

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:15-CV-60082-DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FREDERIC ELM f/k/a FREDERIC ELMALEH,
ELM TREE INVESTMENT ADVISORS LLC,
ELM TREE INVESTMENT FUND LP,
ELM TREE 'E'CONOMY FUND LP, AND
ELM TREE MOTION OPPORTUNITY LP,

Defendants,

and

AMANDA ELM f/k/a AMANDA ELMALEH,

Relief Defendant.

RECEIVER'S MOTION TO EMPLOY DEBT COLLECTION AGENCY

Receiver Grisel Alonso, not individually, but solely in her capacity as Receiver (the "Receiver") for Elm Tree Investment Advisors LLC, Elm Tree Investment Advisors LLC, Elm Tree Investment Fund LP, Elm Tree 'e'conomy Fund LP, and Elm Tree Motion Opportunity LP, (the "Elm Tree Entities"), by and through her attorneys, Nelson Mullins Broad and Cassel, hereby files her Motion to Employ Debt Collection Agency, and alleges as follows:

1. This action was initiated by the Securities & Exchange Commission on January 15, 2015. On January 16, 2015, the Court entered its Order Appointing Receiver which named Grisel Alonso, Esq. as Receiver for the Elm Tree Entities. [D.E. 13].

2. Pursuant to the Receivership Order, the Receiver is authorized to, among other things, "[t]ake immediate possession of all property, assets and estates of every kind of the Elm Tree Entities, whatsoever and wheresoever located . . . and to administer such assets as is required in order to comply with the directions contained in this Order." *Id.* at . Further, the Order also requires that the Receiver investigate the manner and the affairs of the Elm Tree Entities and institute such legal proceedings for the benefit and on behalf of the Elm Tree Entities as the Receiver deems necessary. *Id.* at ¶1.

3. Pursuant to the Receivership Order, the Receiver is also authorized to: "seek[] imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute § 726.101, *et. seq.* or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order." *Id.* at ¶2.

4. To assist the Receiver in her efforts, the Receivership Order, at paragraph 4, allows the Receiver to appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as reasonable expenses of taking possession of the assets and business.

5. The Receivership Order further provides that Receiver may engage persons in the Receiver's discretion to assist the Receiver in carrying out its duties and responsibilities. Accordingly, the Receiver seeks to appoint and retain the debt collection agency, Receivables Control Corporation (the "Agency"), to provide the Receiver with debt collection services and assistance in this matter. A copy of the proposed Collection Service Agreement is attached as **Exhibit A.**

6. The Receiver will retain the Agency to collect Judgements owed by various defendants in *Alonso v. Benvenuto et al.*, Case No. 16-62603-Civ-Dimitrouleas, Southern District of Florida, which the Receiver in her sole discretion may place with the Agency for collection.

7. The Receiver and the Agency have agreed to terms that will result in the Agency providing services to the Receiver on a contingency fee basis. Specifically, in consideration for the Agency providing services to the Receiver, the Receiver agrees to pay the Agency, as its sole compensation, a contingency fee equal to 40% on all collections made.

8. The Receiver has determined, in consultation with her retained professionals, that hiring the Agency is in the best interests of the Receivership Estate. The Receivership Estate will not expend funds chasing collections that may end up being unrecoverable. The Receivership Estate will only pay out funds to the Agency for successful recoveries.

9. The SEC does not object to the relief sought in this Motion.

WHEREFORE, the Receiver respectfully requests that this Court authorize the Receiver to retain Receivables Control Corporation for debt collection services for the Receiver, pursuant to the Collection Services Agreement attached as Ex. A, and for such other and further relief as the Court deems just and proper.

Dated: August 31, 2020

Respectfully submitted,

NELSON MULLINS BROAD AND CASSEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 31, 2020, a true and correct copy of the foregoing was served via electronic transmission on all counsel or parties of record on the Service List below.

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

SERVICE LIST

Patrick R. Costello, Esq. Katharine Zoladz, Esq. costello@sec.gov zoladzK@sec.gov U.S. Securities and Exchange Commission 801 Brickell Avenue Suite 1800 Miami, FL 33131 305-982-6380 305-536-4154 (fax) <i>Counsel for SEC</i>	
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COLLECTION SERVICE AGREEMENT

This Collection Service Agreement (“Agreement”) is entered into this ___ day of _____, 2020, between Grisel Alonso, acting in her official capacity as Receiver (“Receiver”) and Receivables Control Corporation, a Minnesota corporation (“RCC”).

