

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

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

MOBE LTD., et al.

Defendants.

RECEIVER'S MOTION TO ESTABLISH CLAIMS PROCEDURES

Mark J. Bernet (the "Receiver"), as receiver for MOBE, Ltd., MOBEProcessing.com, Inc., Transaction Management USA, Inc., MOBETraining.com, Inc., Mattlloydpublishing.com, Pty Ltd., 9336-0311 Quebec, Inc., MOBE Pro Limited, MOBE Inc., and MOBE Online Ltd. (collectively the "Receivership Entities" or "MOBE"), moves the Court for entry of an order establishing claims procedures for potential non-consumer creditors of the Receivership entities. As discussed more fully below, the Receiver is largely finished with collecting assets, and it now is appropriate for the Court to establish summary claims administration procedures so that the Receiver can pay legitimate claims, and then wind up the receivership estates. The Receiver proposes that this process happen in two stages: First, the Receiver would evaluate any outstanding claims asserted by non-consumer creditors, and second, after paying allowed claims, the Receiver would turn over the remaining funds in the receivership estates to the FTC for the administration of redress to MOBE consumers.

In support of this motion the Receiver submits the accompanying memorandum.

MEMORANDUM OF LAW

The Receiver is largely finished with the "asset-accumulation" phase of the receivership and now believes it appropriate for the Court to establish summary claims administration procedures, so that the funds the Receiver has collected can be distributed and the receivership concluded. The Court has ruled that MOBE caused more than USD \$318 million in consumer injury by falsely claiming that consumers would earn substantial income by investing large sums of money on MOBE's costly product.¹ MOBE's consumers are entitled to be equitably redressed, and their claims will exceed the \$15.6 million in receivership assets available for redress. The only question that needs to be answered before consumers can receive redress is whether any non-consumer creditors have claims taking priority over the claims of MOBE's consumers.

The Receiver proposes that the Court implement summary claims administration procedures that will permit persons who were not consumer victims of the MOBE fraud to present claims so that the Receiver can assess the validity of the claims and whether any such claims should take priority over the claims of MOBE's consumer victims. The proposed procedures would require potential non-consumer creditors to file claims with the Receiver by a specific date; in the event a potential creditor and the Receiver could not reach agreement on the legitimacy or amount of a claim, then the Receiver's proposed procedures would permit the potential creditor to petition the Court to resolve the matter.

¹ See Dkt 260, Final Order *adopting* Report and Recommendation, Dkt. 259 at 9, 15.

At the conclusion of the claims administration process the Receiver would turn over the remaining receivership assets to the FTC, which would pool them with assets recovered in related enforcement actions and then distribute them to MOBE's consumers. The FTC then would administer redress to MOBE's consumers based on the records it and the Receiver have accumulated. Because these records already show the identity of MOBE's consumers and the amount they paid, consumers will not be required to file claims or take any action to be eligible for consumer redress.

BACKGROUND

The Federal Trade Commission (the "FTC") filed its Complaint on June 4, 2018, alleging that the Defendants engaged in unfair and deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. §45(a). (doc. no. 1). The FTC also filed *Plaintiff's Ex Parte Motion and Memorandum of Law in Support of a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue* (doc. no. 3) ("Motion for TRO") and a separate *Plaintiff's Application for a Temporary Receiver* (doc. no. 6) ("Application for Receiver").

The FTC alleged the Defendants operated a fraudulent internet business education program called "My Online Business Education, " or "MOBE," through which the Defendants claimed they would reveal a "simple 21-step system that will show consumers how to quickly and easily start their own online business and make substantial income." However, the FTC further alleged that, contrary to the Defendants' representations, "the vast majority of consumers who join the MOBE program and purchase ... costly MOBE memberships lose money." According to the FTC, the "internet business" is nothing more

than charging consumers thousands of dollars to watch online videos that ultimately advise consumers to go and recruit other consumers to pay thousands of dollars to watch the same videos. The FTC further alleged that by operating the business in the fashion they operated it, the Defendants violated Section 5(a) of the FTC Act, 15 U.S.C.A. §45(a).

On June 5, 2018, the Court granted the Motion for TRO and approved the Application for Receiver by entering its *Order Granting Ex Parte Temporary Restraining Order* (the "TRO") (doc. no. 13). Among other things, the TRO (i) enjoined the Defendants from violating Section 5(a) of the FTC Act, (ii) enjoined the Defendants from transferring, liquidating or otherwise encumbering or disposing of any of their assets, and (iii) appointed the Receiver as the temporary receiver of the Receivership Entities and directed him to implement the TRO by shutting down their operations pending an evaluation as to whether they could be operated "legally and profitably." TRO, pp. 5 & 13.

The TRO was converted into a series of agreed preliminary injunctions, containing essentially the same terms as were contained in the TRO. *See Order* dated August 20, 2018 (stipulated preliminary injunction pertaining to Russell W. Whitney) (doc. no. 94); *Order* dated August 20, 2018 (stipulated preliminary injunction pertaining to Susan Zanghi) (doc. no. 95); *Order Approving Revised Stipulated Preliminary Injunction* (the 'Stipulated Preliminary Injunction') dated September 10, 2018 (stipulated preliminary injunction pertaining to Matthew Lloyd McPhee and the MOBE Defendants) (doc. no. 107).

