

FILED by mp D.C.
OCT 24 2017
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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

Plaintiff,

VS

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.

**DEFENDANT. MERCEDES ELMALEH'S, ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT**

Defendant, MERCEDES ELMALEH (hereinafter referred to as "ELMALEH"),
hereby files this Answer and Affirmative Defenses to Plaintiff's Complaint and
answers as follows:

PRELIMINARY STATEMENT

1. As it relates to Paragraph 1, without knowledge and demands strict proof thereof.
2. As it relates to Paragraph 2, without knowledge and demands strict proof thereof.
3. As it relates to Paragraph 3, without knowledge and demands strict proof thereof.

4. As it relates to Paragraph 4, without knowledge and demands strict proof thereof.
5. As it relates to Paragraph 5, without knowledge and demands strict proof thereof.
6. As it relates to Paragraph 6, without knowledge and demands strict proof thereof.
7. As it relates to Paragraph 7, without knowledge and demands strict proof thereof.
8. As it relates to Paragraph 8, without knowledge and demands strict proof thereof.
9. As it relates to Paragraph 8, without knowledge and demands strict proof thereof.

JURISDICTION AND VENUE

10. As it relates to Paragraph 10, without knowledge and demands strict proof thereof.
11. As it relates to Paragraph 11, without knowledge and demands strict proof thereof.
12. As it relates to Paragraph 12, without knowledge and demands strict proof thereof.

PARTIES

13. As it relates to Paragraph 13, without knowledge and demands strict proof thereof.
14. As it relates to Paragraph 14, admit for jurisdictional purposes only.
15. As it relates to Paragraph 15, admit for jurisdictional purposes only.
16. As it relates to Paragraph 16, without knowledge and demands strict proof Thereof.
17. As it relates to Paragraph 16, without knowledge and demands strict proof

thereof.

18. Denied.

19. Denied.

20. Admit.

FACTS

21. As it relates to Paragraph 21, without knowledge and demands strict Proof thereof.

22. As it relates to Paragraph 22, without knowledge and demands strict Proof thereof.

23. As it relates to Paragraph 23, without knowledge and demands strict Proof thereof.

24. As it relates to Paragraph 24, without knowledge and demands strict Proof thereof.

25. As it relates to Paragraph 25, without knowledge and demands strict Proof thereof.

26. As it relates to Paragraph 26, without knowledge and demands strict Proof thereof.

27. As it relates to Paragraph 27, without knowledge and demands strict Proof thereof.

28. As it relates to Paragraph 28, without knowledge and demands strict Proof thereof.

29. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

30. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

31. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

32. Denied.

33. Denied.

- 34. Denied.
- 35. Denied.
- 36. Denied.
- 37. Denied.
- 38. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 39. Denied. Etopia was not even part of the Receivership at the time.
- 40. Denied.

B. The Transfers to Defendants

- 41. Denied.
- 42. Denied.
- 43. Denied.
- 44. Denied.
- 45. Denied.

1. The Transfers to 1925333 ONTARIO Inc. d/b/a Cleartech Computing Systems

- 46. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 47. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 48. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

2. The Transfers to Engage Marketing Group, Inc.

- 49. Denied.
- 50. Denied.
- 51. Denied.

3. The Transfers to M3 Designs

- 52. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 53. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 54. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

4. Alter Ego

- 55. Denied.
- 56. Denied.
- 57. Denied.
- 58. Denied.

**COUNT 1 – Fraudulent Transfer under Section 726.105, Florida Statutes
(Against CCS)**

- 59. See corresponding answers above.
- 60. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 61. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 62. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 63. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 64. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 65. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 66. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 67. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

Proof thereof.

68. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
69. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

COUNT 2 – Fraudulent Transfer under Section 726.106, Florida Statutes
(Against CCS)

70. See corresponding answers above.
71. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
72. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
73. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
74. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
75. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
76. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
77. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
78. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

COUNT 3 – Unjust Enrichment
(Against CCS)

79. See corresponding answers above.
80. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
81. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

82. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
83. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
84. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

COUNT 4 – Conversion
(Against CCS)

85. See corresponding answers above.
86. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
87. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
88. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
89. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

COUNT 5 – Fraudulent Transfer under Section 726.105, Florida Statutes
(Against Engage)

90. See corresponding answers above.
91. Denied.
92. Denied.
93. Denied.
94. Denied.
95. Denied.
96. Denied.
97. Denied.

98. Denied.

99. Denied.

100. Denied.

COUNT 6 – Fraudulent Transfer under Section 726.106, Florida Statutes
(Against Engage)

101. See corresponding answers above.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

COUNT 7 – Unjust Enrichment
(Against Engage)

110. See corresponding answers above.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

COUNT 8 – Conversion
(Against Engage)

116. See corresponding answers above.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

COUNT 9 – Fraudulent Transfer under Section 726.105, Florida Statutes
(Against M3)

121. See corresponding answers above.

122. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

123. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

124. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

125. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

126. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

127. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

128. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

129. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

130. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

131. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

COUNT 10 – Fraudulent Transfer under Section 726.106, Florida Statutes
(Against M3)

132. See corresponding answers above.

133. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
134. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
135. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
136. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
137. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
138. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
139. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
140. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

COUNT 11 – Unjust Enrichment
(Against M3)

141. See corresponding answers above.
142. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
143. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
144. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
145. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
146. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
147. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof

COUNT 12 – Conversion
(Against M3)

- 148. See corresponding answers above.
- 149. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 150. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 151. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

COUNT 13 – Conversion
(Against Victor Elmaleh)

- 152. See corresponding answers above.
- 153. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 154. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 155. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

COUNT 14 – Aiding and Abetting Conversion
(Against Victor Elmaleh)

- 156. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 157. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 158. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 159. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

160. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
161. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.

COUNT 15 – Conversion
(Against Mercedes Elmaleh)

162. See corresponding answers above.
163. Denied.
164. Denied.
165. Denied.

COUNT 16 – Aiding and Abetting Conversion
(Against Mercedes Elmaleh)

166. Denied.
167. Denied.
168. Denied.
169. Denied.
170. Denied.
171. Denied.

COUNT 17 – Civil Conspiracy
(Against All Elmaleh Defendants)

172. See corresponding answers above.
173. Denied.
174. Denied.
175. Denied.

176. Denied.

177. Denied.

AFFIRMATIVE DEFENSES

1. As and for their First Affirmative Defense, Plaintiff's claims failed to state a claim upon which relief can be granted.

2. As and for her Second Affirmative Defense, to the extent that Plaintiff has alleged fraud on behalf ELMALEH, ELMALEH denies any bad faith or bad intent. ELMALEH vehemently denies the allegations and misrepresentations by the Plaintiff. As such, Plaintiff is unable to establish the bad faith element necessary for any fraud action as per *Parker v. State of Florida Board of Regents*, 724 So.2d 163, 169 (Fla. 1st DCA 1998); *First Interstate Development Corp. v. Ablanado*, 511 So.2d 536, 539 (Fla. 1987).

3. As and for her Third Affirmative Defense, ELMALEH denies any involvement in any unsubstantiated and alleged investment scheme to Elm Tree and any of its related entities

4. As and for her Fourth Affirmative Defense, ELMALEH denies any involvement with soliciting, marketing any investment and has no knowledge or intent in regards to participating in any Elm Tree investment or fund. In fact, Plaintiff has failed to even identify Etopia as an investment fund and not brought forth any so called investor with any material facts. Victor Elmaleh and Mercedes Elmaleh have never spoken to, emailed or received an email or ever communicated with any alleged investors. The Plaintiff has provided no proof whatsoever that Victor Elmaleh or Mercedes Elmaleh have ever dealt with any investor. The ELMALEH'S have never signed any documents, subscription documents, offering memorandums or any

investment agreements as they pertain to investors. The Plaintiff has not proven any of their false claims

5. As and for her Fifth Affirmative Defense, ELMALEH never received a payment from Elm for an alleged benefit and never profited or personally received funds from Etopia, CCS, Engage or M3. As such, unjust enrichment cannot exist where payment has not been received.

