

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-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 NOTICE OF ISSUANCE OF SUBPOENA DUCES TECUM**

PLEASE TAKE NOTICE that the undersigned attorneys, pursuant to the Federal Rules of Civil Procedure, have issued the attached Subpoena Duces Tecum to the party listed below on the date listed:

<b>NAME</b>	<b>DATE</b>	<b>DATE OF ISSUANCE</b>	<b>PLACE</b>
TD Bank, N.A. 1103 Brickell Avenue Miami, FL 33131	October 31, 2017	October 6, 2017	Broad and Cassel LLC 2 South Biscayne Blvd. Suite 2100 Miami, FL 33131

**CERTIFICATE OF SERVICE**

I hereby certify that on October 6, 2017, I electronically filed a true and exact copy of the foregoing document with the Clerk of the Court using the CM/ECF system which will send

notification of such filing to all parties of record on the service list authorized to receive electronic notice through CM/ECF.

Respectfully submitted,

**BROAD AND CASSEL LLP**  
Attorneys for Receiver  
One Biscayne Tower, 21<sup>st</sup> Floor  
2 S. Biscayne Boulevard  
Miami, FL 33131  
Telephone: (305) 373-9467  
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By: *s/Daniel S. Newman*  
Daniel S. Newman, P.A.  
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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-CV-61390-ALTONAGA/GOODMAN

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,

Plaintiff

**SUBPOENA DUCES TECUM  
IN A CIVIL CASE**

**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.

**TO:** TD Bank, N.A.  
1103 Brickell Avenue  
Miami, FL 33131

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

Place of Testimony:	Courtroom
	Date and Time

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Place of Deposition	Date and Time
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YOU ARE COMMANDED to produce and permit inspection and copying of the documents or objects described in the attached Schedule "A" at the place, date, and time specified below:

Place: Broad and Cassel LLP One Biscayne Tower, 21 <sup>st</sup> Floor 2 South Biscayne Boulevard Miami, Florida 33131	Date and Time <b>October 31, 2017</b> <b>10:00 a.m.</b>
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

Premises	Date and Time:
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

Issuing Officer Signature and Title DANIEL S. NEWMAN, ESQ.	Date: October 6, 2017
Issuing Officer's Name, Address and Phone Number: DANIEL S. NEWMAN, ESQ., Attorney for Receiver, Broad and Cassel LLP, One Biscayne Tower, 21 <sup>st</sup> Floor, 2 S. Biscayne Blvd., Miami, Florida 33131 (305) 373-9400 (Telephone)	

(See Rule 45 Federal Rules of Civil Procedure Parts C & D on Reverse)

AO 88 (1/94) Subpoena in a Civil Case

**PROOF OF SERVICE**

	DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
SERVED BY (PRINT NAME)	TITLE	

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on:

\_\_\_\_\_ DATE

\_\_\_\_\_ SIGNATURE OF SERVER

\_\_\_\_\_ ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts (c) & (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the

provision of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

## INSTRUCTIONS

1. This subpoena requires the production of original documents. For your convenience, and at your expense, you may provide photocopies of the documents. If you choose to produce copies, you must maintain the originals in a secure place.

2. Provide the documents as they are kept in the ordinary course of business, including copies of all file folders, cover sheets, memoranda, fax sheets, routing slips or other documents which might indicate the dissemination of the documents. To the extent that the identity of a document's author or source is not apparent from the face of the document, provide the identity of the author or source in addition to the document.

3. Provide all non-identical documents, including all drafts.

4. Affix a bates label or other identifying mark to each page of each document produced.

5. To the extent that you have already provided any document requested, you may list in your transmittal letter the bates range of the document and the number of the request to which it is responsive in lieu of producing the document again.

6. Your transmittal letter should indicate that you have made a thorough search of all documents in your possession, custody or control and have produced all documents responsive to the subpoena. If no documents responsive to a particular request exist, you should so state in your transmittal letter. Your transmittal letter should indicate whether the documents being produced have been kept in the ordinary course of business.

7. If any responsive documents are withheld based upon an assertion of privilege, include with your transmittal letter a privilege log setting forth the following information for each document withheld: (i) the date of the document; (ii) a description of the document (*e.g.*, "memorandum," "letter," "notes"); (iii) the author(s) of the document; (iv) all recipients of the document; (v) all others who have been informed about the substance of the document even if they did not receive it; (vi) the subject matter of the document; and (vii) the nature of the privilege asserted (*i.e.*, attorney-client, attorney work product).

8. Unless otherwise stated, the relevant time period is January 1, 2012 to the date of your response.

## DEFINITIONS

1. The term "document" is used in its broadest possible sense, and means any and all records, and any other tangible forms of expression, communication or information, or the recording or storing thereof, in your possession, custody or control, whether such documents are drafts or unfinished versions, originals, or annotated or nonconforming copies, however or by whoever created, produced or stored (manually, mechanically, electronically or otherwise) including writings, books, papers, files, minutes, summaries, records, analyses, plans, correspondence, memoranda, ledger sheets, schedules, invoices, account statements, reports, wires, telegrams, telexes, electronic mail, telephone logs, notes, or records of conversations of meetings, contracts, agreements, calendars, date books, work sheets, working papers, bills,

records of payment, magnetic tape, tape recordings, disks, diskettes, disk packs, and other electronic media, microfilm, microfiche, date or memory storage devices, appointment books, diaries, notices and message slips.

2. The term "Receivership Entities" refers to Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund, LP, Elm Tree 'e'conomy Fund, LP, Elm Tree Motion Opportunity, LP, and Etopia, LP, and all entities in which they have or had a controlling interest, including but not limited to all divisions, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, managing partners, limited partners, partnerships, and all aliases, code names, or trade or business named used by any of the foregoing.

