

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

GRISEL ALONSO, as Receiver for
Elm Tree Investment Advisors, LLC,
Elm Tree Investment Fund, LP,
Elm Tree 'e'Conomy Fund, LP,
Elm Tree Motion Opportunity, LP, and
Etopia, LP

Case No. 17-cv-61390-Altonaga/Goodman

Proceeding Ancillary to
No. 15-CV-60082-Dimitrouleas/Snow

Plaintiff,

v.

VICTOR ELMALEH, an individual,
MERCEDES ELMALEH, an individual,
1925333 ONTARIO INC. d/b/a CLEARTECH
COMPUTING SYSTEM, a Canadian corporation,
ENGAGE MARKETING GROUP, INC., a
Canadian corporation, and
M3 DESIGNS, LP a Delaware partnership.

Defendants.

**RECEIVER'S MOTION TO STRIKE
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

Plaintiff, Grisel Alonso, as Receiver for Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund, LP, Elm Tree 'e'Conomy Fund, LP, Elm Tree Motion Opportunity, LP, and Etopia LP (collectively, the "Receivership Entities"), moves for an entry of an order striking the Answer and Affirmative Defenses to Plaintiff's Complaint [D.E. 34] filed on September 10, 2017. While Victor Elmaleh may file an answer *pro se* on his own behalf, he cannot do so, as a non-lawyer, on behalf of his wife, Mercedes Elmaleh, or the three corporate entities named as defendants—Cleartech Computing System ("CCS"), Engage Marketing Group, Inc. ("Engage"), and M3 Designs, LP ("M3"). For these reasons, as addressed more fully below, this Court should strike the Answer and Affirmative Defenses.

BACKGROUND

On January 15, 2015, the Securities and Exchange Commission (“SEC”) initiated the matter of *SEC v. Frederic Elm f/k/a Frederic Elmaleh, et. al.*, Case No. 15-cv-60082-WPD, in the United States District Court for the Southern District of Florida (the “Commission Proceeding”). The following day, Judge William Dimitrouleas entered an order (the “Receivership Order”) appointing Grisel Alonso as Receiver for the Receivership Entities. [Comm’n Proceeding, D.E. 13]. Pursuant to the Receivership Order, the Receiver is ordered to, among other things, “[t]ake immediate possession of all property, assets and estates of every kind of [the Receivership Entities] ... and institute such actions and legal proceedings ... as the Receiver deems necessary ... against any transfers of money or other proceeds directly or indirectly traceable from investors in [the Receivership Entities].” *Id.* On February 10, 2017, the Court in the Commission Proceeding expanded the scope of the Receivership to include Etopia, L.P. [Comm’n Proceeding, D.E. 172].

The Receiver subsequently initiated this action pursuant to the Receivership Order, alleging claims for fraudulent transfer, unjust enrichment, conversion, aiding and abetting, and conspiracy. The Receiver has asserted these claims in order to recover fraudulently obtained funds from the Defendants. On October 10, 2017, following several orders from this Court, Defendant Victor Elmaleh, filed an Answer and Affirmative Defenses “on behalf of himself, MERCEDES ELMALEH, [CCS], [Engage], and [M3].”¹ Mr. Elmaleh, however, is not an

¹ The Court previously ordered Defendants to file a response by October 6, 2017. [D.E.30]. Because Defendants failed to do so, the Court ordered the Receiver to submit a motion for entry of clerk’s default by October 17, 2017. [D.E. 33]. While Defendants subsequently filed their Answer and Affirmative Defenses on October 10, 2017, Plaintiff will still, in an abundance of caution, and so as to comply with the Court’s October 10, 2017 Order, submit a motion for entry of clerk’s default by the October 17, 2017 deadline, unless ordered otherwise.

attorney authorized to practice law before this Court or in the State of Florida.² Thus, he is not authorized to file the Answer and Affirmative Defenses on behalf of his wife, Mercedes, Elmaleh, or the three corporate defendants, and the Court should strike the Answer and Affirmative Defenses filed on October 10, 2017.

