UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

April 1, 2015 at 10:30 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	14-31725-D-11 FWP-2	TAHOE STATION, INC.	FINAL HEARING RE: MOTION TO USE CASH COLLATERAL 3-6-15 [75]

2. 10-42050-D-7 VINCENT/MALANIE SINGH — CONTINUED MOTION TO DISMISS
12-2312 KBP-5 — USURY CLAIMS AND CONSTRUCTIVE
BURKART V. BISESSAR — FRAUDULENT TRANSFER CLAIMS
AND/OR MOTION FOR SUMMARY
JUDGMENT
2-2-15 [126]

Tentative ruling:

This is the consolidated motion of the defendant in this adversary proceeding and the defendants in 20 other adversary proceedings (the "defendants") to dismiss certain of the plaintiff's claims and for summary judgment and partial adjudication. The plaintiff, who is the trustee in the underlying chapter 7 case (the "trustee"), has filed opposition. The defendants have filed a reply, and the trustee has filed a sur-reply. For the following reasons, the motion will be granted in part.

Generally, the court will take the defendants' arguments in the order they are listed in the table of contents to the motion, with the introductory observation that several of the issues center around the question whether the defendants made "loans" to the debtor or "investments" with him. This question seems important at first glance (and it is treated as critical by both parties) because under California law, on which the trustee relies for his usury claims, a return on an investment that was not in reality a "loan" cannot be recovered as a payment of usurious interest,[1] and also because under both state and federal bankruptcy fraudulent transfer law, a payment on an antecedent "debt" constitutes value for purposes of the reasonably equivalent value defense.[2] The court finds, however, that both parties make too much of the distinction. In fact, the court need not decide whether the investments were loans or otherwise because, either way, (1) the fact of the debtor's creation and operation of a Ponzi scheme placed the debtor and by succession the trustee in the position of being in pari delicto – "in equal fault" – with the defendants, and in fact, at greater fault than the defendants, such that the law of in pari delicto precludes any recovery by the trustee on his usury claims, and (2) Ninth Circuit law precludes any recovery by the trustee on either his usury claims or his constructive fraudulent transfer claims except to the

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[1] **Numerous transactions involving the advance of money are structured in some form other than a loan. In some cases these ventures are actually investments and not loans, in the sense that the investor expects a return on the funds advanced but also risks a loss or receipt of no return. In these cases the courts reject the claim of usury even though the investor receives a return on investment which exceeds the maximum usury rate.**

8 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 21:3, pp. 20-21, fn. omitted.). This conclusion may be reached even in cases where the transaction was documented by a promissory note and thus, on its face, looked like a loan. See Wooton v. Coerber, 213 Cal. App. 2d 142, 146, 148 (1963); Giorgi v. Conradi, 199 Cal. App. 2d 82, 84-86 (1962); Atkinson v. Wilcken, 142 Cal. App. 2d 246, 247-48 (1956); Fitzgerald v. Provines, 102 Cal. App. 2d 529, 536-38 (1951).

[2] **Cal. Civ. Code § 3439.03; § 548(d)(2)(A) of the Bankruptcy Code.**

extent any particular defendant received payments from the debtor totaling more than the total amount of the defendant's monies invested with (or "loaned to") the debtor.

Motion to Dismiss Usury Claims – Insufficiency of Pleadings

As to the trustee's usury claims, the defendants contend the trustee's complaints fail to state a claim upon which relief can be granted. The argument is difficult to follow, but in any event, it does not hold up to scrutiny and, in addition, it comes too late. As the court understands the argument, the problem comes from the trustee's use of the words "if," "any," and "to the extent that" in his usury allegations. For example, the first allegation in the usury claim is this:

> *If Defendant asserts that some or all of the Payments were made pursuant to a loan or other type of borrowing arrangement* between Vincent Singh and Defendant, Plaintiff alleges on information and belief that some or all of the Payments were for interest in excess of the statutory maximum of ten percent per annum, in a transaction where the loan and all interest thereon were absolutely repayable by Vincent Singh.

First Amended Complaint, filed Aug. 15, 2012 ("Compl."), at 6:5-9 (emphasis added).[3] The defendants conclude from the highlighted language that the complaints do not "contain any language alleging that there was a loan or other type of borrowing arrangement between Singh and any of [the] defendants." Defendants' Motion, filed Feb. 2, 2015 ("Mot."), at 7:6-7. In the defendants' view, this language

> beg[s] the [following] question[]: 1. Has any Defendant asserted "that some or all of the Payments were made pursuant to a loan or other type of borrowing arrangement"? From the face of the Complaints, the answer is no. The usury claims are based on the premise that some defendants *may* assert a lending relationship, not that such a lending relationship exists. No such assertion that a lending relationship exists has been made.

Id. at 15:21-26.[4] Similarly, the complaints allege that "*[a]ny portion of the Payments which were for interest* at a rate in excess of the statutory maximum was usurious under the laws of the state of California" (Compl. at 6:10-11, emphasis added by defendants), and from that language the defendants raise this question:

> 2. Was any portion of the Payments for interest? From the face of the Complaints, no such allegation has been made. The Complaints merely allege "*Any portion of the Payments which were for interest at a rate in*

[3] Page and line citations are from the trustee's amended complaint in AP No. 12-2312. The same allegations appear in the original or amended complaints in the 20 other proceedings. (In some of the adversary proceedings, the trustee filed amended complaints; in others, he did not.)

[4] Phrased another way, in the defendants' view, "[t]he Complaints merely speculate that a defendant might assert that there was a lending arrangement. No such assertion has been made in the Complaints, or otherwise." Id. at 12:15-16.

> ***excess of the statutory maximum"*** **was usurious. Was any portion of the Payments even for interest? The Complaints do not so allege, nor do they allege that, even if the Payments were for interest, that such Payments were for a "rate in excess of the statutory maximum."**

Mot. at 15:27-16:4. The defendants conclude that "it is impossible to discern from a reading of the Complaints exactly, or even generally, what the Trustee is trying to recover. In fact, the Complaints themselves even appear quite uncertain on their face. The uncertain language leaves the Defendants questioning whether the usury claim even has anything to do with them individually." Id. at 14:28-15:4.

Although the use of the words "if," "any," and "to the extent that" theoretically lends a certain speculative quality to the allegations, the court does not agree that the language left the defendants in any doubt as to what the trustee was alleging or what he was seeking to recover. And even if the language did create doubt, the defendants had the opportunity to seek a more definite statement two and one-half years ago, before they filed their answers to the complaints.[5] They did not do so. Instead, the defendants, except one, answered each paragraph of the trustee's usury allegations separately. (Defendant Carolyn Allen, in AP No. 12-2469, filed a pro se general denial.) The court concludes that the "if," "any," and "to the extent that" language did not leave the defendants in any doubt that the trustee would be seeking to recover payments made by the debtor to the defendants as payments of usurious interest.

