

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, and  
Elm Tree Motion Opportunity, LP,

Case No. 16-62603-CIV-DIMITROULEAS  
Proceeding Ancillary to  
No. 15-CV-60082-Dimitrouleas/Snow

Plaintiff,

v.

JAMES BENVENUTO, an individual,  
NGU INVESTORS, LLC, a Florida limited  
liability company; JEAN BENVENUTO, an  
individual, SURJIT WALIA, an individual,  
S.W. EQUITIES CORP., a New York corporation,  
TIMOTHY HARTMANN, an individual,  
ALEXANDER BUKHSHTABER, an individual,  
MVS MEDIA GROUP, LLC, a Florida limited  
liability company, HARRY TAWIL, an individual,  
EDUARDO DOS SANTOS, an individual,  
FILOMENA CALABRIA, an individual,  
JOSE ROFFE, an individual, MIREILLE ROFFE,  
an individual, SOMESWARI NUKALA, an individual,  
Yael TAPIERO, an individual, LAAS W. TURNBULL,  
an individual, OMRI TINTPULVER, an individual,  
CONSTANTINO DOS SANTOS, an individual,  
ARMAND DELMAR, an individual, AHMAD NAQVI,  
an individual, MERCEDES ELMALEH, an individual,  
ELIA BLUMIN, an individual, TED GREENWALD,  
an individual, ALINA TALSKY, an individual,  
ELVIS PERVAN, an individual,  
ANGELO ISMIRNIOGLOU, an individual, and  
JONATHAN VERK, an individual.

Defendants.

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**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT  
WITH DEFENDANT ELIA BLUMIN**

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, and Elm Tree Motion Opportunity, LP, and Etopia LP (the "Receivership Entities"), and Elia Blumin, respectfully submit this Joint Motion for Approval of Settlement Agreement with Defendant Elia Blumin ("Defendant").

### **INTRODUCTION**

In this action, the Receiver alleges, based upon the bank records of the Receivership Entities and records produced in discovery, that Defendant received a total of \$91,891.84 from the Receivership Entities. According to the bank records of the Receivership Entities, the funds Defendant received were derived from investors in the Receivership Entities. Defendant disputes the amount alleged by the Receiver and disputes that this amount constitutes funds derived from investors in the Receivership Entities. However, based on the foregoing, it is the Receiver's position that Defendant is a "net winner" in Defendant Frederic Elm's investment scheme, as outlined in the SEC's Complaint and Emergency Motion for Temporary Restraining Order and Other Relief in *SEC v. Elm, et al.*, United States District Court for the Southern District of Florida, Case No. 15-cv-60082 (the "SEC Action"). [See SEC Action at D.E. 1, D.E. 4].

Further, it is the Receiver's position that the "profits" Defendant received are subject to return to the Receivership Estate as fraudulent transfers. The Receiver named Defendant in the above-styled action as a result.

The Receiver obtained a Final Default Judgment against Defendant on May 26, 2017 (the "Default Judgment"), which Defendant contends to be void due to improper service and violations of the Due Process Clause to the United States Constitution. [D.E. 116]. The Receiver contends service was effectuated consistent with applicable US and Canadian law. Thereafter, the Receiver instituted an action in Ontario, Canada to collect on the Judgment ("Canadian Action"). Further, on December 20, 2018, Defendant filed a motion to vacate the Default Judgment ("Motion to

Vacate”) [D.E. 211] and the Receiver filed her response to the motion of vacate on January 25, 2019 [D.E. 218]. In order to avoid the expense and risk of litigating the validity of the Default Judgment and, should the Default Judgment not be vacated, litigating the collection of the Final Judgment domestically and in the Canadian Action, the Receiver and Defendant have agreed to resolve the Judgment against Defendant pursuant to the terms of a proposed settlement agreement (the "Settlement Agreement") in which Defendant shall pay to the Receiver \$44,250.00 within 20 days of the approval of the Settlement Agreement by the Court. The Receiver files this Motion because the Receivership Order requires Court approval of all proposed settlements. [SEC Action, D.E. 13 at ¶ 6].

