

COMP
DAVID LIEBRADER, ESQ.
STATE BAR NO. 5048
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

A-17-762264-C

IN THE MATTER BETWEEN

Steven A. Hotchkiss,

PLAINTIFF,

v.

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

DEFENDANTS

) Case No.

) Dept.: Department 8

) COMPLAINT FOR DAMAGES

) EXEMPT FROM ARBITRATION:

) EXCEEDS JURISDICTIONAL

) MINIMUM

) JURY TRIAL DEMANDED

COMES NOW, Plaintiff Steven A. Hotchkiss, through counsel, The Law Office of David
Liebrader and files this complaint for damages:

INTRODUCTION

THE PARTIES

1. Plaintiff Steve A. Hotchkiss ("Mr. Hotchkiss" or "Plaintiff") is a retired 65 year old American national who resides in Lake Chapala, Mexico.
2. At all times relevant herein Defendant Virtual Communications Corporation ("VCC") was a Nevada corporation doing business in Clark County, Nevada.

1 3. At all times relevant herein Defendant Wintech, LLC ("Wintech") was a Nevada
2 company doing business in Clark County, Nevada.

3 4. At all times relevant herein Defendant Ronald J. Robinson ("Mr. Robinson") was, on
4 information and belief, a resident of Nevada, and doing business through VCC and
5 Wintech in Clark County, Nevada.

6 5. At all times relevant herein Defendant Vernon Rodriguez ("Mr. Rodriguez") was, on
7 information and belief, a resident of Nevada, doing business in Clark County, and a
8 corporate officer of Wintech and VCC.

9 6. At all times relevant herein Defendant Josh Stoll ("Mr. Stoll") was, on information
10 and belief, a resident of Nevada, and doing business in Clark County, Nevada.

11 7. At all times relevant herein Defendant Retire Happy, LLC ("Retire Happy") was, on
12 information and belief, a Nevada corporation doing business in Clark County, Nevada.

13 8. At all times relevant herein Defendant Frank Yoder ("Mr. Yoder") was, on information
14 and belief, a resident of Nevada, and doing business in Clark County, Nevada.

15 9. At all times relevant herein Defendant Alisa Davis ("Ms. Davis") was, on information
16 and belief, a resident of Nevada, and doing business in Clark County, Nevada.

17 10. That the true names and capacities, whether individual, corporate, associate or
18 otherwise, of Defendants DOES I-X and ROE CORPORATIONS I-X are unknown to
19 Plaintiff who, therefore, sues said Defendants by said fictitious names. Plaintiff is
20 informed and believes and thereon alleges that each of the Defendants designated as
21 DOES and ROES are responsible in some manner for the events and happenings referred
22 to and caused damages proximately to Plaintiff as herein alleged or are parties having
23 ownership interests in entities owned or controlled by Defendants. Plaintiff will ask leave
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1 of the Court to amend this Complaint to insert the true names and capacities of DOES I-X
2 and ROE CORPORATIONS I-X when same have been ascertained and to join such
3 Defendants in this action.

4 11. Jurisdiction is appropriate in District Court for the County of Clark in that both
5 Wintech and VCC were/ are Nevada corporations with business addresses on Warm
6 Springs Rd. in Las Vegas, NV and Defendants Robinson, Rodriguez, Davis and Yoder all
7 worked for VCC and Wintech at all times relevant to the facts in this complaint. Likewise
8 Defendants Stoll and Retire Happy also maintain offices and do business in Las Vegas,
9 NV.

10 FACTUAL BACKGROUND GIVING RISE TO THIS CLAIM

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

16 13. VCC has defaulted on its payment obligations, which called for it to make monthly
17 payments of nine percent interest to Plaintiff. VCC has not made payments to Plaintiff
18 since February, 2015. On August 26, 2017 Plaintiff sent notice of default to VCC and Mr.
19 Robinson demanding the overdue payments. To date neither VCC nor Robinson has
20 responded to the letter, or cured the default.

21 14. Defendant Robinson is the chief executive officer of VCC and is a “control person”
22 under the Nevada securities laws. Mr. Robinson also personally guaranteed the
23 promissory note purchased by Plaintiff.
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1 15. Defendant Rodriguez is an officer and director of VCC and is a "control person"
2 under the Nevada securities laws.

3 16. Plaintiff is informed and believes and thereon alleges that at all relevant times herein
4 there existed a unity of interest and ownership between VCC and Wintech such that any
5 corporate individuality and separateness between VCC and Wintech has ceased and that
6 VCC is the later ego of Wintech. Wintech and its officers so completely dominated,
7 controlled and managed the operations of VCC (which existed solely as a fund raising
8 vehicle for Wintech's technology, the ALICE receptionist) that VCC functioned as a mere
9 instrumentality and conduit through which Wintech operated.

10 17. Furthermore, per Vern Rodriguez' sworn testimony in a separate matter VCC had
11 "zero employees," VCC "didn't have day to day operations," and VCC's Note offering
12 "was used to provide funding for Wintech's activities."

13 18. Wintech used VCC as a means to receive money from investors, while avoiding
14 responsibility for repaying them under the terms of the Notes. As a result, Wintech
15 through its officers, Robinson and Rodriguez directed Wintech to perpetrate a fraud and
16 circumvent the interests of justice. Adherence to the fiction of the existence of VCC as an
17 entity separate and distinct from Wintech would permit an abuse of the corporate privilege
18 and would sanction fraud and promote injustice in that Plaintiff would be denied a full and
19 fair recovery in the event the assets of VCC are insufficient to satisfy a judgment entered
20 against it.

21 19. Defendants VCC and Robinson relied on an outside fund raiser, Defendant Retire
22 Happy to go out to the investment community with its unlicensed sales representatives, to
23 bring potential investors to VCC to invest in the company's securities. Mr. Stoll was not
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1 an employee of VCC, nor was he licensed to sell securities in the state of Nevada or
2 Kansas (where Plaintiff lived at the time of the investment.)

3 20. Plaintiff is a 65 year old man who lives in Lake Chapala Mexico. Plaintiff was a
4 lifelong resident of Kansas, but due to the loss of funds in his retirement, he needed to find
5 a more affordable place to live; Lake Chapala, Mexico was the solution.

6 21. After Plaintiff was laid off from his job of 35 years as a software engineer in 2013 he
7 began to receive a lot of calls from financial planners and financing companies. One of
8 these was a call from Defendant Josh Stoll at Retire Happy.

9 22. Mr. Stoll told Plaintiff that since he was retired, he should move his funds to a self-
10 directed IRA account, where he (Plaintiff) would be able to invest in non-traditional
11 investments that paid a higher rate of interest.

12 23. Prior to receiving the call from Mr. Stoll, Plaintiff had never met him, nor any of the
13 employees at Retire Happy or any of the Defendants affiliated with VCC or Wintech.
14 There was no "pre-existing relationship" between Plaintiff and any of the Defendants.

15 24. Nevertheless, Mr. Stoll began discussing an opportunity to make nine percent by
16 loaning money to a company that Stoll was familiar with; this company was Virtual
17 Communications Corp.

18 25. Stoll told Plaintiff that VCC was looking to borrow money for eighteen months and
19 would pay Plaintiff monthly interest of nine percent until maturity. Stoll told Plaintiff that
20 VCC was a startup telecommunications company that had a unique product that would
21 revolutionize the marketplace. This product was the ALICE technology, presently
22 marketed by Wintech. Stoll told Plaintiff that VCC's financial prospects were bright, and
23 they only needed a short term "bridge loan" until they did a large public offering of stock.
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1 To seal the deal, Mr. Stoll told Plaintiff that the CEO of the company, Ronald Robinson
2 was prepared to personally guarantee the investment.

3 26. As a result of the promised nine percent interest, the representations regarding the
4 financial stability and prospects of the company, and Mr. Robinson's guarantee, Plaintiff
5 agreed to purchase the VCC securities.

6 27. Defendant Alisa Davis authorized Retire Happy to keep preprinted VCC promissory
7 notes, signed and guaranteed by Ronald Robinson (Davis' grandfather) in Retire Happy's
8 office, where they could input prospective investor's names and the dollar amount
9 invested into the "blank" sections on the contract.

10 28. Although the preprinted, pre-signed and pre-guaranteed notes all bear Ronald
11 Robinson's signature, Robinson claims that own Granddaughter - Ms. Davis- was not
12 authorized to provide those preprinted contracts to Retire Happy, and that Ms. Davis did
13 so without Robinson's knowledge or permission.

14 29. Ms. Davis also provided Retire Happy with three different power point presentations
15 related to, and in furtherance of VCC's Note offering whereby the personal guarantee of
16 Ronald Robinson is touted, as is his substantial multimillion dollar net worth.

17 30. According to Ronald Robinson, these power point presentations were prepared by
18 Frank Yoder, who was an officer for VCC at the time. Pursuant to sworn deposition
19 testimony, Robinson has stated that Frank Yoder was not authorized to include Mr.
20 Robinson's guarantee as part of the three separate presentations, and further, that
21 Robinson was unaware that Yoder was including the section on Robinson's personal
22 guarantee in the presentations.

23 31. If Robinson is to be believed, that Alisa Davis and Frank Yoder acted without his
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1 authorization and knowledge, then the end result is that Yoder and Davis intentionally
2 mislead VCC Note purchasers, including Plaintiff, by leading them to believe that the
3 Notes were guaranteed, when they were not.

4 32. In reality, Robinson, Rodriguez VCC and Wintech were all aware that money was
5 being raised by Retire Happy via the promissory note offering, as money came in to VCC
6 as a result of Retire Happy's efforts. Furthermore, VCC paid the investors the specific
7 amount stated under the notes until default, further undermining Robinson's claim that he
8 was unaware of the offering. In any event, VCC, Wintech and its officers and control
9 persons received the benefits of the fund raise, and acted consistent with all of the agreed
10 upon terms.

11 33. Robinson's guarantee was a material aspect of the Note transaction, and Plaintiff
12 would not have invested without this guarantee.

13 34. On September 23, 2013 Plaintiff invested \$75,000 into a VCC nine percent
14 promissory note with a maturity of eighteen months. Robinson agreed to guarantee the
15 note.

16 35. After making the nine percent interest payments for 2014, VCC abruptly stopped
17 making payments in 2015. The last payment Plaintiff received was in February, 2015. On
18 August 26, 2017, Plaintiff, through counsel, sent a letter to VCC and Robinson notifying
19 them that they were in default and giving them ten days to cure. As of the time of the
20 filing of the complaint, Defendants had not cured the default.

21 36. At present, Plaintiffs' principal investment of \$75,000 appears to be completely lost
22 as VCC and Mr. Robinson have refused to return the funds.

23 37. Unbeknownst to Plaintiff, Retire Happy and Stoll were compensated by VCC for
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1 soliciting investors like Plaintiff despite the fact that Retire Happy and Stoll were not
2 employees of VCC.

3 38. In addition to the improper solicitation, neither VCC nor Retire Happy ever provided
4 Plaintiff with a private placement memorandum or "audited financials" detailing VCC's
5 financial status, or risk factors, or proposed use of the funds. Furthermore, none of the
6 Defendants ever informed Julie Minuskin, owner of Retire Happy was a convicted felon, a
7 material omission. Had Plaintiff been informed of this material fact, he would never have
8 agreed to invest with Stoll, Retire Happy or VCC.

9 39. Pursuant to NRS §90.295 the eighteen month promissory note purchased by Plaintiff
10 are securities. Because VCC did not have a pre-existing relationship with Plaintiff and
11 relied on Stoll, who was neither an employee of VCC, nor a licensed sales representative
12 of a broker dealer, the sale of the VCC Note was done in violation of the Nevada
13 Securities Laws, specifically NRS §§90.310, 90.460 and 90.660.

14 40. None of the Defendants ever apprised Plaintiff of the true financial condition of the
15 VCC Defendants; the actual use of the funds invested, and never provided Plaintiff with
16 audited financial statements reflecting the solvency of VCC, any legal actions against it,
17 the risk factors or Minuskin's criminal background. They also failed to inform Plaintiff
18 that Retire Happy was an unlicensed broker dealer, and as a result, that he was entitled to
19 rescind the purchase. These were material omissions

20 41. Neither Stoll nor any of the Defendants ever informed Plaintiff that he had a right to
21 rescind his transaction as a result of VCC's use of a "general solicitation" to sell their
22 private placement of securities. This was a material omission.

23 42. In addition to the material omissions described above, Neither Stoll, VCC, nor
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1 Robinson disclosed the amount of compensation that would be paid to Stoll.

2 43. And as a further misrepresentation, Stoll and Robinson impliedly represented that the
3 VCC shares were being sold in compliance with all state and federal securities laws.

4 44. As to Yoder and Davis, they provided material assistance by (respectively) putting
5 together the PowerPoint presentations to show to prospective investors and providing Stoll
6 with the preprinted notes. If Robinson's sworn testimony is to be believed, that both
7 Yoder and Davis knowingly included Robinson's guarantee without obtaining his
8 authorization, then both Yoder and Davis have engaged in fraud against Plaintiff.

9
10 LEGAL BASIS UPON WHICH RELIEF SHOULD BE GRANTED

11 COUNT ONE – FRAUD, MISREPRESENTATIONS AND OMISSIONS

12 45. Plaintiff incorporates paragraphs 1 through 44, above, as though fully set forth herein.

13 46. The following misrepresentations and omissions were made to the Plaintiff by unlicensed
14 third party sales representative Stoll, and Robinson, in furtherance of acts undertaken and
15 authorized by Defendants, and relied on by Plaintiff in making the investment.

- 16 • Defendants, through their actions, lead Plaintiff to believe that the sales of the
17 promissory notes through Stoll and Retire Happy were in compliance with all
18 federal and state requirements. In fact, the VCC Notes were unregistered securities
19 sold through a general solicitation, via an unlicensed broker dealer, and were
20 therefore unlawfully sold in Nevada;
 - 21 • That Plaintiff was entitled to audited financials and a current private placement
22 memorandum detailing material facts on the VCC offering, such as use of funds,
23 an accounting, disclosure of the background of the principals and risk factors.
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1 Plaintiff did not receive this information from Stoll, Retire Happy, or the
2 Defendants;

- 3 • Defendant Stoll misled Plaintiff by representing to him that Ronald Robinson
4 personally guaranteed the promissory note. According to sworn testimony from
5 Robinson, he never intended to make, nor ever made such guarantees;
- 6 • That Julie Minuskin, owner of Retire Happy was a convicted felon. A reasonable
7 investor would consider this a material piece of information when deciding
8 whether to invest;
- 9 • That Stoll and Retire Happy were unlicensed to sell or offer to sell securities in
10 Nevada and Kansas.

