

1 **Rollie A. Peterson, Esq., (SBN #113042)**
2 Rpeterson@peterson-kell.com
3 **PETERSON & KELL, A LAW CORPORATION**
4 **2377 Gold Meadow Way, Suite 280**
5 **Gold River, California 95670**
6 **Telephone: (916) 635-9300**
7 **Fax: (916) 635-9303**

8 **Attorneys for Tri Tool Inc.**

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 **SECURITIES AND EXCHANGE**
13 **COMMISSION,**

14 **Plaintiff,**

15 **vs.**

16 **CHARLES P. COPELAND,**
17 **COPELAND WEALTH**
18 **MANAGEMENT, A FINANCIAL**
19 **ADVISORY CORPORATION;**
20 **and COPELAND WEALTH**
21 **MANAGEMENT, A REAL**
22 **ESTATE CORPORATION,**

23 **Defendants.**

CASE NO. 11-cv-08607-R-DTB

TRI TOOL INC.'S
REPLY RE: UFTA CLAIMS AND
STATUTE OF LIMITATIONS

Date: December 16, 2013
Time: 10:00 a.m.
Ctrm: 8, 2nd Floor
Judge: Hon. Manuel L. Real

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I.

INTRODUCTION

Non-Party Tri Tool Inc., a Nevada corporation (“Tri Tool”) submits this reply memorandum to the Receiver’s response to Tri Tool’s memorandum re: Tri Tool’s Uniform Fraudulent Transfer Act (“UFTA”) claims against Securities and Exchange Commission Receivership Entities and statute of limitation issues. Tri Tool objects to the District Court’s determination of its UFTA claim and the statute of limitations, without affording Tri Tool its rights under the Seventh Amendment to the United States Constitution, to have its case decided by a jury trial. The Receiver’s response to Tri Tool’s memorandum, arguing as fact, unsupported and incorrect facts, shows why this Court should modify its blanket stay and let the facts be tried and tested on the crucible of cross-examination, as determined by a jury.

Further, Tri Tool asks this Court, pursuant to its inherent powers, to reconsider its ruling, to reconsider the statute of limitations running on the Pacific Wester Bank (“PWB”) transaction, and to modify the stay, on new facts, being the motion to liquidate and dissolve CP18.

II.

FACTUAL BACKGROUND

Tri Tool alleges a “Plan” by Charles P. Copeland (“Copeland”) to transfer all the assets of Copeland Properties Three, a California Limited Partnership (CP3”) to Copeland Properties 18, a California Limited Partnership (“CP18”), together with the equity interests of CP3’s investors. The general partner of both partnerships was Copeland Property, Inc., a California corporation. Copeland later renamed this corporation Copeland Wealth Management, Real Estate, Inc. (“CWMRE”). Copeland owned 70% of, and managed and controlled, CWMRE’s affairs. CWMRE, as general partner of CP3 and CP18, in turn managed and controlled these limited partnership’s affairs. By the nature of their character, the limited partners could not be involved in managing these entities’ business affairs.

Copeland formed CP3 for the sole purpose of owning developed real property in Rancho Cordova, California (“RC Property”). The RC Property was then a sole tenant building. It was a build to suit for the IRS. Copeland formed CP18 for the sole purpose of owning and leasing a

1 retail building in Greensboro, North Carolina.

2 Copeland's Plan began after the IRS vacated the RC Property and CP3 decided to sell the
3 property. In October 2006, CP3 contracted to sell its RC Property to Tri Tool. At the same time,
4 CWMRE contracted to buy the North Carolina Property. Copeland's Plan was to use the
5 proceeds of the sale of the RC Property to buy the North Carolina Property, and roll the Rancho
6 Cordova Investors into the North Carolina Property. Pursuant to that Plan Copeland assigned the
7 contract to purchase the North Carolina Property to CP14.

