



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
August 30, 2022

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:

SIMON VERNON RODRIGUEZ and  
MARILYN KAY SCHIPULL,

Debtors.

) Case No. 21-14112-mkn

) Chapter 7

STEVEN A. HOTCHKISS, et al.,

Plaintiffs,

vs.

SIMON VERNON RODRIGUEZ,

Defendant.

) Adv. Proc. No. 21-01228-mkn

) Date: July 28, 2022

) Time: 1:30 p.m.

**ORDER ON MOTIONS FOR SUMMARY JUDGMENT<sup>1</sup>**

On July 28, 2022, the court heard a Motion for Summary Judgment, as well as a  
Countermotion for Summary Judgment brought in the above-captioned adversary proceeding.

<sup>1</sup> In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of court. All references of “AECF No.” are to the documents filed in the above-captioned adversary proceeding. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. “§§ 101-1532. All references to “NRS” are to the Nevada Revised Statutes. All references to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure. All references to “Civil Rule” are to the Federal Rules of Civil Procedure. All references to “FRE” are to the Federal Rules of Evidence.

1 The appearances of counsel were noted on the record. After arguments were presented, the  
2 matters were taken under submission.

3 **BACKGROUND<sup>2</sup>**

4 On August 20, 2021, a voluntary Chapter 7 petition was filed by Simon Vernon  
5 Rodriguez and Marilyn Kay Schipull. (ECF No. 1). Attached to their bankruptcy petition are  
6 schedules of assets and liabilities, and a statement of financial affairs (“SOFA”), signed under  
7 penalty of perjury. Part 4 of the SOFA discloses prior lawsuits to which the petitioner is a party  
8 within one year of filing for bankruptcy relief. That document discloses one consolidated civil  
9 action entitled Steven A. Hotchkiss, et al. v. Ronald J. Robinson, et al., Case No. A-17-762264-C  
10 (consolidated with Case No. A-17-763003-C), pending in the Eighth Judicial District Court,  
11 Clark County, Nevada, described as a “Claim for securities law violation as a ‘control person’ of  
12 Virtual Communications Corp. pursuant to NRS 90.660(4); subject to possible appeal.” A  
13 Notice of Chapter 7 Bankruptcy Case was filed scheduling a meeting of creditors for September  
14 20, 2021, and also set a deadline of November 19, 2021, for interested parties to object to the  
15 Debtors’ Chapter 7 discharge or to object to the discharge of a particular debt.<sup>3</sup> The case was  
16 assigned for administration to Chapter 7 panel trustee Ryan A. Andersen.

17 On November 10, 2021, Steven A. Hotchkiss, along with Anthony White, Troy  
18 Suntheimer, Stephens Ghesquiere, Jackie Stone, Gayle Chany, Kendall Smith, Gabrielle  
19 Lavermicocca, Robert Kaiser, and Robin Suntheimer (“Plaintiffs”) commenced the above-  
20 captioned adversary proceeding (“Adversary Proceeding”) by filing a complaint (“Complaint”)  
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22 <sup>2</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the  
23 docket in the above-captioned adversary proceeding and the above-captioned Bankruptcy Case  
24 See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also Bank of Am., N.A. v. CD-04,  
25 Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015)  
26 (“The Court may consider the records in this case, the underlying bankruptcy case and public  
records.”).

27 <sup>3</sup> Those deadlines were required by Bankruptcy Rule 4004(a) and 4007(c), both of which  
28 require an objection to be filed within 60 days of the first date set for the meeting of creditors.  
Bankruptcy Rule 7001(4 and 6) require that such objections be raised through commencement of  
an adversary proceeding.

1 against Simon Vernon Rodriguez (“Debtor”). (AECF No. 1). The Complaint seeks to determine  
2 the dischargeability of a pre-bankruptcy debt.

3 On December 1, 2021, a copy of the Complaint and summons were served on the Debtor.  
4 (AECF No. 11).

5 On December 9, 2021, Debtor filed his answer to the Complaint (“Answer”). (AECF No.  
6 8).

7 On January 11, 2022, the parties filed a joint discovery plan representing that the  
8 adversary proceeding would be ready for a two-day trial no later than September 15, 2022.  
9 (AECF No. 12).