6. As and for her Sixth Affirmative Defense, ELMALEH did not personally benefit, did not personally receive funds and was not the beneficial owner of the companies mentioned in the Plaintiff's claim. As a result, ELMALEH should be immediately removed from this litigation.

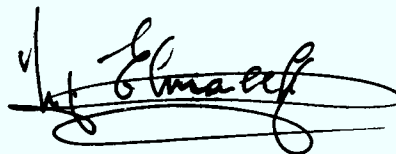
7. As and for her Seventh Affirmative Defense, ELMALEH did not send any of the alleged transfers.

8. As and for her Eighth Affirmative Defense, the action should not be filed or take place within the State of Florida. None of the companies mentioned in the claim operate or reside in Florida and Victor and Mercedes Elmaleh are Canadian citizens that reside in Canada. CSS is a Canadian company that has never done business in Florida. M3 is a Delaware Company has never done business in Florida. Etopia is a Delaware Company with no office or operation in Florida. Engage is a Canadian company that has never done business in Canada. The Plaintiff has shown no legitimate reason as to why this case should be tried in Florida. The venue should be moved to Canada.

9. As and for her Ninth Affirmative Defense, DEFENDANT reserves her right to amend or supplement these Affirmative Defenses as discovery and this litigation is currently ongoing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed and a copy has been emailed to: **Daniel S. Newman, Esquire, Christopher Cavallo, Esquire** Broad and Cassel, Attorneys for Plaintiff, 2 South Biscayne Boulevard, 21st Floor, Miami, Florida 33131 .Email: dnewman@broadandcassel.com; ccavallo@broadandcassel.com.

A handwritten signature in black ink, appearing to read 'Mercedes Elmaleh', written over a horizontal line.

MERCEDES ELMALEH.
59 McCabe Crescent
Thornhill, Ontario
Canada L4J 2S6
Email:
[melmaleh1948@gmail](mailto:melmaleh1948@gmail.com)
.com
Facsimile : 905-597-5733

How to complete a U.S. & International Bill of Lading

- 1. Purolator Business Account number
- 2. Date
- 3. Your name (sender), your address
- 4. Recipient's name, complete address
- 5. Declared value for carriage
- 6. Sender's signature
- 7. Total number of pieces and individual weight if items are not uniform
- 8. Indicate service required (e.g., Insured, Registered, Signature Required, etc.)
- 9. Type of package (e.g., box, envelope, etc.)
- 10. Item, and to whom, the shipping is intended
- 11. If credit card type, number and expiration date
- 12. If third party item, sender's business account number and contact phone number
- 13. Complete description of merchandise
- 14. Declared Value for Carriage and Insurance



Purolator

Purolator Express Envelope U.S. 10:30AM

FROM/DE
Victor Elmaleh
59 MCCABE CRES
THORNHILL ON

TO/A
Southern District of Florida
United States District Court
400 MIAMI AVE N
MIAMI FL 33128

NA
VICTOR ELMALEH
19056609706
59 MCCABE CRES
THORNHILL ON L4J 2S6
IZ CANADA

LTR 1 OF 1
SHP#: A420 6YL7 NSH
DATE: 23 OCT 2017

SHIP TO
SOUTHERN DISTRICT OF FLORIDA
UNITED STATES DISTRICT COURT
1111
400 MIAMI AVE N
STE: 8N09
MIAMI FL 33128
UNITED STATES

FL 330 9-03



S/TAX
 X

INATION
MB

UPS EXPRESS

TRACKING #: 1Z A42 06Y 66 5986 4845



EXPRESS 1Z A42 06Y 66 5986 4845

ended or supplemented
a). Les modalités et conditions
modifiées ou étouffées (y compris
schit une ou plusieurs frontières.

BILLING: P/P RECEIVER A4206Y
DESC: DOCUMENTS ONLY
PUROLATOR PIN: 6917207673

PIECE PIN: 6917207673



WWW

Comment remplir un Bill of Lading
Comment remplir un Bill of Lading
Comment remplir un Bill of Lading