

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

**SECURITIES AND EXCHANGE  
COMMISSION**

**Plaintiff,**

v.

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

**Defendants,**

**CASE NO.: 8:09-0087-T-26TBM**

**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.**

---

**MOTION OF WELLS FARGO BANK, N.A. FOR THE COURT TO CONTINUE  
THE HEARING SCHEDULED FOR MARCH 2, 2012 ON PENDING MOTIONS**

Pursuant to Local Rule 3.09 of the United States District Court for the Middle District of Florida, Wells Fargo Bank, N.A. ("Wells Fargo") respectfully moves this Court to continue the hearing scheduled for Friday, March 2, 2012 at 9:00 a.m. in the interest of judicial resources and for good cause (the "Hearing"). Contemporaneous with this motion for continuance, Wells Fargo has filed a motion seeking (1) to disqualify Burton W. Wiand as Receiver, (2) to disqualify the law firm of Wiand Guerra King P.L. ("WGK") as counsel to the Receiver, and (3) to disallow, at minimum, all fees payable to the Receiver and the law firm of WGK for any work related to Wells Fargo in this case (the "Disqualification Motion"). In the Disqualification

Motion, Wells Fargo contends that the Receiver and WGK violated the Florida Rules of Professional Conduct by taking materially adverse positions against Wells Fargo in this case, while WGK was representing both Wells Fargo and Wells Fargo Advisors, LLC, an affiliate of Wells Fargo, in a number of significant matters, for which WGK had received over one million dollars in legal fees. Wells Fargo respectfully asks this Court to continue the Hearing so that the serious ethical issues raised in Wells Fargo's Disqualification Motion can be resolved, and for the reasons more fully set forth in the Memorandum below.

### **MEMORANDUM**

Pursuant to Local Rule 3.09(a), Wells Fargo moves this court for a continuance of the Hearing in this case in the interest of judicial resources and for good cause. In the Disqualification Motion filed contemporaneously herewith, Wells Fargo contends that the Receiver and WGK violated the Florida Rules of Professional Conduct by taking materially adverse positions against Wells Fargo in this case, while WGK was representing both Wells Fargo and Wells Fargo Advisors in a number of significant matters, for which WGK had received over one million dollars in legal fees. Wells Fargo believes the Receiver and WGK's failure to disclose these representations while taking materially adverse positions against Wells Fargo is a violation of (i) the Florida Rules of Professional Conduct, (ii) Wells Fargo's policy on conflicts of interest, and (iii) the Receiver's fiduciary responsibilities as a court appointed receiver. Wells Fargo therefore has moved that the Receiver and WGK be disqualified from the entire case.

Wells Fargo regrets bringing this motion for continuance to the Court's attention at this late date. The Disqualification Motion is a serious motion and Wells Fargo and undersigned counsel could not file this motion until all issues were carefully considered. Moreover, this issue

has required consultation of a number of different departments and persons at Wells Fargo. It also directly affected several pending litigations which WGK was handling for Wells Fargo entities, at least one of which has an upcoming trial date. In light of the seriousness of the Motion and the effect on other cases being handled by WGK for the Wells Fargo entities, it simply took time to address these issues.

This Court has scheduled the Hearing for Friday, March 2, 2012 commencing at 9:00 a.m. (Doc. No. 733) on the Receiver's Motion to (1) Approve Determination and Priority of Claims, (2) Pool Receivership Assets and Liabilities, and (3) Establishing an Objection Procedure (the "Claims Determination Motion"). TRSTE, Inc. and Wells Fargo both filed objections to the Claims Determination Motion (Doc. Nos. 689, 690). TRSTE, Inc. and Wells Fargo also filed objections to the Receiver's motion raising jurisdictional issues (Doc. No. 745), and those issues have been briefed for the Court. Pursuant to the Court's Order on February 6, 2012 (Doc. No. 735), the Court will also entertain oral argument at the Hearing on "all other objections to the Receiver's Motion to (1) Approve Determination and Priority of Claims, (2) Pool Receivership Assets and Liabilities, and (3) Establish Objection Procedure."

With all due deference and respect to this Court in its efforts to move this case forward, so that assets may be recovered, and the victims of Arthur Nadel's scheme may be compensated, Wells Fargo respectfully contends that ethical issues raised in its Disqualification Motion are of such significance that the Court should consider and rule on the Disqualification Motion prior to hearing argument on the pending motions relating to the administration of the receivership estate. The issues set for the Hearing involve fundamental issues relating to the disposition of claims. Wells Fargo respectfully submits that these matters should be handled by a Receiver who is not in violation of the Florida Rules of Professional Conduct. Wells Fargo and undersigned counsel

submit that this motion is filed in good faith for the concerns articulated herein, and not with the intent of unnecessarily delaying these proceedings, or prejudicing any party.

**CONCLUSION**

WHEREFORE, Wells Fargo respectfully requests that this Court enter an Order to continue the hearing currently scheduled for Friday, March 2, 2012 at 9:00 a.m. for good cause shown so that Wells Fargo's Disqualification Motion can be briefed and argued prior to the Court hearing argument on any of the pending motions currently scheduled.

Dated this 29<sup>th</sup> day of February, 2012 in Tampa, Florida.

Respectfully submitted,

**AKERMAN SENTERFITT**

/s/L. Joseph Shaheen, Jr.

L. Joseph Shaheen, Jr.  
Florida Bar No.: 212385  
Email: joseph.shaheen@akerman.com  
Steven R. Wirth  
Florida Bar No.: 170380  
Email: steven.wirth@akerman.com  
401 East Jackson Street, Suite 1700  
Tampa, Florida 33602  
Telephone: (813) 223-7333  
Facsimile: (813) 223-2837

*Counsel for Wells Fargo, N.A.*

**LOCAL RULE 3.01(g) CERTIFICATION**

Counsel for Wells Fargo has conferred with counsel for the Receiver and counsel for the Securities and Exchange Commission, and each indicated that they objected to and would oppose the relief requested in this Motion.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 29, 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:

Arthur G. Nadel  
FCI BUTNER LOW  
Federal Correctional Institution  
P.O. Box 999  
Butner, NC 27509

/s/L. Joseph Shaheen, Jr.  
Attorney