

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

MAR 11 2013

CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT By _____
FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

**SECURITIES AND EXCHANGE
COMMISSION (SEC),**

Plaintiff,

V.

**ABC VIATICALS, INC.,
C. KEITH LAMONDA,
and JESSE W. LAMONDA, JR.,**

Defendants.

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§ Civil Action No. 3:06-CV-2136-P

C. KEITH LAMONDA'S OBJECTIONS TO
FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The defendant, C. KEITH LAMONDA, **pro se**, respectfully submits unto this Honorable Court as follows as his C. KEITH LAMONDA'S OBJECTIONS to the *FINDINGS, CONCLUSIONS, AND RECOMMENDATION*, filed February 22, 2013 (doc. 410), of the United States Magistrate Judge herein:

The Honorable United States Magistrate Judge issued her *Findings, Conclusions, and Recommendation* (doc. 410) with respect to C. Keith LaMonda's *Motion to Compel Receiver to Comply with Court's Ordered Compromise and Settlement*

Agreement, filed May 2, 2012 (doc. 344), on February 22, 2013, after hearing evidence and arguments ore tenus on February 20, 2013. The Court recommended that the Honorable U. S. District Judge deny the *Motion to Compel Receiver to Comply with Court's Ordered Compromise and Settlement Agreement*, filed May 2, 2012 (doc. 344), and the related *Motion to Freeze Receivership Assets and Enjoin Further Receivership Expenditures Pending Resolution of C. Keith LaMonda's Motion to Compel Herein*, filed July 31, 2012 (doc. 356); the *Motion for Sanctions Against Receiver Pursuant to Federal Rule of Civil Procedure 11*, filed September 11, 2012 (doc. 366), and the *Motion to Intervene of C. Keith LaMonda*, filed October 19, 2012 (doc. 374). The defendant, C. Keith LaMonda, respectfully interjects the following **OBJECTIONS** to the *Findings, Conclusions, and Recommendation* (doc. 410) of the United States Magistrate Judge set forth in her Order entered on February 22, 2013:

OBJECTION 1: The Honorable United States Magistrate Judge, based on "the nature of the relief sought and certain statements in the motion to compel and reply" (see doc. 410 at 1) purported to liberally construe LaMonda's motion to compel as a "motion for an order to have the Receiver show cause why he should not be held in contempt for failing to comply with a court order" (see doc 410 at 1). The Court addressed this construction of the motion in the ore tenus hearing and procured LaMonda's ill-advised consent to proceed under that construction. LaMonda's acquiescence to this construction was ill-advised and a product of the same lack of expertise in legal matters as a pro se litigant upon which the "liberal construction" was effectuated. The word "liberal," in the context of the Court's duty to protect the

defendant's rights as a pro se litigant, is meant to protect and preserve the defendant's interest. The Court employed the "liberal construction" in this instance as a means of converting the standard of proof from the preponderance of the evidence standard attendant to contract breach questions in civil courts to the standard of "clear and convincing evidence." LaMonda did not understand the import of this change in the standard of proof, and respectfully argues that under the preponderance of the evidence standard, the outcome of the current proceeding would be much different than that posed by the Honorable Magistrate's Findings, Conclusions, and Recommendation. (*See p. 1, Findings, Conclusions, and Recommendation*).

OBJECTION NO. 2: The Court found that "the testimony of the Receiver that LaMonda provided no assistance with any recoveries to be more credible than LaMonda's."(*see doc. 410 at 20*) She concluded that the Receiver's testimony is supported by the record, including the timing of the events that ultimately led to the recoveries against IFS and/or Goldenberg, E and J, and DMH, or with the sale of the portfolio of policies. LaMonda respectfully objects to this inappropriate endorsement of the Receiver's credibility, and asserts that the Court gave absolutely no credence to LaMonda's meticulous, factual, and warranted motions, exhibits, and affidavits submitted under the penalty of perjury set forth in the "related motions" about which the Court also recommended denial. LaMonda advanced proof which impugns the Receiver's credibility and, in fact, establishes that he is subject to ethical and legal sanctions. The Court saw fit to dispose of these motions during the same three-hour proceeding reserved for ore tenus evidence on the motion to compel. It is apparent from the pleadings and

consequent orders that the Court utilized a presumption of credibility and propriety in the Receiver's favor. The ore tenus hearing was merely a convenient vehicle for terminating the Receivership and lending support for all of the improprieties clearly documented by LaMonda. (*See pp. 20-21, Findings, Conclusions, and Recommendation*).

