

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE 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,

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.

COMPLAINT

Plaintiff, Grisel Alonso (the "Receiver"), 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 hereby files this Complaint against Victor Elmaleh, Mercedes Elmaleh, 1925333 Ontario Inc. d/b/a Cleartech Computing System, Engage Marketing Group Inc., and M3 Designs, and alleges as follows:

PRELIMINARY STATEMENT

1. On January 15, 2015, the Securities and Exchange Commission ("SEC") commenced an action in the United District Court for the Southern District of Florida, styled

Securities and Exchange Commission v. Frederic Elm f/k/a Frederic Elmaleh, et al., Case No. 15-cv-60082 (the "Commission Proceeding").

2. The SEC's Complaint for Injunctive and Other Relief alleges that between no later than November 2013 to January 2015, Defendants Frederic Elm f/k/a Frederic Elmaleh ("Fred Elm") and Defendants Elm Tree Investment Advisors, LLC ("ETIA"), Elm Tree Investment Fund, LP ("ETIF"), Elm Tree 'e'conomy Fund, LP ("ETEF"), and Elm Tree Motion Opportunity, LP ("ETMO") (collectively, the "Receivership Entities") engaged in a fraudulent securities "Ponzi" scheme through the offer and sale of fraudulent investments that raised more than \$17 million from more than 50 investors (the "Fraudulent Scheme").

3. Fred Elm was the ultimate owner of the Receivership Entities and had the ability or ultimate right to control their operations. The Receivership Entities were used to perpetrate the Fraudulent Scheme by acting as conduits for funneling investor money to or from investors and to loot the Receivership Entities for the benefit of Fred Elm and his family members.

4. The Commission Proceeding alleges that Fred Elm misappropriated at least \$2 million in investor funds to pay for personal items and expenses and by making improper payments including to his wife, Amanda Elm f/k/a Amanda Elmaleh.

5. On January 16, 2015, Judge William Dimitrouleas of the United States District Court for the Southern District of Florida entered an order in the Commission Proceeding (the "Receivership Order") appointing Grisel Alonso as Receiver for the Receivership Entities. A true and correct copy of the Receivership Order is attached hereto as **Exhibit A**.

6. The Receiver was appointed pursuant to the Court's inherent equity powers to carry out the purposes of the Commission Proceeding, which was brought pursuant to the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934.

7. 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]”.

8. By order dated February 10, 2017, the Court expanded the Receivership to include Etopia LP (“Etopia”). [D.E. 172]. As such, Etopia is one of the Receivership Entities.

9. This action by the Receiver against Defendants is brought pursuant to the Receivership Order, which, among other things, charged the Receiver with marshaling assets of the Receivership Estate for the benefit of defrauded investors and asserting causes of action as the Receiver deems necessary.

JURISDICTION AND VENUE

10. This Court has supplemental jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1367(a) because it is an ancillary action to the Commission Proceeding, over which this Court has federal question jurisdiction. This Complaint is brought to accomplish the objectives of the Receivership Order and to seek recovery of funds that Defendants received resulting from the Fraudulent Scheme outlined in the Commission Proceeding. Therefore, supplemental jurisdiction is proper in the Southern District of Florida because the claims raised in this Complaint are so related to the claims involved in the Commission Proceeding that they form part of the same case or controversy under Article III of the United States Constitution.

11. The Court has personal jurisdiction over Defendants pursuant to Section 48.193, Florida Statutes, because: (i) Defendants committed torts within the state; or (ii) Defendants voluntarily participated and engaged in a business venture in this State, which is the Fraudulent

Scheme from which the Receiver's claims arise; and (iii) Defendants have sufficient minimum contacts with the State of Florida to satisfy due process requirements, such that the exercise or personal jurisdiction over them is fair and just.

12. Venue in this District and Division is proper because a substantial part of the events giving rise to the claims occurred in this District, because this action is related to the Commission Proceeding pending in this District, and because the Receiver was appointed by the Court in this District.

PARTIES

13. Plaintiff Grisel Alonso is the duly appointed and acting Receiver for the Receivership Entities.

14. Defendant 1925333 Ontario Inc., doing business as Cleartech Computing System ("CCS"), is a Canadian corporation with its principal place of business in Thornhill, Ontario, Canada.

15. Defendant Engage Marketing Group Inc. ("Engage") is a Canadian corporation with its principal place of business in Thornhill, Ontario, Canada.

16. Defendant M3 Designs ("M3") is a Delaware partnership with its principal place of business in Ft. Lauderdale, Florida.

17. Defendant Victor Elmaleh is an individual who, upon information and belief, resides in Thornhill, Ontario, Canada. Victor Elmaleh is Fred Elm's father. Upon information and belief, Victor Elmaleh is the "owner" of Etopia, and a beneficial owner of CCS and M3. Upon information and belief, Victor Elmaleh exercises control over CCS and M3.

18. Defendant Mercedes Elmaleh is an individual who, upon information and belief, resides in Thornhill, Ontario, Canada. Mercedes Elmaleh is Fred Elm's mother and Victor

Elmaleh's wife. Upon information and belief, Mercedes Elmaleh is a beneficial owner of Engage and exercises control over Engage.

19. CCS, M3, and Engage are, at times, collectively referred to as the "Elmaleh Entities."

20. Victor Elmaleh, Mercedes Elmaleh, and the Elmaleh Entities are, at times, collectively referred to as the "Elmaleh Defendants."