8 Timing issues in closing the sale of RC Property to Tri Tool complicated Copeland
9 closing the North Carolina purchase. The Tri Tool closing, originally set for December 15, 2006,
10 was extended by a number of issues. One such issue was an unrecorded easement across the RC
11 Property. While the parties negotiated this issue, Copeland's Plan changed to include CP3
12 borrowing the money necessary to close North Carolina from PWB. PWB's loan officer called
13 the transaction a "Swing Loan", stating its source of repayment would be from the Tri Tool
14 closing of the RC Property. It obtained from Copeland an instruction to the CP3 escrow, to that
15 effect. PWB funded the Swing Loan on February 22, 2007. It did so by a cashier's check, made
16 payable to CP3, in the amount of \$1,795,000.00. CP3 deposited the cashier's check in its
17 demand deposit account, found at Centennial Bank. On February 28, 2007, CP3 transferred this
18 sum to CP14, to close escrow on the North Carolina Property.

19 CP was to assume the first mortgage on the North Carolina Property. An additional
20 change to the "Plan" occurred when the first mortgage lender would not agree to assign the loan
21 from Wendover, the seller, to CP14. This was because CP14 was not a single asset entity.
22 Consequently, CP14 transferred the funds to escrow on March 2, 2007, and escrow closed in
23 CP18's name. Both CP3 and CP18 always booked the transaction as a loan payable/receivable.¹
24 To close this transaction, CP18 gave Wendover, the seller of the property, a note for
25 \$330,000.00, to cover a short fall in the transaction. Copeland personally guaranteed the loan.

27 ¹The Receiver argues the transactions were sometimes booked otherwise, but does not
28 show the books showing otherwise.

1 On April 27, 2007, CP3 paid off CP18's obligation to Wendover. CWMRE took an undisclosed
2 \$700,000.00 promotional equity interest in the CP18 partnership.

3 To satisfy Tri Tool's concerns about the unrecorded claimed easement, it agreed to give
4 CP3 two years to remove the cloud from title. CP3 agreed to pay Tri Tool \$200,000.00 if it did
5 not accomplish this feat within two years. Tri Tool did assume the risk of non-payment. It did
6 not knowingly assume the risk of a fraudulent transfer precluding payment.

7 CP3 evidenced this promise with a "Straight Note". Although Tri Tool negotiated to pay
8 a smaller sum of money for the RC Property, and itself remove the easement, Copeland would
9 not do so. He insisted on the full purchase price and note arrangement. This was because he
10 needed the \$200,000.00 to pay the limited partners. At the end of closing, CP3 was insolvent in
11 the amount of \$191,410.60. It still had its obligation timely to remove the purported easement
12 and no funds to do so.

13 CP3 immediately closed its bank accounts and dissolved the company. It took no
14 immediate action to remove the easement, waiting 16 months to retain lawyers to resolve the
15 issue. These lawyers held one meeting to attempt a resolution, drafted a complaint, and
16 withdrew from representation, not being paid by Copeland for their services.

17 **III.**

18 **ARGUMENT**

19 **A. TRI TOOL'S CLAIM AGAINST CP18 AND CWMRE UNDER UFTA**

20 The books of account and the deposition testimony of PWB (Tracy Stockman) and
21 Copeland, and surrounding circumstances, show that Tri Tool Will prevail on its UFTA claim.
22 California courts hold that there is a right to a jury trial whenever the remedy sought is monetary
23 relief, including even the return of a detrimental sum of money. [*Wisden v. Superior Court*
24 (2004) 124 Cal.App.4th 750, 757, 7500 [21 Cal.Rptr.3d 523, 04 Cal. Daily Op. Serv. 10658,
25 2004 Daily Journal D.A.R. 14397, 2004 WL 2757631].] This includes a claim under UFTA.
26 Because the facts are hotly contested and not settled, Tri Tool should be afforded its
27 Constitutional right.

