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7 Attorneys for Plaintiffs DONALD C. PARKER
and DONALD C. PARKER SEPARATE
8 PROPERTY TRUST

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

12
13 DONALD C. PARKER, DONALD C.
PARKER SEPARATE PROPERTY TRUST,

14 Plaintiffs,

15 vs.

16 TODD GRIFFITHS, an individual; DAVID
17 HUNT, an individual; CT GROUP, INC., a
California corporation, formerly known as
18 CENTURY COIN & COLLECTIBLES, INC.;
COLLECTIBLE ASSETS, LLC, a California
19 limited liability company, TODDCO
MANAGEMENT, LLC, a California limited
20 liability company; LEGACY TANGIBLE
ASSET FUND, LLC, a California limited
21 liability company, PENDULUM ASSET
ALLOCATION FUND, LLC, a California
22 limited liability company, and Does 1 through
25,

23 Defendants.
24

CASE NO. BC 504753

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO RECEIVER'S MOTION
FOR AN ORDER APPROVING
RECEIVER'S FINAL REPORT AND
ACCOUNTING, DISCHARGE
RECEIVER, DISPOSITION OF
RECORDS, PAYMENT OF
RECEIVERSHIP EXPENSES, AND
EXONERATION OF BOND**

**[Filed Concurrently With Declaration Of
Philip W. Bartenetti]**

Date: July 7, 2015
Time: 1:30 p.m.
Dept.: 85

Assigned to Hon. James C. Chalfant
Department 85

Action Filed: April 2, 2013
Trial Date: March 10, 2014

1 **I. INTRODUCTION**

2 Plaintiffs Donald C. Parker (“Mr. Parker”) and the Donald C. Parker Separate Property
3 Trust (collectively “Plaintiffs”) oppose the Receiver’s motion to the extent it seeks to (i) require
4 Plaintiffs to pay an alleged deficit amount of \$97,334 and (ii) permit the Receiver to turn over to
5 defendants Todd Griffiths and David Hunt the records in the Receiver’s possession relating to the
6 receivership. While not made clear in the motion or proposed order, the Receiver is presumably
7 intending to also turn over to defendants Griffiths and Hunt any of the receivership estate assets.
8 Plaintiffs object to turning over such assets. Instead, Mr. Parker would pay the Receiver the value
9 of such assets, as stated in the Receiver reports, which could be applied to reduce the accumulated
10 deficit of the receivership estate.

11 **II. PLAINTIFFS ARE NOT OBLIGATED TO PAY THE RECEIVER THE DEFICIT**
12 **IN THAT THERE WAS NO IRREGULARITY IN APPOINTING THE RECEIVER,**
13 **NO THIRD PARTY CLAIMED A PARAMOUNT INTEREST IN PROPERTY OF**
14 **THE ESTATE AND IMPOSING SUCH OBLIGATION WOULD BE**
15 **INEQUITABLE DUE TO THE LACK OF ANY BENEFIT RECEIVED BY**
16 **PLAINTIFFS**

17 The Receiver relies upon the California Supreme Court decision of Ephraim v. Pacific
18 Bank, 129 Cal. 589 (1900) for the proposition that Plaintiffs must pay the Receiver for the
19 accumulated deficit of the receivership estate. However, the court in Ephraim acknowledged “[i]t
20 is unquestionably the general rule that the costs of a receivership are primarily a charge upon the
21 fund in his possession, and are to be paid out of that fund.” Id. at 592. The Court stated the
22 exceptions to the general rule when a party is responsible to pay the Receiver, as follows:

23 “If he [the Receiver] has taken property into his custody under an
24 irregular, unauthorized appointment, he must look for his
25 compensation to the parties at whose instance he was appointed, and
26 the same rule applies if the property of which he takes possession is
27 determined to belong to persons who are not parties to the action,
28 and is taken from his possession by paramount authority. As to such
property his appointment as receiver was unauthorized and
conferred upon him no right to charge it with any expenses.” Id. at
592.

1 In Ephraim, the court noted that at the time the Receiver was appointed over the property
 2 of which he was placed in charge, the property was subject to a prior mortgage and the mortgagee
 3 was not made a party to the action in which the Receiver was appointed. The court further noted
 4 that at that time of the Receiver’s appointment, an action was already pending for the foreclosure
 5 of the mortgage and, therefore, the Receiver took the property subject to the judgment to be
 6 rendered in that action. In that the mortgagee had a paramount interest in the property taken over
 7 by the Receiver, an exception existed to the general rule and the Receiver was authorized to seek
 8 payment of costs and fees from the parties in the action. Id., 192 Cal. at 592-593.

