

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

BURTON W. WIAND, as Receiver for  
VALHALLA INVESTMENT PARTNERS,  
L.P.; *et al.*

CASE No.: 8:10-cv-75-T-17MAP *et al.*  
(see attached **Exhibit A**)

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**DECLARATION OF MARIA M. YIP, CPA, CFE, CIRA**

Maria M. Yip declares as follows:

**I. INTRODUCTION AND OVERVIEW**

1. Pursuant to Rule 26(a)(2)(B), Federal Rules Civil Procedure, I hereby make the following written declaration (“Declaration”) of the expert testimony that I expect to give on behalf of Burton W. Wiand, as Receiver<sup>1</sup> for Valhalla Investment Partners, L.P. (“Valhalla Investment”); Viking Fund, LLC (“Viking Fund”); Viking IRA Fund, LLC (“Viking IRA Fund”); Victory Fund, Ltd. (“Victory Fund”); Victory IRA Fund, Ltd. (“Victory IRA Fund”); and Scoop Real Estate, L.P. (“Scoop Real Estate”) (collectively, the “Hedge Funds”) and Traders Investment Club (“Traders”).
2. Yip and Levi, LLC (“Yip Levi”) was retained by Wiand Guerra King P.L. on behalf of Burton Wiand (the “Receiver”), in his capacity as Receiver.

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<sup>1</sup> The United States District Court for the Middle District of Florida originally appointed Mr. Wiand as Receiver for the Hedge Funds by Order Appointing Receiver dated January 21, 2009 and subsequently reappointed him Receiver by Orders Reappointing Receiver dated June 3, 2009, January 19, 2010 and September 23, 2010. Mr. Wiand was also appointed Receiver for Traders on August 9, 2010.

3. We are being compensated for work performed on an hourly basis at agreed upon discounted hourly rates of \$315 for partners, \$225 for managers, and \$135 for associates.
4. My firm, Yip Levi, and I were retained by the Receiver to:
  - a. Review and analyze the books and records of the entities, primarily financial and operational records including investor files maintained by the Hedge Funds and Traders.
  - b. Review and analyze the books and records of the entities, primarily financial and operational records maintained by Scoop Capital, LLC (“Scoop Capital”); Scoop Management, Inc. (“Scoop Management”); Valhalla Management, Inc. (“Valhalla Management”); and Viking Management, LLC (“Viking Management”) referred to (collectively, the “Fund Managers”),
  - c. Reconstruct the Hedge Funds’, Traders’ and Fund Managers’ financial and operational records,
  - d. Analyze the bank records for all bank, brokerage and trading accounts,
  - e. Determine the flow of funds among the Hedge Funds, Traders, Fund Managers and third parties,
  - f. Determine whether the Hedge Funds and Traders were insolvent at the time of the transfers, and lastly
  - g. Express an opinion as to whether there is evidence that the Hedge Funds, Traders and Fund Managers operated as a Ponzi scheme.

5. My opinions are based on documents reviewed, various analyses performed, independent research, interviews, my experience, education, and training.
6. The Declaration includes schedules we have prepared with detailed information pertaining to the issues contained in this Declaration. They are an integral part of this Declaration and should be relied upon accordingly.
7. Should additional documents and information be made available or reviewed, certain information or facts not currently in evidence may come to light, which may impact the observations and conclusions reflected herein. I reserve the right to amend this Declaration based on information received after the issuance of same.
8. I understand that it is the duty of an expert to assist the Court on matters within the expert's expertise. I understand that this duty overrides any obligation to the person from whom I received instruction or by whom I am paid. I understand that, in providing this Declaration, I owe this duty to the Court and I have complied with that duty. I believe that the facts I have stated in this Declaration are true and that the opinions I have expressed are correct.

## II. RELEVANT EXPERIENCE

9. I am one of the co-founders of Yip Levi, a forensic accounting and financial investigations firm. I am a Florida certified public accountant (CPA), certified in financial forensics (CFF) by the American Institute of CPAs, a certified fraud examiner (CFE) and certified as an insolvency and restructuring advisor (CIRA).
10. I have 19 years of experience and training in the issues addressed in this Declaration. I have provided forensic accounting and litigation support services to attorneys, bankruptcy trustees, liquidating trustees, court-appointed receivers, and state and federal governmental agencies. I have provided services in connection with complex matters involving economic damages, white collar crime, fraud and embezzlement in the United States, Latin America, the Caribbean and Bermuda.
11. I also have fiduciary experience previously serving on bankruptcy matters as a Court-appointed Examiner, Custodian.
12. I have been appointed to serve as a member of the Chapter 7 panel of bankruptcy trustees for the Southern District of Florida.
13. Insofar as it may be relevant to the matters upon which I have been asked to opine, my experience also includes:
  - a. Giving expert witness testimony in Federal bankruptcy court, Federal and State court and international arbitration matters.

