

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FREDERIC ELM f/k/a FREDERIC ELMALEH,  
et al.,

Defendants,

and

AMANDA ELM f/k/a AMANDA ELMALEH,

Relief Defendant.

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**RECEIVER'S UNOPPOSED MOTION TO  
CONTINUE HEARING ON RECOMMENDATIONS AND OBJECTIONS**

The Court-appointed receiver, Grisel Alonso (the "Receiver"), not individually, but solely in her capacity 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 (collectively, the "Receivership Entities"), respectfully submits this Unopposed Motion to Continue the May 3, 2019 Hearing set by the Court on the Receiver's Recommendations, [D.E. 210] and the Objections thereto [D.E. 202; 203].

1. On February 4, 2019, the Receiver filed her Motion for Court Approval of the Receiver's Recommendations Concerning Claims, Distribution of Pro Rata Percentages, and Proposed Objection Schedule (the "Recommendations").

2. On March 6, 2019, Jose and Mireille Roffe (the “Roffes”) objected to the Receiver’s Recommendations concerning their claim. [D.E. 202.]

3. On March 7, 2019, Claimant No. 9 objected to the Receiver’s proposed distribution methodology and requested Court approval of a different distribution methodology.<sup>1</sup> [D.E. 203.]

4. On April 8, 2019, the Receiver filed her responses to both of the objections. [D.E. 208; 209.]

5. On April 9, 2019, the Court set a hearing on the Receiver’s Recommendations and any objections thereto for May 3, 2019, at 10:30 a.m. (the “Hearing”). [D.E. 210.]

6. Counsel for the Receiver respectfully requests a continuance of the Hearing. A copy of the Declaration of Daniel S. Newman in support of the Motion is attached as **Exhibit A**.

7. Counsel’s law firm has a “retreat,” consisting of meetings in Orlando, Florida, scheduled from 8:30 a.m. on May 3, 2019 through the afternoon of May 4, 2019. Ex. A, ¶¶ 3-4. The meetings are the first time many of the law firm’s attorneys have the opportunity to meet each other since the merger between Nelson Mullins Riley & Scarborough LLP and Broad and Cassel LLP in 2018. Ex. A, ¶¶ 2, 5.

8. Counsel met and conferred with the SEC, the Roffes, and Claimant No. 9 concerning the relief requested herein. None of the Sec, the Roffes, or Claimant No. 9 object to a continuance of the Hearing.

9. In the interest of providing the Court with alternative hearing dates close in time to the scheduled Hearing date, should the Court choose to grant this Motion, Counsel consulted

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<sup>1</sup> On April 5, 2019, two claimants filed “objections” to the use of the distribution methodology proposed by Claimant No. 9. [D.E. 206; 207.] These are really responses in opposition to Claimant No. 9’s objection, not objections to the Receiver’s Recommendations.

with both the Roffes and Claimant No. 9, as well as the SEC, about their general availability the week of May 6. The Roffes, Claimant No. 9, and the SEC indicated that they are available on May 7 or 9 for a re-scheduled hearing, if either of those dates are also available to the Court.

10. Counsel for the SEC specifically indicated that he is not available on May 10.

11. Counsel for Claimant No. 9 specifically indicated that he is not available May 16 or May 17.

12. No party will be prejudiced by a continuance of the Hearing.

13. This Motion is unopposed and made in good faith, not for purposes of delay.

### **CONCLUSION**

The Receiver respectfully requests that this Court enter an Order continuing the Hearing to May 7, May 9, or any other available date.

### **CERTIFICATE OF GOOD FAITH CONFERRAL**

Undersigned counsel hereby certifies that it conferred with counsel for the SEC, counsel for Claimant No. 9, and the Roffes concerning the relief sought herein on April 12, 2019, April 16, 2019, and April 17, 2019. None of the SEC, Claimant No. 9, or the Roffes oppose the relief sought in this Motion.

Respectfully submitted,

#### **NELSON MULLINS BROAD AND CASSEL**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 17, 2019, a true and correct copy of the foregoing was served via CM/ECF or other electronic transmission on all counsel or parties of record.

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

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**DECLARATION OF DANIEL S. NEWMAN IN SUPPORT OF UNOPPOSED MOTION  
TO CONTINUE HEARING ON RECOMMENDATIONS AND OBJECTIONS**

I, DANIEL S. NEWMAN, Esq., hereby declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner in the Miami office of the law firm Nelson Mullins Broad and Cassel (“NMBC”).

2. My firm, NMBC, was formed by a merger between Nelson Mullins Riley & Scarborough LLP and Broad and Cassel LLP in 2018.

3. Since at least August 2018, approximately 8 months ago, NMBC attorneys at NMBC have been scheduled to attend a firm-wide “retreat” in Orlando, Florida, consisting of attorney meetings starting at 8:30 a.m. on May 3, 2019 through the afternoon of May 4, 2019.

4. Management at the firm asked all of the firm's attorneys to block out these dates to ensure their attendance. The undersigned has had these dates reserved on the calendar since August 2018, planning to be in Orlando starting late afternoon on May 2, 2019.

5. For many of NMBC's attorneys, this is the first opportunity to meet each other since the merger last year.

6. The Receiver's request for a continuance based on her counsel's conflict is made in good faith, not for purposes of delay.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 17, 2019.

/s/ Daniel S. Newman  
Daniel S. Newman, Esq.