

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA**

<b>ALAMERICA BANK,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NUMBER: CV-2018-_____</b>
	)	
<b>ROBERT MATTHEW ROCKETT and</b>	)	
<b>THOMAS CLAYTON HEALAN,</b>	)	
	)	
<b>Defendants.</b>	)	

**COMPLAINT**

Plaintiff, Alamerica Bank (“Alamerica”), hereby files this complaint against Defendants Robert Matthew Rockett (“Rockett”) and Thomas Clayton Healan (“Healan”) and alleges as follows:

**PARTIES**

1. Plaintiff Alamerica is an Alabama state chartered bank, with its principal place of business in Birmingham, Alabama.
2. Defendant Rockett is an individual who currently resides in Birmingham, Alabama.
3. Defendant Healan is an individual who currently resides in Jefferson, Georgia and does business in Birmingham, Alabama.
4. All conduct alleged herein occurred in Jefferson County, Alabama.

**FACTS**

*A. Rockett’s and Healan’s Employment with Alamerica.*

5. Alamerica hired Rockett in March 2012, as an Executive Vice President and Senior Lender. Subsequent to his employment, Rockett also became a member of Alamerica’s Board of

Directors. Rockett also held 100 shares of Alamerica stock. Rockett resigned from both positions effective March 31, 2018.

6. Alamerica hired Healan in April 2017 to serve as Alamerica's Chief Financial Officer. Healan resigned from his position effective March 31, 2018.

7. As part of Defendants' employment, Defendants had access to and obtained confidential financial and proprietary information about Alamerica, including confidential customer information.

8. All employees, officers, and directors of Alamerica, including Defendants, are bound to a Code of Ethics. Rockett executed an acknowledgment of the receipt of the Code of Ethics on April 5, 2012. Healan executed an acknowledgment of the receipt of the Code of Ethics on April 4, 2017.

9. By agreeing to the Code of Ethics, Defendants agreed to take or avoid actions to eliminate issues of ethics or conflicts and to seek advice regarding issues of ethics or potential conflicts.

10. Specifically, the Code of Ethics contains the following provisions regarding avoiding conflict:

Conflicts of Interest

*Policy Statement*

All Bank representatives must manage their personal and business affairs to avoid situations, which might lead to a conflict, or even the appearance of a conflict, between their self-interest and their duty to the Bank, its customers and its shareholders.

*General Requirements*

- Identification:
  - A conflict of interest may exist when a Bank representative or a member of his/her immediate family has a personal financial interest in a

business or venture which conducts business as a customer or vendor with the Bank. A conflict of interest may also occur when a Bank representative has a substantial financial interest in a business, which competes with another company conducting business, banking or otherwise, with the Bank.

11. The Code of Ethics prohibits Defendants from engaging in self-dealing, and specifically states as follows:

- Self-Dealing:
  - Bank representatives are prohibited from self-dealing or otherwise trading on their positions with the Bank. Such individuals are also prohibited from accepting business from someone conducting or seeking to conduct business with the Bank when the business opportunity is not available to other persons or which is made available because of the individual's position with the Bank.

12. The Code of Ethics prohibits Defendants from taking outside employment which would “encroach on the time or attention that should be devoted to the officer’s or employees’ duties with the Bank, adversely affect work performance, compete with the Bank’s activity, involve use of the Bank’s equipment, supplies or facilities or adversely affect the Bank’s reputations.”

13. The Code of Ethics requires Defendants to protect the Bank’s confidential information, and contains the following provision:

Other Areas of Ethical Concern

*Confidential Information*

Bank representatives in numerous functions are regularly entrusted with information about the Bank or its customers, which is entitled to appropriate confidential treatment. Bank representatives are expected to take proper steps to safeguard such information against misuse and to refrain from any use of information other than for the Bank’s and/or customer’s intended business purposes.

Material non-public information concerning the Bank or its customers must not be used for personal advantage, for the advantage of the Bank in making investment decisions, or for the advantage of third parties.

14. The Code of Ethics further provides that the “standards imposed by this policy are applicable both during employment and, with regard to the confidentiality and other requirements relevant to former employees, after termination of employment with the Bank.”

*B. The Departure of Rockett and Healan and the Formation of Millennial Bank*

15. While Defendants were still employed at Alamerica and while Rockett was still a Director of Alamerica, unbeknownst to Alamerica, Defendants began making plans and taking actions to be a part of the formation of a new bank, Millennial Bank (“Millennial”), which was formed to, and in fact did, acquire Covenant Bank in Leeds, Alabama. The plans to form Millennial began sometime prior to November 2017.

16. While still employed by Alamerica, Defendants used their Alamerica email to send and receive information relating to Millennial, including the subscription information for the purchase of shares of Millennial.

