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10 COPELAND PROPERTIES TWO, a Limited
11 Partnership; COPELAND PROPERTIES FIVE, a
12 Limited Partnership; COPELAND PROPERTIES
13 SEVEN, a Limited Partnership; COPELAND
14 PROPERTIES 16, L.P.; COPELAND
15 PROPERTIES 17, L.P.

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 SECURITIES AND EXCHANGE
19 COMMISSION,

20 Plaintiff,

21 vs.

22 CHARLES P. COPELAND,
23 COPELAND WEALTH
24 MANAGEMENT, A FINANCIAL
25 ADVISORY CORPORATION, and
26 COPELAND WEALTH
27 MANAGEMENT, A REAL ESTATE
28 CORPORATION,

Defendant.

CASE NO.: 11-08607-R-DTB
Ctm: 8, 2nd Floor
Judge: Hon. Manuel Real

**OPPOSITION TO MOTION TO (1)
CONSOLIDATE RECEIVERSHIP
ENTITIES; AND (2) POOL ASSETS
AND LIABILITIES OF THE
VARIOUS RECEIVERSHIP
ENTITIES; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF OPPOSITION;
DECLARATIONS IN SUPPORT**

Hearing Date: November 5, 2012
Hearing Time: 10:00 a.m.
Courtroom: 8, 2nd Floor
Judge: Hon. Manuel Real

FILE DATE: October 18, 2011
TRIAL DATE SET: No Date Set

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1 **1. COUNTER-INTRODUCTION.**

2 The Joining Limited Partners take exception to the Receiver's continued and
3 conclusory repetition that Copeland perpetrated a fraud, "treated the entities as the
4 'Copeland Piggy Bank,' and engaged in pervasive commingling of funds from
5 entities that had cash flow to those that did not at any given time." Fortunately,
6 placing this statement in the first paragraph of the Receiver's introduction allows us
7 to go to the heart of the matter. Both the SEC and the Receiver's counsel have filed
8 documents containing allegations of a Ponzi-like scheme, or securities fraud, or
9 commingling, and then most recently the Receiver's characterization of the activity
10 as the "Copeland Piggy Bank." The Receiver has spent a lot of time and a lot of
11 investor money supporting these allegations with conclusions but with precious
12 little fact. In terms of the Objection by the Certain Joining Limited Partners of CP
13 2/17, CP 5, CP 7 and CP 16, their position has been clearly stated from the
14 beginning that their partnerships have existed for as long as seven years, they are all
15 registered in California, they are all solvent, and none of them received any material
16 benefit from any other Copeland named entity. Further, that a fair and honest
17 accounting of the books and records related to these four partnerships would prove
18 that. The purpose of this Opposition to the Motion is to again highlight for the
19 Court that not only is it a relatively easy task to examine these four partnerships to
20 prove or disprove the bald-faced allegations made by the Receiver, it is a task that
21 has already been done by others whose conclusions are contained in declarations
22 attached hereto and supporting exhibits.

23 **2. FACTUAL AND PROCEDURAL BACKGROUND.**

24 Initially, the Receiver's Motion is defective and should be denied. He did not
25 file a notice of motion (Local Rule 7-4) nor did he advise other counsel of his plan
26 (Local Rule 7-3). As to background, we are all aware that the SEC brought an
27 action to enjoin the acts of Mr. Copeland and his associates. We are aware that this
28 Court granted permanent injunctive relief and installed a receiver, all before

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1 Christmas 2011. The record shows that the investors and limited partners in the
2 various Copeland named entities, many of whom are elderly and retired, had little
3 time to respond to the imposition of this receivership and the unilateral selection of
4 Mr. Hebrank as receiver, as well as the unilateral selection of the Allen Matkins law
5 firm as counsel. The investors and limited partners are grateful that the Court
6 recognized that after billing almost \$150,000 in the first month of the receivership,
7 the Allen Matkins firm should not have been retained unilaterally and put the legal
8 services out to bid. Since that time, the Receiver has continued to assert the same
9 argument made by the SEC, that there was rampant commingling and Ponzi-like
10 activity that requires a receiver to unwind in the so-called exercise of his "full
11 equity powers."

