

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 AMENDED¹ MOTION TO APPROVE SETTLEMENT
WITH MATTHEW LLOYD MCPHEE AND RELATED ENTITIES**

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 authorizing him to enter into a settlement with the Defendant, Matthew Lloyd McPhee, a/k/a Matt Lloyd ("McPhee"), and various entities he owns or controls. As discussed more fully below, the Receiver, McPhee, and entities owned or controlled by McPhee have entered into a written Settlement Agreement that monetizes disparate assets for the benefit of the receivership estates, and the Receiver submits that it is in the best interest of the receivership estates for the Court to approve the settlement.

¹ Amended to correct page numbering.

The Receiver is prepared to give oral argument with respect to the issues raised herein, at the pleasure of the Court.

MEMORANDUM OF LAW

Prior to the commencement of this lawsuit McPhee utilized proceeds from MOBE as previously described (*see Receiver's Initial Report*, doc. no. 90) to purchase and control an empire consisting of cash and cash equivalents, investment accounts, and real and personal property located in jurisdictions including Malaysia, Hong Kong, Australia, Fiji, Canada, Costa Rica, the United Kingdom and Europe. The Receiver took possession of some of these assets, consisting principally of cash and cash equivalents and investment accounts, shortly after his appointment. The Receiver, however, found it more challenging to obtain control of other assets, such as resort hotels and condominiums located outside of the United States. After lengthy negotiations, the Receiver and McPhee have entered into a written Settlement Agreement creating a process for McPhee to surrender ownership of his remaining assets to the Receiver, while retaining the ability to purchase them back. The Receiver recommends that the Court approve the Settlement Agreement and direct the Receiver and McPhee to comply with its terms.

A. BACKGROUND

In its Complaint the FTC alleged that the Defendants operated a fraudulent internet business education program called “My Online Business Education,” or “MOBE,” through which the Defendants claimed they would teach consumers a “simple 21-step system that will show consumers how to quickly and easily start their own online

business and make substantial income.” 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 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).²

On June 5, 2018, the Court entered 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." The TRO has been converted into a series of agreed preliminary injunctions, containing essentially the same terms as were contained in the TRO.³

Under the *Order Approving Revised Stipulated Preliminary Injunction* dated September 10, 2018 (doc. no. 107) (the "Preliminary Injunction"), the Court directed the Receiver to accomplish the following:

² As discussed more fully in *Receiver's Initial Report* (doc. no. 90), the Receiver agrees with the FTC's allegations.

³ 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* dated September 10, 2018 (stipulated preliminary injunction pertaining to McPhee and the MOBE Defendants) (doc. no. 107).

B. Take exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or under the control of, any Receivership Entity, wherever situated.

C. Conserve, hold, manage, and prevent the loss of all Assets of the Receivership Entities, and perform all acts necessary or advisable to preserve the value of those Assets. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to the Receivership Entities. The Receiver shall have full power to sue for, collect, and receive, all Assets of the Receivership Entities and of other persons or entities whose interests are now under the direction, possession, custody, or control of, the Receivership Entities. Provided, however, that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer's debt to the Receivership Entities has resulted from the deceptive acts or practices or other violations of law alleged in the Complaint in this matter, without prior Court approval. . . .

* * *

L. Institute, compromise, adjust, appear in, intervene in, defend, dispose of, or otherwise become party to any legal action in state, federal or foreign courts or arbitration proceedings as the Receiver deems necessary and advisable to preserve or recover the Assets of the Receivership Entities, or to carry out the Receiver's mandate under this Order, including but not limited to, actions challenging fraudulent or voidable transfers.

The Receiver has moved diligently to implement the Preliminary Injunction.

**B. ASSETS SUBJECT TO A CONSTRUCTIVE TRUST
IN FAVOR OF THE RECEIVERSHIP ESTATES**

The Receiver has concluded that McPhee utilized proceeds of MOBE's operations to purchase certain "Assets" that properly belong to the receivership estates.⁴ The

⁴ The term "Asset" in the Preliminary Injunction is defined to mean "any legal or equitable interest in, right to, or claim to, any property . . ." A "claim" or "cause of action" thus is an "Asset" the Receiver is directed to administer, particularly because the Court specifically authorized the Receiver to "[i]nstitute . . . or otherwise become party to any legal action . . . the Receiver deems necessary and advisable to preserve or recover Assets."

Receiver asserted, and asserts, a constructive trust over these Assets.⁵ However, there are specific Assets over which the Receiver has not been able to obtain control, including the following:

- Apartment 7A, an apartment (or condominium) owned by McPhee or by his company CAIF Property Holdings Ltd., a Hong Kong limited company ("CAIF Hong Kong"), located at [REDACTED] [REDACTED] Kuala Lumpur, Malaysia;
- Apartment 15B, an apartment (or condominium) owned by McPhee or by his company CAIF Hong Kong, located at [REDACTED] [REDACTED] Kuala Lumpur, Malaysia;
- the Fiji Resort Interests, consisting of an interest in the Serenity Island resort hotel in Fiji; and
- the Sunset del Mar Interests, consisting of an interest in the Sunset del Mar resort hotel on the Pacific Ocean in Costa Rica.

⁵ A constructive trust

is one raised by equity in respect to property which has been acquired by fraud, or where, though acquired originally without fraud, it is against equity that it should be retained by him who holds it.

Quinn v. Phipps, 93 Fla. 805, 113 So. 419, 422 (1927). A constructive trust arises "in a situation where there is a wrongful taking of the property of another." *Abele v. Sawyer*, 750 So.2d 70 (Fla. 4th DCA 1999). The trust is "constructed" by equity to prevent an unjust enrichment of one person at the expense of another as the result of fraud, undue influence, abuse of confidence or mistake in the transaction that originates the problem. *Wadlington v. Edwards*, 92 So. 2d 629 (Fla. 1957). A constructive trust can be imposed against a recipient of funds who has not engaged in the wrongful conduct that justifies the imposition of the trust. *See Browning v. Browning*, 784 So.2d 1145 (Fla. 2d DCA 2001). A constructive trust arises solely by operation of law; it is a remedial device which is designed to restore property to the rightful owner, and to prevent unjust enrichment. *Provence v. Palm Beach Taverns, Inc.*, 676 So.2d 1022, 1025 (Fla. 4th DCA 1996); *see also In re Financial Federated Title and Trust, Inc.*, 347 F.3d 880 (11th Cir. 2003).

Additionally, the Receiver has asserted a constructive trust over certain tax refund claims owed to McPhee or one or more of the Receivership Entities by the governments of Australia and Malaysia.