17. Defendants used Alamerica’s resources to further their endeavor, including using Alamerica’s Federal Express account to send and deliver materials relating to Millennial to various third parties, including a stock brokerage firm in Atlanta.

18. Defendants used confidential financial and proprietary information about Alamerica, which Defendants had obtained during their employment at Alamerica for their benefit, Millennial’s benefit, and to the detriment of Alamerica. Indeed, over a dozen Alamerica customers, vendors, or employees were identified by Defendants as investors or potential investors of Millennial.

19. Defendants solicited Alamerica’s vendors to assist Defendants in the formation of Millennial.

20. Rockett, through his position as Senior Loan Director at Alamerica, made loans to, or increased the credit lines for, numerous Alamerica customers, who were solicited by Defendants to invest in Millennial or who had already agreed to invest in Millennial. Rockett made these loans without disclosing to Alamerica this clear conflict of interest.

21. Around the time that Defendants were engaging in conduct to further the formation of Millennial and while still employed at Alamerica or serving as a Director of Alamerica, Defendants were aware that Alamerica was in discussions with Tamer El-Rayess (“El-Rayess”) to purchase Alamerica. El-Rayess’ purchase of Alamerica would have been very beneficial to Alamerica.

22. In fact, El-Rayess executed a Stock Purchase Agreement with Alamerica Bank in July 2017 (the “El-Rayess Stock Purchase”).

23. As part of the El-Rayess Stock Purchase, Rockett, as a Director of Alamerica, executed a Director’s Agreement in August 2017.

24. The Director’s Agreement contained a confidentiality provision, which provides as follows:

For a period of twenty-four (24) months following the Effective Time, the Director agrees to hold in confidence all information that he or she has regarding Purchaser, Seller, or their respective Affiliates and not to use such information for the Director’s personal or business benefit; provided, however, that this restriction shall not apply to information that becomes generally available to the public without a breach of confidentiality obligations of the Director or other parties known by the Director to be subject to obligations of confidentiality.

25. On October 13, 2017, El-Rayess submitted a Notice of Bank Change in Control (the “Alamerica Change of Control”) to the Federal Deposit Insurance Corporation (“FDIC”) seeking approval for the El-Rayess Family 2010 Trust, Stephen Francis McSorley, William Robert Knotts, Mark Lester Salamone, and Daniel Joseph David to acquire control of Alamerica.

26. Just one month later, on November 16, 2017, a Notice of Change in Bank Control was submitted to the FDIC for Millennial seeking approval for Rockett, Healan, Walter Brady Collins, William Frank Jenkins, William Frank Spencer, III, and Kamlesckumar Vallabhbbhai Sonani to acquire 25% or more of the shares and thereby control Covenant Bank in Leeds, Alabama (the “Millennial Change of Control”).

27. On March 19, 2018, Rockett submitted his resignation effective March 31, 2018. The next day, Healan submitted his resignation effective March 31, 2018.

28. On May 17, 2018, El-Rayess withdrew the Alamerica Notice of Change of Control.

29. Millennial is a competitor to Alamerica, is located in the same geographic area, and is engaged in the same business as Alamerica.

30. Rockett is currently serving as the President of Millennial.

31. Healan is currently serving as the Chief Financial Officer of Millennial.

### **COUNT ONE**

#### **Breach of Fiduciary Duty and Duty of Loyalty – All Defendants**

32. Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

33. Defendants Rockett and Healan owed fiduciary duties to Alamerica in their roles as employees and officers of Alamerica.

34. Specifically, under Alabama law, the duty of loyalty requires directors and officers to manage the affairs of the corporation honestly and impartially, without personal advantage, profit, or gain from their position as an officer or director.

35. These duties required Rockett and Healan to act at all times in the best interests of Alamerica.

36. As officers and employees of Alamerica Defendants owed Alamerica their undivided loyalty and fidelity in all matters during the course of their employment, including acting in the best interest and for the benefit of Alamerica at all times and not transferring their loyalty and time to a competitor bank.

37. While still employed by Alamerica, and without informing or otherwise notifying Alamerica, Defendants secretly conspired to terminate their employment with Alamerica and commence employment with Millennial, including attempting to convert Alamerica's customer and vendor relationships.

38. Rockett and Healan breached their fiduciary duties by engaging in conduct adverse to Alamerica while still employed by Alamerica, including soliciting Alamerica customers or vendors to invest in Millennial, working for Millennial's interests, rather than Alamerica's interests, using Alamerica's resources to benefit Millennial, and using Alamerica's confidential information to benefit them and Millennial.

39. Rockett's and Healan's breaches of fiduciary duty and loyalty damaged Alamerica.

WHEREFORE, Plaintiff demands judgment against Rockett and Healan in an amount to be determined, for compensatory and punitive damages, together with interest and the costs of this action.

