

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 MOTION FOR  
APPROVAL TO TRANSFER VEHICLE TITLES**

Burton W. Wiand, as Receiver (the “**Receiver**”), by and through his undersigned counsel, respectfully moves the Court for entry of an order in substantially the form attached hereto as **Exhibit A**, granting the Receiver authority to transfer title of three vehicles presently titled in the name of CDM Leasing, LLC (“**CDM**”) to Respiro, Inc. (“**Respiro**”).

## BACKGROUND

On January 21, 2009, the Securities and Exchange Commission (“**Commission**”) initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC (“Scoop Capital”) and Scoop Management, Inc. (“Scoop Management”) and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (the “Order Appointing Receiver”). (*See generally* Order Appointing Receiver (Doc. 8).) The Court subsequently granted several motions to expand the scope of the receivership to include other entities owned or controlled by Arthur Nadel (“**Nadel**”). (*See generally* Docs. 17, 44, 68, 81, 153, 172, 454, 911, 916). All of the entities and the trust in receivership are hereinafter referred to collectively as the “**Receivership Entities.**”

Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to: “administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors.” (Order Appointing Receiver at 1-2.) In particular, the Receiver was directed to:

[t]ake immediate possession of all property, assets and estates of every kind of the [Receivership Entities], whatsoever and wheresoever located belonging to or in the possession of the [Receivership Entities], including but not limited to all offices maintained by the [Receivership Entities], rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other

securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership Entities] wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court . . . .

*(Id. at 2.)*

The Receiver's investigation revealed that Christopher Moody ("**Chris Moody**") funded Respiro, a Sarasota-based home respiratory services and medical equipment company, almost exclusively with proceeds from Nadel's Ponzi scheme. (Doc. 904). As such, the Receivership was expanded to include Respiro on September 21, 2012 (Doc. 916).

In addition, the Receiver determined that in 2008 Chris Moody, through CDM, purchased three vehicles (the "**Vehicles**"), more fully identified below, and then had CDM lease them to Respiro for Respiro's use in its business. Chris Moody incorporated CDM in Florida in 2008, owned 100% of CDM, and created it specifically to purchase the Vehicles and lease them to Respiro. CDM is an inactive limited liability company and its only assets are the Vehicles. As reflected in the Limited Power of Attorney executed by Chris Moody in favor of the Receiver which is attached as **Exhibit B**, Chris Moody voluntarily transferred control of CDM to the Receiver and consequently the Receiver has the authority to cause the transfer of title sought in this motion.

### **THE VEHICLES**

The Vehicles to be titled in the name of Respiro are: 1) a 2009 Toyota Corolla, VIN JTDBL40E29J026979; 2) a 2008 GMC Van, VIN 1GTFG15XX81191966; and, 3) a 2008 GMC Van, VIN 1GTFG15XX81116359. The Vehicles are currently used by Respiro in its day-to-day business operations. For example, the Toyota Corolla is used by Respiro's

respiratory therapists to make home health visits and the GMC Vans are used to deliver oxygen concentrators, CPAP, and Bi-Pap machines and to make service calls on those machines. Respiro is in a position to insure and maintain the Vehicles, and the Vehicles are already in the Receiver's control by virtue of the Limited Power of Attorney executed by Chris Moody and the Receiver's control of Respiro. The Vehicles are not subject to any liens or encumbrances, and are not pledged as security or collateral according to Chris Moody's representations to the Receiver.

The Receiver believes that transferring title of the Vehicles to Respiro, and ultimately disposing of them as assets of Respiro, is in the best interest of the Receivership. The Receiver has also determined that the Sarasota County Tax Collector's Office will transfer title of the Vehicles to Respiro without any charge if presented with an order from this Court authorizing the transfer.

#### **MEMORANDUM OF LAW**

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. The Receiver believes that transferring title of the Vehicles to Respiro is in the best interests of the Receivership. 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 as Exhibit A to transfer title of the Vehicles from CDM to Respiro and for such other relief as the Court deems appropriate.

**LOCAL RULE 3.01(g) CERTIFICATE 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 March 15, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

**s/Gianluca Morello**

Gianluca Morello, FBN 034997  
gmorello@wiandlaw.com  
Michael S. Lamont, FBN 0527122  
mlamont@wiandlaw.com  
WIAND GUERRA KING P.L.  
5505 West Gray Street  
Tampa, FL 33609  
Tel.: (813) 347-5100  
Fax: (813) 347-5198

*Attorneys for the Receiver, Burton W. Wiand*