12 The certain Joining Limited Partners objected to the Receiver's first report
13 and submitted an order to this Court, which the Court agreed with and signed on
14 February 6, 2012. That order required:

15 And the ruling is within 30 days of the date of this order
16 . . . and that would be 30 days of today because I'm going
17 to sign the order . . . the receiver is required to report
18 findings on the validity of any notes receivable by all . . .
19 all limited partnerships as a single creditor and provide
20 justification for continued inclusion of such limited
21 partnerships in the receivership.

19 (Reporter's Transcript, February 6, 2012, emphasis added.)

20 The court further ruled:

21 Within 90 days -- no, within 60 days of the date of this
22 order, the receiver is required to report his findings as to
23 the validity of complex notes receivable and payable
24 between and among other limited partnership entities and
25 fixed-income funds and justification for continued
26 inclusion of such limited partnerships in the receivership
27 on the grounds that cross-transactions amount to actual
28 commingling such that the equities require a receiver to
unwind.

26 (Reporter's Transcript, February 6, 2012, emphasis added.)

27 Since the issuance of that court order, the certain Joining Limited Partners
28 have sought to obtain an honest accounting of the history of the partnerships,

1 transfers into the partnerships and any transfers out of the partnerships that might be
2 challenged for impropriety. The Receiver has refused to do that. The certain
3 Joining Limited Partners have written both to the SEC and to the Receiver
4 demanding such a proper accounting and been rebuffed.

5 **3. THE JOINING LIMITED PARTNERS' DECLARATIONS.**

6 The Joining Limited Partners have invested millions of dollars in CP 2/17,
7 CP 5, CP 7, and CP 16. Each of the limited partners invested cash. Most of them,
8 as supported by their declarations filed concurrently herewith, began their
9 investments as far back as 2004, and received annual distributions and annual K-1
10 tax returns reflecting their capital accounts. They relied on those tax returns and
11 most especially relied on the distributions because most of them are retired, as their
12 declarations will show. They all trusted and relied on Mr. Copeland and they all are
13 substantially damaged as a result of his conduct that led to this receivership. What
14 differentiates them from other investors is that their partnerships did not receive
15 material funds transfers from which to make unearned distributions.

16 **4. THE RECEIVER'S BATTLE WITH OBJECTORS/JOINING**
17 **LIMITED PARTNERS.**

18 It is critical to note that at page 6, paragraph D of the Receiver's Motion,
19 counsel attempts to preempt this opposition by repeating again that this Court
20 ordered that all assets of the partnerships were included in the receivership. All of
21 the Joining Limited Partners objected to that result but maintained a vigilant
22 attempt to educate the Receiver, volunteered through the undersigned to meet with
23 the Receiver and go over Mr. Copeland's accountings but have been met with
24 misleading conduct. Counsel for the Receiver originally scheduled approximately
25 six depositions, the undersigned discussed with them appearing at those depositions
26 and also scheduling Mr. Charles Copeland for a deposition to review the
27 accountings he prepared. Counsel for the Receiver abruptly canceled without
28 notice the depositions and, as this Court sees, conducted a scattering of interviews

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1 with investors resulting in the introduction of declarations that are supposed to
2 support the Receiver's argument that all assets must be consolidated and liquidated
3 so these poor folks can receive money.

4 All of the investors and limited partners are victims of Mr. Copeland's
5 breaches of fiduciary duty, but they are not all victims to the same degree, nor are
6 each of them entitled to the same treatment under some form of misguided
7 redistribution theory.

8 It is clear from the Receiver's argument at page 6 of his Motion that he fears
9 the certain Joining Limited Partners a/k/a Objectors will once again fight him over
10 his unsupported allegations designed to destroy their retirement funds. He is
11 correct in that regard. His statement in the third paragraph at line 16 of page 6 that
12 if these joining limited partners' four partnerships were excluded, he "would have to
13 immediately start efforts to collect on notes receivable among the various
14 receivership entities and the investors themselves." This is beyond an absurd
15 statement. As the evidence will show, these four partnerships are isolated, have no
16 material obligations to any other entities and frankly should be left alone. The
17 Receiver cannot abide that result because these four partnerships are where most of
18 the money is.

19 The chart below shows in detail the three different types of assets held in the
20 receivership by virtue of their solvency.