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1 **1. Claim for Actual Fraud Under UFTA**

2 The essential factual elements for a UFTA claim, with actual intent to defraud [Civ.
3 Code, § 3439.04(a)(1)] are found in Judicial Counsel of California Civil Jury Instructions
4 (“CACI”) No. 4200, “Actual Intent to Defraud a Creditor - Essential Factual Elements (Civ.
5 Code, § 3439.04(a)(1)):

6 [Name of Plaintiff] claims [he/she/it] was harmed because [name of debtor]
7 fraudulently [transferred property/incurred an obligation] to [name of defendant]
8 in order to avoid paying a debt to [name of plaintiff]. [This is called “actual
9 fraud”.] To establish this claim against [name of defendant], [name of plaintiff]
10 must provide all of the following:

- 11 1. That [name of plaintiff] has a right to payment from [name of debtor] for [insert
12 amount of claim];
- 13 2. That [name of debtor] [transferred property/incurred an obligation] to [name of
14 defendant];
- 15 3. That [name of debtor] [transferred the property/incurred the obligation] with the
16 intent to hinder, delay, or defraud one or more of [his/her/its] creditors;
- 17 4. That [name of plaintiff] was harmed; and
- 18 5. That [name of debtor’s] conduct was a substantial factor in causing [name of
19 plaintiff]’s harm.

20 To prove intent to hinder, delay, or defraud creditors, it is not necessary to show
21 that [name of debtor] had a desire to harm [his/her/its] creditors. [Name of
22 plaintiff] need only show that [name of debtor] intended to remove or conceal
23 assets to make it more difficult for [his/her/its] creditors to collect payment.

24 [It does not matter whether [name of plaintiff]’s right to payment arose before or
25 after [name of debtor] [transferred property/incurred an obligation].]

26 Whether a conveyance was made with fraudulent intent is a question of fact and proof
27 often consists of inferences from the circumstances surrounding the transfer. [*Filip v. Bucurenciu*
28 (2005) 129 Cal.App.4th 825, 834 [28 Cal.Rptr.3d 884, 05 Cal. Daily Op. Serv. 4418, 2005 Daily
Journal D.A.R. 6030, 2005 WL 1220822].] Some of these facts include Copeland obtaining the
PWB loan under false representations. His representations to PWB to obtain enough money to
buy the North Carolina Property was that CP3 was buying it. The Bank wrote its cashier’s check
to CP3. Copeland used CP3’s funds, lent to CP18, to purchase the North Carolina Property.
Additionally, this court has already found and adjudicated Copeland to be a fraudster.

1 In fact, the Receiver argues that CP3 received full consideration from CP18 because CP3
2 owed CWMRE an equivalent debt that CP18 owed CP3. Yet, Copeland testified the \$423,544
3 debt was owed CP3 by CP14. That CP14 paid its debt to CP3, because CRI, Copeland Trust,
4 CF-1, CF- used that money to reduce their debts. “They got the benefit of those - - we
5 transferred those notes for relief of debt.”

6 Civ. Code, § 3439.04(b) provides:

7 In determining actual intent under Paragraph (1) of subdivision (a), consideration
8 may be given, among other facts, to any or all of the following:

- 9 (1) Whether the transfer or obligation was to an insider.
- 10 (2) Whether the debtor retained possession or control of the property
11 transferred after the transfer.
- 12 (3) Whether the obligation was disclosed or concealed.
- 13 (4) Whether before the transfer was made or obligation was incurred, the
14 debtor had been sued or threatened with suit.
- 15 (5) Whether the transfer was of substantially all of the debtor’s assets.
- 16 (6) Whether the debtor absconded.
- 17 (7) Whether the debtor removed or concealed assets.
- 18 (8) Whether the value of the consideration received by the debtor was
19 reasonably equivalent to the value of the asset transferred or the amount of
20 the obligation incurred.
- 21 (9) Whether the debtor was insolvent or became insolvent shortly after the
22 transfer was made or the obligation incurred.
- 23 (10) Whether the transfer occurred shortly before or shortly after a substantial
24 debt was incurred.
- 25 (11) Whether the debtor transferred the essential assets of the business to a lien
26 holder who transferred the assets to an insider of the debtor.

