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from HVT's suppliers. Id. ¶7. In return, HVT agreed to repay all sums advanced by Mapssy, and pay an 8% commission – subject to a minimum annual commission of \$240,000.00 – of HVT's gross sales financed by Mapssy. Id. ¶8. In an amended funding agreement the parties later increased the commission to 9%. Id. HVT assigned to Mapssy the right to directly collect all amounts due from HVT's customers with respect to transactions financed by Mapssy. Id. ¶9.

On the same day, Rudolph, as President of HVT, executed a personal guaranty of HVT's full payment and performance of its obligations to Mapssy. Id. ¶10.

In March of 2007, HVT's sales were insufficient to support the debt incurred under the funding agreement. Id. ¶11. In May of 2007, Rudolph and Mapssy renegotiated a repayment plan for the due amount, and Mapssy advanced an additional \$52,020.09 to HVT. Id. ¶¶12-13. But shortly thereafter, HVT stopped assigning receivables to Mapssy, which eliminated most of the funds for repayment of the monies advanced by Mapssy. Id. ¶14. In addition, HVT re-hypothecated the inventory and receivables securing Mapssy's loans to HVT and obtained financing from another funding institution. Id. ¶4.

On June 17, 2008, Mapssy filed a Complaint in this court alleging HVT breached the funding agreement. The Complaint additionally alleges that pursuant to the guaranty, Rudolph is “primarily responsible and liable for performance of all of HVT's obligations under and pursuant to the Funding Agreement.” Id. ¶23. Finally, the Complaint alleges HVT converted property belonging to Mapssy when, after receiving from HVT's customer's payments on accounts of invoices and receivables previously transferred and sold by HVT to Mapssy, HVT failed to hold such property for Mapssy, and instead converted it for the benefit of HVT and Rudolph. Id. ¶¶ 24-31. In sum, Mapssy alleges the total debt due amounts to \$417,672.20, together with interest accruing thereon at contractual rate. Id. ¶20.

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Following Plaintiff's filing, on August 22, 2008, Defendants HVT and Rudolph responded by filing an Answer and Counterclaims. Then, on July 7, 2011, Defendants' counsel moved to withdraw as counsel of record, which was granted on July 27, 2011. Subsequently, Defendants failed to appear at a status conference on September 8, 2011 and failed to present good cause regarding their absence. On September 19, 2011, Magistrate Judge Arleo issued an Order to Show Cause on October 26, 2011. Defendants did not appear or respond. Following Magistrate Judge Arleo's recommendations, this Court ordered that Defendants' August 22, 2008 Answer and Counterclaims be stricken, and that the Clerk of the Court enter default judgment against HVT and Rudolph. This motion for default judgment followed.

Mapssy seeks relief in the amount of \$477,672.20 together with interest at the contractual rate, reasonable attorney's fees, costs and disbursements incurred in this action, and any such other and further relief as this Court deems appropriate. Mot. for Default J. at 5.

### **STANDARD OF REVIEW**

Federal Rule of Civil Procedure 55 governs the entry of default and default judgment. The power to grant default judgment "has generally been considered an 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." Hritz v. Woma Corp., 732 F.2d 1178, 1181 (3d Cir. 1984) (citations omitted). Because the entry of default prevents a plaintiff's claims from being decided on the merits, "this court does not favor entry of defaults or default judgments." United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 194 (3d Cir. 1984). Accordingly, the Third Circuit has clarified that, while "the entry of a default judgment is left primarily to the discretion of the district court," this "discretion is not

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without limits,” and cases should be “disposed of on the merits whenever practicable.” Hritz at 1181 (citations omitted). See also \$55,518.05 in U.S. Currency, 728 F.2d at 194-95.

The Third Circuit considers three factors in determining “whether a default judgment should be granted: (1) prejudice to the plaintiff if default is denied, (2) whether the defendant appears to have a litigable defense, and (3) whether defendant's delay is due to culpable conduct.” Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000).

In deciding a motion for default judgment, “the factual allegations in a complaint, other than those as to damages, are treated as conceded by the defendant.” DIRECTV, Inc. v. Pepe, 431 F.3d 162, 165 (3d Cir. 2005). The court must, however, make “an independent inquiry into ‘whether the unchallenged facts constitute a legitimate cause of action’” and “must make an independent determination” regarding questions of law. Days Inn Worldwide, Inc. v. Mayu & Roshan, L.L.C., No. 06-1581, 2007 WL 1674485, at \*4 (D.N.J. June 8, 2007). Similarly, a court does not accept as true allegations pertaining to the amount of damages, and may employ various methods to ascertain the amount of damages due. While the court may conduct a hearing to determine the damages amount, Fed. R. Civ. P. 55(b)(2), a damages determination may be made without a hearing “as long as [the court] ensure[s] that there [is] a basis for the damages specified in the default judgment.” Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997).

## DISCUSSION

### I. Jurisdiction

Before entering a default judgment against the party “that has not filed responsive pleadings, the district court has an affirmative duty to look into its jurisdiction both over the

