

**I.
FACTS AND PROCEDURAL HISTORY**

1. This Motion is supported by the Declaration of Michael J. Quilling, Receiver (the "Receiver's Declaration"), which is attached and fully incorporated as Exhibit "A".

2. On November 17, 2006, this Court appointed the Receiver to act on behalf of ABC Viaticals, Inc. and numerous related individuals and entities in *SEC v. ABC Viaticals, Inc., et al.*, Cause No. 3:06-CV-2136 (N.D. Tex.). *Order Appointing Receiver* [Dkt. No. 8] (3:06-CV-2136). The Receiver has since continued to function in that capacity. *Receiver's Declaration*, Exhibit "A" at ¶ 3.

3. Through that Order, this Court expressly authorized the Receiver to recover Receivership Assets and proceeds by filing suit against third-parties:

The Receiver is hereby authorized to institute, defend, compromise, or adjust such actions or proceeding in state or federal courts now pending and hereafter instituted, as may in his discretion be advisable or proper for the protection of Receivership Assets or proceeds therefrom, and to issue subpoenas, institute, prosecute, compromise, or adjust such actions or proceedings in state or federal court as may in his judgment be necessary or proper for the collection, preservation, or maintenance of the Receivership Assets.

Order Appointing Receiver [Dkt. No. 8] at ¶ 13 (3:06-CV-2136).

4. Accordingly, the Receiver filed this lawsuit against Defendant Mark Wolok ("Defendant") and others on March 6, 2007. *Complaint* [Dkt. No. 1].

5. On March 13, 2007, Defendant received service of process as indicated on the affidavit of service [Dkt. No. 9] filed on March 20, 2007. Defendant, therefore, had until March 29, 2007, to answer or otherwise respond in this matter. FED. R. CIV. P. 12(a).

6. To date, Defendant has failed to answer or make an appearance in this case.

Receiver's Declaration, Exhibit "A" at ¶ 6.

7. The Clerk of this Court entered Defendant's default into the record on April 13, 2007, in accordance with Rule 55(b)(1) of the Federal Rules of Civil Procedure. *Clerk's Entry of Default* [Dkt. No. 31].

8. On February 13, 2007, Defendant filed a voluntary petition for bankruptcy in Cause No. 07-42830-S (Bankr. E.D. Mich.). A true and correct copy of that Petition is attached and fully incorporated as Exhibit "B".

9. On May 15, 2007, the Receiver filed an adversary action in *Quilling v. Wolok*, Cause No. 07-5636-S (E.D. Mich.). The Receiver objected to discharging any of Defendant's debts to ABC. A true and correct copy of that Complaint is attached and fully incorporated as Exhibit "C".

10. On July 5, 2007, the United States Bankruptcy Judge overseeing those cases entered an Order excepting from discharge all debts that Defendant owes to ABC. Paragraph 6 of that Order also vacates the automatic stay for purposes of obtaining judgment against Defendant in this case:

The Automatic Stay as provided by 11 U.S.C. §362, shall be and the same is hereby vacated as it applies to Plaintiff's prosecution of claims against Defendant in the Pending Lawsuit.

A true and correct copy of that Order is attached and fully incorporated as Exhibit "D".

11. Defendant is not an incompetent, infant, person currently in military service, or any officer or agency of the United States. *Receiver's Declaration*, Exhibit "A" at ¶ 7. Therefore, this Court should enter default judgment against Defendant.

II. ARGUMENT AND AUTHORITIES

12. A District Court may enter a final judgment by default. FED. R. CIV. P. 55(b)(2). The Court has discretion to determine the most appropriate method for calculating damages for a default

judgment. *Id.* It is not necessary to hold an evidentiary hearing to determine damages following a party's default. *See, e.g., Leedo Cabinetry v. James Sales & Distrib., Inc.*, 157 F.3d 410, 414 (5th Cir. 1998). Instead, damages are often proven simply through affidavit. *Chemtall Inc. v. Citi-Chem, Inc.*, 992 F. Supp. 1390, 1412 (S.D. Ga. 1998). A Court's default judgment ruling on damages without an evidentiary hearing is reviewed only for abuse of discretion. *Leedo Cabinetry*, 157 F.3d at 414.

13. In this case, the amount of ABC's damages is measured by the bond obligations that Defendant caused to go unpaid. Those obligations currently total \$48,811,500.00. *See Complaint* [Dkt. No. 1] at ¶ 32; *Receiver's Declaration*, Exhibit "A" at ¶ 8; *see also Order of Final Default Judgment* [Dkt. No. 46].

14. Furthermore, because the Receiver has fully set forth all legal and factual bases for liability, there is no need for an evidentiary hearing to determine damages in this case. *Leedo Cabinetry*, 157 F.3d at 414.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff requests that this Court enter final default judgment against Defendant Mark Wolok for \$48,811,500.00, plus pre- and post-judgment interest at the rate provided by law and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By: /s/ Brent J. Rodine
Michael J. Quilling
State Bar No. 16432300
Email: mquilling@qsclpc.com
Brent J. Rodine
State Bar No. 24048770
Email: brodine@qsclpc.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

On the 18th day of July, 2007, a true and correct copy of this motion was sent to all interested parties through the Court's electronic filing system and by first class U.S. mail, postage prepaid, to:

Mark Wolok
4190 Telegraph Road
Suite 2500
Bloomfield Hills, Michigan 48302

/s/ Brent J. Rodine