

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- against - : 09 Cr. 433 (JGK)

ARTHUR G. NADEL, :

Defendant. :

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**MEMORANDUM OF LAW AND FACT IN SUPPORT  
OF MOTION FOR MODIFICATION OF BAIL CONDITIONS**

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**MEMORANDUM OF LAW**

**INTRODUCTION**

Defendant Arthur Nadel requests modification of his bail conditions on the grounds that he cannot possible meet the financial conditions imposed and that these conditions are not required to reasonably assure his presence at trial. The current bail conditions violate the Bail Reform Act and the Eighth Amendment prohibition against "excessive bail." Mr. Nadel proposes maintaining all of the substantial non-financial conditions regarding his pre-trial release, including home detention with electronic monitoring, while reducing the financial conditions to a level that he and his family can meet.

As demonstrated below, defendant's release pending trial would not pose an actual risk of flight even in the absence of the proposed conditions. However, the conditions that defendant proposes clearly provide reasonable assurance that he will not

flee.

**RELEVANT BACKGROUND**

Mr. Nadel has been in jail since his arrest on January 27, 2009, after he voluntarily surrendered to the authorities upon learning from his attorneys that a warrant for his arrest had been issued. Mr. Nadel was detained without bail for nearly a month, on the order of Magistrate Judge Mark Pizzo of the District Court of the Middle District of Florida, pending his transfer to the Southern District of New York.

On February 26, 2009, United States District Judge Denise L. Cote denied the government's request to continue detention without bail and instead ordered bail conditions requiring Mr. Nadel to post a \$5 million dollar bond signed by four people with substantial assets and to post \$1 million in cash. Judge Cote further required that Mr. Nadel (and any co-owners) enter confessions of judgment with respect to every piece of property that he owns and that Mr. Nadel surrender all travel documents; fully co-operate with the Securities and Exchange Commission and the court-appointed receiver to trace and uncover all financial assets; subject himself to electronic monitoring with no internet access; and have his travel restricted to the Middle District of Florida and the Southern District of Florida and that he receive prior permission from the United State's Attorney's Office before he left his house for any reason.

Over the past three months, a thorough investigation of Mr. Nadel's financial state has shown that he cannot satisfy the financial requirements imposed by Judge Cote because he has no financial resources. The SEC Receiver appointed by the court to secure assets for investors, Burton Wiand, has seized all of Mr. Nadel's cash and property and all cash and property traceable to Mr. Nadel. At this point, with the exception of his modest home, Mr. Nadel does not have any money or property; let alone five million dollars. See Nadel Affirmation, Exhibit B.

Judge Cote imposed the onerous financial bail conditions based on the government's contentions that Mr. Nadel posed a substantial risk of flight and that he must have had assets hidden away that had not been found. More than three months have passed, in which the thorough and diligent Receiver has scoured the globe in pursuit of any assets traceable to Mr. Nadel, as well as any assets traceable to profits taken by investors in redemptions that could be found unjustified under "clawback" rules. It has become increasingly clear that Mr. Nadel has no assets hidden away. The Receiver, Mr. Wiand, has seized all of Mr. Nadel's property except for the Nadel's modest Sarasota residence, which has an estimated value of \$250,000 to \$300,000 and is encumbered by a mortgage of approximately \$150,000.

Mr. Nadel poses virtually no risk of flight because he is 76 years old, he is in extremely poor health, he is utterly without

resources, and he has no physical ability to support himself in hiding. Mr. Nadel in fact demonstrated his intention not to flee but to face the charges when he voluntarily turned himself into federal authorities on January 27, at a time when he still held a passport and had some access to cash.

Although Mr. Nadel has neither the ability nor the inclination to flee, he proposes substantial conditions to assure his presence for trial. In addition to home detention with electronic monitoring, daily or twice-daily reporting to pretrial services and all of the other non-financial conditions imposed, Mr. Nadel proposes to post a \$1 million bond, secured by the equity in his Sarasota residence and co-signed by his wife and other family members. This bond represents a significant sum to people who are Mr. Nadel's closest loved ones, an amount that would spell financial ruin for them if he failed to appear. These conditions will more than guarantee Mr. Nadel's appearance for trial.

I.

**Mr. Nadel Has No Resources and Cannot Possibly Meet the Bail Ordered.**

At the last bail hearing, held on February 13 and 25, 2009, Judge Cote determined that despite Mr. Nadel's age, family and community ties, and lack of foreign connections, he posed a substantial risk of flight because he had left home for several days before he was charged and because there were millions of

dollars "unaccounted for." H.II. 21-23.<sup>1</sup> Based on the government's contention that Mr. Nadel must somehow have access to secret funds, the court imposed a "substantial" bond of \$5 million, secured by \$1 million in cash. H.II. 22. Since the last bail hearing, Mr. Nadel's private counsel withdrew from the case because Mr. Nadel could not pay them, the Federal Defender's office was appointed on April 15, 2009 to represent Mr. Nadel, and he was indicted on April 28, 2009. The SEC Receiver has seized every dollar and every asset belonging to Mr. Nadel and his wife, except their residence. There is no secret fund and Mr. Nadel and his family cannot possibly post the bail ordered. Under these circumstances, the bail ordered is excessive bail.

The Receiver's Interim Report was filed on April 3, 2009. In that report, which is attached hereto as Exhibit A, Burton Wiand set forth all of the property seized, including millions of dollars worth of real estate and ongoing businesses, much of which has not been fully valued but all of which has been secured. In particular, the Receiver seized \$1,503,604.84 in cash from the hedge funds and other businesses owned by Mr.

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<sup>1</sup> "FLA." refers to the transcript of the detention hearing held in the Middle District of Florida on January 30, 2009, and "H.I." and "H.II" refer to the transcripts of the detention hearing held before Judge Cote in this District on February 13 and 25, 2009, respectively. The Florida hearing transcript is attached as Exhibit 4 to the government's letter dated April 29, 2009, and the transcripts of the hearing before Judge Cote are attached thereto as Exhibit 6.

Nadel, plus real estate and other assets valued at a total of at least \$6,705,125. (Rec. Rep. at 30-32, Exh A.). In addition, the Receiver expanded the receivership on January 27 to seize \$381,142 in cash from the Marguerite Nadel revocable trust, and the real estate assets of the Guy Nadel revocable trust, as well as several ongoing, viable businesses with substantial value.

These businesses include:

1. Venice Jet Center -- a fully operating business that includes a flight school, fueling service, hangar rentals, a café. the company owns a building, which has a mortgage of \$1.9 million. The Receiver believes that the VJT has **substantial value beyond this loan**, more if it can build new hangars.

2. Tradewind, L.L.C. -- a fully operating business with five planes, one helicopter, and 31 hangars in Georgia. Some loans are outstanding against the hangars and two planes, but there is **substantial value in the assets**, and the hangars generate \$28,000 per month in rent.

3. Laurel Mountain Preserve and Laurel Preserve -- holds title to 420 acres near Asheville, North Carolina, for development as home sites. This includes 29 **"fully developed" lots** -- "infrastructure and utilities are fully in place and functional." 23 lots are estate-sized and 6 are cottage-sized; the property includes a cabin worth \$319,800. The Laurel Mountain property is encumbered by two mortgages, one for \$360,157 and another interest only loan of \$1.9 million, but the Receiver believes that its **value is higher than the encumbrances** and is looking for buyers.

4. Lime Avenue Enterprises -- owns a building in downtown Sarasota with a \$600,000 mortgage -- value to be determined.



5. A Victorian Garden Florist -- an operating business located in the Lime Building, value to be determined.

6. Home Front Homes -- an operating business engaged in manufacturing, marketing and selling energy-efficient homes; value to be determined.

7. Summer Place Development Corporation -- an operating business that owns a proposed affordable housing developing in Manatee County; value to be determined.

(Rec. Rep. 19-27).

Thus, the Receiver has taken control of assets worth at least \$8,208,729 and an additional series of substantial assets, including ongoing businesses, which the Receiver believes have substantial value -- almost certainly, millions more. A very conservative estimate of the current value of these businesses would be \$10-12 million. Since virtually all assets have lost significant value beginning in the last quarter of 2008, it is likely that Mr. Nadel's original investments in these businesses exceed their current value. Clearly, Mr. Nadel invested many millions in these real estate and business ventures.

The Receiver stated that he has discovered approximately \$53 million in redemptions to investors over the years that exceeded their original investments and which he has alleged are "fictitious profits" because there were not profits. (Rec. Rep. at 12). The Receiver reported that he was in the process of identifying and securing these funds under "clawback" provisions.

Since the interim report was published, Mr. Nadel's attorneys have spoken to Mr. Wiand, who has informed us that he has made substantial progress in identifying those accounts. When we offered Mr. Nadel's assistance in trying to identify any such accounts, the Receiver stated that he did not need help because he was almost finished.

Mr. Nadel's counsel asked Mr. Wiand if he believed that Mr. Nadel had any hidden or unidentified assets. He stated that if he knew of any assets squirreled away, he would have seized them. Mr. Wiand stated that over \$20 million went through Mr. Nadel's personal accounts over the years, that the accounts were not straightforward, and that he had not definitively traced all of the money. He stated, however, that some of this money was used to buy and develop the various businesses that Mr. Wiand has seized, like the two aviation centers and the real estate developments in Florida and North Carolina.

Now that the Receiver and the SEC have identified and secured any assets traceable to Mr. Nadel, it is time to end the speculation that he must have secret assets somewhere. Mr. Nadel submits an affirmation, attached as Exhibit B, stating that he has no assets anywhere, that the Receiver has seized or frozen all property that he owned, and that he has never had any foreign accounts. This is corroborated by the fact that months of work by the Receiver has uncovered no secret funds. Further, it is

evident from Mr. Nadel's circumstances that he has no resources. He has been sitting in jail for months with no hope of raising bail and he has had to turn to the Federal Defenders because he cannot pay a lawyer. His family, most of whom either worked for his businesses or were supported by him, have very limited resources. The financial conditions that have been ordered far exceed the resources of Mr. Nadel and his family and therefore constitute excessive bail.

## II.

### **The Standards for Pretrial Release**

The Eighth Amendment to the Constitution states: "Excessive bail shall not be required." U.S. Const. Amend VIII. Accordingly, 18 U.S.C. s 3142(b) "requires the court to order the pre-trial release of a defendant on a personal recognizance [unsecured] bond 'unless the [court] determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.'" United States v. Sahbnani, 493 F.3d 63, 75(2d Cir. 2007).

Only if the court determines that a defendant's release on unsecured bond presents a risk of flight may the court impose conditions on pretrial release. Even then, release should be "subject to the least restrictive further condition, or combination of conditions, that [the court] determines will reasonably assure the appearance of the person as required." Id.

S 3142 (c)(1)(B).

Thus, there are potentially two steps in the analysis. The first step is the court's determination as to whether the defendant poses an actual risk of flight. If not, the analysis ends and the defendant must be released on a personal recognizance bond, even without surety or collateral. The government has the burden of proving an actual risk of flight.

If the government proves that the defendant poses an actual risk of flight, then the court must determine which conditions are the least restrictive that will reasonably assure the defendant's presence for trial. Setting an amount of bail that the defendant and his family cannot possibly meet does not constitute the "least restrictive" condition. Moreover, requiring impossibly high bail violates the excessive bail prohibition of the Eighth Amendment.

**A. Mr. Nadel Poses Virtually No Risk of Flight**

**1. Mr. Nadel Voluntarily Surrendered to the Authorities When he had the Chance to Flee and After his Lawyers Told Him that the Government Would Seek Detention.**

The government has claimed that Mr. Nadel poses a substantial risk of flight despite the fact that he voluntarily turned himself in to federal authorities as soon as he learned from his lawyers that a warrant had been issued. While the warrant for his arrest was still sealed, Mr. Nadel surrendered to the government with his lawyers on January 27, 2009.

Notwithstanding his voluntary surrender, the government has persistently claimed that Mr. Nadel was a "fugitive" for leaving home briefly *before any charges were filed against him.*

On January 14, with his business collapsing and investors demanding their money, Mr. Nadel was distraught and despondent and left Sarasota to clear his head, leaving his wife a letter in which he suggested he might kill himself. This may not have been the most responsible way to act toward his partners, employees, investors, and family. However, this was not flight from justice because there were no criminal charges, nor even civil charges, pending. When Mr. Nadel read news reports about his "disappearance" and anticipated that charges would be filed against him, he sought a lawyer's advice. A few days after leaving home, Mr. Nadel contacted a lawyer, Dan Heiser, and asked for a referral to a criminal lawyer. Mr. Heiser referred him to Barry Cohen at Cohen, Jayson & Foster, a Tampa firm. On January 20, only six days after he left home and before any charges were filed, Mr. Nadel contacted lawyers at the firm Cohen, Jayson & Foster.

At Mr. Nadel's initial detention hearing in Florida ("FLA.") and again at the detention hearing before Judge Cote on February 13 and 2009 ("H.I" and "H.II"), his lawyer, Barry Cohen, set forth the chronology of Mr. Nadel's actions from January 20 to January 26. FLA. 70-74; H.I 52-56. Mr. Cohen spoke to Mr. Nadel

on January 20, determined that he was in a very bad state of mind, and Cohen urged Mr. Nadel to seek psychiatric treatment. Mr. Cohen referred him to Dr. Robert Fernandez, a Tampa psychiatrist. FLA.70. After speaking with Mr. Nadel by phone, Dr. Fernandez recommended hospitalization. FLA.70-71. On January 21, Mr. Nadel's family came to Mr. Cohen's office to discuss his legal situation. H.I. 52. At that time, the lawyers checked to determine whether any warrant was outstanding and they found none. FLA.71; H.I.53. Mr. Cohen told Mr. Nadel that no warrant had been issued and that he did not have to come back unless he wished to. H.I.53. Mr. Nadel had several therapy sessions with Dr. Fernandez by phone and discussed hospitalization. FLA.72. Three hospitals were discussed: one in White Plains, New York, one in Connecticut, and one in Baltimore. FLA.71. On January 23, attorney Barry Cohen checked again to see if a warrant had been issued and there was no warrant outstanding. FLA.71-72. Apparently, a federal warrant had been issued on January 21 but had been sealed. Mr. Cohen knew nothing about it. H.I.52-53.

On January 24, Mr. Nadel flew back to Tampa under his own name, and checked into a hotel at the Tampa airport under his own name. FLA.72, H.I. 54. He met with Barry Cohen in the law firm's office the next day, January 25, and discussed making arrangements to go to the hospital. Mr. Nadel had an appointment

to meet Dr. Fernandez the next morning, January 26. FLA.72, H.I. 54. After Mr. Nadel's appointment with Dr. Fernandez, he again went to Barry Cohen's office and left with his wife. FLA.72, H.I.55. That morning, Mr. Cohen called the United States Attorney's office, spoke to the Chief Assistant United States Attorney, Bobby O'Neill, and asked him to inform Mr. Cohen if a warrant issued. H.I.55. Mr. O'Neill said that his office was not handling this case; it was being handled by the U.S. Attorney's office in New York. FLA.73, H.I.55. O'Neill did not have the name of the Assistant handling the case in New York. FLA.73.

Later that day, which was a Sunday, Mr. Nadel's stepdaughter called Mr. Cohen to report that the FBI had come to the Nadel's house and said that a warrant had been issued but it was not signed. FLA.73, H.I.55. Agent Kevin Riordan had left his card and Mr. Cohen called him and was referred to Reed Brodsky. FLA. 73. Mr. Cohen and his partner Todd Foster called Mr. Brodsky, told him that Mr. Nadel was planning to go the hospital, and asked if there was a warrant for his arrest. FLA.74. Mr. Brodsky said there was a warrant; this was the first time Mr. Cohen had heard that. H.I.55. Mr. Cohen asked if Mr. Nadel could go into the hospital for 10 days before turning himself in and Mr. Brodsky said no, he had to come turn himself in now. H.I.55. Mr. Brodsky also refused to discuss bail because he considered

Mr. Nadel to be a fugitive. FLA.75. Mr. Cohen reiterated that they had just learned of the warrant and that Mr. Nadel would turn himself in. FLA.75, H.I.56. Mr. Cohen called Agent Riordan that day and asked if he could bring Mr. Nadel in the next morning and he was told that would be fine. FLA.75, H.I. 56. Mr. Cohen advised Mr. Nadel that the government might seek detention and that he might never be released. FLA.75, H.II. 56. The next morning, Mr. Nadel turned himself in to the FBI. FLA. 75.

The government has transformed Mr. Nadel's voluntary surrender into a claim that he fled from justice, based on the fact that he left his home for a few days *before* any charges were filed, and while he had a perfect right to travel. In fact, he was out of touch for only a few days, and before any warrant was issued -- sealed or otherwise -- he had contacted his lawyers, who arranged for psychiatric help while trying to find out if he had actually been charged and whether there was a warrant for his arrest.

The government has claimed that Mr. Nadel was a fugitive even during those few days before Mr. Nadel contacted his lawyers because Sarasota police were looking for him. They were not seeking to arrest him however, but because his wife had filed a missing person report, out of concern for his welfare. The government also contends that Mr. Nadel only surrendered because



the FBI was "closing in" on him during the weekend of January 24-25. (Gov. Mem. In Opp. To Bail p. 15, Exhibit 5 to Gov. Letter dated April 29, 2009). The record establishes otherwise: that Mr. Nadel had already returned to the Tampa area on January 24; that he had been communicating with his lawyers since January 20; that his lawyers told him that there was no outstanding warrant against him and advised him to seek treatment for his depression; and that as soon as Mr. Nadel's lawyers learned that an arrest warrant had been issued, Mr. Nadel turned himself in.

If Mr. Nadel ever had any ability to flee, it was before he was charged and turned himself in. At that point, however, Mr. Nadel did not flee but voluntarily surrendered to the authorities, even though he was advised that he might never be released. His decision to face the charges is evidence that he is unlikely to flee.

