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UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re:  
AURORA ADELA GAROIAN,  
Debtor,  
DANIEL GAROIAN,  
Consolidated Debtor,  
SLAUSON MEDICAL DENTAL GROUP,  
LLC,  
Consolidated Debtor,  
DANIEL GAROIAN DDS, INC,  
Consolidated Debtor.

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TIMOTHY YOO, Chapter 7 Trustee of the  
bankruptcy estates of AURORA ADELA  
GAROIAN, DANIEL GAROIAN,  
Plaintiff,  
vs.  
EDWARD GAROIAN, GARY GAROIAN,  
and GARY GAROIAN DDS, INC.,,  
Defendants.

Case No. 2:10-bk-20883 RK  
(Substantively consolidated with  
Case No. 2:10-bk-21398 RK)  
Chapter 7  
Adv. No. 2:12-ap-01419 RK  
REPORT AND RECOMMENDATION  
OF BANKRUPTCY COURT TO  
UNITED STATES DISTRICT COURT  
FOR DETERMINATION OF  
COMPLAINT FOR AVOIDANCE AND  
RECOVERY OF FRAUDULENT  
TRANSFERS

1 TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF  
2 CALIFORNIA:

3 This Report and Recommendation is submitted by the undersigned United States  
4 Bankruptcy Judge of the United States Bankruptcy Court for the Central District of  
5 California (the "Bankruptcy Court") pursuant to 28 U.S.C. § 157 and General Order No.  
6 13-05 of the United States District Court for the Central District of California (the "District  
7 Court"), based on the Bankruptcy Court's determination that the fraudulent transfer  
8 claims addressed herein are not core proceedings and may not be determined by a non-  
9 Article III tribunal. See, *Stern v. Marshall*, 131 S.Ct. 2594 (2011); and *Executive Benefits*  
10 *Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014), *affirming sub nom.*, *In the Matter of*  
11 *Bellingham Insurance Agency, Inc.*, 702 F.3d 553 (9th Cir. 2012); see also, 28 U.S.C. §  
12 157(c)(1); Rule 9033 of the Federal Rules of Bankruptcy Procedure. As detailed more  
13 fully below, the Bankruptcy Court recommends: (1) that the District Court adopt all of the  
14 Bankruptcy Court's proposed findings of fact and conclusions of law and approve this  
15 Report and Recommendation; and (2) that the District Court enter a final judgment on the  
16 adversary complaint in favor of Timothy Yoo, the Chapter 7 Trustee of the bankruptcy  
17 estates of Aurora Adela Garoian and Daniel Garoian, and against defendants Edward  
18 Garoian, Gary Garoian and Gary Garoian DDS, Inc.

19 Based on the decisions of the United States Supreme Court in *Stern v. Marshall*  
20 and *Executive Benefits Insurance Agency v. Arkison* as well as the decision of the United  
21 States Court of Appeals for the Ninth Circuit in *In re Bellingham Insurance Agency, Inc.*,  
22 the Bankruptcy Court as a non-Article III tribunal does not have constitutional authority to  
23 enter a final judgment in a fraudulent transfer action, such as this bankruptcy adversary  
24 proceeding, where the parties to the action have not consented to the entry of a final  
25 judgment by the bankruptcy court.

26 Because the parties do not consent to the entry of a final judgment by the  
27 Bankruptcy Court in this adversary proceeding involving fraudulent transfer claims, the  
28 Bankruptcy Court hereby submits its report and recommendation that the District Court



1 and conclusions of law pursuant to Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(a)(1):

2 The parties submitted a Joint Pre-Trial Order (“JPTO”), which was approved and  
3 entered by the court on March 4, 2013. *JPTO, Docket Entry No. 26*. The JPTO was  
4 modified by the court’s Supplemental Pretrial Order, which was entered on July 10, 2013.  
5 *Docket Entry No. 56*. Pursuant to Local Bankruptcy Rule 7016-1(b), a number of the  
6 following facts are deemed admitted and require no proof pursuant to the JPTO,  
7 reflecting the stipulation of the parties<sup>1</sup>. The court otherwise bases its findings of fact on  
8 the evidence admitted at trial as set forth below.

9 **The Parties**

- 10 1. Plaintiff is the duly appointed and acting Chapter 7 Trustee of the bankruptcy  
11 estates of the substantively consolidated debtors, Aurora Adela Garoian and  
12 Daniel Garoian.<sup>2</sup> *JPTO ¶ 1*.
- 13 2. Aurora Garoian commenced her bankruptcy case by filing a voluntary petition for  
14 relief under Chapter 7 of the Bankruptcy Code in the Central District of California,  
15 Los Angeles Division, on March 23, 2010, which was designated by the Clerk of  
16 the Court as Case No. 2:10-bk-20883-RK (the “Aurora Bankruptcy Case”). *JPTO*  
17 ¶ 2.
- 18 3. Daniel Garoian, a dentist licensed by the State of California, commenced his  
19 bankruptcy case by filing a voluntary petition for relief under Chapter 7 of the

20 \_\_\_\_\_  
21 <sup>1</sup> The stipulated facts set forth in the JPTO have been modified in these findings of fact and conclusions of  
22 law for formatting and grammar as well as to remove stipulations phrased as allegations rather than as  
23 agreed matters of fact.

24 <sup>2</sup> The parties also stipulated that Plaintiff was appointed the bankruptcy trustee for Slauson and Daniel  
25 Corp, but a review of the court’s case docket reveals that these entities did not file their bankruptcy  
26 petitions. On August 2, 2011, the parties stipulated to consolidate Slauson and Daniel Corp. with the  
27 Debtors’ bankruptcy estates, and the stipulation was approved by order entered on September 1, 2011, by  
28 the Honorable Ellen Carroll, United States Bankruptcy Judge, who then presided over these cases. See  
*Case 2:10-bk-20883-RK at Docket Entries No. 38 and 44*. Non-debtor entities can be substantively  
consolidated with a debtor’s bankruptcy estate under the bankruptcy court’s equitable powers pursuant to  
11 U.S.C. § 105(a). *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 763-766 (9th Cir. 2000). The  
parties’ stipulation also effectively consents to a finding of alter ego status and piercing of the corporate  
veils of Slauson and Daniel Corp. *Id.* at 764. Therefore, references to actions taken by Debtors will  
necessarily include those acts that may have been accomplished by the two business entities in name only  
and at Debtors’ direction.

1 Bankruptcy Code in the Central District of California, Los Angeles Division, on  
2 March 26, 2010, which was designated by the Clerk of the Court as 2:10-bk-  
3 21398-RK (the “Daniel Bankruptcy Case”). The Debtors conducted a dentistry  
4 business.<sup>3</sup> *JPTO* ¶ 3.

5 4. Pursuant to the Bankruptcy Court’s order entered in the Aurora Bankruptcy Case  
6 on September 1, 2011, the Aurora Bankruptcy Case and the Daniel Bankruptcy  
7 Case were substantively consolidated, with each other and with Slauson and  
8 Daniel Corp., into one bankruptcy estate (collectively, the “Estate”) bearing case  
9 number 2:10-bk-20883-RK, effective as of March 26, 2010. *JPTO* ¶ 4.

10 5. Defendant Edward Garoian, is, and at all times relevant herein was, a resident of  
11 Los Angeles County, and is an individual subject to the jurisdiction of this court.  
12 *JPTO* ¶ 5.

13 6. Defendant Gary Garoian is, and at all times relevant herein was, a resident of Los  
14 Angeles County and a dentist licensed by the State of California, and is an  
15 individual subject to the jurisdiction of this court. *JPTO* ¶ 6.

16 7. Defendant Gary Corp. is, and at all times relevant herein was, incorporated in the  
17 State of California, doing business in Los Angeles County, and is subject to the  
18 jurisdiction of this court. *JPTO* ¶ 8.

19 8. Edward Garoian and Gary Garoian are brothers of Daniel Garoian, and Aurora  
20 Garoian and Daniel Garoian were married at all times relevant herein. Edward  
21

22 \_\_\_\_\_  
23 <sup>3</sup> Although these facts have been stipulated to in the JPTO and deemed admitted, Defendants objected to  
24 these facts on grounds that based on trial testimony of Daniel and Gary, Debtors did not conduct a  
25 dentistry business at the time the bankruptcy cases were filed during 2010. *Defendants’ Objections*, filed  
26 on April 29, 2014, at ii, *citing*, *Trial Declaration of Gary Garoian*, ¶¶ 14, 16, 17, and 20; *Trial Testimony of*  
27 *Gary Garoian*, July 18, 2013, starting at 2:34:05. Defendants argue that Daniel was not conducting a  
28 dentistry business after the purported sale of his dentistry practice to Gary Corp. in 2010. As discussed  
herein, the purported sale of Daniel’s dentistry practice was a fraudulent transfer because it was not an  
arm’s-length, bona fide sale for reasonably equivalent value. The transfer was a bargain sale to an insider,  
and the evidence shows that Daniel’s dentistry practice was still conducting the same business before and  
after the transfer. Accordingly, the court overrules Defendants’ objection to the substance of this finding of  
fact.

1 Garoian, Gary Garoian, and Gary Corp. are insiders of the Debtors.<sup>4</sup> *JPTO* ¶ 7.  
2 9. The Office Building bears Los Angeles County Assessor's Parcel Numbers 6312-  
3 024-020 and 6312-024-022 and the legal description of Lot 1345 of Tract No.  
4 3648, in the City of Maywood, in the County of Los Angeles, State of California, as  
5 per map recorded in book 40 pages 60 and 61 of maps, in the Office of the County  
6 Recorder of said County, and the east half of Lot 1346 of Tract No. 3648, in the  
7 City of Maywood, in the County of Los Angeles, State of California, as per map  
8 recorded in book 40 pages 60 and 61 of maps, in the Office of the County  
9 Recorder of said County. *JPTO* ¶ 10.

10 **Insolvency Analysis**

11 10. Debtors became the 100 percent owners of the Office Building in 2007, having  
12 paid consideration of \$765,300.00. *JPTO* ¶ 19; *see also*, *Trial Declaration of*  
13 *Daniel Garoian*, ¶ 2 (stating Debtors paid \$715,000 to purchase the Office  
14 Building). At the time of the transfer of the Office Building to Edward Garoian in  
15 2009, Debtors owed \$500,000 to Bank of America on the trust deed securing

16 \_\_\_\_\_  
17 <sup>4</sup> Although these facts have been stipulated to in the *JPTO* and deemed admitted, Defendants objected to  
18 these facts on grounds that based on statements by trial testimony of Daniel Garoian and Edward Garoian  
19 and other exhibits, Aurora and Daniel Garoian were not married at all relevant times and Edward, Gary and  
20 Gary Corp. were not insiders of Debtors. *Defendants' Objections*, filed on April 29, 2014, at ii, *citing inter*  
21 *alia*, *Trial Declaration of Gary Garoian*, ¶¶ 2, 8, 10, and 14; *Trial Declaration of Edward Garoian*, ¶ 3. The  
22 court overrules this objection not only because the facts have been stipulated to and deemed admitted, but  
23 also, the facts are supported by the evidence. According to Daniel, he filed for divorce in October 2009,  
24 which was "finalized a couple of years later, during 2011." *Trial Declaration of Daniel Garoian*, ¶ 8. For  
25 purposes of this adversary proceeding, the time period of 2009 to 2010 was the relevant time period since  
26 the alleged fraudulent transfers occurred during this time period as discussed herein. While Daniel's  
27 statements in paragraph 8 of his trial declaration are not completely clear, it appears that based on these  
28 statements, the dissolution of his marriage with Aurora was not "finalized," or terminated until 2011, or after  
the relevant time period as discussed herein. *Id.*; *see*, California Family Code, § 2340 (a judgment of  
marital dissolution must specify a date of termination of marital status); 3 Hogoboom and King, *California*  
*Practice Guide: Family Law*, ¶ 15:236 at 15-55 (2013). Accordingly, Daniel and Aurora remained married  
through 2011 because their marital status had not been terminated until then, that is, until at least after the  
relevant time period when the alleged fraudulent transfers occurred. This meant that Edward Garoian and  
Gary Garoian as Daniel's brothers were statutory insiders under 11 U.S.C. § 101(31)(A) as relatives of  
Debtors, their brother and sister-in-law, and Gary Corp. as an affiliate of an insider, Gary, under 11 U.S.C.  
§ 101(31)(A) and (E). There is no factual dispute that Daniel, Edward, and Gary are brothers. *Trial*  
*Declaration of Daniel Garoian*, ¶¶ 10 and 14; *Trial Declaration of Edward Garoian*, ¶ 3; *Trial Declaration of*  
*Gary Garoian*, ¶ 3. Thus, there is a separate and independent evidentiary basis for the stipulated facts and  
to overrule Defendants' objection.

1 Debtor's loan for the purchase of the Office Building. *JPTO* ¶ 19.

2 11. The Office Building is where the dental practices of Daniel Corp. and Gary Corp.  
3 were located. The Office Building was owned by Slauson from the year 2007 until  
4 it was transferred, by Slauson or Daniel Garoian on behalf of Slauson, to Edward  
5 Garoian on or about May 4, 2009. Both Daniel Corp. and Gary Corp. used the  
6 same address at 4201 E. Slauson Ave., Maywood, CA 90270 and are located  
7 within the jurisdiction of this court at all relevant times. *JPTO* ¶ 10.

8 12. Bank of America, N.A., sued Daniel Garoian, Aurora Garoian, Slauson, and Daniel  
9 Corp. on an unsecured line of credit in the action styled *Bank of America, N.A. v.*  
10 *Garoian et al*, LASC [Los Angeles Superior Court, or Superior Court of California  
11 for the County of Los Angeles] Case No. BC 412889, which was still pending as of  
12 the dates of filing of Debtors' bankruptcy petitions on March 23, 2010 (Aurora) and  
13 on March 26, 2010 (Daniel). *JPTO* ¶ 11; *Plaintiff's Exhibit 3, Bankruptcy Petition*  
14 *of Aurora Adela Garoian, Statement of Financial Affairs, Item No. 4 (Suits and*  
15 *administrative proceedings, executions, garnishments and attachments); Plaintiff's*  
16 *Exhibit 4, Bankruptcy Petition of Daniel Garoian, Statement of Financial Affairs,*  
17 *Item No. 4 (Suits and administrative proceedings, executions, garnishments and*  
18 *attachments).*

19 13. Daniel Garoian and Aurora Garoian were the sole owners of Slauson and Daniel  
20 Corp., and they considered their ownership interests to be community property at  
21 all relevant times herein, making them affiliates of Daniel and Aurora under 11  
22 U.S.C. § 101(2)(B). *JPTO* ¶ 12.

