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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

STATE BANK OF TEXAS,  
  
Plaintiff,  
  
v.  
  
SARJAN PATEL, *et al.*,  
  
Defendants.

Case No. 16-cv-2692-BAS(BGS)

**ORDER GRANTING  
DEFENDANT RIVERVIEW  
DEVELOPMENT IV, LLC'S  
MOTION TO DISMISS**

**[ECF No. 9]**

20 On September 25, 2014, Hemant Chhatrala and his brothers Ashvin and  
21 Shailesh Patel (collectively, “the three Debtors”) transferred a property they owned  
22 together at 756 Bangor Street, San Diego, California (the “Bangor Street Property”)  
23 to Chhatrala’s son and daughter-in-law, Sarjan and Monali Patel (“the Patels”), who  
24 are both defendants in this case. At the time of the transfer, the three Debtors owed  
25 money to Plaintiff State Bank of Texas (“State Bank”), and Chhatrala owed money  
26 to Defendant Riverview Development IV, LLC (“Riverview”). Riverview sued  
27 Chhatrala and the Patels for fraudulent conveyance in San Diego Superior Court and,  
28 after eighteen months of litigation, entered into a Settlement Agreement guaranteed

1 by the Bangor Property.

2 State Bank then sued both the Patels and Riverview in this case for fraudulent  
3 conveyance. Riverview moves to dismiss arguing that State Bank cannot show that  
4 the transfer from the Patels to Riverview caused any damages to State Bank. For the  
5 reasons discussed below, the Court **GRANTS** the Motion to Dismiss. (ECF No. 9.)  
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## 7 **I. STATEMENT OF FACTS**

### 8 **A. Riverview Sues Chhatrala**

9 On March 24, 2014, Riverview sued Chhatrala and others in Alameda County  
10 Superior Court for fraud and other causes of action. (RJN Ex. 1, ECF No. 9-5.<sup>1</sup>) The  
11 Alameda Court granted Riverview’s request for a writ of attachment in the amount  
12 of \$647,782.98 against several Chhatrala properties, including the Bangor Street  
13 Property. (RJN Ex. 2.) On September 19, 2014, Riverview recorded this Writ of  
14 Attachment against the Bangor Street Property in the San Diego County Recorder’s  
15 Office. (RJN Exs. 3-4.)

16 One week later, on September 25, 2014, the three Debtors transferred the  
17 Bangor Street Property, via three separate Quitclaim Deeds, to Chhatrala’s son and  
18 daughter-in-law, the Patels. (First Amended Complaint (“FAC”) ¶ 4, ECF No. 5.)  
19 Riverside filed a Complaint against, among others, Chhatrala and the Patels to set  
20 aside the fraudulent conveyance in San Diego Superior Court on November 10,  
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22 <sup>1</sup> Riverview requests that this Court take Judicial Notice of various Court filings in the cases  
23 leading up to this one, as well as the Settlement Agreement referenced in State Bank’s Complaint.  
24 (ECF No. 9-4.) State Bank does not oppose. A court may take judicial notice of a fact that is not  
25 subject to reasonable dispute. Fed. R. Evid. 201. Furthermore, the Court may consider material  
26 properly subject to judicial notice on a motion to dismiss without converting the motion into one  
27 for summary judgment. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994). Additionally,  
28 documents specifically identified in the complaint, like the Settlement Agreement in this case,  
whose authenticity is not questioned by the parties may be considered in a motion to dismiss. *Fecht*  
*v. Price Co.*, 70 F.3d 1078, 1080 n.1 (9th Cir. 1995) (superseded by statutes on other grounds.)  
Moreover, the court may consider the full text of those documents even when the complaint quotes  
only selected portions. *Id.* Accordingly, the Court **GRANTS** the Request for Judicial Notice  
 (“RJN”). (ECF No. 9-4.)

1 2014.<sup>2</sup> (RJN Ex. 5, ECF No. 9-6.) After eighteen months of litigation, on April 4,  
2 2016, Riverview settled the case with an agreement by Chhatrala to pay \$3,000,000  
3 plus interest via wire transfer in six installment payments of \$500,000 from April 18,  
4 2016 to June 8, 2018. (Martinez Decl. Ex. 1 (“Settlement Agreement”) ¶ 3, ECF No.  
5 9-3.) Chhatrala further agreed to give Riverview “a non-recourse guaranty . . . with  
6 original and notarized signatures from Sarjan and Monali Patel” which “shall  
7 guarantee” the amount due under the agreement and “shall be secured by a deed of  
8 trust recorded against [the Bangor Street Property.]” (Settlement Agreement ¶ 6.)

