

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 MOTION FOR SUMMARY JUDGMENT
AS TO MERCEDES ELMALEH, OR IN THE ALTERNATIVE
TO STRIKE HER PLEADINGS AND ENTER FINAL DEFAULT JUDGMENT**

Plaintiff, GRISEL ALONSO, solely in her capacity as the Receiver for Elm Tree Investment Advisors, LLC ("ETIA"), Elm Tree Investment Fund, LP ("ETIF"), Elm Tree 'e'Conomy Fund, LP ("ETEF"), Elm Tree Motion Opportunity, LP ("ETMO"), and Etopia, LP ("Etopia"), pursuant to Fed. R. Civ. P. 56, Local Rule 56.1, and Fed. R. Civ. P. 55(b)(1), respectfully moves this Court to enter summary judgment against Defendant Mercedes Elmaleh (at times, "M. Elmaleh"), or in the alternative to strike M. Elmaleh's pleadings and enter final default judgment against her, and grant the relief requested in the Complaint. [D.E. 1].

I. INTRODUCTION

A. The Fraudulent Scheme

1. 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.

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

3. 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.

4. 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 a Ponzi-like fashion and for Fred Elm's own personal use.

5. 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 including automobiles, jewelry, and daily living expenses.

6. 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.

7. 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.

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

9. 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.

10. 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.

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

12. 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.

13. Fred Elm, among others, solicited investments in Etopia from victims who also invested in the other Elm Tree Funds.

14. Victor Elmaleh referred investors to the Receivership Entities and his son, Fred Elm, in Florida.

15. 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 M. Elmaleh, Fred Elm's father and mother. This was a continuation of the Fraudulent Scheme.

16. Fred Elm, Victor Elmaleh, and M. 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.

17. 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.

18. 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.

19. 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

20. 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 Defendants 1925333 Ontario Inc., doing business as Cleartech Computing System (“CCS”), Engage Marketing Group Inc. (“Engage”), and M3 Designs (“M3”) (collectively, the “Elmaleh Entities”).¹

21. CCS, Engage, and M3 are the alter egos of Victor Elmaleh and M. Elmaleh.

22. CCS, Engage, and M3 were established by Victor Elmaleh and M. Elmaleh to act as vehicles to obtain fraudulently transferred funds out of the Receivership Estate, and to defraud creditors.

23. Victor Elmaleh and M. Elmaleh created CCS, Engage, and M3 to be sham entities without any separate legal existence or purpose.

24. 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.

25. Victor Elmaleh, M. Elmaleh, and the Elmaleh Entities are collectively referred to as the “Elmaleh Defendants” in this motion and throughout the Receiver’s filings.

26. 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.

¹ The Court has entered default final judgments against the Elmaleh Entities.

STATEMENT OF MATERIAL FACTS

27. On January 15, 2015, the SEC filed its Complaint alleging that Elm engaged in a fraudulent securities "Ponzi" scheme through the offer and sale of fraudulent investments (the "Fraudulent Scheme"). [D.E. 1 in the SEC Action].²

28. On March 25, 2015, the Court entered a Consent Judgment as to Fred Elm. [D.E. 56 in SEC Action].

29. On April 11, 2016, the Court entered Final Judgment Setting Disgorgement and Civil Penalties as to Fred Elm. [D.E. 151 in SEC Action].

30. The Receivership Entities conducted little or no actual business operations as represented to investors. *See Declaration of Dick Haslam*, attached as **Exhibit A**, ¶¶ 3.

31. The purported business operations of the Receivership Entities produced little or no profits or earnings. Ex. A at ¶ 4.

32. The source of payments to investors was from cash infused by new investors. Ex. A at ¶ 5.

33. At all relevant times, the Receivership Entities were insolvent. Ex. A at ¶ 6.

34. From December 5, 2014 to February 4, 2015, CCS received the following transfers from Etopia in connection with the Fraudulent Scheme: (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

² This action is ancillary to the SEC Action, which is Case No. 15-CV-60082-Dimitrouleas/Snow.

CCS; and (f) on or about February 4, 2015, Etopia transferred \$89,552.65 via wire to CCS. Ex. A at ¶ 8.

35. From January 5, 2015 to January 30, 2015, Engage received the following transfers from Etopia in connection with the Fraudulent Scheme: (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 via wire to Engage; and (c) on or about January 30, 2015, Etopia transferred \$189,506.50 via wire to Engage. Ex. A at ¶ 9.

36. From December 18, 2014 to February 2, 2015, M3 received the following transfers from Etopia in connection with the Fraudulent Scheme: (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. Ex. A at ¶ 10.

37. Elm was conducting the Fraudulent Scheme at the time of the foregoing transfers, totaling \$1,980,214.30, to CCS, Engage, and M3 (the “Transfers”). Ex. A at ¶ 11.

38. The funds transferred to the Elmaleh Defendants from Etopia were derived from the Fraudulent Scheme perpetrated upon investors by Elm through his use of the Receivership Entities. Ex. A at ¶ 12.

39. The Receiver seeks the repayment of \$1,980,214.30 in funds paid out to the Elmaleh Defendants. Ex. A at ¶ 13.

40. None of the Elmaleh Defendants provided reasonably equivalent value in exchange for Transfers they received to the detriment of the Receivership Estate. Ex. A at ¶ 14.

41. On or about March 22, 2018, the Receiver issued discovery to M. Elmaleh regarding the Fraudulent Scheme, the transfers she received, the causes of action asserted in the Complaint, and her involvement with Fred Elm's Fraudulent Scheme. *See* Receiver's Request for Admissions to M. Elmaleh, attached as **Exhibit B**.

