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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DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR MODIFICATION OF BAIL CONDITIONS

LEONARD F. JOY, ESQ.
FEDERAL DEFENDERS OF NEW YORK, INC.
Attorney for Defendant
Arthur G. Nadel
52 Duane Street, 10th Floor
New York, New York 10007
Tel.: (212) 417-8700

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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DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR MODIFICATION OF BAIL CONDITIONS

This Reply memorandum is submitted on behalf of Defendant Arthur Nadel to respond to arguments made by the government in its Memorandum in Opposition to Defendant's Motion to Modify Bail Conditions. Defendant also submits, as Exhibit A, the Receiver's Second Interim Report, which was just filed on June 9, 2009.

INTRODUCTION

Arthur Nadel is a sick, old man who poses no risk of flight and no danger to the community and should be released on reasonable bail conditions. Since Mr. Nadel's January arrest, he has been stripped of all his assets and rendered virtually friendless by the wave of negative publicity generated by the unproved charges against him. He has neither the means nor the desire to do anything but go back to his modest home and prepare to vindicate himself at trial.

The government, however, continues to oppose Mr. Nadel's release on bail on the grounds that he is both an "actual risk of flight" and a "pecuniary danger to the community." G. Mem. at 14. According to the government, Mr. Nadel cannot be released even on the stringent conditions proposed, because he would likely facilitate his "escape" with his purported access to "tens of millions of [hidden] dollars." G. Mem. at 21. The government further claims that Mr. Nadel's age and poor health should lead the Court to deny bail because his shortened life expectancy means that he has little to lose by fleeing. Alternatively, the government argues that bail should be denied because Mr. Nadel supposedly constitutes a "pecuniary" danger to the community who might seek to defraud investors from the confines of his monitored Sarasota home.

The claims that Mr. Nadel is a present risk of flight and/or danger to the community are meritless. As demonstrated in Mr.

Nadel's Memorandum in Support of Modification of Bail Conditions ("Mem.") and below, the unwarranted speculations about risk of flight and danger to the community are based on a distortion of Mr. Nadel's past behavior and a gross mischaracterization of his present circumstances.

I. MR. NADEL IS PRESUMED INNOCENT.

The government asserts that bail must be denied because the evidence against Mr. Nadel is "overwhelming" and a life sentence all but a certainty. G. Mem. at 14, 15. This assessment is premised on a tendentious and myopic view of the facts. G. Mem. at 4-6.

Mr. Nadel is presumed innocent and cannot be expected to try his case in the context of a bail motion. Notably, however, the government's account of the allegedly "overwhelming" evidence against Mr. Nadel virtually omits any reference to Neil and Chris Moody.[1] The Moodys -- not Mr. Nadel -- were the general partners of the Valhalla and Viking Funds. The facts will shows that they actively solicited investors for their funds; made many of the investment decisions; and received at least half of the fees and profits generated by the six funds identified in the indictment. See Receiver's Rep. at 8 and 35. Moreover, according to investors,

[1] For example, as evidence of Mr. Nadel's guilt, the government cites a number of purportedly inaccurate letters to investors regarding the performance of the funds. The government neglects to note, however, that Neil and Chris Moody also signed the very same letters. See Exhibits D, E, F, and G to G. Mem.

the Moodys affirmatively represented that they "actively" managed their own funds and that "trading was not going to be sub-contracted to any other entity or individual." See January 19, 2009, letter from Anil B. Deolakiar to Detective Jack Carter, Sarasota Police Department, Exhibit B. Standing alone, the government's bold attempt to edit the Moodys out of the picture suggests that the case against Mr. Nadel is not nearly as strong or simple as the government would have the Court believe.

II. MR. NADEL'S TRAVELS BETWEEN JANUARY 14 AND JANUARY 24, 2009 DO NOT ESTABLISH THAT HE IS A "RISK OF FLIGHT."

The government continues to argue that Mr. Nadel is an "actual risk of flight" because on January 14, 2009, he supposedly "made the premeditated and calculated decision to flee from authorities." G. Mem. at 16. On its face, this argument is baseless. Mr. Nadel could not have been "flee[ing] from authorities" on January 14, 2009 because, at that time, there were no criminal or civil charges pending against him and, therefore, no authorities from which to flee.