9 Furthermore, the parties recognized “that there is a risk that the transfer of the  
10 Bangor Street Property [from the three Debtors to the Patels] by Quitclaim Deed[]  
11 recorded . . . on September 25, 2014, may not be recognized as valid and could be  
12 voided as a result of [another lawsuit pending in San Diego Superior Court.]”  
13 (Settlement Agreement ¶ 8.) Thus, “[t]o avoid the loss of the security provided by  
14 the Guaranty, and consistent with California Civil Code § 2883(a),” Chhatrala agreed  
15 to provide Riverview with a Replacement Deed of Trust giving Riverview the same  
16 interest in the Bangor Street Property if at any time the ownership of the Bangor  
17 Street Property reverted back to the Debtors from the Patels. (*Id.*; *see also* FAC ¶  
18 41.)

19 Thus, as part of this Settlement Agreement, on or about April 4, 2016,  
20 Riverview recorded a \$1,652,859 lien on the Bangor Street Property. (FAC ¶ 7.) State  
21 Bank claims Riverview gave no value to the Patels in exchange for the Riverview  
22 Transfer<sup>3</sup>—although the transfer was to settle a lawsuit filed against both the Patels  
23 and Chhatrala for fraudulent conveyance. (RJN Ex. 5, ECF No. 9-5.)  
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27 <sup>2</sup> Although State Bank alleges that this lawsuit was against Chhatrala only and not the Patels,  
that is not supported by the Complaint attached as Exhibit 5 to the Request for Judicial Notice.

28 <sup>3</sup> State Bank alleges the \$1.6 million lien is pledged as security for the debts of Chhatrala,  
not the Patels, hence the Patels received nothing of value. (FAC ¶ 75.)

1           **B.     State Bank Sues Chhatrala**

2           In February 2013, State Bank sued the three Debtors in Texas State Court to  
3 enforce personal guaranties made by the Debtors to State Bank and to collect \$3.3  
4 million in outstanding debt. (FAC ¶¶ 1-2, 21, 24.) On January 11, 2015, as a result  
5 of a mediated settlement process, the Debtors and State Bank entered into an  
6 agreement for the full amount of the unpaid balance plus interest and attorneys’ fees.  
7 (FAC ¶¶ 33, 34.) The three Debtors were to transfer properties sufficient to satisfy  
8 this judgment on or before February 28, 2015, but failed to do so. (FAC ¶¶ 36, 37.)

9           State Bank filed this lawsuit on October 31, 2016 against the Patels alleging  
10 that the fraudulent conveyance of the Bangor Street Property from the three Debtors  
11 to the Patels should be voided pursuant to California Civil Code § 3439.01. (ECF No.  
12 1.) On November 28, 2016, State Bank filed a First Amended Complaint adding  
13 Riverview as a defendant and adding an allegation that the April 4, 2016 Settlement  
14 Agreement between Chhatrala and Riverview should also be voided as an actual and  
15 constructive fraudulent transfer under California Civil Code § 3439.01. (FAC ¶ 8.)  
16 State Bank alleges Riverview was an immediate transferee of the Patels’ interest in  
17 the Bangor Street Property and did not receive transfer of the Bangor Street Property  
18 in good faith because Riverview “had actual notice of facts which suggested to a  
19 reasonable person that the House Transfer was fraudulent.” (*Id.* ¶ 44.) Thus, State  
20 Bank requests not only that the transfer from the Patels to Riverview be voided, but  
21 that the entire April 4, 2016 Settlement Agreement between Chhatrala, the Patels,  
22 and Riverview be voided.

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24           **C.     Value of the Bangor Street Property**

25           According to the FAC, the Bangor Street Property is currently valued at  
26 approximately \$5.5 million. (FAC ¶ 4.) There is no indication from the Complaint as  
27 to current equity in the property or the remaining equity after Riverview’s lien in the  
28 amount of \$1,652,859 is satisfied.

1            “In 2009, the Debtors represented to [State Bank] that the House had a market  
2 value of approximately \$6,100,000 with approximately \$4,260,000 in equity.” (FAC  
3 ¶ 69.)

4            Riverview moves to dismiss claiming that State Bank does not and cannot  
5 allege that the second transfer, that is the transfer from the Patels to Riverview as part  
6 of the April 4, 2016 Settlement Agreement, caused any damages to State Bank. (ECF  
7 No. 9.)