42. To date, M. Elmaleh has failed to respond to the Receiver's request for production, interrogatories, and request for admissions.

43. The Receiver noticed M. Elmaleh for deposition in Toronto, Ontario, Canada on April 23, 2018. Victor Elmaleh responded on M. Elmaleh's behalf by e-mail confirming receipt of the notice of deposition scheduled for April 23, 2018, a copy of which is attached as **Exhibit C**.

44. M. Elmaleh did not appear for her deposition, proof of which is attached as **Exhibit D**.

45. Based on M. Elmaleh's failure to respond to the Receiver's request for admissions, the following material facts are deemed admitted by M. Elmaleh:

- a. Victor Elmaleh is the beneficial owner of CCS;
- b. Victor Elmaleh is the beneficial owner of M3;
- c. Victor Elmaleh controls CCS;
- d. Victor Elmaleh controls M3;
- e. Victor Elmaleh has signatory authority on all of CCS and M3's bank accounts;
- f. Victor Elmaleh makes all decision for CCS and M3;
- g. Victor Elmaleh is the alter ego of CCS and M3;
- h. She is the beneficial owner of Engage;
- i. She controls Engage;

- j. She has signatory authority on Engage's bank accounts;
- k. She makes all decisions for Engage;
- l. She is the alter ego of Engage;
- m. Fred Elm and the Receivership Entities were engaged in the conduct alleged in the Complaint.
- n. Victor Elmaleh and Fred Elm opened Etopia in September or October 2014.
- o. Victor Elmaleh was listed as the contact person for Etopia.
- p. Victor Elmaleh and Fred Elm marketed Etopia to investors.
- q. Victor Elmaleh solicited investments in Etopia.
- r. Victor Elmaleh referred investors to Etopia.
- s. She and Victor Elmaleh established CCS, Engage, and M3 to act as vehicles to receive funds transferred out of the Receivership Entities.
- t. She and Victor Elmaleh established CCS, Engage, and M3 for no legitimate purpose.
- u. She and Victor Elmaleh incorporated CCS, Engage, and M3 in 2014.
- v. Victor Elmaleh caused Etopia to transfer all of its assets into companies beneficially owned by he and his wife, M. Elmaleh.
- w. Victor Elmaleh and Fred Elm made the Transfers.
- x. Victor Elmaleh and Fred Elm made the Transfers in connection with Fred Elm's Ponzi scheme.
- y. Victor Elmaleh and Fred Elm made the Transfers with an intent to defraud creditors.

- z. Neither she nor any of the other Elmaleh Defendants provided any services or monies in exchange for the Transfers.
- aa. The Transfers damaged Etopia.
- bb. The Elmaleh Defendants received a benefit in the form of the Transfers.
- cc. The Elmaleh Defendants knowingly and voluntarily accepted the Transfers.
- dd. The Elmaleh Defendants accepted the Transfers even though they knew the monies belonged to Etopia.
- ee. The Elmaleh Defendants refused to return the Transfers.
- ff. She had knowledge of his and the other Elmaleh Defendants' wrongful retention of the Transfers.
- gg. She assisted the Elmaleh Defendants in their wrongful retention of the Transfers.
- hh. She and the other Elmaleh Defendants agreed or conspired to hurt Etopia.
- ii. She and the other Elmaleh Defendants agreed or conspired to receive and retain the Transfers.
- jj. She performed acts in furtherance of the conspiracy to receive and retain the Transfers.

See Ex. B.

46. V. Elmaleh has confirmed on behalf of M. Elmaleh that they are not defending this action, they refuse to participate in discovery, and they *consent to entry of summary judgment* against them. *See Exhibit E.*

II. MEMORANDUM OF LAW

A. Summary Judgment Standard

Summary judgment is appropriate when there is no genuine dispute as to any material

fact, and the evidence establishes that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). A factual dispute is “genuine” if a reasonable jury could return a verdict for the non-movant and “material” if it would affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). In deciding a summary judgment motion, the Court must examine the pleadings, depositions, answers to interrogatories, and admissions on file along with the affidavits and other evidence in the record. *Travelers Indem. Co. of Ill. v. Royal Oak Enter., Inc.*, 344 F. Supp. 2d 1358, 1364–65 (M.D. Fla. 2004). Once the movant has met its burden of establishing the nonexistence of a triable issue of fact, the burden shifts to the non-movant to come forward with sufficient evidence of every element that he or she must prove. *Rollins v. TechSouth*, 833 F. 2d 1525, 1528 (11th Cir. 1987). The non-movant may not rely solely upon the pleadings, but must use affidavits, depositions, and other admissible evidence to demonstrate that there exists a material fact issues to be tried. *Travelers*, 344 F .Supp. 2d at 1365.

B. Requests for Admissions and Summary Judgment

Federal Rule of Civil Procedure 36 expressly provides that requests for admissions are automatically deemed admitted if not answered within thirty (30) days, and that the matters therein are conclusively established unless the Court permits otherwise on motion of the non-responding party. *U.S. v. 2204 Barbara Lane*, 960 F. 2d 126, 129 (11th Cir. 1992) *citing to* *Rainbolt v. Johnson*, 669 F .2d 767, 768 (D.C. Cir. 1981) (reversing district court that failed to give binding and conclusive effect to unanswered requests for admissions).