The Receiver engaged in extensive research as to the nature of the Assets identified above, and has concluded that liquidating them without McPhee's assistance would be difficult, costly and time consuming, and likely would require the Receiver to engage attorneys, accountants and brokers in various foreign countries and possibly travel personally to some of them. Starting in December, 2018, the Receiver therefore explored whether McPhee, an Australian national residing in Kuala Lumpur, would assist with liquidating and collecting the Assets. After extensive negotiations, and subject to the approval of the Court, the Receiver and McPhee have reached an agreement.

C. THE PROPOSED SETTLEMENT

The Settlement Agreement containing the proposed settlement has been reduced to writing and signed by the Receiver, McPhee, and the various affected McPhee Entities. A copy of the Settlement Agreement is attached as Exhibit "A." The material portions of the proposed settlement are as follows:⁶

1. Apartment 7A. Apartment 7A is an apartment owned by McPhee or his company, CAIF Hong Kong, located at [REDACTED] [REDACTED] Kuala Lumpur, Malaysia. Under the proposed settlement, McPhee would immediately cause CAIF Hong Kong to execute all documents

⁶ While the Receiver believes that his summary explanation of the settlement is accurate, any discrepancies between his summary explanation and the actual Settlement Agreement will be resolved in favor of the Settlement Agreement. All parties therefore are encouraged to review the entire Settlement Agreement.

necessary to convey ownership of Apartment 7A to the Receiver (the "Apartment 7A Transfer Documents"), with the Apartment 7A Transfer Documents to be held in escrow pending performance under the Settlement Agreement. McPhee also would proceed under a pre-existing contract to sell Apartment 7A to a third party. The sale must net at least 620,550.00 Malaysian ringgits (approximately USD \$148,000). All transaction costs associated with the sale of Apartment 7A would be paid by McPhee/CAIF Hong Kong or the purchaser. If the net sale proceeds exceed MYR \$620,550.0, then the excess would be paid 40 percent to the Receiver, and 60 percent to pay MOBE's Malaysian tax liabilities or its Malaysian accountants. From the funds paid to the Receiver, USD \$35,000.00 would be paid to McPhee's attorney in the United States, Andrew N. Cove.⁷

McPhee would have 45 days after the entry of an order approving the proposed settlement to complete the sale to a third party, although the Receiver could extend the 45-day period at his discretion. If McPhee does not close on the sale of Apartment 7A within the 45-day period and does not obtain an extension from the Receiver, then the Receiver would be entitled to break the escrow of the Apartment 7A Transfer Documents and sell Apartment 7A to anyone, and retain all of the sale proceeds.

2. Apartment 15B. Apartment 15B is an apartment (or condominium) owned by McPhee or by his company CAIF Hong Kong, located

⁷ While Mr. Cove has not appeared in this case on behalf of McPhee, he has assisted with negotiating this proposed settlement, as well as with repatriating money from McPhee's overseas accounts.

at [REDACTED] Kuala Lumpur, Malaysia. Apartment 15B is McPhee's primary residence. Under the proposed settlement, McPhee would immediately cause CAIF Hong Kong to execute all documents necessary to convey ownership of Apartment 15B to the Receiver (the "Apartment 15B Transfer Documents"), with the Apartment 15B Transfer Documents to be held in escrow pending performance under the Settlement Agreement. McPhee/CAIF Hong Kong would receive from the Receiver the exclusive right to purchase Apartment 15B from the Receiver, extending for 270 days from the date on which the Court enters an order approving the proposed settlement. The purchase price for McPhee/CAIF Hong Kong to purchase Apartment 15B starts at 70 percent of the original price that McPhee paid to purchase Apartment 15B in 2016, or USD \$136,930.50,⁸ if purchased within 120 days of the date on which the Court approves this proposed settlement. The price would then increase as follows:

- USD \$146,711.25, if purchased between 121 and 165 days of the date on which the Court approves the proposed settlement;
- USD \$156,492.00 if purchased between 166 and 210 days of the date on which the Court approves the proposed settlement;
- USD \$166,272.75 if purchased between 211 and 255 days from the date on which the Court approves the proposed settlement; and

⁸ McPhee originally paid USD \$195,615.00 to purchase Apartment 15B.

- USD \$176,053.50 if purchased between 256 and 270 days of the date on which the Court approves the proposed settlement.

If McPhee does not purchase Apartment 15B within the 270-day period and does not obtain an extension from the Receiver, then the Receiver would be entitled to break the escrow of the Apartment 15B Transfer Documents and sell Apartment 15B to anyone, and retain all of the sale proceeds.

3. Fiji Resort Interests. McPhee controls a partial ownership interest in the Serenity Island resort hotel, located on Serenity Island, Fiji.⁹ Sala Levu Resort (Fiji) Limited ("Sala Levu") is a private limited liability company located in Fiji. Sala Levu owns an iTaukei lease of Serenity Island,¹⁰ on which it has constructed a resort hotel facility. The iTaukei lease is mortgaged in favor of a bank to secure repayment of a loan. The balance owed on the loan is approximately FIJ \$6.6 million (approximately USD \$3 million). Sala Levu is owned by Kadavulailai Development PTE Limited, a private limited company located in Fiji ("Kadavulailai"). Kadavulailai in turn is owned by joint venture partners (i) Seed Property Holdings (Fiji) Ltd. ("Seed"), a limited liability company located in Fiji and owned by a former MOBE employee, Athar Rshan, and (ii) CAIF Property Holdings – Fiji Ltd., a limited liability company located in

⁹ Fiji is a nation in the South Pacific Ocean, consisting of over 300 islands, located approximately 2,500 miles east of Australia. Fiji's main island is Vita Levu. Serenity Island is approximately 5 miles west of Vita Levu.

¹⁰ An "iTaukei lease" is a lease of native land granted to a third party by the iTaukei Land Trust Board ("TLTB"), a statutory board in Fiji vested with the control and administration of iTaukei land (formerly known as "native land"). The TLTB has the authority to alienate iTaukei lands by way of leases and licenses.

Hong Kong and owned by CAIF Hong Kong. CAIF Hong Kong is owned by McPhee.

As is clear, the ownership structure of the Fiji resort hotel is complex. At its core, the property is leased under an iTaukei lease from a government agency in Fiji to Salu Levu. The lease has numerous restrictions and conditions, including a requirement that the lessee under the lease (technically, Sala Levu) construct 205 villas on the beach by 2023 (there presently are 23 completed villas). Ownership of Sala Levu is restricted, such that it is not clear that the Receiver or any of the Receivership Entities can take title without triggering a default under the lease. Further, the agreement governing ownership of Kadavulailai requires certain capital contributions by the owners, and McPhee has not made required contributions, resulting in his ownership interest possibly being diluted.

