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Elizabeth A. Brown
Clerk of Supreme Court

7
8 SUPREME COURT
9 STATE OF NEVADA

10 RONALD J. ROBINSON,
11 Appellant,

No. 83250

12 vs.

APPELLANT'S APPENDIX VOL. 11

13 STEVEN A. HOTCHKISS,
14
15 Respondent.

16 RONALD J. ROBINSON,
17 Appellant,
18

19 vs.

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

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25 Respondents.
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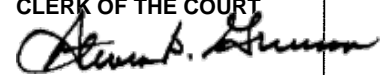
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EXHIBIT A-1

SCHEDULE OF ASSUMED AGREEMENTS

None.



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Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN)	Case No. A-17-762264-C
)	
Steven A. Hotchkiss,	)	Dept.: 9
)	
PLAINTIFF,	)	OPPOSITION TO FIRST POST
	)	JUDGMENT MOTION
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Frank)	
Yoder, Alisa Davis and DOES 1-10 and ROES 1-)	
10, inclusively)	
	)	CONSOLIDATED WITH
DEFENDANTS)	
	)	Case No. A-17-763003-C
Anthony White, Robin Suntheimer, Troy)	
Suntheimer, Stephens Ghesquiere, Jackie Stone,)	
Gayle Chany, Kendall Smith, Gabriele)	
Lavermicocca and Robert Kaiser)	
)	
PLAINTIFFS)	
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Virtual)	
Communications Corporation, Frank Yoder, Alisa)	
Davis and DOES 1-10 and ROES 1-10, inclusively)	
)	
)	

Opposition to Vern Rodriguez' first post judgment motion

Plaintiffs file this Opposition to Defendant Rodriguez' first post judgment motion.

1 In his first motion, Defendant seeks two remedies:

- 2 1. To add additional facts concerning Virtual Communications
3 Corporations' ("VCC") bankruptcy, and other superfluous matters to the
4 Court's finding that Mr. Rodriguez was a control person for VCC.
- 5 2. To revisit the statute of limitations issue (which was the subject of POST
6 trial briefing, in which Mr. Fleming participated.)

7
8 1. THE COURT NEED NOT SUPPLEMENT ITS PRIOR FINDINGS

9 Mr. Rodriguez was found liable as a control person for a company that offered
10 and sold unregistered securities. He wasn't simply a place holder CFO; he actively
11 participated in the offering, and figured prominently in every decision the company
12 made to sell their unregistered securities to the public. Plaintiffs easily met their
13 burden at trial by introducing documentary evidence tying Mr. Rodriguez to VCC's
14 fund raising efforts, as well as being the "point of contact for investors." In addition,
15 testimony by Mr. Yoder and Ms. Davis, as well as Mr. Rodriguez himself conclusively
16 established that as CFO he was aware of, directed and participated in the offering.
17 The Court detailed Mr. Rodriguez role in its decision, issued on April 7, 2020. See
18 Exhibit "A" attached.

19 Subsequently, Plaintiff prepared findings of fact and conclusions of law and
20 sent them to Mr. Rodriguez' attorney for comment. Having received no feedback,
21 Plaintiff submitted the FFCL, and the court signed off and filed the document on May
22 8, 2020. Now, five months later, Defendant wants to add pages of additional
23 language to its findings of fact in the hope it increases his chances on appeal.

1 The primary issue on which Mr. Rodriguez seeks further findings relates to the
2 VCC bankruptcy's effect on his liability as a control person. Further findings are
3 unnecessary. While the bankruptcy proceeding converted Plaintiffs' promissory
4 notes into equity in the reorganized VCC (a common result for creditors during a
5 bankruptcy), it did not extinguish Mr. Rodriguez' liability for having been a control
6 person at the time VCC sold unregistered securities. Nothing in any of the bankruptcy
7 orders released or relieved Mr. Rodriguez of such liability.

8 As discussed extensively in the briefing related to Mr. Robinson's guarantee, "a
9 discharge in bankruptcy does not extinguish the debt itself, but merely releases the
10 debtor from personal liability for the debt." In re Edgeworth, 993 F.2d 51, 53 (5th Cir.
11 1993). As a result, the guarantor remains liable, as do control persons. Defendant's
12 claim that the bankruptcy "absolutely and irrevocably extinguished" any liability
13 under the notes is unsupported, and legally incorrect. While VCC's liability was
14 extinguished (in exchange for the issuance of preferred stock), the same wasn't true
15 of the guarantor, or the control persons (whose liability is based on point of sale
16 activity).

17 Similarly, the conversion of debt to equity via the bankruptcy does not serve to
18 extinguish liability for the "offer or sale" of securities, which is an objective fact. Nor
19 does it operate to extinguish the fact that Mr. Rodriguez was a control person for VCC
20 at the time of the offer and sale. Defendant has not cited a single case in support of
21 this position.

22 As to damages, this was also addressed in Plaintiffs' post-trial brief filed on
23 May 12, 2020. Because NRS §90.660 provides a remedy of rescission, or, if the

1 securities are no longer held, for compensatory damages, Mr. Rodriguez will, upon
2 payment of the amounts due under NRS §90.660 be due the preferred and common
3 shares that Plaintiffs received in exchange for their promissory note interests. This
4 isn't complicated, and Plaintiffs stand ready to tender the shares upon payment of the
5 judgment.

6 In short, there is no need to add additional facts relating to the bankruptcy. An
7 appeals court can take judicial notice of the bankruptcy, and adding five pages of
8 findings from an issue that has no bearing on the activity that gave rise to liability
9 only muddies the record for any appeal.

10 2. STATUTE OF LIMITATIONS ISSUES

11 Mr. Rodriguez asks the court to add purchase dates provided by Plaintiffs in
12 their post-trial brief to its findings of fact. This is unnecessary as the purchase dates
13 are a matter of record. If Defendant chooses to appeal, the entire record, including
14 the briefs containing those purchase dates will be part of the record. In asking for a
15 modification, Defendant is only seeking to buy himself additional time.

16 The SOL issue was also the subject of post-trial briefing. See Plaintiffs' Reply
17 Brief to Mr. Rodriguez' Opposition to the Motion for Damages and Attorney's Fees
18 filed May 28, 2020. In raising the statute of limitations defense, it was incumbent on
19 Defendant to put forth evidence in support of it, especially in light of the evidence of
20 tolling and concealment offered by Mr. Hotchkiss at trial. See Trial Exhibit 3, pages
21 49-56.

22 Having offered nothing pretrial, during trial or post trial, not even mentioning
23 the issue during opening or closing, Defendant abandoned the defense, and did not
24

1 meet his burden or proof. And, as Counsel points out, the Statute of limitations was
2 raised only as an affirmative defense at to Mr. Hotchkiss. It was not raised in the
3 Answer filed in response to any of the other Plaintiffs (from the consolidated Anthony
4 White case).

5 Defendant now claims that Plaintiffs “had actual knowledge of a default under
6 the Notes and made demands for payment no later than February, 2015.” This is
7 demonstrably false. While Defendants stopped making payments in February 2015,
8 demands for payment were sent years later (see Trial Exhibit 1, showing demand
9 letters sent in 2017) as a result of the stall and delay tactics employed by Defendants
10 (particularly Defendant Rodriguez) See Trial Exhibit 3, pages 49-56.

11 Facts determinative of this issue are contained on page 5, lines 17 and 18 and
12 the footnote in the motion. There, Defendant acknowledges that he failed to raise the
13 statute of limitations defense in his answer to the White FAC which added all of the
14 Plaintiffs with the exception of Steve Hotchkiss. The White First Amended Complaint
15 (adding the additional Plaintiffs) was filed October 4, 2018. In his Answer filed
16 November 9, 2018 Defendant failed to raise the statute of limitations defense as to
17 the claims. See Exhibit “B” attached.

18 As a result, the SOL defense is only applicable to the Hotchkiss claim, which
19 was filed within five years, and the defenses waived for the same reasons previously
20 argued. NRS §§ 90.460 and 90.660 are subject to a five year statute of repose.

21 Regardless, Defendant failed to mention the SOLs at all pretrial or during trial,
22 and failed to offer any proof in support of this defense.

23 CONCLUSION
24

1 Mr. Rodriguez is unhappy with the outcome of the trial, and with the
2 performance of his prior counsel. Not having good facts to argue, Mr. Gewerter made
3 a tactical decision to play on the court's sympathies in hopes it would discount the
4 overwhelming documentary evidence that Mr. Rodriguez was a control person and
5 active participant in the sale of unregistered securities. A new trial, or the reopening
6 of evidence is not going to change these facts. Defendant can't point to any
7 restrictions that prevented him from testifying or introducing evidence in support of
8 a good faith defense to control person liability. Based on the clear and convincing
9 evidence of his active role as a control person of an entity that sold unregistered
10 securities, the Court should deny the motion.

11
12 Dated: September 30, 2020

Respectfully submitted,

13 The Law Office of David Liebrader, Inc.

14 By: /s/ David Liebrader

David Liebrader

15 Attorney for Plaintiffs
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CERTIFICATE OF MAILING

I hereby certify that on the 30th day of September, 2020, I mailed a copy of the foregoing
Opposition to first post judgment brief
to the following

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

Scott Fleming, Esq.
Fleming Law
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Las Vegas, NV 89134

/s/: Dianne Bresnahan

An Employee of The Law Office of David Liebrader

EXHIBIT “A”

1 DECN
Judge Cristina D. Silva
2 Eighth Judicial District Court
Department IX
3 Regional Justice Center
200 Lewis Avenue
4 Las Vegas, Nevada 89155

5
6 EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

7 STEVEN A. HOTCHKISS,
8 Plaintiff,

Case No.: A-17-762264-C
Dept. No.: IX

9 vs.

10 RONALD J. ROBINSON; VERNON
RODRIGUEZ; VIRTUAL
11 COMMUNICATIONS CORPORATION;
WINTech, LLC; RETIRE HAPPY, LLC;
12 JOSH STOLL; FRANK YODER; ALISA
DAVIS; and DOES 1-10; and ROES 1-10,
13 inclusively,

14 Defendants.

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

18 Plaintiffs,

19 vs.

20 RONALD J. ROBINSON; VERNON
RODRIGUEZ; VIRTUAL
21 COMMUNICATIONS CORPORATION;
WINTech, LLC; RETIRE HAPPY, LLC;
22 JOSH STOLL; FRANK YODER; ALISA
DAVIS; and DOES 1-10; and ROES 1-10,
23 inclusively,

24 Defendants.

Consolidated with:

Case No.: A-17-763003-C
Dept. No.: IX

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APP001502

1 Much like any other investment opportunity, the evidence at trial revealed that the motivation
2 behind the issuance of the Notes was to raise funds to support VCC¹ and the related “Alice”
3 technology, and that investment in VCC would result in a favorable monetary return.²
4 Testimony from Mr. Robinson and Mr. Rodriguez confirmed the Notes were issued to raise
5 money. Promises of financial gain were made to the purchasers of the Notes; those promises
6 would lead a reasonable person to want to purchase the Notes as an investment. The
7 Defendants’ sale of the Notes resulted in them raising over 4 million dollars.

8 Further, the PowerPoint presentations introduced as exhibits at trial set forth clear plan
9 of distribution and the expectations (i.e. returns) that would result from the distribution of the
10 Notes.³ Testimony from the Defendants, Ms. Davis and Mr. Frank Yoder, confirmed that the
11 Defendants were consulted on the content of the PowerPoints setting forth the plan of
12 distribution, which included language about the personal guarantee by Mr. Robinson and a
13 referral of the notes as “securities.”

14 Last but not least, the end-result of the Notes demonstrates that the purchasers
15 reasonably viewed the Notes as investments. They were presented to investors and potential
16 investors as “securities,”⁴ which is prima facie proof that the Notes were investments. The
17 purpose of selling the Notes was also to raise money, which further demonstrates that they
18 were intended to be investments.

20 ¹ See Exhibit 4 at Bates No. 00066, PowerPoint presentation for potential investors indicating the “target
21 goal was \$120 billion dollars in the global market.”; *see also* Exhibit 6 at Bates No. 0096 (same).

22 ² See *id.* at Bates No. 0074 stating the terms of the securities included a “[T]erm of 18 months, with a 6
month extension option. Notes pay 9% annually with interest paid monthly.” (Emphasis added); *see also* Exhibit 6
at 00150 (same).

23 ³ See Exhibit 4 at Bates No. 0070, setting for the “Revenue Forecast,” and Bates No. 0074, setting forth the
“Growth Strategy.”; *see also* Exhibit 6 at Bates No. 00100 and 00104 (same).

24 ⁴ See Exhibit 5 at Bates No. 74; Exhibit 6 at Bates No. 00150. In fact, the PowerPoints even included
information about the Securities Exchange Act of 1934. See Exhibit 4 at Bates No. 0064; Exhibit No. 6 at Bates No.
0094.

1 Testimony from Plaintiff Mr. Hotchkiss is more evidence that that the VCC Notes meet
2 the four factors. Mr. Hotchkiss testified that he used 1/3 of his personal savings to purchase the
3 notes as part of his overall retirement plan. Specifically he purchased the Notes because of (1)
4 the personal guarantee, and (2) the expectation of a 9% return. Moreover, Mr. Hotchkiss
5 testified that when he repeatedly attempted to contact Vernon Rodriguez to figure out where
6 his returns were, Rodriguez asked him "for patience." Finally, he testified that he never received
7 any of his funds back. The Court notes that there was no evidence introduced at trial that any
8 of the investors received their funds back.

9 **II. The VCC Note Was Not registered as a Security; Defendant Failed to**
10 **Provide Any Evidence that it was Exempt from the Registration**
11 **Requirements.**

12 There was no evidence introduced at trial to demonstrate that the VCC Note was
13 exempt from registration as a security. Therefore, the Notes are not exempted.

14 **III. Ronald Robinson and Vernon Rodriguez were control persons as defined in**
15 **NAC 90.035.**

16 Nevada Administrative Code (NAC) section 90.035 defines a "control person" as an
17 individual who (1) owns or controls 10 percent or more of the voting stock of a corporation; (2)
18 is an officer or director of a corporation; or (3) is in a position to influence the decision-making
19 processes of a corporation. "In general, the determination of who is a controlling person ... is an
20 intensely factual question." *Arthur Children's Trust v. Keim*, 994 F.2d 1390, 1396 (9th Cir.1993)
21 (discussing a "control person" under Federal Securities law). To establish "controlling person"
22 liability, the plaintiff must show that a primary violation was committed and that the
23 defendant "directly or indirectly" controlled the violator. *See Hollinger v. Titan Capital Corp.*, 914
24 F.2d 1564, 1575 (9th Cir. 1990), cert. denied, 499 U.S. 976, 111 S.Ct. 1621, 113 L.Ed.2d 719 (1991).

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

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

21 ...

22 ...

23

24

⁵ The PowerPoints also belie Rodriguez's testimony that he did not become CFO until 2014.

1 IV. Ronald Robinson is Liable as a Guarantor

2 There is no disagreement that Robinson personally guaranteed the Notes/Securities at
3 issue in this case.⁶ In fact, Robinson admitted to guaranteeing the Notes during trial, albeit
4 noting he only intended to personally guarantee some of them.⁷ Qualified or not, his guarantee
5 was “absolute” and “unconditional.”⁸ With his admission, the Court must then determine if he
6 is still liable pursuant to personal guarantee after VCC’s bankruptcy proceedings. The Court
7 finds that VCC’s bankruptcy did not extinguish Robinson’s personal guarantee of the
8 promissory notes. The Court adopts the reasoning in the *Donnell* and *Nelson* cases in reaching
9 this decision. Specifically, the Court agrees with Plaintiff’s argument that VCC’s bankruptcy
10 was a tactical, self-interested decision by Robinson to try and eliminate his responsibilities as
11 the personal guarantor. His decision constitutes as consent to the modification, and further did
12 not increase his liability risk. Consequently, he is still liable as a personal guarantor. *See generally*
13 *Marc Nelson Oil Products v. Grim Logging Co.*, 110 P.3d 120, 122-125.

14 V. Conclusion

15 Within 30 days of this decision, the parties shall meet and confer and submit a proposed
16 Findings of Fact and Conclusions of Law consistent with this Decision. Further, Plaintiff must
17 submit a brief regarding damages, and the evidence that supports the requested damages
18 within 45 days. Defendant may file an opposition 14 days after the filing of Plaintiff’s brief.
19 Plaintiff may file a reply within 7 days of any filed opposition.

20 ...

21 ...

22
23 ⁶ See Exhibit 5 at Bates No. 0088.

24 ⁷ During trial, Robinson testified that Julie Minushkin issued some of the Notes with his personal
guarantee without his permission. No other evidence was introduced to support his position.

⁸ See Exhibit 5 at Bates No. 0088.

1 After the Court receives and reviews the proposed Findings of Fact and Conclusions of
2 Law, and full briefing on the issue of damages, the Court will issue the Findings of Fact and
3 Conclusion of Law. Thereafter a judgment shall issue in favor of the Plaintiffs and against
4 Defendants.

5 DATED this 27th day of April, 2020.



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7 CRISTINA D. SILVA
8 DISTRICT COURT JUDGE
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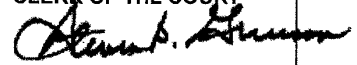
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CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of the foregoing DECISION was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program (EFP) and/or emailed to any party or proper person not registered with the District Court EFP system.

Jaye L Beltran
Judicial Executive Assistant

EXHIBIT “B”



1 AANS
2 HAROLD P. GEWERTER, ESQ.
3 Nevada Bar No. 499
4 HAROLD P. GEWERTER, ESQ., LTD.
5 1212 S. Casino Center Blvd.
6 Las Vegas, Nevada 89104
7 Tel: (702) 382-1714
8 Fax: (702) 382-1759
9 Email: harold@gewerterlaw.com
10 Attorneys for Defendants
11 *Ronald J. Robinson; Vernon*
12 *Rodriguez; Virtual Communications*
13 *Corp.; Wintech, LLC; and Alisa Davis*

10 DISTRICT COURT

11 CLARK COUNTY NEVADA

12 ANTHONY WHITE; ROBIN
13 SUNTHEIMER; TROY SUNTHEIMER,
14 STEPHENS GHESQUIERE; JACKIE
15 STONE; GAYLE CHANY; KENDALL
16 SMITH; GABRIELE LAVERMICOCCA;
17 AND ROBERT KAISER,

18 Plaintiffs,

19 v.

20 RONALD J. ROBINSON; VERNON
21 RODRIGUEZ; VIRTUAL
22 COMMUNICATIONS CORPORATION;
23 WINTECH, LLC; ALISA DAVIS; JULIE
24 MINUSKIN; JOSH STOLL; RETIRE
25 HAPPY, LLC; DOES 1-10; AND ROES 1-
26 10, inclusively,

27 Defendants.

Case No.: A-17-763003-C

Dept.: XXIV

**AMENDED ANSWER TO FIRST
AMENDED COMPLAINT**

26 COME NOW Defendants, Ronald J. Robinson, Vernon Rodriguez, Virtual
27 Communications Corporation, Wintech, LLC, and Alisa Davis (hereinafter "Defendants"), by and
28

1 through their attorney of record, HAROLD P. GEWERTER, ESQ., of the law firm of HAROLD
2 P. GEWERTER, ESQ., LTD., and hereby files their Amended Answer to Plaintiffs' First
3 Amended Complaint.

4 **INTRODUCTION**

5 **THE PARTIES**

6
7 1. In answering paragraph 1 of the First Amended Complaint on file herein,
8 Defendants are without specific knowledge or information sufficient to enable them to admit or
9 deny the allegations in said paragraph, and on that basis DENY each and every remaining
10 allegation contained therein.

11
12 2. In answering paragraph 2 of the First Amended Complaint on file herein,
13 Defendants are without specific knowledge or information sufficient to enable them to admit or
14 deny the allegations in said paragraph, and on that basis DENY each and every remaining
15 allegation contained therein.

16
17 3. In answering paragraph 3 of the First Amended Complaint on file herein,
18 Defendants are without specific knowledge or information sufficient to enable them to admit or
19 deny the allegations in said paragraph, and on that basis DENY each and every remaining
20 allegation contained therein.

21
22 4. In answering paragraph 4 of the First Amended Complaint on file herein,
23 Defendants are without specific knowledge or information sufficient to enable them to admit or
24 deny the allegations in said paragraph, and on that basis DENY each and every remaining
25 allegation contained therein.

26
27 5. In answering paragraph 5 of the First Amended Complaint on file herein,
28 Defendants are without specific knowledge or information sufficient to enable them to admit or

1 deny the allegations in said paragraph, and on that basis DENY each and every remaining
2 allegation contained therein.

3 6. In answering paragraph 6 of the First Amended Complaint on file herein,
4 Defendants are without specific knowledge or information sufficient to enable them to admit or
5 deny the allegations in said paragraph, and on that basis DENY each and every remaining
6 allegation contained therein.
7

8 7. In answering paragraph 7 of the First Amended Complaint on file herein,
9 Defendants are without specific knowledge or information sufficient to enable them to admit or
10 deny the allegations in said paragraph, and on that basis DENY each and every remaining
11 allegation contained therein.
12

13 8. In answering paragraph 8 of the First Amended Complaint on file herein,
14 Defendants are without specific knowledge or information sufficient to enable them to admit or
15 deny the allegations in said paragraph, and on that basis DENY each and every remaining
16 allegation contained therein.
17

18 9. In answering paragraph 9 of the First Amended Complaint on file herein,
19 Defendants are without specific knowledge or information sufficient to enable them to admit or
20 deny the allegations in said paragraph, and on that basis DENY each and every remaining
21 allegation contained therein.
22

23 10. In answering paragraph 10 of the First Amended Complaint on file herein,
24 Defendants ADMIT the allegations contained therein.

25 11. In answering paragraph 11 of the First Amended Complaint on file herein,
26 Defendants ADMIT the allegations contained therein.
27
28

1 12. In answering paragraph 12 of the First Amended Complaint on file herein,
2 Defendants ADMIT that Defendant Robinson was a resident of Nevada but DENY all other
3 allegations contained therein.