Summary judgment based in whole or in part on a defendant’s failure to answer requests for admissions is appropriate. *See 2204 Barbara Lane*, 960 F. 2d at 129; *J.D. Pharmaceutical Distrib.’s, Inc. v. Save-On Drugs & Cosmetics Corp.*, 893 F. 2d 1201, (11th Cir. 1990)

(upholding summary judgment against pro se prisoner based on failure to answer requests for admissions).

C. The Receiver's Causes of Action

Count 15 of the Complaint states a cause of action against M. Elmaleh for conversion. Under Florida law, the elements of conversion are: (i) an act of dominion wrongfully asserted; (ii) over another's property; and (iii) inconsistent with ownership. *Lan Li v. Walsh*, 2017 WL 3130390, *5 (S.D. Fla. 2017). Each of these elements is satisfied, with no question of material fact, based on the Statement of Facts listed above, the Declaration of Dick Haslam,³ and M. Elmaleh's admissions.⁴ The Receiver is entitled to summary judgment on Count 15.

Count 16 of the Complaint states a cause of action against M. Elmaleh for aiding and abetting conversion. The essential elements for a claim of aiding and abetting are: (i) an underlying violation on the part of the primary wrongdoer; (ii) knowledge of the underlying violation by the alleged aider and abettor; and (iii) the rendering of substantial assistance in committing the wrongdoing by the alleged aider and abettor. *Gilbert & Caddy, P.A. v. JP Morgan*, 2015 WL 12862724, *5 (S.D. Fla. 2015). Each of these elements is satisfied, with no question of material fact, based on the Statement of Facts listed above, the Declaration of Dick

³ It is routine and accepted for declarations of financial analysts to be used in Receivership clawback cases as evidence in support of motions for summary judgment. *See Wiand v. Morgan*, 919 F. Supp. 2d 1342, 1357-58 (M.D. Fla. 2013); *Wiand v. Cloud*, 919 F. Supp. 2d 1319, 1332-33 (M.D. Fla. 2013).

⁴ By failing to respond to the Receiver's request for admissions, M. Elmaleh admitted to facts establishing the elements of conversion, including, among other things: (i) that she is the beneficial owner, control person, decision maker, and alter ego of one of the transferees (Ex. B at ¶¶ 10-13, 29); (ii) that her husband, V. Elmaleh, caused Etopia to transfer all of its monies into entities beneficially owned by V. Elmaleh and her (Ex. B at ¶ 22); (iii) that she accepted the transfers even though she knew the monies belonged to Etopia (Ex. B at ¶ 82); (iv) that she refused to return the monies to Etopia (Ex. B at ¶ 83).

Haslam, and M. Elmaleh's admissions.⁵ The Receiver is entitled to summary judgment on Count 16.

Count 17 of the Complaint states a cause of action against all Defendants, including M. Elmaleh, for civil conspiracy. Under Florida law, the elements of civil conspiracy are: (i) an agreement between two or more parties; (ii) to do an unlawful act or to do a lawful act by unlawful means; (iii) the doing of some overt act in pursuance of the conspiracy; and (iv) damage to plaintiff as a result of the acts. *Lan Li*, at *6. Each of these elements is satisfied, with no question of material fact, based on the Statement of Facts listed above, the Declaration of Dick Haslam, and M. Elmaleh's admissions.⁶ The Receiver is entitled to summary judgment on Count 17.

ALTERNATIVE RELIEF OF DEFAULT FINAL JUDGMENT

If the Court deems summary judgment against M. Elmaleh is improper, for any reason, the Receiver respectfully requests entry of an order striking her pleadings and entering final default judgment against her.

On July 12, 2017, the Receiver filed her Complaint. [D.E. 1].

On August 23, 2017, the Defendants jointly filed a motion for extension of time to answer the Complaint and retain counsel. [D.E. 25]. The Court granted Defendants' motion and

⁵ By failing to respond to the Receiver's request for admissions, M. Elmaleh admitted to facts establishing the elements of aiding and abetting, including, among other things: (i) that she had knowledge of Engage's wrongful retention of monies belonging to Etopia (Ex. B at ¶¶ 84); and (ii) that she assisted Engage in its wrongful retention of monies belonging to Etopia (Ex. B at ¶¶ 85).

⁶ By failing to respond to the Receiver's request for admissions, M. Elmaleh admitted to facts establishing the elements of civil conspiracy, including, among other things: (i) she, Victor Elmaleh, CCS, M3, and Engage agreed or conspired to hurt Etopia (Ex. B at ¶ 86); (ii) that she, Victor Elmaleh, CCS, M3, and Engage conspired to receive and retain the Transfers comprised of monies belonging to Etopia (Ex. B at ¶ 87); and (iii) that she performed acts in furtherance of the conspiratorial agreement (Ex. B at ¶ 88).

gave them until September 8, 2017 to file a combined response or separate answers to the Complaint. [D.E. 28].

September 8 came and went without Defendants filing anything. On September 18, 2017, Defendants jointly filed a second motion for extension of time to retain counsel and to file a response or answer to the Complaint. [D.E. 29]. The Court again granted Defendants an extension until October 6, 2017 to file a combined response or separate answers to the Complaint. [D.E. 30].

On October 10, 2017, Defendants filed a single pro se answer to the Complaint, [D.E. 34], in contravention of the Court's orders requiring separate answers. Moreover, the corporate Defendants were not permitted to file a pro se answer. The Receiver filed a motion to strike the answer on these grounds [D.E. 35], which the Court granted on October 17, 2017 [D.E. 36]. In the Court's order striking the answer filed on behalf of all Defendants, the Court ordered the corporate Defendants to retain counsel, and all Defendants to file separate answers, by no later than October 24, 2017. [D.E. 36].

