IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. ANGELO A. ALLECA, SUMMIT WEALTH MANAGEMENT, INC., SUMMIT INVESTMENT FUND, LP, ASSET CLASS DIVERSIFICATION FUND, LP, and PRIVATE CREDIT OPPORTUNITIES FUND, LLC Defendants.	Civil Action No. 1:12-CV-3261-WSD

MEMORANDUM OF LAW IN SUPPORT OF RECEIVER'S MOTION FOR APPROVAL OF SETTLEMENT OF DISPUTED CLAIM AND SETTLEMENT AGREEMENT AND FOR ENTRY OF BAR ORDER AND APPROVAL OF FORM OF NOTICE

I. Introduction

Movant Robert D. Terry, the Receiver for Summit Wealth Management, Inc. ("Summit"), among other entities, respectfully submits this Memorandum of Law in Support of Motion for Approval of Settlement of a Disputed Claim. The Motion seeks the entry of an Order approving a proposed settlement of a disputed claim by

the Receiver against Alexandria Capital, LLC ("Alexandria") for payments alleged due under a sale of business accounts. If approved, the proposed settlement will bring $77,000 into the Receivership Estate.

II. Litigation By Receiver Against Alexandria and Nature of Dispute

On or about September 21, 2017 the Receiver filed a complaint in the United States District Court for the Northern District of Georgia, Atlanta Division, *Robert D. Terry v. Alexandria Capital, LLC*, 1:17-CV-03678 ("Alexandria Lawsuit") asserting that it was due payments from Alexandria related to the sale of financial accounts to Alexandria. A true and correct copy of the complaint filed in the Alexandria Lawsuit is attached hereto as Exhibit 1. The facts giving rise to the Receiver's claims against Alexandria are as follows:

On August 1, 2011, Summit entered into an Asset Purchase Agreement ("APA") with Alexandria whereby Summit transferred certain investment accounts that had been managed by Richard and Jill Potter ("Purchased Assets") to Alexandria in exchange for (a) a down payment of one-third of eight times the average fees generated from the Purchased Assets during the previous four billing cycles, beginning with the December 31, 2010 billing cycle that successfully transferred to Summit ("Down Payment"); and (b) four subsequent payments of one-third of the annual fees generated by the Purchased Assets ("Annual

Payments"), to be paid on October 1, 2012, 2013, 2014, and 2015, respectively. Alexandria made an initial $40,000 installment of the Down Payment on August 4, 2011, and paid the remaining $31,511 of the Down Payment on October 17, 2011. Alexandria's Annual Payments were due on October 1, 2012, 2013, 2014, and 2015. Alexandria did not make the first Annual Payment to Receiver or Summit, nor did it make any of the subsequent Annual Payments in 2013, 2014, and 2015. Based on the fees generated by the Purchased Assets between 2011 and 2015, the total value of the Annual Payments due and owed Summit was determined by the Receiver to be $138,375.55. The Alexandria Lawsuit seeks recovery of that amount.

As the date approached for Alexandria to file its answer in the Alexandria Lawsuit, counsel for Alexandria approached counsel for the Receiver in an attempt to settle the claims. During negotiations, it appeared to the Receiver that Alexandria was willing to make payments to the Receiver in amounts determined by the Receiver to be adequate and fair, based on the issues involved in the matter and the fees and expenses likely to be expended going forward, among other factors.

Alexandria's counsel, however, pointed as an impediment to settlement that Alexandria was defending against a claim based on the same contract filed by the

former Chief Financial Officer, Ms. Carrie Mistina, in a lawsuit brought by Ms. Mistina in the Eastern District of Virginia in 2013, *Carrie Mistina v. Alexandria Capital*, Civil Case No. 1:13-CV-00692/CMM/TRJ ("Mistina Lawsuit"). A true and correct copy of the complaint filed in the Mistina Lawsuit is attached hereto as Exhibit 2. Ms. Mistina's complaint alleges, among other things, that Mistina, and not Summit, was due all amounts that Alexandria owed Summit, by virtue of an alleged assignment of the right to payment of such amounts.