23 14. Daniel Garoian and Aurora Garoian were the owners of their dentistry business or  
24 practice at least during 2005, 2006, and 2007. *Trial Declaration of Daniel Garoian,*  
25 ¶ 2. According to Daniel, Aurora was "my wife, business partner, office manager,  
26 PR person, in charge of advertising, business, finances, etc., [s]ince we acquired  
27 the building and operated the dental practice." *Id.* In late 2007, Daniel and Aurora  
28 temporarily closed the dental practice and started to remodel the interior of the

1 office unit they used for the dental practice and the exterior façade of all three  
2 units of the Office Building. *Id.*, ¶ 3. In January 2008, they bought the dental  
3 practice equipment from Matsco with a loan for \$221,000. *Id.*, ¶ 4. Their dental  
4 practice was fully operational by April 2008. *Id.*, ¶ 5.

5 15. In 2008, Debtors started to have financial and marital problems. *Trial Declaration*  
6 *of Daniel Garoian*, ¶¶ 6-9. Debtors' dental practice declined because the state  
7 funded Denti-Cal system no longer supported or paid for most, if not all, of the  
8 dental services for patients who constituted 30 to 40 percent of the total clientele  
9 of the practice and because of Debtors' marital problems, Aurora Garoian stopped  
10 coming to the practice, and "another percentage" of the clientele was lost because  
11 they were close to her and stopped coming out of loyalty to her. *Id.* Due to the  
12 stock market crash of 2008, Daniel Garoian lost \$90,000 which he borrowed from  
13 his brother, Edward Garoian, and Edward had invested for him, which amount  
14 Daniel repaid Edward in March 2009. *Id.*, ¶ 12. Another contributing factor to  
15 Debtors' financial problems was Daniel's lack of business acumen as he stated in  
16 his trial declaration: "Unfortunately, because I am not a savvy business person, I  
17 did not concentrate as much as needed in generating profit, thus creating the need  
18 to involve my family members to provide financial assistance and know how to  
19 keep the boat afloat." *Id.*, ¶ 23.

20 16. Debtors began to have marital problems in 2008 and 2009 which could not be  
21 resolved, and this led to Daniel Garoian filing for divorce in October 2009. *Trial*  
22 *Declaration of Daniel Garoian*, ¶ 8.

23 17. Debtors' financial problems were exacerbated by Daniel Garoian's health  
24 problems at this same time which included the need for 8 surgery procedures in  
25 both of his hands affecting his fingers and wrists as of 2008, debilitating pain in his  
26 right knee and a left hip problem due to a hip joint tear. *Trial Declaration of Daniel*  
27 *Garoian*, ¶¶ 7 and 9.

28 18. Daniel Garoian listed unsecured non-priority claims in his bankruptcy schedules of

1 over \$1,050,000.00, and Aurora Garoian scheduled unsecured non-priority claims  
2 of over \$55,000.00, substantially all of which were incurred in excess of one year  
3 before the dates of filing of Debtors' bankruptcy petitions on March 23, 2010  
4 (Aurora) and on March 26, 2010 (Daniel). *JPTO ¶¶ 20.*

5 19. After the Office Building Transfer and various money transfers, Debtors had  
6 effectively ceased operations and were left with few or no assets. *JPTO ¶¶ 21 and*  
7 *22.*

8 20. Daniel and Aurora Garoian's Schedules and Amended Schedules list over \$1.7  
9 million in liabilities in secured and unsecured debts. *Plaintiff's Exhibit 4,*  
10 *Bankruptcy Petition of Daniel Garoian* (Summary of Schedules listing  
11 \$1,667,419.58 in total liabilities); *Plaintiff's Exhibit 3, Bankruptcy Petition of Aurora*  
12 *Garoian* (Summary of Schedules listing \$55,530.00 in total liabilities); and  
13 *Plaintiff's Exhibit 60, Amended Bankruptcy Schedules of Aurora Garoian*  
14 (amending Schedule D to include \$9,283.39 in secured claims where the original  
15 Schedule D listed none).

16 21. Daniel A. Garoian, DDS, Inc.'s corporate income tax return for 2008 listed assets  
17 of \$881,472 and liabilities and shareholders' equity of \$881,472 (liabilities of  
18 \$722,483 and shareholders' equity of \$158,989) at the end of the tax year ending  
19 December 31, 2008. *Plaintiff's Exhibit 5, 2008 Corp. tax return and related cover*  
20 *letter – Daniel A. Garoian DDS, Inc.,* at page 5. Daniel A. Garoian, DDS, Inc.'s  
21 corporate income tax return for 2009 listed assets of \$811,785 and liabilities and  
22 shareholders' equity of \$811,785 (liabilities of \$577,163 and shareholders' equity  
23 of \$234,622) at the end of the tax year ending December 31, 2009. Shareholder  
24 equity accounted for \$234,622 of the stated liabilities and shareholders' equity .  
25 *Plaintiff's Exhibit 6, 2009 Corp. tax return and related cover letter – Daniel A.*  
26 *Garoian DDS, Inc.,* at page 5. Daniel A. Garoian, DDS, Inc.'s balance sheet on  
27 this tax return showing assets, liabilities and shareholders' equity reflected net  
28 equity of \$234,622 for Debtors. *Id.*

1 22. Slauson Medical-Dental Group, LLC's tax return for 2008 listed assets of \$739,383  
2 and liabilities and partner capital accounts totaling \$739,383 (liabilities of \$697,803  
3 and partner capital accounts of \$41,480) at the beginning of the tax year on  
4 January 1, 2009 and assets of \$0, liabilities of \$208,565, and partner capital  
5 accounts of negative \$208,565 at the end of the tax year ending December 31,  
6 2009. *Plaintiff's Exhibit 12, 2009 Partnership income tax return—Slauson Medical-*  
7 *Dental Group, LLC*, at page 5. Slauson Medical-Dental Group, LLC's assets and  
8 liabilities represented a net negative amount of \$208,565 for Debtors. When  
9 combined with the balance sheet of Daniel. A. Garoian, DDS, Inc., as of the end of  
10 2009, Debtors' two businesses reflected a net positive value of \$26,057  
11 (shareholders' equity in Daniel Corp. of \$234,622 and partner capital accounts in  
12 Slauson of negative \$208,565), which does not materially impact the balance  
13 sheet insolvency analysis of Debtors discussed herein. *Id.*; *Plaintiff's Exhibit 6,*  
14 *2009 Corp. tax return and related cover letter – Daniel A. Garoian DDS, Inc.*, at  
15 page 5.<sup>5</sup>

16 23. Almost all of Debtors' liabilities were incurred at least one year prior to the filing of  
17 the Debtors' bankruptcy petitions on March 23 and 26, 2010, as stated on their  
18 bankruptcy schedules. *Plaintiff's Exhibit 3, Bankruptcy Petition of Aurora Adela*  
19 *Garoian, Summary of Schedules and Schedules A through J; Plaintiff's Exhibit 4,*  
20 *Bankruptcy Petition of Daniel Garoian, Summary of Schedules and Schedules A*  
21 *through J; Plaintiff's Exhibit 60, Aurora Garoian's Amended Schedules and/or*  
22 *Statements, Amended Schedules B and C.*

23  
24 <sup>5</sup> Using figures for the year ending December 31, 2008 also does not materially impact the balance sheet  
25 insolvency analysis. The shareholders' equity in Daniel Corp. of \$158,989 ) at the end of the tax year  
26 ending December 31, 2008 added to the partner capital accounts in Slauson of \$41,480 as of January 1,  
27 2009 total a positive combined equity value of \$200,469. *Plaintiff's Exhibit 5, 2008 Corp. tax return and*  
28 *related cover letter – Daniel A. Garoian DDS, Inc.*, at page 5. *Plaintiff's Exhibit 12, 2009 Partnership*  
*income tax return—Slauson Medical-Dental Group, LLC*, at page 5. This amount does not offset the  
negative net worth of \$754,586 as of the dates of filing of their bankruptcy petitions on March 23 and 26,  
2010 as shown on Debtors' bankruptcy schedules, See *paragraph 26 infra*.

1 24. The only liability incurred by Debtors within one year of the bankruptcy petitions  
2 was an auto loan incurred by Aurora in "1/2010" in the amount of \$9,283.39.  
3 *Plaintiff's Exhibit 60, Amended Bankruptcy Schedules of Aurora Garoian,*  
4 *Amended Schedule D; Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian,*  
5 *Schedule D (secured claims on residence listed incurred in 2005), Schedule F (all*  
6 *unsecured nonpriority claims listed as incurred "over 1 year ago", i.e., at least one*  
7 *year prior to the date of filing of bankruptcy petition); Plaintiff's Exhibit 3,*  
8 *Bankruptcy Petition of Aurora Garoian, Schedule F (all unsecured nonpriority*  
9 *claims listed as incurred at least one year prior to the date of filing of the*  
10 *bankruptcy petition).*

11 25. Aurora and Daniel Garoian gave different fair market values for their residence at  
12 1075 East Harvard Road, Burbank, California 91501, on their bankruptcy  
13 schedules. Aurora listed the value as \$557,000 while Daniel listed it as \$530,000.  
14 *Plaintiff's Exhibit 3, Bankruptcy Petition of Aurora Adela Garoian, Schedule A*  
15 *(Real Property); Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian,*  
16 *Schedule A (Real Property). The court finds the value of the residence to be*  
17 *\$530,000 because Aurora listed the residence as an asset of Daniel. Plaintiff's*  
18 *Exhibit 3, Bankruptcy Petition of Aurora Garoian, Schedule A. Based on these*  
19 *considerations, Daniel listed total personal property assets at a value of*  
20 *\$256,423.54. Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian, Summary*  
21 *of Schedules. Also, based on these considerations, Aurora listed total personal*  
22 *property assets at a value of \$181,940.00. Plaintiff's Exhibit 60, Amended*  
23 *Schedules of Aurora Garoian, Schedule B. Thus, the highest possible value of the*  
24 *Debtors' assets on their bankruptcy schedules is \$968,363.54.*

25 26. Based on Debtors' bankruptcy schedules, Debtors were insolvent at least one year  
26 prior to filing their bankruptcy petitions on March 23, 2010 (Aurora) and on March  
27 26, 2010 (Daniel) because they had total liabilities of \$1,722,949.58  
28 (\$1,667,419.58 + \$55,530.00), which had been incurred over one year before the

1 dates of filing of the bankruptcy petitions, and total assets as of the dates of the  
2 filing of the bankruptcy petitions of at most \$968,363.54 (\$530,000.00 +  
3 \$256,423.54 + \$181,940.00). *Plaintiff's Exhibit 3, Bankruptcy Petition of Aurora*  
4 *Adela Garoian, Summary of Schedules and Schedules A through J; Plaintiff's*  
5 *Exhibit 4, Bankruptcy Petition of Daniel Garoian, Summary of Schedules and*  
6 *Schedules A through J; Plaintiff's Exhibit 60, Aurora Garoian's Amended*  
7 *Schedules and/or Statements, Amended Schedules B and C.* Based on these  
8 figures, the liabilities of Debtors exceeded their assets by \$754,586 as of the dates  
9 of filing of their bankruptcy petitions on March 23 and 26, 2010, and Trustee has  
10 made a prima facie showing that Debtors were insolvent based on their balance  
11 sheet assets and liabilities at least one year before the filing of the bankruptcy  
12 petitions, which showing is not rebutted by Defendants. Accordingly, based on  
13 the evidence discussed herein, the court finds that Trustee has shown by a  
14 preponderance of the evidence that Debtors were insolvent or were rendered  
15 insolvent based on balance sheet analysis by the transfers at issue in this case.

16 27. The testimony of Jeffery L. Sumpter regarding the Debtors' insolvency was  
17 credible and supplemented the court's own insolvency analysis, which relied  
18 primarily on the Debtors' bankruptcy schedules and other filings. *Plaintiff's Exhibit*  
19 *68, Expert Report of Jeffery L. Sumpter; Trial Declaration of Jeffery L. Sumpter,*  
20 *and Exhibit 1, Expert Report, attached thereto; Trial Testimony of Jeffery L.*  
21 *Sumpter, June 19, 2013 at 10:03-10:13 a.m.*

22 28. The testimony at trial of Daniel Garoian regarding various personal and financial  
23 difficulties he encountered prior to filing his bankruptcy petition was credible and  
24 supplemented the court's own insolvency analysis, which relied primarily on the  
25 Debtors' bankruptcy filings. *Trial Testimony of Daniel Garoian, July 18, 2013 at*  
26 *10:50-11:51 a.m.*

27 29. Wells Fargo Practice Finance fka Matsco, a division of Wells Fargo Bank, N.A.  
28 ("Matsco"), loaned money to Daniel Corp. on January 15, 2008 (the "Matsco

1 Loan”), pursuant to a Master Equipment Financing Agreement (“EFA”). In  
2 furtherance of the Matsco Loan, on January 15, 2008, Daniel Corp. executed a  
3 Schedule to the EFA, viz. Schedule No. 3006264-001, whereby Matsco loaned  
4 \$221,834.10 to Daniel Corp. for the operation of its dental practice. Daniel Garoian  
5 also executed a guaranty of the Matsco Loan. Pursuant to the Matsco Loan,  
6 Daniel Corp. granted Matsco a security interest in the personal property of Daniel  
7 Corp. (the “Matsco Lien”) used in the operation of a dental practice located at 4201  
8 E. Slauson Ave., Maywood, CA 90270. *JPTO* ¶ 13.