11
12 47. The following fraudulent acts were done by Yoder and Davis:

- 13 • By Davis: Sending Retire Happy preprinted Notes with Robinson's signed
14 guarantee for use in soliciting investors (including Plaintiff). If Robinson is to be
15 believed, Davis sent these presigned Notes without Robinson's authorization, and
16 without obtaining his consent to use the Notes for capital raising purposes. The
17 use of this unauthorized Note document resulted in Plaintiff being misled about the
18 financial backing behind the transaction, and he would not have invested had
19 Davis and Stoll informed him that Robinson did not intend to guarantee the
20 transaction
- 21 • By Yoder: Creating and overseeing the use of VCC's PowerPoint presentations
22 that were used by VCC and Retire Happy to solicit investors. If Robinson is to be
23 believed, Yoder included Robinson's personal guarantee and net worth information
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1 in the presentations without Robinson's knowledge or authorization. Since Yoder
2 was aware that VCC was providing the presentations to Retire Happy for use to
3 solicit prospective investors, if Robinson is to be believed, Yoder's use of
4 Robinson's guarantee resulted in material misrepresentations being made to VCC
5 Note purchasers regarding Robinson's guarantee

6 48. These misrepresentations and omissions were material, and resulted in Plaintiff being
7 misled about the true nature of the VCC note investments. Plaintiff relied in good faith on
8 the misrepresentations and omissions to his detriment.

9 49. The result of these misrepresentations and omissions is that Plaintiff was induced to
10 purchase the VCC investments. Had Defendants provided truthful information to Plaintiff,
11 Plaintiff would not have invested in the VCC notes.

12 50. The purchase of the VCC investments has resulted in a loss of over \$75,000.

13 COUNT TWO - VIOLATION OF NEVADA UNIFORM SECURITIES ACT §§ NRS

14 90.310, 90.460 and 90.660

15 51. Plaintiff incorporates paragraphs 1 through 44, above, as though fully set forth herein.

16 52. At all times mentioned herein Stoll and Retire Happy acted as sales and marketing
17 representatives for VCC.

18 53. At all times mentioned herein Mr. Robinson and Mr. Rodriguez were control persons
19 for VCC.

20 54. At all times mentioned herein the VCC promissory notes purchased by Plaintiff were
21 securities within the definitions of the Nevada Securities Act.

22 55. At all times mentioned herein the VCC promissory notes were neither registered
23 pursuant to the Nevada Securities Act, nor exempt from registration.

1 56. At all times mentioned herein, neither Stoll, nor Retire Happy were licensed to sell
2 securities, nor exempt from licensing pursuant to NRS 90.310.

3 57. At all times mentioned herein the VCC Defendants sold unregistered securities
4 through unlicensed sales representatives (Stoll and Retire Happy) via a general
5 solicitation, in violation of the Nevada Securities Act.

6 58. Plaintiff hereby tenders the securities he purchased to Defendants and demands
7 damages and attorney's fees according to proof.

8 COUNT THREE - VIOLATION OF NEVADA UNIFORM SECURITIES ACT §§

9 NRS 90.570 and 90.660

10 59. Plaintiff incorporates paragraphs 1 through 44, above, as though fully set forth herein.

11 60. At all times mentioned herein Defendants withheld material information about the
12 VCC investment and the VCC corporation as described above. Had this information
13 been disclosed to Plaintiff prior to the time he made his investments, he would not
14 have purchased the VCC notes.

15 61. At all times mentioned herein Davis and Yoder materially aided in the VCC Note
16 transaction by providing information and the forms necessary to complete the
17 transaction to Retire Happy (and then to Stoll), whom they knew were raising money
18 for VCC.

19 62. At all times mentioned herein, Rodriguez and Robinson were control persons for
20 VCC.

21 63. Defendants VCC and Robinson also failed to inform Plaintiff that by using Retire
22 Happy to market the VCC shares, they were engaging in a "general solicitation" of
23 securities, in violation of state and federal securities laws. This was a material
24

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.

64. Defendants also failed to tell Plaintiff that Julie Minuskin, owner of Retire Happy was a convicted felon. This was a material omission. Any reasonable investor would want to know that the firm they were relying on for investment advice was run by a convicted felon.

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

66. By reason of the conduct alleged herein, Defendants knowingly and/or recklessly, directly and indirectly have violated the Nevada securities laws in that they made untrue statements of material facts, and omitted to state material facts necessary in order to their statements, in light of the circumstances under which they were made, not misleading, and sold unregistered investments through unlicensed sales representatives.

67. Plaintiff hereby tenders the securities he purchased to Defendants and demands

1 damages and attorney's fees according to proof.

2 COUNT FOUR – BREACH OF WRITTEN CONTRACT

3 68. Plaintiff incorporates paragraphs 1 through 44, above, as though fully set forth herein.

4 69. The VCC promissory note was a written contract. Pursuant to the terms of this
5 contract, Defendant VCC was to make monthly payments to Plaintiff throughout the
6 eighteen month term.

7 70. Defendant VCC has not made monthly payments since February, 2015, and Plaintiff,
8 pursuant to the terms of the note, provided notice of default to VCC on August 26,
9 2017. Defendants had ten days to cure the default, and they have failed to cure within
10 that time. As a result, the note provides that all interest and principal payments would
11 accelerate.

12 71. Plaintiff provided valuable, bargained for consideration by agreeing to loan money to
13 VCC in exchange for Defendants' promise to pay on the dates specified.

14 72. Plaintiff has not excused Defendants' payment obligations, nor has he provided any
15 extension for Defendants to make the payments. There are no conditions precedent,
16 and Plaintiff has performed all acts required to trigger Defendants' obligations to pay.

17 73. Defendant Robinson guaranteed VCC's obligations under the contracts, and is liable to
18 the same extent as VCC to Plaintiff for the breach of contract.

19 74. As a result of Defendants' failure to honor the contracts, Plaintiff has suffered
20 damages.

21
22 Wherefore Plaintiff prays for a joint and several judgment against Defendants as follows:

23 FIRST CLAIM FOR RELIEF

1. Damages in excess of \$10,000.00;
2. Attorneys' fees and costs;
3. For a finding by the court that VCC is the alter ego of Wintech; and
4. Such other and further relief as the Court deems just and proper

SECOND CLAIM FOR RELIEF

1. Damages in excess of \$10,000.00;
2. Attorneys' fees and costs;
3. For a finding by the court that VCC is the alter ego of Wintech; and
4. Such other and further relief as the Court deems just and proper

THIRD CLAIM FOR RELIEF

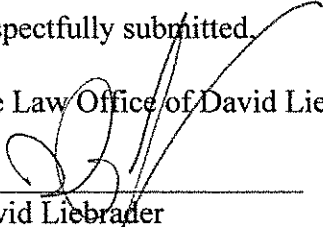
1. Damages in excess of \$10,000.00;
2. Attorneys' fees and costs;
3. For a finding by the court that VCC is the alter ego of Wintech; and
4. Such other and further relief as the Court deems just and proper

FOURTH CLAIM FOR RELIEF

1. Damages in excess of \$10,000.00;
2. Attorneys' fees and costs;
3. For a finding by the court that VCC is the alter ego of Wintech; and
4. Such other and further relief as the Court deems just and proper

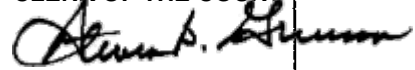
Dated: September 28, 2017 Respectfully submitted.

The Law Office of David Liebrader, Inc.

By: 
David Liebrader

Attorney for Plaintiff

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7 Attorney for Plaintiffs

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN) Case No. A-17-763003-C
11)
12 Anthony White, Robin Suntheimer, Troy) Dept.: 24
13 Suntheimer, Stephens Ghesquiere, Jackie Stone,)
14 Gayle Chany, Kendall Smith, Gabriele) FIRST AMENDED COMPLAINT
15 Lavermicocca and Robert Kaiser)
16) EXEMPT FROM ARBITRATION:
17 PLAINTIFFS,) EXCEEDS JURISDICTIONAL
18) MINIMUM
19 v.)
20)
21 Ronald J. Robinson, Vernon Rodriguez, Virtual)
22 Communications Corporation, Wintech, LLC, Alisa) JURY TRIAL DEMANDED
23 Davis, Julie Minuskin, Josh Stoll, Retire Happy)
24 LLC, and DOES 1-10 and ROES 1-10, inclusively,)
25)
26 DEFENDANTS)

18 Plaintiff Anthony White files this first amended complaint by adding as Plaintiffs and
19 Defendants the following individuals (and a corporate entity), while withdrawing all efforts to
20 certify this case as a class action.

21 New Plaintiffs: Robin Suntheimer, Troy Suntheimer, Stephens Ghesquiere, Jackie Stone,
22 Gayle Chany, Kendall Smith, Gabriele Lavermicocca, Robert Kaiser.

23 New Defendants: Retire Happy, LLC, Julie Minuskin, Josh Stoll.

INTRODUCTION

THE PARTIES

1. Plaintiff Anthony White ("Mr. White" or "Plaintiff") is a man living in Dakula, Georgia.
2. Plaintiff Stephens Ghesquiere ("Mr. Ghesquiere" or "Plaintiff") is a man living in Pensacola, Florida.
3. Plaintiff Troy Suntheimer ("Mr. Suntheimer" or "Plaintiff") is a man living in Newport News, Virginia.
4. Plaintiff Robin Suntheimer ("Ms. Suntheimer" or "Plaintiff") is a woman living in Newport News, Virginia.
5. Plaintiff Jackie Stone ("Ms. Stone" or "Plaintiff") is a woman living in Rescue, California.
6. Plaintiff Gabriele Lavermicocca ("Ms. Lavermicocca" or "Plaintiff") is a woman living in San Diego, California.
7. Plaintiff Gayle Chany ("Ms. Chany" or "Plaintiff") is a woman living in Crest Hill, Illinois.
8. Plaintiff Kendall Smith ("Mr. Smith" or "Plaintiff") is a man living in Reed Point Montana.
9. Plaintiff Robert Kaiser ("Mr. Kaiser" or "Plaintiff") is a man living in Fort Wayne, Indiana.
10. At all times relevant herein Defendant Virtual Communications Corporation ("VCC") was a Nevada corporation doing business in Clark County, Nevada.
11. At all times relevant herein Defendant Wintech, LLC ("Wintech") was a Nevada

1 company doing business in Clark County, Nevada.

2 12. At all times relevant herein Defendant Ronald J. Robinson ("Mr. Robinson") was, on
3 information and belief, a resident of Nevada, and doing business through VCC and
4 Wintech in Clark County, Nevada.

5 13. At all times relevant herein Defendant Vernon Rodriguez ("Mr. Rodriguez") was, on
6 information and belief, a resident of Nevada, doing business in Clark County, and a
7 corporate officer of Wintech and VCC.

8 14. At all times relevant herein Defendant Julie Minuskin ("Ms. Minuskin") was, on
9 information and belief, a resident of Nevada, and doing business in Clark County, Nevada.

10 15. At all times relevant herein Defendant Josh Stoll ("Mr. Stoll") was, on information
11 and belief, a resident of Nevada, and doing business in Clark County, Nevada.

12 16. At all times relevant herein Defendant Retire Happy, LLC ("Retire Happy") was, on
13 information and belief, a Nevada corporation doing business in Clark County, Nevada.

14 17. At all times relevant herein Defendant Alisa Davis ("Ms. Davis") was, on information
15 and belief, a resident of Nevada, and doing business in Clark County, Nevada.

16 18. That the true names and capacities, whether individual, corporate, associate or
17 otherwise, of Defendants DOES I-X and ROE CORPORATIONS I-X are unknown to
18 Plaintiff who, therefore, sues said Defendants by said fictitious names. Plaintiff is
19 informed and believes and thereon alleges that each of the Defendants designated as
20 DOES and ROES are responsible in some manner for the events and happenings referred
21 to and caused damages proximately to Plaintiff as herein alleged or are parties having
22 ownership interests in entities owned or controlled by Defendants. Plaintiff will ask leave
23 of the Court to amend this Complaint to insert the true names and capacities of DOES I-X
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1 and ROE CORPORATIONS I-X when same have been ascertained and to join such
2 Defendants in this action.

3 19. Jurisdiction and venue is appropriate in District Court for the County of Clark in that
4 Retire Happy, Wintech and VCC were/ are Nevada corporations doing business in Clark
5 County, Nevada and Defendants Robinson, Rodriguez, Davis, Stoll and Minuskin all
6 worked in Las Vegas, NV at all times relevant to the facts in this complaint.

7 20. Statement regarding bankruptcy: At the time of the filing of this first amended
8 complaint claims against Defendant VCC (and its wholly owned subsidiary Wintech) are
9 subject to an "automatic stay" due to a Chapter 11 bankruptcy filing in Nevada District
10 Bankruptcy Court. The stay only applies to VCC and Wintech.

11
12 FACTUAL BACKGROUND GIVING RISE TO THIS CLAIM

13 21. This is an action for the recovery of investment losses. The investment at issue is an
14 unregistered security in the form of a promissory note that was marketed and sold by
15 Defendants through a "general solicitation" in violation of the Nevada securities laws.
16 The investment is a short term promissory note issued by a VCC, and personally
17 guaranteed by Defendant Robinson.

18 22. VCC has defaulted on its payment obligations, which called for it to make monthly
19 payments of nine percent interest to Plaintiffs and all the class members. VCC has not
20 made payments to Plaintiffs since February, 2015. Plaintiffs have all sent notice of default
21 to VCC and Mr. Robinson demanding the overdue payments. To date neither VCC nor
22 Robinson have responded to the letter, or cured the default.

23 23. Defendant Robinson is the former chief executive officer of VCC and is a "control
24
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1 person" under the Nevada securities laws. Mr. Robinson also personally guaranteed the
2 promissory note purchased by the Plaintiffs.

3 24. Defendant Rodriguez is an officer and director of VCC and is a "control person"
4 under the Nevada securities laws.

5 25. Defendant Minuskin is the owner of unregistered broker dealer Retire Happy, LLC
6 (the company that ran the offering for VCC), and is a "control person" under the Nevada
7 securities laws.

8 26. Plaintiff is informed and believes and thereon alleges that at all relevant times herein
9 there existed a unity of interest and ownership between VCC and Wintech such that any
10 corporate individuality and separateness between VCC and Wintech has ceased and that
11 VCC is the alter ego of Wintech. Wintech and its officers so completely dominated,
12 controlled and managed the operations of VCC (which existed solely as a fund raising
13 vehicle for Wintech's technology, the ALICE receptionist) that VCC functioned as a mere
14 instrumentality and conduit through which Wintech operated.

15 27. Furthermore, per Vern Rodriguez' sworn testimony in a separate matter VCC had
16 "zero employees," VCC "didn't have day to day operations," and VCC's Note offering
17 "was used to provide funding for Wintech's activities."

18 28. Wintech used VCC as a means to receive money from investors, while avoiding
19 responsibility for repaying them under the terms of the Notes. As a result, Wintech
20 through its officers, Robinson and Rodriguez directed VCC and Wintech to perpetrate a
21 fraud and circumvent the interests of justice. Adherence to the fiction of the existence of
22 VCC as an entity separate and distinct from Wintech would permit an abuse of the
23 corporate privilege and would sanction fraud and promote injustice in that Plaintiff and
24

1 prospective Plaintiffs would be denied a full and fair recovery in the event the assets of
2 VCC are insufficient to satisfy a judgment entered against it.