- b. Providing litigation support services to attorneys representing clients in connection with the calculation of damages in commercial disputes arising from contractual disputes. The services provided included detailed review and analysis of financial records, assistance with discovery, preparing damage analyses, written reports, demonstrative exhibits, and testimony.
14. A more comprehensive listing of my experience is contained in my resume attached as **Exhibit 1**.
15. During the past four years, I have testified in the following:
- a. Trial testimony on December 8 and 9, 2011 as an expert witness on the issue of flow of funds and damages in the matter of Coquina Investments v. TD Bank. U.S. District Court for the Southern District of Florida, Case No: 10-60786-Civ-Cooke/Bandstra.
  - b. Deposition testimony in May, July and October 2011 as an expert witness on the issue of damages in the matter of Coquina Investments v. TD Bank. U.S. District Court for the Southern District of Florida, Case No: 10-60786-Civ-Cooke/Bandstra.
  - c. Deposition testimony on October 6, 2011 as an expert witness on the issue of comingling of funds and insolvency in the matter of George Reinitz v. Symphony Builders, Inc., Circuit Court for the 17<sup>th</sup> Judicial Circuit, Case No:08-60741 (09).
  - d. Trial testimony on February 16, 2011 as an expert witness on the issue of damages in the matter of Dubai World Corporation, and its subsidiaries, Exomos, Nakheel and Palm Marine v. Herve Jaubert, Seahorse Submarines International Incorporated and Does 1-99, U.S. District Court for the Southern District of Florida, Case No: 09-Civ-14314- Martinez/Lynch.

- e. Deposition testimony on December 9, 2010 and December 30, 2010 as an expert witness on the issue of the tracing of monies and alleged misappropriations in the matter of Zublin Chile Ingenieria y Construcciones Ltda, and Zublin Chile Ingenieria y Construcciones Ltda., Sucursal Peru v. TotalBank, Albert Forsyth, et al., Circuit Court for the 11<sup>th</sup> Judicial Circuit, Case No: 06-04474 CA (40).
- f. Deposition testimony on September 14, 2009 as a fact witness in the matter of State of Florida, Department of Financial Services, as Receiver of Caduceus Self Insurance Fund, Inc., Circuit Court for the 11<sup>th</sup> Judicial Circuit, Case No: 04-8939 CA (13).
- g. Trial testimony on February 4, 2009 as an expert witness on the issue of damages and partnership accounting in the matter of Luis Alejo Arrondo v. Alejandra Cossio, Circuit Court for the 11<sup>th</sup> Judicial Circuit, Case No: 07-31681 CA (40).
- h. Deposition testimony on January 26, 2009, as an expert witness on the issue of damages in the matter of Ruskin Company v. Greenheck Fan Corporation, U.S. District Court, Southern District of Florida, Case No: 08-60902-Civ-Cohn/Seltzer.
- i. Trial testimony in July 2008 as an expert witness on the issue of damages in the matter of LISA, S.A. v. Leamington Reinsurance Company Ltd. and Avicola Villalobos S.A., In the Supreme Court of Bermuda Civil Jurisdictions 1999 No. 108 and 2001 No. 179.

16. During the past ten years, I have co-authored the following:

- a. Jay Perlman and I co-authored an article on Foreign Corruption Practices Act submitted to South Florida CEO magazine in February 2008.
- b. Gina Masi and I co-authored an article on how to prepare for an anti-money laundering review submitted to the South Florida Legal Guide in 2008.