Also as part of this argument, the defendants cite certain documents the trustee served on the defendants' counsel in November and December of 2014 pursuant to the court's order establishing procedures for the amendment of complaints. That order permitted the trustee, in lieu of filing amended complaints, to provide only revised paragraphs containing changes. The trustee provided revised paragraphs in 18 of the adversary proceedings, under cover of a caption page with a title beginning "Excerpts," for example, "Excerpts from Amended Complaint for Avoidance and Recovery of Fraudulent Transfer; Recovery of Usurious Interest; Objection to Claim." In 11 of those adversary proceedings, the title of the Excerpts did not include the words "Recovery of Usurious Interest," which had been included in the titles of the original or earlier amended complaints in those proceedings. From that fact, the defendants in those 11 proceedings conclude, and seek an order confirming, that "no usury claims are included in the amended complaints against them." Mot. at 17:7-8.

The argument is frivolous. The court's order permitted the trustee to provide to the defendants' counsel, in lieu of amended complaints, only revised paragraphs containing the changes the trustee would make if filing amended complaints. It was clear from the order that those portions of the original and earlier amended complaints not included with the revised paragraphs were not to be seen as deleted from the complaints, as the defendants now suggest. And although the trustee offers no explanation for the discrepancies among the titles of the various excerpts, there is no reason to conclude they were anything but accidental. Indeed, the trustee

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[5] **"A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading . . . ." Fed. R. Civ. P. 12(e), incorporated herein by Fed. R. Bankr. P. 7012(b).**

included the prayer in his excerpts, and in every instance where the title omitted the reference to Recovery of Usurious Interest, the prayer included a request for the recovery of usurious interest payments and treble damages.

Motion to Dismiss Usury Claims – Judicial Estoppel

The defendants contend the trustee's usury claims must be dismissed because they inherently conflict with his claim that the debtor was running a Ponzi scheme. They argue that because the trustee caused the court to rely on his Ponzi scheme theory when it granted his motions for default judgments in related adversary proceedings and his motions for leave to amend his complaints, the trustee is judicially estopped from claiming that the debtor was not running a Ponzi scheme and judicially estopped from arguing that the defendants were not investors in that scheme. The defendants frame their argument as follows:

> By pursuing usury theories in the face of the otherwise firmly established Ponzi scheme position that the Trustee has taken, the Trustee will, in litigating a usury claim, necessarily have to take a position that is totally inconsistent with his prior position. The Trustee has obtained judicial relief based on the allegation that this was a Ponzi scheme and that the Defendants were investors. A usury claim is based on a lending relationship, not an investor relationship. A usury claim assumes that the Defendants, whom the Trustee has labeled "investors" in every other pleading, suddenly become "lenders" when demanding usurious interest.

Mot. at 18:19-25.

The court rejects the argument. It is essential to the application of judicial estoppel that the party to be estopped – here, the trustee – must have asserted inconsistent positions. "[A] party's later position must be 'clearly inconsistent' with its earlier position." New Hampshire v. Maine, 532 U.S. 742, 750 (2001). Here, the court is not persuaded that a usury claim is inconsistent with a Ponzi scheme, that a "lending relationship" is inconsistent with an "investor relationship," or that being an "investor" is inconsistent with being a "lender."

The defendants cite no authority for their assumption that a Ponzi scheme cannot be based on a lending relationship, and there is authority to the contrary. For example, in United States v. Treadwell, 593 F.3d 990 (9th Cir. 2010), the Ninth Circuit affirmed the criminal convictions of three operators of "a massive four-year Ponzi scheme in which more than 1,700 investors across the United States lost over $40 million." 593 F.3d at 992. Although the court repeatedly characterized the victims as "investors," the evidence was that they had "loaned" money to the perpetrators. Id. at 993. The court referred to the perpetrators as having told investors "the loans were 'zero risk,' often paying returns of 50% interest per month and 2% interest compounded monthly" (id.), and referred to the "investors" as having "'loaned' over $50 million to the defendants' companies." Id. at 994. The court repeatedly and unequivocally characterized the operation as a Ponzi scheme despite the fact that the "investments" were in the form of "loans."

Similarly, in United States v. Sine, 493 F.3d 1021 (9th Cir. 2007), the Ninth Circuit affirmed the conviction and sentencing of a lawyer who helped run what the Ninth Circuit characterized as a "pyramid scheme." 493 F.3d at 1023. The court characterized the victims as "lending money" to the perpetrators, and the funds received by the perpetrators as "loans" for which the "lenders" received promissory

notes and were promised between 20% and 100% interest. See id. at 1024. "In fact, the money provided by these 'lenders' funded no legitimate projects. Instead, some of the money went to repay earlier 'lenders' so that the pyramid scheme could continue, and some ended up in the personal coffers of [the perpetrators]." Id.

In another example, Auza v. United Dev., Inc. (In re United Dev., Inc.), 2007 Bankr. LEXIS 4857 (9th Cir. BAP 2007), the Bankruptcy Appellate Panel found that the debtor was operating a Ponzi scheme (at *29) in circumstances where

> [the debtor] could not keep up with its loan payments to [an original lender] and others like him, which resulted in borrowing additional funds from existing and new investors to repay previous loans. As a result of UDI's insufficient assets or profits generated from its business activities from which to repay its lenders, UDI used the funds obtained from later lenders to repay the principal and above-market rates of return to earlier investors.

Id. at *2-3 (emphasis added). There was no indication in the decision that the "investors" were anything other than lenders.

The court concludes from these decisions that the trustee's usury claims are not inconsistent with his position that the debtor was operating a Ponzi scheme, and therefore, that the trustee is not judicially estopped from asserting the usury claims. As discussed below, however, this does not mean the usury claims hold up as against the defendants' in pari delicto defense.

