

**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, LLC,

Relief Defendants.

**RECEIVER'S UNOPPOSED MOTION TO APPROVE
SEVENTH INTERIM DISTRIBUTION**

Burton W. Wiand, as Receiver (the “**Receiver**”), respectfully moves this Court for an Order approving a seventh interim distribution of \$5,000,000.00 as set forth in this motion and in **Exhibit A**, representing an additional recovery of 3.81% of the Allowed Amounts¹ of Class 1 Claims² receiving a distribution at this time.³

¹ The phrase “**Allowed Amount**” is defined in the Receiver’s Motion to (1) Approve Determination and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) (footnote cont’d)

these claimants or representatives of these claimants to ensure that the appropriate parties are able to recover these funds.

PROPOSED PLAN FOR SEVENTH INTERIM DISTRIBUTION

The Receiver now seeks leave to make a seventh interim distribution totaling \$5,000,000.00 as specified in **Exhibit A** to holders of Class 1 Claims on a *pro rata* basis subject to applicable exceptions, priorities, and other parameters discussed in the Claims Determination Motion – the same method and parameters used for all of the prior interim distributions. This distribution will result in an additional 3.81% recovery for these Claimants' Allowed Amounts, bringing these Claimants' total recovery to approximately 51.99% of their Allowed Amounts.⁵

The distribution plan approved by the Court provides that Class 1 Claimants receive a percentage of their Allowed Amount from the aggregate amount distributed to Claimants in any particular distribution based upon the following formula, which achieves a *pro rata* distribution: each claim's Allowed Amount divided by the total Allowed Amount of all allowed claims multiplied by the aggregate distribution amount. The amount each Class 1 Claim would receive based on this formula as part of a seventh interim distribution is specified in Exhibit A.

⁵ As noted above, Claim Number 391 is not allowed to participate in any distributions of Receivership assets until and if all Class 1 Claims receive 50% of their Allowed Amounts. The proposed seventh interim distribution will bring the total combined recovery to approximately 51.99% for such Class 1 Claims. As such, this claim is entitled to participate in the seventh interim distribution to the extent the percentage of recovery exceeds 50% and thus, is only entitled to receive 1.99% of its Allowed Amount.

As of August 30, 2017, the total funds in all Receivership accounts are approximately \$6,753,507.70, which includes a tax refund payment from the Internal Revenue Service in the amount of \$2,920,359.71, which was received and deposited into a Receivership account on August 28, 2017. The Receiver believes that by distributing \$5,000,000.00 he will be able to provide a significant amount of money to Claimants now while still maintaining adequate funds, including to cover the expenses of (1) continuing ongoing litigation and post-judgment collection efforts, (2) administering the Receivership, and (3) paying the Receiver's professionals for services already provided and yet to be provided. Further, as discussed below, the Receiver will be left with sufficient funds and assets to cover asserted interests in the Receivership by Wells Fargo. The Receiver believes he has reserved more than is necessary for the payment of these items and intends to distribute the excess in a final distribution at the close of this Receivership.

The Receiver requests leave to make the seventh interim distribution in the amounts specified on Exhibit A within 15 business days of the date of the order authorizing the distribution. The Receiver will mail checks by U.S. Mail. The Receiver requests that the Claimants be allowed 120 days to negotiate the distribution checks. A deadline for negotiating distribution checks is necessary for the orderly administration of the Receivership. If a check is not negotiated by a Claimant within 120 days, the Receiver will make reasonable efforts to provide the Claimant an opportunity to recover the funds. If the Receiver is unable to locate the Claimant or obtain sufficient information and/or documentation to reissue the check, he will turn over the funds to the Division of Unclaimed Property in the appropriate state.

OBJECTIONS AND RESERVES

The Receiver received objections relating to 23 claims (*see* Claim Nos. 157, 403, 404, 405, 406, 407, 408, 444, 445, 449, 450, 462, 463, 464, 465, 466, 467, 469, 471, 476, 477, 483, and 504). All objections relating to the 23 claims identified above have been resolved and no reserves are necessary for these claims.

Wells Fargo, which filed Claim Number 502, petitioned the Court for relief with respect to its claim and to other purported interests it asserted in Receivership property. The Receiver and Wells Fargo entered into a settlement agreement to resolve the majority of these matters. On June 12, 2017, the Receiver filed a motion to approve this settlement agreement (Doc. 1291). The Court granted this motion on June 21, 2017 (Doc. 1296). In pertinent part, the agreement provides that (1) the Receiver will disburse \$2,224,563.15 from the proceeds received in connection with the sale of the Rite-Aid property to Wells Fargo, (2) the Receiver will disburse \$2,106,140.29 from the proceeds received in connection with the sale of the La Bellasara property to Wells Fargo, and (3) within ninety-days of the motion, Wells Fargo will notify the Receiver in writing if it intends to pay the Receiver \$254,073.76 for expenses incurred in maintaining the Laurel Preserve property and foreclose on it or waive its security interest in the property in favor of the Receiver.

