

**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,

Relief Defendants.

**DECLARATION OF BURTON W. WIAND IN SUPPORT OF THE RECEIVER'S
MOTION TO CLARIFY CERTAIN SETTLEMENT ORDERS**

Burton W. Wiand declares as follows:

1. I am an attorney with Wiand Guerra King P.L. in Tampa, Florida.
2. I make this declaration based on information personally known to me and in support of The Receiver's Motion To Clarify Certain Settlement Orders.
3. By orders dated January 21, 2009, June 3, 2009, January 19, 2010, September 23, 2010 and October 29, 2012, the Court in *Securities & Exch. Comm'n v. Arthur Nadel, et al.*, Case No. 8:09-cv-87-T-26TBM (M.D. Fla.) (the "SEC Action"), appointed me as

Receiver for, among other entities, Valhalla Investment Partners, L.P. (“**Valhalla Investment**”); Viking Fund, LLC (“**Viking Fund**”); Viking IRA Fund, LLC (“**Viking IRA Fund**”); Victory Fund, Ltd. (“**Victory Fund**”); Victory IRA Fund, Ltd. (“**Victory IRA Fund**”); and Scoop Real Estate, L.P. (“**Scoop Real Estate**”) (collectively, the “**Hedge Funds**”), and also as Receiver for Traders Investment Club (“**Traders**”). I was also appointed Receiver over the purported managers and investment advisors of the Hedge Funds, including Scoop Capital, LLC (“**Scoop Capital**”); Scoop Management, Inc. (“**Scoop Management**”); Valhalla Management, Inc. (“**Valhalla Management**”); and Viking Management, LLC (“**Viking Management**”) (collectively, the “**Fund Managers**”).

4. Additionally, the Receivership was expanded to include Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; The Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Home Front Homes, LLC; Summer Place Development Corporation; and Respiro, Inc.

5. Since my appointment as Receiver, I and professionals that I have retained (including lawyers, accountants, and a financial analyst) have extensively investigated the affairs of Arthur Nadel (“**Nadel**”) and Christopher and Neil Moody (the “**Moodys**”), among other individuals, and also the affairs of Receivership Entities, including those of the Hedge Funds, the Fund Managers, and Traders. As part of that investigation, we have gathered information from a large number of sources, including from Nadel and the Moodys; from persons associated with Nadel and the Receivership Entities; from persons responsible for maintaining the financial books of Receivership Entities and other businesses controlled by

Nadel; from persons responsible for assisting the Receivership Entities and other business controlled by Nadel with their transactions; and from the Receivership Entities themselves.

6. Among the information gathered is information gathered directly from Nadel through several lengthy in person meetings and from Neil Moody, Christopher Moody, Andrew Martin, Michelle Bell, Michael Zucker, Marguerite “Peg” Nadel, and others who were closely associated with Nadel and Receivership Entities.

7. Further, documents gathered and reviewed included documents that were located in the offices of the Hedge Funds and Fund Managers, which was the primary location for all activities relating to the scheme underlying this matter, and those documents included those stored on the Hedge Funds’ and Fund Managers’ computer network; documents obtained from other businesses controlled by Nadel; documents obtained from financial institutions and other third parties, including lawyers and others who assisted Nadel and the Receivership Entities.

8. Based on this information and pursuant to my mandate, I identified numerous investors who received “**false profits**” – *i.e.*, fraudulent transfers from the scheme in amounts greater than the amounts of their purported principal investments. I also identified a small subset of those “winning investors” who I believe cannot satisfy the good faith affirmative defense provided by Florida Statutes § 726.109(1) and should be required to return not only their false profits but also the amount equal to their principal investment amounts. Finally, I identified certain entities that I believe were liable to the Hedge Funds for damages (as opposed to fraudulent transfers) due to their actions (or inaction) in connection with Nadel’s scheme. As relevant here, those entities are Goldman Sachs Execution & Clearing, L.P.

("GSEC"), Shoreline Trading Group, LLC ("Shoreline"), and Holland & Knight LLP ("H&K").

9. Pursuant to my mandate, I investigated the connections of GSEC, Shoreline, and H&K to Nadel's Ponzi scheme and determined they may have been liable to the Receivership estate for damaging the Hedge Funds by, for example, ignoring or facilitating the scheme. I asserted damages claims against them (formally through a lawsuit in the case of H&K and informally through settlement negotiations with respect to GSEC and Shoreline) and ultimately settled those claims.

10. Through those settlements, I recovered \$9,850,000 from GSEC, \$2,500,000 from Shoreline, and \$25 million (minus attorneys' fees) from H&K for the benefit of the Receivership estate and ultimately defrauded investors. In connection with each of these settlements, I asked the Court to enter an order barring any further claims by anyone against GSEC, Shoreline, and H&K related to their provision of services to Nadel and the Hedge Funds. To that end, my counsel drafted proposed language, which, in relevant, the Court enforced as part of its Orders.

11. In addition to the language barring claims, those proposed orders contained the following language: such person or entity shall be entitled to such set-offs or judgment reductions as permitted by law, if any, as a result of said injunction. This language was included to recognize some barred individuals or entities may have a right to a judgment credit under pertinent law, independent of the Settlement Orders. The primary consideration of including that language is the fact that joint tortfeasors may be entitled to a judgment reduction to account for principles of contribution and indemnity under the Florida Uniform Contribution Among Tortfeasors Act, Fla. Stats. §§ 768.31 *et seq.*

12. As explained in the Motion for Clarification, fraudulent transfer claims are different from tort claims seeking damages. As such, the language excerpted above was never intended (and, in fact, does not) grant fraudulent transfer recipients a judgment credit in any amount, much less the approximately \$37 million amount recovered through the GSEC, Shoreline, and H&K settlements. Again, as noted above, the proposed orders were never intended to create a right to a judgment credit; they simply recognized that such credits may be available by statute to joint tortfeasors.

13. While I have settled or obtained judgments in the vast majority of the clawback cases I filed to recover money Nadel stole from losing investors and fraudulently transferred to others to perpetrate and perpetuate his scheme, 23 such cases remain pending in arbitration. Those cases involve more than \$36 million in total transfers from the scheme, and more than \$9 million in false profits. Importantly, each of those cases involves much less than the approximately \$37 million recovered through the GSEC, Shoreline, and H&K settlements. If the argument advanced by World Opportunity is successful, I will be precluded from recovering any further money on behalf of the Receivership estate through these pending clawback cases.

14. This would be profoundly inequitable to both losing investors who have recovered only 37% of their approved claims to date but also other winning investors who agreed to return their false profits. It would allow World Opportunity and the remaining clawback defendants to retain the money Nadel stole and fraudulently transferred to them as the expense of losing investors.

I DECLARE under the penalty of perjury that the foregoing is true and correct and is executed this 13th day of February, 2013.

A handwritten signature in black ink, appearing to read "Burton W. Wiand", written over a horizontal line.

Burton W. Wiand, as Receiver
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