

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-87-T-26TBM

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

Defendants,

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.

**RECEIVER'S TWELFTH INTERIM MOTION FOR ORDER
AWARDING FEES, COSTS, AND REIMBURSEMENT OF COSTS
TO RECEIVER AND HIS PROFESSIONALS**

Burton W. Wiand, as Receiver, by and through his undersigned counsel and pursuant to Rule 66 of the Federal Rules of Civil Procedure and the Court's Order Appointing Receiver dated January 21, 2009 (the "**Order Appointing Receiver**"; Doc. 8), respectfully moves this Court for the entry of an order awarding fees, costs, and reimbursement of costs to the Receiver and his professionals. This motion covers all fees and costs incurred for the four month period from December 1, 2011 through March 31, 2012. The Standardized Fund

Accounting Report (“SFAR”) for this period is attached hereto as **Exhibit 1**.¹ For the time covered by this Motion, the Receiver and Wiand Guerra King P.L. (“WGK”) seek total fees and costs of \$695,757.50 for their services. During this same time, the Receiver collected **\$11,451,321.40** in cash from settlements, gross business income, interest/dividend income, business asset liquidation, and other miscellaneous income. From the inception of the Receivership through March 31, 2012, the Receiver has collected **\$42,537,177.21** in cash from these same sources, as well as securities and personal asset liquidation.

Since the appointment of the Receiver, he and those he has retained to assist him have engaged in substantial and continuing efforts for the benefit of the Receivership. As of the date of this Motion, among other things, the Receiver and his professionals have done the following:

- Pursued and continue to pursue litigation for (1) the recovery of false profits from investors (i.e., from “Profiteers”); (2) the recovery of distributions from Receivership Entities to Donald and Joyce Rowe, and certain of their affiliated entities; (3) the recovery of other distributions, such as commissions, from other individuals and/or entities; and (4) the recovery of certain charitable contributions made with scheme proceeds;
- Reached agreements to settle with **143** Profiteers for a total amount of **\$21,469,309.97** as of August 28, 2012;
- Reached an agreement to settle, provided notice of the settlement to all potentially interested parties, and obtained an order approving the settlement between the Receiver and Goldman Sachs Execution & Clearing, L.P. (“GSEC”), pursuant to which GSEC paid **\$9,850,000** to the Receiver;

¹ The Securities and Exchange Commission (the “**Commission**”) provided the Receiver with detailed Billing Instructions for Receivers in Civil Actions Commenced by the Commission (the “**Billing Instructions**”). The SFAR is one of the requirements contained in the Billing Instructions.

- Reached an agreement to settle, provided notice of the settlement to all potentially interested parties, and obtained an order approving a settlement with Shoreline Trading Group, LLC (“**Shoreline**”) pursuant to which Shoreline paid **\$2,500,000** to the Receiver;
- Entered into an agreement with Bonds.com to retire all Bonds.com’s indebtedness to the Receivership in exchange for payment of **\$2,250,000** (which has been received) and, allow Bonds.com to repurchase all approximately 7.5 million shares, if specified conditions are met, in exchange for a payment of \$5,000 within one year of the entry of the order approving the agreement;
- Sold or reached agreements in principle to sell Receivership assets that should result in approximately **\$7,537,975.93** for the Receivership and the waiver or resolution of more than **\$8 million** in debt obligations of Receivership Entities (this includes \$2,229,463.15 received from the sale of the “Rite-Aid Property” which is being held pending resolution of disputes with Wells Fargo Bank, N.A. (“**Wells Fargo**”));
- Filed the appropriate federal tax forms on behalf of Art Nadel, Chris Moody, Neil Moody, Marguerite Nadel, and Sharon Moody seeking refunds in the total amount of approximately **\$5,359,159.11**;
- Successfully recovered the total amount of approximately **\$3,020,858.44** in federal tax refunds issued for Peg and Art Nadel, Sharon Moody, Neil Moody, and Chris Moody;
- Expanded the Receivership to include **11** additional business entities and one trust;
- Obtained possession of additional property in Georgia, North Carolina, Mississippi, Ohio, Colorado, Tennessee, and Florida bringing the Receivership’s current real and personal property holdings to more than 420 acres; five residential properties; 31 aircraft hangars; and other miscellaneous items, including artwork and furniture;
- Obtained and has control of (1) a \$4 million interest in Quest Energy Management, and (2) various promissory notes totaling more than \$1.2 million;
- Assisted the Commission with obtaining the entry of judgments enjoining Neil V. Moody and Christopher D. Moody (at times collectively referred to as the “**Moody’s**”) from further violations of the anti-fraud provisions of the federal securities laws and allowing the Commission to seek disgorgement and/or civil penalties from the Moody’s by motion to the Court;

- Finalized and obtained Court approval of a settlement agreement with Neil Moody to settle claims brought by the Receiver against him individually and in his capacity as Trustee of the Neil Moody Revocable Trust and the Neil Moody Charitable Foundation, which provides in pertinent part, that all of the Receiver's claims are dismissed without prejudice and with an express waiver of any time bar defenses by Neil Moody in exchange for (1) the transfer of all of Neil Moody's meaningful assets identified in the settlement agreement, along with a sworn affidavit by Neil Moody verifying the extent of his assets; (2) transfer to the Receiver of his tax refunds, which included a check for \$365,284.99 received March 12, 2012; and (3) cooperation with and assistance to the Receivership in the Receiver's ongoing efforts to recover monies on behalf of investors subject to Neil Moody's Fifth Amendment rights;
- Worked on recovering assets in the possession of Neil Moody and Chris Moody;
- Pursued his malpractice action against Holland & Knight LLP, including successfully overcoming motions to dismiss; which seeks to recover the Hedge Funds' losses that occurred after January 1, 2003;
- Instituted an action against Wells Fargo to recover damages and fraudulent transfers relating to the bank's activities in connection with the Ponzi scheme underlying this case;
- Successfully opposed Wells Fargo's efforts to disqualify the Receiver and his counsel from all Receivership matters;
- Instituted the claims process and published notice of the same by (1) direct mail of more than 1250 packages to known investors and their attorneys, if any, and other known potential creditors of the Receivership estate; (2) global publication on one day in The Wall Street Journal and publication on one day in the Sarasota-Herald Tribune on June 15, 2010; and (3) web access to all pertinent claims process documents on the Receiver's website, www.nadelreceivership.com;
- Reviewed and analyzed more than 500 Proof of Claim Forms, identified deficiencies in numerous Proof of Claim Forms and sent more than 130 letters to claimants notifying them of deficiencies in their respective Proof of Claim Forms and allowing them an opportunity to timely return an amended Proof of Claim Form to preserve their claims;
- Filed the Receiver's Motion to (1) approve determination and priority of claims, (2) pool Receivership assets and liabilities, (3) approve plan of distribution, and (4) establish objection procedure and included the Receiver's recommended determination and priority of each of the 504 claims submitted, which was