Despite the fact that Mr. Nadel left his home at a time when he was not facing any criminal charges, the government claims that Mr. Nadel's behavior during his journey demonstrates a calculated effort to evade detection. But, the only evidence cited by the government is that at some point during his travel he "dropped his cellphone" and that he stayed in two hotels while in San Francisco. However, during the time he was gone, Mr. Nadel traveled under his

own name, including booking airplane flights and paying for his expenses with his own credit cards. He did not seek to leave the country, but stayed in three major United States cities where he registered at hotels in his own name and paid for his lodgings with his own credit cards. These are not the actions of someone intent on flight from a [non-existent] warrant as the police could simply have checked his credit-card usage or airline records if they wanted to determine his whereabouts.

As further "proof" of Mr. Nadel's supposed attempt at flight, the government observes that Mr. Nadel wrote letters to his family in which he advised them to co-operate with the authorities, but suggested that they first retain a lawyer. G. Mem. at 18. The government does not, however, explain why Mr. Nadel's advising his family to *co-operate* with law enforcement supports the conclusion that he is a risk of flight.

The government also significantly distorts both the facts and Mr. Nadel's arguments regarding risk of flight. It asserts that "the notion that Nadel did not understand that he was wanted by law enforcement authorities strains belief" because "during the time that Nadel was on the run and in contact with his family, agents of the FBI had repeatedly interviewed members of his family and his associates, and had executed a search warrant on his North Carolina residence." G. Mem. at 18. But, Mr. Nadel does not claim that he didn't come to understand that law enforcement authorities were

looking for him. Rather, as his opening Memorandum makes clear, he retained counsel precisely because he did become aware that he would, at some point, be charged. Def. Mem. at 11.[2]

Finally, the government's recitation of the "facts" about Mr. Nadel's supposed two-week "flight" from the authorities fails to include the undisputed evidence that Mr. Nadel retained counsel on January 20, 2009 and that between January 21st, 2009 and January 26, 2009, his lawyers made repeated, but unsuccessful, efforts -- including speaking with the Chief Assistant United States Attorney for the Middle District of Florida -- to ascertain if there was a warrant for Mr. Nadel's arrest.[3] See Def. Mem. at 11-14. As soon as his lawyers were informed that a warrant had been issued, he surrendered with counsel. The omission of these crucial facts by the government underscores the overall weakness of its claim that Mr. Nadel was seeking to evade detection by law enforcement during his travels between January 14th and January 27th, 2009.

Finally, Mr. Nadel's financial activities in the days before he left Florida demonstrate that he had no intention of becoming a

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[2] Moreover, the police contacts with Mr. Nadel's family and the search of his home had nothing to do with his determination to retain counsel because -- as the government concedes -- both the search and the interviews with family members took place *after* Mr. Nadel first contacted a lawyer on January 20th. G. Mem. at 9.

[3] The government's Statement of Facts does not disclose why the arrest warrant for Mr. Nadel was such a secret that even the United States Attorney for the Middle District of Florida did not know of its existence.

fugitive. In the week prior to January 14, 2009, Mr. Nadel made substantial payments, totaling about $182,000, in maintenance and carrying costs for various properties he owned, including Tradewinds LLC; Laurel Preserve, LLC, Thomasville National Bank and Homefront Homes, LLC. See Exhibit I to G. Mem. If Mr. Nadel had been intent on leading a life as a fugitive, he would have used the money for himself, rather than dissipating his funds to satisfy his debt obligations. Similarly, as evidence of his desire to flee, the government makes much of Mr. Nadel's unsuccessful effort to transfer a $50,000 check "to a new Bank of America credit card for his use while on the run." G. Mem. at 16. But, as the Criminal Complaint filed against Mr. Nadel demonstrates, Mr. Nadel left a letter for his wife in which he instructed her to use the funds in that credit account for *her* benefit. See Exhibit C, par. 17. Thus, the record shows that, rather than removing a lot of cash for a life on the run, Mr. Nadel paid bills to keep ongoing businesses solvent and tried to provide for his wife.