10 On May 6, 2022, Plaintiffs filed the instant motion for summary judgment (“MSJ”) and  
11 noticed it to be heard on July 28, 2022. (AECF Nos. 17 and 18). The MSJ seeks a determination  
12 of dischargeability under Section 523(a)(19) of a prior judgment entered against the Debtor by  
13 the Eighth Judicial District Court for Clark County, Nevada (“State Court). The MSJ includes a  
14 Statement of Undisputed Facts (“Plaintiffs SUF”).

15 On June 6, 2022, Debtor filed his opposition to the MSJ (“Opposition”) that included a  
16 countermotion for summary judgment (“Countermotion”), in addition to his supporting  
17 declaration (“Rodriguez Declaration”). (AECF Nos. 27 and 28). On the same date, Debtor also  
18 filed: (1) a response to Plaintiffs SUF, and (2) the Debtor’s own statement of undisputed facts  
19 (“Debtor SUF”). (AECF No. 29). The Debtor SUF is supported by an appendix of exhibits.  
20 (AECF Nos. 30 and 31).

21 On June 7, 2022, Debtor also filed a declaration of Michael Yoder (“Yoder Declaration”)  
22 in support of his Opposition to the MSJ and his Countermotion. (AECF No. 33).

23 On June 24, 2022, Plaintiffs filed their reply brief that included an opposition to Debtor’s  
24 Countermotion (“Plaintiffs Reply”). (AECF No. 37).

25 On July 14, 2022, a status hearing in the Adversary Proceeding was continued to  
26 September 8, 2022.

27 On July 18, 2022, an order was entered granting the Debtor until July 18, 2022, to file a  
28 reply in support his Countermotion and Plaintiffs until July 21, 2022, to file a response to

1 Debtor's reply on the Countermotion. (AECF No. 45).

2 On July 18, 2022, Debtor filed his reply ("Reply") to Plaintiffs' opposition to his  
3 Countermotion. (AECF No. 47).

4 On July 21, 2022, Plaintiffs filed their response to Debtor's Reply ("Plaintiffs Further  
5 Replay"). (AECF No. 49).

#### 6 SUMMARY JUDGMENT STANDARDS

7 Summary judgment is governed by Civil Rule 56. Summary judgment may be granted  
8 only if "the movant shows that there is no genuine dispute as to any material fact and that the  
9 movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). For summary  
10 judgment purposes "[m]aterial facts are those that may affect the outcome of the case." Farmer  
11 v. Las Vegas Metro. Police Dep't, 423 F.Supp.3d 1008, 1013 (D. Nev. 2019), citing Anderson v.  
12 Liberty Lobby, Inc., 477 U.S. 242, 248 (1985). Findings of fact may not be entered because  
13 summary judgment may only be granted where there are no disputed issues of fact. See Animal  
14 Legal Def. Fund v. U.S. Food & Drug Admin., 836 F.3d 987, 989-90 (9th Cir. 2016).

15 A genuine issue of material fact exists when "the evidence is such that a reasonable jury  
16 could return a verdict for the nonmoving party." Id. The moving party's evidence is judged by  
17 the same standard of proof applicable at trial. See Celotex Corp. v. Catrett, 477 U.S. 316, 323  
18 (1986); see also Southern Calif. Gas Co. v. City of Santa Ana, 336 F.3d 885, 888 (9th Cir. 2003).  
19 The burden of proof is on the party seeking the summary judgment, but the inferences are  
20 viewed in favor of the opposing party. See Eastman Kodak Co. v. Image Technical Services,  
21 Inc., 504 U.S. 451, 456 (1992); see also Miller v. Glenn Miller Prods., Inc., 454 F.3d 975, 987  
22 (9th Cir. 2006). Determinations of intent or credibility generally are ill-suited for disposition by  
23 summary judgment. See Fogel Legware, etc. v. Wills (In re Wills), 243 B.R. 58, 65 (B.A.P. 9th  
24 Cir. 1999). Once the moving party demonstrates the absence of disputed material facts, the  
25 responding party must provide admissible evidence raising a genuine dispute. The responding  
26 party cannot rely solely on conclusory allegations unsupported by factual data. See Farmer v.  
27 Las Vegas Metro. Police Dep't, 423 F.Supp.3d at 1014 ("the nonmoving party cannot avoid  
28 summary judgment by relying solely on conclusory allegations that are unsupported by factual