OBJECTION 3: As a general objection, LaMonda objects to the *Findings, Conclusions, and Recommendation* as premature. LaMonda instituted his action seeking contract breach damages with inadequate information to prove his damages with certainty, under the contemplation of procuring necessary information and documentation through discovery procedures. A major portion of the relief sought consisted of an accounting by the Receiver to LaMonda for transactions and recoveries throughout the many years in which the receivership has been in operation. The court did not make provision for information which had to be properly developed through legal means, and essentially leapfrogged across the necessary discovery procedures for the purpose of merely ending LaMonda's action. (*See overall Findings, Conclusions, and Recommendation*).

OBJECTION 4: As an overall objection, LaMonda respectfully objects to the Court's application of contractual principles to the Compromise and Settlement Agreement (CSA) (see doc. 71,72); rather, the objection should be couched in terms of the Court's absolute failure to recognize the governing case law, with which the motion at issue is replete, requiring absolute adherence to the four corners rule. The Court in effect butchered the four corners rule by interpreting the contract to conform to the Receiver's

excessive powers and his bold, repugnant characterizations arising from LaMonda's status as a prisoner. The Court readily bought into the Receiver's ultra vires actions, and ignored all of the evidence which LaMonda placed in the record through the motions which were summarily denied, the motion itself, and the evidence adduced by LaMonda in the ore tenus hearing.

The four corners rule is the most elementary concept known to Texas state and federal law. There is no need to interpret an unambiguous contract, and the language in Paragraph 15 is the most unambiguous contractual term that one can find in the annals contract interpretation and adjudication. The Court exhibited a belief that the Receiver has the unfettered right, fully ratified by the Court's overall recommendation, that the Receiver is free to negotiate a contract while harboring the intent to repudiate each and every overture that the opposing party might make about entitlement to payment under the contract. It is unambiguous from the record that the Receiver never intended to pay a dime. LaMonda cited pleadings, which were quoted extensively, to the effect that the Receiver would not bargain or negotiate with a prisoner and that his attitude evinced an intention to pay nothing lest LaMonda might be encouraged to ask for something else. A contract is a contract, and the four corners rule must prevail in each and every case. The Court gave no credence to the rule, and her recommendation should be ignored and overruled on that basis alone.

OBJECTION 5: The recommendation before the Court was not articulated in a vacuum. Case law within the Fifth Circuit and the Northern District of Texas in which Quilling's conduct as a Receiver has been challenged establishes a pattern which cannot

be gainsaid. The limitations attendant to this objection in terms and time and space preclude LaMonda from citing all of these cases, but the Court is well aware of them because in most cases the U. S. District Court ratified Quilling's specious conduct to such an extent that a pattern emerges: the SEC superimposes its powers upon a flourishing business, insures that Quilling, who has a reputation of never failing with any undertaking in the Northern District of Texas, is appointed as Receiver, and after a voluntary agreement creates a receivership estate, wreaks havoc upon the business until all of the money is spent and the estate is closed. Not one concern for the ownership of the flourishing business is manifested by the Receiver, and eventually the owners, who lose innumerable assets by reason of the ultra vires actions of the Receiver, are forced into the same position in which LaMonda finds himself today. The four corners rule is demeaned may or may not be invoked by the Court's, but the outcome is all the same: the Receiver wins and the owner is divested of his entitlement to funds which he generated by working 24 x 7 for many years.

In the current proceeding, LaMonda has proved that no one lost money by reason of his business operations, and that; in fact, there was a great excess of funds when funds were matched to specific policies. Any evidence that Quilling introduced to the contrary is tainted by the evidence which LaMonda submitted in his motions for sanctions, which was summarily denied herein, casting credible aspersions upon Quilling's character and his unmitigated boldness in inundating this predilection in pleadings tendered to this Honorable Court for adjudication. There is absolutely no evidence in this proceeding that Quilling labors under any fear that he will be held accountable for his actions, and if nothing else, he is subject to contempt for the language

documented in LaMonda's motion for sanctions. LaMonda raises a continuing objection to the preferred treatment manifested toward Quilling in this proceeding and other proceedings conducted throughout Quilling's tenure as an officer of this Court.

OBJECTION 6: Commencing with Section B(1) of the recommendation, under Hearing, the Court observes, "The Receiver specifically denied that LaMonda assisted him by voluntarily giving him records or millions of dollars of assets; he already had control and possession of those records and assets by virtue of the Court's order appointing him as Receiver." (*see* 410 at 11) The Court, throughout the entire recommendation, treats the Receiver's denials as gospel and construes them under the protective umbrella of a presumption of credibility. (See Part III, Motion for Contempt, Subparagraph B, Paragraphs 3-4, in which the Court states, "The Court also finds the testimony of the Receiver that LaMonda provided no assistance with any recoveries to be more credible than LaMonda's. The Receiver's testimony is supported by the record, including the timing of the events that ultimately led to the recoveries against IFS and/or Goldenberg, E and J, and DMH, or with the sale of the portfolio. These events preceded both the Agreement and the Receiver's first substantive meeting with LaMonda in December 2007)."