McPhee and Athar Roshan, a former MOBE employee, invested in the Fiji resort hotel while operating MOBE. This was one of the resort hotels that they intended to use in connection with MOBE seminars. As reported in the *Receiver's Initial Report*, MOBE employed speakers who gave live seminars at various hotels located throughout the world. The purpose of these seminars, called "Supercharge Summits" and "Mastermind Summits,"¹¹ was to up-sell existing MOBE affiliates to higher-level memberships and to sell other add-on products,

¹¹ MOBE also conducted seminars it called "Home Business Summits," which were designed for the entry-level MOBE affiliates. These were not held in Fiji.

such as private mentorships.¹² However, after MOBE ceased to operate, the business model for the Fiji resort hotel was not viable because the resort was no longer used to host MOBE live events. Instead, Sala Levu has attempted to operate as a conventional resort hotel, but with only 23 operational villas its income-generating potential is limited. Moreover, McPhee has reported that its former General Manager, Brad Hall, and the accounting staff for the hotel, embezzled money from the hotel, leaving it in poor shape financially.¹³

Under the proposed settlement, McPhee and his companies would execute the CAIF Fiji/Kadavulailai Transfer Documents, thereby transferring to the Receiver all of CAIF Hong Kong's interest in CAIF Fiji. The CAIF Fiji/Kadavulailai Transfer Documents would be held in escrow. McPhee and CAIF Hong Kong would receive from the Receiver the exclusive right to purchase the Fiji Resort Interests back from the Receiver. This exclusive period would extend for 270 days from the earlier of (i) the date on which the Court enters an order approving a settlement between McPhee and the FTC, and (ii) October 1, 2019. The purchase price would be as follows:

- If McPhee and/or CAIF Hong Kong purchase the Fiji Resort Interests within 150 days from the date on which the Court enters

¹² Consumers initially paid \$49 to register for MOBE's 21-step system. They then were encouraged to pay money to upgrade to the Silver Masterclass, the Gold Masterclass, the Titanium Mastermind, the Platinum Mastermind, and ultimately the Diamond Mastermind. *See Receiver's Initial Report*, pp. 4-8. McPhee maintains that the seminars' purpose was broader than merely to upsell products.

¹³ The Receiver has reviewed financial records for the Fiji resort hotel. The hotel presently is losing money.

an order approving this proposed settlement, then the purchase price will be USD \$400,000;

- If McPhee and/or CAIF Hong Kong purchase the Fiji Resort Interests between 151 and 270 days from the date on which the Court enters an order approving this proposed settlement, then the purchase price will be USD \$450,000

During the 270-day exclusive rights period, McPhee would be responsible for properly and competently managing and operating the Fiji resort hotel, and he would be required to provide written reports to the Receiver every two weeks, as to the income, expenditures, and significant events occurring during the two-week period. Failure to properly and competently manage and operate the resort hotel would constitute a default under the proposed settlement.

If McPhee/CAIF Hong Kong do not purchase the Fiji Resort Interests within the 270-day exclusive rights period and do not obtain an extension from the Receiver, then the Receiver would be entitled to break the escrow of the CAIF Fiji/Kadavulailai Transfer Documents and sell the Fiji Resort Interests to anyone.

4. Costa Rica Resort Interests. McPhee owns a 49 percent interest in Sunset del Mar Investments S.R.L, a company located in Costa Rica ("Sunset del Mar"). Sunset del Mar in turn owns 100 percent of Mar y Tierra del Oeste M.T.O., S.A., another corporation in Costa Rica ("Mar y Tierra"). Mar y Tierra owns a lease, or concession, of beachfront property, located in the "Maritime Zone," or a 200 meter strip starting from the average high tide line, on the Pacific

Ocean on which is located the Sunset del Mar resort hotel. Under Costa Rican law McPhee, as a non-Costa Rican citizen who has not resided in Costa Rica for the previous five years, cannot own a majority interest in any entity with a concession of beachfront property. He therefore owned only a minority interest in Sunset del Mar, with the majority interest being owned by a Costa Rican citizen.¹⁴

Like the Serenity Island resort in Fiji, the Costa Rica Resort Hotel was used by MOBE to host live seminars, and like Serenity Island it suffered a marked decline in revenues when the Receiver shut down MOBE's operations. The resort is located in a remote area and thus is difficult to access. The Costa Rica Resort Hotel's financial records show that it is losing money and not being operated prudently, due to a lack of funds.¹⁵

Under the proposed settlement, McPhee would execute the Sunset del Mar Transfer Documents, thereby conveying ownership of his interest in Sunset del Mar to the Receiver, or the Receiver's designee. The Sunset del Mar Transfer Documents would be held in escrow pending performance under the Settlement Agreement. McPhee would receive the exclusive right to purchase from the Receiver or his designee the interest in the Sunset del Mar Interests acquired under the Sunset del Mar Transfer Documents. This exclusive period would extend for 270 days from the date on which the Court enters an order approving

¹⁴ The majority owner, a Costa Rican citizen who has resided in Costa Rica for the past five years, invested little capital in the Costa Rica Resort hotel initially, although McPhee claims that she has invested capital over the past 15 months.

¹⁵ For example, the Costa Rica Resort Hotel did not have property insurance on the hotel. The Receiver has agreed to advance approximately USD \$3,000 to pay the premium. McPhee would repay the sums advanced when finances permit.

the proposed settlement. McPhee may exercise this right to purchase the Receiver's interest in the Sunset del Mar Interests for USD \$250,000, provided that, the price would be reduced to \$225,000 if McPhee makes payment within 180 days of the date on which the Court enters an order approving the proposed settlement.

During the 270-day exclusive rights period, McPhee would be responsible for properly and competently managing and operating the Costa Rica Resort Hotel, and he would be required to provide written reports to the Receiver every two weeks as to the income, expenditures, and significant events occurring during the two-week period. Failure to properly and competently manage and operate the resort hotel would constitute a default under the proposed settlement.

If McPhee does not purchase the Sunset del Mar Interests within the 270-day period and does not obtain an extension from the Receiver, then the Receiver would be entitled to break the escrow of the Sunset del Mar Transfer Documents and sell the Sunset del Mar Interests to anyone.

5. Tax Refunds. Under the proposed settlement McPhee would take all necessary actions to secure tax refunds owed to MOBE and to cause such tax refunds to be transferred or paid to the Receiver. This includes tax refunds owed by the governments of Malaysia, which the Receiver believes to be in the range of approximately USD \$145,000, and Australia, believed to be in the range of approximately USD \$11,000.

From the Malaysian tax refund:

- The first USD \$140,000 would be paid to the Receiver;
- The next USD \$10,000, after the initial USD \$140,000, would be retained by McPhee; and
- All sums collected over USD \$150,000 would be split 60 percent to McPhee and 40 percent to the Receiver, except that McPhee could not collect any more than \$50,000 from Malaysian tax refunds.

All funds received as tax refunds from Australia would be paid to the Receiver, except that the Australian accountants who obtained the tax refunds would be entitled to payment from the refunds of approximately USD \$1,500.

D. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT.

