

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-0087-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.

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**RECEIVER'S UNOPPOSED MOTION FOR POSSESSION OF  
CERTAIN BANK ACCOUNTS CONTROLLED BY ARTHUR  
NADEL AND PARTIAL MODIFICATION OF ASSET FREEZE**

Burton W. Wiand, as Receiver (the “**Receiver**”), moves the Court for relief related to his efforts to close various frozen bank accounts at Wells Fargo Bank, N.A. (“**Wells Fargo**”) which were controlled by Arthur Nadel (“**Nadel**”) but were not titled in the name of one of the entities placed in receivership in this case (the “**Receivership Entities**”). Specifically, the Receiver seeks an Order (1) authorizing him to take custody of the money in those

accounts and (2) modifying the asset freeze to permit Wells Fargo to release that money to the Receiver and close or otherwise handle those accounts in its ordinary course of business.

### **BACKGROUND**

On January 21, 2009, the Securities and Exchange Commission (“**Commission**”) initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. That same day, the Court entered an order (the “**Order Appointing Receiver**”) appointing Burton W. Wiand as Receiver for various entities, including Defendants Scoop Management, LLC, and Scoop Capital, LLC, and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; and Viking Fund, LLC. *See generally* Order Appointing Receiver (Doc. 8).

Pursuant to the Order Appointing Receiver, in relevant part the Receiver has the duty and authority to “administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors.” *Id.* at 1-2. Of relevance here, the Receiver was directed to:

[t]ake immediate possession of all property, assets and estates of every kind of the [Receivership Entities], whatsoever and wheresoever located belonging to or in the possession of the [Receivership Entities], including but not limited to all offices maintained by the [Receivership Entities], rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership Entities] wherever situated, and to administer such assets as is required in order to comply with the directions

contained in this Order, and to hold all other assets pending further order of this Court ....

(Doc. 8.)

On April 28, 2009, Nadel was indicted on six counts of securities fraud, one count of mail fraud, and eight counts of wire fraud. On February 24, 2010, Nadel pled guilty to all counts in the indictment. On August 18, 2010, the Court entered a consent Judgment of Permanent Injunction and Other Relief against Nadel which permanently enjoined Nadel from further violations of the antifraud provisions of the federal securities laws and ordered Nadel to disgorge ill-gotten gains and pay prejudgment interest (Doc. 460). On October 21, 2010, Nadel was sentenced to 14 years in prison, and he died in prison on April 16, 2012.

The Receiver's investigation revealed that Nadel controlled a number of bank accounts at Wells Fargo held in names other than the names of Receivership Entities. All of those accounts were funded with proceeds from his scheme and were frozen by this Court. (See Doc. 7.) Of relevance to this motion, those accounts included the following:

<u>Account Name</u>	<u>Account Number (Last 4 Digits)</u>
Arthur Nadel	4895 (the " <b>4895 Account</b> ")
Arthur Nadel	1484 (the " <b>1484 Account</b> ")
Clark-Nadel Rev. Trust	1503 (the " <b>1503 Account</b> ")

These accounts currently hold a combined balance of \$13,610.94 (collectively, the "**Accounts**"). Because the Accounts are frozen and are not titled in the name of a Receivership Entity, Wells Fargo has informed the Receiver that it needs an Order (1) authorizing the Receiver to take custody of the money in those accounts and (2) modifying the asset freeze to permit Wells Fargo to release the money in the Accounts to the Receiver and close or otherwise handle those accounts in its ordinary course of business.

## ARGUMENT

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). Those powers include the power to order the transfer of property. *See SEC v. American Capital Investments, Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996) (abrogated on other grounds). The relief sought by the Receiver falls squarely within those powers.

In related "clawback" litigation, this Court determined that Nadel operated a Ponzi scheme from at least 2000 forward. *See, e.g., Burton W. Wiand, as Receiver v. Vernon M. Lee, et al.*, Case No. 8:10-cv-210-T-EAK-MAP (January 23, 2013 M.D. Fla.) (Doc. 169). Money from that scheme was used to fund the Accounts, all of which were opened by Nadel. The 4895 Account and the 1484 Account were opened in Nadel's name and the 1503 Account was opened in the name of a trust that he created and funded and of which he was trustee. The 4895 Account has a balance of approximately \$5,000.18; the 1484 Account has a balance of approximately \$7,421.43; and the 1503 Account has a balance of approximately \$1,189.33. Because the funds in those accounts are proceeds of Nadel's scheme, they should be turned over to the Receiver for distribution to defrauded investors.

The asset freeze provisions of the Preliminary Injunction Order entered on January 21, 2009 (Doc. 7), froze all of the assets controlled by Nadel, including the Accounts. A

partial modification of the freeze is necessary for the limited purpose of allowing Wells Fargo (1) to release the funds in those accounts to the Receiver so that he can take possession of them and (2) to close or otherwise handle the accounts in its ordinary course of business.

### **CONCLUSION**

Based upon the foregoing, the Receiver respectfully moves the Court for an Order in substantially the form attached as **Exhibit A** (1) authorizing the Receiver to take possession of the contents of the 4895 Account, the 1484 Account, and the 1503 Account at Wells Fargo and (2) modifying the asset freeze for the limited purpose of allowing Wells Fargo to release the contents of those accounts to the Receiver and to close or otherwise handle those accounts in its ordinary course of business.

### **CERTIFICATE UNDER LOCAL RULE 3.01(g)**

Counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

**s/ Gianluca Morello**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 4, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

**s/Gianluca Morello**  
Gianluca Morello, FBN 034997