On October 25, 2017, only one Defendant, M. Elmaleh, filed an answer. [D.E. 37]. The corporate Defendants were defaulted [D.E. 44], but V. Elmaleh, who never filed an answer, was not. To date, V. Elmaleh has never filed an answer or other response to the Complaint after the Court's order striking the Defendants' joint answer.

The Receiver issued M. Elmaleh discovery on March 22, 2018. The Receiver also noticed M. Elmaleh's deposition for April 23, 2018. On April 16, 2018, Victor Elmaleh e-mailed counsel for the Receiver, copying M. Elmaleh and speaking on her behalf, and told counsel that they would not be participating in discovery in this action and they would not be appearing for their duly-noticed depositions. Victor Elmaleh also doubled down on his previous admission, made in

December 2017, that he and his wife were abandoning any defense to this action and consented to summary judgment against them. *See* Ex. E.

Based on the foregoing, M. Elmaleh has willfully and intentionally refused to participate in discovery in this action or otherwise appear to defend against the Receiver's claims. The Receiver respectfully submits that entry of an order striking M. Elmaleh's pleadings and entering default final judgment against her is appropriate under the circumstances.

WHEREFORE, Plaintiff, GRISEL ALONSO, respectfully requests this Honorable Court enter an Order: (i) granting summary judgment in favor of the Receiver on liability on all counts of the Complaint against M. Elmaleh; and (ii) granting such other and further relief as the Court deems just and proper. In the alternative, if the Court determines summary judgment is not appropriate, the Receiver respectfully requests entry of an order striking M. Elmaleh's pleadings and entering Default Final Judgment against her.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 8, 2018, a true and correct copy of the foregoing was served via electronic transmission or U.S. Mail on all counsel or parties of record.

By: *s/Daniel S. Newman*

Daniel S. Newman, P.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
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

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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.

**DECLARATION OF DICK HASLAM IN SUPPORT MOTION FOR SUMMARY
JUDGMENT AS TO MERCEDES ELMALEH, OR IN THE ALTERNATIVE
TO STRIKE HER PLEADINGS AND ENTER FINAL DEFAULT JUDGMENT**

PURSUANT TO 28 U.S.C. § 1746, I, **DICK HASLAM**, DECLARE:

1. I work as a financial analyst in the Receiver's office in connection with the above-styled matter, and I make this declaration from my own personal knowledge.
2. This declaration is based on my review of the books and records of the Receivership.
3. The books and records of the Receiver reflect that the Receivership Entities conducted little or no actual business operations as represented to investors.
4. The books and records of the Receiver reflect that the purported business operations of the Receivership Entities produced little or no profits or earnings.

5. The books and records of the Receiver reflect that the source of payments to investors was from cash infused by new investors.

6. The books and records of the Receiver reflect that, at all relevant times, the Receivership Entities were insolvent.

7. Based on the foregoing, consistent with the SEC action against Fred Elm, Fred Elm was engaged in a fraudulent securities "Ponzi" scheme (the "Fraudulent Scheme").

8. From December 5, 2014 to February 4, 2015, CCS received the following transfers from Etopia in connection with the Fraudulent Scheme: (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.

9. From January 5, 2015 to January 30, 2015, Engage received the following transfers from Etopia in connection with the Fraudulent Scheme: (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.

10. From December 18, 2014 to February 2, 2015, M3 received the following transfers from Etopia in connection with the Fraudulent Scheme: (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.

11. Elm was conducting the Fraudulent Scheme at the time of the foregoing transfers, which total \$1,980,214.30.


12. The foregoing funds transferred by Etopia were derived from the Fraudulent Scheme perpetrated upon investors by Elm through his use of the Receivership Entities.

13. The Receiver seeks the repayment of \$1,980,214.30 in funds paid out to Elmaleh Defendants.

14. The books and records of the Receivership reflect that none of the Elmaleh Defendants provided reasonably equivalent value in exchange for the \$1,980,214.30 they received to the detriment of the Receivership Estate.

15. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on May 8, 2018.



Dick Haslam

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

GRISEL ALONSO, as Receiver for
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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.

**PLAINTIFF GRISEL ALONSO'S FIRST REQUEST FOR ADMISSION TO
DEFENDANT MERCEDES ELMALEH**

Pursuant to Federal Rules of Civil Procedure 36, Plaintiff Grisel Alonso ("Alonso" or "Plaintiff"), not individually but solely in her capacity as the Receiver appointed over Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund, LP, Elm Tree 'e'conomy Fund, LP, Elm Tree Motion Opportunity, LP, and Etopia, LP (the "Receivership Entities") requests that Defendant Mercedes Elmaleh admit under oath the truthfulness of the following requests for admission within thirty (30) days from the date hereof, in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of Florida.