### **III. BACKGROUND**

17. Valhalla Investment was formed in March 1999 and did business until January 2009 as an investment fund. Valhalla Investment's General Partner was Valhalla Management. Valhalla Management was also the manager of Valhalla Investment and was responsible for administering all facets of Valhalla Investment, including its investment and trading activities. Valhalla Management was a Fund Manager.
18. Viking Fund and Viking IRA Fund (collectively "Viking Funds") were formed in March 2001 and did business until January 2009 as investment funds. Viking Funds' Managing Members were Viking Management. Viking Management was also the manager of the Viking Funds responsible for administering all facets of the Viking Funds, including its investment and trading activities. Viking Management was a Fund Manager.
19. Scoop Investments, LTD ("Scoop Investments") was formed in May 2001. Scoop Investments' General Partner was Intex Trading Corp. Intex Trading Corp. was created and owned by Nadel.
20. In November 2002 Scoop Investments changed its name to Victory Fund which operated until January 2009. Beginning in December 2002, Victory Fund's General Partner was Scoop Capital. Scoop Capital was created and owned by Nadel. Scoop Capital was a Fund Manager.
21. Victory IRA Fund was formed in March 2003 and did business until January 2009 as an investment fund. Victory IRA Fund's General Partner was Scoop Capital. Scoop Capital was a Fund Manager.



22. Scoop Real Estate was formed in October 2003 and did business until January 2009 as an investment fund. Scoop Real Estate's General Partner was Scoop Capital. Scoop Capital was also the manager of Scoop Real Estate and was responsible for administering all facets of Scoop Real Estate, including its investment and trading activities. Scoop Capital was a Fund Manager.
23. Scoop Management was incorporated in April 2001 and was created and owned by Nadel. He controlled all of its operations, and performed all of Scoop Management's trading activities for the Hedge Funds. Scoop Management was responsible for all trading decisions for each of the Hedge Funds and in essence controlled all of the Fund Managers.
24. Nadel's control over Scoop Management and Scoop Capital allowed him to perpetrate the Ponzi type scheme discussed further in this Declaration.
25. From at least December 1999 through January 2009, Nadel through the Fund Managers managed the Hedge Funds and grossly misrepresented their performance<sup>2</sup>. Nadel defrauded investors through his control of the Hedge Funds.
26. The Fund Managers collected fees from the Hedge Funds for their purported investment management services. These fees included "Performance Allocations", "Incentive Fees," "Management Fees," "Service Fees," and "Office Fees." These various fees will be referred to collectively as "Management Fees."

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<sup>2</sup> Nadel indicates in a memo/letter on or about February 5, 2009 that he provided false gains as early as 1998. United States v. Arthur Nadel, Case 1:09-cr-00433-JGK Document 71-6.

27. Based on representations made by Nadel about the net asset value and purported net profits of the Hedge Funds, at least \$98 million of investor funds were paid by the Hedge Funds to the Fund Managers in the form of Management Fees. A detailed list of the Management Fees we have identified during our review is attached as **Exhibit 2**.
28. Traders Investment Club (“Traders”), another investment vehicle controlled by Nadel, purportedly operated separately from the Hedge Funds. Similar to the Hedge Funds, Nadel represented to investors that he had achieved high rates of return in order to induce investors to invest.
29. On April 28, 2009 Nadel was indicted on six counts of Securities Fraud, one count of Mail Fraud, and seven counts of Wire Fraud. The indictment states as follows:
- [Nadel] solicited and caused others to solicit prospective clients to invest their money in the [Hedge] Funds based upon, among other things, his false statements that:
- a. the investor funds would be used to purchase and sell securities;
  - b. the performance of each of the funds was consistently positive; and
  - c. the net asset value of the [Hedge] Funds was tens of millions of dollars.
30. On February 24, 2010 Nadel pled guilty to all counts and an additional count of wire fraud. He was sentenced to 14 years in prison on October 21, 2010.

#### IV. DOCUMENTATION REVIEWED AND RELIED UPON

31. We reviewed records for 29 bank accounts. A listing of the bank accounts is included as

**Exhibit 3.** The listing provides the name of the financial institution, the account number, the company name and the period for which we reviewed the documents. The records reviewed included the following:

- a. Bank account statements,
- b. cancelled checks,
- c. wire transfer documentation,
- d. deposit slips, and
- e. deposit confirmations.

32. We reviewed records for 24 brokerage and trading accounts. A listing of these accounts is

included as **Exhibit 4.** The listing provides the name of the financial institution, the account number, the company name and the period for which we reviewed the documents. The records reviewed included the following:

- a. brokerage, and trading account statements, and
- b. wire transfer information.