FACTS

A. The Fraudulent Scheme

21. Fred Elm, through the sale of securities in ETIF, ETEF, ETMO, and Etopia (collectively, the "Elm Tree Funds"), raised at least \$17 million from more than 50 investors.

22. Fred Elm was the founder and managing director of ETIA and the general partner and manager of the Elm Tree Funds.

23. The offering documents for the Elm Tree Funds provided that Fred Elm and ETIA would charge a 2% annual management fee, but would not receive any additional fees unless and until the Elm Tree Funds made a profit. But Fred Elm and ETIA invested only a portion of the investor funds raised.

24. At no point did Fred Elm or the Elm Tree Funds earn a profit that would have entitled them to additional fees under the offering documents. Instead, Fred Elm and ETIA used the majority of the funds to pay back investors in Ponzi-like fashion and for Fred Elm's own personal use.

25. Fred Elm misappropriated at least \$2 million in investor funds to pay for personal items and expenses such as a home, high-end furnishings, and other personal items such as automobiles, jewelry, and daily living expenses.

26. Investors sent their investment funds to Fred Elm by wire transfer or by mailing a check. Fred Elm initially deposited investor funds into bank accounts held by ETIA, the Elm Tree Funds, or his own personal bank account. Fred Elm then transferred the money back and forth between the various accounts and commingled money invested in one of the Elm Tree Funds with money invested in the others.

27. The Elm Tree Funds did not generate a profit. While Fred Elm invested a portion of investor funds, he used the vast majority of the funds to repay other investors in a Ponzi scheme, and to fund his own personal expenses and the expenses of his wife, Amanda Elm.

28. Fred Elm defrauded investors through his control of the Receivership Entities.

29. A large number of investors in the Elm Tree Funds received no distributions from the Elm Tree Funds of purported trading or other investment profits, or they received such distributions in an amount that was less than the amount they invested. As such, each of those investors suffered a net loss.

30. Etopia was formed in or about late September or early October 2014, at a time after Fred Elm began receiving inquiries and requests for information from the SEC related to the other Elm Tree Funds. It appears Fred Elm and Victor Elmaleh, and possibly other related individuals, opened Etopia in an attempt to receive new investment dollars and to continue the Fraudulent Scheme, described above, while avoiding detection by the SEC. Specifically, Etopia registration documents were filed naming Victor Elmaleh as the contact person on or about September 30, 2014.

31. Fred Elm and Victor Elmaleh marketed Etopia as Elm Tree Etopia Fund, LP, with ETIA as its General Partner and Fund Manager.

32. Fred Elm and Victor Elmaleh listed ETIA as the primary contact for inquiries related to Etopia, including in marketing materials that contained ETIA's address and telephone number, and Fred Elm's e-mail address.

33. Fred Elm, among others, solicited investments in Etopia from victims who also invested in the other Receivership Entities.

34. Upon information and belief, Victor Elmaleh referred investors to the Receivership Entities and his son, Fred Elm, in Florida.

35. Upon information and belief, Victor Elmaleh had at least one registered vehicle in Florida.

36. Fred Elm and Victor Elmaleh received new investment funds in Etopia before ultimately transferring all of the funds out of Etopia and into companies beneficially owned by Victor Elmaleh and Mercedes Elmaleh, Fred Elm's father and mother. This was a continuation of the Fraudulent Scheme.

37. Upon information and belief, Fred Elm, Victor Elmaleh, and Mercedes Elmaleh used Etopia as an extension of the Fraudulent Scheme conducted through the other Elm Tree Funds *after* the SEC began its formal inquiry into the conduct.

38. While the Receiver was in the process of marshalling the assets of the Receivership Estate, Fred Elm requested that he be permitted to keep certain assets that he claimed had deep personal meaning if he paid fair market value in exchange for them.

39. Ultimately, Fred Elm's father and mother, Victor and Mercedes Elmaleh, paid fair market value for their son to keep those assets using a joint bank account. Before accepting payment from them, the Receiver required a sworn declaration from Victor Elmaleh that the funds being used to pay the Receiver in Florida were from his personal savings account and that

the account did not directly or indirectly receive money from any of the individuals or entities named in the SEC's complaint.

40. Victor and Mercedes Elmaleh intentionally and willfully availed themselves to this jurisdiction in connection with these Court-approved purchases from the Receivership.

B. The Transfers to Defendants

41. From October 15, 2014 to February 4, 2015, millions of dollars received from investors in Etopia were deposited in Etopia's account in connection with the Fraudulent Scheme. Fred Elm and Victor Elmaleh improperly transferred those investors' funds to third parties, including the Elmaleh Defendants.

42. All of the money that Fred Elm and Victor Elmaleh wrongfully caused to be transferred to the Elmaleh Defendants was diverted and misappropriated in furtherance of the Fraudulent Scheme. Thus, all of the money transferred to the Elmaleh Defendants was improperly diverted assets of Etopia and thus belongs to the Receivership Estate.

43. The Elmaleh Defendants exercise of dominion and control over the money transferred to them by Etopia is a wrongful deprivation of property that belongs to the Receivership Estate.

44. To allow the Elmaleh Defendants to keep the funds transferred by Victor Elmaleh and Fred Elm from Etopia would be inequitable and unjust, including to the investors of the Elm Tree Funds.