4 13. In answering paragraph 13 of the First Amended Complaint on file herein,
5 Defendants ADMIT that Defendant Rodriguez was a resident of Nevada but DENY all other
6 allegations contained therein.
7

8 14. In answering paragraph 14 of the First Amended Complaint on file herein,
9 Defendants ADMIT the allegations contained therein.

10 15. In answering paragraph 15 of the First Amended Complaint on file herein,
11 Defendants ADMIT the allegations contained therein.
12

13 16. In answering paragraph 16 of the First Amended Complaint on file herein,
14 Defendants ADMIT the allegations contained therein.

15 17. In answering paragraph 17 of the First Amended Complaint on file herein,
16 Defendants ADMIT the allegations contained therein.
17

18 18. In answering paragraph 18 of the First Amended Complaint on file herein,
19 Defendants are without specific knowledge or information sufficient to enable them to admit or
20 deny the allegations in said paragraph, and on that basis DENY each and every remaining
21 allegation contained therein.

22 19. In answering paragraph 19 of the First Amended Complaint on file herein,
23 Defendants are without specific knowledge or information sufficient to enable them to admit or
24 deny the allegations in said paragraph, and on that basis DENY each and every remaining
25 allegation contained therein.
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1 20. In answering paragraph 20 of the First Amended Complaint on file herein,
2 Defendants ADMIT that Defendants VCC and Wintech have filed for bankruptcy protection but
3 DENY that the automatic stay applies to only those Defendants.

4 **FACTUAL BACKGROUND GIVING RISE TO THIS CLAIM**

5 21. In answering paragraph 21 of the First Amended Complaint on file herein,
6 Defendants DENY the allegations contained therein.

7 22. In answering paragraph 22 of the First Amended Complaint on file herein,
8 Defendants DENY the allegations contained therein.

9 23. In answering paragraph 23 of the First Amended Complaint on file herein,
10 Defendants DENY the allegations contained therein.

11 24. In answering paragraph 24 of the First Amended Complaint on file herein,
12 Defendants DENY the allegations contained therein.

13 25. In answering paragraph 25 of the First Amended Complaint on file herein,
14 Defendants DENY the allegations contained therein.

15 26. In answering paragraph 26 of the First Amended Complaint on file herein,
16 Defendants DENY the allegations contained therein.

17 27. In answering paragraph 27 of the First Amended Complaint on file herein,
18 Defendants are without specific knowledge or information sufficient to enable them to admit or
19 deny the allegations in said paragraph, and on that basis DENY each and every remaining
20 allegation contained therein.

21 28. In answering paragraph 28 of the First Amended Complaint on file herein,
22 Defendants DENY the allegations contained therein.

1 29. In answering paragraph 29 of the First Amended Complaint on file herein,
2 Defendants DENY the allegations contained therein.

3 30. In answering paragraph 30 of the First Amended Complaint on file herein,
4 Defendants DENY the allegations contained therein.

5 31. In answering paragraph 31 of the First Amended Complaint on file herein,
6 Defendants DENY the allegations contained therein.

7 32. In answering paragraph 32 of the First Amended Complaint on file herein,
8 Defendants are without specific knowledge or information sufficient to enable them to admit or
9 deny the allegations in said paragraph, and on that basis DENY each and every remaining
10 allegation contained therein.
11

12 33. In answering paragraph 33 of the First Amended Complaint on file herein,
13 Defendants DENY the allegations contained therein.

14 34. In answering paragraph 34 of the First Amended Complaint on file herein,
15 Defendants DENY the allegations contained therein.

16 35. In answering paragraph 35 of the First Amended Complaint on file herein,
17 Defendants DENY the allegations contained therein.

18 36. In answering paragraph 36 of the First Amended Complaint on file herein,
19 Defendants DENY the allegations contained therein.

20 37. In answering paragraph 37 of the First Amended Complaint on file herein,
21 Defendants DENY the allegations contained therein.

22 38. In answering paragraph 38 of the First Amended Complaint on file herein,
23 Defendants are without specific knowledge or information sufficient to enable them to admit or
24

1 deny the allegations in said paragraph, and on that basis DENY each and every remaining
2 allegation contained therein.

3 39. In answering paragraph 39 of the First Amended Complaint on file herein,
4 Defendants DENY the allegations contained therein.

5 40. In answering paragraph 40 of the First Amended Complaint on file herein,
6 Defendants DENY the allegations contained therein.

7 41. In answering paragraph 41 of the First Amended Complaint on file herein,
8 Defendants DENY the allegations contained therein.

9 42. In answering paragraph 42 of the First Amended Complaint on file herein,
10 Defendants DENY the allegations contained therein.

11 43. In answering paragraph 43 of the First Amended Complaint on file herein,
12 Defendants DENY the allegations contained therein.

13 44. In answering paragraph 44 of the First Amended Complaint on file herein,
14 Defendants DENY the allegations contained therein.

15 45. In answering paragraph 45 of the First Amended Complaint on file herein,
16 Defendants are without specific knowledge or information sufficient to enable them to admit or
17 deny the allegations in said paragraph, and on that basis DENY each and every remaining
18 allegation contained therein.

19 46. In answering paragraph 46 of the First Amended Complaint on file herein,
20 Defendants DENY the allegations contained therein.

21 47. In answering paragraph 47 of the First Amended Complaint on file herein,
22 Defendants DENY the allegations contained therein.

1 48. In answering paragraph 48 of the First Amended Complaint on file herein,
2 Defendants DENY the allegations contained therein.

3 49. In answering paragraph 49 of the First Amended Complaint on file herein,
4 Defendants DENY the allegations contained therein.

5 50. In answering paragraph 50 of the First Amended Complaint on file herein,
6 Defendants DENY the allegations contained therein.

7
8 51. In answering paragraph 51 of the First Amended Complaint on file herein,
9 Defendants are without specific knowledge or information sufficient to enable them to admit or
10 deny the allegations in said paragraph, and on that basis DENY each and every remaining
11 allegation contained therein.
12

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

14 **COUNT ONE – MISREPRESENTATIONS AND OMISSIONS**

15 52. In answering paragraph 52 of the First Amended Complaint on file herein,
16 Defendants DENY the allegations contained therein.

17
18 53. In answering paragraph 53 of the First Amended Complaint on file herein,
19 Defendants DENY the allegations contained therein.

20 54. In answering paragraph 54 of the First Amended Complaint on file herein,
21 Defendants DENY the allegations contained therein.

22 55. In answering paragraph 55 of the First Amended Complaint on file herein,
23 Defendants are without specific knowledge or information sufficient to enable them to admit or
24 deny the allegations in said paragraph, and on that basis DENY each and every remaining
25 allegation contained therein.
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1 56. In answering paragraph 56 of the First Amended Complaint on file herein,
2 Defendants DENY the allegations contained therein.

3 57. In answering paragraph 57 of the First Amended Complaint on file herein,
4 Defendants DENY the allegations contained therein.

5 **COUNT TWO – VIOLATION OF NEVADA UNIFORM SECURITIES ACT**

6 **§§ NRS 90.310, 90.460, and 90.660**

7
8 58. In answering paragraph 58 of the First Amended Complaint on file herein,
9 Defendants DENY the allegations contained therein.

10 59. In answering paragraph 59 of the First Amended Complaint on file herein,
11 Defendants DENY the allegations contained therein.

12 60. In answering paragraph 60 of the First Amended Complaint on file herein,
13 Defendants DENY the allegations contained therein.

14 61. In answering paragraph 61 of the First Amended Complaint on file herein,
15 Defendants DENY the allegations contained therein.

16 62. In answering paragraph 62 of the First Amended Complaint on file herein,
17 Defendants DENY the allegations contained therein.

18 63. In answering paragraph 63 of the First Amended Complaint on file herein,
19 Defendants DENY the allegations contained therein.

20 64. In answering paragraph 64 of the First Amended Complaint on file herein,
21 Defendants DENY the allegations contained therein.

22 65. In answering paragraph 65 of the First Amended Complaint on file herein,
23 Defendants DENY the allegations contained therein.

1 66. In answering paragraph 66 of the First Amended Complaint on file herein,
2 Defendants DENY the allegations contained therein.

3 **COUNT THREE – VIOLATION OF NEVADA UNIFORM SECURITIES ACT**

4 **§§ NRS 90.570 AND 90.660**

5 67. In answering paragraph 67 of the First Amended Complaint on file herein,
6 Defendants DENY the allegations contained therein.

7 68. In answering paragraph 68 of the First Amended Complaint on file herein,
8 Defendants DENY the allegations contained therein.

9 69. In answering paragraph 69 of the First Amended Complaint on file herein,
10 Defendants DENY the allegations contained therein.

11 70. In answering paragraph 70 of the First Amended Complaint on file herein,
12 Defendants DENY the allegations contained therein.

13 71. In answering paragraph 71 of the First Amended Complaint on file herein,
14 Defendants DENY the allegations contained therein.

15 72. In answering paragraph 72 of the First Amended Complaint on file herein,
16 Defendants DENY the allegations contained therein.

17 73. In answering paragraph 73 of the First Amended Complaint on file herein,
18 Defendants DENY the allegations contained therein.

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

20 74. In answering paragraph 74 of the First Amended Complaint on file herein,
21 Defendants DENY the allegations contained therein.

22 75. In answering paragraph 75 of the First Amended Complaint on file herein,
23 Defendants DENY the allegations contained therein.

1 76. In answering paragraph 76 of the First Amended Complaint on file herein,
2 Defendants DENY the allegations contained therein.

3 77. In answering paragraph 77 of the First Amended Complaint on file herein,
4 Defendants DENY the allegations contained therein.

5 78. In answering paragraph 78 of the First Amended Complaint on file herein,
6 Defendants DENY the allegations contained therein.

7 79. In answering paragraph 79 of the First Amended Complaint on file herein,
8 Defendants DENY the allegations contained therein.

9 80. In answering paragraph 80 of the First Amended Complaint on file herein,
10 Defendants DENY the allegations contained therein.
11

12
13 **AFFIRMATIVE DEFENSES**

14 **FIRST AFFIRMATIVE DEFENSE**

15 Plaintiff's Complaint on file herein fails to state a claim against these answering
16 Defendants upon which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 That it has been necessary for the Defendants to retain the services of an attorney to defend
19 this action and Defendants are entitled to an award of reasonable attorney's fees and costs incurred
20 herein.
21

22 **THIRD AFFIRMATIVE DEFENSE**

23 Pursuant to NRCP Rule 11, all possible affirmative defenses may not have been alleged
24 herein insofar as sufficient facts are not available after reasonable inquiry upon the filing of the
25 Plaintiff's Complaint, and therefore, these answering Defendants reserve the right to amend this
26 Answer to add additional affirmative defenses as additional facts are discovered.
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FOURTH AFFIRMATIVE DEFENSE

The alleged investments referenced in the Complaint do not constitute a security under law.

WHEREFORE, Defendants respectfully pray for judgment against Plaintiffs and for relief as follows:

- (1) That Plaintiffs take nothing by virtue of their Complaint;
- (2) That judgment be entered in favor of Defendants on all of Plaintiffs' causes of action;
- (3) That Defendants be awarded their attorneys' fees and costs of suit for having to defend against Plaintiffs' claims; and
- (4) For all other relief to which Defendants are entitled.

DATED this 9th day of November, 2018.

HAROLD P. GEWERTER, ESQ., LTD.

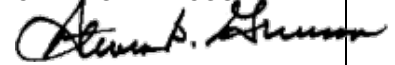
/s/: Harold P. Gewerter
HAROLD P. GEWERTER, ESQ.
Nevada Bar No. 499
HAROLD P. GEWERTER, ESQ., LTD.
1212 S. Casino Center Blvd.
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Fax: (702) 382-1759
Email: harold@gewerterlaw.com
Attorneys for Defendants
*Ronald J. Robinson; Vernon
Rodriguez; Virtual Communications
Corp.; Wintech, LLC; and Alisa Davis*

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2018, a true and correct copy of Defendants' **AMENDED ANSWER TO FIRST AMENDED COMPLAINT** was electronically served through the Court's electronic filing system upon the following:

David Liebrader, Esq.
THE LAW OFFICES OF DAVID LIEBRADER, APC
601 S. Rancho Drive, Suite D-29
Las Vegas, Nevada 89106
Attorney for Plaintiffs

AN EMPLOYEE OF HAROLD P. GEWERTER, ESQ., LTD.



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

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN	)	Case No. A-17-762264-C
)	
Steven A. Hotchkiss,	)	Dept.: 9
)	
PLAINTIFF,	)	OPPOSITION TO SECOND
	)	POST JUDGMENT MOTION
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Frank)	
Yoder, Alisa Davis and DOES 1-10 and ROES 1-)	
10, inclusively)	
	)	CONSOLIDATED WITH
DEFENDANTS)	
	)	Case No. A-17-763003-C
Anthony White, Robin Suntheimer, Troy)	
Suntheimer, Stephens Ghesquiere, Jackie Stone,)	
Gayle Chany, Kendall Smith, Gabriele)	
Lavermicocca and Robert Kaiser)	
)	
PLAINTIFFS)	
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Virtual)	
Communications Corporation, Frank Yoder, Alisa)	
Davis and DOES 1-10 and ROES 1-10, inclusively)	
)	
)	
)	

Opposition to Vern Rodriguez' second post judgment motion

Plaintiffs file this Opposition to Defendant Rodriguez' second post judgment motion.

1 In this motion, Defendant seeks a new trial, or in the alternative, further
2 action. As will be described below, neither is warranted.

3 The basis for the motion is the claim that Mr. Rodriguez did not receive a fair
4 trial due to the purported conflict of interest of his counsel Harold Gewerter, who
5 represented both Defendants Rodriguez and Robinson. Defendant does not cite any
6 Nevada cases supporting his position (even acknowledging that none exist), offering
7 only a 1984 New York case, which is not controlling authority. While Mr. Rodriguez
8 may have an issue with his prior counsel for the way he tried the case, his remedy lies
9 against Mr. Gewerter. Courts cannot be expected to retry cases when a bad result
10 sends a litigant in search of new counsel to second guess prior **counsel's** trial
11 decisions.

12 Regardless of the issue of a conflict, the evidence submitted conclusively
13 established that Mr. Rodriguez was a control person for Virtual Communications
14 Corporation ("VCC"), facts that exist irrespective of any purported conflict, waiver or
15 otherwise.

16 The Court rightly found that VCC sold unregistered securities through the
17 active participation and assistance of its chief financial officer, Vern Rodriguez, who
18 was the "point man" to speak with investors prior to their investing. New counsel
19 Fleming is clearly unfamiliar with the evidence introduced at trial.

20 Among these facts:

- 21 1. Mr. Rodriguez was the CFO for a company that sold unregistered
22 securities. See Exhibit 13, page 185.
- 23 2. Mr. Rodriguez was the "direct contact" to speak with any investors. who
24

1 were “wary of making an investment with the company” (per Ms. Davis’
2 testimony) and Exhibit 2. He also spoke with and met with investors
3 (Frank Yoder testimony).

4 3. Mr. Rodriguez was copied on and asked for input on the power point
5 presentation used by VCC to solicit finds from prospective investors. See
6 Exhibits 4 and 6.

7 4. Mr. Rodriguez presented Mr. Robinson with a contract to compensate
8 him for guaranteeing the fund raise (Ex 2, p 48.)

9 5. Mr. Rodriguez introduced fund raiser Retire Happy to VCC. (Rodriguez
10 trial testimony, and Declaration in support of Motion.)

11 While control person liability under NRS §90.660 does provide for a good
12 faith defense, based upon the evidence submitted, it clearly would not apply to Mr.
13 Rodriguez role in the transaction:

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

22 NRS 90.660 (Emphasis added).

23 Here, liability was based upon the sale of unregistered securities. Both Mr.
24 Robinson and Mr. Rodriguez knew of, and participated in the offering; Should they
25 have known that the sale required a registration or exemption filing? As to Mr.
26 Rodriguez, as the chief financial officer - with a business degree from the University
of New Mexico - he had, at the very least, the duty of inquiry to make sure that the

1 fund raise was being done in compliance with the securities laws. He took no steps to
2 do so, despite being aware that the securities laws applied, as the PowerPoint
3 presentations that he reviewed and approved contained a statement referencing the
4 securities laws (Ex 13 and 14). In the “exercise of reasonable care” a CFO is obligated
5 to make the necessary inquiries to counsel and accountants to ensure a registration
6 statement or claim for exemption is filed and effective prior to the commencement of
7 the offering. His failure to do so, in light of his active participation in the offering was
8 “unreasonable,” and eliminates the ability to rely on the good faith defenses available
9 to control persons under NRS 90.660.

10 Mr. Rodriguez testified at trial, and was able to introduce exhibits in support
11 of his defense. He was not prevented in any way from offering evidence. Nor did he
12 attempt to offer evidence to which Plaintiffs objected. There were no objections made
13 on the record to preserve any of these issues for appeal.

14 On appeal, a district court's "'findings of fact and conclusions of law, supported
15 by substantial evidence, will not be set aside unless clearly erroneous.'" Sheehan &
16 Sheehan v. Nelson Malley & Co., 121 Nev. 481, 486, 117 P.3d 219, 223 (2005) (quoting
17 Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025 1031, 923 P.2d 569, 573 (1996)).

18 CONCLUSION

19 Defendant acknowledged testifying for nearly an hour. But, it **wouldn't** have
20 mattered if he testified for eight hours; he was not going to be able to overcome the
21 overwhelming evidence against him that he was a control person who actively
22 participated in an unregistered offering of securities. For this reason, the motion
23 should be denied.

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Dated: September 30, 2020

Respectfully submitted,

The Law Office of David Liebrader, Inc.

By: /s/ David Liebrader
David Liebrader
Attorney for Plaintiffs

1
2 CERTIFICATE OF MAILING

3 I hereby certify that on the 30th day of September, 2020, I mailed a copy of the foregoing
4 Opposition to second post judgment brief
5 to the following


6
7 Harold Gewerter, Esq.
Gewerter Law Firm
8 1212 Casino Center Boulevard
Las Vegas, NV 89104

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

12 /s/: Dianne Bresnahan

13

An Employee of The Law Office of David Liebrader
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DAVID LIEBRADER, ESQ.
STATE BAR NO. 5048
THE LAW OFFICES OF DAVID LIEBRADER, APC
3960 HOWARD HUGHES PARKWAY STE 500
LAS VEGAS, NV 89169
PH: (702) 380-3131
Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN	)	Case No. A-17-762264-C
)	
Steven A. Hotchkiss,	)	Dept.: 9
)	
PLAINTIFF,	)	OPPOSITION TO THIRD POST
	)	JUDGMENT MOTION
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Frank)	
Yoder, Alisa Davis and DOES 1-10 and ROES 1-)	
10, inclusively)	
	)	CONSOLIDATED WITH
DEFENDANTS)	
	)	Case No. A-17-763003-C
Anthony White, Robin Suntheimer, Troy)	
Suntheimer, Stephens Ghesquiere, Jackie Stone,)	
Gayle Chany, Kendall Smith, Gabriele)	
Lavermicocca and Robert Kaiser)	
)	
PLAINTIFFS)	
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Virtual)	
Communications Corporation, Frank Yoder, Alisa)	
Davis and DOES 1-10 and ROES 1-10, inclusively)	
)	
)	
)	

Opposition to Vern Rodriguez' third post judgment motion

Plaintiffs file this Opposition to Defendant Rodriguez' third post judgment motion.

1 In this motion, Defendant seeks a stay on the enforcement of judgment both
2 during the pendency of his post-trial motions, and also during the pendency of any
3 appeal he intends to file. As to the first request, Plaintiff will conditionally agree. As
4 to the second, Plaintiff is opposed.

5 1. A Brief Stay Pending Resolution of the Post Judgment Issues is Acceptable

6 On the request for a stay of execution during the pendency of the post
7 judgment motions, Plaintiffs are not opposed, provided that Defendant also agrees to
8 stay any efforts to hide, conceal or transfer assets during this period of time. While
9 Plaintiffs believe Defendant's post judgment motions will be denied, time, Covid-19
10 and equitable considerations lean towards a brief stay of enforcement. However, this
11 must be reciprocal; Defendant must not use this time to take steps to frustrate
12 legitimate collection and enforcement efforts. Had counsel raised this issue prior to
13 filing his motion, this issue could have been resolved, and presented to the court as a
14 stipulation.

15 2. A Stay Pending Appeal Is Unwarranted

16 As to the request for stay pending appeal, Plaintiffs oppose this request. First,
17 the motion is premature, as Defendant has not filed to appeal the case. Further, such
18 relief is permissive, not mandatory, and Defendant has not met his burden for such
19 drastic relief.

20 NRCP 62(d) governs stays pending appeal and provides:

21 (d) Stay Upon Appeal. When an appeal is taken the appellant
22 by giving a supersedeas bond may obtain a stay subject to the
23 exceptions contained in subdivision (a) of this rule. The bond may be
24

1 given at or after the time of filing the notice of appeal. The stay is
2 effective when the supersedeas bond is filed.

3 NRCP

4 This rule is substantially based on its federal counterpart, FRCP 62(d). Most
5 federal courts interpreting the rule generally recognize that FRCP 62(d) allows an
6 appellant to obtain a stay pending appeal as of right upon the posting of a
7 supersedeas bond for the full judgment amount, but that courts retain the inherent
8 power to grant a stay in the absence of a full bond.

9 "a supersedeas bond posted under NRCP 62 should usually be set in an
10 amount that will permit full satisfaction of the judgment. But a district
11 court, in its discretion, may provide for a bond in a lesser amount, or
12 may permit security other than a bond, when unusual circumstances
13 exist and so warrant."