Section XI of the Preliminary Injunction, starting on page 14, obligates McPhee and the other defendants, to "fully cooperate with and assist the Receiver in taking and maintaining possession, custody or control of the Assets . . . of the Receivership Entities." The Preliminary Injunction also obligates McPhee to "immediately transfer or deliver to the Receiver's possession, custody and control" all Assets of the Receivership Entities. The Receiver interprets this provision to include not only Assets titled in the names of the Defendants or Receivership Entities, but also Assets owned by third-parties that are owned or controlled by any of the Defendants, or that were purchased with funds that derived from MOBE. Apartment 7A, Apartment 15B, the Fiji Resort Interests, the Sunset del Mar Interests, (collectively the "Real Property Interests"), as well as the tax refund claims identified above, thus all are subject to administration by the Receiver.

However, having the *authority* to obtain possession or control of the Real Property Interests is different than *actually* possessing or controlling them. The Real Property Interests all are titled in the names of non-parties and are located in Malaysia, Fiji and Costa Rica. Each of the Real Property Interests is subject to the laws of foreign jurisdictions; many of these are complex and highly technical and, arguably, preclude the Receiver from actually taking control or ownership, even in the name of one of the Receivership Entities. At least some of the Real Property Interests (specifically the Fiji Resort Interests and the Sunset del Mar Interests) appear to have limited, or even negative, economic value.¹⁶ Moreover, the remoteness of the properties makes it extraordinarily difficult for the Receiver to manage them, or even to hire individuals to manage them.¹⁷

Under the circumstances, the Receiver submits that liquidating the Assets is in the best interest of the receivership estates. The question then becomes how to liquidate them. As noted, there are complicated ownership structures of the various Assets, designed in part to comply with (or circumvent) the laws of the jurisdictions in which they are located. The Fiji Resort Interests, pertaining to the Serenity Island resort in Fiji, are subject to contract that limits the sale possibilities, and the Sunset del Mar resort in Costa Rica is losing money at a significant rate. While the Malaysian apartments are not encumbered by liens and thus could, at least theoretically, be sold, the Receiver believes

¹⁶ As noted, the Serenity Island resort in Fiji is pledged as collateral to secure a USD \$3 million loan. Both the Serenity Island resort and the Sunset del Mar resort in Costa Rica will require large capital infusions if they are to become profitable. The Receiver is reluctant to commit receivership funds for this purpose.

¹⁷ This is further complicated by the fact that McPhee has only minority interests in the Serenity Island resort in Fiji and the Sunset del Mar resort in Costa Rica.

that the market for these particular apartments is restricted to non-Malaysian purchasers because they are at the high end of the market.

The proposed settlement with McPhee grants to McPhee the right to purchase all of the Real Property Interests (save for Apartment 7A). The structure of the proposed settlement, however, is such that McPhee immediately would execute all documents necessary to transfer ownership of the assets to the Receiver or his nominee, with the transfer documents to be held in escrow and only be enforced if McPhee or his companies default under the proposed Settlement Agreement. If McPhee does not exercise his right to purchase the Assets by the end of the "exclusive rights" periods, then the Receiver would be entitled to break escrow and enforce the transfer documents. This allows the Receiver to avoid the necessity of initiating litigation, and incurring the attendant uncertainty, delay and expense, in foreign jurisdictions, such as Malaysia, Costa Rica and Fiji, to obtain control of the assets.¹⁸

One concern, of course, is that if McPhee is surrendering all of his assets derived from the proceeds of MOBE's operations, as is required under the Preliminary Injunction, he will be in no position to exercise the purchase options granted to him under the proposed settlement. McPhee, however, believes that he can obtain financing or outside investment to help him fund these purchases. The Receiver notes that under the proposed settlement Apartment 7A is to be sold within 45 days to a third party under an existing sale contract, with the sale proceeds to be paid to the Receiver; for Apartment 7A, at

¹⁸ Litigation in Malaysia and Fiji, to obtain control of the assets located in those countries, likely would not be completed within 270 days. There is no guaranty that the Receiver would be successful.

least, McPhee's ability to attract new capital is irrelevant. Also, as noted above, it is not clear that the Receiver can take ownership of the Fiji Resort Interests without jeopardizing the underlying iTaukei lease. Finally, as noted above, the Receiver believes that litigation against the McPhee Entities in foreign jurisdictions would be expensive and likely could not be concluded successfully within nine months; McPhee's voluntary conveyance of his interests, even with the re-purchase options, therefore would expedite the transfer of ownership and control to the Receiver.

“[T]he district court has broad powers and wide discretion to determine relief in an equity receivership.” *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992), rev'd in part on other grounds, 998 F.2d 922 (11th Cir. 1993). This includes the power to permit a receiver to sell property where appropriate to protect the receivership estate. *Id.* Here, the Real Property Interests all are located in foreign jurisdictions and titled in the names of non-parties. Initiating litigation in these foreign jurisdictions to transfer ownership of the Real Property Interests to the Receiver would be expensive and time consuming, and the Receiver cannot guaranty that he would be successful. Taking all of this into account, the Receiver submits that the proposed settlement is in the best interest of the receivership estates.

E. CONCLUSION

The Real Property Interests, located outside the jurisdiction of this Court, are owned by entities that are not parties in this lawsuit. As such, the Receiver cannot simply assume control of the Real Property Interests; instead, absent McPhee's cooperation the Receiver would be required to initiate litigation in Malaysia, Costa Rica and Fiji to obtain

control. Such litigation would be expensive and time consuming, and the Receiver cannot guaranty that he would be successful. Under the proposed settlement Apartment 7A in Kuala Lumpur is under contract and should be sold in the near future, with the proceeds (less USD \$35,000 to be paid to McPhee's attorneys) to be paid to the Receiver. The Serenity Island resort in Fiji is located on land leased by an agency of the government of Fiji, and litigation in which ownership or control of the resort is at issue could constitute a default under the iTaukei lease justifying its termination. The Sunset del Mar resort in Costa Rica is located in the Maritime Zone, and thus is leased from the government of Costa Rica, and litigation seeking to obtain control of that resort also could jeopardize the lease. Both resort hotels are unprofitable, and both require substantial capital infusions if they are to become profitable. On the whole, the Receiver submits that obtaining documents necessary to convey ownership of the Real Estate Assets from McPhee on a voluntary basis has substantial value. The Receiver therefore requests that the Court enter an order approving the proposed settlement, and direct the parties thereto to comply with its terms.

ORAL ARGUMENT

The Receiver acknowledges the proposed settlement is complex. He therefore invites the Court to schedule oral argument, if the Court deems it appropriate to do so. The Receiver anticipates that one hour would be required.

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.

The Receiver also has requested the position of Qualpay, Inc., and Synovus Bank, non-parties seeking to intervene. While the Receiver does not recognize them as parties, he reports that they do not oppose the relief requested herein.