45. All conditions precedent to filing this action have been performed, occurred, or have been waived.

1. The Transfers to 1925333 Ontario Inc. d/b/a Cleartech Computing System

46. From December 5, 2014 to February 4, 2015, CCS received the following transfers from Etopia for the benefit of Victor Elmaleh: (a) on or about December 5, 2014, Etopia transferred \$65,500.00 via wire to CCS; (b) on or about December 29, 2014, Etopia transferred \$93,875.00 via wire to CCS; (c) on or about January 13, 2015, Etopia transferred \$174,925.00 via wire to CCS; (d) on or about January 20, 2015, Etopia transferred \$297,800.85 via wire to CCS; (e) on or about January 26, 2015, Etopia transferred \$265,000.00 via wire to CCS; and (f) on or about February 4, 2015, Etopia transferred \$89,552.65 via wire to CCS.

47. In all, CCS received transfers of funds in the amount of \$986,653.50 (collectively, the "CCS Transfers"), all of which were derived from the fraud perpetrated upon investors by Victor Elmaleh and Fred Elm through use of the Receivership Entities.

48. The Receivership Entities did not receive reasonably equivalent value in exchange for the CCS Transfers, which were made to the detriment of the Receivership Estate.

2. The Transfers to Engage Marketing Group, Inc.

49. From January 5, 2015 to January 30, 2015, Engage received the following transfers from Etopia for the benefit of Mercedes Elmaleh: (a) on or about January 5, 2015, Etopia transferred \$54,990.00 via wire to Engage; (b) on or about January 15, 2015, Etopia transferred \$119,556.80.00 via wire to Engage; and (c) on or about January 30, 2015, Etopia transferred \$189,506.50 via wire to Engage.

50. In all, Engage received transfers of funds in the amount of \$364,063.30 (collectively, the "Engage Transfers"), all of which were derived from the Fraudulent Scheme perpetrated upon investors by Victor Elmaleh and Fred Elm through use of the Receivership Entities.

51. The Receivership Entities did not receive reasonably equivalent value in exchange for the Engage Transfers, which were made to the detriment of the Receivership Estate.

3. The Transfers to M3 Designs

52. From December 18, 2014 to February 2, 2015, M3 received the following transfers from Etopia for the benefit of Victor Elmaleh: (a) on or about December 18, 2014, Etopia transferred \$190,000.00 via check to M3; (b) on or about January 2, 2015, Etopia transferred \$96,507.50 via check to M3; (c) on or about January 16, 2015, Etopia transferred \$245,500.00 via check to M3; and (d) on or about February 2, 2015, Etopia transferred \$97,500 via check to M3.

53. In all, M3 received transfers of funds in the amount of \$629,507.50 (collectively, the "M3 Transfers"), all of which were derived from the Fraudulent Scheme perpetrated upon investors by Victor Elmaleh and Fred Elm through use of the Receivership Entities.

54. The Receivership Entities did not receive reasonably equivalent value in exchange for the M3 Transfers, which were made to the detriment of the Receivership Estate.

C. Alter Ego

55. Upon information and belief, CCS, Engage, and M3 are the alter egos of Victor Elmaleh and Mercedes Elmaleh.

56. Upon information and belief, CCS, Engage, and M3 were established by Victor Elmaleh and Mercedes Elmaleh to act as vehicles to obtain fraudulently transferred funds out of the Receivership Estate, and to defraud creditors.

57. Upon information and belief, Victor Elmaleh and Mercedes Elmaleh created CCS, Engage, and M3 to be sham entities without any separate legal existence or purpose.

58. Consistent with the Fraudulent Scheme and the use of Etopia to extend that Fraudulent Scheme, upon information and belief, CCS, Engage, and M3 were all incorporated in mid-to-late 2014, around the same time Etopia was formed.

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

59. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

60. This is a claim to avoid and recover fraudulent transfers to CCS pursuant to Section 726.105, Florida Statutes.

61. Victor Elmaleh and Fred Elm, through Etopia, transferred a total of \$986,653.50 to CCS in the CCS Transfers.

62. By Victor Elmaleh and Fred Elm intentionally and wrongfully causing the transfer to CCS of funds received from investors properly belonging to the Receivership Estate, the Receivership Estate and the Receiver have a right to repayment of those funds from CCS.

63. In light of this right to repayment, the Receivership Estate and the Receiver have a claim against Victor Elmaleh and Fred Elm, and consequently are creditors under Florida's Uniform Fraudulent Transfer Act. Accordingly, Victor Elmaleh and Fred Elm are debtors under that Act.

64. The CCS Transfers were inherently fraudulent because they were made as part of Fred Elm's Fraudulent Scheme. The Receiver, as the representative of the Receivership Entities, is entitled to avoid and recover transfers equal to the amount of the transfers that Victor Elmaleh and Fred Elm caused to be made to CCS because Victor Elmaleh and Fred Elm caused the CCS Transfers as part of the Fraudulent Scheme.

65. The transfers to CCS were fraudulent under Florida Statutes § 726.105(1)(a) because Victor Elmaleh and Fred Elm, through Etopia, made the transfers with actual intent to hinder, delay, or defraud creditors of Fred Elm and the Elm Tree Funds.

66. The transfers to CCS were also fraudulent under Florida Statutes § 726.105(1)(b) because the transfers were made without Etopia receiving a reasonably equivalent value in exchange for the transfers and because Victor Elmaleh and Fred Elm: (i) were engaged or were about to engage in a business or transaction for which their remaining assets were unreasonably small in relation to the business or transaction; or (ii) intended to incur, or believed or reasonably should have believed they would incur, debts beyond their ability to pay as they became due.