### **THE RECEIVERSHIP ORDER**

On January 16, 2015, the Court entered an order appointing Ms. Alonso as the Receiver (the "Receivership Order"). [SEC Action, D.E. 13]. The Receivership Order provides, among other things, that the assets and property of the Receivership Entities, whatsoever and wherever located, are to be placed in the Receiver’s control [*Id.* at ¶ 1] and the Receiver has sole title to the assets and property, including but not limited to all books, papers, codes, records, data, bank accounts, savings accounts, securities, supplies, equipment, and other real property [*Id.* at ¶¶ 1, 17].

The Receivership Order also gives the Receiver power to:

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 . . .**

[*Id.* at ¶ 6] (emphasis added).

The Receivership Order further provides:

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;

[*Id.* at ¶ 24].

### **THE TRANSFERS**

The Receiver contends that from November 27, 2013 to September 15, 2014, the Receivership Entities transferred \$91,891.84 to Defendant (the "Transfers"). The Receiver contends that the records of the Receivership Entities demonstrate that the funds Defendant received were derived from persons who invested in the Receivership Entities. Accordingly, it is the Receiver's position that Defendant received a fraudulent transfer in the amount of \$91,891.84, which funds rightfully belong to the Receivership Estate. Defendant disputes the amount alleged by the Receiver and disputes that this amount constitutes funds derived from investors in the Receivership Entities. Defendant further disputes that these transfers, to the extent they were made, constitute fraudulent transfers.

### **THE PROPOSED SETTLEMENT AGREEMENT**

The proposed Settlement Agreement provides in pertinent part:

- Defendant shall pay \$44,250.00 to the Receiver within 20 days of the date the Settlement Agreement is approved by the Court.
- In the event Defendant fails to timely make payment pursuant to the Settlement Agreement, or if any payment made by Defendant pursuant to the terms of the Settlement Agreement is not made with good and sufficient funds, the Receiver shall provide Defendant with five (5) business days' written notice of default. During this five (5) business day period, Defendant shall have the opportunity to cure such default (the "Cure Period"). If Defendant fails to cure the default within the Cure Period, the Receiver may pursue all appropriate

amounts owed to the Receivership Estate, including the Judgment, without any limitation based on the Settlement Amount set forth in paragraph 2 of the Settlement Agreement and Defendant shall waive all defenses to any such action both domestically and in Canada, including but not limited to in the Canadian Action.

- The Receiver and Defendant agree to mutual releases relating to the Transfers upon the Court's approval of the Settlement Agreement and the Receiver's receipt of the full Settlement Amount due under the terms of the Settlement Agreement.
- The Defendant shall file a notice of withdrawal of the Motion to Vacate with prejudice within five (5) days of an order by this Court approving the Settlement Agreement, specifying that each party shall bear its own attorneys' fees and expenses in connection with such Motion.
- Upon receipt and clearance of the Settlement Amount, the Receiver shall file a motion in the Canadian Action seeking to dismiss such action with prejudice, specifying that each party shall bear its own attorneys' fees and costs.

A copy of the proposed Settlement Agreement is attached as **Exhibit A**.

### **JURISDICTION**

The Receiver and Defendant request that the United States District Court for the Southern District of Florida retain jurisdiction to enforce the terms of the Settlement Agreement and decide any other issues arising from the Settlement Agreement and Defendant exclusively submits to the jurisdiction of this Court for such purposes and waives any right to challenge this Court's jurisdiction or collaterally challenge same in Canada or anywhere else. The Receiver and Defendant agree that in the event an enforcement action or any other litigation arises from the Settlement Agreement, the prevailing party in that action will be entitled to an award of its

attorneys' fees and costs and again Defendant exclusively submits to the jurisdiction of this Court for such purposes and waives any right to challenge this Court's jurisdiction or collaterally challenge same in Canada or anywhere else.

