accounts would  
5 attempt to poach their account holders. *See* Rodriguez Declaration at p. 4, ¶ 11.

6           6.       **Licensure.** At one point prior to the VCC note issuance, Mr. Rodriguez had a  
7 discussion with Mr. Robinson in which a question was raised regarding whether Retire Happy held  
8 appropriate licenses. Mr. Robinson assured Mr. Rodriguez that Retire Happy held all necessary  
9 licenses. Mr. Rodriguez had no reason to doubt Mr. Robinson, as his statement was entirely  
10 consistent with Mr. Rodriguez's assumption that any company like Retire Happy that solicited  
11 investments would, of course, hold appropriate licenses. Moreover, Mr. Dahl had indicated that  
12 Provident's account holders had conducted extensive business with Retire Happy. Mr. Rodriguez  
13 naturally assumed that a company like Provident that acted as a custodian for billions of dollars in  
14 retirement assets would not recommend an investment firm to its account holders without  
15 conducting essential due diligence regarding licensure. In any event, Mr. Rodriguez was never  
16 asked to investigate the licensure status of Retire Happy, nor would he have had any reason to do  
17 so. His responsibilities included marketing, PR, business planning and sales for WinTech, LLC.  
18 At all relevant times, Mr. Robinson was responsible for fundraising. *See* Rodriguez Declaration  
19 at p. 4, ¶ 12.

20           7.       **The Power Point Presentation.** At some point, Mr. Robinson entered into an  
21 agreement with Retire Happy to assist with fundraising. At the request of Retire Happy, Mr.  
22 Robinson and Mr. Yoder prepared a Power Point presentation that Retire Happy could use for  
23 presentations to its investors. Mr. Rodriguez did not participate in the creation of the Power Point  
24 document. Mr. Rodriguez is informed that Mr. Robinson and Alisa Davis ("Davis") provided the  
25 Power Point materials to Retire Happy by email and that they were later used by Retire Happy's  
26 salespeople. *See* Rodriguez Declaration at p. 4, ¶ 13.

27           8.       **Investor Questions.** In the Power Point presentation, Mr. Yoder was identified as  
28 the person whom potential investors could contact if they had any questions regarding the ALICE

1 virtual receptionist technology. Mr. Rodriguez was designated as the person whmo potential  
2 investors could contact to discuss WinTech as a company, meaning that Mr. Rodriguez was  
3 prepared to discuss sales initiatives, marketing, public relations, product pricing and existing  
4 WinTech customers. Despite being so designated, no potential investor ever contacted Mr.  
5 Rodriguez with questions regarding the company. Mr. Rodriguez is informed and believes that no  
6 potential investors ever contacted Mr. Yoder. *See* Rodriguez Declaration at p. 5, ¶ 14.

7 9. **Use of Investor Proceeds.** Mr. Rodriguez is informed and believes that at various  
8 times, Mr. Robinson used a portion of the proceeds from the issuance of VCC notes for business  
9 purposes unrelated to WinTech, LLC. Mr. Rodriguez never made use of such funds for any  
10 purpose. *See* Rodriguez Declaration at p. 5, ¶ 15.

11 10. **Compensation from WinTech.** Mr. Rodriguez is informed and believes that  
12 Plaintiffs in this matter acquired VCC promissory notes in 2013 and 2014. Mr. Rodriguez received  
13 absolutely no consideration from WinTech or VCC, apart from shares in VCC, prior to January 1,  
14 2018, at which time he began taking a salary. *See* Rodriguez Declaration at p. 5, ¶ 16.

15 11. **Identification of Investors.** Typically, WinTech (and Mr. Rodriguez in particular)  
16 would not be informed of the identity of investors until VCC notes were sold by Retire Happy.  
17 Mr. Robinson and Ms. Davis would handle all aspects of the note transaction, including receipt of  
18 funds from Provident, the issuance of notes by VCC and the issuance of personal guarantees by  
19 Mr. Robinson. *See* Rodriguez Declaration at p. 5, ¶ 17.

20 In sum, both statutory defenses under Nev. Rev. Stat. 90.660(4) were available to Mr.  
21 Rodriguez. The securities law violations that occurred involved the sale of unregistered securities  
22 by Retire Happy. Mr. Rodrigues did not know and had no reason to know (or even suspect) that  
23 Retire Happy was required to register the VCC notes or that it had failed to do so. Mr. Rodriguez  
24 did not now, and had no reason to know, that Retire Happy was not licensed to participate in  
25 securities transactions. Retire Happy held itself out as an leader in that field, and had been involved  
26 in several other transactions with Provident. The first Nev. Rev. Stat. 90.660(4) defense squarely  
27 applies to Mr. Rodriguez.

28 . . .

1           The second Nev. Rev. Stat. 90.660(4) defense also clearly applies. Apart from a chance  
2 meeting that eventually resulted in Retire Happy connecting with Mr. Robinson, Mr. Rodriguez  
3 had no role whatever in fundraising for VCC. He certainly had no responsibility for ensuring the  
4 VCC notes were registered with State of Nevada or that Retire Happy obtained an appropriate  
5 license to conduct its business.

6           These defenses were not presented because Mr. Gewerter had an actual, material, and  
7 irreconcilable conflict of interest. Had Mr. Rodriguez testified on any of these issues, Mr.  
8 Robinson could not have maintained his defense in which he claimed not to have intended to offer  
9 his personal guarantee of the obligations memorialized in the VCC notes.

10 **D.       A New Trial or Additional Action Following a Non-Jury Trial Would Promote**  
11 **Judicial Efficiency**

12           As a final matter, Mr. Rodriguez urges the Court to consider that the granting of relief  
13 under Nev. R. Civ. P. 59 would promote judicial efficiency. If this Court is inclined to consider  
14 additional testimony regarding Mr. Rodriguez's role (or lack thereof) in the VCC note transactions,  
15 that evidence may be presented in a matter of a few hours. The only immediate alternative, of  
16 course, would involve an appeal involving significant time and expense for the parties and dozens  
17 of hours of time for the appellate court and its staff. If Mr. Rodriguez is successful in his appeal,  
18 one possible outcome would be an order of remand to this Court to consider the very same evidence  
19 that Mr. Rodriguez now wishes to present.

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**CONCLUSION**

Based on the foregoing, Mr. Rodriguez respectfully requests that this Honorable Court conduct a new trial, or take additional action following a non-jury trial, pursuant to Nev. R. Civ. P. 59. Thereafter, if the Court finds that Mr. Rodriguez has established a defense to liability as a “control person” pursuant to Nev. Rev. Stat. 90.660(4), Mr. Rodriguez requests that the Court amend its August 20, 2020 Judgment and issue a decision and judgment in his favor as to liability. Finally, Mr. Rodriguez requests such other relief as is just and proper.

Dated this 16<sup>th</sup> day of September 2020.

FLEMING LAW FIRM, PLLC

By /s/ Scott D. Fleming  
SCOTT D. FLEMING, ESQ.  
Nevada Bar No. 5638  
9525 Hillwood Drive  
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*Attorney for Vernon Rodriguez*



**CERTIFICATE OF SERVICE**

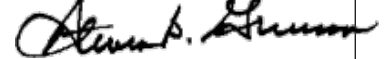
I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 16<sup>th</sup> day of September, 2020, I caused to be served a true and correct copy of foregoing **SECOND POST-JUDGMENT MOTION BY DEFENDANT VERNON RODRIGUEZ FOR A NEW TRIAL, OR IN THE ALTERNATIVE, FURTHER ACTION AFTER A NONJURY TRIAL PURSUANT TO NEV. R. CIV. P. 59(A)** in the following manner:

(VIA ELECTRONIC SERVICES) The above-referenced documents were electronically filed on the dates listed above and served on May 21, 2020, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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10 *Attorney for Defendant Vernon Rodriguez*

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

13 \* \* \*

14 STEVEN A. HOTCHKISS,  
15  
16 Plaintiff,  
17  
18 vs.

CASE NO. A-17-762264-C  
DEPT NO. IX

19 RONALD J. ROBINSON; VERNON  
20 RODRIGUEZ; VIRTUAL  
21 COMMUNICATIONS CORPORATION;  
22 WINTECH, LLC; RETIRE HAPPY, LLC;  
23 JOSH STOLL; FRANK YODER; ALISA  
24 DAVIS; and DOES 1-10; and ROES 1-10,  
25 inclusively,

26 Defendants.

27 ANTHONY WHITE; ROBIN  
28 SUNTHEIMER; TROY SUNTHEIMER;  
STEPHENS GHESQUIERE; JACKIE  
STONE; GAYLE CHANY; KENDALL  
SMITH; GABRIELE LAVERNICOCCHA;  
and ROBERT KAISER,

Plaintiffs,

vs.

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.

**THIRD POST-JUDGMENT MOTION  
BY DEFENDANT VERNON  
RODRIGUEZ FOR STAYS  
PENDING DISPOSITION OF POST-  
JUDGMENT MOTIONS AND  
APPEAL**

**HEARING REQUESTED**

Consolidated with

CASE NO. A-17-763003-C  
DEPT NO. IX

1 This is the third of three post-trial motions by Defendant Vernon Rodriguez (“Rodriguez”)  
2 that relate to the *Judgment* entered August 20, 2020 (the “Judgment”).<sup>1</sup> Contemporaneously with  
3 the filing of this motion (this “Motion”), Mr. Rodriguez has filed his *First Post-Judgment Motion*  
4 *by Defendant Vernon Rodriguez for Additional Findings of Fact and Conclusions of Law and to*  
5 *Amend Judgment Pursuant to Nev. R. Civ. P. 52(b), Or In the Alternative, for Further Action After*  
6 *a Nonjury Trial Pursuant to Nev. R. Civ. P. 59(b)* (the “First Post-Judgment Motion”) and the  
7 *Second Post-Judgment Motion by Defendant Vernon Rodriguez for a New Trial, Or in the*  
8 *Alternative, Further Action After a Nonjury Trial Pursuant to Nev. R. Civ. P. 59(a)* (the “Second  
9 Post-Judgment Motion” and together, the “Post-Judgment Motions”). Mr. Rodriguez respectfully  
10 requests that this Court stay enforcement of the Judgment as to him pending the resolution of the  
11 Post-Judgment Motions.

12 This Motion is based on the attached memorandum of points and authorities and is  
13 supported by the *Omnibus Declaration of Vernon Rodriguez in Support of Post-Judgment Motions*  
14 (the “Rodriguez Declaration”).

#### 15 MEMORANDUM OF POINTS AND AUTHORITIES

##### 16 A. Standards for Relief Under Nev. R. Civ. P. 62

17 Stays of proceedings to enforce a judgment are governed by Nev. R. Civ. P. 62, which  
18 provides in relevant part:

##### 19 **Rule 62. Stay of Proceedings to Enforce a Judgment**

##### 20 **(a) Automatic Stay; Exceptions for Injunctions and Receiverships.**

21 (1) **In General.** Except as stated in this rule, no execution  
22 may issue on a judgment, nor may proceedings be taken to enforce  
23 it, until 30 days have passed after service of written notice of its  
24 entry, unless the court orders otherwise.

25 (2) **Exceptions for Injunctions and Receiverships.** An  
26 interlocutory or final judgment in an action for an injunction or a  
27 receivership is not automatically stayed, unless the court orders  
28 otherwise.

##### **(b) Stay Pending the Disposition of Certain Postjudgment Motions.** On appropriate terms for the opposing party’s security,

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28 <sup>1</sup> Mr. Rodriguez respectfully suggests that the Court take up the three motions in the order  
in which they were presented, as a ruling on an earlier motion may render moot, in whole or in  
part, the relief sought in subsequent motions.

the court may stay execution on a judgment — or any proceedings to enforce it — pending disposition of any of the following motions

- (1) under Rule 50, for judgment as a matter of law;
- (2) under Rule 52(b), to amend the findings or for additional findings;
- (3) under Rule 59, for a new trial or to alter or amend a judgment; or
- (4) under Rule 60, for relief from a judgment or order.

...

(d) **Stay Pending an Appeal.**

(1) **By Supersedeas Bond.** If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.

(2) **By Other Bond or Security.** If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

...

Nev. R. Civ. P. 62(b) allows the district court “to stay the execution of a judgment pending the disposition of a motion to alter or amend a judgment pursuant to NRCP 59.” *Stapp v. Hilton Hotels Corp.*, 826 P.2d 954, 956, 108 Nev. 209, 211 (1992). Rule 62(b) is, by its express terms, discretionary and does not include a bond requirement.

Similarly, stays pending appeal pursuant to Nev. R. Civ. P. 62(d) are permissive rather than mandatory. *See State ex rel. Pub. Serv. Comm’n v. First Judicial Dist. Court ex rel. Carson City*, 94 Nev. 42, 45, 574 P.2d 272, 274 (1978) (*abrogated on other grounds by Nelson v. Heer*, 121 Nev. 832, 834 n. 4, 122 P.3d 1252, 1253 n. 4 (2005)). A supersedeas bond posted pursuant to Rule 62(d) is typically set in an amount that will permit full satisfaction of the judgment. A District Court may, however, provide for a bond in a lesser amount, or may permit security other than a bond, when unusual circumstances exist. *McCulloch v. Jeakins*, 99 Nev. 122, 659 P.2d 302 (1983). If a Court accepts a bond or security in an amount less than the full amount of a judgment, the District Court should set forth “substantial” reasons for doing so in an appropriate order. *Id.*

...

...

1 **B. This Court Should Issue a Rule 62(b) Stay Pending Disposition of Post-Judgment**  
2 **Proceedings**

3 The First Post-Judgment Motion, if granted, would resolve all claims against Mr.  
4 Rodriguez. That motion may be considered in the ordinary course and resolved in the next thirty  
5 (30) days. If the Court denies the First Post-Judgment Motion but grants the Second Post-  
6 Judgment Motion and re-opens proceedings for “further action” pursuant to Nev. R. Civ. P. 59, a  
7 final resolution should be had within several weeks or a few months. In either event, a Rule 62(b)  
8 stay should need to remain in place for an extended period. A short-term stay pending to allow  
9 for the disposition of pending Post-Judgment Motions should not result in any hardship to any  
10 Plaintiffs.

11 **C. This Court Should Issue a Rule 62(d) Stay Pending Appeal and Waive the**  
12 **Requirement of a Supersedeas Bond**

13 As for a longer-term stay pending appeal, Mr. Rodriguez requests that this Court grant  
14 relief with the necessity of posting a bond.

15 There are at least two issues that Mr. Rodriguez will take before the Nevada Supreme Court  
16 in the event the Court denies the Post-Judgment Motions. The first concerns the effect of the VCC  
17 bankruptcy case. As noted in the First Post-Judgment Motion, Plaintiffs’ promissory notes were  
18 converted to equity in Virtual Communications Corporation (“VCC”). Mr. Rodriguez maintains  
19 that there are no longer any promissory notes (securities) that could support a claim against a  
20 “control person” under Nev. Rev. Stat. 90.660(4). It is possible, however, that during any appeal  
21 that Plaintiffs may obtain a return on their investments through their VCC common and preferred  
22 stock.

23 The second issue that Mr. Rodriguez will take up on appeal concerns the two-year statute  
24 of limitation impose by Nev. Rev. Stat. 90.670. As noted in the First Post-Judgment Motion,  
25 Plaintiffs commenced this action more than two years after issuance of the subject notes, and more  
26 than two years after VCC defaulted on its obligations. There is a reasonable possibility that a  
27 higher court may hold that Plaintiffs’ claims were time-barred. Should such a ruling be made after  
28 execution on the Judgment, Mr. Rodriguez would, of course, seek to recover any amounts obtained

1 by Plaintiffs through execution or garnishment.

2 It should be noted too that there were never any allegations that Mr. Rodriguez personally  
3 received any proceeds of the promissory notes. Plaintiffs made loans to VCC in 2013 and 2014,  
4 and the company defaulted in 2015. As stated in the Rodriguez Declaration, the Defendant did  
5 receive any compensation (other than shares in VCC) until he began taking a salary in 2018. *See*  
6 Rodriguez Declaration at p. 5, ¶ 16. A stay without a supersedeas bond, in other words, presents  
7 no risk whatever that Mr. Rodriguez would dispose of funds that can in any way be traced to  
8 Plaintiffs.