Motion to Dismiss / for Summary Judgment on Usury Claims – In Pari Delicto / Estoppel / Unclean Hands

The trustee does not dispute the underlying premise of the defendants' in pari delicto argument, which is that if the debtor would have been barred by the doctrine of in pari delicto from recovering the allegedly usurious interest he paid the defendants (if any), then the trustee is also barred.[6] What he does dispute is that the issue can be resolved in advance of trial. The court finds that the issue is

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[6] A bankruptcy trustee has the power to pursue, in general, two types of actions – actions brought pursuant to his avoiding powers and actions based on the debtor's pre-petition rights of action that become property of the estate upon the filing of the case. See Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co., 267 F.3d 340, 356 (3rd Cir. 2001). As to the latter, the trustee steps into the shoes of the debtor, taking such rights of action subject to any defenses a defendant would have had against the debtor, including in pari delicto. Grayson Consulting, Inc. v. Wachovia Sec., Inc. (In re Derivium Capital LLC), 716 F.3d 355, 367 (4th Cir. 2013); Official Comm. of Unsecured Creditors of PSA, Inc. v. Edwards, 437 F.3d 1145, 1150 (11th Cir. 2006); R.F. Lafferty & Co., 267 F.3d at 356; Sender v. Buchanan (In re Hedged-Investments Assocs.), 84 F.3d 1281, 1285 (10th Cir. 1996). See also In re Bonham Recovery Actions, 229 B.R. 438, 442 (Bankr. D. Alaska 1999) (citations omitted) ["A bankruptcy trustee has long been able to assert a right to a usury claim which belonged to a debtor. The trustee, however, takes the property of the estate under 11 USC § 541(a) subject to any encumbrances or blemishes that existed against the debtor. . . . In the bankruptcy vernacular, the trustee stands in the shoes of the debtor."].

subject to decision on a motion to dismiss or a motion for summary judgment. The court also finds that the defendants have made a prima facie showing that the defense of in pari delicto applies, and the trustee has failed to show there is a genuine issue of material fact that should preclude summary adjudication of the issue.

The court will begin with the sometimes conflicting policies underlying California's usury law and the doctrine of in pari delicto. The purpose of the usury law is "to protect the necessitous, impecunious borrower who is unable to acquire credit from the usual sources and is forced by his economic circumstances to resort to excessively costly funds to meet his financial needs." Ghirardo v. Antonioli, 8 Cal. 4th 791, 804-05 (1994). "The usury laws were enacted primarily to 'protect the indigent, who are helpless to protect themselves in a practical sense . . . .'" O'Connor v. Televideo Sys., 218 Cal. App. 3d 709, 718 (1990) (citation omitted). Thus, the policy underlying the usury law is the protection of the borrower, and in particular, of the impecunious and helpless borrower.

The doctrine of in pari delicto derives from the principle that the court is not to aid either party to an illegal contract.

> It is well established that no recovery can be had by either party to a contract having for its object the violation of law. The courts refuse to aid either party, not out of regard for his adversary but because of public policy. Where it appears that a contract has for its object the violation of law, the court should sua sponte deny any relief to either party.

Smith v. California Thorn Cordage, Inc., 129 Cal. App. 93, 99-100 (1933) (citation omitted, internal quotation marks omitted, emphasis omitted). The Latin "in pari delicto" means "in equal fault"; that is, parties who are in pari delicto are equally at fault. Kelly v. First Astri Corp., 72 Cal. App. 4th 462, 467 n.4 (1999). In such a situation, the courts will leave the parties as they find them, and will not award a recovery to either party. Id. at 481 [on application of doctrine to illegal gambling contracts].

> There is no doubt that the general rule requires the courts to withhold relief under the terms of an illegal contract or agreement which is violative of public policy. It is also true that . . . "when the evidence shows that . . . [a party] in substance seeks to enforce an illegal contract or recover compensation for an illegal act, the court has both the power and duty to ascertain the true facts in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids." These rules are intended to prevent the guilty party from reaping the benefit of his wrongful conduct, or to protect the public from the future consequences of an illegal contract.

Jacobs v. Universal Dev. Corp., 53 Cal. App. 4th 692, 700 (1997), quoting Tri-Q, Inc. v. Sta-Hi Corp., 63 Cal. 2d 199, 218 (1965). Thus, whereas the usury law is generally intended for the protection of the borrower, the policy underlying the in pari delicto doctrine may favor the lender, and the usury law and the in pari delicto doctrine may come into conflict.

The trustee's theory is that California's usury law requires the defendants, as lenders who loaned money to the debtor, to repay to the estate the payments they

received from the debtor, which the trustee claims were usurious interest payments, plus treble damages, as allowed under California's usury law. This theory relies on the policy of protection of the borrower – the policy underlying the usury law. The defendants, on the other hand, contend their borrower, debtor Vincent Singh, was "in pari delicto" with the defendants; that is, of equal (or greater) fault in entering into the contracts the trustee claims called for illegal usurious interest, and thus, that the trustee, standing in the shoes of the debtor, should not be able to recover the payments (assuming he can establish they were made on account of interest). In contrast with the policy underlying the usury law, the in pari delicto defense in this situation would favor the lenders; that is, the defendants.

In apparent recognition of this policy conflict, earlier California cases stated that the doctrine of in pari delicto does not apply to usury claims. For example, the trustee cites Westman v. Dye, 214 Cal. 28 (1931), in which the court stated that "under the Usury Law of this state the parties to a usurious transaction are not regarded as in pari delicto." 214 Cal. at 35; see also cases collected in Buck v. Dahlgren, 23 Cal. App. 3d 779, 787 (1972). The problem with the trustee's reliance on Westman is that application of in pari delicto in that case would have meant penalizing a borrower who had done nothing more egregious than making the usurious interest payments voluntarily. Previous cases under the particular constitutional provision the court was construing had held that voluntary payments of interest, even if made under a mistake of law, operated as a waiver of the borrower's right to recover payments of usurious interest or to have them applied to the principal balance of the loan. See 214 Cal. at 32. The Westman court rejected those cases, deciding instead it should follow cases in other jurisdictions "if the same appear equitable and right." Id. at 37. Thus, the court adopted a "rule allowing payments of usurious interest to be set off against the principal debt in actions brought to collect the latter." Id. at 36. Application of in pari delicto in that case would have prevented the borrower from having his usurious interest payments applied to the principal balance simply because he had paid them voluntarily. It might be said that, as applied to the facts of that case, the policy underlying the usury law – protection of the borrower – outweighed the policy underlying the in pari delicto doctrine – not assisting either party to an illegal contract.