In further discussions with the Receiver's counsel, Alexandria's counsel suggested that Alexandria would agree to settle the Alexandria Lawsuit if the settlement agreement could include a pre-condition whereby the Court would be asked to enter a bar order preventing further prosecution of the Mistina Lawsuit. The anticipated procedure would resemble the procedure followed in this action at the time the Receiver sought approval of the settlement between the Receiver and Chubb/Federal Insurance Company. [Doc. No. 103]. The Receiver agreed conditionally to settle the Alexandria Lawsuit on those terms, thereby leading to the execution of a Settlement Agreement and the filing of the present motion.

III. Basis for Mistina's Claims Against Alexandria.

At the time of the Receiver's appointment and for several years prior thereto, Mistina served as Chief Financial Officer for Summit. In that role, Mistina's

responsibilities included managing the financial affairs of Summit, including maintaining the company's checking accounts, managing its receivables and payables, and maintaining its financial books and records.

In August, 2012, approximately one month before the Receivership Order was entered, Angelo Alleca, the President of Summit, allegedly asked Mistina to loan Summit $30,000 in exchange for the assignment to her by Summit of the remaining payments due under a promissory note from a third party, Alexandria Capital, LLC. Because the amounts of the payments were to be determined by the future income to be derived from certain investment accounts which had been purchased by Alexandria from Summit, the value of those remaining payments was, and remains, uncertain. However, the Receiver has determined the value of those payments to be $138,375.55. On or before March 28, 2013, the Receiver preliminarily concluded that the assignment was a fraudulent transfer and so advised Alexandria and Mistina of that conclusion. *See* Receiver's Second Interim Report filed March 28, 2013, pp. 13-14 (Doc. No. 50). The Mistina Lawsuit was stayed in 2013 at the request of Alexandria, relying upon the stay provisions of the Receivership Order entered in the present case. Mistina, however, filed a Motion to Intervene in the present action and asked the Court to lift the stay in the Mistina

Lawsuit. By Order dated March 5, 2015, the Court allowed Mistina's motion to intervene but denied her motion to lift the stay. [Doc. No. 102].

IV. Terms of Proposed Settlement Between the Receiver and Alexandria

The Receiver and Alexandria have agreed, subject to Court approval, to a compromise of Summit's claims reflected on the proposed Compromise Settlement and Policy Release Agreement ("Settlement Agreement") attached as Exhibit A to the Motion filed concurrently herewith. The principal features of the Settlement Agreement are (1) payment by Alexandria of the total sum of $77,000 to be made in two payments (January 15, 2018 and April 15, 2018) ("Settlement Consideration") to the Receivership Estate, and (2) the entry of a bar order foreclosing future claims against Alexandria related to claims in the Lawsuits. The settlement is expressly contingent on the development of a bar order mechanism to protect Alexandria from further claims by those who may have claims against Alexandria related to those asserted in the Lawsuits.

During settlement negotiations, Alexandria's counsel expressed concern that any settlement with the Receiver would not necessarily resolve the controversy because Mistina, and perhaps other unknown persons, could still pursue claims against Alexandria based upon the same agreement and set of facts.

The Receiver recognizes the validity of Alexandria's concern and regards the existence of the assignment to Mistina and the filing of the Mistina Lawsuit to constitute an impediment to settlement. As a way to eliminate that impediment, Alexandria requested, and the Receiver agreed, to include in any settlement agreement a mechanism whereby the Mistina Lawsuit and any other claim would be barred, if approved by the Court.[1] If after notice Mistina or any other person objects to the entry of the Bar Order, there would be a mechanism by which the Court could hear and consider any such objection before ruling on whether or not to enter the Bar Order.[2]

[1] The concern that another unknown person or entity may have also received an assignment of Summit's claims against Alexandria is not unreasonable, given that Alleca occasionally made inconsistent and duplicative pledges or oversubscribed participation in other business ventures in which he was involved.

