

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

**MICHAEL J. QUILLING, Receiver for** §  
**ABC VIATICALS, INC. and Related Entities,** §  
§  
**Plaintiff,** §  
§

v. §

**INTERNATIONAL FIDELITY &** §  
**SURETY LIMITED, INTERNATIONAL** §  
**CONSULTANTS & MANAGEMENT LTD.,** §  
**SURETY MARKETING SOURCE, LLC,** §  
**KPMG VANUATU, HAWKES LAW,** §  
**KPMG INTERNATIONAL, BOSWELL,** §  
**DERMOTT & PAWLETT, LLP, MOHAN &** §  
**ASSOCIATES, DAVID A. GOLDENBERG,** §  
**DAG INVESTMENTS, LLC, LPG** §  
**INVESTMENTS, LLC, WED MARKETING,** §  
**LLC, GALAX HOLDINGS, LTD.,** §  
**MARK WOLOK, LINDA WOLOK and** §  
**ARIE KOTLER.** §

Civil Action No. 3:07-CV-0421-P

ECF

**Defendants** §  
§  
§

**PLAINTIFF’S MOTION TO DISMISS REMAINING CLAIMS**  
**(David A. Goldenberg, DAG Investments LLC,**  
**LPG Investments LLC, and WED Marketing LLC)**

TO THE HONORABLE JORGE A. SOLIS, UNITED STATES DISTRICT COURT JUDGE:

COMES NOW, Michael J. Quilling as the Receiver for ABC Viaticals, Inc. and related entities, (“Plaintiff” or “Receiver”) and files this motion to dismiss the remaining claims in this case against Defendants David A. Goldenberg, DAG Investments LLC, LPG Investments LLC, and WED Marketing LLC under Federal Rule of Civil Procedure 41(a)(2). In support, the Receiver would respectfully show the Court as follows:

**I.  
BACKGROUND FACTS**

1. The Receiver filed his Complaint (Dkt. No. 1) against the Defendants in this case on March 7, 2007.

2. The Receiver has already obtained final judgment against International Fidelity & Surety Limited (Dkt. No. 46), International Consultants & Management Ltd. (Dkt. No. 52), Surety Marketing Source, LLC (Dkt. No. 83), KPMG International (Dkt. No. 60), and Mark Wolok (Dkt. No. 52).

3. The Receiver has already dismissed his causes of action against Linda Wolok (Dkt. No. 33), Arie Kotler (Dkt. No. 70), Galax Holdings, Ltd. (Dkt. No. 64), and Boswell Dermott & Pawlett, LLP (Dkt. No. 64).

4. Along with this motion, the Receiver has filed a separate notice of dismissal (Dkt. No. 88) for his causes of action against KPMG Vanuatu, Hawkes Law, and Mohan & Associates.

5. As a result, the only remaining claims in this case are against David A. Goldenberg, DAG Investments LLC, LPG Investments LLC, and WED Marketing LLC (collectively, the "Goldenberg Defendants").

6. The Goldenberg Defendants filed separate Answers (Dkt. Nos. 38-41) to the Receiver's Complaint on May 1, 2007.

7. After David Goldenberg committed suicide, his attorneys filed a Motion to Withdraw as Counsel (Dkt. No. 65) for the Goldenberg Defendants. The Court entered an order (Dkt. No. 76) granting the withdrawal and directing all future correspondence to:

Estate of David Goldenberg  
3036 West Ridge Court  
Bloomfield Hills, Michigan 48302

DAG Investments LLC  
c/o Estate of David Goldenberg  
3036 West Ridge Court  
Bloomfield Hills, Michigan 48302

LPG Investments LLC  
c/o Estate of David Goldenberg  
3036 West Ridge Court  
Bloomfield Hills, Michigan 48302

WED Marketing LLC  
Attn: Paula Cetean  
1550 Drexal, #5  
Miami Beach, Florida 33139

8. The Receiver has worked out a settlement agreement with David Goldenberg's widow, achieved a substantial recovery from that settlement, and now wishes to dismiss his claims against the Goldenberg Defendants.

### **III. ARGUMENTS AND AUTHORITIES**

Generally, once the defendant appears in a case, a plaintiff would dismiss his claims by stipulation of both parties. FED. R. CIV. P. 41(a)(1)(A)(ii). However, Rule 41(a)(2) also permits dismissal by court order at the plaintiff's request. Dismissals under Rule 41(a)(2) should be freely granted unless the defendants would suffer some plain legal prejudice other than the mere prospect of a second lawsuit. *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002).

The Receiver believes that dismissal by court order under Rule 41(a)(2) is appropriate here. Each of the Goldenberg Defendants have appeared in this case but are no longer represented by counsel, making it difficult to obtain a stipulation of dismissal under Rule 41(a)(1). An order of dismissal, on the other hand, would quickly bring this case to an end without additional expense to the receivership estate.

Given the settlement agreement with Goldenberg's widow, the substantial recovery achieved, and the fact that the Goldenberg Defendants currently exist in name only, it is in the receivership estate's best interest to dismiss all remaining causes of action against them and bring this case to its conclusion.

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully asks the Court to enter an order under Rule 41(a)(2) that dismisses without prejudice the Receiver's causes of action against David A. Goldenberg, DAG Investments LLC, LPG Investments LLC, and WED Marketing LLC. The Receiver also asks the Court to grant such other and further relief, general or special, at law or in equity, to which he may show himself otherwise entitled.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.  
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Dallas, Texas 75201-4240  
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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

A true and correct copy of this notice was served on all interested parties through the Court's electronic pleading system and by U.S. Mail, first class postage prepaid, to:

Estate of David Goldenberg  
3036 West Ridge Court  
Bloomfield Hills, Michigan 48302

LPG Investments LLC  
c/o Estate of David Goldenberg  
3036 West Ridge Court  
Bloomfield Hills, Michigan 48302

DAG Investments LLC  
c/o Estate of David Goldenberg  
3036 West Ridge Court  
Bloomfield Hills, Michigan 48302

WED Marketing LLC  
Attn: Paula Cetean  
1550 Drexal, #5  
Miami Beach, Florida 33139

/s/ Brent J. Rodine