67. On behalf of Etopia, a Receivership entity, from which money was transferred to CCS, directly or indirectly, the Receiver is entitled to avoid and recover transfers equal to the amount of the transfers that Victor Elmaleh and Fred Elm caused to be made to CCS, and to any other pertinent remedy, including those available under Florida Statutes § 726.108.

68. On behalf of Etopia and the Receivership Estate, the Receiver is entitled to avoid and recover those transfers because Victor Elmaleh and Fred Elm caused the CCS Transfers out of Etopia, a Receivership entity, as part of the Fraudulent Scheme.

69. The Receivership Estate has been damaged and diminished as a direct and proximate result of the CCS Transfers.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant CCS for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

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

70. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

71. This is a claim to avoid and recover fraudulent transfers to CCS pursuant to Section 726.106, Florida Statutes.

72. Victor Elmaleh and Fred Elm transferred a total of \$986,653.50 to CCS.

73. By Victor Elmaleh and Fred Elm intentionally and wrongfully causing the transfer to CCS of funds received from investors properly belonging to the Receivership Estate, the Receiver and Receivership Entities have a right to repayment of those funds from CCS.

74. In light of this right to repayment, the Receivership Estate and Receiver have a claim against Victor Elmaleh and Fred Elm, and consequently are creditors under Florida's Uniform Fraudulent Transfer Act. Accordingly, Victor Elmaleh and Fred Elm are debtors under that Act.

75. The transfers to CCS were fraudulent under Florida Statutes § 726.106(1) because Etopia did not receive a reasonably equivalent value in exchange for the transfers and Fred Elm and the Receivership Entities were insolvent at all relevant times.

76. On behalf of Etopia, a Receivership entity, from which money was transferred to CCS, directly or indirectly, the Receiver is entitled to avoid and recover transfers equal to the amount of the transfers that Victor Elmaleh and Fred Elm caused to be made to CCS, and to any other pertinent remedy, including those available under Florida Statutes § 726.108.

77. On behalf of the Etopia and Receivership Estate, the Receiver is entitled to avoid and recover those transfers because Victor Elmaleh and Fred Elm caused the CCS Transfers out of Etopia, a Receivership entity, as part of the Fraudulent Scheme.

78. The Receivership Estate has been damaged and diminished as a direct and proximate result of the CCS Transfers.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant CCS for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

COUNT 3 - Unjust Enrichment
(Against CCS)

79. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

80. This unjust enrichment claim is asserted in the alternative, in the event the statutory remedies do not provide an adequate remedy at law.

81. Through the CCS Transfers, Etopia, a Receivership entity, conferred a substantial benefit on CCS.

82. CCS knowingly and voluntarily accepted and retained a benefit in the form of the CCS Transfers.

83. CCS's retention of this benefit is inequitable and unjust because, *inter alia*, CCS failed to provide anything of value to Etopia in exchange for the benefit, the CCS Transfers were made to the detriment of the Receivership Estate and investors in Etopia, and the CCS Transfers dissipated assets of Etopia that could have been otherwise available to the Receivership Estate.

84. Allowing CCS to retain the CCS Transfers would unjustly enrich CCS to the detriment of the Receivership Estate, and would allow Victor Elmaleh and Fred Elm to benefit from their involvement in the Fraudulent Scheme.

85. Accordingly, the Receiver, on behalf of the Receivership Entities, is entitled to the return of that money through disgorgement or any other applicable remedy.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant CCS for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

COUNT 4 - Conversion
(Against CCS)

86. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

87. CCS accepted the funds transferred in the CCS Transfers with an intent to exercise ownership that is inconsistent with the Receivership Estate's right of possession to the funds transferred in the CCS Transfers.

88. CCS retained the funds transferred in the CCS Transfers, exercises dominion and control over the funds, and refuses to return the funds to the Receivership Estate, despite pre-suit demand.

89. CCS's retention of the funds transferred in the CCS Transfers is a wrongful deprivation of property properly belonging to the Receivership Estate, and an act in derogation of the Receivership Estate's possessory right to the funds.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant CCS for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

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

90. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

91. This is a claim to avoid and recover fraudulent transfers to Engage pursuant to Section 726.105, Florida Statutes.

92. Victor Elmaleh and Fred Elm, through Etopia, transferred a total of \$364,063.30 to Engage in the Engage Transfers.

93. By Victor Elmaleh and Fred Elm intentionally and wrongfully causing the transfer to Engage of funds received from investors properly belonging to the Receivership Estate, the Receivership Estate and the Receiver have a right to repayment of those funds from Engage.

94. In light of this right to repayment, the Receivership Estate and the Receiver have a claim against Victor Elmaleh and Fred Elm, and consequently are creditors under Florida's Uniform Fraudulent Transfer Act. Accordingly, Victor Elmaleh and Fred Elm are debtors under that Act.

95. The Engage Transfers were inherently fraudulent because they were made as part of Fred Elm's Fraudulent Scheme. The Receiver, as the representative of the Receivership Entities, is entitled to avoid and recover transfers equal to the amount of the transfers that Victor Elmaleh and Fred Elm caused to be made to Engage because Victor Elmaleh and Fred Elm caused the Engage Transfers as part of the Fraudulent Scheme.

96. The transfers to Engage were fraudulent under Florida Statutes § 726.105(1)(a) because Victor Elmaleh and Fred Elm, through Etopia, made the transfers with actual intent to hinder, delay, or defraud creditors of Fred Elm and the Elm Tree Funds.