WHEREAS, the Receiver has need for and is interested in obtaining the services of a debt collection agency to collect outstanding judgments owed by various defendants in *Alonso v. Benvenuto et al.*, Case No. 16-62603-Civ-Dimitrouleas, Southern District of Florida, all as identified on the attached Exhibit A (“Judgments”); and

WHEREAS RCC provides debt collection services and is interested in providing collection services to the Receiver.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below and other good and valuable consideration, the receipt, and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. SCOPE OF SERVICES

The Receiver retains RCC to collect Judgments, which the Receiver in her sole discretion may place with RCC for collection. Nothing contained in this Agreement shall be construed as requiring the Receiver to use RCC exclusively or to place any minimum number of accounts with RCC. RCC agrees to use its best efforts and work diligently to collect all money due to the Receiver and to forward such money to the Receiver, all in accordance with the terms and conditions of this Agreement.

2. PLACEMENT OF JUDGMENTS

- A. The Receiver shall notify RCC of Judgments she wishes to place with RCC. RCC will acknowledge receipt of such Judgments within five (5) days of receipt from the Receiver (the "Acknowledgment Date").
- B. The Receiver is entitled to withdraw any Judgment which she placed in error with RCC. Otherwise, the Judgments referred to RCC shall remain with RCC for collection until RCC, in consultation with the Receiver, determines the account to be uncollectible. In the event the Receiver receives a direct payment from a Judgment debtor within five (5) days of referral ("Pull Back Period"), RCC shall close and return the account to the Receiver. Any Judgment may be immediately “pulled back” from RCC in the event that RCC violates any provisions of Section 3 or 5 of this Agreement or Receiver reasonably determines that RCC actions may or will violate Applicable Law as defined in Sections 3(C), 5(A), and 5(B). If the Receiver receives a direct payment from a debtor after the Pull Back Period, the Receiver shall report the payment to RCC within five (5) days of receipt and RCC will offset the amount as provided by Section 5(D) of this Agreement from future collections remittances to the Receiver. Notwithstanding anything set forth in this Agreement to the contrary, at any time in her sole discretion, the Receiver may remove a Judgment from RCC by providing thirty (30) days advance written notice

("Notice Period") to RCC, so long as prior to and during such Notice Period, RCC has not collected any funds from such Judgment.

3. PERFORMANCE STANDARDS

- A. RCC shall commence collection efforts upon receipt of any Judgments and shall continue such efforts for the entire period such Judgments are held by RCC.
- B. RCC shall supervise and direct all collection work, devoting enough attention and applying the necessary skill and expertise to perform the work competently and efficiently. RCC shall be solely responsible for the means, methods, techniques, sequences, and procedures of the collection.
- C. RCC shall perform its collection efforts in accordance with all relevant federal, state, and local laws and regulations, including interpretations thereof by regulatory bodies having jurisdiction over RCC's activities.
- D. RCC shall provide the Receiver with status reports on all Judgments within 72 hours of written or verbal request for such reports.

4. OBLIGATIONS OF THE RECEIVER

- A. At the time the Receiver agrees to place a Judgment with RCC, the Receiver shall provide RCC with the following information with respect to each Judgment (the "Debtor Information") provided the Receiver has knowledge of this Debtor Information:
 - i. Debtor's name, address and where available, telephone number, any other documents necessary to identify the debtor and substantiate the debt.
 - ii. Any communications received by the Receiver from the Debtor, or the legal representative of any Debtor, relating to the Judgment or the collection of the Judgment; and
 - iii. Any credits or other forgiveness granted by the Receiver with respect to any Judgment.

The Receiver agrees that all such information shall be true and accurate to the best of her knowledge.

- B. The Receiver shall have a continuing obligation to provide RCC any new or additional Account Information with respect to the Judgments as soon as such information becomes known to the Receiver.

5. REPRESENTATIONS OF RCC

- A. RCC shall at all times maintain all licenses required by local, state, and federal law to carry out all actions described in this Agreement.

- B. RCC represents that, among other things that in performing its collection efforts in accordance with all laws and regulations, it:
- i. will not communicate with the consumer or third parties in any prohibited manner;
 - ii. will furnish all written validation notice within the required time period and otherwise complied with applicable validation requirements;
 - iii. will not use any harassing, abusive, unfair, or deceptive collection practice prohibited by FDCPA;
 - vi. will not collect any amount not expressly authorized by the debt instrument creating the debt or by state law;
 - v. will apply all payments received as instructed and, where no instruction is given, apply payments only to undisputed debts; and
- vi. if applicable, file suit in an authorized forum if an action is instituted to collect the Judgment.

6. COLLECTIONS; PAYMENTS

- A. The Receiver agrees to pay RCC, as its sole compensation, a contingency fee equal to 40% on all collections made.

