

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

**SECURITIES AND EXCHANGE
COMMISSION,**

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Civil Action No.: 3:06-CV-2136-P

vs.

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

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Relief Defendants.

**RESPONSE TO C. KEITH LaMONDA'S MOTION TO APPEAR *PRO SE* AND
RECONFIRM THE COMPROMISE AND SETTLEMENT AGREEMENT**

Michael J. Quilling, the Receiver for ABC Viaticals, Inc. and other related entities, (“Receiver”) files this response to C. Keith LaMonda’s motion [Doc. 252] to appear *pro se* and to “reconfirm” a settlement agreement as an order. In support, the Receiver would respectfully show the Court as follows:

INTRODUCTION

LaMonda effectively asks this Court to add him as a party in this case after his party status was terminated by final judgment and to appear both through his counsel of record and as a *pro se* litigant. He does not explain why he wants this extraordinary relief or how he has any

actual interest in the remaining phase of this lawsuit. The Receiver presumes LaMonda wants a greater role so he can file motions, file response briefs, and participate in attorney conferences. In short, he is asking for the opportunity to weigh in on every decision from prison. The Court should deny LaMonda's motion because he insists on keeping his counsel of record and fails to establish proper standing to remain in this case. Furthermore, his request that the Court "reconfirm" his settlement agreement with the Receiver as a standing order is unnecessary and should be denied.

STATEMENT OF FACTS

1. On November 17, 2006, the Securities and Exchange Commission filed this lawsuit alleging that C. Keith LaMonda ("LaMonda") violated securities laws and ran a Ponzi scheme through a company called ABC Viaticals, Inc. ("ABC"). The Court appointed Michael J. Quilling as the Receiver for ABC and other related entities.

2. In July 2007, the Receiver negotiated a settlement agreement that transferred certain assets between LaMonda's family and the receivership estate. (Compromise & Settlement Agreement [Doc. 71-2].) He filed a motion asking the Court for authority to consummate the agreement and the Court gave its approval. (Agreed Mot. to Approve [Doc. 71]; Order [Doc. 73-2].)

3. Since that time, the United States District Court for the Middle District of Florida convicted LaMonda for eight securities law violations in another scheme he ran through ABC's predecessor. *United States v. LaMonda*, Cause No. 6:05-CR-0131-JA-UAM [Doc. 972] (M.D. Fla. Jan. 2, 2008). He is currently serving a total of 240 months in federal prison. (*Id.*)

4. While serving time, LaMonda has sent numerous letters to the Receiver demanding various payments under the settlement agreement. The Receiver refuses to pay him

anything because (a) LaMonda has still not paid for one of the assets under that agreement and (b) the amount LaMonda owes the Receiver exceeds any amount he is actually due. This has been made clear to both LaMonda and his counsel of record.

5. LaMonda is no longer an active party in this case. The docket report lists him as a “terminated” party on September 3, 2009—the date this Court entered final judgment against him. (Final J. [Doc. 236].) It also shows that he is represented by counsel whom LaMonda “does not wish to relieve.” (Def.’s Mot. [Doc. 252] at 2.) LaMonda is not a licensed attorney capable of acting as his own co-counsel.

6. The Receiver now asks the Court to deny the motion for the reasons stated below.

ARGUMENTS & ANALYSIS

A. The Court Should Not Admit Anyone *Pro Se* Who Has Counsel Of Record

The Court cannot recognize LaMonda both through his counsel of record and as a *pro se* litigant. In his motion, LaMonda asks to appear for himself but also states he “does not wish to relieve Mr. Wynne of his responsibility of representation of him.” (Def.’s Mot. [Doc. 252] at 2.) He cannot have it both ways. The Court should deny LaMonda’s request to serve as his own co-counsel alongside his attorneys.

For LaMonda to proceed *pro se*, he must comply with the local rules by having his counsel of record withdraw. LOCAL CIV. R. 83.12. Then and only then could the Court consider any motion for LaMonda to act as a *pro se* litigant. LOCAL CIV. R. 83.14. Until counsel has withdrawn, LaMonda’s motion is moot or premature. Under these circumstances the Court should deny his request to appear both *pro se* and through an attorney.

B. LaMonda Is No Longer A Party With Standing In This Case

LaMonda correctly points out that he is no longer a party in this case. (Def.'s Mot. [Doc. 252] at 2.) As a terminated party, he "can no longer participate and loses any opportunity to clarify or to affect in any way the ongoing case." *Citizens Concerned About Our Children v. Sch. Bd. of Broward County*, 193 F.3d 1285, 1296 (11th Cir. 1999) (Barkett, J., concurring in part). As a preliminary matter, LaMonda must file a motion to intervene and prove he has standing to redress a specific injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Ward v. Santa Fe Indep. Sch. Dist.*, 393 F.3d 599, 606 (5th Cir. 2004) ("Article III of the United States Constitution requires that a litigant have standing to invoke the power of a federal court"). Party status does not depend upon the case style but, instead, whether the litigant has any present relation to the case, whether it affects his interests, and whether judgment is sought against him. *Heatherton v. Playboy, Inc.*, 60 F.R.D. 372, 377 (C.D. Cal. 1973). The Court should, therefore, deny LaMonda's motion for failing to prove his standing or assert a particular interest in this phase of the lawsuit.

C. There Is No Reason To "Reconfirm" The Settlement Agreement

Recognizing that he does not have a compelling reason to appear in this case, LaMonda asks the Court for "confirmation" that the settlement agreement is a standing order so it might somehow allow him greater participation. (Def.'s Mot. [Doc. 252] at 2-3.) This is both unnecessary and unwarranted. The settlement agreement, motion for approval, and order of approval speak for themselves and cannot, on their own, give LaMonda any greater standing to participate in this phase of the case. In short, that settlement agreement that is already valid and the Court already approved it, so reconfirming it accomplishes nothing. The agreement itself simply transferred assets between LaMonda's family and the receivership estate. He fails to

show how it has any relation to the Receiver's remaining efforts in this case or his interests in them. The Court should deny the request.

WHEREFORE, premises considered, the Receiver asks this Court to deny LaMonda's motion to appear in this case along side his counsel of record and to deny his request to "reconfirm" the settlement agreement. The Receiver also asks for such other and further relief, general or special, at law or in equity, to which he may otherwise show himself entitled.

Respectfully submitted,

**QUILLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.**
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By: /s/ Brent Rodine
Michael J. Quilling
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ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

A copy of this pleading was served on all interested parties through the Court's electronic filing system and by U.S. Mail to:

C. Keith LaMonda
Reg. No. 26060 – 018, Butner LSCI
P. O. Box 999
Butner, NC 27509

/s/ Brent Rodine