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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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United States of America,

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CIV 09-2468-PHX-MHB

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Plaintiff,

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ORDER

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vs.

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\$9,250.00 in U.S. Currency, et al.,

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Defendants.

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Pending before the Court is Plaintiff United States of America’s Motion to Strike Claim and Answer of Claimant Jessica Vazquez. (Doc. 21.) After considering the arguments of the parties in their briefing, the Court now issues the following ruling.

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BACKGROUND¹

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On June 22, 2009, the Phoenix Police Department Commercial Narcotics Interdiction Unit (“CNIU”) at Phoenix Sky Harbor International Airport received information regarding arriving passengers Destin White (“White”), Charles Williams (“Williams”), and Antoine Cooper (“Cooper”). The information indicated that White, Williams, and Cooper each had a one-way ticket on a US Airways flight from St. Louis, Missouri to Phoenix, Arizona, and the airline tickets were booked and purchased within twenty-four hours of departure by the same person, with the same credit card. The men were reported to each have one checked

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¹ The following facts are derived from Plaintiff’s Verified Complaint for Forfeiture *In Rem*, Claimant’s Claim and Answer, Plaintiff’s Motion to Strike, and Claimant’s Opposition to Plaintiff’s Motion to Strike. (Docs. 1, 14, 15, 21, 24.)

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1 bag. CNIU Detective Travis Bird (“Detective Bird”) waited at the gate in Phoenix for the
2 men to exit the aircraft.

3 Among the passengers who arrived in Phoenix on the US Airways flight from St.
4 Louis, were three men who began to walk through the terminal side-by-side as if they knew
5 each other. The men were later identified as White, Williams, and Cooper. Sergeant James
6 Cope (“Sergeant Cope”) went to the baggage carousel where the luggage would arrive. He
7 observed the three men, and believed they knew each other because of the way they were
8 talking to each other.

9 When the bags began to arrive, White, Williams, and Cooper were seen taking the first
10 three bags from the carousel, and walking away. At this point, Detective Bird identified
11 himself to them. Detective Bird spoke with Williams and Sergeant Cope spoke with Cooper.
12 White started to walk past Williams, Cooper, and the officers. White was asked by Detective
13 Bird if he was with “the other two passengers.” He stated that he did not know Williams or
14 Cooper, and walked away.

15 Shortly thereafter White was approached by Sergeant Cope, and during their
16 conversation, White admitted that he knew Williams and that they were traveling together,
17 but he claimed that did not know Cooper.

18 In the course of the ensuing investigation the officers asked each of the three men if
19 they had any drugs or large amounts of cash. White stated, “I don’t have anything like that,
20 check my stuff if you want.” He also gave Sergeant Cope permission to search his carry-on
21 bag. White was then asked if he had any large sums of money. He replied, “I got about
22 fifteen.” White was asked, “fifteen what?” He replied, “fifteen thousand ... ,” referring to
23 his carry-on bag. Officers subsequently located thirty-eight bundles of cash in White’s
24 possession totaling \$70,900.00.

25 In his contact with officers, White was described as nervous and anxious. At one
26 point the officers observed his hands shaking. White stated that he was a rap star known as
27 “Yowda,” and the money was payment for his performances at rap concerts. He indicated
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1 that he was paid in cash for performances in Kansas City on June 19 and 20, and in Topeka,
2 Kansas.

3 Williams, possessed \$9,250.00 in cash on his person in a Bank of America envelope.
4 Initially, he stated that the money was his. Later, he changed his story and said some of the
5 money came from his mother. Using a number supplied by Williams, officers spoke to an
6 individual identified as Felicia Williams. She stated that she had given Williams \$1,700.00.
7 Finally, after being told that Cooper had told officers that he had given money to Williams,
8 he admitted that some of the money came from Cooper. Williams did not say how much of
9 the \$9,250.00 he received from Cooper.

10 When asked why he had so much cash, Williams stated that it was to be used for
11 expenses while in Phoenix, and to buy a sewing machine and other supplies for an upholstery
12 job that he and Cooper were going to be doing in the Phoenix area. Williams said they were
13 to do upholstery work on a boat. He stated that his cousin, Michael Lawrence, set up the
14 upholstery job for them. The phone number he provided, however, was not to an individual
15 named Michael Lawrence. The party who answered indicated that it must be a wrong
16 number.