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5. **THE RECEIVER'S PIGGY BANK:**

RECEIVER'S REPORT #4
as of September 28, 2012

Subject to fees:

Copeland Realty
Financial

Copeland Wealth
Management

Copeland Fixed
Income Fund I

Copeland Fixed
Income Fund II

Copeland Fixed
Income Fund III

CP Equity Two LP

Total Balance:
\$245,804.53

Failed or Failing:

CP 9 - \$19,944.34
• Default – not cash
to pay debt
• Value less than
mortgage
• Deed to lender

CP 15 - \$67,579.48
• Not cash to pay
debt
• Value less than
mortgage
• Motion to abandon

CP 10 - \$430,123.05
• Value less than
mortgage
• Cash flow
• Under lender
default

CP 18 - \$260,065.30
• Sale approved by
court

Total Balance:
\$777,712.17

Solvent:

CP 2: \$217,028.31

CP 5: \$629,485.59

CP 7: \$118,025.29

CP 16: \$177,408.25

CP 17: \$182,879.70

Total Balance:
\$1,324,827.14

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21 The chart above makes it very clear that the bulk of the money in the
22 receivership is held in the Joining Limited Partners' solvent partnerships on the far
23 right. More than that, these partnerships are producing significant cash flow, well
24 over \$1 million per year, and are the very assets the Receiver covets. But what the
25 Receiver does not say and will not tell this Court is that these four partnerships can
26 easily be segregated from the rest of the group with the accounting work that was
27 detailed in the certain Joining Limited Partners Objection to the Receiver's Report
28 #4 which is incorporated herein by reference, in its entirety.

1 **6. THE GOAL LINE STAND.**

2 These certain Joining Limited Partners respectfully request the Court to
3 consider the factual detail they provided and the fundamental unfairness destroying
4 these four partnerships will mean to the limited partners. As one limited partner
5 said in his declaration, that of Mr. Higdon, "Are we guilty by association?" Does
6 the purchase of a legitimate, validly accounted and tax reported asset in a properly
7 registered legal entity from a charlatan mean that an innocent investor must
8 relinquish ownership simply because the charlatan may have treated others
9 unfairly? We call this a goal line stand because frankly, the Receiver is using the
10 investors' money to fight them and we believe the issue has come to a critical
11 decision point for this Court. We believe the Court is being asked to abuse its
12 discretion by accepting the Receiver's blithe arguments without forcing a proper
13 accounting of them. It just isn't that hard, Your Honor, to do this properly and
14 fairly. We respectfully request the court to consider what it would feel like to have
15 the Court's own retirement assets tied up in a partnership or two that were created
16 by a charlatan. To the extent the Court believes the charlatan's activities had little
17 or no impact on the integrity of the investments and the legal entity in which funds
18 were invested, would the Court see it any differently than these Joining Limited
19 Partners?

20 These Joining Limited Partners repeat their willingness to meet with the
21 Receiver and his accountants and go over all of the data available. We believe we
22 have taken the accounting requirements to a rational conclusion on this side of the
23 line, and we challenge the Receiver to do it honestly and fairly on his side of the
24 line. We ask the Court to call a time-out and derail the Receiver's attempt to
25 overrun these Joining Limited Partners, many of whom are retired and elderly.

26 **7. ALL OF THE OTHER COPELAND RECEIVERSHIP ASSETS.**

27 The Receiver continues to fold his disorganized forensic reporting data into
28 this motion in order to support the argument that this is just all too complex to sort

1 out and he should be allowed to liquidate everything and pay distributions to the
 2 claimants. What he doesn't address and what we trust the Court will force him to
 3 address is that he must rely on Mr. Copeland's accounting to determine the capital
 4 accounts of all of the different claimant investors and that his sending letters to
 5 them asking for verification of their investment will not change the facts. All of the
 6 other limited partnerships and fixed income funds relied on Mr. Copeland's
 7 accounting and K-1 filings. As the chart above demonstrates, from the Receiver's
 8 most recent report, there is very little money left in the fixed income funds and the
 9 Copeland Wealth Management and Real Estate Corporation entities. There are
 10 some funds, perhaps \$700,000.00, left in the failed or failing partnerships.
 11 (\$430,000.00 of that is claimed rightly by Flagstar Bank, lender to CP 10.) If the
 12 investors and limited partners in those two groups of assets choose to subject
 13 themselves to the Receiver's consolidation plan and live with whatever is left over
 14 after he takes more fees, than these certain Joining Limited Partners have no
 15 objection to that. That would make this entire process quite simple for all involved.

16 **8. THE AUTHORITIES CITED IN SUPPORT OF THE MOTION.**

17 These Objecting and Joining Limited Partners do not challenge the Court's
 18 equitable power, so they will not offer a forest of counter-citations. They
 19 respectfully request the Court use its equitable powers as judiciously as a proper
 20 and fair accounting will allow.

21 **9. THE INVESTOR DECLARATIONS INTRODUCED BY THE**
 22 **RECEIVER.**

23 Filed in support of this Opposition are counter-declarations by limited
 24 partners in each of the four limited partnerships, CP 2/17, CP 5, CP 7 and CP 16.
 25 These individuals not only detail their own investments and what they relied upon
 26 vis-à-vis Mr. Copeland and the assets they invested in, they make it clear that the
 27 Joining Limited Partners have much the same story as the investors whose
 28 declarations were introduced by the Receiver. These Joining Limited Partners do

1 not doubt that Mr. Copeland reached a point in the formation of various investment
2 partnerships and funds that he selected, some investments that turned out poorly.
3 As is often the case, Mr. Copeland may have had an extremely hard time
4 disappointing people, so he moved money from some entities to others to support
5 them in hopes that time would heal.

6 Maybe he had darker intentions, but the bottom line here is that Mr.
7 Copeland picked some good assets and he picked some bad assets. Each asset was
8 placed in a limited partnership, properly registered and accounted for. Those that
9 turned out to be strong are the four that these Joining Limited Partners invested in.
10 Some of these Joining Limited Partners invested in other partnerships or fixed
11 income funds that didn't turn out well and they are suffering from that. The
12 ultimate question for this Court which is not being addressed by the Receiver is
13 what justification under law and equity is there for destroying four solvent, properly
14 registered and accounted for limited partnerships that have no material obligations
15 to anyone?

16 **10. THE HARM OF THE RECEIVER'S CONSOLIDATED COMMON**
17 **POT.**

18 The Receiver admits at page 20, line 2, of his Motion, that his consolidation
19 plan will "invariably redistribute wealth among the investors and creditors.
20 However, it was the unauthorized redistribution of assets among the limited
21 partnerships that created the inequities which now burden most of the investors."
22 He further goes on to admit that the substantive consolidation remedy he argues for
23 has been found by many courts to be something that should be used "sparingly and
24 reserved for rare cases." (*In Re Lewellyn*, 26 B.R. 246 (S.D. Iowa, 1982).) The
25 Receiver talks about the economic prejudice balance and quotes, quite
26 appropriately, "In other words, a court must conduct a searching inquiry to ensure
27 that consolidation yields benefits offsetting the harm it inflicts on objecting parties.
28 *In Re East Group Properties*, 935 F.2d 245, 249 (11th Cir. 1991), citing *In Re Auto*

1 *Train Corporation*, 810 F.2d at 276." We respectfully suggest the inquiry need not
2 be all that searching to conclude that harm to these Joining Limited Partners will
3 outweigh the gain to the other investors by a factor of 100, given the paucity of
4 assets outside the Joining Limited Partners' partnerships.

5 The balance of the Receiver's citations are simply inapposite. He isolates the
6 core questions for this Court at page 20 of his argument: Is it overwhelmingly
7 equitable to take the assets of these four objecting limited partnership owners and
8 destroy them for the so-called "greater good" of all the other investors who are not
9 so fortunate? Did these four partnerships gain any material benefit from
10 unauthorized transfers that so corrupted the accounting for their partnership
11 interests that their partnership interests must be tossed into the common pot without
12 more? We believe the accounting on the objecting and Joining Limited Partners'
13 side has been done and shows there is no material benefit that occurred with
14 unauthorized transfers into these four partnerships. We believe we have shown that
15 the Receiver cannot prove unearned distributions. If he cannot prove it, then the
16 balancing test he cites must protect the Joining Limited Partners of these four
17 partnerships. To do otherwise is to engage in an unconstitutional taking under the
18 guise of equitable power. Another critical issue is raised by several limited partners
19 in their declarations. (See Declarations of Rick Higdon and Stewart Wright, M.D.)
20 These declarants have additional concerns ignored by the Receiver – they have IRS
21 § 1031 deferral of gain; and potential for personal liability on loans as a result of
22 Mr. Copeland's misconduct. The Receiver disregards this risk in his common pot
23 arrangement. Taking one's life savings and leaving the victim to IRS demands for
24 tax on gain seized by the Receiver is beyond cruel.

25 **11. THE RECEIVER'S FINAL ARGUMENT.**

26 The Receiver claims at page 23, lines 24 through 27, that consolidation will
27 "avoid the substantial accounting fees and expenses resulting from the continued
28 preparation of separate tax returns for each of the receivership entities." Again, if

1 these four partnerships are segregated and released as these Joining Limited
2 Partners will request in a separate motion, they will undertake all of their own
3 accounting and legal fees and continue to operate as all of the limited partners
4 intend. The limited partners have selected a replacement general partner, Mr.
5 Charles Crookall of Shaw Properties, and his declaration submitted herewith
6 demonstrates he has the capability to continue to operate these partnerships
7 effectively. To the extent that no one else objects as to all of the other partnerships
8 and funds, then perhaps consolidation is a rational remedy for the people involved
9 with them. At the bottom, the Receiver's argument at line 22 of page 24 that his
10 consolidation is the only fair and equitable procedure is only fair and equitable
11 through the lens of a man who doesn't want to do the work of treating these four
12 partnerships as separate legal entities properly accounted for, and does not want to
13 give up the \$1,324,827.14 that he is holding in their bank accounts.

14 **12. CONCLUSION**

15 Based on all of the arguments above and the reasoning submitted, these
16 Joining Limited Partners and Objectors respectfully request that:

- 17 (1) The Receiver's Motion for Consolidation and Pooling of Assets and
18 Liabilities of the limited partnerships known as Copeland Properties
19 2/17, CP 5, CP 7 and CP 16 be segregated and continue to be treated as
20 separate legal entities entitled to due process under this receivership;
21 and
22 (2) That the Receiver be ordered to cooperate with counsel and accounting
23 experts for these Joining Limited Partners to compare accounting
24 evidence and make a final joint report to the Court on the accounting
25 status and legal obligations of these four limited partnerships. In the
26 alternative, in the exercise of his equitable power, this Court entertain
27 an evidentiary hearing on the issues raised by these Joining Limited
28 Partners that the Receiver be ordered to cooperate in discovery, that

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the SEC be ordered to cooperate in discovery, and that the limited partners be authorized to conduct discovery as parties to this receivership action with respect to the four subject limited partnerships, CP 2/17, CP 5, CP 7 and CP 16. Further that, in that discovery, Mr. Charles Copeland shall be a subject of deposition by these Joining Limited Partners; and

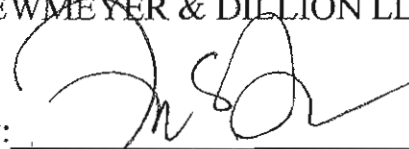
(3) For such other and further relief as the Court may deem must and proper.

Respectfully submitted.

Dated: October 15, 2012

NEWMAYER & DILLION LLP

By:



Francis E. Quinlan
John E. Bowerbank
Attorneys for
the Joining Limited Partners of
COPELAND PROPERTIES TWO, a
Limited Partnership; COPELAND
PROPERTIES FIVE, a Limited
Partnership; COPELAND
PROPERTIES SEVEN, a Limited
Partnership; COPELAND
PROPERTIES 16, L.P.; COPELAND
PROPERTIES 17, L.P.

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CERTIFICATE OF SERVICE

I, Joanne Kenney, hereby certify that on October 15, 2012, the attached document was electronically transmitted to the Clerk of the Court using the CM/ECF System which will send a Notice of Electronic Filing to the following CM/ECF registrants:

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I further certify that copies of the foregoing were sent on October 15, 2012, via U.S. Mail to the following parties:

Charles P. Copeland
Copeland Group
25884 Business Center Drive, Suite B
Redlands, CA 92374

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 15, 2012, at Newport Beach, California.

/s/ Joanne Kenney

Joanne Kenney

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