9 Finally, and perhaps most importantly, if the Judgment is reversed on appeal or vacated  
10 following remand, it would be unreasonably difficult for Mr. Rodriguez to recover proceeds of  
11 any execution. According to the *Complaint for Damages* filed September 28, 2017, Mr. Hotchkiss  
12 resides in Lake Chapala, Mexico. *Id.* at p. 1, l. 22. The *First Amended Complaint* filed October 4,  
13 2018, indicates that Mr. White lives in Dakula, Georgia. *Id.* at p. 2, l. 3. Mr. Chesquiere resides  
14 in Pensacola, Florida. *Id.* at ll. 5-6. Troy and Robin Suntheimer live in Newport News, Virginia.  
15 *Id.* at ll. 7-10. Ms. Lavermicocca resides in San Diego, California. *Id.* at ll. 13-14. Gayle Chany  
16 lives in Crest Hill, Illinois. *Id.* at ll. 15-16. Kendall Smith lives in Reed Point, Montana. *Id.* at ll.  
17 17-18. Finally, Robert Kaiser lives in Fort Wayne, Indiana. *Id.* at ll. 19-20. According to the  
18 *Statement of Damages* submitted by Plaintiffs on February 3, 2020, the amounts invested by  
19 Plaintiffs range from a low of \$20,000 (Mr. White) to a maximum of \$100,000 (Ms.  
20 Lavermicocca). *Id.* at p. 2.

21 Even if this Court were to order Plaintiffs to return funds distributed to them following  
22 execution, it would be difficult or impossible for Mr. Rodriguez to compel payment should they  
23 refuse to comply with the order and he would need to look at domesticating an order or judgment  
24 issued by this Court, or commence new actions, in another country and at least seven (7) States.  
25 Given the relatively small amounts at issue, it would be impossible to pursue such action in a cost-  
26 effective way, meaning that Mr. Rodriguez would likely be left without a remedy. The balance of  
27 hardships, therefore, tips sharply in favor of Mr. Rodriguez.

1 **CONCLUSION**

2 For all the foregoing reasons, Mr. Rodriguez respectfully requests that this Honorable  
3 Court issue a stay of execution pursuant to Nev. R. Civ. P. 62(b) pending the final resolution of  
4 the Post-Judgment Motions. Should it then become necessary for Mr. Rodriguez to file an appeal,  
5 he further requests entry of a stay pending appeal pursuant to Nev. R. Civ. P. 62(d) without bond.  
6 Finally, Mr. Rodriguez requests such other relief as is just and proper.

7 Dated this 16<sup>th</sup> day of September, 2020.

8 FLEMING LAW FIRM, PLLC

9  
10 By /s/ Scott D. Fleming  
11 SCOTT D. FLEMING, ESQ.  
12 Nevada Bar No. 5638  
13 9525 Hillwood Drive  
14 Suite 140  
15 Las Vegas, Nevada 89134  
16 *Attorney for Vernon Rodriguez*  
17  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 16<sup>th</sup> day of September, 2020, I caused to be served a true and correct copy of foregoing **THIRD POST-JUDGMENT MOTION BY DEFENDANT VERNON RODRIGUEZ FOR STAYS PENDING DISPOSITION OF POST-JUDGMENT MOTIONS AND APPEAL** in the following manner:

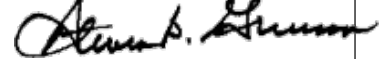
(VIA ELECTRONIC SERVICES) The above-referenced documents were electronically filed on the dates listed above and served on May 21, 2020, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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*Attorney for Vernon Rodriguez*

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**DECL**  
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*Attorneys for Defendant Vernon Rodriguez*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\* \* \*

STEVEN A. HOTCHKISS,  
  
Plaintiff,  
  
vs.

CASE NO. A-17-762264-C  
DEPT NO. IX

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,

**OMNIBUS DECLARATION OF  
VERNON RODRIGUEZ IN  
SUPPORT OF POST-JUDGMENT  
MOTIONS**

Defendants.

ANTHONY WHITE; ROBIN  
SUNTHEIMER; TROY SUNTHEIMER;  
STEPHENS GHESQUIERE; JACKIE  
STONE; GAYLE CHANY; KENDALL  
SMITH; GABRIELE LAVERNICOCCA;  
and ROBERT KAISER,

Consolidated with

CASE NO. A-17-763003-C  
DEPT NO. IX

Plaintiffs,

vs.

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.

1 VERNON RODRIGUEZ states the following under penalty of perjury under the laws of  
2 the United States and State of Nevada:

3 1. I am over the age of twenty-one (21) years and have personal knowledge of the  
4 matters set forth below.

5 2. I would, if called upon, offer live testimony regarding all matters set forth in this  
6 declaration.

7 3. I am offering this declaration in support of the following: (i) the *First Post-*  
8 *Judgment Motion by Defendant Vernon Rodriguez for Additional Findings of Fact and*  
9 *Conclusions of Law and to Amend Judgment Pursuant to Nev. R. Civ. P. 52(b), Or In the*  
10 *Alternative, for Further Action After a Nonjury Trial Pursuant to Nev. R. Civ. P. 59(b)* (the “First  
11 Post-Judgment Motion”); (ii) the *Second Post-Judgment Motion by Defendant Vernon Rodriguez*  
12 *for a New Trial, Or in the Alternative, Further Action After a Nonjury Trial Pursuant to Nev. R.*  
13 *Civ. P. 59(a)* (the “Second Post-Judgment Motion”); and (iii) the *Third Post-Judgment Motion by*  
14 *Defendant Vernon Rodriguez for Stays Pending Disposition of Post-Judgment Motions and*  
15 *Appeal* (the “Third Post-Judgment Motion” and together, the “Post-Judgment Motions”).

16 4. On February 24 and 25, 2020, I participated in a trial of the above-referenced  
17 matter. To the best of my recollection, I was questioned at trial for less than one hour by the  
18 attorney that represented me and my fellow defendant Ronald J. Robinson (“Robinson”). During  
19 trial, I was not questioned by Mr. Gewerter about my role (or lack thereof) the issuance of certain  
20 promissory notes by Virtual Communications Corporation (“VCC”).

21 5. Mr. Gewerter never discussed with me the possibility that a conflict of interest  
22 might arise because of his concurrent representation of me and Mr. Robinson, or of any other  
23 defendants in this matter. I was never informed that an actual conflict of interest has arisen in  
24 this matter as a result of incompatible defenses that could be asserted by me and Mr. Robinson.

25 . . .

26 . . .

1           6.     I am informed and believe that during the trial in this matter, Mr. Gewerter failed  
2 to elicit direct testimony from me regarding the VCC note issuance because such testimony would  
3 have required me to explain that Mr. Robinson was, in fact, responsible for that transaction.  
4 Testimony of that sort would have been incompatible with the defense offered by Mr. Robinson  
5 regarding his personal guarantee.

6           7.     Between 2011 and 2014, I served as CEO for WinTech, LLC, a company  
7 developing a virtual receptionist technology referred to as "ALICE." I was charged with  
8 overseeing programming efforts by Frank Yoder ("Yoder") and Michael (Mike) Yoder, as well  
9 as the development of business plans, client development, sales, marketing strategies and public  
10 relations.

11           8.     Throughout my time at WinTech, LLC, Mr. Robinson was the sole member charged  
12 with fundraising. At its earliest stages, Mr. Robinson provided funding for WinTech by obtaining  
13 a personal loan secured by his home. Later, Mr. Robinson was the sole point of contact for  
14 potential investors in the company.

15           9.     In the summer of 2011, Mr. Yoder and I attended a networking event at the Bali  
16 Hai Golf Club in Las Vegas. There, we met a man named Michael (Mike) Dahl, who worked for  
17 Provident Trust Group, LLC ("Provident"). Mr. Dahl explained that Provident was a custodian  
18 for investors with self-directed 401k and IRA accounts. During our conversation, the three of us  
19 discussed the fact that WinTech, LLC might be interested in raising additional capital for  
20 development of its "ALICE" virtual receptionist technology. Mr. Dahl mentioned that  
21 Provident's account holders often asked about higher yield opportunities, and that he had directed  
22 them to an investment firm called "Retire Happy, LLC" that offered lending opportunities. Mr.  
23 Yoder and I told Mr. Dahl that Mr. Robinson handled fundraising for WinTech and suggested  
24 that he might have someone from Retire Happy, LLC contact him. I am informed that sometime  
25 after this meeting, a woman named Julie Minuskin contacted Mr. Robinson, and the two later  
26 agreed to meet to discuss a credit transaction for the benefit of WinTech, LLC. Apart from a  
27 happenstance meeting at a golf course that led to an introduction between Mr. Robinson and a  
28 representative of Retire Happy, I had no role whatever in seeking fundraising opportunities for

1 WinTech, LLC.

2 10. I attended a handful of meetings with representatives of Retire Happy prior to the  
3 note issuance in which those representatives explained how Retire Happy raised funds. Those  
4 meetings were informational only. The sole person at VCC in charge of fundraising was Mr.  
5 Robinson.

6 11. During their initial meetings, representatives of Retire Happy specifically asked  
7 that WinTech employees refrain from having any contact with potential investors. They  
8 explained that their investor lists were proprietary and that they were concerned that other firms  
9 managing retirement accounts would attempt to poach their account holders.

10 12. At one point prior to the VCC note issuance, I had a discussion with Mr. Robinson  
11 in which a question was raised regarding whether Retire Happy held appropriate licenses. Mr.  
12 Robinson assured me that Retire Happy held all necessary licenses. I had no reason to doubt Mr.  
13 Robinson, as his statement was entirely consistent with my assumption that any company like  
14 Retire Happy that solicited investments would, of course, hold appropriate licenses. Moreover,  
15 Mr. Dahl had indicated that Provident's account holders had conducted extensive business with  
16 Retire Happy. I naturally assumed that a company like Provident that acted as a custodian for  
17 billions of dollars in retirement assets would not recommend an investment firm to its account  
18 holders without conducting essential due diligence regarding licensure. In any event, I was never  
19 asked to investigate the licensure status of Retire Happy, nor would I have had any reason to do  
20 so. My responsibilities included marketing, PR, business planning and sales for WinTech, LLC.  
21 At all relevant times, Mr. Robinson was responsible for fundraising.

22 13. At some point, Mr. Robinson entered into an agreement with Retire Happy to assist  
23 with fundraising. At the request of Retire Happy, Mr. Robinson and Mr. Yoder prepared a Power  
24 Point presentation that Retire Happy could use for presentations to its investors. I did not  
25 participate in the creation of the Power Point document. I am informed that Mr. Robinson and  
26 Alisa Davis ("Davis") provided the Power Point materials to Retire Happy by email and that they  
27 were later used by Retire Happy's salespeople.

28 ...

1           14. In the Power Point presentation, Mr. Yoder was identified as the person whom  
2 potential investors could contact if they had any questions regarding the ALICE virtual  
3 receptionist technology. I was designated as the person whom potential investors could contact  
4 to discuss WinTech as a company, meaning that I was prepared to discuss sales initiatives,  
5 marketing, public relations, product pricing and existing WinTech customers. Despite being so  
6 designated, no potential investor ever contacted me with questions regarding the company. I am  
7 informed and believes that no potential investors ever contacted Mr. Yoder.

8           15. I am informed and believes that at various times, Mr. Robinson used a portion of  
9 the proceeds from the issuance of VCC notes for business purposes unrelated to WinTech, LLC.  
10 I never made use of such funds for any purpose.

11           16. I am informed and believes that Plaintiffs in this matter acquired VCC promissory  
12 notes in 2013 and 2014. I received absolutely no consideration from WinTech or VCC, apart  
13 from shares in VCC, prior to January 1, 2018, at which time I began taking a salary.

14           17. Typically, WinTech (and me in particular) would not be informed of the identity of  
15 investors until VCC notes were sold by Retire Happy. Mr. Robinson and Ms. Davis would handle  
16 all aspects of the note transaction, including receipt of funds from Provident, the issuance of notes  
17 by VCC and the issuance of personal guarantees by Mr. Robinson.

18           Dated this 16<sup>th</sup> day of September 2020.

19  
20           By   
21           VERNON RODRIGUEZ  
22  
23  
24  
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28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 16<sup>th</sup> day of September, 2020, I caused to be served a true and correct copy of foregoing **OMNIBUS DECLARATION OF VERNON RODRIGUEZ IN SUPPORT OF POST-JUDGMENT MOTIONS** in the following manner:

(VIA ELECTRONIC SERVICES) The above-referenced documents were electronically filed on the dates listed above and served on May 21, 2020, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

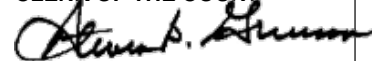
HAROLD P. GEWERTER, ESQ.  
Nevada Bar No. 499  
1212 South Casino Center Boulevard  
Las Vegas, Nevada 89101  
*Attorney for Vernon Rodriguez*

DAVID LIEBRADER, ESQ.  
Nevada Bar No. 5048  
THE LAW OFFICES OF DAVID LIEBRADER, APC  
601 S. Rancho Drive, Suite D-29  
Las Vegas, Nevada 89106  
*Attorney for Plaintiffs*

By /s/ Scott D. Fleming  
SCOTT D. FLEMING, ESQ.  
Nevada Bar No. 5638  
9525 Hillwood Drive  
Suite 140  
Las Vegas, Nevada 89134  
*Attorney for Vernon Rodriguez*

FLEMING LAW FIRM, PLLC  
9525 Hillwood Drive, Suite 140  
Las Vegas, Nevada 89134  
(702) 743-6263

Electronically Filed  
9/16/2020 3:19 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 **RFJN**  
2 SCOTT D. FLEMING, ESQ.  
3 Nevada Bar No. 5638  
4 **FLEMING LAW FIRM, PLLC**  
5 9525 Hillwood Drive  
6 Suite 140  
7 Las Vegas, Nevada 89134  
8 Telephone: (702) 743-6263  
9 E-Mail: [scott@fleminglawlv.com](mailto:scott@fleminglawlv.com)

6 *Attorney for Defendant Vernon Rodriguez*

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 \* \* \*

11 STEVEN A. HOTCHKISS,  
12 Plaintiff,  
13 vs.

CASE NO. A-17-762264-C  
DEPT NO. IX

13 RONALD J. ROBINSON; VERNON  
14 RODRIGUEZ; VIRTUAL  
15 COMMUNICATIONS CORPORATION;  
16 WINTECH, LLC; RETIRE HAPPY, LLC;  
17 JOSH STOLL; FRANK YODER; ALISA  
18 DAVIS; and DOES 1-10; and ROES 1-10,  
19 inclusively,

**REQUEST BY DEFENDANT  
VERNON RODRIGUEZ FOR  
JUDICIAL NOTICE IN SUPPORT  
OF POST-JUDGMENT MOTIONS**

17 Defendants.

18 ANTHONY WHITE; ROBIN  
19 SUNTHEIMER; TROY SUNTHEIMER;  
20 STEPHENS GHESQUIERE; JACKIE  
21 STONE; GAYLE CHANY; KENDALL  
22 SMITH; GABRIELE LAVERNICOCCA;  
23 and ROBERT KAISER,

Consolidated with

CASE NO. A-17-763003-C  
DEPT NO. IX

21 Plaintiffs,

22 vs.

23 RONALD J. ROBINSON; VERNON  
24 RODRIGUEZ; VIRTUAL  
25 COMMUNICATIONS CORPORATION;  
26 WINTECH, LLC; RETIRE HAPPY, LLC;  
27 JOSH STOLL; FRANK YODER; ALISA  
28 DAVIS; and DOES 1-10; and ROES 1-10,  
inclusively,

Defendants.

1 Defendant Vernon Rodriguez (“Rodriguez”) respectfully requests that the Court take  
2 judicial notice of certain documents entered by the United States Bankruptcy Court for the District  
3 of Nevada (the “Bankruptcy Court”) in a matter styled *In re Virtual Communications Company*,  
4 *Debtor*, Case No. 19-12951-ABL:

5 **Exhibit 1:** *Order Entering Final Decree* dated March 14, 2019,  
6 Electronic Case Filing (ECF) No. 119.