The court finds that the Westman case, including the statement that "the parties to a usurious transaction are not regarded as in pari delicto," should have little, if any, bearing on the present case, involving as it does a borrower who did far more than simply paying usurious interest voluntarily. Here, the borrower, Vincent Singh, as mastermind of the Ponzi scheme, solicited the loans and offered allegedly usurious interest on them as an integral part of the Ponzi scheme. More on point here is Buck v. Dahlgren, 23 Cal. App. 3d 779 (1972), cited by the defendants, in which the court did apply in pari delicto to a usury claim.[7] In that

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[7] **The court quoted and relied on language in a New Jersey case (see below) that used the phrase "in pari delicto" specifically (see Buck, 23 Cal. App. 3d at 791), but the Buck court cast its actual holding in terms of estoppel. "The particular and unusual equities of this case impel us to the conviction that the philosophy expressed by Ryan [discussing in pari delicto] is most appropriately invoked here. Accordingly, we conclude the trial court properly found appellant was estopped from claiming the loans from respondent were usurious." Id. This court believes the two doctrines – in pari delicto and estoppel – as applied to the defense of a usury claim, are one and the same. Neither party has**

case, an experienced real estate developer advertised for a loan, and a Swedish immigrant with no experience in real estate lending responded and agreed to make the loan. The developer/borrower later sued the lender to recover the usurious interest the developer/borrower had paid. The court canvassed the California cases, including Westman, observing that they had focused on furthering the goal of the usury law, that being "to penalize lenders taking advantage of unwary and necessitous borrowers." 23 Cal. App. 3d at 787. In furtherance of this policy of protection, the court said, "the courts have . . . regularly held a borrower and a lender are not in pari delicto in a usurious transaction and the lender may not assert an estoppel against the borrower simply because the borrower took the initiative in seeking the loan, knew of the usurious nature of the transaction, and paid usurious interest without protest." Id. citing Westman among others.

The Buck court contrasted those cases with the facts before it, observing that the developer/borrower had solicited the loans, suggested and initiated the usurious terms, induced additional loans by misrepresenting his intention of repaying them, and concealed the true value of the land he put up as collateral. The court found that "[a]t a minimum, the case before us is distinguishable from the foregoing cases on the basis of the fraudulent practices of the borrower, and on the extent of the involvement of [the borrower] in carrying out the entire scheme, as well as on the resulting substantial loss to the lender. [The borrower] now seeks not only to retain the results of his fraud but also to mulct [the lender] further." Buck, 23 Cal. App. 3d at 790. Rejecting such an outcome, the court held the developer/borrower was estopped from recovering the usurious interest. Id. The Buck court cited Heald v. Friishansen, 52 Cal. 2d 834, 837 (1959), in which the court stated that "[i]n the absence of fraud by the borrower, the parties to a usurious transaction are not in pari delicto . . .," and Stock v. Meek, 35 Cal. 2d 809, 817 (1950), stating that "[i]f no loophole is provided for lenders, and all borrowers save fraudulent ones are protected, usurious transactions will be discouraged." Buck, 23 Cal. App. 3d at 788.

The Buck court also quoted from and relied on Ryan v. Motor Credit Co., 130 N.J. Eq. 531, 559, 23 A.2d 607, 623 (1941), and in particular, the following:

> It is true that the penalties of the [usury] act seem to be directed solely to the lender, and the advantages or benefits . . . reserved solely for the borrowers. But these penalties were designed to prevent oppression of the weak and poor; they were not designed as rewards for the perfidy of the borrower. Where no oppression is involved, no advantage taken by the lender of the borrower, the transaction being entered into with the deliberate purpose of defeating the [usury] statute, the parties are both particeps criminis and in pari delicto, and the rule and not the exception applies. Certainly it was not the intention of the legislature to preclude the courts, in such cases, from finding as a fact that the parties were in pari delicto.

Buck, 23 Cal. App. 3d at 790-91, quoting Ryan, 130 N.J. Eq. at 559, 23 A.2d at 623. The Buck court also found the facts of the Ryan case to be significant. The case concerned a New Jersey law limiting the amount any one person could owe to a small loan company and limiting the interest rate on such loans. In order to circumvent the statute, the borrower, a car dealer, and the lender, a credit company, entered into an arrangement where the borrower obtained loans in the names of nominees,

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suggested they should be distinguished from one another.

relatives, and friends, and in names "selected at random from telephone directories, from tombstones or taken from the thin air." 130 N.J. Eq. at 534, 23 A.2d at 611. In those circumstances, the court found, the borrower was not among the class of borrowers the usury laws are intended to protect, being "not under pressure of want or necessity" and "not susceptible to oppression," but instead "criminally minded." 130 N.J. Eq. at 558, 23 A.2d at 623. The court denied the borrower's bill for recovery of the usurious interest he had paid (130 N.J. Eq. at 563, 23 A.2d at 625), and also denied the lender's counterclaim for the remaining balance due on the loans. Id.

In the present case, the debtor, Vincent Singh, has pled guilty in federal court to wire fraud in connection with his operation of the Ponzi scheme.[8] The court takes judicial notice of the debtor's plea agreement, in which the debtor admitted he solicited investors by telling them their money would be used to make safe loans for a high rate of return; that he did not use all investor money in the way he had told investors he would; that he made millions of dollars worth of payments to investors to make it appear his business was successful in the way he had described to investors, so as to induce them to give him even more money; that when he made those payments to investors, he was generally using investors' principal; that the appearance of a successful business was false; that his false statements convinced the investors to invest with him; and that he did not use investor money to make hard money loans, but instead used investor money to pay other investors. See Ex. A to Plea Agreement in United States v. Singh, Case No. 2:12-CR-352 (E.D. Cal.), filed March 20, 2014. In these circumstances, the court has no trouble concluding that the policy underlying the usury law; namely, the protection of the needy and unwary borrower, does not apply to the debtor, and that the policies supporting the in pari delicto doctrine do apply to his transactions with investors, such that the debtor would be barred by in pari delicto from recovering the allegedly usurious interest payments, if any, if he tried to recover them. Thus, the trustee, as successor to the debtor's interests in the usury claims, and subject to all of the defenses the defendants would have against the debtor, is also barred.

A California court has fairly recently applied the doctrine of in pari delicto to bar recovery by a bankruptcy trustee in a Ponzi scheme case. In Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP, 133 Cal. App. 4th 658, 679-82 (2005), the court held that the bankruptcy trustee of an entity ("Peregrine") used by its owner ("Hillman") to perpetrate a Ponzi scheme was barred by the doctrine of unclean hands (which the court expressly equated to the doctrine of in pari delicto (133 Cal. App.4th at 677)) from suing the debtor's and its owner's attorneys ("Sheppard") for negligence and misconduct that allegedly aided in delaying discovery of the scheme. The court first found that the doctrine applied as against the trustee because he had succeeded to pre-petition claims of the debtor subject to any defenses that might have been asserted against the debtor. Id. at 680. "In the context of an unclean hands defense, this means a bankruptcy trustee stands in the shoes of the debtor and may not use his status as an innocent successor to insulate the debtor from the consequences of its wrongdoing." Id. The court went on to hold that the attorneys would have prevailed on an unclean hands defense against the debtor, and thus, they prevailed against the trustee.