LEGAL ARGUMENT

“The rule is well established that a corporation is an artificial entity that can act only through agents, cannot appear *pro se*, and must be represented by counsel.” *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985) (concluding officer of corporation could not raise corporate claims without the benefit of counsel); *see also Hernandez v. Espinosa*, 08-22768-CIV, 2008 WL 4540990, at *1 (S.D. Fla. Oct. 9, 2008) (“The problem is that Anchor Shipping is a corporation and as such cannot appear *pro se* or through its officers in federal court. . . . As a result, the *pro se* complaint is a nullity.”). *Simon v. Leaderscape LLC*, Case No. 06-80797-CIV, 2007 WL 1879393, at *1 (S.D. Fla. June 26, 2007) (“It is well-settled that although individuals may appear in court *pro se*, a corporation cannot be represented in a legal action by a non-lawyer employee, officer or shareholder.”).

Accordingly, courts routinely strike pleadings filed by a *pro se* party on behalf of a corporate defendant. *See Blanco GmbH + Co. KG v. Vlanco Indus., LLC*, Case No. 12-61580-CIV, 2012 WL 12838280, at *2 (S.D. Fla. Nov. 19, 2012) (“Because corporations cannot appear *pro se*, the Court must strike any pleading submitted by a *pro se* corporate Defendant. . . . Accordingly, the Motions to Dismiss filed on behalf of corporate Defendant Vlanco Industries, LLC, [D.E. 19] and corporate Defendant G-Tech-I, Inc. [D.E. 21], shall be stricken.”); *Weiler v. Stargate Techs., Inc.*, Case No. 08-81571-CIV, 2009 WL 656251, at *1 (S.D. Fla. Mar. 10, 2009)

² The Florida Bar website’s “find a lawyer” function and the Southern District website’s “FLSD Attorney Lookup” function yielded zero results for a “Victor Elmaleh.”

(granting plaintiff's motion to strike an answer as to the corporate defendants "as a corporation cannot represent itself or be represented by its owner, and must be represented by counsel."); *Hartford Fire Ins. Co. v. Glob. Ocean Freight, Inc.*, 09-60394-CIV, 2009 WL 10667892, at *1 (S.D. Fla. Dec. 22, 2009) ("Hartford filed a Motion to Strike Answer wherein it sought to strike the 'Answer' on the grounds that Cohen filed on behalf of Global Ocean Freight, that she is not an attorney, and it is well settled that defendant corporations cannot proceed *pro se*. . . . On April 21, 2009, this Court granted Hartford's Motion to Strike because it construed Cohen's filing as an 'Answer' filed on behalf of Global Ocean Freight."); *Simon*, 2007 WL 1879393, at *1 (granting motion to strike defendant's answer); *Deleon v. Nat'l Painting & Waterproofing, Inc.*, Case No. 2:12-CV-92-FTM-29SPC, 2012 WL 1232099, at *1 (M.D. Fla. Apr. 12, 2012) ("The general rule that corporations must be represented by an attorney in judicial actions applies even where the person seeking to represent the corporation is its president and/or major stock holder. . . . Thus, the answer filed by the Defendant Corporation, National Painting and Waterproofing, Inc., is due to be stricken.").

Here, Victor Elmaleh is a *pro se* party who is not admitted to practice as an attorney in the Southern District of Florida or the State of Florida. While he may be able to represent himself in his individual capacity, he cannot represent the three corporate defendants—CCS, Engage, and M3—in this case. As such, the Answer and Affirmative Defenses filed "on behalf of" these corporate defendants should be stricken.

Similarly, Mr. Elmaleh cannot represent his wife, Mercedes Elmaleh, who has been named as a defendant in her individual capacity. Indeed "[a]lthough a non-lawyer may proceed *pro se*, a non-lawyer may not render legal services for another." *Weir v. Stagg*, 09-21745-CIV, D.E. 71, at 1 (S.D. Fla. Feb. 7, 2011) (copy attached hereto as **Exhibit A**) (striking second

amended complaint filed by on *pro se* litigant on behalf of *pro se* litigant and his eight co-plaintiffs). “Likewise, a non-lawyer may not file a pleading, motion, memorandum or other paper on behalf of another litigant because to do so would constitute the unlicensed practice of law.” *Id.* The unlicensed practice of law constitutes a felony under Florida law. *Id.* at 2.