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## 9 **II. LEGAL STANDARD**

10            A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
11 Procedure tests the legal sufficiency of the claims asserted in the complaint. Fed. R.  
12 Civ. P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001). The court must  
13 accept all factual allegations pleaded in the complaint as true and must construe them  
14 and draw all reasonable inferences from them in favor of the nonmoving party. *Cahill*  
15 *v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). To avoid a Rule  
16 12(b)(6) dismissal, a complaint need not contain detailed factual allegations, rather,  
17 it must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell*  
18 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has “facial plausibility  
19 when the plaintiff pleads factual content that allows the court to draw the reasonable  
20 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*,  
21 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). “Where a complaint  
22 pleads facts that are ‘merely consistent with’ a defendant’s liability, it stops short of  
23 the line between possibility and plausibility of ‘entitlement to relief.’” *Iqbal*, 556 U.S.  
24 at 678 (quoting *Twombly*, 550 U.S. at 557).

25            “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to  
26 relief’ requires more than labels and conclusions, and a formulaic recitation of the  
27 elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (quoting  
28 *Papasan v. Allain*, 478 U.S. 265, 286 (1986)) (alteration in original). A court need

1 not accept “legal conclusions” as true. *Iqbal*, 556 U.S. at 678. Despite the deference  
2 the court must pay to the plaintiff’s allegations, it is not proper for the court to assume  
3 that “the [plaintiff] can prove facts that [he or she] has not alleged or that defendants  
4 have violated the . . . laws in ways that have not been alleged.” *Associated Gen.  
5 Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526  
6 (1983).

7       When a claim is based on fraud or mistake, the circumstances surrounding the  
8 fraud or mistake must be alleged with particularity. Fed. R. Civ. P. 9(b). If the  
9 allegations fail to satisfy the heightened pleading requirements of Rule 9(b), a district  
10 court may dismiss the claim. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1087, 1107  
11 (9th Cir. 2003). To satisfy the particularity requirement of Rule 9(b), “[a]llegations  
12 of fraud must be accompanied by ‘the who, what, when, where, and how’ of the  
13 misconduct charged.” *Id.* at 1106 (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th  
14 Cir. 1997)). Plaintiffs must plead enough facts to give defendants notice of the time,  
15 place, and nature of the alleged fraud, together with an explanation of the statement  
16 and why it was false or misleading. *See id.* at 1107. The circumstances constituting  
17 the alleged fraud must “be specific enough to give defendants notice of the particular  
18 misconduct . . . so that they can defend against the charge and not just deny that they  
19 have done anything wrong.” *Id.* at 1106 (quoting *Bly-Magee v. California*, 236 F.3d  
20 1014, 1019 (9th Cir. 2001) (internal quotation marks omitted); *see also In re  
21 GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1547 (9th Cir. 1994) (superseded by statute  
22 on other grounds as stated in *Ronconi v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir.  
23 2001)). “Malice, intent, knowledge, and other conditions of a person’s mind may be  
24 alleged generally.” Fed. R. Civ. P. 9(b). A claim for actual fraudulent transfer is  
25 subject to the requirements of Rule 9(b), while a claim for constructive fraudulent  
26 transfer is not. *Kelleher v. Kelleher*, No. 13-cv-5450-MEJ, 2014 WL 94197, at \*5  
27 (N.D. Cal. Jan. 19, 2014).

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1 **III. DISCUSSION**

2 **A. California Civil Code § 3439**

3 Under California Civil Code § 3439.04, a creditor may void a fraudulent  
4 transfer made with actual intent to hinder, delay or defraud any creditor, if the debtor  
5 made the transfer without receiving a reasonably equivalent value in exchange for  
6 the transferred property. “In order for a fraudulent transfer to occur, there must be a  
7 transfer of an asset as defined [in section 3439.]” *Fidelity Nat’l Title Ins. v.*  
8 *Schroeder*, 179 Cal. App. 4th 834, 841 (2009) (citations and emphasis omitted); Cal.  
9 Civ. Code § 3439.01(m) (“‘Transfer’ means every mode . . . or disposing or parting  
10 with an asset or interest in an asset.”). An “asset” under § 3439 means property of a  
11 debtor, but does not include property encumbered by a valid lien. Cal. Civ. Code §  
12 3439.01(a)(1).