Dated: Tampa, Florida
September 6, 2019

/s/ Mark J. Bernet

Mark J. Bernet, Receiver
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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 Baldridge, Esquire, Venable, LLP, 600 Massachusetts Avenue NW, Washington, DC 20001, email: jdbaldridge@venable.com; and by email to Matthew Lloyd McPhee, e-mail: workwithmattlloyd@gmail.com, this 6th day of September, 2019.

/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)

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereafter the "Agreement") is made and entered into effective as the date on which it is approved by the Court (as that term is defined below) by, between and among the following:

1. Matthew Lloyd McPhee ("**McPhee**");
2. Business Education Training Ltd. (Australia) ("**BET**");
3. CAIF Property Holdings – Fiji Ltd. ("**CAIF Fiji**");
4. CAIF Property Holdings CR S.A. ("**CAIF Costa Rica**");
5. CAIF Property Holdings Ltd. (Hong Kong) ("**CAIF Hong Kong**");
6. Kadavulailai Development PTE Limited (Fiji) ("**Kadavulailai**");
7. Mar y Tierra del Oeste M.T.O. S.A. (Costa Rica) ("**Mar y Tierra**");
8. MOBE Holdings Limited (Malta) ("**MOBE Malta**");
9. Sunset del Mar Investments S.R.L (Costa Rica) ("**Sunset del Mar**");
10. Andrew N. Cove, solely in his capacity as Escrow Agent hereunder; and
11. Mark J. Bernet, as Receiver for MOBE Ltd., d/b/a MOBE, d/b/a My Online Business Education, d/b/a My Own Business Empire (Malaysia), MOBEProcessing.com, Inc. (US), MOBETraining.com, Inc. (US), Transaction Management USA, Inc. (US), MOBE Pro Limited (UK), MOBE Online Ltd. (Mauritius), 9336-0311 Quebec, Inc., d/b/a Business Education Training (Canada), Matt Lloyd Publishing.com, Pty Ltd., d/b/a Matt Lloyd Publishing, d/b/a Home Business Builders (Australia), and MOBE Inc. (Panama) (the "**Receiver**").

WITNESSETH:

WHEREAS, on June 4, 2018, the **Federal Trade Commission ("FTC")** filed a civil lawsuit against MOBE Ltd., d/b/a MOBE, d/b/a My Online Business Education, d/b/a My Own Business Empire and others styled *Federal Trade Commission v. MOBE Ltd., et al.*, case no. 6:18-cv-862, United States District Court, Middle District of Florida (the "**Lawsuit**"); and

WHEREAS, the court in which the Lawsuit is pending (the "**Court**") appointed the Receiver to serve as receiver for all of the non-individual defendants identified in paragraph 11 above (individually a "**Receivership Defendant**" and collectively the "**Receivership Defendants**"); and



WHEREAS, by its September 10, 2018 *Order Approving Revised Stipulate Preliminary Injunction ("Preliminary Injunction")*, the Court directed the Receiver to take exclusive custody, control, and possession of all "Assets" of the Receivership Defendants, a term defined in the Preliminary Injunction; and

WHEREAS, directly or indirectly McPhee owns some percentage, or all, of BET, CAIF Fiji, CAIF Costa Rica, CAIF Hong Kong, Kadavulailai, Mar y Tierra, MOBE Malta, the Receivership Defendants and Sunset del Mar (collectively, the "**McPhee Entities**"); and

WHEREAS, the Receiver has demanded that McPhee turn over to the receivership estate his interests in the various McPhee Entities as Assets of the receivership estates; and

WHEREAS, the parties have agreed to resolve this dispute in the manner more fully described herein;

NOW, THEREFORE, McPhee, the McPhee Entities and the Receiver agree as follows:

1. Affirmation of Recitals. The recitals set forth above are true and correct and incorporated herein by reference.

2. Definitions. As used herein the following definitions shall apply:

- a. "15B Deed" means the deed or equivalent document or instrument conveying ownership of Apartment 15B from CAIF Hong Kong to the Receiver, as required under paragraph 3 below. The 15B Deed shall be in a form reasonably satisfactory to the Receiver.
- b. "7A Deed" means the deed or equivalent document or instrument conveying ownership of Apartment 7A from CAIF Hong Kong to the Receiver, as required under paragraph 4 below. The 7A Deed shall be in a form reasonably satisfactory to the Receiver.
- c. "Apartment 15B" means the apartment owned by McPhee and located at [REDACTED] Kuala Lumpur, Malaysia.
- d. "Apartment 7A" means the apartment owned by McPhee and located at [REDACTED] Kuala Lumpur, Malaysia.
- e. "BET" means Business Education Training Ltd., a Canadian public company wholly-owned by McPhee.
- f. "CAIF Costa Rica" means CAIF Property Holdings CR S.A., a Costa Rican limited liability corporation owned in part by McPhee. At one time it owned the stock of Mar y Tierra, but transferred all of it to Sunset del Mar.
- g. "CAIF Fiji" means CAIF Property Holdings – Fiji Ltd., a limited liability company located in Hong Kong. CAIF Fiji, which is owned by CAIF Hong

Kong and thus controlled by McPhee, is one of two owners of Kadavulailai.

- h. "CAIF Fiji/Kadavulailai Interests" means the interests in CAIF Fiji conveyed by CAIF Hong Kong to the Receiver under the CAIF Fiji/Kadavulailai Transfer Documents.
- i. "CAIF Fiji/Kadavulailai Transfer Documents" means the documents or instruments necessary to transfer CAIF Hong Kong's ownership interest in CAIF Fiji to the Receiver as required under paragraph 5 below. The CAIF Fiji/Kadavulailai Transfer Documents shall be in a form reasonably satisfactory to the Receiver.
- j. "CAIF Hong Kong" means CAIF Property Holdings Ltd., a Hong Kong limited company wholly-owned by McPhee. CAIF Hong Kong owns Apartment 7A and Apartment 15B, and also owns CAIF Fiji.
- k. "Court" means the court in which the Lawsuit was filed.
- l. "Escrow Agent" means Andrew N. Cove, Cove Law, P.A., [REDACTED], [REDACTED], telephone: [REDACTED], e-mail [REDACTED].
- m. "FTC" means the Federal Trade Commission, an agency of the United States of America.
- n. "Kadavulailai" means Kadavulailai Development PTE Limited, a private limited liability company located in Fiji. Kadavulailai, which is owned by joint venture partners Seed and CAIF Fiji, owns Sala Levu.
- o. "Lawsuit" means the civil lawsuit filed in the United States of America against McPhee, the Receivership Defendants and others styled *Federal Trade Commission v. MOBE Ltd., et al.*, case no. 6:18-cv-862, United States District Court, Middle District of Florida.
- p. "Mar y Tierra" means Mar y Tierra del Oeste M.T.O. S.A, a corporation in Costa Rica owned by Sunset del Mar. Mar y Tierra owns a lease, or concession, of beachfront property, located in the "Maritime Zone" (a 200 meter strip starting from the average high tide line) on the Pacific Ocean on which is located the Sunset del Mar resort hotel.
- q. "McPhee Entities" means BET, CAIF Fiji, CAIF Costa Rica, CAIF Hong Kong, Kadavulailai, Mar y Tierra, MOBE Malta, the Receivership Defendants and Sunset del Mar.
- r. "McPhee" means Matthew Lloyd McPhee, a/k/a Matt Lloyd, the owner of the McPhee Entities and the founder and former CEO of the Receivership Defendants.

