

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

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

Defendants,

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants.

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**NOTICE OF FACTUAL DEVELOPMENT REGARDING SALE OF REAL PROPERTY
LOCATED IN GRAHAM, ALAMANCE COUNTY, NORTH CAROLINA**

Burton W. Wiand, as Receiver (the “**Receiver**”), by and through his undersigned counsel, files this Notice in order to inform the Court of the following factual development in connection with the sale of real property located in Graham, Alamance County, North Carolina (the “**Rite Aid Property**” or “**Property**”), which this Court approved on May 8, 2012. (Docs. 840, 842)

1. After a long and storied chronology of filings and motion practice relating to objections raised by Wells Fargo Bank, N.A. (“**Wells Fargo**” or “**Bank**”), which the Receiver

will not rehash here, the Court approved the sale of the Rite Aid Property for the negotiated price of \$2,400,000.00 on May 8, 2012. (Doc. 840, 842)

2. In its Order approving the sale, the Court acknowledged the fact that the requirements set forth in 28 U.S.C. § 2001(b) have been satisfied here – three independent, disinterested appraisers performed appraisals of the Rite Aid Property and the terms of the sale of the Property were published for a period of ten (10) days in a newspaper of general circulation (“**Notice of Sale**”). Specifically, the Notice of Sale was consecutively published in The Times-News (Burlington, North Carolina, Alamance County) from April 26 to May 5, 2012. See Affidavit of Insertion of Advertisement, attached as **Exhibit 1**. By the conclusion of the publication period, no bids or offers of purchase were submitted to the Receiver. At that time, the Receiver’s obligation to sell the Property became unconditional.

3. On May 10, 2012 – five days after the conclusion of the publication period – the Receiver received a telephone call from Tim Giambrone, Director of the National Retail Group for Marcus & Millichap Real Estate Investment Services (“**Giambrone**”). Giambrone claimed to have an unidentified client who may be interested in purchasing the Rite Aid Property. Without providing any specifics or a firm written offer, Giambrone stated that his client – who is aware of the pending sale, but has not reviewed the Property lease or other particulars – may be willing to pay six figures above the approved sale price of \$2,400,000.00 and may be able to expedite closing.

4. The Receiver informed Giambrone that a firm contract has been in place for some time, that he is bound by the contract, and that the contract does not include any contingencies beyond the buyer putting money down and the Court approving the sale. The Receiver additionally confirmed that both of these contingencies have been satisfied and that he is

preparing to close on the Property on May 15, 2012. The Receiver asked Giambrone how he learned of the Rite Aid Property and the pending sale. In response, Giambrone stated that Wells Fargo had brought the Property to his attention.

5. While the Receiver has not had the opportunity to investigate the facts leading up to the telephone call he received from Giambrone, the eleventh-hour timing makes him skeptical of the motivation behind the call. Further, he is skeptical of the ability of an unidentified and uninformed buyer to close in three business days for a price exceeding the existing contract price by six figures. Regardless, the Receiver made it clear to Giambrone that he is contractually obligated to proceed with the sale as approved by the Court earlier this week. In closing, the Receiver indicated that he would contact Giambrone in the event that the current contract falls through.

6. The Receiver is currently scheduled to close on the Rite Aid Property on May 15, 2012 for the approved contract price of \$2,400,000.00. Significantly, the terms of the negotiated sale were finalized with Trinet West, LLC (“**Trinet**”) – the only buyer to commit to a contract – in October 2011 after years of actively marketing the Property. Since that time, Trinet has patiently and eagerly waited to finalize the sale of the Property, which the Court approved on May 8, 2012.

7. The Receiver discloses the above-described factual development to ensure that the Court is apprised of these recent developments and that the record accurately reflects the circumstances leading up to the sale of the Rite Aid Property. While this factual development is interesting, in light of the fact that: (1) the Court has approved the sale of the Property; (2) no bids or firm offers were submitted by the conclusion of the publication period; and (3) Trinet completed all of its terms of purchase, the Receiver is obligated to honor the executed contract

and proceed with the sale of the Rite Aid Property for the approved contract price of \$2,400,000.00. It is the Receiver's intention to complete the sale as approved by the Court. Accordingly, the Receiver will proceed with closing on the Rite Aid Property on May 15, 2012.

Respectfully submitted,

/s/ Jonathan B. Cohen

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Attorneys for the Receiver, Burton W. Wiand

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 11, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/ Jonathan B. Cohen

Attorney for the Receiver, Burton W. Wiand