granted in all respects except for one claim submitted by Wells Fargo for which the Court reserved ruling;

- Sought and obtained approval of a first interim distribution of approximately \$26 million which provided a 20% recovery of the Allowed Amounts of Claimants entitled to participate in the first interim distribution; 331 checks were mailed to these Claimants in the beginning of May 2012; and
- Continued to operate ongoing businesses, and where possible, enhance the value of those businesses resulting in the generation of more than \$4,154,824.57 in gross business income since the appointment of the Receiver.

Case Background and Status

As of the date of filing this Motion, the Court has appointed Burton W. Wiand as Receiver over the following entities and trust:

- a) Defendants Scoop Capital, LLC; and Scoop Management, Inc.;
- b) Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Victory IRA Fund, Ltd.; Victory Fund, Ltd.; Viking IRA Fund, LLC; and Viking Fund LLC; Valhalla Management, Inc.; and Viking Management, LLC; and
- c) Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; Laurel Mountain Preserve Homeowners Association, Inc.; Marguerite J. Nadel Revocable Trust UAD 8/2/07; Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Home Front Homes, LLC; and Traders Investment Club.

(See Docs. 8, 17, 44, 68, 81, 153, 172, 454.) The foregoing entities and trust are collectively referred to as the “**Receivership Entities.**”

On May 31, 2012, the Receiver filed the Eleventh Interim Report (Doc. 863). This Interim Report contains comprehensive and detailed information regarding the case background and status; the recovery and disposition of assets; financial information on Receivership Entities; the proposed course of action to be taken regarding assets in the

Receivership estate; the claims process; and related litigation involving Receivership Entities. The Receiver incorporates the Eleventh Interim Report into this Motion for Fees and has attached a true and correct copy of the Eleventh Interim Report as **Exhibit 2** for the Court's convenience. This Interim Report reports on all of the activity which resulted in the fees and costs sought in this Motion. Throughout this Motion, the Eleventh Interim Report will be referred to as "**Interim Report.**"

Professional Services Rendered and Costs Incurred

Paragraph 4 of the Order Appointing Receiver authorizes the Receiver to

[a]ppoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Defendants and Relief Defendants, and exercising the power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation.

Pursuant to this paragraph, the Receiver retained, among others,² (1) PDR Certified Public Accountants ("**PDR**") to provide accounting services; (2) Riverside Financial Group ("**Riverside**") to provide financial analyses; (3) E-Hounds, Inc. ("**E-Hounds**") to provide computer forensic services; (4) Fowler White Boggs P.A. ("**Fowler White**"), and

² The others retained in more limited capacities include: (1) James, Hoyer, Newcomer, & Smiljanich ("**James Hoyer**") and, to represent WGK, de la Parte & Gilbert, P.A. to provide assistance with disputes involving Wells Fargo; (2) Yip & Levy, LLC ("**Yip Levy**") to serve as testifying expert in connection with clawback litigation; (3) Orrick, Herrington & Sutcliffe (Europe) LLP ("**Orrick**") to provide legal services in connection with an action against a profiteer in the United Kingdom; and (4) Kirby Noonan Lance & Hoge, LLP ("**Kirby Noonan**") to assist with the recording of three final judgments against clawback defendants who reside in California.

subsequently **WGK** to provide legal services; and (5) RWJ Group, LLC (“**RWJ**”) to provide asset management services (collectively, the “**Professionals**”).³

On May 13, 2009, the Receiver filed his First Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and His Professionals. (Doc. 129.)

The amounts requested therein were as follows:

Burton W. Wiand	\$59,080.00
Fowler White Boggs P.A.	\$206,974.14
PDR Certified Public Accountants	\$44,794.00
Riverside Financial Group	\$14,962.50
E-Hounds, Inc.	\$10,453.12

The Court granted the First Interim Motion in full. (Doc. 130). No amounts remain unpaid.

On July 27, 2009, the Receiver filed his Second Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and his Professionals. (Doc. 164.)

The amounts requested therein were as follows:

Burton W. Wiand	\$59,143.00
Fowler White Boggs P.A.	\$298,425.61
PDR Certified Public Accountants	\$60,558.71
Riverside Financial Group	\$2,450.00
E-Hounds, Inc.	\$8,781.25

The Court granted the Second Interim Motion in full. (Doc. 165.) No amounts remain unpaid.

On September 21, 2009, the Receiver filed his Third Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and his Professionals. (Doc.

³ As noted in the Fourth Interim Report (Doc. 240 at n.2), the Receiver and certain of his counsel of record in this case moved from Fowler White Boggs P.A. to Wiand Guerra King P.L. The Receiver has continued to use some professionals at Fowler White Boggs where such use is in the best interests of the Receivership.