9 In finding an exception to the general rule that parties to the action are not responsible for
 10 the costs of receivership, the Court in Ephraim also referenced Howe v. Jones, 66 Iowa 156
 11 (receiver was appointed and took possession of certain notes and mortgages for collection, but
 12 third parties established paramount right as owners of the notes, thereby allowing the Receiver to
 13 look for payment from the party at whose instance he was appointed); and also Knickerbocker v.
 14 McKindley Coal etc. Co., 67 Ill. App. 290 (property of which the Receiver was placed in charge
 15 was sold under a decree foreclosing a trust deed that had been executed prior to the Receiver’s
 16 appointment, thereby allowing the Receiver to look for payment from the party to the action).

17 In addressing the Ephraim case and others on the issue of when a party to an action is
 18 obligated to pay the Receiver, the United States Supreme Court reiterated the general rule that a
 19 party is not liable for the costs and expenses of a Receiver. As stated by the court in Atlantic Trust
 20 Company v. Edgar C. Chapman, et al (1908) 208 US 360:

21 “It is true that cases are cited in which the party bringing a suit in
 22 which a receiver is appointed has been held liable for expenses
 23 incurred by the receiver in excess of the proceeds arising from the
 24 sale of the property. But in most, if not in all, of those cases, the
 25 circumstances were peculiar and were such as to make it right and
 26 equitable, in the opinion of the court, that that should be done. As,
 27 for instance, in Ephraim v. Pacific Bank,... in which arose a question
 28 as to the party to whom a receiver should look for reimbursement or
 payment of his expenses, the court recognized the fact that the
 general rule that the compensation of a receiver was a charge upon
 the fund in his hands did not apply without qualification to every
 case...” 208 U.S. at 373-374.

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“The above cases relied upon in the circuit court of appeals - and others of like kind could be cited - proceeded upon their special facts. They do not, in our judgment, authorize the order made by that court, although they tend to support the rule that cases may arise in which, because of their special circumstances, it is equitable to require the parties, at whose instance a receiver of property was appointed, to meet the expenses of the receivership, when the fund in court is ascertained to be insufficient for that purpose.” Id. at 374-375.

The court noted a Receiver is an officer of the court and appointed on behalf of all persons who may establish rights in the property of the estate. The parties have no control over the actions of the Receiver. When a court appoints a Receiver, the court assumes the administration of the estate through the Receiver as officer. Id. at 372.

As the court in Atlantic Trust Company noted, the court could have conditioned the appointment of a Receiver on plaintiff’s agreeing to pay any deficiency in the funds required for the expenses of the receivership. No such condition was imposed. Id. at 372-373. In the case before it, the Court found no special circumstances warranting the plaintiff to pay the deficit. As the court stated:

“Here, it is not asserted that the plaintiff trustee was not in the exercise of his strict rights when bringing a suit for foreclosure and sale and asking that the property be put in possession of a receiver. It gave no assurances as to the probable value of the property or of the profits to arise from its management. It misled no one who loaned money to the receiver, or who purchased the certificates. It acted as an ordinary litigant, submitting to the action of the court in all particulars. We do not think that the mere insufficiency of the property or fund to meet the expenses of a receivership entitled the receiver to hold the plaintiff in the suit personally liable, if all that could be said was that he instituted the suit and moved for the appointment of the receiver to take charge of the property and maintain and operate it pending the suit.” Id. 208 U.S. at 376.

In the present case, there is no basis to impose the Receiver’s costs and fees on Mr. Parker, the victim of financial elder abuse who lost in excess of \$7 million due to the wrongful conduct of the Defendants. There was no irregularity in the appointment of the Receiver. The property taken into the Receiver’s custody did not belong to any third party with a paramount authority to take possession of the property. Mr. Parker never agreed to pay the Receiver for any accumulated

1 deficit of the estate, the Receiver had never made any such request of Mr. Parker prior to the
 2 deficit being incurred and the order appointing the Receiver was not conditioned on Mr. Parker
 3 agreeing to do so.

4 A. **An Accumulated Deficit Would Likely Have Been Avoided Had The Receiver**
 5 **Been More Assertive In Discharging Its Duties**

6 The Receiver was appointed to preserve and account for the assets of the receivership
 7 estate. The Receiver was acting as an officer of the Court and all receivership assets would be
 8 available to all creditors, not just Mr. Parker.