97. The transfers to Engage were also fraudulent under Florida Statutes § 726.105(1)(b) because the transfers were made without Etopia receiving a reasonably equivalent value in exchange for the transfers and because Victor Elmaleh and Fred Elm: (i) were engaged

or were about to engage in a business or transaction for which their remaining assets were unreasonably small in relation to the business or transaction; or (ii) intended to incur, or believed or reasonably should have believed they would incur, debts beyond their ability to pay as they became due.

98. On behalf of Etopia, a Receivership entity, from which money was transferred to Engage, directly or indirectly, the Receiver is entitled to avoid and recover transfers equal to the amount of the transfers that Victor Elmaleh and Fred Elm caused to be made to Engage, and to any other pertinent remedy, including those available under Florida Statutes § 726.108.

99. On behalf of Etopia and the Receivership Estate, the Receiver is entitled to avoid and recover those transfers because Victor Elmaleh and Fred Elm caused the Engage Transfers out of Etopia, a Receivership entity, as part of the Fraudulent Scheme.

100. The Receivership Estate has been damaged and diminished as a direct and proximate result of the Engage Transfers.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant Engage for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

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

101. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

102. This is a claim to avoid and recover fraudulent transfers to Engage pursuant to Section 726.106, Florida Statutes.

103. Victor Elmaleh and Fred Elm transferred a total of \$364,063.30 to Engage.

104. By Victor Elmaleh and Fred Elm intentionally and wrongfully causing the transfer to Engage of funds received from investors properly belonging to the Receivership Estate, the Receiver and Receivership Entities have a right to repayment of those funds from Engage.

105. In light of this right to repayment, the Receivership Estate and Receiver have a claim against Victor Elmaleh and Fred Elm, and consequently are creditors under Florida's Uniform Fraudulent Transfer Act. Accordingly, Victor Elmaleh and Fred Elm are debtors under that Act.

106. The transfers to Engage were fraudulent under Florida Statutes § 726.106(1) because Etopia did not receive a reasonably equivalent value in exchange for the transfers and Fred Elm and the Receivership Entities were insolvent at all relevant times.

107. On behalf of Etopia, a Receivership entity, from which money was transferred to Engage, directly or indirectly, the Receiver is entitled to avoid and recover transfers equal to the amount of the transfers that Victor Elmaleh and Fred Elm caused to be made to Engage, and to any other pertinent remedy, including those available under Florida Statutes § 726.108.

108. On behalf of Etopia and Receivership Estate, the Receiver is entitled to avoid and recover those transfers because Victor Elmaleh and Fred Elm caused the Engage Transfers out of Etopia, a Receivership entity, as part of the Fraudulent Scheme.

109. The Receivership Estate has been damaged and diminished as a direct and proximate result of the Engage Transfers.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant Engage for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

COUNT 7 - Unjust Enrichment
(Against Engage)

110. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

111. This unjust enrichment claim is asserted in the alternative, in the event the statutory remedies do not provide an adequate remedy at law.

112. Through the Engage Transfers, Etopia, a Receivership entity, conferred a substantial benefit on Engage.

113. Engage knowingly and voluntarily accepted and retained a benefit in the form of the Engage Transfers.

114. Engage's retention of this benefit is inequitable and unjust because, *inter alia*, Engage failed to provide anything of value to Etopia in exchange for the benefit, the Engage Transfers were made to the detriment of the Receivership Estate and investors in Etopia, and the Engage Transfers dissipated assets of Etopia that could have been otherwise available to the Receivership Estate.

115. Allowing Engage to retain the Engage Transfers would unjustly enrich Engage to the detriment of the Receivership Estate, and would allow Victor Elmaleh and Fred Elm to benefit from their involvement in the Fraudulent Scheme.

116. Accordingly, the Receiver, on behalf of the Receivership Entities, is entitled to the return of that money through disgorgement or any other applicable remedy.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant Engage for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

COUNT 8 - Conversion
(Against Engage)

117. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

118. Engage accepted the funds transferred in the Engage Transfers with an intent to exercise ownership that is inconsistent with the Receivership Estate's right of possession to the funds transferred in the Engage Transfers.

119. Engage retained the funds transferred in the Engage Transfers, exercises dominion and control over the funds, and refuses to return the funds to the Receivership Estate, despite pre-suit demand.

120. Engage's retention of the funds transferred in the Engage Transfers is a wrongful deprivation of property properly belonging to the Receivership Estate, and an act in derogation of the Receivership Estate's possessory right to the funds.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant Engage for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

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

121. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

122. This is a claim to avoid and recover fraudulent transfers to M3 pursuant to Section 726.105, Florida Statutes.

123. Victor Elmaleh and Fred Elm, through Etopia, transferred a total of \$629,507.50 to M3 in the M3 Transfers.

124. By Victor Elmaleh and Fred Elm intentionally and wrongfully causing the transfer to M3 of funds received from investors properly belonging to the Receivership Estate, the Receivership Estate and the Receiver have a right to repayment of those funds from M3.

125. In light of this right to repayment, the Receivership Estate and the Receiver have a claim against Victor Elmaleh and Fred Elm, and consequently are creditors under Florida's Uniform Fraudulent Transfer Act. Accordingly, Victor Elmaleh and Fred Elm are debtors under that Act.