On August 16, 2018, the Receiver filed his *Receiver's Initial Report* (doc. no. 90), which details the Receiver's activities, opinions and preliminary conclusions as of the filing date. The *Receiver's Initial Report* is adopted and made a part of this motion. Among

other things, the Receiver concluded the Receivership Entities could not be operated "legally and profitably," and he accordingly terminated their internet business operations.

On March 5, 2020, the Court entered an Order (doc. no. 258) approving the *Consent Motion for Entry of Stipulated Final Order for Permanent Injunction and Monetary Judgment as to Matthew Lloyd McPhee*. The Court's Order implemented a settlement between the Plaintiff and the Defendant McPhee, calling for the following:

- A permanent injunction against the Defendant McPhee enjoining him from creating, advertising, marketing, promoting, offering for sale, or selling, any "Business Coaching Program" or any "Investment Opportunity."
- A money judgment in favor of the FTC and against the Defendant McPhee for \$318,512,336, representing the net sum the FTC and the Defendant McPhee agreed was raised through MOBE's operations. The Defendant McPhee also was directed to deliver certain assets to the Receiver.

On April 13, 2020, the Court entered an *Order* (doc. no. 260) adopting a *Report and Recommendation* (doc. no. 259), amounting to a default judgment against the Receivership Defendants. Substantively, the Court's order is essentially identical to the agreed order against the Defendant McPhee, in that (i) the Receivership Defendants are permanently enjoined from creating, advertising, marketing, promoting, offering for sale, or selling, any "Business Coaching Program" or any "Investment Opportunity," and (ii) the FTC obtained a money judgment for \$318,512,336.

During the entirety of the case the Receiver collected Assets of the Defendants and monetized them. The Receiver anticipates having approximately \$15.6 million that can be

used to pay claims of creditors and consumer victims. The Receiver believes he has paid all receivership expenses current but believes that the Court should create a process for potential non-consumer creditors to file and prosecute claims if they believe they are still owed money by the Receiver.

THE COURT SHOULD ESTABLISH
SUMMARY CLAIMS ADMINISTRATION PROCEDURES

District courts have broad powers and wide discretion to determine relief in equity receiverships. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992), *SEC v. Wencke*, 783 F.2d 829 (9th Cir. 1986). This discretion derives from the inherent powers of an equity court to fashion relief, *Elliott*, 953 F.2d at 1566, and any action by a trial court in supervising an equity receivership is committed to the sound discretion of the court and will not be disturbed unless there is a clear showing of abuse. *SEC v. Pension Fund of America LC*, case no. 09-10241 (11th Cir. May 6, 2010), citing *SEC v. Safety Financial Services, Inc.*, 674 F. 2d 368, 373 (5th Cir. 1982). In granting relief in an equity receivership, it is appropriate for the district court to fashion and utilize summary procedures, because summary procedures reduce the time necessary to settle disputes, decrease litigation costs, and prevent dissipation of receivership assets. *Elliott*, 953 F.2d at 1566. Parties subject to summary procedures are entitled to the due process right to notice and an opportunity to be heard; the particular process that is due varies according to the nature of the right and the type of proceeding. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487 (1985); *Matthews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976). Generally, a district court's use of summary procedures complies with due process if the parties are permitted "to present evidence when the facts are in dispute

and to make arguments regarding those facts." *Elliott*, 953 F. 2d at 1567. However, parties proceeding under summary procedures are not entitled to a hearing if there is no factual dispute. *Codd v. Velger*, 429 U.S. 624, 97 S. Ct. 882 (1977) (discharged employee who agreed with stated reason for termination has no right to any hearing).

The Receiver proposes to treat the "Claims"² of "Consumers" separately from those of "Non-Consumer Creditors." "Consumers" are those persons or entities who paid money to MOBE to sign up for the online marketing program, or who paid money for some of the ancillary products or services, such as lead lists, seminars or personal coaching.³ In most FTC enforcement cases the FTC administers funds collected during the case for the benefit of injured consumers, and there is no reason in this case to deviate from that procedure. The Receiver and the FTC have already collected sufficient information concerning the identity of consumer claimants and their amount of injury to administer redress. Requiring MOBE consumers to submit Claim Forms would impose unnecessary administrative costs without providing any useful information. It could also result in an inequitable distribution if it excluded consumers with valid claims because the consumers failed to return a Claim Form.⁴

Moreover, in separate enforcement actions the FTC has already collected more than \$5 million from lawsuits against MOBE affiliates and one of MOBE's payment

² Attached as Exhibit "A" is a list of defined terms utilized in this motion.

³ As outlined in the *Receiver's Initial Report* (doc. no. 90), consumers were encouraged to become Silver, Gold, Titanium, Platinum and Diamond level members, with each membership costing progressively more money.

⁴ There are many reasons a consumer might not return a Claim Form. For example, a consumer who had been swindled by MOBE understandably might be suspicious of unsolicited mail that requests personal information about the consumer.

processors.⁵ The FTC intends to use this money to provide redress to MOBE consumers. It would be a waste of receivership resources for the Receiver to administer a separate redress program for the same group of consumers.