[2] In Response to Mistina's Motion to Intervene and to Lift the Stay, the Receiver presented ample evidence and argument why the alleged assignment to Mistina should be set aside or ignored, as a fraudulent conveyance to an insider, among other theories. In denying Mistina's motion to lift the stay, the Court also noted that "there is a reasonable basis to believe the transfer [to Mistina] was made with the intent to defraud creditors." [Doc. No. 102 at 9 n.3]. The Receiver will not restate this evidence or argument at present, but will present them again, if necessary, in response to any objection to the entry of the Bar Order that Mistina may file.

V. Basis for Approval By the Court

The proposed Settlement Agreement was obtained in good faith and is a compromise of matters within the duties of the Receiver as set forth in the Modified Receivership Order. The Settlement Agreement was reached after negotiations between the Receiver and Alexandria and was agreed to without misconduct, gross negligence, or criminal intent. As such, it should be approved by the Court.

In deciding to agree to the proposed settlement, the Receiver considered various factors including the available defenses of Alexandria, the expenses of litigation, the likelihood of success and the likelihood and costs of collectability.

Under the terms of the Settlement Agreement, the Receivership Estate would receive more than half of what it claims it is due from Alexandria. The Receiver believes the proposed Settlement is in the best interests of the Estate and provides a favorable recovery without the burden and large expense of protracted litigation against Alexandria.

"The standard for determining whether a proposed settlement should be approved is whether the settlement is 'fair, reasonable and adequate.'" *In re Mid-Atlantic Toyota Antitrust Litigation*, 605 F. Supp. 440, 442 (D.Md. 1984) (*citing and quoting Manual on Complex Litigation* § 1.46 at 56-57 (5th ed. 1982). The

Court may consider, but not defer to, the opinion of the Receiver when determining whether a proposed settlement is fair and equitable. *See Interlachen Harriet Invs. Ltd. v. Kelley (In re Petters Co.)*, 455 B.R. 166, 176-7 (B.A.P. 8th Cir. 2011).

In order to determine whether a proposed settlement is within the range of reasonableness, the Court may, among potentially other facts, consider: a) the probability of success in the litigation; b) the difficulties, if any, to be encountered in the matter of collection; c) the complexity of the litigation involved, and the expense, inconvenience, and delay; and d) the paramount interests of the creditors of the Receivership Estate. *See Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. Neb. 1929); *see also, In re Carragher*, 249 B.R. 817 (Bankr N.D.Ga. 2000); *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544 (11th Cir. 1990), *cert. denied*, 498 U.S. 959, 111 S.Ct. 387, 112 L.Ed.2d 398 (1990). These factors attempt to balance a potential settlement against the probable costs and benefits of continuing to pursue claims and defenses. Under the current circumstances, one factor is neutral and each of the other factors supports approval of the Settlement Agreement. With respect to the individual factors, the Receiver respectfully shows as follows:

A. Probability of Success on Merits

The Receiver concedes that the probability of success in recovering amounts due under the contract is uncertain. Alexandria has asserted various defenses that the Receiver believes are legitimate defenses but that would not ultimately be successful in the litigation. That being said, the Receiver recognizes there is the possibility that one or more of the defenses could potentially be successful at the trial of the case.

B. Difficulties, if any, to be Encountered in the Matter of Collection

There are anticipated difficulties in collection due to the fact Alexandria is a small Limited Liability company with limited resources. If the Receiver were able to recover a judgment, costs of collection on the judgment could be extensive and there is no guarantee that after payment of legal expenses, Alexandria could satisfy the judgment.

C. Complexity of Litigation, Expense, Inconvenience and Delay

In the absence of settlement, the claim against Alexandria must be decided in a separate ancillary proceeding. Because litigation in such an ancillary proceeding would be a time consuming and expensive proposition that potentially may not be determined in favor of the Receivership Estate, an early settlement

without the further expense of litigation is of substantial benefit to the Estate and weighs in favor of approval of the Settlement Agreement.

D. Deference to Reasonable Views of Creditors

Creditors of the Receivership Estate should support the Settlement Agreement since the Settlement Agreement will enhance the possibility and amount of any distribution to creditors generally by minimizing the risks, costs and delay of litigation and the costs and risks of collection while allowing the Receiver Estate to recover the Settlement Consideration. Nevertheless, the Receiver perceives the possibility that some creditors may object to the proposed settlement and therefore proposes that the Court enter an order requiring the Receiver to notify claimants as far as reasonably possible in order to afford interested parties the opportunity to object.