**BEST INTERESTS OF THE RECEIVERSHIP ESTATE**

The Receiver respectfully submits that the Court should approve the proposed Settlement Agreement because it is in the best interest of the Receivership Estate. The process of reaching the proposed settlement was fair, well-informed, and well-advised by the Receiver's retained professionals.

The ultimate inquiry in assessing a proposed receivership settlement is whether "the proposed settlement is fair." *Sterling v. Stewart*, 158 F. 3d 1199, 1203 (11th Cir. 1998); see *In re Consol. Pinnacle West Sec. Litig./Resolution Trust Corp.-Merabank Litig.*, 51 F. 3d 194, 196-97 (9th Cir. 1995) ("We see no reason to upset the court's conclusion that the settlement process and result were fair."). Determining the fairness of [a] settlement is left to the sound discretion of the trial court." *Sterling*, 158 F. 3d at 1202 (11th Cir. 1998). In determining fairness, the Court should examine the following broad array of factors: (1) the likelihood of success on the merits; (2) the range of possible discovery; (3) the point on or below the range of discovery at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Sterling*, 158 F. 3d at 1204. See also *SEC v. Princeton Economic Int'l*, 2002 WL 206990, \*2 (S.D.N.Y. 2002) (receivership court should consider "various factors including, inter alia: (1) the probable validity of the claim; (2) the apparent difficulties attending its enforcement through the courts; (3) the collectability of the judgment thereafter; (4) the delay and expenses of the litigation to be incurred; and (5) the amount involved in the compromise").

For example, the District Court in *Gordon v. Dadante* “analyze[d] the settlement as a whole, under the totality of the circumstances.” 2008 U.S. Dist. LEXIS 32281, \*39, 48 (N.D. Ohio April 18, 2008). The Sixth Circuit affirmed, finding that the district court had fulfilled its responsibilities by engaging in an “independent analysis of the settlement,” as “the district court had extensive knowledge of the claims involved in the case, the valuation of those claims, and the nature of the settlement,” and thus “had more than sufficient information to assess the fairness of the settlement proposed.” 2009 U.S. App. LEXIS 15517 at \*\*16, 23. As the district court noted in a later approval proceeding, “the courts must recognize that plans relating to settlement of a receivership are inherently imperfect, “because no proposal can be [perfect],” and the “task at hand, however, is to do justice to the extent possible.” *Gordon v. Dadante*, 2010 U.S. Dist. LEXIS 1979, \*13-14 (N.D. Ohio Jan. 11, 2010).

Here, the Receiver respectfully submits that the Settlement Agreement is a fair, adequate, and reasonable resolution of the Receiver's causes of action against Defendant. The Receiver, considering the delays and high costs of litigating the enforcement of the Final Judgment both before this Court and in Canada, believes that the outcome for the Receivership Entities and investors will be better under the Settlement Agreement than it would be if the Receiver was forced to expend attorneys' fees and costs attempting to collect on the Final Judgment.

Based on the Receiver's due diligence, the terms of the proposed Settlement Agreement are fair and reasonable, representing a sensible means of assuring a beneficial outcome for the investors.

#### **OBJECTION PROCEDURE**

As noted above, the determination of the fairness of a settlement is left to the sound discretion of the trial court. *See Sterling*, 158 F. 3d at 1202. While "the substance and amount of

opposition to the settlement" is a factor for the Court's consideration pursuant to the *Sterling* test, the Receiver respectfully requests that the Court, in exercising its broad discretion, approve the Settlement Agreement with limited or no objection procedure.

It is the Receiver's position that given the amount at stake in this action, an expensive, elongated objection procedure would render the benefits of the settlement worthless to the Receivership Estate, and thus no objection procedure should be permitted.