13 The focus is on the intent of the transferor. *In re Beverly*, 374 B.R. 221, 235  
14 (B.A.P. 9th Cir. 2007).<sup>4</sup> Since direct evidence of intent to hinder, delay or defraud is  
15 uncommon, determination is typically made from circumstances including the eleven  
16 non-exclusive “badges of fraud” factors listed in the statute that are probative of  
17 intent. *Id.*

18 If the transfer is voidable, judgment may be entered not only against the debtor  
19 transferee but also “an immediate or mediate transferee of the first transferee, other  
20 than” a “good faith transferee.” Cal. Civ. Code § 3439.08(b)(1). Although a “good  
21 faith transferee” is not defined by the statute, the California Court of Appeal has  
22 required deliberate wrongful conduct on the part of the transferee.<sup>5</sup> *Lewis v. Superior*  
23 *Court*, 30 Cal. App. 4th 1850, 1858 (1995) (“good faith” means the “transferee did

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25 <sup>4</sup> Since § 3439.08 is derived from § 550(a) of the Bankruptcy Code, “cases construing the  
26 Bankruptcy Code counterparts . . . are persuasive authority due to the similarity of the laws in this  
area.” *Qwest Comm’ns Corp. v. Weisz*, 278 F. Supp. 2d 1188, 1192 n.2 (S.D. Cal. 2003).

27 <sup>5</sup> Whether a transfer is voidable under this statute is a question purely of California law.  
28 Therefore, a federal court construing the statute must predict what the California Supreme Court  
would rule if presented with the issue. *In re Beverly*, 374 B.R. at 232 (citing *Comm’r v. Estate of*  
*Bosch*, 387 U.S. 456, 465 (1967)).

1 not collude with the debtor or otherwise actively participate in the fraudulent scheme  
2 of the debtor.”). Thus, one who becomes a transferee “by accident, or even  
3 negligently” is not a fraudulent transferee under § 3439.08(b)(1). *Id.*; *see also*  
4 *Kelleher*, 2014 WL 94197, at \*5 (liability imposed if transferee colluded with the  
5 debtor or otherwise actively participated in the fraudulent scheme).

6 The Legislative Committee Comments to the statute state that “[k]nowledge  
7 of the facts rendering the transfer voidable would be inconsistent with the good faith  
8 that is required of a protected transferee.” Cal. Civ. Code § 3439.08, Comment (1).  
9 Thus, some courts have held that a transferee lacks good faith if he or she has actual  
10 knowledge of facts which would suggest to a reasonable person that the transaction  
11 was fraudulently made. *See, e.g., Cybermedia, Inc. v. Symantec Corp.*, 19 F. Supp.  
12 2d 1070, 1076 (N.D. Cal. 1998); *In re Cohen*, 199 B.R. 709, 719 (B.A.P. 9th Cir.  
13 1996).

14 Any judgment under these statute should be based upon the value of the asset  
15 transferred and “the judgment shall be for an amount equal to the value of the asset  
16 at the time of the transfer, subject to adjustment as the equities may require.” Cal.  
17 Civ. Code § 3439.08(c). Although generally the creditor has the burden of proving  
18 the claims in these statutes, one claiming he is either a “good faith transferee” or that  
19 an adjustment is necessary based on the equities, has the burden of proving these  
20 claims by a preponderance of evidence. *Id.* § 3439.08(f).

21 A lawsuit to void the transfer may only be brought by a creditor who is injured  
22 by the transfer. *Mehrtash v. Mehrdash*, 93 Cal. App. 4th 75, 80 (2001). “[P]rejudice  
23 to the plaintiff is essential.” *Id.* “A creditor has not been injured unless the transfer  
24 puts beyond reach property the creditor could subject to payment of his or her debt.”  
25 *Fidelity*, 179 Cal. App. 4th at 858.

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1           **B.     Sufficiency of State Bank’s Claim**

2           There are multiple transfers at issue in this case. Each of the three Debtors  
3 individually transferred their one-third interest in the Banger Street Property via three  
4 individual Quit Claim deeds. The Patels later transferred part of the Bangor Street  
5 property, via lien, to Riverview. And, finally, in the April 2016 Settlement  
6 Agreement, Chhatrala agreed that if the three Quit Claim deeds to the Patels were  
7 voided, he would transfer to Riverview a lien on the property that had reverted to his  
8 name. Unfortunately, in both the FAC as well as the Response to the Motion to  
9 Dismiss, State Bank combines all of the above transfers at issue in this case. With  
10 respect to the Quit Claim deeds, from the three Debtors to the Patels, State Bank  
11 alleges sufficient facts that these transfers may be voided as fraudulent under § 3439.  
12 The second transfer, from the Patels to Riverview as part of the Settlement  
13 Agreement, is more tenuous. The Settlement Agreement agreeing that Chhatrala  
14 would transfer his interest in the Bangor Street Property if the Quit claim deeds were  
15 voided is even further removed. State Bank does not help by mixing the “badges of  
16 fraud” and alleging them against all transfers interchangeably.