**2. Mr. Nadel Has No Ability to Flee.**

Mr. Nadel has no resources whatsoever that would enable him to flee and live as a fugitive. As is demonstrated above, he has no financial resources because the government Receiver has taken everything he had. The Receiver has also taken all of his wife's property, except the modest, mortgaged family residence. Mr. Nadel has no foreign connections and no significant history of foreign travel. In this respect, Mr. Nadel poses a much lower risk of flight than many foreign nationals and defendants with

strong foreign connections who have been granted bail pending trial. Eq., United States v. Khashoggi, 717 F.Supp. 1048, 1051-52 (S.D.N.Y. 1989) (pretrial release on reasonable conditions required even though defendant was a Saudi Arabian national, who had been a fugitive in Switzerland before his arrest, had resisted extradition to the United States, whose wife and siblings lived abroad, and who was "enormously wealthy" with the "means to procure staggering amounts of cash in fewer than 24 hours"); United States v. Sabhnani, 493 F.2d 63 (2d Cir. 2007) (pretrial release on conditions required for foreign-born defendants who had substantial assets abroad and close family members living abroad). Almost everyone Mr. Nadel knows lives in Sarasota, and no one there would help him escape. To the contrary, if he were placed in home detention, residents of Sarasota could be counted on to call the police if he stepped into his driveway.

Mr. Nadel has no ability to support himself in hiding; no overseas connections; and no skills or experience at being a fugitive. Neither does he have any criminal associates who might help him escape and/or elude detection.

Even more importantly, Mr. Nadel is 76 years old and has a serious heart condition. Medical records establish that he has suffered from congestive heart failure for years and that at least since 2004, cardiologists have urged him to undergo valve

surgery to alleviate his heart condition. See Exhibit C. This condition has caused periodic bouts of shortness of breath and physical incapacity. Mr. Nadel lacks the physical stamina necessary to run and hide, or to support himself without financial resources. Cardiologists' reports of Mr. Nadel's condition are attached as Exhibit C.

**3. There is No Presumption That a Fraud Defendant is More Likely to Flee.**

In claiming that Mr. Nadel poses a serious risk of flight, the government has emphasized the fact that Mr. Nadel is charged with a large fraud and with lying to investors and colleagues for years. The government argues that his purported deceptiveness and ability "to lie with great skill" makes him a flight risk.

There is no presumption that someone charged with fraud or other deceitful conduct should be detained before trial. To the contrary, defendants charged with fraud are presumptively entitled to and routinely granted pretrial release, including those facing more serious charges of much more elaborate and sophisticated frauds. In United States v. Bennett, Docket No. 1;97-000639-JSM, for example, Mr. Bennett was released pretrial on a \$500,000 personal recognizance bond, secured only by his wife's residence and her signature, although he was charged with an elaborate pyramid scheme involving sales of fictitious leases and legitimate leases to multiple parties, and was facing a sentence of at least 20 years for "a scheme that took hundreds of

millions of dollars from the victim investors." United States v. Bennett, 252 F.3d 559, 265 (2d Cir. 2001); United States v. Bennett, 2000 WL 420547 at \*1 (S.D.N.Y. Apr. 18, 2000). At the time, the Bennett case was represented to be the largest pyramid scheme in U.S. history, yet Mr. Bennett was released throughout two trials, even after the first trial resulted in a partial conviction. See also United States v. Bond, Docket No. 01-cr-1140 (LBS) (defendant charged with multi-million dollar fraud, facing 12-year sentence, was released on \$1 million PRB bond cosigned by his wife and parents and partially secured by their homes).

### III.

**Even If Mr. Nadel Posed an Actual Risk of Flight, the Bail Ordered is Excessive and Far Less Onerous Conditions Are Sufficient to Reasonably Assure his Presence at Trial.**

Where the only purpose of bail is to prevent flight, "bail must be set by a court at a sum designed to ensure that goal, and no more." United States v. Salerno, 481 U.S. 739, 754 (1987); Stack v. Boyle, 342 U.S. 1, 5 (1951). In this case, the only purpose of bail conditions is to reasonably assure Mr. Nadel's presence at trial. The 76-year old cardiac patient clearly poses no danger to society, and Judge Cote found that he posed no danger. Therefore, the task is to determine a package of bail and other conditions that will be sufficient to reasonably assure the defendant's appearance in court but that the defendant may also

be expected to meet. United States v. Dreier, 596 F.Supp.2d 831, 835( S.D.N.Y. Feb. 5, 2009).

This was the issue before Judge Rakoff earlier this year in the case of Marc Dreier, in which the Magistrate had imposed cash bail of \$10 million, an amount that Mr. Dreier could not possibly meet. Judge Rakoff ordered Marc Dreier released on unsecured bond and conditions of house arrest, although Dreier had actually impersonated numerous people in committing multiple highly sophisticated frauds, he was captured out of the country, he had defrauded investors of more than \$700 million, and the judge considered him "a master of deceit" and "the kind of person who, under stress, may resort to desperate measures." United States v. Dreier, 596 F.Supp.2d 831. The court replaced the \$10 million cash requirement with a bond secured by Mr. Dreier's mother's signature and strict conditions of house arrest. The court concluded that these "conditions will be sufficient to reasonably assure the defendant's appearance in court as required. *At the same time, it is a set of conditions that the defendant may reasonably be expected to meet.*" Dreier, 596 F.Supp.2d at 835 (emphasis added).

Mr. Dreier's family, unlike Mr. Nadel, could afford to offer a security guard in his package to compensate for the substantial risk of flight that he presented. Compared to the Dreier case, the case against Mr. Nadel involves relatively straightforward

allegations that he falsified the value of trading accounts in order to hide trading losses and take management fees. The allegations do not involve the kind of elaborate impersonations and use of coconspirators that Mr. Dreier's case involved. Unlike Mr. Dreier (or Mr. Madoff), Mr. Nadel has never had any foreign connections or business but has led a parochial life in Sarasota. Finally, unlike Mr. Dreier, who appears from photographs to be a strapping man in the prime of life, Mr. Nadel is a sick old man without the physical wherewithal to run and hide.

Just last week, Judge Rakoff refused to revoke bail and remand Dreier even after he pled guilty. See Docket No. 09 cr 0085 (JSR). Although the government insisted that Mr. Dreier posed an overwhelming risk of flight, Judge Rakoff determined that, under the conditions imposed, there was no real risk of flight. As in this case, the government had seized or frozen all of Dreier's assets and left him with no resources.

In sum, even if Mr. Nadel posed some risk of flight, his presence at trial can be reasonably assured by a personal recognizance bond secured by the signatures of his wife and other family members and the equity in his wife's home, along with the surrender of travel documents and the conditions of monitored home confinement already ordered.

IV.

**Mr. Nadel Cannot Effectively Prepare his  
Defense if He is Incarcerated Prior to Trial**

Mr. Nadel should be granted bail on terms he can meet because he cannot effectively prepare his defense so long as he remains behind bars. "The traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction." Stack v. Boyle, 342 U.S. 1, 3 (1951). Mr. Nadel's incarceration is severely, if not fatally, hampering the preparation of his defense because his confinement makes it all but impossible for him to access and review the extraordinarily voluminous documentary and computer-based evidence, identify and contact the scores of potential witnesses, and/or communicate and work with his lawyers on understanding and rebutting the charges against him.

By all measures, this is an extremely complex case to properly defend. The six-count, fourteen-page indictment alleges that Mr. Nadel defrauded more than 350 investors out of more than 360 million dollars over a ten year period. During this span, Mr. Nadel is claimed to have managed six different investment funds. There are dozens, if not hundreds, of potential witnesses from locations all around the United States. By letter dated May 21, 2009, the government has given notice that the discovery in this case includes, inter alia: 129 boxes of materials, six

computer discs that contain additional hundreds of thousands of pages of records, 428,000 e-mails, multiple computer drives, and several search warrants. See Exhibit D.

To effectively participate in his defense, Mr. Nadel needs to personally review and analyze the discovery; assist in identifying and contacting potential witnesses; and communicate with his lawyers regarding the significance of the evidence and the contours of his evidence. Moreover, based on counsel's prior experience with similar complex and document-intensive cases, frequent communication with the client is an indispensable prerequisite for Mr. Nadel's lawyers to understand the evidence and prepare an effective defense.

Mr. Nadel's present conditions are simply not compatible with his right to prepare his defense and his right to effective assistance of counsel. As detailed below, his conditions prevent the needed degree of communication with his lawyers and preclude effective access to and/or review of the extensive discovery.

Mr. Nadel's ability to communicate with his attorneys is greatly impaired by his incarceration. Because he is jail, Mr. Nadel's lawyers cannot directly contact him by telephone or e-mail. Although Mr. Nadel is permitted to call his lawyers, he has only limited access to a telephone which is subject to the demands of other inmates and the schedule of the prison. Accordingly, as long as Mr. Nadel remains incarcerated, most



attorney-client communications will have to be in the form of jail visits.

Unfortunately, as any experienced criminal defense attorney will attest, an attorney visit to the New York Metropolitan Correctional Center is often a time-consuming ordeal. Any visit to the jail involves a substantial commitment of time and is quite likely to be unduly prolonged by delays outside the control of counsel or Mr. Nadel.<sup>2</sup>

There is no practical way for Mr. Nadel to either acquire or have effective access to the voluminous discovery in this case so long as he is incarcerated. Counsel cannot ship 129 boxes of discovery to the Metropolitan Correctional Center. The jail is already so overcrowded that it routinely assigns new arrivals to

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<sup>2</sup> For example, on May 11, 2009, counsel for Mr. Nadel spent almost two hours of their time to have a twenty minute interview with their client. Counsel arrived at the M.C.C. at about 1:25 p.m. Initial processing (presenting identification, storing cell phones and keys in a locker, filling out a visiting form, passing through a metal detector and having one's hand stamped with an invisible ink) took about fifteen minutes. Counsel were then required to wait in the downstairs waiting room for about forty minutes because all of the third-floor attorney-client visiting rooms were occupied by other lawyers. Once a room became vacant, an additional ten minutes passed before counsel reached the third-floor visiting room. After signing in again at the third floor area, counsel had to wait another fifteen minutes before Mr. Nadel was brought to the visiting room. Counsel spoke with Mr. Nadel for about twenty minutes. After signing out, counsel had to wait another ten minutes for the elevator back to the first floor because (as is generally the case) only one of the jail's elevators was working. Thus, a twenty-minute discussion took up two hours of each attorney's time.

the punitive segregation section because it has no other bed space available. Access to the computerized data is equally difficult. Mr. Nadel does not have a personal computer at the jail. Although arrangements can be made for him to view computer discs, such use is dependent on the availability of the institution's few computers. Even if Mr. Nadel could receive all of the paper and computer discovery, he does not have access to any computer system that would enable him to organize and keep track of the information.

Nor is it practical for counsel to cart boxes of discovery over to the jail for discussion and review. Effective review and analysis of discovery generally involves looking at an array of documents that bear on a particular issue. It is impossible to anticipate what documents from what boxes may be relevant to a particular issue and equally impossible to select the appropriate documents to bring to the jail.

Finally, the impediments to effective preparation posed by incarceration are further exacerbated by Mr. Nadel's relatively advanced age and poor health. Mr. Nadel is seventy-six and one-half years old and has been diagnosed with a serious heart condition as well as skin cancer, cataracts, and urological problems. Indeed, five years ago, Mr. Nadel's doctors advised him that his heart condition was so grave that he faced a substantial

possibility of death if he did not have corrective surgery.<sup>3</sup>

Although he still has not had the recommended heart surgery, Mr. Nadel is not acutely ill at the moment. However, the Metropolitan Correction Center is not well-equipped to provide Mr. Nadel with optimal monitoring of his health conditions. Mr. Nadel received a medical examination upon his arrival at the M.C.C. in February of 2009, but has not been seen by any doctor since that time. At the very least, Mr. Nadel's frail health, coupled with the stress and strain and physical discomfort of imprisonment, presents still one more obstacle to his right to prepare his defense.

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<sup>3</sup> In 2004 after experiencing severe difficulty with breathing, Mr. Nadel was diagnosed with congestive heart failure and mitral valve disease. His doctor, Clayton Bredlau, very strongly recommended that he have heart surgery, informing Mr. Nadel that "his condition will slowly deteriorate over time and that now he is probably at a plank where he would benefit the most from heart surgery." Exhibit C at 12. Dr. Bredlau also explained to Mr. Nadel that if he did not take care of his heart condition on a timely basis, the risks included "sudden death, arrythmias, worsening acute severe congestive heart failure, and 'smothering to death'" Exhibit C at 16.

**CONCLUSION**


For the foregoing reasons, Arthur Nadel requests and order modifying the bail conditions for pretrial release.

Dated: New York, New York  
May 22, 2009

LEONARD F. JOY, ESQ.  
Federal Defenders of New York, Inc.  
Attorney for Defendant

**Arthur G. Nadel**

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**MARK B. GOMBINER,**  
**COLLEEN P. CASSIDY,**  
Of Counsel

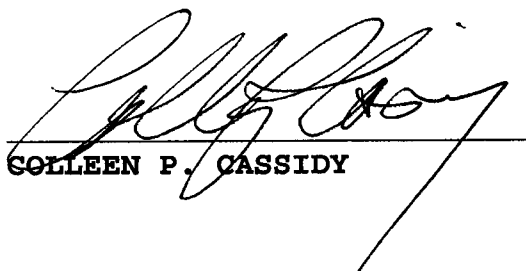
**TO: HONORABLE LEV DASSIN**  
United States Attorney  
Southern District of New York  
One St. Andrew's Plaza  
New York, New York 10007  
Attn.: Reed M. Brodsky, Esq.,  
Maria E. Douvas, Esq.  
Assistant United States Attorneys  
Southern District of New York

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**CERTIFICATE OF SERVICE**

I certify that a copy of this Memorandum of Law has been served by first-class mail on the United States Attorney/S.D.N.Y.; Attention: **REED M. BRODSKY, ESQ., MARIA E. DOUVAS, ESQ.**, Assistant United States Attorneys, Assistant United States Attorneys, One St. Andrew's Plaza, New York, New York 10007.

Dated: New York, New York  
May 22, 2009

  
\_\_\_\_\_  
**COLLEEN P. CASSIDY**

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***EXHIBIT A***

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-0087-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.

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**THE RECEIVER'S FIRST INTERIM REPORT**

**I. Introduction**

Burton W. Wiand, the Court-appointed Receiver for (a) Defendants Scoop Capital, LLC ("Scoop Capital") and Scoop Management, Inc. ("Scoop Management") (collectively referred to as "Defendants"); (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 (collectively referred to as the "Hedge Funds");<sup>1</sup> (c) Relief Defendants Valhalla Management, Inc. and Viking Management (along with Scoop Capital and Scoop Management are collectively referred to as the "Investment Managers"); and (d) 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; and A Victorian Garden Florist, LLC (all of the foregoing are collectively referred to as the "Receivership Entities"), hereby files this First Interim Report in order to inform the Court, the investors, and others interested in the Receivership Entities of activities to date, as well as the proposed course of action.<sup>2</sup>

The Receiver was appointed on January 21, 2009. By January 26, 2009, the Receiver established an informational website [www.nadelreceivership.com](http://www.nadelreceivership.com). The Receiver has updated this website periodically and continues to update it with the Receiver's most significant actions to date; important court filings in this proceeding; and other news that might be of interest to the public. This First Interim Report, as well as all subsequent reports, will be posted on the Receiver's website.

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<sup>1</sup> While these funds are referred to as hedge funds, the Receiver's investigation has raised serious question as to whether they were ever operated as legitimate investment vehicles. The Receiver will refer to these funds as hedge funds throughout this Report although as noted the Receiver has serious question regarding their operation.

<sup>2</sup> This First Interim Report is intended to report on information and activity for the Receiver's first sixty days of appointment from January 21, 2009 through March 23, 2009. Thus, unless otherwise indicated, the information reported herein reflects the information in the Receiver's possession as of March 23, 2009.



## II. Procedural Background

On or about January 14, 2009, Arthur Nadel (“Nadel”), the Hedge Funds’ principal investment advisor and the sole officer and director of Scoop Management and sole managing member of Scoop Capital, fled Sarasota county and disappeared for nearly two weeks. On January 21, 2009, the Securities and Exchange Commission (the “SEC” or “Commission”) filed a complaint in the United States District Court for the Middle District of Florida charging the Defendants with violations of the federal securities laws (the “SEC Action”). The Commission alleges that Nadel used the Investment Managers to defraud investors in the Hedge Funds from at least January 2008 forward by “massively” overstating investment returns and the value of fund assets to investors in these funds and issuing false account statements to investors. The Commission also asserts that Nadel misappropriated investor funds by transferring \$1.25 million from Viking IRA Fund and Valhalla Investment Partners, L.P. to secret bank accounts. The Court found the Commission demonstrated a *prima facie* case that Defendants committed multiple violations of federal securities laws.

The same day the Commission filed its complaint, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants and Relief Defendants (the “Order Appointing Receiver”). (*See generally* Order Appointing Receiver (Doc. 8).)

On January 21, 2009, on the SEC’s motion, the Court entered (i) an Order of Preliminary Injunction and Other Relief as to Defendants Scoop Capital and Scoop Management and all Relief Defendants (Doc. 7) and (ii) a Temporary Restraining Order and Other Emergency Relief as to Nadel (the “TRO”) (Doc. 9). Among other things, these orders enjoined the Defendants and Relief Defendants from further violations of federal securities

laws and froze their assets. On February 3, 2009, the Court entered an Order of Preliminary Injunction and Other Relief as to Nadel (the "February 3 Preliminary Injunction") (Doc. 29), the terms of which are essentially identical to those of the TRO.<sup>3</sup>

On January 27, 2009, on the Receiver's motion, the Court entered an order expanding the scope of the receivership and appointing the Receiver as receiver also over the Venice Jet Center, LLC, and Tradewind, LLC. (*See* Order, Jan. 27, 2009 (Doc. 17).) On February 11, 2009, on the Receiver's motion, the Court entered an order expanding the scope of the receivership and appointing the Receiver as receiver also over Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; and the Laurel Mountain Preserve Homeowners Association, Inc. (*See* Order, Feb. 11, 2009 (Doc. 44).) On March 9, 2009, on the Receiver's motion, the Court entered an order expanding the scope of the receivership and appointing the Receiver as receiver also over the Guy-Nadel Foundation, Inc. (*See* Order, March 9, 2009 (Doc. 8).) On March 17, 2009, on the Receiver's motion, the Court entered an order expanding the scope of the receivership and appointing the Receiver as receiver also over Lime Avenue Enterprises, LLC, and A Victorian Garden Florist. (*See* Amended Order, March 17, 2009 (Doc. 81).)