9 30. Daniel Corp. defaulted on the Matsco Loan, and Daniel defaulted on his guaranty  
10 of the Matsco Loan. On February 22, 2010, Matsco commenced litigation in the  
11 Los Angeles Superior Court as Case No. BC 432201 against Daniel and Daniel  
12 Corp. (the “Matsco Lawsuit”). Daniel Garoian thereafter filed his present  
13 bankruptcy petition on March 26, 2010. Prior to the commencement of the Matsco  
14 Lawsuit, Matsco had discovered that Daniel Corp. had sold its assets to Daniel  
15 Garoian’s brother, Gary Garoian and/or Gary Corp., so Matsco alleged that the  
16 property of Daniel Corp. had been converted. Accordingly, Matsco named Gary  
17 and Gary Corp. as defendants in the Matsco Lawsuit. Thereafter, Matsco entered  
18 into a Settlement Agreement and Release with Gary and Gary Corp., pursuant to  
19 which Gary Corp. paid \$75,000.00 to purchase Matsco’s right, title, and interest in  
20 the Matsco Loan. *JPTO* ¶ 14; *Plaintiff’s Exhibit 42, Settlement Agreement and*  
21 *Release between Gary Garoian and Matsco*. These loan defaults also support the  
22 finding that Debtors were insolvent at the time of the Transfers at issue in this  
23 case.

24 **Office Building Transfer**

25 31. The Office Building was transferred by Slauson, or by Daniel Garoian on behalf of  
26 Slauson, to his brother, Edward Garoian, on or about May 4, 2009 (the “Office  
27 Building Transfer”). The Office Building was sold to Edward for \$500,000.00 on or  
28 about May 4, 2009. The 2009 Slauson income tax return dated February 10,

1 2011, listed total assets as of January 1, 2009, of \$739,383.00 (composed of cash  
2 of \$4,427.00 and buildings and other depreciable assets of \$734,956.00, net of  
3 depreciation). The Office Building had been purchased and put in service by  
4 Slauson on July 1, 2007, with a cost of \$765,300.00. The assessed value of the  
5 Office Building was over \$1.2 million and it had a market value of at least \$1  
6 million during 2009. As of December 31, 2009, after the sale closed, Slauson's  
7 total assets were \$0 and its current liabilities were \$208,565.00. Since a loss had  
8 been recorded on Slauson's accounting records from the sale to Edward,  
9 combined total liabilities and capital netted out to \$0 at year end. *JPTO* ¶¶ 10, 15  
10 and 19; *Plaintiff's Exhibit 2, CBIZ Valuation Group, Summary Appraisal of Certain*  
11 *Real Property, 4219 & 4217 Slauson Ave., Maywood, CA 90270; Trial Declaration*  
12 *of John M. Rimar; Trial Testimony of John M. Rimar, June 19, 2013 at 9:40-10:02*  
13 *a.m.; Plaintiff's Exhibit 11, Grant Deed Describing Transfer of the Office Building*  
14 *from Slauson Medical-Dental Group to Edward Garoian, April 29, 2009; Plaintiff's*  
15 *Exhibit 12, 2009 Partnership income tax return—Slauson Medical-Dental Group,*  
16 *LLC, at page 5; Plaintiff's Exhibit 13, Seller's Final Settlement Statement, Property*  
17 *Sale, and Escrow Documents for the Office Building Transfer; Trial Declaration of*  
18 *Edward Garoian, ¶ 4.*<sup>6</sup>

19  
20 <sup>6</sup> Although these facts have been stipulated to in the JPTO and deemed admitted, Defendants objected to  
21 these facts on grounds that based on trial testimony of Daniel and Edward Garoian, Defendants object to  
22 Plaintiff's Amended Proposed Finding of Fact, ¶ 10, based on JPTO, ¶¶ 10, 15 and 19, arguing that the  
23 value of the Office Building at the time of Debtors' transfer to Edward on May 4, 2009, was \$500,000.  
24 *Defendants' Objections*, filed on April 29, 2014, at iv-xi, *citing inter alia, Trial Declaration of Edward*  
25 *Garoian, ¶¶ 3, 4 and 9; Trial Testimony of Edward Garoian, July 18, 2013, at 55:30 and 3:03:03; Trial*  
26 *Declaration of Daniel Garoian, ¶¶ 10 and 11; Trial Testimony of Daniel Garoian at 57:33 and 2:25:17*  
27 Defendants argue that the trustee's expert witness appraisal fails to take into account the many repairs  
28 needed for the property, including toxic waste removal, parking lot repairs and lack of Americans with  
Disabilities Act ("ADA") compliance. *Defendants' Objections* at iv-xi. Defendants did not offer valuation  
evidence from an independent and qualified commercial real property appraiser as did Plaintiff. Rather,  
Defendants relied upon their own testimony from Edward, the transferee, and Daniel, the transferor, who  
are not disinterested parties and are insiders to the transaction, regarding the value of the property and the  
need for repairs. Defendants did not offer credible and admissible evidence that the property needed major  
repairs. While Plaintiff's appraiser, John Rimar, stated that his firm was not given access to the interior of  
the Office Building for appraisal inspection, Defendants have not offered credible and admissible evidence  
that repairs were needed to warrant adjustments in the valuation of the property by Plaintiff's appraiser.

1 32. Debtors made the Office Building Transfer to Edward on May 4, 2009, for  
2 consideration in the amount of \$500,000.00, which was not reasonably equivalent  
3 value for the Office Building, having a value of \$1,000,000.00 at that time. *JPTO*  
4 ¶¶ 10, 15 and 19; *Plaintiff's Exhibit 2, CBIZ Valuation Group, Summary Appraisal*  
5 *of Certain Real Property, 4219 & 4217 Slauson Ave., Maywood, CA 90270; Trial*  
6 *Declaration of John M. Rimar; Trial Testimony of John M. Rimar, June 19, 2013 at*  
7 *9:40-10:02 a.m.; Plaintiff's Exhibit 11, Grant Deed Describing Transfer of the*  
8 *Office Building from Slauson Medical-Dental Group to Edward Garoian, April 29,*  
9 *2009; Plaintiff's Exhibit 13, Seller's Final Settlement Statement, Property Sale, and*  
10 *Escrow Documents for the Office Building Transfer; Trial Declaration of Edward*  
11 *Garoian, ¶ 4.*

12 33. There is no evidence that Daniel Garoian attempted to sell the Office Building  
13 Assets in an arm's-length transaction with an independent party. *Trial Declaration*  
14 *of Daniel Garoian, ¶ 10-11.* Daniel only offered to sell the Office Building Assets  
15 only to his brother, Edward Garoian. *Id.* Daniel testified that while he was  
16 negotiating the sale of the Office Building to Edward, Daniel discussed valuation  
17 with a realtor, but no evidence of any valuation contemporaneous with the sale to  
18 Edward was offered at trial other than Daniel's uncorroborated statement that he  
19 talked with a realtor. *Id.* Edward stated in his trial testimony that he knew Daniel

20  
21 \_\_\_\_\_  
22 The court has reviewed the valuation report of Plaintiff's appraiser and considered the trial testimony of the  
23 appraiser and finds that the appraised value of the property as of the date of the transfer to Edward in 2009  
24 of \$1,090,000 to be reasonable. *Plaintiff's Exhibit 2, CBIZ Valuation Group, Summary Appraisal of Certain*  
25 *Real Property, 4219 & 4217 Slauson Ave., Maywood, CA 90270; Trial Declaration of John M. Rimar; Trial*  
26 *Testimony of John M. Rimar, June 19, 2013 at 9:40-10:02 a.m.* Plaintiff's appraiser valued the Office  
27 Building based on a generally accepted valuation method of analyzing comparable sales, which in this  
28 case, included properties of similar use and characteristics, single-tenant and multi-tenant medical use  
properties within reasonable proximity (i.e., sales of properties within 3 or 4 miles of the subject property in  
2008 and 2009). *Id.* Plaintiff's appraiser made appropriate adjustments based on market conditions,  
location, building to land ratios, age and condition of the properties. *Id.* The derived value of \$1,090,000  
based on 5,212 square feet in gross building area and net rentable area at \$210.00 per square foot was  
reasonable. *Id.* The valuation opinion of Plaintiff's appraiser is consistent with the proposed finding of fact  
based on Joint Pretrial Order, ¶¶ 10, 15 and 19. Accordingly, the court overrules Defendants' objection to  
the substance of this finding of fact.

1 was "having trouble staying afloat." *Trial Declaration of Edward Garoian*, ¶ 5.  
2 Debtors' transfer of the Office Building to Daniel's brother, Edward, was a bargain  
3 sale to an insider, which allowed Daniel to keep practicing dentistry at that  
4 location.

5 34. Edward Garoian did not take possession of the Office Building in good faith or for  
6 a reasonably equivalent value. *JPTO* ¶¶ 10, 15 and 19; *Plaintiff's Exhibit 2, CBIZ*  
7 *Valuation Group, Summary Appraisal of Certain Real Property, 4219 & 4217*  
8 *Slauson Ave., Maywood, CA 90270; Trial Declaration of John M. Rimar; Trial*  
9 *Testimony of John M. Rimar, June 19, 2013 at 9:40-10:02 a.m.; Plaintiff's Exhibit*  
10 *11, Grant Deed Describing Transfer of the Office Building from Slauson Medical-*  
11 *Dental Group to Edward Garoian, April 29, 2009; Plaintiff's Exhibit 13, Seller's*  
12 *Final Settlement Statement, Property Sale, and Escrow Documents for the Office*  
13 *Building Transfer; Trial Declaration of Edward Garoian*, ¶¶ 3 and 4.

14 **\$105,234.72 Funds Transfer**

15 35. Within 90 days prior to the Office Building Transfer, \$105,234.72 of the Debtors'  
16 funds were transferred into a bank account in the name of Edward (the  
17 "\$105,234.72 Funds Transfer"), which funds were then transferred into the escrow  
18 account utilized for the Office Building Transfer and dissipated. *JPTO* ¶ 15.

19 36. Edward Garoian's testimony that the \$105,234.72 Funds Transfer was related to  
20 repayment of a loan to Daniel Garoian for stock investments and remodeling of his  
21 dental office was credible. Accordingly, the court finds that Debtors made the  
22 \$105,234.72 Funds Transfer to Edward for reasonably equivalent value on  
23 account of repaying those loans. *Trial Testimony of Daniel Garoian, July 18, 2013*  
24 *at 11:03-11:05 a.m.; Trial Declaration of Daniel Garoian*, ¶ 12; *Trial Declaration of*  
25 *Edward Garoian*, ¶ 9; *Plaintiff's Exhibits 15 through 30, Bank Statements, Deposit*  
26 *Slips and Checks of Daniel and Edward Documenting the \$105,234.72 Funds*  
27 *Transfer.*

28 37. The testimony of Daniel Garoian and Edward Garoian regarding the absence of

1 actual fraudulent intent in making the \$105,234 Funds Transfer to Edward Garoian  
2 was credible in that the intent of the transfer was to repay loans made by Edward  
3 to Debtors for Daniel's stock market investments and remodeling, and therefore,  
4 the court finds that Plaintiff has not met his burden of proving that this transfer was  
5 made with the actual intent to hinder, delay, or defraud their existing creditors on  
6 the dates the transfer was made. *Trial Declaration of Daniel Garoian*, ¶ 12; *Trial*  
7 *Declaration of Edward Garoian*, ¶¶ 2 and 9.

8 38. Edward Garoian took possession of the \$105,234.72 Funds Transfer in good faith  
9 and for a reasonably equivalent value because the funds were transferred to repay  
10 outstanding loans. *Trial Declaration of Daniel Garoian*, ¶ 12; *Trial Declaration of*  
11 *Edward Garoian*, ¶¶ 2 and 9.

12 **\$47,500 Funds Transfer**

13 39. Debtors made the \$47,500 Funds Transfer to Edward Garoian for no  
14 consideration. *JPTO* ¶ 15; *Plaintiff's Exhibits 31 through 38, Bank Statements,*  
15 *Deposit Slips and Checks of Daniel and Edward Documenting the \$47,500 Funds*  
16 *Transfer; Trial Declaration of Daniel Garoian*, ¶ 13; *Trial Declaration of Edward*  
17 *Garoian*, ¶¶ 3, 4 and 5. Although this is a stipulated fact in the Joint Pretrial Order,  
18 *JPTO*, ¶ 15, there is an independent basis for finding that this transfer was made  
19 for no consideration. According to Daniel, the \$47,500 represented "rent" for the  
20 three office units at the Office Building (i.e., \$4,500 per month per unit) after the  
21 transfer of the Office Building to Edward. *Trial Declaration of Daniel Garoian*, ¶  
22 13. Because the transfer of the Office Building to Edward Garoian was not made  
23 for reasonably equivalent consideration, the transfer was fraudulent (either  
24 constructively or intentionally as the court has otherwise found), and these  
25 payments based on the insider bargain sale of the Office Building are further  
26 evidence of the lack of reasonably equivalent consideration for the transfer.

27 40. Between about May and October 2009, Edward Garoian also received \$47,500.00  
28 in additional payments from Daniel Garoian or Daniel Corp. (collectively, the

1 “\$47,500 Funds Transfer”) for no consideration. *JPTO* ¶ 15. Accordingly, the  
2 assets of Slauson and Daniel Corp. having been transferred pursuant to the Office  
3 Building Transfer, the \$105,234.72 Funds Transfer, the \$47,500 Funds Transfer,  
4 the \$99,880 Funds Transfer and the Dental Practice Transfer (collectively, the  
5 “Transfers”), Debtors had effectively ceased operations in their own names by  
6 September of 2009. *JPTO* ¶ 21.

7 41. Debtors were insolvent on the dates of the Office Building Transfer, the  
8 \$105,234.72 Funds Transfer, and the \$47,500 Funds Transfer or were rendered  
9 insolvent by the Transfers. *Trial Testimony of Daniel Garoian*, July 18, 2013 at  
10 10:54-10:56 a.m.; *Trial Declaration of Jeffery L. Sumpter* at 10-12; *Plaintiff’s*  
11 *Exhibit 3, Bankruptcy Petition of Aurora Adela Garoian, Summary of Schedules*  
12 *and Schedules A through J; Plaintiff’s Exhibit 4, Bankruptcy Petition of Daniel*  
13 *Garoian, Summary of Schedules and Schedules A through J; Plaintiff’s Exhibit 60,*  
14 *Aurora Garoian’s Amended Bankruptcy Schedules and/or Statements, Amended*  
15 *Schedules B and C.* As discussed herein, the various financial, marital and health  
16 problems of Debtors before and during the time of the Transfers also show that  
17 they were insolvent at the time of the Transfers.