**CONCLUSION**

The Receiver and Defendant hereby jointly respectfully request entry of an order approving the Settlement Agreement, and granting any further relief the Court deems just and proper.

<p><b>NELSON MULLINS BROAD AND CASSEL LLP</b> Attorneys for Receiver One Biscayne Tower, 21<sup>st</sup> Floor 2 S. Biscayne Boulevard Miami, FL 33131 Telephone: (305) 373-9467 Facsimile: (305) 995-6387</p> <p>By: <u>s/Daniel S. Newman</u> Daniel S. Newman, P.A. Florida Bar No. 0962767 dnewman@broadandcassel.com Christopher Cavallo, Esq. Florida Bar No. 0092305 ccavallo@broadandcassel.com</p>	<p><b>BRODSKY FOTIU-WOJTOWICZ</b> Attorneys for Defendant 200 SE 1st Street Suite 400 Miami, Florida 33131 T. 305-503-5054</p> <p>By: <u>s/Joshua Truppmann</u> Joshua Truppmann, Esq. Florida Bar No. 111795 joshua@bfwlegal.com</p>
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 5, 2019, a true and correct copy of the foregoing was served via electronic transmission on all counsel or parties of record.

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

## SETTLEMENT AGREEMENT AND RELEASE

**THIS SETTLEMENT AGREEMENT** (referred to herein as the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 2019, by and between Grisel Alonso, not individually, but solely in her capacity as the Court-appointed receiver ("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 L.P. (collectively, the "Receivership Entities"), and Elia Blumin ("Defendant"). The Receiver and Defendant are collectively referred to as the "Parties."

**WHEREAS**, Receiver has alleged that between November 27, 2013 and September 15, 2014, Defendant received transfers of recoverable funds from Receivership Entities (the "Transfers");

**WHEREAS**, Defendant denies the Receiver's allegations regarding the Transfers;

**WHEREAS**, on November 15, 2016, the Receiver filed suit against Defendant, among others, in the United States District Court for the Southern District of Florida ("Court"), Case No. 16-cv-62603, with respect to the Transfers (the "Clawback Action");

**WHEREAS**, on May 26, 2017, the Court entered Final Default Judgment against Defendant in the amount of \$103,705.52 (the "Judgment");

**WHEREAS**, the Receiver instituted proceedings in Ontario, Canada ("Canadian Action") to collect on the Judgment;

**WHEREAS**, Defendant has filed in the Court which presided over the Clawback Action a motion to vacate the judgment ("Motion to Vacate") and appeared and opposed the relief sought in the Canadian Action;

**WHEREAS**, to avoid the expense and risk of litigating the collection of the Judgment in Canada and in resolution of Defendant's motion to vacate the Judgment, the Parties hereto are desirous of resolving all disputes relating to the Transfers and the Judgment;

**NOW THEREFORE**, in consideration of the premises and mutual promises and covenants contained herein, the Parties agree as follows:

1. **Settlement**. The Parties hereby settle and compromise all claims, disputes, and controversies between them for damages, attorneys' fees, costs, equitable relief, and/or punitive damages which relate, in any way, to the Transfers, the Judgment, and/or the Canadian Action, which the Receiver has or may have had against Defendant, or which Defendant has or may have had against the Receiver.
2. **Settlement Terms**. In consideration and exchange for the settlement and releases contained herein:
  - a. Defendant shall pay \$44,250.00 (the "Settlement Amount") to the Receiver by delivery to the Receiver's counsel of a check made payable to the Receiver or

a wire transfer to a Receivership Entity account specified in writing by the Receiver, within 20 days of the date the Court enters an order approving this Agreement;

- b. Within five (5) days of the Court's entry of an order approving this Agreement, Defendant shall file a notice withdrawing the Motion to Vacate with prejudice, and specifying that each party shall bear its own attorneys' fees and costs; and
- c. Within five (5) days of the Court's entry of an order approving this Agreement, Receiver shall file a motion dismissing the Canadian Action with prejudice, and specifying that each party shall bear its own attorneys' fees and costs.