VI. Rationale of Settlement

A. Fairness of Monetary Consideration.

The Receiver does not concede the validity of Alexandria's claimed defenses. Nevertheless, the Receiver recognizes the existence of a *bona fide* dispute and believes that the proposed settlement represents a fair compromise of the parties' respective positions regarding liability, expenses and collectability. In the absence of such an agreement, said issues would only be decided by this Court

after continuation of expensive formal litigation. The Receiver believes that the proposed settlement benefits the creditors of the Estate.

The Receiver contends that the Settlement Agreement is fair, equitable, and reasonable and that the net recovery by the Receivership Estate would not be increased materially by the expenditure of additional funds to obtain a judgment. Furthermore, the Settlement Agreement minimizes the burdens on the Court and the Receiver. The Receiver and Alexandria desire to resolve the claims fairly and promptly. In summary, the Settlement Agreement provides an immediate and concrete benefit to the Receivership Estate in a fair and efficient manner.

B. Necessity of Bar Order.

An essential element of the Settlement Agreement is Alexandria's ability to close its books on the claims in the Lawsuits through a court order barring additional claims. The Court has this ability. Indeed, "federal courts have inherent equitable authority to issue a variety of 'ancillary relief' measures in actions brought by the SEC to enforce the federal securities laws." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980); *see also SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992)("district court has broad powers and wide discretion to determine relief in an equity receivership"); *Gordon v. Dadante*, 336 F. App'x 540, 549 (6th Cir. 2009) ("[N]o federal rules prescribe a particular standard for approving settlements

in the context of an equity receivership; instead, a district court has wide discretion to determine what relief is appropriate."). This discretion extends to the issuance of "stay[s], effective against all persons, of all proceedings against the receivership entities." *Wencke*, 622 F.2d at 1369; *see also SEC v. Stanford Int'l Bank Ltd.*, 424 F. App'x 338, 340 (5th Cir. 2011) ("It is axiomatic that a district court has broad authority to issue blanket stays of litigation to preserve the property placed in receivership pursuant to SEC actions.").

Recent federal decisions support the imposition of bar orders as a means to facilitate the marshalling of receivership assets. For example, in *SEC v. Parish*, an SEC enforcement action regarding an alleged Ponzi scheme, the court approved a settlement barring litigation against the insurer. *Parish*, No. 2:07-cv-00919-DCN, 2010 WL 5394736, at *1 (D.S.C., Feb. 10, 2010). Specifically, the settlement required the insurer to submit a lump sum to the receiver in return for a bar order prohibiting litigation related to the insurer's underlying policy. The court approved the settlement and issued the bar order, recognizing that "[f]ailing to approve [the] settlement would result in a drawn-out, inefficient, and chaotic administration of justice, assuming justice in [these] circumstances could be achieved at all." *Id.*, at *6.

The Fifth Circuit Court of Appeals recently affirmed the ability of a district court to approve settlements that include a lump sum payment to a receiver by third parties in return for a bar order. *SEC v. Kaleta*, 530 Fed. App'x. 360, 363 (5th Cir. 2013) ("*Kaleta II*"). Affirming the trial court's settlement approval, the Fifth Circuit "conclude[d] that the district court's analysis was sound and thus [it] did not abuse its discretion in entering the bar order." *Id*.

Similar to *Parish*, the district court, whose order was affirmed in *Kaleta II*, recognized that the "collect[ion of] substantial sums without litigation costs and delay [was] of substantial value" to potential claimants. *SEC v. Kaleta*, No. 4:09-3674, 2012 WL 401069, at *7 (S.D. Tex. Feb. 7, 2012) ("*Kaleta I*"). The court found persuasive the receiver's contention that, in the absence of a settlement, the receivership estate could incur $250,000 to $300,000 in litigation fees and expenses and that those fees would "harmfully reduce available Receivership Estate funds for distribution to claimants." *Id*. at *5. In addition, the settling parties would have to pay defense costs, which would "likely deplete those parties' assets available to the Receiver." *Id*. The same points hold true here. Approval of the settlement will preserve litigation expenses and attorneys' fees that would reduce the Receivership Estate and potentially reduce Alexandria's ability to satisfy any judgment.