126. The M3 Transfers were inherently fraudulent because they were made as part of Fred Elm's Fraudulent Scheme. The Receiver, as the representative of the Receivership Entities, is entitled to avoid and recover transfers equal to the amount of the transfers that Victor Elmaleh and Fred Elm caused to be made to M3 because Victor Elmaleh and Fred Elm caused the M3 Transfers as part of the Fraudulent Scheme.

127. The transfers to M3 were fraudulent under Florida Statutes § 726.105(1)(a) because Victor Elmaleh and Fred Elm, through Etopia, made the transfers with actual intent to hinder, delay, or defraud creditors of Fred Elm and the Elm Tree Funds.

128. The transfers to M3 were also fraudulent under Florida Statutes § 726.105(1)(b) because the transfers were made without Etopia receiving a reasonably equivalent value in exchange for the transfers and because Victor Elmaleh and Fred Elm: (i) were engaged or were about to engage in a business or transaction for which their remaining assets were unreasonably small in relation to the business or transaction; or (ii) intended to incur, or believed or reasonably should have believed they would incur, debts beyond their ability to pay as they became due.

129. On behalf of Etopia, a Receivership entity, from which money was transferred to M3, directly or indirectly, the Receiver is entitled to avoid and recover transfers equal to the

amount of the transfers that Victor Elmaleh and Fred Elm caused to be made to M3, and to any other pertinent remedy, including those available under Florida Statutes § 726.108.

130. On behalf of Etopia and the Receivership Estate, the Receiver is entitled to avoid and recover those transfers because Victor Elmaleh and Fred Elm caused the M3 Transfers out of Etopia, a Receivership entity, as part of the Fraudulent Scheme.

131. The Receivership Estate has been damaged and diminished as a direct and proximate result of the M3 Transfers.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant M3 for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

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

132. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

133. This is a claim to avoid and recover fraudulent transfers to M3 pursuant to Section 726.106, Florida Statutes.

134. Victor Elmaleh and Fred Elm transferred a total of \$629,507.50 to M3.

135. By Victor Elmaleh and Fred Elm intentionally and wrongfully causing the transfer to M3 of funds received from investors properly belonging to the Receivership Estate, the Receiver and Receivership Entities have a right to repayment of those funds from M3.

136. In light of this right to repayment, the Receivership Estate and Receiver have a claim against Victor Elmaleh and Fred Elm, and consequently are creditors under Florida's Uniform Fraudulent Transfer Act. Accordingly, Victor Elmaleh and Fred Elm are debtors under that Act.

137. The transfers to M3 were fraudulent under Florida Statutes § 726.106(1) because Etopia did not receive a reasonably equivalent value in exchange for the transfers and Fred Elm and the Receivership Entities were insolvent at all relevant times.

138. On behalf of Etopia, a Receivership entity, from which money was transferred to M3, directly or indirectly, the Receiver is entitled to avoid and recover transfers equal to the amount of the transfers that Victor Elmaleh and Fred Elm caused to be made to M3, and to any other pertinent remedy, including those available under Florida Statutes § 726.108.

139. On behalf of Etopia and Receivership Estate, the Receiver is entitled to avoid and recover those transfers because Victor Elmaleh and Fred Elm caused the M3 Transfers out of Etopia, a Receivership entity, as part of the Fraudulent Scheme.

140. The Receivership Estate has been damaged and diminished as a direct and proximate result of the M3 Transfers.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant M3 for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

COUNT 11 - Unjust Enrichment
(Against M3)

141. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

142. This unjust enrichment claim is asserted in the alternative, in the event the statutory remedies do not provide an adequate remedy at law.

143. Through the M3 Transfers, Etopia, a Receivership entity, conferred a substantial benefit on M3.

144. M3 knowingly and voluntarily accepted and retained a benefit in the form of the M3 Transfers.

145. M3's retention of this benefit is inequitable and unjust because, *inter alia*, M3 failed to provide anything of value to Etopia in exchange for the benefit, the M3 Transfers were made to the detriment of the Receivership Estate and investors in Etopia, and the M3 Transfers dissipated assets of Etopia that could have been otherwise available to the Receivership Estate.

146. Allowing M3 to retain the M3 Transfers would unjustly enrich M3 to the detriment of the Receivership Estate, and would allow Victor Elmaleh and Fred Elm to benefit from their involvement in the Fraudulent Scheme.

147. Accordingly, the Receiver, on behalf of the Receivership Entities, is entitled to the return of that money through disgorgement or any other applicable remedy.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant M3 for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

COUNT 12 - Conversion
(Against M3)

148. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

149. M3 accepted the funds transferred in the M3 Transfers with an intent to exercise ownership that is inconsistent with the Receivership Estate's right of possession to the funds transferred in the M3 Transfers.

150. M3 retained the funds transferred in the M3 Transfers, exercises dominion and control over the funds, and refuses to return the funds to the Receivership Estate, despite pre-suit demand.

151. M3's retention of the funds transferred in the M3 Transfers is a wrongful deprivation of property properly belonging to the Receivership Estate, and an act in derogation of the Receivership Estate's possessory right to the funds.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant M3 for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

COUNT 13 - Conversion
(Against Victor Elmaleh)

152. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

153. Upon information and belief, Victor Elmaleh accepted the funds transferred in the CCS Transfers and M3 Transfers with an intent to exercise ownership that is inconsistent with the Receivership Estate's right of possession to the funds transferred in the CCS Transfers and M3 Transfers.

154. Victor Elmaleh retained the funds transferred in the CCS Transfers and M3 Transfers, exercises dominion and control over those funds, and refuses to return those funds to the Receivership Estate, despite pre-suit demand.

