

CV-1328-L. *Receiver's Affidavit*, Exhibit A at ¶ 2. At the Commission's request, the Court issued an Order on July 5, 2005 appointing Michael J. Quilling as Receiver for Sardaukar Holdings, IBC, Bradley C. Stark, and the other defendants and relief defendant. *Id.* The Receiver has since continued to function in that capacity. *Id.*

3. The Receiver has investigated the businesses, transactions, assets, liabilities, books, and records of Sardaukar Holdings, IBC ("Sardaukar") and its director, Bradley C. Stark ("Stark"). *Id.* at ¶ 3. He has also interviewed witnesses, taken depositions, and reviewed all available documents concerning the company's investment scheme. *Id.*

4. The Receiver's investigation has revealed that Stark operated a *Ponzi* scheme and fraudulent investment program through Sardaukar. *Id.* at ¶ 4. Investors sent their money to Sardaukar's account at JP Morgan Chase Bank believing those funds would be invested under Stark's supervision. *Id.* As Sardaukar received investor funds however, Stark fraudulently diverted large amounts as *Ponzi* payments to previous investors and for other expenses personally benefitting himself, his friends, and his family. *Id.*

5. The fraudulent nature of Sardaukar's investment program is self-evident from the bank records. *Id.* at ¶ 5. An accounting summary of Sardaukar's JP Morgan Chase account ("Accounting Summary") is attached to the Receiver's Affidavit as Exhibit A-1 and fully incorporated for all purposes. This ledger clearly shows how investor funds were used to pay "returns" to other investors. *Receiver's Affidavit*, Exhibit A at ¶5; *see also Accounting Summary*, Exhibit A-1. Furthermore, Sardaukar made distributions to individuals and entities that never exchanged anything of value in return. *Receiver's Affidavit*, Exhibit A at ¶ 5; *see also Accounting Summary*, Exhibit A-1. Palace Investments, Inc. ("Palace Investments") is one such entity that

benefitted from the Sardaukar investment scheme. *Accounting Summary*, Exhibit A-1 at 9, 11, 15.

6. Sardaukar diverted investor funds to Palace Investments in numerous transfers dating from March 24, 2005 to May 26, 2005. *Id.* Based upon records currently available to the Receiver, Palace Investments received three separate transfers from Sardaukar's JPMorgan Chase account, totaling at least \$668,000.00. *Id.* Sardaukar and its investors did not receive any reasonable value in exchange for these payments. *Receiver's Affidavit*, Exhibit A at ¶ 6; *see also Accounting Summary*, Exhibit A-1. Accordingly, Palace Investments has no legitimate claim to these funds. *Receiver's Affidavit*, Exhibit A at ¶ 6.

II. PROCEDURAL HISTORY OF THIS CASE

7. Plaintiff commenced this lawsuit by filing his original Complaint on July 25, 2005 [Dkt. No. 1] against Hans Tschebaum and Michael Tschebaum. *Id.* at ¶ 7. Plaintiff later filed an Amended Complaint on March 22, 2006 [Dkt. No. 27], which added Palace Investments as a named defendant. *Id.* A true and correct copy of the Amended Complaint is attached to the Receiver's Affidavit as Exhibit A-2 and fully incorporated for all purposes.

8. Michael Tschebaum is Palace Investments' registered agent for service of process. *Receiver's Affidavit* at ¶ 8. Accordingly, Tschebaum agreed to accept service of process upon Palace Investments through his legal counsel. *Id.* This agreement is reflected in the Court's Order of May 15, 2006 [Dkt. No. 47]. That Order expressly states that "[c]ounsel for the Tschebaums has agreed to accept service of process for Palace Investments." A copy of that Order is attached as Exhibit A-3 and fully incorporated for all purposes.

9. Pursuant to that agreement, counsel for the Receiver contacted Tschebaum's attorney

on May 4, 2006 and got verbal confirmation that he was authorized to accept service of process upon Palace Investments. *Receiver's Affidavit* at ¶ 9. The Receiver's counsel then prepared a correspondence effecting service as agreed by the parties. *Id.* A copy of the Affidavit of Service is attached as Exhibit A-4 and fully incorporated for all purposes.

10. The Court then issued an Order on May 15, 2006 [Dkt. No. 47] directing Palace Investments to file an answer or otherwise appear in these proceedings no later than May 25, 2006. *See Order of May 15, 2006*, Exhibit A-3 at 1.

11. As of this date, Palace Investments still has not filed an Answer, a motion under Fed. R. Civ. P. 12(b) or 56, or otherwise defended this lawsuit. *Receiver's Affidavit*, Exhibit A at ¶ 11.

12. Accordingly, the Clerk of this Court entered Palace Investments' default into the record on June 19, 2006 in accordance with Rule 55(b)(1) of the Federal Rules of Civil Procedure. *Id.* at ¶ 12. A true and correct copy of the Clerk's Entry of Default is attached as Exhibit A-5 and fully incorporated for all purposes.