1 data [ . . . ] Instead, the opposition must go beyond the assertions and allegations of the pleadings  
 2 and set forth specific facts by producing competent evidence that shows a genuine issue for  
 3 trial.”) (external citations omitted).

#### 4 **REQUIREMENTS OF A CLAIM UNDER SECTION 523(a)(19)**

5 Section 523(c) lists three types of debt that require a creditor to timely commence an  
 6 adversary proceeding to prevent an individual debtor from obtaining a Chapter 7 discharge: a  
 7 debt for money, property or services obtained by false pretenses, false representations, or actual  
 8 fraud under Section 523(a)(2), a debt for fraud or defalcation while acting in a fiduciary capacity,  
 9 or embezzlement or larceny under Section 523(a)(4), and a debt for willful and malicious injury  
 10 by the debtor to the objecting creditor. See 11 U.S.C. §§ 523(c) and 523(a)(2), (4), and (6).<sup>4</sup> All  
 11 three types of debt require a bankruptcy court determination of some nature of culpable conduct<sup>5</sup>  
 12 by the individual debtor.

13 Section 523(a) lists sixteen other types of debt that do not require a creditor to commence  
 14 an adversary proceeding to prevent the individual debtor from obtaining a Chapter 7 discharge of  
 15 the debt owed to the creditor. Likewise, the sixteen other types of debt do not necessarily require  
 16 a determination of malign intent or similar culpable conduct by the individual debtor.<sup>6</sup> Section

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17 <sup>4</sup> As discussed at note 3, supra, an adversary complaint required under Section 523(c)  
 18 must be timely filed. Complaints seeking to determine dischargeability of debts not included in  
 19 Section 523(c), however, can be filed at any time. See FED.R.BANKR.P. 4007(b).

20 <sup>5</sup> Debtor suggests that culpability or scienter also may be relevant for other types of  
 21 nondischargeable debt inasmuch as the U.S. Supreme Court soon will hear arguments in  
 22 Bartenwerfer v. Buckley, 860 Fed.Appx. 544 (9th Cir. 2021), cert. granted 142 S.Ct. 2675 (May  
 23 2, 2022). See Opposition at 21:17 to 22:24. The sole question presented to the Court in that case  
 24 will be whether under Section 523(a)(2)(A) the fraudulent conduct of a husband may be imputed  
 to a wife “without any act, omission, intent or knowledge of her own?” Nothing suggests that  
 the resolution of that question implicates any of the types of debt for which the creditor is not  
 required by Section 523(c) to timely file an objection.

25 <sup>6</sup> A bankruptcy court’s determination of the elements required for a nondischargeable  
 26 debt may be based on the preclusive effect given to a prior federal or state judgment. Issue  
 27 preclusion applies in bankruptcy as well as non-bankruptcy proceedings, and is designed to  
 prevent parties from re-litigating issues that they previously lost. Debtor focuses primarily on  
 whether issue preclusive effect may be given to the prior determinations of the State Court. See  
 28 Opposition at 27:16 to 47:3. The language of Section 523(a)(19)(A)(i), however, does not  
 require a factual determination that the debtor had a “willful,” “malicious,” “intentional,”