27 There is no minium number of factors that must be present before the scales tip in favor
28 of finding of actual intent to defraud. The list of factors is meant to provide guidance to the trial
court not to compel a finding one way or the other. [*Filip*, supra, 129 Cal.App.4th 825, 834].
There is no mathematical formula.

In determining whether transfers occurred with fraudulent intent, the courts apply the
preponderance of the evidence test. [*Gagan v. Gouyd* (1999) 73 Cal.App.4th 835, 839 [86

1 Cal.Rptr.2d 733, 99 Cal. Daily Op. Serv. 5866, 1999 Daily Journal D.A.R. 7472, 1999 WL
2 517190)].] In this case, the Court can find the presence of factors 1, 2, 3, 5, 6, 8, 9, and 11.

3 **(a) Factor (1): The Transfer or Obligation Was to an Insider**

4 Copeland owned 66-2/3% of CWMRE. He testified that he ran and controlled it.
5 CWMRE is the general partner of both CP3 and CP18. In other words, Copeland made the
6 decisions affecting the business affairs of both entities. The investors were substantially the
7 same. CP3's remaining assets after the sale of the RC Property was cash. Substantially, all that
8 cash rolled into CP18 as a part of Copeland's Plan. But, for a piece of paper filed at the
9 Secretary of State's Office, a few additional investors, they were substantially one and the same.

10 **(b) Factor (2): Copeland Retained Control of the Property**
11 **After the Transfer**

12 Because Copeland controlled both entities through CWMRE, their common general
13 partner he unquestionably maintained control of the monies once they left CP3's bank account,
14 and transferred to CP18's bank account. In controlling CP18's bank account, he controlled where
15 the money went from there. That just happened to be to pay a debt of CP18, he personally
16 guaranteed.

17 **(c) Factor (3): Whether the Obligation was Disclosed**
18 **or Concealed**

19 Here, Copeland testified in his deposition that the obligation to PWB was not disclosed
20 and that he would not have done so.

21 **(d) Factor (5): The Transfers Were of Substantially All**
22 **CP3's Assets**

23 Copeland's Plan was to lend CP18 the funds he obtained from the PWB loan, for CP18 to
24 buy the North Carolina Property. He would then repay the loan from the sales proceeds of CP3's
25 RC Property. After the sale of the RC Property on April 6, 2007, Copeland netted \$680,924.59.
26 By the end of April 2007, he paid off the Wendover note of \$333,544.00. He had returned
27 Franklin's investment of \$230,000.00. He paid other creditors, leaving CP3 \$191,410.60 in debt.
28 By July 7, 2007, he closed the account.

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(e) Factor (8): The Value of the Consideration Received by CP18 was not Reasonably Equivalent to the Value of the Asset Transferred

Copeland's Plan was for CP3 to give up or release its CP18 note receivable, in exchange for CP18 giving the CP3 investors an equivalent equity interest in CP18. This consideration did not flow to CP3. It flowed to the undivided investors. Thus, CP3 got nothing in return. Copeland also, as part of his Plan, paid off the debt of CP18 to Wendover, a debt he personally guaranteed. Here, the Receiver's claims and alleges transactions between CP3 and CWMRE, left CP3 indebted to CWMRE, coincidentally, in like amount, without showing any evidence of the underlying debt owed CWMRE by CP3. He relies on books and records that the SEC asserted in its petition in this case were but a part of a massive fraudulent scheme, commingling assets. He does so after asserting this in his request to pool assets. And, he does so without any tracing as to the obligation's source. This happens while at the same time he admits that after first denying Tri Tool access to records, he only gave Tri Tool access to CP3 and CP18's records because Tri Tool could get them from Attorney Ziprick anyway. He has not provided Tri Tool with any of CWMRE's records. He has no basis and cannot assert the accuracy or truthfulness of the offsets he claims provides consideration. Copeland's testimony, in regards to his own account records, states otherwise. Effectively, he uses an expert, the Receiver, to claim the offsets are accurate, denying Tri Tool an expert, by denying Tri Tool access to the same records, by virtue of this Court's blanket stay. These facts dictate that Tri Tool cannot obtain due process unless and until this Court should reconsider its prior ruling and under *S.E.C. v. Wencke* (9th Cir. 1980) 622 F.2d 1363 [Fed. Sec. L. Rep. P 97533], lift the stay.