Non-Consumer Creditors, however, should be afforded an opportunity to present their Claims to the Receiver for consideration before the receivership is wound up. In denying Synovus' motion to intervene, the Court already acknowledged that potential third-party creditors can have their claims adjudicated through a summary claims process. Dkt 246 at 9-10.

The Receiver has collected and liquidated Assets of the Receivership Defendants and believes that he now has recovered almost all that can be recovered in a cost-effective manner. As part of this process the Receiver incurred expenses. The Receiver believes that all of the post-receivership expenses have been paid or, in the case of professional fees, are awaiting approval for payment from the Court.⁶ However, given that the receivership is now in its final stages the Receiver submits it is appropriate for all potential Non-Consumer Creditors to submit their Claims to the Receiver for final consideration. The Receiver therefore requests entry of an order establishing summary claims administration procedures, substantially in the form of the attached Exhibit "C" containing the following provisions:

⁵ See *FTC v. Giannulis*, 6:20-cv-371 (M.D. Fla. March 3, 2020); *FTC v. Bransfield*, 6:20-cv-372 (M.D. Fla. March 3, 2020); and *FTC v. Allied Wallet, Inc.*, 2:19-cv-4355 (C.D. Cal. May 21, 2019).

⁶ The Receiver's new accounting firm, Rehmann Robson, has prepared tax returns but has not yet applied for payment. The Receiver estimates that its fees will be in the range of \$35,000.

A. Notice Provisions.

Within 30 days of the date the Court enters an order granting this motion, the Receiver and the Plaintiff should provide notice of the provisions contained in the order as follows:

1) The Receiver should be directed to post a copy of the court's order and of a Claim Form⁷ on his website, www.bernet-receiver.com, and he also should post a copy of the order and Claim Form, or a link to a copy of the order and Claim Form, on his Facebook, Instagram and Twitter accounts;

2) The Receiver should be directed to compile a list of all known actual or potential Non-Consumer Creditors, to include name and contact information (physical address, e-mail address and/or facsimile number), and provide a copy of the order and Claim Form, or a statement containing a link to the order and Claim Form, to each person identified on said list.

Upon providing notice as described above, the Receiver should be directed to file a Notice of Compliance with the Court, containing a list of all actual or potential Non-Consumer Creditors to whom notice was provided, the date on which notice was provided, and the manner in which notice was provided, to include the physical address, e-mail address and/or facsimile number utilized.

⁷ The Receiver proposes that the Court direct all Non-Consumer Creditors to use the Claim Form attached as Exhibit "B."

B. Claims Bar Date.

The Court should establish a specific Claims Bar Date, possibly 30 days after the date on which the Receiver provides notice to Non-Consumer Creditors as described above, by which all Non-Consumer Creditors would be required to present a completed Claim Form to the Receiver so that he receives it by 5:00 p.m. Eastern Standard Time on the Claims Bar Date. The completed Claim Form, with all required attachments, would need to be received by the Receiver , by e-mail or facsimile, at the following addresses or number:

Mark J. Bernet, Receiver
E-mail mark.bernet@akerman.com,
brooke.rollins@akerman.com, & mary.mclees@akerman.com
Facsimile no. (813) 223-2837

The Court should authorize the Receiver, after consulting with the Plaintiff, to extend the Claims Bar Date for a reasonable period of time for any particular Non-Consumer Creditor in the event of unusual or extraordinary circumstances.

C. Information to be Provided in Claim Form.

The Court should direct all Non-Consumer Creditors who present a Claim Form to the Receiver and the Plaintiff to provide all information requested therein and attach to their Claim Form all supporting materials as requested therein. All Claim Forms should be signed under penalty of perjury by the Non-Consumer Creditor presenting the Claim Form, or by an officer, manager or other responsible person on behalf of the Non-Consumer Creditor presenting the Claim Form. Material modifications to the Claim Form should constitute grounds for disallowing the Claim. The Court should authorize the Receiver and/or the Plaintiff to request additional information from any Non-Consumer

Creditor pertaining to the validity, extent, legality, enforceability or amount set forth in such Non-Consumer Creditor's Claim Form, and in this regard, the Receiver and the Plaintiff should be authorized to conduct discovery relating to the Non-Consumer Creditor's claim or its relationship with the Corporate Defendants, in accordance with the following rules of civil procedure (and all corresponding local rules): Rule 30 (depositions), Rule 33 (interrogatories), Rule 34 (document requests), and Rule 37 (compelling discovery/protective orders). The Court should direct that failure to cooperate with the Receiver or the Plaintiff in connection with any such request for additional information would constitute grounds for disallowing the Claim of the non-cooperating Non-Consumer Creditor.

D. Receiver to File Receiver's Claim Report.

The Court should direct the Receiver to analyze each Claim Form timely received. The Receiver and the Plaintiff, independently or jointly, should be authorized to contact Non-Consumer Creditors concerning their Claim Forms to request additional information or otherwise to obtain clarity concerning the Claim; in particular, the Receiver and the FTC should be permitted to request from a Non-Consumer Creditor supporting documentation and legal authority showing the validity and legality of the Non-Consumer Creditor's Claim.

