

EXHIBIT A

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.

**DECLARATION OF KEVIN J. HEISER IN SUPPORT OF MOTION OF WELLS
FARGO BANK, N.A. (I) TO DISQUALIFY RECEIVER,
(II) TO DISQUALIFY WIAND GUERRA KING P.L. AND (III) TO DISALLOW
ALL FEES PAYABLE TO THE RECEIVER AND HIS COUNSEL**

Kevin J. Heiser, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury as follows:

1. I am a Senior Counsel, Legal Department, at Wells Fargo Bank, N.A. ("Wells Fargo") and am authorized to make this Declaration on behalf of Wells Fargo. I make this declaration from personal knowledge and from the information taken from Wells Fargo's business records. I have personal knowledge of Wells Fargo's procedures for creating these records. They are (a) made at or near the time of the occurrence of the

matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Wells Fargo's regularly conducted business activities; and (c) it is the regular practice of Wells Fargo to makes such records.

2. I submit this declaration in support of the *Motion of Wells Fargo Bank, N.A. (I) to Disqualify Receiver, (II) to Disqualify Wland Guerra King P.L. and (III) to Disallow All Fees Payable to the Receiver and His Counsel* (the "Motion") filed contemporaneously herewith.

3. From mid-November 2009 through February 2012, WGK represented Wells Fargo and/or Wells Fargo Advisors, LLC ("WFA") in connection with approximately **twenty-eight (28)** matters. These matters included, but were not limited to, arbitration proceedings, securities actions, general litigation, legal inquiries and subpoenas, commercial lending transactions, and brokerage account matters. During this time, Wells Fargo and its affiliate paid WGK approximately \$1.04 Million for services rendered. Of the approximately \$1.04 Million paid to WGK, \$47,529.37 was paid to WGK for services rendered to Wells Fargo and the balance was paid to WGK for services rendered to WFA.

4. Wells Fargo's legal department has adopted a policy regarding legal conflicts of interest resulting from a law firm's current or former representation of Wells Fargo, including the subsidiaries of Wachovia Corporation. See Policy Regarding Legal Conflicts of Interest, Revision of October 14, 2010, attached as Exhibit A to the Motion (the "Policy"). The purpose of the Policy is to provide Wells Fargo's general consent to

some common conflicts of interest (none of which are applicable here), but more importantly, to identify those conflicts of interest to which Wells Fargo will not consent and to provide a procedure for requesting consent to other conflicts. *See* Policy, Introduction. Wells Fargo requires that its outside firms and lawyers who represent Wells Fargo adhere to this policy. *Id.* Pursuant to the Policy, "a law firm must obtain Wells Fargo's specific consent before commencing any representation which would result in a Conflict of Interest for the firm, whether the Conflict of Interest arises as the result of a Transaction or Dispute." *See* Policy, ¶ 1.¹ The Policy even specifies the required format of any such request. *Id.* ("Any request for specific consent must be submitted by e-mail to the Wells Fargo Conflicts Counsel identified on Exhibit D for the Wells Fargo Line of Business which is involved in the Transaction or Dispute causing the Conflict of Interest, and be substantially in the form of Exhibit B,") (emphasis in original); Policy, Exhibit "B" thereto.

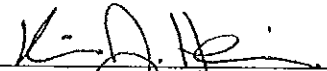
5. The Receiver and WGK's conflicts of interest were not fully realized by Wells Fargo until approximately December 2011/January 2012, after WGK filed the Receiver's claims determination motion and explained in some detail for the first time the purported "shadow account" claims the Receiver intended to pursue against the bank. On investigation of facts regarding these types of claims, Wells Fargo's internal counsel became aware for the first time that at the same time WGK and the Receiver were taking positions clearly adverse to Wells Fargo that WGK was also representing Wells Fargo

¹ Under the Policy, "Conflict of Interest" "means a conflict of interest arising under any applicable rules of professional conduct as a result of a law firm's past, present or proposed representation of Wells Fargo or an Adverse Party." *See* Policy, Exhibit "A". "Dispute" "means a pending, threatened, or likely litigation, arbitration, bankruptcy, adversary proceeding, contested motion, alternative dispute resolution process or loan workout, including, without limitation, any foreclosure or collection action." *Id.*

and WFA in other matters. Thereafter, internal counsel for Wells Fargo raised the issue with WGK in a series of phone calls culminating in WGK's request for waiver in January, 2012 and Wells Fargo's denial of that request.

I declare under penalty of perjury that the foregoing is, to the best of my knowledge, information and belief, complete, true and correct.

Executed on this 27th day of February, 2012
in Charlotte, North Carolina.



Kevin J. Heiser