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(f) Factor (9): CP3 Became Insolvent Shortly After the Transfers

Copeland testified that shortly after the transfers, CP3 was in the negative \$192,000.00.

(g) Factor (11): CP3 Transferred the Essential Assets of the Business to an Insider of the Debtor

As stated above, CP3's essential assets on April 6, 2007 was the RC Property. Through the Swing Loan, CP3 effectively transferred its asset to CP18 on close of escrow that date.

In other words, of the eleven badges of fraud identified in Civ. Code, § 3439.04(b) to

1 show intent, seven of them show Copeland's intent under Civ. Code, § 3439.04(a)(1).

2 The SEC obtained a judgment against Copeland for being a fraudster. He left CP3 owing
3 Tri Tool on the Note, while stripping CP3 of its equity, and ability to pay Tri Tool. Tri Tool thus
4 has actionable claims against CP18 and CWMRE, under Civ. Code, § 3439 et seq., for their
5 participation in this fraudulent transfer.

6 The Receiver argues that since \$200,000.00 existed on a given date, in April 2007, the
7 transfer could not be fraudulent. That is not the law. The law is that a transfer is fraudulent if
8 the transfer or obligation is incurred, without receiving a reasonably equivalent value in exchange
9 and the debtor is insolvent at that time, or the debtor became insolvent as a result of the transfer.
10 [Civ. Code, § 3439.05]. Here, the asset transferred that offended UFTA, was not the money
11 loaned. The asset transferred was the release of the note receivable, CP18 owed CP3. That
12 occurred April 6, 2007. CP3 became insolvent when it released that note receivable.

13 **2. Claim for Constructive Fraud Under UFTA**

14 To recover on an action under UFTA for constructive fraudulent transfer [Civ. Code, §
15 3439.04(a)(2)], the Plaintiff claiming it was harmed because CP3 transferred money to CP18,
16 must prove that (1) Petitioner has a right to payment from CP3 for \$200,000.00, and interest, at
17 10%, and attorneys fees; (2) CP3 transferred property, through CP14 to CP18; (3) CP3 did not
18 receive a reasonable equivalent value in the exchange for the transfer; (4) CP3 believed or
19 reasonably should have believed that it would incur debts beyond its ability to pay them, as they
20 became due; (5) they harmed Petitioner; CP3's conduct was a substantial factor in causing
21 Petitioner's harm; and (6) Petitioner suffered injury. [Civ. Code, § 3439 et seq.; *Wisden*, supra,
22 124 Cal.App.4th 750, 757; Judicial Counsel of California Civil Jury Instructions, 4203].] These
23 elements as set forth above have clearly been met.

24 **3. Transfer**

25 **(a) What a Transfer Is**

26 On its face, the UFTA applies to all transfers. Civ. Code, § 3439.01, subdivision (i)
27 defines "transfer" as "every mode, direct or indirect, absolute or conditional, voluntary or
28 involuntary, of disposing of or parting with an asset or an interest in an asset, and includes

1 payment of money, release, lease and creation of a lien or other encumbrance.”

2 Transfer means every method of parting with a debtor’s property or an interest in a
3 debtor’s property. [Civ. Code, § 3439.01(i); *Mejia v. Reed* (2003) 31 Cal.4th 657, 664 [3
4 Cal.Rptr.3d 390, 74 P.3d 166, 03 Cal. Daily Op. Serv. 7306, 2003 Daily Journal D.A.R. 9119,
5 2003 WL 21939792].] A transfer may be direct or indirect, absolute or conditional or voluntary
6 or involuntary. [*Mejia*, supra, 31 Cal.4th 657, 664.]