1 523(a)(19) encompasses one of those sixteen types of debt if it is based on a “violation of any of  
2 the Federal securities laws..., any of the State securities laws, or any regulation or order issued  
3 under” such laws. See 11 U.S.C. § 523(a)(19)(A)(i). Additionally, Section 523(a)(19)  
4 encompasses a debt that results from “common law fraud, deceit, or manipulation in connection  
5 with the purchase or sale of any security.” See 11 U.S.C. § 523(a)(19)(A)(ii). A debt based on  
6 conduct in connection with a security also must result “before, on, or after” the commencement  
7 of the bankruptcy case,<sup>7</sup> “from a judgment, order, consent order, or decree” entered by any  
8 federal or state proceeding, a “settlement agreement entered into by the debtor,” or, “any court or  
9 administrative order for any damages, fine, penalty, citation, restitutionary payment,  
10 disgorgement payment, attorney fee, cost, or other payment owed by the debtor.” See 11 U.S.C.  
11 §§ 523(a)(19)(B)(i, ii, and iii). In other words, unlike the types of debt encompassed by Section  
12 523(c), a debt encompassed by Section 523(a)(19) is nondischargeable as a matter of law if there  
13 ever is a judgment or order entered – before or after bankruptcy – that is based on the debtor’s  
14 violation or misconduct in connection with a federal or state securities law.<sup>8</sup>

15  
16 \_\_\_\_\_  
17 “knowing,” or similar state of mind. All the statute requires is an adjudication or agreement that  
18 the debtor violated a federal or state securities law. Here, the only material issue is undisputed:  
19 the State Court entered a final judgment that the Debtor violated Nevada securities laws and  
20 awarded damages based on that violation.

21 <sup>7</sup> The “before, on, or after” language was added to Section 523(a)(19)(B) by amendment  
22 through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. As a result of  
23 this amendment, as long as a judgment is entered against the debtor based on a pre-bankruptcy  
24 securities law violation, it is immaterial whether the judgment is entered before or after the  
25 bankruptcy proceeding is commenced.

26 <sup>8</sup> Because Section 523(a)(19) also includes common law fraud, deceit or manipulation in  
27 connection with the purchase or sale of any security, and is not included in Section 523(c), it  
28 appears that a claim that otherwise might be encompassed by Section 523(a)(2) and subject to  
the objection deadline imposed by Bankruptcy Rule 4007(c), could be pursued well after an  
individual debtor obtains a Chapter 7 discharge. Indeed, Section 523(a)(19)(B) refers to a debt  
that results before, on, or after the bankruptcy petition date, from a judgment. See generally 4  
COLLIER ON BANKRUPTCY, ¶ 523.27[1] (Richard Levin and Henry J. Sommer, eds., 16th ed.  
2022).

**THE EVIDENTIARY RECORD**

Attached to the MSJ is a declaration of Plaintiffs' counsel, David Liebrader ("Liebrader Declaration"), as well as copies of four exhibits. Exhibit "A" is a copy of the judgment entered in the State Court Action on or about August 21, 2020 ("State Judgment"). Exhibit "B" is a copy of the decision issued on or about April 27, 2020 ("State Decision"). Exhibit "C" is a copy of the findings of fact, conclusions of law and order entered by the State Court on or about August 21, 2020 with respect to the award of damages and attorney's fees ("State FF&CL re Damages"). Exhibit "D" is a copy of a transcript of the Debtor's deposition taken in this Adversary Proceeding on March 21, 2022 ("Deposition Transcript"). As Exhibits A, B, and C are copies of documents appearing on the docket of the State Court Action, Plaintiffs request that the court take judicial notice of the exhibits pursuant to FRE 201. No objection has been made by the Debtor and the court finds that judicial notice is appropriate. See note 2, supra. In addition to the Liebrader Declaration and four exhibits, also attached to the MSJ is a copy of Plaintiffs SUF.

In response to the MSJ and in support of his countermotion, Debtor has submitted the Rodriguez Declaration, Yoder Declaration, copies of the pleadings in the State Court Action (Exhibits 1 and 2), copies of the February 24 and 25, 2020 transcripts of the trial conducted in State Court Action (Exhibits 3 and 4), copies of the post-trial briefs filed in the State Court Action (Exhibits 5 and 6), a copy of the State Court's finding of facts and conclusions of law with respect to liability ("State FF&CL re Liability") (Exhibit 7), and copies of various trial exhibits offered or admitted in the State Court Action (Exhibits 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22). The court takes judicial notice that Exhibits 1 through 22 were filed in the State Court Action.