200.) The amounts requested therein were as follows:

Burton W. Wiand	\$38,360.00
Fowler White Boggs P.A.	\$251,286.46
PDR Certified Public Accountants	\$48,238.61
Riverside Financial Group	\$1,312.50
E-Hounds, Inc.	\$2,975.00

The Court granted the Third Interim Motion in full. (Doc. 201.) No amounts remain unpaid.

On December 16, 2009, the Receiver filed his Fourth Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and his Professionals. (Doc.

259.) The amounts requested therein were as follows:

Burton W. Wiand	\$51,378.39
Fowler White Boggs P.A.	\$204,708.77
PDR Certified Public Accountants	\$39,918.75
Riverside Financial Group	\$4,371.20
E-Hounds, Inc.	\$43.75

The Court granted the Fourth Interim Motion in full. (Doc. 266.) No amounts remain unpaid.

On April 21, 2010, the Receiver filed his Fifth Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and his Professionals. (Doc. 392.)

The amounts requested therein were as follows:

Burton W. Wiand	\$51,450.00
Fowler White Boggs P.A.	\$289,244.41
Wiand Guerra King P.L.	\$373,023.44
Johnson Pope, Bokor Ruppel & Burns, LLP	\$1,670.20
PDR Certified Public Accountants	\$113,044.80
Riverside Financial Group	\$3,113.75
E-Hounds, Inc.	\$4,281.25

The Court granted the Fifth Interim Motion in full. (Doc. 395.) No amounts remain unpaid.

On October 7, 2010, the Receiver filed his Sixth Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and his Professionals. (Doc. 496.)

The amounts requested therein were as follows:

Burton W. Wiand	\$37,450.00
Wiand Guerra King P.L.	\$345,503.61
Fowler White Boggs P.A.	\$16,270.32
Johnson Pope, Bokor Ruppel & Burns, LLP	\$3,612.96
PDR Certified Public Accountants	\$76,740.00
RWJ Group, LLC	\$11,064.23
Wheeler, Fairman & Kelley, CPA	\$7,497.68

The Court granted the Sixth Interim Motion in full. (Doc. 497.) No amounts remain unpaid.

On December 15, 2010, the Receiver filed his Seventh Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and his Professionals. (Doc.

577.) The amounts requested therein were as follows:

Burton W. Wiand, Receiver	\$27,090.00
Fowler White Boggs P.A.	\$19,506.85
Wiand Guerra King P.L.	\$446,083.43
RWJ Group, LLC	\$17,207.93
Johnson, Pope, Bokor, Ruppel & Burns, LLP	\$1,252.80
PDR Certified Public Accountants	\$104,677.40
Riverside Financial Group	\$28,974.44
E-Hounds, Inc.	\$3,221.25

The Court granted the Seventh Interim Motion in full. (Doc. 582.) No amounts remain unpaid.

On June 30, 2011, the Receiver filed his Eighth Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and his Professionals. (Doc. 645.)

The amounts requested therein were as follows:

Burton W. Wiand, Receiver	\$63,175.00
Wiand Guerra King P.L.	\$708,442.72
PDR Certified Public Accountants	\$117,746.12
Fowler White Boggs P.A.	\$69,489.40
RWJ Group, LLC	\$28,783.05
Johnson, Pope, Bokor, Ruppel & Burns, LLP	\$6,557.45
Riverside Financial Group	\$14,700.00
E-Hounds, Inc.	\$4,100.00
Jones & Keller, P.C.	\$2,088.00
Jones, Blechman, Woltz & Kelly, P.C.	\$832.90
Stanifer & Stanifer	\$200.00
Husch Blackwell	\$979.00
Wheeler Fairman & Kelley	\$3,450.00
Suplee & Shea, P.A.	\$18,757.38

The Court granted the Eighth Interim Motion in full. (Doc. 646.) No amounts remain unpaid.

On September 14, 2011, the Receiver filed his Ninth Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and his Professionals. (Doc. 652.) The amounts requested therein were as follows:

Burton W. Wiand, Receiver	\$49,455.00
Wiand Guerra King P.L.	\$697,336.18
PDR Certified Public Accountants	\$87,005.50
Fowler White Boggs P.A.	\$7,204.05
RWJ Group, LLC	\$23,694.75
Johnson, Pope, Bokor, Ruppel & Burns, LLP	\$9,738.09
E-Hounds, Inc.	\$1,627.35
Cheney Brock & Saudek, P.C.	\$905.00
Goosman Rose Colvard & Cramer, P.A.	\$433.00

The Court granted the Ninth Interim Motion in full. (Doc. 657.) No amounts remain unpaid.

On December 28, 2011, the Receiver filed his Tenth Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and his Professionals. (Doc. 697.) The amounts requested therein were as follows:

Burton W. Wiand, Receiver	\$24,045.00
Wiand Guerra King P.L.	\$604,410.63
PDR Certified Public Accountants	\$57,007.50
Fowler White Boggs P.A.	\$5,050.50
Riverside Financial Group	\$7,656.25
RWJ Group, LLC	\$23,393.52
Johnson, Pope, Bokor, Ruppel & Burns, LLP	\$1,230.80
E-Hounds, Inc.	\$612.50
Wheeler, Fairman & Kelley	\$255.00
Leonard Starr, P.C.	\$10,000.00

The Court granted the Tenth Interim Motion in full. (Doc. 717.) No amounts remain unpaid.

On May 18, 2012, the Receiver filed his Eleventh Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and his Professionals. (Doc. 859.) The amounts requested therein were as follows:

Burton W. Wiand, Receiver	\$23,870.00
Wiand Guerra King P.L.	\$418,235.84
PDR Certified Public Accountants	\$41,969.25
Fowler White Boggs P.A.	\$96.75
Riverside Financial Group	\$962.50
RWJ Group, LLC	\$17,789.35
Orrick, Herrington & Sutcliffe (Europe) LLP	£17,894.38

The Court granted the Eleventh Interim Motion in full. (Doc. 860.) No amounts remain unpaid.