RCC agrees that it shall not be entitled to compensation on Judgments which are withdrawn from RCC pursuant to Section 2B of this Agreement; except to the extent both Receiver and RCC agree in writing that the payment directly resulted from the collection efforts of RCC. To the extent the above condition is met, RCC shall be entitled to payment of any contingency fees without limitation as to the time at which the Receiver receives payment on the accounts.

- B. All collections received via certified funds by RCC on the Receiver's accounts will be remitted less the commission earned by RCC ("Net Remit"), by the fifteenth (15th) of each calendar month, accompanied by a remittance advice. All collections received via non-certified funds by RCC, that have cleared a 17 day hold, will be remitted less the commission earned by RCC ("Net Remit"), by the fifteenth (15th) of each calendar month, accompanied by a remittance advice.
- C. In the event that collection of the Judgment(s) requires the necessity of filing a garnishment or other action, RCC will obtain written consent from the Receiver before taking such action with RCC's attorneys. The Receiver, subject to written approval will pay if acceptable, any upfront costs or non-contingent fees.

7. TERM

- A. This Agreement shall be effective as of the date shown and continue in effect until either party gives notice of termination. Either party may terminate this Agreement upon giving thirty (30) days prior written notice thereof to the other party setting forth the effective date of such termination. RCC shall return all referred Judgments within 15 days after termination of the Agreement upon written request by the Receiver.
- B. The Agreement shall automatically renew at the close of the calendar year in which it is executed, and at the close of each succeeding calendar year thereafter until terminated by either party.
- C. Either the Receiver may terminate this Agreement for cause without prior notice in the event RCC is in material breach of any term of this Agreement including but not limited to those provision requiring all collection efforts to be carried out in accordance with all laws or regulations governing the collection of debt.

8. CREDIT BUREAU REPORTING

- A. RCC will not report Judgments to the Credit Bureaus (collectively, "Credit Bureau").

9. INDEMNIFICATION

- A. The Receiver shall defend, hold harmless and indemnify RCC], its members, officers and employees against any and all liabilities, claims, damages, costs, judgments and expenses, including attorney fees, sought or asserted against RCC, its members, officers and employees of RCC arising out of the collection activities of RCC if such liabilities, claims, damages, costs, judgments or expenses are the direct result of any of the following:
 - i. Any actions by the Receiver, its officers, employees or contractors, including any other collection agency; or
 - ii. Inaccuracy in any Account Information supplied by the Receiver to RCC, including the failure to provide updated Account Information as it becomes available.
- B. RCC shall defend, hold harmless and indemnify the Receiver, its affiliates, members, officers and employees against any and all liabilities, claims, damages, costs, judgments and expenses, including attorney fees, sought or asserted against the Receiver, its affiliates, members, officers and employees of the Receiver arising out of the collection activities of RCC if such liabilities, claims, damages, costs, judgments or expenses are based or alleged to be based, in whole or in part, upon any of the following:
 - i. Any actions by RCC, its officers, employees or contractors;
 - ii. The breach of this Agreement; or

- iii. Violation of any law or regulation governing the collection of debt.
- C. Obligations of the Receiver and RCC under this Section 9 shall be continuing obligations of the Receiver and RCC, as the case may be, and shall specifically survive the termination of this Agreement or any other agreement between the Receiver and RCC.

10. MISCELLANEOUS

- A. RCC shall not transfer, assign, sell, or convey any Judgments or interests in the Judgments to any other collection agency or third-party without the prior written consent of the Receiver which may be withheld for any reason in the discretion of Receiver.
- B. All notices required to be sent under the terms of this Agreement shall be sent to the Receiver at:

Grisel Alonso, Esq.
Receiver
Grisel Alonso and Associates, LLC
2525 Ponce de Leon Blvd., Suite 300
Coral Gables, FL 33134

And to RCC at:

Receivables Control Corporation
7373 Kirkwood Court, Suite 2001
Maple Grove, MN 55369

Such designations may be changed at any time by either party giving written notice of a new name and/or address.

- C. This Agreement shall be construed under the laws of the State of Florida without giving effect to conflict-of-laws principles.
- D. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If any such provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating or otherwise affecting the remaining provisions of this Agreement.
- E. Any dispute concerning the terms and conditions of this contract will be resolved by the laws of the State of Florida. The parties understand that the United States District Court for the Southern District of Florida shall be the exclusive venue for the resolution of any dispute and the parties hereby submit to the jurisdiction of that Court for any dispute arising under or related to this Agreement. The parties further agree that they will consider, but are not obligated to resolve any dispute by alternate dispute resolution as the same is authorized and defined by the law of Florida.

- F. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which counterparts of this Agreement taken together shall constitute but one and the same instrument.
- G. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
- H. Headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Agreement as of the date first set forth above.

By: _____
Name: Grisel Alonso
Title: Receiver

By: _____
Name: Receivables Control Corporation
Title: