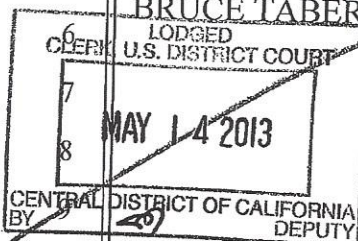


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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION – LOS ANGELES

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 CHARLES P. COPELAND,
16 COPELAND WEALTH
17 CORPORATION, AND
COPELAND WEALTH
ESTATE CORPORATION,

18 Defendants.

CASE NO.: 2:11-cv-08607-R-(DTB x)

BRUCE TABER, D.D.S.'S OBJECTION
TO MOTION FOR ORDER
AUTHORIZING THE DESTRUCTION
OF CERTAIN DOCUMENTS IN THE
RECEIVER'S POSSESSION;
MEMORANDUM OF POINTS AND
AUTHORITIES

Date: June 3, 2013
Time: 10:00 am
Courtroom: 8, 2nd Floor
Judge: Hon. Manuel L. Real

19
20 Interested Parties BRUCE TABER, D.D.S., MAUREEN TABER, and THE TABER
21 FAMILY TRUST, (collectively, the "Tabers"), investors in Copeland Properties, 8, a
22 Limited Partnership ("CP8"), and Copeland Properties 18, a Limited Partnership
23 ("CP18"), submit the following responses and objections to Permanent Receiver
24 Thomas C. Hebrank's Motion for Order Authorizing Destruction of Certain
25 Documents in the Receiver's Possession (the "Motion"), including documents
26 related to CP8 and Copeland Wealth Management, a Financial Advisory
27

FILED BY FAX

1 Corporation ("CWM"):

2 **OBJECTION**

3 The Tabers object to the destruction of any documents related to CP8 and
4 CWM, to the extent that such documents are relevant, or highly likely to lead to the
5 discovery of relevant and admissible evidence, in an action pending in the San
6 Bernardino Superior Court, that the Tabers are prosecuting against their former
7 accountants, Mr. Charles Copeland, Ms. Jeanne Minnerly, and The Copeland
8 Group, a Consulting and Accountancy Corporation. In addition, the Tabers object
9 to the destruction of any documents related to CP8 and CWM, to the extent that
10 such documents are relevant to proceedings in the Supreme Court of the State of
11 New York, related to the foreclosure of the real property purchased by CP8.

12 With respect to the Receiver's Motion, the Tabers ask that any order related
13 to the disposition of CP8 and CWM documents provides a mechanism by which the
14 Tabers can review original documents and either take possession of such documents
15 or obtain copies of the documents for use in the San Bernardino Action and/or the
16 New York Action. In addition, the Tabers seek clarification with respect to their
17 ability to issue a subpoena for the production of documents to the Receiver, in light
18 of the Court's Judgment and injunction issued on October 19, 2011 in this action
19 [Doc. 3]

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I.**

22 **BACKGROUND**

- 23 • The Tabers are currently prosecuting an action in the San Bernardino
24 Superior Court against *inter alia*, Charles Copeland, C.P.A., Jeanne
25 Minnerly, C.P.A., and The Copeland Group, a Consulting and
26 Accountancy Corporation, *Taber et al., v. The Copeland Group, et al.*,
27

1 SBSC Case Not CIVDS 1113312 (the "San Bernardino Action").

- 2 • In the San Bernardino Action, the Tabers allege accounting
3 malpractice and breach of fiduciary duty claims against the above
4 defendants, arising in part out of their investment in CP8 and CP18.
5 Discovery has not been completed in the case.
- 6 • The Tabers believe that documents relevant to the claims asserted in
7 the San Bernardino Action are in the possession of the Receiver.
- 8 • In addition, Dr. Bruce Taber is named as a defendant in an action
9 pending in the Supreme Court of the State of New York entitled
10 *Telesis Community Credit Union v. Copeland Properties Eight, L.P.,*
11 *et al.*, Index No. 09-1988 (the "New York Action"). The claims
12 against Dr. Taber in the New York Action arise from a written
13 Guaranty, purportedly signed by Dr. Taber in connection with a loan to
14 CP8 in the approximate amount of \$4.2 million. Dr. Taber asserts he
15 had no knowledge of this written Guaranty until after he was served
16 with the Summons and Complaint in the New York Action.
- 17 • Dr. Taber believes documents relevant to the facts underlying the
18 Guaranty are in the possession of the Receiver.
- 19 • The ability to take discovery by way of a subpoena issued to the
20 Receiver is unclear in light of the Court's "Judgment of Permanent
21 Injunction and Other Relief as to Defendant Charles P. Copeland,
22 Copeland Wealth Management, a Financial Advisory Corporation, and
23 Copeland Wealth Management, a Real Estate Corporation"
24 ("Judgment"), which includes a sweeping order that stays all litigation
25 related to the entities. [Doc.3, p. 7, ¶ VII(b)]