7 **Exhibit 2:** *Order Confirming First Amended Chapter 11 Plan*  
8 *of Reorganization of Virtual Communications*  
9 *Corporation* dated September 5, 2018, ECF No. 75.

10 **Exhibit 3:** *First Amended Chapter 11 Plan of Reorganization of*  
11 *Virtual Communications Corporation* dated June 13,  
12 2018, ECF No. 38.

13 The documents were originally attached as exhibits to the *Opposition by Defendant Vernon*  
14 *Rodriguez to Plaintiffs’ Motion for Damages and Attorneys’ Fees* filed in the above-referenced  
15 matter on May 21, 2020. No objections were made to their accuracy, completeness, or authenticity  
16 at that time.

17 Mr. Rodriguez submits that the entry of these documents by the Bankruptcy Court is a fact  
18 that is capable of accurate and ready determination by resort to sources whose accuracy cannot  
19 reasonably be questioned. *See Nev. Rev. Stat. 47.130(2)(b)*. The source to which he refers is the  
20 Electronic Case Filing system maintained by the Bankruptcy Court.<sup>1</sup>

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<sup>1</sup> When certified, public records are presumed to be authentic. Nev. Rev. Stat. 52.125(1), 52.265. Mr. Rodriguez has offered uncertified copies as exhibits to avoid unnecessary expense and delay in obtaining such records.



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Dated this 16<sup>th</sup> day of September, 2020.

FLEMING LAW FIRM, PLLC

By /s/ Scott D. Fleming

SCOTT D. FLEMING, ESQ.

Nevada Bar No. 5638

9525 Hillwood Drive

Suite 140

Las Vegas, Nevada 89134

*Attorney for Vernon Rodriguez*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 16<sup>th</sup> day of September, 2020, I caused to be served a true and correct copy of foregoing **REQUEST BY DEFENDANT VERNON RODRIGUEZ FOR JUDICIAL NOTICE IN SUPPORT OF POST-JUDGMENT MOTIONS** in the following manner:

(VIA ELECTRONIC SERVICES) The above-referenced documents were electronically filed on the dates listed above and served on May 21, 2020, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

HAROLD P. GEWERTER, ESQ.  
Nevada Bar No. 499  
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*Attorney for Vernon Rodriguez*

DAVID LIEBRADER, ESQ.  
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THE LAW OFFICES OF DAVID LIEBRADER, APC  
601 S. Rancho Drive, Suite D-29  
Las Vegas, Nevada 89106  
*Attorney for Plaintiffs*

By /s/ Scott D. Fleming  
SCOTT D. FLEMING, ESQ.  
Nevada Bar No. 5638  
9525 Hillwood Drive  
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Las Vegas, Nevada 89134  
*Attorney for Vernon Rodriguez*

# EXHIBIT 1

Order Entering Final  
Decree Dated March  
14, 2019

EXHIBIT 1

NVB 5075-5 (Rev. 2/16)

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

IN RE:

VIRTUAL COMMUNICATIONS CORPORATION

BK-18-12951-abl  
CHAPTER 11

Debtor(s)

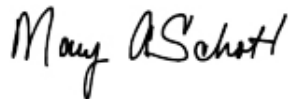
ORDER ENTERING  
FINAL DECREE

---

It appearing that this Court's continuing jurisdiction is no longer necessary and that the case has been fully administered,

**IT IS ORDERED** that a Final Decree is entered closing this case without prejudice to the reopening of this case for further administration.

Dated: 3/14/19

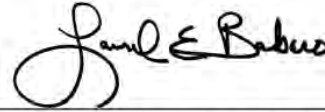


Mary A. Schott  
Clerk of Court

# EXHIBIT 2

Order Confirming First Amended Chapter 11  
Plan of Reorganization of Virtual  
Communications Corporation  
Dated September 5, 2018

# EXHIBIT 2



Honorable Laurel E. Babero  
United States Bankruptcy Judge



Entered on Docket  
September 05, 2018

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ewalther@klnevada.com

*Attorneys for Debtor Virtual  
Communications Corporation*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

\* \* \*

IN RE:

VIRTUAL COMMUNICATIONS  
CORPORATION,

Debtor.

Case No. 18-12951-leb

Chapter 11

Date of Hearing: August 14, 2018  
Time of Hearing: 9:30 a.m.

**ORDER CONFIRMING FIRST AMENDED CHAPTER 11 PLAN OF  
REORGANIZATION OF VIRTUAL COMMUNICATIONS CORPORATION**

On June 13, 2018, the Debtor filed its *First Amended Chapter 11 Plan of Reorganization for Virtual Communications Corporation* [ECF No. 38] (the “Plan”) and *First Amended Disclosure Statement for Chapter 11 Plan of Reorganization for Virtual Communications Corporation* [ECF No. 39] (the “Disclosure Statement”). On June 25, 2018, the Bankruptcy Court entered its *Order (1) Conditionally Approving Adequacy of the Proposed Disclosure Statement to Accompany Plan*

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of Reorganization; and (2) Setting a Hearing on Confirmation of the Debtor's Chapter 11 Plan of Reorganization and Related Deadlines [ECF No. 42] (the "Disclosure Statement Order") in which the Court, among other things, (a) conditionally approved the Disclosure Statement pursuant to Local Rule<sup>1</sup> 3017(b), (b) approved the forms of ballots and procedures for notice and solicitation of votes to accept or reject the Plan, (c) set deadlines for objecting to confirmation of the Plan or final approval of the Disclosure Statement and for voting to accept or reject the Plan, and (d) set a hearing date to consider final approval of the Disclosure Statement and confirmation of the Plan.

On August 14, 2018 the Court conducted a hearing to consider final approval of the Disclosure Statement and confirmation of the Plan (the "Confirmation Hearing"). The Debtor appeared at the Confirmation Hearing through its counsel, Bart K. Larsen, Esq. of the law firm of Kolesar & Leatham. Interested parties Reva Waldo, Anthony White, Steven Hotchkiss, Troy Suntheimer, Robin Suntheimer, Steve Ghesquire, and Jackie Stone appeared at the Confirmation Hearing through their counsel David Liebrader, Esq. of the Law Office of David Liebrader, Inc. Edmund Gee, Esq. also appeared at the Confirmation Hearing on behalf of the Office of the United States Trustee.

The Court, having considered (a) the Plan and Disclosure Statement, (b) the papers and pleadings filed in connection with the Plan and Disclosure Statement, (c) the arguments presented by counsel during the Hearing, and (d) the entire record of this Chapter 11 Case; and the Court being familiar with this Chapter 11 Case, the Plan, and other relevant factors affecting this Chapter 11 Case; and after due deliberation and sufficient cause appearing,

**THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

A. The Court has jurisdiction over this Chapter 11 Case pursuant to 28 U.S.C. § 1334. Venue of this case is appropriate in the District of Nevada pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b), and this Court has jurisdiction to enter a final order with respect thereto.

<sup>1</sup> Unless otherwise stated, all "Chapter" and "Section" references are to Title 11 of the U.S. Code (the "Bankruptcy Code"), all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and all references to "Local Rules" are to the Local Rules of Bankruptcy Practice for the U.S. District Court for the District of Nevada (the "Local Rules").

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1 B. On May 22, 2018 (the “Petition Date”), the Debtor filed its voluntary petition for  
2 relief under Chapter 11 of the United States Bankruptcy Code. Since the Petition Date, the Debtor  
3 has continued to operate its businesses and manage its property as a debtor and debtor in possession  
4 pursuant to §§ 1107(a) and 1108.

5 C. This Court relies upon and takes judicial notice pursuant to Rule 201 of the Federal  
6 Rules of Evidence of the docket in this Chapter 11 Case, including, without limitation, all filed  
7 pleadings and declarations, all entered orders, and all evidence and arguments made, proffered, or  
8 adduced at the hearings held before the Court during the pendency of the Chapter 11 Case, including  
9 at the Confirmation Hearing.

10 D. The Disclosure Statement contains “adequate information” within the meaning of  
11 Section 1125.

12 E. In accordance with Section 1129(a)(1), the Plan complies with all applicable  
13 provisions of the Bankruptcy Code, including the applicable requirements of Sections 1122 and  
14 1123, the Bankruptcy Rules, the Local rules, and all orders of this Court with respect to the Plan.

15 F. Good, sufficient, and timely notice of the Confirmation Hearing was given to holders  
16 of Claims and Equity Interests and to other interested parties entitled to notice in accordance with  
17 the Disclosure Statement Order, the Bankruptcy Code, and the Bankruptcy Rules. The solicitation  
18 of votes was made in good faith and in compliance with the applicable provisions of the Bankruptcy  
19 Code and all other rules, laws, and regulations, and such solicitation was conducted after disclosure  
20 of “adequate information” as defined in Section 1125. The ballots of holders of Claims entitled to  
21 vote were properly solicited and tabulated in accordance with the Disclosure Statement Order and  
22 the Bankruptcy Code. The Debtor has therefore complied with Section 1129(a)(2), including, but  
23 not limited to the requirements set forth in Sections 1125 and 1126.

24 G. The Plan and the compromises embodied therein were proposed in good faith and  
25 not by any means forbidden by law, as evidenced by, among other things, the totality of the  
26 circumstances surrounding the formulation of the Plan and the record of the Chapter 11 Case. The  
27 Plan provides the greatest opportunity to maximize the value of the Estate, and the Debtor has  
28 exercised sound and reasonable business judgment in proposing the Plan. As such, the Plan satisfies



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1 the requirements of Section 1129(a)(3).

2 H. The Plan complies with the requirements of Section 1129(a)(4) in that all payments  
3 to be made by the Debtor for services or for costs and expenses in or connected with the Chapter  
4 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, have been approved  
5 by or are subject to the approval of the Court as reasonably required.

6 I. The Plan complies with the requirements of Section 1129(a)(5) in that the Debtor  
7 has disclosed the identity, affiliation, and compensation, if any, of the principals of the Debtor under  
8 the Plan and that the appointment to, or continuance in, such office is consistent with the interests  
9 of Creditors and Equity Interest holders and with public policy.

10 J. Section 1129(a)(6) is inapplicable to the Chapter 11 Case because the Plan does not  
11 contain any rate change for which a governmental regulatory commission has jurisdiction after  
12 confirmation.

13 K. The Plan complies with Section 1129(a)(7) in that each holder of a Claim or Equity  
14 Interest in Classes 1 through 5 has voted to accept the Plan and will receive under the Plan property  
15 of a value, as of the Effective Date, that is not less than the amount that such holder would receive  
16 or retain if the Debtor were liquidated under Chapter 7.

17 L. As set forth in the *Certificate of Acceptance of Debtor's Plan of Reorganization*  
18 [ECF No. 73] filed on August 10, 2018, Creditors holding Impaired Claims in Classes 1, 2, 3, 4,  
19 and 5 voted to accept the Plan in accordance with Section 1126(c). In Class 1, 100% of Creditors  
20 holding 100% of the amount of indebtedness in Class 1 voted to accept the Plan. In Class 2, 100%  
21 of Creditors holding 100% of the amount of indebtedness in Class 2 voted to accept the Plan. In  
22 Class 3, approximately 84% of voting Creditors holding approximately 81% of the amount of the  
23 voting indebtedness in Class 3 voted to accept the Plan. In Class 4, 100% of voting Creditors  
24 holding 100% of the voting indebtedness in Class 4 voted to accept the Plan. In Class 5, 100% of  
25 voting Holders of Equity Interests holding 100% of the voting Equity Interests in Class 5 voted to  
26 accept the Plan.

27 M. Because the Plan has been accepted by Impaired Classes 1, 2, 3, 4, and 5 without  
28 including any vote in favor of acceptance by any Insider, the Plan satisfies Section 1129(a)(8).

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1 N. The Plan's treatment of unclassified priority Claims under Section 507(a) satisfies  
2 the requirements set forth in Section 1129(a)(9) because Allowed Administrative Claims and  
3 Allowed Priority Tax Claims shall be paid in full and in cash or upon such other terms as may be  
4 agreed upon by the Debtor or the Reorganized Debtor, as applicable, and the holders of such Claims.

5 O. Because Impaired Classes 1, 2, 3, 4, and 5, voted to accept the Plan without including  
6 any vote in favor of acceptance by any Insider, the Plan satisfies Section 1129(a)(10).

7 P. The Plan complies with Section 1129(a)(11) in that confirmation will not likely be  
8 followed by the liquidation or the need for further financial reorganization of the Debtor. The Plan  
9 offers a reasonable prospect of success, and it provides a reasonable probability that the provisions  
10 of the Plan can be performed. Therefore, the Plan satisfies the feasibility test set forth in Section  
11 1129(a)(11) of the Bankruptcy Code.

12 Q. The Plan complies with the requirements set forth in Section 1129(a)(12) in that the  
13 Plan provides for the payment of all fees owed pursuant 28 U.S.C. § 1930 as of the Effective Date  
14 and as they come due after the Effective Date.

15 R. Section 1129(a)(13) is satisfied as no retiree benefits (as defined in Section 1114)  
16 are affected under the Plan.

17 S. The Debtor is not required or obligated on any domestic support obligation. Thus  
18 Section 1129(a)(14) is inapplicable.

19 T. The Debtor is not an individual. Thus Section 1129(a)(15) is inapplicable.

20 U. The Debtor is a moneyed, business, or commercial entity. Thus Section 1129(a)(16)  
21 is inapplicable.

22 V. All documents and agreements necessary to implement the Plan have been  
23 negotiated in good faith, at arm's length, and are in the best interests of the Debtor, the Debtor's  
24 Estate, and the Debtor's Creditors.

25 W. The Debtor and its attorneys, accountants, and advisors have acted in good faith with  
26 respect to the solicitation of votes to accept or reject the Plan. The Debtor and its attorneys,  
27 accountants, and advisors are, therefore, entitled to the protection under Section 1125(e).

28 . . .

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1 X. The discharges and injunctions contained within the Plan comply with the  
2 Bankruptcy Code and the Bankruptcy Rules, including Section 524(e). The satisfaction, discharge,  
3 release, or other termination of Claims against the Debtor under the Plan does not affect the liability  
4 of any other Entity or Person for such Claims and does not discharge, release, or otherwise impair  
5 any Claim or cause of action that any Unsecured Noteholder may have against Ronald Robinson  
6 based upon any personal guaranty of any Unsecured Note.

7 Y. Notice of all proceedings regarding or relating to confirmation of the Plan, including  
8 without limitation of the Confirmation Hearing, was adequate under the circumstances and  
9 complied with applicable provisions of the Bankruptcy Code and the Bankruptcy Rules.

10 Z. Pursuant to Sections 105(a), 1123(b)(3), 1129, and 1141 and Bankruptcy Rules 3016  
11 and 9019, the settlements, compromises, discharges, releases, and injunctions set forth in the Plan  
12 are approved as an integral part of the Plan, are fair, equitable, reasonable, and in the best interest  
13 of the Debtor, its Estate, and the holders of Claims and Equity Interests.

14 **ACCORDINGLY, THE COURT HEREBY ORDERS AS FOLLOWS:**

- 15 1. The Disclosure Statement is approved on a final basis pursuant to Section 1125.  
16 2. The Plan, Section X.B.3., at pp. 24-25, is amended in pertinent part as follows:

17 EFFECTIVE AS OF THE CONFIRMATION DATE, THE DEBTOR AND ALL  
18 CURRENT OFFICERS AND DIRECTORS OF THE DEBTOR AS OF THE EFFECTIVE  
19 DATE SHALL RECEIVE A FULL RELEASE FROM THE DEBTOR AND ITS ESTATE  
20 FROM ANY AND ALL CAUSES OF ACTION THAT MIGHT BE ASSERTED ON  
21 BEHALF OF THE DEBTOR OR ITS ESTATE, WHETHER KNOWN OR UNKNOWN,  
22 FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT  
23 OR NONCONTINGENT, EXISTING AS OF THE EFFECTIVE DATE OF THE PLAN,  
24 WHETHER IN LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT OR  
25 OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR,  
26 INCLUDING, WITHOUT LIMITATION, IN ANY WAY RELATED TO THE CHAPTER  
27 11 CASE, THE DEBTOR'S RESTRUCTURING, THE NEGOTIATION,  
28 FORMULATION OR PREPARATION OF THE PLAN, THE DISCLOSURE  
STATEMENT, OR ANY OTHER ACT OR OMISSION RELATED THERETO  
OCCURRING DURING THIS CHAPTER 11 CASE, TO THE CONFIRMATION DATE;  
PROVIDED, HOWEVER, THAT THE FOREGOING RELEASE SHALL NOT  
OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION (1) OF THE  
DEBTOR OR ITS ESTATE FOR ANY CLAIMS ARISING FROM WILLFUL  
MISCONDUCT OR GROSS NEGLIGENCE; (2) CLAIMS AGAINST ANY FORMER  
OFFICER OR DIRECTOR OF THE DEBTOR; OR (3) CLAIMS THAT MAY BE  
ASSERTED BY THIRD PARTIES AGAINST PERSONS OR ENTITIES OTHER THAN  
THE DEBTOR.