9 The receivership estate obtained over \$8,000,000 from Mr. Parker. Defendants also took
 10 gold coins belonging to Mr. Parker. The Receiver did not find any of Mr. Parker’s money or his
 11 coins and did not identify any irregularities in the Defendants’ dealings with other persons in the
 12 numismatic industry with whom Defendant Griffiths had very close relationships. Yet,
 13 impropriates existed. Trial Exhibit 53, entitled “Coins out on memo”, dated October 3, 2013,
 14 listed 36 coins belonging to the receivership estate which were being held by third parties.
 15 Malcolm Varner of Alhambra Coins, a close business associate of Griffiths (Griffiths’s sister
 16 worked at Alhambra Coins), provided deposition testimony that somewhere around the middle or
 17 end of October 2013 Defendant Hunt delivered the coins identified in Trial Exhibit 53 to
 18 auctioneers Larry and Ira Goldberg. The Court had issued a receivership Order and preliminary
 19 injunction on October 10, 2013, prohibiting Defendants from transferring or relinquishing
 20 possession of assets of the receivership entities. Mr. Varner’s deposition testimony established
 21 that the coins were delivered to Alhambra Coins, Hunt picked up the coins belonging to the
 22 receivership estate and delivered them to the Goldbergs in violation of the Court Order. (See,
 23 excerpts from Mr. Varner’s deposition testimony attached as Exhibit A to the Declaration of
 24 Leonard Brazil, dated January 7, 2014, in support of Plaintiffs’ motion to appoint Receiver to take
 25 over and control personal assets of Defendants Griffiths and Hunt which was filed with the Court
 26 on January 7, 2014.)

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1 The Receiver reported making inquiries with Alhambra Coin and the Goldbergs regarding
2 what appeared to be a transfer of the receivership estate's coins in violation of the Court's Order.
3 However, the Receiver prematurely concluded Alhambra Coin and the Goldbergs were not in
4 wrongful possession of assets belonging to the estate. Griffiths has a long history of doing
5 business with Mr. Varner of Alhambra Coins and the Goldbergs. The Receiver was too willing to
6 accept the word of Alhambra Coins and the Goldbergs and did not pursue the recovery of those
7 coins or the proceeds from the sale of any of the coins.

8 Information recently collected by Plaintiffs' counsel indicates there are monies the
9 Receiver should have pursued beyond those pertaining to Alhambra Coins and the Goldbergs,
10 including from a lawsuit between Griffiths and a former business partner, Steve Contursi, and
11 money being received by Griffiths in his current arrangement with Coin Connection in Studio
12 City. (Declaration of Philip W. Bartenetti, dated June 23, 2015, filed concurrently herewith.)

13 Plaintiffs have been able to find promising leads with respect to receivership assets in a
14 relatively short period of time. Yet, the Receiver was unable to identify any sources of
15 receivership assets during approximately two years it was the Receiver in this action. The
16 activities of the Receiver provided no benefit to Plaintiffs although it now appears that had the
17 Receiver been more assertive in discharging its duties, it would have discovered assets of the
18 estate.

19 **III. THE RECORDS AND ASSETS OF THE RECEIVERSHIP ESTATE SHOULD NOT**
20 **BE TURNED OVER TO DEFENDANTS GRIFFITHS AND HUNT**

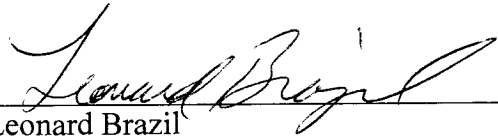
21 The Receiver seeks authority to turn over the records relating to the Receivership in its
22 possession to Defendants Griffiths and Hunt. Plaintiffs object to the records being provided to
23 them. Plaintiffs also object to the Receiver providing to Griffiths, Hunt or any other Defendant
24 subject to the Receivership any assets of the Estate currently in the Receiver's possession. The
25 assets consist of five (5) mountings of one dollar bills from the sunken Andrea Doria cruise ship,
26 boxes of old comic books, boxes of baseball cards, Civil War era newspapers and a stamp
27 collection. Plaintiffs would be willing to pay the value of these assets, as stated by the Receiver,
28 which could be used to reduce the accumulated deficit of the Estate.

1 **IV. CONCLUSION**

2 Plaintiffs object to the Receiver's Motion to the extent it seeks to require Plaintiffs to pay
3 any alleged deficit of \$97,334.00 or permit the Receiver to turn over to any of the Defendants the
4 records and assets of the Receivership Estate currently in the Receiver's possession.