**DISCUSSION**

There is no dispute that a two-day bench trial was conducted in the State Court Action before the Honorable Cristina D. Silva. Four witnesses testified on the first day, including Simon Vernon Rodriguez (Debtor) and Steven Hotchkiss (Plaintiff), and 13 documents were offered into evidence. See Exhibit 3. The same 13 documents are offered by the Debtor in connection with the instant summary judgment motions as his Exhibits 8, 9, 10, 11, 12, 13, 14,



1 17, 18, 19, 20, 21, and 22. One other witness testified on the second day, Frank Yoder, and two  
2 documents were offered into evidence. See Exhibit 4. The same two documents are offered by  
3 the Debtor in connection with the instant summary judgment motions as his Exhibits 15 and 16.  
4 After concluding the trial on February 25, 2020, Judge Silva entered the State Decision dated  
5 April 27, 2020. The court determined, *inter alia*, that (1) a certain promissory note issued by  
6 Virtual Communications Corporation (“VCC”) constituted a security within the meaning of the  
7 Nevada Securities Act, NRS 90.295, see Decision at 2:6 to 4:8, (2) that the note was not  
8 registered as a security and that no evidence had been provided that the security was exempt  
9 from registration, see id. at 4:9-12, and (3) that Vernon Rodriguez (Debtor) is a control person of  
10 VCC as defined under Nevada Administrative Code section 90.035. Id. at 4:13 to 5:20. Judge  
11 Silva directed counsel to meet and confer to submit proposed findings of fact and conclusions of  
12 law. Id. at 6:15-16. Additionally, the State Court set a deadline for the parties to brief the  
13 requested damages. Id. at 6:16-19.

14 After the Decision was entered, the State Court entered the State FF&CL re Liability  
15 dated May 4, 2020. Consistent with the language of the State Decision, Judge Silva found that  
16 “the Promissory Notes offered by VCC and sold to the Plaintiffs meet the definition of a security  
17 under NRS §90.295.” State FF&CL re Liability at 2:21-23.<sup>9</sup> Additionally, the State Court found  
18 that “VCC sold unregistered nonexempt securities to the Plaintiff in violation of NRS §90.460.”  
19 Id. at 3:2-3.<sup>10</sup> Judge Silva also found that “Mr. Robinson and Mr. Rodriguez were VCC’s  
20 officers, and that they were in a position to, and did in fact, influence the unregistered  
21 Promissory Note offering.” Id. at 3:10-11.<sup>11</sup> The State Court also found that “Mr. Rodriguez  
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23 <sup>9</sup> NRS 90.295 defines a “security” to mean “a note, stock, bond, debenture, evidence of  
24 indebtedness, certificate of interest or participation in a profit-sharing agreement, a limited  
25 partnership interest, an interest in a limited liability company” and similar devices.

26 <sup>10</sup> NRS 90.460 provides that “It is unlawful for a person to offer to sell or sell any  
27 security in the State unless the security is registered or the security or transaction is exempt under  
28 this chapter.”

<sup>11</sup> “Mr. Robinson” is Ronald J. Robinson (“Robinson”), who was the Debtor’s co-  
defendant in the State Court Action.



1 was the CFO, and was designated as the point of contact for investors who had questions about  
 2 the Promissory Note offering.” Id. at 3:13-14. Judge Silva further found that both Mr. Robinson  
 3 and Mr. Rodriguez “were fully involved in the finances of the company, and both were aware of  
 4 the Power Point presentations that were prepared by VCC to show to prospective investors.” Id.  
 5 at 3:14-17. Based on the evidence presented, the State Court concluded that “Plaintiffs met their  
 6 burden of establishing that Mr. Robinson and Mr. Rodriguez were statutory control persons  
 7 within the definition of NAC 90.035.” Id. at 3:18-20.<sup>12</sup> Having found that VCC sold  
 8 unregistered securities under Nevada law, and that the Debtor was a control person of VCC  
 9 under Nevada law, Judge Silva concluded that the Debtor is “liable for the sale of unregistered  
 10 securities,” see id. at 4:19-20,<sup>13</sup> and that “Plaintiffs are entitled to damages under NRS §90.660.”  
 11 Id. at 4:20.<sup>14</sup>