7 **(b) Transferee**

8 The UFTA permits defrauded creditors to reach property in the hands of a transferee.
9 [*Mejia*, supra, 31 Cal.4th 657]. A transfer made by a debtor is fraudulent as to a creditor,
10 whether the creditor’s claim arose before or after the transfer was made, if the debtor made the
11 transfer as follows: (1) with actual intent to hinder, delay or defraud any creditor of debtor.
12 [*Filip*, supra, 129 Cal.App.4th 825, 829.] CP18 did not take in good faith because its general
13 partner whom arranged the transaction was CWMRE, whom Copeland controlled and ran, as
14 well as CP3.

15 Petitioner’s claims against the Receivership Entities arise out of Copeland using CP3’s
16 sole asset to monetize the purchase of the Garden Ridge Property, which then became CP18’s
17 sole asset. As explained below, Copeland closing CP3’s bank account shortly after selling CP3’s
18 sole asset fully supports Petitioner’s claim that CP3 could have paid the Note, had Copeland not
19 used CP3’s funds to purchase the Garden Ridge Property. Its filling the certificate of dissolution
20 long before the Note became due, evidences the Copeland’s intent. By doing what he did,
21 Copeland put these funds beyond the reach of Petitioner, a CP3 creditor. Going to the very core
22 of Petitioner’s UFTA claim is what Copeland told PWB. That is, that CP3’s loan’s purpose was
23 to buy the Garden Ridge Property. The trail of funds through CP3’s, and CP14’s bank accounts,
24 into the escrow, to purchase the Garden Ridge Property in CP18’s name is crystal clear. CP3’s
25 paying the Loan and the Wendover Loan off upon the sale of CP3’s sole asset, and immediately
26 closing CP3’s checking account, clearly implies CP3 had no intent to pay this obligation. These
27 facts make clear Petitioner’s and rights under the law, to have a constructive trust imposed over
28 the sale proceeds of the Garden Ridge Property.

1 (c) When Transfer Occurs

2 If transfers of particular property cannot be perfected under applicable law, the transfer is
3 deemed made *when it becomes effective between the debtor and transferee*. [Civ. Code, §
4 3439.06(c)(2).]

5 There is no serious dispute as to the following facts: (1) Copeland controlled CWMRE,
6 the general partner of both CP3 and CP18. (2) CWMRE controlled CP3 and CP18. (3) Copeland
7 transferred more than \$2,100,000.00 cash from CP3 to CP18, as a part of his Plan to roll the
8 assets of CP3 to CP18. (4) Copeland transferred CP3's \$1,795,000.00 Swing Loan proceeds to
9 CP18 on or about March 2, 2007, both entities booked as a loan. (5) CWMRE, as general partner
10 of CP3 and CP18, released the note receivable to CP18 on April 6, 2007. (6) That effective April
11 6, 2007, CP3 no longer owned the loan, as an asset, CP3 having released it to CP18. (7) That
12 CP18 gave CP3's limited partners equity in CP18, in exchange for the obligator's release. (8)
13 The investors received the benefit of the release, not CP3. CP3 thus received no consideration.

14 **B. STATUTE OF LIMITATIONS**

15 The Receiver, contends the statute of limitations has run, as to the PWB loan. He does so
16 by mischaracterizing the \$1,800,000.00 transfer as CP3 having an interest in CP14, instead of
17 how they booked it, as a loan. He ignores California law that dictates the transfer takes place
18 when the transfer is effective between the parties. He ignores the fact that the transfer is but a
19 part of a plan that became effective upon the note receivable's release to CP18. Here, that is
20 April 6, 2007.

21 The Receiver misstates the second amended complaint filed April 4, 2006, within the four
22 year period. The second amended complaint names all the limited partners and includes 25 Doe
23 Defendants with appropriate allegations of their participation in the UFTA transaction.

24 The Wendover Note payoff was clearly within both prongs of the UFTA statute of
25 limitations that would otherwise provide for extinguishment of actions.