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- s. "MOBE Malta" means MOBE Holdings Limited, a private limited liability company located in Malta and owned by MOBE Inc., a Panamanian limited liability company.
- t. "Preliminary Injunction" means the September 10, 2018 *Order Approving Revised Stipulate Preliminary Injunction* entered by the Court in the Lawsuit.
- u. "Rashan" mean Athar Rashan, a former executive of the Receivership Defendants and the owner of Seed.
- v. "Receiver" means Mark J. Bernet, in his capacity as receiver for the Receivership Defendants.
- w. "Receivership Defendant" means one of MOBE Ltd., d/b/a MOBE, d/b/a My Online Business Education, d/b/a My Own Business Empire (Malaysia), MOBEProcessing.com, Inc. (US), MOBETraining.com, Inc. (US), Transaction Management USA, Inc. (US), MOBE Pro Limited (UK), MOBE Online Ltd. (Mauritius), 9336-0311 Quebec, Inc., d/b/a Business Education Training (Canada), Matt Lloyd Publishing.com, Pty Ltd., d/b/a Matt Lloyd Publishing, d/b/a Home Business Builders (Australia), and MOBE Inc. (Panama). Collectively they are the "Receivership Defendants."
- x. "Sala Levu" means Sala Levu Resort (Fiji) Limited, a private limited liability company located in Fiji and owned by Kadavulailai. Sala Levu owns an iTaukei lease of Serenity Island, an island within the nation of Fiji, on which it has constructed a resort hotel facility.
- y. "Seed" means Seed Property Holdings (Fiji), Ltd., a limited liability company located in Fiji. Seed, which is controlled by Rashan, is one of two owners of Kadavulailai.
- z. "Sunset del Mar Transfer Documents" means the documents or instruments necessary to transfer McPhee's ownership interest in Sunset del Mar to the Receiver as required under paragraph 6 below. The Sunset del Mar Transfer Documents shall be in a form reasonably satisfactory to the Receiver.
- aa. "Sunset del Mar" means Sunset del Mar Investments S.R.L., a company in Costa Rica owned in part by McPhee. Sunset del Mar owns Mar y Tierra.
- bb. All terms defined in the Preliminary Injunction shall have the same meanings herein, unless otherwise stated.

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3. Apartment 15B. Immediately upon execution of this Agreement, McPhee shall cause CAIF Hong Kong to convey ownership of Apartment 15B to the Receiver, or the Receiver's designee, by (i) executing the 15B Deed and all other documents and instruments necessary to transfer ownership of Apartment 15B to the Receiver, and (ii) delivering the original(s) to the Escrow Agent. Alternatively, McPhee shall cause the developer of Soho Suites to convey ownership of Apartment 15B to the Receiver, or the Receiver's designee, by (i) executing the 15B Deed and all other documents and instruments necessary to transfer ownership of Apartment 15B to the Receiver, and (ii) delivering the original(s) to the Escrow Agent. Within five business days after the entry of an order by the Court approving this Agreement, the Escrow Agent shall deliver the original 15B Deed to the Receiver, together with all other documents and instruments necessary to transfer ownership of Apartment 15B to the Receiver or his designee. The Receiver shall hold the 15B Deed in escrow pending performance hereunder.

a. McPhee/CAIF Hong Kong's Exclusive Right to Purchase. McPhee and/or CAIF Hong Kong are hereby granted, and shall have, the exclusive right to purchase Apartment 15B from the Receiver. This exclusive rights period shall extend for 270 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement. McPhee and/or CAIF Hong Kong may exercise this right to purchase Apartment 15B only as follows:

i. If McPhee and/or CAIF Hong Kong purchase Apartment 15B within 120 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, then the purchase price would be 70 percent of the original purchase price (the parties agree that the original purchase price was USD \$195,615.00).

ii. If McPhee and/or CAIF Hong Kong purchase Apartment 15B between 121 and 165 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, then the purchase price would be 75 percent of the original purchase price.

iii. If McPhee and/or CAIF Hong Kong purchase Apartment 15B between 166 and 210 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, then the purchase price would be 80 percent of the original purchase price.

iv. If McPhee and/or CAIF Hong Kong purchase Apartment 15B between 211 and 255 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement the purchase price would be 85 percent of the original purchase price.

v. If McPhee and/or CAIF Hong Kong purchase Apartment 15B between 256 and 270 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, the purchase price would be 90 percent of the original purchase price.



vi. Transaction Costs. All transaction costs associated with McPhee's and/or CAIF Hong Kong's exercise of their exclusive right to purchase Apartment 15B, including without limitation documentary stamp taxes, value-added taxes, broker's commissions, recording fees, etc., shall be paid by McPhee and/or CAIF Hong Kong.

vii. Cooperation. During the exclusive rights period set forth in this paragraph, but not after the time McPhee and/or CAIF Hong Kong purchase Apartment 15B from the Receiver as contemplated in this paragraph 3, McPhee and/or CAIF Hong Kong shall provide to the Receiver all documents reasonably requested by the Receiver pertaining to their efforts to raise or borrow the purchase price.

viii. Destruction/Return of 15B Deed. If McPhee and/or CAIF Hong Kong purchase Apartment 15B from the Receiver in the manner described in this paragraph 3, then upon receipt of payment in full, and provided that McPhee and the McPhee Entities are not otherwise materially in default hereunder, the Receiver either shall destroy the escrowed 15B Deed, or return it to McPhee and/or CAIF Hong Kong, as directed by McPhee, and execute any other documents or instruments necessary to consummate the sale.

b. Sale of Apartment 15B to McPhee's Nominee. As an alternative to the provisions of Section 3.a., above, McPhee and/or CAIF Hong Kong may arrange to have the Receiver sell Apartment 15B to a third party, selected by McPhee and/or CAIF Hong Kong, within 270 days. If McPhee and/or CAIF Hong Kong arranges for a third party to purchase the unit within 270 days, the terms would be as follows:

i. If the nominee purchases Apartment 15B within 120 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, then the purchase price would be 70 percent of the original purchase price (the parties agree that the original purchase price was USD \$195,615.00).

ii. If the nominee purchases Apartment 15B between 121 and 165 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, then the purchase price would be 75 percent of the original purchase price.

iii. If the nominee purchases Apartment 15B between 166 and 210 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, then the purchase price would be 80 percent of the original purchase price.

iv. If the nominee purchases Apartment 15B between 211 and 255 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement the purchase price would be 85 percent of the original purchase price.