There is no room under the four corners rule for the interpretation placed upon the contract by the Court. Paragraph 15 disallows any spin placed upon its language to the effect that the assets germane under the contract which were previously in the possession of the Receiver were exempt from consideration under the compensability provisions of Paragraph 15. Events that preceded both the Agreement and the Receiver's

first substantive meeting with LaMonda are compensable, as well as the assistance given to the Receiver against IFS, Goldenberg, E and J, and DMH, and especially with respect to the portfolio are, contrary to the Court's findings, compensable under the contract. Quilling, as the drafter and creator of the Agreement, had every opportunity to insert definitions limiting the compensable assistance to certain periods of time and/or certain circumstances. Similarly, the Receiver had the opportunity as drafter to define the circumstances under which assets would fall within the ambit of "additional assets." The disputations of the Receiver constitute evidence of his bad faith in the negotiation and draftsmanship of the agreement.

OBJECTION 6: LaMonda vehemently objects to the resolution of his motion under the clear and convincing evidence standard of proof. However, he submits that based upon the totality of his evidence he has proved the two elements necessary to surpass the clear and convincing standard. First, a court order was in effect. Secondly, the order required certain conduct by the respondent. Third, the respondent failed to comply with the court's order.

The Court did not choose to delve in the most important task that a reviewing court faces in adjudicating controversy surrounding performance under the contract--the Court skirted the issue of the parties' intent upon entering into the contract. In this case, it is clear, based upon the documentation submitted in the motion for sanctions and the motion to freeze the receivership assets that the Receiver entered into the contract with no intent of complying with Paragraph 15. He repudiated his obligations from the outset, after he had promised LaMonda everything under the sun to induce him into signing the

contract (which, significantly, took place after entry of the Court's order adopting and ratifying the agreement and the subjection of the agreement to the Court's contempt powers). The Receiver's statements to others, duly documented in LaMonda's exhibits which were withheld from him by U. S. Marshals prior to the ore tenus hearing, clearly document his intent to avoid paying LaMonda one dime. He bragged to third parties that he never distributed money to persons from whom he seized it. He said that if he encouraged LaMonda by engaging in negotiations, he would do nothing but encouraged him. Does that not evince beyond doubt that the Receiver harbored a contemptuous intent which preceded the consummation of the agreement and governed his conduct at all points thereafter?

The Honorable United States Magistrate Judge purports to adjudicate the matter under the law established in *Travelhost, Inc. v. Blandford*, 68 F.3d 958 (5th Cir. 1995),:

that the evidence surpasses the evidentiary standard if the Court determines that the evidence of the proponent thereof is direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case.(*Travelhost Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995).

The evidence of the proponent, LaMonda, is clearly within this standard and the Court erred in its conclusion that he has not borne the standard of proof. (See Part III, *Motion for Contempt*, Paragraph One).

OBJECTION 7: LaMonda objects to the Honorable U. S. Magistrate Judge's finding that LaMonda is not entitled to any portion of the proceeds from the sale of the

entire portfolio of policies, and that the Receiver "was unaware that LaMonda contacted any potential bidders." (doc.401) The purchaser of the portfolio had been a close business associate of LaMonda since time immemorial, and the history of LaMonda's relationship with the purchaser combined with the unequivocal evidence that the Receiver was prepared to accept a bid in an amount constituting about \$5 million less than the amount which LaMonda's associate eventually paid inexorably leads to a conclusion that LaMonda's work at the behest of the Receiver is compensable under Paragraph 15.

The time allotted for the ore tenus hearing precluded LaMonda from fully expounding upon the sale of the portfolio of policies. The circumstances under which the hearing was scheduled and heard inured to the detriment of LaMonda in that he had no occasion for preparing for this aspect of the hearing. A hearing within the parameters of the Due Process Clause of the Fifth Amendment would have enabled LaMonda to subpoena relevant witnesses and coordinate testimony establishing the development of the facts attendant to the sale of the portfolio. LaMonda's legal materials were seized by the U. S. Marshals, and he was deprived of the benefit of documents necessary to the competent presentation of a legal claim. This objection extends not only to the sale of the portfolio, but also to all of the other claims about which the Honorable United States Magistrate Judge found: "None of the items the Receiver collected related to Paragraph 15 of the Agreement." (*see* doc.410, **Hearing**, Page 16).