33. We also reviewed the books and records of the Hedge Funds and the Fund Managers. These records include:

- a. copies of the investor files which contained:
  - i. a copy of the investor's check,
  - ii. the deposit slip confirmation,
  - iii. wire documentation, and investor correspondence

b. accounting records maintained in Quickbooks for:

- i. Scoop Real Estate, LP
- ii. Valhalla Investment Partners, LP
- iii. Viking Fund, LLC
- iv. Viking IRA Fund, LLC
- v. Victory Fund, Ltd.
- vi. Victory IRA Fund, Ltd.
- vii. Scoop Capital, LLC
- viii. Scoop Management, Inc.
- ix. Valhalla Management, Inc.
- x. Viking Management, LLC

34. Beginning in March 2002, the activity attributed to each investor account (“Investor Account”) was maintained with the use of an Advent Software investor accounting system (“Advent”). Actual investor deposits and distributions were input into Advent. Similarly, actual distributions for payment of Management Fees were also input into Advent.

35. However, in addition to the actual information that was input, the fictitious performance on the investor accounts that Nadel purported to have achieved was also input into Advent. We were provided with and reviewed monthly Partners’ Capital Balance Statements from the Advent Software system for each of the Hedge Funds.

36. We reviewed Member Status Reports for 1999 and 2000.

37. We also reviewed tax records for the following:

- a. Traders Investment Club (1999-2005),
- b. Valhalla Investment Partners LP (1999-2007),
- c. Victory Fund, Ltd. (2001-2007)
- d. Viking Fund LLC and Viking IRA Fund, LLC (2001- 2007)
- e. Victory IRA Fund, Ltd. (2003-2007), and
- f. Scoop Real Estate LP (2004-2007).

38. Lastly, we reviewed a series of reports prepared by Riverside Financial Group titled “Analysis of Account Activity” for each of the brokerage accounts held at AB Watley, Rydex Funds, SG Americas Securities, LLC, and Shoreline Trading Group, LLC (previously Spear, Leeds, Kellogg). These reports were produced between February 2009 and June 2010.

39. A comprehensive list of the documents reviewed and relied upon is attached as **Exhibit 5**.

## V. METHODOLOGY

40. My opinions are based on:

- a. detailed review of the documents requested by me and provided to me by counsel for the Receiver which are described in the prior section of this Declaration and attached as **Exhibit 5**,
- b. various analyses performed,
- c. experience conducting internal investigations, fraud investigations, and calculating damages, and
- d. education and training.

41. The documents and information that we reviewed and relied upon to reconstruct the records and financial affairs of Nadel's investment operations and to formulate my opinions are of the nature typically relied upon by forensic accountants to (a) reconstruct the financial affairs of individuals and entities engaged in investment operations and (b) determine whether the investment operations were a Ponzi scheme or other fraud.

42. We prepared several analyses based on the information that we reviewed to obtain an accurate picture of Nadel's and the Hedge Funds' and the Fund Managers' financial activities.

43. In conducting our analyses, we traced all funds in and out of the Hedge Fund bank and brokerage accounts. In instances in which bank and brokerage data is not available we identified other books and records to reconstruct the records for the missing gaps (**Exhibits 6-58**).
44. More specifically, we prepared a comprehensive database of available data which identifies:
- a. the source of funds coming into an account,
  - b. the destination or recipient of disbursements from the account,
  - c. the transaction type such as check or wire transfer;
  - d. the date the bank recorded the transaction ; and
  - e. notations on the memo portion of the check, in QuickBooks or on the bank statement.

## **VI. FINDINGS AND OBSERVATIONS**

### Characteristics of a Ponzi Scheme

45. The AICPA's Business Valuation and Forensic & Litigation Services Section's Practice Aid 07-1, Forensic Accounting - Fraud Investigations states the following about Ponzi schemes:

- a. A Ponzi or pyramid scheme is usually any venture wherein earlier investors are repaid principal plus interest with funds provided by later investors. There may or may not be a legitimate business purpose for the venture, but the need for capital creates and continues the scheme. Often, unusually high investment returns or other inducements are offered by the promoters to attract investors.
- b. Each Ponzi scheme typically shares three common characteristics:
  - i. The business activity depends on outside investor money.
  - ii. The investor money is not used according to the stated purpose. Some of the investor money is used to pay the returns promised to earlier investors.
  - iii. The business enterprise lacks profits sufficient to provide the promised returns and, therefore, depends on an ever increasing supply of investor money.