The Court should direct the Receiver to consult with the Plaintiff and then prepare and file, and serve on all Interested Parties, his Receiver's Claim Report describing each Claim Form received, to include the identity of the Non-Consumer Creditor, the amount of the Claim as set forth on the Claim Form, a narrative description of the nature of the Claim,

and the Receiver's determination as to whether the Claim is allowed, disallowed, or allowed in part and disallowed in part. The Receiver suggests that the Court establish a deadline for the Receiver to file and serve the Receiver's Claim Report for 45 days after the Claims Bar Date, subject to an extension if needed for good cause.

E. Procedures after Receiver's Claim Report.

The claims administration procedures should provide that after the Receiver files his Claims Report, the Plaintiff would have 14 days to file a statement noting whether it objects to any of the Claims that the Receiver has decided to allow or disallow. After the Plaintiff files its statement, all Claims the Receiver allows, as set forth in the Receiver's Claims Report, and to the extent (i) not objected to by the Plaintiff, and (ii) arising after the commencement of this lawsuit, should be deemed allowed and paid from the assets of the Receivership estates. The holder of any Claim that is disallowed by the Receiver, in whole or in part, should be permitted to object to the Receiver's determination by filing a written objection with the Court and serving a copy on the Receiver and the Plaintiff, thereby initiating a Contested Matter. The holder of any Non-Consumer Creditor Claim that has been allowed by the Receiver but objected to by the Plaintiff should be directed to file a response to the Plaintiff's objection, serving a copy on the Receiver and the Plaintiff, which also would initiate a Contested Matter. The deadline for filing an objection to the Receiver's Claim Report should be set by the Court at 30 days after the time the Receiver files his Receiver's Claim Report, and the deadline for filing a response to the Plaintiff's objection to an allowed Claim should be set at 30 days after the Plaintiff files its objections. Any objection filed after the deadlines established herein should be overruled as untimely.

The Receiver or the Plaintiff should advise the Court when a Contested Matter is ripe for adjudication. In this regard, the Receiver recommends that the parties proceed under Rule 56, Fed R. Civ. P., such that the Receiver, the Plaintiff, and/or the Non Consumer Victim Creditor initiating a Contested Matter would be authorized to file a motion for summary judgment. The Court then would consider motions filed in any Contested Matter, with or without oral argument at the Court's discretion, under the standards established in Rule 56, Fed. R. Civ. P., and grant any such motion if the Court finds there is no genuine dispute as to any material fact, and that the movant is entitled to the requested relief as a matter of law. Any Contested Matter not resolved under Rule 56, Fed. R. Civ. P., should be set for a final evidentiary hearing.

In the event Non-Consumer Creditors initiating a Contested Matter believe that they cannot present facts essential to justify a motion for summary judgment, or that they otherwise believe are essential to develop their Claim for adjudication, then they should be authorized to file a motion with the Court seeking leave to conduct discovery. Any such motion should identify (i) specific material facts that the Non-Consumer Creditor seeks to discover, (ii) the form of discovery the Non-Consumer Creditor seeks to undertake, and (iii) a narrative explanation as to why the proposed discovery is reasonably calculated to demonstrate those specific material facts.

F. Payment of Allowed Claims.

Upon payment of any allowed Receivership Claim or Receivership Claim from a Contested Matter ultimately held in favor of a Non-Consumer Creditor by the Court, and after payment or settlement of Administrative Fees separately approved by the Court, the

Court should direct the Receiver to distribute any remaining assets or funds to the Plaintiff and terminate the Receivership pursuant to the Court's prior orders.

CONCLUSION

The case is nearing its end and the Receiver is working to wind up all open matters. Non-Consumer Creditors, or potential Non-Consumer Creditors, should be provided an opportunity to present their claims to the Receiver for consideration. The Court therefore should adopt summary claims procedures to be followed by Non-Consumer Creditors, the Receiver, and the Plaintiff, so that claims can be presented and resolved. The Receiver expects most, if not all, of the claims presented by potential Non-Consumer Creditors could be resolved without court involvement, although the Receiver's proposed summary claims procedures to be utilized in the case of a dispute would satisfy due process requirements. The proposed summary claims procedures would not apply in the case of Consumer Creditors, all of whom will be treated by the Plaintiff under its customary procedures.

LOCAL RULE 3.01(g) CERTIFICATION

The Receiver certifies that, prior to filing this motion, he consulted with the Plaintiff and the Defendants to determine whether they oppose the relief requested herein. The Plaintiff advises that it supports the requested relief. The Defendant Ingrid Whitney, as the Personal Representative of the Estate of Russell W. Whitney, also advises that she does not oppose the requested relief. The Defendant Matthew Lloyd McPhee, a/k/a Matt Lloyd, also advises that he does not oppose the requested relief. All other Defendants have been defaulted by the Clerk.

WHEREFORE, the Receiver requests that the Court enter an order establishing summary claims procedures, substantially in the form of the attached Exhibit "C."

Dated: Tampa, Florida
November 16, 2020

/s/ Mark J. Bernet

Mark J. Bernet, Receiver
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Tampa, Florida 33602
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Secondary: brooke.rollins@akerman.com
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Secondary: mary.mclees@akerman.com

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was served by CM/ECF to Benjamin R. Davidson, Esquire, and Sung W. Kim, Esquire, Federal Trade Commission, Mail Stop CC-8528, 600 Pennsylvania Avenue NW, Washington, DC 20580, e-mails: bdavidson@ftc.gov and skim6@ftc.gov; and J. Douglas Baldrige, Esquire, Venable, LLP, 600 Massachusetts Avenue NW, Washington, DC 20001, email: jdbaldrige@venable.com; and by email to Matthew Lloyd McPhee, e-mail: workwithmattlloyd@gmail.com, this 16th day of November, 2020.