OBJECTION 8: LaMonda respectfully objects to the Recommendation's finding that "the Receiver was required to file a foreclosure action" with respect to the Florida property. The Receiver drafted the Agreement and orchestrated a clause allowing

recognition of an equitable lien. The Receiver was not "required" to undertake the illegal action of foreclosing on the Florida property. It is an elementary principle, fully implemented in the Florida Statutes under which the foreclosure was effectuated, that the right to foreclose is triggered by a default. There were no default provisions enumerated in the agreement before the Court. The Receiver was hedging his bets and relying upon his procedural proclivities to invoke his unfounded allegations of a Ponzi scheme, with the attendant attribute of insolvency, to turn the equitable lien into cash.

When the Receiver instituted the foreclosure action in the Florida court, he alleged the existence of a default and the Florida Court's final order, obviously drafted and presented to the Court by the Receiver and his officers, agents, and employees who litigated the foreclosure action, found that default had, in fact, occurred. The Court erred in its findings concerning the Florida real estate, and this Honorable Court has absolutely no factual basis for finding that the necessary default provisions were incorporated into the agreement. (See Page 17, Paragraph 1).

OBJECTION 9: The Honorable United States Judge found that "LaMonda has not shown by clear and convincing evidence that the Receiver 'clearly violated' the Agreement or the Court's Order by...foreclosing on it and selling it to enforce the receivership's equitable lien." (Page 19, Property, Paragraph 1). The Court shifted the burden of proof erroneously to LaMonda. LaMonda proved in his case-in-chief that there was no default provision in the Agreement. This proffer was sufficient to require the Receiver to prove the legality of a foreclosure without a default provision. The agreement with respect to the real property was consummated with the intent to preserve

LaMonda's interest in the property under applicable real property law. If LaMonda and the Receiver had intended to perform in the manner approved by the Court, there would have been no rationale for a lien at all--LaMonda would have simply transferred all of his right, title, and interest in the property to the Receivership.

OBJECTION 10: LaMonda respectfully objects to the Court's failure to attribute any weight whatsoever to the evidence adduced by Mr. Bill Whitehill, a competent attorney whose credibility cannot be questioned. The record establishes that Mr. Whitehill was in an excellent position to assess the assistance rendered by LaMonda to the collection of additional assets.

He corroborates LaMonda's testimony and supporting exhibits, and the Court acknowledged his statement that LaMonda offered the Receiver his assistance and information, and provided valuable information to the SEC. Most importantly, the Court made specific note of the fact that LaMonda instructed his counsel, who was working for an hourly fee, to give the SEC and the Receiver "everything they wanted." (Page 17, Paragraph No. 3). The evidence reveals that LaMonda ignored another counsel's advice to refrain from "being so forthcoming" and "offered to share the information that he had." The Court's failure to give credence to this evidence and assign undue weight to the testimony of the Receiver is appalling in view of LaMonda's unequivocal commitment to assist the Receiver and the SEC.

OBJECTION 11: LaMonda submits that the Honorable United States Magistrate Judge never once considered that the business operations in question cannot

be characterized as a fraudulent operation. Purchasers did not lose money, and the imposition of the SEC and its insistence upon the establishment of a receivership led to loss that cannot be properly evaluated by reason of the Receiver's refusal to render a full and complete accounting to LaMonda to enable him to prove his claim under Paragraph 15. The business was atypical in the context of other businesses subjected to a receivership, and LaMonda acquiesced to the establishment of a receivership under the coercive influence of a criminal prosecution in Florida and the obvious collusion among the SEC, the Receiver, and the Office of the United States Attorney's Office for the Middle District of Florida. The absence of any language in the Report and Recommendation acknowledging the lack of harm sustained by any of LaMonda's purchasers and LaMonda's right to profit from his business undertakings successfully conducted in the spirit of capitalism. LaMonda respectfully objects to the Court's failure to weigh the evidence set forth in the record in its entirety.