26 ///

- 1 • The Judgment in this action includes an order restraining and enjoining
2 investors, creditors, claimants and all other persons from, *inter alia*,
3 “using self-help or executing or issuing or causing the execution or
4 issuance of any court attachment, subpoena, ...or other process for the
5 purpose of impounding or taking possession of or interfering with
6 ...property or property interests owned by or in the possession of
7 CWM and Copeland Realty. *Id.*
- 8 • The Receiver’s Motion, *inter alia*, seeks authority to destroy
9 documents related to CP8 and CWM, which the Tabers believe are or
10 may be relevant to the prosecution of their San Bernardino Action, and
11 to the resolution of the New York Action against Dr. Taber.
- 12 • The Tabers have not issued a subpoena for the production of these
13 documents in their San Bernardino Action, because of the restraining
14 issued in connection with the Judgment in this action on October 19,
15 2011. The New York Action has been stayed by the Order issued in
16 this action. [Doc. 3]
- 17 • Counsel for the Tabers has been meeting and conferring with counsel
18 for the Receiver in an attempt to resolve the Tabers’ concerns that
19 documents relevant to their claims will be destroyed without adequate
20 safeguards in place, such as a subpoena or other court process
21 compelling the Receiver to maintain and produce relevant documents.

22 II.

23 ARGUMENT

24 A duty to preserve evidence can be created by a specific request from a party
25 “based on some other contractual foundation, or on a statute, a regulation (for
26 example, record-retention statutes and regulations), or some analogous special
27

1 relationship.” *Johnson v. United Services Auto. Assn.*, 67 Cal.App.4th 626, 635
 2 (1998) abrogated by *Lueter v. State of California*, 94 Cal.App.4th 1285 (2002);
 3 *Dunham v. Condor Ins. Co.*, 57 Cal. App. 4th 24, 27–28 (1997); *Reid v. State Farm*
 4 *Mut. Auto. Ins. Co.*, 173 Cal. App. 3d 557, 581 (1985). California Code of Civil
 5 Procedure § 2020.020(b) imposes a statutory duty for non-parties to produce
 6 business records.

7 The destruction or significant alteration of evidence or the failure to preserve
 8 evidence for another’s use in pending or future litigation is condemned because it
 9 “can destroy fairness and justice, for it increases the risk of an erroneous decision
 10 on the merits of the underlying cause of action. Destroying evidence can also
 11 increase the costs of litigation as parties attempt to reconstruct the destroyed
 12 evidence or to develop other evidence, which may be less accessible, less
 13 persuasive, or both.” *Cedars-Sinai Medical Center v. Superior Court*, 18 Cal.4th 1,
 14 8 (1998). While there is no tort cause of action for the intentional destruction of
 15 evidence after litigation has commenced, it is a misuse of the discovery process that
 16 is subject to a broad range of punishment, including monetary, issue, evidentiary,
 17 and terminating sanctions. *Williams v. Russ*, 167 Cal.App.4th 1215, 1223 (2008)
 18 (citing Code Civ. Proc., §§ 2023.010(d), 2023.030(a)-(d).) The California Supreme
 19 Court recognized that “discovery sanctions are available to punish third party
 20 spoliation, including monetary and contempt sanctions against persons who flout
 21 the discovery process by suppressing or destroying evidence.” *Temple Community*
 22 *Hospital v. Superior Court*, 20 Cal.4th 464, 476-77 (1999)

23 Similarly, Rule 45 of the Federal Rules of Civil Procedure imposes a legal
 24 obligation on the nonparty to take affirmative steps to preserve information relevant
 25 to a subpoena, including electronically stored information, at least through the
 26 period of time it takes to comply with the subpoena and resolve any issues before
 27

1 the court. (Fed. Rule of Civ. Proc. 45 (d)-(e).) While litigant is under no duty to
 2 keep or retain every document in its possession once a complaint is filed, it is under
 3 duty to preserve what it knows, or reasonably should know, is relevant in action, is
 4 reasonably calculated to lead to discovery of admissible evidence, is reasonably
 5 likely to be requested during discovery, and/or is subject of pending discovery
 6 request. *Wm. T. Thompson Co. v. General Nutrition Corp., Inc.*, 593 F.Supp. 1443,
 7 1455 (C.D. Cal. 1984). Moreover, federal courts have held that, under California
 8 law, "spoliation of evidence" is the destruction or significant alteration of evidence,
 9 or failure to preserve property for another's use as evidence, in pending or future
 10 litigation. *Lewis v. J.C. Penney, Inc.*, 12 F.Supp.2d 1083, 1086 (E.D. Cal. 1998).

11 In this instance, the Tabers will continue to work with counsel for the
 12 Receiver to resolve their concerns and obtain access to the documents prior to their
 13 destruction. In an abundance of caution, the Tabers assert this objection so that, if
 14 the parties are unable to resolve the issues related to preserving evidence, the Court
 15 will allow the Tabers to obtain the documents prior to any destruction of evidence.

16 III.

17 CONCLUSION

18 For the reasons set forth above, the Tabers object to any order that would
 19 allow the destruction of evidence relevant to the prosecution of the San Bernardino
 20 Action or the resolution of the New York Action against Dr. Taber. The Tabers ask
 21 that any order regarding the disposition of CP8 and CWM documents allow the
 22 Tabers to access the documents and obtain originals for inspection and copying.

23 DATED: May 1, 2013

DUCKOR SPRADLING METZGER &
 WYNNE

25
 26 Bv: /s/ Robert M. Shaughnessy
 ROBERT M. SHAUGHNESSY
 Attorneys for Non-Party
 27 BRUCE TABER, D.D.S.
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