

**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 commenced this lawsuit against Defendant KPMG International (“Defendant”) and others on March 6, 2007. *Complaint* [Dkt. No. 1].

5. On July 7, 2007, Defendant received service of process through Timothy P. Flynn, who serves on its International Board of Directors. *See Affidavit of Service* [Dkt. No. 54]; *Receiver’s Declaration*, Exhibit “A” at ¶ 6. Defendant, therefore, had until July 27, 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 August 22, 2007, in accordance with Federal Rule of Civil Procedure 55(b)(1). *Clerk's Entry of Default* [Dkt. No. 57].

8. 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.

II. ARGUMENT AND AUTHORITIES

9. 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.

10. In this case, the amount of damages is measured by the due and unpaid bond obligations incurred by ABC Viaticals, Inc. after relying upon erroneous accountant's reports issued by Defendant or with its consent. *See Complaint* [Dkt. No. 1] at ¶¶ 36, 40, 42, 44, 47, 53. Those losses 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. Nos. 46, 51, 52].

11 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 KPMG International 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,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

On the 28th day of August, 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:

KPMG International
c/o Timothy P. Flynn
781 Wooded Trail
Franklin Lakes, New Jersey 07417

/s/ Brent J. Rodine