OBJECTION 12: LaMonda respectfully objects to the denial of his right to a jury trial on the issue of contract breach and damages. The contract providing the foundation for LaMonda's claim is an ordinary contract, and the construction of the dispute under the procedures reserved for contempt adjudication is erroneous. The Court took it upon itself to unilaterally construe LaMonda's motion to compel as a motion for a rule to show cause why the Receiver should not be held in contempt for failing to abide by the contract. Ironically, this erroneous ruling was purportedly made in fulfillment of the Court's duty to construe LaMonda's pleadings liberally based upon his status as a pro se litigant. The Court's hasty scheduling of an ore tenus hearing allowed no time or

opportunity for LaMonda to take remedial action to protect his interest by the filing of proper motions, such as a motion to take an issue out of chancery and have a jury rule upon the limited issues of contract breach and damages. (Order, p. 1, Paragraph 1). The "liberal construction" of LaMonda's motion is a constitutional right, and was never meant to be an instrument allowing the Court to circumvent the right to a jury trial and the adjudication of the issues under the preponderance of the evidence standard of proof.

OBJECTION 13: LaMonda objects to the Court's recommendation of dismissal based upon its self-serving standard, without reference to any legal guidelines or authorities, to the effect that "LaMonda has not shown that 'this' is the type of assistance contemplated by the Agreement" in the context of the "assistance" necessary to trigger compensation under Paragraph 15. (Order, p. 20). LaMonda met his burden of proving a prima facie case, and it was incumbent upon the Receiver to rebut LaMonda's evidence and prove that the assistance established there "is not" the "type of assistance" contemplated by the agreement. The Court had a duty to establish the type of evidence called for in the agreement. The process mandated by the four corners rule requires the court, as the first order of business, to rule upon the presence or absence of ambiguity in the contract's language and resort to the parties' intent manifested in the contract's language. One cannot discern from an overall review of the recommendation for a dispositive order that the court even considered ambiguity and the intent of the parties to the contract.

OBJECTION 14: LaMonda respectfully objects to the Honorable United States Magistrate Judge's subjective assessment of the assistance rendered to the Receiver as not enough. The Court did not rule that the standard for the assistance provided was "substantial assistance" or any other term connoting objectivity to some degree. One could infer from the language in the recommendation that the United States Magistrate Judge has some lofty notion of what constitutes "assistance," but she does not purport to reduce such notion to a workable standard. She seems to imply that "assistance" is something we recognize when we see it, but her finding is insufficient as a matter of law. The efforts which she deems not to constitute assistance encompass efforts for which LaMonda expended millions of dollars which he is now asked to forego.

For example, she specifically states that the Receiver's employment of two of LaMonda's employees to assist with the transfer of records, and assistance provided through his attorneys, for which he also expended millions of dollars, is not enough to warrant payment under Paragraph 15. The justification provided for the recommended denial--that the Receiver was required to seize all assets and records of the receivership regardless of LaMonda's agreement or cooperation--subsumes all forms of assistance which one could imagine. This interpretation of Paragraph 15 renders the provision unenforceable, and the Court is required to indulge in the presumption that the parties would not have articulated the provision at all if it were unenforceable. The Court must assume that the parties intended to enter into a mutually binding agreement with sufficient consideration. In the absence of the Court's enforcement of Paragraph 15, the parties would have omitted the provision altogether. The Court noted, "LaMonda has not shown that this is the type of assistance contemplated by the Agreement." (doc. 410) To

the contrary, LaMonda, through his own testimony corroborated by a morass of exhibits, proved that the assistance which he rendered "is the type of assistance contemplated by the Agreement." If the Court had explored the concept of intent at all, LaMonda's evidence adduced to demonstrate the parties' intent would have been controlling. (Order, p. 20).

OBJECTION 15: LaMonda objects to the Court's conclusions drawn from the evidence surrounding the sale of the entire portfolio of policies. The Court deems it controlling that "the sale of the portfolio was completed as the result of a Court-supervised public auction" and that "LaMonda did not broker the sale." (Order, p. 21). The evidence relating to the sale of the portfolio demonstrates that the sale by public auction was orchestrated through the means of advertisements and personal contacts designed to generate commitments from interested parties, and that the Receiver had prepared paperwork under which he planned to procure the Court's permission to accept a bid which had been already tendered in the amount of about \$27 million. LaMonda, through the expenditure of considerable costs and labor, utilized his personal experience and contacts with the eventual purchaser of the portfolio and, in effect, through intense persuasive undertakings, convinced the purchaser that it was in the purchaser's best interests to appear at the public auction and tender an offer in the amount of \$33 million. Under the Court's perception of the transaction, no amount of assistance by LaMonda would have sufficed to trigger compensation under Paragraph 15 because the sale was effectuated through a public auction. The success of an auction is predicated upon the people who attend the auction. If one babies a potential purchaser into appearing at the

auction and tendering a bid in excess of the highest bidder, that effort constitutes more than substantial assistance, and the Receiver cannot deny that the receivership estate benefitted by the assistance to the extent of more than \$5 million. LaMonda is entitled to an award of at least \$1.25 million for his assistance rendered in the sale of the portfolio of insurance policies. The Court's observation that the fact that LaMonda "may have assisted the ultimate buyers start their companies prior to the SEC's proceedings does not equate assistance with the sale" is a gross oversimplification of the facts. LaMonda testified along these lines only to demonstrate that he used his own personal, valuable connections in the business as a means of persuading purchasers to become interested in the portfolio and eventually tender a bid much higher than the highest bid the Receiver could procure on his own.

