

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

Federal Trade Commission,

Plaintiff,

v.

MOBE Ltd., et al.,

Defendants.

Case No. 6:18-cv-862-ORL-37DCI

**EMERGENCY CONSENT MOTION TO EXTEND THE
TEMPORARY RESTRAINING ORDER, RESCHEDULE
PRELIMINARY INJUNCTION HEARING, UNFREEZE CERTAIN
ASSETS, AND ENLARGE TIME TO RESPOND TO COMPLAINT**

The FTC requests that the Court: (1) postpone the preliminary injunction hearing for a period of approximately 60-days to allow the parties to discuss settlement; (2) extend the expiration date of the TRO as to Defendants Matthew Lloyd McPhee and the MOBE corporate defendants so that the TRO expires on the date of the rescheduled preliminary injunction hearing; (3) enlarge the time for Defendants to respond to the FTC's Complaint so that their responses are due no later than seven days prior to the rescheduled preliminary injunction hearing; and (4) direct the Court-appointed receiver to unfreeze \$50,000 from defendants' repatriated funds to be used to pay legal fees and expenses for Defendants McPhee and Susan Zanghi. All defendants and the Receiver consent to the relief requested.¹ As explained below, there is good cause for the requested relief, as it will allow the parties time to continue discussions on a settlement that would resolve all claims in this action and

¹ Defendant McPhee controls all of the MOBE corporate defendants and has consented to the relief requested in this motion on their behalf. Defendants Zanghi and Whitney have consented through their counsel.

facilitate the efficient repatriation of significant sums of defendants' foreign-held assets.

On June 4, 2018, the FTC filed their complaint in this action against three individuals (McPhee, Zanghi, and Russell Whitney) and the nine MOBE corporate defendants² that are all controlled by MCPhee. On June 5, 2018, the Court entered an *Ex Parte* Temporary Restraining Order ("TRO") and set a preliminary injunction hearing date for June 26, 2018. (Doc. 13.) On June 15, 2018, the Court extended the TRO and rescheduled the preliminary injunction hearing to July 17, 2018. (Doc. 27, 28.)

On June 25, 2018, Defendant Zanghi stipulated to the entry of a preliminary injunction against her. (Doc 35.) The Zanghi stipulated preliminary injunction is currently awaiting Court approval. The FTC has also reached an agreement with Defendant Whitney regarding a stipulated preliminary injunction, which the FTC intends to submit shortly for the Court's approval. Defendant MCPhee has informed the FTC that the MOBE corporate defendants will not be retaining counsel or taking steps to defend themselves against the allegations in the complaint. Accordingly, the FTC will be moving for default judgments against these corporations once service of all corporate entities is complete. Thus, as it currently stands, Defendant MCPhee is the only defendant who may still contest the preliminary injunction and would be implicated by the proposed rescheduling of the preliminary injunction hearing.

Defendants MCPhee and Zanghi have both indicated that they would like to discuss resolving all the claims against them and the FTC, and these defendants have had some

² The MOBE corporate defendants are MOBE Ltd., MOBEProcessing.com, Inc., Transaction Management USA, Inc., MOBETraining.com, Inc., MOBE Pro Limited, MOBE Online Ltd., 9336-0311 Quebec, Inc., MattLloydPublishing.com Pty Ltd., and MOBE Inc.

preliminary discussions with the FTC regarding settlement that are promising. As such, there is good cause to extend the TRO, push back the preliminary injunction hearing for approximately 60 days, and extend the time for McPhee and Zanghi to respond to the complaint to seven days prior to the rescheduled preliminary injunction hearing. This relief will allow the parties to focus their resources on negotiating a potential settlement that would resolve all claims against them while allowing McPhee and Zanghi, whose assets are currently frozen, to avoid incurring additional expense working on their responses to the complaint and (as to McPhee) preparing for the upcoming preliminary injunction hearing.