In this case, Peregrine and Hillman's orchestration of the Ponzi scheme

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[8] The court will discuss below the admissibility and effect of a guilty plea and plea agreement in a Ponzi scheme case.

> that defrauded investors is intimately related to the professional malpractice claims before the court. These claims are based entirely on the assertion that Sheppard's professional advice and tactics enabled Hillman and Peregrine to perpetuate their fraud on investors. Moreover, Peregrine's participation in the fraud affects the equities between itself and Sheppard. For Peregrine—the company plaintiffs allege was controlled by Hillman and used by him to operate the Ponzi scheme—to now complain of Sheppard's role in enabling it to commit the fraud is unfair, and it is precisely this sort of unfairness the unclean hands doctrine seeks to address.

Id. at 681.

Also recently, a California court applied the doctrine of unclean hands to require a criminal defendant, as part of a restitution award to his victim, to pay pre-judgment interest (at a non-usurious rate) as a component of his victim's economic loss despite the fact that the promissory notes documenting the victim's loans to the defendant called for interest at usurious rates. People v. Wickham, 222 Cal. App. 4th 232, 237 (2013). The defendant/borrower relied on a civil case, Rochester Capital Leasing Corp. v. K & L Litho Corp., 13 Cal. App. 3d 697, 703 (1970), which held that the lender in a usurious transaction may recover his principal but may recover no interest at all. The Wickham court, in essence, viewed the doctrine of unclean hands as prevailing over the purpose of the usury laws, when applied to the facts before it.

> The purpose of the usury laws is to protect the necessitous, impecunious borrower who is unable to acquire credit from the usual sources and is forced by his economic circumstances to resort to excessively costly funds to meet his financial needs. . . . Here, defendant was not a poor, needy borrower who had no choice but to borrow money from Mr. Griffin to meet his financial needs. Rather, defendant told Mr. Griffin that he borrowed some of the money to invest in Mexican gold and "lumber deals," not to buy food or pay rent. Further, the record shows that defendant did not intend the transactions as loans secured by his enforceable promise to repay, but rather as a means to obtain money from Mr. Griffin under false pretenses. Defendant had a history of fraud and theft-related convictions for amounts more than $100,000 and, in fact, pled guilty to obtaining money from Mr. Griffin by false pretenses.

Wickham, 222 Cal. App. 4th at 237-38. "The doctrine of unclean hands prevents a party from obtaining either legal or equitable relief when that party has acted inequitably or with bad faith relative to the matter for which relief is sought." Id. at 238. The court found the case before it to be a "textbook case" for application of the doctrine. Id. This court finds the present case, in light of the debtor/borrower's operation of a Ponzi scheme, to also be a textbook case.

The trustee makes three arguments that, in light of the debtor's guilty plea and plea agreement, are unpersuasive. First, he claims the defendants "have presented no evidence on the subject of whether Vincent Singh was in pari delicto with the Moving Defendants." Trustee's Opposition, filed Feb. 18, 2015 ("Opp."), at 40:26-27. Ordinarily, of course, a party moving for summary judgment will present supporting evidence; here, the defendants submitted no evidence for their in pari delicto argument. However, the court may consider not only materials cited by the moving party but other materials in the record. Fed. R. Civ. P. 56(c)(3), incorporated herein by Fed. R. Bankr. P. 7056. In Santa Barbara Capital Mgmt. v.

Neilson (In re Slatkin), 525 F.3d 805, 811-13 (9th Cir. 2008), the court found a debtor's plea agreement, in circumstances substantially similar to those in this case, to be admissible evidence of his operation of a Ponzi scheme with the actual intent to defraud. Further, the court held that "a debtor's admission, through guilty pleas and a plea agreement admissible under the Federal Rules of Evidence, that he operated a Ponzi scheme with the actual intent to defraud his creditors conclusively establishes the debtor's fraudulent intent under 11 U.S.C. § 548(a)(1)(A) and California Civil Code § 3439.04(a)(1), and precludes relitigation of that issue." Id. at 814. See also AFI Holding, Inc. v. Mackenzie, 525 F.3d 700, 704 (9th Cir. 2008) ["Eisenberg's plea demonstrates the existence of fraudulent intent and a Ponzi scheme"]; La Bella v. Bains, 2012 U.S. Dist. LEXIS 76502, *10-12, 2012 WL 1976972, *4 (S.D. Cal. 2012) [taking judicial notice of plea agreement to establish actual intent to defraud in a Ponzi scheme].

In this case, the parties have previously made the court aware of debtor Vincent Singh's guilty plea and plea agreement, and the court finds it appropriate to take judicial notice of them in connection with the trustee's usury claims, for purposes of evaluating the defendants' in pari delicto defense. Not only are the guilty plea and plea agreement matters of which the court can and does take judicial notice but the trustee himself has submitted a declaration of an expert he has retained, who testifies to the following opinion: "Vincent Singh was operating a Ponzi scheme from
2005 or 2006 until he filed his Chapter 7 petition in August 2010. All payments from and to
investors during that period which were for 'investment' purposes were payments in furtherance
of the Ponzi scheme." G. McHale Decl., filed Feb. 18, 2015, at 2:23-26. In both an action to recover a fraudulent transfer based on actual intent to defraud and in an action to recover usurious interest, in which the borrower is alleged to have acted fraudulently, the fact of the debtor/borrower's operation of a Ponzi scheme is highly relevant and probative. Indeed, "the mere existence of a Ponzi scheme is sufficient to establish actual intent to defraud." Donell v. Kowell, 533 F.3d 762, 770 (9th Cir. 2008); AFI Holding, 525 F.3d at 704. Simply put, the debtor's guilty plea and plea agreement, along with the testimony in the McHale declaration, are compelling evidence of conduct by the debtor that took him completely outside the class of borrowers the usury laws are meant to protect such that he would clearly be estopped to recover from the defendants. The trustee, by succession to the debtor's claims, is also estopped. The trustee's expert's declaration also supports this conclusion.