OBJECTION 16: LaMonda respectfully objects to the Court's conclusion that "additional assets" under the contemplation of Paragraph 15 cannot be part of the assets which were "already assets of the receivership." The assets to which the Court refers, i.e. funds deriving from IFS, the Goldenburg Settlement, E and J, and DMH, were no doubt "legally" assets of the receivership estate. However, the assistance provided by LaMonda centered upon the "physical" acquisition of those assets and their "physical" transfer into the estate. One can own assets, but if he cannot procure possession of them, the ownership is for naught. (Order, p. 21).

OBJECTION 17: The Honorable United States Magistrate's construction of the contract totally frustrates the intent of the parties. The recommendation states as follows on Page 21, Paragraph 1:

Even assuming *arguendo* that LaMonda provided assistance by virtue of allowing access to his staff and records, or even through any information he provided at December (sic) 2007 meeting, he has still not shown that this was the type of assistance contemplated by the Agreement.(doc.410, at 210)

It is important that LaMonda has been deprived of access to his litigation documents by the unlawful acts and omissions of the United States Marshal Service. He does not have sufficient materials with which to analyze the Court's conclusions, and is bewildered by the following language which immediately follows the preceding quotation:

The first sentence and the preceding four paragraphs provide context for the type of efforts (or assistance) for which payment was required to be made under the second sentence of Paragraph 15...Because 'these actions' were already assets of the receivership, they could not be 'additional assets' as contemplated by the Agreement. (Id.).

The characterization of the foregoing language as "opaque" and "obfuscatory" only scratches the surface. This half-hearted stab at clarification of the term "additional assets" is a complete failure, and it is incontrovertible that the Honorable United States Magistrate Judge has not fulfilled her responsibility to make findings of fact and conclusions of law that provide the litigants and persons reviewing the record in the future unambiguous guidance. Giving effect to the Honorable United States Magistrate Judge's recommendation would constitute reversible error of the most basic sort.

OBJECTION 18: LaMonda respectfully objects to the Honorable United States Magistrate Judge's denial of his motion to freeze assets pending determination of his motion under the All Writs Act, 28 U.S.C. 1651(a), and further asserts that the motion should be granted at this time and construed to preserve the receivership estate during any appeal that might ensue herein. LaMonda has, contrary to the Court's conclusions, proved the requisites for a preliminary injunction. LaMonda has established that he is likely to succeed on the merits with respect to his motion for rule to show cause, assuming arguendo that the motion will retain its characterization as such. He has already suffered irreparable harm and will without doubt suffer additional irreparable harm in the event the court denies LaMonda's relief. The balance of equities tips in his favor, and an injunction would be in the public interest. (*See Order*, p. 22, Part IV).

OBJECTION 19: LaMonda respectfully objects to the Court's findings with respect to the motion for sanctions, and the procedure under which the Honorable United States Magistrate Judge adjudicated the matter. The motion for sanctions was filed at a time when LaMonda had become totally frustrated with the Receiver's abject, contemptuous disrespect for LaMonda and the undignified manner in which the Receiver had conducted the litigation up until that point. The matters specifically proven in the motion for sanctions, in most instances derived from contemptuous pleadings which the Receiver had filed in the instant matter, were sufficient to overcome any conceivable presumption of good faith, unless the Court felt that it was acceptable conduct for the Receiver to boast in pleadings duly filed in the current pending matter that he never

intended to negotiate or bargain with LaMonda based upon his belief that doing so would merely encourage him. No presumption of good faith can make this type of contemptuous, undignified evidence into something that it is not. The Receiver's language has no place in a dignified society, and the Court has endorsed the Receiver's unbridled attempts to impugn the character of persons invoking judicial processes for relief.