DEFINITIONS AND INSTRUCTIONS

a. "You", "Your", or "Defendant" shall refer to Mercedes Elmaleh, as well as her

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successors, assigns, and representatives.

b. "Alonso", "Receiver" or "Plaintiff" shall refer to Plaintiff Grisel Alonso, not individually but solely in her capacity as the Receiver appointed over Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund, LP, Elm Tree 'e'conomy Fund, LP, Elm Tree Motion Opportunity, LP, and Etopia, LP ("Etopia").

c. "Fred Elm" shall refer to Frederic Elm a/k/a Frederic Elmaleh.

d. "Victor Elmaleh" shall refer to Victor Elmaleh.

e. "Receivership Entities" shall mean Elm Tree Investment Advisors, LLC ("ETIA"), Elm Tree Investment Fund, LP, Elm Tree 'e'conomy Fund, LP, Elm Tree Motion Opportunity, LP, and Etopia.

f. "MYECCO" shall refer to MYECCO, LLC.

g. "MojiLife" shall refer to MojiLife, Inc. of Delaware, MojiLife, Inc. of Florida, and MojiLife Inc., an Ontario business corporation.

h. "Elmaleh Entities" shall mean 1925333 Ontario Inc. d/b/a Cleartech Computing System ("CCS"), Engage Marketing Group, Inc. ("Engage"), and M3 Designs ("M3").

i. "Elmaleh Defendants" shall mean Victor Elmaleh, Mercedes Elmaleh, and the Elmaleh Entities.

j. "Action" shall refer to *Alonso v. Victor Elmaleh et al.*, Case No. 17-61390-CIV-ALTONAGA/Goodman.

k. "Fraudulent Scheme" shall refer to a fraudulent securities "Ponzi" scheme in which Fred Elm and the Receivership Entities engaged through the offer and sale of fraudulent investments that raised more than \$17 million from more than 50 investors.

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l. “CCS Transfers” shall refer to the funds transferred from Etopia to CCS from December 5, 2014 to February 4, 2015, which are as follows: (1) on or about December 5, 2014, Etopia transferred \$65,500.00 via wire to CCS; (2) on or about December 29, 2014, Etopia transferred \$93,875.00 via wire to CCS; (3) on or about January 13, 2015, Etopia transferred \$174,925.00 via wire to CCS; (4) on or about January 20, 2015, Etopia transferred \$297,800.85 via wire to CCS; (5) on or about January 26, 2015, Etopia transferred \$265,000.00 via wire to CCS; and (6) on or about February 4, 2015, Etopia transferred \$89,552.65 via wire to CCS.

m. “Engage Transfers” shall refer to the funds transferred from Etopia to Engage from January 5, 2015 to January 30, 2015, which are as follows: (1) on or about January 5, 2015, Etopia transferred \$54,990.00 via wire to Engage; (2) on or about January 15, 2015, Etopia transferred \$119,556.80 via wire to Engage; and (3) on or about January 30, 2015, Etopia transferred \$189,506.50 via wire to Engage.

n. “M3 Transfers” shall refer to the funds transferred from Etopia to M3 from December 18, 2014 to February 2, 2015, which are as follows: (1) on or about December 18, 2014, Etopia transferred \$190,000.00 via check to M3; (2) on or about January 2, 2015, Etopia transferred \$96,507.50 via check to M3; (3) on or about January 16, 2015, Etopia transferred \$245,500.00 via check to M3; and (4) on or about February 2, 2015, Etopia transferred \$97,500 via check to M3.

o. The relevant time period for this First Request for Admission shall be from December 1, 2013 through the date hereof. This time period shall apply to all requests below, unless otherwise specified.

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REQUESTS FOR ADMISSION

1. Admit 1925333 Ontario, Inc. does business as Cleartech Computing System.
2. Admit that Victor Elmaleh is beneficial owner of CCS.
3. Admit that Victor Elmaleh is beneficial owner of M3.
4. Admit that Victor Elmaleh controls CCS.
5. Admit that Victor Elmaleh controls M3.
6. Admit that Victor Elmaleh has signatory authority on all bank accounts for CCS.
7. Admit that Victor Elmaleh has signatory authority on all bank accounts for M3.
8. Admit that Victor Elmaleh makes all decisions for CCS.
9. Admit that Victor Elmaleh makes all decisions for M3.
10. Admit that You are beneficial owner of Engage.
11. Admit that You control Engage.
12. Admit that You have signatory authority on all bank accounts for Engage.
13. Admit that You make all decisions for Engage.
14. Admit that Fred Elm and Receivership Entities were engaged in the conduct alleged in the Complaint.
15. Admit that Victor Elmaleh and Fred Elm opened Etopia in September or October 2014.
16. Admit that Etopia registration documents listed Victor Elmaleh as the contact person for Etopia.
17. Admit that Fred Elm and Victor Elmaleh marketed Etopia.
18. Admit that Etopia used ETIA as its General Partner and Fund Manager.

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19. Admit that Fred Elm and Victor Elmaleh solicited investments in Etopia.
20. Admit that Victor Elmaleh referred investors to the Receivership Entities.
21. Admit that Victor Elmaleh referred investors to Etopia.
22. Admit that Victor Elmaleh caused Etopia to transfer all of its monies into companies beneficially owned by You and him.
23. Admit that You used funds that were Receivership assets to pay the Receiver for Fred Elm's belongings.
24. Admit that Victor Elmaleh used funds that were Receivership assets to pay the Receiver for Fred Elm's belongings.
25. Admit that Victor Elmaleh lied in an affidavit submitted in Florida regarding the source of the funds used to pay for Fred Elm's belongings.
26. Admit that You and/or Victor Elmaleh established CCS, Engage, and M3 to act as vehicles to receive funds transferred out of The Receivership Entities.
27. Admit that You and/or Victor Elmaleh established CCS, Engage, and M3 for no legitimate purpose.
28. Admit that You and/or Victor Elmaleh incorporated CCS, Engage, and M3 in 2014.
29. Admit that You are the alter ego of Engage.
30. Admit that Victor Elmaleh is the alter ego of CCS and M3.
31. Admit that on or about December 5, 2014, Etopia transferred \$65,500 via wire to CCS.
32. Admit that on or about December 29, 2014, Etopia transferred \$93,875.00 via wire to CCS.

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33. Admit that on or about January 13, 2015, Etopia transferred \$174,925.00 via wire to CCS.