3 29. Defendants VCC and Robinson relied on outside fund raiser, unregistered broker
4 dealer Defendant "Retire Happy" to go out to the investment community with its
5 unlicensed sales representatives, to solicit investments for VCC's Promissory Note
6 offering. These agents of Retire Happy, including Defendants Stoll and Minuskin were
7 not employees of VCC, nor were they licensed to sell securities in the state of Nevada, or
8 in any other state.

9 30. Sometime in 2013, Plaintiffs began receiving solicitations from Minuskin and Stoll
10 to invest in VCC's 9% Promissory Note offering with personal guarantee.

11 31. Retire Happy's agents told Plaintiffs that VCC was looking to borrow money for
12 eighteen months and would pay Plaintiffs monthly interest of nine percent until maturity.
13 They also told Plaintiffs that VCC was a startup telecommunications company that had a
14 unique product that would revolutionize the marketplace. This product was the ALICE
15 technology, presently owned by Wintech. Minuskin and Stoll told Plaintiffs that VCC's
16 financial prospects were bright, and VCC only needed a short term "bridge loan" until
17 they did a large public offering of stock. To seal the deal, they told Plaintiffs that the CEO
18 of the company, Ronald Robinson was prepared to personally guarantee the investment.

19 32. As a result of the promised nine percent interest, the representations regarding the
20 financial stability and prospects of the company, and Mr. Robinson's guarantee, Plaintiffs
21 agreed to purchase the VCC securities.

22 33. Defendant Alisa Davis authorized Retire Happy to keep preprinted VCC promissory
23 notes, signed and guaranteed by Ronald Robinson (Davis' grandfather) in Retire Happy's
24

1 office, where they could input prospective investor's names and the dollar amount
2 invested into the "blank" sections on the contract.

3 34. Although the preprinted, pre-signed and pre-guaranteed notes all bear Ronald
4 Robinson's signature, Robinson claims that own Granddaughter - Ms. Davis- was not
5 authorized to provide those preprinted contracts to Retire Happy, and that Ms. Davis did
6 so without Robinson's knowledge or permission.

7 35. Ms. Davis also provided Retire Happy with three different power point presentations
8 related to, and in furtherance of VCC's Note offering whereby the personal guarantee of
9 Ronald Robinson is touted, as is his substantial multimillion dollar net worth.

10 36. If Robinson is to be believed, that Alisa Davis acted without his authorization and
11 knowledge, then the end result is that Davis intentionally mislead VCC Note purchasers,
12 including Plaintiffs, by leading them to believe that the Notes were guaranteed, when they
13 were not.

14 37. In reality, Robinson, Rodriguez, VCC and Wintech were all aware that money was
15 being raised by Retire Happy via the promissory note offering, as money came in to VCC
16 as a result of Retire Happy's efforts. Furthermore, VCC paid the Plaintiffs the specific
17 amounts stated under the Notes until default, further undermining Robinson's claim that
18 he was unaware of the offering. In any event, VCC, Wintech and its officers and control
19 persons received the benefits of the fund raise, and acted consistent with all of the agreed
20 upon terms.

21 38. Robinson's guarantee was a material aspect of the Note transaction, and Plaintiffs
22 would not have invested without this guarantee.

23 39. The following amounts were invested by Plaintiffs:

| Investor | Amount invested | Date |
|-----------------------|-----------------|-----------------|
| Anthony White | \$20,000 | January, 2014 |
| Troy Suntheimer | \$52,000 | November, 2013 |
| Robin Suntheimer | \$35,000 | October, 2013 |
| Steve Ghesquiere | \$66,000 | April, 2014 |
| Jackie Stone | \$35,000 | January, 2013 |
| Gabriele Lavermicocca | \$100,000 | September, 2014 |
| Gayle Chany | \$59,000 | September, 2014 |
| Kendall Smith | \$28,000 | December, 2014 |
| Robert Kaiser | \$62,000 | January, 2013 |
| | \$42,000 | October, 2013 |

40. After making the nine percent interest payments for 2014, VCC abruptly stopped making payments in 2015. The last payment Plaintiffs received was for January, 2015. After the default Plaintiffs sent a letters to VCC and Robinson notifying them that they were in default, and giving them ten days to cure. As of the time of the filing of the complaint, Defendants had not cured the default.

41. Since payments stopped to Plaintiffs in February, 2015 they have received periodic updates from VCC promising them that they would be receiving their money back as a result of fund raising efforts by VCC. Plaintiffs were also told they would be offered the opportunity to redeem their Notes for shares in the soon to be profitable company. These promises, made by Robinson and Vern Rodriguez were nothing more than stall and delay tactics, designed to prevent Plaintiffs from filing a lawsuit to recover their funds.

1 Plaintiffs relied to their detriment on these repeated promises of forthcoming repayment,
2 which resulted in them delaying bringing this action in hopes that Defendants would
3 follow through on their promises.

4 42. At present, Plaintiffs' principal investment appears to be completely lost as VCC
5 and Mr. Robinson have refused to return the funds.

6 43. Unbeknownst to Plaintiffs, Retire Happy, Minuskin and Stoll were compensated by
7 VCC for soliciting investors despite the fact that neither Minuskin, Stoll, nor Retire Happy
8 were employees of VCC.

9 44. In addition to the improper solicitation, neither VCC nor Retire Happy ever provided
10 Plaintiffs with a private placement memorandum or "audited financials" detailing VCC's
11 financial status, or risk factors, or proposed use of the funds. Furthermore, none of the
12 Defendants ever informed Plaintiffs that Julie Minuskin, owner of Retire Happy was a
13 convicted criminal, a material omission. Had Plaintiff been informed of this material fact,
14 they would never have agreed to invest in the Note Offering.

15 45. Pursuant to NRS §90.295 the eighteen month promissory notes purchased by Plaintiff
16 are securities. Because VCC did not have a pre-existing relationship with Plaintiffs and
17 relied on Retire Happy, which was neither an employee of VCC, nor a licensed sales
18 representative of a broker dealer, the sale of the VCC Notes was done in violation of the
19 Nevada Securities Laws, specifically NRS §§90.310, 90.460 and 90.660.

20 46. None of the Defendants ever apprised Plaintiff of the true financial condition of the
21 VCC Defendants; the actual use of the funds invested, and never provided Plaintiffs with
22 audited financial statements reflecting the solvency of VCC, any legal actions against it,
23 the risk factors or Minuskin's criminal background. They also failed to inform Plaintiff
24

1 that Retire Happy was an unlicensed broker dealer, and as a result, that he was entitled to
2 rescind the purchases. These were material omissions.

3 47. Defendants failed to disclose that Ronald Robinson was improperly withdrawing
4 money raised in the Note offering and using it to fund his other businesses. VCC
5 represented that the money raised would be used to grow and market VCC's ALICE
6 technology. Instead Robinson improperly withdrew \$2 million of the \$4.5 million raised,
7 crippling the young company and forcing it into bankruptcy.

8 48. Defendants failed to disclose that money that was being raised in the Note offering was
9 being used to pay "interest" to the Promissory Note holders. Since VCC did not have
10 sufficient revenues to pay the 9% "interest" on the Notes, Robinson directed that funds
11 raised should be paid to investors, falsely giving the appearance that interest was being
12 paid from operations. This "Ponzi style" arrangement was never disclosed to investors
13 and was materially misleading.

14 49. Defendants never informed Plaintiffs that they had a right to rescind their transactions
15 as a result of VCC's use of a "general solicitation" to sell their private placement of
16 securities. This was a material omission.

17 50. As a further misrepresentation, Retire Happy and Robinson impliedly represented
18 that the VCC Notes were being sold in compliance with all state and federal securities
19 laws.

20 51. As to Davis, she materially aided the transaction by providing Retire Happy with the
21 preprinted notes. If Robinson's sworn testimony is to be believed, that Davis knowingly
22 included Robinson's guarantee without obtaining his authorization, then Davis has
23 perpetrated a fraud against the Plaintiffs.

1 ventures.

- 2 • That Julie Minuskin, owner of Retire Happy had recently been convicted of a
3 serious crime for which she had served jail time. In addition, that neither she, nor
4 Josh Stoll nor Retire Happy were licensed to sell securities. A reasonable investor
5 would consider this material information when deciding whether to invest;

6
7 54. The following fraudulent acts were done by Davis:

- 8 • Sending Retire Happy preprinted Notes with Robinson's signed guarantee for use
9 in soliciting investors (including Plaintiff). If Robinson is to be believed, Davis
10 sent these presigned Notes without Robinson's authorization, and without
11 obtaining his consent to use the Notes for capital raising purposes. The use of this
12 unauthorized Note document resulted in Plaintiff and Plaintiffs being misled about
13 the financial backing behind the transaction, and they would not have invested had
14 Davis, Minuskin and Stoll informed them that Robinson did not intend to
15 guarantee the transactions;

16 55. These misrepresentations and omissions were material, and resulted in Plaintiffs being
17 misled about the true nature of the VCC note investments. Plaintiffs relied in good faith
18 on the misrepresentations and omissions to their detriment.

19 56. The result of these misrepresentations and omissions is that Plaintiffs were induced to
20 purchase the VCC investments. Had Defendants provided truthful information, Plaintiffs
21 would not have invested in the VCC notes.

22 57. The purchase of the VCC investments has resulted in monetary loss.

23 COUNT TWO - VIOLATION OF NEVADA UNIFORM SECURITIES ACT §§ NRS

90.310, 90.460 and 90.660

- 1
- 2 58. Plaintiffs incorporate paragraphs 1 through 50, above, as though fully set forth herein.
- 3 59. At all times mentioned herein Retire Happy acted as sales and marketing
- 4 representative for VCC.
- 5 60. At all times mentioned herein Mr. Robinson and Mr. Rodriguez were control persons
- 6 for VCC.
- 7 61. At all times mentioned herein the VCC promissory notes purchased by Plaintiffs and
- 8 Plaintiff were securities within the definitions of the Nevada Securities Act.
- 9 62. At all times mentioned herein the VCC promissory notes were neither registered
- 10 pursuant to the Nevada Securities Act, nor exempt from registration.
- 11 63. At all times mentioned herein, neither Retire Happy nor any of its employees were
- 12 licensed to sell securities, nor exempt from licensing pursuant to NRS 90.310.
- 13 64. At all times mentioned herein the VCC Defendants sold unregistered securities
- 14 through unlicensed sales representatives via a general solicitation, in violation of the
- 15 Nevada Securities Act.
- 16 65. At all times mentioned herein Retire Happy through Stoll and Minuskin, and under the
- 17 direction of control person Minuskin sold unregistered securities through unlicensed
- 18 sales representatives via a general solicitation, in violation of the Nevada Securities
- 19 Act.
- 20 66. Plaintiffs hereby tender the VCC securities purchased to Defendants, and demand
- 21 damages and attorney's fees according to proof.

22 COUNT THREE - VIOLATION OF NEVADA UNIFORM SECURITIES ACT §§

23 NRS 90.570 and 90.660

1 67. Plaintiffs incorporate paragraphs 1 through 50, above, as though fully set forth herein.

2 68. At all times mentioned herein Defendants withheld material information about the
3 VCC investment and the VCC Corporation as described above. Had this information
4 been disclosed to Plaintiffs prior to the time they made their investment, they would
5 not have purchased the VCC notes.

6 69. At all times mentioned herein, Rodriguez and Robinson were control persons for
7 VCC, while Minuskin was a control person for Retire Happy.

8 70. Defendants VCC and Robinson failed to inform Plaintiffs that by using Retire Happy
9 to market the VCC Notes, they were engaging in a "general solicitation" of securities,
10 in violation of state and federal securities laws. This was a material omission because
11 Plaintiffs would not have invested in the VCC share transactions had they known that
12 VCC was violating the law in offering the securities to them.

13 71. Defendants also failed to tell Plaintiffs that Julie Minuskin, owner of Retire Happy had
14 no securities license, and had plead guilty and/or had been convicted of a drug crime
15 within the past five years and had served jail time. This was a material omission. Any
16 reasonable investor would want to know that the firm and people they were relying on
17 for investment advice had no securities license and a criminal background.

18 72. By reason of the conduct alleged herein, Defendants knowingly and/or recklessly,
19 directly and indirectly have violated the Nevada securities laws in that they made
20 untrue statements of material facts, and omitted to state material facts necessary in
21 order to their statements, in light of the circumstances under which they were made,
22 not misleading, and sold unregistered investments through unlicensed sales
23 representatives.
24
25
26

1 73. Plaintiffs hereby tender the securities they purchased to Defendants and demand
2 damages and attorney's fees according to proof.

3 COUNT FOUR – BREACH OF WRITTEN CONTRACT

4 74. Plaintiffs incorporate paragraphs 1 through 50, above, as though fully set forth herein.

5 75. The VCC promissory note was a written contract. Pursuant to the terms of this
6 contract, Defendant VCC was to make monthly payments to Plaintiffs throughout the
7 eighteen month term.

8 76. Defendant VCC has not made monthly payments since February, 2015, and Plaintiffs,
9 pursuant to the terms of the note, provided notice of default to VCC. Defendants had
10 ten days to cure the default, and they have failed to cure within that time. As a result,
11 the Notes provide that all interest and principal payments would accelerate.

12 77. Plaintiffs provided valuable, bargained for consideration by agreeing to loan money to
13 VCC in exchange for Defendants' promise to pay on the dates specified.

14 78. Plaintiffs have not excused Defendants' payment obligations, nor have they provided
15 any extension for Defendants to make the payments. There are no conditions
16 precedent, and Plaintiffs have performed all acts required to trigger Defendants'
17 obligations to pay.

18 79. Defendant Robinson guaranteed VCC's obligations under the contracts, and is liable to
19 the same extent as VCC to Plaintiffs for the breach of contract.

20 80. As a result of Defendants' failure to honor the contracts, Plaintiffs have suffered
21 damages.