12 After the State FF&CL re Liability was entered, entry of the State FF&CL re Damages  
 13 followed on August 21, 2020. With respect to the Debtor, Judge Silva found that “he is also  
 14 liable as a control person, and per NRS §90.660 Plaintiffs are entitled to an award of damages  
 15 and attorney’s fees on this successful claim in the amount of \$960,401, comprised of principal in  
 16 the amount of \$574,000, interest in the amount of \$164,770 and attorney’s fees in the amount of

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17 <sup>12</sup> Nevada Administrative Code 90.035 defines a control person to include a person who:  
 18 (1) owns or controls 10 percent or more of the voting stock of a corporation; (2) is an officer or  
 19 director of a corporation; or (3) is in a position to influence the decision-making processes of a  
 20 corporation.

21 <sup>13</sup> Judge Silva also found that defendant Robinson was separately liable to the plaintiffs  
 22 on a breach of contract theory. See id. at 4:21-23. Other than his violation of Nevada securities  
 23 law, however, the State Court found no separate basis for the Debtor’s liability to the plaintiffs.  
 24 In other words, determination of the Nevada securities law violation was necessary to the entry  
 25 of the Judgment against the Debtor and was the only basis for the entire award against the  
 26 Debtor.

27 <sup>14</sup> NRS 90.660(1)(b) provides that a person who offers or sells a security in violation of  
 28 NRS 90.460 [unregistered securities] “is liable to the person purchasing the security.” NRS  
 90.660(4) provides in pertinent part that “a person who directly or indirectly controls another  
 person who is liable” for the sale of an unregistered security “is also jointly and severally liable  
 with and to the same extent as the other person, but it is a defense that the person did not know,  
 and in the exercise of reasonable care could not have known, of the existence of the facts by  
 which the liability is alleged to exist.”

1 \$221,631 as set forth in Plaintiffs' filed February 22, 2020 Statement of Damages." State  
2 FF&CL re Damages at 2:22 to 3:3.<sup>15</sup>

3 After the State FF&CL re Damages was entered, Judge Silva entered the separate  
4 Judgment on August 21, 2020, repeating that the State Court had "found Mr. Robinson and  
5 Defendant Vernon Rodriguez liable for violations of NRS §90.660 (civil liability under the  
6 Nevada Securities Laws) as control persons for Virtual Communications Corporation."  
7 Judgment at 2:1-4. The State Court therefore adjudged that "Plaintiffs shall also have judgment  
8 against Defendant Rodriguez, in the amount of \$960,401, comprised of principal in the amount  
9 of \$574,000, interest in the amount of \$164,770 and attorney's fees in the amount of \$221,631 as  
10 set forth in Plaintiffs' filed February 22, 2020 Statement of Damages." *Id.* at 2:13-16.

11 No suggestion is made nor has evidence been presented that the Debtor ever appealed the  
12 Judgment.<sup>16</sup> No suggestion is made that the Judgment has been stayed with respect to the  
13 Debtor. No argument has been made that the Judgment is not final in its determination that the  
14 Debtor is obligated on a debt based on a violation of Nevada securities laws.<sup>17</sup>

15 Under these circumstances, there is no genuine dispute that a final judgment was entered  
16 by the State Court. There is no genuine dispute that the Judgment was entered after a trial on the  
17 merits where Judge Silva assessed the credibility of the witnesses who testified, including the

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19 <sup>15</sup> Judicial notice is taken under FRE 201(b) of the "Statement of Damages NRS §90.660"  
20 referenced in the State FF&CL re Damages. That Statement sets forth the breakdown by  
21 plaintiff of the \$960,401 damage award. Included in the breakdown is the principal amount of  
22 each plaintiff's investment in the subject security and the legal interest accrued from the date of  
23 the investment, arriving at a total amount of principal and interest. The breakdown also includes  
24 an additional 30 percent attorney's fees recovery based on the total amount of principal and  
25 interest, to arrive at a total damage figure for each plaintiff permitted under NRS §90.660. The  
26 plaintiffs in the State Court Action are the same as the plaintiffs in the instant Adversary  
27 Proceeding. As discussed at note 13, *supra*, the Nevada securities laws violation was the sole  
28 basis for the State Judgment against the Debtor. Thus, even under an issue preclusion analysis,  
all of the damages awarded by the State Court necessarily were for the securities violation.