3. **Court Approval and Effective Date.** This Agreement is not effective unless and until it is approved by the Court. The Effective Date of this Agreement is defined as the date the Court enters an order approving the Agreement, if such approval is granted.

4. **Releases.**

- a. Upon the approval of this Agreement by the Court and upon the Receiver's receipt and clearing of the entire Settlement Amount as set forth in paragraph 2 above, in consideration of the undertakings described above, but expressly excepting the rights and obligations created by this Agreement, the Receiver, on behalf of the Receivership Entities, releases and discharges Defendant from any and all claims, debts, liabilities, demands, obligations, costs, attorneys' fees, lawsuits, actions and causes of action, both known or unknown, in law or in equity, of any kind whatsoever, which the Receiver ever had, now has, or may have against Defendant, including but not limited to claims related to or arising from the Transfers, the Judgment, and/or the Canadian Action and any and all other transactions or transfers between Defendant and the Receivership Entities, made at any time. This is a general release of all claims made or which could have been made by Receiver and releases all claims of any sort arising from any transactions or transfers between Defendant and any Receivership Entity, or any legal action between the Receiver and Defendant, from the beginning of time to the date of this Agreement.
- b. Upon the approval of this Agreement by the Court and upon the Receiver's receipt and clearing of the entire Settlement Amount as set forth in paragraph 2 above, Defendant releases and discharges the Receiver and the Receivership Entities from any and all claims, debts, liabilities, demands, obligations, costs, attorneys' fees, lawsuits, actions and causes of action, both known or unknown, in law or in equity, of any kind whatsoever, which the Defendant ever had, now has, or may have against the Receiver, including but not limited to claims related to or arising from the Transfers, the Judgment, and/or the Canadian Action and any and all other transactions or transfers between Defendant and the Receivership Entities. This is a general release of all claims made or which could have been made by Defendant and releases all claims of any sort arising

from any transactions or transfers between Defendant and any Receivership Entity, the Receiver, or any legal action between the Receiver and Defendant, from the beginning of time to the date of this Agreement.

5. **No Admissions.** This Agreement is expressly agreed to be in compromise of all disputes and disputed claims, and the Settlement Amount and/or the releases contained herein are not to be construed as admissions of liability, culpability, or wrongdoing on the part of the the Parties, which liability, culpability, or wrongdoing is expressly denied.
6. **Integration.** This Agreement contains the entire Agreement between the Parties, and the terms of this Agreement are contractual and not a mere recital. The Parties agree that all prior negotiations and understandings between them have been merged herein, and that this Agreement may not be modified or changed, except by a writing signed by a duly authorized representative of each party.
7. **Binding Nature.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their estates, heirs, legal representatives, successors and assigns. The Parties represent and acknowledge that they have had an opportunity to, and have consulted with, counsel in connection with the execution of this Agreement.
8. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same agreement, notwithstanding that each party is not signatory to the original or the same counterpart. Facsimile signatures shall be deemed as effective as original signatures.
9. **Disputes.** Any dispute arising out of this Agreement or its terms shall be resolved exclusively in the United States District Court for the Southern District of Florida, and Florida law shall govern. The Parties submit to the jurisdiction of the United States District Court for the Southern District of Florida.
10. **Authority.** Each of the signatories hereto represents that she/he has authority to execute this Agreement and to bind the party or parties on whose behalf she/he has signed.
11. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.
12. **Construction.** The Parties to this Agreement have negotiated at arms' length and participated in the drafting of this Agreement and, accordingly, any claimed ambiguity shall not be presumptively resolved either in favor of or against any party hereto.
13. **Attorneys' Fees.** The Parties will bear their own expenses, costs and/or attorneys' fees, including any costs or attorneys' fees incurred in connection with the

negotiation and execution of this Agreement. The Parties agree that in the event of any litigation to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party in any action (including but not limited to all paralegal fees in any trial, bankruptcy and/or appellate proceedings).

