

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.

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**MOTION AND MEMORANDUM OF LAW OF WELLS FARGO  
BANK, N.A. FOR LEAVE TO FILE REPLY TO OPPOSITION OF  
RECEIVER, WIAND GUERRA KING, P.L. AND THE SECURITIES  
AND EXCHANGE COMMISSION TO 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**

Wells Fargo Bank, N.A. ("Wells Fargo"),<sup>1</sup> a valid secured creditor and party in interest herein, recently filed a motion seeking (i) to disqualify Burton W. Wiand as Receiver, (ii) to disqualify the law firm of Wiand Guerra King P.L. ("WGK") as counsel

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<sup>1</sup> Wells Fargo is successor by merger to Wachovia Bank, N.A.

to the Receiver, and (iii) to disallow, at minimum, all fees payable to the Receiver and WGK for any work related to Wells Fargo in this case (Doc. No. 766) (the "Motion"). The Receiver, WGK, and the Securities and Exchange Commission (the "SEC" and together with the Receiver and WGK, the "Respondents"), each filed lengthy briefs in opposition to the Motion (Doc. Nos. 786, 788, and 790) and accompanying affidavits (Doc. Nos. 787 and 789) (collectively, the "Oppositions"). For the reasons set forth below, Wells Fargo respectfully seeks leave of this Court to file one consolidated twenty-page reply to the Oppositions no later than Friday, March 23, 2012 at 5:00 p.m.

#### MEMORANDUM OF LAW

Wells Fargo seeks leave to file a reply to address the issues raised in the Oppositions because it respectfully believes additional briefing will assist the Court in resolving the Motion. Wells Fargo would like the opportunity to respond to the Respondents' significant misrepresentations regarding certain complicated factual issues, and their misinterpretation of the law and cases cited in the Oppositions. The issues Wells Fargo seeks to address include the Respondents':

- (1) misrepresentation to the Court as to the time the directly adverse conflict arose between the Receiver and his law firm, WGK, and Wells Fargo and its affiliate – **in fact, there are multiple specific letters from the Receiver and WGK to Wells Fargo and its outside counsel asserting adverse positions against the bank beginning in at least September 2010;**
- (2) incorrect representations regarding the law and the Florida Rules of Professional Conduct as they apply to receivers in SEC receivership proceedings;
- (3) failure to address cases from this Court regarding the applicability of the Florida Rules of Professional Conduct to receivers in SEC receivership proceedings;

- (4) attempts to minimize the extent of the significant conflicts of interest in this case;
- (5) incorrect contention that Wells Fargo waived, consented, or otherwise acquiesced to the conflicts and ethical violations committed by the Receiver and his law firm, WGK;
- (6) incorrect contention that Wells Fargo's policy on conflicts of interest has no application in this case; and
- (7) misinterpretation of cases discussed in the Oppositions.

WHEREFORE, Wells Fargo respectfully seeks leave to file one consolidated twenty-page reply to the Oppositions no later than Friday, March 23, 2012 at 5:00 p.m.

**LOCAL RULE 3.01(g) CERTIFICATION**

Counsel for Wells Fargo has conferred with Counsel for the Receiver, Counsel for the Securities and Exchange Commission, and Counsel for Wiand Guerra and King, P.L., and each indicated that they opposed the relief requested in this motion.

Dated this 15<sup>th</sup> day of March, 2012 in Tampa, Florida.

Respectfully submitted,

**AKERMAN SENTERFITT**

*/s/ Steven R. Wirth*

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*Counsel for Wells Fargo, N.A.*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 15, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which provided notice to all CM/ECF participants in this case.

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

de la Parte & Gilbert, P.A.  
Richard A. Gilbert  
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*/s/ Steven R. Wirth* \_\_\_\_\_  
Attorney