**COUNT TWO**  
**Breach Of Fiduciary Duty And Loyalty – Rockett**

40. Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

41. Rockett was a Director of Alamerica.

42. As a Director, Rockett owed a fiduciary duty to Alamerica, including a duty of loyalty. These duties prohibit Rockett from engaging in transactions that are contrary to the interests of Alamerica.

43. Rockett breached these duties by engaging in conduct adverse to Alamerica, including soliciting Alamerica customers or vendors to invest in Millennial, working for Millennial's interests, rather than Alamerica's interests, using Alamerica's resources to benefit Millennial, and using Alamerica's confidential information to benefit himself and Millennial.

44. Rockett's breaches of fiduciary duty and loyalty damaged Alamerica.

WHEREFORE, Plaintiff demands judgment against Rockett in an amount to be determined, for compensatory and punitive damages, together with interest and the costs of this action.

### **COUNT THREE**

#### **Tortious Interference with Business Relationships – All Defendants**

45. Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

46. As an employee and officer of Alamerica, Healan was aware of, and involved with, the proposed El-Rayess Stock Purchase.

47. As an employee, officer and director of Alamerica, Rockett was aware of, and involved with, the proposed El-Rayess Stock Purchase.

48. In their respective roles at Alamerica, Defendants were privy to confidential information relating to the El-Rayess Stock Purchase.

49. Defendants also knew that they could not be identified as principles or officers of two pending Notices of Changes of Bank Control submitted to the FDIC.



50. With this knowledge, Defendants allowed the Millennial Change of Control to be submitted, which identified them as officers and owners. The Millennial Change of Control was submitted while Rockett was an officer, employee, and Director of Alamerica and while Healan was an officer and employee of Alamerica.

51. Defendants' conduct in working to further Millennial's interests, and their own interests, instead of Alamerica's interests contributed to the withdrawal of the Alamerica Change of Control and the termination of the El-Rayess Stock Purchase Agreement.

52. Each Defendant tortiously interfered with Alamerica's business relationships with a willing, ready, and able purchaser of Alamerica by making plans and taking actions to pursue a venture with a competing bank while employed at Alamerica.

53. These Defendants further tortiously interfered with Alamerica's business relationship with a willing, ready, and able purchaser of Alamerica by using confidential information to solicit Alamerica's customers, vendors, and employees to invest in Millennial.

54. Defendants' interference with the El-Rayess Stock Purchase damaged Alamerica.

WHEREFORE, Plaintiff demands judgment against the Defendants in an amount to be determined, including compensatory damages and punitive damages, together with interest and the costs of this action.

#### **COUNT FOUR**

##### **Tortious Interference with Customer Relationships – All Defendants**

55. Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

56. As employees, officers and a Director of Alamerica, Defendants had access to Alamerica's confidential customer information.

57. Defendants tortiously interfered with Alamerica's customer relationships by soliciting the customers to become investors or customers of Millennial.

58. Plaintiff has been damaged by Defendants' tortious conduct.

WHEREFORE, Plaintiff demands judgment against the Defendants in an amount to be determined, including compensatory damages and punitive damages, together with interest and the costs of this action.

### **COUNT FIVE**

#### **Tortious Interference with Vendor Relationships – All Defendants**

Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

59. As employees, officers, and a Director of Alamerica, Defendants had access to Alamerica's confidential vendor relationships.

60. Defendants tortiously interfered with Alamerica's vendor relationships by soliciting or using the vendors to assist with the formation of Millennial or to further Millennial's interests.

61. Plaintiff has been damaged by Defendants' tortious conduct.

WHEREFORE, Plaintiff demands judgment against the Defendants in an amount to be determined, including compensatory damages and punitive damages, together with interest and the costs of this action

### **COUNT SIX**

#### **Usurpation of Corporate Opportunities – All Defendants**

62. Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

63. Defendants usurped corporate opportunities that belonged to Alamerica by engaging in activities to further the interests of Millennial and their individual interests, to the

detriment of Alamerica, including usurping funding and credit opportunities that could have furthered Alamerica's interests.

64. Plaintiff has been damaged by Defendants' tortious conduct.

WHEREFORE, Plaintiff demands judgment against the Defendants in an amount to be determined, including compensatory damages and punitive damages, together with interest and the costs of this action

**COUNT SEVEN**  
**Breach of Contract – Rockett**

65. Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

66. Defendant Rockett breached the Director Agreement by disclosing confidential information to further Millennial's interest.