14 Nelson v. Heer, 122 P.3d 1252, 121 Nev. 832 (Nev. 2005)

15 The purpose of a supersedeas bond is to protect the prevailing party from loss
16 resulting from a stay of execution of the judgment. Thus, a supersedeas bond posted
17 under NRCP 62 should usually be set in an amount that will permit full satisfaction of
18 the judgment. A district court, in its discretion, may provide for a bond in a lesser
19 amount, or may permit security other than a bond, when unusual circumstances exist
20 and so warrant. Wright & Miller, Federal Practice and Procedure § 2905, at 328
21 (1973). See also Fed. Presc. Serv. v. Am. Pharm. Ass'n, 636 F.2d 755 (D.C.Cir.1980);
22 Poplar Grove, Etc. v. Bache Halsey Stuart, Inc., 600 F.2d 1189 (5th Cir.1979).
23 McCulloch v. Jeakins, 99 Nev. 122, 659 P.2d 302 (Nev. 1983)

1 Defendant has not provided any evidence of any financial hardship justifying
2 reducing, let alone waiving the requirement of a supersedeas bond. Plaintiff is
3 informed and believes and thereon alleges that Mr. Rodriguez owns property in Clark
4 County Nevada. He is also a large shareholder in Virtual Communications
5 Corporation. Financial hardship is not even addressed in his affidavit, or in his
6 motion.

7 This is a case of Defendant putting the proverbial cart before the horse; he
8 complains that if his as yet unfiled appeal is over turned, he would encounter
9 difficulty in repatriating any funds collected while any appeal is pending. This is
10 precisely the reason to order a supersedeas bond; to guarantee that while the appeal
11 moves forward, Plaintiffs are protected. Mr. Rodriguez has not provided any
12 argument as to why he **couldn't** obtain a supersedeas bond, or pledge alternate assets,
13 as the Nelson v. Heer case allows.

14 CONCLUSION

15 Plaintiffs acknowledge that a brief stay on enforcement of the judgment may
16 be warranted, provided Mr. Rodriguez makes no efforts to hide, conceal or transfer
17 his assets during this time. As to a stay pending appeal, that request is premature,
18 and also lacking in support. As a result, it should be denied.

19
20 Dated: September 30, 2020

Respectfully submitted,

21 The Law Office of David Liebrader, Inc.

22 By: /s/ David Liebrader

23 David Liebrader

24 Attorney for Plaintiffs

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2 CERTIFICATE OF MAILING

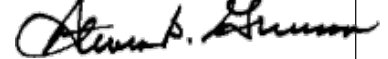
3 I hereby certify that on the 30th day of September, 2020, I mailed a copy of the foregoing
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Attorneys for Defendant Vernon Rodriguez

**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

**REPLY TO OPPOSITION TO 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)**

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

**Hearing Date: 10/27/2020
Hearing Time: 9:00 a.m.**

1 Before turning to the legal arguments raised by Plaintiffs, it may be helpful to first review
2 the matters that are not in dispute.

3 **1. The Standards for Relief Under Rule 52(a) Were Not Contested**

4 In his motion (the “Motion”), Defendant Vernon Rodriguez (“Rodriguez”) observed that
5 “findings of fact must be sufficient to indicate the factual bases for the Court’s ultimate decision.”
6 See Motion at p. 9, ll. 14-17 (*citing Bing Constr. Co. v. Vasey-Scott Eng’g Co.*, 100 Nev. 72, 73,
7 674 P.2d 1107, 1107 (1984). He further noted: “In the absence of express findings, an appellate
8 court will imply findings when the evidence clearly supports the judgment.” *Id.* at ll. 17-21 (*citing*
9 *Obstetrics and Gynecologists v. Pepper*, 101 Nev. 105, 107, 693 P.2d 1259, 1261 (1985); *Gorden*
10 *v. Gorden*, 93 Nev. 494, 496, 569 P.2d 397, 398 (1977) (*citing Hardy v. First Nat’l Bank of Nev.*,
11 86 Nev. 921, 478 P.2d 581 (1970)). “When the record is not clear, however, an appellate court
12 ‘will not imply findings to support the judgment’ but will instead ‘remand the matter to the district
13 court to set forth the basis for its award.’” *Id.* at ll. 21-25 (*citing Commercial Cabinet Co. v. Mort*
14 *Wallin of Lake Tahoe, Inc.*, 103 Nev. 238, 240, 737 P.2d 515, 517 (1987) (*citing Bing Constr. Co.*
15 *v. Vasey-Scott Eng’g Co.*, 100 Nev. 72, 73, 674 P.2d 1107 (1984). Finally, “[if] the district court
16 judge cannot do so, the matter will be remanded for a new trial.” *Id.* at ll. 25-28 (*citing Luciano*
17 *v. Diercks*, 97 Nev. 637, 638, 637 P.2d. 1219, 1221 (1981) (*citing Noble v. Noble*, 86 Nev. 459,
18 470 P.2d 430 (1970); *Pease v. Taylor*, 86 Nev. 195, 467 P.2d 109 (1970)).

19 In their opposition to the Motion (the “Opposition”), Plaintiffs offered no points and
20 authorities – or unsupported argument – regarding any of these standards. It thus appears that the
21 parties agree that if essential findings of fact that have not been made, an appellate court *must*
22 remand this case for further proceedings.

23 **2. Plaintiffs Confirmed that Mr. Rodriguez’s Prior Counsel Did Not Offer Input on the**
24 **Court’s Findings of Fact and Conclusions of Law**

25 In his Motion, Mr. Rodriguez noted that “Rule 52(b) is an important remedy, given the
26 common practice of the prevailing party preparing and submitting proposed findings of fact and
27 conclusions of law for the court.” See Motion at p. 10, ll. 10-15 (*citing Foley v. Morse & Mowbray*,
28 109 Nev. 116, 123-24, 848 P.2d 519, 524 (1993); *Byford v. State*, 123 Nev. 67, 156 P.3d 691, 692

(2007)). Mr. Rodriguez expressed doubt regarding “whether Mr. Gewerter ever offered any comments” on Plaintiffs’ draft findings. *See* Motion at p. 6, ll. 21-22. In their Opposition, Plaintiffs confirmed that they “received no feedback” from Mr. Gewerter. *See* Opposition at p. 2, ll. 19-20. It thus appears that this is an appropriate instance for relief under Nev. R. Civ. P. 52(a).¹

3. Plaintiffs Do Not Challenge the Accuracy or Evidentiary Support for any Additional Requested Findings of Fact

In his Motion, Mr. Rodriguez asked the Court to make additional findings of fact on eight (8) issues:

1. Requested Finding No. 1: VCC’s Chapter 11 Case Was Fully Administered and No Appeals Were Pending at the Time of Trial
2. Requested Finding No. 2: VCC’s Chapter 11 Plan Was Confirmed by the United States Bankruptcy Court
3. Requested Finding No. 3: VCC’s Chapter 11 Plan is Binding on All Parties
4. Requested Finding No. 4: VCC’s Chapter 11 Plan Cancelled All Promissory Notes and Issued Common and Preferred Stock
5. Requested Finding No. 5: Plaintiffs in this Action Received a Pro Rata Distribution of 1,300,093 Shares of VCC Common Stock in Exchange for their Promissory Notes
6. Distribution of 940,110 Shares of VCC Preferred Stock in Exchange for their Promissory Notes
7. Requested Finding No. 7: Confirmation of the Plan Provided for a Complete Discharge of VCC, Enforced by a Permanent Injunction
8. Requested Finding No. 8: Plaintiffs Acquired Interests in VCC Promissory Notes Between January 2013 and December 2014

See Motion at pp. 11-16.

In their Opposition, Plaintiffs do not assert that any of the requested findings are inaccurate. Instead, Plaintiffs merely argue that the requested findings are “superfluous” (p. 2, l 3) and

¹ This comment is not intended to suggest impropriety of any kind on the part of Plaintiffs’ counsel, David Liebrader, Esq. Mr. Rodriguez has no doubt that Mr. Liebrader did, in fact, provide a draft version of the Findings of Fact and Conclusions of Law to Mr. Gewerter prior to filing, and that Mr. Gewerter failed to respond. The impact of Mr. Gewerter’s omissions, most notably his failure to recognize an actual conflict of interest involving his concurrent representation of Mr. Robinson and Mr. Rodriguez, is the subject of the second post-trial motion.

1 “unnecessary” (p. 3, l. 3). Likewise, Plaintiffs do not allege that there is an absence of evidence
2 in the record to support the requested findings. To the contrary, Plaintiffs acknowledge: “An
3 appeals court can take judicial notice of the bankruptcy . . .” See Opposition at p. 4, ll. 6-7. The
4 only objection offered by Plaintiffs for the inclusion of such findings is that “adding five pages of
5 findings from an issue that has no bearing on the activity that gave rise to liability only muddies
6 the record for any appeal.” *Id.* at ll. 7-9. Mr. Rodriguez respectfully submits that an appellate
7 court will be have no trouble dealing with a few pages of additional findings – but far more
8 importantly, having a complete understanding of events is essential to the proper administration of
9 justice by both this Court and any appellate court.

10 **4. Plaintiffs Incorrectly Argue that “Control Person” Liability Under Nevada Securities**
11 **Law is Equivalent to a Personal Guarantee**

12 Plaintiffs’ resistance to including findings of fact concerning the VCC Chapter 11
13 bankruptcy case is clearly the result of a fundamental misunderstanding of the differences between
14 *contractual* liability under a personal guarantee (i.e., liability applicable to Ronald J. Robinson)
15 and *statutory* liability extended to certain “control persons” under Nevada law (i.e., the sole basis
16 on which Mr. Rodriguez was found liable). Their conflation of these concepts is readily apparent
17 in their Opposition, which states:

18 As discussed extensively in the briefing related to Mr.
19 Robinson's guarantee, "a discharge in bankruptcy does not
20 extinguish the debt itself, but merely releases the debtor from
21 personal liability for the debt." *In re Edgeworth*, 993 F.2d 51, 53
22 (5th Cir. 1993). As a result, the guarantor remains liable, as do
23 control persons. Defendant's claim that the bankruptcy "absolutely
and irrevocably extinguished" any liability under the notes is
unsupported, and legally incorrect. While VCC's liability was
extinguished (in exchange for the issuance of preferred stock), the
same wasn't true of the guarantor, or the control persons (whose
liability is based on point of sale activity).

24 See Opposition at p. 3, ll. 8-16.

25 As can be seen in this quotation, no authority was offered by Plaintiffs to support the
26 proposition that *statutory* “control person” liability under Nevada law is equivalent to the
27 *contractual* liability of a personal guarantor. A brief review of the two concepts explains why.

28

1 **a. A Personal Guarantee is a Separate and Independent Contract**

2 It is well accepted that a personal guarantee is an original, separate, and independent
3 contract that exists between a guarantor and a lender. As described by the Nevada Supreme Court:

4 "The guaranty of a note is not a promise to answer for the
5 debt of the maker . . . when it is negotiated in consideration of value
6 received by the guarantor, but ***it becomes the original and absolute***
7 ***obligation of the guarantor himself***, whereby he promises to pay
8 his own debt to the guarantee; that is to say, the debt he owes his
9 guarantee for what he has received from the latter. The note
meanwhile is delivered and held as collateral to the promise of the
guarantor. ***If the maker pays it at the date of its maturity, the***
guarantor's obligation is by that fact discharged; but, if the maker
fails to pay, the guarantor remains liable upon his own obligation,
which is absolute and independent of the note itself."

10 *Manufacturers & Traders Trust Co. v. Eighth Judicial Dist. Court In and For Clark County*, 583
11 P.2d 444, 447, 94 Nev. 551, 556 (1978) (*citing Randon v. Turk*, 86 Nev. 123, 131, 466 P.2d 218,
12 223 (1970) and *quoting Swenson v. Stoltz*, 36 Wash. 318, 78 P. 999, 1000 (1904)) (*overruled on*
13 *other grounds by First Interstate Bank of Nevada v. Shields*, 730 P.2d 429, 430-31, 102 Nev. 616,
14 618 (1986)) [emphasis added].²

15 It is thus entirely logical that this Court should hold that Defendant Robinson remains
16 individually liable on his personal guarantee, notwithstanding proceedings that occurred in the
17 VCC Chapter 11 case. *Direct privity of contract exists between Mr. Robinson and the Plaintiffs.*
18 That is not true with respect to Mr. Rodriguez.

19 **b. Statutory Liability Under Nev. Rev. Stat. 90.660(4) is Entirely Dependent**
20 ***Upon that of the Primary Obligor***

21 In sharp contrast to the common law principle that a personal guarantee is a separate and
22 independent obligation, statutory "control person" liability under Nev. Rev. Stat. 90.660(4) is
23 entirely dependent upon that of the primary obligor. The plain language of Nev. Rev. Stat.
24 90.660(1) imposes primary liability on the person of "offers or sells" an unregistered security:

25
26 _____
27 ² Beginning with the *Shields* decision, the Nevada Supreme Court began applying certain
28 protections to parties that had offered personal guarantees of obligations secured by deeds of trust,
including application of the "one-action rule" and "anti-deficiency" statutes. The common law
principle that a personal guarantee constitutes a separate obligation of a guarantor, independent of
a primary borrower, has never been renounced.

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. . .

As noted in the Motion, 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. . .” Subsection (4) imposes secondary liability against a control person “*to the same extent as*” the primary violator offering the securities for sale:

NRS 90.660 Civil liability.

...

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

[Emphasis added.]

Simply stated, Mr. Rodriguez cannot be liable “to the same extent” as VCC because VCC has been discharged in bankruptcy. The VCC Chapter 11 plan is outcome determinative as to Mr. Rodriguez, not as a matter of Federal bankruptcy law, but *because of Nevada law*. Plaintiffs have offered no authority (or unsupported argument) to refute this plain reading of Nev. Rev. Stat. 90.660(4) or the holding in *Baroi v. Platinum Condo. Dev., LLC*.

5. Plaintiffs’ “Tender” Offer is Another Misinterpretation of Law

In his Motion, Mr. Rodriguez noted that the award of damages against him was improper because it failed to account for any value for the shares issued to VCC’s investors and that it is a

1 “bedrock principle of law that a Court may not award damages based on speculation.” *See* Motion
2 at p. 19, ll. 3-4 (*citing J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 278, 71 P.3d 1264, 1269 (2003)). In
3 their Opposition, Plaintiffs attempted to sidestep that argument by offering to “tender” their shares in
4 the reorganized company: “This isn’t complicated, and Plaintiffs stand ready to tender the shares upon
5 payment of the judgment.” *See* Opposition at p. 4, ll. 3-5. In fact, it is more complicated than that.

6 a. ***To Whom a Tender a May be Made: A Purchaser May Tender Securities to the***
7 ***Issuer***

8 Once again, it is essential to appreciate the distinction between a *primary* obligor under
9 Nev. Rev. Stat. 90.660(1) and a *secondary* “control person” under Nev. Rev. Stat. 90.660(4). The
10 measure of damages for which a *primary* obligor (i.e., the issuer) may be liable made be
11 determined upon a tender *to the primary obligor*:

12 **NRS 90.660 Civil liability.**

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

15 (b) NRS 90.460;

16 is liable to the person purchasing the security. ***Upon tender***
17 ***of the security***, the purchaser may recover the consideration paid for
18 the security and interest at the legal rate of this State from the date
19 of payment, costs and reasonable attorney’s fees, less the amount of
20 income received on the security. A purchaser who no longer owns
21 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.

22 [Emphasis added.]

23 Plaintiffs cannot “tender” their securities to VCC because that would constitute an effort
24 to enforce a payment obligation that has been discharged in bankruptcy and is now subject to a
25 permanent injunction. There is no provision in Nevada law that allows a plaintiff to tender
26 securities to a secondary control person, and certainly no authority offered by Plaintiffs to support
27 such a notion.

28 . . .

1 **b. *What May be Tendered: A Purchaser Must Tender the Securities Issued by the***
2 ***Primary Obligor***

3 The plain language of Nev. Rev. Stat. 90.660(1) is equally clear regarding *what* must be
4 tendered: the original security sold in violation of law. In this case, Plaintiffs acknowledge that
5 “the bankruptcy proceeding converted Plaintiffs’ promissory notes into equity in the reorganized
6 VCC. . .” *See* Opposition at p. 3, ll. 3-4. There are no longer any promissory notes to tender –
7 even assuming for the sake of argument that there was still a primary obligor to which such a
8 tender could be made.

9 **6. Plaintiffs Arguments Regarding the Statute of Limitation Are Unpersuasive**

10 In the final section of their brief, Plaintiffs discuss three (3) issues concerning Mr.
11 Rodriguez’s assertion of a statute of limitation defense under Nev. Rev. Stat. 90.670.

12 **a. Plaintiffs Acknowledge that Evidence Exists to Support the Statute of**
13 ***Limitation Defense***

14 According to Plaintiffs: “Mr. Rodriguez asks the court to add purchase dates provided by
15 Plaintiffs in their post-trial brief to its findings of fact. This is unnecessary as the purchase dates
16 are a matter of record.” *See* Opposition at p. 4, ll. 11-13. In the very next paragraph, however,
17 Plaintiffs argued that “[i]n raiding the statute of limitation defense, it was incumbent on Defendant
18 to put forth evidence to support it, especially in light of the evidence of tolling and concealment
19 offered by Mr. Hotchkiss at trial.” *Id.* at ll. 18-21. Plaintiffs’ positions on this issue are obviously
20 irreconcilable. Either evidence exists in the record – or it does not.

21 If Plaintiffs are correct that no additional findings are necessary because purchase dates do
22 appear in the Court’s record, then no further evidence is necessary for this Court to resolve the
23 issues concerning the statute of limitation defense. Mr. Rodriguez presented authority holding that
24 claims related to the sale of unregistered securities accrue on the date the securities are issued and
25 that a discovery rule cannot apply. *See* Motion at p. 19, *et seq.* (*citing Baroi v. Platinum Condo. Dev.,*
26 *LLC*, 914 F.Supp.2d 1179, 1199 (D. Nev. 2012)). Plaintiffs failed to offer any points and authorities
27 to contradict *Baroi*. In fact, Plaintiffs never discussed the case at all.

1 **b. Plaintiffs Offer Differing Positions Regarding the Assertion of the Statute of**
2 **Limitation Defense**

3 According to Plaintiffs, “The SOL issue was also the subject of post-trial briefing. See
4 Plaintiffs’ Reply Brief to Mr. Rodriguez’ Opposition to the Motion for Damages and Attorney’s
5 Fees filed May 28, 2020.” *See* Opposition at p. 4, ll. 16-18. In the next paragraph, however, they
6 claim the defense was not raised: “Having offered nothing pretrial, during trial or post trial, not
7 even mentioning the issue during opening or closing, Defendant abandoned the defense, and did
8 not meet his burden or proof.” *Id.* at p. 4, l. 22- p. 5, l. 1.

9 No authority is offered for the proposition that an affirmative defense must be discussed
10 during opening or closing arguments at trial to be effective. Mr. Rodriguez respectfully submits
11 that such opening and closing arguments are frequently waived in bench trials, and in any event,
12 the purpose of those arguments is to preview or summarize the *facts* adduced at trial. In this matter,
13 the Court very properly requested post-trial briefing on *legal* issues, and Mr. Rodriguez raised the
14 statute of limitation defense at his earliest opportunity.

15 As for the comments regarding “tolling” or “concealment,” if Plaintiffs are correct that the
16 dates of their investments appear in the record, then the uncontroverted rule announced in *Baroi*,
17 namely that claims related to the sale of unregistered securities accrue at the time of issuance, can
18 be fully determined. Since no discovery rule applies, statutes of limitation ran exactly two years
19 the unregistered securities were sold.

20 **c. Defendant’s Assertion of an Affirmative Defense Should Apply to the Entire**
21 **Consolidated Case**

22 The final issue raised by Plaintiffs is an interesting one. Mr. Rodriguez, having a duty of
23 candor to the Court, noted in his Motion that the statute of limitation defense had been expressly
24 asserted in his response to the Hotchkiss complaint, but not that filed by Mr. White. *See* Motion
25 at p. 5, ll. 17-18. Plaintiffs now argue that that defense should not be applied to the additional
26 parties added in the White pleading. *See* Opposition at p. 5, ll. 11-17.

27 On July 1, 2019, long after responses were filed by Mr. Rodriguez to both complaints, this
28 Court approved a *Stipulation and Order Consolidating Cases*, which provided: “The parties
acknowledge that the issues in both cases are identical, and involve the same Defendants and same

1 causes of action. Consolidating the two cases would save time and money, and is in the interest
2 of the parties and the Eighth Judicial District Court.” *Id.* at p. 1, ll. 20-23.

3 Consolidation of cases is governed by Nev. R. Civ. P. 42, which provides, in pertinent part:

4 **Rule 42. Consolidation; Separate Trials**

5 (a) Consolidation. If actions before the court involve a
6 common question of law or fact, the court may:

- 7 (1) join for hearing or trial any or all matters at
8 issue in the actions;
9 (2) consolidate the actions; or
10 (3) issue any other orders to avoid unnecessary cost
11 or delay. . .

12 Rule 42(a)(1) allows for a joint hearing or trial, while Rule 42(a)(2) allows the court to
13 “consolidate” the actions. A plain reading of Rule 42(a)(2) suggests “consolidation” is more than
14 simply coordinating a hearing or trial and that a Court may combine two or more cases into a single
15 action, at least until the time of any appeal.³ That is certainly what happened in this case.
16 Following entry of the stipulation, all filings were made under the *Hotchkiss* case number. No
17 distinction was made between any of the Plaintiffs in any pre- or post-trial briefing, and indeed,
18 this Court issued only one *Findings of Fact, Conclusions of Law and Order on Defendants*
19 *Liability* and a *Judgment* awarding Plaintiffs collectively a single amount as damages. Mr.
20 Rodriguez respectfully submits that because the two cases have been treated as a single proceeding
21 for all purposes, it would be fundamentally unfair not to incorporate all his affirmative defenses in
22 that single consolidated action. Plaintiffs offered no evidence or argument suggesting that they
23 would be prejudiced as a result.

24 . . .

25 . . .

26 . . .