13. Palace Investments is a private entity and not an incompetent, infant, person currently in military service, or any officer or agency of the United States. *Receiver's Affidavit* at ¶ 13. This Court should, therefore, enter Default Judgment against Palace Investments for failing to appear in this action as required by a specific Order of the Court.

III. ARGUMENT AND AUTHORITIES

14. A District Court may enter a final judgment by default. Fed. R. Civ. P. 55(b)(2). A trial court has discretion in determining the most appropriate method of determining the amount of damages for a default judgment. *Id.* It is not necessary to hold an evidentiary hearing to determine

damages in a default situation. *See, e.g., Leedo Cabinetry v. James Sales & Distrib., Inc.*, 157 F.3d 410, 414 (5th Cir. 1998). The use of affidavits to prove damages is a widely accepted method for awarding damages in a default judgment. *Chemtall Inc. v. Citi-Chem, Inc.*, 992 F. Supp. 1390, 1412 (S.D. Ga. 1998). In fact, a District Court's ruling on damages in a default judgment without an evidentiary hearing is reviewed only for abuse of discretion. *Leedo Cabinetry*, 157 F.3d at 414.

15. In the case at hand, the amount of damages is measured by the amount of funds fraudulently transferred to Defendant. Plaintiff is entitled to relief by establishing that a fraudulent transfer occurred under the Texas Uniform Fraudulent Transfer Act (the "UFTA") or the supplemental provisions of common law. Tex. Bus. & Com. C. § 24.008, § 24.011, § 24.013.¹ The fraudulent nature of Sardaukar's investment program is self-evident from the bank records. *Receiver's Affidavit*, Exhibit A at ¶ 5. Those records show that Sardaukar's JP Morgan Chase account was solely funded by investor contributions, not interest earned on legitimate investments. *Id.*; *see also Accounting Summary*, Exhibit A-1. From those funds, Sardaukar paid its investors "returns" on their deposits and distributed money to third parties—including Palace Investments—who never exchanged anything in return. *Receiver's Affidavit*, Exhibit A at ¶ 5; *Accounting Summary*, Exhibit A-1. This arrangement illustrates a classic *Ponzi* scheme.²

16. The mere existence of a *Ponzi* scheme establishes fraudulent intent as a matter of law because the scheme is insolvent from conception. *Warfield v. Byron*, 2006 WL 118250, *5 (5th Cir. Jan. 17, 2006), *citing Cunningham v. Brown*, 265 U.S. 1, 7-8 (1924). As such, Sardaukar's transfers

¹ The California Uniform Fraudulent Transfer Act contains the same provisions. Cal. Civ. C. § 3439 et seq.

² *See* Black's Law Dictionary 1180 (7th ed. 1999) (describing a scheme where "money from new investors is used to pay 'profits' on the money contributed by earlier investors, without the operation of an actual revenue-producing business").

to Defendant were necessarily fraudulent under the UFTA:

§ 24.005. Transfers Fraudulent as to Present and Future Creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation . . . with actual *intent to hinder, delay, or defraud* any creditor³

Tex. Bus. & Com. C. § 24.005 (emphasis added). Furthermore, the fraudulent nature of those transfers is evidenced by the fact that Palace Investments did not exchange any reasonable value to Sardaukar or its investors for the misappropriated funds. *Receiver's Affidavit*, Exhibit A at ¶ 5; *Accounting Summary*, Exhibit A-1; *see also* Tex. Bus. & Com. C. § 24.006.

17. As explained more fully in the Receiver's Affidavit, the damages suffered by Sardaukar and its investors are easily ascertainable and total \$668,000.00. *Receiver's Affidavit*, Exhibit A at ¶ 14; *see also Accounting Summary*, Exhibit A-1. Additionally, the Receiver has incurred \$0.00 in costs and \$2,325.00 in attorney's fees relating to this matter. *Receiver's Affidavit*, Exhibit A at ¶ 14.

18. Upon final judgment of this matter, the Receiver is entitled to recover his damages, costs, and fees. Tex. Bus. & Com. Code § 24.013. The legal and factual bases for liability are set forth above and fully supported by the Receiver's Affidavit and accompanying exhibits. Therefore, no evidentiary hearing is necessary to determine the damages to be awarded against the Defendants in this case. *Leedo Cabinetry*, 157 F.3d at 414.

³ For purposes of the UFTA, the term "Creditor" includes any person or entity with an existing, future, legal, or equitable right to payment or property. *See* Tex. Bus. & Com. C. § 24.002(3), (4), (9).

**IV.
CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, the Plaintiff requests that the Court enter a final default judgment against Defendant Palace Investments, Inc. for \$668,000.00, plus pre- and post-judgment interest at the rate provided by law, as well as \$0.00 in costs and \$2,325.00 in attorneys' fees.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of June, 2006 a true and correct copy of the foregoing document was served via first class mail, with full and proper postage prepaid thereon, to:

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