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1           3.       The Plan, as amended herein, is confirmed pursuant to Section 1129, and the record  
2 of the Confirmation Hearing is hereby closed. The Effective Date of the Plan shall be the latter of  
3 September 3, 2018 or the first Business Day that is more than fourteen (14) days after the entry of  
4 this Order confirming the Plan by the Court.

5           4.       Fees owed pursuant to 28 U.S.C. § 1930(a)(6) are not subject to allowance as  
6 Administrative Claims under the Plan. Past due fees imposed under 28 U.S.C. § 1930(a)(6), if any,  
7 shall be paid in full before or on the Effective Date. After the Effective Date, the Debtor shall  
8 timely file quarterly reports in the form prescribed by the United States Trustee; such reports shall  
9 be filed within 20 days following the end of each calendar quarter (including any fraction thereof)  
10 until the Chapter 11 Case has been converted, dismissed, or closed by entry of a final decree. The  
11 Debtor shall pay in full when due the fees imposed under 28 U.S.C. § 1930(a)(6) for each quarter  
12 (including any fraction thereof) until this Chapter 11 Case is converted, dismissed, or closed by  
13 entry of a final decree.

14           5.       In accordance with Section 1141(a) of the Bankruptcy Code and upon the occurrence  
15 of the Effective Date, the Plan shall be binding upon and inure to the benefit of: (i) the Debtor; (ii)  
16 all Claimants and all Holders of Claims or Equity Interests (regardless of whether any such  
17 Claimants or Holders voted to accept the Plan, is Impaired under the Plan, or has filed, or is deemed  
18 to have filed, a Proof of Claim); (iii) any other Entity giving, acquiring, or receiving property under  
19 the Plan; (iv) any party to an executory contract or unexpired lease of the Debtor; and (v) each of  
20 the foregoing's respective heirs, successors, assigns, trustees, executors, administrators, affiliates,  
21 officers, directors, agents, representatives, attorneys, beneficiaries, or guardians, if any.

22           6.       On the Effective Date, title to all property rights and interests of the Estate,  
23 including, but not limited to, all claims, causes of action, and remedies the Debtor may hold against  
24 any Entity, shall vest in and be transferred to the Reorganized Debtor in accordance with the terms  
25 of the Plan.

26           7.       The Debtor is authorized to undertake or cause to be undertaken any and all acts and  
27 actions contemplated by the Plan or required to consummate and implement the provisions of the  
28 Plan, prior to, on, and after the Effective Date, including without limitation, entering, executing,

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1 delivering, filing, or recording any agreements, instruments, or documents necessary to implement  
2 the Plan.

3 8. Pursuant to Section 1146(a), any transaction arising out of, contemplated by, or in  
4 any way related to the Plan, whether occurring on or after the Effective Date, shall not be subject  
5 to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax,  
6 real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee,  
7 regulatory filing or recording fee, or other similar tax or governmental assessment, and the  
8 appropriate federal, state or local governmental officials or agents shall and are hereby directed to  
9 forego the collection of any such tax or governmental assessment and to accept for filing and  
10 recordation any of the foregoing instruments or other documents without the payment of any such  
11 tax or governmental assessment.

12 9. As of the Effective Date, all executory contracts and unexpired leases identified in  
13 Exhibit A-1 to the Plan shall be assumed as set forth in the Plan. All executory contracts and  
14 unexpired leases of the Debtor that are not identified in Exhibit A-1 to the Plan shall be rejected as  
15 set forth in the Plan.

16 10. The provisions of the Plan shall not diminish or impair in any manner the  
17 enforceability and coverage of any insurance policies that may cover Claims against the Debtor or  
18 any other Person. Nothing in the Plan shall be deemed to constitute a rejection of any insurance  
19 policies or related agreements relating to any insurance policies under Section 365 of the  
20 Bankruptcy Code to the extent such policies and agreements exist and are executory. The Debtor  
21 shall remain the insured under the Debtor's applicable insurance policies and related agreements.

22 11. The Administrative Claims Bar Date shall be forty-five (45) days after the Effective  
23 Date except for Professional Claims, which shall be filed no later than sixty (60) days after the  
24 Effective Date. Any Person that fails to file a necessary application or request for approval or  
25 payment of an Administrative Claim on or before such date shall be forever barred from asserting  
26 such Claim against the Debtor, and the holder thereof shall be enjoined from commencing or  
27 continuing any action, employment of process or act to collect, offset or recover such  
28 Administrative Claim.

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12. The Claim Objection Bar Date as to all Claims not previously Allowed under the Plan or by prior order of the Court shall be one hundred and twenty (120) days after the Effective Date.

13. Failure specifically to include or reference particular sections or provisions of the Plan or any related agreement in this Order shall not diminish or impair the effectiveness of such sections or provisions, it being the intent of the Court that the Plan be confirmed and such related agreements be approved in their entirety.

14. This Order is a final order, and the period in which an appeal must be filed shall commence immediately upon the entry hereof.

15. If any or all of the provisions of this Order are hereafter reversed, modified or vacated by subsequent order of this Court, or any other Court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Debtor's receipt of written notice of such order. Notwithstanding any such reversal, modification or vacatur of this Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Order and the Plan and all related documents or any amendments or modifications thereto.

16. From and after the Effective Date, this Court shall retain and have exclusive jurisdiction of all matters arising out of this Chapter 11 Case pursuant to, and for purposes of, Sections 105(a) and 1142 of the Bankruptcy Code, including without limitation, jurisdiction over the matters set forth in the Plan, which is incorporated herein by reference, and the enforcement of this Order.

**IT IS SO ORDERED.**

Prepared and Submitted by:  
KOLESAR & LEATHAM

/s/ Bart K. Larsen, Esq.

BART K. LARSEN, ESQ.

Nevada Bar No. 8538

400 S. Rampart Blvd., Ste. 400

Las Vegas, Nevada 89145

*Attorneys for Debtor Virtual Communications Corporation*

**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the Court's ruling and that (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below.

<u>Attorney</u>	<u>Approved</u>	<u>Disapproved</u>	<u>Failed To Respond</u>
Edmund Gee <i>Office of the U.S. Trustee</i>	X		
David Liebrader <i>Attorney for Reva Waldo, Anthony White, Steven Hotchkiss, Troy Suntheimer, Robin Suntheimer, Steve Ghesquire, and Jackie Stone</i>		X	

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

# # #

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# EXHIBIT 3

First Amended Chapter 11 Plan of  
Reorganization of Virtual Communications  
Corporation

Dated June 13, 2018

# EXHIBIT 3



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6

7 *Attorneys for Debtor Virtual*  
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9

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 \* \* \*

13  
14 IN RE:

15 VIRTUAL COMMUNICATIONS  
CORPORATION,

16 Debtor.  
17

Case No. 18-12951-leb

Chapter 11

18 **FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION FOR**  
19 **VIRTUAL COMMUNICATIONS CORPORATION**  
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## INTRODUCTION

Virtual Communications Corporation, as debtor and debtor in possession (“VCC” or “Debtor”), proposes this Chapter 11 Plan of Reorganization (the “Plan”) for the resolution of the outstanding Claims against, and Equity Interests in the Debtor. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code. All Holders of Claims and Interests that are entitled to vote are encouraged to read the Plan in its entirety as well as the Disclosure Statement, which was provisionally approved by the Bankruptcy Court on \_\_\_\_\_, 2018 (the “Disclosure Statement”). The Disclosure Statement discusses the Debtor’s assets and liabilities, historical financial performance, and anticipated future financial projections. The Disclosure Statement also includes a summary and analysis of this Plan and additional information concerning the classification and treatment of the Claims and Interests provided herein.

ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

### **I. DEFINED TERMS AND RULES OF INTERPRETATION**

#### **A. Defined Terms.**

Administrative Claim: A Claim for costs and expenses of administration pursuant to Bankruptcy Code sections 503(b), 507(a)(2), 507(b), or 1114(e)(2), including, without limitation: (a) the actual and necessary costs and expenses of the Estate incurred after the Petition Date; (b) Allowed Professional Claims; and (c) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

Administrative Claim Bar Date: The deadline for filing requests for payment of Administrative Claims, which shall be thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court, except with respect to Professional Claims, which shall be subject to the provisions of Article III.B.

Affiliate: As defined at section 101(2) of the Bankruptcy Code.

Allowed: Except as otherwise provided herein: (a) a Claim or Interest that is (i) listed in the Schedules as of the Effective Date as not disputed, not contingent, and not unliquidated, or (ii) evidenced by a valid Proof of Claim filed by the applicable Bar Date and as to which the Debtor, or other parties in interest have not filed an objection to the allowance thereof within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or (b) a Claim that is Allowed pursuant to the Plan or any stipulation approved by, or Final Order of, the Bankruptcy Court.

Articles of Incorporation: The articles of incorporation of the Debtor, as amended, as of the Petition Date, which shall also be adopted by and apply to the Reorganized Debtor except as expressly amended pursuant to the Plan.

Assets: All of the Debtor’s right, title and interest of any nature in property, wherever located, as specified in section 541 of the Bankruptcy Code.

1        Avoidance Actions: Any and all avoidance, recovery, subordination, or other actions or  
2 remedies that may be brought on behalf of the Debtor or its estate under the Bankruptcy Code or  
3 applicable non-bankruptcy law, including actions or remedies under Bankruptcy Code sections  
544, 547, 548, 550, 551, 552, or 553.

4        Ballot: The form of ballot provided to Holders of Claims or Interests pursuant to  
5 Bankruptcy Rule 3017(d), by which each Holder may accept or reject the Plan.

6        Bankruptcy Code: Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as may  
be amended from time to time.

7        Bankruptcy Court: The United States Bankruptcy Court for the District of Nevada having  
8 jurisdiction over the Chapter 11 Case and to the extent of the withdrawal of any reference under  
9 section 157 of title 28 of the United States Code and/or order of a district court pursuant to section  
157(a) of title 28 of the United States Code, the United States District Court for the District of  
Nevada.

10        Bankruptcy Rules: The Federal Rules of Bankruptcy Procedure as applicable to the  
11 Chapter 11 Cases, and the general, local, and chambers rules of the Bankruptcy Court.

12        Business Day: Any day, other than a Saturday, Sunday, or a legal holiday, as defined in  
13 Bankruptcy Rule 9006(a).

14        Bylaws: The bylaws of the Debtor, as amended, as of the Petition Date, which shall also  
15 be adopted by and apply to the Reorganized Debtor except as expressly amended pursuant to the  
Plan.

16        Cash: The legal tender of the United States of America or the equivalent thereof,  
17 including bank deposits and checks.

18        Causes of Action: means all actions, causes of action (including Avoidance Actions),  
19 Claims, liabilities, obligations, rights, suits, debts, damages, judgments, remedies, demands,  
20 setoffs, defenses, recoupments, crossclaims, counterclaims, third-party claims, indemnity claims,  
21 contribution claims or any other claims disputed or undisputed, suspected or unsuspected,  
22 foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in law,  
equity or otherwise, based in whole or in part upon any act or omission or other event occurring  
prior to the Commencement Date or during the course of the Chapter 11 Case, including through  
the Effective Date.

23        Chapter 11 Case: The Chapter 11 case pending for the Debtor under Chapter 11 of the  
24 Bankruptcy Code before the Bankruptcy Court.

25        Claim: As defined in Bankruptcy Code section 101(5).

26        Claimant: A Holder of a Claim.

27        Claims Bar Date: As applicable, (a) September 26, 2018, (b) the Governmental Bar Date  
28 or (c) such other period of limitation as may be specifically fixed by an order of the Bankruptcy  
Court for Filing such Claims.

1        Claims Objection Bar Date: For each Claim, the later of (a) 180 days after the Effective  
2 Date and (b) such other period of limitation as may be specifically fixed by an order of the  
3 Bankruptcy Court for objecting to such Claims; *provided, however*, that in no event shall the  
4 Claims Objection Bar Date be greater than 180 days after the Effective Date with respect to any  
5 General Unsecured Claim in Class 4.

6        Claims Register: The official register of Claims maintained by the Bankruptcy Court.

7        Class: A category of Holders of Claims or Interests pursuant to Bankruptcy Code section  
8 1122(a).

9        Common Stock: The common stock, par value \$0.001 per share, of the Reorganized  
10 Debtor issued on the Effective Date.

11        Common Stock Distribution: A distribution of approximately 1,300,093 shares of  
12 Common Stock of the Reorganized Debtor to be allocated among the Holders of Allowed Class 3  
13 Claims on a Pro Rata basis according to the amount of contract-rate interest accrued on the  
14 principal balance included in each Holder's respective Allowed Class 3 Claim as of the Petition  
15 Date, which shall be subject to adjustment to provide that the number of shares of Common Stock  
16 included within the Common Stock Distribution is equal to the total amount of all contract-rate  
17 interest accrued on the aggregate principal balances included within all Allowed Class 3 Claims  
18 as of the Petition Date.

19        Confirmation: The entry of the Confirmation Order on the docket of the Chapter 11 Case,  
20 subject to all conditions specified having been satisfied or waived.

21        Confirmation Date: The date upon which the Bankruptcy Court enters the Confirmation  
22 Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and  
23 9021.

24        Confirmation Hearing: The hearing before the Bankruptcy Court pursuant to Bankruptcy  
25 Code section 1128 on the motion for entry of the Confirmation Order.

26        Confirmation Order: The order of the Bankruptcy Court confirming the Plan pursuant to  
27 section 1129 of the Bankruptcy Code.

28        Consummation: The occurrence of the Effective Date.

Court: The Bankruptcy Court.

Creditor: As defined in Bankruptcy Code Section 101(10).

Disclosure Statement: The disclosure statement for the Plan, supplemented or modified  
from time to time, including all exhibits and schedules thereto, and as approved by the  
Bankruptcy Court pursuant to Bankruptcy Code section 1125.

Disputed Claim: Any Claim or Interest that is not yet Allowed.

Disallowed Claim: A Claim against the Debtor that: (a) is not listed on the Schedules, or  
is listed therein as contingent, unliquidated, disputed, or in an amount equal to zero, and whose

1 Holder has failed to timely File a proof of claim; or (b) has been disallowed pursuant to order of  
2 the Bankruptcy Court.

3 Distribution Agent: The Debtor or Reorganized Debtor shall serve as the Distribution  
4 Agent under the Plan.

5 Distribution Record Date: The date for determining which Holders of Claims are eligible  
6 to receive distributions under the Plan, which shall be set by order of the Bankruptcy Court.

7 Effective Date: The date that is the first Business Day after the Confirmation Date on  
8 which: (a) no stay of the Confirmation Order is in effect; and (b) all conditions precedent to the  
9 Effective Date have been satisfied or waived.

10 Entity: As defined in Bankruptcy Code section 101(15).

11 Event of Default: A material failure of the Debtor or Reorganized Debtor to fulfill the  
12 obligations required under this Plan after the Effective Date.

13 Equity Interest: Any partnership, membership, or other equity interest in the Debtor or the  
14 Reorganized Debtor.

15 Estate: The bankruptcy estate of the Debtor created pursuant to Bankruptcy Code  
16 Sections 301 and 541 upon the commencement of the Chapter 11 Case.