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

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<sup>3</sup> Both the TRO and the February 3 Preliminary Injunction required Nadel to make a sworn accounting to the Court and the Commission of all funds received by him from any of the defendants or relief defendants and a sworn identification of all accounts in which he has an interest or has the power or right to exercise control. (Docs. 9, 29.) In response to these Orders, Nadel submitted a letter asserting his Fifth Amendment right against self-incrimination and refused to provide this information.

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.)

On January 27, 2009, Nadel surrendered to the FBI in Tampa, Florida. Nadel was arrested and charged with two counts of securities fraud and wire fraud based on the fraudulent investment scheme discussed below. On January 30, 2009, Magistrate Judge Mark Pizzo of the United States District Court for the Middle District of Florida denied Nadel’s request for a release on bond awaiting trial, deciding instead that Nadel should remain in jail based on, among other things, a risk of flight. On or about February 2, 2009, Judge Pizzo entered a Detention Order denying bail and a Removal Order requiring that Nadel be transferred to the Metropolitan Correctional Center in New York, New York to await trial. *See U.S. v. Nadel*, (U.S. Dist. Ct. M.D. Fla., Case No. 8:09-mj-01039-MAP (Docs. 5, 6)).

On February 26, 2009, Judge Denise Cote of the United States District Court for the Southern District of New York agreed to release Nadel on \$5 million bail, contingent on a number of conditions including \$1 million in cash, living restrictions, and specific bond guarantees. Judge Cote also required Nadel to fully and completely cooperate with the SEC. As of the date of this Report, Nadel has not met the conditions for bail and is still being held in the Metropolitan Correctional Center.

On February 27, 2009, the prosecution and Nadel’s attorneys agreed to a 30-day extension of a formal indictment. The prosecution requested the extension for the purposes of conducting pre-indictment discovery, and Nadel agreed to waive his right to a speedy trial. As of the date of this Report, no indictment has been entered against Nadel.

**B. Taking Possession of Receivership Property.**

The Court directed the Receiver to “[t]ake immediate possession of all property, assets and estates of every kind of the Defendants and Relief Defendants, whatsoever and wheresoever, located, belonging to or in the possession of the Defendants and Relief Defendants . . . .” (Order Appointing Receiver ¶1.)

**C. Investigating Receivership Affairs and Recovering Funds.**

The Court also directed the Receiver to “[i]nvestigate the manner in which the affairs of the Defendants and Relief Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Defendants and Relief Defendants and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Defendants or Relief Defendants . . . .” (Order Appointing Receiver ¶2.)

**D. Reporting on Assets and Liabilities and Implementing Claims Process.**

The Court further directed the Receiver to “[p]resent to this Court a report reflecting the existence and value of the assets of the Defendants and Relief Defendants and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Defendants and Relief Defendants.” (Order Appointing Receiver ¶3.) As contemplated by the Order, the Receiver will ultimately institute a claims process primarily for the benefit of the Receivership Entities’ investors who have been defrauded and suffered legitimate losses as a result of the activities of Nadel and others.

#### **IV. Overview of Preliminary Findings**

The Receiver is in the process of reviewing voluminous records from the offices of Receivership Entities, as well as records from more than thirty (30) different institutions, including banks and brokerage firms. The Receiver also is in the process of obtaining documents from additional third parties. The Receiver has formed some preliminary conclusions based on his review of a portion of the records received. While these conclusions are not final, and may change as the review becomes more complete, the Receiver believes they should be shared with the Court, the investors, and other potentially interested parties.

In the Commission's Emergency Motion and Memorandum of Law in Support of Temporary Restraining Order and Other Emergency Relief ("SEC's Emergency Motion") (Doc. 2) and supporting papers, the Commission presented evidence showing Nadel defrauded investors through his control of the Hedge Funds' advisers and/or managers, Scoop Capital and Scoop Management. Through the Investment Managers, Nadel, along with Christopher Moody and Neil Moody, were ultimately responsible for controlling the Hedge Funds' investment activities. While the Commission's evidence showed that Nadel defrauded investors since at least January 2008, the Receiver's investigation has uncovered evidence showing that the fraud began at least as early as 2003 and in all likelihood before then.

The Receiver's investigation has revealed that for each Hedge Fund, the Hedge Fund's performance as disclosed to investors from at least 2003 forward was based mainly on trading results that Nadel purported to have in brokerage transactions cleared through Goldman Sachs Group, Inc. (in which money was purportedly traded to generate the purported returns Nadel was paying). The returns reported to investors and potential investors were based on fictitious

performance results that were created by Nadel and then included in a database maintained by Scoop Management. These fictitious performance results formed the basis of gross misrepresentations to investors.

Below is a table comparing actual trading results in the Hedge Funds' Goldman Sachs accounts to the values represented to investors and to distributions paid. Specifically, for each year from 2003 to 2008, the table lists from, left to right, (1) the pertinent year; (2) the amount of gains the Investment Managers represented that the Hedge Funds had achieved that year (identified as "Company Represented Amounts"); (3) the actual combined total gain or loss experienced that year in the accounts for the Hedge Funds (identified as "Hedge Funds"); (4) the difference between what the Investment Managers represented the Hedge Funds had achieved in performance versus the actual trading results in the Goldman Sachs accounts for the Hedge Funds (identified as "Difference"); and (5) the actual distributions paid by the Hedge Funds for the pertinent year, including distributions to investors and management and performance incentive fees paid (identified as "Distributions").

Year	<b>Gains/(Losses)</b>			
	Company Represented Amounts	Hedge Funds (Per Goldman Sachs statements)	Difference	Distributions
2003	23,716,749	17,237,008	6,479,741	16,729,147
2004	46,950,345	4,637,878	42,312,467	49,329,387
2005	61,169,058	5,739,301	55,429,756	75,078,840
2006	50,003,778	(18,549,355)	68,553,133	75,444,122
2007	54,665,571	(24,989,307)	79,654,879	60,034,321
2008	36,334,794	(2,493,654)	38,828,448	73,443,310
<b>Total</b>	<b>272,840,295</b>	<b>(18,418,129)</b>	<b>291,258,424</b>	<b>350,059,127</b>

As the above table shows, for 2003 through 2008, the Hedge Funds' performance as represented to investors was significantly overstated and thus, false. For instance, for the

years 2003 to 2008, the Investment Managers represented that the Hedge Funds' trading activity generated more than \$272 million in gains when, in reality, the Hedge Funds' investment accounts actually lost approximately \$18.4 million. Further, while the Hedge Funds lost approximately \$18.4 million for this same period, the Investment Managers still paid more than \$350 million in distributions to investors and fees. As this table shows, from at least 2003 through 2008, the Investment Managers were making distributions and paying fees that the investment performance of the Hedge Funds never supported. The Investment Managers were also crediting fictitious profits to accounts where the accountholders were not taking distributions. These fictitious profits were likewise unsupported by the Hedge Funds' investment performance and only served to further increase the Hedge Funds' insolvency. This negative cash flow made the eventual collapse of Nadel's enterprise inevitable.

In short, the investment returns and performance as represented to investors were based on grossly overstated performance numbers created by Nadel, and the results reported to investors were fiction. The true results of the trading activity that actually occurred was never included in data reported to investors or potential investors.

Evidence also shows that the Hedge Funds directly or indirectly paid substantial fees to Scoop Capital and Scoop Management, and to other Receivership Entities, in the form of management, advisory, and/or profit incentive fees. As reflected by the table below, according to the Hedge Funds' documents from 2003 through 2008, they paid approximately \$97,168,122 in total fees. Profit incentive fees were paid to Scoop Management, Viking Management and Valhalla Management based on a percentage of profits that never occurred and thus significantly depleted the Hedge Funds' assets and diverted those assets to Scoop

Capital and Scoop Management, which were controlled by Nadel, and to Valhalla Management and Viking Management, which were controlled by Neil and Christopher Moody.

<b>Year</b>	<b>Management Fees</b>	<b>Performance Incentive Fees</b>	<b>Total Fees</b>
2003	1,521,377	5,929,187	7,450,565
2004	3,644,188	11,737,586	15,381,774
2005	5,057,633	15,292,264	20,349,897
2006	5,756,646	12,500,945	18,257,590
2007	6,206,972	13,666,393	19,873,365
2008	6,771,232	9,083,698	15,854,931
<b>Total</b>	<b>28,958,048</b>	<b>68,210,074</b>	<b>97,168,122</b>

Significant sums from the proceeds of Nadel's scheme also made their way into other accounts controlled by Nadel and/or his wife, Marguerite Nadel. As of December 31, 2008, according to the balance sheet for Scoop Management, Scoop Management had transferred approximately \$17,177,896.56 to accounts owned either individually or jointly by the Nadels. These amounts are in addition to the amounts Mrs. Nadel received from Scoop Management as compensation. According to its balance sheet, Scoop Management also transferred approximately \$6,433,804.40 to other entities controlled by Nadel. To date, the Receiver has not uncovered any source of income for Nadel or his wife (during the time of Nadel's scheme) that was not in some manner funded with money from that scheme.

Documentation and other information that the Receiver has collected shows that money derived from the scheme was used by Nadel to purchase and/or fund other businesses. The Receiver has expanded the Receivership to include additional businesses controlled by Nadel in the Receivership. See discussion of expansion at Section V.B. below.



To date, the Receiver has discovered and identified approximately 371 investors who invested slightly more than \$397 million. Based on documentation analyzed to date, it appears that investors have out of pocket losses of approximately \$168 million. The Receiver has also discovered that some investors were paid more than their total investments. These overpayments were “fictitious profits.” At this time, the Receiver has discovered approximately \$53.5 million in such fictitious profits. Further, it appears that, although separately numbered investor accounts were used in communications with investors and brokerage accounts were used for each Hedge Fund, in reality there were not separate funds. Due to the method Nadel used to trade securities, distinctions made between the individual Hedge Funds and between investor “accounts” have little meaning. The documents reviewed reveal that Nadel treated the Hedge Funds as a single source of money regardless of with which Hedge Fund investors purportedly invested. The Receiver has reached the preliminary conclusion based on available research and evidence that investor funds were commingled in Nadel’s and the Receivership Entities’ accounts.

**A. Nadel’s Trading Activities in the Hedge Funds.**

In the Executive Summaries disseminated to investors, Nadel represented that the Hedge Funds were generating the annual returns reflected in the table below, primarily through trading in the quadruple Qs.<sup>4</sup>

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<sup>4</sup> The term “Quadruple Qs” (ticker symbol: QQQQ) refers to the NASDAQ-100 Tracking Stock, an exchange-trading fund (“ETF”) listed on the NASDAQ intended to track the NASDAQ index.

**Fund Performance as Represented in Executive Summaries**

Year	Valhalla	Victory	Viking	Viking IRA	Victory IRA	Scoop Real Estate
2002	21.59%	40.93%	26.98%	26.88%	N/A	N/A
2003	41.57%	42.52%	46.42%	45.23%	30.43%	N/A
2004	28.96%	30.30%	30.46%	29.93%	32.16%	48.67%
2005	30.19%	25.90%	27.40%	26.36%	27.31%	32.14%
2006	19.99%	18.94%	19.08%	18.93%	19.50%	21.15%
2007	19.24%	19.65%	20.60%	20.55%	20.02%	21.75%
2008*	10.97%	11.82%	11.43%	11.52%	11.72%	12.31%

\* Results are for an incomplete year.

While Nadel did trade in quadruple-Qs, he did not achieve for the Hedge Funds any of the amount of returns he represented to investors. Rather, based on the documents the Receiver's financial expert has analyzed to date, the Hedge Funds as a whole lost significant sums from their inception. Specifically, the table below shows the actual account profits and losses for the Hedge Funds for the indicated time.

Account Name	Account Profit/Losses	Overall Annualized Rate of Return
Scoop Real Estate Ltd. 2/1/04 – 12/31/08	(\$6,637,880)	-33.35%
Valhalla Investment Partners, LP 10/01/02 – 12/31/08	\$2,863,875	3.98%
Viking Fund LLC 3/01/03 – 12/31/08	(\$8,073,752)	-19.40%
Viking IRA Fund Ltd. 3/01/03 – 12/31/08	(\$2,053,443)	-24.53%
Victory Fund, Ltd. 6/01/02 – 12/31/08	\$1,825,701	-16.70%
Victory Fund, Ltd. 2/01/03 – 8/31/03	(\$66,776)	-18.45%
Victory IRA Fund, Ltd.	(\$5,941,164)	-18.63%
<b>Hedge Fund Total</b>	<b>(\$18,083,439)</b>	

Between 2002 and 2008, the highest annualized rate of return Nadel appears to have achieved was approximately 4%, while the rest of the Hedge Funds experienced annualized returns of -16.70% to -33.25%. While these actual performance numbers demonstrate the disparity between what Nadel and others were claiming the Hedge Funds were achieving, the performance of each individual Hedge Fund is not significant because it appears that Nadel arbitrarily allocated daily results of trading transactions among the Hedge Funds. This activity resulted in the commingling of the Hedge Funds' assets and makes the performance results of each individual Hedge Fund immaterial. In short, Nadel was losing significant sums of money while representing that he was achieving annual returns from 18.93% to 48.67% (for years with full activity).

Further, as shown by the chart below, while the Hedge Funds' accounts experienced losses, all but one of Nadel's personal accounts and other accounts maintained essentially for the benefit of Nadel and in the sole control of Nadel (collectively referred to herein as "Nadel's Accounts") experienced significant gains.

Account Name	Account Profit/Losses	Overall Annualized Rate of Return
Scoop Capital LLC 12/01/04 – 12/31/08	\$11,331,464	49.37%
Scoop Management 10/01/02 – 12/31/08	\$737,141	36.72%
Arthur Nadel 6/01/02 – 10/31/08	\$10,781,029	71.62%
Marguerite Nadel 8/01/07 – 1/30/09	\$10,033	-15.49%
<b>Non-Fund Total</b>	<b>\$22,859,667</b>	

The trading activity in the Hedge Funds' accounts and Nadel's Accounts appears to have been essentially the same, and trading in those accounts was done concurrently. Virtually all trading allocated to every account was in quadruple-Qs. Given the dramatic differences in trading results in Nadel's accounts as compared to the Hedge Funds' accounts and preliminary information received by the Receiver concerning Nadel's trading practices, the Receiver believes that this evidence may indicate that Nadel engaged in a fraudulent practice known as "cherry picking." In cherry picking, the trader allocates profitable trades to himself and unprofitable trades to clients. *See, e.g., S.E.C. v. K.W. Brown and Co.*, 555 F. Supp. 2d 1275, 1302-1307 (S.D. Fla. 2007) (holding that "cherry-picking" day-trading scheme operated by officers constituted scheme to defraud under Securities Exchange Act). Analysis of the trading activity and cash flows is ongoing. However, in light of the fact that Nadel traded the same investments for all Hedge Funds and the accounts he owned and/or controlled for his benefit and that there was a wide disparity between the results allocated to the Hedge Funds' accounts and those allocated to Nadel's Accounts, there is no apparent logical explanation other than the improper diversion of profitable transactions by Nadel.

**B. Funds located by the Receiver.**

At the outset of the Receivership, approximately \$556,758.33 in cash and cash equivalents in financial accounts titled in the name of the Hedge Funds and Investment Managers (which include Scoop Management, Scoop Capital, Valhalla Management, and Victory Management) had been identified and frozen pursuant to the Court's TRO and Preliminary Injunction Orders. In addition, cash and cash equivalents in financial accounts

titled in the name of other Receivership Entities<sup>5</sup> at the time the entities were brought into receivership were approximately \$556,654.72. Thus, total cash and cash equivalents at the inception of the Receivership and as the Receivership was expanded to include each additional Receivership Entity indicated was approximately \$1,113,413.05.<sup>6</sup>

One of the Receiver's highest priorities is to locate and recover any additional funds. The Receiver has retained a forensic accounting firm to assist in tracing funds. As of the date of this report, the Receiver has also identified and recovered \$120,000.<sup>7</sup> From January 21, 2009 through February 28, 2009, the Receiver also received \$260,789.98 in business income from ongoing operations of some Receivership Entities, \$9,371 in interest/dividend income and \$30 in miscellaneous income. The Receiver will continue to diligently investigate, and will update the Court and the investors if additional funds are located.

#### **V. The Receiver's First Sixty Days**

In the first sixty days, the Receiver took a number of steps to fulfill his mandates under the Order Appointing Receiver.

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<sup>5</sup> These other Receivership Entities include Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; and the Marguerite J. Nadel Revocable Trust UAD 8/2/2007.

<sup>6</sup> This amount does not include any sum for non-cash or non-cash equivalent assets the Receiver has recovered. For a discussion of these assets, please refer to Sections V.B. & V.D. below.

<sup>7</sup> This amount is comprised of two \$60,000 payments the Receiver recovered from two individuals. The Receiver determined that the transfers made to these individuals in the amount of \$60,000 each were an improper diversion of investor funds and obtained court orders to recover these funds.

**A. Taking possession of Receivership Property.**

**1. Physical premises and tangible assets.**

On the day of his appointment, the Receiver took possession of the Receivership Entities' offices at 1618 Main Street, Sarasota, FL 34236 (the "Office"). The Office was used by Nadel as the headquarters for administering his control of the Receivership Entities. The Receiver secured the premises by changing the locks. The Receiver has inventoried all of the physical property at the premises and is in the process of removing the Office's contents to either the Receiver's offices in Tampa, Florida, or his information technology expert's offices in Clearwater, Florida. The Receiver is also attempting to sell any of these contents that have value and that may be sold at this time and returning or otherwise disposing of any leased equipment.

The office contained books and records of the Receivership Entities and Mr. Nadel, some office furniture, and computer and other electronic equipment. Based on bids from furniture liquidators, the estimated resale value of the furniture and office fixtures is \$3,400. The Receiver has provided change of address notifications to the United States Postal Service and Federal Express, as well as all known service providers to the Receivership Entities.