As described above and more fully in the Interim Report, the Professionals have provided services and incurred expenses to investigate the affairs of the Receivership Entities, preserve and sell Receivership assets, attempt to locate and recover additional assets, administer the claims process, and institute and pursue litigation. These services are for the benefit of aggrieved investors, creditors, and other interested parties of the Receivership Entities.

I. The Receiver.

The Receiver requests the Court award him fees for the professional services rendered for the four months from December 1, 2011, through March 31, 2012, in the amount of \$57,872.50. The standard hourly rate which the Receiver charges clients is \$450. However, the Receiver agreed that for purposes of his appointment as the Receiver, his hourly rate would be reduced to \$350 per hour, representing a little more than a twenty-two percent (22%) discount off the standard hourly rate which he charges clients in comparable matters. This rate was set forth in the Commission's Emergency Motion for Appointment of Receiver and Memorandum of Law (Doc. 6), which the Court granted on January 21, 2009 (Doc. 8).

The Receiver commenced services immediately upon his appointment. The Receiver has billed his time for these activities in accordance with the Billing Instructions. The Billing Instructions request that this Motion contain a narrative of each "business enterprise or litigation matter" for which outside professionals have been employed. The Billing Instructions identify each such business enterprise or litigation matter as a separate "project." Further, the Billing Instructions request that time billed for each project be allocated to one of several Activity Categories.⁴

⁴ The Activity Categories set forth by the Commission in the Billing Instructions are as follows: (1) Asset Analysis and Recovery, which is defined as identification and review of potential assets including causes of action and non-litigation recoveries; (2) Asset Disposition, which is defined as sales, leases, abandonment and related transaction work (where extended series of sales or other disposition of assets is contemplated, the Billing Instructions provide that a separate category should be established for each major transaction); (3) Business Operations, which is defined as issues related to operation of an ongoing business; (4) Case Administration, which is defined as coordination and compliance activities, including preparation of reports to the court, investor inquiries, etc.; (5) Claims Administration and Objections, which is defined as expenses in formulating, gaining approval of and administering any claims procedure; and (6) Employee Benefits/Pensions,

A. The Receivership.

During the relevant period of this Receivership, the work of the Receiver and WGK focused on investigating the fraud and related activities underlying this matter; locating and taking control of Receivership assets; investigating, pursuing, and recovering additional assets for the Receivership; selling or otherwise disposing of assets in a manner that is in the best interests of the Receivership; administering the claims process and addressing objections; and pursuing litigation to recover false profits and other improper transfers and damages. These activities of the Receiver are set forth in detail in the Interim Report. (Ex. 2.) A copy of the statement summarizing the Receiver's services rendered and costs incurred for the Receivership is attached hereto as **Exhibit 3**. The Receiver's time and fees for services rendered for each Activity Category for the four months from December 1, 2011, through March 31, 2012, are as follows:

Receivership
Receiver's Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Asset Analysis and Recovery	94.30	32,305.00
Asset Disposition	5.20	1,820.00
Claims Administration	1.00	350.00
Case Administration	1.80	630.00
TOTAL	102.30	\$35,105.00

which is defined as reviewing issues such as severance, retention, 401k coverage and continuance of pension plan. The Billing Instructions provide that time spent preparing motions for fees may not be charged to the Receivership Estate. In accordance with these instructions, the Receiver created an additional Activity Category for work on fees motions and has accounted for the time spent on such work but has not charged any amount for this work.

B. Discrete Litigation Matters and Projects.

In conjunction with the Receivership, the following six discrete litigation matters or projects have been formally commenced by the Receiver.

1. Home Front Homes Litigation.

This was a lawsuit against Brian C. Bishop, a former employee who also had an ownership interest in Home Front Homes, LLC (“**Home Front Homes**”) an operating business. This matter has been resolved. The Receiver did not charge any fees or incur any costs for this matter for the time covered by this Motion.

2. Carolina Mountain Land Conservancy Easement.

This was a project involving the recovery of a conservancy easement that Laurel Mountain Preserve, LLC, had granted to the Carolina Mountain Land Conservancy. (*See also* Ex. 2 § V.A.2.) This matter has been resolved. (*See id.*) The Receiver did not charge any fees or incur any costs for this matter for the time covered by this Motion.

3. Recovery of False Profits from Investors and Other Transfers.

This is a project involving the Receiver’s efforts to primarily recover profits from investors whose purported accounts received monies in an amount that exceeded their investments. (*See also* Ex. 2 § V.E.1.) These purported profits were false because they were not based on any trading or investment gain, but rather were proceeds of a Ponzi scheme that consisted of funds of new and existing investors. This project also includes the Receiver’s efforts to recover charitable contributions made with scheme proceeds. (*See also* Ex. 2 § V.E.4.) A copy of the statement summarizing the services rendered and costs incurred by the Receiver for the four months from December 1, 2011, through March 31, 2012, for this

project is attached hereto as **Exhibit 4**. The Receiver's time and fees for services rendered for each Activity Category are as follows:

Recovery of False Profits from Investors and Other Transfers
Receiver's Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Asset Analysis and Recovery	23.80	\$7,630.00
TOTAL	23.80	\$7,630.00

4. Recovery of Assets from the Moodys.

This is a project involving the Receiver's efforts to recover money and assets from the Moodys. (*See also* Ex. 2 §§ V.D and V.E.2.) A copy of the statement summarizing the services rendered and costs incurred by the Receiver for the four months from December 1, 2011, through March 31, 2012, for this project is attached hereto as **Exhibit 5**. The Receiver's time and fees for services rendered for each Activity Category are as follows:

Recovery from Chris and Neil Moody
Receiver's Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Asset Analysis and Recovery	4.10	\$1,435.00
TOTAL	4.10	\$1,435.00

5. Recovery from Recipients of Commissions and Other Related Transfers.

This is a project involving the Receiver's efforts to recover commissions and/or other related transfers from individuals and/or entities who received commissions or other improper transfers from the Receivership Entities. (*See* Ex. 2 § V.E.3.) The Receiver did not charge any fees or incur any costs for this matter for the time covered by this Motion.