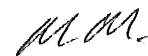
v. If the nominee purchases Apartment 15B between 256 and 270 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, the purchase price would be 90 percent of the original purchase price.

vi. Transaction Costs. All transaction costs associated with McPhee's and/or CAIF Hong Kong's nominee's purchase of Apartment 15B, including without limitation documentary stamp taxes, value-added taxes, broker's commissions, recording fees, etc., shall be paid by McPhee and/or CAIF Hong Kong, or their nominee.

vii. Destruction/Return of 15B Deed. If McPhee's and/or CAIF Hong Kong's nominee purchases Apartment 15B from the Receiver in the manner described in this paragraph 3, then upon receipt of payment in full as required hereunder the Receiver either shall destroy the escrowed 15B Deed, or return it to McPhee and/or CAIF Hong Kong, as directed by McPhee, and execute any other documents or instruments necessary to consummate the sale.

c. Non-Sale/Default Procedures. If McPhee and/or CAIF Hong Kong (i) do not purchase Apartment 15B within 270 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, and (ii) do not arrange for their nominee to purchase Apartment 15B within 270 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, or (iii) otherwise materially default hereunder, then the Receiver shall be entitled to break the escrow in which the 15B Deed is held and enforce it to confirm that the Receiver or his designee is the owner of Apartment 15B. The Receiver also would be free to sell Apartment 15B to anyone. The failure of McPhee and/or CAIF Hong Kong to purchase, or arrange for the sale, of Apartment 15B within the 270-day period shall not, of itself, preclude McPhee or the relevant McPhee Entities from exercising his other rights hereunder with respect to Apartment 7A, the CAIF Fiji/Kadavulailai Interests, or Sunset Del Mar.

d. Surrender. Notwithstanding any other provision contained herein, at any time McPhee and/or CAIF Hong Kong may choose to waive their right to purchase, or arrange for the sale of, Apartment 15B as described in this paragraph 3 by choosing to surrender Apartment 15B to the Receiver. Any such decision to surrender Apartment 15B shall be in writing sent by e-mail to the Receiver, and shall be effective upon the Receiver's receipt thereof. Once the decision to surrender Apartment 15B is received by the Receiver, it shall be irrevocable. The decision to surrender Apartment 15B in accordance with this subparagraph, by itself, shall not be deemed a "default" under any provision of this Agreement.



4. Apartment 7A. Immediately upon execution of this Agreement, McPhee shall cause CAIF Hong Kong to convey ownership of Apartment 7A to the Receiver, or the Receiver's designee, by (i) executing the 7A Deed and all other documents and instruments necessary to transfer ownership of Apartment 7A to the Receiver, and (ii) delivering the original(s) to the Escrow Agent. Alternatively, McPhee shall cause the developer of Soho Suites to convey ownership of Apartment 7A to the Receiver, or the Receiver's designee, by (i) executing the 7A Deed and all other documents and instruments necessary to transfer ownership of Apartment 7A to the Receiver, and (ii) delivering the original(s) to the Escrow Agent. Within five business days after the entry of an order by the Court approving this Agreement, the Escrow Agent shall deliver the original 7A Deed to the Receiver, together with all other documents and instruments necessary to transfer ownership of Apartment 7A to the Receiver or his designee. The Receiver shall hold the 7A Deed in escrow pending performance hereunder.

a. Pending Sale of Apartment 7A. McPhee represents and warrants that he and/or CAIF Hong Kong has arranged for a sale of Apartment 7A, and the parties agree that McPhee and/or CAIF Hong Kong shall proceed to sell Apartment 7A.

i. Timing of Sale. The sale of Apartment 7A must close within 45 days of the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, or such longer period of time as the parties may agree.

ii. Progress Reports. McPhee will provide to the Receiver all documents relating to the pending sale of Apartment 7A, including without limitation purchase contracts, applications for financing and documents showing the original purchase price, as well as all other documents that the Receiver reasonably requests related to the transactions.

iii. Payment to Receiver. From the proceeds of the sale of Apartment 7A, McPhee and/or CAIF Hong Kong shall pay to the Receiver no less than MYR 620,550.00. However, if McPhee and/or CAIF Hong Kong consummates a sale of Apartment 7A resulting in proceeds greater than MYR 620,550.00, the parties shall split the excess amount 40 percent to the Receiver, 60 percent to pay MOBE's Malaysian tax liabilities and/or its Malaysian accountants, at McPhee's direction.

iv. Payment to McPhee's Attorneys. From the proceeds of the sale of Apartment 7A sent to the Receiver, USD \$35,000 would be paid to McPhee's attorney in the United States of America, Cove Law, P.A.

v. Destruction/Return of 7A Deed. If McPhee's and/or CAIF Hong Kong's buyer closes on the purchase of Apartment 7A, then upon receipt of payment in full as required hereunder, at the direction of McPhee the Receiver either shall destroy the escrowed 7A Deed, or return it to McPhee and/or CAIF Hong Kong, and execute any other documents or instruments necessary to consummate the sale.



b. Non-Sale/Default Procedures. If McPhee and/or CAIF Hong Kong (i) do not sell Apartment 7A within 45 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, or (ii) otherwise materially default hereunder, then the Receiver shall be entitled to break the escrow in which the 7A Deed is held and enforce the 7A Deed to confirm that the Receiver or his designee is the owner of Apartment 7A. The Receiver also would be free to sell Apartment 7A to anyone. From the proceeds of a sale of Apartment 7A, USD \$35,000 shall be paid to McPhee's attorney in the United States of America, Cove Law, P.A. The failure of McPhee and/or CAIF Hong Kong to arrange for the sale of Apartment 7A within the 270-day period shall not, of itself, preclude McPhee and/or the relevant McPhee Entities from exercising other rights hereunder with respect to Apartment 15B, the CAIF Fiji/Kadavulailai Interests, or Sunset Del Mar.

c. Surrender. Notwithstanding any other provision contained herein, at any time McPhee and/or CAIF Hong Kong may choose to waive their right to arrange for the sale of Apartment 7A as described in this paragraph 4 by choosing to surrender Apartment 7A to the Receiver. Any such decision to surrender Apartment 7A shall be in writing sent by e-mail to the Receiver, and shall be effective upon the Receiver's receipt thereof. Once the decision to surrender Apartment 7A is received by the Receiver, it shall be irrevocable. The decision to surrender Apartment 7A in accordance with this subparagraph, by itself, shall not be deemed a "default" under any provision of this Agreement.