Second, and related to his first argument, the trustee contends the validity of an in pari delicto defense should not be decided at the pleading stage. Thus, he states: "[W]hile it might be possible to conclude that the parties to a usurious transaction are in pari delicto, any decision to bar a usury claim would depend on the facts. It does not happen as a matter of law. The bottom line is that, like any other factual defense, it must be resolved on a factual basis." Opp. at 41:22-24. Again, the trustee misses the point that there is clear evidence of the existence of a Ponzi scheme, in the form of the debtor's guilty plea and plea agreement, which the trustee has not refuted. Indeed, the trustee himself has asserted in his complaints that the debtor was running a Ponzi scheme, and has offered expert testimony to that effect. In Terlecky v. Hurd (In re Dublin Sec.), 133 F.3d 377 (6th Cir. 1997), the bankruptcy trustee opposed a motion to dismiss his complaint on the ground that the in pari delicto defense required a more intensive fact-finding effort. The court affirmed the district court's granting of the motion, noting that the trustee had admitted in his complaint that "the debtors' own

actions were instrumental in perpetrating the fraud on the individuals choosing to invest in the Dublin Securities schemes. [The trustee] concedes, for example, that the debtors intentionally defrauded their investors. Such purposeful conduct thus establishes conclusively that the debtors were at least as culpable as the defendants in this matter." 133 F.3d at 380.[9]

The trustee cites Fed. R. Civ. P. 8(d), arguing he is entitled to assert inconsistent theories of the case, one of which is that the debtor was running a Ponzi scheme and the other, that the defendants made usurious loans to the debtor. (As discussed above, the court does not find these theories to be inconsistent.) The problem is that Rule 8 states the general rules for pleading, whereas the defendants' motion is one to dismiss the case for failure to state a claim, but also for summary judgment or summary adjudication of issues. There being conclusive evidence that the debtor was running a Ponzi scheme with the actual intent to defraud, it was incumbent on the trustee to come forward with affirmative evidence to show the existence of genuine issues of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57 (1986). As regards the defendants' in pari delicto defense, he has not done so.

Finally, the trustee has suggested the defendants were part of a conspiracy with the debtor to evade taxes and thereby to defraud the IRS. Thus, he argues:

> One final reason to deny the Moving Parties' in pari delicto defense at this stage is the question of how to deal with the fact that the Moving Parties may themselves have unclean hands. The evidence at trial may show that Vincent Singh was engaged in a Ponzi scheme, but what if the Moving Parties were complicit with Vincent Singh in a scheme to defraud the IRS? Should they be estopped to raise the "in pari delicto" defense? This issue is not presently before the Court, and Plaintiff will not attempt to suggest a resolution.

Opp. at 42:7-12. The court believes the issue is before the court. The defendants raised a legitimate in pari delicto defense in their motion, and the debtor's guilty plea and plea agreement demonstrate the applicability of the defense. Thus, the trustee had the burden to demonstrate the existence of genuine issues of fact for trial concerning the defense.

The trustee claims it is undisputed that the defendants did not pay taxes on the payments they received from the debtor, failed to keep records of those payments, and claim not to know how the amounts of the payments were calculated. He also claims the debtor did not file 1099's showing the payment of interest and did not provide statements of amounts invested, amounts earned, amounts paid, or amounts due. Thus, the trustee concludes, "[e]verything was designed to fly under the radar of the IRS, so that interest payments received by the Moving Defendants would not be taxed." Opp. at 19:14-16. He acknowledges that his evidence is "completely circumstantial" (id. at 19:9), but cites case law suggesting a conspiracy may be

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[9] And in Peregrine Funding, the court stated that "[a]lthough plaintiffs are correct that application of this defense generally rests on questions of fact, this does not mean the defense can never prevail at the pleading stage or on a motion to strike. Where, as here, a plaintiff's own pleadings contain admissions that establish the basis of an unclean hands defense, the defense may be applied without a further evidentiary hearing." 133 Cal. App. 4th at 681 (citation omitted).

proven by circumstantial evidence and inferences.

The trustee has submitted no evidence, and has not even suggested, that the payments the defendants received from the debtor were taxable. The defendants claim they were not, and the court, of course, has no knowledge or understanding on this issue one way or the other. However, it was up to the trustee to present his evidence in response to the motion, and he has failed to do so. "A scintilla of evidence or evidence that is merely colorable or not significantly probative does not present a genuine issue of material fact." United Steel Workers of America v. Phelps Dodge Corp., 865 F.2d 1539, 1542 (9th Cir. 1989). Discovery in these adversary proceedings has closed after two and one-half years; thus, the trustee would be hard-pressed to argue he needs more time to develop his evidence.[10] Further, even evidence that the defendants should have paid taxes on the payments they received from the debtor would in no way change the outcome as it would still leave the debtor, and hence the trustee, subject to the in pari delicto defense. "A court will neither aid in the commission of a fraud by enforcing a contract, nor relieve one of two parties to a fraud from its consequences, where both are in pari delicto. The doctrine closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." Jacobs, 53 Cal. App. 4th at 699 (citations omitted).

Motion to Dismiss / for Summary Judgment – Usury and Constructive Fraudulent Transfer Claims – Effect of Ninth Circuit Law

The defendants rely heavily on Donell v. Kowell, 533 F.3d 762 (9th Cir. 2008), in defense of both the trustee's usury claims and his constructive fraudulent transfer claims. Their reliance is well-placed; the trustee's attempts to distinguish the case are unavailing. The crux of the Donell case is that "net winners" in a Ponzi scheme; that is, investors who received payments in excess of the total amount of their investments, may be compelled to return the excess under California fraudulent transfer law. Thus, the court stated:

> Where causes of action are brought under UFTA against Ponzi scheme investors, the general rule is that to the extent innocent investors have received payments in excess of the amounts of principal that they originally invested, those payments are avoidable as fraudulent transfers . . . . The policy justification is ratable distribution of remaining assets among all the defrauded investors. The "winners" in the Ponzi scheme, even if innocent of any fraud themselves, should not be permitted to "enjoy an advantage over later investors sucked into the Ponzi scheme who were not so lucky."

533 F.3d at 770 (emphasis added), citing Scholes v. Lehmann, 56 F.3d 750, 757-58 (7th Cir. 1995) and In re United Energy Corp., 944 F.2d 589, 596 (9th Cir. 1991). The court then described a two-step process for determining whether the investor is liable and if so, in what amount.

First, to determine whether the investor is liable, courts use the

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[10] The trustee would also have trouble claiming he was surprised by the defendants' arguments, as, with one exception (Carolyn Allen in 12-2469), they included in pari delicto in their answers as an affirmative defense.

> so-called "netting rule." Amounts transferred by the Ponzi scheme perpetrator to the investor are netted against the initial amounts invested by that individual. If the net is positive, the receiver has established liability, and the court then determines the actual amount of liability, which may or may not be equal to the net gain, depending on factors such as whether transfers were made within the limitations period or whether the investor lacked good faith. If the net is negative, the good faith investor is not liable because payments received in amounts less than the initial investment, being payments against the good faith losing investor's as-yet unsatisfied restitution claim against the Ponzi scheme perpetrator, are not avoidable within the meaning of UFTA. [¶] Second, to determine the actual amount of liability, the court permits good faith investors to retain payments up to the amount invested, and requires disgorgement of only the "profits" paid to them by the Ponzi scheme.

