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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION – LOS ANGELES

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 CHARLES P. COPELAND,
COPELAND WEALTH
16 MANAGEMENT, A FINANCIAL
ADVISORY CORPORATION,
17 AND COPELAND WEALTH
MANAGEMENT, A REAL
18 ESTATE CORPORATION,

19 Defendants.

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

**JOINT REPLY TO OPPOSITION
TO MOTION TO CONSOLIDATE
RECEIVERSHIP ENTITIES**

Date: November 5, 2012

Time: 10:00 a.m.

Ctrm: 8, 2nd Floor

Judge: Hon. Manuel L. Real

20 Permanent Receiver Thomas C. Hebrank submits the following joint
21 reply to opposition to motion to consolidate filed by Flagstar Bank, certain
22 "Joining Limited Partners", and certain "Third Party Objectors".

23 I.

24 **PREFATORY STATEMENT**

25 The opposition filed by Flagstar Bank, FSB (hereafter, "Flagstar"),
26 brought to the Receiver's attention that when the Declaration of Thomas C.
27 Hebrank [Dkt. Number 130-10] was filed, three pages were inadvertently
28 omitted. All pages, however, were timely served via the U.S. Postal

1 Service on October 5, 2012 on all of the Copeland investors and their
 2 attorneys. On October 17, 2012, a Notice of Errata attaching the missing
 3 pages was filed with the Court. [Dkt. Number 148]. Because all of the
 4 objecting parties were served copies of the complete declaration by mail on
 5 October 5, 2012, and the heretofore missing pages were filed on October
 6 17, 2012, no prejudice exists as a result of this inadvertent mistake.

7 Additionally, as a result of the Flagstar opposition, it was also brought
 8 to the Receiver's attention that the Notice of Motion was not filed. Again,
 9 this mistake was inadvertent. However, as is apparent by the fact that the
 10 same three parties that have opposed every other application or motion in
 11 this case also filed opposition to the instant motion, the failure to file the
 12 Notice here did not unfairly prejudice their ability to respond to the Motion
 13 To Consolidate.

14 The Receiver's counsel apologizes for any confusion caused by the
 15 above-described inadvertent errors. Indeed, no excuse is offered because
 16 none exists. The fact remains, however, that no party was unfairly
 17 prejudiced by what occurred. That said, if the Court is inclined to deny this
 18 Motion To Consolidate because of the procedural failings (since corrected),
 19 it is respectfully requested that the hearing date be continued to account for
 20 the late filing of the Notice and that the matter be heard on the Court's next
 21 available date.

22 II. 23 ARGUMENT

24 A. Flagstar's Opposition Fails To Address The Matter Before The Court.

25 Flagstar's Opposition engages in alchemy. Like a sorcerer trying to
 26 turn lead into gold, Flagstar is trying to turn this Motion To Consolidate into
 27 something it is not. This is a Motion To Consolidate the Receivership
 28 Entities and pool the assets and liabilities of the various partnerships. It is

1 not a motion to establish a claims procedure, nor does it seek approval of a
 2 distribution plan. It is definitely not a motion seeking a determination as to
 3 the scope of Flagstar's security interest. Rather than attacking the merits
 4 of substantive consolidation, Flagstar's argument is focused solely on
 5 protecting its security.

6 This is not the time or place to argue what effect, if any, substantive
 7 consolidation may have on a creditor's security interest. This Motion simply
 8 seeks authority to accumulate the assets of all of the various Receivership
 9 Entities so that decisions can be made with respect to establishing a
 10 Claims Procedure and a Distribution Plan. The Receiver does not concede
 11 that Flagstar's position is correct. Assuming, arguendo, that it is correct, it
 12 is still premature. Flagstar is opposing a motion that has not yet been
 13 brought.

14 Once the rhetoric and argument concerning the impact substantive
 15 consolidation has on secured interests is stripped from its opposition,
 16 Flagstar doesn't really oppose the Motion To Consolidate. Flagstar
 17 concedes as much, asking that if the Court grants the Receiver's motion,
 18 the Court's order should make clear that substantive consolidation has no
 19 effect on Flagstar's security interest. [Dkt. Number 140, Page ID #:2418].
 20 Flagstar is asking the Court to render an advisory opinion; it seeks relief
 21 from something that has not yet occurred. While the Court may be
 22 omniscient, it is not clairvoyant.