The Receiver also removed several servers and related computer equipment from the premises that were used by the Receivership Entities and Mr. Nadel. The Receiver retained experienced forensic information technology experts with the firm of E-Hounds, Inc. to assist in securing and analyzing the electronic data on the computers. E-Hounds personnel have secured the data, and are underway in their forensic analysis.

Since obtaining control of the Receivership Entities, the Receiver and his professionals have had discussions – including continuing discussions – with a number of people associated with Nadel and/or the Receivership Entities, including officers of some of the Receivership Entities and persons responsible for maintaining the financial books of Receivership Entities, for operating the business of Receivership Entities, for performing accounting services, and for administering the Hedge Funds.

The Receiver and his professionals have also reviewed documents located in the Office; documents obtained from the accountant for one or more Receivership Entities; information stored on the Receivership Entities' 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's businesses with their transactions; and information available in the public record.

**B. Expansion of the Receivership.**

As a result of the review of these records and of the discussions noted above, the Receiver sought and successfully obtained the expansion of the Receivership to include: Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; Laurel Mountain Preserve Homeowners Association, Inc.; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; and A Victorian Garden Florist, LLC. The Receiver's investigation revealed that Nadel had control and/or a full or partial interest in these additional businesses and that they were purchased and/or funded with money derived from Nadel's fraudulent investment scheme. Further, by virtue of Scoop Capital's ownership interest in Home Front Homes, LLC and

Summer Place Development Corporation the Receiver also has control of these entities although for various reasons a formal order expanding the Receivership to include Home Front Homes or Summer Place Development has not been sought.

Included in the discussion below of these entities is a description of assets the Receiver has acquired as a result of their inclusion in the Receivership. Where possible the Receiver has included estimated values of these assets. However, given the state of the U.S. economy at the time of this Report, it is important to note that any such estimations, valuations or appraisals are subject to change. In particular, due to the poor state of the real estate markets, the estimates provided may differ markedly from the actual amounts realized upon the selling of any real property.

**1. Venice Jet Center, LLC.**

Venice Jet Center, LLC ("VJC"), is a Florida limited liability company formed in April 2006. Its principal address is the Office, and Nadel was its registered agent and the managing member. The assets of VJC were purchased with proceeds of Nadel's scheme, and over time additional proceeds of the scheme were transferred to VJC. VJC is a viable business with potential to generate assets for the Receivership estate.

On January 27, 2009, the Court expanded the Receivership to include VJC. VJC is a fully operating FBO business. It includes a flight school, fueling service, hangar rentals, and a café. Since the Receiver's appointment as Receiver of VJC, he has taken control of it and is continuing to operate the business. The Receiver is continuing VJC's longstanding pursuit of a permit to build new hangars at the VJC. The Receiver believes that the permit to build more hangars, which was requested well before the Receiver's appointment, will make the VJC



more attractive to potential purchasers and ultimately increase the value of the business. The Receiver has encountered some problems in connection with the ongoing management of the VJC. The City of Venice (the "City"), in contravention of its lease and specific direction from the Federal Aviation Authority ("FAA"), has refused to grant VJC authorization to develop four hangars at the VJC facility. The City officials have publicly announced their intent to terminate the VJC lease with the City and take over VJC's operations. The Receiver intends to vigorously resist any unwarranted interference by the City with what appears to be a substantial and valuable property right of VJC (and of the Receivership estate).

The Receiver has possession and control of a building owned by VJC located at 400 Airport Avenue East, Venice, Florida, 34285 (the "VJC Building"). The VJC Building has one known encumbrance: a loan with Northern Trust Bank, N.A., on which there is a remaining balance of \$1,978,274.00.

The Receiver estimates VJC has significant value in excess of the funds owed to Northern Trust. However, this value is subject to change depending on the resolution of the hangar permit issue. The Receiver has received significant interest in the purchase of VJC. Parties interested in marketing or purchasing this property should contact the Receiver directly.

## **2. Tradewind, LLC.**

The information reviewed to date shows that Nadel was also the managing member of Tradewind, LLC ("Tradewind"). Tradewind was formed in Delaware in January 2004, and registered for the first time in Florida in March 2008. Nadel was Tradewind's managing member and its registered agent, and Tradewind's principal address was the Office. The

Receiver discovered that Tradewind owns and controls five planes and one helicopter. Tradewind also owns 31 airport hangars at the Newnan-Coweta County Airport in Georgia (the "Georgia Hangars"). The Receiver's investigation revealed that Tradewind was funded with money from Nadel's scheme. Similar to VJC, Tradewind appears to be a viable business with potential to generate assets for the Receivership estate.

On January 27, 2009, the Court expanded the Receivership to include Tradewind. Tradewind is a fully operating business. Since the Receiver's appointment as Receiver of Tradewind, he has taken control of it and is continuing to operate the business. Tradewind collects approximately \$28,000 in monthly rent (mainly from the hangars) and incurs varying monthly expenses, which include land rent, loan payments, payroll, and various utilities. The Receiver is entertaining offers to purchase this business or any of its assets.

The Receiver has possession and control of the Georgia Hangars. The Georgia Hangars have one known encumbrance: a loan with the Bank of Coweta with a remaining balance of approximately \$963,106.37, and monthly payments of \$8,055. There is also monthly rent of \$2,805 due to the Newnan Coweta Aviation Authority. The Receiver has been making these monthly payments as he believes they are in the best interest of the Receivership.

The Receiver also has possession and control of the five planes and helicopter. The following table shows the year, model, and known encumbrances relating to each aircraft.

**Aircraft in Receiver's Possession**

Model	Year	Type of Aircraft	Known Encumbrance
Piper PA-28/140	1971	Airplane	None.
Cessna 152	1978	Airplane	None.
Learjet 31A	1996	Airplane	Loan with General Electric Capital Corporation ("GECC") entered into on May 17, 2006, for approximately \$2.4 million.
Citation	1992	Airplane	Loan with VFS Financing, Inc. ("VFS") entered into on May 23, 2008, for approximately \$2.1 million
Baron	1977	Airplane	None.
Schweizer 300	1997	Helicopter	None.

The Receiver currently is negotiating with GECC and VFS to reach an agreement for disposition of the LearJet and Citation in a manner that would be in the best interest of the Receivership estate. Also, the Receiver is currently evaluating the value of the other aircraft and determining the appropriate method of their disposition.

**3. Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; and Laurel Mountain Preserve Homeowners Association, Inc.**

The Receiver's investigation revealed that Laurel Mountain Preserve, LLC ("Laurel Mountain"), was a North Carolina limited liability company formed in or about December 2003. Laurel Mountain was "withdrawn" as a limited liability company in January 2006. Its principal address was the Office, and its manager and member was Nadel. Laurel Preserve, LLC ("Laurel Preserve"), was formed as a North Carolina limited liability company in February 2006. Its principal address was the Office, Nadel was its registered agent, and the "Registered Office" address was a home in Fairview, North Carolina titled in the names of Nadel and his wife. The manager was Nadel, and although Laurel Preserve's 2006 Operating

Agreement identifies Nadel and his wife as members of Laurel Preserve with each having made a "capital contribution" of \$750, the Laurel Preserve 2007 federal income tax return identifies Scoop Capital as owner of 100% of Laurel Preserve.

Laurel Mountain Preserve Homeowners Association, Inc. (the "HOA"), is a North Carolina non-profit corporation formed in March 2006. Its principal address was the Fairview, North Carolina home, and its registered agent was Nadel.

Documentation reviewed and information obtained by the Receiver showed that Laurel Preserve holds title to approximately 420 acres near Asheville, North Carolina in Buncombe and McDowell counties, intended for development of home-sites (the "Laurel Mountain Property"). The Laurel Mountain Property was originally purchased by Laurel Mountain in 2003 and then "sold" to Laurel Preserve in February 2006. Laurel Mountain provided financing for that purchase in the form of a \$2,900,000 loan to Laurel Preserve.

According to documentation retrieved from the Office, Laurel Mountain and Laurel Preserve received significant funding in the form of "loans" from Scoop Capital, Scoop Management, Tradewind, Nadel and Mrs. Nadel and BB&T Bank. On February 11, 2009, the Court expanded the Receivership to include Laurel Mountain, Laurel Preserve, and the HOA. Since the Receiver's appointment as Receiver of these entities, he has taken control of them and is working on marketing for sale the Laurel Mountain Property. This property currently does not generate any income.

The Laurel Mountain Property encompasses 29 lots, including 23 estate-sized and 6 cottage-sized lots. There is also a cabin on this property that, according to the Buncombe

County Property Appraiser, is valued at \$319,800. The Laurel Mountain Property is fully developed: infrastructure and utilities are currently in place and are fully functional.

The Laurel Mountain Property has three known encumbrances. The first encumbrance is a \$360,157.37 loan from BB&T Bank. The second encumbrance is a \$1,900,000 interest only loan from Wachovia Bank, N.A. There is a monthly payment of \$5,149.66 due on this latter loan and the Receiver presently is not making payments on this loan. The third encumbrance is an easement of approximately 169 acres of the Laurel Mountain Property, which was granted to a land conservancy in 2005. It appears that this donation was made in part for the Nadels' own tax benefit. The Receiver is contemplating whether it would be in the best interests of the Receivership to seek to recover this easement from the conservancy as it may create an exponential increase in the value of the full acreage.

The Receiver has consulted with a realtor who previously listed the property and is entertaining offers to purchase or proposals to market this developed property either by lot or in its entirety. The Receiver is still evaluating the current value of this property, but it appears that the value is higher than the amount of the encumbrances. For more information regarding this property, please refer to <http://www.laurelmountainpreserve.com/>. Parties interested in marketing or purchasing this property should contact the Receiver directly.

**4. Marguerite J. Nadel Revocable Trust UAD 8/2/2007.**

The Marguerite J. Nadel Revocable Trust Under Agreement Dated 8/2/2007 (the "Trust") was created on August 2, 2007. The trustee is identified as Mrs. Nadel. The Receiver's investigation revealed that the Trust was funded entirely with proceeds of Nadel's scheme through (1) a transfer of \$500,000 from Scoop Management in August 2007 and (2) a

transfer of \$150,000 from Scoop Capital on the day before Nadel fled. It also revealed that Nadel controlled the account in which the money held by the Trust purchased and sold securities. Significantly, as alleged in the criminal complaint against Nadel, in an apparent note Nadel left for his wife before fleeing, he instructed her to "use the trust (yours) to your benefit as much and as soon as possible." *United States v. Nadel*, Case No. 09 MAG 169 (S.D.N.Y.), Compl. ¶ 17, attached as Exhibit 14 to the Receiver's Declaration in Support of Second Unopposed Motion to Expand receivership (Doc. 37-15).

Since the Receiver's appointment as Receiver of this Trust, he has taken control of the bank account owned by the Trust. Currently, there is approximately \$381,142.34 remaining in this account.

#### **5. Guy-Nadel Foundation, Inc.**

The Guy-Nadel Foundation, Inc. (the "Foundation"), is a Florida non-profit corporation formed in December 2003 for "charitable, educational and scientific purposes." Nadel was the Foundation's incorporator and its registered agent. Further, according to its 2006 federal tax return, the Foundation's President is Nadel. The Foundation's current principal address is the Office.

The Receiver has gathered information that indicates the Foundation was funded with proceeds of Nadel's scheme, which were transferred directly from Scoop Capital or indirectly through transfers from the Nadels' personal accounts. In addition, in December 2003 and December 2004, the Foundation was deeded approximately 22 lots located in North Carolina from Laurel Mountain and Nadel and his wife. These lots are essentially adjacent to each other. The lots appear to have been purchased by Laurel Mountain and the Nadels as part of

the same general transaction in which Laurel Mountain purchased the Laurel Mountain Property. At the time of those transactions, Nadel was already perpetrating his scheme, and essentially all of the Nadels' income was derived from that scheme.

Additionally, the Receiver has possession and control of two small parcels of unimproved land in Thomasville, Georgia (this land is separate from the Thomasville Property discussed in section V.D.1.a, below) owned by the Foundation. According to the Thomas County Tax Assessor's Office, one of the parcels is approximately 1.17 acres with a land value of \$30,762 and a free-standing garage with a value of \$3,928. The other parcel is .12 acres with a land value of \$4,276.

On March 9, 2009, the Court expanded the Receivership to include the Foundation. Since the Receiver's appointment as Receiver of the Foundation, he has taken control of it and is working on marketing the real property owned by the Foundation.

**6. Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC.**

Lime Avenue Enterprises, LLC ("Lime") is a Florida limited liability company formed in August 2006 for "any and all lawful business." Lime owns a building located at 599 North Lime Avenue, Sarasota, Florida 34237 (the "Lime Building"). Lime purchased the Lime Building in August 2006. Public records and other information reviewed by the Receiver indicate that Lime was formed by the Nadels for the specific purpose of purchasing the Lime Building. The Lime Building houses a flower shop, which is owned by A Victorian Garden Florist, LLC ("Victorian Garden"), a Florida limited liability company formed in April 2005. The Receiver's investigation revealed that Lime and Victorian Garden were funded with proceeds from Nadel's scheme.

On March 17, 2009, the Court expanded the Receivership to include Lime and Victorian Garden. Since the Receiver's appointment as Receiver of these entities, he has taken control of them and is working on reviewing their books and records and determining the most prudent course of action to take. In that regard, the Receiver is evaluating whether the flower shop's operations are profitable and whether it is in the best interest of the Receivership estate to maintain ownership of this business.

The Receiver has possession and control of the Lime Building. The Lime Building has one known encumbrance: a mortgage owed to the individuals who sold the building to Lime on which the balance is approximately \$600,000. The Receiver is presently attempting to determine the value of this property. The Receiver also has possession and control of two vans owned by Lime: a 1999 Ford van and a 2003 Dodge van. The Receiver does not have any estimation of value of these vans at this time. There are no known encumbrances on these vans.

**7. Home Front Homes, LLC.**

Home Front Homes, LLC ("Home Front Homes") is a Florida limited-liability company that was formed in 2006 for the purpose of "any and all lawful business." The Receiver has not sought a formal order expanding the Receivership to include Home Front Homes. However, as of April 15, 2008, Nadel was the sole managing member of Home Front Homes, and Scoop Capital owns a majority equity interest in Home Front Homes. By virtue of this controlling interest, the Receiver has assumed control over Home Front Homes and is directing the operation of that company for the benefit of the Receivership estate.



Home Front Homes is engaged in the business of manufacturing, marketing, and selling energy-efficient homes. Home Front Homes is an operating business. The Receiver intends to sell Scoop Capital's equity interest in this entity in a manner which would be most beneficial to the Receivership estate. To date, the Receiver has not sought to bring this business as a whole into the Receivership and likely will not do so absent a necessity to protect the operation from creditors while the business or the Receiver's interest therein is being sold. Parties interested in marketing or purchasing this business should contact the Receiver directly.

**8. Summer Place Development Corporation.**

Summer Place Development Corporation ("Summer Place") is a Florida company that was formed in 2005 for the purpose of "any and all lawful business." The Receiver has not sought a formal order expanding the Receivership to include Summer Place. However, as of January 20, 2007, Nadel was a managing member of Summer Place, and Scoop Capital owns a fifty-percent interest in Summer Place. By virtue of this fifty-percent interest, the Receiver has not assumed full control over Summer Place, but is working with the other managing member and fifty-percent owner in directing the operation of Summer Place for the benefit of the Receivership estate.

Summer Place is the owner of a proposed affordable residential housing development site in Manatee County, Florida. Summer Place is an operating business. The Receiver intends to sell Scoop Capital's equity interest in this entity in a manner which would be most beneficial to the Receivership estate. Parties interested in marketing or purchasing this business should contact the Receiver directly.

**C. Securing Receivership Funds.**

Upon his appointment, the Receiver was initially concerned that the Receivership Entities might hold positions in volatile securities that would require an exit strategy to avoid or minimize losses. The Receiver immediately investigated the nature of the Receivership's holdings and determined that no such exit strategies were required because almost all of the relatively liquid holdings were in cash or cash equivalents.<sup>8</sup>

The Receiver coordinated with the SEC to move swiftly to freeze all funds of which they were aware. The Receiver and his attorneys engaged in a preliminary review of documents and other information for the purpose of identifying institutions that potentially held relevant financial accounts or lines of credit. The Receiver immediately forwarded copies of the asset freeze orders to the pertinent institutions and confirmed that they understood their obligations under the freeze orders.

Receivership funds are currently being held in six different institutions: (1) Northern Trust Bank, N.A.; (2) Wachovia Bank, N.A.; (3) Shoreline Trading Group, LLC; (4) Branch Banking and Trust Company ("BB&T"); (5) Bank of Coweta; and (6) Thomasville National Bank. VJC also maintains an insignificant amount of funds in a small operating account with Bank of America. Attached as Exhibit A to this Interim Report is a cash accounting report showing the amount of money on hand at inception of the Receivership (January 21, 2009) less operating expenses plus revenue through February 28, 2009. This cash accounting report does not reflect non-cash or non-cash equivalent assets. Thus, the value of all property

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<sup>8</sup> See Section V.D.2.b. *infra* for a discussion of the Receivership estate's securities holdings.

discussed in Section V.B. above and Section V.D. below is not included in this report. All Receivership funds are currently being held in non-interest bearing accounts. The Receiver is contemplating the most appropriate action to take with respect to these funds in light of the current state of the economy and financial institutions. He will likely consolidate the funds into one to three institutions and will explore the relative benefits and risks of moving the funds into interest-bearing accounts and/or revenue-generating investments.

**D. Other Assets Recovered.**

In addition to the assets discussed in conjunction with the expansion of the Receivership in section V.B. above, the Receiver has also recovered a number of other assets, most of which are in the process of being valued, assessed, and otherwise analyzed for liquidation, disposition, or other action. Again, given the state of the U.S. economy at the time of submission of this Report, the Receiver emphasizes that any estimates, appraisals, or valuations are subject to change because of market forces. In particular, due to the poor state of the real estate markets, the estimates provided in section V.D.1 below may be significantly different from the amounts realized upon selling such real property.