22
23 Wherefore Plaintiff prays for a joint and several judgment against Defendants as follows:
24
25
26

FIRST CLAIM FOR RELIEF

1. Damages in excess of \$10,000.00;
2. Attorneys' fees and costs;
3. Punitive damages in an amount to be determined at trial;
4. For a finding by the court that VCC is the alter ego of Wintech; and
5. Such other and further relief as the Court deems just and proper

SECOND CLAIM FOR RELIEF

1. Damages in excess of \$10,000.00;
2. Attorneys' fees, interest and costs;
3. For a finding by the court that VCC is the alter ego of Wintech; and
4. Such other and further relief as the Court deems just and proper

THIRD CLAIM FOR RELIEF

1. Damages in excess of \$10,000.00;
2. Attorneys' fees, interest and costs;
3. Punitive damages in an amount to be determined at trial;
4. For a finding by the court that VCC is the alter ego of Wintech; and
5. Such other and further relief as the Court deems just and proper

FOURTH CLAIM FOR RELIEF

1. Damages in excess of \$10,000.00;
2. Attorneys' fees, interest, penalties and costs;
3. For a finding by the court that VCC is the alter ego of Wintech; and
4. Such other and further relief as the Court deems just and proper

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1. Damages in excess of \$10,000.00;
2. Attorneys' fees and costs;
3. Punitive damages in an amount to be determined at trial;
4. For a finding by the court that VCC is the alter ego of Wintech; and
5. Such other and further relief as the Court deems just and proper

SECOND CLAIM FOR RELIEF

1. Damages in excess of \$10,000.00;
2. Attorneys' fees, interest and costs;
3. For a finding by the court that VCC is the alter ego of Wintech; and
4. Such other and further relief as the Court deems just and proper

THIRD CLAIM FOR RELIEF

1. Damages in excess of \$10,000.00;
2. Attorneys' fees, interest and costs;
3. Punitive damages in an amount to be determined at trial;
4. For a finding by the court that VCC is the alter ego of Wintech; and
5. Such other and further relief as the Court deems just and proper

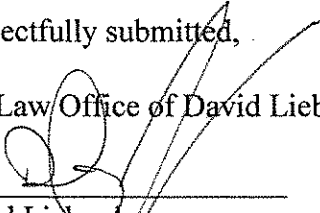
FOURTH CLAIM FOR RELIEF

1. Damages in excess of \$10,000.00;
2. Attorneys' fees, interest, penalties and costs;
3. For a finding by the court that VCC is the alter ego of Wintech; and
4. Such other and further relief as the Court deems just and proper

1 Dated: October 2, 2018

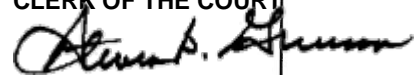
Respectfully submitted,

2 The Law Office of David Liebrader, Inc.

3 By: 

David Liebrader

4 Attorney for Plaintiffs



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

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 IN THE MATTER BETWEEN,
12

Case No. A-17-763003-C

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

Dept. 24

17 Plaintiff,

18 vs.

19 Ronald J. Robinson, Vernon Rodriquez,
20 Virtual Communications Corporation,
21 Wintech, LLC, Alisa Davis, Julie Minuskin,
22 Josh Stoll, Retire Happy LLC, and DOES 1-
23 10 and ROES 1-10, inclusively,

24 Defendants.

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

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

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

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

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

9 DATED this 23 day of April, 2019.

10
11 
12 DISTRICT COURT JUDGE

13 Respectfully Submitted:

14 PALAZZO LAW FIRM, P.C.

15 
16 T. LOUIS PALAZZO, ESQ.

17 Nevada Bar Number 4128


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

19
20 Reviewed and approved as to form and content:

21 
22 HAROLD P. GEWERTER, ESQ.

23 Nevada Bar Number 499

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

21 
22 DAVID LIEBRADER, ESQ.
23 Nevada Bar Number 5048
24 *Attorney for Plaintiffs*

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CERTIFICATE OF SERVICE

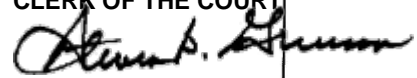
Pursuant of NRCP 5(b), I hereby certify that I am an employee of PALAZZO LAW FIRM, P.C., and that on the 23 day of April, 2019, I served a true and correct copy of the foregoing by:

- ☐ Mail on all parties listed below, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below.
- ☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.
- ☐ Courtesy copy by facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.
- ☒ Electronically through the Eighth Judicial District Court electronic filing system:

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

Harold Gewerter, Esq.
Gewerter Law Office
1212 Casino Center Blvd.
Las Vegas, Nevada 89104

/s/ Celina Moore
An employee of PALAZZO LAW FIRM



1 **NOE**
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3 Nevada Bar No. 4128
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7 Las Vegas, Nevada 89101
8 Tele: 702/385-3850
9 Fax: 702/385-3855
10 *Attorney for Defendants,*
11 **JULIE MINUSKIN, JOSH STOLL**
12 *and RETIRE HAPPY, LLC*

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

11 IN THE MATTER BETWEEN,

Case No. A-17-763003-C

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

Dept. 24

NOTICE OF ENTRY OF ORDER

15 Plaintiff,

16 vs.

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

21 Defendants.

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

23 A copy of said Order is attached hereto.

24 DATED this 23rd day of April, 2019.

25 /s/ T. Louis Palazzo

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

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

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CERTIFICATE OF SERVICE

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

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

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

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Las Vegas, Nevada 89106

Harold Gewerter, Esq.
Gewerter Law Office
1212 Casino Center Blvd.
Las Vegas, Nevada 89104

/s/ Celina Moore
An employee of PALAZZO LAW FIRM



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10 *Attorney for Defendants,*

11 *JULIE MINUSKIN, JOSH STOLL*

12 *and RETIRE HAPPY, LLC*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 IN THE MATTER BETWEEN,

Case No. A-17-763003-C

16 Anthony White, Robin Suntheimer, Troy
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Dept. 24

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22 Ronald J. Robinson, Vernon Rodriquez,
23 Virtual Communications Corporation,
24 Wintech, LLC, Alisa Davis, Julie Minuskin,
25 Josh Stoll, Retire Happy LLC, and DOES 1-
26 10 and ROES 1-10, inclusively,

27 Defendants.

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

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

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

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

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

9 DATED this 23 day of April, 2019.

10
11 
12 DISTRICT COURT JUDGE

13 Respectfully Submitted:

14 PALAZZO LAW FIRM, P.C.

15 
16 T. LOUIS PALAZZO, ESQ.

17 Nevada Bar Number 4128

18 *Attorney for Defendants,*
19 **RETIRE HAPPY, LLC. JULIE MINUSKIN,**
20 **and JOSH STOLL**

21 Reviewed and approved as to form and content:

22 
23 HAROLD P. GEWERTER, ESQ.

24 Nevada Bar Number 499

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

29 
30 DAVID LIEBRADER, ESQ.

31 Nevada Bar Number 5048

32 *Attorney for Plaintiffs*

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CERTIFICATE OF SERVICE

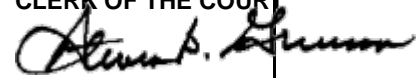
Pursuant of NRCP 5(b), I hereby certify that I am an employee of PALAZZO LAW FIRM, P.C., and that on the 23 day of April, 2019, I served a true and correct copy of the foregoing by:

- ☐ Mail on all parties listed below, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below.
- ☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.
- ☐ Courtesy copy by facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.
- ☒ Electronically through the Eighth Judicial District Court electronic filing system:

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

Harold Gewerter, Esq.
Gewerter Law Office
1212 Casino Center Blvd.
Las Vegas, Nevada 89104

/s/ Celina Moore
An employee of PALAZZO LAW FIRM



T. LOUIS PALAZZO, ESQUIRE
Nevada Bar No. 4128
PALAZZO LAW FIRM
A PROFESSIONAL LAW CORPORATION
520 South Fourth Street, Second Floor
Las Vegas, Nevada 89101
Tele: 702/385-3850
Fax: 702/385-3855
Attorney for Defendants,
JOSH STOLL and RETIRE HAPPY, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

IN THE MATTER BETWEEN,

Case No. A-17-762264-C

Steven A. Hotchkiss,

Dept. 8

Plaintiff,

**ANSWER, AFFIRMATIVE DEFENSES
AND CROSS CLAIM**

vs.

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

Defendants.

COME NOW the Defendants, RETIRE HAPPY, LLC and JOSH STOLL (collectively referred to as Defendants herein) by and through their attorney, T. LOUIS PALAZZO, ESQ., of PALAZZO LAW FIRM and for their Answer to Plaintiff STEVEN A. HOTCHKISS'S, (hereinafter, HOTCHKISS or Plaintiff) Complaint state as follows:

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1 9. Answering Paragraph 9 of Plaintiff's Complaint, Defendants state that they are
2 without sufficient knowledge or information upon which to base a belief as to the truth of the
3 allegations contained therein and, therefore, deny each and every allegation contained therein.
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5 10. Answering Paragraph 10 of Plaintiff's Complaint, Defendants state that they are
6 without sufficient knowledge or information upon which to base a belief as to the truth of the
7 allegations contained therein and, therefore, deny each and every allegation contained therein.
8

9 11. Answering Paragraph 11 of Plaintiff's Complaint, Defendants admit that RETIRE
10 HAPPY AND JOSH STOLL maintain offices and do business in Las Vegas, Nevada. Defendants
11 state that they are without sufficient knowledge or information upon which to base a belief as to the
12 truth of the allegations contained in the remainder of the allegations and, therefore, the remaining
13 allegations.
14

15 **FACTUAL BACKGROUND GIVING RISE TO THIS CLAIM**
16

17 12. Answering Paragraph 12 of Plaintiff's Complaint, Defendants state that they are
18 without sufficient knowledge or information upon which to base a belief as to the truth of the
19 allegations contained therein and, therefore, deny each and every allegation contained therein.
20

21 Furthermore, the allegations call for a legal conclusion which Defendants are not qualified
22 to make and therefore, deny each and every allegation contained therein on that basis.
23

24 13. Answering Paragraph 13 of Plaintiff's Complaint, Defendants state that they are
25 without sufficient knowledge or information upon which to base a belief as to the truth of the
26 allegations contained therein and, therefore, deny each and every allegation contained therein.
27

28 14. Answering Paragraph 14 of Plaintiff's Complaint, Defendants state that they are
without sufficient knowledge or information upon which to base a belief as to the truth of the

1 allegations that Defendant Robinson is the chief executive officer of VCC and is a “control person”
2 under the Nevada securities laws, and admit the remainder of the allegation.

3 Furthermore, the allegations call for a legal conclusion which Defendants are not qualified
4 to make and therefore, deny each and every allegation contained therein on that basis.
5

6 15. Answering Paragraph 15 of Plaintiff’s Complaint, Defendants state that they are
7 without sufficient knowledge or information upon which to base a belief as to the truth of the
8 allegations contained therein, and therefore deny the allegations contained therein.

9 Furthermore, the allegations call for a legal conclusion which Defendants are not qualified
10 to make and therefore, deny each and every allegation contained therein on that basis.
11

12 16. Answering Paragraph 16 of Plaintiff’s Complaint, Defendants state that they are
13 without sufficient knowledge or information upon which to base a belief as to the truth of the
14 allegations contained therein, and therefore deny the allegations contained therein.

15 Furthermore, the allegations call for a legal conclusion which Defendants are not qualified
16 to make and therefore, deny each and every allegation contained therein on that basis.
17

18 17. Answering Paragraph 17 of Plaintiff’s Complaint, Defendants state that they are
19 without sufficient knowledge or information upon which to base a belief as to the truth of the
20 allegations contained therein, and therefore, deny each and every allegations contained therein.

21 18. Answering Paragraph 18 of Plaintiff’s Complaint, Defendants state that they are
22 without sufficient knowledge or information upon which to base a belief as to the truth of the
23 allegations contained therein, and therefore deny each and every allegation contained therein.
24

25 19. Answering Paragraph 19 of Plaintiff’s Complaint, Defendants deny Retire Happy
26 employed unlicensed sales representatives, or that it brought potential investors to VCC to invest in
27 the company’s securities, but admits Defendant Stoll was not an employee of VCC, and that he was
28 not licensed to sell securities in the state of Nevada or Kansas.

1 20. Answering Paragraph 20 of Plaintiff's Complaint, Defendants state that they are
2 without sufficient knowledge or information upon which to base a belief as to the truth of the
3 allegations contained therein and, therefore, deny each and every allegation contained therein.
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5 21. Answering Paragraph 21 of Plaintiff's Complaint, Defendants state that they are
6 without sufficient knowledge or information upon which to base a belief as to the truth of the
7 allegations contained therein, and therefore, deny each and every allegation contained therein.
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9 22. Answering Paragraph 22 of Plaintiff's Complaint, Defendants state that they are
10 without sufficient knowledge or information upon which to base a belief as to the truth of the
11 allegations contained therein, and therefore, deny each and every allegation contained therein.
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13 23. Answering Paragraph 23 of Plaintiff's Complaint, Defendants state that they are without
14 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
15 contained therein, and therefore, deny each and every allegation contained therein.
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17 24. Answering Paragraph 24 of Plaintiff's Complaint, Defendants state that they are without
18 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
19 contained therein, and therefore, deny each and every allegation contained therein.
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21 25. Answering Paragraph 25 of Plaintiff's Complaint, Defendants state that they are without
22 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
23 contained therein, and therefore, deny each and every allegation contained therein.
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25 26. Answering Paragraph 26 of Plaintiff's Complaint, Defendants state that they are without
26 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
27 contained therein, and therefore, deny each and every allegation contained therein.
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 27. Answering Paragraph 27 of Plaintiff's Complaint, Defendants state that they are without
sufficient knowledge or information upon which to base a belief as to the truth of the allegations
contained therein, and therefore, deny each and every allegation contained therein.

1 28. Answering Paragraph 28 of Plaintiff's Complaint, Defendants state that they are
2 without sufficient knowledge or information upon which to base a belief as to the truth of the
3 allegations made against others, and therefore, deny each and every allegation contained therein.
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5 29. Answering Paragraph 29 of Plaintiff's Complaint, Defendants state that they are
6 without sufficient knowledge or information upon which to base a belief as to the truth of the
7 allegations contained therein, and therefore, deny each and every allegation contained therein.
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9 30. Answering Paragraph 30 of Plaintiff's Complaint, Defendants state that they are without
10 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
11 made against others, and therefore, deny each and every allegation contained therein.

12 31. Answering Paragraph 31, of Plaintiff's Complaint, Defendants state they are without
13 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
14 made against others, and therefore, deny each and every allegation contained therein.
15

16 32. Answering Paragraph 32 of Plaintiff's Complaint, Defendants deny each and every
17 allegation made against them, and are without sufficient knowledge or information upon which to
18 base a belief as to the truth of the allegations made against others, and therefore, deny each and every
19 allegation contained therein.

20 33. Answering Paragraph 33 of Plaintiff's Complaint, Defendants state that they are without
21 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
22 made against others, and therefore, deny each and every allegation contained therein.
23

24 34. Answering Paragraph 34 of Plaintiff's Complaint, Defendants state that they are
25 without sufficient knowledge or information upon which to base a belief as to the truth of the
26 allegations made against others, therefore, deny each and every allegation contained therein.
27

28 35. Answering Paragraph 35 of Plaintiff's Complaint, Defendants state that they are without
sufficient knowledge or information upon which to base a belief as to the truth of the allegations

1 made against others, and therefore, deny each and every allegation contained therein.