27 ³ It should be noted that the Nevada Supreme Court recently held that "Consolidated cases
28 retain their separate identities so that an order resolving all of the claims in one of the consolidated
cases is immediately appealable as a final judgment under NRAP 3A..." *Estate of Sarge v. Quality
Loan Serv. Corp. (In re Estate of Sarge)*, 432 P.3d 718, 722 (Nev. 2018).

1 **CONCLUSION**

2 Based on the foregoing, Mr. Rodriguez respectfully requests that this Honorable Court
3 offer the eight (8) additional findings of fact described above pursuant to Nev. R. Civ. P. 52(a).
4 Alternatively, Mr. Rodriguez requests that this Court take “further action” after a nonjury trial
5 pursuant to Nev. R. Civ. P. 59(b) to consider additional evidence. After consideration of those
6 findings, Mr. Rodriguez requests that the Court amend the Judgment to vacate the finding of
7 liability and award of damages against him. Finally, Mr. Rodriguez requests such other relief as
8 is just and proper.

9 Dated this 13th day of October, 2020.

10 FLEMING LAW FIRM, PLLC

11
12 By /s Scott D. Fleming
13 SCOTT D. FLEMING, ESQ.
14 Nevada Bar No. 5638
15 9525 Hillwood Drive
16 Suite 140
17 Las Vegas, Nevada 89134
18 *Attorney for Vernon Rodriguez*
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28

CERTIFICATE OF SERVICE

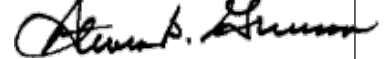
I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 13th day of October, 2020, I caused to be served a true and correct copy of foregoing **REPLY TO OPPOSITION TO FIRST POST-JUDGMENT MOTION BY DEFENDANT VERNON RODRIGUEZ FOR ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT PURSUANT TO NEV. R. CIV. P. 52(B), OR IN THE ALTERNATIVE, FOR FURTHER ACTION AFTER A NONJURY TRIAL PURSUANT TO NEV. R. CIV. P. 59(B)** in the following manner:

(VIA ELECTRONIC SERVICES) The above-referenced documents were electronically filed on the dates listed above and served on October 13, 2020, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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Attorneys for Defendant Vernon Rodriguez

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

STEVEN A. HOTCHKISS,

Plaintiff,

vs.

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

**REPLY TO OPPOSITION TO
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)**

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

**Hearing Date: 10/27/2020
Hearing Time: 9:00 a.m.**

As with his reply to Plaintiffs' opposition to the first post-judgment motion by Defendant Vernon Rodriguez ("Rodriguez"), we begin by noting matters that are not contested or otherwise in dispute.

1. The Standards for Relief Under Rule 59 Were Not Contested

In his second post-trial motion (the "Motion"), Mr. Rodriguez observed: "The rule at common law was that a new trial would be granted when an injustice had been done." *See* Motion at p. 4, ll. 9-10 (*citing Shute v. Big Mountain Inv. Co.*, 45 Nev. 99, 102, 198 P.227 (1921)). Similarly, relief could be granted where there was a showing of "manifest injustice." *Id.* at ll. 14-15 (*citing Frances v. Plaza Pac. Equities*, 109 Nev. 91, 94, 847 P.2d 772, 725 (1993) (*citing Price v. Sinnott*, 85 Nev. 600, 460 P.2d 837, (1969); *Avery v. Gilliam*, 97 Nev. 181, 625 P.2d 1166 (1981))).

The injustice to which Mr. Rodriguez referred was an actual conflict of interest that resulted from the concurrent representation by Harold P. Gewerter, Esq. of Defendants Ronald J. Robinson and Mr. Rodriguez. According to Plaintiffs, "Defendant does not cite any Nevada cases supporting his position (even acknowledging that none exist), offering only a 1984 New York case, which is not controlling authority." *See* Opposition at p. 2, ll. 5-7. In fact, what appears to be the seminal case on this admittedly esoteric issue is from the U.S. Court of Appeals for the Second Circuit, and involves essentially identical facts: *Dunton v. Suffolk County, State of N.Y.*, 729 F.2d 903 (2nd Cir. 1984). Plaintiffs certainly offer no authorities suggesting that the existence of an actual, material conflict of interest is not an irregularity that can support a new trial or further action under Rule 59.

2. Mr. Rodriguez's Claim that an Actual Conflict of Interest Existed Was Not Contested

In his Motion, Mr. Rodriguez described in detail how the concurrent representation of Mr. Robinson and himself presented an irreconcilable conflict of interest. Two statutory defenses were available to Mr. Rodriguez, but neither was fully presented – because doing so would have interfered with Mr. Robinson's argument that he had not intended to personally guarantee the promissory notes formerly held by Plaintiffs. No authority, or unsupported argument, was presented by Plaintiff in opposition to the observation that an actual conflict of interest existed.

1 **3. Plaintiffs Mischaracterize Nev. Rev. Stat. 90.660(4)**

2 Turning now to the substance of Plaintiffs' argument, they refer to a single "good faith"
3 defense: "While control person liability under NRS §90.660 does provide for a good faith defense,
4 based upon the evidence submitted, it clearly would not apply to Mr. Rodriguez role in the
5 transaction. . ." *Id.* at p. 3, ll. 11-13. In fact, as noted in the Motion, there are *two* statutory defenses
6 to "control person" liability under Nev. Rev. Stat. 90.660(4):

7 **NRS 90.660 Civil liability.**

8 . . .

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

18 [Emphasis added.]

19 In this case, Plaintiffs hope to rewrite Nev. Rev. Stat. 90.660(4) to add an affirmative "duty
20 of inquiry" to ensure absolute compliance with all securities laws:

21 Here, liability was based upon the sale of unregistered
22 securities. Both Mr. Robinson and Mr. Rodriguez knew of, and
23 participated in the offering; Should they have known that the sale
24 required a registration or exemption filing? ***As to Mr. Rodriguez, as***
25 ***the chief financial officer - with a business degree from the***
26 ***University of New Mexico - he had, at the very least, the duty of***
27 ***inquiry to make sure that the fund raise was being done in***
28 ***compliance with the securities laws.*** . . In the "exercise of reasonable
care" a CFO is obligated to make the necessary inquiries to counsel and
accountants to ensure a registration statement or claim for exemption
is filed and effective prior to the commencement of the offering. ***His***
failure to do so, in light of his active participation in the offering was
"unreasonable," and eliminates the ability to rely on the good faith
defenses available to control persons under NRS 90.660.

1 See Opposition at p. 3, l. 19 – p. 4, l. 1 [emphasis added].

2 Under Plaintiffs’ faulty interpretation, one’s status as a control person would *always* create
3 a “duty of inquiry,” and any failure to discover any defect in an offering would, *per se*, constitute
4 a lack of “reasonable care.” The same faulty logic would also negate the second defense. Plaintiffs
5 would have this Court hold that any failure to discover a defect would prevent such a person from
6 acting in “good faith.” In sum, Plaintiffs proposal to rewrite Nev. Rev. Stat. 90.660(4) to add a
7 “duty of inquiry” that would render it impossible for anyone to ever invoke either statutory defense.
8 It is well established, however, that courts must not render any part of a statute meaningless and
9 must not read a statute’s language so as to produce absurd or unreasonable results. *See, e.g., Leven*
10 *v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007).

11 **4. Additional Testimony is Needed for the Court to Evaluate the Two Statutory Defenses**
12 **Under Nev. Rev. Stat. 90.660(4)**

13 In its Decision on April 27, 2020, this Court noted that Mr. Rodriguez presented testimony
14 that was not aware of the registration requirements under Nevada securities law:

15 While the testimony of Robinson and *Rodriguez suggests that*
16 *they believed they were acting in good faith, based in part on an*
17 *alleged lack of knowledge of Nevada security laws, they failed to*
18 *present any evidence that they were not directly or indirectly involved*
19 *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.

20 *Id.* at p. 5, ll. 14-20 [emphasis added].

21 As Mr. Rodriguez has explained, testimony regarding the second elements of the two
22 statutory defenses (i.e., reasonable care and inducement of the violation) was never presented
23 because doing so would have interfered with Mr. Robinson’s argument that he never intended to
24 offer his personal guarantee. The conflict of interest is readily apparent and resulted in an
25 irregularity at trial that warrants either a new trial or further action pursuant to Nev. R. Civ. P. 59.

26 In his Motion and supporting declaration, Mr. Rodriguez made an offer of proof on eleven
27 (11) issues, summarized below:

28 . . .

1. Mr. Rodriguez's Role with WinTech, LLC.
2. Fundraising Exclusively by Ron Robinson.
3. The Meeting With a Representative of Provident Trust.
4. Meetings With Retire Happy.
5. Requests by Retire Happy to Avoid Contact With Investors.
6. Licensure.
7. The Power Point Presentation.
8. Investor Questions.
9. Use of Investor Proceeds.
10. Compensation from WinTech.
11. Identification of Investors.

See Motion at pp. 8-11.

Mr. Rodriguez concluded by noting that the additional facts set forth in his offer of proof would be sufficient to establish both statutory defenses available under Nev. Rev. Stat. 90.660(4). *Id.* at p. 11, ll. 20-27. Plaintiffs offered no evidence or authorities (or even unsupported argument) to suggest that Mr. Rodriguez's offer of proof, if accepted, would fail to establish either of the two statutory defenses under Nev. Rev. Stat. 90.660(4).

CONCLUSION

According to Plaintiffs: "While Mr. Rodriguez may have an issue with his prior counsel for the way he tried the case, his remedy lies against Mr. Gewerter." *See* Opposition at p. 2, ll. 7-9. It is worth taking a moment to consider how that scenario would play out. If this Court declines Mr. Rodriguez's request for further action, he will be forced to file an appeal. At least one possible outcome of such an appeal (after dozens of hours and tens of thousands of dollars in fees incurred by both sides) would be a remand to this Court to consider the testimony for which Mr. Rodriguez has made his offer of proof. A claim against Mr. Gewerter would, of course, require the commencement of a new action where Mr. Rodriguez would have to prove the "case within a case," meaning that but for some omission on the part of counsel, he would have prevailed in this matter. There is a possibility, however, that an appeal, a new trial on remand, and a new lawsuit

1 can all be avoided if this Court is willing to consider a half-day of additional testimony.
2 Accordingly, Mr. Rodriguez respectfully requests that this Court take “further action” pursuant to
3 Nev. R. Civ. P. 59, to amend the Judgment to reflect any additional findings, and to grant such
4 other relief as is just and proper.

5 Dated this 13th day of October 2020.

6 FLEMING LAW FIRM, PLLC

7
8 By /s/ Scott D. Fleming
9 SCOTT D. FLEMING, ESQ.
10 Nevada Bar No. 5638
11 9525 Hillwood Drive
12 Suite 140
13 Las Vegas, Nevada 89134
14 Attorney for Vernon Rodriguez
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 13th day of October, 2020, I caused to be served a true and correct copy of foregoing **REPLY TO OPPOSITION TO SECOND POST-JUDGMENT MOTION BY DEFENDANT VERNON RODRIGUEZ FOR A NEW TRIAL, OR IN THE ALTERNATIVE, FURTHER ACTION AFTER A NONJURY TRIAL PURSUANT TO NEV. R. CIV. P.**

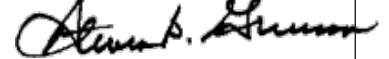
59(A) in the following manner:

(VIA ELECTRONIC SERVICES) The above-referenced documents were electronically filed on the dates listed above and served on October 13, 2020, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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Attorney for Plaintiffs

By /s/ Scott D. Fleming
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Attorney for Vernon Rodriguez



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Telephone: (702) 743-6263
E-Mail: scott@fleminglawlv.com

Attorney for Defendant Vernon Rodriguez

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * *

STEVEN A. HOTCHKISS,

Plaintiff,

vs.

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

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

Defendants.

**REPLY TO OPPOSITION TO
THIRD POST-JUDGMENT MOTION
BY DEFENDANT VERNON
RODRIGUEZ FOR STAYS
PENDING DISPOSITION OF POST-
JUDGMENT MOTIONS AND
APPEAL**

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

Hearing: Chambers Only

1 Defendant Vernon Rodriguez (“Rodriguez”) offers the following reply to the opposition
2 this third post-trial motion (the “Motion”).

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **A. Plaintiffs Do Not Dispute the Standards for Relief Under Nev. R. Civ. P. 62**

5 In his Motion, Mr. Rodriguez observed that “stays pending appeal pursuant to Nev. R. Civ.
6 P. 62(d) are permissive rather than mandatory.” *See* Motion at p. 3, ll. 18-19 (*citing State ex rel.*
7 *Pub. Serv. Comm’n v. First Judicial Dist. Court ex rel. Carson City*, 94 Nev. 42, 45, 574 P.2d 272,
8 274 (1978) (*abrogated on other grounds by Nelson v. Heer*, 121 Nev. 832, 834 n. 4, 122 P.3d
9 1252, 1253 n. 4 (2005)). A supersedeas bond posted pursuant to Rule 62(d) is typically set in an
10 amount that will permit full satisfaction of the judgment. A District Court may, however, provide
11 for a bond in a lesser amount, or may permit security other than a bond, when unusual
12 circumstances exist. *Id.* at ll. 22-24 (*citing McCulloch v. Jeakins*, 99 Nev. 122, 659 P.2d 302
13 (1983)). Plaintiffs did not dispute any of these authorities.

14 **B. Plaintiffs Consent to a Stay Pending Resolution of the Post-Judgment Motions**

15 The filing of a post-trial motion pursuant to Nev. R. Civ. P. 59 will toll the time for filing
16 an appeal but does not stay enforcement measures while such a motion is pending. Accordingly,
17 in an abundance of caution, Mr. Rodriguez requested a temporary stay in addition to a stay pending
18 appeal. It appears that Plaintiffs do not oppose Mr. Rodriguez’s request for a stay pending
19 resolution of the post-trial motions.

20 **C. Plaintiffs Focus Exclusively on Financial Hardship as a Basis to Grant or Deny Relief Pending Appeal**

21 In their Opposition, Plaintiffs argue that the Motion should be denied because Mr.
22 Rodriguez did not present evidence regarding his inability to post a supersedeas bond. *See*
23 Opposition at p. 4, ll. 1-5. While it is certainly true that Mr. Rodriguez does not have the ability
24 to fund a cash bond or the ability to collateralize a surety bond, he did not rely on that fact in
25 seeking a stay. Rather, he pointed to the fact that (i) he has asserted multiple plausible defenses to
26 liability and (ii) that Plaintiffs are located in multiple states and have individual claims that would
27 render it all but impossible for Mr. Rodriguez to commence separate actions to recover any
28 amounts collected if the Judgment is reversed on appeal or remand. Plaintiffs did not offer a

1 substantive response to these observations. Instead, they offered a completely circular argument
2 that Mr. Rodriguez could avoid this result by posting a supersedeas bond. *See* Opposition at p. 4,
3 ll. 7-13. They never addressed either the likelihood of Mr. Rodriguez prevailing on his appeal, the
4 clear difficulty he would suffer attempting to recoup funds if the Judgment is reversed, or the fact
5 that the balance of hardships tips sharply in favor of Mr. Rodriguez.

6 **CONCLUSION**

7 For all the foregoing reasons, Mr. Rodriguez respectfully requests that this Honorable
8 Court issue a stay of execution pursuant to Nev. R. Civ. P. 62(b) pending the final resolution of
9 the Post-Judgment Motions. Should it then become necessary for Mr. Rodriguez to file an appeal,
10 he further requests entry of a stay pending appeal pursuant to Nev. R. Civ. P. 62(d) without bond.
11 Finally, Mr. Rodriguez requests such other relief as is just and proper.

12 Dated this 13th day of October, 2020.

13 FLEMING LAW FIRM, PLLC

14
15 By /s/ Scott D. Fleming
16 SCOTT D. FLEMING, ESQ.
17 Nevada Bar No. 5638
18 9525 Hillwood Drive
19 Suite 140
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21 *Attorney for Vernon Rodriguez*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 13th day of October, 2020, I caused to be served a true and correct copy of foregoing **THIRD POST-JUDGMENT MOTION BY DEFENDANT VERNON RODRIGUEZ FOR STAYS PENDING DISPOSITION OF POST-JUDGMENT MOTIONS AND APPEAL** in the following manner:

(VIA ELECTRONIC SERVICES) The above-referenced documents were electronically filed on the dates listed above and served on October 13, 2020, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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Attorney for Vernon Rodriguez

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Las Vegas, Nevada 89106
Attorney for Plaintiffs

By /s/ Scott D. Fleming
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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,	)	ORDER
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Frank)	
Yoder, Alisa Davis and DOES 1-10 and ROES 1-)	
10, inclusively	)	CONSOLIDATED WITH
)	
DEFENDANTS	)	Case No. A-17-763003-C
)	
Anthony White, Robin Suntheimer, Troy)	
Suntheimer, Stephens Ghesquiere, Jackie Stone,)	
Gayle Chany, Kendall Smith, Gabriele)	
Lavermicocca and Robert Kaiser)	
)	
PLAINTIFFS)	
)	
v.)	
)	
Ronald J. Robinson, Vernon Rodriguez, Virtual)	
Communications Corporation, Frank Yoder, Alisa)	
Davis and DOES 1-10 and ROES 1-10, inclusively)	
)	
)	
)	

ORDER ON POST JUDGEMNT MOTIONS

Defendant Rodriguez' three post judgment motions came on for hearing on
October 27, 2020. Appearing for Plaintiffs was David Liebrader. Appearing for

1 Defendant Rodriguez was Scott Fleming. Harold Gewerter was in attendance, but did
2 not participate.

3 After considering the motions, oppositions and replies, and hearing oral
4 argument from counsel, the court rules that further briefing is required on the issue
5 of control person liability under NRS 90.660 in light of Virtual Communications
6 Corporation's bankruptcy, and sets the following briefing schedule:

- 7 1. Mr. Rodriguez' brief is due November 24, 2020;
- 8 2. Plaintiffs' reply brief is due by December 22, 2020;
- 9 3. Briefs are limited to 20 pages.
- 10 4. A hearing on the three post trial motions is set for January 19, 2021 at 9:00
11 a.m.


12 The Court FURTHER ORDERS that while a decision on these three motions
13 remains pending, and until further order of the Court, Plaintiff shall not seek to
14 enforce the judgment against Defendant Rodriguez, and Mr. Rodriguez shall not
15 transfer, dispose, remove or conceal any assets, except those required for everyday,
16 ordinary expenses.

17 Any transfer in violation of this order will result in a contempt of court
18 citation.

19 Dated this 12th day of November, 2020

20 IT IS SO ORDERED:

21 Dated this ____ day of November, 2020

22 
Hon. Cristina Silva
District Court Judge

EC

23 A1B 201 3412 0F80
24 Cristina D. Silva
District Court Judge

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Submitted by:

/s/David Liebrader
David Liebrader
Attorney for Plaintiff

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 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: 11/12/2020

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19 David Liebrader, Esq.

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20 David Liebrader

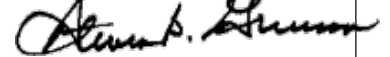
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DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

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

**DEFENDANT VERNON
RODRIGUEZ'S SUPPLEMENTAL
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
POST-JUDGMENT MOTIONS**

Hearing date: 1/19/21
Hearing time: 9:00 a.m.

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 Defendant Vernon Rodriguez (“Rodriguez”) offers the following supplemental
2 memorandum of points and authorities in support of the post-judgment motions that are currently
3 set for a continued hearing on January 19, 2021.

4 This memorandum will discuss the interplay between Nev. Rev. Stat. 90.660 and Title 11
5 of the United States Code (the “Bankruptcy Code”), together with supporting case law.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **A. Primary and Secondary Liability Under Nev. Rev. Stat. 90.660**

8 **1. “Primary” Violator Liability Under Nev. Rev. Stat. 90.660(1)**

9 We begin with the observation that there are two distinct categories of persons from whom
10 a plaintiff may obtain a recovery for violations of securities law. Pursuant to Nev. Rev. Stat.
11 90.660(1), a plaintiff may recover from a person “who offers or sells a security” in violation of
12 law:

13 **NRS 90.660 Civil liability.**

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

16 . . . (b) NRS 90.460 [failure to register];

17 . . . is liable to the person purchasing the security. . .

18 An offeror or seller of a security to whom liability may extend under Nev. Rev. Stat.
19 90.660(1) has been referred to as a “Primary” violator.

20 **2. “Secondary” Control Person Liability Under Nev. Rev. Stat. 90.660(4)**

21 A plaintiff may also recover from a secondary “control person”:

22 **NRS 90.660 Civil liability.**

23 . . .
24 4. *A person who directly or indirectly controls another person
25 who is liable under subsection 1 or 3, a partner, officer or director
26 of the person liable, a person occupying a similar status or
27 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. . . .*

28 [Emphasis added.]

1 There appear to be only three cases discussing Nev. Rev. Stat. 90.660, but all three
2 recognize the distinction between a “primary” violator and a “secondary” control person. *See*
3 *Baroi v. Platinum Condo. Dev., LLC*, 914 F.Supp.2d 1179, 1200-01 (D. Nev. 2012) (“Pursuant to
4 Nevada Revised Statutes § 90.660(4), a person who ‘directly or indirectly controls’ a *primary*
5 violator of Nevada securities law is jointly and severally liable for the securities violation. . .”)
6 [emphasis added]; *see also Tsutsumi v. Advanced Power Techs., Inc.*, Case No. 2:12-cv-01784-
7 MMD-VCF at *7 (D. Nev. January 24, 2014) (complaint failed to meet pleading requirements of
8 Fed. R. Civ. P. 9(b) where it did not detail whether corporate defendants were themselves liable
9 or whether individual defendants were “vicariously” liable as controlling persons under Nev. Rev.
10 Stat. 90.660(4)) [unpublished decision]; *Ayers v. Lee*, Case No. 14cv542-LAB(WVG) at *2 (S.D.
11 Cal. March 13, 2015) (“Section 90.660(1) provides that a person who offers or sells securities in
12 violation of certain provisions of law is liable to the person who purchases the security. Section
13 90.660(4) provides for the liability of several other classes of people. . .”) [unpublished decision].