The motion for sanctions was filed at a time when LaMonda perceived that he could possibly effectuate change in the Receiver's contemptuous manner of litigating the issues. The Court frustrated this effort by placing a lengthy stay upon the filing of further pleadings in the proceeding. The stay was never removed, and the Court then proceeded to set an expedited hearing date without affording LaMonda any time to have his motions ruled upon and reap the benefit of the Court's rulings, which LaMonda honestly believed would serve to deter the Receiver from his contemptuous efforts. The Court frustrated LaMonda's efforts in the current litigation altogether by first recommending denial of the underlying motion for relief under the agreement, and, as an incident matter, taking up the motion for sanctions. The motion for sanctions lost its relevance when the Honorable United States Magistrate Judge decided to stay the filing of further pleadings and conduct a hearing which, in effect, made the motion for sanctions moot. (Order, pp. 24-25).

OBJECTION 20: LaMonda respectfully objects to the violation of his substantive and procedural rights to due process of law guaranteed by the **Due Process Clause of the Fifth Amendment to the United States Constitution**, perpetrated by the Honorable United States Magistrate Judge between December, 2012, when the Court

placed a stay upon the filing of any and all pleadings of whatsoever type, nature, or kind (*see* doc.399,12/6/2012) , allowed a period of two months to pass, and suddenly, without affording LaMonda an opportunity to voice his concerns or take action to protect his interest, scheduled an ore tenus hearing (*see* doc.407, 02/07/2013) which necessitated that LaMonda be transported from the Federal Correctional Institution 2, Butner, North Carolina, to an isolated unit within the territorial jurisdiction of this Honorable Court and forced to present his motion to compel to the Court on February 20, 2013. (*see* doc. 406,407) The U. S. Marshal Service seized all of LaMonda's legal papers which accompanied him for the purpose of documenting his claim to this court. The Court conducted an ore tenus hearing during the afternoon of February 20, 2013,(*see* court docket entry 02/20/2012) under which LaMonda was to have 90 minutes within which to present his motion to compel, erroneously construed as a motion for rule to show cause. A proportional amount of time was allotted to the Receiver during which he testified for an extended period with respect to his claim that he never asked for any help from LaMonda and that no assistance was received.

The foregoing actions of the U. S. Marshal Service and the Honorable United States Magistrate Judge coalesced to deprive LaMonda of his access to the courts guaranteed by the **United States Constitution**. The Court insisted subsequent to the hearing that LaMonda was to be kept within the jurisdiction until the expiration of 14 days subsequent to his receipt of a copy of the Court's recommendation that all of LaMonda's motions be denied.(*see* doc.411,401) The rationale offered by the Court for this limitation upon LaMonda's transport back to his housing unit in Butner, North Carolina, was the provision of an opportunity for LaMonda to file objections to the

recommendation of the United States Magistrate Judge. In fact, upon arrival at the jurisdictional interim prison, LaMonda was placed in an isolated cell – which precludes him from filing legal objections to the Conclusions Findings, and Recommendation of this Honorable Court about which LaMonda complains herein. (personal communication to family).

The Court summarily denied a motion to insure LaMonda's immediate return to his housing unit in Butner, North Carolina, based upon his severe heart problems and his need for insulin on a regular, foolproof schedule based on blood glucose monitoring.(*see* doc.408,411) The full thrust of the Court's action was to manipulate LaMonda and impede his ability to file meaningful, legal objections to the Recommendation of the United States Magistrate Judge.

In summary, the nightmarish trip was meant to procure LaMonda's approval, extended by The Magistrate Judge in a coercive, hostile atmosphere, to change his motion from a motion to compel under which the emphasis was upon contract breach damages, to a motion for rule to show cause against the Receiver, insure that all of the Receiver's voluminous exhibits and exhaustive documents were presented and allowed into the record, and allow the Court to construct and deliver a pre-fabricated recommendation 26 pages in length (in a record 2 days after the hearing) (*see court docket's notices of delivery, doc.410,411 on 02/22/2012, at 15:11:28 CST and 16:11:05 CST, respectively; see also doc.412,413*).

The fact that the Conclusions, Findings and Recommendation (doc. 410) was already entered in the mind of the Honorable United States Magistrate Judge cannot be credibly contradicted. If the Court had deemed it necessary to mull over her decision for

a period of two days, she would not have known to insure that LaMonda was placed in isolation in a distant location during the period when objections could be timely filed. The 26-page recommendation against LaMonda was the product of a desire to place him in a legal dilemma from which he cannot readily emerge.

OBJECTION 21: LaMonda objects on the ground that the Court gave no consideration to the Receiver's bias engendered by the millions of dollars which he and his firm received as the result of the demise and destruction of LaMonda's various businesses, all of which were perpetuated through hard work and the investment of millions of dollars. The SEC and the Receiver are engaged in an ongoing ruse to destroy the businesses of hardworking citizens and turn the assets of such legitimate businesses to their own advantage.