III. MR. NADEL IS NOT A DANGER TO THE COMMUNITY

The government alleges that Mr. Nadel would pose a "danger to the community" if released, but offers no evidence-or even a hypothesis-to support its claim. Rather, the government's entire argument on "danger to the community" merely reiterates its view Mr. Nadel defrauded investors and that the loss of money "caused massive harm and destruction." G. Mem. at 20.

There is no presumption that a defendant charged with fraud constitutes a "danger to the community." To the contrary, the government must show by clear and convincing evidence that there are no conditions of release for such a defendant which will "reasonably assure" that he or she will not "endanger the safety or any other person or the community." United States v. Sahbnani, 493 F.3d 63, 75 (2d Cir. 2007). Here, the government does not even offer an hypothesis, let alone any facts, which would satisfy this high burden. Mr. Nadel has been publicly reviled and convicted by the media, abandoned by most of his friends, and will be confined to his home and monitored by pre-trial services once released. The unsupported suggestion that he will attempt to defraud or otherwise harm anyone under such circumstances is ludicrous and does not warrant further discussion.

IV. MR. NADEL'S AGE AND ILL HEALTH SHOULD NOT BE HELD AGAINST HIM ON BAIL.

Mr. Nadel is a 76 year-old man who suffers from multiple medical problems, including a serious and disabling heart condition. Mr. Nadel's age, infirmities and need for medical treatment obviously limit his ability to escape and/or live as a fugitive and, therefore diminish any concern that he would be a "risk of flight." Mem. at 16-17.

The government, however, asserts that Mr. Nadel's poor health "is another factor that militates *against* modifying his bail conditions," and "is only relevant in so far as it makes any

potential sentence he receives a likely life sentence, diminishes the practical effect of a bail jumping charge, and thus, gives Nadel an even stronger incentive to flee." G. Mem at 13. This novel[4] argument is without merit. On its face, the notion that Mr. Nadel should be denied bail simply because the government adjudges his life expectancy insufficient to survive a potential sentence or to give "practical effect" to a prospective bail jumping charge is repellent. Moreover, the same specious logic could be applied to a defendant of any age. For example, if Mr. Nadel were young and healthy, the government might assert that he has a "stronger incentive to flee" because he has more years of potential freedom ahead of him should he jump bail.

V. MR. NADEL'S INABILITY TO PREPARE HIS DEFENSE WHILE INCARCERATED SUPPORTS THE GRANT OF REASONABLE BAIL.

The huge amount of paper and computer discovery involved in this case coupled with Mr. Nadel's poor health and the limited ability to communicate with counsel make it all but impossible for him to effectively help prepare his own defense while confined in jail. Mem. at 22-26. The government, however, dismisses these concerns as mere "speculation" and actually insists that any consideration of Mr. Nadel's ability to prepare his defense based on the amount of discovery would "offend the notion of justice"

[4] Counsel has been able to locate any case, and the government cites none, in which a defendant's poor health or short life expectancy has been cited as a reason for denying bail.

because it would create an unwarranted presumption of release in document-intensive cases. G. Mem. at 14.

The government's argument is without foundation. The traditional right to freedom before trial is specifically designed to "permit the unhampered preparation of a defense." Stack v. Boyle, 342 U.S. 1, 4 (1951) United States v. Speed Joyero, S.A., 204 F.Supp. 2d 412, 434 (E.D.N.Y. 2002). Given this basic principle, it can scarcely "offend justice" for the Court to take into account the fact that, in this case, pre-trial incarceration will especially "hamper" Mr. Nadel's personal preparation of an effective defense. See Kinney v. Lenon, 425 F.2d 209, 210 (9th Cir. 1970) (release from detention was warranted where defendant made "strong showing" that his release was necessary so that he could personally identify potential defense witnesses).