Thus, while Mr. Elmaleh may sign the Answer and Affirmative Defenses on his own behalf, the fact that he signed the pleading on behalf of Mercedes Elmaleh is improper and renders the Answer and Affirmative Defenses a “legal nullity.” *Id.* (citing *Torrey v. Leesburg Reg'l Med. Ctr.*, 769 So.2d 1040 (Fla. 2000); *see also Forman v. State Dept. of Children & Families*, 956 So. 2d 476, 477 (Fla. 4th DCA 2007) (“However, pleadings filed by a non-lawyer on behalf of another are a nullity. . . . The Florida rule declaring a non-lawyer’s pleadings filed on behalf of another to be a nullity is the product of the state’s policy against the unauthorized practice of law.”). This is true even though Mercedes Elmaleh is Victor Elmaleh’s wife. *See Forman*, 956 So. 2d at 477 (noting that daughter’s power of attorney to act on mother’s behalf “authorizes her to act as her mother’s agent, not as her mother’s attorney at law.”); *Miller v. Tampa Police Dept.*, Case No. 810-CV-487-T-33EAJ, 2010 WL 2854259, at *2 (M.D. Fla. July 21, 2010) (“Mr. Miller may not allow a non-attorney to exercise that privilege on his behalf, even through a power of attorney. . . . This rule applies regardless of whether the non-lawyer representative possessing the power of attorney is a family member of the *pro se* party.”).

Accordingly, the Court should also strike the Answer and Affirmative Defenses filed by Victor Elmaleh “on behalf of” Mercedes Elmaleh.

CONCLUSION

For the reasons detailed above, Grisel Alonso, as Receiver, respectfully requests that this Court enter an order striking the Answer and Affirmative Defenses to Plaintiff’s Complaint.

Dated October 16, 2017.

Respectfully submitted,

BROAD AND CASSEL LLP
Attorneys for Receiver
One Biscayne Tower, 21st Floor
2 S. Biscayne Boulevard
Miami, FL 33131
Telephone: (305) 373-9467
Facsimile: (305) 995-6387

By: *s/Daniel S. Newman*

Daniel S. Newman, P.A.
Florida Bar No. 0962767
dnewman@broadandcassel.com
Christopher Cavallo, Esq.
Florida Bar No. 0092305
ccavallo@broadandcassel.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 16, 2017, a true and correct copy of the foregoing was served via electronic transmission on all counsel or parties of record.

By: s/Daniel S. Newman
Daniel S. Newman, P.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-21745-CIV-SEITZ/O'SULLIVAN

STEAPHAN WEIR, *et al.*,

Plaintiffs,

v.

SCOTT A. STAGG, *et al.*,

Defendants.

ORDER STRIKING SECOND AMENDED COMPLAINT

THIS MATTER is before the Court *sua sponte*. On April 5, 2010, Plaintiff Liam Weir, who is not a lawyer, filed Plaintiffs' Second Amended Complaint on behalf of himself and his eight co-Plaintiffs.¹ [DE 65]. For the following reasons, the Court strikes the Second Amended Complaint and directs each of the remaining Plaintiffs to either obtain counsel admitted to practice in the Southern District of Florida or file a notice that he intends to proceed *pro se*, fully understanding his individual obligations as set forth in the "Order of Instructions to *Pro Se* Litigants." [DE 70].

In the Court's March 5, 2010 Order conditionally granting Plaintiffs' counsel's motion to withdraw, the Court instructed Plaintiffs either to obtain counsel admitted to practice in the Southern District of Florida or file a notice that he intends to proceed *pro se* no later than March 26, 2010. [DE 60]. No Plaintiff obtained counsel admitted to practice in the Southern District of Florida, and only one Plaintiff, Liam Weir, filed a notice of *pro se* appearance. [DE 64]. Plaintiffs' failure to comply with the Court's Order and retain counsel admitted to practice in the Southern District of Florida or file a notice of *pro se* appearance warrants dismissal of this action as to every Plaintiff but Liam Weir.