17 Executory Contract: A contract or lease to which one or more of the Debtors is a party  
18 that is subject to assumption or rejection under Bankruptcy Code sections 365 or 1123.

19 Fee Claim: A Claim by a Professional seeking an award by the Bankruptcy Court of  
20 compensation for services rendered or reimbursement of expenses incurred through and including  
21 the Confirmation Date under Bankruptcy Code sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4)  
22 or 503(b)(5).

23 File: To file with the Bankruptcy Court or its authorized designee in this Chapter 11 Case

24 Final Decree: The decree contemplated under Bankruptcy Rule 3022.

25 Final Order: An order or judgment of the Bankruptcy Court or other court or competent  
26 jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified, or  
27 amended, and as to which the time to appeal or seek certiorari has expired and no appeal or  
28 petition for certiorari has been timely taken, or as to which any appeal that has been taken or any  
petition for certiorari that has been or may be filed has been resolved by the highest court to  
which the order or judgment was appealed or from which certiorari was sought; provided,  
however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure,  
or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules, may be filed  
relating to such order shall not prevent such order from being a Final Order.

Governmental Unit: As defined in section 101(27) of the Bankruptcy Code.

Holder: A Person holding a Claim or Interest.



1       Initial Distribution Date: The date that is as soon as practicable after the Effective Date  
2 but no later than thirty (30) days after the Effective Date, when distributions under the Plan shall  
commence.

3       Impaired: With respect to any Class of Claims or Interests, a Claim or Interest that is not  
4 Unimpaired.

5       Insider: As defined in Bankruptcy Code section 101(31).

6       Interest: Any Equity Interest in a Debtor as defined in section 101(16) of the Bankruptcy  
7 Code, including all issued, unissued, authorized, or outstanding shares of capital stock of the  
8 Debtor together with any warrants, options, or contractual rights to purchase or acquire such  
equity securities at any time and all rights arising with respect thereto, whether or not fully-vested  
or vesting in the future, that existed immediately before the Effective Date.

9       Lien: As defined in Bankruptcy Code section 101(37).

10       New Equity Interests: The equity interests in the Reorganized Debtor to be authorized,  
11 issued, or reserved on the Effective Date pursuant to the Plan, which shall constitute all of the  
equity interests in the Reorganized Debtor.

12       Periodic Distribution Date: The Distribution Date, as to the first distribution made by the  
13 Distribution Agent, and thereafter, such Business Days as determined by the Distribution Agent.

14       Person: As defined in Bankruptcy Code section 101(41).

15       Petition Date: May 22, 2018.

16       Plan: The Plan Proponent's Chapter 11 plan as it may be altered, amended, modified, or  
17 supplemented from time to time, including the Plan Supplement and all exhibits, supplements,  
18 appendices, and schedules.

19       Plan Proponent: Virtual Communications Corporation.

20       Priority Claim: Collectively, Priority Tax Claims, and Other Priority Claims.

21       Priority Tax Claim: Any Claim of a Governmental Unit of the kind specified in  
22 Bankruptcy Code section 507(a)(8).

23       Professional: A professional: (a) employed in the Chapter 11 Cases pursuant to a Final  
24 Order in accordance with Bankruptcy Code sections 327 and 1103 and to be compensated for  
25 services rendered prior to or on the Effective Date, pursuant to Bankruptcy Code sections 327,  
328, 329, 330, and 331; or (b) for which compensation and reimbursement has been Allowed by  
the Bankruptcy Court pursuant to Bankruptcy Code section 503(b)(4).

26       Professional Compensation: All accrued fees and expenses for services rendered by all  
27 Professionals through and including the Confirmation Date to the extent any such fees and  
28 expenses have not been paid and regardless of whether a fee application has been filed for such  
fees and expenses. To the extent there is a Final Order denying some or all of a Professional's  
fees or expenses, such denied amounts shall no longer be considered Professional Compensation.

1        Proof of Claim: A proof of Claim filed against the Debtor in the Chapter 11 Case.

2        Pro Rata: The proportion that an Allowed Claim in a particular Class bears to the  
3 aggregate amount of Allowed Claims in that Class, or the proportion that a Holder's portion of an  
4 Allowed Claim of a particular Class bears to the aggregate Allowed Claim of that Class.

5        Rejection Damage Claim: A Claim against the Debtor arising under Bankruptcy Code  
6 section 365 from the rejection by the Debtor of an unexpired lease or executory contract  
7 Reorganized Debtor: The Debtor on and after the Effective Date, after giving effect to the Plan.

8        Reorganized Debtor: The Debtor, or any successor thereto, by merger, consolidation or  
9 otherwise, on or after the Effective Date.

10        Schedules: The schedules of assets and liabilities, schedules of executory contracts and  
11 unexpired leases, and statements of financial affairs filed by the Debtor pursuant to section 521 of  
12 the Bankruptcy Code and the Bankruptcy Rules.

13        Schedule of Assumed Agreements: The schedule of executory contracts and unexpired  
14 leases that the Debtor will assume on the Effective Date, which is attached to the Plan as Exhibit  
15 A-1.

16        Secured Claim: A Claim: (a) secured by a Lien on collateral to the extent of the value of  
17 such collateral, as determined in accordance with Bankruptcy Code section 506(a) or (b) subject  
18 to a valid right of setoff pursuant to Bankruptcy Code section 553.

19        Secured Tax Claim: Any Secured Claim that, absent its secured status, would be entitled  
20 to priority in right of payment under Bankruptcy Code section 507(a)(8) (determined irrespective  
21 of time limitations), including any related Secured Claim for penalties.

22        Securities Act: The Securities Act of 1933, as now in effect of hereafter amended, or any  
23 regulations promulgated thereunder.

24        Series A Preferred Stock: Preferred Stock in the Reorganized Debtor that has been  
25 specifically designated by the Debtor or Reorganized Debtor as "Series A" preferred stock  
26 pursuant to the Articles of Incorporation and Bylaws.

27        Series A Preferred Distribution: A distribution of approximately 940,110 shares of Series  
28 A Preferred Stock of the Reorganized Debtor to be allocated among the Holders of Allowed Class  
3 Claims on a Pro Rata basis according to the principal indebtedness included in each Holder's  
4 Allowed Class 3 Claim, which shall be subject to adjustment to provide that the number of shares  
5 of Series A Preferred Stock included within the Series A Preferred Distribution is equal to one-  
6 fifth (1/5<sup>th</sup>) of the total dollar amount of all principal indebtedness included within all Allowed  
7 Class 3 Claims.

8        Unexpired Lease: A lease of nonresidential real property to which one or more of the  
9 Debtors is a party that is subject to assumption or rejection under Bankruptcy Code sections 365  
10 or 1123.

11        Unimpaired: With respect to a Class of Claims or Interests, a Class of Claims or Interests  
12 that is unimpaired within the meaning of Bankruptcy Code section 1124.

1        Unsecured Claim: Any Claim against the Debtor that is neither Secured nor entitled to  
2 priority under the Bankruptcy Code or an order of the Bankruptcy Court.

3        Unsecured Noteholders: The Holders of Claims based upon or arising from any Unsecured  
4 Note or any transaction related thereto.

5        Unsecured Notes: Approximately 100 Unsecured promissory notes issued by the Debtor  
6 during 2013 and 2014 in the aggregate principal amount of approximately \$4,700,550 and made  
7 payable to Provident Trust Group, LLC as custodian for various individual lenders that elected to  
8 make loans to the Debtor through their respective self-directed individual retirement accounts.

9        U.S. Trustee: The Office of the United States Trustee for the District of Nevada.

10       U.S. Trustee Fees: Fees or charges assessed against the Estate pursuant to 28 U.S.C. §  
11 1930.

12       Voting Deadline: The date which shall be the final date by which a Holder of a Claim  
13 may vote to accept or reject the Plan.

14       Voting Record Date: The date for determining which Holders of Claims are entitled to  
15 vote to accept or reject the Plan.

16       **B. Rules of Construction.**

17       1. The rules of construction in Bankruptcy Code section 102 apply to this Plan to the  
18 extent not inconsistent herewith.

19       2. Bankruptcy Rule 9006(a) applies when computing any time period under the Plan.

20       3. A term that is used in this Plan and that is not defined in this Plan has the meaning  
21 attributed to that term, if any, in the Bankruptcy Code or the Bankruptcy Rules.

22       4. The definition given to any term or provision in the Plan supersedes and controls  
23 any different meaning that may be given to that term or provision in the Disclosure Statement.

24       5. Whenever it is appropriate from the context, each term, whether stated in the  
25 singular or the plural, includes both the singular and the plural.

26       6. Any reference to a document or instrument being in a particular form or on  
27 particular terms means that the document or instrument will be substantially in that form or on  
28 those terms. No material change to the form or terms may be made after the Confirmation Date  
without the consent of any party materially negatively affected.

1       7. Any reference to an existing document means the document as it has been, or may  
be, amended or supplemented.

2       8. Unless otherwise indicated, the phrase “under the Plan” and similar words or  
phrases refer to this Plan in its entirety rather than to only a portion of the Plan.

3       9. Unless otherwise specified, all references to Sections or Exhibits are references to

1 this Plan's Sections or Exhibits.

2 10. The words "herein," "hereto," "hereunder," and other words of similar import refer  
3 to this Plan in its entirety rather than to only a particular portion hereof.

## 4 **II. ADMINISTRATIVE AND PRIORITY TAX CLAIMS**

### 5 **A. Administrative Claims.**

6 Each Holder of an Allowed Administrative Claim shall be paid the full unpaid amount of  
7 such Claim in Cash (a) on or as soon as reasonably practicable after the Effective Date, (b) if  
8 such Claim is Allowed after the Effective Date, on or as soon as reasonably practicable after the  
9 date such Claim is Allowed, or (c) upon such other terms as may be agreed upon by the Debtor  
10 or the Reorganized Debtor, as applicable, and such Holder or otherwise upon an order of the  
11 Bankruptcy Court; *provided, however,* that Allowed Administrative Expense Claims  
12 representing liabilities incurred by the Debtor in the ordinary course of business during the  
13 Chapter 11 Case, other than those liabilities constituting or relating to commercial tort claims or  
14 patent, trademark or copyright infringement claims, shall be paid in the ordinary course of  
15 business in accordance with the terms and subject to the conditions of any agreements governing,  
16 instruments evidencing, or other documents related to such transactions, and Holders of claims  
17 related to such ordinary course liabilities are not required to File or serve any request for  
18 payment of such Administrative Claims.

#### 14 **1. Bar Date for Administrative Claims.**

15 Except as otherwise provided in this Article II.A hereof, unless previously Filed, requests  
16 for payment of Administrative Claims must be Filed and served on the Reorganized Debtor  
17 pursuant to the procedures specified in the Confirmation Order and the notice of entry of the  
18 Confirmation Order no later than 45 days after the Effective Date. Holders of Administrative  
19 Claims that are required to File and serve a request for payment of such Administrative Claims,  
20 including, without limitation, Holders of Claims for liabilities constituting or relating to  
21 commercial tort claims or patent, trademark or copyright infringement claims who assert that  
22 such claims constitute Administrative Claims, that do not File and serve such a request by the  
23 applicable Claims Bar Date shall be forever barred, estopped and enjoined from asserting such  
24 Administrative Claims against the Debtor or the Reorganized Debtor or their Estates and  
25 property and such Administrative Claims shall be deemed discharged as of the Effective Date.  
26 Objections to such requests must be Filed and served on the Reorganized Debtor and the  
27 requesting party by the later of (a) 120 days after the Effective Date and (b) 60 days after the  
28 Filing of the applicable request for payment of Administrative Claims, if applicable, as the same  
may be modified or extended from time to time by the Bankruptcy Court and/or on motion of a  
party in interest approved by the Bankruptcy Court.

#### 25 **2. Professional Compensation and Reimbursement Claims.**

26 Retained Professionals or other Entities asserting a Fee Claim for services rendered  
27 before the Confirmation Date must File and serve on the Reorganized Debtor and such other  
28 Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of  
the Bankruptcy Court an application for final allowance of such Fee Claim no later than 60 days  
after the Effective Date; *provided* that the Reorganized Debtor shall pay Retained Professionals

or other Entities in the ordinary course of business for any work performed after the Confirmation Date. Objections to any Fee Claim must be Filed and served on the Reorganized Debtor and the requesting party by 14 days after the Filing of the applicable request for payment of the Fee Claim. To the extent necessary, the Confirmation Order shall amend and supersede any previously entered order of the Bankruptcy Court regarding the payment of Fee Claims. Each Holder of an Allowed Fee Claim shall be paid by the Reorganized Debtor in Cash within five (5) Business Days of entry of the order approving such Allowed Fee Claim.

#### **B. Priority Tax Claims.**

Each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective Date shall receive, as soon as reasonably practicable after the Effective Date, on account of such Claim: (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (2) Cash in an amount agreed to by the Debtor or Reorganized Debtor, as applicable, and such Holder; *provided, however*, that such parties may further agree for the payment of such Allowed Priority Tax Claim at a later date; or (3) at the option of the Debtor, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period not more than five years after the Commencement Date, plus simple interest at the rate required by applicable law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to by a particular taxing authority, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such claim shall be paid in full in cash in accordance with the terms of any agreement between the Debtor and such Holder, or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business. The Debtor does not have any Priority Tax Claims.

### **III. DESIGNATION OF CLASSES AND TREATMENT OF CLAIMS**

#### **A. Summary of Classifications and Claims.**

This Section classifies Claims against the Debtor – except for Administrative Claims and Priority Tax Claims, which are not classified – for all purposes, including voting, confirmation, and distribution under the Plan. A Claim against the Debtor is classified in a particular Class only to the extent that the Claim falls within the Class description. To the extent that part of the Claim against the Debtor falls within a different Class description, the Claim is classified in that different Class. The following table summarizes the Classes of Claims under the Plan:

CLASS	DESCRIPTION	IMPAIRED/ UNIMPAIRED	VOTING STATUS
None	Administrative Claims and Priority Tax Claims	Unimpaired	Not Entitled to Vote
Class 1	Secured Claim of Gewerter Law Office	Impaired	Entitled to Vote
Class 2	Secured Claim of Julie Minushkin	Impaired	Entitled to Vote
Class 3	Unsecured Promissory Notes	Impaired	Entitled to Vote
Class 4	General Unsecured Claims	Impaired	Entitled to Vote

CLASS	DESCRIPTION	IMPAIRED/ UNIMPAIRED	VOTING STATUS
Class 5	Equity Interests	Impaired	Entitled to Vote

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN, NO DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED ON ACCOUNT OF ANY CLAIM AGAINST THE DEBTOR OR THE ESTATE THAT IS NOT AN ALLOWED CLAIM.**

The treatment in this Plan is in full and complete satisfaction of the legal, contractual, and equitable rights (including any liens) that each entity holding a Claim may have against the Debtor or the Estate. This treatment supersedes and replaces any agreements or rights that any Holder of a Claim may have with or against the Debtor, the Estate, or their respective property. All distributions in respect of Allowed Claims will be allocated first to the principal amount of such Allowed Claim, as determined for federal income tax purposes, and thereafter, to the remaining portion of such Allowed Claim, if any.

**B. Classification and Treatment of Claims and Equity Interests.**

**1. Class 1 – Secured Claim Gewerter Law Office.**

Classification: Class 1 consists of the Allowed Secured Claim of Gewerter Law Office, which is estimated to be approximately \$1,000.00 and is secured by a prepetition retainer paid to Gewerter Law Office for legal services.

Treatment: Except to the extent that a Holder of an Allowed Class 1 Claim agrees to a less favorable treatment, in exchange for and in full and final satisfaction, compromise, settlement, release, and discharge of each Allowed Class 1 Claim, each Holder of an Allowed Class 1 Claim shall receive payment in full in Cash no later than the thirtieth (30th) day after the Effective Date. Any Unsecured Claim asserted by any Holder of an Allowed Class 1 Claim shall be treated as a Class 4 (General Unsecured) Claim.

Voting: Class 1 is an Impaired Class. Holders of Class 1 Claims are entitled to vote to accept or reject the Plan.