WHEREFORE, the defendant, C. KEITH LAMONDA, pro se, respectfully requests that the Honorable United States District Judge conduct a de novo review of LaMonda's motion for relief herein along with the other motions set forth herein in accordance with Rule 72(b) of the Federal Rules of Civil Procedure and enter appropriate orders for a rehearing and other appropriate proceedings; and the defendant respectfully requests that this Honorable Court grant such other and further general relief that the Court might deem just, fair, and appropriate under the circumstances herein.



C. Keith LaMonda, Pro se

By Gary W. LaMonda
DOA, brother of Defendant

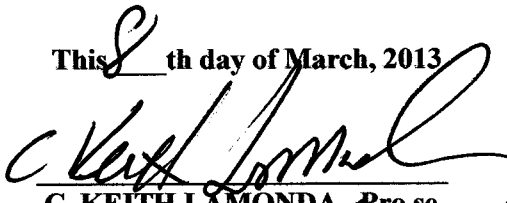
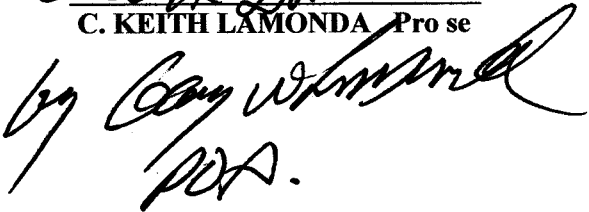
CERTIFICATE OF SERVICE

I, C. KEITH LAMONDA, do hereby certify that true copies of the foregoing
OBJECTIONS TO THE FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE were duly forwarded via first-class
U. S. Mail, postage pre-paid, to:

**Michael Quilling, Esquire, at his office: QSLWM, 2001 Bryan Street, Suite 1800,
Dallas, Texas 75201**

**Harold R Loftin, Jr SNR Denton US LLP, 2000 McKinney Ave., Suite 1900,
Dallas, Texas 75201, 214/259-0900, Fax: 214/259-0910**

This 8 th day of March, 2013


C. KEITH LAMONDA Pro se

per.

March 4, 2013

3/8/13

Addendum to Clerk/Court
My apologies if this mailing
for my brother is a
duplicate. It appears
he has had some difficulties
getting out mail from
his current location!

Clerk

United States District Court

Northern District of Texas

Dallas Division

1100 Commerce Street, Room 1452

Dallas, Texas 75242

Cory W. LaMonda
POD
for
C. Keith LaMonda

Re: Securities and Exchange Commission (SEC) v. ABC Viaticals, Inc. et als.

Docket No. 3:06-cv-02136-P

Submission of C. Keith LaMonda's Objections to Findings, Conclusions, and Recommendation
of United States Magistrate Judge entered on February 22, 2013

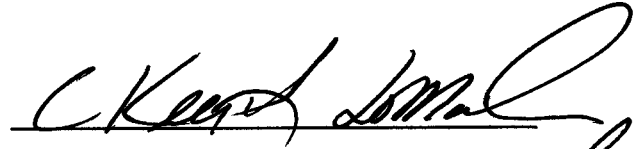
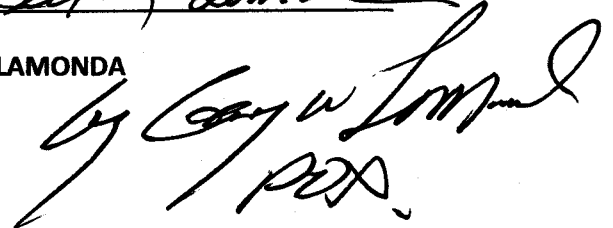
Dear Sir/Madam:

Enclosed herewith please find an original and four copies of my Objections to the Findings, Conclusions, and Recommendation of the Honorable United States Magistrate Judge entered herein on February 22, 2013.

Should questions or problems arise in this matter, please do not hesitate to contact me.

I am enclosing herewith a self-addressed, stamped envelope and a copy of the first page of the objections, which I respectfully request that you mark "FILED" and return to me.

Respectfully submitted,


C. KEITH LAMONDA
Pro Se 

Michael J Quilling
Quilling Selander Cummiskey & Lownds
2001 Bryan St
Suite 1800
Dallas, TX 75201
214/871-2100
Fax: 214/871-2111 FAX
Email: mquilling@qsclpc.com

Harold R Loftin , Jr
SNR Denton US LLP
2000 McKinney Ave
Suite 1900
Dallas, TX 75201
214/259-0900
Fax: 214/259-0910
Email: harold.loftin@snrdenton.com