26 (i) Three Prongs of UFTA Statute

27 In deciding whether an action to set aside a fraudulent transfer under UFTA is timely, the
28 Court must evaluate it under three prongs of the statute. The statute "extinguishes" a cause of

1 action under UFTA, with respect to a fraudulent transfer, unless the action is filed or execution is
2 levied within one of the following time periods:

3 ***(ii) Actual Frauds***

4 For transfers made with the intent to hinder, delay or defraud any creditor, four years after
5 the transfer was made or obligation was incurred, *or if later*, within one year after the transfer or
6 obligation was or reasonably could have been discovered. [Civ. Code, § 3439.09(a); *Monastra v.*
7 *Konica Business Machines, U.S.A., Inc.* (1996) 43 Cal.App.4th 1628, 1645 [51 Cal.Rptr.2d 528,
8 539, 29 UCC Rep.Serv.2d 1306, 96 Cal. Daily Op. Serv. 2188, 96 Daily Journal D.A.R. 3612,
9 1996 WL 139152]; *Donell v. Kowell* (9th Cir. 2008) 533 F.3d 762, 773, 774 [08 Cal. Daily Op.
10 Serv. 8363, 2008 Daily Journal D.A.R. 10090, 2008 WL 2579200]].] Petitioner sued on April 4,
11 2011, within four years of the time of when the transfer became effective, April 6, 2007.

12 ***(iii) Constructive Fraud***

13 For transfers made without receiving reasonably equivalent value, leaving the debtor
14 insolvent or with unreasonably small assets for its operations, four years after the transfer was
15 made, or the obligation was incurred. [Civ. Code, § 3439.09(b); *Monastra*, supra, 43 Cal.App.4th
16 1628, 1645; *Donell*, supra, 533 F.3d 762, 773).] Here, Copeland’s “Plan” was to transfer the
17 assets and equity from CP3 to CP18. In doing so, he did not provide for the payment of attorney
18 fees to remove the lien or to pay the debt if he did not.

19 ***(iv) Maximum Seven Year Limit***

20 Notwithstanding any other provision of law, the statute extinguishes a cause of action
21 with respect to a fraudulent transfer or obligation if no action is brought, or levy made, within
22 seven years after the transfer was made or the obligation was incurred. [Civ. Code, § 3439.09(c);
23 *In re JMC Telecom LLC* (C.D. Cal. 2009) 416 B.R. 738, 742, 743 [2009 WL 3226520].]

24 ***1. Release to CP18 of the Note Receivable***

25 Petitioner filed its second amended complaint, including a UFTA claim, on April 4, 2007.
26 Here, the facts demonstrate that neither the first or second prong of the UFTA statutes
27 extinguishes CP3's release of its note receivable to CP18 arising out of the PWB \$1,800,000.00
28 loan. Here, the “transfer,” relating to the note receivable CP3 release, arising out of the PWB

1 loan of \$1,800,000.00, occurred April 6, 2007. That is when Copeland released the debt between
2 CP3 and CP18, exchanging it for CP18 partnership equity, CP3's limited partners' benefit.
3 Copeland testified, in his deposition of February 1, 2013, starting at Page 180:6-25 through 187,
4 that on March 1, 2007, he transferred CP3's PWB loan funds to CP14's account. He used the
5 money to close escrow in CP18's name. He booked the transfer on CP18's books as a loan from
6 CP3, and on CP3's books as a note receivable from CP18. On April 6, 2007, the day CP3 sold its
7 sole asset, and repaid the PWB loan, Copeland debited the capital accounts of the limited
8 partners, the amount of their investment. Then he correspondingly credited CP3's note receivable
9 account for the CP18's loan payable to CP3. He established capital accounts in CP18 for the CP3
10 partners. All this was done as a part of a plan by him and within the four-year statute of
11 limitations. [See Copeland Deposition Transcript, attached to the Declaration of Rollie A.
12 Peterson, Esq., as Exhibit "A"].