Mr. Nadel's continued detention also erects a significant obstacle to his ability to assist the S.E.C. and Receiver in tracing all of his assets. This is a condition of both the present and proposed conditions of release and Mr. Nadel has, even while incarcerated, offered his assistance. However, his limited ability to communicate and/or receive and review voluminous records because of his incarceration obviously limits the amount of help he can provide. Mr. Nadel is representing himself pro se in the SEC action and his detention impedes his ability to respond to the charges or to cooperate, or to even make decisions about how to proceed. An

example of this is the difficulty Mr. Nadel had in communicating with the SEC lawyer about a case management report that had to be filed. It took so long for Mr. Nadel and the SEC lawyer to even arrange a phone call, that the court had to grant an extension of time for routine report.

IV. MR. NADEL HAS NO ACCESS TO ANY FUNDS

The government continues to claim that Mr. Nadel "potentially has access to tens of millions of dollars that he can use to facilitate his escape." G.Mem 21. This claim was always speculative. Now, five months into the Receiver's work of locking down every asset owned or traced to Mr. Nadel, this claim is beyond speculation and borders on fantasy. Even before Mr. Nadel was charged and the Receiver was appointed, he clearly had no access to millions of dollars-not even to thousands. When Mr. Nadel left Sarasota on January 14, he traveled on credit cards and, as is recounted in the Complaint, advised his wife that he had paid the most recent bills, that there was no money left, and that she should use their credit account to pay bills. Exh.C, p. 17. As a last resort, he advised her to sell their Subaru to raise money for living expenses. Since then, the Receiver has seized all of the bank accounts of Mr Nadel and his wife, as well as all of the real estate and businesses that Mr. Nadel acquired during the years of the hedge funds' operation. Mr. Nadel and his wife are virtually penniless and Mrs. Nadel has informed counsel that she is worried

about being able to pay the mortgage of approximately $150,000 on their residence. Mr. Nadel is 76 years old and sickly and sits in the M.C.C. If Mr. Nadel had any ability whatsoever to raise funds, he would have done so to make bail.

Yet the government continues to assert, without foundation, that Mr. Nadel must have access to large sums of money. The government does this by indiscriminately tossing around some very large numbers and double counting funds to create a misleading picture. Clearly, without extensive document review and forensic accountants, the defense cannot be expected to account for every penny that went through the Scoop and Nadel accounts. However, even a cursory review of the government's numbers is enlightening.

At page 21 of its memorandum, the government asserts that Mr. Nadel received over $48 million in management fees from 2003 to 2008, something that the Receiver asserts as well. However, the government then asserts: "*In addition to the $48,584,061* that Nadel received in 'fees,' Scoop Management transferred approximately $17,177,896.56 to accounts owned individually or jointly by the defendant and his wife, and another $6,433,804.40 to other entitites controlled by the defendant." The government incorrectly *adds* these sums to the $48 million figure as the amount that Mr. Nadel received from the hedge funds, when these sums were *part of* the $48 million that Scoop Management received from the hedge funds, and were transferred from Scoop Management to accounts and

entities controlled by Mr. Nadel. The roughly $48 million is allegedly money that was paid *in* to Scoop Management from the hedge funds in management and performance fees (the other $48 million going to the Moodys), whereas the $17 million and $6 million amounts were transferred *out of* Scoop Management to Mr. Nadel's personal and business accounts. Clearly, those sums that came out of the $48 million cannot be added to it. Although the government cites the Receiver's Report as its authority (G.Mem.21), the Receiver's Report simply traced that money (the approximately $17 and $6 million amounts) through the accounts in order to seize all of Mr. Nadel's assets, and did not add it to money that was received from the funds. By incorrectly adding money that came out of the Scoop account to the total amount that Scoop took in, the government inflates the amount of money that it claims Nadel received by approximately $23.5 million. This is just one of the most obvious errors that leads the government to its claim that Mr. Nadel netted $65 million, "leaving a balance of more than $40 million unaccounted." G. Mem. at 22.