The Receiver has disbursed the funds to Wells Fargo as set forth above. In its January 10, 2017 Order, the Court approved total reserves of \$1,078,547.03 for Wells Fargo's purported claim relating to the Laurel Preserve property and total reserves of \$1,123,256.09 for Wells Fargo's purported claims relating to the La Bellasara property (Doc.

1259). As set forth above and in Exhibit B, these reserves are no longer needed due to the settlement as approved by the Court's June 21, 2017 Order.

During the time the Receiver maintained the Rite-Aid property, the Receivership collected rental income in the amount of approximately \$1,322,923.20. Wells Fargo is claiming an interest in this rental income. The Receiver opposes this position and believes he is entitled to retain these funds. The parties have agreed to mediate this issue on September 28, 2017. The Receiver will increase the reserves currently held in connection with the Rite-Aid property by a total of \$755,538.60 as set forth in Exhibit B to include the full amount of rental income received by the Receivership until that issue is resolved (*see* Claim No. 502). The Receiver will maintain these specified reserves so that this purported interest does not impede or delay a seventh interim distribution and will hold these reserves until this dispute is resolved.

ARGUMENT

As explained above, the Receiver asks the Court to approve the seventh interim distribution as set forth in this Motion and in the attached Exhibits.⁶ The Court has previously approved the Receiver's plan of distribution and six interim distributions. (*See* March 2, 2012 Order, Doc. 776; May 7, 2012 Order, Doc. 839; November 16, 2012 Order, Doc. 946; November 22, 2013 Order, Doc. 1087; April 24, 2014 Order, Doc. 1114; December 15, 2015 Order, Doc. 1213; January 10, 2017 Order, Doc. 1259.) The seventh interim distribution sought herein is consistent with the plan of distribution approved by the

⁶ For the Court's convenience, a proposed order is provided as **Exhibit C**.

Court and the prior interim distributions. Further, the relief requested in this motion is in the best interest of the Receivership and the Claimants as a whole; is fair, reasonable, and equitable; and satisfies due process.

The Court's power over an equity receivership and to determine appropriate procedures for administering a receivership is "extremely broad." *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986); *see SEC v. Basic Energy*, 273 F.3d 657, 668 (6th Cir. 2001); *SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992). The primary purpose of an equity receivership is to promote the orderly and efficient administration of the estate for the benefit of the creditors. *Hardy*, 803 F.2d at 1038. The relief requested by the Receiver best serves this purpose.

The Court has wide latitude when it exercises its inherent equitable power in approving a plan of distribution of receivership funds. *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (affirming District Court's approval of plan of distribution because court used its discretion in "a logical way to divide the money"); *Quilling v. Trade Partners, Inc.*, 2007 WL 107669, *1 (W.D. Mich. 2007) ("In ruling on a plan of distribution, the standard is simply that the district court must use its discretion in a logical way to divide the money" (internal quotations omitted)). In approving a plan of distribution in a receivership, "the district court, acting as a court of equity, is afforded the discretion to determine the most equitable remedy." *Forex*, 242 F.3d at 332. The Court may adopt any plan of distribution that is fair and reasonable. *SEC v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *Basic Energy*, 273 F.3d at 671.

Consistent with the features of Nadel’s Ponzi scheme, “Courts have favored pro rata distribution of assets where, as here, the funds of defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders.” *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88 (2d Cir. 2002); *see Quilling*, 2007 WL 107669 at *2 (“The use of a *pro rata* distribution plan is especially appropriate for fraud victims of a Ponzi scheme, in which earlier investors’ returns are generated by the influx of fresh capital from unwitting newcomers rather than through legitimate investment activity.”). A fair and reasonable distribution plan may provide for reimbursement to certain claimants, while excluding others. *See Wang*, 944 F.2d at 84 (citations omitted); *Basic Energy*, 273 F.3d at 660-61. The Receiver believes that the interim distribution set forth above is fair and reasonable and is consistent with the distribution plan approved by the Court.

WHEREFORE, Burton W. Wiand, as Receiver, respectfully requests the Court enter an order authorizing a seventh interim distribution in the total amount of \$5,000,000.00 as set forth in this Motion and in the attached Exhibits.⁷

⁷ As specified in Exhibit A, the Receiver has honored technical requests related to the distribution of funds. For instance, as authorized by the Court, the Receiver has honored requests for the reissuance of distribution checks made payable to custodians which were no longer being used by the Claimant (*see* Claim No. 365). The Receiver has also honored technical requests for a business entity claimant which merged into another entity (*see* Claim No. 13), and for claimants who are deceased (*see* Claim Nos. 293, 294, 296, and 374). These changes are noted on Exhibit A.

LOCAL RULE 3.01(g) CERTIFICATION

The undersigned counsel for the Receiver has conferred with counsel for the Securities and Exchange Commission and is authorized to represent to the Court that the Commission has no objection to the relief sought herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 31, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Michael Lamont

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