34. Admit that on or about January 20, 2015, Etopia transferred \$297,800.85 via wire to CCS.

35. Admit that on or about January 26, 2015, Etopia transferred \$265,000.00 via wire to CCS.

36. Admit that on or about February 4, 2015, Etopia transferred \$89,552.65 via wire to CCS.

37. Admit that Victor Elmaleh and/or Fred Elm, through Etopia, transferred a total of \$986,653.50 to CCS via the CCS Transfers.

38. Admit that Victor Elmaleh and/or Fred Elm, through Etopia, made the CCS Transfers in connection with Fred Elm's Ponzi scheme.

39. Admit that Victor Elmaleh and/or Fred Elm, through Etopia, made the CCS Transfers with an intent to defraud creditors.

40. Admit that CCS did not provide any services to Etopia in exchange for the CCS Transfers

41. Admit that CCS did not provide any monies to Etopia in exchange for the CCS Transfers.

42. Admit that the CCS Transfers damaged Etopia.

43. Admit that CCS received a benefit in the form of the CCS Transfers.

44. Admit that CCS knowingly and voluntarily accepted the CCS Transfers.

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45. Admit that CCS accepted the CCS Transfers even though it knew the monies belonged to Etopia.

46. Admit that CCS refused to return the CCS Transfers to Etopia.

47. Admit that on or about January 5, 2015, Etopia transferred \$54,990.00 via wire to Engage.

48. Admit that on or about January 15, 2015, Etopia transferred \$119,556.80.00 via wire to Engage.

49. Admit that on or about January 30, 2015, Etopia transferred \$189,506.50 via wire to Engage.

50. Admit that Victor Elmaleh and Fred Elm, through Etopia, transferred a total of \$364,063.30 to Engage via the Engage Transfers.

51. Admit that Victor Elmaleh and Fred Elm, through Etopia, made the Engage Transfers in connection with Fred Elm's Ponzi scheme.

52. Admit that Victor Elmaleh and Fred Elm, through Etopia, made the Engage Transfers with an intent to defraud creditors.

53. Admit that Engage did not provide any services to Etopia in exchange for the Engage Transfers.

54. Admit that Engage did not provide any monies to Etopia in exchange for the Engage Transfers.

55. Admit that the Receivership Entities were damaged by the Engage Transfers.

56. Admit that Engage received a benefit in the form of the Engage Transfers.

57. Admit that Engage knowingly and voluntarily accepted the Engage Transfers.

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58. Admit that Engage accepted the Engage Transfers even though it knew the monies belonged Etopia.

59. Admit that Engage refused to return the Engage Transfers to Etopia.

60. Admit that on or about December 18, 2014, Etopia transferred \$190,000.00 via check to M3.

61. Admit that on or about January 2, 2015, Etopia transferred \$96,507.50 via check to M3.

62. Admit that on or about January 16, 2015, Etopia transferred \$245,500.00 via check to M3.

63. Admit that on or about February 2, 2015, Etopia transferred \$97,500 via check to M3.

64. Admit that Victor Elmaleh and/or Fred Elm, through Etopia, transferred a total of \$629,507.50 to M3 via the M3 Transfers.

65. Admit that Victor Elmaleh and/or Fred Elm, through Etopia, made the M3 Transfers in connection with Fred Elm's Ponzi scheme.

66. Admit that Victor Elmaleh and/or Fred Elm, through Etopia, made the M3 Transfers with an intent to defraud creditors.

67. Admit that M3 did not provide any services to Etopia in exchange for the M3 Transfers.

68. Admit that M3 did not provide any monies to Etopia in exchange for the M3 Transfers.

69. Admit that Etopia was damaged by the M3 Transfers.

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70. Admit that M3 received a benefit in the form of the M3 Transfers.
71. Admit that M3 knowingly and voluntarily accepted the M3 Transfers.
72. Admit that M3 accepted the M3 Transfers even though it knew the monies belonged to Etopia.
73. Admit that M3 refused to return the M3 Transfers to Etopia.
74. Admit that Victor Elmaleh knowingly and voluntarily accepted the funds transferred in the CCS and M3 Transfers.
75. Admit that Victor Elmaleh accepted the CCS and M3 Transfers even though he knew the monies belonged to Etopia.
76. Admit that Victor Elmaleh refused to return the CCS and M3 Transfers to Etopia.
77. Admit that Victor Elmaleh had knowledge of CCS's wrongful retention of the CCS Transfers.
78. Admit that Victor Elmaleh had knowledge of M3's wrongful retention of the M3 Transfers.
79. Admit that Victor Elmaleh assisted CCS in its wrongful retention of the CCS Transfers.
80. Admit that Victor Elmaleh assisted M3 in its wrongful retention of the M3 Transfers.
81. Admit that You knowingly and voluntarily accepted the funds transferred in the Engage Transfers.
82. Admit that You accepted the Engage Transfers even though You knew the monies belonged to Etopia.