McPhee has been in contact with the FTC through attorneys Andrew Cove and DJ Poyfair. To date, Mr. Cove and Mr. Poyfair have accepted service of process on behalf of McPhee, defended Zanghi's deposition, counseled McPhee and Zanghi in preliminary settlement discussions, and assisted them in preparing their respective sworn financial statements and the sworn financial statements for eight of the nine MOBE corporate defendants.³

As required by the TRO, McPhee has agreed to repatriate all of the liquid assets that belong to him and his corporate entities,⁴ but states that he needs further assistance of counsel to complete this task. Mr. Cove and Mr. Poyfair are willing to provide this assistance and to continue advising McPhee and Zanghi on a potential settlement, but request \$50,000 to cover future fees and expenses they will incur. McPhee and Zanghi therefore request that, after the

³ The FTC has not yet received the financial statements for MOBE Inc., but McPhee has indicated that this was an oversight and the statement for MOBE Inc. will be provided shortly.

⁴ Specifically, McPhee has agreed to use his best efforts to repatriate the amounts listed in Items 9 and 10 of his sworn financial statement and in Item 20 of the sworn financial statements for each of the MOBE corporate defendants. The efforts may include making telephone calls and/or executing declarations or other documents consenting to or affirmatively instructing third party institutions to transmit account balances to U.S. accounts.

foreign assets are repatriated, that \$50,000 from those repatriated assets be unfrozen to pay Mr. Cove's and Mr. Poyfair's future fees and expenses incurred in completing the repatriation of foreign funds and counseling McPhee and Zanghi in settlement negotiations with the FTC for a period of 60 days. If the Court grants this request, Mr. Cove's and Mr. Poyfair's representation of McPhee and Zanghi would be limited to just these two tasks, and they would not agree to generally represent McPhee and Zanghi for the duration of the litigation unless the Court approves further releases of frozen funds for payment of legal fees.

Although the FTC typically opposes the use of frozen funds to pay defendants' attorney fees, there is good cause for the \$50,000 release sought here. McPhee and the MOBE corporate defendants have substantial assets located in Canada, Australia, Malaysia, Mauritius, and Bulgaria. Without McPhee's cooperation in repatriating these foreign assets, the Receiver would almost certainly incur costs that far exceed \$50,000 to repatriate these assets through retaining foreign lawyers and instituting legal proceedings in these countries. As such, unfreezing \$50,000 of the foreign assets to secure the assistance of counsel in repatriating assets will meaningfully increase the amount of money that will be available for consumer redress if the FTC prevails on the merits of this action.⁵

WHEREFORE, for the foregoing reasons, the FTC respectfully requests that the Court postpone the preliminary injunction hearing for a period of approximately 60-days to allow the parties to discuss settlement, extend the TRO as to Defendants Matthew Lloyd McPhee and the MOBE corporate defendants so that it expires on the date of the rescheduled

⁵ Because the assets are held in foreign banks, it is possible that McPhee's best efforts may not be sufficient to cause all of these assets to be repatriated. In the event that McPhee is unable to repatriate all of the liquid assets identified in the financial statements, the parties agree that the Receiver should only release the \$50,000 for attorneys' fees if the Receiver determines that McPhee has used his best efforts to repatriate his liquid assets.

preliminary injunction hearing, and enlarge the time for Defendants to respond to the FTC's Complaint so that their responses are due no later than seven days prior to the rescheduled preliminary injunction hearing. The FTC also requests that the Court direct the Receiver to unfreeze \$50,000 from defendants' repatriated funds to be used to pay legal fees and expenses for Defendants McPhee and Susan Zanghi once the Receiver concludes that Defendant McPhee has used his best efforts to repatriate all foreign-held assets identified in McPhee's and the MOBE corporate defendants' financial disclosures.

Respectfully Submitted,

Dated: July 3, 2018

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FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2018, I served the foregoing document via the methods indicated below.

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Dated: July 3, 2018

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