18 42. Edward Garoian did not take possession of the \$47,500 Funds Transfer in good  
19 faith or for a reasonably equivalent value. *JPTO* ¶¶ 10, 15 and 19; *Plaintiff’s*  
20 *Exhibit 2, CBIZ Valuation Group, Summary Appraisal of Certain Real Property,*  
21 *4219 & 4217 Slauson Ave., Maywood, CA 90270; Trial Declaration of John M.*  
22 *Rimar; Trial Testimony of John M. Rimar*, June 19, 2013 at 9:40-10:02 a.m.;  
23 *Plaintiff’s Exhibit 11, Grant Deed Describing Transfer of the Office Building from*  
24 *Slauson Medical-Dental Group to Edward Garoian, April 29, 2009; Plaintiff’s*  
25 *Exhibit 13, Seller’s Final Settlement Statement, Property Sale, and Escrow*  
26 *Documents for the Office Building Transfer; Trial Declaration of Edward Garoian,*  
27 ¶¶ 3, 4 and 5.

28 43. The testimony of Daniel Garoian and Edward Garoian regarding the absence of

1 actual fraudulent intent was not credible in making the Office Building Transfer and  
2 the \$47,500 Funds Transfer to Edward in that these transfers were made by  
3 Debtors with the actual intent to hinder, delay, or defraud their existing creditors on  
4 the dates that the transfers were made because Debtors were insolvent or  
5 rendered insolvent by the transfers, reasonably equivalent value was not given for  
6 the transfers, the status quo of Daniel's dentistry practice continued after the  
7 transfers as reflected in the business operations of the dental practice and as  
8 shown by the tax returns of Daniel and Daniel Corp. *Trial Declaration of Daniel*  
9 *Garoian*, ¶¶ 10, 11 and 13; *Trial Declaration of Edward Garoian*, ¶¶ 3, 4 and 5;  
10 *JPTO* ¶¶ 10, 15 and 19; *Plaintiff's Exhibit 2, CBIZ Valuation Group, Summary*  
11 *Appraisal of Certain Real Property, 4219 & 4217 Slauson Ave., Maywood, CA*  
12 *90270; Trial Declaration of John M. Rimar; Trial Testimony of John M. Rimar, June*  
13 *19, 2013 at 9:40-10:02 a.m.; Plaintiff's Exhibit 11, Grant Deed Describing Transfer*  
14 *of the Office Building from Slauson Medical-Dental Group to Edward Garoian, April*  
15 *29, 2009; Plaintiff's Exhibit 13, Seller's Final Settlement Statement, Property Sale,*  
16 *and Escrow Documents for the Office Building Transfer.*

17 **Dental Practice Transfer**

18 44. In September 2009, due to his financial, marital, and health problems, Daniel  
19 approached his brother Gary about selling his dentistry business to Gary, and the  
20 brothers, Daniel and Gary, discussed sale of Daniel's dentistry business to Gary.  
21 *Trial Declaration of Daniel Garoian*, ¶ 14-17; *Trial Declaration of Gary Garoian*, ¶  
22 3-6. Gary was aware that Daniel was having financial problems and was in default  
23 on his equipment finance loan with Matsco and incurring late payment fees,  
24 learning that the loan debt had grown to \$292,000. *Trial Declaration of Gary*  
25 *Garoian*, ¶ 5. As Daniel stated in his declaration, at the time of the sale of his  
26 dental business to Gary, the Matsco loan was in "serious default," and Matsco  
27 instituted litigation on the loan. *Trial Declaration of Daniel Garoian*, ¶ 19. Daniel  
28 also owed other equipment lienholders, including Kodak and Patterson, totaling

1 approximately \$30,000. *Id.*, ¶ 16. These outstanding loan liabilities also show that  
2 Debtors were insolvent at the time of the Transfers at issue in this case.

3 45. On or about September 22, 2009, the business assets of Daniel Corp. — including  
4 without limitation its personalty, business goodwill, and customer lists (collectively,  
5 the “Dental Practice Assets”) — were transferred by the Debtors to Gary Corp.  
6 (the “Dental Practice Transfer”). The Dental Practice Assets were sold to Gary  
7 Corp. for \$5,000.00 pursuant to an asset sale agreement dated September 22,  
8 2009, subject to liens. Gary Garoian settled the dispute with Matsco over its lien  
9 on the dental practice equipment for \$75,000.00. As a result, the total purchase  
10 price paid by Gary Corp. for the Dental Practice Assets was at most \$80,000.00,  
11 which was less than their reasonably equivalent value.<sup>7</sup> After the Dental Practice  
12 Assets were sold to Gary Corp., Daniel began working for Gary Corp. as a dentist  
13 at the same office address as Daniel Corp. *JPTO* ¶ 16. Debtors’ transfer of the  
14 Dental Practice Assets to Daniel’s brother, Gary, was a bargain sale to an insider,  
15 which allowed Daniel to keep practicing dentistry at the same location as before.

16 46. There is no evidence that Daniel Garoian attempted to sell the Dental Practice  
17 Assets in an arm’s-length transaction with an independent party. *Trial Declaration*

18  
19 <sup>7</sup> Although these facts have been stipulated to in the JPTO and deemed admitted, Defendants objected to  
20 these facts on grounds that based on trial testimony of Daniel and Gary, Gary gave reasonably equivalent  
21 value for the transfer of the Dental Practice Assets. *Defendants’ Objections*, filed on April 29, 2014, at xv-  
22 xviii, *citing*, *Trial Declaration of Gary Garoian*, ¶¶ 5, 6 and 8; *Trial Declaration of Daniel Garoian*, ¶¶ 4, 5,  
23 16, 17 and 19; *Trial Testimony of Daniel Garoian*, July 18, 2013, at 1:44)6, 1:47:14 and 2:27:00.  
24 Defendants argue that Gary paid approximately \$300,000 for the Dental Practice Assets, including a  
25 payment of \$5,000 and the assumption of existing liens, including Matsco for \$275,000. As discussed  
26 herein, the purported sale of Daniel’s dentistry practice was a fraudulent transfer because it was not an  
27 arms length, bona fide sale for reasonably equivalent value, and that the evidence shows that Daniel’s  
28 dentistry practice was still conducting the same business before and after the transfer. As stated herein,  
the Matsco loan was not assumable by Gary, and Matsco sued Gary and Gary Corp., as the transferee of  
dental equipment secured by Matsco’s lien. Gary settled the loan dispute with Matsco for \$75,000, so the  
consideration for assuming the Matsco loan was \$75,000, as reflected by the parties’ stipulation of fact in  
the Joint Pretrial Order, ¶ 16. Defendants failed to rebut Plaintiff’s showing based on the stipulated facts  
and the other evidence regarding the Matsco loan that Gary’s consideration for the Dental Practice Assets  
was at most \$80,000 and there was no other consideration, including credible and admissible evidence of  
assumption of other liabilities. Accordingly, the court overrules Defendants’ objection to the substance of  
this finding of fact.

1 of Daniel Garoian, ¶ 16. Daniel offered to sell the Dental Practice Assets only  
2 his brother Gary. *Id.*, ¶¶ 14-17. While Daniel was negotiating the sale of the  
3 Dental Practice Assets to Gary, Daniel obtained a valuation of the practice to “give  
4 us an idea as to its value” and was told that the practice was worth between  
5 \$150,000 and \$250,000. *Id.*, ¶¶ 15-16.

6 47. Though the Dental Practice Assets were allegedly sold for \$80,000.00 on  
7 September 22, 2009, the Daniel Corp. 2009 income tax return dated February 11,  
8 2011, lists total assets as of January 1, 2009, of \$881,472.00 (composed of cash  
9 of \$31,078.00, accounts receivable of \$346,759.00, and buildings and other  
10 depreciable assets of \$503,635.00, net of depreciation), and as of December 31,  
11 2009, total assets were \$811,785.00 (composed of cash of \$12,592.00, accounts  
12 receivable of \$322,960.00, and buildings and other depreciable assets of  
13 \$476,233.00, net of depreciation). *JPTO* ¶ 18.

14 48. During 2010, Gary Garoian received \$99,880.00 in payments from Daniel Corp.,  
15 \$31,950.00 of which was transferred before the dates of filing of Debtors’  
16 bankruptcy petitions on March 23, 2010 (Aurora) and on March 26, 2010 (Daniel)  
17 (the “\$31,950 Funds Transfer”) and \$67,930.00 of which was transferred after the  
18 petition dates (the “\$67,930 Funds Transfer”). *JPTO* ¶ 17; *Trial Declaration of*  
19 *Daniel Garoian*, ¶ 22.

20 49. Debtors made the Dental Practice Transfer to Gary Corp. without receiving  
21 reasonably equivalent value in exchange for the transfer, within two years prior to  
22 the dates of filing of Debtors’ bankruptcy petitions on March 23, 2010 (Aurora) and  
23 on March 26, 2010 (Daniel) . The value of the dental equipment, furniture, office  
24 equipment, and computer equipment transferred in the Dental Practice Transfer  
25 was \$167,370.00 as of the transfer date of September 22, 2009. As reflected in  
26 the Joint Pretrial Order, the parties stipulated that the maximum consideration paid  
27 was \$80,000.00. The evidence before the court is insufficient to determine the full  
28 value of the Dental Practice Assets, but that value is at least the amount of

1 \$167,370.00 attributed to the practice's tangible assets and the consideration paid  
2 was not reasonably equivalent even for that portion of the Dental Practice  
3 Transfer. *JPTO* ¶¶ 16 and 18; *Plaintiff's Exhibit 1, CBIZ Valuation Group, Expert*  
4 *Valuation of Certain Tangible Assets of Daniel Garoian Dental Practice; Trial*  
5 *Declaration of David Werch; Trial Testimony of David Werch, June 19, 2013 at*  
6 *9:25-9:40 a.m.; Plaintiff's Exhibit 7, Agreement for the Sale and Purchase of*  
7 *Business Assets executed by Daniel Garoian and Gary Garoian, September 22,*  
8 *2009; Plaintiff's Exhibit 8, Invoices for the Purchase of Dental Assets for Daniel*  
9 *Garoian DDS, dated March 20, 2008 to March 27, 2008; Trial Declaration of*  
10 *Jeffery Sumpter at 13-14; Trial Declaration of Daniel Garoian, ¶¶ 16-17; Trial*  
11 *Declaration of Gary Garoian, ¶¶ 5-6.*

12 50. Gary Garoian actually only paid \$5,000 for the Dental Practice Assets. *Trial*  
13 *Declaration of Daniel Garoian, ¶¶ 16-17; Trial Declaration of Gary Garoian, ¶¶ 5-6.*  
14 Although he and Daniel said that they contemplated that Gary would assume the  
15 Matsco loan on the Dental Practice Assets, the loan was not assumable. *Id.* Gary  
16 Garoian was able to settle the liability for the Matsco loan on the Dental Practice  
17 Assets for \$75,000.00 *Trial Declaration of Gary Garoian, ¶ 8; Plaintiff's Exhibit 42,*  
18 *Settlement Agreement and Release between Gary Garoian and Matsco.*  
19 Accordingly, the total purchase price paid by Gary Garoian for the Dental Practice  
20 Assets was at most \$80,000. *JPTO, ¶ 16; Trial Declaration of Gary Garoian, ¶¶ 5,*  
21 *6, and 8.*

22 51. Debtors were insolvent on the date of the Dental Practice Transfer or were  
23 rendered insolvent by the Transfer. *Trial Testimony of Gary Garoian, July 18, 2013*  
24 *at 10:54-10:56 a.m.; Trial Declaration of Daniel Garoian, ¶¶ 6-19 (detailing*  
25 *numerous financial problems and business and personal losses due to state*  
26 *insurance funding changes, real property market collapse, bad investments,*  
27 *marital dissolution, multiple hand surgeries and other health problems affecting*  
28 *Daniel's ability to work, and his self-acknowledged lack of business acumen); Trial*

1        *Declaration of Jeffery L. Sumpter at 10-12; Plaintiff's Exhibit 3, Bankruptcy Petition*  
2        *of Aurora Adela Garoian, Summary of Schedules and Schedules A through J;*  
3        *Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian, Summary of Schedules*  
4        *and Schedules A through J; Plaintiff's Exhibit 60, Aurora Garoian's Amended*  
5        *Schedules and/or Statements, Amended Schedules B and C.*

6        52. After the Dental Practice Transfer, Daniel Garoian began working for Gary Corp.  
7        as an employee, but continued to treat the same patients and run the operational  
8        and financial aspects of the dental practice using the same assets in the same  
9        location as Debtors previously had done. Gary Garoian operated a dental practice  
10       at a different location in Orange, California. *JPTO ¶ 18; Plaintiff's Trial Exhibit 6,*  
11       *2009 Corp. Tax Return and Related Cover Letter for Daniel A. Garoian, DDS;*  
12       *Trial Declaration of Gary Garoian, ¶¶ 6, 7, 9 and 11; Trial Declaration of Daniel*  
13       *Garoian, ¶¶ 14, 15, 18, 20, and 22.* In making the Dental Practice Transfer,  
14       Debtors made a transfer of personal property that was not accompanied by an  
15       immediate delivery or by an actual and continued change of possession of that  
16       property. *JPTO ¶¶ 16 and 18; Plaintiff's Trial Exhibit 6, 2009 Corporate Tax*  
17       *Return and Related Cover Letter for Daniel A. Garoian, DDS; Trial Declaration of*  
18       *Gary Garoian, ¶¶ 6, 7, 9, and 11; Trial Declaration of Daniel Garoian, ¶¶ 18, 20,*  
19       *and 22.*

20       53. The testimony of Daniel Garoian and Gary Garoian regarding the absence of  
21       actual fraudulent intent for the Dental Practice Transfer was not credible and  
22       Debtors made the Dental Practice Transfer to Gary Corp. with the actual intent to  
23       hinder, delay, or defraud their existing creditors in that the transfer was made to an  
24       insider, Daniel's brother, Gary, through his dental practice, Gary Corp., Debtors  
25       retained possession or control of the assets in that Daniel continued his dental  
26       practice in Gary's name, the transfer was made when Debtors had been sued or  
27       threatened with suit for unpaid debts by Matsco, Debtors were insolvent at the  
28       time of the transfer, and the transferee, Gary, did not give reasonably equivalent