23 The issue of the scope and validity of Flagstar's security interest is
 24 not before the Court. The only issue before the Court is whether
 25 substantive consolidation provides a fair and equitable procedure for the
 26 victims and creditors of Charles Copeland's wrongdoing. This Motion
 27 should be granted.

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B. The Opposition By The "Joining Limited Partners" Is Misguided.

The opposition [Dkt. Number 144] filed by certain Joining Limited Partners of Copeland Properties Two, Copeland Properties Five, Copeland Properties Seven, Copeland Properties 16, and Copeland Properties 17 (hereafter, "Joining Limited Partners") provides no reason for the Court to deny this Motion. Indeed, several of the declarations submitted in support of the opposition actually support the Motion To Consolidate. The fact is, nearly all of the investors in Copeland's ill-fated scheme invested in Charles Copeland; they conducted no due diligence or other investigation with respect to the various limited partnerships into which their money was placed.¹ They received regular distributions, but paid no attention to and apparently didn't care about the financial management of the limited partnership entities. The Copeland scheme became a game of financial musical chairs. Because the Joining Limited Partners happened to be standing near a chair when the music stopped, they claim they should be rewarded.

The fact that the Joining Limited Partners' partnerships happened to be viable entities at the time the Receivership was imposed, while other partnerships were not, is merely a fortuitous event. It had nothing to do with actions taken, or not taken, by the Joining Limited Partners. That is why this motion should be granted and the Receiver directed to consolidate the Receivership Entities.

1. The Declarations Do Not Support The Opposition.

Six investor declarations were filed. One of those declarants,

¹ Eight declarations were filed in support of the opposition. Two of the declarants (Charles E. Crookall [Dkt. Number 144-5] and James R. Conner [Dkt. Number 144-7]) are not investors, but rather professional witnesses hired by Attorney Quinlan. None of the remaining six declarants provides any facts, only self-serving conclusions, concerning due diligence performed with respect to the limited partnerships into which their money was placed. They think they should be rewarded simply because they were lucky.

1 William Steele, describes himself as a professional financial advisor. [Dkt.
 2 Number 144-3, Page ID #: 2536]. The other five are medical professionals
 3 or laypersons, without expertise investing in real estate limited
 4 partnerships. Similar to the declarants supporting the Motion, all six
 5 became acquainted with Charles Copeland because he was their trusted
 6 accountant.

7 Pertinent portions of the six Declarations are discussed as follows:²

8 **Robert Mitchell, M.D. [Dkt. Number 144-1]:**

9 Dr. Mitchell states that Charles Copeland was his accountant for
 10 many years, and that Copeland persuaded him to invest in CP-18. He
 11 claims he was "provided enough information about the investment to make
 12 a judgment about its value", but Dr. Mitchell states absolutely nothing about
 13 what that information was or what he did with it prior to making his
 14 investment. [Dkt. Number 144-1, Page ID #:2525].

15 **Blanche Higdon [Dkt. Number 144-2]:**

16 Ms. Higdon, like the others, invested with Charles Copeland because
 17 "he had a good reputation" and was her trusted accountant. Her
 18 declaration says nothing about how she and her husband went about
 19 deciding to invest in CP-7, as opposed to any of the other limited
 20 partnerships. She doesn't even say that any investigation of any kind was
 21 performed, prior to making the investment. [Dkt. Number 144-2, Page ID #:
 22 2530]. Her declaration seems to claim that she was lucky, therefore she
 23 should be rewarded.

24 ///

25
 26 ² The Receiver sought to take depositions of several of the declarants by scheduling multiple depositions
 27 on the same day, thereby avoiding the expense of multiple trips to the Riverside area. Counsel for the
 28 "Joining Limited Partners" comments that the depositions were abruptly cancelled; in fact, as a result of
 their counsel, depositions of those persons became unduly difficult to schedule in a coordinated manner.
 The depositions, no doubt, would have elicited more candid information.