14 **B. Damages Recoverable from a Primary Violator Under Nev. Rev. Stat. 90.660(1)**

15 There are two (and only two) statutory formulas for determining damages that may be
16 recovered from a Primary violator under Nev. R. Civ. P. 90.660(1): the “Tender Rule” and the
17 “Disposition Rule.”

18 **1. The Tender Rule**

19 If a purchaser still holds a security, he may “tender” the security to the Primary violator
20 from whom he purchased it. Damages consist of the amount paid for the security, less income
21 received from the security, plus interest, fees, and costs:

22 **NRS 90.660 Civil liability.**

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

25 . . .
 (b) NRS 90.460;

26 . . .
 is liable to the person purchasing the security. *Upon tender*
27 *of the security, the purchaser may recover the consideration paid*
28 *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. . .

1 [Emphasis added.]

2 The Tender Rule appears in Nev. Rev. Stat. 90.660(1), which deals solely with the liability
3 of a Primary violator. The plain language is thus clear that the person *to whom* a tender must be
4 made is the “person who offers or sells a security” in violation of law – i.e., the Primary violator.

5 As importantly, the Tender Rule states clearly *what* must be tendered: the original security.
6 There is nothing in Nev. Rev. Stat. 90.660(1) that allows for the “tender” of anything other than
7 that which was purchased. If a purchaser has “disposed of” a security, he must rely on the second
8 formula to determine damages.

9 **2. The Disposition Rule**

10 Nev. Rev. Stat. 90.660(1) provides for a recovery from a Primary violator if a purchaser
11 has “disposed” of a security.

12 **NRS 90.660 Civil liability.**

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

15 (b) NRS 90.460;

16 is liable to the person purchasing the security. . . A purchaser
17 who no longer owns the security may recover damages. *Damages*
18 *are [1] the amount that would be recoverable upon a tender [2]*
19 *less the value of the security when the purchaser disposed of it,*
20 *plus [3] interest at the legal rate of this State from the date of*
21 *disposition of the security, costs and reasonable attorney’s fees*
22 *determined by the court. . .*

20 [Emphasis and numbers in brackets added.]

21 The damages calculation under the Disposition Rule requires a three-part analysis. First, a
22 plaintiff must determine what amount would be recoverable under the Tender Rule (i.e., the
23 purchase price less the income derived from the security). Second, a plaintiff must then subtract
24 the value of the security when the purchaser disposed of it. Finally, a plaintiff then may add
25 interest, fees, and costs.

26 The second element of the Disposition Rule requires two pieces of evidence. A purchaser
27 must show that he “disposed” of the security (i.e., that he transferred the property) and the “value”
28 of the security when that event occurred.

1 **C. Damages Recoverable From a Secondary Control Person Under Nev. Rev. Stat.**
2 **90.660(4)**

3 The Tender Rule and the Disposition Rule are the only two means of measuring damages
4 against a Primary violator under Nev. Rev. Stat. 90.660(1). There are no formulas for determining
5 the liability of a Secondary control person. There is no equivalent of the Tender Rule and no
6 Disposition Rule in subsection (4). There is nothing that authorizes an award of interest or
7 attorneys’ fees or costs. Instead, the statute provides that a Secondary control person may only be
8 held liable “with and to the same extent as” the Primary violator:

9 **NRS 90.660 Civil liability.**

10 ...
11 4. *A person who directly or indirectly controls another*
12 *person who is liable under subsection 1* or 3, a partner, officer or
13 director of the person liable, a person occupying a similar status or
14 performing similar functions, any agent of the person liable, an
15 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. ...

16 [Emphasis added.]

17 With these principles in mind, we turn to a discussion of the Bankruptcy Code.

18 **D. The Effect of the VCC Bankruptcy**

19 In the *Request by Defendants Vernon Rodriguez for Judicial Notice in Support of Post-*
20 *Judgment Motions* (“RFJN”) filed September 19, 2020, Mr. Rodriguez provided copies of three
21 key documents entered in the Chapter 11 bankruptcy case by Virtual Communications Corporation
22 (“VCC”). We refer to those documents extensively in the following section.

23 **1. VCC Cannot be Held Liable as a Primary Violator**

24 **a. VCC’s Chapter 11 Case Has Been Concluded**

25 Mr. Rodriguez attached as **Exhibit 1** to the RFJN the *Order Entering Final Decree* dated
26 March 14, 2019, Electronic Case Filing (ECF) No. 119. The order is significant because it
27 establishes that the VCC case has been fully administered and that there are no pending appeals.

28 ...

b. VCC's Plan of Reorganization Was "Confirmed"

On September 5, 2018, the Bankruptcy Court entered the *Order Confirming First Amended Chapter 11 Plan of Reorganization of Virtual Communications Corporation* [ECF No. 75] (the "Confirmation Order"). This document was attached as **Exhibit 2** to the RFJN.

The Confirmation Order is significant because it provides Bankruptcy Court approval of the "Plan" (as defined below), which is expressly binding upon all parties:

5. 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.

c. The Plan of Reorganization Provides a Discharge to VCC

The Plan provides a discharge that prohibits any parties from asserting any claims against VCC or its property that arose prior to the "Effective Date":

A. Discharge Injunction.

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

rights based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

See Plan, **Exhibit 3** to the RFJN, at p. 25, ll. 13-23.

The discharge provided by the Plan is enforceable by a permanent injunction:

A. Discharge Injunction.

... 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. 25, l. 24 – p. 26, l. 6 [emphasis added].

In sum, the Plan provides a discharge to VCC that is enforceable by a permanent injunction by any person or entity injured by its violation – including Mr. Rodriguez.

d. Because VCC Cannot be Held Liable as a Primary Violator, No Liability May Attach to Mr. Rodriguez

As a result of the bankruptcy filing, any liability that VCC may have had as a “Primary” violator under Nev. Rev. Stat. 90.660(1) has been extinguished, and Plaintiffs are subject to a permanent injunction under federal law prohibiting them from pursuing any claim. Without a

1 judgment against a Primary violator, there is no ability to hold Mr. Rodriguez liable as a
2 “Secondary” control party “with and to the same extent as” under Nev. Rev. Stat. 90.660(4).

3 **2. The Tender Rule Under Nev. Rev. Stat. 90.660(1) Cannot Apply in this Case**

4 It is anticipated that Plaintiffs will argue that even if they cannot pursue a claim against
5 VCC, this Court can nevertheless consider what VCC’s liability would have been if a claim could
6 be asserted. There is, of course, no authority for a “hypothetical” finding of liability against a
7 Primary violator – but even if there were, damages could not be assessed against VCC, or Mr.
8 Rodriguez, because Plaintiffs cannot satisfy the “Tender Rule.”

9 **a. Tender Must be Made to the Primary Violator**

10 As noted above, the Tender Rule appears in Nev. Rev. Stat. 90.660(1), which deals
11 exclusively with the Primary violator, which in this case is VCC. The discharge and permanent
12 injunction prohibit Plaintiffs from demanding payment in exchange for the surrender of the
13 securities issued in violation of law. There is nothing in Nev. Rev. Stat. 90.660(4) that allows for
14 a tender to a Secondary control party.

15 **b. Plaintiffs No Longer Hold Securities Issued by the Primary Violator**

16 Just as there is no Primary violator to which a tender may be made, there are no longer any
17 original securities available for Plaintiffs to tender. VCC’s Plan effected a “debt for equity swap,”
18 meaning that Plaintiffs’ promissory notes were cancelled and that shares of stock were issued to
19 them in “full and final satisfaction” of VCC’s obligations:

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

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

23 Treatment: Except to the extent that a Holder of an Allowed
24 Class 3 Claim agrees to a less favorable treatment, in exchange for
25 and in **full and final satisfaction**, compromise, settlement, release,
26 and discharge of each Allowed Class 3 Claim, each Holder of an
27 Allowed Class 3 Claim shall receive on the Effective Date, or as
28 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***.

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

28 The “Common Stock Distribution” under the Plan consisted of 1,300,093 shares of

1 common stock of the reorganized debtor:

2 Common Stock Distribution: A distribution of
3 approximately 1,300,093 shares of Common Stock of the
4 Reorganized Debtor to be allocated among the Holders of Allowed
5 Class 3 Claims on a Pro Rata basis according to the amount of
6 contract-rate interest accrued on the principal balance included in
7 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.

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

9 The "Series A Preferred Distribution" consisted of a pro rata share of 940,110 shares of
10 VCC preferred stock:

11 Series A Preferred Distribution: A distribution of
12 approximately 940,110 shares of Series A Preferred Stock of the
13 Reorganized Debtor to be allocated among the Holders of Allowed
14 Class 3 Claims on a Pro Rata basis according to the principal
15 indebtedness included in each Holder's Allowed Class 3 Claim,
16 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.

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

18 In sum, because of the VCC confirmed Plan, there is no one to whom a tender can be made
19 --- and nothing to tender. There is no ability to award damages against a Primary violator for whom
20 Mr. Rodriguez could have Secondary control person liability "with and to the same extent as."

21 ...

22 ...

23 ...

24 ...

25

26

27

28

3. **The Disposition Rule Under Nev. Rev. Stat. 90.660(1) Cannot Apply in this Case**

As discussed above, the Disposition Rule may allow for a recovery where a purchaser has “disposed of” securities:

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. . . A purchaser who no longer owns the security may recover damages. ***Damages are [1] the amount that would be recoverable upon a tender [2] less the value of the security when the purchaser disposed of it, plus [3] 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. . .***

[Emphasis and numbers in brackets added.]

a. Plaintiffs Did Not “Dispose Of” Their Notes

Once again, the Plan makes it impossible for Plaintiffs to prove damages against VCC, even as a hypothetical matter. To begin with, Plaintiffs did not “dispose of” their notes. The plain meaning of that phrase is as follows:

dispose of

1 a (1): to get rid of

// how to dispose of toxic waste

(2): to deal with conclusively

// disposed of the matter efficiently

b: to transfer to the control of another

// disposing of personal property to a total stranger

2: to place, distribute, or arrange especially in an orderly way

// disposing of the weapons in the new fort

See <https://www.merriam-webster.com/dictionary/dispose> [italics in original].

Plaintiffs did not transfer their promissory notes to a third party. Instead, those notes were

1 cancelled through the Plan and pro rata shares of common and preferred stock were issued to them
2 in “full and final satisfaction” of those debts.

3 **b. Plaintiffs Cannot Demonstrate a Loss in Value**

4 In addition to demonstrating that they “disposed of” their promissory notes, Plaintiffs must
5 prove the difference between the amount that they paid for their securities and the “value” they
6 received in exchange for the transfer. As noted above, the Plan provides that the debt for equity
7 swap constitutes “full and final satisfaction” of all debts. The Plan also refers to the “complete
8 satisfaction” of all prior obligations:

9 **A. Discharge Injunction.**

10 *The rights afforded in the Plan and the treatment of all*
11 *Claims shall be in exchange for and in complete satisfaction,*
12 *discharge, and release of all Claims of any nature whatsoever*
13 *arising prior to the Effective Date* against the Debtor and the Estate,
including any interest accrued on such Claims from and after the
Petition Date. . .

14 See Plan, Exhibit 3 to the RFJN, at p. 25, ll. 13-15 [emphasis added].

15 Even if the Court were to consider the debt for equity swap to be a “disposition,” and if the
16 Court were willing to ignore the language of the Plan regarding “full and final satisfaction” and
17 “complete satisfaction” and presume that the shares are worth less than the original notes, no
18 evidence was offered regarding the *value* of the common and preferred stock issued to Plaintiffs.
19 It is a bedrock principle of law that a Court may not award damages based on speculation. See,
20 *e.g., J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 278, 71 P.3d 1264, 1269 (2003).

21 If Plaintiffs cannot satisfy the Disposition Rule to prove damages (even hypothetical
22 damages) on the part of VCC as a Primary violator, there is no amount for which Mr. Rodriguez
23 may be held liable as a Secondary party “with and to the same extent as.”

24 **4. The Bankruptcy Rule Against the Discharge of Non-Debtor Parties**

25 In the *Findings of Fact and Conclusions of Law and Order* (“FFCL”) issued May 8, 2020,
26 the Court observed that the VCC bankruptcy case did not extinguish the liability of Ronald J.
27 Robinson under his personal guarantee:

28 . . .

The Court also finds that the VCC Bankruptcy did not extinguish 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, case 2:04-cv-01172, Decision issued 10/11/06) and Marc Nelson Oil Prods. v. Grim Logging Co., 110 P.3d 120 (Or. App. 2005) finds that the VCC bankruptcy did not extinguish Mr. Robinson's liability as guarantor of the Notes.

Id. at p. 4, ll. 6-11.

Mr. Rodriguez does not dispute that proposition.¹ It is well accepted that a personal guarantee is an original, separate, and independent contract that exists between a guarantor and a lender. As described by the Nevada Supreme Court:

"The guaranty of a note is not a promise to answer for the debt of the maker . . . when it is negotiated in consideration of value received by the guarantor, but ***it becomes the original and absolute obligation of the guarantor himself***, whereby he promises to pay his own debt to the guarantee; that is to say, the debt he owes his guarantee for what he has received from the latter. The note meanwhile is delivered and held as collateral to the promise of the guarantor. ***If the maker pays it at the date of its maturity, the guarantor's obligation is by that fact discharged; but, if the maker fails to pay, the guarantor remains liable upon his own obligation, which is absolute and independent of the note itself.***"

Manufacturers & Traders Trust Co. v. Eighth Judicial Dist. Court In and For Clark County, 583 P.2d 444, 447, 94 Nev. 551, 556 (1978) (citing *Randono v. Turk*, 86 Nev. 123, 131, 466 P.2d 218, 223 (1970) and quoting *Swenson v. Stoltz*, 36 Wash. 318, 78 P. 999, 1000 (1904)) (overruled on other grounds by *First Interstate Bank of Nevada v. Shields*, 730 P.2d 429, 430-31, 102 Nev. 616, 618 (1986)) [emphasis added].

¹ It is unclear why the parties cited a U.S. District Court decision and Oregon state court opinion for a proposition that is black letter law within the Ninth Circuit. *See, e.g., Underhill v. Royal*, 769 F.2d 1426, 1432 (9th Cir. 1985) ("the bankruptcy court has no power to discharge the liabilities of a nondebtor pursuant to the consent of creditors as part of a reorganization plan."); *In re Am. Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir. 1989) ("Section 524(e) ... limits the court's equitable power under section 105 to order the discharge of the liabilities of nondebtors."); *In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995) ("[t]his court has repeatedly held, without exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors."); *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1082 (9th Cir. 2020) ("[b]y its terms, § 524(e) prevents a bankruptcy court from extinguishing claims of creditors against non-debtors over the very debt discharged through the bankruptcy proceedings.").

1 It is thus entirely logical that this Court should hold that Defendant Robinson remains
2 individually liable on his personal guarantee, notwithstanding proceedings that occurred in the
3 VCC Chapter 11 case. *Direct privity of contract exists between Mr. Robinson and the Plaintiffs,*
4 *but that is not true with respect to Mr. Rodriguez.* Instead, as discussed at length above, Mr.
5 Rodriguez can only be found liable as a Secondary control party “with and to the same extent as”
6 the Primary violator VCC, which has – and cannot – occur.

7 **E. The VCC Bankruptcy Did Not Affect the Statute of Limitation Applicable to the**
8 **Claim Against Mr. Rodriguez**

9 Having discussed the many ways in which VCC’s bankruptcy has affected Plaintiffs’
10 claims under Nevada securities law, it is worth mentioning one issue on which the VCC Plan has
11 had no effect: the statute of limitation applicable to the claim against Mr. Rodriguez.

12 **1. The Statute of Limitation Applicable to Claims Under Nev. Rev. Stat. 90.660**

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

15 **NRS 90.670 Statute of limitations.** A person may not
16 sue under NRS 90.660 unless suit is brought within the earliest of 2
17 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.

18 When a case involves the sale of an unregistered security, the discovery rule cannot, as a
19 matter of law, apply and the statute of limitation thus begins to run on the date a security is sold.
20 *See Baroi*, 914 F.Supp.2d at 1199 (“The securities’ status as registered or unregistered was publicly
21 available information capable of discovery through reasonable care. . . Plaintiffs therefore had all
22 facts necessary to bring their registration claims at the time they signed their purchase agreements,
23 even if they did not understand the legal significance of those facts until later.”). In this case, it is
24 undisputed that Plaintiffs purchased securities from VCC more than two years before the
25 commencement of the earlier of these consolidated actions.

26 ...

27 ...

28 ...

The two-year statute of limitation imposed by Nev. Rev. Stat. 90.670 began running on the date each promissory note was issued to a Plaintiff, the latest of which occurred in December 2014. Any claim against Mr. Rodriguez was time-barred in December 2016, and that date could not have been extended by the VCC bankruptcy filing.

For all of the foregoing reasons, Mr. Rodriguez respectfully submits that the confirmed Plan extinguished all liability on behalf of VCC, and that as a result, there is no Nev. Rev. Stat. 90.660(1) “Primary” violator for which he could be held liable “with and to the same extent as” as a “Secondary” control party under Nev. Rev. Stat. 90.660(4). Moreover, the VCC bankruptcy plan renders it impossible for Plaintiffs to satisfy either of the two statutory formulas for determining damages: the Tender Rule and the Disposition Rule. There was neither a “tender” nor a “disposition,” nor could there be given the facts of this matter. Finally, the VCC bankruptcy filing did not affect the two-year statute of limitation applicable to the claim against Mr. Rodriguez, which expired roughly nine (9) months before the commencement of the first of these consolidated actions.

...

1 Mr. Rodriguez requests that the Court amend the Judgment to vacate the finding of liability
2 and award of damages against him. Finally, Mr. Rodriguez requests such other relief as is just and
3 proper.

4 Dated this 24th day of November, 2020.

6 FLEMING LAW FIRM, PLLC

8 By: 

9 SCOTT D. FLEMING, ESQ.

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12 Suite 140

13 Las Vegas, Nevada 89134

14 Telephone: (702) 743-6263

15 E-Mail: scott@fleminglawlv.com

CERTIFICATE OF SERVICE

I certify that I am an employee of Fleming Law Firm, PLLC, and that on the 24th day of November, 2020, I caused to be served a true and correct copy of foregoing **DEFENDANT VERNON RODRIGUEZ'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF POST-JUDGMENT MOTIONS** in the following manner:

(VIA ELECTRONIC SERVICES) The above-referenced documents were electronically filed on the dates listed above and served on November 24, 2020, through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

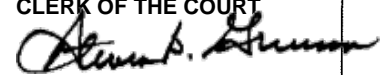
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

REPLY BRIEF

Ten months after this case went to trial, Defendant is before the court looking for a fourth bite at the apple. At the hearing on Defendant's three post trial motions

1 the court asked for authority in support of his claim that control person Vernon
2 Rodriguez couldn't be liable to Plaintiff – as a matter of law - because the primary
3 tortfeasor, Virtual Communications Corporation (“VCC”) filed for bankruptcy.
4 Despite providing Defendant an additional thirty days, Defendant's supplemental
5 memorandum doesn't cite a single case in support.

6 Instead, he focuses on a new argument; that NRS §90.660 only permits
7 damages to be recoverable from the primary tortfeasor. This novel argument is
8 unsupported – save an unpersuasive cite to Merriam Webster's Dictionary. It is also
9 improper. This issue should have been raised pretrial, via either a motion to dismiss
10 or a motion in limine; or at trial. It wasn't. As a result, this argument was waived.

11 **A. Mr. Rodriguez is Liable as a Control Person for Selling**
12 **Unregistered Securities**

13 Defendant asks the court to throw out its judgment, arguing that because VCC
14 filed for bankruptcy, Mr. Rodriguez cannot be liable “to the same extent” as VCC,
15 because VCC wasn't found liable to the Plaintiffs. This argument fails on two
16 grounds:

- 17 1. This Court made a specific finding that VCC sold unregistered
18 securities.
- 19 2. It is well settled law that a discharge of a primary tortfeasor in
20 bankruptcy does not release a joint tortfeasor from liability.

21 **1. The Court found that VCC sold unregistered securities**

22 The issue of whether the Notes sold by VCC were securities was settled at trial.
23 The court received briefs on the subject, and heard testimony from Mr. Rodriguez
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1 and Mr. Robinson on the issue. Probably the most conclusive piece of evidence at
2 trial was VCC's own power point presentation, which referred to the Notes as
3 securities See Exhibit "A", attached. As a result, the Court found that VCC sold
4 unregistered, non-exempt securities in violation of NRS §90.460 and §90.660. Nor
5 was this finding made in violation of the bankruptcy stay, as the court was apprised of
6 the bankruptcy, the bankruptcy court issued an order allowing the case to proceed,
7 and the issue was argued and decided solely for the purpose of establishing control
8 person liability.

9 As to VCC's bankruptcy, Defendants brief cites to the confirmed plan of
10 reorganization. Nothing in the confirmed plan acts as a release of any claims against
11 third parties. The Discharge Injunction applies solely to "the Debtor and the Estate",
12 not to Mr. Rodriguez or Mr. Robinson.

13 **2. VCC's Bankruptcy Does Not Absolve Mr. Rodriguez of Control**
14 **Person Liability**

15 Defendant cites NRS §90.660, which provides that control persons are liable
16 "to the same extent" as the primary violator. Because VCC received a discharge, Mr.
17 Rodriguez argues he cannot be liable, since his liability exists only "to the same
18 extent" as VCC's. This argument contradicts a bedrock principle of bankruptcy law;
19 that a discharge of the debtor does not serve as a discharge or release of liability for
20 third parties.

21 Mr. Rodriguez' argument is identical to the one raised by control persons in
22 Schleicher v. Wendt, 529 F. Supp. 2d 959 (S.D. Ind. 2007). There, the Plaintiffs
23 alleged that individual "control persons" were liable for securities fraud committed by
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25
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1 the corporate Defendant Consecro. The control persons argued that they couldn't be
2 liable, because Consecro filed for bankruptcy and received a discharge. The Court
3 rejected this argument.