155. Victor Elmaleh's retention of the funds transferred in the CCS Transfers and M3 Transfers is a wrongful deprivation of property properly belonging to the Receivership Estate, and an act in derogation of the Receivership Estate's possessory right to the funds.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant Victor Elmaleh for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

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

156. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

157. CCS and M3 accepted the funds transferred in the CCS Transfers and M3 Transfers with an intent to exercise ownership that is inconsistent with the Receivership Estate's right of possession to the funds transferred in the CCS Transfers and M3 Transfers.

158. CCS and M3 retained the funds transferred in the CCS Transfers and M3 Transfers, exercise dominion and control over those funds, and refuse to return those funds to the Receivership Estate, despite pre-suit demand.

159. CCS's and M3's retention of the funds transferred in the CCS Transfers and M3 Transfers is a wrongful deprivation of property properly belonging to the Receivership Estate, and an act in derogation of the Receivership Estate's possessory right to the funds.

160. Victor Elmaleh had knowledge of CCS's and M3's wrongful conversion of funds properly belonging to the Receivership Estate.

161. Victor Elmaleh rendered substantial assistance to CCS and M3 in their wrongful conversion of funds properly belonging to the Receivership Estate

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant Victor Elmaleh for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

COUNT 15 - Conversion
(Against Mercedes Elmaleh)

162. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

163. Mercedes Elmaleh accepted the funds transferred in the Engage Transfers with an intent to exercise ownership that is inconsistent with the Receivership Estate's right of possession to the funds transferred in the Engage Transfers.

164. Mercedes Elmaleh retained the funds transferred in the Engage Transfers, exercises dominion and control over those funds, and refuses to return those funds to the Receivership Estate, despite pre-suit demand.

165. Mercedes Elmaleh's retention of the funds transferred in the Engage Transfers is a wrongful deprivation of property properly belonging to the Receivership Estate, and an act in derogation of the Receivership Estate's possessory right to the funds.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant Mercedes Elmaleh for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

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

166. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

167. Engage accepted the funds transferred in the Engage Transfers with an intent to exercise ownership that is inconsistent with the Receivership Estate's right of possession to the funds transferred in the Engage Transfers.

168. Engage retained the funds transferred in the Engage Transfers, exercises dominion and control over those funds, and refuses to return those funds to the Receivership Estate, despite pre-suit demand.

169. Engage's retention of the funds transferred in the Engage Transfers is a wrongful deprivation of property properly belonging to the Receivership Estate, and an act in derogation of the Receivership Estate's possessory right to the funds.

170. Mercedes Elmaleh had knowledge of Engage's wrongful conversion of funds properly belonging to the Receivership Estate.

171. Mercedes Elmaleh rendered substantial assistance to Engage in its wrongful conversion of funds properly belonging to the Receivership Estate

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against Defendant Mercedes Elmaleh for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

COUNT 17 – Civil Conspiracy
(Against All Elmaleh Defendants)

172. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-58, as if fully stated herein.

173. This is a cause of action for conspiracy against the Elmaleh Defendants.

174. The Elmaleh Defendants, as detailed above, agreed and conspired to perform an unlawful act or a lawful act by illegal means—*i.e.*, willingly and intentionally accepting the fraudulent transfers of funds belonging to the Receivership Estate and converting those same funds.

175. The Elmaleh Defendants knowingly and willingly participated, directly or indirectly, in the fraudulent transfer and conversion of funds properly belonging to the Receivership Estate.

176. As detailed above, each Elmaleh Defendant performed one or more overt acts in furtherance or pursuance of this illicit conspiracy to convert funds belonging to the Receivership Estate.

177. The Receivership Estate was damaged and continues to be damaged as a direct and proximate result of the Elmaleh Defendants' conspiracy.

WHEREFORE, Plaintiff Grisel Alonso, as Receiver, requests this Court to enter a judgment against the Elmaleh Defendants for all damages incurred including, but not limited to, all costs and prejudgment interest, and all other relief this Court deems just.

DATED: July 12, 2017

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION)

Plaintiff,)

v.)

FREDERIC ELM f/k/a FREDERIC ELMALEH,)

ELM TREE INVESTMENT ADVISORS, LLC,)

ELM TREE INVESTMENT FUND LP,)

ELM TREE 'E'CONOMY FUND LP, and)

ELM TREE MOTION OPPORTUNITY LP,)

Defendants,)

and)

AMANDA ELM f/k/a AMANDA ELMALEH,)

Relief Defendant.)

RECEIVERSHIP ORDER

WHEREAS Plaintiff Securities and Exchange Commission has filed an emergency motion for the appointment of a Receiver for Defendants Elm Tree Investment Advisors, LLC ("ETIA"), Elm Tree Investment Fund LP ("ETI Fund"), Elm Tree 'e'Conomy Fund LP ("e'Conomy Fund"), and Elm Tree Motion Opportunity LP ("Motion Opportunity Fund") (the ETI Fund, 'e'Conomy Fund and Motion Opportunity Fund are collectively referred to as the "Elm Tree Funds"), with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, choses in action and any other property of ETIA and the Elm Tree Funds; marshal and safeguard all of the assets of ETIA and the Elm Tree Funds; and take whatever actions are necessary for the protection of the investors;

WHEREAS, the Commission has made a sufficient and proper showing in support of the relief requested by evidence demonstrating a *prima facie* case of violations of the federal securities laws by ETIA, the Elm Tree Funds, and Defendant Frederic Elm f/k/a Frederic Elmaleh;