6. Litigation Against Holland & Knight LLP.

This is a project involving the Receiver's pursuit of malpractice and other claims by the Hedge Funds against Holland & Knight which seeks to recover the Hedge Funds' losses that occurred after January 1, 2003. (See Ex. 2 § V.E.6.) A copy of the statement summarizing the services rendered and costs incurred by the Receiver for the four months from December 1, 2011, through March 31, 2012, for this project is attached hereto as **Exhibit 6**. The Receiver's time and fees for services rendered for each Activity Category are as follows:

Litigation Against Holland & Knight
Receiver's Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Asset Analysis and Recovery	39.90	\$13,702.50
TOTAL	39.90	\$13,702.50

II. Wiand Guerra King P.L. And Other Counsel.

The Receiver requests the Court award WGK fees for professional services rendered and costs incurred for the four months from December 1, 2011, through March 31, 2012, in the amounts of \$606,751.75 and \$31,133.25, respectively. Further, the Receiver requests the Court award an additional \$21,371.46 to be paid to WGK to reimburse it for fees and costs for professional services rendered to WGK by de la Parte & Gilbert, P.A. resulting from Wells Fargo's unsuccessful efforts to have WGK disqualified. A categorization and summary of all costs for which WGK seeks reimbursement (other than those arising from de la Parte & Gilbert's services, which are separately itemized on Exhibit 16) is attached hereto as **Exhibit 7**. Further, the Receiver requests the Court award James, Hoyer, Newcomer &

Smiljanich (“**James Hoyer**”) fees for professional services rendered and costs incurred for the four months from December 1, 2011 through March 31, 2012 in the amounts of \$117,118.80 and \$114.99, respectively.

As an accommodation to the Receiver, WGK agreed to reduce the hourly rates of the Receiver’s counsel in accordance with the discounted fee structure that was in place at Fowler White as provided in the Fee Schedule attached hereto as **Exhibit 8**⁵ (James Hoyer also agreed to reduce the hourly rates of its professionals to mirror WGK’s rate structure). WGK began providing services on November 8, 2009. The activities of WGK for the time covered by this Motion are set forth in the Interim Report. (*See* Ex. 2.) WGK has billed time for these activities in accordance with the Billing Instructions.

A. The Receivership.

As discussed above, during the relevant period of this Receivership, the work of the Receiver and WGK focused on investigating the fraud and related activities underlying this matter; locating and taking control of Receivership assets; investigating, pursuing, and recovering additional assets for the Receivership; administering the claims process and addressing objections; pursuing litigation as detailed in the Interim Report; and contesting various efforts by Wells Fargo to obtain Receivership assets. (Ex. 2.) A copy of the statement summarizing the services rendered and costs incurred by WGK for the foregoing for the four months from December 1, 2011, through March 31, 2012, is attached hereto as

⁵ Some of the attorneys listed in Exhibit 8 remained at Fowler White, and thus no longer work on Receivership matters. Similarly, WGK attorneys not listed in Exhibit 8 now work on such matters. WGK attorneys who work on Receivership matters but are not listed in Exhibit 8 are billed at hourly rates that are consistent with the discounted fee structure detailed in that exhibit based on their respective level of seniority.

Exhibit 9. WGK's time and fees for services rendered on this matter for each Activity Category are as follows:

Receivership
WGK's Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Asset Analysis and Recovery	518.70	\$119,526.15
Asset Disposition	232.90	\$44,782.75
Business Operations	35.10	\$4,886.00
Case Administration	60.50	\$15,486.40
Claims Administration	732.20	\$164,756.65
TOTAL	1,579.40	\$349,437.95

B. Discrete Litigation Matters and Projects.

WGK professionals also provided services in connection with the six litigation matters and/or projects discussed above. Additionally, WGK provided services in connection with disqualification efforts by Wells Fargo discussed below.

1. Home Front Homes Litigation.

This was a lawsuit against Brian C. Bishop, a former employee who also had an ownership interest in Home Front Homes, LLC ("**Home Front Homes**") an operating business. This matter has been resolved. WGK did not charge any fees or incur any costs for this matter for the time covered by this Motion.

2. Carolina Mountain Land Conservancy.

This was a project involving the recovery of a conservancy easement that Laurel Mountain Preserve, LLC, granted to the Carolina Mountain Land Conservancy. (*See also* Ex. 2 § V.A.2.) This matter has been resolved. (*See id.*) WGK did not charge any fees or incur any costs for this matter for the time covered by this Motion.

3. Recovery of False Profits from Investors and Other Transfers.

This is a project involving the Receiver's efforts to primarily recover profits from investors whose purported accounts received monies in an amount that exceeded their investments. (See also Ex. 2 § V.E.1.) These purported profits were false because they were not based on any trading or investment gain, but rather were fruits of a Ponzi scheme that consisted of funds of new and existing investors. This project also includes the Receiver's efforts to recover charitable contributions made with scheme proceeds. (See also Ex. 2 § V.E.4.) A copy of the statement summarizing WGK's services rendered and costs incurred for the four months from December 1, 2011, through March 31, 2012, for this project is attached hereto as **Exhibit 10**. WGK's time and fees for services rendered on this matter for each Activity Category are as follows:

Recovery of False Profits from Investors and Other Transfers
WGK's Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Asset Analysis and Recovery	734.10	\$186,427.30
TOTAL	734.10	\$186,427.30

4. Recovery of Assets from the Moodys.

This is a project involving the Receiver's efforts to recover money and assets from the Moodys. (See also Ex. 2 §§ V.D and V.E.2.) A copy of the statement summarizing WGK's services rendered and costs incurred for the four months from December 1, 2011 through March 31, 2012, for this project is attached hereto as **Exhibit 11**. WGK's time and fees for services rendered on this matter for each Activity Category are as follows:

Recovery of Assets from Chris and Neil Moody
WGK's Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Asset Analysis and Recovery	101.10	\$21,529.50
TOTAL	101.10	\$21,529.50

5. Recovery of Commissions and Other Related Transfers.

This is a project involving the Receiver's efforts to recover commissions and/or other related transfers from individuals and/or entities who received commissions or other improper transfers from the Receivership Entities. (See Ex. 2 § V.E.3.) A copy of the statement summarizing WGK's services rendered and costs incurred for the four months from December 1, 2011 through March 31, 2012, for this project is attached hereto as **Exhibit 12**. WGK's time and fees for services rendered on this matter for each Activity Category are as follows:

Recovery of Commissions and Other Related Transfers
WGK's Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Asset Analysis and Recovery	5.40	\$1,216.00
TOTAL	5.40	\$1,216.00

6. Litigation Against Holland & Knight LLP.

This is a project involving the Receiver's pursuit of malpractice and other claims by the Hedge Funds against Holland & Knight which seeks to recover the Hedge Funds' losses that occurred after January 1, 2003. (See Ex. 2 § V.E.6.) A copy of the statement summarizing WGK's services rendered and costs incurred for the four months from December 1, 2011 through March 31, 2012, for this project is attached hereto as **Exhibit 13**.

WGK's time and fees for services rendered on this matter for each Activity Category are as follows:

Litigation Against Holland & Knight
WGK's Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Asset Analysis and Recovery	72.70	\$15,814.00
TOTAL	72.70	\$15,814.00

7. Litigation Involving Wells Fargo.

With respect to WGK, this is a project involving the defense of Wells Fargo's unfounded, retaliatory, and unsuccessful efforts to disqualify WGK from all Receivership matters. (See Ex. 2 § V.E.7.) Wells Fargo's motion to disqualify WGK (and the Receiver) was filed in an apparent retaliatory response to the Receiver's decisions in connection with a claim and other purported asserted interests of Well Fargo. The Court denied the disqualification efforts in their entirety after concluding that the Receiver and his counsel acted appropriately at all times. The Court observed that Wells Fargo's motion "was timed to derail, or perhaps retaliate against, as the Receiver and [his counsel] suggest, the receivership proceedings." (Doc. 822.) The fees and costs for these efforts were necessitated by Wells Fargo's attempts to obtain Receivership assets, and the disqualification motion proved to be, at best for Wells Fargo, borderline frivolous. The Receiver believes that ultimately these fees and costs should be taxed against any recovery Wells Fargo may ultimately be entitled to, including any proceeds from the sale of collateral it may receive. A copy of the statement summarizing WGK's services rendered and costs incurred for the four months from December 1, 2011 through March 31, 2012, for this project is attached hereto as

Exhibit 14. WGK’s time and fees for services rendered on this matter for each Activity Category are as follows:

Litigation Involving Wells Fargo
WGK’s Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Asset Analysis and Recovery	110.70	\$32,327.00
TOTAL	110.70	\$32,327.00

The Receiver determined that it was prudent and necessary to retain separate counsel to represent him in connection with all Receivership matters involving Wells Fargo. (*See* Doc. 730.) The Receiver retained James Hoyer to represent him in connection with these matters. These matters include (1) responding to Wells Fargo’s objections and various other motions relating to the claims process; (2) Wells Fargo’s asserted interests in real property held by the Receivership; and (3) Wells Fargo’s attempts to disqualify the Receiver. (*See* Ex. 2 §§ V.A.2, V.B.1, V.B.5, and VI.) In an April 25, 2012, Order, the Court concluded that WGK could not represent the Receiver in “matters specifically involving Wells Fargo Bank or its affiliates.” (Doc. 822.) The Receiver requests the Court award James Hoyer fees for professional services rendered and costs incurred for the four months from December 1, 2011 through March 31, 2012, in the amounts of \$117,118.80 and \$114.99, respectively.⁶ A copy of the statement summarizing James Hoyer’s services rendered and costs incurred for the

⁶ As the Receiver previously informed the Court (*see, e.g.*, Doc. 730), although James Hoyer is representing the Receiver in his prosecution of claims against Wells Fargo on a contingency fee basis, in all other Receivership matters involving Wells Fargo James Hoyer’s representation is on an hourly fee basis. However, if claims against Wells Fargo are successful, any contingency fee James Hoyer is awarded will be reduced by the hourly fees it will have been paid for the other Receivership matters.

four months from December 1, 2011 through March 31, 2012, for this project is attached hereto as **Exhibit 15**. James Hoyer's time and fees for services rendered on this matter for each Activity Category are as follows:

Litigation Involving Wells Fargo
James Hoyer's Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Asset Analysis and Recovery	15.70	\$4,907.00
Asset Disposition	107.80	\$28,064.15
Case Administration	129.60	\$35,610.95
Claims Administration	164.90	\$48,536.70
TOTAL	418.00	\$117,118.80

Also, it was determined that it was prudent and the best course to retain separate representation for WGK in connection with Wells Fargo's motion to disqualify it. WGK retained the services of de la Parte & Gilbert, P.A. on March 5, 2012 to represent it in connection with its response to the motion to disqualify. Accordingly, the Receiver requests the Court approve de la Parte & Gilbert's fees and costs for professional services rendered and costs incurred for the five months from December 1, 2011 through April 30, 2012, in the amounts of \$21,076.50 and \$294.96 respectively.⁷ Copies of the statements summarizing the services rendered and costs incurred for the pertinent period are attached as composite **Exhibit 16**. De la Parte & Gilbert's time and fees for services rendered on this matter for each Activity Category are as follows:

⁷ Given the negligible amount of fees and costs incurred in the month of April by de la Parte & Gilbert (\$267.60 combined) and considering this matter concluded in April, the Receiver has included fees and costs incurred through April, 2012 in the amount he seeks for de la Parte & Gilbert in this Motion.