**2. Class 2 – Secured Claim of Julie Minushkin.**

Classification: Class 2 consists of the Allowed Secured Claim of Julie Minushkin, which is estimated to be approximately \$15,000.00 and is secured by certain shares of common stock of the Debtor.

Treatment: Except to the extent that a Holder of an Allowed Class 2 Claim agrees to a less favorable treatment, in exchange for and in full and final satisfaction, compromise, settlement, release, and discharge of each Allowed Class 2 Claim, each Holder of an Allowed Class 2 Claim shall receive a Cash payment in the amount of \$10,000 no later than the ninetieth (90<sup>th</sup>) day after the Effective Date. As of the Effective Date, all common stock held as collateral for any Allowed Class 2 Claim shall be cancelled and shall become null and void. Any Unsecured Claim asserted by any Holder of an Allowed Class 2 Claim shall be treated as a Class

1 4 (General Unsecured) Claim.

2 Voting: Class 2 is an Unimpaired Class. Holders of Class 2 Claims are entitled to vote to  
3 accept or reject the Plan.

4 **3. Class 3 – Unsecured Promissory Notes.**

5 Classification: Class 3 consists of all Claims held by the Unsecured Noteholders.

6 Treatment: Except to the extent that a Holder of an Allowed Class 3 Claim agrees to a  
7 less favorable treatment, in exchange for and in full and final satisfaction, compromise,  
8 settlement, release, and discharge of each Allowed Class 3 Claim, each Holder of an Allowed  
9 Class 3 Claim shall receive on the Effective Date, or as soon thereafter as reasonably practicable,  
10 (i) its Pro Rata share of the Common Stock Distribution and (ii) its Pro Rata Share of the Series A  
11 Preferred Distribution.

12 Voting: Class 3 is an Impaired Class. Holders of Class 3 Claims are entitled to vote to  
13 accept or reject the Plan.

14 **4. Class 4 – General Unsecured Claims.**

15 Classification: Class 4 consists of all General Unsecured Claims against the Debtor that  
16 are not based on or related to any Unsecured Note. The total amount of such claims is presently  
17 unknown. The Debtor estimates that the total amount of all Allowed Class 4 Claims will not  
18 exceed \$10,000.

19 Treatment: Except to the extent that a Holder of an Allowed Class 4 Claim agrees to a  
20 less favorable treatment, in exchange for and in full and final satisfaction, compromise,  
21 settlement, release, and discharge of each Allowed Class 4 Claim, each Holder of an Allowed  
22 Class 4 Claim, if any, shall receive on or before the ninetieth (90<sup>th</sup>) day after the Effective Date,  
23 the lesser of (i) a Cash payment equal to 50% of its Allowed General Unsecured Claims, if any, or  
24 (b) its Pro Rata share of a lump sum payment in the amount of \$5,000.

25 Voting: Class 4 is an Impaired Class. Holders of Class 4 Claims are entitled to vote to  
26 accept or reject the Plan.

27 **5. Class 5 – Equity Interests in the Debtor.**

28 Classification: Class 5 consists of the Holders of all Equity Interests in the Debtor.

Treatment: Except to the extent that a Holder of an Allowed Class 5 Interest agrees to a  
less favorable treatment, each Holder of an Allowed Class 5 Interest shall receive on the Effective  
Date, or as soon thereafter as reasonably practicable, New Equity Interests consisting of shares of  
Common Stock in the Reorganized Debtor in an amount equal to the number of shares of  
common stock that each Holder of an Allowed Class 5 Interest held in the Debtor as of the  
Petition Date.

Voting: Class 5 is an Impaired Class. Holders of Class 5 Interests are entitled to vote to  
accept or reject the Plan.



**IV. ACCEPTANCE OR REJECTION OF THE PLAN**

**A. Deemed Acceptance of the Plan.**

All Classes are Impaired under the Plan. Accordingly, no Class is deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code.

**B. Voting Classes.**

Each Holder of an Allowed Claim or Interest as of the Record Date in each of the Voting Classes (Classes 1, 2, 3, 4, and 5) shall be entitled to vote to accept or reject the Plan.

**C. Acceptance by Impaired Classes of Claims.**

Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted the Plan if the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class actually voting have voted to accept the Plan.

**D. Cramdown.**

The Debtor requests Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code. The Debtor reserves the right to modify the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

**E. Elimination of Vacant Classes.**

Any Class of Claims that is not occupied as of the date of commencement of the Confirmation Hearing by the Holder of an Allowed Claim or a Claim temporarily Allowed under Bankruptcy Rule 3018 (*i.e.*, no Ballots are cast in a Class entitled to vote on the Plan) shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptances or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption of Executory Contracts and Unexpired Leases.**

**1. Assumption of Agreements.**

On the Effective Date, the Reorganized Debtor shall assume all executory contracts and unexpired leases of the Debtor listed on the Schedule of Assumed Agreements.

The Debtor reserves the right to amend the Schedule of Assumed Agreements at any time prior to the Effective Date to: (a) delete any executory contract or unexpired lease and provide for its rejection under the Plan or otherwise, or (b) add any executory contract or unexpired lease and provide for its assumption under the Plan. The Debtor will provide notice of any amendment to the Schedule of Assumed Agreements to the party or parties to the agreement affected by the amendment.



1 The Confirmation Order will constitute a Court order approving the assumption, on the  
2 Effective Date, of all executory contracts and unexpired leases identified on the Schedule of  
3 Assumed Agreements.

4 **2. Cure Payments.**

5 Any amount that must be paid under Bankruptcy Code section 365(b)(1) to cure a default  
6 under and compensate the non-debtor party to an executory contract or unexpired lease to be  
7 assumed under the Plan, is identified as the Cure Payment on the Schedule of Assumed  
8 Agreements. Unless the parties mutually agree to a different date, such payment shall be made in  
9 cash, ten (10) days following the later of: (i) the Effective Date and (ii) entry of a Final Order  
resolving any dispute regarding (a) the amount of any Cure Payment, (b) the ability of the  
Reorganized Debtor to provide “adequate assurance of future performance” within the meaning of  
Bankruptcy Code section 365 with respect to a contract or lease to be assumed, to the extent  
required, and/or (c) any other matter pertaining to assumption.

10 Pending the Court’s ruling on any such dispute, the executory contract or unexpired lease  
11 at issue shall be deemed assumed by the Reorganized Debtor unless otherwise agreed by the  
12 parties or ordered by the Court.

13 **3. Objections to Assumption/Cure Payment Amounts.**

14 Any entity that is a party to an executory contract or unexpired lease that will be assumed  
15 under the Plan and that objects to such assumption (including the proposed Cure Payment) must  
16 file with the Court and serve upon parties entitled to notice a written statement and supporting  
17 declaration stating the basis for its objection. This statement and declaration must be Filed and  
served by the deadline fixed by the Court for such objection. Any entity that fails to timely File  
and serve such a statement and declaration will be deemed to waive any and all objections to the  
proposed assumption (including the proposed Cure Payment) of its contract or lease.

18 In the absence of a timely objection by an entity that is a party to an executory contract or  
19 unexpired lease, the Confirmation Order shall constitute a conclusive determination as to the  
20 amount of any cure and compensation due under the executory contract or unexpired lease, and  
that the Reorganized Debtor has demonstrated adequate assurance of future performance with  
respect to such executory contract or unexpired lease, to the extent required.

21 **4. Resolution of Claims Relating to Contracts and Leases.**

22 Payment of the Cure Payment established under the Plan, by the Confirmation Order or by  
23 any other order of the Court, with respect to an assumed executory contract or unexpired lease,  
24 shall be deemed to satisfy, in full, any prepetition or post-petition arrearage or other Claim against  
25 the Debtor (including any asserted in a Filed proof of claim or listed in the Schedules) with  
26 respect to such contract or lease (irrespective of whether the Cure Payment is less than the amount  
27 set forth in such proof of Claim or the Schedules). Upon the tendering of the Cure Payment, any  
28 such Filed or scheduled Claim shall be disallowed, without further order of the Court or action by  
any party.

**B. Rejections of Executory Contracts and Unexpired Leases.**

**1. Rejected Agreements.**

On the Effective Date, all executory contracts and unexpired leases that (i) have not been previously assumed or rejected and (ii) that are not set forth on the Schedule of Assumed Agreements shall be rejected. For the avoidance of doubt, executory contracts and unexpired leases that have been previously assumed or assumed and assigned pursuant to an order of the Court shall not be affected by the Plan. The Confirmation Order will constitute a Court order approving the rejection, on the Effective Date, of the executory contracts and unexpired leases to be rejected under the Plan.

**2. Bar Date for Rejection Damage Claims.**

Any Rejection Damage Claim or other Claim against the Debtor for damages arising from the rejection under the Plan of an executory contract or unexpired lease must be Filed and served upon counsel to the Reorganized Debtor within 30 days after the mailing of notice of the occurrence of the Effective Date. Any such Claims that are not timely Filed and served will be forever barred and unenforceable against the Debtor, the Reorganized Debtor, the Estate, and their respective property, and entities holding such Claims will be barred from receiving any distributions under the Plan on account of such untimely Claims.

**3. Post-petition Contracts and Leases.**

Except as expressly provided in the Plan or the Confirmation Order, all contracts, leases, and other agreements that the Debtor entered into after the Petition Date will be retained by the Reorganized Debtor and will remain in full force and effect following the Effective Date.

**VI. MEANS OF EXECUTION AND IMPLEMENTATION OF THE PLAN**

**A. Means of Effectuating the Plan.**

**1. Funding for the Plan.**

The funds necessary to satisfy the Reorganized Debtor's obligations and to ensure the Reorganized Debtor's continuing performance under the Plan after the Effective Date will be obtained from: (i) cash on hand; (ii) equity contributions; (iii) distributions of income from the business operations of the Debtor's wholly-owned subsidiary WinTech, LLC; (iv) any reserves established by the Debtor; and (v) any other contributions or financing (if any) that the Debtor may obtain on or after the Effective Date.

**2. New Corporate Existence.**

The Debtor shall continue to exist after the Effective Date as a separate corporate entity with all the powers of a corporation under the laws of the State of Nevada and pursuant to the Articles of Incorporation and Bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such Articles of Incorporation or Bylaws (or other formation documents) are amended by or in connection with the Plan or otherwise and, to the extent such documents are amended, such documents are deemed to be authorized pursuant hereto and without the need for any other approvals, authorizations, actions or consents.

1                   **3. Vesting of Assets.**

2           Except as otherwise provided herein or in any agreement, instrument or other document  
3 relating thereto, on or after the Effective Date, all property of the Estate (including, without  
4 limitation, Causes of Action) and any property acquired by the Debtor pursuant hereto shall vest  
5 in the Reorganized Debtor, free and clear of all liens, Claims, charges or other encumbrances.  
6 Except as may be provided herein, on and after the Effective Date, the Reorganized Debtor may  
7 operate its business and may use, acquire or dispose of property and compromise or settle any  
8 Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of  
9 the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the  
Plan and the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor shall  
pay the charges that it incurs after the Effective Date for Retained Professionals' fees,  
disbursements, expenses or related support services (including reasonable fees relating to the  
preparation of Retained Professional fee applications) without application to the Bankruptcy  
Court.

10                   **4. Issuance and Distribution of New Equity Interests.**

11           On or immediately after the Effective Date, the Reorganized Debtor shall issue or reserve  
12 for issuance all securities required to be issued pursuant hereto. The New Equity Interests issued  
13 under the Plan are issued under Section 1145 of the Bankruptcy Code shall be subject to all  
14 applicable state and federal laws. The Debtor makes no representation as to any restriction or  
15 requirement that may or may not apply to the sale or exchange of New Equity Interests pursuant  
16 to such laws. All of the New Equity Interests issued pursuant to the Plan shall be duly  
17 authorized, validly issued and, if applicable, fully paid and non-assessable. Each distribution and  
issuance referred to in Article VII hereof shall be governed by the terms and conditions set forth  
herein applicable to such distribution or issuance and by the terms and conditions of the  
instruments evidencing or relating to such distribution or issuance, which terms and conditions  
shall bind each Entity receiving such distribution or issuance.

18                   **5. Securities Registration Exemption.**

19           The New Equity Interests to be issued to the Debtor's Equity Interest Holders will be  
20 issued without registration under the Securities Act or any similar federal, state or local law in  
reliance upon the exemptions set forth in section 1145 of the Bankruptcy Code.

21                   **6. Certificate of Incorporation and Bylaws.**

22           The Articles of Incorporation and Bylaws of the Debtor may be amended as may be  
23 required to be consistent with the provisions of the Plan and the Bankruptcy Code or as  
24 otherwise required by, and in a form reasonably acceptable to the Reorganized Debtor. On or as  
25 soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file a new  
26 Articles of Incorporation with the Nevada Secretary of State, which, as required by section  
27 1123(a)(6) of the Bankruptcy Code, shall prohibit the issuance of non-voting securities. After  
the Effective Date, the Reorganized Debtor may file a new, or amend and restate its existing,  
Articles of Incorporation, Bylaws and other constituent documents as permitted by the relevant  
state corporate law.

1                   **7.      Effectuating Documents; Further Transactions; Exemption from**  
2                   **Certain Transfer Taxes.**

3           The Debtor or the Reorganized Debtor, as applicable, may take all actions to execute,  
4           deliver, File or record such contracts, instruments, releases and other agreements or documents  
5           and take such actions as may be necessary or appropriate to effectuate and implement the  
6           provisions of the Plan, including, without limitation, the distribution of the securities to be issued  
7           pursuant hereto in the name of and on behalf of the Reorganized Debtor, without the need for  
8           any approvals, authorizations, actions or consents except for those expressly required pursuant  
9           hereto. The secretary and any assistant secretary of the Debtor shall be authorized to certify or  
10          attest to any of the foregoing actions.

11          Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant  
12          to the Plan that would otherwise require approval of the shareholders, directors or members of  
13          the Debtor shall be deemed to have been so approved and shall be in effect prior to, on or after  
14          the Effective Date (as appropriate) pursuant to applicable law and without any requirement of  
15          further action by the shareholders, directors, managers or partners of the Debtor, or the need for  
16          any approvals, authorizations, actions or consents.

17          Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant  
18          hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in  
19          the United States, and the Confirmation Order shall direct the appropriate state or local  
20          governmental officials or agents to forgo the collection of any such tax or governmental  
21          assessment and to accept for filing and recordation instruments or other documents pursuant to  
22          such transfers of property without the payment of any such tax or governmental assessment.  
23          Such exemption specifically applies, without limitation, to all documents necessary to evidence  
24          and implement the provisions of and the distributions to be made under the Plan, including the  
25          issuance of New Equity Interests.

26                   **VII.    DISTRIBUTIONS UNDER THE PLAN**

27                   **A.      Distributions for Claims Allowed as of the Effective Date.**

28           Except as otherwise provided in the Plan, a Final Order or as agreed to by the relevant  
29           parties, the Reorganized Debtor shall make initial distributions under the Plan on account of  
30           Claims Allowed before the Effective Date on or as soon as practicable after the Initial  
31           Distribution Date; *provided, however*, that payments on account of General Unsecured Claims  
32           that become Allowed Claims on or before the Effective Date may commence on the Effective  
33           Date.

34                   **B.      Distributions on Account of Claims Allowed After the Effective Date.**

35                   **1.      Payments and Distributions on Disputed Claims.**

36           Except as otherwise provided in the Plan, a Final Order or as agreed to by the relevant  
37           parties, distributions under the Plan on account of a Disputed Claim that becomes an Allowed  
38           Claim after the Effective Date shall be made on the first Periodic Distribution Date after the  
39           Disputed Claim becomes an Allowed Claim.

1                   **2. Special Rules for Distributions to Holders of Disputed Claims.**

2           Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to  
3           by the relevant parties no partial payments and no partial distributions shall be made with respect  
4           to a Disputed Claim until all such disputes in connection with such Disputed Claim have been  
5           resolved by settlement or Final Order. In the event that there are Disputed Claims requiring  
          adjudication and resolution, the Reorganized Debtor shall establish appropriate reserves for  
          potential payment of such Claims.