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

9 "Every person who, directly or indirectly, controls any person liable
10 under any provision of this chapter or of any rule or regulation thereunder
11 shall also be liable jointly and severally with and to the same extent as such
12 controlled person to any person to whom such controlled person is liable..."
13 15 U.S.C. § 78t(a). (Emphasis added)."

14 "Defendants argue that they can be held liable under section 20(a) only
15 *"to the same extent as"* Consecro is held liable. Since Consecro was discharged in
16 bankruptcy from any potential liability under the Exchange Act, defendants
17 argue, plaintiffs cannot state a claim against them under section 20(a)."

18 "Plaintiffs counter by citing Kemmerer v. Weaver, 445 F.2d 76 (7th Cir.
19 1971). In Kemmerer, the alleged primary violator, an agricultural cooperative
20 association, was dissolved by the defendants. Defendants there, like the
21 defendants here, argued they could be held liable under section 20(a) only to
22 the same extent as the alleged primary violator; i.e., not at all. The court
23 disposed of the defendants' argument as follows:

1 “The premise of this argument is that there is a finding of “no liability”
2 with respect to the [alleged primary violator]. No such finding exists, it
3 appearing instead that the [alleged primary violator] was dismissed
4 from the suit for lack of jurisdiction due to a failure to obtain service of
5 process. It further appears that the reason for the failure to obtain
6 process was that the [alleged primary violator] had been dissolved on
7 the initiative of many of the individual defendants in the present suit.

8 On such facts it is evident that [§ 20(a)] is of no avail to defendants.”

9 *Id.* at 78. “ (Emphasis added).

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

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

18 Similarly, in Underhill v. Royal, 769 F. 2d 1426 (9th Cir. 1985) a company that
19 sold unregistered securities filed for bankruptcy, but the control person were still
20 held liable. There, Mr. Royal a control person for a corporation that filed for
21 bankruptcy sought to escape control person liability:

22 “When the recession hit hard in 1981, NMESC's cash flow suffered
23 because many of the notes in its portfolio went into default. NMESC
24

1 filed for Chapter 11 reorganization.”

2 Underhill at 1429

3 “Carlos Royal, the principal shareholder of both companies, was a
4 defendant in this separate trial in order to determine his derivative
5 liability on a control person theory.”

6 Underhill at 1431.

7 “Royal contends that the personal release in the amended plan of
8 reorganization effectively bars the action against him for securities law
9 violations.”

10 Underhill at 1431

11 “Generally, discharge of the principal debtor in bankruptcy will not
12 discharge the liabilities of co-debtors or guarantors. 11 U.S.C. Sec. 524(e)
13 provides: “Except as provided in subsection (a)(3) of this section, discharge of
14 a debt of the debtor does not affect the liability of any other entity on, or the
15 property of any other entity for, such debt.” This section of the 1978
16 Bankruptcy Reform Act was a reenactment of Section 16 of the 1898 Act which
17 provided that “[t]he liability of a person who is a co-debtor with, or guarantor
18 or in any manner a surety for, a bankrupt shall not be altered by the discharge
19 of such bankrupt.” Act of July 1, 1898, ch. 541, Sec. 16, 30 Stat. 550 (formerly
20 codified at 11 U.S.C. Sec. 34 (1976)).”

21 “In addition, the Bankruptcy Act of 1898, as amended, provided that a
22 corporation’s discharge in bankruptcy “shall not release its officers, the
23 members of its board of directors or trustees or of other similar controlling
24 bodies, or its stockholders or members, as such, from any liability under the
25 laws of a State or of the United States.” Act of June 22, 1938, ch. 575, Sec. 4(b),
26 52 Stat. 845 (formerly codified at 11 U.S.C. Sec. 22(b) (1976)). Thus, under the
old Act, stockholders or directors could remain liable for substantive violations
despite discharge of the corporate entity. 1A J. Moore Collier on Bankruptcy p
16.14, at 1551 (14th ed. 1978).”

Underhill at 1432

Like the corporations in Schleicher and Underhill, VCC was put into bankruptcy by its control persons. Permitting them to escape liability for this self-serving act would be contrary to established law, and produce an inequitable result. In addition, the issues before the court are more compelling than those in Schleicher; Here, the court made a specific finding that VCC sold unregistered securities. See Findings of Fact and Conclusions of Law filed May 8, 2020, attached as Exhibit “B”. Based on that finding, the court found control person liability.

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

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

As in Schleicher, VCC wasn't found "not liable"; the District Court received evidence on the issue, and for purposes of control person liability only, made a finding that VCC sold unregistered securities. Based on that finding, control person liability was established.

B. Mr. Rodriguez’ New “Tender” Defense is Untimely and Inapplicable

¹ This was done prior to the time the cases were consolidated.

1 Defendant seeks to rewrite NRS §90.660 by claiming that Plaintiffs may only
2 recover damages from the primary violator. This is a misreading of the statute which
3 provides:

4
5 ‘A person who offers or sells a security in violation of
(b) NRS 90.460;

6 is liable to the person purchasing the security.

7 Upon tender of the security, the purchaser may recover the
8 consideration paid for the security and interest at the legal rate of this
9 State from the date of payment, costs and reasonable attorney’s fees,
less the amount of income received on the security.

10 A purchaser who no longer owns the security may recover damages.

11 Damages are the amount that would be recoverable upon a tender less
12 the value of the security when the purchaser disposed of it, plus interest
13 at the legal rate of this State from the date of disposition of the security,
costs and reasonable attorney’s fees determined by the court. Tender
requires only notice of willingness to exchange the security for the
amount specified.’

14
15 NRS §90.660

16 This statute is also the source for control person liability, which under
17 paragraph 4 provides:

18 “A person who directly or indirectly controls another person who is
19 liable under subsection 1 or 3, a partner, officer or director of the person
20 liable... are also liable jointly and severally with and to the same extent as the
21 other person...”

22
23 Nothing in NRS §90.660 limits the recovery of damages, or puts a tender
24

1 requirement solely against the primary violator. To do so would render the joint and
2 several control person liability provisions meaningless. Defendant cites no cases in
3 support, save the Merriam Webster dictionary in an unpersuasive effort to argue his
4 point.

5 As part of the discharge, VCC issued preferred securities to Plaintiffs in
6 exchange for their promissory notes. The plan provided a conversion formula, and
7 the shares issued are directly traceable to the promissory notes, and the funds
8 Plaintiffs had on deposit in their IRAs to make the purchases. Plaintiffs still hold the
9 conversion shares, which are illiquid, haven't paid distributions, and have no trading
10 market. Plaintiffs have no rights to demand distributions, and have no effective
11 rights to direct management to either make distributions or liquidate the company.
12 As a closely held private company, VCC isn't obligated to report its earnings, leaving
13 potential buyers of Plaintiffs' illiquid, restricted shares without any means to gauge
14 the value of the shares. For all intents and purposes the shares have no value.

15 Nevertheless, at such time that Mr. Rodriguez pays the judgment, or a portion,
16 he may choose to deposit the funds with the court or escrow, and ask for a hearing to
17 determine the value of the shares. The Court, should it be so inclined, can hear from
18 experts from both sides as to the value of the VCC shares.

19 Plaintiffs have maintained since trial that they are prepared to tender their
20 preferred shares in exchange for payment of damages under NRS §90.660, and
21 remain willing to do so today.

22 .
23 **C. The Statute of Limitations Defense is Inapplicable**
24

1 While Defendant raised the statute of limitations affirmative defense in his
2 original answer to the Hotchkiss complaint (but not against any of the other
3 Plaintiffs), it is a fact that he abandoned the defense, and did nothing to advance,
4 argue or even attempt to prove it at trial. As a result, he failed to meet his burden of
5 proof.

6 After a cursory assertion as an affirmative defense his answer, Defendant never
7 brought up the statutes of limitations again; He failed to file a motion to dismiss,
8 motion for summary judgment, or a motion in limine on the issue; he conducted no
9 discovery on the subject, he failed to argue them in a pretrial or post trial brief; he
10 failed to mention them in his opening statement or closing argument, and he failed to
11 ask Plaintiff a single question in support of them. Not a single piece of evidence was
12 introduced (or even offered) at trial in support of the defense.

13 Now, three years later, after a change of counsel, and after the record has been
14 closed, Defendant wants to finally argue the point, and have the court throw out its
15 decision. This is inappropriate. Had Defendant raised the issue, or even questioned
16 Plaintiffs on it, Plaintiffs would have opposed it by pointing to evidence in the record,
17 whereby Defendant claimed in a PowerPoint slide that the securities were being sold
18 in compliance with the securities laws (Trial Exhibit 4, page 60). See Exhibit "D", or
19 where Mr. Robinson and Mr. Rodriguez stalled Plaintiffs, by promising compensation
20 (Trial Exhibit 3, pages 49 and 54). See Exhibit "E". Both of these pieces of evidence
21 effectively mislead the Plaintiffs, and delayed their discovery of the violations.

22 Since the averments of an affirmative defense are taken as denied or avoided, each
23 element of the defense must be affirmatively proved. The burden of proof clearly rests
24

1 with the defendant. Res. Grp., LLC v. Nev. Ass'n Servs., Inc., 437 P.3d 154 (Nev.
2 2019). The date on which a statute of limitations accrues is normally a question of
3 fact, and the district court may determine that date as a matter of law only when the
4 uncontroverted evidence irrefutably demonstrates the accrual date. Winn v. Sunrise
5 Hosp. & Med. Ctr., 128 Nev. Adv. Op. 23, 277 P.3d at 458, 462-63 (2012). Non-
6 compliance with a statute of limitations is a non-jurisdictional, affirmative defense,
7 see, e.g., Dozier v. State, 124 Nev. 125, 129 (2008), and the party asserting an
8 affirmative defense bears the burden of proof. See Nev. Ass'n Servs., Inc. v. Eighth
9 Judicial Dist. Court, 130 Nev. Adv. Op. 94, 338 P.3d 1250, 1254 (2014).

10 The appropriate accrual date for the statute of limitations is a question of law only
11 if the facts are uncontroverted. Day v. Zubel, 112 Nev. 972, 977, 922 P.2d 536, 539
12 (1996); see also Bemis v. Estate of Bemis, 114 Nev. 1021 1025, 967 P.2d 437, 440
13 (1998) ("Dismissal on statute of limitations grounds is only appropriate 'when
14 uncontroverted evidence irrefutably demonstrates plaintiff discovered or should have
15 discovered' the facts giving rise to the cause of action." (quoting Nevada Power Co. v.
16 Monsanto Co., 955 F.2d 1304, 1307 (9th Cir.1992).

17 Here, all of the Plaintiffs purchased within the five year window provided for
18 under the statute. Plaintiffs submitted evidence showing

19 1. that VCC misrepresented that the securities were being offered in compliance with
20 the securities laws, and

21 2. a July, 2017 communication from Mr. Rodriguez that a subsequent securities
22 offering would get Plaintiffs repaid (Trial Ex. 3, page 54) See Exhibit "E".

23 This evidence - which is in the record- shows that Defendants took steps to
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1 prevent and delay Plaintiffs from discovering they had a claim for the sale of
2 unregistered securities from the outset.

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

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

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

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

19 CONCLUSION

20 Mr. Rodriguez' arguments are novel, but unpersuasive. VCC was not found
21 "not liable" for purposes of the securities laws. As the Court noted previously, VCC
22 made a tactical move to file for bankruptcy, after Judge Williams affirmatively found
23 in a prior case that VCC sold unregistered securities. Rodriguez and Robinson
24

1 directed this filing, and were the beneficiaries of it. Defendant's attempt to avoid
2 liability is transparent. As to the statute of limitations defense, prior counsel
3 abandoned it, and literally did nothing to advance it, thereby failing to meet his
4 burden of proof. It is too late, now, almost a year later, to reopen evidence, and force
5 Plaintiffs to fly to Las Vegas from around the country to address arguments that
6 should have been made at trial. For these reasons, as well as those arguments made
7 in the three Oppositions filed in response to Defendant's post trial motions, the
8 Plaintiffs ask that the Court affirm the judgment.

9
10 Dated: December 22, 2020

Respectfully submitted,

11 The Law Office of David Liebrader, Inc.

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

I hereby certify that on the 22 day of December 2020, I mailed a copy of the foregoing
Reply Brief
to the following

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Las Vegas, NV 89134

/s/: Dianne Bresnahan

An Employee of The Law Office of David Liebrader

EXHIBIT “A”

Offering Summary

Securities: 9% Notes
Minimum Offering: \$20,000 **Maximum Offering:** \$1,000,000

TERMS OF SECURITIES:

Return:

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

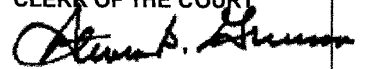
Secured:

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

Termination Date:

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

EXHIBIT “B”



FFCO
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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.: ~~6~~ 9

)
) CONSOLIDATED WITH

) Case No. A-17-763003-C

)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW AND
) ORDER ON DEFENDANTS
) LIABILITY

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter was submitted for a bench trial before the Hon. Cristina Silva on
February 25-25,2020. Testifying were Plaintiff Steve Hotchkiss and Defendants

1 Ronald Robinson and Vern Rodriguez. In addition, the court heard testimony from
2 Alisa Davis and Frank Yoder, named Defendants who were dismissed at the
3 conclusion of Plaintiffs' case in chief. Prior to trial there was briefing on the issues of
4 whether the notes were securities and whether Plaintiffs had standing to bring their
5 claim. Furthermore, after trial the court received post trial briefs from the parties.

6 FINDINGS OF FACT; CONCLUSIONS OF LAW

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

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

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

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

19 As to the legal issues, the Court makes the following findings:

- 20 1. VCC sold unregistered nonexempt securities.

21 Applying the test set forth in State v. Friend, 118 Nev. 115 (2002) the Court finds that
22 the Promissory Notes offered by VCC and sold to the Plaintiffs meet the definition of
23 a security under NRS §90.295. Further, none of the Defendants either claimed or
24

1 attempted to prove that any exemption from registration applied to the offering or
2 any of the individual transactions. As a result, the court finds that VCC sold
3 unregistered nonexempt securities to the Plaintiff in violation of NRS §90.460.

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

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

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

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

18 Based upon this evidence, Plaintiffs met their burden of establishing that Mr.
19 Robinson and Mr. Rodriguez were statutory control persons within the definition of
20 NAC 90.035.

21 3. Mr. Robinson is liable as a guarantor

22 The evidence introduced at trial proved by a preponderance of the evidence
23 that the Note bears the signature of Defendant Ronald Robinson, as guarantor. Mr.
24

1 Robinson claimed that his signature was used without his permission, and that he did
2 not intend to guarantee repayment.

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

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

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

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

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

1 Upon the submission of briefs detailing their statutory and contract damages
2 the Court will issue judgment in favor of Plaintiffs.

3 IT IS SO ORDERED:

4 Dated this 4 th day of May, 2020

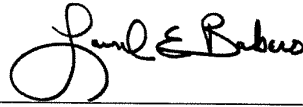


Hon. Cristina Silva
District Court Judge

mm

8 Submitted by: /s/ David Liebrader
9 David Liebrader, Esq.
10 Attorney for Plaintiff

EXHIBIT “C”



Honorable Laurel E. Babero
United States Bankruptcy Judge



Entered on Docket
July 17, 2018

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

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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

**ORDER GRANTING MOTION
FOR RELIEF FROM STAY**

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

Judge: Honorable Laurel E.
Babero

ORDER GRANTING MOTION FOR RELIEF FROM STAY

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

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

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

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

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

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

19 Prepared and Submitted By:

20 David Liebrader

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

Attorney for Moving Party

Bart Larsen, Esq.

By:/s/ Bart Larsen

Kolesar & Leatham

400 S Rampart Blvd #400

Las Vegas, NV 89145

blarsen@klnevada.com

Attorney for Debtor

LOCAL RULE 9021 CERTIFICATION

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

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

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

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

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

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

EXHIBIT “D”

Frank Yoder

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

Ron,
Is this ok?

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

Offering Summary

Securities: 9% Notes

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

TERMS OF SECURITIES:

Return:

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

Secured:

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

Termination Date:

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

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

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

EXHIBIT “E”

8/24/2017

Gmail - Investment



Steve Hotchkiss <stevehotchkiss52@gmail.com>

Investment

2 messages

Vernon Rodriguez <vern.rodriguez@alicereceptionist.com>
To: Steve Hotchkiss <stevehotchkiss52@gmail.com>

Wed, Jul 26, 2017 at 4:25 PM

Mr. Hotchkiss:

Please go to virtualcommunicationscorp.com to receive the latest correspondence regarding the company's effort to raise capital in order to address your investment payback. We are still in the process with this capital raise through the New York Investment Banking firm. We are hopeful that within the next 30 days that we will be successful. In the meantime we will post any news on the web site. Sorry you could not reach Mr. Robinson. We are still committed to take care of our note holders as soon as we can.

Vernon Rodriguez

ALICE Receptionist

Direct: (702) 284-7310

Twitter: @alicereception

Online: www.ALICEreceptionist.com

ALICE Receptionist explained in 67 seconds:



Steve Hotchkiss <stevehotchkiss52@gmail.com>
To: Vernon Rodriguez <vern.rodriguez@alicereceptionist.com>

Wed, Jul 26, 2017 at 6:56 PM

Thank you for your reply
(Quoted text hidden)

<https://mail.google.com/mail/u/0/?ui=2&ik=14d5869be5&jsver=NO90uJauj60.en.&view=pl&search=inbox&th=15d815481183d8d6&siml=15d80ca14d25b639&siml...> 1/1

Plaintiff's ECC Production 000010

Plaintiffs' Production 000050

APP001607

8/24/2017

Gmail - Fw: YOUR VCC INVESTMENT Update



Steve Hotchkiss <steve.hotchkiss52@gmail.com>

Fw: YOUR VCC INVESTMENT Update

6 messages

Steve Hotchkiss <shotchkiss@kc.rr.com>
To: SteveHotchkiss52@gmail.com

From: Ronald Robinson
Sent: Tuesday, January 10, 2017 5:17 PM
To: Steve Hotchkiss
Subject: Re: YOUR VCC INVESTMENT Update

Yes, we are working on all the details right as I write, please be patient we will get those shares to you just as quickly as possible thank you Ronald Robinson

On Jan 10, 2017, at 10:57 AM, Steve Hotchkiss <shotchkiss@kc.rr.com> wrote:

Was wondering if you have an update on when this transfer will take place?

From: Robin1031@aol.com
Sent: Monday, December 05, 2016 3:45 PM
To: shotchkiss@kc.rr.com
Cc: sara@crowdcheck.com
Subject: Re: Fw: YOUR VCC INVESTMENT Update

We wish to thank you for your acceptance of our proposal. We shall keep you informed as we progress in completing our agreement. Ron Robinson

In a message dated 12/5/2016 12:09:00 P.M. Pacific Standard Time, shotchkiss@kc.rr.com writes:

My name is Steve Hotchkiss, from Leavenworth Kansas and I just had a phone conversation with Mr Ron Robinson regarding the VCC offer to exchange hereby authorize VCC to make that conversion with the Notes they have for my Provident Trust account number 130800142. Please notify when this ex SteveHotchkiss52@gmail.com

From: Vernon Rodriguez
Sent: Friday, November 04, 2016 2:51 PM
To: Steve Hotchkiss
Subject: RE: YOUR VCC INVESTMENT Update

"Please look over the attached .pdf letter regarding your Exchange Option. When you have had a moment to go through the document, please give Ron Robinson a call to discuss it."

ALICE Receptionist
Direct: (702) 731-4111
Twitter: @alicerception
Online: www.ALICereceptionist.com

ALICE Receptionist explained in 67 seconds:

<http://Lslgnaukdeux.com/link?url=http://www.alicerceptionist.com/media/&ukey=agxzfNpZ1ShbHNjcmhyGA5C1VzXUQcm9mWzIwGICAgLd9aQIDA&k=42cb3483862>

From: Steve Hotchkiss [mailto:shotchkiss@kc.rr.com]
Sent: Friday, November 04, 2016 11:37 AM
To: Vernon Rodriguez
Subject: Re: YOUR VCC INVESTMENT Update

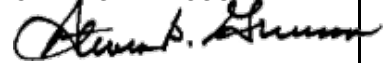
Please forward a copy of your legal proposal

From: Virtual Communications Corp
Sent: Monday, October 17, 2016 3:03 PM
To: shotchkiss@kc.rr.com
Subject: YOUR VCC INVESTMENT Update

<https://mail.google.com/mail/u/0/?ui=2&ik=14d5869be5&jsver=NQ90dJau80.en.&view=pl&search=starred&th=15d2f30f8c1d3e02&siml=15e85a3b6c726af9&siml...> 1/5

Plaintiffs ECC Production 000005

Plaintiffs' Production 000045



MOT

MICHAEL F. BOHN, ESQ.

Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

ADAM R. TRIPPIEDI, ESQ.

Nevada Bar No.: 12294

atrippiedi@bohnlawfirm.com

LAW OFFICES OF

MICHAEL F. BOHN, ESQ., LTD.

2260 Corporate Circle, Suite 480

Henderson, Nevada 89074

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

Attorney for defendant Ronald J. Robinson

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.: XXIII

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

MOTION FOR RULE 54(b)
DETERMINATION

HEARING REQUESTED

1 Defendant Ronald J. Robinson (hereinafter “Robinson”), by and through his attorney, the Law
2 Offices of Michael F. Bohn, Esq., Ltd., hereby moves this court for a determination that there is no
3 just reason for delay and a Rule 54(b) certification for the findings of fact, conclusions of law and
4 order on motion for damages and attorney’s fees, filed on August 20, 2020. This motion is based
5 on the points and authorities contained herein

6 DATED this 16th day of March, 2021.

7 LAW OFFICES OF
8 MICHAEL F. BOHN, ESQ., LTD.

9 By: /s/ Michael F. Bohn, Esq. /
10 Michael F. Bohn, Esq.
11 Adam R. Trippiedi, Esq.
2260 Corporate Circle, Ste. 480
12 Henderson, NV 89074
Attorneys for defendant Ronald J. Robinson

13 **FACTS**

14 On September 28, 2017, plaintiff Steven A. Hotchkiss filed a complaint for damages in Case No.
15 A-17-762264-C that included Retire Happy, LLC and Josh Stoll as defendants.