Litigation Involving Wells Fargo
de la Parte & Gilbert's Time and Fees for Services Rendered

Activity Category	Hours Expended	Fee Amount
Case Administration	69.40	\$21,076.50
TOTAL	69.40	\$21,076.50

Because WGK has already paid the fees and costs incurred by de la Parte & Gilbert, in this Motion the Receiver and WGK seek reimbursement for those amounts.

III. PDR Certified Public Accountants.

The Receiver requests the Court award PDR fees for professional services rendered and costs incurred for the four months from December 1, 2011 through March 31, 2012 in the amount of \$72,588.00. PDR started providing services for the Receivership on January 22, 2009. PDR has billed time for these services in accordance with the Billing Instructions. Because PDR's work for the period covered by this motion could be allocated to specific Receivership Entities and/or related entities, PDR has billed its time separately for each entity and indicated the appropriate Activity Category for each time entry.⁸ Copies of the

⁸ The Activity Categories that apply to PDR and Riverside as set forth in the Billing Instructions for Financial Activities are as follows: (1) Accounting/Auditing, which is defined as activities related to maintaining and auditing books of account, preparation of financial statements and account analysis; (2) Business Analysis, which is defined as preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies; (3) Corporate Finance, which is defined as review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries; (4) Data Analysis, which is defined as management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.; (5) Status Reports, which is defined as preparation and review of periodic reports as may be required by the Court; (6) Litigation Consulting, which is defined as providing consulting and expert witness services relating to forensic accounting, etc.; (7) Forensic Accounting, which is defined as reconstructing books and records from past transactions and bringing accounting current,

statements summarizing the services rendered and costs incurred for the pertinent period are attached as composite **Exhibit 17**. The total hours billed by each PDR professional and their respective total amount of billing are set forth on composite Exhibit 17. PDR's statements also include a summary of the total time spent on each relevant Activity Category in connection with each Receivership Entity (or "project" as identified in the Billing Instructions). For a discussion of entities delineated in the statements, please refer to Sections III and V.A of the Interim Report.

IV. Riverside Financial Group.

The Receiver requests the Court award Riverside fees for professional services rendered for the four months from December 1, 2011 through March 31, 2012 in the amount of \$3,675.00. Riverside started providing services for the Receivership on January 27, 2009. Riverside has billed time for these services in accordance with the Billing Instructions. The activities of Riverside are described in the Interim Report. (*See* Ex. 2 § VII.) A copy of the statement summarizing the services rendered, the hours billed, and the total amount of billing by Riverside for the pertinent period is attached as **Exhibit 18**.

V. E-Hounds, Inc.

The Receiver requests the Court award E-Hounds fees for professional services rendered for the four months from December 1, 2011 through March 31, 2012 in the amount of \$481.25. E-Hounds, which is a computer forensics firm, started providing services for the Receivership on January 22, 2009. The activities of E-Hounds are described in the Interim

tracing and sourcing assets; (8) Tax Issues, which is defined as analysis of tax issues and preparation of state and federal tax returns; and (9) Valuation, which is defined as appraising or reviewing appraisals of assets.

Report. (*See* Ex. 2 § IV.A) Copies of the statements summarizing the services rendered and costs incurred for the pertinent period are attached as composite **Exhibit 19**.

VI. The RWJ Group, LLC.

The Receiver requests the Court award RWJ fees for professional services rendered and costs incurred for the four months from December 1, 2011 through March 31, 2012, in the amount of \$23,079.30. RWJ started providing services for the Receivership on February 1, 2010. The activities of RWJ are described in the Interim Report. (*See* Ex. 2 § VII.) Copies of the statements summarizing the services rendered and costs incurred for the pertinent period are attached as composite **Exhibit 20**.

VII. Yip & Levi, LLC.

The Receiver requests the Court award Yip & Levi, LLC (“**Yip Levi**”) fees for professional services rendered and costs incurred for the period of time through March 31, 2012, in the amounts of \$164,304.00 and 4,700.48, respectively.⁹ The Receiver retained Yip Levi to serve as testifying expert in connection with the clawback litigation. Yip Levi started providing services for the Receivership on September 28, 2011. Copies of the statements summarizing the services rendered and costs incurred for the pertinent period are attached as composite **Exhibit 21**.

VIII. Miscellaneous Others.

To assist with a litigation matter in the United Kingdom, the Receiver determined that it would be necessary to retain the services of British counsel. Accordingly, the Receiver

⁹ These sums include \$8,921.48 for fees and costs incurred in September and November 2011, which inadvertently were excluded from the last motion for approval of fees and costs.

requests the Court award Orrick, Herrington & Sutcliffe (Europe) LLP fees and costs for professional services rendered and costs incurred for the four months from December 1, 2011 through March 31, 2012, in the amounts of £6,493.13 and £2.00, respectively. Copies of the statements summarizing the services rendered and costs incurred for the pertinent period are attached as composite **Exhibit 22**.

To assist with the recording of three final judgments against clawback defendants who reside in California, the Receiver determined that it would be cost-effective and beneficial to retain the services of local attorneys, Kirby Noonan Lance & Hoge, LLP (“**Kirby Noonan**”). Accordingly, the Receiver requests the Court award Kirby Noonan fees and costs for professional services rendered and costs incurred for the four months from December 1, 2011 through March 31, 2012, in the amounts of \$1,525.00 and \$69.80, respectively.¹⁰ Copies of the statements summarizing the services rendered and costs incurred for the pertinent period are attached as composite **Exhibit 23**.