Furthermore, Liam Weir, who is not a lawyer, purports to represent his co-Plaintiffs in this action. [DE 64]. Although a non-lawyer may proceed *pro se*, a non-lawyer may not render legal services for another. Fla. R. Prof'l Cond. 4-5.5; *Florida Bar v. Schramek*, 616 So.2d 979, 987 (Fla. 1993). Likewise, a non-lawyer may not file a pleading, motion, memorandum or other paper on behalf of another litigant because to do so would constitute the unlicensed practice of law. *EHQF Trust v. S & A Capital Partners, Inc.*, 947 So.2d 606 (Fla.App.

¹Specifically, Liam Weir filed the pleading on behalf of himself and co-Plaintiffs Steaphan Weir, Chad Needy, Michael D'Ambrose, Layne Bednar, Matthew Johnson, Thomas Dorman, Robert Winslow, and Rhonny Valentine.

4 Dist. 2007). The unlicensed practice of law is a felony in Florida. Fla. Stat. § 454.23.

Moreover, the Second Amended Complaint [DE 65] is problematic because it was not signed by an attorney as required by Rule 11 of the Federal Rules of Civil Procedure, but was signed by a *pro se* Plaintiff on behalf of himself and the other Plaintiffs. Fed. R. Civ. P. 11 (every pleading must be signed by a lawyer or by the party personally if the party is unrepresented). Although an unrepresented party may personally sign a pleading, only Liam Weir signed the Second Amended Complaint but he did so on behalf of all co-Plaintiffs. A pleading signed by a non-lawyer on behalf of another is a legal nullity. *See Torrey v. Leesburg Regional Medical Center*, 769 So.2d 1040 (Fla. 2000).

For the foregoing reasons, the Court strikes the Second Amended Complaint. Plaintiff Liam Weir shall have leave to file an amended pleading that complies with the rules of court and the laws of Florida. If any of the remaining eight Plaintiffs choose to continue to prosecute this action, each of them must either obtain counsel admitted to practice in the Southern District of Florida or file a notice that he intends to proceed *pro se*. Accordingly, it is

ORDERED that

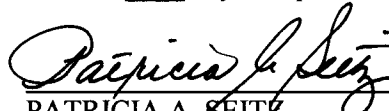
(1) No later than **Friday, May 21, 2010**, Plaintiffs Steaphan Weir, Chad Needy, Michael D'Ambrose, Layne Bednar, Matthew Johnson, Thomas Dorman, Robert Winslow, and Rhonny Valentine must either: (a) obtain counsel who is admitted to practice in the Southern District of Florida who must file an appearance, or (b) file a notice that he intends to proceed *pro se*.

(2) No later than **Friday, May 21, 2010**, Plaintiff Liam Weir must file a Second Amended Complaint, but only as to himself.

(3) No later than **Friday, May 21, 2010**, each of the remaining eight Plaintiffs who chooses to continue to prosecute this action must file a Second Amended Complaint, but only as to himself.

(4) **Failure to abide by this Order will result in dismissal of this action as to the Plaintiff who fails to comply.**

DONE AND ORDERED in Miami, Florida, this 20th day of April, 2010.



PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record

Liam Wier, *Pro Se*
11734 Wilshire Blvd., #C1114
Los Angeles, CA 90025

Stephan Weir
937 23rd Street
Santa Monica, CA 90403

Chad Needy
195 N. Harbor Drive
Chicago, IL 60601

Michael D'Ambrose
16537 W. 159th Street
Lockport, IL 60441

Layne Bednar
11829 Kiowa Avenue, #1
Los Angeles, CA 90049

Matthew Johnson
2459 W. Cortland
Chicago, IL 60647

Thomas J. Dorman
2210 Noyes Street
Evanston, IL 60201

Robert J. Winslow
1443 Maple Street
Western Springs, IL 60558

Rhonny Valentine
c/o Valentine Pharmacy, Inc.
116 Jefferson Street
Mansfield, LA 71052