13 Arguendo, even if, as to the \$1,800,000.00 PWB loan, it does not fall within the four-year
14 statute for constructive fraud, Petitioner has, for actual frauds, after the four-year period, one year
15 from discovering the fraudulent transfer, to file its action. Tri Tool was given in discovery, on
16 March 24, 2011, the form K-1's revealing that beginning on April 6, 2007, CP3 made
17 distributions to the limited partners, in the amounts of their original investments. The K-1's did
18 not show that the distributions to the CP3 limited partners represented a transfer of their CP3
19 limited partnership interest into another partnership, instead a return of the cash they invested. It
20 took more than nine months to get this discovery. Defendants purposefully delayed Plaintiff's
21 discovery and Copeland was deceitful in his response to deposition questions triggering equitable
22 estoppel to assert the statute of limitations. [*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 383
23 [2 Cal.Rptr.3d 655, 672, 73 P.3d 517, 03 Cal. Daily Op. Serv. 6914, 2003 Daily Journal D.A.R.
24 8638, 2003 WL 21782274].] This is a question of fact for the jury to resolve. [*Mills v. Forestex*
25 *Co.* (2003) 108 Cal.App.4th 625, 652 [134 Cal.Rptr.2d 273, 296, 03 Cal. Daily Op. Serv. 3966,
26 2003 Daily Journal D.A.R. 5078, 2003 WL 1870991].]

27 Plaintiff filed the second amended complaint April 4, 2011. The second amended
28 complaint named the limited partners and Doe Defendants, and added, among other things, a

1 cause of action under the UFTA, Civ. Code, § 3439 et seq. against the limited partners and
 2 against the Doe Defendants. The second amended complaint specifically incorporated the Doe
 3 Defendants in the cause of action.

4 **(a) Actions Legally Prohibited by Other Means**

5 Code Civ. Proc., § 356 tolls the statute of limitation during the stay. The running of the
 6 statute of limitations is tolled during any period in which plaintiff is legally prevented from
 7 taking action to protect his or her rights. [*Hoover v. Galbraith* (1972) 7 Cal.3d 519, 526 [102
 8 Cal.Rptr. 733, 738, 498 P.2d 981].]

9 **(b) The Original Complaint Stated Valid Claims**
 10 **Against “Doe” Defendants**

11 For the amendment to relate back, the original complaint must name “doe” defendants
 12 and contain charging allegations that state a valid claim against the fictitiously-named
 13 defendants. [*Austin v. Massachusetts Bonding & Ins. Co.* (1961) 56 Cal.2d 596, 600 [15
 14 Cal.Rptr. 817, 819, 364 P.2d 681]; *Scherer v. Mark* (1976) 64 Cal.App.3d 834, 842 [135
 15 Cal.Rptr. 90, 95].] Petitioner’s second amended complaint, filed within the limitation’s period,
 16 and naming “doe” defendants, satisfies the relation back criteria of Austin and Scheer.

17 **2. Wendover Note**

18 Further, CP3's \$333,544.11 payoff of the carry back Wendover Note on April 22, 2007,
 19 occurred within the four-year period.

20 **IV.**

21 **CONCLUSION**

22 The foregoing shows that the facts are not settled, and that Tri Tool can only obtain due
 23 process by it having the facts settled by a trier of fact. Tri Tool respectfully requests that this
 24 court modify the stay according to *Wencke* and allow Tri Tool to proceed to conclusion in the
 25 state court, before a jury. Additionally, Tri Tool request that this court reconsider its ruling that
 26 the statute ran on CP3's releasing the CP18 note receivable to CP18, in exchange for CP3's
 27 investors getting an equity interest in CP18. Additionally, Tri Tool contends that the payment of
 28 the Wendover note was but a part of Copeland’s Plan that left CP3 without assets to pay its debt

1 to Tri Tool. That includes lacking the cash assets to satisfy its obligation to Tri Tool by getting
2 the easement timely removed.

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**PETERSON & KELL,
A LAW CORPORATION**

Dated: December 4, 2013

By: /s/ Rollie A. Peterson, Esq.
ROLLIE A. PETERSON,
Attorney for Tri Tool Inc.