46. The entity and/or individual's ability to make payments to its investors on purported profits and/or redemptions of investments are critical in attracting new investors and furtherance of the Ponzi scheme.



## Nadel's Ponzi Scheme

47. Based on our review and analysis of the documents, Nadel in combination with Christopher Moody and Neil Moody raised at least \$336 million from investors between May 1999 and January 2009. The money was raised in connection with more than 700 investor accounts<sup>3</sup>.
48. The money was raised as part of a single, continuous Ponzi scheme.
49. Investors received statements ("Investor Statements") on a monthly basis for each of their respective accounts. These Investor Statements showed purported appreciation and increase in Investor Account balances that were in fact not true.
50. Providing these fictitious balances not only maintained the investors "in the dark" about the actual performance of these funds but just as important, it served as the basis for the Management Fees that the Fund Managers charged to each of the Investor Accounts.

### Movement of Funds in Ponzi Scheme

51. Our review of documents and other information revealed that Nadel controlled a number of bank, brokerage, and trading accounts for the period of time between July 1999 and January 2009, and that he transferred money received from investors among a number of those accounts.
52. Monies received from investors was directly deposited into bank accounts maintained at:
  - a. SouthTrust, later acquired by Wachovia
  - b. Bank of America
  - c. Northern Trust

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<sup>3</sup> Some individuals, trusts, or entities that invested with Nadel had multiple investor accounts, thus the number of accounts does not correlate to the number of separate investors that invested with Nadel.

53. Below is a summary table of these accounts:

No.	Institution	Account Name	Account Number
1	Southtrust/Wachovia	Scoop Investments Ltd./Victory Fund Ltd.	2000706764790
2	Bank of America	Valhalla Investment Partners L.P.	003660666373
3	Bank of America	Victory Fund, Ltd.	003672646763
4	Bank of America	Viking Fund, LLC	003730047518
5	Bank of America	Viking IRA Fund, LLC	003730047521
6	Northern Trust Bank	Valhalla Investment Partners L.P.	750899
7	Northern Trust Bank	Viking Fund, LLC	750928
8	Northern Trust Bank	Viking IRA Fund, LLC	751007
9	Northern Trust Bank	Victory Fund, LTD.	751023
10	Northern Trust Bank	Victory IRA Fund, LTD.	751090
11	Northern Trust Bank	Scoop Real Estate, LP	760624

54. From these bank accounts funds were transferred to brokerage accounts for the purpose of investing the investors' funds. These brokerage accounts are listed in **Exhibit 4**.

55. From these brokerage accounts funds were transferred back to the Hedge Funds' respective bank accounts to pay for the following:

- a. Management Fees based on the purported account balance
- b. Management Fees based on the purported profits, and
- c. redemptions to investors.

56. In addition, Nadel transferred funds from the brokerage accounts to other accounts that he controlled. In some instances, Nadel opened personal bank accounts at Wachovia Bank with names similar to Hedge Fund accounts. Specifically, Nadel created these accounts for two Hedge Funds on whose behalf he did not have authority to act. Nadel had complete access and control of the funds deposited into these accounts. The account names and account numbers for these are provided in the table below:

<b>No.</b>	<b>Institution</b>	<b>Account Name</b>	<b>Account Number</b>
1	Wachovia	Arthur Nadel d/b/a Valhalla Investments	2000706755110
2	Wachovia	Arthur Nadel d/b/a Viking Fund	2000712344984
3	Wachovia	Scoop Real Estate, LP	2000034073632
4	Wachovia	Scoop Investments Ltd. / Victory Fund Ltd.	2000706764790
5	Wachovia	Scoop Capital LLC	2000712702157

57. Money received from investors and deposited into the above accounts was pooled and commingled with other investors' money and transferred from those accounts into other bank, brokerage, and trading accounts in which the money was further pooled and commingled with other investors' money.

58. Nadel pooled and commingled investors' monies regardless of with which Hedge Fund the monies had been invested. Nadel not only comingled the monies in these accounts, he would also transfer funds into the brokerage accounts as necessary in order to have sufficient funds from which to pay redemptions. These funds would be transferred from the Hedge Fund brokerage account to the Hedge Fund bank account from which the investor would receive his or her redemption.

Nadel's Misrepresentations of Profits and Investor Account Balances

59. The table below compares the balance of the principal invested by the investors at year end according to the K-1s issued by the Hedge Funds during the years 1999<sup>4</sup> through 2002 as compared to the actual balance that was in the bank, brokerage and trading accounts combined. It is abundantly clear that Nadel significantly misrepresented the values in the Investor Accounts and the Investor Accounts had a fraction of the purported balances.