1 value for the transfer. *JPTO ¶¶ 16 and 18; Plaintiff's Exhibit 1, CBIZ Valuation*  
2 *Group, Expert Valuation of Certain Tangible Assets of Daniel Garoian Dental*  
3 *Practice; Trial Declaration of David Werch; Trial Testimony of David Werch, June*  
4 *19, 2013 at 9:25-9:40 a.m.; Plaintiff's Exhibit 7, Agreement for the Sale and*  
5 *Purchase of Business Assets executed by Daniel Garoian and Gary Garoian,*  
6 *September 22, 2009; Plaintiff's Exhibit 8, Invoices for the Purchase of Dental*  
7 *Assets for Daniel Garoian DDS, dated March 20, 2008 to March 27, 2008; Trial*  
8 *Declaration of Jeffery L. Sumpter at 13-14; Plaintiff's Exhibit 3, Bankruptcy Petition*  
9 *of Aurora Adela Garoian, Summary of Schedules and Schedules A through J;*  
10 *Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian, Summary of Schedules*  
11 *and Schedules A through J; Plaintiff's Exhibit 60, Aurora Garoian's Amended*  
12 *Schedules and/or Statements, Amended Schedules B and C; Sumpter Trial*  
13 *Declaration at 13-14; Trial Declaration of Daniel Garoian, ¶¶ 16-18, 20 and 22;*  
14 *Trial Declaration of Gary Garoian, ¶¶ 5-7, 9 and 11.*

15 54. Gary Corp. did not take possession of the Dental Practice Assets in good faith or  
16 for their reasonably equivalent value. *JPTO ¶¶ 16 and 18; Plaintiff's Exhibit 1,*  
17 *CBIZ Valuation Group, Expert Valuation of Certain Tangible Assets of Daniel*  
18 *Garoian Dental Practice; Trial Declaration of David Werch; Trial Testimony of*  
19 *David Werch, June 19, 2013 at 9:25-9:40 a.m.; Plaintiff's Exhibit 7, Agreement for*  
20 *the Sale and Purchase of Business Assets executed by Daniel Garoian and Gary*  
21 *Garoian, September 22, 2009; Plaintiff's Exhibit 8, Invoices for the Purchase of*  
22 *Dental Assets for Daniel Garoian DDS, dated March 20, 2008 to March 27, 2008;*  
23 *Trial Declaration of Jeffery L. Sumpter at 13-14; Plaintiff's Exhibit 3, Bankruptcy*  
24 *Petition of Aurora Adela Garoian, Summary of Schedules and Schedules A*  
25 *through J; Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian, Summary of*  
26 *Schedules and Schedules A through J; Plaintiff's Exhibit 60, Aurora Garoian's*  
27 *Amended Schedules and/or Statements, Amended Schedules B and C; Sumpter*  
28 *Trial Declaration at 13-14; Trial Declaration of Daniel Garoian, ¶¶ 16-18, 20 and*

1 22; *Trial Declaration of Gary Garoian*, ¶¶ 5-7, 9 and 11.

2 **\$31,950 Funds Transfer**

3 55. Debtors made the \$31,950 Funds Transfer to Gary Garoian without receiving a  
4 reasonably equivalent value in exchange, within two years prior to the dates of  
5 filing of Debtors' bankruptcy petitions on March 23, 2010 (Aurora) and on March  
6 26, 2010 (Daniel). *JPTO* ¶ 17; *Plaintiff's Trial Exhibit 40, Daniel Garoian, DDS,*  
7 *Inc. General Ledger as of December 31, 2010; JPTO* ¶¶ 16 and 18; *Plaintiff's*  
8 *Exhibit 1, CBIZ Valuation Group, Expert Valuation of Certain Tangible Assets of*  
9 *Daniel Garoian Dental Practice; Trial Declaration of David Werch; Trial Testimony*  
10 *of David Werch, June 19, 2013 at 9:25-9:40 a.m.; Plaintiff's Exhibit 7, Agreement*  
11 *for the Sale and Purchase of Business Assets executed by Daniel Garoian and*  
12 *Gary Garoian, September 22, 2009; Plaintiff's Exhibit 8, Invoices for the Purchase*  
13 *of Dental Assets for Daniel Garoian DDS, dated March 20, 2008 to March 27,*  
14 *2008; Trial Declaration of Jeffery L. Sumpter at 13-14; Plaintiff's Exhibit 3,*  
15 *Bankruptcy Petition of Aurora Adela Garoian, Summary of Schedules and*  
16 *Schedules A through J; Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian,*  
17 *Summary of Schedules and Schedules A through J; Plaintiff's Exhibit 60, Aurora*  
18 *Garoian's Amended Schedules and/or Statements, Amended Schedules B and C;*  
19 *Trial Declaration of Daniel Garoian, ¶¶ 16-18, 20 and 22; Trial Declaration of Gary*  
20 *Garoian, ¶¶ 5-7, 9 and 11.*

21 56. Debtors made the \$31,950 Funds Transfer and the \$67,930 Funds Transfer to  
22 Gary Garoian for no consideration. *JPTO* ¶ 17; *Plaintiff's Exhibit 40, Daniel*  
23 *Garoian, DDS, Inc. General Ledger for the year 2010.* According to Daniel, these  
24 transfers of funds were mistaken in that they were payable to him or his  
25 corporation, Daniel Corp., but should have gone to Gary Corp., as the new owner  
26 of the Dental Practice Assets. *Trial Declaration of Daniel Garoian, ¶ 22.* Because  
27 the transfer of the Dental Practice Assets to Gary Garoian was not made for  
28 reasonably equivalent consideration, the transfer was fraudulent (either

1 constructively or intentionally as the court has otherwise found), and these  
2 payments based on the insider bargain sale of the Dental Practice Assets are  
3 further evidence of the lack of reasonably equivalent consideration for the transfer.

4 57. Debtors were insolvent on the date of the \$31,950 Funds Transfer. *Trial*  
5 *Testimony of Daniel Garoian*, July 18, 2013 at 10:54-10:56 a.m.; *Plaintiff's Exhibit*  
6 *3, Bankruptcy Petition of Aurora Adela Garoian, Summary of Schedules and*  
7 *Schedules A through J; Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian,*  
8 *Summary of Schedules and Schedules A through J; Plaintiff's Exhibit 60, Aurora*  
9 *Garoian's Amended Schedules and/or Statements, Amended Schedules B and C;*  
10 *Trial Declaration of Jeffery L. Sumpter* at 10-12.

11 58. Gary Garoian did not take possession of the \$31,950 Funds Transfer in good faith  
12 or for a reasonably equivalent value. *JPTO* ¶ 17; *Plaintiff's Trial Exhibit 40, Daniel*  
13 *Garoian, DDS, Inc. General Ledger as of December 31, 2010; JPTO* ¶¶ 16 and 18;  
14 *Plaintiff's Exhibit 1, CBIZ Valuation Group, Expert Valuation of Certain Tangible*  
15 *Assets of Daniel Garoian Dental Practice; Trial Declaration of David Werch; Trial*  
16 *Testimony of David Werch*, June 19, 2013 at 9:25-9:40 a.m.; *Plaintiff's Exhibit 7,*  
17 *Agreement for the Sale and Purchase of Business Assets executed by Daniel*  
18 *Garoian and Gary Garoian, September 22, 2009; Plaintiff's Exhibit 8, Invoices for*  
19 *the Purchase of Dental Assets for Daniel Garoian DDS, dated March 20, 2008 to*  
20 *March 27, 2008; Trial Declaration of Jeffery L. Sumpter* at 13-14; *Plaintiff's Exhibit*  
21 *3, Bankruptcy Petition of Aurora Adela Garoian, Summary of Schedules and*  
22 *Schedules A through J; Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian,*  
23 *Summary of Schedules and Schedules A through J; Plaintiff's Exhibit 60, Aurora*  
24 *Garoian's Amended Schedules and/or Statements, Amended Schedules B and C;*  
25 *Trial Declaration of Daniel Garoian*, ¶¶ 16-18, 20 and 22; *Trial Declaration of Gary*  
26 *Garoian*, ¶¶ 5-7, 9 and 11.

27 59. The testimony of Daniel Garoian and Gary Garoian regarding the absence of  
28 actual fraudulent intent for the \$31,950 Funds Transfer was not credible and

1 Debtors made the \$31,950 Funds Transfer to Gary Corp. with the actual intent to  
2 hinder, delay, or defraud their existing creditors in that the transfer was made to an  
3 insider, Daniel's brother, Gary, through his dental practice, Gary Corp., Debtors  
4 retained possession or control of the assets in that Daniel continued his dental  
5 practice in Gary's name, the transfer was made when Debtors had been sued or  
6 threatened with suit for unpaid debts by Matsco, Debtors were insolvent at the  
7 time of the transfer, and the transferee, Gary, did not give reasonably equivalent  
8 value for the transfer. *JPTO ¶¶ 16 and 18; Plaintiff's Exhibit 1, CBIZ Valuation*  
9 *Group, Expert Valuation of Certain Tangible Assets of Daniel Garoian Dental*  
10 *Practice; Trial Declaration of David Werch; Trial Testimony of David Werch, June*  
11 *19, 2013 at 9:25-9:40 a.m.; Plaintiff's Exhibit 7, Agreement for the Sale and*  
12 *Purchase of Business Assets executed by Daniel Garoian and Gary Garoian,*  
13 *September 22, 2009; Plaintiff's Exhibit 8, Invoices for the Purchase of Dental*  
14 *Assets for Daniel Garoian DDS, dated March 20, 2008 to March 27, 2008; Trial*  
15 *Declaration of Jeffery L. Sumpter at 13-14; Plaintiff's Exhibit 3, Bankruptcy Petition*  
16 *of Aurora Adela Garoian, Summary of Schedules and Schedules A through J;*  
17 *Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian, Summary of Schedules*  
18 *and Schedules A through J; Plaintiff's Exhibit 60, Aurora Garoian's Amended*  
19 *Schedules and/or Statements, Amended Schedules B and C; Trial Declaration of*  
20 *Daniel Garoian, ¶¶ 16-18, 20 and 22; Trial Declaration of Gary Garoian, ¶¶ 5-7, 9*  
21 *and 11.*

22 60. Debtors made the \$31,950 Funds Transfer to Gary with the actual intent to hinder,  
23 delay, or defraud their existing creditors. Debtors made the \$67,930 Funds  
24 Transfer to Gary Garoian without court authority and after the dates of filing of  
25 Debtors' bankruptcy petitions on March 23, 2010 (Aurora) and on March 26, 2010  
26 (Daniel). *JPTO ¶ 17; Plaintiff's Exhibit 40, Daniel Garoian, DDS, Inc. General*  
27 *Ledger for the year 2010; JPTO ¶¶ 16 and 18; Plaintiff's Exhibit 1, CBIZ Valuation*  
28 *Group, Expert Valuation of Certain Tangible Assets of Daniel Garoian Dental*

1 *Practice; Trial Declaration of David Werch; Trial Testimony of David Werch, June*  
2 *19, 2013 at 9:25-9:40 a.m.; Plaintiff's Exhibit 7, Agreement for the Sale and*  
3 *Purchase of Business Assets executed by Daniel Garoian and Gary Garoian,*  
4 *September 22, 2009; Plaintiff's Exhibit 8, Invoices for the Purchase of Dental*  
5 *Assets for Daniel Garoian DDS, dated March 20, 2008 to March 27, 2008; Trial*  
6 *Declaration of Jeffery L. Sumpter at 13-14; Plaintiff's Exhibit 3, Bankruptcy Petition*  
7 *of Aurora Adela Garoian, Summary of Schedules and Schedules A through J;*  
8 *Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian, Summary of Schedules*  
9 *and Schedules A through J; Plaintiff's Exhibit 60, Aurora Garoian's Amended*  
10 *Schedules and/or Statements, Amended Schedules B and C; Trial Declaration of*  
11 *Daniel Garoian, ¶¶ 16-18, 20 and 22; Trial Declaration of Gary Garoian, ¶¶ 5-7, 9*  
12 *and 11.*

13 61. Bank of America is an unsecured creditor of the Debtors' bankruptcy estate  
14 holding a claim allowable under 11 U.S.C. § 502 and was also a creditor of the  
15 Debtors at the time of the Transfers (claim for \$8,236.00 for credit card purchases  
16 incurred on 8/01/03). *Plaintiff's Exhibit 3, Bankruptcy Petition of Aurora Garoian,*  
17 *Schedule F; Plaintiff's Exhibit 4, Bankruptcy Petition of Daniel Garoian, Schedule*  
18 *F; see also, JPTO ¶ 11; Plaintiff's Exhibit 3, Bankruptcy Petition of Aurora Adela*  
19 *Garoian, Statement of Financial Affairs, Item No. 4 (Suits and administrative*  
20 *proceedings, executions, garnishments and attachments); Plaintiff's Exhibit 4,*  
21 *Bankruptcy Petition of Daniel Garoian, Statement of Financial Affairs, Item No. 4*  
22 *(Suits and administrative proceedings, executions, garnishments and*  
23 *attachments).*

## 24 **DISCUSSION**

### 25 **I. Constructive Fraudulent Conveyance under California Civil Code §§ 3439.05** 26 **and 3439.07-09.**

27 Plaintiff Timothy Yoo as Chapter 7 Trustee for the bankruptcy estates of Aurora  
28 Adela Garoian and Daniel Garoian ("Plaintiff" or "Trustee") seeks accountings and

1 avoidance of fraudulent transfers to defendants Edward Garoian (“Edward”), Gary  
2 Garoian (“Gary”), and Gary’s corporation, Gary Garoian DDS, Inc. (“Gary Corp.”)  
3 (collectively “Defendants”). The complaint alleges that consolidated debtors Aurora  
4 Adela Garoian and Daniel Garoian (collectively, “Debtors”) fraudulently transferred and  
5 caused their wholly-owned companies, Slauson Medical Group, LLC (“Slauson”) and  
6 Daniel Garoian DDS, Inc. (“Daniel Corp.”), to transfer cash, personal property, and the  
7 real property located at 4129, 4131, 433, 4201-4219 E. Slauson Avenue, Maywood,  
8 California 90270 (the “Office Building”) to Defendants in connection with the purported  
9 sale of Daniel Garoian’s dentistry practice.