/s/ Mark J. Bernet

cc: Andrew N. Cove, Esquire (via e-mail to ANC@covelaw.com) (Mr. Cove has not appeared in this case on behalf of any party)

EXHIBIT "A" -- DEFINITIONS

For the purpose of the *Receiver's Motion to Establish Claims Procedures*, the following definitions apply:

1. "**Administrative Fees**" means any fees and/or costs owed to the Receiver or Special Receiver, or to professionals retained by the Receiver or Special Receiver, in performance of the duties and responsibilities of the Receiver and Special Receiver under the authority previously granted by the Court (doc. nos. 107 and 182), to the extent such fees or costs have not been settled, and which will be the subject of separate court orders.

2. "**Business Coaching Program**" means any program, plan, or product, including those related to work-at-home opportunities, that is represented, expressly or by implication, to train or teach a participant or purchaser how to establish a business or earn money or other consideration through a business or other activity.

3. "**Claim**" means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

4. "**Claim Form**" means the form attached to the *Receiver's Motion to Establish Claims Procedures* as Exhibit "B." Non-Consumer Creditors who intend to file a Claim Form may contact the Receiver to obtain a version of the Claim Form in a fillable format.

5. "**Consumer**" means any person or entity who paid money to any of the MOBE Receivership Defendants or any related entity (i) to enroll in a Business Coaching Program or an Investment Opportunity, or (ii) to obtain goods or services related to a Business Coaching Program or an Investment Opportunity.

6. **"Contested Matter"** means any proceeding brought in the Court whereby (i) a Non-Consumer Creditor objects to the Receiver's disallowance of such Non-Consumer Creditor's Claim, whether in whole or in part, in a Receiver's Claim Report, or (ii) the FTC objects to the Receiver's allowance of any Claim in favor of any Non-Consumer Creditor.

7. **"Defendant(s)"** means Receivership Defendants and Individual Defendants, individually, collectively, or in any combination.

8. **"Individual Defendant(s)"** means Matthew Lloyd McPhee a/k/a Matt Lloyd, Susan Zanghi, and Ingrid Whitney (as personal representative of the Estate of Deceased Defendant Russell W. Whitney), individually, collectively, or in any combination.

9. **"Interested Parties"** means the Plaintiff, the Receiver, and all Non-Consumer Creditors who timely file a Claim with the Receiver and the Plaintiff.

10. **"Investment Opportunity"** means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

11. **"McPhee"** means Individual Defendant Matthew Lloyd McPhee, a/k/a Matt Lloyd.

12. **"Non-Consumer Creditor"** means any persons or entity who is not a Consumer and who has or claims to have a Claim against the Receiver, the Special Receiver or any of the Receivership Defendants.

13. **"Receiver"** means the receiver appointed in this action, Mark J. Bernet, and any deputy receivers that he names.

14. **"Receiver's Claim Report"** means a report to be filed by the Receiver analyzing Claim Forms received timely and determining whether each Claim Form timely received is allowed, disallowed, or allowed in part and disallowed in part.

15. **"Receivership Claim"** means any Claim asserted by any Non-Consumer Creditor, whether the claim arose prior to or during the pendency of the Receivership on or after June 5, 2018, with the exception of Administrative Fees.

16. **"Receivership Defendants"** or **"Receivership Entities"** means MOBE Ltd., MOBEProcessing.com, Inc., Transaction Management USA, Inc., MOBETraining.com, Inc., 9336-0311 Quebec Inc., MOBE Pro Limited, MOBE Inc., MOBE Online Ltd., Matt Lloyd Publishing.com Pty Ltd., and their subsidiaries, affiliates, successors, and assigns. as well as any other entity that has conducted any business related to Defendants' marketing and sale of Business Coaching Programs or Investment Opportunities to consumers, including receipt of Assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant.

17. **"Special Receiver"** means Burton W. Wiand, and any deputy special receivers that he names.

Exhibit B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

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

MOBE LTD., et al.

Defendants.

_____ /

CLAIM FORM FOR NON-CONSUMER CREDITORS

DO NOT FILE THIS CLAIM FORM WITH THE COURT.

FILL IN ALL THE INFORMATION REQUESTED BELOW. ALL DEFINED TERMS SHALL HAVE THE SAME MEANING AS IS SET FORTH IN THE COURT'S *ORDER ESTABLISHING CLAIMS PROCEDURES*, DATED _____, 2020.

THIS CLAIM FORM IS TO BE COMPLETED AND SUBMITTED TO THE RECEIVER AND THE PLAINTIFF ONLY BY "NON-CONSUMER CREDITORS." PLEASE CHECK THE DEFINITIONS TO DETERMINE WHETHER YOU QUALIFY AS A "NON-CONSUMER CREDITOR."

1. What is the name of the Non-Consumer Creditor filing this Claim Form?

Please list all other names by which this Non-Consumer Creditor is known.

2. What is the nature of your relationship with the Defendants and/or Receivership Entities?

3. Has this Claim been acquired from someone else?

- No
- Yes. If Yes, from whom?