17 Cooper had \$8,065.00 in cash on his person in a Bank of America envelope. He said
18 that he preferred to do business in cash, so that he did not have to pay taxes. He stated that
19 he had started with \$15,000.00, but gave some money to Williams, so that if the money fell
20 out of his bag he would not lose it all. Cooper said the \$15,000.00 came from a joint account
21 he had with his girlfriend, Claimant, Jessica Vazquez.

22 Claimant was contacted using a number provided by Cooper. When Claimant
23 answered the phone, she said, "who" when asked if she knew Cooper. When asked again if
24 she knew Cooper she said, "no why?" When the detective told Claimant that he was talking
25 to Cooper, and Cooper claimed that she had given him money out of a joint account, she
26 replied "no, what was his name again?" The detective again told Claimant that he was
27 talking about Cooper. She then said "oh yeah, I know him, sorry I am at work." She went
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1 on to tell the officer that she gave Cooper the money from her account, that they did not have
2 a joint account, and that she understood the money was for Cooper's upholstery business.
3 Cooper also stated that he was in Phoenix with Williams for an upholstery job for a relative
4 of Williams and that the money was for the purchase of supplies and a sewing machine.

5 The currency found with White, Williams, and Cooper was, subsequently, seized and
6 examined. Echo, a two-year-old black Labrador Retriever who is currently certified with the
7 National Narcotics Detector Dog Association and the National Police Canine Association,
8 detected the presence of one or more odors consisting of marijuana, methyl benzoate (a
9 byproduct of cocaine), heroin, or methamphetamine, on the seized currency.

10 Subsequently, on November 25, 2009, Plaintiff initiated the instant action to forfeit
11 \$9,250.00 in United States Currency seized from Williams and \$8,065.00 in United States
12 Currency seized from Cooper to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), 21
13 U.S.C. § 881(a)(6), 31 U.S.C. § 5317(c)(2) and/or 18 U.S.C. § 981(a)(1)(A). White,
14 Williams, and Cooper were notified of the intent to have the money forfeited. None of the
15 men filed a claim. Claimant, however, filed a claim to only a portion of the money carried
16 by Cooper and Williams. She claimed \$7,500.00 of the \$9,250.00 found on Williams and
17 \$7,500.00 of the \$8,065.00 found on Cooper for a total of \$15,000.00.

18 Claimant is 27 years old and currently lives in Kansas City, Missouri. In early 2009,
19 Claimant applied for a home equity loan on her primary residence. On February 18, 2009,
20 Claimant received a check in the amount of \$52,800.00 from Community America Bank in
21 Missouri as proceeds from the home equity loan, and deposited the check into her personal
22 savings account with Bank of America.

23 During this period of time, Claimant was involved in a personal relationship with
24 Cooper. She dated Cooper off and on for several years and considered him to be her
25 boyfriend. Cooper worked as an upholsterer and owned an upholstery business. In June
26 2009, Cooper told Claimant that he would be traveling to Phoenix to handle an upholstery
27 job, but would need approximately \$15,000.00 to buy materials and equipment in order to
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1 complete the work. Claimant, subsequently, withdrew \$15,000.00 cash from her personal
2 bank account and gave the money to Cooper believing that he would be using the money for
3 the an upholstery job in Arizona.

4 On April 28, 2010, Plaintiff filed a Motion to Strike Claim and Answer of Claimant.
5 (Doc. 21.) Claimant filed her Opposition to Plaintiff's Motion to Strike on May 17, 2010,
6 and Plaintiff filed its Reply on May 28, 2010. (Docs. 24, 27.)

7 DISCUSSION

8 In its Motion to Strike, Plaintiff argues that Claimant lacks standing to contest the
9 forfeiture. Specifically, Plaintiff contends that Claimant has nothing more than a general,
10 unsecured interest in the money seized and, as such, she cannot establish that she is an
11 "owner" as required to contest the forfeiture of the currency.

12 In response, Claimant concedes that general, unsecured creditors cannot establish
13 "ownership" for standing purposes, but alleges that her close relationship with Cooper,
14 Cooper's promise to return the money, and the potential for fraud demand an equitable
15 remedy. Specifically, Claimant states that she is entitled in equity to a determination by this
16 Court that she has standing to file a claim and contest the forfeiture under the equitable
17 doctrine of constructive trust.