2 36. Answering Paragraph 36 of Plaintiff's Complaint, Defendants state that they are without
3 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
4 made against others, and therefore, deny each and every allegation contained therein.
5

6 37. Answering Paragraph 37 of Plaintiff's Complaint, Defendants deny each and every
7 allegation made against them, and are without sufficient knowledge or information upon which to
8 base a belief as to the truth of the allegations made against others, and therefore, deny each and every
9 allegation contained therein.
10

11 38. Answering Paragraph 38 of Plaintiff's Complaint, Defendants deny each and every
12 allegation made against them, and are without sufficient knowledge or information upon which to
13 base a belief as to the truth of the allegations made against others, and therefore, deny each and every
14 allegation contained therein.
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16 39. Answering Paragraph 39 of Plaintiff's Complaint, Defendants deny each and every
17 allegation made against them; the allegations call for a legal conclusion requiring no answer; and,
18 they are without sufficient knowledge or information upon which to base a belief as to the truth of
19 the allegations made against others, and therefore, deny each and every allegation contained therein.
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21 40. Answering Paragraph 40 of Plaintiff's Complaint, Defendants deny each and every
22 allegation made against them, and are without sufficient knowledge or information upon which to
23 base a belief as to the truth of the allegations made against others, and therefore, deny each and every
24 allegation contained therein.

25 41. Answering Paragraph 41 of Plaintiff's Complaint, Defendants deny each and every
26 allegation made against them, and are without sufficient knowledge or information upon which to
27 base a belief as to the truth of the allegations made against others, and therefore, deny each and every
28 allegation contained therein.

1 42. Answering Paragraph 42 of Plaintiff's Complaint, Defendants deny each and every
2 allegation made against them, and are without sufficient knowledge or information upon which to
3 base a belief as to the truth of the allegations made against others, and therefore, deny each and every
4 allegation contained therein.
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6 43. Answering Paragraph 43 of Plaintiff's Complaint, Defendants deny each and every
7 allegation made against them, and are without sufficient knowledge or information upon which to
8 base a belief as to the truth of the allegations made against others, and therefore, deny each and every
9 allegation contained therein.
10

11 44. Answering Paragraph 44 of Plaintiff's Complaint, Defendants deny each and every
12 allegation made against them, and are without sufficient knowledge or information upon which to
13 base a belief as to the truth of the allegations made against others, and therefore, deny each and every
14 allegation contained therein.
15

16 **LEGAL BASIS UPON WHICH RELIEF SHOULD BE GRANTED**

17 **COUNT ONE – FRAUD, MISREPRESENTATIONS AND OMISSIONS**

18 45. Answering Paragraph 45 of Plaintiff's Complaint, Defendants repeat and incorporate
19 their answers to paragraphs 1 through 44, as though fully set forth herein by this reference.
20

21 46. Answering Paragraph 46 of Plaintiff's Complaint, Defendants deny each and every
22 allegation made against them, and are without sufficient knowledge or information upon which to
23 base a belief as to the truth of the allegations made against others, and therefore, deny each and every
24 allegation contained therein.

25 47. Answering Paragraph 47 of Plaintiff's Complaint, Defendants deny each and every
26 allegation made against them, and are without sufficient knowledge or information upon which to
27 base a belief as to the truth of the allegations made against others, and therefore, deny each and every
28 allegation contained therein.

1 48. Paragraph 48 contains conclusions of law to which no answer is required, to the extent
2 any answer is required, Defendants hereby deny the allegations contained therein.

3 49. Paragraph 49 contains conclusions of law to which no answer is required, to the extent
4 any answer is required, Defendants hereby deny the allegations contained therein.

5 50. Answering Paragraph 50 of Plaintiff's Complaint, Defendants state they are without
6 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
7 made against others, and therefore, deny each and every allegation contained therein.

8
9 **COUNT TWO – VIOLATION OF NEVADA UNIFORM SECURITIES ACT §§ NRS**

10 **90.310, 90.460 and 90.660**

11
12 51. Answering Paragraph 51 of Plaintiff's Complaint, Defendants repeat and incorporate
13 their answers to paragraphs 1 through 50, as though fully set forth herein by this reference.

14 52. Answering Paragraph 52 of Plaintiff's Complaint, Defendants deny each and every
15 allegation made against them, and are without sufficient knowledge or information upon which to
16 base a belief as to the truth of the remaining allegations made against others, and therefore, deny
17 each and every allegation contained therein.

18
19 53. Answering Paragraph 53 of Plaintiff's Complaint, Defendants state that they are
20 without sufficient knowledge or information upon which to base a belief as to the truth of the
21 allegations made against others, and therefore, deny each and every allegation contained therein.

22 54. Paragraph 54 contains conclusions of law to which no answer is required, to the extent
23 any answer is required, Defendant s hereby deny the allegations contained therein.

24 55. Paragraph 55 contains conclusions of law to which no answer is required, to the extent
25 any answer is required, Defendant s hereby deny the allegations contained therein.

26
27 56. Answering Paragraph 56 of Plaintiff's Compliant, Defendants admit they were not
28 licensed to sell securities, and deny they were not exempt from licensing.

1 57. Answering Paragraph 57 of Plaintiff's Complaint, Defendants deny each and every
2 allegation made against them, and are without sufficient knowledge or information upon which to
3 base a belief as to the truth of the remaining allegations made against others, and therefore, deny
4 each and every allegation contained therein.
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6 58. Answering Paragraph 58 of Plaintiff's Complaint, Defendants state they are without
7 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
8 made against others, and therefore, deny each and every allegation contained therein.
9

10 **COUNT THREE – VIOLATION OF NEVADA UNIFORM SECURITIES ACT §§**

11 **NRS 90.570 and 90.660**

12 59. Answering Paragraph 59 of Plaintiff's Complaint, Defendants repeat and incorporate
13 their answers to paragraphs 1 through 58, as though fully set forth herein by this reference.
14

15 60. Answering Paragraph 60 of Plaintiff's Complaint, Defendants deny each and every
16 allegation made against them, and are without sufficient knowledge or information upon which to
17 base a belief as to the truth of the remaining allegations made against others, and therefore, deny
18 each and every allegation contained therein.

19 61. Answering Paragraph 61 of Plaintiff's Complaint, Defendants deny each and every
20 allegation made against them, and are without sufficient knowledge or information upon which to
21 base a belief as to the truth of the remaining allegations made against others, and therefore, deny
22 each and every allegation contained therein.
23

24 62. Answering Paragraph 62 of Plaintiff's Complaint, Defendants state they are without
25 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
26 made against others, and therefore, deny each and every allegation contained therein.
27

28 63. Answering Paragraph 63 of Plaintiff's Complaint, Defendants deny each and every
allegation made against them, and are without sufficient knowledge or information upon which to

1 base a belief as to the truth of the remaining allegations made against others, and therefore, deny
2 each and every allegation contained therein.

3 64. Answering Paragraph 64 of Plaintiff's Complaint, Defendants deny each and every
4 allegation made against them, and are without sufficient knowledge or information upon which to
5 base a belief as to the truth of the remaining allegations made against others, and therefore, deny
6 each and every allegation contained therein.

7
8 65. Answering Paragraph 65 of Plaintiff's Complaint, Defendants deny each and every
9 allegation made against them, and are without sufficient knowledge or information upon which to
10 base a belief as to the truth of the remaining allegations made against others, and therefore, deny
11 each and every allegation contained therein.

12
13 66. Paragraph 66 contains conclusions of law to which no answer is required, to the
14 extent any answer is required, Defendants hereby deny the allegations contained therein.

15
16 67. Answering Paragraph 67 of Plaintiff's Complaint, Defendants state they are without
17 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
18 made against others, and therefore, deny each and every allegation contained therein.

19 **COUNT FOUR – BREACH OF WRITTEN CONTRACT**

20 68. Answering Paragraph 68 of Plaintiff's Complaint, Defendants repeat and incorporate
21 their answers to paragraphs 1 through 67, as though fully set forth herein by this reference.

22
23 69. Answering Paragraph 69 of Plaintiff's Complaint, Defendants state they are without
24 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
25 made against others, and therefore, deny each and every allegation contained therein.

26 70. Answering Paragraph 70 of Plaintiff's Complaint, Defendants state they are without
27 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
28

1 made against others, and therefore, deny each and every allegation contained therein.

2 71. Answering Paragraph 71 of Plaintiff's Complaint, Defendants state they are without
3 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
4 made against others, and therefore, deny each and every allegation contained therein.
5

6 72. Answering Paragraph 72 of Plaintiff's Complaint, Defendants state they are without
7 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
8 made against others, and therefore, deny each and every allegation contained therein.
9

10 73. Answering Paragraph 73 of Plaintiff's Complaint, Defendants state they are without
11 sufficient knowledge or information upon which to base a belief as to the truth of the allegations
12 made against others, and therefore, deny each and every allegation contained therein.

13 74. Answering Paragraph 74 of Plaintiff's Complaint, Defendants deny each and every
14 allegation made against them, and are without sufficient knowledge or information upon which to
15 base a belief as to the truth of the remaining allegations made against others, and therefore, deny
16 each and every allegation contained therein.
17

18 **AFFIRMATIVE DEFENSES**

19 **FIRST AFFIRMATIVE DEFENSE**

20 Plaintiffs' Complaint fails to state any claim against the answering Defendants upon which
21 relief can be granted.
22

23 **SECOND AFFIRMATIVE DEFENSE**

24 These answering Defendants assert that they have performed no act or omission relevant to
25 the subject matter of the Complaint that would impose upon them any liability to Plaintiff.
26

27 **THIRD AFFIRMATIVE DEFENSE**

28 These answering Defendants are privileged to protect their own financial interests.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 These answering Defendants actions in no way caused or contributed to Plaintiff's injuries,
3 if any.
4

5 **FIFTH AFFIRMATIVE DEFENSE**

6 Damages, if any, suffered by Plaintiff were caused in whole or in part, or were contributed
7 to reason of Plaintiff's acts and/or Plaintiff's failure to perform in all respects as contemplated by
8 the parties herein.
9

10 **SIXTH AFFIRMATIVE DEFENSE**

11 By his own acts, Plaintiff has waived whatever right he may otherwise have to relief from
12 these answering Defendants.
13

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 Plaintiffs damages, if any, are limited by the economic loss rule.
16

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 Plaintiffs acts, omissions and damages of which he complains resulted from his own
19 negligent and/or intentional conduct or illegal actions.
20

21 **NINTH AFFIRMATIVE DEFENSE**

22 The claims are barred by virtue of an efficient intervening and superseding cause.
23

24 **TENTH AFFIRMATIVE DEFENSE**

25 All or part of the alleged securities improperly issued as alleged by Plaintiff arose by virtue
26 of Plaintiff's own instance and acts and not at any of these answering Defendants instance or acts
27 and Plaintiff is therefore estopped to demand damages from either of these answering Defendants
28 for damages purportedly arising thereby.

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 Plaintiff's alleged dealings as alleged in the contract/subscription agreement, if any, exists
3 by and between Plaintiff and VCC and neither of these answering Defendants is a party to or a
4 personal guarantor of any such contract and Plaintiff, is therefore not in privity with these answering
5 Defendants and may not assert a claim against these answering Defendants for any alleged harm set
6 forth by Plaintiff's Complaint.
7

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 Defendant STOLL was merely an employee of Defendant RETIRE HAPPY, LLC, all acts
10 done by STOLL in any regard were done in such capacity only and therefore, STOLL has no
11 individual personal responsibility to Plaintiff for any such activity.
12

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 Any and all acts and activities of STOLL alleged by Plaintiff to be an employee of RETIRE
15 HAPPY, LLC., were undertaken by STOLL in accordance with the best business judgment rule.
16

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiff is estopped to assert any rights under the contracts alleged in the Complaint by virtue
19 of his own acts or omissions on which these answering Defendants relied.
20

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 These answering Defendants allege that the occurrences referred to in Plaintiff's Complaint,
23 and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a
24 third party over whom these answering Defendants had no control, including fraudulent and illegal
25 actions of others.
26

27 **SIXTEENTH AFFIRMATIVE DEFENSE**

28 All risks and dangers involved in the factual situation described in Plaintiffs' Complaint were
open, obvious and known to Plaintiff.

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiff, with full knowledge of all the facts connected with or relating to the transaction
3 alleged in the Complaint, ratified and confirmed in all respects the acts of these answering
4 Defendants by accepting the benefits to Plaintiff accruing from such acts.
5

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7 These answering Defendants allege that the injuries complained of in Plaintiff's Complaint,
8 if any, were not the result of the willful misconduct, gross negligence, or unreasonable commercial
9 conduct of these answering Defendants.
10

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 Neither of these answering Defendants committed any acts of misrepresentations, omissions,
13 fraud or malice, express or implied.
14

15 **TWENTIETH AFFIRMATIVE DEFENSE**

16 Defendants VCC and ROBINSON drafted the agreement placed in issue and are therefore
17 responsible for any and all harm arising therefrom, if any.
18

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 These answering Defendants have not violated any provision of NRS 78 et seq, NRS 90.310,
21 NRS 90.460, NRS 90.660, NRS 90.570, or any other provision of the Nevada Uniform Securities
22 Act.
23

24 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

25 Plaintiff waived his rights under the contracts alleged in the Complaint by intentionally and
26 knowingly waiving rights known to him.
27

28 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

 Plaintiff assumed the risk of any and all alleged losses.

1 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

2 Any and all transaction that were negotiated between Plaintiff and these answering
3 Defendants were done at arm's length, in good faith, and with the ability to seek legal counsel.
4

5 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

6 Plaintiff has failed to mitigate his damages.

7 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

8 Plaintiff, with knowledge of the facts connected with or relating to the transactions and
9 occurrences alleged in the Complaint, ratified and confirmed the actions of these answering
10 Defendants.
11

12 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

13 There was no legal consideration whatsoever for the damages to which the Plaintiff now
14 claims is due from these answering Defendants.
15

16 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

17 Plaintiff has not stated, or has misstated the agreement, between Plaintiff and these answering
18 Defendants, if any, and as a result. the Complaint is without merit and must be dismissed as to these
19 answering Defendants.
20

21 **RULE 8 STATEMENT**

22 These answering Defendants incorporate by this reference those Affirmative Defenses
23 enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. If further
24 investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right
25 to seek leave of this Court to amend this Answer to Plaintiff's Complaint to specifically assert any
26 such defense. Such defenses are herein incorporated by this reference for the specific purpose of not
27 waiving any such defenses.
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RULE 11 STATEMENT

Pursuant to Rule 11 of the Nevada Rules of Civil Procedure, all possible affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer and, therefore, Defendants JULIE MINUSKIN and RETIRE HAPPY, LLC reserve the right to amend this Answer to alleged additional affirmative defenses if subsequent investigation warrants.

ATTORNEY FEES

Defendants JOSH STOLL and RETIRE HAPPY, LLC has been forced to retain counsel to defend against Plaintiff's Complaint, and Defendants JOSH STOLL and RETIRE HAPPY, LLC are entitled to an award of reasonable attorney's fees.

WHEREFORE, Defendants RETIRE HAPPY, LLC and JOSH STOLL, pray that Plaintiff's Complaint on file herein be dismissed with prejudice, that Plaintiff be denied all requested relief and take nothing by reason of the Complaint, and that Defendants RETIRE HAPPY, LLC and JOSH STOLL recover from Plaintiff any and all relief this Court deems just and proper.