In approving the bar order the *Kaleta I* court concluded:

> The Receiver's goal of limiting litigation involving the [settling parties] . . . is appropriate to enable the Receiver to collect as many assets as possible for distribution among all defrauded investors. The Bar Order advances that goal by arranging for reasonably prompt collection of the maximum amount of funds possible from the [settling parties] under the present litigation and financial circumstances. Preclusion of . . . alleged claims . . . in order to collect substantial sums without litigation costs and delay is of substantial value . . . .

Id., at *7; *see also Gordon*, 336 Fed. Appx. 540 (6th Cir. 2009) (approval of settlement by a receiver against a third-party broker-dealer and barring all claims against broker-dealer by victims of Ponzi scheme); *SEC v. Byers*, 609 F.3d 87, 92-93 (2d Cir. 2010) (affirming third-party bar order and stressing importance of bar orders in permitting receivers to maintain maximum control over estate assets).[3]

Approval of the settlement will achieve immediate value for the estate and avoid protracted, complex, and risky coverage litigation. At the same time, it will provide Alexandria with the necessary finality that it requires as a condition of its agreement to pay the Settlement Consideration.

[3] A majority of the federal judicial circuits, including the Eleventh Circuit, allow bar orders under similar circumstances in bankruptcy court. *See In re Mumford, Inc.*, 97 F.3d 449, 454, 55 (11th Cir. 1996); *In re Drexel Burnham Lambert Group, Inc*. 960 F. 2d 285 (2d Cir. 1992); *In re A.H. Robins Co., Inc*. 880 F.2d 694 (4th Cir. 1989); *In re Dow Corning Corp*., 280 F.3d 648, 657-59 (6th Cir. 2002); *In re Specialty Equip. Companies, Inc.*, 3 F. 3d 1043, 1047 (7th Cir. 1993).

VII. Conclusion

WHEREFORE, the Receiver respectfully asks this Court to enter the relief requested in his Motion For Approval Of Settlement Of Disputed Claim And Settlement Agreement And For Entry Of Bar Order And Approval Of Form Of Notice for the reasons set forth herein.

Respectfully submitted this 20th day of November, 2017.

/s/ Pratt H. Davis
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CERTIFICATE OF SERVICE

I certify that the foregoing was prepared with one of the font and point selections approved by the Court in LR 5.1B. I further certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of electronic filing to counsel of record.

Respectfully submitted this 20th day of November, 2017.

/s/ Pratt H. Davis
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE COMMISSION, Relief Plaintiff, v. ANGELO A. ALLECA, SUMMIT WEALTH MANAGEMENT, INC., SUMMIT INVESTMENT FUND, LP, ASSET CLASS DIVERSIFICATION FUND, LP, and PRIVATE CREDIT OPPORTUNITIES FUND, LLC Relief Defendants.	Civil Action No. 1:12-CV-3261-WSD
ROBERT D. TERRY, RECEIVER FOR SUMMIT WEALTH MANAGEMENT, INC. Plaintiff, v. ALEXANDRIA CAPITAL, LLC Defendant.	Ancillary Proceeding No.: _____

COMPLAINT BY RECEIVER

COMES NOW Robert D. Terry, as the court-appointed Receiver for Summit Wealth Management, Inc. ("Summit"), Summit Investment Fund, LP ("SIF"),

Asset Diversification Fund, LP ("ACDF") and Private Credit Opportunities Fund, LLC ("PCOF") (the "Receivership Entities") and files this complaint against Alexandria Capital, LLC, showing this Court the following:

SUMMARY

On September 18, 2012, the United States Securities and Exchange Commission filed an enforcement action in United States District Court for the Northern District of Georgia styled *Securities and Exchange Commission v. Angelo Alleca, Summit Wealth Management, Inc., Summit Investment Fund, LP, Asset Diversification Fund, LP and Private Credit Opportunities Fund, LLC,* Civil-Action-Number 1:12-CV-3621 ("SEC Enforcement Action"). On September 21, 2012, Plaintiff Robert D. Terry ("Plaintiff") was appointed as Receiver for the Receivership Entities by Order of this Court ("Receivership Order"). The ultimate purpose of the Receivership (the "Receivership") created incident to the Receivership Order is to produce the maximum disbursement to allowed claimants. To accomplish this purpose, the Receiver is required to maximize the pool of assets that will be available for distribution by taking control of and/or recovering all assets of the Receiver Estate (as defined in the Receivership Order) and traceable to the Receiver Estate, wherever located, including money obtained from investors through fraud.

PARTIES

1. Receiver as the Plaintiff is a citizen of the United States and resident of Georgia.

2. Defendant Alexandria Capital, LLC ("Defendant"), formerly known as Botree Westmount Partners, LLC, is a limited liability company with its registered agent and office at 12103 Ruffin Drive, Fairfax, Fairfax County, VA 22030. The Defendant is subject to the jurisdiction and venue of this Court. Service of process may be perfected upon Defendant by delivery of the complaint and summons pursuant to the Federal Rules of Civil Procedure.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under Section 22(a) of the Securities Act (15 U.S.C. § 77v(a)), Section 27 of the Exchange Act (15 U.S.C. § 78aa), and under Chapter 49 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 754).

4. This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1), as the amount in controversy exceeds $75,000, and Plaintiff and Defendant are citizens of different states.

5. As the Court that appointed the Receiver, this Court has jurisdiction over any claim brought by the Receiver to execute the duties of the Receiver in

this Receivership. This Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1345 and 1367 in that this case arises out of and is related to the matters at issue in the Civil Action and is so related to the claims asserted in the Civil Action that it forms part of the same case and controversy. This Court also has ancillary jurisdiction over this action as it is an action instituted by the Receiver in order to execute his duties as set forth in the Receivership Order, and this action seeks to accomplish the ends sought by the Civil Action in which the Receiver was appointed. *See Peacock v. Thomas,* 516 U.S. 349, 356, (1996)("we have approved the exercise of ancillary jurisdiction over a broad range of supplementary proceedings involving third parties to assist in the protection and enforcement of federal judgments--including...the prejudgment avoidance of fraudulent conveyances."); *Haile v. Henderson Nat'l Bank, 657 F.2d 816, 822 (6th Cir. Tenn. 1981)(noting* that any suit initiated by the receiver is ancillary to the primary action and as "such, the district court has ancillary subject matter jurisdiction of every such suit irrespective of diversity, amount in controversy or any other factor which would normally determine jurisdiction"); *Pope v. Louisville, New Albany & Chicago Ry.,* 173 U.S. 573, / 577 (1899) (holding that a receiver appointed to "accomplish the ends sought and directed" by a suit with a proper basis for

federal jurisdiction may proceed in ancillary jurisdiction on claims with no other independent basis for federal jurisdiction).

6. Further the Receiver filed the original Complaint and Order Appointing the Receiver in one other United States district court pursuant to 28 U.S.C. § 754, giving this Court *in rem* and *in personam* jurisdiction in each district where the Complaint and Order have been filed.

7. Venue is proper in this district pursuant to 28 U.S.C. § 139l(b) because a substantial part of the events or omissions giving rise to the action occurred in this district.

8. This Court also has personal jurisdiction over Defendant pursuant to O.C.G.A. § 9-10-91(1). Defendant consummated a transaction in Georgia by purchasing investment accounts from a Florida corporation which operated a wealth management office in the Northern District of Georgia. The Court also has personal jurisdiction under 28 U.S.C. §§ 754 and 1692, SEC v. Bilzerian, 378 F.3d 1100, 1104-1105 (D.C. Cir. 2004).