The extravagance of the government's claims is also demonstrated by the Receiver's May 28, 2009 letter (Exh. A to G. Mem.), which reported that, out of the entire approximately $400 million in investor funds that were raised, he had accounted for all but $28 million. By contrast, the government here claims that as of that same date, more than $40 million is unaccounted for out

of only that portion that Mr. Nadel received--excluding the $48 million that the Moodys received, all of the redemptions made over the years, and the trading losses. This makes no sense.

Basic arithmetic allows a maximum gross figure of not $95 million, but approximately $71 million, adding the $48,584,061 in fees to Scoop Management and Mr. Nadel's $22,859,667 in trading gains. G. Mem. 21 . The government acknowledges that Mr. Nadel paid more than $16 million to acquire all of the various property, businesses, and real estate listed on pages 22-23 of its memorandum, all of which has been seized or frozen by the Receiver. This does not even include acquisition costs for some assets that clearly have substantial value, such as four airplanes and a helicopter. G.mem. 24. In addition, the government acknowledges that Mr. Nadel paid his income taxes, which it estimates to have been approximately $30 million out its inflated gross of $95 million. G. Mem. 21. Out of the $71 million, that tax figure would be approximately $21.3 million. Subtracting taxes paid ($21.3 million) and the conceded acquisition costs of the various properties and businesses seized ($16 million) leaves approximately $33 million. However, the government does not account at all for numerous expenses that were paid by Scoop and/or Mr. Nadel over the years for salaries and office expenses for Scoop Management, commissions paid to Dan Rowe and others, development and carrying costs for the numerous businesses Mr. Nadel bought, and trading

losses in the last quarter of 2008.

The Scoop Management office had numerous employees, including Andrew Martin, Michelle Bell, Geoff Quisenberry, and Peg Nadel, as well as computers and office equipment. During the six years of operation from 2003 to 2008, Mr. Nadel conservatively estimates that these expenses amounted to approximately $7 million, which is a little more than $1 million per year. These expenses were paid out of Scoop Management, except for the small sum of $5000 per month that the Moodys contributed. Mr. Nadel and the Moodys split commissions with third parties, notably with Dan Rowe, a financial blog writer. Exh. A, Rec. Rep. II at 10. A conservative estimate of Mr. Nadel's share of these commissions over the years is $2 million.

Major expenditures were made for development and carrying costs of the various businesses that Mr. Nadel purchased, all of which have been seized by the Receiver. Although the government acknowledges the acquisition costs of these properties, it does not include any expenditures for subsequent development and carrying costs. This is despite the fact that checks the government attaches to its memorandum demonstrate, for example, that Mr. Nadel paid a total of $182,678.00 to Tradewind, Laurel Mountain Preserve, Home Front Homes, and to Thomasville National Bank (for interest

owed) just in the first week of January, 2009.[5] In particular, the real estate developments incurred substantial costs and earned no income because the plots were not completed and could not be sold. Thus all of these costs were paid by Mr. Nadel. A conservative estimate of these costs is $6.5 million, approximately $4.5 in interest payments plus $2 million in development costs. In addition, Mr. Nadel's businesses incurred losses of at least $1 million.

Mr. Nadel incurred significant trading losses when the markets dramatically declined in the last quarter of 2008. These losses amounted to approximately $4.5 million. Finally, in 2008, Mr. Nadel transferred back into the funds approximately $9.5 million from his personal accounts in order to meet increasing demands for redemptions. The trading losses combined with the amounts transferred back to the hedge funds to pay redemptions totalled $14 million.