10 Trustee has alleged claims under the California Uniform Fraudulent Transfer Act  
11 (“CUFTA”) against Defendants. California Civil Code §§ 3439-3439.12. The authority of  
12 a bankruptcy trustee to assert a fraudulent transfer claim under the CUFTA derives from  
13 Section 544(b) of the Bankruptcy Code, 11 U.S.C. *Neilson v. Union Bank of California*,  
14 *N.A.*, 290 F. Supp. 2d 1101, 1144 (C.D. Cal. 2003) (citation omitted). Section 544(b)  
15 states, in relevant part, the “trustee may avoid any transfer of an interest of the debtor in  
16 property or any obligation incurred by the debtor that is voidable under applicable law by  
17 a creditor holding an unsecured claim . . . .” 11 U.S.C. § 544(b). Where state law  
18 provides a similar avoiding power to a creditor, as in California, 11 U.S.C. § 544(b)  
19 permits a trustee (or a debtor in possession) to stand in the shoes of the creditor and to  
20 assert the same cause of action. *Kupetz v. Wolf*, 845 F.2d 842, 845 and n. 2 (9th Cir.  
21 1988). However, under Section 544(b), a trustee may avoid a fraudulent transfer only if a  
22 creditor with a claim against the bankruptcy estate could have done so actually exists. 11  
23 U.S.C. § 544(b)(1).

24 Under California law, a creditor may avoid transfers of property that are either  
25 actually or constructively fraudulent. California Civil Code, §§ 3439.04 and 3439.05. If it  
26 is shown that a transfer of property is fraudulent as to the creditors, a bankruptcy trustee  
27 may recover the transferred property, or the value of the property transferred, for the  
28 benefit of the estate pursuant to California Civil Code § 3439.07 and 11 U.S.C. § 550.

1 In the complaint against Defendants Edward, Gary and Gary Corp., Trustee  
2 alleges that: (1) the consolidated debtors made the Office Building Transfer, the  
3 \$105,234.72 Funds Transfer, and the \$47,500 Funds Transfer to Edward in violation of  
4 California Civil Code §§ 3439.04(a) and 3439.05; (2) the consolidated debtors made the  
5 Dental Practice Transfer to Gary Corp. in violation of California Civil Code §§ 3439.04(a)  
6 and 3439.05; and (3) the consolidated debtors made the \$99,880 Funds Transfer to Gary  
7 Garoian in violation of California Civil Code §§ 3439.04(a) and 3439.05. *Complaint* at 8-  
8 19. Based on these allegations, Trustee alleges claims for actual and constructive  
9 fraudulent transfer under California Civil Code §§ 3439.04 and 3439.05 against  
10 defendants Edward Garoian, Gary Garoian and Gary Garoian DDS, Inc. *Id.*  
11 Specifically, the Trustee alleges that Defendants are liable on the Trustee's fraudulent  
12 transfer claims because: (1) the Office Building Transfer, the \$105,234.57 Funds  
13 Transfer, the \$47,500 Funds Transfer, the Dental Practice Transfer and the \$99,880  
14 Funds Transfer made to Defendants were made when Debtors were insolvent or were  
15 rendered insolvent; (2) Debtors received less than reasonably equivalent value from  
16 Defendants for the transfers; (3) Debtors had no assets after the transfers were made;  
17 and (4) when Debtors made the transfers, they reasonably should have believed that an  
18 inability for them to meet their debts and obligations would result. *Id.*

19 Because the issue of whether the Funds Transfers prejudiced the Debtors'  
20 financial position is crucial, the court first considers Trustee's claims of constructive  
21 fraudulent transfer against Defendants. Under the CUFTA, a transfer of property is  
22 constructively fraudulent as to a creditor whose claim arose before the transfer if the  
23 debtor made the transfer without receiving reasonably equivalent value in exchange for  
24 the transfer or obligation and the debtor either (a) was engaged in a business for which  
25 the remaining assets of the debtor were unreasonably small in relation to the business,  
26 (b) intended, believed or reasonably should have believed that he or she would incur  
27 debts beyond his or her ability to pay as they came due, or (c) the debtor was insolvent at  
28 the time or became insolvent as a result of the transfer or obligation. California Civil

1 Code §§ 3439.04(a)(2) and 3439.05. In other words, Trustee must prove that (1) the  
2 Funds Transfers were made without reasonably equivalent value and (2) the financial  
3 condition of Debtors, considering three alternative situations: (a) insolvency at the time of  
4 the Funds Transfers or Debtors were rendered insolvent by the Funds Transfers, (b)  
5 Debtors' inability to pay debts as they became due, or (c) relatively small remaining  
6 assets of Debtors compared with the alleged fraudulent transfer. *Id.* For the reasons  
7 discussed below, the court finds that Trustee has met his burden for showing insolvency  
8 of Debtors, the transferors of the subject assets.

9 Trustee argues that the preponderance of the evidence establishes that Debtors  
10 were insolvent at the time of the Transfers or rendered insolvent by the Transfers.  
11 *Plaintiff's Proposed Findings of Fact and Conclusions of Law at ¶¶ 21.* The burden of  
12 proving insolvency is on the creditor asserting a fraudulent transfer claim. *See, e.g.,*  
13 *Neumeyer v. Crown Funding Corp.*, 56 Cal.App.3d 178, 186 (1976), *disapproved of on*  
14 *other grounds by Liodas v. Sahadi*, 19 Cal App.3d 278, 287 n. 3 (1977); *Stearns v. Los*  
15 *Angeles City School District*, 244 Cal.App.2d 696, 737 (1966). Thus, in this case, the  
16 burden of proving insolvency is on the Trustee as the plaintiff asserting the fraudulent  
17 transfer claims. *Id.* In an action to establish a fraudulent transfer, a plaintiff must  
18 establish each requisite element by a preponderance of the evidence. *Whitehouse v. Six*  
19 *Corp.*, 40 Cal.App.4th 527, 533-534 (1995).

20 The CUFTA defines "insolvency" under California Civil Code § 3439.02(a) using  
21 two different tests, the "balance sheet test" and the "equity" or "cash flow test." Under the  
22 "balance sheet" method, "a debtor is insolvent if, at fair valuations, the sum of the  
23 debtor's debts is greater than all of the debtor's assets." California Civil Code §  
24 3439.02(a); 11 U.S.C. § 101(32)(A); *Bay Plastics, Inc. v. BT Commercial Corp. (In re Bay*  
25 *Plastics, Inc.)*, 187 B.R. at 315, 328 n. 22 (Bankr. C.D. Cal. 1995). In determining  
26 whether a debtor's liabilities exceed the assets, the court must evaluate the debtor's  
27 assets and liabilities based upon a practical assessment of their actual value – a "fair  
28 valuation" – rather than in accordance with generally accepted accounting principles. *In*

1 *re Bay Plastics, Inc.*, 187 B.R. at 330. Intangible balance sheet assets, such as goodwill,  
2 which may have no market value (either on a liquidation or going concern basis)  
3 generally should be excluded from the calculation. *Id.* at 330-331 and n. 21 (citations  
4 omitted). Under the alternative “equity” or “cash flow test,” California Civil Code §  
5 3439.02(c) provides that “a debtor who is generally not paying his or her debts as they  
6 become due is presumed to be insolvent.”

7         The Trustee has established by a preponderance of the evidence that Debtors  
8 were rendered insolvent by the Funds Transfers. In this case, the court relies upon three  
9 forms of evidence for determining the Debtors’ financial condition and insolvency before  
10 and after the Transfers: the Debtors’ Bankruptcy Schedules, the trial declaration and  
11 testimony of Daniel Garoian, and the trial declaration of Jeffery L. Sumpter. A balance  
12 sheet analysis for insolvency requires a comparison between assets and debt, and in this  
13 case, Debtors’ schedules of assets and liabilities accompanying their bankruptcy petitions  
14 may be used to make this comparison. See California Civil Code § 3439.02(a). In this  
15 case, the amount of debt listed in the Debtors’ Schedules was \$1,732,232.97. *Findings*  
16 *of Fact (“Findings”)* ¶ 22. The amount of assets listed in Debtors’ schedules was at most  
17 \$968,363.54. *Findings* ¶ 25. Because Debtors’ liabilities were greater than their assets,  
18 Debtors were insolvent at the time their bankruptcy petitions were filed on March 23 and  
19 26, 2010. *Id.* As stated by Debtors on their bankruptcy schedules, almost all of their  
20 liabilities were incurred at least one year prior to the filing of their bankruptcy petitions on  
21 March 23 and 26, 2010. *Findings* ¶ 23. The only liability incurred by Debtors within one  
22 year of the bankruptcy petitions was an auto loan incurred by Aurora in “1/2010” in the  
23 amount of \$9,283.39. *Findings* ¶ 24. Since all of the Transfers occurred less than one  
24 year before the dates of filing of the bankruptcy petitions, the court can and does find that  
25 Debtors had debts of \$1,722,949.58 (\$1,732,232.97 minus the \$9,283.39 incurred in  
26 2010) at least a year prior to the dates of filing of the bankruptcy petitions. *Findings* ¶ 26.  
27 Because Debtors had \$1,722,949.58 in liabilities at least one year before the dates that  
28 the bankruptcy petitions were filed, the subject transfers occurred less than one year

1 before the petition dates, and Debtors had no more than \$968,363.54 in assets as of the  
2 petition dates, the court determines that that Debtors were either insolvent at the time the  
3 Transfers occurred or were rendered insolvent by the Transfers based on balance sheet  
4 insolvency. *Findings* ¶ 26. The court's insolvency analysis is supplemented by Daniel  
5 Garoian's testimony at trial and the testimony of Trustee's expert witness, Jeffery L.  
6 Sumpter. *Findings* ¶¶ 27 and 28.

7 Accordingly, this court finds that the Trustee met his burden of proving by a  
8 preponderance of the evidence that Debtors were either insolvent on the dates of the  
9 Transfers, or were rendered insolvent by the Transfers.

10 **A. 11 U.S.C. § 544(b) and California Civil Code §§ 3439.05 and**  
11 **3439.07-09**

12 A bankruptcy trustee may avoid a transfer of a debtor's interest in property that is  
13 voidable under applicable law by a creditor holding an unsecured claim allowable under  
14 11 U.S.C. § 502 or that is not allowable under § 502(e). 11 U.S.C. § 544(b)(1). According  
15 to Debtors' Schedule F, Bank of America holds a prepetition unsecured nonpriority claim  
16 allowable under § 502, and the trustee may avoid a transfer if Bank of America could  
17 avoid it under applicable California law. The trustee merely needs one triggering creditor  
18 in order to avoid the entire transfer, regardless of amount. *In re Acequia, Inc.*, 34 F.3d  
19 800, 809-810 (9th Cir. 1994). Under California law, a transfer is fraudulent as to an  
20 existing creditor if the debtor makes a transfer while insolvent without receiving  
21 reasonably equivalent value, and the creditor may avoid that transfer. California Civil  
22 Code §§ 3439.05 and 3439.07.

23 **1. Office Building Transfer, \$105,234.72 Funds Transfer, and \$47,500**  
24 **Funds Transfer to Edward.**

25 The fourth cause of action seeks avoidance of the Office Building Transfer,  
26 \$105,234.72 Funds Transfer, and \$47,500 Funds Transfer made to Edward, as  
27 constructively fraudulent transfers pursuant to 11 U.S.C. § 544(b) and California Civil  
28 Code §§ 3439.05 and 3439.07-09. *Complaint* at ¶¶ 40-43. This court determines that

1 Trustee has not met his burden of proving that the \$105,234.72 Funds Transfer is  
2 avoidable under 11 U.S.C. § 544(b) and California Civil Code §§ 3439.05 and 3439.07-09  
3 because it was transferred for reasonably equivalent value in that the funds retired prior  
4 loans made by Edward Garoian to Daniel Garoian in the same amount. *Findings* ¶ 36.

5 The Office Building Transfer and the \$47,500 Funds Transfer, on the other hand,  
6 were not given to Edward Garoian in exchange for reasonably equivalent value. There  
7 was no consideration for the \$47,500 Funds Transfer. The court rejects Defendants'  
8 argument that the \$47,500 Funds Transfer was on account of rents that Edward Garoian  
9 was entitled to receive for the Office Building, because the stipulated facts in the Joint  
10 Pretrial order signed by Defendants states that Edward Garoian received \$47,500 in  
11 payments from Daniel Garoian or Daniel Corp. for no consideration. *Findings* ¶ 39.

12 While Edward gave some consideration for the Office Building Transfer, it was in an  
13 amount that is less than reasonably equivalent value because the consideration was only  
14 \$500,000 and the Office Building was valued at \$1 million on the date of the transfer,  
15 which made the transfer a fraudulent transfer as a bargain sale to an insider while  
16 Debtors were insolvent or rendered insolvent. *Findings* ¶ 32. The rent payments are for  
17 alleged rents based on a transfer that was not given for reasonably equivalent value,  
18 which shows as well that reasonably equivalent value was not given for these transfers.  
19 The Office Building Transfer and the \$47,500 Funds Transfer are therefore avoidable by  
20 Plaintiff pursuant to 11 U.S.C. § 544(b) and California Civil Code §§ 3439.05 and  
21 3439.07-09.

## 22 **2. Dental Practice Transfer to Gary Corp.**

23 The thirteenth cause of action alleges that the Dental Practice Transfer to Gary  
24 Corp. is avoidable under 11 U.S.C. § 544(b) and California Civil Code §§ 3439.05 and  
25 3439.07-09. *Complaint* at ¶¶ 72-75. The consideration paid for the Dental Practice  
26 Assets was less than reasonably equivalent value because the Dental Practice Assets  
27 had a value of at least \$167,370.00 at the time of the transfer and the consideration paid  
28 was no more than \$80,000.00. Plaintiff is therefore entitled to avoid the Dental Practice

1 Transfer to Gary Corp. pursuant to 11 U.S.C. § 544(b) and California Civil Code  
2 §§ 3439.05 and 3439.07-09 as a fraudulent transfer based on a bargain sale to an insider  
3 while Debtors were insolvent or rendered insolvent.

4 **3. \$31,950 Funds Transfer to Gary**

5 The twenty-third cause of action seeks avoidance of the \$31,950 Funds Transfer  
6 to Gary pursuant to 11 U.S.C. § 544(b) and California Civil Code §§ 3439.05 and  
7 3439.07-09. *Complaint* at ¶¶ 109-112. Debtors received no consideration for the \$31,950  
8 Funds Transfer because Gary's right to the funds is based on the fraudulent transfer of  
9 the Dental Practice Assets, which was a bargain sale to an insider while Debtors were  
10 insolvent or rendered insolvent. *Findings* ¶ 56. As such, Plaintiff is entitled to avoid the  
11 \$31,950 Funds Transfer under 11 U.S.C. § 544(b) and California Civil Code §§ 3439.05  
12 and 3439.07-09.