**CROSSCLAIMS AGAINST VCC and ROBINSON FOR
CONTRIBUTION AND INDEMNITY**

COMES NOW, Defendants/Cross-Claimants, RETIRE HAPPY, LLC, a Nevada Limited Liability Company and JOSH STOLL, an individual, (hereinafter CrossClaimants) , by and through their attorney, T. LOUIS PALAZZO, ESQ., of PALAZZO LAW FIRM and alleges for a Crossclaim against the CrossDefendants, VCC and ROBINSON (hereinafter, CrossDefendants) hereby aver and allege as follows:

1. JOSH STOLL is an individual residing in Clark County, Nevada.
2. RETIRE HAPPY, LLC is a limited liability company organized pursuant to the laws of the State of Nevada, is qualified to conduct business in Clark County, Nevada, and conducts

1 business in Clark County, Nevada.

2 4. At all times relevant herein, Defendant/Cross Defendant VIRTUAL
3 COMMUNICATIONS CORPORATION (“VCC”) was a Nevada corporation doing business in
4 Clark County, Nevada.
5

6 5. At all times relevant herein, Defendant/Cross Defendant RONALD J. ROBINSON
7 (“Mr. Robinson”) was, on information and belief, a resident of Nevada, and doing business through
8 VCC in Nevada.
9

10 6. That Crossclaimants have been sued by Plaintiff in the above referenced action for
11 losses and damages sustained in connection with financial transactions that occurred on September
12 23, 2013.

13 6. Neither STOLL nor RETIRE HAPPY, LLC are in privity to the contracts complained
14 of herein.
15

16 7. STOLL and RETIRE HAPPY, LLC alleges CrossDefendants are liable for any
17 injuries or damages allegedly sustained by Plaintiff as a result of their conduct as alleged in
18 Plaintiff's Complaint.

19 8. STOLL and RETIRE HAPPY, LLC alleges that in the event that it is found to be
20 liable to Plaintiff, or any other party for damages, or if payment is made by them to any other party
21 as a result of the incidents and occurrences described in the Plaintiff's Complaint, then the liability
22 of or payment by STOLL and/or RETIRE HAPPY, LLC is based upon an obligation imposed by law
23 and not based upon the acts or omissions of STOLL and/or RETIRE HAPPY, LLC but is based upon
24 the acts or omissions of the CrossDefendants, including, without limitation, the alleged conduct as
25 more fully set forth in Plaintiff's Complaint and STOLL and RETIRE HAPPY, LLC therefore,
26 alleges that they are entitled to be indemnified, equitably or expressly, by said Cross- Defendants for
27
28

1 any liability they may incur toward, may have paid, or may be required to pay to Plaintiff or any
2 other party.

3 9. STOLL and RETIRE HAPPY, LLC alleges that in the event they are found to be
4 liable to Plaintiff or any other party for damages, or if payment is made by them to Plaintiff or to
5 any other party as a result of the incident or occurrence described in Plaintiff's Complaint, then their
6 liability for payment is based upon the acts and/or omissions of CrossDefendants and they therefore,
7 allege that if they are required to pay damages or other sums to Plaintiff, or any other party,
8 CrossDefendants are liable for said judgment or payment and CrossClaimants are entitled to
9 contribution from said CrossDefendants; STOLL and RETIRE HAPPY, LLC requests that theories
10 of contribution applicable to joint tortfeasors be applied in order that no party is called upon to bear
11 more than its proportional share of liability and damages.
12

13
14 WHEREFORE, CrossClaimants pray for judgment as follows:

15 1. That JOSH STOLL and RETIRE HAPPY, LLC be awarded judgment against
16 CrossDefendant on CrossClaimant's Crossclaim for contribution and/or indemnification in an
17 amount to be determined at the time of trial;
18

19 2. For costs of suit incurred herein, attorneys' fees and for such other and further relief as the
20 Court deems just and proper under the circumstances.
21

22 Dated this 29th day of January, 2018

23 PALAZZO LAW FIRM
24 A PROFESSIONAL LAW CORPORATION

25 /s/ T. Louis Palazzo
26 _____
27 T. LOUIS PALAZZO, ESQUIRE
28 Nevada Bar No. 4128
 520 South Fourth Street, Second Floor
 Las Vegas, Nevada 89101
 Attorney for Defendants,
 JOSH STOLL and RETIRE HAPPY, LLC .

1 **CERTIFICATE OF SERVICE**

2 Pursuant of NRCP 5(b), I hereby certify that I am an employee of PALAZZO LAW FIRM,
3 P.C., and that on the 5th day of February, 2018, I served a true and correct copy of the foregoing
4 document by:

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

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

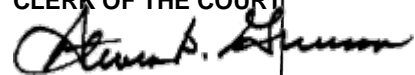
9 ☐ Courtesy copy by facsimile on the parties in said action by causing a true copy
10 thereof to be telecopied to the number indicated after the address(es) noted below.

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

12 ☐ Federal Express or other overnight delivery addressed as follows:

13 David Liebrader, Esq.
14 THE LAW OFFICES OF DAVID LIEBRADER, INC.
15 601 South Rancho Drive, Ste. D-29
16 Las Vegas, NV 89106

17 /s/Celina Moore
18 An employee of PALAZZO LAW FIRM
19
20
21
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25
26
27
28



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

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

10 IN THE MATTER BETWEEN,

Case No. A-17-762264-C

11 Steven A. Hotchkiss,

Dept. 9

12 Plaintiff,

13 vs.

14
15 Ronald J. Robinson, Vernon Rodriquez,
16 Virtual Communications Corporation,
17 Wintech, LLC, Retire Happy, LLC, Josh
18 Stoll, Frank Yoder, Alisa Davis and DOES 1-
19 10 and ROES 1-10, inclusively,

20 Defendants.

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

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

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

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

7 DATED this 18th day of May, 2019.

8
9 
DISTRICT COURT JUDGE

10 Respectfully Submitted:

11 PALAZZO LAW FIRM, P.C.

12 
13 T. LOUIS PALAZZO, ESQ.

14 Nevada Bar Number 4128

15 *Attorney for Defendants,*

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

17 Reviewed and approved as to form and content:

18
19
20 HAROLD P. GEWERTER, ESQ.

21 Nevada Bar Number 499

22 *Attorney for Defendants,*

23 **RONALD ROBINSON,**

24 **VIRTUAL COMMUNICATIONS CORP.,**

25 **VERNON RODRIGUEZ, WINTech, LLC.,**

26 **FRANK YODER, AND ALISA DAVIS**

27 
28 DAVID LIEBRADER, ESQ.

Nevada Bar Number 5048

Attorney for Plaintiff

STEVEN A. HOTCHKISS

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

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

DATED this _____ day of April, 2019.

DISTRICT COURT JUDGE

Respectfully Submitted:

PALAZZO LAW FIRM, P.C.

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

Reviewed and approved as to form and content:

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

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

1 **CERTIFICATE OF SERVICE**

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

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

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

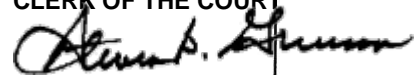
8 ☐ Courtesy copy by facsimile on the parties in said action by causing a true copy thereof
9 to be telecopied to the number indicated after the address(es) noted below.

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

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

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

19 /s/Celina Moore
20 An employee of PALAZZO LAW FIRM



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

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

IN THE MATTER BETWEEN,

Case No. A-17-762264-C

Steven A. Hotchkiss,

Dept. 9

Plaintiff,

NOTICE OF ENTRY OF ORDER

vs.

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

Defendants.

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

DATED this 20th day of May, 2019.

/s/ T. Louis Palazzo

T. LOUIS PALAZZO, ESQUIRE

Nevada Bar No. 4128

520 South Fourth Street, Second Floor

Las Vegas, Nevada 89101

Attorney for Defendants,

JOSH STOLL and RETIRE HAPPY, LLC.

1 **CERTIFICATE OF SERVICE**

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

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7 envelope in a designated area for outgoing mail, addressed as set forth below.

8 [] Personal delivery by causing a true copy thereof to be hand delivered this date to the
9 address(es) at the address(es) set forth below.
10

11 [] Courtesy copy by facsimile on the parties in said action by causing a true copy thereof
12 to be telecopied to the number indicated after the address(es) noted below.

13 [X] Electronically through the Eighth Judicial District Court electronic filing system.

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

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

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

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DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN,

Case No. A-17-762264-C

Steven A. Hotchkiss,

Dept. 9

Plaintiff,

vs.

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

Defendants.

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

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

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

DISTRICT COURT JUDGE

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

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

2

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

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

DATED this _____ day of April, 2019.

DISTRICT COURT JUDGE

Respectfully Submitted:

PALAZZO LAW FIRM, P.C.

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

Reviewed and approved as to form and content:

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

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

1 CERTIFICATE OF SERVICE

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

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

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

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10 to be telecopied to the number indicated after the address(es) noted below.

11 [X] Electronically through the Eighth Judicial District Court electronic filing system.
12

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

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

19 /s/Celina Moore
20 An employee of PALAZZO LAW FIRM
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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 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, CONCLUCIONS 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.

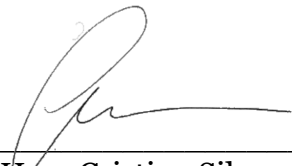
12 Because Plaintiffs prevailed on both their breach of contract claim and
13 securities law claim against Defendant Ronald Robinson, Plaintiffs are entitled to
14 damages and attorney's fees on both claims. The contract underlying the breach of
15 contract claim provides for an award of attorney's fees, 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
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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
10 District Court Judge
D4B 26A F3E2 9C07
Cristina D. Silva
District Court Judge

EC

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

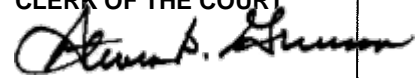
DaveL@investmentloss.com

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 Plaintiffs

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

) Case No. A-17-762264-C

) Dept.: 9

) NOTICE OF ENTRY OF ORDER

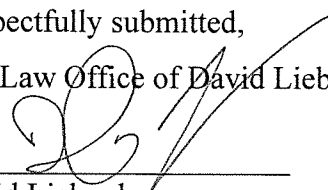
) CONSOLIDATED WITH

) Case No. A-17-763003-C

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

5 DISTRICT COURT
CLARK COUNTY, NEVADA

6
7 IN THE MATTER BETWEEN)

8 Steven A. Hotchkiss,)

9 PLAINTIFF,)

10 v.)

11 Ronald J. Robinson, Vernon Rodriguez, Frank
Yoder, Alisa Davis and DOES 1-10 and ROES 1-
12 10, inclusively)

13 DEFENDANTS)

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

16 PLAINTIFFS)

17 v.)

18 Ronald J. Robinson, Vernon Rodriguez, Virtual
19 Communications Corporation, Frank Yoder, Alisa
Davis and DOES 1-10 and ROES 1-10, inclusively)

20 DEFENDANTS)

21
22 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

23 Plaintiffs' Motion for Damages and Attorney's Fees came on for Decision by
24 the Court on its June 8, 2020 Chamber's Calendar. The Court considered Plaintiffs'
25
26

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.

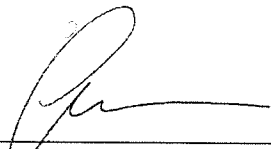
12 Because Plaintiffs prevailed on both their breach of contract claim and
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14 damages and attorney's fees on both claims. The contract underlying the breach of
15 contract claim provides for an award of attorney's fees, while NRS §90.660 provides
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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
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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 
10 Hon. Cristina Silva
District Court Judge
D4B 26A F3E2 9C07
Cristina D. Silva
District Court Judge

EC

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

2
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 |
| 17 T. Louis Palazzo, Esq. | louis@palazzolawfirm.com |
| 18 Celina Moore | celina@palazzolawfirm.com |
| 19 Miriam Roberts | miriam@palazzolawfirm.com |
| 20 David Liebrader, Esq. | dliebrader@gmail.com |
| 21 David Liebrader | DaveL@investmentloss.com |
| 22 Vernon Rodriquez | harold@gewerterlaw.com |
| 23 Scott Fleming | scott@fleminglawlv.com |

24
25
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27
28

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
9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 IN THE MATTER BETWEEN) Case No. A-17-762264-C
13)
14 Steven A. Hotchkiss,) Dept.: ~~8~~ IX
15)
16 PLAINTIFF,)
17 v.) CONSOLIDATED WITH
18)
19 Ronald J. Robinson, Vernon Rodriguez, Frank) Case No. A-17-763003-C
20 Yoder, Alisa Davis and DOES 1-10 and ROES 1-
21 10, inclusively)

22 **JUDGMENT**

23 DEFENDANTS)
24)
25 Anthony White, Robin Suntheimer, Troy)
26 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)
)

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
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 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.

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20 David Liebrader

DaveL@investmentloss.com

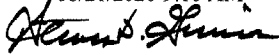
21 Vernon Rodriquez

harold@gewerterlaw.com

22 Scott Fleming

scott@fleminglawlv.com

23
24
25
26
27
28


CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

7 IN THE MATTER BETWEEN) Case No. A-17-762264-C
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9 PLAINTIFF,)
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16 PLAINTIFFS,)

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20 DEFENDANTS)

JUDGMENT

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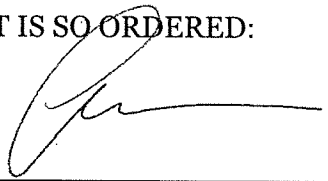
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17 Dated this 21st day of August, 2020

18 IT IS SO ORDERED:

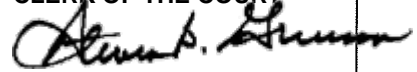
19 Dated this _____th day of August, 2020



Hon. Cristina Silva
District Court Judge
Cristina D. Silva
District Court Judge

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

EC



DAVID LIEBRADER, ESQ.
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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 |) | |
| |) | |
| DEFENDANTS |) | CONSOLIDATED WITH |
| |) | |
| Anthony White, Robin Suntheimer, Troy |) | Case No. A-17-763003-C |
| Suntheimer, Stephens Ghesquiere, Jackie Stone, |) | |
| Gayle Chany, Kendall Smith, Gabriele |) | |
| Lavermicocca and Robert Kaiser |) | |
| |) | |
| PLAINTIFFS |) | |
| |) | |
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| 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.

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

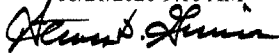
Harold Gewerter, Esq.
Gewerter Law Firm
1212 Casino Center Boulevard
Las Vegas, NV 89104

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”


CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

7 IN THE MATTER BETWEEN) Case No. A-17-762264-C
8 Steven A. Hotchkiss,)
9 PLAINTIFF,) Dept.: ~~8~~ IX
10 v.) CONSOLIDATED WITH
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JUDGMENT

21 JUDGMENT

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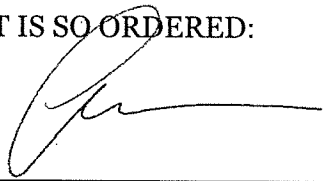
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17 Dated this 21st day of August, 2020

18 IT IS SO ORDERED:

19 Dated this _____th day of August, 2020



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

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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: 8/21/2020

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17 Celina Moore

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18 Miriam Roberts

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19 David Liebrader, Esq.

