

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-87-T-26TBM

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT,

Relief Defendants.

RECEIVER'S MOTION TO APPROVE SETTLEMENT

Burton W. Wiand, as Receiver, moves the Court for an order approving settlement of *Burton W. Wiand, as Receiver v. Harvey A. Gilbert and Deanne E. Gilbert, as Co-Trustees of the Gilbert Family Trust*, Case No. 8:10-cv-171-T-17MAP (M.D. Fla.), *Wiand, as Receiver v. Melinda Munson and Mark Munson*, Case No. 8:10-cv-206-T-17MAP (M.D. Fla.), *Wiand, as Receiver v. Munson Family Partners, Ltd.*, Case No. 8:10-cv-221-T-17MAP (M.D. Fla.), *Wiand, as Receiver v. Peter Roby and Katherine Roby*, Case No. 8:10-cv-71-T-17MAP

(M.D. Fla.), *Wiand, as Receiver v. Rodney Nigel Turner*, Case No. 8:10-cv-125-T-17MAP (M.D. Fla.), *Wiand, as Receiver v. Louis Wang*, Case No. 8:10-cv-112-T-17MAP (M.D. Fla.), *Wiand, as Receiver v. Charles Hailey*, Case No. 8:10-cv-96-T-17MAP (M.D. Fla.), *Wiand, as Receiver v. Paul Swenson*, Case No. 8:10-cv-134-T-17MAP (M.D. Fla.), *Wiand, as Receiver v. Gregg Weinberg, as Trustee of the Commonwealth Radiology, PC PSP*, Case No. 8:10-cv-97-T-17MAP (M.D. Fla.), *Wiand, as Receiver v. John D. Whitlock, as Trustee of the W.W. Whitlock PC Pension Trust*, Case No. 8:10-cv-180-T-17MAP (M.D. Fla.), and *Wiand, as Receiver v. W.W. Whitlock Foundation*, Case No. 8:10-cv-125-T-17MAP (M.D. Fla.) (collectively the “Court Actions”) on the basis of the Settlement Agreements attached hereto as Exhibit A.

MEMORANDUM IN SUPPORT

The Securities and Exchange Commission (the “Commission” or “SEC”) instituted this action to “halt [an] ongoing fraud, maintain the status quo, and preserve investor assets” (Dkt. 1, Compl., ¶ 7.) Burton W. Wiand was appointed by this Court as the Receiver for Defendants other than Arthur Nadel and for Relief Defendants. (*See* Order Reappointing Receiver (Dkt. 140).) Additionally, the Receivership was expanded to include Venice Jet Center, LLC and Tradewind, LLC (Dkt. 17); Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, the Marguerite J. Nadel Revocable Trust UAD 8/2/07, and the Laurel Mountain Preserve Homeowners Association, Inc. (Dkt. 44); The Guy-Nadel Foundation, Inc. (Dkt. 68); Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC (Dkt. 81); Viking Oil & Gas, LLC (Dkt. 153); Home Front Homes, LLC (Dkt. 172); Traders Investment Club (Dkt. 454); Summer Place Development Corp. (Dkt. 911); Respiro, Inc.

(Dkt. 916); and Quest Energy Management Group, Inc. (Dkt. 1024). All of the entities in receivership are collectively identified herein as the Receivership Entities.

Pursuant to the Order Reappointing Receiver (Dkt. 984), the Receiver has the duty and authority to:

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary . . . against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement or profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, *et. seq.* or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

Further, the Order Reappointing Receiver (at paragraph 6) authorizes the Receiver to “[d]efend, compromise or settle legal actions . . . in which the Receivership Entities or the Receiver is a party . . . with authorization of this Court”

By Complaints filed January 12, 2010 through January 19, 2010, the Receiver originally sued Harvey A. Gilbert and Deanne E. Gilbert, as Co-Trustees of the Gilbert Family Trust, Melinda Munson, Mark Munson, the Munson Family Partners, Ltd., Peter Roby, Katherine Roby, Rodney Nigel Turner, Louis Wang, Charles Hailey, Paul Swenson, Gregg Weinberg, as Trustee of the Commonwealth Radiology, PC PSP, John D. Whitlock, as Trustee of the W.W. Whitlock PC Pension Trust, and the W.W. Whitlock Foundation (collectively the “Defendants”) to recover sums received from the Receivership Entities with a view to marshaling assets for an eventual distribution to investors with verifiable claims in an equitable and appropriate manner. In total, the Defendants received **\$2,478,216.16** in

“false profits.”¹ Pursuant to a court order, the claims asserted in the Court Actions were compelled to arbitration, and the Court Actions were stayed pending completion of arbitration.

As shown by the attached Settlement Agreements, the Receiver and the Defendants, subject to the approval of this Court, have agreed to settle the Court Actions for **\$1,363,018.90**,² to be paid within 14 days after approval of this settlement by the SEC Receivership Court or January 10, 2014, whichever is later.³ In reaching this agreement, the Receiver considered the risks and expense of arbitration. The Receiver believes that the settlements provide a practical solution which results in the maximum benefit to the Receivership. Further, the settlement reflected by the Settlement Agreements are in the best interests of the Receivership, the investors in the Receivership Entities, and Defendants,

¹ Hailey received a total of \$100,460.63 in false profits. Swenson received a total of \$49,716.92 in false profits. Commonwealth received a total of \$44,061.70 in false profits. The Gilbert Family Trust received a total of \$25,827.58 in false profits. Melinda Munson, Mark Munson, and the Munson Family Partners received a total of \$929,660.93 in false profits. The Roby’s received a total of \$94,185.62 in false profits. Turner received a total of \$751,208.37 in false profits. Wang received a total of \$136,655.54 in false profits. Whitlock, as Trustee and the W.W. Whitlock Foundation received a total of \$346,438.87 in false profits.

² Hailey agreed to settle for \$55,253.35. Swenson agreed to settle for \$27,344.31. Commonwealth agreed to settle for \$24,233.94. The Gilbert Family Trust agreed to settle for \$14,205.17. Melinda Munson, Mark Munson, and the Munson Family Partners agreed to settle for \$511,313.51. The Roby’s agreed to settle for \$51,802.09. Turner agreed to settle for \$413,164.60. Wang agreed to settle for \$75,160.55. Whitlock, as Trustee and the W.W. Whitlock Foundation agreed to settle for \$190,541.38.

³ This settlement is for a lower percentage of amounts sought than other matters the Receiver resolved. This is due to unique legal issues which were raised by these Defendants in these cases and which increased the risk of an adverse result for the Receiver and the expense of arbitration. The Receiver agreed to resolve these matters for 55% of “false profits.”

because resolution of the claim avoids protracted litigation, conserving Receivership assets and judicial resources, and avoids the cost of litigation to Defendants.

WHEREFORE, the Receiver moves the Court to approve the settlement reflected by the attached Settlement Agreements.

LOCAL RULE 3.01(g) CERTIFICATE OF COUNSEL

The undersigned counsel for the Receiver is authorized to represent to the Court that the SEC has no objection to the Court's granting this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Michael S. Lamont
Gianluca Morello, FBN 034997
Email: gmorello@wiandlaw.com
Michael S. Lamont, FBN 0527122
Email: mlamont@wiandlaw.com
WIAND GUERRA KING P.L.
5505 West Gray Street
Tampa, FL 33609
Tel: (813) 347-5100
Fax: (813) 347-5198

Attorneys for the Receiver, Burton W. Wiand