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83. Admit that You refused to return the Engage Transfers to Etopia.
84. Admit that You had knowledge of Engage's wrongful retention of the Engage Transfers.
85. Admit that You assisted Engage in its wrongful retention of the Engage Transfers.
86. Admit that You, Victor Elmaleh, CCS, M3, and/or Engage agreed or conspired to hurt Etopia.
87. Admit that You, Victor Elmaleh, CCS, M3, and/or Engage agreed conspired to receive and retain the CCS, M3, and Engage Transfers.
88. Admit that You performed acts to in furtherance of Your agreement to receive and retain the CCS, M3, and Engage Transfers.
89. Admit that Victor Elmaleh performed acts to in furtherance of Your agreement to receive and retain the CCS, M3, and Engage Transfers.
90. Admit that the Receivership Entities' monies were used to finance MyEcco.
91. Admit that the Receivership Entities' monies were used to finance MojiLife.
92. Admit that the Receivership Entities' monies were used to finance MojiLife's operations.
93. Admit that MyEcco was re-branded as MojiLife.
94. Admit that You assisted Fred Elm in rebranding MyEcco as MojiLife.
95. Admit that You assisted Fred Elm in rebranding MyEcco as MojiLife in an attempt to prevent the Receiver from seizing MyEcco.
96. Admit that MojiLife uses the same underlying source code as MyEcco.
97. Admit that MojiLife is a continuation of MyEcco.

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98. Admit that the Receivership Entities have an ownership interest in MojiLife.

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2018, I electronically served the foregoing document on all parties of record on the service list below.

Respectfully submitted,

BROAD AND CASSEL

Attorneys for Receiver

One Biscayne Tower, 21st Floor

2 S. Biscayne Boulevard

Miami, FL 33131

Telephone: (305) 373-9467

Facsimile: (305) 995-6387

By: /s/Daniel S. Newman

Daniel S. Newman, P.A.

Florida Bar No. 0962767

dnewman@broadandcassel.com

Christopher Cavallo, Esq.

Florida Bar No. 0092305

ccavallo@broadandcassel.com

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SERVICE LIST

Mercedes Elmaleh, an individual
59 McCabe Crescent
Thornhil, Ontario L4J2S6
Canada
Pro Se Defendant

Victor Elmaleh, an individual
59 McCabe Crescent
Thornhil, Ontario L4J2S6
Canada
Pro Se Defendant

Christopher C. Cavallo

From: Daniel Newman
Sent: Thursday, April 19, 2018 9:59 PM
To: Victor Elmaleh
Cc: Brenda Fradera; Christopher C. Cavallo; Trish Anzalone; altonaga@flsd.uscourts.gov; melmaleh1948@gmail.com
Subject: Re: SERVICE OF COURT DOCUMENT - Grisel Alonso, as Receiver v. Victor Elmaleh, et al.

Mr. Elmaleh:

Contrary to your email, I have not received any communication or message from an attorney purporting to represent you. The Receiver intends to proceed with your deposition tomorrow as scheduled.

Dan Newman

Sent from my iPhone

On Apr 19, 2018, at 9:36 PM, Victor Elmaleh <velmaleh1944@gmail.com> wrote:

Hello Mr. Newman,

My Canadian lawyer tried to reach you. We have not been able to obtain a US Attorney yet. The cost is extremely high and US Attorney's are far expensive than Canadian lawyers. Upon the advice of our Canadian lawyer, we suggest that you go through the appropriate legal channels in Canada.

Sinicery,

Victor Elmaleh and Mercedes Elmaleh

On Wed, Apr 18, 2018 at 10:09 AM Victor Elmaleh <velmaleh1944@gmail.com> wrote:

Hello Mr. Newman, please expect a call from our Canadian attorney. He has been in court but I am hoping he will be able to reach you today.

Thank you,

Victor Elmaleh

On Tue, Apr 17, 2018 at 1:26 PM Daniel Newman <dnewman@broadandcassel.com> wrote:

Mr. Elmaleh:

Please call me if you wish to discuss this issue.

Best regards,

Dan Newman

From: Victor Elmaleh <velmaleh1944@gmail.com>
Sent: Tuesday, April 17, 2018 12:50 PM
To: Daniel Newman <dnewman@broadandcassel.com>; altonaga@flsd.uscourts.gov
Cc: Brenda Fradera <bfradera@broadandcassel.com>; melmaleh1948@gmail.com; Christopher C. Cavallo <ccavallo@broadandcassel.com>; Trish Anzalone <tanzalone@broadandcassel.com>

Subject: Re: SERVICE OF COURT DOCUMENT - Grisel Alonso, as Receiver v. Victor Elmaleh, et al.

Hello Mr. Newman,

Thank you for your email. In your letter dated March 27, 2018, which I believe we received several days later in Canada, you suggested the possibility of an alternative date. Over the past two weeks we have been speaking to our Canadian council and looking into obtaining a US Federal Attorney to deal with this matter. Unfortunately, our Canadian council can not be present at the deposition because he is not familiar with US law. He has insisted that we would have to obtain a US lawyer. As I am sure you can appreciate, the cost of obtaining a US lawyer and having them fly to a deposition in Toronto that could take several days is extremely costly. As I have previously stated, we do not have that kind of money. We are trying to figure out the best way to deal with the matter and have reached out to several US attorneys to advise us appropriately.

My wife and I are requesting a postponement of another two weeks to see if we can obtain a decent US lawyer to deal with the matter. Unfortunately, the cost is a major factor. We do not believe that asking for a two week postponement is an unreasonable request especially since a US attorney would have to fly to Toronto. Also, I honestly do not understand the urgency since the receivership action has gone on for 3 1/2 years and from my understanding you have given several other people the opportunity to reschedule their deposition dates and they were local Florida residents. In addition, I do not understand why you would incur the great costs of flying to Toronto for the deposition when we have given you advance notice that we will not be attending those dates without appropriate legal representation.

Please let us know if you are willing to give us an extra two weeks.