6                   **C. Delivery and Distributions and Undeliverable or Unclaimed Distributions.**

7                   **1. Record Date for Distributions.**

8           On the Distribution Record Date, the Claims Register shall be closed and any party  
9           responsible for making distributions shall instead be authorized and entitled to recognize only  
10          those Holders of Claims listed on the Claims Register as of the close of business on the  
11          Distribution Record Date. If a Claim is transferred twenty (20) or fewer days before the  
12          Distribution Record Date, the Distribution Agent shall make distributions to the transferee only  
          to the extent practical and, in any event, only if the relevant transfer form contains an  
          unconditional and explicit certification and waiver of any objection to the transfer by the  
          transferor.

13                  **2. Delivery of Distributions in General.**

14          Except as otherwise provided herein, the Debtor or the Reorganized Debtor, as  
15          applicable, shall make distributions to Holders of Allowed Claims at the address for each such  
16          Holder as indicated on the Debtor's records as of the date of any such distribution; *provided,*  
17          *however,* that the manner of such distributions shall be determined at the discretion of the Debtor  
18          or the Reorganized Debtor, as applicable; and *provided further,* that the address for each Holder  
          of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by  
          that Holder.

19                  **3. Distributions by Distribution Agents.**

20          The Debtor and the Reorganized Debtor, as applicable, shall have the authority, in their  
21          sole discretion, to enter into agreements with one or more Distribution Agents to facilitate the  
22          distributions required hereunder. As a condition to serving as a Distribution Agent, a Distribution  
23          Agent must (a) affirm its obligation to facilitate the prompt distribution of any documents, (b)  
24          affirm its obligation to facilitate the prompt distribution of any recoveries or distributions  
          required hereunder and (c) waive any right or ability to setoff, deduct from or assert any lien or  
          encumbrance against the distributions required hereunder that are to be distributed by such  
          Distribution Agent.

25          The Distribution Agents, and their respective agents, employees, officers, directors,  
26          professionals, attorneys, accountants, advisors, representatives and principals (collectively, the  
27          "Indemnified Parties") shall be indemnified and held harmless by the Debtor and the  
28          Reorganized Debtor, to the fullest extent permitted by law for any losses, claims, damages,  
          liabilities and expenses, including, without limitation, reasonable attorneys' fees, disbursements  
          and related expenses which the Indemnified Parties may incur or to which the Indemnified

1 Parties may become subject in connection with any action, suit, proceeding or investigation  
2 brought or threatened against one or more of the Indemnified Parties on account of the acts or  
3 omissions of the Distribution Agents solely in their capacity as such; provided, however, that the  
4 Debtor and the Reorganized Debtor shall not be liable to indemnify any Indemnified Party for  
5 any act or omission constituting gross negligence, fraud or reckless, intentional or willful  
6 misconduct. The foregoing indemnity in respect of any Indemnified Party shall survive the  
7 termination of such Indemnified Party from the capacity for which they are indemnified.

#### 4. Minimum Distributions.

8 Notwithstanding anything herein to the contrary, the Reorganized Debtor shall not be  
9 required to make distributions or payments of less than \$25 (whether Cash or otherwise) and  
10 shall not be required to make partial distributions or payments of fractions of dollars. Whenever  
11 any payment or distribution of a fraction of a dollar under the Plan would otherwise be called for,  
12 the actual payment or distribution will reflect a rounding of such fraction to the nearest whole  
13 dollar (up or down), with half dollars or less being rounded down.

14 No Distribution Agent shall have any obligation to make a distribution on account of an  
15 Allowed Claim if: (a) the aggregate amount of all distributions authorized to be made on the  
16 Periodic Distribution Date in question is or has an economic value less than \$100.00, unless such  
17 distribution is a final distribution; or (b) the amount to be distributed to the specific Holder of an  
18 Allowed Claim on such Periodic Distribution Date does not constitute a final distribution to such  
19 Holder and is or has an economic value less than \$25.00, which shall be treated as an  
20 undeliverable distribution under Article VII.C.5 below.

#### 5. Undeliverable Distributions.

##### a. Holding of Undeliverable Distributions.

21 If any distribution to a Holder of an Allowed Claim made in accordance herewith is  
22 returned to the Reorganized Debtor (or its Distribution Agent) as undeliverable, no further  
23 distributions shall be made to such Holder unless and until the Reorganized Debtor (or their  
24 Distribution Agent) are notified in writing of such Holder's then current address, at which time  
25 all currently and due missed distributions shall be made to such Holder on the next Periodic  
26 Distribution Date. Undeliverable distributions shall remain in the possession of the Reorganized  
27 Debtor, subject to Article VII.C.5(b) hereof, until such time as any such distributions become  
28 deliverable. Undeliverable distributions shall not be entitled to any additional interest, dividends  
or other accruals of any kind on account of their distribution being undeliverable.

##### b. Failure to Claim Undeliverable Distributions.

29 No later than 210 days after the Effective Date, the Reorganized Debtor shall File with  
30 the Bankruptcy Court a list of the Holders of undeliverable distributions. This list shall be  
31 maintained and updated periodically in the sole discretion of the Reorganized Debtor for as long  
32 as the Chapter 11 Case stays open. Any Holder of an Allowed Claim, irrespective of when a  
33 Claim becomes an Allowed Claim, that does not notify the Reorganized Debtor of such Holder's  
34 then current address in accordance herewith within the latest of (i) one year after the Effective  
35 Date, (ii) 60 days after the attempted delivery of the undeliverable distribution and (iii) 180 days  
36 after the date such Claim becomes an Allowed Claim shall have its Claim for such undeliverable



1 distribution discharged and shall be forever barred, estopped and enjoined from asserting any  
2 such Claim against the Reorganized Debtor or their property. In such cases, (i) any Cash held for  
3 distribution on account of Allowed Claims shall be redistributed to Holders of Allowed Claims  
4 in the applicable Class on the next Periodic Distribution Date and (ii) any Cash held for  
5 distribution to other creditors shall be deemed unclaimed property under section 347(b) of the  
6 Bankruptcy Code and become property of the Reorganized Debtor, free of any Claims of such  
7 Holder with respect thereto. Nothing contained herein shall require the Reorganized Debtor to  
8 attempt to locate any Holder of an Allowed Claim.

9  
10 **c. Failure to Present Checks.**

11 Checks issued by the Distribution Agent on account of Allowed Claims shall be null and  
12 void if not negotiated within 180 days after the issuance of such check. In an effort to ensure that  
13 all Holders of Allowed Claims receive their allocated distributions, no later than 180 days after  
14 the issuance of such checks, the Reorganized Debtor shall File with the Bankruptcy Court a list  
15 of the Holders of any un-negotiated checks. This list shall be maintained and updated  
16 periodically in the sole discretion of the Reorganized Debtor for as long as the Chapter 11 Case  
17 stay open. Requests for reissuance of any check shall be made directly to the Distribution Agent  
18 by the Holder of the relevant Allowed Claim with respect to which such check originally was  
19 issued. Any Holder of an Allowed Claim holding an un-negotiated check that does not request  
20 reissuance of such un-negotiated check within 240 days after the date of mailing or other  
21 delivery of such check shall have its Claim for such un-negotiated check discharged and be  
22 discharged and forever barred, estopped and enjoined from asserting any such Claim against the  
23 Reorganized Debtor or its property. In such cases, any Cash held for payment on account of such  
24 Claims shall be property of the Reorganized Debtor, free of any Claims of such Holder with  
25 respect thereto. Nothing contained herein shall require the Reorganized Debtor to attempt to  
26 locate any Holder of an Allowed Claim.

27 **D. Compliance with Tax Requirements/Allocations.**

28 In connection with the Plan, to the extent applicable, the Reorganized Debtor shall  
comply with all tax withholding and reporting requirements imposed on them by any  
governmental unit, and all distributions pursuant hereto shall be subject to such withholding and  
reporting requirements. Notwithstanding any provision in the Plan to the contrary, the  
Reorganized Debtor and the Distribution Agent shall be authorized to take all actions necessary  
or appropriate to comply with such withholding and reporting requirements, including  
liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to  
pay applicable withholding taxes, withholding distributions pending receipt of information  
necessary to facilitate such distributions or establishing any other mechanisms they believe are  
reasonable and appropriate. The Reorganized Debtor reserves the right to allocate all  
distributions made under the Plan in compliance with all applicable liens and encumbrances.

For tax purposes, distributions in full or partial satisfaction of Allowed Claims shall be  
allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid  
interest that accrued on such Claims.

**E. Timing and Calculation of Amounts to Be Distributed.**

On the Initial Distribution Date (or if a Claim is not an Allowed Claim on the Effective

1 Date, on the date that such a Claim becomes an Allowed Claim, or as soon as reasonably  
2 practicable thereafter), each Holder of an Allowed Claim against the Debtor shall receive the full  
3 amount of the distributions that the Plan provides for Allowed Claims in the applicable Class.  
4 Except as otherwise provided herein, Holders of Claims shall not be entitled to interest,  
dividends or accruals on the distributions provided for herein, regardless of whether such  
distributions are delivered on or at any time after the Effective Date.

5 **F. Setoffs.**

6 The Debtor and the Reorganized Debtor may withhold (but not setoff except as set forth  
7 below) from the distributions called for hereunder on account of any Allowed Claim an amount  
8 equal to any Claims, Equity Interests, rights and Causes of Action of any nature that the Debtor  
9 or the Reorganized Debtor may hold against the Holder of any such Allowed Claim. In the event  
10 that any such Claims, Equity Interests, rights and Causes of Action of any nature that the Debtor  
11 or the Reorganized Debtor may hold against the Holder of any such Allowed Claim are  
12 adjudicated by Final Order or otherwise resolved, the Debtor may, pursuant to section 553 of the  
13 Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim and the  
14 distributions to be made pursuant hereto on account of such Allowed Claim (before any  
15 distribution is made on account of such Allowed Claim), the amount of any adjudicated or  
resolved Claims, Equity Interests, rights and Causes of Action of any nature that the Debtor or  
the Reorganized Debtor may hold against the Holder of any such Allowed Claim, but only to the  
extent of such adjudicated or resolved amount. Neither the failure to effect such a setoff nor the  
allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the  
Reorganized Debtor of any such Claims, Equity Interests, rights and Causes of Action that the  
Debtor or the Reorganized Debtor may possess against any such Holder, except as specifically  
provided herein.

16 **VIII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND**  
17 **DISPUTED CLAIMS**

18 **A. Resolution of Disputed Claims.**

19 **1. Allowance of Claims.**

20 After the Effective Date, the Reorganized Debtor shall have and shall retain any and all  
21 rights and defenses that the Debtor had with respect to any Claim, except with respect to any  
22 Claim deemed Allowed under the Plan. Except as expressly provided in the Plan or in any order  
23 entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the  
Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is  
24 deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a  
Final Order, including, without limitation, the Confirmation Order, in the Chapter 11 Case  
25 allowing such Claim. All settled claims approved prior to the Effective Date pursuant to a Final  
Order of the Bankruptcy Court pursuant to Bankruptcy Rule 9019 or otherwise shall be binding  
on all parties.

26 **2. Prosecution of Objections to Claims.**

27 After the Confirmation Date the Debtor or the Reorganized Debtor, as applicable, shall  
28 have the exclusive authority to File objections to Claims, settle, compromise, withdraw or litigate



1 to judgment objections to any and all Claims, regardless of whether such Claims are in a Class or  
2 otherwise; provided, however, this provision shall not apply to Fee Claims. From and after the  
3 Effective Date, the Reorganized Debtor may settle or compromise any Disputed Claim without  
4 any further notice to or action, order or approval of the Bankruptcy Court. The Reorganized  
5 Debtor shall have the sole authority to administer and adjust the Claims Register to reflect any  
6 such settlements or compromises without any further notice to or action, order or approval of the  
7 Bankruptcy Court.

### 8 **3. Claims Estimation.**

9 After the Confirmation Date the Debtor or the Reorganized Debtor, as applicable, may, at  
10 any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to  
11 applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law,  
12 including, without limitation, section 502(c) of the Bankruptcy Code, regardless of whether the  
13 Debtor or the Reorganized Debtor has previously objected to such Claim or whether the  
14 Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain  
15 jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim, contingent Claim  
16 or unliquidated Claim, including during the litigation concerning any objection to any Claim or  
17 during the pendency of any appeal relating to any such objection. Notwithstanding any provision  
18 otherwise in the Plan, a Claim that has been expunged from the Claims Register but that is  
19 subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at  
20 zero dollars, unless otherwise ordered by the Bankruptcy Court. All of the aforementioned  
21 Claims and objection, estimation and resolution procedures are cumulative and not exclusive of  
22 one another. Claims may be estimated and subsequently compromised, settled, withdrawn or  
23 resolved by any mechanism approved by the Bankruptcy Court.

### 24 **4. Expungement or Adjustment to Claims without Objection.**

25 Any Claim that has been paid, satisfied or superseded may be expunged on the Claims  
26 Register by the Reorganized Debtor, and any Claim that has been amended may be adjusted  
27 thereon by the Reorganized Debtor, in both cases without a claims objection having to be Filed  
28 and without any further notice to or action, order or approval of the Bankruptcy Court.

### 29 **5. Deadline to File Objections to Claims.**

30 Any objections to Claims shall be Filed no later than the Claims Objection Bar Date.

#### 31 **B. Disallowance of Claims.**

32 All Claims of any Entity from which property is sought by the Debtor or the Reorganized  
33 Debtor under section 542, 543, 550 or 553 of the Bankruptcy Code or that the Debtor or the  
34 Reorganized Debtor allege is a transferee of a transfer that is avoidable under section 522(f),  
35 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code shall be disallowed if (i) the  
36 Entity, on the one hand, and the Debtor or the Reorganized Debtor, on the other hand, agree or  
37 the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to  
38 turnover any property or monies under any of the aforementioned sections of the Bankruptcy  
39 Code and (ii) such Entity or transferee has failed to turnover such property by the date set forth  
40 in such agreement or Final Order.

1       EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM  
2       AND PROOFS OF INTEREST FILED AFTER THE APPLICABLE CLAIMS BAR  
3       DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE  
4       EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER  
5       OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH  
6       CLAIMS AND EQUITY INTERESTS MAY NOT RECEIVE ANY DISTRIBUTIONS ON  
7       ACCOUNT OF SUCH CLAIMS AND EQUITY INTERESTS, UNLESS SUCH LATE  
8       PROOF OF CLAIM OR EQUITY INTEREST IS DEEMED TIMELY FILED BY A  
9       BANKRUPTCY COURT ORDER ON OR BEFORE THE LATER OF (1) THE  
10      CONFIRMATION HEARING AND (2) 45 DAYS AFTER THE APPLICABLE CLAIMS  
11      BAR DATE.

12           **C.     Amendments to Claims.**

13           On or after the Effective Date, except as otherwise provided herein, a Claim may not be  
14           Filed or amended without the prior authorization of the Bankruptcy Court or the Reorganized  
15           Debtor, and, to the extent such prior authorization is not received, any such new or amended  
16           Claim Filed shall be deemed disallowed and expunged without any further notice to or action,  
17           order or approval of the Bankruptcy Court.

18           **IX.    CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF**  
19           **THE PLAN**

20           **A.     Conditions Precedent to Confirmation.**

21           It shall be a condition to Confirmation hereof that all provisions, terms and conditions  
22           hereof are approved in the Confirmation Order.

23           **B.     Conditions Precedent to Consummation.**

24           It shall be a condition to Consummation of the Plan that the following conditions shall  
25           have been satisfied or waived pursuant to the provisions of Article IX.C hereof.

26           1.     The Plan and all Plan Supplement documents, including any amendments,  
27           modifications or supplements thereto, shall be reasonably acceptable to the Debtor.

28           2.     The Confirmation Order shall have been entered and become a Final Order in a  
form and in substance reasonably satisfactory to the Debtor. The Confirmation Order shall  
provide that, among other things, the Debtor or the Reorganized Debtor, as appropriate, is  
authorized and directed to take all actions necessary or appropriate to consummate the Plan,  
including, without limitation, entering into, implementing and consummating the contracts,  
instruments, releases, leases, indentures and other agreements or documents created in  
connection with or described in the Plan.