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20 David Liebrader

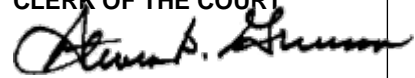
DaveL@investmentloss.com

21 Vernon Rodriquez

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22 Scott Fleming

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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

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”).¹ 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.²

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 ...
24

25 ¹ 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 ² 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”).³

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

³ 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.⁴

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:

⁴ 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 ...

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

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

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

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

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

1. VCC sold unregistered nonexempt securities.

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

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

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

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
received post trial briefs on this issue, and relying on the reasoning
set forth in Donnell v. Perpetual Investments, Inc. (USDC Nevada,
13 case 2:04-cv-01172, Decision issued 10/11/06) and Marc Nelson Oil
14 Prods. V. Grim Logging Co., 110 P.3d 120 (Or. App. 2005) fins [sic]
that the ***VCC bankruptcy did not extinguish Mr. Robinson's***
15 ***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***
20 ***personal liability under the Notes. As a result, the Court finds***
21 ***such conduct serves as a defacto consent to the modification,***
22 ***which also did not increase Mr. Robinson's risk under the Note***
23 ***terms.***

24 As a result of the sale of unregistered securities under NRS§
25 90.460, the Court finds control persons Robinson and Rodriguez
26 liable for the sale of unregistered securities and finds that Plaintiffs
27 are entitled to damages under NRS§ 90.660.

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

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

In sum, the Court issued extensive findings and conclusions regarding the effect of the
VCC bankruptcy case on Mr. Robinson. No findings or conclusions were ever offered, however,
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

respectfully requests that the Court address that omission.

LEGAL AUTHORITIES AND ANALYSIS

A. Standards for Issuance of Amended or Additional Findings of Fact and Amendment of a Judgment

Nev. R. Civ. P. 52(a) requires that a District Court enter findings of fact and conclusions of law in all actions “tried upon the facts” by the court, either by stating such findings on the record or in a written memorandum or decision:

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

(a) Findings and Conclusions.

(1) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58. . .

Specific findings of fact need not be made if at the time judgment is entered, the facts are not at issue. *Britz v. Consol. Casinos Corp.*, 87 Nev. 441, 447, 488 P.2d 911, 916 (1971). The findings, however, must be sufficient to indicate the factual bases for the Court’s ultimate decision. *Bing Constr. Co. v. Vasey-Scott Eng’g Co.*, 100 Nev. 72, 73, 674 P.2d 1107, 1107 (1984). In the absence of express findings, an appellate court will imply findings when the evidence clearly supports the judgment. *Obstetrics and Gynecologists v. Pepper*, 101 Nev. 105, 107, 693 P.2d 1259, 1261 (1985); *Gorden v. Gorden*, 93 Nev. 494, 496, 569 P.2d 397, 398 (1977) (*citing Hardy v. First Nat’l Bank of Nev.*, 86 Nev. 921, 478 P.2d 581 (1970)). When the record is not clear, however, an appellate court “will not imply findings to support the judgment” but will instead “remand the matter to the district court to set forth the basis for its award.” *Commercial Cabinet Co. v. Mort Wallin of Lake Tahoe, Inc.*, 103 Nev. 238, 240, 737 P.2d 515, 517 (1987) (*citing Bing Constr. Co. v. Vasey-Scott Eng’g Co.*, 100 Nev. 72, 73, 674 P.2d 1107 (1984)). If the district court 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)).

Nev. R. Civ. P. 52(b) provides that a Court may, within twenty-eight days following entry of a judgment, offer additional or amended findings of fact, and may amend a judgment accordingly:

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

...

(b) **Amended or Additional Findings.** On a party's motion filed no later than 28 days after service of written notice of entry of 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.

Rule 52(b) is an important remedy, given the common practice of the prevailing party preparing and submitting proposed findings of fact and conclusions of law for the court. *See Foley v. Morse & Mowbray*, 109 Nev. 116, 123-24, 848 P.2d 519, 524 (1993); *Byford v. State*, 123 Nev. 67, 156 P.3d 691, 692 (2007). A Rule 52(b) motion may also be used to suggest and/or request clarification on the record of the basis for the District Court's decision. *See Bing Constr. Co. v. Vasey-Scott Eng'g Co.*, 100 Nev. 72, 73, 674 P.2d 1107, 1107 (1984).

B. Mr. Rodriguez Requests Additional Findings of Fact Regarding the VCC Chapter 11 Bankruptcy Case

There are three key documents that include significant rulings by the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court"), all of which were attached as Exhibits to the *Opposition by Defendant Vernon Rodriguez to Plaintiff's Motion for Damages and Attorneys' Fees dated May 21, 2020*. No objections were made by any party regarding the accuracy, completeness, or authenticity of those documents. For the convenience of the Court, the same documents have been reproduced again and attached as Exhibits to the *Request by Defendant Vernon Rodriguez for Judicial Notice in Support of Post-Trial Motions* (the "RFJN") filed contemporaneously with this Motion.

...

...

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.

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

22 **3. Requested Finding No. 3: VCC’s Chapter 11 Plan is Binding on All Parties**

23 Mr. Rodriguez requests a finding by this Court that VCC’s Chapter 11 plan of
24 reorganization is binding upon all parties, regardless of whether they voted in favor of the plan.
25 The support for that finding appears in the Confirmation Order, which provides:

26 ...

27 ...

28 ...

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.

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

4. Requested Finding No. 4: VCC's Chapter 11 Plan Cancelled All Promissory Notes and Issued Common and Preferred Stock

Mr. Rodriguez requests a finding by this Court that VCC's Chapter 11 plan of reorganization cancelled all promissory notes, including those held by the Plaintiffs in these consolidated cases, and provided for the issuance of common and preferred stock.

The support for this finding consists of the *First Amended Chapter 11 Plan of Reorganization for Virtual Communications Corporation* [ECF No. 38] (the "Plan") filed on June 13, 2018 (and approved by the Bankruptcy Court pursuant to the Confirmation Order). A true and correct copy of the Plan was attached to the RFJN as **Exhibit 3**.

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

3. Class 3 – Unsecured Promissory Notes.

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

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)

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) enforcing, attaching, collecting, or recovering in any manner any judgment, award, 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 violator.

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. Requested Finding No. 8: Plaintiffs Acquired Interests in VCC Promissory Notes Between January 2013 and December 2014

Mr. Rodriguez requests a finding by this Court that Plaintiffs in this action acquired interests in VCC promissory notes between January 2013 and December 2014. The support for that finding consists of the *Statement of Damages* submitted by Plaintiffs on February 3, 2020. That document includes on page 2 a chart listing (among other things) the names of each Plaintiff, 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 |

D. Mr. Rodriguez Requests That the Judgment Be Amended To Conform With These Additional Findings of Fact

1. Amendment of the Judgment to Reflect Proceedings in the VCC Bankruptcy Case

a. There is No Primary Obligor For Which Mr. Rodriguez Can Hold Secondary Liability as a “Control Person”

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

amount for which it was later sold, plus interest, fees, and costs:

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.]

Under subsection (4), liability can also attach to certain secondary "control" parties. The Honorable Philip M. Pro has recognized the distinction between a *primary* violator under Subsection (1) and a secondary party under Subsection (4). *See Baroi v. Platinum Condo. Dev., LLC*, 914 F.Supp.2d 1179, 1200-01 (D. Nev. 2012) ("Pursuant to Nevada Revised Statutes § 90.660(4), a person who 'directly or indirectly controls' a *primary* violator of Nevada securities law is jointly and severally liable for the securities violation. . .") [emphasis added]; *see also Tsutsumi v. Advanced Power Techs., Inc.*, Case No. 2:12-cv-01784-MMD-VCF at *7 (D. Nev. January 24, 2014) (complaint failed to meet pleading requirements of Fed. R. Civ. P. 9(b) where 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

secondary party can only responsible for damages “with and to the same extent as the other person” (i.e., the original issuer):

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*, 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.

[Emphasis added.]

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

b. There is No Evidence Regarding the Value Received by Plaintiffs in the VCC Debt for Equity Swap and as a Result Any Award of Damages Against Mr. Rodriguez Would be Speculative

Even in the absence of a permanent Federal injunction prohibiting further claims against VCC, there is no evidentiary basis on which damages could be calculated. As noted above, damages recoverable under Nev. Rev. Stat. 90.660(1) can only consist of (i) the amount paid for the security, less amounts received, or (ii) the difference between the amount paid and the amount for which it was later sold, plus fees and cost. The Bankruptcy Case involved a debt for equity swap. That scenario is simply not contemplated by Chapter 90. Moreover, even if the Court were 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.

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

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

Viewing the evidence in the light most favorable to Plaintiffs, no genuine issue of material fact remains that Plaintiffs’ claims in count fifteen are untimely. Plaintiffs knew all facts giving 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) (“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 16th day of September, 2020.

15 FLEMING LAW FIRM, PLLC

16 By /s/ Scott D. Fleming
17 SCOTT D. FLEMING, ESQ.
18 Nevada Bar No. 5638
19 9525 Hillwood Drive
20 Suite 140
21 Las Vegas, Nevada 89134
22 *Attorney for Vernon Rodriguez*
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

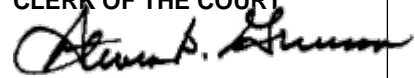
2 I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 16th day
3 of September, 2020, I caused to be served a true and correct copy of foregoing **FIRST POST-**
4 **JUDGMENT MOTION BY DEFENDANT VERNON RODRIGUEZ FOR ADDITIONAL**
5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT**
6 **PURSUANT TO NEV. R. CIV. P. 52(B), OR IN THE ALTERNATIVE, FOR FURTHER**
7 **ACTION AFTER A NONJURY TRIAL PURSUANT TO NEV. R. CIV. P. 59(B)** in the
8 following manner:

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

13 HAROLD P. GEWERTER, ESQ.
14 Nevada Bar No. 499
15 1212 South Casino Center Boulevard
16 Las Vegas, Nevada 89101
17 *Attorney for Vernon Rodriguez*

18 DAVID LIEBRADER, ESQ.
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23 *Attorney for Plaintiffs*

24 By /s/ Scott D. Fleming
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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

**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

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

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”).¹ 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 ¹ 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.

requests that the Court refer to that factual statement, which he incorporates by reference.

LEGAL AUTHORITIES AND ANALYSIS

A. Standards for Relief Under Nev. R. Civ. P. 59

1. Nevada Authority

Nev. R. Civ. P. 59 provides that a Court may, upon motion, grant a new trial if any of six (6) circumstances are met. Alternatively, a Court may open a judgment and take additional testimony, amend findings and conclusions, and direct the entry of a new judgment:

Rule 59. New Trials; Amendment of Judgments

(a) In General.

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues — and to any party — for any of the following causes or grounds materially affecting the substantial rights of the moving party:

(A) irregularity in the proceedings of the court, jury, master, or adverse party or in any order of the court or master, or any abuse of discretion by which either party was prevented from having a fair trial;

(B) misconduct of the jury or prevailing party;

(C) accident or surprise that ordinary prudence could not have guarded against;

(D) newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial;

(E) manifest disregard by the jury of the instructions of the court;

(F) excessive damages appearing to have been given under the influence of passion or prejudice; or

(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)).

...

...

2. **Conflict of Interest as a Basis for a New Trial**

It does not appear that the Nevada Supreme Court has ever considered a motion pursuant to Nev. R. Civ. P. 59(a) for a new trial, or for further action following a non-jury trial, based on irregularities in a proceeding caused by an attorney conflict of interest. That precise issue, however, was addressed by the Second Circuit Court of Appeals in *Dunton v. Suffolk County, State of N.Y.*, 729 F.2d 903 (2nd Cir. 1984), the facts of which were summarized as follows:

Defendant-appellant Angela Pfeiffer attended a retirement party for a fellow employee on the evening of May 20, 1981. As the party broke up, plaintiff-appellee Emerson Dunton, Jr., a co-worker and attendee, accompanied Ms. Pfeiffer to her car. The accounts of the subsequent events differ; Ms. Pfeiffer claims that Dunton began making improper advances while they were seated in her car, while Dunton asserts that Ms. Pfeiffer willingly participated in the maneuvers. Defendant-appellant Robert Pfeiffer, Angela's husband and also a Suffolk County police officer, came upon the scene in his patrol car, threw Dunton out of Ms. Pfeiffer's car, struck him repeatedly and left him lying in the parking lot. Dunton suffered non-disabling and non-permanent injuries from the incident.

Id. at 905.

Shortly after the encounter, Dunton commenced an action against Suffolk County, the Suffolk County Police Department and the Pfeiffers seeking \$100 million in compensatory and punitive damages. A jury returned a \$20,000 verdict against Robert Pfeiffer for battery and held Angela Pfeiffer for \$25,000 for malicious prosecution. *Id.* at 906.

The Pfeiffers argued that the Suffolk County Attorney suffered from a conflict of interest based on his concurrent representation of all defendants. Specifically, the Officer Pfeiffer claimed that it was in his interest to assert immunity from Section 1983 based on good faith actions within the scope of his employment. He alleged that the attorney undermined his good faith immunity defense by repeatedly stating that Pfeiffer acted not as a police officer, but as an "irate husband," in an effort to shield the County from liability. *Id.* at 907. The district court acknowledged that there was a conflict in Pfeiffer's representation but denied the motion for a new trial in the belief that the conflict was not prejudicial. *Id.* at 909. The Second Circuit reversed, holding that Office Pfeiffer had not received a fair trial because the conflict of interest prevented him from asserting a good faith immunity defense. *Id.* The Appellate Court vacated the judgment against Officer

Pfeiffer and orders dismissing Suffolk County and the Suffolk County Police Department and remanded the case for a new trial. *Id.* at 910.

The very same issue raised in *Dunton* is present in this case.

B. The Concurrent Representation of Mr. Robinson and Mr. Rodriguez by Harold P. Gewerter, Esq. Presented an Actual Conflict of Interest

Nevada's Rules of Professional Conduct prohibit concurrent representation of multiple clients where the clients will be directly adverse to one another, or where the lawyer's representation will be materially limited:

Rule 1.7. Conflict of Interest: Current Clients.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(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.

...

In this instance, an actual conflict of interest existed by virtue of statutory defenses under Nev. Rev. Stat. 90.660(4).

1. Statutory Defenses for "Control Persons" Under Nev. Rev. Stat. 90.660(4)

Under its adoption of the Uniform Securities Act, Nevada imposes *primary* liability for certain violations, including the issuance of unregistered securities, on the party that "offers or sells" a security:

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. . .

[Emphasis added.]

Under subsection (4), liability can also attach to certain secondary “control” persons, unless one of two statutory defenses exist:

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, 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.

[Emphasis added.]

2. The Court Noted that No Testimony Was Offered Regarding the Nev. Rev. Stat. 90.660(4) Statutory Defenses

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, and while the Court observed that both witnesses claimed to have been acting in good faith, no evidence was offered in support of the two statutory defenses:

If the plaintiff establishes that a defendant is a “controlling person,” then the defendant bears the burden of proving that he “acted in good faith and did not directly or indirectly induce the act 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. While the testimony of Robinson and Rodriguez suggests that they 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.