3. The term "Victor Elmaleh" refers to Victor Elmaleh, and any of his representatives, attorneys, affiliates, predecessors, or successors.

4. The term "Mercedes Elmaleh" refers to Mercedes Elmaleh, and any of her representatives, attorneys, affiliates, predecessors, or successors.

5. The term "1925333 Ontario" refers to 1925333 Ontario Inc. d/b/a Cleartech Computing System, and any of its officers, directors, representatives, attorneys, affiliates, predecessors, or successors.

6. The term "Engage Marketing" refers to Engage Marketing Group Inc., and any of its officers, directors, representatives, attorneys, affiliates, predecessors, or successors.

7. The term "M3" refers to M3 Designs, and any of its officers, directors, representatives, attorneys, affiliates, predecessors, or successors.

8. The term "Etopia" refers to Etopia, LP and any of its officers, directors, representatives, attorneys, predecessors, or successors.

9. The term "Ahmad Naqvi" refers to Ahmad Naqvi a/k/a Ahmad Naqvia, and any of his representatives, attorneys, affiliates, predecessors, or successors.

10. The terms "you" or "your" refers to TD Bank, N.A., and all its divisions, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, managing partners, limited partners, partnerships, and all aliases, code names, or trade or business named used by any of the foregoing.

11. The term "person" means any natural person or any business, legal or government entity, or association.

12. The term "concerning" means reflecting, relating to, referencing, referring to, describing, evidencing, or constituting.

13. The following rules of construction apply to this attachment:

a. the term "any" shall include "all," and the term "all" shall include "any," as needed to make the request inclusive and not exclusive.

- b. the term “and” shall include “or,” and the term “or” shall include “and,” as needed to make the request inclusive and not exclusive; and
- c. the use of the singular form of any work includes the plural and vice versa.

**SCHEDULE “A”**  
**DOCUMENTS TO BE PRODUCED**

1. All documents that refer, relate to or reflect account no. XXXX-XXXX348, whether active or inactive, including but not limited to new account forms, account opening documents, margin agreements, options agreements and/or any other customer agreements, trade confirmations, monthly account statements, checks, deposits, wire transfers, documents reflecting risk tolerance or account objectives, active account review forms, documents relating to the transfer of any accounts to you, and any and all documents and information regarding any computer access programs, online trading accounts or subscriptions, or any other type of electronic account monitoring.

2. All documents that refer, relate to or reflect account no. XXXX-XXXX177, whether active or inactive, including but not limited to new account forms, account opening documents, margin agreements, options agreements and/or any other customer agreements, trade confirmations, monthly account statements, checks, deposits, wire transfers, documents reflecting risk tolerance or account objectives, active account review forms, documents relating to the transfer of any accounts to you, and any and all documents and information regarding any computer access programs, online trading accounts or subscriptions, or any other type of electronic account monitoring.

2. All documents that refer, relate to or reflect any and all assets, books, records, and real and personal property of Victor Elmaleh, Mercedes Elmaleh, any of the Receivership Entities, 1925333 Ontario, Engage Marketing, M3, and/or Ahmad Naqvi, whether or not those assets, books, records, and real and personal property are in your possession, custody, or control.

3. All documents that refer, relate to or reflect any and all accounts held in the name of Victor Elmaleh, Mercedes Elmaleh, any of the Receivership Entities, 1925333 Ontario, Engage Marketing, M3, and/or Ahmad Naqvi, whether active or inactive, including but not limited to new account forms, account opening documents, margin agreements, options agreements and/or any other customer agreements, trade confirmations, monthly account statements, checks, deposits, wire transfers, documents reflecting risk tolerance or account objectives, active account review forms, documents relating to the transfer of any accounts to



you, and any and all documents and information regarding any computer access programs, online trading accounts or subscriptions, or any other type of electronic account monitoring.

4. All documents that refer, relate to or reflect any and all accounts, opened by any third parties for the benefit of, or on behalf of, Victor Elmaleh, Mercedes Elmaleh, any of the Receivership Entities, 1925333 Ontario, Engage Marketing, M3, and/or Ahmad Naqvi, whether active or inactive, including but not limited to new account forms, account opening documents, margin agreements, options agreements and/or any other customer agreements, trade confirmations, monthly account statements, checks, deposits, wire transfers, documents reflecting risk tolerance or account objectives, active account review forms, documents relating to the transfer of any accounts to you, and any and all documents and information regarding any computer access programs, online trading accounts or subscriptions, or any other type of electronic account monitoring.

5. All documents that refer, relate to or reflect any payments made by or on behalf of Victor Elmaleh, Mercedes Elmaleh, any of the Receivership Entities, 1925333 Ontario, Engage Marketing, M3, and/or Ahmad Naqvi, including but not limited to, checks, billing statements, or credit card stubs.

6. All documents that refer, relate to or reflect any payments made to or for the benefit of Victor Elmaleh, Mercedes Elmaleh, any of the Receivership Entities, 1925333 Ontario, Engage Marketing, M3, and/or Ahmad Naqvi, including but not limited to, checks, billing statements, or credit card stubs.

7. All communications that refer, relate to or reflect any accounts held in the name of any of Victor Elmaleh, Mercedes Elmaleh, any of the Receivership Entities, 1925333 Ontario, Engage Marketing, M3, and/or Ahmad Naqvi, including but not limited to communications regarding trading or investments.

8. All communications with any third party that refer, relate to or reflect any accounts held in the name of Victor Elmaleh, Mercedes Elmaleh, any of the Receivership Entities, 1925333 Ontario, Engage Marketing, M3, and/or Ahmad Naqvi, including but not limited to communications regarding trading or investments.