

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-cv-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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**RECEIVER'S UNOPPOSED VERIFIED MOTION TO APPROVE SALE OF  
UNENCUMBERED REAL PROPERTY LOCATED IN RALEIGH, WAKE COUNTY,  
NORTH CAROLINA TO TRI-ARC FOOD SYSTEMS, INC.**

Burton W. Wiand, as Receiver (the “Receiver”), respectfully moves the Court for entry of an order in substantially the form attached hereto as **Exhibit 1**, approving the sale of unencumbered real property located in Raleigh, Wake County, North Carolina (the “Property”) to Tri-Arc Food Systems, Inc. (“Tri-Arc”).

## **I. Background**

The Receiver previously submitted his Unopposed Verified Motion to Approve Public Sale of Unencumbered Real Property Located in Raleigh, Wake County, North Carolina (Dkt. 780) which also related to sale of the Property. The Court granted the Receiver's motion on March 8, 2012 (Dkt. 782), and that motion and order (Dkts. 780 and 782) are incorporated in this motion. Iron Horse Auction Company ("**Iron Horse**") and The Swicegood Group, Inc. ("**Swicegood**") were retained by the Receiver to conduct the public sale of the Property. Iron Horse and Swicegood had estimated a potential sales price in excess of \$1,000,000.00 based upon their evaluation of the Property and in the previous motion (Dkt. 780) the Court was so advised.

## **II. Result of the Public Auction of the Property**

Iron Horse and Swicegood conducted the public sale on April 12, 2012. Six potential purchasers attended the auction and bid on the Property. At the conclusion of the public auction, the highest bid was \$840,000.00 and a proposed contract was submitted to the Receiver for consideration. Since the reserve price was not met, the Receiver, as authorized by the Order on his Unopposed Verified Motion to Approve Public Sale of Unencumbered Real Property Located in Raleigh, Wake County, North Carolina, opened negotiations with the highest bidder to try to secure a price which more reasonably reflected the value of the Property. Another bidder, Tri-Arc, contacted Iron Horse and Swicegood on April 13, 2012 to determine if the Property was still available and subsequently submitted a proposed contract to purchase the Property for \$950,000.00<sup>1</sup> for the Receiver's consideration. The terms of the

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<sup>1</sup> After payment of the 7% buyer's premium (*see* Doc. 780 at 10), the final sale price is \$1,016,500.00.

sale of the Property to Tri-Arc are reflected in the Contract attached as **Exhibit 2**. The high bidder at the auction indicated on April 13, 2012 that he would stand on his original bid of \$840,000.00. The Receiver has accepted the second offer in the amount of \$950,000.00 offer and believes this is the highest realizable price for the Property. While this Court's prior order (Dkt. 782) provided the Receiver with the authority to complete this transaction, this motion is nevertheless being filed out of an abundance of caution because the sale price is below the previously estimated price of over \$1,000,000.00.

### **III. Approval of the Sale of the Property to Tri-Arc**

The Receiver believes that the sale of the Property to Tri-Arc for \$950,000.00 is in the best interest of the Receivership Estate and, accordingly, requests that this Court enter an order approving the sale of the Property for the following reasons:

- 1) The Receiver believes that the offer of Tri-Arc accurately reflects the current value of the Property;
- 2) The Receivership Estate will receive over \$900,000.00 from the sale of the Property after the payment of a 3% commission to Iron Horse and Swicegood and advertising costs which will not exceed \$13,500.00;
- 3) It is not likely that the Receiver will find a buyer to offer more than \$950,000.00 for the Property in light of the poor economic conditions in the market and the absence of a tenant; and,
- 4) The Property will likely continue to decline in value the longer it remains unoccupied, and its sale to Tri-Arc will eliminate the costs to maintain the Property, thus conserving Receivership funds.

#### **IV. The Court Has the Authority to Approve This Transaction**

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver falls squarely within those powers. Furthermore, the relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Order Appointing Receiver.

**WHEREFORE**, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached hereto as **Exhibit 1**, approving the sale of the Property to Tri-Arc for \$950,000.00 pursuant to the terms and conditions set forth in this Motion and in the Contract attached hereto as **Exhibit 2**.

#### **CERTIFICATE UNDER LOCAL RULE 3.01(g)**

The Receiver has conferred with counsel for the Commission and is authorized to represent to the Court that this motion is unopposed.

**VERIFICATION OF RECEIVER**

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.



Burton W. Wiand, Court-Appointed Receiver

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 16, 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 Nadel, Register No. 50690-018  
FCI BUTNER LOW  
Federal Correctional Institution  
P.O. Box 999  
Butner, NC 27509

**s/Gianluca Morello**

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*Attorney for the Receiver, Burton W. Wiand  
W. Wiand*