Donell, 533 F.3d at 771 (citations omitted).

Donell was not the first Ninth Circuit decision to address the issue. In re United Energy Corp., 944 F.2d 589 (9th Cir. 1991), involved a Ponzi scheme in which the defendants invested $159,127 and received back $23,980. The trustee sued to recover the $23,980 (and sued several hundred other investors), claiming the payments were avoidable as constructive fraudulent transfers under both federal bankruptcy law, § 548(a)(1)(B) of the Bankruptcy Code, and state law, Cal. Civ. Code § 3439.04(a)(2) (as does the trustee in the present case). The Ninth Circuit held that "the investors exchanged reasonably equivalent value when their rights to restitution were proportionately reduced by the . . . payments they received." 944 F.2d at 595.[11] The court added that "this case does not involve investors who received more from the debtor than the amounts of their respective total investments. Such excess amounts would be avoidable because the debtor would not have received reasonably equivalent value for them." Id. at 595, n.6. The United Energy case is directly on point in the present case; the holding quoted above is precedential, not dicta, and it is binding in the present case.

AFI Holding, Inc. v. Mackenzie, 525 F.3d 700 (9th Cir. 2008), also involved a Ponzi scheme in which the particular defendant had invested a total of $73,400 and received payments totaling $89,824, all of which the trustee sought to recover. The court held that United Energy controlled its decision, and concluded that the payments to the defendant, up to the amount of his investment, $73,400, were in exchange for a restitution claim the defendant acquired when he made his investment.

> [T]he record demonstrates that Eisenberg's operation was a Ponzi scheme before Mackenzie [the defendant] provided his principal "investment," and thus well before the transfers were made from AFI [the debtor] to

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[11] The court also quoted the Bankruptcy Appellate Panel's decision, which the court affirmed, as follows: "In a suit for damages, the . . . payments given to the defrauded investors would be deemed to partially satisfy or release fraud or restitution claims. Satisfaction of such claims would constitute value given for the receipt of the . . . payments within the meaning of section 548(d)(2)(A) or the comparable California provision." Id. at 593, quoting In re United Energy Corp., 102 B.R. 757, 763 (9th Cir. BAP 1989) (citations omitted).

> Mackenzie. Because of this, Mackenzie acquired a restitution claim at the time he bought into Eisenberg's Ponzi scheme, just as the investors in United Energy acquired a restitution claim at the time they bought their solar modules. It is this restitution claim, in toto, that Mackenzie exchanged when AFI returned Mackenzie's principal "investment" amount. If AFI had only provided Mackenzie a portion of his initial investment, as a fictitious gain or otherwise, Mackenzie would be entitled also to keep that amount as an exchange for a proportionate reduction in his restitution claim.

AFI Holding, 525 F.3d at 708. On the other hand, "Mackenzie is entitled only to the amount he initially provided to AFI," and not to the excess $16,424, which the trustee was entitled to recover. Id. at 709. Like United Energy, AFI Holding is on point and controlling in this case.

The trustee contends that, for several reasons, Donell does not require dismissal or summary adjudication as to either his usury claims or his constructive fraudulent transfer claims.[12] First, he correctly observes that the court was construing California constructive fraudulent transfer law rather than bankruptcy fraudulent transfer law;[13] this is, however, a distinction without a difference. "California's fraudulent transfer act and the federal bankruptcy code's fraudulent transfer provisions are almost identical in form and substance; therefore, we draw upon cases interpreting both." Donell, 533 F.3d at 769-70 (citations omitted). Second, the trustee emphasizes that in Donell, no one was contesting the issue of liability for the payments the defendant received up to the amount he had invested. To phrase this more clearly, the receiver in Donell did not seek recovery of those payments, only of the payments the defendant received over and above the total amount of his investments. Thus, the trustee appears to be suggesting that the language from Donell the defendants are relying on was dicta. That appears to be true; however, the trustees in United Energy and AFI Holding did try to recover the total amounts paid to the defendant investors, including the amounts paid to them up to the total amounts they had invested. Thus, the language from those two cases the court has cited above were the holdings of the cases, not dicta; the holdings are on point here and are controlling.

Finally, the trustee offers a tortured construction of a quote from the Donell decision to support this conclusion:

> For purposes of analyzing whether a usury claim exists, [the trustee] contends that Donell does not hold that the nature of the payments received by the Moving Defendants is magically changed because Vincent Singh was operating a Ponzi scheme. The rule described in Donell is limited to situations involving fraudulent transfers. Facts are facts. If Vincent Singh was paying interest at a rate in excess of the statutory

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[12] The trustee discusses Donell primarily, mentioning United Energy only in passing and AFI Holding not at all, apparently because it is Donell the defendants have chosen to rely on.

[13] The Donell case was not a bankruptcy case; instead, the plaintiff seeking recovery of the alleged fraudulent transfers was a receiver appointed by the district court at the request of the Securities and Exchange Commission. See SEC v. J.T. Wallenbrock & Assocs., 313 F.3d 532, 536 (9th Cir. 2002).

maximum, the fact that those payments were made in the context of a Ponzi scheme does not mean that the payments are somehow insulated from being usurious.

Opp. at 33:22-34:1. Simply put, the court does not agree with the trustee's parsing of the Donell quote and finds his conclusion to be incorrect. There is nothing in the Donell decision to suggest the court meant to limit its remarks to investments in a Ponzi scheme in some form other than loans documented by notes calling for usurious interest rates. It was the fraud underlying the Ponzi scheme the Donell court focused on, not the particular form of the investment. Thus, the court stated, "the terms of the [California fraudulent transfer] statute are abstract in order to protect defrauded creditors, no matter what form a Ponzi scheme or other financial fraud might take." 533 F.3d at 774. Similarly, in AFI Holding, the court said that "[a]lthough circumstances of the exchange were cloaked in terms of a partnership interest, we delve beyond the 'form' to the 'substance' of the transaction." 525 F.3d at 708.

In United Energy, the trustee relied on the particular form of the defendants' investments for his conclusion that the payments to the defendants were not "in satisfaction of a debt." The court rejected the argument as "fail[ing] to consider the Code's broad definition of the term 'debt'" (944 F.2d at 595); namely, a "'right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. . . .'" Id. at 595-96, quoting § 101(5)(A) of the Bankruptcy Code. "In the present case, the investors were duped into buying the solar modules. They clearly had claims for rescission and restitution which arose when they bought the modules, regardless of whether there existed a contractual right to the return of principal. These claims fit within the Code's broad definition of 'debt.'" Id. at 596 (citation omitted). It was the fact of the Ponzi scheme that drove these decisions, not the particular form of the investment.