STATEMENT OF FACTS

9. On August 1, 2011, Summit entered into an Asset Purchase Agreement ("Agreement") with Defendant wherein Summit transferred certain investment accounts that had been managed by Richard and Jill Potter ("Purchased Assets") to Defendant in exchange for (a) a down payment of

one-third of eight times the average fees generated from the Purchased Assets during the previous four billing cycles, beginning with the December 31, 2010 billing cycle that successfully transferred to Summit ("Down Payment"); and (b) four subsequent payments of one-third of the annual fees generated by the Purchased Assets ("Annual Payments"), to be paid on October 1, 2012, 2013, 2014, and 2015, respectively.

10. Defendant made an initial $40,000 installment of the Down Payment on August 4, 2011, and paid the remaining $31,511 of the Down Payment on October 17, 2011.

11. On September 21, 2012, Plaintiff was appointed as Receiver over Summit, among other entities.

12. Defendant's Annual Payments were due on October 1, 2012, 2013, 2014, and 2015. Defendant did not make the first Annual Payment to Receiver or Summit, nor did it make any of the subsequent Annual Payments in 2013, 2014, and 2015.

13. Based on the fees generated by the Purchased Assets between 2011 and 2015, the total value of the Annual Payments due and owed Summit is $138,375.55.

14. The Plaintiff, through counsel, has made demand on Defendant for payment, and those demands have been unjustifiably refused.

COUNT I- Breach of Contract

15. The preceding paragraphs are incorporated by reference.

16. The August 1, 2011 Agreement between Summit and Defendant was a contract.

17. Defendant breached the Agreement by failing to make the Annual Payments, which became due and payable on October 1, 2012, 2013, 2014, and 2015.

18. Because of Defendant's breach, Summit suffered damages in the amount of $138,375.55, plus interest.

COUNT II- Attorney's Fees

19. Defendant's refusal to pay the Annual Payments has caused Plaintiff unnecessary trouble and expense.

20. Because Defendant's refusal to pay the Annual Payments has caused Plaintiff unnecessary trouble and expense, it will be appropriate to award Plaintiff reasonable attorneys' fees under O.C.G.A. § 13-6-11.

21. WHEREFORE: Plaintiff prays for:

a. An award of damages to Plaintiff for Defendant's failure to make the Annual Payments on October 1, 2012, 2013, 2014, and 2015, respectively;

b. Prejudgment interest in the amount provided by law;

c. Payment of costs of suit;

d. Payment of reasonable attorneys' fees; and,

e. Such other relief as the Court may deem just and proper.

Dated: September 21, 2017

Respectfully submitted,

s/ Pratt Davis
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

CARRIE MISTINA,
30319 PGA Drive
Mt. Plymouth, Florida 32776

Plaintiff,

v.

ALEXANDRIA CAPITAL, LLC,
Serve:
R.A. Theresa Lee
4900 Seminary Road
Suite 105
Alexandria, Virginia 22311

Defendant.

Civil Case No. 1:13cv692-CMH/TRJ

I. JURISDICTION AND VENUE

1. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1), as the amount in controversy exceeds $75,000, and Plaintiff and Defendants are citizens of different states.

2. Plaintiff's claims arose in this judicial district, where Defendant regularly conducts business.

3. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) and (c), as Defendant resides in this judicial district.

II. PARTIES

4. Plaintiff, Carrie Mistina, is a citizen of the United States and a resident of Mt. Plymouth, Florida.

5. Defendant, Alexandria Capital, LLC ("Alexandria Capital"), formerly known as Botree Westmount Partners, LLC, is a limited liability company headquartered at 4900 Seminary Road, Suite 105, Alexandria, Virginia 22311. Defendant regularly conducts business in the Eastern District of Virginia.

III. STATEMENT OF FACTS

6. In August 2004, Ms. Mistina took a position as a financial manager/controller with BR Chamberlain & Sons, an investment advisory firm located in Orlando, Florida.

7. In May 2006, BR Chamberlain & Sons was sold to Summit Wealth Management, Inc. ("Summit"). Ms. Mistina subsequently became Summit's Chief Financial Officer and relocated to Summit's Atlanta, Georgia headquarters.