5 DATED: June 23, 2015

CLARK & TREVITHICK

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7 By: 
8 Leonard Brazil
9 Attorneys for Plaintiffs DONALD C. PARKER
10 and DONALD C. PARKER SEPARATE
11 PROPERTY TRUST
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16 TODD GRIFFITHS, an individual; DAVID
17 HUNT, an individual; CT GROUP, INC., a
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19 limited liability company, TODDCO
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ASSET FUND, LLC, a California limited
21 liability company, PENDULUM ASSET
ALLOCATION FUND, LLC, a California
22 limited liability company, and Does 1 through
25,

23 Defendants.
24

CASE NO. BC 504753

**DECLARATION OF PHILIP W.
BARTENETTI IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
RECEIVER'S MOTION FOR AN ORDER
APPROVING RECEIVER'S FINAL
REPORT AND ACCOUNTING,
DISCHARGE RECEIVER, DISPOSITION
OF RECORDS, PAYMENT OF
RECEIVERSHIP EXPENSES, AND
EXONERATION OF BOND**

Date: July 7, 2015
Time: 1:30 p.m.
Dept.: 85

Assigned to Hon. Mary H. Strobel
Department 32

Action Filed: April 2, 2013
Trial Date: March 10, 2014

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1 I, Philip W. Bartenetti, declare as follows:

2 1. I am an attorney duly admitted to practice before this Court. I am a member of
3 Clark & Trevithick, attorneys of record for Plaintiff Donald C. Parker.

4 2. If called as a witness, I could and would competently testify to all facts within my
5 personal knowledge except where stated upon information and belief.

6 3. I make this declaration in support of Plaintiff's Opposition to Receiver's Motion
7 for an Order Approving Receiver's Final Report and Accounting, Discharge Receiver, Disposition
8 of Records, Payment of Receivership Expenses, and Exoneration of Bond.

9 4. On April 30, 2015, I placed a telephone call to Kenton Johnson of the Receiver's
10 office. Mr. Johnson and I discussed the wrapping up of the Receivership and also his office's
11 request for fees.

12 5. In the conversation, I told Mr. Johnson it is our position that if the Receivership had
13 properly pursued the assets of the persons and entities subject to the Receivership there would
14 have been sufficient assets to pay the Receiver's costs. In particular, we discussed a transfer of
15 coins facilitated by Defendant David Hunt ("Hunt") in October 2013, from Malcolm Varner's
16 office, Alhambra Coin located in Alhambra, California to a Beverly Hills' auctioneer, known
17 commonly in the business as The Goldbergs. The Receiver made inquiries of The Goldbergs who
18 claimed that they were entitled to the coins or the proceeds of the coins because they had an offset
19 against money owed to them by Griffiths. They essentially ignored the Receiver and the Receiver
20 did no real investigation into the claim of offset.

21 6. In our telephone conversation, I also told Mr. Johnson that we believed the limited
22 assets that he held should be turned over to our client. I also indicated to him that our client would
23 pay the value the Receiver had set on those assets. Mr. Johnson said that would not be acceptable.
24 The Receiver wanted the full payment of the bill. I then asked what the Receiver intended to do
25 with the limited Receivership estate property it held. He said that consistent with their normal
26 practice, they would return the property to Mr. Griffiths. I told him that was not a proper
27 disposition of those assets and that we would strongly object to that type of disposition.

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1 7. Based on information that our office has collected, there are monies that the
2 Receiver should have pursued, including (a) The Goldbergs, (b) Alhambra Coin, (c) a lawsuit with
3 a former business partner, Steve Contursi, and (d) money being received by Griffiths in his current
4 arrangement with Coin Connection on Ventura Boulevard in Studio City. That arrangement dates
5 from the appointment of the Receiver to the current time, i.e., from new businesses in the
6 collectible coin area in Orange County. A number of these leads, (a) through (c) above, and other
7 information concerning Defendant Griffiths' activities were shared with the Receiver. Rather than
8 truly pursue them, the Receiver accepted, at face value, the representations of the debtors of
9 Griffiths that they did not owe any such monies. Because of the passage of time, it is going to
10 make Plaintiff's position as a Judgment Creditor more difficult to pursue and collect the assets that
11 were available in the early stages of the Receivership.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed June 23, 2015, at Los Angeles, California.

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18 Philip W. Bartenetti

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