          3.     All actions, documents, certificates and agreements necessary to implement this  
Plan shall have been effected or executed and delivered to the required parties and, to the extent  
required, Filed with the applicable governmental units in accordance with applicable laws.

1           **C.      Waiver of Conditions.**

2           The conditions to Confirmation of the Plan and to Consummation of the Plan set forth in  
3 this Article IX may be waived by the Debtor without notice, leave or order of the Bankruptcy  
4 Court or any formal action other than proceeding to confirm or consummate the Plan.

5           **D.      Effect of Non Occurrence of Conditions to Consummation.**

6           If the Consummation of the Plan does not occur, the Plan shall be null and void in all  
7 respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a  
8 waiver or release of any claims by or Claims against or Equity Interests in the Debtor; (2)  
9 prejudice in any manner the rights of the Debtor, any Holders or any other Entity; or (3)  
10 constitute an admission, acknowledgment, offer or undertaking by the Debtor, any Holders or  
11 any other Entity in any respect.

12                   **X.      SETTLEMENT RELEASE AND RELATED PROVISIONS**

13           **A.      Compromise and Settlement.**

14           Notwithstanding anything contained herein to the contrary, the allowance, classification  
15 and treatment of all Allowed Claims and their respective distributions and treatments hereunder,  
16 takes into account the relative priority and rights of the Claims and the Equity Interests in each  
17 Class in connection with any contractual, legal and equitable subordination rights relating thereto  
18 whether arising under general principles of equitable subordination, section 510(b) and (c) of the  
19 Bankruptcy Code or otherwise. As of the Effective Date, any and all contractual, legal and  
20 equitable subordination rights, whether arising under general principles of equitable  
21 subordination, section 510(b) and (c) of the Bankruptcy Code or otherwise, relating to the  
22 allowance, classification and treatment of all Allowed Claims and their respective distributions  
23 and treatments hereunder are settled, compromised, terminated and released pursuant hereto.

24           The Confirmation Order will constitute the Bankruptcy Court's finding and determination  
25 that the settlements reflected in the Plan are (1) in the best interests of the Debtor, its estate and  
26 all Holders of Claims and Equity Interests, (2) fair, equitable and reasonable, (3) made in good  
27 faith and (4) approved by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code  
28 and Bankruptcy Rule 9019. The Confirmation Order shall approve the releases by all Entities of  
all such contractual, legal and equitable subordination rights or Causes of Action that are  
satisfied, compromised and settled pursuant hereto.

          In accordance with the provisions of this Plan, including Article VIII hereof, and  
pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, without any further  
notice to or action, order or approval of the Bankruptcy Court, after the Effective Date (1) the  
Reorganized Debtor may, in its sole and absolute discretion, compromise and settle Claims  
against them and (2) the Reorganized Debtor may, in its sole and absolute discretion,  
compromise and settle Causes of Action against other Entities.

**B. Preservation of Rights of Action.**

**1. Maintenance of Causes of Action.**

Except as otherwise provided in the Plan or Confirmation Order, after the Effective Date, the Reorganized Debtor shall retain all rights to commence, pursue, litigate, or settle, as appropriate, any and all Causes of Action, whether existing as of the Commencement Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case.

**2. Preservation of All Causes of Action Not Expressly Settled or Released.**

Unless a claim or Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, the Confirmation Order), the Debtor expressly reserves such claim or Cause of Action for later adjudication by the Debtor or the Reorganized Debtor (including, without limitation, claims and Causes of Action not specifically identified or of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such claims or Causes of Action upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtor and the Reorganized Debtor expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

**3. Third Party Release**

EFFECTIVE AS OF THE CONFIRMATION DATE, THE DEBTOR AND ALL CURRENT OFFICERS AND DIRECTORS OF THE DEBTOR AS OF THE EFFECTIVE DATE SHALL RECEIVE A FULL RELEASE FROM THE DEBTOR AND ITS ESTATE FROM ANY AND ALL CAUSES OF ACTION THAT MIGHT BE ASSERTED ON BEHALF OF THE DEBTOR OR ITS ESTATE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR NON-CONTINGENT, EXISTING AS OF THE EFFECTIVE DATE OF THE PLAN, WHETHER IN LAW, AT EQUITY, WHETHER FOR TORT, FRAUD, CONTRACT OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR, INCLUDING, WITHOUT LIMITATION, IN ANY WAY RELATED TO THE CHAPTER 11 CASE, THE DEBTOR'S RESTRUCTURING, THE NEGOTIATION, FORMULATION OR PREPARATION OF THE PLAN, THE DISCLOSURE STATEMENT, OR ANY OTHER ACT OR OMISSION RELATED THERETO OCCURRING ON OR BEFORE THE CONFIRMATION DATE; PROVIDED, HOWEVER, THAT THE FOREGOING RELEASE SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CAUSES OF ACTION (1) OF THE DEBTOR OR ITS ESTATE FOR ANY CLAIMS ARISING FROM WILLFUL MISCONDUCT

OR GROSS NEGLIGENCE; (2) CLAIMS AGAINST ANY FORMER OFFICER OR DIRECTOR OF THE DEBTOR; OR (3) CLAIMS THAT MAY BE ASSERTED BY THIRD PARTIES AGAINST PERSONS OR ENTITIES OTHER THAN THE DEBTOR.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE RELEASES ARE (1) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS; (2) FAIR, EQUITABLE AND REASONABLE; AND (3) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING.

# **XI. EFFECT OF PLAN CONFIRMATION BINDING NATURE OF THE PLAN**

THIS PLAN SHALL BIND ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS AND INTERCOMPANY INTERESTS IN THE DEBTORS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING WHETHER OR NOT SUCH HOLDER (I) WILL RECEIVE OR RETAIN ANY PROPERTY OR INTEREST IN PROPERTY UNDER THE PLAN, (II) HAS FILED A PROOF OF CLAIM OR INTEREST IN THE CHAPTER 11 CASES OR (III) FAILED TO VOTE TO ACCEPT OR REJECT THE PLAN OR VOTED TO REJECT THE PLAN.

## **A. Discharge Injunction.**

The rights afforded in the Plan and the treatment of all Claims shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever arising prior to the Effective Date against the Debtor and the Estate, including any interest accrued on such Claims from and after the Petition Date. Except as otherwise provided in the Plan or the Confirmation Order, on the Effective Date, (a) the Debtor, the Estate, the Reorganized Debtor and their respective property are discharged and released hereunder to the fullest extent permitted by Bankruptcy Code sections 524 and 1141 from all Claims and rights against them that arose before the Effective Date, including all debts, obligations, demands, and liabilities, and all debts of the kind specified in Bankruptcy Code sections 502(g), 502(h), or 502(i), regardless of whether or not (i) a proof of Claim based on such debt is Filed or deemed Filed, (ii) a Claim based on such debt is allowed pursuant to Bankruptcy Code section 502, or (iii) the Holder of a Claim based on such debt has or has not accepted the Plan; (b) any judgment underlying a Claim discharged hereunder is void; and (c) all entities are precluded from asserting against the Debtor, the Estate, the Reorganized Debtor and their respective property, any Claims or rights based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

Except as otherwise provided in the Plan or the Confirmation Order, on and after the Effective Date, all entities who have held, currently hold, or may hold a Claim against the Debtor, the Estate, or the Reorganized Debtor, that is based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, that otherwise arose or accrued prior to the Effective Date, or that otherwise is discharged pursuant to the Plan, are permanently enjoined from taking any of the following actions on account of any such discharged Claim, (the "Permanent Injunction"): (a) commencing or continuing in any manner any action or other proceeding against the Debtor, the Estate, the Reorganized Debtor or their respective property, that is inconsistent with the Plan or the Confirmation Order; (b)

1 enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or  
2 order against the Debtor, the Estate, the Reorganized Debtor or their respective property, other  
3 than as expressly permitted under the Plan; (c) creating, perfecting, or enforcing any lien or  
4 encumbrance against property of Debtor, the Estate, the Reorganized Debtor, or their respective  
5 property, other than as expressly permitted under the Plan; and (d) commencing or continuing  
6 any action, in any manner, in any place that does not comply with or is inconsistent with the  
7 provisions of the Plan, the Confirmation Order, or the discharge provisions of Bankruptcy Code  
8 section 1141. Any person or entity injured by any willful violation of such Permanent Injunction  
9 shall recover actual damages, including costs and attorneys' fees, and, in appropriate  
10 circumstances, may recover punitive damages, from the willful violator.

## 11 XII. RETENTION OF JURISDICTION

12 Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective  
13 Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the  
14 Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the  
15 Debtor and the Plan as legally permissible, including, without limitation, jurisdiction to:

16 1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or  
17 secured or unsecured status of any Claim, including, without limitation, the resolution of any  
18 request for payment of any Administrative Claim and the resolution of any and all objections to  
19 the allowance or priority of any Claim;

20 2. Grant or deny any applications for allowance of compensation or reimbursement  
21 of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or  
22 before the Confirmation Date;

23 3. Resolve any matters related to the assumption, assignment or rejection of any  
24 Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a  
25 Debtor or Reorganized Debtor may be liable and to adjudicate and, if necessary, liquidate, any  
26 Claims arising therefrom, including, without limitation, those matters related to any amendment  
27 to the Plan after the Effective Date to add Executory Contracts or Unexpired Leases to the list of  
28 Executory Contracts and Unexpired Leases to be assumed;

4. Resolve any issues related to any matters adjudicated in the Chapter 11 Case;

5. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant  
to the provisions of the Plan;

6. Decide or resolve any motions, adversary proceedings, contested or litigated  
matters and any other Causes of Action that are pending as of the Effective Date or that may be  
commenced in the future, and grant or deny any applications involving a Debtor that may be  
pending on the Effective Date or instituted by the Reorganized Debtor after the Effective Date,  
*provided* that the Reorganized Debtor shall reserve the right to commence actions in all  
appropriate forums and jurisdictions;

7. Enter such orders as may be necessary or appropriate to implement or  
consummate the provisions of the Plan and all other contracts, instruments, releases, indentures  
and other agreements or documents adopted in connection with the Plan, the Plan Supplement or



1 the Disclosure Statement;

2 8. Resolve any cases, controversies, suits or disputes that may arise in connection  
3 with the Consummation, interpretation or enforcement of the Plan or any Entity's obligations  
4 incurred in connection with the Plan;

5 9. Hear and determine all Causes of Action that are pending as of the Effective Date  
6 or that may be commenced in the future;

7 10. Issue injunctions and enforce them, enter and implement other orders or take such  
8 other actions as may be necessary or appropriate to restrain interference by any Entity with  
9 Consummation or enforcement of the Plan, except as otherwise provided in the Plan;

10 11. Enforce any provision hereof;

11 12. Enter and implement such orders or take such others actions as may be necessary  
12 or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

13 13. Resolve any other matters that may arise in connection with or relate to the Plan,  
14 the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture  
15 or other agreement or document adopted in connection with the Plan or the Disclosure  
16 Statement; and

17 14. Enter an order concluding the Chapter 11 Case.

### 18 **XIII. MISCELLANEOUS PROVISIONS**

#### 19 **A. Payment of Statutory Fees.**

20 All fees payable pursuant to section 1930 of title 28 of the United States Code after the  
21 Effective Date shall be paid prior to the closing of the Chapter 11 Case when due.

#### 22 **B. Modification of Plan.**

23 Effective as of the date hereof and subject to the limitations and rights contained in the  
24 Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the  
25 Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order; and  
26 (b) after the entry of the Confirmation Order, the Debtor or the Reorganized Debtor, as  
27 applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance  
28 with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any  
inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent  
of the Plan.

#### 29 **C. Revocation of Plan.**

30 The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation  
31 Date and to File subsequent chapter 11 plans. If the Debtor revokes or withdraw the Plan, or if  
32 Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all  
33 respects; (2) any settlement or compromise embodied in the Plan, assumption or rejection of  
34 Executory Contracts or Unexpired Leases effected by the Plan and any document or agreement  
35 executed pursuant hereto shall be deemed null and void except as may be set forth in a separate  
36 order entered by the Bankruptcy Court; and (3) nothing contained in the Plan shall: (a) constitute  
37 a waiver or release of any Claims by or against, or any Equity Interests in, such Debtor or any

1 other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c)  
2 constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any  
other Entity.

3 **D. Successors and Assigns.**

4 The rights, benefits and obligations of any Entity named or referred to herein shall be  
5 binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign  
of such Entity.

6 **E. Reservation of Rights.**

7 Except as expressly set forth herein, the Plan shall have no force or effect unless and until  
8 the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement  
9 or provision contained herein, nor the taking of any action by a Debtor or any other Entity with  
10 respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1)  
any Debtor with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any  
Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

11  
12 **F. Section 1146 Exemption.**

13 Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant  
14 hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in  
15 the United States, and the Confirmation Order shall direct the appropriate state or local  
16 governmental officials or agents to forego the collection of any such tax or governmental  
assessment and to accept for filing and recordation instruments or other documents pursuant to  
such transfers of property without the payment of any such tax or governmental assessment.  
Such exemption specifically applies, without limitation, to all documents necessary to evidence  
and implement the provisions of and the distributions to be made under the Plan.

17 **G. Further Assurances.**

18 The Debtor or the Reorganized Debtor, as applicable, all Holders of Claims receiving  
19 distributions hereunder and all other Entities shall, from time to time, prepare, execute and  
20 deliver any agreements or documents and take any other actions as may be necessary or  
advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

21 **H. Severability.**

22 If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy  
23 Court to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter  
24 and interpret such term or provision to make it valid or enforceable to the maximum extent  
25 practicable, consistent with the original purpose of the term or provision held to be invalid, void  
or unenforceable, and such term or provision then will be applicable as altered or interpreted,  
26 *provided* that the Debtor, the Reorganized Debtor or any affected Entity (as applicable) may seek  
an expedited hearing before the Bankruptcy Court to address any objection to any such alteration  
27 or interpretation of the foregoing. Notwithstanding any such order by the Bankruptcy Court,  
alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in  
28 full force and effect. The Confirmation Order shall constitute a judicial determination and shall  
provide that each term and provision of the Plan, as it may have been altered or interpreted in  
accordance with the foregoing, is valid and enforceable pursuant to its terms.



**I. Service of Documents.**

Any pleading, notice or other document required by the Plan to be served on or delivered to the Debtor shall be sent by overnight mail to:

Virtual Communications Corporation  
Attn: Michael Yoder  
319 E. Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119

with copies to:

Kolesar & Leatham  
Attn: Bart K. Larsen, Esq.  
400 S. Rampart Blvd., Suite 400  
Las Vegas, Nevada 89145

**J. Return of Security Deposits.**

Unless the Debtor has agreed otherwise in a written agreement or stipulation approved by the Bankruptcy Court, all security deposits provided by the Debtor to any Person or Entity at any time after the Commencement or offset of any kind.

**K. Filing of Additional Documents.**

On or before the Effective Date, the Debtor may File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**L. Default.**

Upon the Effective Date of the Plan, in the event the Debtor fails to timely perform any of the obligations set forth in the Plan, the applicable party-in-interest shall notify the Debtor and Debtor's counsel of the default in writing in accordance with the notice provisions herein, after which the Debtor shall have: (i) twenty (20) Business Days from the date of receipt of the written notification to cure the default; or (ii) if the cure requires more than twenty (20) business days, so long as the Debtor initiates steps to cure the default within twenty (20) business days and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical. If the Debtor fails to timely cure the default as provided above, the applicable creditor shall be free to pursue any and all rights it may have under the contract(s) between the parties and/or applicable state law, without further court order or proceeding being necessary.

1 Dated this 12<sup>th</sup> day of June, 2018.

2 VIRTUAL COMMUNICATIONS CORPORATION

3  
4 /s/ Michael Yoder

By: Michael Yoder

5 Its: President

6 Prepared and Submitted by:

7 KOLESAR & LEATHAM

8 /s/ Bart K. Larsen, Esq.

9 Bart K. Larsen, Esq.

10 Nevada Bar No. 8538

400 S. Rampart Blvd., Ste. 400

11 Las Vegas, Nevada 89145

12 *Attorneys for Debtor Virtual*  
13 *Communications Corporation*