MEMORANDUM OF LAW

It is well settled that this Court has the power to appoint a receiver and to award the receiver and those appointed by him fees and costs for their services. *See, e.g., SEC v. Elliott*, 953 F.2d 1560 (11th Cir. 1992) (receiver is entitled to compensation for faithful performance of his duties); *Donovan v. Robbins*, 588 F. Supp. 1268, 1272 (N.D. Ill. 1984) (“[T]he receiver diligently and successfully discharged the responsibilities placed upon him by the

¹⁰ Payment was inadvertently remitted for the February invoice twice. The Receiver requests that the Court authorize payment of the remaining balance of these invoices and also authorize reimbursement of amounts already paid to Kirby Noonan as reflected on Exhibit 23.

Court and is entitled to reasonable compensation for his efforts.”); *SEC v. Custable*, No. 94-C-3755, 1995 WL 117935 (N.D. Ill. Mar. 15, 1995) (receiver is entitled to fees where work was of high quality and fees were reasonable); *SEC v. Mobley*, No. 00-CV-1316, 1317RCC, 2000 WL 1702024 (S.D.N.Y. Nov. 13, 2000) (court awarded reasonable fees for the receiver and his professionals); *see also* (Doc. 8, Order Appointing Receiver, at p. 14). The determination of fees to be awarded is largely within the discretion of the trial court. *See Monaghan v. Hill*, 140 F.2d 31, 34 (9th Cir. 1944). In determining reasonable compensation for the services rendered by the Receiver and his Professionals, the Court should consider the circumstances surrounding the receivership. *See Elliot*, 953 F.2d at 1577.

Here, because of the nature of this case, it was necessary for the Receiver to employ attorneys and accountants experienced and familiar with financial frauds, federal receiverships, securities laws, banking, finance, and trusts and estates. Further, in order to perform the services required and achieve the results obtained to date, the skills and experience of the Receiver and the Professionals in the areas of fraud, securities, computer and accounting forensics, and financial transactions were indispensable.

As discussed above, the Receiver and WGK have discounted their normal and customary rates as an accommodation to the Receivership and to conserve Receivership assets. The rates charged by the attorneys and paralegals are at or below those charged by attorneys and paralegals of comparable skill from other law firms in the Middle District of Florida.

This case has been time-intensive for the Receiver and his Professionals because of the need to resolve many issues rapidly and efficiently. The attached Exhibits detail the time, nature and extent of the professional services rendered by the Receiver and his Professionals

for the benefit of investors, creditors, and other interested parties. The Receiver anticipates that additional funds will be obtained through the Receiver's negotiations or litigation with third parties.

Although the Commission investigated and filed the initial pleadings in this case, the Receiver has assumed the primary responsibility for the investigation and forensic analysis of the events leading to the commencement of the pending lawsuits, the efforts to locate and gather investors' money, the determination of investor and creditor claims and any ultimate payment of these claims. While the Receiver is sensitive to the need to conserve the Receivership Entities' assets, he feels that the fees and costs expended to date were reasonable, necessary, and benefited the Receivership. Notably, the Commission has no objection to the relief sought in this motion. *Custable*, 1995 WL 117935, *7 ("In securities law receiverships, the position of the SEC in regard to the awarding of fees will be given great weight.").

CONCLUSION

Under the terms and conditions of the Order Appointing Receiver, the Receiver, among other things, is authorized, empowered, and directed to engage professionals to assist him in carrying out his duties and obligations. The Order further provides that he apply to the Court for authority to pay himself and his Professionals for services rendered and costs incurred. In exercising his duties, the Receiver has determined that the services rendered and their attendant fees and costs were reasonable, necessary, advisable, and in the best interest of the Receivership.

WHEREFORE, Burton W. Wiand, the Court-appointed Receiver, respectfully requests that this Court award the following sums and direct that payment be made from the Receivership assets:¹¹

Burton W. Wiand, Receiver	\$57,872.50
Wiand Guerra King P.L.	\$637,885.00
James, Hoyer, Newcomer & Smilijanich, P.A.	\$117,233.79
de la Parte & Gilbert, P.A.	\$21,371.46
PDR Certified Public Accountants	\$72,588.00
RWJ Group, LLC	\$23,079.30
Riverside Financial Group	\$3,675.00
Orrick, Herrington & Sutcliffe (Europe) LLP	£6,495.13
E-Hounds, Inc.	\$481.25
Yip & Levi LLC	\$169,004.48
Kirby Noonan Lance & Hoge LLP	\$1,594.80

LOCAL RULE 3.01(g) CERTIFICATION OF COUNSEL

The undersigned counsel for the Receiver is authorized to represent to the Court that the SEC has no objection to the Court's granting this motion.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on August 28, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Gianluca Morello

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Attorney for the Receiver Burton W. Wiand

¹¹ A proposed order is attached as **Exhibit 24**.

RECEIVER'S CERTIFICATION

The Receiver has reviewed this Twelfth Interim Motion for Order Awarding Fees, Costs, and Reimbursement of Costs to Receiver and His Professionals (the "**Motion**").

To the best of the Receiver's knowledge, information, and belief formed after reasonable inquiry, the Motion and all fees and expenses herein are true and accurate and comply with the Billing Instructions provided to the Receiver by the Securities and Exchange Commission.

All fees contained in the Motion are based on the rates listed in the Fee Schedule, attached as Exhibit 8. Such fees are reasonable, necessary, and commensurate with (if not below the hourly rate that is commensurate with) the skill and experience required for the activity performed.

The Receiver has not included in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment, or capital outlay (except to the extent that any such amortization is included within the permitted allowable amounts set forth in the Billing Instructions for photocopies and facsimile transmission).

To the extent the Receiver seeks reimbursement for any service which the Receiver justifiably purchased or contracted for from a third party (such as copying, imaging, bulk mail, messenger service, overnight courier, computerized research, or title and lien searches), the Receiver has requested reimbursement only for the amount billed to the Receiver by the third-party vendor and/or paid by the Receiver to such vendor. The Receiver is not making a profit on such reimbursable service.

s/Burton W. Wiand
Burton W. Wiand, as Receiver