26 <sup>16</sup> *See* Plaintiffs Reply at 9 n.1.

27 <sup>17</sup> On their face, the State Decision, the State FF&CL re Liability, the State FF&CL re  
28 Damages, and the State Judgment address the necessary language of all of the applicable Nevada  
securities statutes. *See* notes 9, 10, 12, and 14, *supra*.

1 Debtor and plaintiff Hotchkiss. There is no genuine dispute that the State Court considered the  
 2 amount owed by the Debtor to each of the named plaintiffs for the securities law violations.  
 3 There is no genuine dispute that the Judgment resulted in a pre-bankruptcy debt owed by the  
 4 Debtor that is for a violation of a Nevada securities law, NRS 90.660.

5 The court is, of course, barred by the Rooker-Feldman doctrine<sup>18</sup> from granting relief  
 6 from the State Judgment. The Rooker-Feldman doctrine bars relief that “would require the  
 7 [federal court] to determine that the state court’s decision was wrong and thus void.” Henrichs v.  
 8 Valley View Dev., 474 F.3d 609, 616 (9th Cir. 2007).<sup>19</sup> Application of the doctrine bars both  
 9 direct appeals of state court judgments to a lower federal court as well as “de facto” appeals  
 10 where the losing party “asserts as a legal wrong an allegedly erroneous decision by a state court,  
 11 and seeks relief from a state court judgment based on that decision.” Noel v. Gall, 341 F.3d  
 12 1148, 1164 (9th Cir. 2003); Levandowski v. DiPasquale (In re Levandowski), 2021 WL 948710,  
 13 at \* 3 (D. Ariz. Mar. 12, 2021). In this instance, Debtor has submitted to this bankruptcy court  
 14 copies of the complaint and answer filed in the State Court Action. See Exhibits 1 and 2. Debtor  
 15 also has submitted copies of all of the trial exhibits that were presented to Judge Silva. See  
 16 Exhibits 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22. Additionally, Debtor has  
 17 submitted the Rodriguez Declaration and the Yoder Declaration, even though both declarants  
 18 also testified before Judge Silva. Debtor also has submitted a copy of the transcripts of the trial  
 19 conducted by Judge Silva.<sup>20</sup> See Exhibits 3 and 4. While all of the Debtor’s exhibits would have

20  
 21 <sup>18</sup> The doctrine is based on two decisions of the U.S. Supreme Court: Rooker v. Fidelity  
Trust Co., 263 U.S. 413 (1923) and D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983).

22  
 23 <sup>19</sup> The Rooker-Feldman doctrine is applicable in bankruptcy cases to bar bankruptcy  
 24 courts from reviewing state court decisions. See, e.g., In re Thomason, 2022 WL 318181, at \*8  
 25 (Bankr. D. Idaho Feb. 2, 2022)(claim objection proceeding); In re Wollner, 2020 WL 2764693,  
 at \*4 (Bankr. D. Ariz. May 26, 2020)(adversary to determine validity of prior state court  
 foreclosure judgment); In re Fikrou, 2019 WL 5783260, at \*4 (Bankr. D. Nev. July 31,  
 2019)(debtor’s motion to vacate state court order denying declaratory relief).

26  
 27 <sup>20</sup> After the State Judgment was entered, Judge Silva was nominated and confirmed to  
 28 serve on the United States District Court for the District of Nevada. Under the Rooker-Feldman  
 doctrine, even now-U.S. District Judge Silva would be barred from reviewing her prior State  
 Judgment.