<b>Year</b>	<b>Total in Combined Brokerage and Bank Accounts</b>	<b>Investors' Purported Balance</b>	<b>Shortfall</b>
1999	\$2,400,873	\$3,516,273	\$1,115,400
2000	\$762,959	\$8,800,105	\$8,037,146
2001	\$1,625,680	\$19,504,032	\$17,878,352
2002	\$5,718,975	\$36,434,051	\$30,715,076

60. Similarly, **Exhibit 59** contains the balance purportedly in the accounts for the investors at each quarter end during the period January 2003 through December 2008 as compared to the actual balance that was in the bank accounts and brokerage accounts combined. It is abundantly clear that Nadel significantly misrepresented the values in the Investor Accounts. We analyzed the account balance at the end of each quarter for each bank account maintained by each Hedge Fund. In addition, we reviewed the brokerage account balance for each account maintained by each Hedge Fund and combined these amounts to determine the total amount for each Hedge Fund.

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<sup>4</sup> Nadel admits to “using all of our liquid assets to cover redemptions and withdrawals, nothing is left.” in a letter to his wife, Peg. United States v. Arthur Nadel, Case 1:09-cr-00433-JGK Document 71-5.

61. According to Advent's Investor Statements at the end of the first quarter of 2003, investors had invested a total of \$49,363,230 with Nadel and the Hedge Funds when in actuality the total balances in the bank, brokerage and trading accounts were \$19,987,238. Similarly, at the end of the fourth quarter of 2008 investors had invested a total of \$294,512,345 with Nadel and the Hedge Funds when in actuality the total balances in the bank, brokerage and trading accounts were \$1,338,471.
62. According to Advent during the period January 2003 through December 2008 Nadel always generated positive quarterly returns for investors.
63. Because the Investor Statements reflected positive returns in almost all instances, the amount of money that Nadel had in the financial accounts relating to his investment activities should have been equal to or greater than the collective amount invested by investors.
64. As is clear from comparing the number in the Total Investor Balance column with the number in the Bank and Brokerage Accounts Total column for each quarter between the first quarter of 2003 and the fourth quarter of 2008, the Hedge Funds always had significantly less money in financial accounts than the amount that had been invested with them by investors.

## Traders' Activity

65. As previously mentioned Traders was another investment vehicle controlled by Nadel that purportedly operated separately from the Hedge Funds. Nadel represented to investors that he had achieved high rates of return to induce them to invest.
66. We reviewed the following documentation with respect to Traders:
- a. Brokerage statements for Spear Leeds Kellogg Account #4X58 (“SLK Account 4X58”) in the name of Traders Investment Club for July 1999 and the period January 2000 – December 2010;
  - b. Brokerage statements for Spear Leeds Kellogg Account #782V (“SLK Account 782V”) in the name of Traders Investment Club for the period July 2003 – December 2005;
  - c. Bank statements for Wachovia Account # 2000780158115 (“Wachovia Account 8115”) in the name of Traders Investment Club for the period January 2003 – January 2006;
  - d. Yearly federal income tax returns for the years 1999 through 2005; and
  - e. Partners' Capital Balances statements from Advent for the periods January 2005 through September 2005. Individual Account Statements for the period May 1999 through December 2004.

67. A review of this documentation revealed that Nadel utilized investor principal to pay new investors, the same pattern seen with the Hedge Funds. In fact, Nadel used investor monies from the various Hedge Funds to pay for Traders' investors' redemptions.
68. Traders' brokerage account SLK Account 4X58 had a net asset value of \$13, held in cash, as of July 1999. Brokerage statements for this account are not available for the period August 1999 through December 1999. However, the beginning balance for January 2000 was exactly the same amount as the July 1999 balance and remained the same every month through January 2009.
69. During this period, July 1999 through December 2009, there is no evidence that Nadel was conducting any trading activity in this Traders' account.
70. Traders' brokerage account SLK Account 782V was opened in July of 2003 and closed in December 2005. Nadel conducted trading on behalf of Traders in this account.
71. There is no evidence that any trading was conducted by Nadel on behalf of Traders in any account during the period July 1999 through June 2003.
72. As mentioned above, Nadel used investor monies from the various Hedge Funds to pay for Traders' investors' redemptions. For instance, on January 29, 2003, Traders' Wachovia Account 8115 had a balance of \$2,051.
- a. On January 30, 2003, Traders received two wires into this account in the amounts of \$22,000 and \$60,000.
  - b. On January 31, 2003, Traders received funds in the amount of \$200,000 into this account directly from a Victory Fund bank account.