17           There are insufficient allegations that the transfers to Riverview, both from the  
18 Patels and from Chhatrala in the Settlement Agreement agreeing to provide  
19 Riverview with a Replacement Deed of Trust, were, in fact, fraudulently made under  
20 § 3439.04. If State Bank believes these transfers were done to hinder, delay, or  
21 defraud it, there are insufficient factual allegations under Rule 8 to give Riverview  
22 notice of the reasons it has this belief. Furthermore, it appears from the documents  
23 presented to this Court that the transfer was given for value. Riverview had sued the  
24 Patels for fraudulent conveyance of the Bangor Street Property. The Patels settled  
25 this lawsuit by agreeing to the lien placed on the property in the amount allegedly  
26 owed to Riverview. If State Bank has additional facts that this transfer was somehow  
27 not done for value or was done to defraud State Bank, it must allege more facts than  
28 are alleged in the FAC.

1           The more difficult question is whether State Bank alleges sufficient facts under  
2 § 3439.08 that Riverview was an immediate or mediate transferee who did not receive  
3 the transfer in good faith. State Bank alleges that Riverview had actual knowledge  
4 that the initial transfer from the Debtors to the Patels was fraudulent. However, there  
5 are only allegations that Riverview had knowledge that the transfer was fraudulent  
6 as to Riverview. There are no allegations that Riverview had actual knowledge that  
7 the transfer was fraudulently made to avoid a debt from State Bank or even, in fact,  
8 that Riverview was aware of State Bank. Although there are allegations that  
9 Riverview believed the one Quit Claim deed from Chhatrala to the Patels was  
10 fraudulent, there are insufficient facts to support State Bank’s theory that Riverview  
11 knew the other two Quit Claim deeds from Chhatrala’s brothers were fraudulent.  
12 Finally, there are no allegations that Riverview colluded with any of the Debtors or  
13 that any of its conduct was deliberately wrongful. The fact that the Debtors may have  
14 chosen one creditor (Riverview) over another (State Bank) does not make the  
15 transaction unlawful. *See* Cal. Civ. Code § 3432 (a debtor “may give to one creditor  
16 security for the payment of his demand in preference to another”).

17           Furthermore, State Bank fails to allege sufficient facts to show that it was  
18 injured by the transfer from the Patels to Riverview. State Bank alleges the Bangor  
19 Street Property is currently worth \$5.5 million. Without knowing how much equity  
20 is in the property, however, it is not clear whether State Bank was injured by the \$1.6  
21 million lien in favor of Riverview.

22           Additionally, Riverview shows that even if the transfer from the Patels to  
23 Riverview is voided as part of its non-recourse guarantee, Chhatrala would be  
24 obligated to reissue the deed of trust with Riverview’s lien. In order to void this  
25 transfer from Chhatrala, State Bank would have to allege that this transfer was  
26 fraudulent under § 3439 *et seq.* This, State Bank fails to do. Thus, State Bank fails to  
27 allege that the transfer to Riverview put property out of reach that State Bank could  
28 subject to payment of its debt.

1 **IV. CONCLUSION & ORDER**

2 In light of the foregoing, the Court **GRANTS WITH LEAVE TO AMEND**  
3 Riverview’s Motion to Dismiss (ECF No. 7). *See* Fed. R. Civ. P. 15(a); *Qpid.me, Inc.*  
4 *v. Schrom*, No. 13-cv-583-IEG(NLS), 2013 WL 4833990, at \*4 (S.D. Cal. Sept. 9,  
5 2013) (Gonzalez, J.) (“As a general rule, a court freely grants leave to amend a  
6 complaint which has been dismissed.”). If State Bank chooses to file an amended  
7 complaint, it must do so no later than **July 31, 2017**.

8 **IT IS SO ORDERED.**

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**DATED: July 12, 2017**

  
**Hon. Cynthia Bashant**  
**United States District Judge**