WHEREAS, the Commission has submitted the credentials of a candidate to be appointed as Receiver of all of the assets, properties, books and records, and other items of ETIA and the Elm Tree Funds, including properties, assets and other items in their names or their principals' names, and the Commission has advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court;

IT IS THEREFORE ORDERED that Grisel Alonso, Esq. is hereby appointed the Receiver for ETIA and the Elm Tree Funds, their subsidiaries, successors and assigns, and is hereby authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of ETIA and the Elm Tree Funds, whatsoever and wherever located belonging to or in the possession of ETIA and the Elm Tree Funds, including but not limited to all offices maintained by ETIA and the Elm Tree Funds, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of ETIA and the Elm Tree Funds, wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;
2. Investigate the manner in which the affairs of ETIA and the Elm Tree Funds were conducted and institute such actions and legal proceedings, for the benefit and on behalf of ETIA and the Elm Tree Funds, and their investors and other creditors, as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in ETIA and the Elm Tree Funds, including against ETIA and the Elm Tree Funds, their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in ETIA and the Elm Tree Funds; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, *et. seq.* or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

3. Present to this Court a report reflecting the existence and value of the assets of ETIA and the Elm Tree Funds and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of ETIA and the Elm Tree Funds;

4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of ETIA and the Elm Tree Funds, and exercising the power granted by this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;

6. Defend, compromise or settle legal actions, including the instant proceeding, in which ETIA and the Elm Tree Funds or the Receiver are a party, commenced either prior to or subsequent to this Order, with authorization of this Court; except, however, in actions where ETIA and the Elm Tree Funds are nominal parties, as in certain foreclosure actions where the action does not effect a claim against or adversely affect the assets of ETIA and the Elm Tree Funds, the Receiver may file appropriate pleadings at the Receiver's discretion. The Receiver may waive any attorney-client or other privilege held by ETIA and the Elm Tree Funds;

7. Assume control of, and be named as authorized signatory of, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of ETIA and the Elm Tree Funds and, upon, order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;

8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties;

9. Have access to and review all mail of ETIA and the Elm Tree Funds and the mail of Defendant Elm and Relief Defendant Amanda Elm (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of ETIA and the Elm Tree Funds. All mail addressed to Elm or Amanda Elm that is opened by the Receiver

and, upon inspection, is determined by the Receiver to be personal or attorney-client privileged, shall be promptly delivered to the addressee and the Receiver shall not retain any copy.

IT IS FURTHER ORDERED that, in connection with the appointment of the Receiver provided for above:

10. ETIA and the Elm Tree Funds and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of ETIA and the Elm Tree Funds shall deliver forthwith upon demand such property, monies, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of ETIA and the Elm Tree Funds;

11. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, ETIA and the Elm Tree Funds shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;

12. Unless expressly authorized in writing by the Receiver in advance, ETIA and the Elm Tree Funds and their principals shall take no action, nor purport to take any action, in the name of or on behalf of ETIA and the Elm Tree Funds;

13. ETIA and the Elm Tree Funds and their principals, respective officers, agents, employees, attorneys, and attorneys-in-fact, shall cooperate with and assist the Receiver, including, if deemed necessary by the Receiver, appearing for deposition testimony upon two (2) business days' notice (by email or facsimile), and producing documents upon two (2) business days' notice, while the Commission's request for a Preliminary Injunction is pending. ETIA and the Elm Tree Funds and their principals, and respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

14. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by ETIA and the Elm Tree Funds; said amount or amounts of compensation

shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court;

15. During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code without prior permission from this Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of ETIA and the Elm Tree Funds;

16. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to ETIA and the Elm Tree Funds;

17. Title to all property, real or personal, all contracts, rights of action, and all books and records of ETIA and the Elm Tree Funds and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;

18. Upon request by the Receiver, any company providing telephone services to ETIA and the Elm Tree Funds shall provide a reference of calls from any number presently assigned to ETIA and the Elm Tree Funds to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;

19. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to ETIA and the Elm Tree Funds shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;

20. The United States Postal Service is directed to provide any information requested by the Receiver regarding ETIA and the Elm Tree Funds, and to handle future deliveries of the mail of ETIA and the Elm Tree Funds as directed by the Receiver;

21. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

22. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by ETIA and the Elm Tree Funds or by the Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by

the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

23. Service of this Order shall be sufficient if made upon ETIA and the Elm Tree Funds, and their principals, or their counsel, by email, facsimile or overnight courier;

24. In the event the Receiver discovers that funds of persons who have invested in the Elm Tree Funds have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds;

25. Immediately upon entry of this Order, the Receiver may take depositions upon oral examination of parties and non-parties subject to two (2) business days' notice. In addition, the Receiver may issue subpoenas for documents, things and electronically stored information to non-parties calling for production within one week of service. The Receiver also shall be entitled to serve interrogatories, requests for the production of documents and electronically stored information, and requests for admissions. The parties shall respond to such discovery requests within two (2) business days of service. Service of discovery requests shall be sufficient if made upon the parties by email, facsimile or overnight courier. Depositions may be taken by telephone or other remote electronic means; and

26. This Court shall retain jurisdiction of this matter for all purposes.

DONE AND ORDERED in Chambers in Fort Lauderdale, Florida, this 16 day of January, 2015.


WILLIAM P. DIMITROULEAS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record