4. Where should notices to the Non Consumer Creditor be sent?

Telephone: _____

Email: _____

5. Has anyone else filed a Claim Form for this Claim?

- No
- Yes. If Yes, who made the earlier filing?

6. How much is the Claim, in US Dollars? \$ _____

Does this amount include interest or other charges?

No

Yes. **If Yes, please attach a statement itemizing interest, fees, expenses, and all other charges included.**

7. What is the basis of the Claim? _____

(Examples: Goods sold, services rendered, money loaned, contract, etc.).

Attach copies of any documents supporting the Claim, including in particular any contract on which the Claim is based. PLEASE LIMIT DISCLOSING PERSONALLY IDENTIFIABLE INFORMATION.

8. State the nature and amount of all payments or other consideration you have received from the Defendants and/or Receivership Entities (e.g., wages, payments for services rendered, commissions, etc.) prior to June 5, 2018, and during the pendency of the Receivership.

When did the Claim arise?

9. Is all or part of the Claim secured?

No

Yes. The Claim is secured by a lien on the following property:

Attach copies of documents, if any, that show evidence of the existence and perfection of a lien or security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____

Amount of the Claim that is secured: \$ _____

Amount of the Claim that is unsecured: \$ _____

(SIGNATURE ON NEXT PAGE)

IMPORTANT: PLEASE READ BEFORE SIGNING:

I AM SUBMITTING THIS CLAIM FORM WITH THE UNDERSTANDING THAT IT MAY AFFECT ACTION BY THE RECEIVER, THE FEDERAL TRADE COMMISSION OR A FEDERAL COURT. I HAVE USED MY BEST EFFORTS TO OBTAIN THE INFORMATION REQUESTED IN THIS STATEMENT. THE RESPONSES I HAVE PROVIDED TO THE ITEMS ABOVE ARE TRUE AND CONTAIN ALL THE REQUESTED FACTS AND INFORMATION OF WHICH I HAVE NOTICE OR KNOWLEDGE. I HAVE PROVIDED ALL REQUESTED DOCUMENTS IN MY CUSTODY, POSSESSION, OR CONTROL. I KNOW OF THE PENALTIES FOR FALSE STATEMENTS UNDER 18 U.S.C. § 1001, 18 U.S.C. § 1621, AND 18 U.S.C. § 1623 (FIVE YEARS IMPRISONMENT AND/OR FINES). I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT.

Signature

Printed name

Date

Exhibit C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

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

MOBE LTD., et al.

Defendants.

**ORDER ESTABLISHING CLAIMS BAR DATE
AND CLAIMS ADMINISTRATION PROCEDURES
FOR NON-CONSUMER CREDITORS**

THIS CAUSE came on for consideration of the Receiver's Motion to Establish Claims Administration Procedures. By this motion the Receiver, Mark J. Bernet, requests that the Court establish a deadline for Non-Consumer Creditors (as defined below) to present their claims to the Receiver in writing, with documentation and evidence substantiating each alleged claim. The Receiver's motion does not address or affect the legal or equitable rights of Consumers harmed by acts and practices alleged in the Complaint of the Federal Trade Commission ("FTC" or "Plaintiff") against the Defendants. The Receiver further requests that the Court define procedures for the Receiver, the Plaintiff, and the Receivership Defendants to utilize to assess, adjudicate and administer the claims of any potential Non-Consumer Creditor, and to include court review if necessary. The Court makes the following findings and orders as set forth below.

FINDINGS AND CONCLUSIONS

1. This Court has jurisdiction over this matter.
2. The Court has entered a final order and judgment against the Defendants awarding the Plaintiff Federal Trade Commission \$318,512,336, which represents the amount of injury

suffered by consumers and the amount of unjust enrichment obtained by Defendants in connection with the practices alleged in the Complaint. Doc. 139, 242, 258, 260. The judgments are final, unappealed, and unappealable. As previously ordered, all money paid to the Commission pursuant to the final order against the Receivership Defendants may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. Doc. 260, Sec. IV.A.

3. To conclude the receivership, the Receiver will be required to pay legitimate receivership expenses, including any valid and enforceable claim held by potential third party creditors that are legally superior to the right of recovery of injured consumers. It therefore is appropriate for the Court to establish summary claims procedures to be employed to afford potential Non-Consumer Creditors the ability to present and prosecute a Claim.

4. District courts have broad powers and wide discretion to determine relief in equity receiverships. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Wencke*, 783 F.2d 829 (9th Cir. 1986). This discretion derives from the inherent powers of an equity court to fashion relief, *Elliott*, 953 F.2d at 1566, and any action by a trial court in supervising an equity receivership is committed to the sound discretion of the court and will not be disturbed unless there is a clear showing of abuse. *SEC v. Pension Fund of America LC*, case no. 09-10241 (11th Cir. May 6, 2010), citing *SEC v. Safety Financial Services, Inc.*, 674 F.2d 368, 373 (5th Cir. 1982).

5. In granting relief in an equity receivership, it is appropriate for a district court to fashion and utilize summary procedures, because summary procedures reduce the time necessary to settle disputes, decrease litigation costs, and prevent dissipation of receivership assets. *Elliott*, 953 F.2d at 1566. Parties subject to summary procedures are entitled to the due process right to notice and an opportunity to be heard; the particular process that is due varies according to the

nature of the right and the type of proceeding. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487 (1985); *Matthews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976).