18 The Civil Asset Forfeiture Reform Act of 2000, 18 U.S.C. § 983, governs all *in rem*
19 civil forfeiture proceedings commenced on or after August 23, 2000. See United States v.
20 Approximately \$1.67 Million in U.S. Currency, 513 F.3d 991, 998 (9th Cir. 2008). Those
21 forfeiture proceedings are also governed by the Supplemental Rules for Admiralty or
22 Maritime Claims and Asset Forfeiture Actions ("Supplemental Rules"). See 18 U.S.C. §
23 983(a)(4)(A); United States v. \$100,348.00 in U.S. Currency, 354 F.3d 1110, 1117 (9th Cir.
24 2004).

25 Rule G of the Supplemental Rules, adopted in 2006, permits any person claiming an
26 interest in the property to contest the forfeiture by filing a claim in the court where the action
27 is pending. Also, at any time after the claim is filed and before the close of discovery, the
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1 Government “may serve special interrogatories limited to the claimant’s identity and
2 relationship to the defendant property” Furthermore, the Government may move to strike
3 the claim for lack of standing at any time before trial. The motion to strike “may be
4 presented as a motion for judgment on the pleadings or as a motion to determine after a
5 hearing or by summary judgment whether the claimant can carry the burden of establishing
6 standing by a preponderance of the evidence.” As further explained by the 2006 Advisory
7 Committee Notes to Rule G of the Supplemental Rules:

8 If a claim fails on its face to show facts that support claim standing, the claim
9 can be dismissed by judgment on the pleadings. If the claim shows facts that
10 would support claim standing, those facts can be tested by a motion for
11 summary judgment. If material facts are disputed, precluding a grant of
12 summary judgment, the court may hold an evidentiary hearing. The
13 evidentiary hearing is held by the court without a jury. The claimant has the
14 burden to establish claim standing at a hearing; procedure on a government
15 summary judgment motion reflects this allocation of the burden.

16 Advisory Committee Notes to Rule G(8)(c)(ii). Here, Plaintiff has presented its Motion to
17 Strike as a motion for summary judgment, including various responses to discovery requests
18 along with other exhibits.

19 Standing is a threshold issue on which the claimant bears the burden of proof in every
20 civil forfeiture case. See United States v. Real Property Located at 5208 Los Franciscos
21 Way, 385 F.3d 1187, 1191 (9th Cir. 2004). The claimant must establish his standing with
22 admissible evidence because “the danger of false claims in these proceedings is substantial
23” \$100,348 in U.S. Currency, 354 F.3d at 1118-19 (courts require more than “conclusory
24 or hearsay allegations of some ‘interest’ in the forfeited property”).

25 To establish Article III standing, the claimant must demonstrate an interest in the
26 property sufficient to satisfy the “case and controversy” requirement. See Real Property
27 Located at 5208 Los Franciscos Way, 385 F.3d at 1191; Sierra Club v. Morton, 405 U.S.
28 727, 731 (1972) (a claimant must possess a “sufficient stake in an otherwise justiciable
controversy to obtain judicial resolution of that controversy”). A claimant must show “actual

1 or imminent injury – not hypothetical, conjectural, or abstract injury” in order to establish
2 standing. See United States v. Lazarenko, 476 F.3d 642, 649 (9th Cir. 2007).

3 Initially, the Court notes that although the term “owner” is interpreted broadly, general
4 creditors, unlike secured creditors, cannot claim an interest in any particular asset that makes
5 up the debtor’s estate. See United States v. \$20,193.39 in U.S. Currency, 16 F.3d 344, 346
6 (9th Cir. 1994). Thus, as the parties agree, “federal courts have consistently held that
7 unsecured creditors do not have standing to challenge the civil forfeiture of their debtors’
8 property.” Id.; see United States v. Four Million, Two Hundred Fifty-Five Thousand, 762
9 F.2d 895, 907 (11th Cir. 1985), cert. denied, 474 U.S. 1056 (1986); United States v.
10 \$47,875.00 in U.S. Currency, 746 F.2d 291, 294 (5th Cir. 1984); United States v. \$3,799.00
11 in U.S. Currency, 684 F.2d 674, 678 (10th Cir. 1982).

12 The record contains evidence of the following: (1) a photocopy of check in the
13 amount of \$52,800.00 from Community America Bank to Claimant as proceeds from the
14 alleged home equity loan; (2) a deposit slip establishing that Claimant deposited a check in
15 the amount of \$52,800.00 into an account held with Bank of America; (3) two withdrawal
16 slips (one dated June 16, 2009 and another dated June 17, 2009) from a bank account in the
17 amount of \$7,500.00 each; (4) the fact that the money was found on Williams and Cooper
18 in Bank of America envelopes; and (5) Claimant’s assertion that she loaned \$15,000.00 to
19 Cooper. Claimant, however, has failed to allege and submit any evidence of a secured
20 interest in the funds carried by Williams or Cooper. At most, the record demonstrates that
21 Claimant’s status is that of a general creditor.