14. **Default.** In the event Defendant fails to timely make payment pursuant to paragraph 2(a), the Receiver shall provide Defendant with five (5) business days written notice of default. During this five (5) business day period, Defendant shall have the opportunity to cure such default (the "Cure Period"). If Defendant fails to cure the default within the Cure Period, then the Receiver may pursue all appropriate amounts owed to the Receivership Estate, including the Judgment, without any limitation based on the Settlement Amount set forth in paragraph 2 of this Agreement, and Defendant shall waive all defenses to any such action both domestically and in Canada, including but not limited to the Canadian Action. Said written notice shall be sent by Receiver to Defendant by Federal Express to Defendant Elia Blumin in accordance with the Notice provisions of paragraph 16, with courtesy copy to counsel, named in paragraph 16. The five (5) business days shall begin to run on next business day after notice is received by either Joshua Truppmann or Elia Blumin, whichever is later.
15. **Jurisdiction.** The Parties agree to seek an Order providing that the United States District Court for the Southern District of Florida shall retain jurisdiction to enforce the terms of this Agreement and decide any other issues arising from this Agreement. In the event no such order retaining jurisdiction over this Agreement is granted, the Parties agree that the sole venue for any action arising from the Agreement shall be in the District Court for the Southern District of Florida. Defendant waives any right to challenge the jurisdiction of the District Court for the Southern District of Florida or collaterally challenge same in Canada or anywhere else.
16. **Notices.** All notices to the Receiver shall be addressed to Daniel S. Newman, P.A., Nelson Mullins Broad and Cassel, 2 South Biscayne Boulevard, 21<sup>st</sup> Floor, Miami, Florida 33131 which shall constitute good and sufficient notice. All notices sent to Defendant shall be addressed to Elia Blumin, 27 Napanee Street, Richmond Hill, Ontario, Canada, and shall be sent via Federal Express, with proof of delivery, to both Elia Blumin Joshua Truppmann, Brodsky Fotiu-Wojtowicz, PLLC, 200 SE 1<sup>st</sup> Street, Suite 400, Miami, FL, 33131, which when sent to both parties shall constitute good and sufficient notice.

**IN WITNESS WHEREOF**, the Parties have affixed or caused to be affixed their respective signatures, effective on the day and year first written above.

**GRISEL ALONSO, THE RECEIVER**

By: \_\_\_\_\_  
Name: Grisel Alonso  
Title: Receiver  
Date:

\_\_\_\_\_  
**ELIA BLUMIN**

Date: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

GRISEL ALONSO, as Receiver for  
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ELVIS PERVAN, an individual,  
ANGELO ISMIRNIOGLOU, an individual, and  
JONATHAN VERK, an individual.

Defendants.

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**ORDER GRANTING JOINT MOTION FOR APPROVAL OF  
SETTLEMENT AGREEMENT WITH DEFENDANT ELIA BLUMIN**

**THIS CAUSE** came before the Court upon the Joint Motion for Approval of Settlement

Agreement with Defendant Elia Blumin (the “Joint Motion”), [D.E. \_\_\_\_], filed by the Receiver, Grisel Alonso, and Defendant, Elia Blumin, on March 5, 2019. After careful consideration of the Joint Motion, upon agreement of the parties, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. The Joint Motion is **GRANTED**.
2. The Settlement Agreement between the Receiver and Defendant, attached as Exhibit A to the Joint Motion, is approved.

**DONE AND ORDERED** in Chambers, Fort Lauderdale, Broward County, Florida this \_\_\_\_ day of \_\_\_\_\_, 2019.

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WILLIAM P. DIMITROULEAS  
United States District Judge

Copies furnished to:  
Counsel of record