16 On February 5, 2018, defendants Retire Happy, LLC and Josh Stoll filed an answer, affirmative
17 defenses and cross claim. The cross claim requested contribution and indemnity from Virtual
18 Communications Corporation (hereinafter “VCC”) and Robinson in the event that Retire Happy, LLC
19 and Josh Stoll were found to be liable to plaintiff, or any other party for damages.

20 On February 20, 2019, this court entered an order granting defendants Retire Happy, LLC and
21 Josh Stoll’s unopposed good faith settlement pursuant to NRS 17.245 and dismissing all claims against
22 said defendants with prejudice in Case No. A-17-762264-C. This order did not mention the cross claim
23 filed by Retire Happy, LLC and Josh Stoll against VCC and Robinson.

24 On October 12, 2017, plaintiffs Anthony White, et al, filed a first amended complaint in Case No.
25 A-17-763003-C that included Retire Happy, LLC, Julie Minuskin, and Josh Stoll as defendants. This
26 case was assigned to Dept. 24.

27 On April 23, 2019, the court entered an order granting defendants Retire Happy, LLC, Julie
28

1 Minuskin, and Josh Stoll's unopposed motion for determination of good faith settlement pursuant to NRS
2 17.245 and dismissing all claims against said defendants with prejudice in Case No. A-17-763003-C.

3 On July 1, 2019, a stipulation and order consolidating cases, which consolidated Case No. A-17-
4 763003-C pending in Dept. 24 with Case No. A-17-763003-C.

5 A bench trial was held in Dept. 9 for the consolidated cases on February 24, 2020 and February
6 25, 2020.

7 Retire Happy, LLC and Josh Stoll did not appear at or participate in the trial.

8 On August 20, 2020, the court entered findings of fact, conclusions of law and order in favor of
9 plaintiffs against Robinson and Vernon Rodriguez (hereinafter "Rodriguez"). The findings of fact,
10 conclusions of law and order do not mention the cross claim filed by Retire Happy, LLC and Josh Stoll
11 against Robinson.

12 On August 20, 2020, this court entered judgment in favor of plaintiffs against Robinson and
13 Rodriguez.

14 A duplicate judgment in favor of plaintiffs against Robinson and Rodriguez was also filed on
15 August 21, 2020.

16 On August 21, 2020, plaintiffs filed and served notice of entry of the findings of fact, conclusions
17 of law and order entered on August 20, 2020.

18 On August 21, 2020, plaintiffs also filed and served notice of entry of the judgment entered on
19 August 21, 2020.

20 On September 16, 2020, Rodriguez filed a motion to amend judgment pursuant to NRCP 52(b)
21 or for further action after a nonjury trial pursuant to NRCP 59(b).

22 On September 16, 2020, Rodriguez also filed a motion for a new trial pursuant to NRCP 59(a).

23 These motions are currently scheduled for decision on April 20, 2021.

24 On September 21, 2020, Robinson filed a notice of appeal from the judgment entered on August
25 21, 2020, and Case No. 81838 was assigned to this appeal.

26 On March 8, 2021, the Nevada Supreme Court issued an order to show cause and file amended
27 docketing statement in Case No. 81838 because the docketing statement filed by Robinson's prior counsel

1 stated that the challenged order was certified as final under NRCP 54(b), but “no such certification
2 appears on the challenged order and appellant has not provided this court with a copy of any
3 certification.”

4 The order to show cause also stated that the judgment entered on August 21, 2020 may be
5 “duplicative of the August 20, 2020, findings of fact and conclusions of law, and thus not substantively
6 appealable.”

7 POINTS AND AUTHORITIES

8 NRCP 54(b) provides in part:

9 (b) Judgment Involving Multiple Parties. When multiple parties are involved, the court
10 may direct the entry of a final judgment as to one or more but fewer than all of the parties
11 only upon an express determination that there is no just reason for delay and upon an
12 express direction for the entry of judgment. In the absence of such determination and
13 direction, any order or other form of decision, however designated, which adjudicates the
14 rights and liabilities of fewer than all the parties shall not terminate the action as to any
15 of the parties, and the order or other form of decision is subject to revision at any time
16 before the entry of judgment adjudicating all the rights and liabilities of all the parties.

17 Because plaintiffs’ claims against Retire Happy, LLC and Josh Stoll have been dismissed with
18 prejudice, and because Retire Happy, LLC and Josh Stoll did not appear at trial to pursue their cross claim
19 against Robinson, Robinson respectfully requests that this court make a determination pursuant to NRCP
20 54(b) that there is no just reason for delay and certify the findings of fact, conclusions of law and order
21 entered on August 20, 2020 as final.

22 CONCLUSION

23 For the reasons set forth above, Robinson respectfully requests that the court certify the findings
24 of fact, conclusions of law and order entered on August 20, 2020 as final under NRCP 54(b).

25 DATED this 16th day of March, 2021

26 LAW OFFICES OF
27 MICHAEL F. BOHN, ESQ., LTD.

28 By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
Adam R. Trippiedi, Esq.
2260 Corporate Circle, Ste. 480
Henderson, Nevada 89074
Attorneys for defendant Ronald J. Robinson

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 16th day of March, 2021 an electronic copy of the **MOTION FOR RULE 54(b) DETERMINATION** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

David Liebrader, Esq.
The Law Offices of David Liebrader, APC
601 S. Rancho Dr., Ste. D-29
Las Vegas, NV 89106
Attorney for plaintiffs

Scott D. Fleming, Esq.
FLEMING LAW FIRM, PLLC
9525 Hillwood Drive, Suite 140
Las Vegas, Nevada 89134
Attorneys for Defendant Vernon Rodriguez

/s/ /Maurice Mazza /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

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.

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.

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

18 
19 _____
DISTRICT COURT JUDGE

20 Respectfully submitted by:

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

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

23
24
25 By: /s/ Michael F. Bohn, Esq./
Michael F. Bohn, Esq.
26 2260 Corporate Circle, Suite 480
Henderson, NV 89074
27 Attorney for defendant Ronald J. Robinson
28

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

10 Reviewed by:

11

12 The Law Office of David Liebrader, Inc.

13

14 See attached email from Atty. David

15 Liebrader

16 By: ~~No Response~~

17 David Liebrader, Esq.

18 3960 Howard Hughes Pkwy # 500

19 Las Vegas, Nevada 89169

20 Attorney for plaintiff

21

22

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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, P.L.L.C.

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
Suite 480
Henderson, NV 89074
(702) 642-3113
(702) 642-9766 FAX
mbohn@bohnlawfirm.com
www.bohnlawfirm.com
Confidentiality Notice

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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

CONFIDENTIAL COMMUNICATION

Notice: The information contained in this e-mail message is intended only for the personal and confidential use of the designated recipients named above. This message is confidential and privileged. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please immediately telephone (702) 380-3131 and return the original message to us by replying to this e-mail. Thank you.

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

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 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

mbohn@bohnlawfirm.com

17 Harold Gewerter

harold@gewerterlaw.com

18 T. Louis Palazzo, Esq.

louis@palazzolawfirm.com

19 Celina Moore

celina@palazzolawfirm.com

20 Miriam Roberts

miriam@palazzolawfirm.com

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

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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
------------	---

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

11 Steven A. Hotchkiss,

12 PLAINTIFF,

13 v.

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

17 DEFENDANTS

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

22 PLAINTIFFS

23 v.

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

) Case No. A-17-762264-C

) Dept.: 23

) OMNIBUS ORDER ON POST
) JUDGMENT MOTIONS

) CONSOLIDATED WITH

) Case No. A-17-763003-C

27 **OMNIBUS ORDER ON POST JUDGMENT MOTIONS**

28 Defendant Rodriguez' three post judgment motions came on for hearing on
29 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.

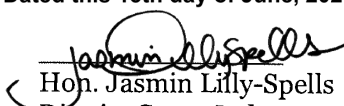
10 The Court orders that while a decision on Defendant's post-trial motions
11 remains pending, and until further order of the Court, Plaintiff shall not seek to
12 enforce the judgment against Defendant Rodriguez, and Mr. Rodriguez shall not
13 transfer, dispose, remove or conceal any assets, except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

19 Dated this 15th day of June, 2021

20 Dated this ____ day of May, 2021

21 
22 Hon. Jasmin Lilly-Spells
23 District Court Judge

24 Submitted by:

25 /s/David Liebrader
26 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

CONFIDENTIAL COMMUNICATION

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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

This transmission (and the documents, if any, accompanying it) may contain confidential information belonging to the sender and the intended recipient that is protected by the attorney-client privilege. It is intended only for the use of the person(s) to whom it is addressed. If you are not the intended recipient you are hereby notified that any disclosure, distribution, copying or taking any action in reliance on the contents of this transmission is strictly prohibited. If you have received this transmission in error, please notify us immediately by return e-mail, delete the transmission, and destroy all copies.

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
CLARK COUNTY, NEVADA

4
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

mbohn@bohnlawfirm.com

17 Harold Gewerter

harold@gewerterlaw.com

18 T. Louis Palazzo, Esq.

louis@palazzolawfirm.com

19 Celina Moore

celina@palazzolawfirm.com

20 Miriam Roberts

miriam@palazzolawfirm.com

21 David Liebrader, Esq.

dliebrader@gmail.com

22 David Liebrader

DaveL@investmentloss.com

23 Vernon Rodriquez

harold@gewerterlaw.com

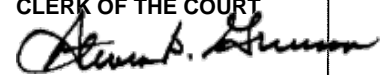
24 Scott Fleming

scott@fleminglawlv.com

25 Mark Kemp

mkemp@bohnlawfirm.com

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

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER BETWEEN

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.: 8

) REPLY TO DEFENDANT
) VERNON RODRIGUEZ'
) **SECOND** MEMORANDUM OF
) SUPPLEMENTAL
) AUTHORITIES ON POST
) JUDGMENT MOTIONS

) CONSOLIDATED WITH

) Case No. A-17-763003-C

REPLY BRIEF

Fifteen months after this case went to trial, rather than taking whatever issues
he has to the appellate court, Defendant is still seeking to undo the judgment.

1 In his *second* supplemental brief, Mr. Rodriguez continues to cite criminal
2 cases that have no applicability to this civil lawsuit. Claiming he had ineffective
3 assistance of counsel, he demands a new evidentiary hearing, but doesn't cite a single
4 Nevada case on point. He acknowledges that "it does not appear that the Nevada
5 Supreme Court has ever held that an evidentiary hearing is required when a party
6 requests a new trial or further proceedings" *See* Defendant's Supplemental Brief at
7 3:4-5.

8 This should end the discussion. Mr. Rodriguez was represented by counsel
9 who put on a spirited defense; he filed motions to dismiss the case, raised the VCC
10 bankruptcy issues that new counsel now complains of, called and crossed examined
11 witnesses, and argued for dismissal in opening and closing. Judge Silva carefully
12 considered the evidence, and ruled in Plaintiffs' favor. As this Court stated in its
13 Order on Mr. Rodriguez' post-trial motions after reviewing the transcript: "The Court
14 finds that the parties had an opportunity to, and did present testimony without
15 restriction."

16 *See Omnibus Order on Post-Trial Motions at 2:10-11* (Exhibit "A") attached.

17 Nor were the trial Court's decisions on control person liability, and whether
18 the VCC promissory notes were securities difficult; Defendants referred to the
19 Promissory Notes as securities in their own documents, and Mr. Rodriguez was the
20 chief financial officer, whose job it was to speak with investors. *See* Exhibit "B".

21 Despite these findings, and without any legal support, Defendant continues to
22 rehash the same arguments he has made since he retained new counsel. He claims
23 prior counsel failed to raise the statute of limitation defense, failed to argue that
24

1 VCC's bankruptcy extinguished Mr. Rodriguez' personal liability, ¹ and failed to elicit
2 testimony on two statutory defenses. Plaintiffs dispute these contentions. Perhaps
3 Mr. Gewerter did not focus on these defenses enough for Mr. Fleming's liking, but the
4 bankruptcy issues were argued throughout the case, and control person liability was
5 disputed. If Mr. Rodriguez is not satisfied with Mr. Gewerter's presentation of
6 evidence he should consider a malpractice action. He should not expect this Court to
7 re-open evidence on a trial held fifteen months ago in a different department, which
8 would require ten Plaintiffs to come to Las Vegas to testify in opposition.

9 Lastly, one of the problems with new counsel arguing facts to a Judge who
10 didn't preside over the underlying trial is that new counsel is not familiar with the
11 evidence and arguments made at trial. As a result, his arguments to the new
12 presiding Judge are inaccurate. For example; He cites Judge Silva's Decision on
13 control person liability, but fails to provide the whole quote, leaving the new
14 presiding Judge with a potentially wrong impression. For example, he argues that
15 Mr. Gewerter failed to raise the control person defense due to a conflict of interest
16 with his other client, Defendant Robinson. This claim is belied by the evidence, and
17 Judge Silva's findings. Her full quote from her Decision:

18 If the plaintiff establishes that a defendant is a "controlling person,"
19 then the defendant bears the burden of proving that he "acted in good faith
20 and did not directly or indirectly induce the act or acts constituting the

21 ¹ Defendant concedes that the VCC Bankruptcy was "certainly discussed at trial and in pretrial
22 motions."
23
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1 violation or cause of action.” Paracor Fin., Inc. v. Gen. Elec. Capital Corp., 96
2 F.3d 1151, 1161 (9th Cir. 1996) (citing 15 U.S.C. § 78t(a)); see also Hollinger,
3 914 F.2d at 1575. While the testimony of Robinson and Rodriguez suggests
4 that they believed they were acting in good faith, based in part on an alleged
5 lack of knowledge of Nevada security laws, they failed to present any evidence
6 that they were not directly or indirectly involved in the acts regarding the
7 violation of Nevada security regulations. Rather, the evidence demonstrates
8 that they were directly and intimately involved in creating the material to sell
9 the Notes; Robinson then served as the personal guarantor of the Notes and
10 Rodriguez was the proverbial “closer” who spoke to investors when necessary.

11
12 See Decision at 5:10-20, Attached as Exhibit “C”. (omitted language in emphasis).

13
14 In conclusion, Defendant provides no support whatsoever that ineffective
15 assistance of counsel justifies reopening evidence. Not a single Nevada civil case. His
16 arguments (including that the worthless shares that Plaintiffs received in VCC’s
17 bankruptcy have value) are novel, but are more suited for the appellate courts.
18 Defendant has not provided any new support or Nevada authorities to overturn Judge
19 Silva’s decision, or this Court’s ruling on Defendant’s post-trial motions. For these
20 reasons, Defendant’s motion should be denied, and he should seek redress, if at all,
21 with the appellate courts.

22
23 Dated: July 12, 2021

Respectfully submitted,

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The Law Office of David Liebrader, Inc.

By:/s/ David Liebrader
David Liebrader
Attorney for Plaintiffs

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CERTIFICATE OF MAILING


I hereby certify that on the 12th day of July, 2021, I mailed a copy of the foregoing
Opposition Brief
to the following

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 Plaintiffs

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 IN THE MATTER BETWEEN) Case No. A-17-762264-C
11 Steven A. Hotchkiss,)
12) Dept.: 23
13 PLAINTIFF,)
14) OMNIBUS ORDER ON POST
15 v.) JUDGMENT MOTIONS
16)
17 Ronald J. Robinson, Vernon Rodriguez, Frank)
18 Yoder, Alisa Davis and DOES 1-10 and ROES 1-)
19 10, inclusively)
20)
21 DEFENDANTS) CONSOLIDATED WITH
22) Case No. A-17-763003-C
23 Anthony White, Robin Suntheimer, Troy)
24 Suntheimer, Stephens Ghesquiere, Jackie Stone,)
25 Gayle Chany, Kendall Smith, Gabriele)
26 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)
)

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.

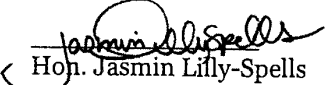
10 The Court orders that while a decision on Defendant's post-trial motions
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12 enforce the judgment against Defendant Rodriguez, and Mr. Rodriguez shall not
13 transfer, dispose, remove or conceal any assets, except those required for every day,
14 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:

19 Dated this 15th day of June, 2021

20 Dated this ____ day of May, 2021

21 
22 Hon. Jasmin Lilly-Spells
23 District Court Judge

24 Submitted by:

25 /s/David Liebrader
26 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]

EXHIBIT “B”

Miriam

From: Robin1031@aol.com
Sent: Monday, December 10, 2012 10:50 AM
To: Julie Minuskin
Subject: Re: Agreement
Attachments: image001.png; image002.png; image003.png; image004.png; image005.png; image006.png; image007.png

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

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

Hi-

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

Thoughts?

Julie Minuskin

Investment Specialist | Retire Happy, LLC
4840 W. University Ave., A1 | Las Vegas, NV 89103
Direct: 702.752.1843 | Toll Free: 888.899.4700. Fax: 825.899.4702

jminuskin@retirehappy.com



 Retire Happy

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

Frank Yoder

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

Ron,
Is this ok?

Return:

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

Offering Summary

Securities: 9% Notes

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

TERMS OF SECURITIES:

Return:

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

Secured:

Notes are secured by a Promissory Note. The Guarantor of the note is Mr. R.J. Robinson, chairman & CEO of Virtual Communications Corporation. Mr. Robinson has a net worth of \$17,696,000. Financial Statement is available for inspection in the offices of Retire Happy.

Termination Date:

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

Frank Yoder

Wintech, LLC

311 East Warm Springs Road, Suite #100
Las Vegas, NV 89119

phone: (702) 284-7311

email: Frank.Yoder@WintechLLC.com

web: www.ALICEreceptionist.com

From: Robin1031@aol.com [mailto:Robin1031@aol.com]

Sent: Monday, December 17, 2012 11:36 AM

To: Frank Yoder

Subject: Re: revised note

EXHIBIT “C”

1 DECN
Judge Cristina D. Silva
2 Eighth Judicial District Court
Department IX
3 Regional Justice Center
200 Lewis Avenue
4 Las Vegas, Nevada 89155

5
6 EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

7 STEVEN A. HOTCHKISS,
8 Plaintiff,

Case No.: A-17-762264-C
Dept. No.: IX

9 vs.

10 RONALD J. ROBINSON; VERNON
11 RODRIGUEZ; VIRTUAL
COMMUNICATIONS CORPORATION;
12 WINTECH, LLC; RETIRE HAPPY, LLC;
JOSH STOLL; FRANK YODER; ALISA
13 DAVIS; and DOES 1-10; and ROES 1-10,
inclusively,

14 Defendants.

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

18 Plaintiffs,

19 vs.

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

24 Defendants.

Consolidated with:

Case No.: A-17-763003-C
Dept. No.: IX

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I. Virtual Communications Corporation (“VCC”) Note was a Security as defined by the Nevada Securities Act (*see* NRS §90.295)

- (1) The note subject to review is compared to a series of notes that are not securities; and
- (2) The note subject to review is examined according to four factors: (1) motivation; (2) plan of distribution; (3) expectations, and (4) need for securities law.

An examination of the promissory notes issued by VCC actually meets all four factors.

1 Much like any other investment opportunity, the evidence at trial revealed that the motivation
2 behind the issuance of the Notes was to raise funds to support VCC¹ and the related “Alice”
3 technology, and that investment in VCC would result in a favorable monetary return.²
4 Testimony from Mr. Robinson and Mr. Rodriguez confirmed the Notes were issued to raise
5 money. Promises of financial gain were made to the purchasers of the Notes; those promises
6 would lead a reasonable person to want to purchase the Notes as an investment. The
7 Defendants’ sale of the Notes resulted in them raising over 4 million dollars.

8 Further, the PowerPoint presentations introduced as exhibits at trial set forth clear plan
9 of distribution and the expectations (i.e. returns) that would result from the distribution of the
10 Notes.³ Testimony from the Defendants, Ms. Davis and Mr. Frank Yoder, confirmed that the
11 Defendants were consulted on the content of the PowerPoints setting forth the plan of
12 distribution, which included language about the personal guarantee by Mr. Robinson and a
13 referral of the notes as “securities.”

14 Last but not least, the end-result of the Notes demonstrates that the purchasers
15 reasonably viewed the Notes as investments. They were presented to investors and potential
16 investors as “securities,”⁴ which is prima facie proof that the Notes were investments. The
17 purpose of selling the Notes was also to raise money, which further demonstrates that they
18 were intended to be investments.

20 ¹ See Exhibit 4 at Bates No. 00066, PowerPoint presentation for potential investors indicating the “target
21 goal was \$120 billion dollars in the global market.”; *see also* Exhibit 6 at Bates No. 0096 (same).

22 ² *See id.* at Bates No. 0074 stating the terms of the securities included a “[T]erm of 18 months, with a 6
month extension option. Notes pay 9% annually with interest paid monthly.” (Emphasis added); *see also* Exhibit 6
at 00150 (same).

23 ³ *See* Exhibit 4 at Bates No. 0070, setting for the “Revenue Forecast,” and Bates No. 0074, setting forth the
“Growth Strategy.”; *see also* Exhibit 6 at Bates No. 00100 and 00104 (same).

24 ⁴ *See* Exhibit 5 at Bates No. 74; Exhibit 6 at Bates No. 00150. In fact, the PowerPoints even included
information about the Securities Exchange Act of 1934. *See* Exhibit 4 at Bates No. 0064; Exhibit No. 6 at Bates No.
0094.