DEFINITIONS

For the purpose of this Order, the following definitions apply:

1. "**Administrative Fees**" means any fees and/or costs owed to the Receiver or Special Receiver, or to professionals retained by the Receiver or Special Receiver, in performance of the duties and responsibilities of the Receiver and Special Receiver under the authority previously granted by the Court (doc. nos. 107 and 182), to the extent such fees or costs have not been settled, and which will be the subject of separate court orders.

2. "**Business Coaching Program**" means any program, plan, or product, including those related to work-at-home opportunities, that is represented, expressly or by implication, to train or teach a participant or purchaser how to establish a business or earn money or other consideration through a business or other activity.

3. "**Claim**" means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

4. "**Claim Form**" means the form attached hereto as Exhibit "1." Non-Consumer Creditors who intend to file a Claim Form may contact the Receiver to obtain a version of the Claim Form in a fillable format.

5. "**Consumer**" means any person or entity who paid money to any of the MOBE Receivership Defendants or any related entity (i) to enroll in a Business Coaching Program or an Investment Opportunity, or (ii) to obtain goods or services related to a Business Coaching Program or an Investment Opportunity.

6. **"Contested Matter"** means any proceeding brought in the Court whereby (i) a Non-Consumer Creditor objects to the Receiver's disallowance of such Non-Consumer Creditor's Claim, whether in whole or in part, in a Receiver's Claim Report, or (ii) the FTC objects to the Receiver's allowance of any Claim in favor of any Non-Consumer Creditor.

7. **"Defendant(s)"** means Receivership Defendants and Individual Defendants, individually, collectively, or in any combination.

8. **"Individual Defendant(s)"** means Matthew Lloyd McPhee a/k/a Matt Lloyd, Susan Zanghi, and Ingrid Whitney (as personal representative of the Estate of Deceased Defendant Russell W. Whitney), individually, collectively, or in any combination.

9. **"Interested Parties"** means the Plaintiff, the Receiver, and all Non-Consumer Creditors who timely file a Claim with the Receiver and the Plaintiff.

10. **"Investment Opportunity"** means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

11. **"McPhee"** means Individual Defendant Matthew Lloyd McPhee, a/k/a Matt Lloyd.

12. **"Non-Consumer Creditor"** means any persons or entity who is not a Consumer and who has or claims to have a Claim against the Receiver, the Special Receiver or any of the Receivership Defendants.

13. **"Receiver"** means the receiver appointed in this action, Mark J. Bernet, and any deputy receivers that he names.

14. **"Receiver's Claim Report"** means a report to be filed by the Receiver analyzing Claim Forms received timely and determining whether each Claim Form timely received is allowed, disallowed, or allowed in part and disallowed in part.

15. **"Receivership Claim"** means any Claim asserted by any Non-Consumer Creditor, whether the claim arose prior to or during the pendency of the Receivership on or after June 5, 2018, with the exception of Administrative Fees.

16. **"Receivership Defendants"** or **"Receivership Entities"** means MOBE Ltd., MOBEProcessing.com, Inc., Transaction Management USA, Inc., MOBETraining.com, Inc., 9336-0311 Quebec Inc., MOBE Pro Limited, MOBE Inc., MOBE Online Ltd., Matt Lloyd Publishing.com Pty Ltd., and their subsidiaries, affiliates, successors, and assigns. as well as any other entity that has conducted any business related to Defendants' marketing and sale of Business Coaching Programs or Investment Opportunities to consumers, including receipt of Assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant.

17. **"Special Receiver"** means Burton W. Wiand, and any deputy special receivers that he names.

ORDER

It is hereby ORDERED as follows:

A. Notice Provisions.

Within thirty days of the date of this Order the Receiver and the Plaintiff shall provide notice of the provisions contained in this Order as follows:

- 1) The Receiver shall post a copy of this Order on his website, www.bernet-receiver.com, and he also shall post a copy of this Order, or a link to a copy of this Order, on his Facebook, Instagram and Twitter accounts;
- 2) The Plaintiff shall post this Order on its website;

3) The Receiver shall compile a list of all known potential Non-Consumer Creditors, to include name and contact information (physical address, e-mail address and/or facsimile number), and provide a copy of this Order, or a statement containing a link to this Order, to each person identified on said list.

Upon providing notice as described above, the Receiver shall file a Notice of Compliance with the Court. The Notice of Compliance shall contain a list of all known potential Non-Consumer Creditors to whom notice was provided, the date on which notice was provided, and the manner in which it was provided, to include the physical address, e-mail address and/or facsimile number utilized.

B. Claims Bar Date.

All Non-Consumer Creditors shall present a completed Claim Form to the Receiver **so that he receives it by 5:00 p.m. Eastern Standard Time on _____ 2020**. The completed Claim Form, with all required attachments, must be transmitted by e-mail or facsimile to the Receiver, Mark J. Bernet, e-mail mark.bernet@akerman.com, brooke.rollins@akerman.com, & mary.mclees@akerman.com, facsimile no. (813) 223-2837.