In short, the trustee's various theories why Donell does not control here are unavailing. The real reason Donell does not control is that there was no attempt by the trustee to recover payments up to the amount of the defendant's investment; thus, the Donell language was dicta. However, United Energy and AFI Holding reached the same result in their holdings, not in dicta, and those cases do control here. Thus, the court rejects the trustee's conclusion that he can divorce his usury claims from his Ponzi scheme theory so as to avoid the principles enunciated in Donell (and the holdings of United Energy and AFI Holding). The fact that the defendants' investments with Vincent Singh were documented by promissory notes allegedly containing usurious interest rate provisions does not deprive the defendants of their claims for restitution, claims that were satisfied – up to the amounts of their original investments – by Singh's repayments, whether of interest, principal, profits, or anything else.

The court concludes that the debtor's guilty plea and plea agreement, along with the McHale declaration, conclusively establish that the debtor was running a Ponzi scheme with the actual intent to defraud his creditors, that the defendants acquired restitution claims against the debtor at the time they made their investments, that those claims were proportionately reduced by the payments they received from the debtor, and that the satisfaction of their claims for restitution constituted reasonably equivalent value for the payments they received. The trustee has failed to demonstrate that a genuine issue of fact as to any of these conclusions remains to be tried. As the defendants note, the Ninth Circuit has "[found] no reason, in statute or case law, to treat 'reasonably equivalent value'

differently for each of the Code's provisions. Both the prima facie case for constructively fraudulent transfers, under § 3439.04(a)(2), and the affirmative defense to actually fraudulent transfers, under § 3439.08, require a determination of whether 'reasonably equivalent value' was transferred from the transferee to the debtor." AFI Holding, 525 F.3d at 707. Thus, this ruling determines the issue for both purposes.

Although the court concludes the defendants gave reasonably equivalent value for the payments they received from the debtor, this ruling leaves undecided the issue of whether the defendants received the payments from the debtor in good faith, so as to have a defense to the trustee's fraudulent transfer claims based on actual fraud; that is, the trustee's claims brought under § 548(a)(1)(A) of the Bankruptcy Code or Cal. Civ. Code § 3439.04(a)(1). The defendants have indicated they will raise this contention at trial or by separate motion; it is not a part of their present motion. Similarly, the court is not deciding the good faith component of the defendants' reasonably equivalent value defense to the trustee's constructive fraudulent transfer claims – the claims brought under § 548(a)(1)(B) or Civil Code § 3439.04(a)(2). The defendants contend the trustee was required to plead lack of good faith on the part of the defendants and is required to, in essence, disprove the defendants' good faith as part of his case-in-chief. The court, on the other hand, sees good faith as a defense the trustee was not required to plead or disprove. The defendants have cited no authority to the contrary.

Finally, the court wishes to clarify that certain documents filed by the parties were not overlooked. First, the court has paid virtually no heed to the defendants' statement of undisputed facts and conclusions of law or the trustee's response to it because the statement is essentially an itemization of the procedural history of the adversary proceedings, along with a restatement of some of the defendants' arguments; it is not a statement of material factual issues remaining in dispute. Second, the court has reviewed the trustee's sur-reply and agrees that the defendants have taken out of context his statement that "Moving Defendants gave additional money to Vincent Singh after receiving amounts that were less than what they had previously invested." Opp. at 26:11-13. The court concludes the trustee has not admitted the defendants were "net losers." The defendants have offered no evidence on this issue, and it remains a disputed material factual issue. Finally, the defendants have made blanket evidentiary objections to the supporting declaration of the trustee's attorney and to virtually all the exhibits submitted by the trustee. The court has given little weight to those documents in this decision, finding them to be of little persuasive value; thus, the court finds no reason to take the time to rule on the evidentiary objections, which are conclusory in any event.

The court will hear the matter.

3.	10-42050-D-7 12-2320 BURKART V. ZOU	VINCENT/MALANIE SINGH KBP-005	CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT 2-2-15 [111]

See ruling for Item No. 2.

4.	10-42050-D-7 12-2368 BURKART V. PRASAD	VINCENT/MALANIE SINGH KBP-5	CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT 2-2-15 [106]

See ruling for Item No. 2.

5.	10-42050-D-7 12-2370 BURKART V. TORRES	VINCENT/MALANIE SINGH KBP-5	CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT 2-2-15 [113]

See ruling for Item No. 2.

6.	10-42050-D-7 12-2371 BURKART V. WU	VINCENT/MALANIE SINGH KBP-5	CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT 2-2-15 [106]

See ruling for Item No. 2.

7. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2374 KBP-5
BURKART V. WANG

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [110]

See ruling for Item No. 2.

8. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2387 KBP-5
BURKART V. SHARMA

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [108]

See ruling for Item No. 2.

9. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2400 KBP-5
BURKART V. PRASAD

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [108]

See ruling for Item No. 2.

10. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2401 KBP-5
BURKART V. BISESSAR

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [115]

See ruling for Item No. 2.

11. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2418 KBP-5
BURKART V. TRACH

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [106]

See ruling for Item No. 2.

12. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2429 KBP-5
BURKART V. STEELE

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [106]

See ruling for Item No. 2.

13. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2430 KBP-5
BURKART V. SINGH ET AL

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [131]

See ruling for Item No. 2.

14. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2434 KBP-5
BURKART V. REDDY

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [106]

See ruling for Item No. 2.

15. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2446 KBP-5
BURKART V. BELOLI

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [110]

See ruling for Item No. 2.

16. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2448 KBP-5
BURKART V. SINGH

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [104]

See ruling for Item No. 2.

17. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2461 KBP-5
BURKART V. WENG FRAUDULENT TRANSFER CLAIMS

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [103]

See ruling for Item No. 2.

18. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2469 KBP-5
BURKART V. ALLEN

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [62]

See ruling for Item No. 2.

19. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2478 KBP-5
BURKART V. SINGH

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS
2-2-15 [126]

See ruling for Item No. 2.

20. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2483 KBP-5
BURKART V. NARAYAN

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [101]

See ruling for Item No. 2.

21. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2486 KBP-5
BURKART V. PRASAD

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [101]

See ruling for Item No. 2.

22. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2496 KBP-5
BURKART V. MORA

CONTINUED MOTION TO DISMISS USURY CLAIMS AND CONSTRUCTIVE FRAUDULENT TRANSFER CLAIMS AND/OR MOTION FOR SUMMARY JUDGMENT
2-2-15 [101]

See ruling for Item No. 2.