**1. Real Property.**

**a. Thomasville, Georgia.**

The Receiver has possession and control of approximately 14 acres in Thomasville, Georgia (the "Thomasville Property"). The Thomasville Property encompasses 45 lots, 44 of which are vacant. A home on one of the Thomasville Property lots was built by Home Front Homes. After its purchase, approximately \$750,000 of infrastructure was added to the Thomasville Property. The Thomasville Property is fully developed: infrastructure and

utilities are currently in place and are fully functional. First Realty & Appraisal Services, Inc., prepared appraisal reports of two lots on the Thomasville Property. As of February 5, 2009, the lot with the home on it was valued at \$123,500. Also as of February 5, 2009, a vacant lot on the Thomasville Property was valued at \$14,000.

The Thomasville Property has two known encumbrances. The first encumbrance is a \$600,000 loan, on which a \$576,000 balance is due. All interest has been paid for the year 2008, and no interest is due until December 2009. The second encumbrance is a loan for \$142,600 for the construction of the house. Both of these loans mature in December 2009. The Thomasville Property currently is not generating any income.

The Thomasville Property is ready for sale with 45 lots having all utilities, roads, and other improvements. RE/MAX of Thomasville had previously listed the property on its website. The Receiver is presently determining the appropriate method and agents to use to market this property. Parties interested in marketing or purchasing this property should contact the Receiver directly.

**b. Grady County, Georgia.**

The Receiver very recently was made aware of approximately 37.5 acres owned by Scoop Capital in Grady County, Georgia (the "Grady Property"). According to Grady County public records, the land value of the Grady Property in 2008 was \$151,125. The Receiver is currently determining the best course of action to take regarding this land. Parties interested in marketing or purchasing this property should contact the Receiver directly.

**c. Graham, North Carolina.<sup>9</sup>**

The Receiver has possession and control of a building located at 841 South Main Street, Graham, North Carolina 27253 (the "Rite-Aid Building"). This building was purchased for \$2,655,000 and is currently being leased to a Rite-Aid Pharmacy for \$33,073.08 per month under an absolute net lease.<sup>10</sup> The Rite-Aid Building has one known encumbrance: a loan with Wachovia Bank on which there is a remaining balance of approximately \$2,655,000. Parties interested in marketing or purchasing this property should contact the Receiver directly.

**d. Raleigh, North Carolina.**

The Receiver has possession and control of a building located at 4905 Waters Edge, Raleigh, North Carolina 27060 (the "EDS Building"). This building was purchased for \$1,900,000 and is currently being leased to Electronic Data Systems ("EDS"), a technology services provider, for \$29,688.54 per month under a double net lease.<sup>11</sup> The EDS Building has no known encumbrances. Parties interested in marketing or purchasing this property should contact the Receiver directly.

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<sup>9</sup> The properties described in this subsection and the following subsections d, e, and f appear to have been purchased through Scoop Real Estate Fund. However, in light of the commingling of assets among all Receivership Entities, these properties appear to be appropriately attributed as general assets of the Receivership estate.

<sup>10</sup> Under an "absolute net lease," a tenant is required to pay all operating expenses of the property, and the landlord receives a net rent.

<sup>11</sup> Under a "double net lease," the tenant pays all taxes and insurance expenses that arise from the use of the property. The tenant pays rent, and the landlord pays maintenance expenses.

**e. Tupelo, Mississippi.**

The Receiver has possession and control of a building located at 2433 West Main Street, Tupelo, Mississippi 38801 (the "Starbucks Building"). This building was purchased for \$941,000 and is currently being leased to Starbucks (Store #8809) for \$5,745.83 per month under an absolute net lease. The Starbucks Building has no known encumbrances. Parties interested in marketing or purchasing this property should contact the Receiver directly.

**f. Newnan, Georgia.**

The Receiver has possession and control of a gas station located at 5 McCollum Station, Newnan, Georgia 30265 (the "Gas Station"). This gas station was purchased for \$2,450,000 and is currently being leased to a Shell Gas franchisee for \$10,800 per month. The Gas Station has no known encumbrances. Parties interested in marketing or purchasing this property should contact the Receiver directly.

**2. Vehicles and Other Items.**

**a. Vehicles.**

The Receiver assumed control of three vehicles: (1) 2008 Mercedes-Benz E63 ("Mercedes"); (2) 2009 Volkswagen EOS ("Volkswagen"); and (3) Maserati Grand Turismo ("Maserati"). These vehicles were used by Neil and Christopher Moody. The Mercedes and Volkswagen were leased by Valhalla Management. Because there was no value to these vehicles and only the continuing obligation of lease payments, the Receiver surrendered them to the leasing company without penalty and without the lessor retaining any claim to Receivership assets. The Maserati was leased by Viking Management. As with the Mercedes

and Volkswagen, because there was no value to this vehicle and only the continuing obligation of lease payments, the Receiver surrendered the Maserati to the leasing company without penalty and without the lessor retaining any claim to Receivership assets.

**b. Other Items.**

The Receiver has also recovered a myriad of other items that he may be able to sell, including a variety of furniture, fixtures, computers, and miscellaneous supplies. The Receiver will take reasonable efforts to maximize the amount he is able to recover from the possible sale of all of these items.

The Receivership Entities also have a certificate of deposit ("CD") and a promissory note. Northern Trust Bank issued the CD for approximately \$1.5 million. There is also a loan with Northern Trust for \$1.5 million with a maturity date of December 1, 2011. The Receiver is still reviewing the nature of this loan and its relationship to the CD. The promissory note is from Quest Energy Management and two individuals to Valhalla Investment Partners in the amount of \$1,100,000. Interest is being paid on this note.

The Receiver also has an investment in a public company, Bonds.com, that includes a convertible note and equity securities. The Receiver has been in contact with the company and is working on gaining an understanding of the value of these holdings and possible methods for liquidation of the same at a future time.

**E. Contemplated Litigation.**

**1. False Profits Obtained by Some Investors.**

The Receiver has determined that some purported investor accounts received monies in an amount that exceeded their investments. The Receiver intends to seek to recover these

false profits and redistribute the funds more equitably among investors holding legitimate and allowed claims.

**2. Moodys.**

From the Receiver's investigation to date, it appears that a significant portion of activities of certain Hedge Funds were managed and directed by Christopher and Neil Moody. The Receiver believes that the Moodys had fiduciary responsibility with respect to the management of these Funds. From the documentation reviewed to date, the Moodys have received millions of dollars as a result of their efforts and participation in Nadel's activities. The Receiver will institute appropriate efforts regarding the Moodys to recover this money or assets that were acquired with this money.

**3. Other Litigation.**

The Receiver previously has been contacted by the law firm of Johnson, Pope, Bokor, Ruppel & Burns, LLP ("Johnson Pope") regarding the institution of a class action against Holland & Knight, the law firm that prepared the private placement memoranda used to solicit investors into the Nadel scheme. On March 20, 2009, Johnson Pope on behalf of Michael Sullivan and others similarly situated, instituted a class action suit against Holland & Knight, *Michael Sullivan v. Holland & Knight LLP*, Case No. 09-cv-0531-EAJ (M.D. Fla.). Should Johnson Pope be successful in this litigation it is likely that the claims process created for the Receivership estate for distributions to investors with legitimate and allowed claims will be used to distribute any proceeds.



**F. Investigating Receivership Affairs, and Recovering Receivership Funds.**

The Receiver has retained the services of PDR Certified Public Accountants (“PDR”), forensic accountants, to assist in investigating and analyzing the flow of funds both in and out of the Receivership Entities, and to assist in locating additional funds, if any. The Receiver has also retained the services of Riverside Financial Group (“Riverside”), financial analysts to assist in investigating and analyzing all of the trading activity. In conjunction with the Receiver, PDR and Riverside are further attempting to identify additional individuals and/or entities who may be in possession of Receivership funds. PDR will also assist in determining the amount of each investor’s loss.

**VI. The Next Sixty Days**

The Receiver has received only a portion of the documents he has subpoenaed from third parties. It will be necessary to obtain and review all such documents in order to complete an understanding of the flow of funds through the Receivership Entities, to identify any additional sources of recovery, and to prepare an accounting. The Receiver is working diligently on this task, but without knowing the volume of documents he expects to receive, it is difficult to estimate the time needed for completion.

During this process, the Receiver is also compiling and analyzing individual investor accounts. This is a necessary task to assess and administer investor claims. The Receiver will likely ask all investors to send him copies of all documentation related to their investments in the Hedge Funds. He will review and analyze all documents relating to each investment to determine the amounts owed, if any, to each investor. The Receiver does not expect to

commence the claims process until late 2009 or early 2010. The Receiver will provide a more definitive time estimate as his analysis progresses.

The Receiver is also reviewing information to determine if any third parties may have liability either to the Receivership estate or investors. In this regard it should be anticipated that the Receiver will bring actions in the future.

The Receiver will continue to attempt to locate additional funds and other assets and, if appropriate, will institute proceedings to recover assets on behalf of the Receivership Entities. In an effort to more fully understand the conduct at issue and in an attempt to locate more assets, the Receiver will continue to conduct interviews and/or depositions of parties and third parties with knowledge.

The Receiver will also continue the operations of all ongoing businesses of the Receivership Entities to maintain and, if possible, enhance their value. The Receiver will continue to market properties for sale and entertain offers for purchase.

## **VII. Conclusion**

Creditors and investors in the Receivership Entities are encouraged to periodically check the informational website (<http://www.nadelreceivership.com/>) for current information concerning this Receivership. The Receiver and his counsel have received an enormous amount of emails and telephone inquiries and have had to expend significant resources to address them. To minimize those expenses, creditors and investors are strongly encouraged to consult the Receiver's website before contacting the Receiver or his counsel. However, the Receiver continues to encourage individuals or attorneys representing investors who may have information that may be helpful in securing further assets for the Receivership estate or

identifying other potential parties who may have liability to either the Receivership estate or investors directly to either email [ksalo@fowlerwhite.com](mailto:ksalo@fowlerwhite.com), or call Kathy Salo at 813-228-7411.

Dated this 3<sup>rd</sup> day of April, 2009.

Respectfully submitted,

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

FOWLER WHITE BOGGS P.A.  
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Tampa, Florida 33602  
Phone: 813-228-7411  
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**Standardized Fund Accounting Report  
for Consolidated Receivership Entities - Cash Basis  
Reporting Period 01/21/09 to 02/28/09**

Fund Accounting (See Instructions):

	<u>Detail</u>	<u>Subtotal</u>	<u>Grand Total</u>
Line 1	Beginning Balance (As of 01/21/09):		1,113,413.05
	<b><i>Increases in Fund Balance:</i></b>		
Line 2	Business Income	260,789.98	
Line 3	Cash and Securities		
Line 4	Interest/Dividend Income	9,371.81	
Line 5	Business Asset Liquidation		
Line 6	Personal Asset Liquidation	120,000.00	
Line 7	Third-Party Litigation Income		
Line 8	Miscellaneous - Other	30.00	
	<b>Total Funds Available (Line 1 - 8):</b>	<u>390,191.79</u>	<u>1,503,604.84</u>
	<b><i>Decreases in Fund Balance:</i></b>		
Line 9	Disbursements to Investors		
Line 10	Disbursements for Receivership in Operations		
Line 10a	Disbursements to Receiver or Other Professionals		
Line 10b	Business Asset Expenses	183,825.54	
Line 10c	Personal Asset Expenses	20,000.00	
Line 10d	Investment Expenses		
Line 10e	Third-Party Litigation Expenses		
	1. Attorney Fees		
	2. Litigation Expenses		
	<b>Total Third-Party Litigation Expenses</b>		
Line 10f	Tax Administrator Fees and Bonds		
Line 10g	Federal and State Tax Payments		
	<b>Total Disbursements for Receivership Operations</b>	<u>203,825.54</u>	<u>203,825.54</u>
Line 11	Disbursements for Distribution Expenses Paid by the Fund:		
Line 11a	Distribution Plan Development Expenses:		
	1. Fees:		
	Fund Administrator		
	Independent Distribution Consultant (IDC)		
	Distribution Agent		
	Consultants		
	Legal Advisors		
	Tax Advisors		
	2. Administrative Expenses		
	3. Miscellaneous		
	<b>Total Plan Development Expenses</b>	<u>                    </u>	<u>                    </u>

**Standardized Fund Accounting Report  
 for Consolidated Receivership Entities - Cash Basis  
 Reporting Period 01/21/2009 to 02/28/2009**

Fund Accounting (See Instructions):

	<u>Detail</u>	<u>Subtotal</u>	<u>Grand Total</u>
Line 11b Distribution Plan Implementation Expenses:			
1. Fees:			
Fund Administrator			
IDC			
Distribution Agent			
Consultants			
Legal Advisors			
Tax Advisors			
2. Administrative Expenses			
3. Investor Identification:			
Notice/Publishing Approved Plan			
Claimant Identification			
Claims Processing			
Web Site Maintenance/Call Center			
4. Fund Administrator Bond			
5. Miscellaneous			
6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
<b>Total Plan Implementation Expenses</b>			
<b>Total Disbursements for Distribution Expenses Paid by the Fund</b>			
Line 12 Disbursements to Court/Other:			
Line 12a Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b Federal Tax Payments			
<b>Total Disbursements to Court/Other: Total Funds Disbursed (Lines 9 - 11)</b>			
Line 13 Ending Balance (As of 02/28/09)			1,299,779.30
Line 14 Ending Balance of Fund - Net Assets:			1,299,779.30
Line 14a Cash & Cash Equivalents			1,299,779.30
Line 14b Investments			
Line 14c Other Assets or Uncleared Funds			
<b>Total Ending Balance of Fund - Net Assets</b>			1,299,779.30

---

***EXHIBIT B***

---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,	:	<b><u>A F F I R M A T I O N</u></b>
- against -	:	<b>09 Cr. 433 (JGK)</b>
<b>ARTHUR G. NADEL,</b>	:	
Defendant.	:	

-----X

I, **ARTHUR G. NADEL**, hereby declare under penalties of perjury, pursuant to 28 U.S.C. § 1746:

1. I am the defendant in this case. I make this statement in support of a motion to modify the conditions of my pretrial release.

2. I currently have no money and no assets, except for the equity interest in my residence at 3966 Country View Drive, which is held in trust for the benefit of my wife. The SEC Receiver has seized all cash, bank accounts, and property that I previously owned or controlled. The Receiver has also frozen my wife's bank accounts.

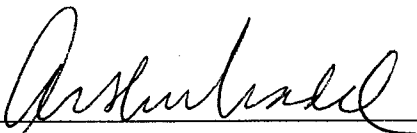
3. I have no access to any money in any account anywhere.

4. I have never held an account in a foreign bank, either directly or indirectly.

5. My entire family resides in the United States. I have no relatives living abroad, nor any friends or business associates living abroad.

I affirm under the penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
May 21, 2009

  
\_\_\_\_\_  
**ARTHUR G. NADEL**



---

***EXHIBIT C***

---



**The Heart  
& Vascular  
Center**  
OF SARASOTA

Clayton E. Bredlau, MD, FACC

**FAX**

To:	Federal Defender	From:	Paulette
Fax:	212-571-0392	Pages:	22
Phone:	312-417-8773	Date:	5-7-09
Re:	ARTHUR NADEL	cc:	

Urgent  For Review  Please Comment  Please Reply  Please Recycle

●Comments: All Records

Please Note:

Unauthorized interception of this telephonic communication could be a violation of federal and state law(s). The documents attached to this transmittal contain confidential information. They belong to the sender and are legally privileged. The information contained herein is intended for you only by the authorized receiver named above. Any other party cannot redisclose it for use. If you are not the authorized receiver you are hereby notified that any disclosure, copying, distribution, or taking in any action in reliance on the information contained herein is prohibited. If you have received these documents in error, notify the sender immediately by telephone to arrange for the return of the original documents to said sender or to receive instructions for their destruction.

1851 HAWTHORNE STREET  
SARASOTA, FL 34239  
PHONE 941-365-0433  
FAX 941-954-2064  
www.heartcenter.com

**Federal Defenders  
 OF NEW YORK, INC.**

Southern District  
 52 Duane Street-10th Floor, New York, NY 10007  
 Tel: (212) 417-8700 Fax: (212) 571-0392

Leonard F. Joy  
 Executive Director

**FAX COVER SHEET**

Southern District of New York  
 John J. Byrnes  
 Attorney-in-Charge

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<b>FAX TO:</b>	Dr. Clayton Bredlav - Medical Records	
<b>FAX NUMBER:</b>	941.954.2064	
<b>DATE SENT:</b>	5/6/9	
<b>SENDER:</b>	Max Kampfer	
<b>NO. OF PAGES:</b>	4	(including this cover sheet)
<b>COMMENTS:</b>	U.S. v. Nadel - Request for Medical Records 09 May. 16 9 Please call to confirm 212 417 8773	
If problems with this transmission occur, please call (212) 417-8700		

Fax No: (212) 571-0392



# Federal Defenders OF NEW YORK, INC.

Southern District  
52 Duane Street-10th Floor, New York, NY 10007  
Tel: (212) 417-8700 Fax: (212) 571-0392

Leonard F. Joy  
Executive Director

May 6, 2009

Southern District of New York  
John J. Byrne  
Attorney-in-Charge

Via Facsimile  
Attn: Medical Records  
Dr. Clayton Bredlau  
Fax: 941.954.2064

Re: United States v. Arthur G. Nadel  
09 Mag 169 (UA)

To Whom It May Concern:

I write from the office of Colleen P. Cassidy, Assistant Federal Defender, attorney for Arthur Nadel in the above-captioned case.

Enclosed please find a release form endorsed by Mr. Nadel authorizing the release of medical records as well as a federal subpoena directing the production of the following:


Any and all records relating to Arthur Nadel, DOB 1/1/1933, SSN 060-26-4425 in the possession of Dr. Bredlau including but not limited to medical and psychological treatment records, testings, treatments, charts, notes, medications, therapies, memos, and any and all other documents related to Dr. Bredlau's care of Mr. Nadel.

Please note that these materials must be returned by May 11th, 2009 to Colleen Cassidy, Federal Defenders of New York, 10<sup>th</sup> Flr, NY, NY 10007. The defendant is indigent invoking Rule 17(b) F.R.CRIM.P as to fees.

If there are questions or problems concerning this matter please contact Ms. Cassidy at (212) 417-8747 or me at the below-listed number.

Thank you for your timely attention to this matter.

Sincerely,

  
Maxwell Kampiner  
Paralegal  
(212) 417-8773

AO 89 (Rev. 11/81) Subpoena in a Criminal Case

SOUTHERN **United States District Court** NEW YORK

UNITED STATES OF AMERICA DISTRICT OF

**SUBPOENA IN A CRIMINAL CASE**

v.

Arthur Nadel,  
Defendant

CASE NUMBER:

09 Mag 169

TO:  
Attn: Medical Records  
Dr. Clayton Bredlau

YOU ARE COMMANDED to appear in the United States District Court at the place, date and time specified below to testify in the above case.


PLACE  UNITED STATES COURTHOUSE 500 PEARL STREET - ROOM 270 NEW YORK, NY 10007 ATTN: COURT SUBPOENA CLERK	COURTROOM  DATE AND TIME ROOM 270  May 11 <sup>th</sup> , 2009
--	--

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

\*\*Any and all records relating to Arthur Nadel, DOB 1/1/1933, SS# 060-26-4425 in the possession of Dr. Bredlau including but not limited to medical and psychological treatment records, testings, treatments, charts, notes, medications, therapies, memos, and any and all other documents related to Dr. Bredlau's care of Mr. Nadel.\*\*

THIS SUBPOENA MAY BE COMPLIED WITH BY HAVING THE INFORMATION DELIVERED TO THE FOLLOWING ADDRESS BY MAY 11<sup>TH</sup>, 2009:

Colleen Cassidy  
Federal Defenders of New York,  
52 Duane Street  
10<sup>th</sup> Flr, NY, NY 10007

U.S. MAGISTRATE JUDGE OR CLERK OF COURT <b>J. MICHAEL McMAHON</b>	DATE
(BY) DEPUTY CLERK 	May 6, 2009

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER  
COLLEEN CASSIDY, ESQ.  
FEDERAL DEFENDERS OF NEW YORK, INC  
52 DUANE STREET- 10<sup>TH</sup> FLR  
NY, NY 10007  
TEL (212) 417-8747

\*\*DEPENDANT IS INDIGENT INVOKING RULE 17(b) F.R.CRIM.P. AS TO FEES

OCA Official Form No.: 960



**AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA**

[This form has been approved by the New York State Department of Health]

Patient Name <b>Arthur G. Nadel</b>	Date of Birth <b>1/1/33</b>	Social Security Number <b>060-26-4425</b>
Patient Address <b>MCL New York</b>		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

- This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV-RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
- If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
- I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
- I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
- Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
- THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information:  
**Dr. Clayton Breddan, M.D.**

8. Name and address of person(s) or category of person to whom this information will be sent:  
**Federal Republics**

9(a). Specific information to be released:

Medical Record from (insert date) \_\_\_\_\_ to (insert date) \_\_\_\_\_

Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.

Other: \_\_\_\_\_

Include: (Indicate by Initialing)

Alcohol/Drug Treatment

Mental Health Information

HIV-Related Information

Authorization to Discuss Health Information

(b)  By initialing here **ca** I authorize **Dr. Clayton Breddan, M.D.** Name of health care provider

to discuss my health information with my attorney, or governmental agency, listed here:  
**Federal Republics**  
 (Attorney/Firm Name or Governmental Agency Name)

10. Reason for release of information:  
 At request of individual  
 Other: **Legal**

11. Date or event on which this authorization will expire:  
**4/30/2010**

12. If not the patient, name of person signing form:

13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

**Arthur G. Nadel**  
 Date: **4/30/09**

LABORATORY REPORT

Page 1

2027

941-756-0000 OR 1-800-298-1111

6419 PARKLAND DRIVE • SARASOTA, FL 34243

NADEL, ARTHUR

PATIENT

2086

REFERRED BY

Doc. Sec. # : 060264425

DR. JOHN E SULLIVAN SR

1880 ARLINGTON STREET, STE. 203  
 SARASOTA FL 34239

Phone # : 941-927-3830

DR. SULLIVAN

*cc for flow + bill*

Date of Birth: 01/01/1933

Age	Sex	Date & Time Collection	Date Received	Originally Reported	Accession Number	Report Status
70	M	09/17/2003 09:15	09/17/2003	09/18/2003 8:02	LL125906	FINAL

Tests ordered: CBCD, PSA

TEST NAME	RESULTS	OUT OF RANGE	EXPECTED VALUE	UNITS
-----------	---------	--------------	----------------	-------

PSA (PROSTATIC SPECIFIC AG.)

9.44

M

< 4.0

ng/mL 01

The laboratory method for this test has changed, however, the reference range has not. IML uses the DPC Immulite 2000 method.

MANUFACTURER'S LIMITATIONS AND RECOMMENDATIONS:

Serum PSA concentrations should not be interpreted as absolute certain evidence for the presence or absence of malignant disease, nor should serum PSA be used alone as a screening test for malignant disease.

Prediction of malignant prostatic disease presence should be based on a complete clinical evaluation of the patient, which may also include serial serum PSA determinations.

Samples should be obtained before biopsy, prostatectomy, or prostatic massage, since manipulation of the prostate gland may lead to elevated PSA levels persisting up to 3 weeks.

PSA expression may be altered due to hormonal therapy for prostate cancer. Consequently, a low PSA result following a prostatic cancer treatment which includes hormonal therapy may not adequately reflect the presence of residual or recurrent disease.

CBC W/ DIFFERENTIAL

WBC	8.3		4.4-10.8	THOU/CMM
RBC			4.7-6.1	MIL/CMM
HEMOGLOBIN	14.5		14.0-18.0	G/DL
HEMATOCRIT			42-52	%
MCV	93		80-100	CU MICRO
MCH	32.9		27-33	PG
MCHC	35.6		31-36	%
RDW	14.4		11.5-14.5	
HDW	2.72		2.2-3.2	
PLATELET COUNT	287		130-400	THOU/CMM
MPV	9.2		6.7-11.1	
SEGS	61		40-74	%
LYMPHOCYTES	31		19-48	%
MONOCYTES	6		0-9	%
EOSINOPHILS	1		0-7	%
BASOPHILS	1		0-2	%
ATYPICAL LYMPHS	2		0-4	%
RBC MORPHOLOGY	NORMAL			



CLIA NO.: 17D0648226 CAP ACCREDITATION NO.: 20646-01  
 10101 RENNER BLVD. LENEXA KS, 66219  
 DIRECTOR: RICHARD BRAUN, MD LAB DIRECTOR: ROBERT L. BRECKENRIDGE, MD  
 PROSTATE SPECIFIC ANTIGEN REPORT

NAME: ARTHUR NADEL

NATIONWIDE - IIP  
 P.O. BOX 182835  
 COLUMBUS, OH 43218-2835  
 ATTN: MICHAEL L. MOORE, M.D.  
 V.P./CHIEF MEDICAL DIRECTOR

DOB/SEX/ST: 03/01/1933 M FL  
 AGENT/AGENCY: JAMES GUY  
 EXAMINER: FL/FORTAMEDIC  
 TICKET NUMBER: 0083215674  
 INS TYPE/AMT: IND LIFE/\$ 2,500,000  
 DATE PERFORMED: 07/25/2003 ECT 56798382  
 INSURANCE KEY:  
 D/T LAST MEAL: 07/22/2003 7:00 AM  
 D/T COLLECTED: 07/22/2003 12:40 PM  
 SERUM APPEAR: NORMAL  
 SOC SEC NO: 063-26-4425

PROSTATE SPECIFIC ANTIGEN RESULTS

DETERMINATION	OUT OF RANGE	NORMAL	USUAL RANGE
PSA (NG/ML)	8.92		< 4.01
PERCENT FREE PSA (%)	9		

THE PERCENT FREE PSA IS INVERSELY PROPORTIONAL TO THE RISK OF PROSTATE CANCER.  
 PERCENT FREE PSA IS NOT ABSOLUTE EVIDENCE OF MALIGNANCY. PERCENT FREE PSA IS PERFORMED USING THE DPC IMMULITE 2000 ASSAY. VALUES OBTAINED WITH DIFFERENT ASSAY METHODS MAY NOT BE INTERCHANGEABLE.



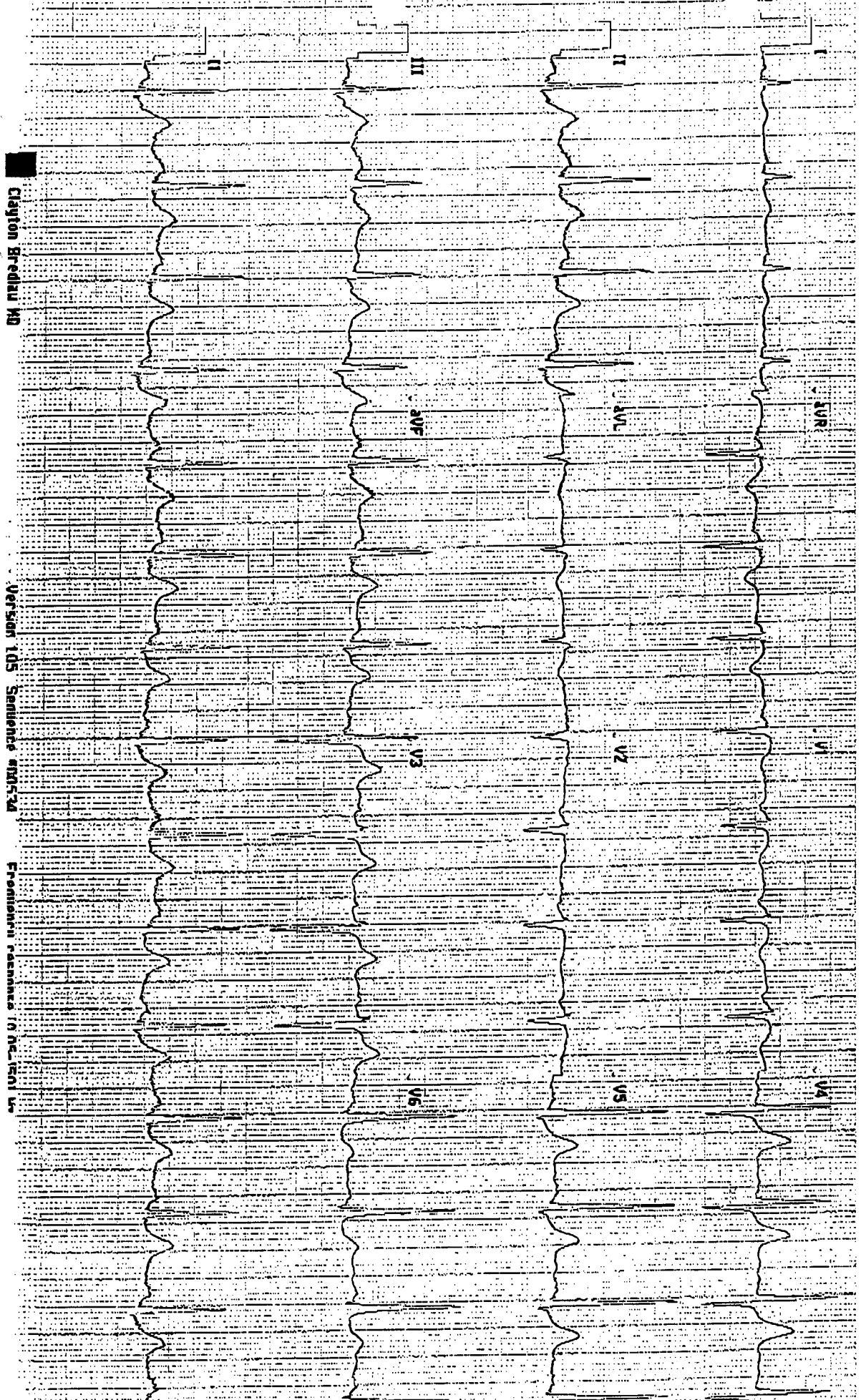
Patient, Mr. [unclear]  
ID: [unclear]  
DOB: 01/01/1933  
7'4", Male

# 380350

7-000-21004 14-9-522  
Vent Rate: 87 BPM  
PR Int: 155 ms  
QRS Dur: 114 ms  
QT/QTc: 376/420 ms  
P-R-T axes: 61 72 77

SINUS RHYTHM  
POSSIBLE LEFT ATRIAL ENLARGEMENT (L-Q, MV) P WAVE IN V1/V2  
NONSPECIFIC INTRAVENTRICULAR CONDUCTION DELAY (MV) NS QRS DURATION  
BORDERLINE ECG  
Unconfirmed

W



Clayton Bredlau MD

Version 1.05 Sentinels 02/05/04

Frontierline Reference 10 Dec 1991 Ver

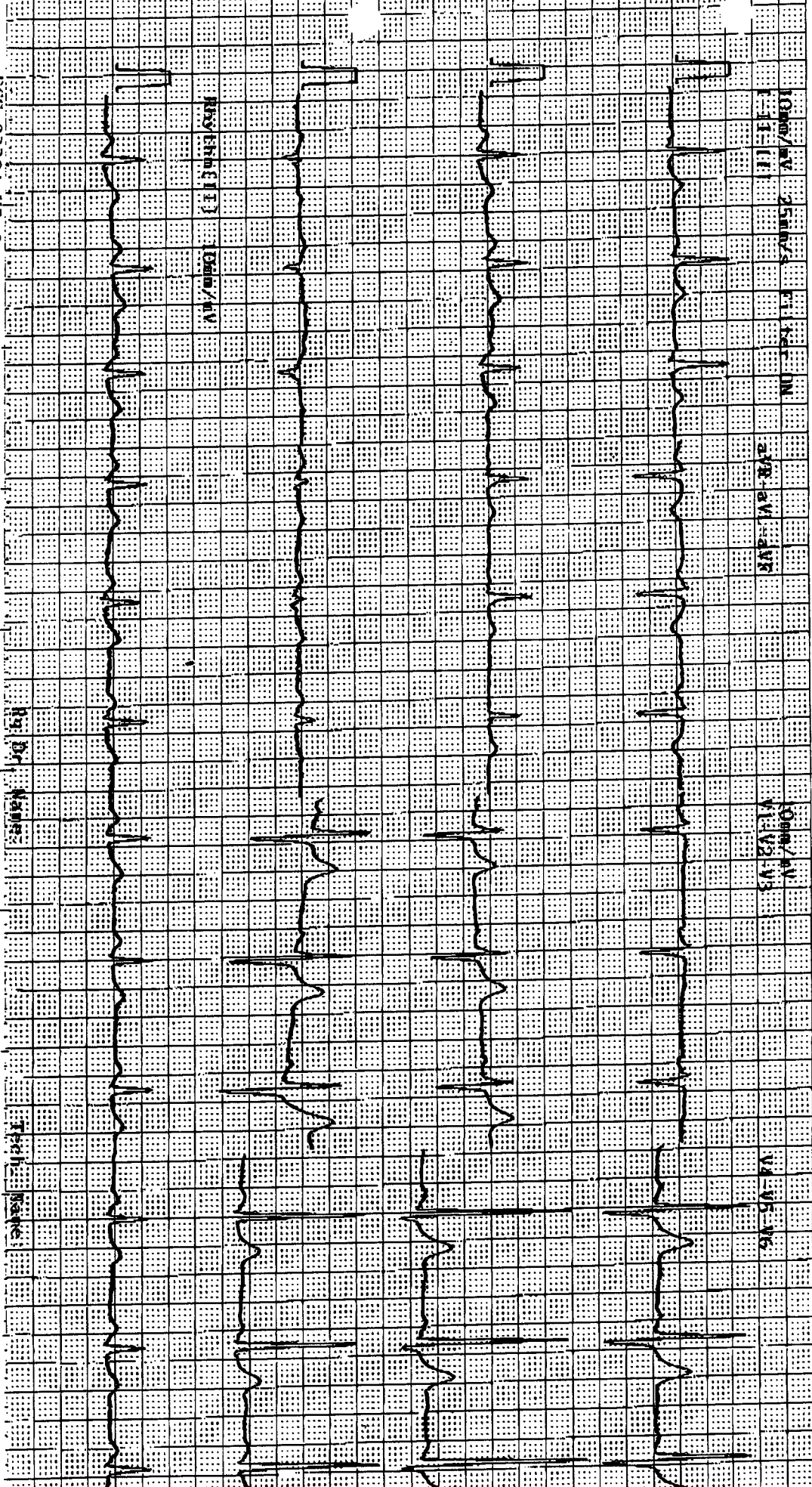
Name: *Wesley / Noel*  
 ID: \_\_\_\_\_ Room: \_\_\_\_\_

Med: \_\_\_\_\_  
 in \_\_\_\_\_ years \_\_\_\_\_ / \_\_\_\_\_ months

Vent. Rate 71bpm  
 PR int. 156ms  
 QRS dur. 108ms  
 QT/QTc int. 380/402ms  
 P/QRS/T axis 71 / 13 / 46°  
 RV5/SV1 amp. 3.04/0.88mV

380354

10/20/03  
 1-1988-12-03am



Reviewed by:

By: Dr. \_\_\_\_\_

Date: \_\_\_\_\_

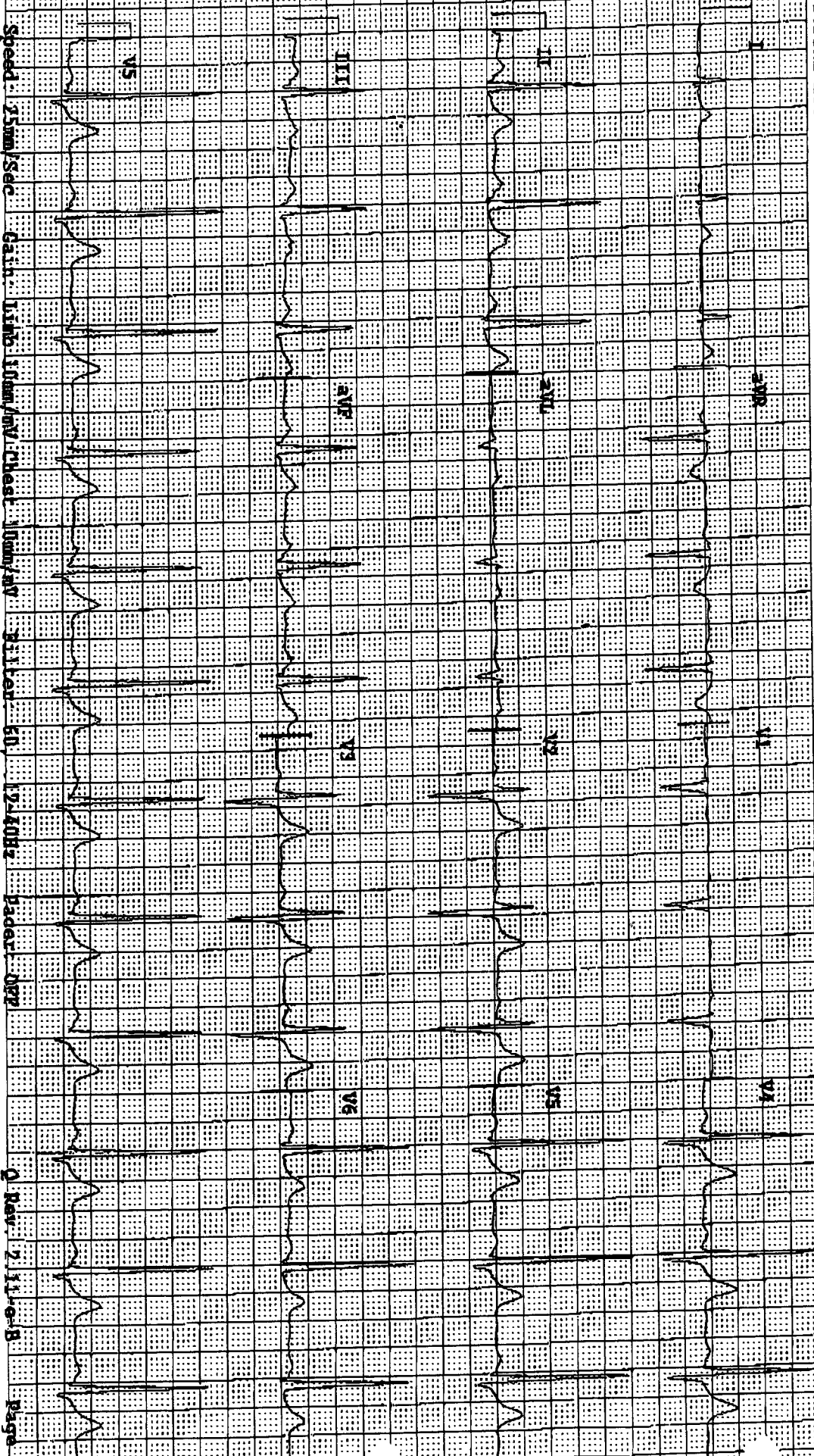


Name: ARTHUR NADEL  
ID: 380356

10/28/2003 08:20:13

HR: 0  
BP: 0  
Age: 70 Years  
Sex: Male  
Race: Caucasian  
Height: 0 in  
Weight: 0 lbs  
Medicine 1:  
Medicine 2:  
Clin. Class 1:  
Clin. Class 2:  
Location:  
Technician:  
Physician:  
HEART AND VASCULAR CENTER  
MICHELLE HUNT  
BREDDIAN

SUPINE ECG



Speed: 25mm/Sec Gain: 10mm/mV Chest: 10mm/mV Filter: 60 Hz 12-Lead ECG Paper: 007 Rev: 7-11-03-B page



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TOLL FREE: (800) 226-0433  
FAX: (941) 934-2064

**Clyton E. Bredius, MD, FACC**

**MARY N. HEALY, MS, ARNP**

**ELIZABETH MILLER, MS, ARNP**

**JENNIFER GRANTON, MS, ARNP**

**CAROLYN CLARK, MS, NPH, ARNP**

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Cardiology Laboratory**



**ICAEL  
Accredited Echocardiography  
Laboratory**

Patient Name: NADEL, ARTHUR  
Patient Number: 380356

D.O.S: 10/21/2003  
D.O.B: 01/01/1933

**CARDIAC CONSULTATION NOTE**

DATE OF VISIT: 10/21/2003

REFERRING PHYSICIAN: John E. Sullivan SR., MD

**INDICATION FOR EVALUATION:** This is a 70-year-old gentleman who runs a brokerage company called Scoop Management on main street here at Sarasota. His main fund is called the victory fund. He is a son-in-law to Elizabeth Guy, who is a 102-year-old patient of mine. He is referred through the courtesy of Dr. John Sullivan for evaluation of his mitral valve prolapse. He has the following medical problems:

1. Heart murmur first detected recently by Dr. John Sullivan.
2. Echocardiogram by Dr. Bermudez on 09/25/03 showing mild LV dilatation, EF 60-65%, partially flail segment of the posterior leaflet of the mitral valve associated with mildly severe mitral regurgitation, moderate pulmonary hypertension, RV systolic pressure 50-55 mm/Hg, trace to +1 AI and TR, mild left atrial enlargement.
3. Exertional dyspnea on climbing mountains, upstairs and playing tennis, new in the past few months.
4. Hypertension, recently started on Lotrel 5/10 mg q.d. with dropping blood pressure and improvement in shortness of breath symptoms.
5. History of allergic rhinitis.
6. History of skin cancer.

**HISTORY:** Mr. Arthur Nadel is a pleasant 70-year-old gentleman who comes in alone for a second opinion regarding his mitral valve disease. He indicates that he has been very healthy his entire life and says he has never ever been in the hospital. A heart murmur was recently discovered on routine examination and the patient underwent the transthoracic echocardiogram by Dr. Bermudez, which showed moderately severe mitral insufficiency with a possible flail segment of the posterior leaflet. Mild pulmonary hypertension, trace to +1 AI, LVEF 60-65% with LV end-systolic dimension of 63 and end-diastolic dimension 34 suggesting left ventricular enlargement. The right heart chambers were at the upper limits of normal in size. The left atrium is 44 mm in diameter. It was explained to the patient by Dr. Bermudez that he might require heart surgery to repair the mitral valve. He was started on Lotrel 5/10 mg, which has significantly improved his symptoms of exertional dyspnea. He noticed, while walking at 5000 feet in the mountains of North Carolina that he would become somewhat short of breath. Playing tennis and walking upstairs also cause these symptoms and they have abated on the medication. He says his systolic blood pressure was about 150, before his echocardiogram and today it is down to the 120s. The patient has no complaints of chest pain, palpitations, lightheadedness, pre-syncope, syncope, orthopnea, PND or ankle edema. He says that he has been seeing the dentist over the past two years for deep root cleanings but he is not taking SBE prophylaxis. This was explained to him by Dr. Bermudez and he was given a prescription for amoxicillin. I have given him a brochure from the American Heart Association regarding SBE prophylaxis today.

The patient denies hypertension, diabetes, high cholesterol and smoking. He does have a family history of stroke but no heart disease in the family. He has four children, three of them are girls and all in the 30s and 40s and none of them have been checked for mitral valve prolapse as of yet.

**CURRENT MEDICATIONS:** Lotrel 5/10 mg q.d. for the past three weeks, MVI q.d., vitamin C q.d., vitamin E q.d.

**MEDICATION ALLERGIES:** No known allergies.



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TOLL FREE: (800) 226-0433

FAX: (941) 954-2064



Clayton E. Breckler, MD, FACC

MARY N. HEALY, MS, ARNP

ELIZABETH MULLER, MS, ARNP

JENNIFER GARDNER, MS, ARNP

CAROLYN CLARK, MS, ARNP

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**SOCIAL HISTORY:** The patient lives with his wife who helps him at Scoop Management. They have owned this business for eight years. He does not smoke but he drinks moderately and he enjoys playing tennis, hiking, swimming and walking regularly. He does say " I do not feel good doing anything over strenuous nowadays".

**FAMILY HISTORY:** Father died at the age of 89 of Alzheimer's disease and pneumonia. He had no heart disease. Mother died at the age of 70 of a CVA but had no heart disease. His sister died in the late 50s of the CVA. He thinks she might have had a heart murmur. He has four children, three girls and one boy. They have no known heart disease.

**REVIEW OF SYSTEMS:** There is no history of TIA, CVA, asthma, bronchitis, peptic ulcer disease, phlebitis, pulmonary embolism or renal disease.

**PHYSICAL EXAMINATION:** Blood pressure is 128/72 mm/Hg in the left arm, 126/72 mm/Hg in the right arm. Pulse is 72 and regular. Weight is 164 pounds. There is no JVP at 30 degrees. Carotid upstrokes are +2 bilaterally, no bruits. Lungs are clear. Heart tones show a normal S1 and S2. There is a systolic ejection murmur and a late systolic click of mitral valve prolapse and mitral insufficiency. No S3 or S4. Abdomen is nontender. Normal bowel sounds. No vascular bruits or pulsatile masses. No hepatosplenomegaly. Extremities are free of edema. There are +1 pulses in both feet.

**EKG:** Sinus rhythm at rate 71. Normal PR and QRS intervals. Normal R-wave progression across the precordial leads. QRS axis is 13 degrees. No atrial or ventricular ectopy.

**IMPRESSION:**

1. Moderately severe mitral valve prolapse with partially flail segment of posterior leaflet.
2. Mildly dilated left ventricular dimensions. LVEDD 63 mm, LVEF 60-65%.
3. Moderate pulmonary hypertension, RV systolic pressure is 50-55 mm/Hg by echocardiogram.
4. Trace to +1 AI and TR.
5. Left atrium 44 mm and is mildly enlarged.
6. The patient is symptomatically improved with less dyspnea on exertion in the past three weeks since starting on Lotrel.

**RECOMMENDATIONS:** I had a long discussion with Mr. Nadel and reviewed the pathophysiology of mitral valve prolapse with him. I used a diagram of the heart on a wall to explain his condition. He was originally hopeful that he could avoid heart surgery or at least postpone it indefinitely. I think that he is beginning to show progressive signs of the severity of his mitral leak as evidenced by enlargement of both left ventricle and the left atrium and the elevated pulmonary pressures. I suspect that he may have torn a chordae tendinae a few months ago, which has resulted in an increased degree of mitral insufficiency and his clinical symptoms. I have explained at length that his condition will slowly deteriorate over time and that now he is probably at a plank where he would benefit the most from heart surgery. If he waits too long, he will lose the window of opportunity and eventually will not achieve significant benefit from heart surgery or may not be even possible, if his LV is too dilated.

Mr. Nadel has agreed to proceed slowly first with a Myoview stress test to evaluate his coronary artery status.

He understands he will eventually need a heart catheterization prior to having surgery. I have gone through the details of heart catheterization.

We also discussed at length heart surgery and what is entailed including the length of hospital stay, potential complications, recovery after leaving the hospital etc. He understands he will have the opportunity to meet a heart surgeon in a conference session prior to admission to the hospital for valve surgery, if he decides in a future to undergo the operation.

In the meantime, he understands through our discussions the importance of SBE prophylaxis.



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Clayton E. Bredlau, MD, FACC  
CEB: !ktk/man

cc: John E. Sullivan SR., MD (941-366-1658)

d: 10/26/2003

r: 10/27/2003

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Patient Name: NADEL, ARTHUR  
Patient Number: 380356

D.O.S: 10/28/2003  
D.O.B: 01/01/1933

**TWO-DAY PROTOCOL GATED SPECT EXERCISE  
MYOVIEV STUDY WITH WALL MOTION  
FIRST PASS STUDY**

DATES OF SERVICE: Stress: 10/28/2003  
Rest: 10/29/2003

**INDICATION FOR EVALUATION:** This is a 70-year-old gentleman with mitral valve prolapse and mitral insufficiency. We have recommended he consider mitral valve repair but he is reluctant. This study is to assess his exercise capacity, heart rate response to exercise as well as to look for evidence of coronary artery disease.

**STRESS PROTOCOL:** Standard Bruce.

**TEST PROTOCOL:** On 10/28/03, the patient was exercised on a motorized treadmill, beginning at Stage I of the Bruce protocol, which starts at 1.7 mph and 10% grade. The patient exercised for the total duration stated, achieving the maximum heart rate noted. The patient was injected with Technetium 99 Myoview during maximal treadmill exercise. SPECT imaging was begun immediately after exercise with recovery (within 6 to 10 minutes). Reconstruction of the SPECT tomograms was done using a quantitative analysis protocol.

Myocardial perfusion study was performed and gated wall motion images were obtained during stress in the vertical long-axis, horizontal long-axis, and short-axis views.

On 10/29/03, first pass acquisition was obtained utilizing planar imaging with the injection of the rest dose of Myoview. First pass functional analysis was performed at rest with wall motion analysis. Heart counts were evaluated after appropriate phase imaging distributions. End-systolic and end-diastolic frames were then evaluated.

On 10/29/03, baseline rest SPECT imaging was acquired one hour after Technetium 99 Myoview injection was given. These images were obtained using an SMV system.

**PHYSIOLOGIC DATA:**

RESTING HEART RATE: 74 beats per minute.  
RESTING BLOOD PRESSURE: 128/70 mm/Hg.  
MAXIMUM HEART RATE: 132 beats per minute.  
MAXIMUM BLOOD PRESSURE: 170/90 mm/Hg.

PERCENT OF MAXIMUM HEART RATE: 88%.

EXERCISE DURATION: 7 MINUTES.

SYMPTOMS: Shortness of breath, no chest pain or angina.

ECG: LVH at rest. There were no diagnostic ST-segment and T-wave changes or arrhythmias during the study.

MYOVIEV DOSES: Stress: 22.0 mCi.  
Rest: 21.4 mCi.



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**MYOVIEW IMAGES:**

1. VERTICAL LONG-AXIS VIEW: Myoview images showed hypoperfusion in the inferior wall but no reversible ischemia.
2. HORIZONTAL LONG-AXIS VIEW: Myoview images showed normal homogenous uptake of Myoview during rest and stress in all areas of myocardium.
3. SHORT-AXIS VIEW: Myoview images showed a small area of hypoperfusion in inferior wall suggesting a non-transmural MI.
4. LVEF is 68%.
5. GATED WALL MOTION ANALYSIS: Shows mild hypokinesis.

**CONCLUSIONS:**

1. Mildly abnormal nuclear stress test showing an inferior wall defect suggesting a non-transmural MI possibly due to single vessel CAD. The patient's exercise tolerance is good. LVEF is 68%.

**DISPOSITION/PLAN:** I have discussed these results with the patient. We talked about a heart surgery again. He might consider doing a TEE for further evaluation of his mitral valve or considering to contemplate the pros and cons of heart surgery. He is still very reluctant to go ahead with the operation. I will see him back in the office in two weeks to talk with him again.

Clayton E. Bredlau, MD, FACC

CEB: !mzf/man

cc: John E. Sullivan Sr., MD (941-366-1658)

d: 11/02/2003

t: 11/03/2003

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Patient Name: NADEL, ARTHUR  
Patient Number: 380356

D.O.S: 12/09/2003  
D.O.B: 01/01/1933

OFFICE VISIT

DATE OF VISIT: 12/09/2003

**HISTORY OF PRESENT ILLNESS:** Mr. Nadel came in to the office today and we had a long discussion regarding his heart condition, his mitral prolapse and results of his stress test assured him the nuclear images. I think, he gradually is understanding that he will need to have mitral valve surgery. He agreed to see Dr. Thomas Kelly in consultation but wants to wait until after the first of the year before doing anything. I have spoken with Dr. Kelly and given him the patient's phone number and I did give the patient Dr. Kelley's phone number, so hopefully they can have a counseling session in not too distant future and arrange for surgery. The patient will need a cardiac cath prior to heart surgery. I have also spoken with Dr. John Sullivan.

Clayton E. Bredlau, MD, FACC  
CEB: !mob/dsf

d: 12/14/2003

t: 12/15/2003



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Patient Name: NADEL, ARTHUR  
Patient Number: 380356

D.O.S: 11/09/2004  
D.O.B: 01/01/1933

**2-D AND M-MODE ECHOCARDIOGRAM WITH COLOR  
FLOW DOPPLER AND CARDIAC DOPPLER**

DATE OF SERVICE: 11/09/2004

**INDICATION FOR EVALUATION:** This is a 71-year-old gentleman with congestive heart failure and shortness of breath with known mitral valve disease. In 09/2003, the patient was found to have a partially flail posterior mitral leaflet associated with mildly severe mitral regurgitation and elevated PA pressures. Mitral valve repair surgery was recommended, but the patient lost the followup for the past year.

He now presents with congestive heart failure documented by chest x-ray. He has been sitting in a chair for the last two weeks and states he cannot breathe lying flat. This study is to reassess his mitral valve and LV function.

**TEST PROTOCOL:** Utilizing high-resolution real-time imaging, parasternal long-axis, short-axis, and apical 2-D and M-Mode views were obtained.

Color flow mapping and analysis were performed of the pre- and postvalvular areas.

Spectral analysis of pulsed wave and continuous wave Doppler was obtained.

Careful interrogation of the valvular areas was obtained to identify high blood flow velocities. Various sampling sites were used from the postvalvular areas to evaluate for regurgitant flow.

**M-MODE INTERPRETATION:**

The aortic root is 37 mm in diameter. The aortic leaflets are thin and separate well during systole with midline diastolic closure. There is no evidence of midsystolic notching or early leaflet closure, calcification, or stenosis.

The left atrium is 48 mm in diameter. The mitral valve leaflets are thin and showed normal E and A point diastolic excursions. There is evidence of prolapse of the flail posterior leaflet seen. The EF slope is 193 mm/second. The ES point separation is 7 mm.

The left ventricular dimensions measured slightly enlarged in diameter of 60 mm. The LVIDS is 41 mm. The septal and posterior wall thickness is 12 mm. There is normal wall motion. The calculated LVEF is 60 percent by Teichholz method. RV dimensions are normal. There is no pericardial effusion.

**M-MODE CONCLUSIONS:**

1. Normal aortic valve.
2. Abnormal mitral valve with mitral prolapse with flail posterior leaflet.
3. Mild left atrial enlargement.
4. Borderline LV size and good contractility.