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Stewart Rex Wright, M.D. [Dkt. Number 144-4]:

Dr. Wright states that Charles Copeland was his accountant for many years, and that Copeland approached him to invest in several entities. While he claims, "I was provided enough information by Mr. Copeland to make a judgment as to the value of the commercial property purchased by CP16 as a partnership", Dr. Wright's declaration is devoid of any factual statement concerning what that "information" was, or what he did to compare investment in CP-16 with any of the other entities presented to him by Charles Copeland. He says he "investigated" the investment, but states nothing about what constituted that investigation.[Dkt. Number 144-4, Page ID #:2547]. The declaration fails to present any facts to support that Dr. Wright's investment in CP-16 was anything but a fortuitous event.

Dusty Bricker [Dkt. Number 144-6]:

Charles Copeland was Ms. Bricker's accountant and financial advisor. She says that Copeland facilitated a Section 1031 exchange for her, and advised her to transfer the gain from the sale into Copeland Properties 17, which she did. The declaration simply says Copeland advised her to invest in CP-17, and she followed his advice. Ms. Bricker's declaration states nothing about investigation or other due diligence concerning her investment, or why she decided to invest in CP-17, as opposed to other investment opportunities. [Dkt. Number 144-6, Page ID #:2564]. Dusty Bricker was fortunate; her money just happened to land in one of the viable limited partnerships. But, Ms. Bricker did nothing differently than any of the other less fortunate investors. She should be treated no differently just because she was lucky, and others were not.

Rick Higdon [Dkt. Number 144-8]:

Similar to the other investors, Charles Copeland was Rick Higdon's accountant. He states that Copeland had a good reputation and that he

1 was trusted. Mr. Higdon states that Copeland approached him to invest in
 2 several entities, and that he was provided "enough information" to make a
 3 judgment as to the value of the CP-16 commercial property. The
 4 declaration is conclusory, and states no facts to support the opposition. Mr.
 5 Higdon does not describe the "information", or how it was used to help him
 6 make a judgment that he should invest in CP-16, as opposed to any of the
 7 other entities created by Copeland. He doesn't even state what any of the
 8 other "entities" were. [Dkt. Number 144-8, Page ID #: 2583]. Mr. Higdon is
 9 fortunate. He invested in CP-16, a viable entity. That fortuitous event is
 10 the only thing that differentiates his investment from those of many of the
 11 other victims.

12 **William Steele [Dkt. Number 144-3]:**

13 Mr. Steele is a professional investment advisor. Charles Copeland
 14 was his accountant, and approached him to invest in several entities.

15 Mr. Steele states that in February, 2004, he and his wife invested in
 16 CP-2. As did the other opposing partners, Mr. Steele stated that he
 17 "investigated" the investment. He fails to provide any facts concerning that
 18 investigation, when it took place, or how the results of that investigation
 19 caused him to invest in CP-2 as opposed to any of the other partnership
 20 entities. [Dkt. Number 144-3, Page ID #: 2535]. Mr. Steele also states that
 21 his wife and he invested in CP-5 in February, 2005. He claims he also
 22 investigated that investment, but doesn't describe the investigation, when it
 23 occurred, or how the results caused him to invest in CP-5. [Dkt. Number
 24 144-3, Page ID #: 2535].

25 As with all the investor declarations submitted in support of the
 26 opposition to this motion, Mr. Steele's declaration is conclusory. It provides
 27 no information to support why Mr. Steele should be treated any differently
 28 than any of the other less fortunate victims.

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1 It is difficult to know why the Opposing Partners filed declarations by
 2 Charles E. Crookall and James R. Conner. The **only** reference to Mr.
 3 Crookall in the Opposition to Motion is that the opposing partners would like
 4 to have Mr. Crookall named replacement General Partner. [Dkt. Number
 5 144, Page ID #: 2520].

6 As for James R. Connor, there is no reference to him, or any of the
 7 statements in his declaration, anywhere in the Opposition to Motion [Dkt.
 8 Number 144]. Other than summarizing reports previously filed by the
 9 Receiver, and stating opinions based upon his review of those reports,
 10 Connor's declaration provides no evidence of anything remotely relevant to
 11 this motion. It is interesting, if not noteworthy, that Connor's declaration is
 12 not critical of work performed by the Receiver, in any manner.

13 What position would these "Joining Limited Partners" be taking if
 14 Charles Copeland had re-financed the properties they now covet, and
 15 moved all of the equity into the Fixed Income Partnership that was
 16 depleted; or worse, improperly cashed out some of the other investors?