8. On August 1, 2011, Summit entered into an asset purchase agreement ("Agreement") with Defendant Alexandria Capital wherein Summit transferred certain investment accounts that had been managed by Richard and Jill Potter ("Potter Accounts") to Alexandria Capital in exchange for (a) a down payment of one-third of eight times the average fees generated from the Potter Accounts during the previous four quarterly billing cycles, beginning with the December 31, 2010, billing cycle that

successfully transferred to the Purchaser ("Down Payment")[1]; and (b) four subsequent payments of one-third of the annual fees generated by the Potter Accounts ("Annual Payments"), to be paid on October 1, 2012, 2013, 2014 and 2015, respectively.

9. Alexandria Capital made an initial $40,000 installment of the Down Payment on August 4, 2011, and paid the remaining $31,511 of the Down Payment on October 17, 2011.

10. Based on the fees previously generated by the Potter Accounts, the estimated total value of the Annual Payments was projected to be between $130,000 and $210,000.

11. On August 19, 2012, Summit's President and Chief Executive Officer, Angelo Alleca, called Ms. Mistina on the telephone to ask her for $30,000 to pay the premium on Summit's errors and omissions insurance policy. Ms. Mistina had previously made loans to Summit, which had been repaid.

12. In exchange for the $30,000, Mr. Alleca offered to assign Summit's remaining interest in the Agreement with Alexandria Capital, including the four remaining Annual Payments, to Ms. Mistina. Ms. Mistina agreed, but only on the condition that Alexandria Capital confirm the assignment in writing.

13. On August 21, 2012, in exchange for valid consideration, Summit executed an assignment agreement that assigned its interest in the Annual Payments to Ms. Mistina.

[1] In the event that any of the contemplated client accounts did not transfer to the Purchaser because they were moved or closed, fees from those acocunts would not be included in the Down Payment calculation.

14. Alexandria Capital, through its Chief Financial Officer, Charles D'Angelo, confirmed the assignment by email on Wednesday, August 22, 2012, and agreed that the Annual Payments would be made by check payment to Carrie Lynn Mistina at 30319 PGA Drive, Mt. Plymouth, Florida 32776.

15. The first of Alexandria Capital's Annual Payments was due on October 1, 2012. Alexandria Capital did not make the first Annual Payment—to Ms. Mistina or Summit—and has refused to provide Ms. Mistina with any information concerning the amount due to her.

16. Alexandria Capital now refuses to acknowledge Ms. Mistina's right to the Annual Payments. Because of this, and because of Alexandria Capital's failure to make the first Annual Payment, Ms. Mistina brings the current action.

COUNT I
Breach of Contract

17. The preceding paragraphs are incorporated by reference.

18. The August 1, 2011, Asset Purchase Agreement between Summit and Alexandria Capital was a contract.

19. The Annual Payments due to Summit under the terms of the Agreement were lawfully assigned by Summit to Ms. Mistina.

20. The assignment to Ms. Mistina was valid, and executed in accordance with the terms of the Agreement.

21. Alexandria Capital breached the Agreement by failing to make the first Annual Payment, which became due and payable on October 1, 2012.

22. Because of Alexandria Capital's breach, Ms. Mistina has suffered damages.

COUNT II
Declaratory Judgment

23. The preceding paragraphs are incorporated by reference.

24. A substantial controversy exists between Ms. Mistina and Alexandria Capital with respect to the validity of Summit's assignment of the Annual Payments to Ms. Mistina.

25. Ms. Mistina's legal interests are adverse to Alexandria Capital's in that Alexandria Capital is refusing to honor its contract with Summit by making the Annual Payments that were assigned to Ms. Mistina.

26. The controversy between the parties is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

a. An order declaring that Summit Wealth Management's September 21, 2012, assignment to Plaintiff was valid;

b. An award of damages to Plaintiff for Defendant's failure to make the first of the Annual Payments on October 1, 2012;

c. An order requiring that Defendant make the remaining Annual Payments to Plaintiff as agreed in the August 1, 2011, Agreement;

d. Payment of costs of suit;

e. Payment of reasonable attorneys' fees; and,

f. Such equitable and other relief as the Court may deem just and proper;

g. Plaintiff requests a jury trial.

DATED this 7th day of ~~May~~ June, 2013.

Carrie Lynn Mistina, Plaintiff,

BY: _____

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