**2-DIMENSIONAL INTERPRETATION:**

The parasternal long axis view demonstrates normal LV size with hypokinetic ventricle. The LV outflow tract is normal in size and contractility. The left atrium is slightly enlarged when comparison with the aortic root. There is calcification of the aortic valve but it opens well. Mitral shows clear prolapse of the posterior leaflet in this angle. The anterior leaflet appears to move normally.



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The short axis view of the aortic valve shows a mildly sclerotic trileaflet valve with normal motion. Short axis of the mitral valve shows there appears to be normal leaflet structure, but the posterior leaflet can be seen with the prolapse even in this view. Short axis at the papillary muscle level demonstrates normal LV size, wall thickness and contractility.

The apical four-chamber view demonstrates normal size and spatial relationships of all four cardiac chambers except for left atrium, which is mildly enlargement. There is normal contractility of both ventricles. The calculated LVEF is 75% by spatial ELLIPS method. There is evidence of prolapse in the posterior mitral valve leaflet and tricuspid valve appears normal.

**2-DIMENSIONAL CONCLUSIONS:**

1. Sinus rhythm.
2. Hyperkinetic left ventricle with an ejection fraction at least 60%, possibly 75%.
3. Normal RV size and contractility.
4. Mild left atrial enlargement. Normal right atrial size.
5. Prolapse and possibly a flail posterior mitral leaflet.
6. No sclerosis of the aortic valve.
7. Normal tricuspid and pulmonic valves.
8. No evidence of pericardial effusion, IHSS, ASH, ASD, myxoma, aneurysm or thrombus.

**CARDIAC DOPPLER STUDY:**

Cardiac Doppler flow velocities were obtained across the four heart valves as follows:

1. AORTIC: 1.1 meters/second.
2. MITRAL: 1.9 meters/second.
3. PULMONIC: 0.9 meters/second.
4. TRICUSPID: 0.5 meters/second.
5. LVOT: 1.3 meters/second.

These cardiac Doppler flow velocities demonstrate increase flow across the mitral valve due to the severe mitral insufficiency. There is no evidence of mitral stenosis. Peak gradient across the valve is 15 mm/Hg and mean gradient is 4.25 mm/Hg.

Cardiac Doppler flow mapping and color flow mapping of the four heart valves demonstrate the following:

1. AORTIC: +1 insufficiency.
2. MITRAL: +3-+4 insufficiency.
3. PULMONIC: +1 insufficiency.
4. TRICUSPID: +1 insufficiency.

COMMENTS: RV systolic pressure is 46 mm/Hg indicating elevated pulmonary artery pressures.

**CONCLUSION:**

1. Sinus rhythm.
2. Severe prolapse of the posterior leaflet of the mitral valve possibly flail leaflet with +3-+4 insufficiency.
3. Sclerosis of the aortic valve and +1 insufficiency.
4. +1 PI, +1 TR.
5. Hyperkinetic left ventricle with EF 70-75%.
6. Mild concentric LVH.
7. Mild left atrial enlargement.
8. Normal LV size and contractility.
9. Normal right atrial size.
9. No evidence of pericardial effusion, IHSS, ASH, ASD, myxoma, aneurysm or thrombus.



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DISPOSITION AND PLAN: I have discussed these results with the patient. I have strongly encouraged him to go to Sarasota Memorial Hospital today so that we can appropriately treat his congestive heart failure. We discussed mitral valve repair at great length. The patient refused to go to the hospital, but was willing to take Demadex 10 mg q.d. at home. I gave him a prescription for that. He says he wants to wait until his wife returns in the next few days before making any final decisions. I did discuss these results with Dr. John Sullivan.

Clayton E. Bredlau, MD, FACC  
CEB: lbah/sza

cc: John E. Sullivan Jr., MD (941-955-0453)

d: 11/15/2004

t: 11/16/2004



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Patient Name: NADEL, ARTHUR  
Patient Number: 380356

D.O.S: 11/09/2004  
D.O.B: 01/01/1933

OFFICE VISIT

DATE OF VISIT: 11/09/2004

PROBLEMS: Mr. Nadel is 71 years old. He has the following problem list:

1. Heart murmur first detected recently by Dr. John Sullivan.
2. Echocardiogram by Dr. Bermudez on 09/25/03 showing mild LV dilatation, EF 60-65%, partially flail segment of the posterior leaflet of the mitral valve associated with mildly severe mitral regurgitation, moderate pulmonary hypertension, RV systolic pressure 50-55 mm/Hg, trace to +1 AI and TR, mild left atrial enlargement.
3. Exertional dyspnea on climbing mountains, upstairs and playing tennis, new in the past few months.
4. Hypertension, recently started on Lotrel 5/10 mg q.d. with dropping blood pressure and improvement in shortness of breath symptoms.
5. History of allergic rhinitis.
6. History of skin cancer.

SUBJECTIVE: I got a call from Dr. John Sullivan Sr. about Mr. Nadel asking that I see him today because he is having trouble breathing. I spoke with Mr. Nadel by phone and told him I would see him today. We then arranged for him to have a chest x-ray as an outpatient. This showed "CHF with small bilateral effusions". We then did an echocardiogram, which showed +3-4 mitral insufficiency with a prolapse of posterior leaflet, LVEF was 60%, left ventricle was mildly dilated and the left atrium diameter.

Mr. Nadel has in fact been having difficulty sleeping for the past two weeks. He has to sit up on the chair because he is short of breath. He says he has been doing some research and saw Dr. Tom Kelly on 11/04/04 and says he has an appointment to see Dr. Schiro on 11/15/04. He has had no palpitations or chest pain or ankle swelling.

CURRENT MEDICATIONS: Lotrel 5/10 q.d., MVI q.d., vitamin C q.d., and vitamin E 400 IU q.d.

MEDICATION ALLERGIES: None known.

PHYSICAL EXAMINATION: Blood pressure is 138/74 mm/Hg. Pulse is 87 and regular. There is no JVP at 30 degrees. Carotid upstrokes are +1 bilaterally; no bruits. Lungs are clear except for decreased breath sounds at the bases. Heart tones show a loud systolic ejection murmur of mitral insufficiency at the left sternal border radiating into the left axilla, ? S4, no S3. Abdomen is nontender. Normal bowel sounds. No vascular bruits, or pulsatile masses. No hepatosplenomegaly. Extremities are free of edema. There are +1 pulses in both feet.

EKG: Sinus rhythm, rate 87 beats per minute, normal PR and QRS-intervals, normal R-wave progression across the precordial leads, nonspecific ST-segment and T-wave abnormalities, QRS axis is 72 degrees. No atrial, or ventricular ectopy.

IMPRESSION:

1. A 71-year-old gentleman with congestive heart failure due to progressive mitral insufficiency with a frail posterior leaflet.

RECOMMENDATIONS:

1. I recommended him surgery a year ago. Today I recommended he go to the hospital so that we can





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treat his congestive heart failure and arrange for a heart catheterization in the next few days and then heart surgery. He refused to do that. He said his wife is out of town in North Carolina and will be flying back until tomorrow evening. He said he will not go to the hospital until she gets back in town. I offered to call her in North Carolina but he refused. He did say he would come in to the hospital on Friday.

2. I did explain to the patient in great detail the risks of not going to the hospital, sudden death, arrhythmias, worsening acute severe congestive heart failure, and "smothering to death". The patient simply does not want to take care of his heart situation on a timely basis. He may be scared but I have made it quite clear that he is taking the risk by not going to the hospital right now. He was willing to take a diuretic at home to try and help his heart failure. I gave him Demadex 20 mg one-half tablet q.d. to help his breathing, however I do not want him to take too many diuretics because he might become hypotensive with the severe mitral insufficiency. I have called Dr. John Sullivan back and explained the situation to him. I have spoken with Dr. Tom Kelly. I have also spoken with my nurse, Nancy who will contact the patient to make sure he is doing okay. We will arrange to have a bed available for him Friday, if he finally considers going to the hospital when his wife is back in town.

Clayton E. Bredlau, MD, FACC  
CEB: !ktk/sza

cc: John. E. Sullivan Sr, MD (941-366-1658)

d: 11/10/2004

t: 11/11/2004



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Patient Name: NADEL, ARTHUR  
Patient Number: 380356

D.O.S: 01/28/2005  
D.O.B: 01/01/1933

NOTE TO CHART

DATE OF SERVICE: 01/28/2005

I just called Mr. Arthur Nadel to find out how he was proceeding with his mitral valve repair heart surgery. He states he is on waiting list with Dr. Cosgrove at the Cleveland Clinic for sometime in April. He is feeling fine. He did say that Dr. Cosgrove may retire before April, but he is still going to wait to have the minimally invasive mitral valve operation if possible. He will have his heart catheterization at Cleveland Clinic.

I also called Dr. John Sullivan, his internist, to inform him of Mr. Nadel's plans. He asked me if I had mentioned to Mr. Nadel about the fact that Dr. Cosgrove has developed quite a tremor of late.

Clayton E. Bredlau, MD, FACC  
CEB: lmzf/sza

d: 01/28/2005

t: 01/29/2005



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***EXHIBIT D***

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**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

---

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

May 21, 2009

**BY HAND**

Mark B. Gombiner, Esq.  
Federal Defenders of New York  
52 Duane Street, 10<sup>th</sup> floor  
New York, NY 10007

**Re: *United States v. Arthur Nadel, 09 Cr. 433 (JGK)***

Dear Mr. Gombiner:

This letter provides discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."), and seeks reciprocal discovery.

**Disclosure By the Government**

First, based on your request for discovery in this case, I have enclosed four CDs, which consist of the following:

**CD 1**

1. Documents seized from 3966 Countryview Drive, Sarasota, FL 34233 (NSR 001-00038512);
2. Documents received from Citizens Bank (NSR 00038513 - 00038690);
3. Documents received from Len Furman (NSR 00038690 - 00038778);
4. Documents received from Goldman Sachs (NSR 00038779 - 00038925), as follows:
  - a. Victory Fund FWO (NSR 00038779 - 00038791)
  - b. Victory IRA Fund FWI (NSR 00038792 - 00038796)
  - c. Victory Fund FWO (NSR 00038797 - 00038822)

Mark B. Gombiner, Esq.  
May 21, 2009  
Page 2

- d. Scoop Capital FWO (NSR 00038823 - 00038848)
  - e. Victory Fund FWI (NSR 00038849 - 00038867)
  - f. Scoop Management FWO (NSR 00038868 - 00038869)
  - g. Scoop Capital FWO (NSR 00038870 - 00038902)
  - h. Scoop Management FWI (NSR 00039803 - 00038925)
- 5.\* Documents received from JPMorgan Chase (NSR 00038926 - 00040290);
  6. Documents received from Millennium Trust Company (NSR 00040291 - 00040759);
  7. Documents received from Scott Trade (NSR 00040760 - 00040971);
  8. Documents received from Thomasville National Bank (NSR 00040972 - 00041361);
  9. Scoop Real Estate Private Placement Memorandum (NSR 00041362 - 00041408);
  10. Valhalla Investment Partners Private Placement Memorandum (NSR 00041409 - 00041460);
  11. Viking Fund Private Placement Memorandum (NSR 00041461 - 00041514);
  12. Viking IRA Fund Private Placement Memorandum (NSR 00041515 - 00041564);
  13. Documents received from the SEC (NSR 00041565 - 00042193);
  14. Documents received from Bank of America (NSR 00042194 - 00042209);
  15. The defendant's criminal history record (NSR 00042210 - 00042211);
  16. Documents relating to Laurel Mountain (NSR 00042212 - 00042259); and
  17. Documents received from Wachovia (NSR 00042260 - 00044450).

CD 2

18. A copy of the complaint;

Mark B. Gombiner, Esq.  
May 21, 2009  
Page 3

19. A copy of the indictment;
20. A copy of the search warrant for 131 Garren Creek Road, Fairview, North Carolina;
21. A copy of the pen registers;
22. Documents received from Carbon Based Consulting, Inc.;
23. Documents received from Charles Schwab;
24. Documents received from First Citizens Bank;
25. Documents received from Northern Trust;
26. Documents received from the Receiver;
27. Documents received from Thomasville National Bank;
28. Documents seized from 3966 Countryview Drive, Sarasota, FL 34233;
29. The defendant's tax records;
30. Documents received from Think Strategy;
31. Wire transfer records; and
32. Various documents and files.

CD 3 (NSR 00044504)

33. A copy of the investor files. Two indexes of these files has also been enclosed, and stamped with control numbers NSR 00044451 - 00044477 (index of investor files sorted by document identification) and NSR 00044478 - 00044503 (index of investor files sorted by investor).

CD 4 (NSR 00044505)

34. Documents received from A.B. Watley Direct, Inc. (ABW000001 - 000008) ;
35. Documents received from ABN Amro Inc. (ABN000001 - 0000021);

Mark B. Gombiner, Esq.  
May 21, 2009  
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36. Documents received from Advanta Bank Corp. (ABC000001 - 000210);
37. Documents received from Alexander Aviation Associates, Inc. (AAA000001 - 000002);
38. Documents received from Bank of America (BOA000001 - 000534);
39. Documents received from Bank of Coweta (BOC000001 - 000586);
40. Documents received from BB&T (BBT000001 - 000450);
41. Documents received from Michael Caccavo (Caccavo000001 - 000050);
42. Documents received from CarbonBased Consulting, Inc. (CBC000001 - 000309);
43. Documents received from Charles Schwab & Co., Inc. (Schwab 000001 - 000700);
44. Documents received from Robert Deutsch (Deuts000001 - 00049);
45. Documents received from Steve Ellis (Ellis000001 - 000118);
46. Documents received from First Citizens Bank (FCB000001 - 000695);
47. Documents received from General Electric Capital Corp. (GECC000001 - 000016);
48. Documents received from GreyBeard Realty (GBR000001 - 000303);
49. Documents received from Michael Infanti (Infanti000001 - 000122);
50. Documents received from J.K. Boatwright & Co., P.C. (JKBoat00001 - 00507);
51. Documents received from JPMorgan Chase Bank, N.A. (JPMC000001 - 001374);
52. Documents received from Lyons, Beaudry & Harrison (LBH0001 - 0401);
53. Documents received from Millennium Trust Company, LLC (MTC 000001 - 001431);
54. Documents received from Northern Trust (TNTFL000001 - 003611);
55. Documents received from Quest Energy Management Group (Quest000001 - 000225);
56. Documents received from John Rose (Rose000001 - 000237);

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57. Documents received from Donald Rowe (Rowe000001 - 001081);
58. Documents received from Rydex Investments (Rydex000001 - 000289);
59. Documents received from Shoreline Trading Group (Shore000001 - 017446);
60. Documents received from James Smith (Smith000001 - 000515);
61. Documents received from Thomasville National Bank (TNB000001 - 000351);
62. Documents received from TradeStation Securities, Inc. (TStat000001 - 000160);
63. Documents received from VFS Financing, Inc. (VFSF000001 - 000019); and
64. Documents received from Wachovia Bank (Wach000001 - 003043).

Second, based on your request for discovery, a box of the items seized from 131 Garren Creek Road, Fairview, North Carolina will be available for your inspection and copying on May 26, 2009 from Jagg Management, 52-08 Grand Avenue, Maspeth, NY 11378. You may reach Jagg Management by contacting Joe Meisner at (718) 381-1480 x212, and referencing Purchase Order Number 90039.

Third, in connection with the execution of search warrants at 3966 Countryview Drive, Sarasota, FL 34233 and 131 Garren Creek Road, Fairview, North Carolina, the Federal Bureau of Investigation seized six hard drives. A "mirror" copy of the hard drives seized in this case will be provided to you within 2 business days of receiving six 100 GB hard drives.

Finally, the following items are in the custody of Burton W. Wiand, Esq., the court appointed receiver in the *SEC v. Arthur Nadel, et al.* case:

65. 129 boxes of materials, which are available for inspection and copying. For your convenience, an index of certain of these documents is enclosed, and bates labeled as follows:
  - a. Index to Art Nadel's Desk and Office Contents (NSR00044506 - 00044512);
  - b. Index to Peg Nadel's Desk and Office Contents (NSR00044513 - 00044534);
  - c. Index to Michelle Bell's Desk and Office Contents (NSR00044535 - 00044541); and

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- d. Index to Shelley Benham's Boxes (NSR 00044542 - 00044553).
66. Multiple computer hard drives that were seized from the defendant's offices. It is our understanding that those hard drives consist of the following files:
- a. Approximately 5.5 GB of Word/Wordperfect documents;
  - b. Approximately .07 GB of Powerpoint presentations;
  - c. Approximately .09 GB of Publisher Files;
  - d. Approximately 1.23 GB of Quickbooks Financial data;
  - e. Approximately .35 GB of Excel Spreadsheets XLS data;
  - f. Approximately 1.80 GB of Acrobat .pdf files;
  - g. Approximately 428,084 e-mails in the online Exchange Database (which has a total of 20 mailboxes), totaling approximately 8.1 GB; and
  - h. Approximately 8.4 GB of e-mails recovered from Scoop Management's prior server.

If you wish to inspect and copy items 65 and 66, please contact Burton W. Wiand, Esq., Fowler White Boggs P.A., 1200 East Las Olas Blvd., Suite 400, Ft. Lauderdale, FL 33301, and he will make the necessary arrangements. Mr. Wiand can be reached at (813) 222-2029.

The Government recognizes its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. To date, the Government is unaware of any *Brady* material regarding your client, but will provide timely disclosure if any such material comes to light.

The Government will provide material under *Giglio v. United States*, 405 U.S. 150, 154 (1972), and its progeny, in a timely manner prior to trial.

#### Disclosure By the Defendant

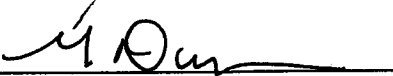
In light of your request for the foregoing discovery, the Government hereby requests reciprocal discovery under Fed. R. Crim. P. 16(b). Specifically, we request that you allow inspection and copying of: (1) any books, or copies or portions thereof, which are in the defendant's possession, custody or control, and which the defendant intends to introduce as evidence or otherwise rely on at trial; and (2) any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, which are in the

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Please contact me at your earliest convenience concerning the possible disposition of this matter or any further discovery which you may request.

Very truly yours,

LEV L. DASSIN  
Acting United States Attorney

by:   
Maria E. Douvas/Joshua Klein  
Assistant United States Attorneys  
(212) 637-2327/2397