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.

20 ...

21 ...

22 ...

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 16th 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

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 16th day
3 of September, 2020, I caused to be served a true and correct copy of foregoing **SECOND POST-**
4 **JUDGMENT MOTION BY DEFENDANT VERNON RODRIGUEZ FOR A NEW**
5 **TRIAL, OR IN THE ALTERNATIVE, FURTHER ACTION AFTER A NONJURY**
6 **TRIAL PURSUANT TO NEV. R. CIV. P. 59(A)** in the following manner:

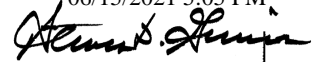
7 (VIA ELECTRONIC SERVICES) The above-referenced documents were electronically
8 filed on the dates listed above and served on May 21, 2020, through the Notice of Electronic Filing
9 automatically generated by the Court's facilities to those parties listed on the Court's Master Service
10 List as follows:

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

14 DAVID LIEBRADER, ESQ.
15 Nevada Bar No. 5048
THE LAW OFFICES OF DAVID LIEBRADER, APC
16 601 S. Rancho Drive, Suite D-29
Las Vegas, Nevada 89106
Attorney for Plaintiffs

17
18
19 By /s/ Scott D. Fleming
20 SCOTT D. FLEMING, ESQ.
Nevada Bar No. 5638
9525 Hillwood Drive
21 Suite 140
Las Vegas, Nevada 89134
22 *Attorney for Vernon Rodriguez*
23
24
25
26
27
28

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


CLERK OF THE COURT

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 Plaintiffs

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN) Case No. A-17-762264-C
11)
12 Steven A. Hotchkiss,) Dept.: 23
13)
14 PLAINTIFF,) OMNIBUS ORDER ON POST
15) JUDGMENT MOTIONS
16)

17 v.)

18 Ronald J. Robinson, Vernon Rodriguez, Frank
19 Yoder, Alisa Davis and DOES 1-10 and ROES 1-
20 10, inclusively)

21 DEFENDANTS)

CONSOLIDATED WITH

Case No. A-17-763003-C

22 Anthony White, Robin Suntheimer, Troy
23 Suntheimer, Stephens Ghesquiere, Jackie Stone,
24 Gayle Chany, Kendall Smith, Gabriele
25 Lavermicocca and Robert Kaiser)

26 PLAINTIFFS)

v.)

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

OMNIBUS ORDER ON POST JUDGMENT MOTIONS

Defendant Rodriguez' three post judgment motions came on for hearing on
March 9, 2021 and April 27, 2021. Appearing for Plaintiffs was David Liebrader;

1 Appearing for Defendant Rodriguez was Scott Fleming; Appearing for Defendant
2 Robinson was Michael Bohn.

3 After considering the motions, oppositions and replies, and argument from
4 counsel, the court rules as follows:

5 A. Post Judgment Motion One: For Additional Findings of Fact

6 This motion is denied.

7 Having reviewed the trial transcript, the Court finds no irregularities, no
8 surprise or new evidence, no manifest disregard of the law, and no errors of law in the
9 record. No objections were made at time of trial on any of the issues raised in the
10 motion. The Court finds that the parties had an opportunity to, and did present
11 testimony without restrictions.

12 In addition, a prior motion for reconsideration filed by Defendant Rodriguez
13 was denied.

14 As a result there is not a sufficient basis to change or amend the findings of
15 facts and conclusions of law, and on that basis the Motion is Denied.

16 B. Post-Trial Motion Two: For a New Trial

17 The Court finds that Defendant wasn't denied a fair trial, and is not inclined to
18 reopen evidence, as the issues raised in Defendant's motion do not establish any
19 irregularities.

20 However, the Court will give Defendant an opportunity to address his claim of
21 ineffective assistance of counsel as it pertains to plain error and manifest injustice.
22 And, while the Court is not inclined to reopen evidence or retry the case, it will permit
23 additional briefing on the following schedule:

1 May 27, 2021: Defendant's supplemental brief due;

2 June 26, 2021: Opposition due;

3 July 6, 2021: Reply due;

4 July 20, 2021: 9:30 a.m. Hearing on the issues.

5 C. Post Judgment Motion Three: Stay of Enforcement of Judgment

6 This Motion is Denied without prejudice.

7 The Court finds that Defendant has failed to lay out the requirements to waive
8 a bond, and has failed to address the factors discussed in Nelson v. Heer, 121 Nev.
9 832, and on that basis the Motion is denied.

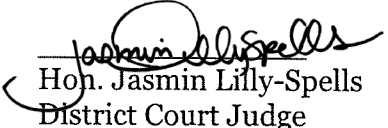
10 The Court orders that while a decision on Defendant's post-trial motions
11 remains pending, and until further order of the Court, Plaintiff shall not seek to
12 enforce the judgment against Defendant Rodriguez, and Mr. Rodriguez shall not
13 transfer, dispose, remove or conceal any assets, except those required for every day,
14 ordinary expenses.

15 Any transfer in violation of this order will result in a contempt of court
16 citation.

17
18 IT IS SO ORDERED:

Dated this 15th day of June, 2021

19 Dated this ____ day of May, 2021

20 
Hon. Jasmin Lilly-Spells
District Court Judge

21
22 Submitted by:

23 /s/David Liebrader
24 David Liebrader

A79 9F6 4409 6B33
Jasmin Lilly-Spells
District Court Judge

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Attorney for Plaintiff



Dave Liebrader <dliebrader@gmail.com>

Hotchkiss Order

7 messages

Dave Liebrader <dliebrader@gmail.com>

Wed, May 5, 2021 at 2:32 PM

To: Scott Fleming <scott@fleminglawlv.com>, Michael Bohn <mbohn@bohnlawfirm.com>

Scott and Mickey

Attached is a proposed order on the post trial motions.

Please review and let me know if you have any comments.

Thank you.

--

David Liebrader
The Law Office of David Liebrader, Chtd.
3960 Howard Hughes Parkway Ste. 500
Las Vegas, NV 89169
Ph: (702) 380-3131
Fx: (702) 583-4227
e-mail: dliebrader@gmail.com
www.investmentloss.com

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Order on post trial motions 3.doc
74K

Michael Bohn <mbohn@bohnlawfirm.com>

Wed, May 5, 2021 at 7:32 PM

To: Dave Liebrader <dliebrader@gmail.com>, Scott Fleming <scott@fleminglawlv.com>

If you want to submit with my e signature, you may.

I forwarded you the order on my motion last week. Can you email me back that I can file with your e signature?

Thank you

Morning Dave -- I have no objection to the order. Please feel free to add my electronic signature.

Thanks

Please Note Our New Address:

F L E M I N G
LAW FIRM, PLLC

Scott D. Fleming, Esq.
8250 West Charleston Boulevard
Suite 100
Las Vegas, Nevada 89117
www.fleminglawlv.com
scott@fleminglawlv.com
(702) 743-6263

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From: Dave Liebrader <dliebrader@gmail.com>
Sent: Wednesday, May 5, 2021 11:32 AM
To: Scott Fleming <scott@fleminglawlv.com>; Michael Bohn <mbohn@bohnlawfirm.com>
Subject: Hotchkiss Order

[Quoted text hidden]

Dave Liebrader <dliebrader@gmail.com>
To: Michael Bohn <mbohn@bohnlawfirm.com>

Fri, May 7, 2021 at 3:17 PM

On this motion, Hotchkiss v. Robinson, I have no objection.

[Quoted text hidden]

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Steven Hotchkiss, Plaintiff(s)

CASE NO: A-17-762264-C

7 vs.

DEPT. NO. Department 23

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 Order 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: 6/15/2021

15 E-Service BohnLawFirm

office@bohnlawfirm.com

16 Michael Bohn

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17 Harold Gewerter

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louis@palazzolawfirm.com

19 Celina Moore

celina@palazzolawfirm.com

20 Miriam Roberts

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21 David Liebrader, Esq.

dliebrader@gmail.com

22 David Liebrader

DaveL@investmentloss.com

23 Vernon Rodriquez

harold@gewerterlaw.com

24 Scott Fleming

scott@fleminglawlv.com

25 Mark Kemp

mkemp@bohnlawfirm.com

26

27

28

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Heather S. Smith
CLERK OF THE COURT

1 **ORDG**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 LAW OFFICES OF

6 MICHAEL F. BOHN, ESQ., LTD.

7 2260 Corporate Circle, Suite 480

8 Henderson, NV 89074

9 (702) 642-3113/ (702) 642-9766 FAX

10 Attorney for defendant Ronald J. Robinson

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 STEVEN A. HOTCHKISS,

14 Plaintiff,

15 vs.

16 RONALD J. ROBINSON; VERNON
17 RODRIGUEZ; VIRTUAL
18 COMMUNICATIONS CORPORATION;
19 WINTECH, LLC; RETIRE HAPPY, LLC; JOSH
20 STOLL; FRANK YODER; ALISA DAVIS; and
21 DOES 1-10; and ROES 1-10, inclusively,

22 Defendants.

23 ANTHONY WHITE; ROBIN SUNTHEIMER;
24 TROY SUNTHEIMER; STEPHENS
25 GHESQUIERE; JACKIE STONE; GAYLE
26 CHANY; KENDALL SMITH; GABRIELE
27 LAVERNICocca; and ROBERT KAISER,

28 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.

CASE NO.: A-17-762264-C

DEPT NO.: 23

Consolidated with:

CASE NO. A-17-763003-C

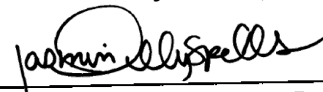
ORDER GRANTING MOTION
FOR RULE 54(b) DETERMINATION

1 The motion of defendant Ronald J. Robinson for a Rule 54(b) determination having come
2 before the court on the 27th day of April, 2021, Michael F Bohn, Esq. appearing on behalf of Ronald
3 J. Robinson, David Liebrader, Esq. appearing on behalf of the plaintiffs and Scott D. Fleming, Esq.
4 appearing on behalf of defendant Vernon Rodriguez, and the court, having reviewed the motion and
5 heard arguments of counsel, notes that there was no opposition to the motion which was filed or
6 served, and EDCR 2.20(e) provides that failure to oppose a motion may be construed as an
7 admission that the motion is meritorious and a consent to the granting the same, and for good cause
8 appearing.
9

10
11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion for Rule
12 54(b) certification is granted.

13 IT IS FURTHER ORDERED that the court finds and makes an express determination
14 that there is no just reason for delay in the entry of final judgment as to the claims against Ronald J.
15 Robinson.
16

17 DATED this _____ day of _____, 2021
18 Dated this 15th day of June, 2021

19 
20 DISTRICT COURT JUDGE

21 Respectfully submitted by:

22 LAW OFFICES OF
23 MICHAEL F. BOHN, ESQ., LTD

039 5CA 7164 C126
Jasmin Lilly-Spells
District Court Judge

24
25 By: /s/ Michael F. Bohn, Esq./
26 Michael F. Bohn, Esq.
27 2260 Corporate Circle, Suite 480
28 Henderson, NV 89074
Attorney for defendant Ronald J. Robinson

1 Reviewed by:

2 Fleming Law Firm, PLLC

3
4 By: /s/ /Scott D. Fleming, Esq./

5 Scott D. Fleming, Esq.

6 8250 West Charleston Blvd., Suite 100

7 Las Vegas, NV 89117

8 Attorney for defendant Vernon Rodriguez

9 Reviewed by:

10 The Law Office of David Liebrader, Inc.

11 See attached email from Atty. David

12 Liebrader

13 By: No Response

14 David Liebrader, Esq.

15 3960 Howard Hughes Pkwy # 500

16 Las Vegas, Nevada 89169

17 Attorney for plaintiff

Michael Bohn

From: Scott Fleming <scott@fleminglawlv.com>
Sent: Wednesday, April 28, 2021 7:38 AM
To: Michael Bohn; Dave Liebrader
Cc: Maurice Mazza
Subject: Re: Hotchkiss v. Robinson A762264-C

Good morning Mickey -- The order looks fine, although my name is spelled incorrectly and you have my old address (please see below). With those changes, you have my permission to add my electronic signature.

Regards,

Scott

Please Note Our New Address:

F L E M I N G
LAW FIRM, PLLC

Scott D. Fleming, Esq.
8250 West Charleston Boulevard
Suite 100
Las Vegas, Nevada 89117
www.fleminglawlv.com
scott@fleminglawlv.com
(702) 743-6263

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From: Michael Bohn <mbohn@bohnlawfirm.com>
Sent: Tuesday, April 27, 2021 4:54 PM
To: Dave Liebrader <dliebrader@gmail.com>; Scott Fleming <scott@fleminglawlv.com>
Cc: Maurice Mazza <mazza@bohnlawfirm.com>
Subject: Hotchkiss v. Robinson A762264-C

Counsel

Please see attached order from today's hearing. Please advise if I have your permission to file with your e signature, or advise if you have any requested changes.

Mickey Bohn, Esq.

Bohn Law Firm
2260 Corporate Circle
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Henderson, NV 89074
(702) 642-3113
(702) 642-9766 FAX
mbohn@bohnlawfirm.com
www.bohnlawfirm.com
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Boyer, Deborah

From: David Liebrader <davel@investmentloss.com>
Sent: Monday, June 14, 2021 8:41 AM
To: Boyer, Deborah
Cc: Roberson, Anise
Subject: Re: A-17-762264-C, Hotchkiss vs Robinson, Order Granting Motion for Rule 54(b) Determination

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Yes Deborah, I have no objection to that order.

Also, can you confirm that the court is reviewing my submitted order re: the post trial motions? Its been a long time.

Thanks.

David Liebrader
The Law Office of David Liebrader, Inc.
3960 Howard Hughes Parkway Ste. 500
Las Vegas, NV 89169
Ph: (702) 380-3131
Fx: (702) 583-4227
e-mail: DaveL@investmentloss.com
www.investmentloss.com
www.nevadasecuritiesattorney.com

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On Thu, Jun 10, 2021 at 4:46 PM Boyer, Deborah <BoyerD@clarkcountycourts.us> wrote:

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Steven Hotchkiss, Plaintiff(s)

CASE NO: A-17-762264-C

7 vs.

DEPT. NO. Department 23

8 Ronald Robinson, Defendant(s)

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mbohn@bohnlawfirm.com

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harold@gewerterlaw.com

18 T. Louis Palazzo, Esq.

louis@palazzolawfirm.com

19 Celina Moore

celina@palazzolawfirm.com

20 Miriam Roberts

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21 David Liebrader, Esq.

dliebrader@gmail.com

22 David Liebrader

DaveL@investmentloss.com

23 Vernon Rodriquez

harold@gewerterlaw.com

24 Scott Fleming

scott@fleminglawlv.com

25 Mark Kemp

mkemp@bohnlawfirm.com

26
27
28

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 6/16/2021

T. Palazzo 520 S. Fourth St., 2nd Fl
Las Vegas, NV, 89101