Sincerely Victor Elmaleh & Mercedes Elmaleh

On 17 April 2018 at 11:28, Daniel Newman <dnewman@broadandcassel.com> wrote:

Mr. and Mrs. Elmaleh:

Contrary to the assertion in your email, we believe the depositions were appropriately scheduled and that you were given more than sufficient advance notice. Indeed, until last night you never contacted us in any way to communicate

an objection to the proposed deposition dates. Accordingly, we intend to proceed with the depositions on scheduled dates.

Best regards,

Dan Newman

From: Victor Elmaleh <velmaleh1944@gmail.com>
Sent: Monday, April 16, 2018 10:52 PM
To: Brenda Fradera <bfradera@broadandcassel.com>
Cc: melmaleh1948@gmail.com; Daniel Newman <dnewman@broadandcassel.com>; Christopher C. Cavallo <ccavallo@broadandcassel.com>; Trish Anzalone <tanzalone@broadandcassel.com>
Subject: Re: SERVICE OF COURT DOCUMENT - Grisel Alonso, as Receiver v. Victor Elmaleh, et al.

Hello Mr. Newman,

My wife has been CC'd in this email. We are notifying you that we will not be attending the proposed dates for the Deposition. We were not given enough time to obtain appropriate US council and according to our Canadian lawyer, your deposition request/filing is not valid in Ontario and you have not jurisdiction in Ontario.

Sincerely,

Victor

On 27 March 2018 at 16:17, Brenda Fradera <bfradera@broadandcassel.com> wrote:

COURT:	UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA
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CASE No:	1:17-cv-61390
PLAINTIFF(S):	GRISEL ALONSO, as Receiver for Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund, LP, Elm Tree 'e'conomy Fund, LP, and Elm Tree Motion Opportunity, LP
DEFENDANT(S):	VICTOR ELMALEH, et al.
TITLE OF DOCUMENT(S):	NOTICE OF TAKING DEPOSITION OF VICTOR ELMALEH
SENDER'S NAME:	DANIEL S. NEWMAN, P.A.
SENDER'S TELEPHONE No:	(305) 373-9400



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BRENDA FRADERA

Legal Secretary

Broad and Cassel LLP

[2 South Biscayne Blvd., Suite 2100](#)

[Miami, FL 33131](#)

Tel: 305.373.9400

Fax: 305.373.9443

Direct Line: 305.373.9462

bfradera@broadandcassel.com

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YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY AND RETURN THE ORIGINAL MESSAGE TO THE SENDER. THANK YOU.

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
Deleware partnership,

Defendants.

Certificate of Non-Attendance

I, Robyn Arndt, Examiner, hereby certify:

That an appointment was issued for the 23rd day of April, 2018, at the offices of Gowling WLG, Suite 1600, 100 King Street West, Toronto, Ontario, at the hour of 10:00 a.m. for the deposition via Skype of Mercedes Elmaleh, a Defendant.

That at the said last above mentioned time and place, I was attended by Daniel S. Newman, P.A. and Christopher Cavallo, Esq. from the offices of Broad and Cassel, appearing as attorneys for the Receiver, who waited more than fifteen (15) minutes, but the said Mercedes Elmaleh did not appear.

Dated at Toronto this 23rd day of April, 2018.



Robyn Arndt
Examiner



Christopher C. Cavallo

From: Victor Elmaleh <velmaleh1944@gmail.com>
Sent: Monday, April 16, 2018 10:40 PM
To: Brenda Fradera
Cc: melmaleh1948@gmail.com; Daniel Newman; Christopher C. Cavallo; Trish Anzalone
Subject: Re: SERVICE OF COURT DOCUMENT - Grisel Alonso, as Receiver v. Victor Elmaleh, et al.
Attachments: Alonso-v.-Elmaleh-Email-from-Victor-Elmaleh-to-Judge-Altonaga.pdf

Hello Mr. Newman & Mr. Cavallo,

As you are aware through previous emails and a court filing made in December, my wife and I are not actively defending this case. As mentioned previously, we can not afford to defend this case. A letter was sent to the courts and was also emailed to your office. We understand that not defending this case will result in a judgment but unfortunately we do not have a choice. We do not really understand why you are attempting to change the proposed timeline. There is no reason to change the scheduling dates because we are consenting to a judgement.

In addition, you sent us a request for production of documents but as previously mentioned this is not necessary because you have all the documents and we are not actively defending this case. We are consenting to summary judgment.

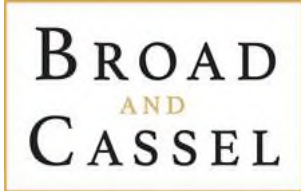
Please see the attached document.

Sincerely,

Victor Elmaleh & Mercedes Elmaleh

On 22 March 2018 at 17:39, Brenda Fradera <bfradera@broadandcassel.com> wrote:

COURT:	UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA
CASE NO:	1:17-cv-61390
PLAINTIFF(S):	GRISEL ALONSO, as Receiver for Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund, LP, Elm Tree 'e'conomy Fund, LP, and Elm Tree Motion Opportunity, LP
DEFENDANT(S):	VICTOR ELMALEH, et al.
TITLE OF DOCUMENT(S):	<ol style="list-style-type: none"> 1. RECEIVER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO MERCEDES ELMALEH; 2. RECEIVER'S FIRST REQUEST FOR ADMISSIONS TO MERCEDES ELMALEH; AND 3. RECEIVER'S FIRST SET OF INTERROGATORIES TO MERCEDES ELMALEH
SENDER'S NAME:	DANIEL S. NEWMAN, P.A.
SENDER'S TELEPHONE No:	(305) 373-9400



www.broadandcassel.com



BRENDA FRADERA

Legal Secretary

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