Thus, when this $14 million is added to the $7.5 million in development/carrying costs and business losses, plus the $9 million in office expenses and commissions, it amounts to $30.5 million. Out of the $33 million net of taxes and acquisition costs for assets that have been seized, this leaves $2.5 over a period of 7

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5 The fact that Mr. Nadel used what money he had left in January to pay bills due for these various businesses, rather than to remove cash for an "escape," completely undermines the government's flight theory. If Mr. Nadel were planning to flee, why would he care about paying these bills?

years. This amount, which was certainly to acquire some of the unvalued property, as well as to pay living expenses, cannot justify the government's claim that Mr. Nadel must have access to "millions."

Thus, the funds that Mr. Nadel received are accounted for. It is unclear, then, what the Receiver's letter refers to when it states that $28 million of the entire $397 invested remains unaccounted for. Perhaps it is referring to some of the $48 million that the Moodys received or to some of the overpayments to investors. The Receiver has just filed his Second Interim Report ("Rec. Rep. II"), which we attach as Exhibit A hereto. This latest report makes no reference to an unaccounted for $28 million. Moreover, the figures set forth in that report further demonstrate the inflated nature of the government's claims. The Receiver states that the hedge funds took in slightly more than $397 million and that investors had out of pocket losses of $168 million. Rec Rep. II at 12. This means that $229 million was returned to investors in redemptions. Out of the $168 million in out of pocket losses, the Receiver states that approximately $18 million was lost in trading. Rec. Rep. II at 9-10. Approximately $53 million in overpayments was paid to investors, based on allegedly fictitious profits, and $97,168,122 was paid in fees to Scoop Management and the Moodys' firms, Viking Management and Valhalla Management. Rec. Rep. II at 11-12. These figures account for the $397 taken in by

the hedge funds. Thus, aside from the $48 million in fees to Scoop Management, the rest was either paid to investors in redemptions, paid to Moodys, or lost in trading.[6]

[6] The Receiver's letter attached to the government's memorandum makes reference to unspecified "recent findings." However, the only assets listed in the Receiver's Second Interim Report or on its website as having been seized after the First Interim Report are 1) a promissory note and mortgage held by Peg Nadel on a $120,000 loan to an employee of the Victorian Florist Shop that she had assigned to the Cohen, Jayson & Foster firm in payment of legal fees incurred in this case (Rec. Rep. II, 17), and 2) the Nadel's vacation house in Fairview North Carolina, which had been purchased in 2004 for $335,000 and carries a mortgage of $248,560. Rec. Rep. II, 36. These assigned or encumbered assets hardly constitute a slush fund for escape money.

CONCLUSION

For the foregoing reasons and the reasons set forth in his Memorandum of Law and Fact in Support of Motion for Modification of Bail Conditions, Arthur Nadel requests an order modifying his bail conditions for pretrial release in accordance with the terms proposed in his Motion for Modification of Bail Conditions.

Dated: New York, New York
June 12, 2009

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

By: _____

MARK B. GOMBINER
COLLEEN P. CASSIDY
Attorney for Defendant
Arthur G. Nadel
52 Duane Street - 10th Floor
New York, New York 10007
Tel.: (212) 417-8747

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

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.
_____/

THE RECEIVER'S SECOND 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") (which, along with Arthur Nadel, are 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");[1] (c) Relief Defendants Valhalla Management, Inc. and Viking Management (which, 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 Second 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.[2]

The Receiver was appointed on January 21, 2009. By January 26, 2009, the Receiver established an informational website 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 Second Interim Report, as well as all previous and subsequent reports, will be posted on the Receiver's website.

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

[1] While these funds are referred to as hedge funds in this report, the Receiver's investigation has raised serious questions as to whether they were ever operated as legitimate investment vehicles.

[2] This Second Interim Report is intended to report on information and activity from March 24, 2009, through May 15, 2009. Thus, unless otherwise indicated, the information reported herein reflects the information in the Receiver's possession as of May 15, 2009.

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 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 the Investment Managers and Relief Defendants (the "Order Appointing Receiver"). (*See generally* Order Appointing Receiver (Doc. 8).)

Also on that same day, on the SEC's motion, the Court entered (i) an Order of Preliminary Injunction and Other Relief as to the Investment Managers 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