1 Testimony from Plaintiff Mr. Hotchkiss is more evidence that that the VCC Notes meet
2 the four factors. Mr. Hotchkiss testified that he used 1/3 of his personal savings to purchase the
3 notes as part of his overall retirement plan. Specifically he purchased the Notes because of (1)
4 the personal guarantee, and (2) the expectation of a 9% return. Moreover, Mr. Hotchkiss
5 testified that when he repeatedly attempted to contact Vernon Rodriguez to figure out where
6 his returns were, Rodriguez asked him “for patience.” Finally, he testified that he never received
7 any of his funds back. The Court notes that there was no evidence introduced at trial that any
8 of the investors received their funds back.

9 **II. The VCC Note Was Not registered as a Security; Defendant Failed to**
10 **Provide Any Evidence that it was Exempt from the Registration**
11 **Requirements.**

12 There was no evidence introduced at trial to demonstrate that the VCC Note was
13 exempt from registration as a security. Therefore, the Notes are not exempted.

14 **III. Ronald Robinson and Vernon Rodriguez were control persons as defined in**
15 **NAC 90.035.**

16 Nevada Administrative Code (NAC) section 90.035 defines a “control person” as an
17 individual who (1) owns or controls 10 percent or more of the voting stock of a corporation; (2)
18 is an officer or director of a corporation; or (3) is in a position to influence the decision-making
19 processes of a corporation. “In general, the determination of who is a controlling person ... is an
20 intensely factual question.” *Arthur Children's Trust v. Keim*, 994 F.2d 1390, 1396 (9th Cir.1993)
21 (discussing a “control person” under Federal Securities law). To establish “controlling person”
22 liability, the plaintiff must show that a primary violation was committed and that the
23 defendant “directly or indirectly” controlled the violator. *See Hollinger v. Titan Capital Corp.*, 914
24 F.2d 1564, 1575 (9th Cir. 1990), cert. denied, 499 U.S. 976, 111 S.Ct. 1621, 113 L.Ed.2d 719 (1991).

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

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

21 ...

22 ...

23

24 ⁵ The PowerPoints also belie Rodriguez's testimony that he did not become CFO until 2014.

1 IV. Ronald Robinson is Liable as a Guarantor

2 There is no disagreement that Robinson personally guaranteed the Notes/Securities at
3 issue in this case.⁶ In fact, Robinson admitted to guaranteeing the Notes during trial, albeit
4 noting he only intended to personally guarantee some of them.⁷ Qualified or not, his guarantee
5 was “absolute” and “unconditional.”⁸ With his admission, the Court must then determine if he
6 is still liable pursuant to personal guarantee after VCC’s bankruptcy proceedings. The Court
7 finds that VCC’s bankruptcy did not extinguish Robinson’s personal guarantee of the
8 promissory notes. The Court adopts the reasoning in the *Donnell* and *Nelson* cases in reaching
9 this decision. Specifically, the Court agrees with Plaintiff’s argument that VCC’s bankruptcy
10 was a tactical, self-interested decision by Robinson to try and eliminate his responsibilities as
11 the personal guarantor. His decision constitutes as consent to the modification, and further did
12 not increase his liability risk. Consequently, he is still liable as a personal guarantor. *See generally*
13 *Marc Nelson Oil Products v. Grim Logging Co.*, 110 P.3d 120, 122-125.

14 V. Conclusion

15 Within 30 days of this decision, the parties shall meet and confer and submit a proposed
16 Findings of Fact and Conclusions of Law consistent with this Decision. Further, Plaintiff must
17 submit a brief regarding damages, and the evidence that supports the requested damages
18 within 45 days. Defendant may file an opposition 14 days after the filing of Plaintiff’s brief.
19 Plaintiff may file a reply within 7 days of any filed opposition.

20 ...
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23 ⁶ See Exhibit 5 at Bates No. 0088.

24 ⁷ During trial, Robinson testified that Julie Minushkin issued some of the Notes with his personal
guarantee without his permission. No other evidence was introduced to support his position.

⁸ See Exhibit 5 at Bates No. 0088.

1 After the Court receives and reviews the proposed Findings of Fact and Conclusions of
2 Law, and full briefing on the issue of damages, the Court will issue the Findings of Fact and
3 Conclusion of Law. Thereafter a judgment shall issue in favor of the Plaintiffs and against
4 Defendants.

5 DATED this 27th day of April, 2020.



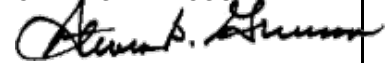
6
7 CRISTINA D. SILVA
8 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of the foregoing DECISION was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program (EFP) and/or emailed to any party or proper person not registered with the District Court EFP system.

Jaye L. Beltran
Judicial Executive Assistant



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10 Attorney for defendant Ronald J. Robinson
11

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA
14

15 STEVEN A. HOTCHKISS,
16
17 Plaintiff,
18

19 vs.

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

25 Defendants.
26

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

27 ANTHONY WHITE; ROBIN SUNTHEIMER; TROY
28 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

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that defendant, Ronald J. Robinson, hereby appeals to the Supreme Court of Nevada from the findings of fact, conclusions of law and order on motion for damages and attorney's fees, filed on August 20, 2020, the judgment, filed on August 20, 2020, and the duplicate

1 judgment, filed on August 21, 2020.

2 DATED this 13th day of July, 2021.

3 By: /s/ /Michael F. Bohn, Esq./

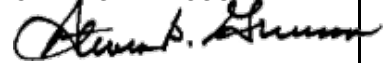
4 MICHAEL F. BOHN, ESQ.
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Attorney for defendant Ronald J. Robinson

7 **CERTIFICATE OF SERVICE**

8 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW
9 OFFICES OF MICHAEL F. BOHN., ESQ., and on the 13th day of July, 2021, an electronic copy of the
10 **NOTICE OF APPEAL** was served on opposing counsel via the Court's electronic service system to the
11 following counsel of record:

12 David Liebrader, Esq.
13 The Law Offices of David Liebrader, APC
14 3960 Howard Hughes Parkway, Ste. 500
Las Vegas, NV 89169
Attorney for plaintiffs

16 /s/ /Maurice Mazza /
17 An employee of Law Offices of
18 Michael F. Bohn, Esq., Ltd.



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12 DISTRICT COURT
13 CLARK COUNTY, NEVADA
14

15 STEVEN A. HOTCHKISS,
16
17 Plaintiff,
18

19 vs.

20 RONALD J. ROBINSON; VERNON RODRIGUEZ;
21 VIRTUAL COMMUNICATIONS CORPORATION;
22 WINTECH, LLC; RETIRE HAPPY, LLC; JOSH
23 STOLL; FRANK YODER; ALISA DAVIS; and
24 DOES 1-10; and ROES 1-10, inclusively,
25

26 Defendants.
27

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

28 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

CASE APPEAL STATEMENT

1. The appellant filing this case appeal statement is Ronald J. Robinson.
2. The judge issuing the judgment appealed from is the honorable Cristina Silva.

3. The parties to the proceedings in District Court are Steven A. Hotchkiss, Anthony White, Robin Suntheimer, Troy Suntheimer, Stephens Ghesquiere, Jackie Stone, Gayle Chany, Kendall Smith, Gabrielle Lavernicocca, and Robert Kaiser, plaintiffs; Ronald J. Robinson, Vernon Rodriguez, Virtual Communications Corporation, Wintech, LLC, Retire Happy, LLC, Josh Stoll, Frank Yoder, and Alisa Davis, defendants.

4. The parties to this appeal are the appellant Ronald J. Robinson, and respondents Steven A. Hotchkiss, Anthony White, Robin Suntheimer, Troy Suntheimer, Stephens Ghesquiere, Jackie Stone, Gayle Chany, Kendall Smith, Gabrielle Lavernicocca, and Robert Kaiser.

5. Counsel for appellant Ronald J. Robinson is Michael F. Bohn, Esq.; 2260 Corporate Circle, Suite 480, Henderson, NV 89074; (702) 642-3113. Counsel for respondents is David Liebrader, Esq., The Law Offices of David Liebrader, APC, 3960 Howard Hughes Parkway, Ste. 500, Las Vegas, NV 89169, (702) 380-3131.

6. The attorneys for both the defendant/appellant and plaintiff/respondent are licensed in the state of Nevada.

7. The appellant was represented by retained counsel in the District Court;

8. The appellant is represented by retained counsel on appeal;

9. There were no orders granting leave to proceed in forma pauperis;

10. The complaint in Case No. A-17-762264-C was filed in District Court on September 28, 2017. The complaint in Case No. A-17-763003-C was filed in District Court on October 12, 2017.

11. The complaint in Case No. A-17-762264-C and the first amended complaint in Case No. A-17-763003-C alleged claims for relief based on fraud, misrepresentation and omissions, violation of the Nevada Uniform Securities Act, and breach of written contract. The district court found in favor of the plaintiffs.

12. The case has previously been the subject of appeal SC# 81838.

13. The case does not involve child custody or visitation; and,

14. This case is one that is not likely to be settled.

///

1 DATED this 13th day of July 2021.

2 LAW OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.

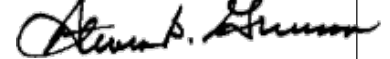
4
5 By: /s/ /Michael F. Bohn, Esq./
6 MICHAEL F. BOHN, ESQ.
7 2260 Corporate Circle, Suite 480
8 Henderson, NV 89074
9 Attorney for defendant Ronald J. Robinson

10 **CERTIFICATE OF SERVICE**

11 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law
12 Offices of Michael F. Bohn., Esq., and on the 13th day of June, 2021, an electronic copy of the **CASE**
13 **APPEAL STATEMENT** was served on opposing counsel via the Court's electronic service system to
14 the following counsel of record:

15 David Liebrader, Esq.
16 The Law Offices of David Liebrader, APC
17 3960 Howard Hughes Parkway, Ste. 500
18 Las Vegas, NV 89169
19 Attorney for plaintiffs

20 /s/ /Maurice Mazza /
21 An employee of Law Offices of
22 Michael F. Bohn, Esq., Ltd.



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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. 23

**REPLY TO OPPOSITION TO
SUPPLEMENT TO 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)**

Date: August 3, 2021
Time: 9:30 a.m.

Consolidated with

CASE NO. A-17-763003-C
DEPT NO. 23

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.

1 Trials are chaotic. Things get missed. In a world where every bench trial resulted in a
2 complete and perfect record, there would be no need for Nev. R. Civ. P. 59 and the various forms
3 of relief that rule provides:

- 4 • A new trial on all or some of the issues – as to any party
- 5 • Additional testimony
- 6 • Amended findings of fact and conclusions of law
- 7 • New findings and conclusions
- 8 • A new judgment

9 In his extensive post-trial briefing, Defendant Vernon Rodriguez has noted errors in these
10 proceedings by his prior counsel, including (i) failure to file a dispositive motion based on an
11 expired two-year statute of limitation, (ii) failure to file a dispositive motion regarding the “debt
12 for equity swap” by the issuer of the promissory notes at issue in this case, and (iii) failure to file
13 a dispositive motion, or elicit testimony at trial, regarding the two statutory defenses available to
14 “control persons” under Nev. Rev. Stat. 90.660. Should these issues have been raised before trial?
15 Absolutely. Is it too late now for Mr. Rodriguez to raise these issues? Absolutely not. This is
16 *exactly* the sort of situation that Rule 59 (a) was designed to address. *See, e.g., Sierra Pac. Power*
17 *Co. v. Day*, 391 P.2d 501, 80 Nev. 224 (Nev. 1964) (“Error in some respects, or injustice in the
18 result, alone authorizes an interference with a judgment or decree once rendered...” (*quoting Shute*
19 *v. Big Meadow Inv. Co.*, 45 Nev. 99, 198 P. 227 (1921))).

20 In their Opposition, Plaintiffs state that they “dispute these contentions.” *Id.* at p. 3, l. 2.
21 They do not, however, offer any argument or legal authorities to demonstrate that these defenses
22 are not viable. To recap:

23 **1. The Statute of Limitation Defense**

24 The statute of limitation for claims under Nev. Rev. Stat. 90.660 is two (2) years. Nev.
25 Rev. Stat. 90.670. As a matter of law, there is no applicable discovery period when a violation
26 involves failure to register securities because that information is publicly available. *Baroi v.*
27 *Platinum Condo. Dev., LLC*, 914 F.Supp.2d 1179, 1191 (D. Nev. 2012). These statements of law
28 were never contested. As importantly, Plaintiffs never contested the fact that the earlier of these

1 consolidated cases was commenced two (2) years and nine (9) months after the last investor
2 purchased notes from VCC. Based on undisputed facts and law, the sole claim against Mr.
3 Rodriguez would be time-barred if this Court were to consider the statute of limitation defense.

4 Plaintiffs argue – without citation to any authority – that Mr. Rodriguez was too late in
5 raising that issue. At what point, however, was it too late? Was it the opening date of the trial?
6 Was it the date when Judge Silva issued her Decision? Was it the date when the Court approved
7 the *Findings of Fact and Conclusions of Law* (“FFCL”) prepared by Plaintiffs’ counsel? Was it
8 some other date? The purpose of a trial is to adduce facts. We rely on post-trial briefing to explain
9 the legal significance of those facts. No authorities, or even unsupported argument, has been made
10 by Plaintiffs to explain why this Court should not consider an expired statute of limitation when
11 that issue has been raised in a timely-filed motion under Rule 59(a).

12 **2. The VCC Bankruptcy**

13 It is a universally accepted premise that a plaintiff is only entitled to one recovery.
14 *Calloway v. City of Reno*, 993 P.2d 1259, 1279, 116 Nev. 250 (2000) (“no plaintiff is entitled to
15 more than one recovery no matter how many theories of recovery may be applicable”) (*citing*
16 *Ambassador Hotel Co. v. Wei-Chuan Inv.*, 189 F.3d 1017 (9th Cir.1999) [additional citation
17 omitted]. In his post-trial motions, Mr. Rodriguez has explained that the noteholders – including
18 the Plaintiffs in this action – were the beneficiaries of a “debt for equity swap” as a result of VCC’s
19 confirmed Chapter 11 plan. No authority, or unsupported argument, has been offered to explain
20 why it is “too late” for Mr. Rodriguez to request a ruling that the Plaintiffs have already obtained
21 recovery in this matter. In their opposition, Plaintiffs claim that these shares are “worthless.” *Id.*
22 at p. 4, l. 16. There has been no expert testimony offered, however, regarding the present or
23 potential future value of those shares. As for lay opinion, the bankruptcy demonstrates that a
24 super-majority of noteholders reached a different conclusion, as 81% of them voted in favor of
25 VCC’s plan of reorganization.¹ Mr. Rodriguez respectfully submits that it would be a profound
26

27 ¹ The 81% voting figure is set forth on page 4, line 22 of the *Order Confirming First Amended Chapter 11*
28 *Plan of Reorganization of Virtual Communications Corporation*, which was attached as Exhibit 2 to the *Request by*
Defendant Vernon Rodriguez for Judicial Notice in Support of Post-Judgment Motions filed on or about September
16, 2020.

1 miscarriage of justice for this Court to continue to refuse to take up the issue of the recovery that
2 has already been obtained by the Plaintiffs. It is, after all, Plaintiffs' burden to prove that they
3 have suffered damages. If they acknowledge that they have received VCC shares, and then offer
4 to them over to Mr. Rodriguez in exchange for cash, they have not met their burden of proving a
5 loss.

6 **3. The Nev. Rev. Stat. 90.660 Defenses**

7 Much has been made of the fact that Mr. Rodriguez was identified on a Power-Point slide
8 as a person to whom potential VCC investors could direct questions regarding the company. In
9 her *Decision*, Judge Silva referred to Mr. Rodriguez as the "proverbial 'closer.'" *Id.* at p. 5, l. 20.²
10 That reference, however, reveals a fundamental misapprehension of the law. As noted in his
11 motion, there is nothing remotely improper about a company borrowing money and issuing
12 promissory notes. The violation of law that occurred in this case consisted of VCC's failure to
13 register securities with the Secretary of State. *See* Nev. Rev. Stat. 90.460. Even if Mr. Rodriguez
14 had had multiple discussions with every one of the Plaintiffs regarding VCC's business, there is
15 nothing in the *Decision* or FFCL to suggest that Mr. Rodriguez was the person in charge of
16 registering those securities. Had that issue been addressed, Mr. Rodriguez would have testified
17 that Ronald J. Robinson supervised all of VCC's fundraising and that former Defendant Retire
18 Happy, LLC responsible for ensuring compliance with securities law. The Court never heard that
19 testimony, however, because presenting those defenses on behalf of Mr. Rodriguez would have
20 required Mr. Gewerter to introduce testimony that would have implicated his other client.
21 Plaintiffs have never asserted that a conflict of interest did not exist or that a different outcome
22 would likely have occurred but for that conflict. As with their other arguments, Plaintiffs' position
23 is that it is too late for Mr. Rodriguez to raise that defense.

24 . . .

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28 ² Of course, there is nothing in the *Decision* or FFCL to suggest that Mr. Rodriguez was an "actual" closer -- and Mr. Rodriguez has submitted a declaration to confirm that he never spoke with any of the Plaintiffs prior to them investing.

According to Plaintiffs, Mr. Rodriguez “should seek redress, if at all, with the appellate courts.” *See* Opposition at p. 4, ll. 20-21. The problem with that argument is that Mr. Rodriguez is not asking this Court to reconsider facts on which it has already made rulings – he is, instead, asking the Court to consider *new* facts and address *new* legal issues. He respectfully submits that if this matter does go up on appeal, the most likely outcome is that an appellate court will order the matter remanded with instructions to consider the issues that this Court has so far declined to offer any substantive ruling. A decision now will save both parties a good deal of time, effort and expense.

CONCLUSION

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Dated this 20th day of July, 2021.

FLEMING LAW FIRM, PLLC

By /s/ Scott D. Fleming

SCOTT D. FLEMING, ESQ.

Nevada Bar No. 5638

8250 West Charleston Boulevard

Suite 100

Las Vegas, Nevada 89117

Attorney for Vernon Rodriguez

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Fleming Law Firm, PLLC, and that on the 20th day of July, 2021, I caused to be served a true and correct copy of foregoing **REPLY TO OPPOSITION TO SUPPLEMENT TO SECOND POST-JUDGMENT MOTION BY DEFENDANT VERNON RODRIGUEZ FOR A NEW TRIAL, OR IN THE ALTERNATIVE, FURTHER ACTION AFTER A NONJURY TRIAL PURSUANT TO NEV. R. CIV. P. 59(A)** in the following manner:

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

DAVID LIEBRADER, ESQ.
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Attorney for Plaintiffs

By /s/ Scott D. Fleming
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6 PH: (702) 380-3131
7 Attorney for Plaintiffs

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 IN THE MATTER BETWEEN) Case No. A-17-762264-C
13)
14 Steven A. Hotchkiss,) Dept.: 23
15)
16 PLAINTIFF,) ORDER ON DEFENDANT'S
17) SECOND POST JUDGMENT
18 v.) MOTION (SUPPLEMENTAL
19) BRIEFING)
20 Ronald J. Robinson, Vernon Rodriguez, Frank)
21 Yoder, Alisa Davis and DOES 1-10 and ROES 1-)
22 10, inclusively)
23)
24 DEFENDANTS)
25) CONSOLIDATED WITH
26)
27 Anthony White, Robin Suntheimer, Troy)
28 Suntheimer, Stephens Ghesquiere, Jackie Stone,) Case No. A-17-763003-C
29 Gayle Chany, Kendall Smith, Gabriele)
30 Lavermicocca and Robert Kaiser)
31)
32 PLAINTIFFS)
33)
34 v.)
35)
36 Ronald J. Robinson, Vernon Rodriguez, Virtual)
37 Communications Corporation, Frank Yoder, Alisa)
38 Davis and DOES 1-10 and ROES 1-10, inclusively)
39)
40)
41)

42 **ORDER ON POST JUDGMENT MOTIONS**

43 The Court considered briefing on Defendant Rodriguez' post judgment motion,
44 specifically Defendants "supplement to second post judgment motion for a new trial,
45
46

1 or in the alternative, for further action” filed June 10, 2021, as well as Plaintiff’s
2 Opposition and Defendant’s Reply.

3 The Court held a hearing on August 3, 2021. Appearing for Plaintiffs was David
4 Liebrader; Appearing for Defendant Rodriguez was Scott Fleming.

5 After considering the briefing and argument from counsel, the court finds as
6 follows:

7 The Court previously denied Defendant’s motions for reconsideration, and for
8 a new trial, and Defendant has not cited any evidence of plain error, manifest
9 injustice or irregularities in the proceeding justifying the reopening of evidence.

10 As to the claim of ineffectiveness of counsel, the Court finds that Defendant
11 Rodriguez was represented by counsel at trial, and had an opportunity to, and did
12 present testimony without restrictions.

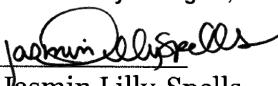
13 As a result there is not a sufficient basis to change or amend the findings of
14 facts and conclusions of law or reopen the record to permit the introduction of
15 additional evidence.

16 On that basis, Defendant’s Motion is Denied.

17
18
19 IT IS SO ORDERED:

Dated this 31st day of August, 2021

20 Dated this ____ day of August, 2021

21 
22 Hon. Jasmin Lilly-Spells
23 District Court Judge
24 F49 0F1 E65E ABA7
25 Jasmin Lilly-Spells
26 District Court Judge

Submitted by:

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/s/David Liebrader
David Liebrader
Attorney for Plaintiff



David Liebrader <davel@investmentloss.com>

Proposed Order Aug 3 hearing

Scott Fleming <scott@fleminglawlv.com>

Fri, Aug 13, 2021 at 4:12 PM

To: David Liebrader <davel@investmentloss.com>

Hello Dave. No objection to the form of order. You may submit with my electronic signature.

Thanks.

Sent from my iPhone

On Aug 13, 2021, at 9:37 AM, David Liebrader <davel@investmentloss.com> wrote:

[Quoted text hidden]

<Order on post trial motions August 2021.doc>

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 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: 8/31/2021

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