

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.

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**RECEIVER'S MOTION TO APPROVE SETTLEMENT**

Burton W. Wiand, as Receiver, moves the Court for an order approving settlement of claims asserted against certain defendants in *Burton W. Wiand, as Receiver v. Neil V. Moody et al.*, Case No.: 8:10-cv-249-T-17 MAP (M.D. Fla.) (the "Moody Action"). Specifically, the Receiver seeks approval of settlement of claims asserted against Neil V. Moody in his individual capacity and in his capacity as Trustee of the Neil V. Moody Revocable Trust and against the Neil Moody Charitable Foundation, Inc. (collectively, "Moody"), on the basis of the Settlement Agreement attached as Exhibit 1.

## 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. 493).) 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. 79); Viking Oil & Gas, LLC (Dkt. 153); Home Front Homes, LLC (Dkt. 172); and Traders Investment Club (Dkt. 454). All of the entities in receivership are collectively identified herein as the Receivership Entities.

Pursuant to the Order Reappointing Receiver (Dkt. 493), 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 a Complaint filed January 20, 2010, the Receiver sued Moody to recover all monies he received from Receivership Entities with a view to marshalling assets for an eventual distribution to investors with verifiable claims in an equitable and appropriate manner. As part of the settlement, Moody has turned over all of his assets except for certain personal items, as set forth in Exhibit B to the Settlement Agreement, which are collectively worth less than \$15,000. After conducting diligence, the Receiver does not believe the items contained in Exhibit B would yield a material benefit to the Receivership Estate.

Under the terms of the Settlement Agreement, the Receiver and Moody, subject to the approval of this Court, have agreed to settle without prejudice all of the Receiver’s claims asserted against Moody in the Moody Action, in exchange for the following consideration: (1) transfer to the Receiver of all assets listed in Exhibit A to the Settlement Agreement; (2) transfer to the Receiver of his tax refunds; (3) execution of a sworn statement verifying the extent of Moody’s assets; and (4) cooperation with and assistance to the Receiver in the Receiver’s ongoing efforts to recover monies on behalf of the investors. Earlier this month, a tax refund check in the amount of \$365,284.99 relating to Moody’s prior tax payments was delivered by the Internal Revenue Service to the Receiver which will be endorsed for the benefit of the Receivership. Importantly, as noted above and as set forth in the Settlement Agreement, the Receiver is not releasing any of his claims against Moody, and Moody is waiving any and all time-bar defenses. If it is later determined that Moody made a material

misrepresentation in the Settlement Agreement and/or affidavit, or failed to satisfy any of his obligations imposed by the Settlement Agreement, the Receiver is entitled to a judgment for the total amount of disgorgement entered by the SEC in Case No. 8:10-cv-0053-T-26TBM or \$23,000,000 in the event no disgorgement has yet been entered.

The settlement reflected by the Settlement Agreement is in the best interests of the Receivership and the investors in Receivership Entities because resolution of the claims as indicated in the Settlement Agreement avoids protracted litigation, conserving Receivership assets and judicial resources; avoids the risk of litigation and of an unfavorable outcome; and, in the event of a favorable outcome, it avoids a significant risk of not being able to fully collect on any eventual judgment. In sum, the Settlement Agreement transfers to the Receivership Estate all of Moody's assets (other than certain specified personal belongings which are of no material benefit to the Receivership Estate) and secures Moody's ongoing cooperation, while preserving the Receiver's claims and the costs of proceeding with litigation.

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

**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 February 22, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

Arthur G. Nadel  
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**s/ Gianluca Morello**

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*Attorneys for the Receiver, Burton W. Wiand*