13 **B. 11 U.S.C. § 544(b) and California Civil Code Sections 3440 and**  
14 **3439.07-09**

15 The eighteenth cause of action seeks avoidance of the Dental Practice Transfer  
16 pursuant to 11 U.S.C. § 544(b) and California Civil Code §§ 3440 and 3439.07-09  
17 because Gary Corp. did not take possession of the Dental Practice Assets. *Complaint* at  
18 ¶¶ 91-94. A trustee may avoid a transfer of the debtor's interest in property that is  
19 voidable under applicable law by a creditor holding an unsecured claim allowable under  
20 11 U.S.C. § 502 or that is not allowable under § 502(e). 11 U.S.C. § 544(b)(1). Bank of  
21 America's claim existed prior to all of the transfers that are the subject of this adversary  
22 proceeding, and the transfers were all made at a time when the Debtors were insolvent.

23 Under California law, a transfer of personal property is void as to a debtor's  
24 creditors if the transfer is "not accompanied by an immediate delivery followed by an  
25 actual and continued change in possession of the property." California Civil Code  
26 § 3440(a). This includes creditors at the time of the transfer and those who become  
27 creditors while the transferor remains in possession of the personal property. *Id.* Bank of  
28 America was a creditor of the Debtors on the date of the Dental Practice Transfer, and

1 the transfer is avoidable by it if Gary Corp. did not take possession of the Dental Practice  
2 Assets.

3         The preponderance of the evidence does not indicate that Gary Corp. took  
4 possession of the personal property assets included in the Dental Practice Assets from  
5 Daniel in the transfer. The evidence shows that the sale of the Dental Practice Assets  
6 was a bargain sale to an insider wherein control of the assets was maintained by family  
7 member insiders as shown by Daniel Garoian continuing to exercise possession and  
8 control over the Dental Practice Assets after the sale was completed. Daniel was  
9 nominally an employee of Gary Corp., but continued to see the same patients at the  
10 same location using the same equipment and other personal property. Gary and Gary  
11 Corp., meanwhile, maintained a separate dental practice in another city just as they had  
12 done prior to the sale. Thus, there was no actual change in possession of the personal  
13 property assets included in the Dental Practice Assets at any point in time after the  
14 Dental Practice Transfer because the transfer was a bargain sale to an insider who  
15 continued possession of the assets by the transferor. It may seem paradoxical to hold  
16 that Gary and his corporation liable under California Civil Code § 3440 for lack of change  
17 of possession if the court otherwise holds that the assets were fraudulently transferred to  
18 him and his corporation. However, a finding of liability under § 3440 is consistent with the  
19 facts here where there was no an arm's-length sale for reasonably equivalent value with  
20 a change in possession to an independent party and that the transferor, Daniel, remains  
21 in possession of the assets under the control of his brother, an insider party. Therefore,  
22 Plaintiff is entitled to avoid the transfer of the personal property assets in the Dental  
23 Practice Transfer pursuant to 11 U.S.C. § 544(b) and California Civil Code §§ 3440 and  
24 3439.07-09.

25 **II. 11 U.S.C. § 548(a)(1)(B)(i) and (ii)(I)**

26         A trustee may avoid a transfer of the debtor's interest in property made within two  
27 years before the petition date if the debtor "received less than a reasonably equivalent  
28 value in exchange for such transfer" and was insolvent on the date of the transfer or

1 became insolvent as a result of the transfer. 11 U.S.C. § 548(a)(1)(B)(i) and (ii)(I).  
2 “Reasonably equivalent value is the value of the property on the date of the transfer from  
3 the perspective of the creditors.” *In re JTS Corp.*, 617 F.3d 1102, 1109 (9th Cir. 2010).  
4 The court may consider the fair market value and all of the specific circumstances of the  
5 case in determining reasonably equivalent value. *Id.* (citation omitted) A debtor is  
6 insolvent if his or her debts are greater than the fair market value of all of his or her  
7 property, excluding exempt property and property that has been transferred with the  
8 intent to hinder, delay, or defraud creditors. 11 U.S.C. § 101(32)(A).

9 **A. Office Building Transfer, \$105,234.72 Funds Transfer, and \$47,500**  
10 **Funds Transfer to Edward**

11 The first cause of action seeks avoidance of the Office Building Transfer,  
12 \$105,234.72 Funds Transfer, and \$47,500 Funds Transfer made to Edward, as  
13 constructively fraudulent transfers pursuant to 11 U.S.C. § 548(a)(1)(B)(i) and (ii)(I).  
14 *Complaint* at ¶¶ 28-31. All three transfers are transfers of the Debtors’ interest in  
15 property that occurred within two years of the dates of the filing of the bankruptcy  
16 petitions, and at a time that the Debtors were insolvent. The only remaining issue is  
17 whether the Debtors received reasonably equivalent value in exchange for the transfers.

18 The court finds that Plaintiff has shown by a preponderance of the evidence that  
19 the Office Building Transfer and the \$47,500 Funds Transfer were not given to Edward in  
20 exchange for reasonably equivalent value. There was no consideration for the \$47,500  
21 Funds Transfer. The court rejects Defendants’ argument that the \$47,500 Funds  
22 Transfer was on account of rents that Edward was entitled to receive for the Office  
23 Building, because the Joint Pretrial Order signed by Defendants states that Edward  
24 received \$47,500 in payments from Daniel or Daniel Corp. for no consideration. *Findings*  
25 ¶ 39. There was consideration for the Office Building Transfer, but in an amount that is  
26 less than reasonably equivalent value because the consideration was only \$500,000 and  
27 the Office Building was valued at \$1 million on the date of the transfer. The Office  
28 Building Transfer and the \$47,500 Funds Transfer are therefore avoidable by Plaintiff

1 pursuant to 11 U.S.C. § 548(a)(1)(B)(i) and (ii)(I).

2 The court finds that Plaintiff has not shown by a preponderance of the evidence  
3 that the \$105,234.72 Funds Transfer is avoidable under 11 U.S.C. § 548(a)(1)(B)  
4 because it was transferred for reasonably equivalent value in that the funds retired prior  
5 loans to Daniel Garoian in the same amount.

6 **B. Dental Practice Transfer to Gary Corp.**

7 The tenth cause of action seeks avoidance of the Dental Practice Transfer to Gary  
8 Corp. as a constructively fraudulent transfer pursuant to 11 U.S.C. § 548(a)(1)(B)(i) and  
9 (ii)(I). *Complaint* at ¶¶ 60-63. The Dental Practice Transfer was a transfer of the  
10 Debtors' interest in property that occurred within two years of the Petition Date, and at a  
11 time that the Debtors were insolvent. The consideration paid for the Dental Practice  
12 Assets was less than a reasonably equivalent value because the Dental Practice Assets  
13 had a value of at least \$167,370.00 at the time of the transfer and the consideration paid  
14 was no more than \$80,000.00. Plaintiff is therefore entitled to avoid the Dental Practice  
15 Transfer to Gary Corp. pursuant to 11 U.S.C. § 548(a)(1)(B)(i) and (ii)(I).

16 **C. \$31,950 Funds Transfer to Gary.**

17 The twentieth cause of action seeks avoidance of the \$31,950 Funds Transfer to  
18 Gary as a constructively fraudulent transfer pursuant to 11 U.S.C. § 548(a)(1)(B)(i) and  
19 (ii)(I). *Complaint* at ¶¶ 97-100. The \$31,950 Funds Transfer was a transfer of the  
20 Debtors' interest in property that occurred within two years of the dates of filing of the  
21 bankruptcy petition, and at a time that the Debtors were insolvent. Debtors received no  
22 consideration for the \$31,950 Funds Transfer. *Findings* ¶ 56. Accordingly, Plaintiff is  
23 entitled to avoid the \$31,950 Funds Transfer to Gary pursuant to 11 U.S.C. §  
24 548(a)(1)(B)(i) and (ii)(I).

25 **III. Actual Fraudulent Conveyance Under 11 U.S.C. § 548(a)(1)(A) and California**  
26 **Civil Code Section 3439.04(a)(1)**

27 Plaintiff's claim for actual fraudulent transfer against Defendants was brought  
28 under 11 U.S.C § 548(a) and California Civil Code § 3439.04(a)(1), which provide that a

1 transfer is “actually fraudulent” as to a creditor if the debtor made the transfer “with actual  
2 intent to hinder, delay, or defraud any creditor of the debtor.” 11 U.S.C. § 548(a)(1)(A);  
3 California Civil Code § 3439.04(a)(1). Because there is usually no direct evidence  
4 demonstrating actual intent, courts have frequently inferred fraudulent intent from  
5 circumstances surrounding the transfer. *In re Acequia, Inc.*, 34 F.3d at 805-806. These  
6 indicia of intent, or “badges of fraud,” include: “(1) actual or threatened litigation against  
7 the debtor; (2) a purported transfer of all or substantially all of the debtor’s property; (3)  
8 insolvency or other unmanageable indebtedness on the part of the debtor; (4) a special  
9 relationship between the debtor and the transferee; and, after the transfer, (5) debtor  
10 retaining the property involved in the putative transfer.” *Id.* “The presence of a single  
11 badge of fraud may spur mere suspicion; the confluence of several can constitute  
12 conclusive evidence of actual intent to defraud, absent ‘significantly clear’ evidence of a  
13 legitimate supervening purpose.” *Id.* (citation omitted).

14 Thus, “proof by a creditor of certain objective facts (for example, a transfer to a  
15 close relative, a secret transfer, a transfer of title without transfer of possession, or  
16 grossly inadequate consideration) would raise a rebuttable presumption of actual  
17 fraudulent intent.” *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 541 (1994). In a  
18 fraudulent transfer inquiry based on actual intent, the court should focus on the state of  
19 mind of the transferor. *In re Cohen*, 199 B.R. 709, 716-717 (9th Cir. BAP 1996).

20 California Civil Code § 3439.04(b) sets forth a nonexclusive, eleven-factor test for  
21 determining whether a transfer was made with an actual intent to hinder, delay, or  
22 defraud a creditor. Consideration may be given, among other factors, to any or all of the  
23 following:

- 24 (1) Whether the transfer or obligation was to an insider;
- 25 (2) Whether the debtor retained possession or control of the  
26 property transferred after the transfer;
- 27 (3) Whether the transfer or obligation was disclosed or  
concealed;
- 28 (4) Whether before the transfer was made or obligation was

- 1 incurred, the debtor had been sued or threatened with suit;
- 2 (5) Whether the transfer was of substantially all of the debtor's  
3 assets;
- 4 (6) Whether the debtor absconded;
- 5 (7) Whether the debtor removed or concealed assets;
- 6 (8) Whether the value of the consideration received by the debtor  
7 was reasonably equivalent to the value of the asset  
8 transferred or the amount of the obligation incurred;
- 9 (9) Whether the debtor was insolvent or became insolvent shortly  
10 after the transfer was made or the obligation was incurred;
- 11 (10) Whether the transfer occurred shortly before or after a  
12 substantial debt was incurred;
- 13 (11) Whether the debtor transferred the essential assets of the  
14 business to a lienholder who transferred the assets to an  
15 insider of the debtor.

13 California Civil Code, § 3439.04(b). In considering the indicia of a fraudulent transfer, the  
14 court “should evaluate all of the relevant circumstances involving a challenged transfer”  
15 and “may appropriately take into account all indicia negating as well as those  
16 suggesting fraud. . . .” *Annod Corp. v. Hamilton & Samuels*, 100 Cal.App.4th 1286, 1298  
17 (2002), *quoting*, Legislative Committee comment for California Civil Code, § 3439.04,  
18 12A West’s Ann. Civ. Code following California Civil Code, § 3439.04 (referring to  
19 statutory language before 2004 amendment of § 3439.04). This list of nonexclusive  
20 factors in California Civil Code § 3439.04(b) is intended to guide the court in determining  
21 actual intent. *In re Beverly*, 374 B.R. 221, 235-236 (9th Cir. BAP 2007), *affirmed in part*  
22 *and dismissed in part*, 551 F.3d 1092 (9th Cir. 2008).

23 The California Uniform Fraudulent Transfer Act’s list of “badges of fraud” in  
24 California Civil Code § 3439.04(b) provides neither a counting rule, nor a mathematical  
25 formula. *Id.* No minimum number of factors tips the scales toward actual intent. A trier  
26 of fact may be entitled to find actual intent based on the evidence in the case, even if no  
27 “badges of fraud” are present. Conversely, specific evidence may negate an inference of  
28 fraud notwithstanding the presence of a number of “badges of fraud.” *Id.* at 236, *citing*,

1 *Filip v. Bucurenciu*, 129 Cal. App. 4th at 825, 834 (2005).

2 Trustee as the plaintiff bears the burden of proving a claim based on actual  
3 fraudulent transfer. *In re Acequia, Inc.*, 34 F.3d at 805-806; *Whitehouse v. Six Corp.*, 40  
4 Cal.App.4th at 533-534 (creditor has burden of proving fraudulent transfer claims).  
5 However, under actual fraud, Trustee need not prove that the debtor was insolvent,  
6 rendered insolvent, or otherwise in a vulnerable financial condition. *Id.*; *In re Cohen*, 199  
7 B.R. at 716-717. The standard of proof for actual intent under California Civil Code §  
8 3439.04(a) is by a preponderance of the evidence. *Decker v. Voisenat (In re Serrato)*,  
9 214 B.R. 219, 229 (Bankr. N.D. Cal. 1997), *citing inter alia, Whitehouse v. Six Corp.*, 40  
10 Cal.App.4th at 533.

11 With regard to the various Transfers, a few of the factors under California Civil  
12 Code § 3439.04(b) do not apply to the facts of this case. For example, there is no  
13 evidence before the court that Debtors absconded or concealed assets in any way.  
14 Therefore, the court will focus its analysis only on the relevant factors.

15 a. Special Relationship / Insider Status

16 The existence of a special relationship between a transferor and a transferee can  
17 be evidence of actual intent to hinder, delay, or defraud creditors. *In re Acequia, Inc.*, 34  
18 F.3d at 805-806. This can include family, friendship, or a close associate relationship.  
19 *Id.*; *Kaisha v. Dodson*, 423 B.R. 888, 901 (N.D. Cal. 2001)(citations omitted). Similarly, a  
20 transfer to an insider of the debtor is evidence of actual intent under the CUFTA.  
21 California Civil Code § 3439.04(b).