1 been useful in preparing a record for a timely appeal from the State Judgment, their only value in  
 2 connection with this Adversary Proceeding is to demonstrate that the claim for violation of NRS  
 3 90.660 was actually and necessarily litigated on the merits in the State Court Action, resulting in  
 4 a final judgment against the Debtor.<sup>21</sup> That State Judgment fully satisfies the requirements of  
 5 Section 523(a)(19).<sup>22</sup>

6 Because there is no genuine dispute of material fact, the court concludes that the  
 7 Plaintiffs are entitled to judgment as a matter of law.

8 **IT IS THEREFORE ORDERED** that the Motion for Summary Judgment brought by  
 9 the Plaintiffs herein, Adversary Docket No. 17, be, and the same hereby is, **GRANTED**.

10 **IT IS FURTHER ORDERED** that the Countermotion for Summary Judgment brought  
 11 by the Defendant herein, Adversary Docket No. 27, be, and the same hereby is, **DENIED**.

12  
 13 <sup>21</sup> Debtor relies primarily on the Ninth Circuit's decision in Sherman v. Securities and  
 14 Exchange Commission (In re Sherman), 658 F.3d 1009 (9th Cir. 2011) to suggest that Section  
 15 523(a)(19) does not apply. See Opposition at 18:25 to 21:16. Plaintiffs seem to agree that the  
 16 Sherman case is applicable. See Plaintiffs Further Reply at 2:9 to 5:2. Both parties are incorrect.  
 17 In Sherman, the bankruptcy court did not determine whether the debtor committed a federal  
 18 securities law violation, but only whether the debtor could discharge debts for civil contempt and  
 19 the federal district court's fee disgorgement order that had arisen out of a prior federal securities  
 20 action entitled Securities and Exchange Commission v. Whitworth Energy Resources Ltd., 243  
 21 F.3d 549 (9th Cir. 2000). The bankruptcy court determined that Section 523(a)(19) did not  
 22 encompass the actions of the debtor that violated the district court's prior fee disgorgement  
 23 orders. On appeal, the federal district court reversed. 406 B.R. 883 (C.D.Cal. 2009). On further  
 24 appeal, the Ninth Circuit reversed the district court, concluding that the debtor's disgorgement  
 25 obligation was not excepted from discharge under Section 523(a)(19) because that section  
 26 "prevents the discharge of debts for securities wrongdoings only in cases where the debtor is  
 27 responsible for that wrongdoing." 658 F.3d at 1019. The Sherman decision did not involve a  
 28 final judgment by a state court determining the debtor had violated state securities laws. The  
Sherman decision did not involve any finding that the debtor had violated any securities laws.  
 The Sherman decision did not involve an award of damages, interest and attorney's fees  
 attributable to the individual debtor's violation of Nevada securities laws. More important, the  
Sherman decision did not involve a bankruptcy court's review of a state court judgment that  
 would be barred by the Rooker-Feldman doctrine.

26 <sup>22</sup> Section 523(a)(19)(A)(i), unlike Section 523(a)(19)(A)(ii), does not include a  
 27 culpability element. Instead, it only requires a determination that the debtor has violated a  
 28 federal or state securities law. Thus, even if the imputation of culpability somehow is cabined by  
 the Court's future decision in Bartenwerfter, see discussion at note 5, supra, it would not apply to  
 this Adversary Proceeding.

1           **IT IS FURTHER ORDERED** that pursuant to 11 U.S.C. §523(a)(19), the Judgment  
2 entered on or about August 21, 2020, by the Eighth Judicial District Court, Clark County,  
3 Nevada, in Hotchkiss v. Robinson, et al., Case No. A-17-762264-C, and White, et al. v.  
4 Robinson, et al., Case No. A-17-763003-C, is excepted from the Chapter 7 discharge of debtor  
5 Simon Vernon Rodriguez.

6           **IT IS FURTHER ORDERED** that a separate judgment shall be entered concurrently  
7 with this order.

8           **IT IS FURTHER ORDERED** that the status conference set for September 8, 2022, and  
9 all other matters set in this Adversary Proceeding are **VACATED** from the court's calendar.

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