- c. On February 5, 2003, these funds were used to pay \$280,000 to Traders investor, Vernon Lee.
  - d. Again, there is no evidence that any trading was conducted by Nadel on behalf of Traders for the period July 1999 through June 2003
73. The Traders bank statements for the period January 2003 to January 2006 showed that Traders received at least \$2.8 million into Wachovia Account 8115 from Victory Fund, and distributed funds from Wachovia Account 8115 to Victory Fund, Victory IRA Fund, Viking Fund, Scoop Real Estate and Nadel personally.
74. It is clear that as early as 2003 Traders did not have the assets necessary to pay the amounts that were represented as owed to investors. Investor distributions were paid with new investor funds, often investor funds from the Hedge Funds. A review of the available documentation for prior periods indicates that the pattern of activity was likely the same throughout the 1999 through 2005 period after which time there was little to no activity.
75. It appears that all trading activity for Traders ceased in November 2005 and all investor principal and investor purported profits were either distributed to investors or transferred to one of the Hedge Funds between early October 2005 and November 15, 2005. Though trading activity for Traders was profitable for the July 2003 through November 2005, the distributions made from Traders' Wachovia Account 8115 could not have been made without transfers from Victory Fund. In addition, once all principal and purported profits were distributed, Wachovia Account 8115 was left with a balance of \$143,205.



76. On December 2, 2005 Nadel made a check out to himself for \$143,000; a final balance of \$195 was withdrawn from the account and the account was closed on January 10, 2006. There is no evidence of any new investors into Traders or any trading activity under the name of Traders after this date.
77. A detailed Exhibit showing the sources and uses of funds for Wachovia Account 8115 is attached as **Exhibit 33**.

Nadel's Actual Performance

78. Based on our review of the brokerage statements and portions of the Riverside Financial Group Reports, Nadel lost more than \$23 million over the period September 1999 and December 2008 (**Exhibit 60**), summarized as follows:
- a. Scoop Real Estate LP – lost \$6,637,880
  - b. Vallhalla Investment Partners – lost \$3,114,011
  - c. Victory Fund Ltd and Victory Funds IRA Fund – lost \$4,209,134
  - d. Viking Fund LLC and Viking IRA Fund, LLC – lost \$9,116,715
79. I did not see evidence of any other source of funding for Nadel's Hedge Funds or Fund Managers other than a negligible amount<sup>5</sup>, from any source other than investors.

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<sup>5</sup> Scoop Real Estate received rental income. This income represented less than 1% of the funds raised.

## Insolvency

80. Solvency is defined as an entity that has sufficient current assets to meet or exceed current liabilities.

81. In order to determine insolvency assets and liabilities are analyzed based on the documents and information available. To the extent that liabilities exceed the assets of the entity and its ability to meet these obligations, the entity is insolvent.

82. Based on a comprehensive review of the books and records of the Hedge Funds, these funds were insolvent as early as 2000<sup>6</sup> and through and including January 2009.

a. Below is a table reflecting the year end insolvency for the years 2000 through 2002

<b>Year</b>	<b>Total in Combined Brokerage and Bank Accounts</b>	<b>Investors' Principal Balance</b>	<b>Shortfall</b>
2000	\$762,959	\$5,636,816	\$4,873,857
2001	\$1,625,680	\$14,029,492	\$12,403,812
2002	\$5,718,975	\$24,424,415	\$18,705,440

b. For the subsequent period 2003 through December 2008, **Exhibit 61** provides the quarterly information reflecting the insolvency during this period.

83. The books and records reviewed included bank statements, check copies, cancelled checks, wire transfer documentation, deposit slip, deposit confirmations, tax returns filed by the Hedge Funds, QuickBooks records and information maintained on the Advent system.

84. In addition, I reviewed correspondence in which Nadel admits to “using all of our liquid assets to cover redemptions and withdrawals, nothing is left.” in a letter to his wife, Peg.<sup>7</sup>

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<sup>6</sup> Based on documents available for 1999, the amount due to investor for principal only exceeds the funds in the bank and brokerage accounts. However, bank account records for 1999 are not complete.