In the event of extraordinary circumstances, and after consulting with the Plaintiff, the Receiver may extend the deadline described herein for any particular Non-Consumer Creditor.

Consumers harmed by the acts or practices alleged in the Complaint shall not provide any Claim Form to the Receiver.

C. Information to be Provided in Claim Form.

Non-Consumer Creditors who present a Claim Form to the Receiver shall provide all information requested therein and shall attach to their Claim Form all supporting materials as requested therein. All Claim Forms shall be signed under penalty of perjury by the Non-Consumer

Creditor presenting the Claim Form, or by an officer, manager or other responsible person on behalf of the Non-Consumer Creditor presenting the Claim Form. Material modifications to the Claim Form will constitute grounds for disallowing the Claim. The Receiver and/or the Plaintiff may request additional information from any Non-Consumer Creditor pertaining to the validity, extent, legality, enforceability or amount set forth in such Non-Consumer Creditor's Claim Form, and in this regard, the Receiver and the Plaintiff shall be entitled to conduct discovery relating to the Non-Consumer Creditor's claim or its relationship with the Receivership Defendants, in accordance with the following rules of civil procedure (and all corresponding local rules): Rule 30 (depositions), Rule 33 (interrogatories), Rule 34 (document requests), and Rule 37 (compelling discovery/protective orders). Failure to cooperate with the Receiver or the Plaintiff in connection with any such request for additional information will constitute grounds for disallowing the Claim of the non-cooperating Non-Consumer Creditor.

D. Receiver to File Receiver's Claim Report.

The Receiver shall analyze each Claim Form timely received. The Receiver and the Plaintiff, independently or jointly, may contact Non-Consumer Creditors concerning their Claim Forms to request additional information or otherwise to obtain clarity concerning the Claim; in particular, the Receiver and the Plaintiff may request from a Non-Consumer Creditor supporting documentation and legal authority showing the validity and legality of the Non-Consumer Creditor's Claim. By no later than _____, 2021, and after consulting with the Plaintiff, the Receiver shall file and serve on all Interested Parties his Receiver's Claim Report describing each Claim Form received, to include the identity of Non-Consumer Creditors who filed Claims, the amount set forth on each Claim Form, a general

narrative description of each Claim presented, and the Receiver's determination as to whether the Claim has been allowed, disallowed, or allowed in part and disallowed in part.

E. Procedures after Receiver's Claim Report.

After the Receiver files his Claims Report, the Plaintiff shall have 14 days to file a statement noting whether it objects to any of the Claims that the Receiver has decided to allow in whole or in part. After the Plaintiff files its statement, all Claims the Receiver allows, as set forth in the Receiver's Claims Report, and to the extent (i) not objected to by the Plaintiff, and (ii) arising after the commencement of this lawsuit, shall be deemed allowed and paid from the assets of the receivership estates. The holder of any Claim that is disallowed by the Receiver, in whole or in part, shall be permitted to object to the Receiver's determination by filing a written objection with the Court and serving a copy on the Receiver and the Plaintiff, thereby initiating a Contested Matter. The holder of any Non-Consumer Creditor Claim that has been allowed by the Receiver but objected to by the Plaintiff shall file a response to the Plaintiff's objection, serving a copy on the Receiver and the Plaintiff, which also will initiate a Contested Matter. The deadline for a Non-Consumer Creditor to file an objection to the Receiver's Claim Report shall be 30 days after the time the Receiver files his Receiver's Claim Report, and the deadline for a Non-Consumer Creditor to file a response to the Plaintiff's objection to an allowed Claim shall be 30 days after the Plaintiff files its objections. Any objection filed after the deadlines established herein shall be overruled as untimely.

The Receiver or the Plaintiff shall advise the Court when a Contested Matter is ripe for adjudication by the Court. In this regard, Rule 56, Fed R. Civ. P. shall apply, and the Receiver, the Plaintiff, and/or the Non Consumer Victim Creditor initiating a Contested Matter may file a motion for summary judgment. The Court shall consider motions filed in any Contested Matter,

with or without oral argument at the Court's discretion, under the standards established in Rule 56, Fed. R. Civ. P., and shall grant any such motion if it finds there is no genuine dispute as to any material fact, and that the movant is entitled to the requested relief as a matter of law. Any Contested Matter not resolved under Rule 56, Fed. R. Civ. P., shall be set for a final evidentiary hearing.

In the event Non-Consumer Creditors initiating a Contested Matter believe that they cannot present facts essential to justify a motion for summary judgment, or that they otherwise believe are essential to develop their Claim for adjudication, then they may file a motion with the Court seeking leave to conduct discovery. Any such motion shall include (i) specific material facts that the Non-Consumer Creditor seeks to discover, (ii) the form of discovery the Non-Consumer Creditor seeks to undertake, and (iii) an explanation as to why the proposed discovery is reasonably calculated to demonstrate those specific material facts.

F. Payment of Claims and Expenses.

Upon payment of any allowed Receivership Claim or Receivership Claim from a Contested Matter ultimately held in favor of a Non-Consumer Creditor by the Court, and after payment or settlement of Administrative Fees separately approved by the Court, the Receiver shall distribute any remaining assets or funds to the Commission and terminate the Receivership pursuant to the Court's prior orders.

SO ORDERED this _____ day of _____, 2020,

United States District Judge