17 It is simply not credible that for some unexplained reason Copeland
 18 gave information to certain select investors, but not to others. Not a single
 19 one of the declarations submitted by the "Joining Limited Partners"
 20 provides any of the information they claimed to have relied upon as
 21 exhibits, nor do any of the declarants explain how they used that
 22 information to decide to invest in one limited partnership vis-à-vis another.
 23 This Motion To Consolidate should be granted.

24 **C. The Opposition By Third Party Objectors is Not Persuasive.**

25 Finally, certain Third Party Objectors, Robert Allen, Elaune Allen,
 26 Vellore Muraligopal (both individually and as Trustee for the Muraligopal
 27 Living Trust), Myron and Ruby Cinque, Rick and Blanche Higdon, Klaus
 28 Kuehn, Lynda Kuehn, Richard Paul Blanford, Glenn Goodwin, and James

1 Powell (hereafter, "Third Party Objectors") have opposed the Motion To
2 Consolidate. Long on rhetoric, the opposition is short on substance. The
3 Third Party Objectors offer no evidence to support why granting this motion
4 is not in the best interest of the victims and creditors. No declarations were
5 filed to support the Third Party Objectors, though declarations of Rick and
6 Blanche Higdon were submitted in support of the Opposing Partners.³
7 Those declarations are devoid of any facts showing that Rick or Blanche
8 Higdon were anything but lucky deciding where their money would be
9 invested. Other than their good luck, the Third Party Objectors are no
10 different than any of the other victims. They should be treated no
11 differently.

12 Additionally, the Third Party Objectors seem to adopt a time-worn
13 strategy: When both the law and the facts are against you, attack your
14 opponent. The Third Party Objectors claim, "There is simply no rational
15 basis for why the Receiver is holding so much of CP-10's money, except
16 the Receiver appears to intend to hoard cash so that he can pay his fees
17 and those of his attorneys." There is no rational basis for this ludicrous
18 claim. If counsel has some evidence to support this unwarranted attack, he
19 should put it before the Court. If not, he should withdraw this unwarranted
20 argument.

21 The Opposition of Third-Party Objectors should be disregarded, as no
22 evidence has been submitted that supports why they should be treated
23 differently than any of the other numerous victims of Mr. Copeland's
24 scheme. Substantive Consolidation provides a fair and equitable
25 procedure to pool the assets and liabilities of the various Receivership
26 Entities. This motion should be granted.

27
28 ³ The declarations filed on December 12, 2011, [Dkt. Number 19] simply do not support any of the arguments here advanced by the Third-Party Objectors.

III.

CONCLUSION

The primary issue that this Court must decide in ruling on this Motion is whether it is in the best interest of victims and creditors to consolidate the assets of all of the Receivership Entities. In short, will consolidation ensure equitable treatment.

As was previously stated, the common thread running through the victims' statements is that money was invested with Copeland because people trusted him, not because of the financial vitality of any particular limited partnership. The funds, as well as returns on investments, were moved from one entity to another, on the whim of Charles Copeland, not at the direction of any investor. The money invested into a specific partnership was never permanently segregated for purposes of that partnership alone. The funds were freely transferred among the Receivership Entities, depending upon which partnerships had money and which ones needed money at the time. Because there is no evidence that differentiates the decision made by one investor to place money in a particular limited partnership from the decisions made by other investors, the Receiver proposes to treat all assets of the Receivership Entities as a single estate. Treating all investors equally is not done to punish any group that was fortunate enough to have invested in what ended up as a viable entity at the time the Copeland house of cards came crashing down. Rather, as recognized by the several Courts, Substantive Consolidation is an equitable doctrine; its purpose is to insure the "equitable treatment of all creditors." *In re Eastgroup Properties*, 935 F.2d 245 (11th Cir. 1991); *In re Standard Brands Paint Company*, 154 B.R. 563, 570 (Bkrcty. C.C. Cal. 1993).

For all the foregoing reasons and based upon the pleadings herein,

1 as well as any argument or evidence the Court may consider at the time of
2 the hearing, it is respectfully requested that this Motion To Consolidate be
3 granted.

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5 Dated: October 22, 2012 MULVANEY BARRY BEATTY LINN &
MAYERS, LLP

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7 By: /s/ Patrick L. Prindle
8 Attorneys for Thomas C. Hebrank, Receiver
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