<sup>7</sup> Case 1:09-cr-00433-JGK Document 71-5.

85. The assets were calculated based on our detailed analysis of the actual balances in each of the bank and brokerage accounts as well as other assets recorded by the Hedge Funds in its QuickBooks records.

86. The liabilities were calculated as the obligations to the investors for the principal they had invested and liabilities recorded by the Hedge Funds in its QuickBooks records.

## VI. CONCLUSION

87. In order for Nadel to sustain his investment operations, he required a continuous infusion of contributions from his investors. The infusion of new funds into his operation from new and existing investors allowed Nadel to meet the initial investors' request for redemptions. With the exception of the *de minimis* rental income that was generated, there is no indication of any other sources of income that Nadel could have used to pay the existing investors.
88. Nadel created the classic Ponzi scheme by paying existing investors with deposits from new and existing investors. In my opinion, based on the extensive information that I have reviewed, it is evident that the combination of the actual losses coupled with the ever-growing management fees (based on inflated balances from purported gains) caused the ultimate collapse of this Ponzi scheme because there was no way for Nadel to meet the investors' redemption requests without the use of new funds from existing investors and funds from new investors.
89. Based on my analysis of the information that we reviewed, it is clear that Nadel operated a Ponzi scheme through Hedge Funds and Fund Managers from at least May 1999 through January 2009, when the funds collapsed.
90. The Hedge Funds were insolvent as early as 2000 through and including January 2009, when the funds collapsed.
91. Traders' raised funds from investors beginning as early as May 1999, paid out Management Fees on purported profits yet did not have trading activity until July 2003.

92. Similar to the Hedge Funds, Traders also operated as a Ponzi scheme misrepresenting purported profits to investors and using the monies of new investments from existing investors or monies from new investors to meet the redemption of existing investors, in furtherance of Nadel's Ponzi scheme.

**I DECLARE** under the penalty of perjury that the foregoing is true and correct and is executed this 23rd day of March, 2012.



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**EXHIBIT A**  
*Alphabetical by Defendant*

<b>BURTON W. WIAND, as Receiver for VALHALLA INVESTMENT PARTNERS, L.P.; VIKING FUND, LLC; VIKING IRA FUND, LLC; VICTORY FUND, LTD.; VICTORY IRA FUND, LTD. and SCOOP REAL ESTATE, L.P. v.</b>	<b>CASE NO.</b>
Buhl, Henry M.	8:10-cv-075
Catholic Charities, Diocese of Venice, Inc.	8:10-cv-247
Cloud, Diana W.	8:10-cv-150
Cloud, John V.	8:10-cv-149
Cloud, John V. and Catherine S. Cloud, as Co-Trustees of the Mary Anne Cloud Revocable Trust dtd 03/13/1987	8:10-cv-165
Dancing \$, LLC	8:10-cv-092
Bishop Frank J. Dewane, as Corporation Sole of the Diocese of Venice in Florida and Diocese of Venice in Florida, an unincorporated religious organization	8:10-cv-246
EFG Bank f/k/a EFG Private Bank SA and D&E Unit Trust Associates	8:10-cv-241
Ellis, Steve	8:10-cv-233
Meeker, Brian L., as Trustee for the Brian L. Meeker Trust dtd 12/06/1991	8:10-cv-166
Rowe, Donald, individually and as Trustee of the Wall Street Digest Defined Benefit Pension Plan, Joyce Rowe, and Carnegie Asset Management, Inc.	8:10-cv-245
Sarasota Opera Association, Inc.	8:10-cv-248

<b>BURTON W. WIAND, as Receiver for VALHALLA INVESTMENT PARTNERS, L.P.; VIKING FUND, LLC; VIKING IRA FUND, LLC; VICTORY FUND, LTD.; VICTORY IRA FUND, LTD.; SCOOP REAL ESTATE, L.P. and TRADERS INVESTMENT CLUB v.</b>	<b>CASE NO.</b>
Morgan, III, Samuel Ross	8:10-cv-205
Lee, Vernon M., individually and as Trustee of the Vernon M. Lee Trust	8:10-cv-210
Mason, Mark and Clarisse	8:10-cv-2146
Khodorkovsky, Mikhail	8:10-cv-2148
Grosman, Yelena	8:10-cv-2149