22 The bankruptcy court finds that this factor weighs in favor of Trustee. Edward and  
23 Gary Garoian are brothers of Daniel, and Aurora and Daniel were married at all times  
24 relevant herein. Edward, Gary, and Gary Corp. are insiders of Debtors. *Findings ¶ 8.*

25 b. Possession or Control of the Property

26 The second factor weighs in favor of the Trustee. Debtors retained possession or  
27 control of the transferred property, the business assets, after the transfer to Gary Corp.  
28 After the business assets were sold to Gary Corp., Daniel began working for Gary Corp.

1 as a dentist at the same office address as Daniel Corp. *Findings* ¶ 52. Additionally,  
2 although the business assets of Daniel Corp. were allegedly sold for \$80,000 on  
3 September 22, 2009, its 2009 income tax return dated February 22, 2011, listed total  
4 assets as of January 1, 2009 of \$881,472 (composed of cash of \$31,078, accounts  
5 receivable of \$346,759 and buildings and other depreciable assets of \$503,635, net of  
6 depreciation) and as of December 31, 2009, total assets were \$811,785 (composed of  
7 cash of \$12,592, accounts receivable of \$322,960 and buildings and other depreciable  
8 assets of \$476,233, net of depreciation). *Findings* ¶ 47. Daniel continued to work as a  
9 dentist at the same premises under the nominal control of his brother, and treated the  
10 dental practice assets as his corporation's on its tax return for that year, even though the  
11 assets were purportedly sold to Gary. Accordingly, the evidence at trial indicates that  
12 which the Debtors retained possession and control of the dental practice assets after the  
13 purported transfer.

14 c. Substantially All of Debtor's Assets

15 The fifth factor weighs in favor of the Trustee. Once the assets of Slauson and  
16 Daniel Corp. were transferred pursuant to the Office Building Transfer, the \$105,234.72  
17 Funds Transfer, the \$47,500 Funds Transfer, the \$99,880 Funds Transfer and the Dental  
18 Practice Transfer, Debtors had transferred substantially all of these assets in these  
19 transfers and were left with assets of little value. *Findings* ¶ 19. Trustee has shown that  
20 this factor of the transfer of substantially all of Debtors' assets.

21 d. The Value of the Consideration Received by the Debtors was Not  
22 Reasonably Equivalent to the Value of the Assets Transferred

23 The eighth factor weighs in favor of the Trustee. The Office Building Transfer, the  
24 \$47,500 Funds Transfer, the Dental Practice Transfer, and the \$31,950 Funds Transfer  
25 were all made for less than reasonably equivalent value. *Findings* ¶¶ 32, 42, 45 and 55.

26 e. Insolvency

27 The ninth factor weighs in favor of the Trustee. Debtors were either insolvent on  
28 the dates of the Transfers, or were rendered insolvent by the Transfers. *Findings* ¶¶ 41,

1 51 and 57.

2 f. Conclusion

3 The court finds that, on balance, the applicable factors weigh in favor of the  
4 Trustee. The evidence shows that the various asset transfers took place between  
5 Debtors and their insiders, Daniel's brothers, Debtors' insider transfers were made for  
6 less than reasonably equivalent value, the insider transfers were for substantially all of  
7 the Debtors' assets, the insider transfers occurred when Debtors were insolvent or the  
8 transfers rendered them insolvent, and Debtors retained possession or control of the  
9 assets after the insider transfers had taken place. For these reasons, the court finds that  
10 Plaintiff has established by a preponderance of the evidence based on the "badges of  
11 fraud" that the transfers, as bargain sales to insiders, were intentional fraudulent transfers  
12 under 11 U.S.C. § 548(a)(1)(A) and California Civil Code Section § 3439.04(a)(1).

13 **IV. 11 U.S.C. § 549**

14 The twenty-eighth cause of action seeks avoidance of the \$67,930 Funds Transfer  
15 to Gary Garoian as a post-petition transfer pursuant to 11 U.S.C. § 549(a). *Complaint* at  
16 ¶¶ 127-129. A trustee may avoid a transfer of property of the estate that occurs after  
17 commencement of the case that is not authorized by the Bankruptcy Code or by the  
18 court. 11 U.S.C. § 549(a). The \$67,930 Funds Transfer was a transfer of property of the  
19 bankruptcy after the dates of the filing of the bankruptcy petitions on March 23 and 26,  
20 2010. The transfer was not authorized by this court under the Bankruptcy Code.  
21 Defendants argue that the Debtors were mere conduits for insurance payments to which  
22 Gary Garoian as the new owner of the Dental Practice Assets was entitled but were  
23 mistakenly issued to Daniel Garoian, the former owner. However, the court rejects this  
24 argument because the transfer occurred postpetition and because the funds were due to  
25 the Dental Practice Assets which were transferred in a fraudulent transfer to Debtors'  
26 insider, Gary and his corporation, for less than reasonably equivalent consideration, while  
27 Debtors were insolvent or rendered insolvent. Accordingly, the postpetition payments  
28 due to the Dental Practice Assets transferred to Gary Garoian were also fraudulent

1 transfers because these funds were attributable to the Dental Practice Assets which were  
2 fraudulently transferred to Gary. Accordingly, these funds are funds of Debtors'  
3 bankruptcy estate, and Plaintiff is therefore entitled to avoid the \$67,930 Funds Transfer  
4 as a post-petition transfer pursuant to 11 U.S.C. §549(a).

5 **V. Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550**

6 11 U.S.C. § 550(a) provides that where a transfer is avoided under 11 U.S.C. §§  
7 544, 548, or 549, the bankruptcy trustee may recover the transferred property or the  
8 value of the property from the initial transferee. 11 U.S.C. § 550(a)(1). The trustee is  
9 limited to a single satisfaction for each transfer. 11 U.S.C. § 550(d). Recovery is also  
10 limited to the extent that it benefits the estate. *In re Acequia, Inc.* 34 F.3d at 811.  
11 However, the court has insufficient evidence before it to determine exactly what amount  
12 will benefit the Debtors' bankruptcy estate, and it declines to make that determination at  
13 this time. This ruling is without prejudice to a later motion seeking to limit the amount  
14 recoverable should evidence come to light indicating that there would be no further  
15 benefit to the estate.

16 The following transfers are avoided under 11 U.S.C. §§ 544, 548, and 549 in this  
17 adversary proceeding:

- 18 1. Office Building Transfer to Edward;
- 19 2. \$47,500 Funds Transfer to Edward;
- 20 3. Dental Practice Transfer to Gary Corp.;
- 21 4. \$31,950 Funds Transfer to Gary;
- 22 5. \$67,930 Funds Transfer to Gary.

23 If the transferee is a good faith transferee, the trustee's recovery under 11 U.S.C.  
24 § 544(b) is limited. California Civil Code § 3439.08(d); *In re JTS Corp.* 617 F.3d at 1115.  
25 Good faith is a defense and the transferee has the burden of showing good faith. See  
26 California Civil Code § 3439.08(a) (Legislative Committee Comment – Assembly 1987  
27 Amendment) ("person who invokes this [good faith] defense carries the burden of  
28 establishing good faith"); *In re Agricultural Research and Technology Group, Inc.*, 916

1 F.2d 528, 535 (9th Cir.1990) (transferee bears the burden of showing good faith). An  
2 early Supreme Court case held that a transferee's, ". . . knowledge or actual notice of  
3 circumstances sufficient to put him, as a prudent man, upon inquiry as to whether his  
4 brother intended to delay or defraud his creditors . . . should be deemed to have notice  
5 . . . as would invalidate the sale to him." *Shauer v. Alterton*, 151 U.S. 607, 621 (1894).  
6 This indicates that courts should look to what the transferee objectively "knew or should  
7 have known" in questions of good faith, rather than examining what the transferee  
8 actually knew from an objective standpoint. *In re Agricultural Research and Technology*  
9 *Group, Inc.* 916 F.2d at 535-536.

10 Daniel Garoian testified at trial that in mid-2008, the real estate market in  
11 California went through many changes that were adverse to his dental practice business.  
12 *Findings* ¶ 15. The state-funded Denti-Cal system no longer paid for most dental  
13 services, which "had a huge impact on [his] dental practice" because patients were no  
14 longer being approved for financing. *Id.* Daniel Garoian had major medical issues  
15 throughout 2008, including hand and wrist injuries that compromised his ability to  
16 continue to earn a successful living as a dentist. *Findings* ¶ 17. Debtors' bankruptcy  
17 schedules indicate that Debtors had approximately \$1.7 million in liabilities by March  
18 2009, one year before the dates of the filing of the bankruptcy petitions. Edward Garoian  
19 stated that he knew his brother Daniel was "having trouble staying afloat." *Findings*, ¶  
20 33. Given the acute financial problems Daniel Corp. was facing in 2008 and 2009, the  
21 medical issues Daniel Garoian was experiencing, and the \$1.7 million in debt Debtors  
22 shouldered at the time of the Transfers, this court finds that the preponderance of the  
23 evidence shows that Edward Garoian either knew or should have known that the Office  
24 Building Transfer and the \$47,500 Funds Transfer to him for less than reasonably  
25 equivalent value would interfere with payments to Debtors' creditors and that Edward  
26 Garoian has not rebutted this showing to demonstrate his good faith as a transferee.  
27 While the evidence indicates that Edward Garoian was trying to help his brother Daniel  
28 by buying the Office Building, this was to the detriment of creditors through a bargain sale

1 by Debtors to an insider, resulting in a loss of value in this asset to creditors of at least  
2 \$500,000 (fair market value of at least \$1 million against consideration paid by Edward of  
3 \$500,000).

4 Accordingly, this court determines that Edward Garoian was not a good faith  
5 transferee and is not entitled to retain a lien against the Office Building in the amount of  
6 consideration he paid. Since the Office Building was valued at \$1 million, Plaintiff is  
7 entitled to either a judgment in the amount of \$1 million or Edward's turnover of the Office  
8 Building to Trustee.

9 Gary Garoian stated that in September 2009, he was approached by his brother,  
10 Daniel, who said that he feared that he could no longer continue to be the head of his  
11 own dental practice due to financial, marital and health issues. *Findings* ¶ 44. Gary  
12 Garoian admitted that he was aware that Daniel's dentistry practice had at least \$292,000  
13 in loans outstanding at that time. *Id.* In particular, Gary Garoian stated that when he  
14 ultimately bought the practice, "the Matsco loan was in serious default" and Matsco had  
15 initiated litigation against Daniel Corp. *Id.* Despite this knowledge, Gary Garoian  
16 accepted transfer of the Dental Practice and the \$99,880 Funds Transfer on behalf of  
17 Gary Corp. Given Gary Garoian's knowledge of the financial difficulties Daniel Corp. was  
18 facing, including \$1.7 million in liabilities, as well as the medical issues Daniel was  
19 experiencing, and the fact that the Matsco loan was in serious default at the time of the  
20 Transfers, this court finds that the preponderance of the evidence shows that Gary  
21 Garoian either knew or should have known that the Dental Practice Transfer and the  
22 \$99,880 Funds Transfer to him would interfere with payments due to creditors and that  
23 Gary Garoian has not rebutted this showing to demonstrate his good faith as a  
24 transferee. While the evidence indicates that Gary Garoian was trying to help his brother  
25 Daniel by buying the Dental Practice Assets, this was to the detriment of creditors  
26 through a bargain sale by Debtors to an insider, resulting in a loss of value in these  
27 assets to creditors of at least \$80,000 (fair market value of at least \$167,370.00 against  
28 consideration paid by Gary of \$80,000 at most).

1 Gary Corp. paid consideration of \$80,000.00 for the Dental Practice Transfer. As  
2 is discussed above, the evidence before the court is insufficient to determine the full  
3 value of the Dental Practice Assets at the time of the transfer. Judgment in this  
4 adversary proceeding may be satisfied by turning over to Plaintiff either the transferred  
5 asset itself or the value of that asset.

6 **VI. Accounting**

7 The thirtieth cause of action requests an accounting of the net income obtained by  
8 Edward Garoian from the Office Building pursuant to 11 U.S.C. §§ 105(a) and 542(a).  
9 *Complaint* at ¶¶ 132-133. The thirty-first cause of action seeks an accounting of the  
10 income obtained by Gary Corp. from the Dental Practice Assets. *Id.* at ¶¶ 134-135. 11  
11 U.S.C. § 105(a) provides that “[t]he court may issue any order, process, or judgment that  
12 is necessary or appropriate to carry out provisions of” Title 11 of the United States Code.  
13 11 U.S.C. § 542(a) provides that an entity in possession of property of the bankruptcy  
14 estate shall turn over and account for the property or the value of the property to the  
15 trustee. Any transfer avoided under 11 U.S.C. §§ 544, 548, or 549 is preserved for the  
16 benefit of the bankruptcy estate. 11 U.S.C. § 551. The bankruptcy court determines that  
17 Edward Garoian and Gary Corp. must turnover and account for the property transferred  
18 to them now that those transfers have been avoided and the subject property is property  
19 of the bankruptcy estate. Plaintiff is therefore entitled to an accounting of the income and  
20 expenses generated by the Office Building and the Dental Practice Assets pursuant to 11  
21 U.S.C. §§ 105(a) and 542(a).

22 **VII. Remaining Cause of Action**

23 The bankruptcy court denies the Thirty-Second Cause of Action for Conspiracy to  
24 Defraud the Trustee under Section 105(a) of the Bankruptcy Code for failure to state a  
25 claim upon which relief can be granted. Such a claim is not expressly recognized under  
26 the Bankruptcy Code, and the court does not impliedly recognize such a claim.  
27 Moreover, the court finds that this cause of action has been abandoned since Trustee did  
28 not submit proposed findings of fact and conclusions of law as to this cause of action.

1 **VIII. Conclusion**

2 The above-recited findings of fact and conclusions of law are proposed by the  
3 United States Bankruptcy Court and are subject to review and approval of the United  
4 States District Court for the Central District of California. See *Stern v. Marshall*, 131 S.Ct.  
5 2594 (2011); and *Executive Benefits Insurance Agency v. Arkison*, 134 S.Ct. 2165  
6 (2014), *affirming sub nom., In the Matter of Bellingham Insurance Agency, Inc.*, 702 F.3d  
7 553 (9th Cir. 2012)

8 For the foregoing reasons, the bankruptcy court recommends that the United  
9 States District Court adopt this report and recommendation and find and enter judgment  
10 in favor of Plaintiff and against Defendants.

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Date: October 7, 2014



Robert Kwan  
United States Bankruptcy Judge