67. Defendant Rockett breached the Director Agreement by engaging in conduct adverse to the El-Rayess Stock Purchase.

68. Rockett's breaches damaged Plaintiff and are causing Plaintiff to suffer irreparable harm.

WHEREFORE, Plaintiff demands judgment against Rockett in an amount to be determined, including compensatory damages and punitive damages, together with interest and the costs of this action.

**COUNT EIGHT**  
**Breach Of Code Of Ethics – All Defendants**

69. Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

70. Defendants agreed to be bound by the Code of Ethics.

71. The Code of Ethics prohibited Defendants from engaging in outside employment that would be adverse to Alamerica.

72. The Code of Ethics prohibited Defendants from using Alamerica's resources to further other employment.

73. The Code of Ethics prohibited Defendants from engaging in conflicted transactions.

74. The Code of Ethics prohibited Defendants from engaging in self-dealing.

75. The Code of Ethics required Defendants to protect confidential information, such as Alamerica customer information.

76. Defendants breached the Code of Ethics.

77. Alamerica has been damaged by Defendants' breaches.

WHEREFORE, Plaintiff demands judgment against the Defendants in an amount to be determined, including compensatory damages and punitive damages, together with interest and the costs of this action.

#### **COUNT NINE**

##### **Conversion or Misappropriation of Confidential Information – All Defendants**

78. Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

79. As a part of Defendants' duties as employees, officers, or Director, Defendants were privy to confidential information belonging to Alamerica, including its customer and vendor lists, loan production information, credit information, and financial information. Defendants misappropriated this information by using it to further their individual interests or those of Millennial. Defendants further misappropriated this information by sending it to their personal email accounts. Defendants converted this information to benefit themselves and Millennial.

80. Defendants' conversion or misappropriation of Alamerica's confidential information damaged Alamerica.

WHEREFORE, Plaintiff demands judgment against the Defendants in an amount to be determined, including compensatory damages and punitive damages, together with interest and the costs of this action.

**COUNT TEN**  
**Civil Conspiracy – All Defendants**

81. Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

82. The Defendants engaged in an unlawful scheme aimed against Alamerica to solicit Alamerica's customers and vendors away from Alamerica.

83. The unlawful acts which underlie the Defendants' scheme include the misappropriation and conversion of confidential information and the tortious interference with Alamerica's business, customer, and vendor relationships.

84. Defendants met on several occasions to carry out this scheme, including periods of time when one or more of them were still employed with Alamerica.

85. Defendants' wrongful conduct damaged Alamerica.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount to be determined, including compensatory damages and punitive damages, together with interest and the costs of this action.

**COUNT ELEVEN**  
**Fraudulent Suppression – All Defendants**

86. Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

87. Defendants engaged in fraudulent conduct against Alamerica by presenting themselves as loyal officers, employees, and a Director while at the same time secretly engaging in conduct detrimental to Alamerica, such as forming Millennial and being identified as officers and owners in Millennial's Change of Control.

88. Defendants suppressed material facts from Alamerica, in particular, their activities in being an integral part of the formation of Millennial, forming Millennial, planning to solicit and soliciting Alamerica's customers and vendors to invest in, or assist with, the formation of Millennial, and submitting the Millennial Change of Control, all the while purporting to be acting in Alamerica's interests.

89. Defendants had a duty to disclose to Alamerica, by virtue of their positions as officers, employees, and a Director, their interest in Millennial. Defendants also had a duty to disclose to Alamerica by virtue of the express confidential relationship between them and Alamerica.

90. Defendants allowed themselves to be identified as officers of Alamerica in the Alamerica Change of Control, all the while failing to disclose that they were planning to submit Millennial's Change of Control.

91. Defendants allowed themselves to remain employees, officers and a Director of Alamerica, all the while failing to disclose that they were working to further the interests of Millennial and themselves.

92. Alamerica reasonably relied on the Defendants' affirmative misrepresentations and on their silence to its detriment.

93. The Defendants' fraudulent conduct damaged Alamerica. Their actions were willful, malicious, or wanton.

WHEREFORE, Plaintiff demands judgment against the Defendants in an amount to be determined, and seeks compensatory damages and punitive damages, together with interest and the costs of this action.

**COUNT TWELVE**  
**Unjust Enrichment – All Defendants**

94. Plaintiff adopts and incorporates all previous paragraphs as if specifically alleged herein.

95. The Defendants, individually and collectively, have been unjustly enriched by using confidential and proprietary information misappropriated or wrongfully obtained from Alamerica, to further their own individual interests and that of Millennial.

WHEREFORE, Plaintiff demands judgment against the Defendants in an amount to be determined, and seeks compensatory damages and punitive damages, together with interest and the costs of this action.

**PLAINTIFF DEMANDS A TRIAL BY JURY**

s/ Hope T. Cannon

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Hope T. Cannon

D. Brian O'Dell

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