22 In light of her status a general, unsecured creditor, Claimant argues that due to her
23 close relationship with Cooper, Cooper’s promise to return the money, and the potential for
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1 fraud, she is entitled to a determination by this Court that she has standing to file a claim
2 under the equitable doctrine of constructive trust.²

3 “A constructive trust is a remedial device created by courts of equity to compel one
4 who unfairly holds a property interest to convey that interest to another to whom it justly
5 belongs.” Harmon v. Harmon, 613 P.2d 1298, 1300 (Ariz. Ct. App. 1980). The gist of the
6 conduct that leads to imposing a constructive trust is the wrongful withholding of property
7 that unjustly enriches one person at the expense of another. See Turley v. Ethington, 146
8 P.3d 1282, 1285 (Ariz. Ct. App. 2006); Harmon, 613 P.2d at 1300. Such a trust “arises by
9 operation of law and not by agreement or intention.” Turley, 146 P.3d at 1285 (quoting
10 Harmon, 613 P.2d at 1300). Generally, a court may impose a constructive trust when there
11 has been fraud, either actual or constructive, or when there is a confidential or fiduciary
12 relationship, coupled with an express or implied promise to reconvey. See Stoltz v. Maloney,
13 630 P.2d 560, 563 (Ariz. Ct. App.1981); Harmon, 613 P.2d at 1300 (stating that a
14 constructive trust is “used whenever title to property has been obtained through actual fraud,
15 misrepresentation, concealment, undue influence, duress or through any other means which
16 render it unconscionable for the holder of legal title to continue to retain and enjoy its
17 beneficial interest” (citation omitted)). A constructive trust must be established by clear and
18 convincing proof of entitlement. See Harmon, 613 P.2d at 1300.

19 There is no proof in the record, that actual or constructive fraud existed in this case.
20 Further, the Court finds that Claimant’s allegation of a fiduciary relationship with Cooper in
21 light the fact that they dated “off and on for several years” unpersuasive. The existence of
22 a family relationship (or an “off and on” dating relationship in this case) without more is not
23 sufficient to warrant imposition of a constructive trust. See Golleher v. Horton, 715 P.2d
24 1225, 1232 (Ariz. Ct. App. 1985); Stoltz v. Maloney, 630 P.2d at 563; see also Almada v.

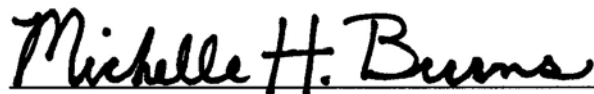
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26 ² The parties appear to concede the application of Arizona law even though a portion
27 of the events in question are alleged to have taken place in Missouri. In any event, the courts
28 in both states apply the same principles in imposing constructive trusts.

1 Ruelas, 393 P.2d 254, 257 (Ariz. 1964). In fact, in cases where a constructive trust has been
2 established, in addition to a family relationship, other factors such as age and infirmity, actual
3 dominance on the part of one of the parties, an established course of management of the
4 grantor's affairs by the grantee, or other similar facts making it inequitable to allow the
5 grantee to prevail, have been demonstrated. See Golleher, 715 P.2d at 1232; Estate of
6 Coffin, 671 P.2d 921, 923 (Ariz. Ct. App. 1983). On the facts of this case, the absence of
7 proof of great intimacy, trusting of power, superiority of position and the like, the Court will
8 not impose a constructive trust.

9 Accordingly, having considered the parties' positions and the evidence presented, the
10 Court finds that Claimant has failed to establish standing to assert her claim to \$7,500.00 of
11 the \$9,250.00 found on Williams and \$7,500.00 of the \$8,065.00 found on Cooper for a total
12 of \$15,000.00. The Court will, therefore, grant Plaintiff's Motion to Strike.

13 **IT IS ORDERED** that Plaintiff's Motion to Strike Claim and Answer of Claimant
14 Jessica Vazquez (Doc. 21) is **GRANTED**.

15 DATED this 9th day of August, 2010.

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17 Michelle H. Burns
18 United States Magistrate Judge
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