5. Fiji/Serenity Island. Immediately upon execution of this Agreement, McPhee shall cause CAIF Hong Kong to convey ownership of the CAIF Fiji/Kadavulailai Interests to the Receiver, or the Receiver's designee, by (i) executing the CAIF Fiji/Kadavulailai Transfer Documents, and (ii) delivering the original(s) to the Escrow Agent. Within five business days after the entry of an order by the Court approving this Agreement, the Escrow Agent shall deliver the original CAIF Fiji/Kadavulailai Transfer Documents to the Receiver. The Receiver shall hold the CAIF Fiji/Kadavulailai Transfer Documents in escrow pending performance hereunder. The form of the CAIF Fiji/Kadavulailai Transfer Documents shall be reasonably satisfactory to the Receiver. In connection therewith, McPhee shall take all reasonable steps necessary for CAIF Hong Kong to effectively and legally transfer its CAIF Fiji/Kadavulailai Interests, including without limitation using his best efforts to obtain all necessary consents and approvals of all third parties (including those of Seed and Rshan) and governmental agencies to assure that Kadavulailai does not go into default under its iTaukei lease of Serenity Island. The Receiver shall provide reasonable assistance in this regard. The Receiver shall hold the CAIF Fiji/Kadavulailai Transfer Documents in escrow pending performance hereunder.

a. McPhee/CAIF Hong Kong's Exclusive Right to Purchase. McPhee and/or CAIF Hong Kong are hereby granted, and shall have, the exclusive right to purchase from the Receiver or his designee the CAIF Fiji/Kadavulailai Interests transferred to the Receiver or his designee under the CAIF Fiji/Kadavulailai Transfer Documents. This exclusive period shall extend for 270 days after the date which is the earlier of (i) the date on which the Court enters an order in the Lawsuit approving a settlement between the FTC and McPhee and/or the McPhee Entities, and (ii) October 1, 2019. McPhee and/or



CAIF Hong Kong may exercise this right to purchase the CAIF Fiji/Kadavulailai Interests only as follows:

i. If McPhee and/or CAIF Hong Kong purchase the CAIF Fiji/Kadavulailai Interests within 150 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, then the purchase price will be USD \$400,000.


ii. If McPhee and/or CAIF Hong Kong purchase the CAIF Fiji/Kadavulailai Interests between 151 and 270 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, then the purchase price will be USD \$450,000.

iii. Operation of Serenity Island Resort. During the 270-day exclusive rights period described in this paragraph 5, or until full payment is made, McPhee shall properly and competently manage and operate the business of CAIF Fiji and Kadavulailai, and McPhee shall provide to the Receiver bi-weekly (i.e. every two weeks) reports as to the income, expenditures, and significant events occurring during the two-week period. The phrase "properly and competently manage and operate the business" means that there may be no new payment defaults to any creditor or taxing agency, that all contractual obligations are honored, and that the property be maintained (by way of example, "maintaining" the property would include taking all reasonable efforts to recover funds stolen from the hotel, as has been reported to the Receiver, as well as maintaining property and casualty insurance on the hotel).

iv. Cooperation. During the exclusive rights period set forth in this paragraph 5, McPhee and/or CAIF Hong Kong shall provide to the Receiver all documents reasonably requested by the Receiver pertaining to their efforts to raise or borrow the purchase price.

v. Destruction/Return of CAIF Fiji/Kadavulailai Transfer Documents. If McPhee and/or CAIF Hong Kong purchases the CAIF Fiji/Kadavulailai Interests as contemplated hereunder, then upon receipt of payment in full as required hereunder, at McPhee's direction the Receiver either shall destroy the CAIF Fiji/Kadavulailai Transfer Documents, or return them to McPhee and/or CAIF Hong Kong, and execute any other documents or instruments necessary to consummate the sale.

b. Non-Sale/Default Procedures. If McPhee and/or CAIF Hong Kong (i) do not purchase CAIF Fiji/Kadavulailai Interests within 270 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, or (ii) otherwise materially defaults under this Settlement Agreement, then the Receiver shall be entitled to break the escrow in which the CAIF Fiji/Kadavulailai Transfer Documents are held and enforce them to confirm that the Receiver or his designee is the owner of the CAIF Fiji/Kadavulailai Interests. The Receiver or his designee also would be free to sell the CAIF Fiji/Kadavulailai Interests to anyone. The failure of McPhee and/or CAIF



Hong Kong purchase the CAIF Fiji/Kadavulailai Interests from the Receiver within the 270-day period shall not, of itself, preclude McPhee and/or the relevant McPhee Entities from exercising other rights hereunder with respect to Apartment 15B, Apartment 7A, or Sunset Del Mar.

c. Surrender. Notwithstanding any other provision contained herein, at any time McPhee and/or CAIF Hong Kong may choose to waive their right to purchase the CAIF Fiji/Kadavulailai Interests as described in this paragraph 5 by choosing to surrender the CAIF Fiji/Kadavulailai Interests to the Receiver. Any such decision to surrender the CAIF Fiji/Kadavulailai Interests shall be in writing sent by e-mail to the Receiver, and shall be effective upon the Receiver's receipt thereof. Once the decision to surrender the CAIF Fiji/Kadavulailai Interests is received by the Receiver, it shall be irrevocable. The decision to surrender the CAIF Fiji/Kadavulailai Interests in accordance with this subparagraph, by itself, shall not be deemed a "default" under any provision of this Agreement.

6. Costa Rica/Sunset del Mar. Immediately upon execution of this Agreement, McPhee shall convey ownership of his interest in Sunset del Mar to the Receiver, or the Receiver's designee, by (i) executing the Sunset del Mar Transfer Documents, and (ii) delivering the original(s) to the Escrow Agent. Within five business days after the entry of an order by the Court approving this Agreement, the Escrow Agent shall deliver the original Sunset del Mar Transfer Documents to the Receiver. The Receiver shall hold the Sunset del Mar Transfer Documents in escrow pending performance hereunder. The form of the Sunset del Mar Transfer Documents shall be reasonably satisfactory to the Receiver. In connection therewith, McPhee shall take all reasonable steps necessary to effectively and legally transfer his interest in Sunset del Mar to the Receiver, including without limitation using his best efforts to obtain all necessary consents and approvals of all third parties (including without limitation the approval, if necessary, of all other owners of Mar y Tierra) and governmental agencies to assure that Mar y Tierra does not go into default under its lease, or concession, of beachfront property, located in the "Maritime Zone" on the Pacific Ocean. The Receiver shall provide reasonable assistance in this regard. The Receiver shall hold the Sunset del Mar Transfer Documents in escrow pending performance hereunder.

a. McPhee's Exclusive Right to Purchase. McPhee is hereby granted, and shall have, the exclusive right to purchase from the Receiver or his designee the interest in Sunset del Mar acquired under the Sunset del Mar Transfer Documents. This exclusive period shall extend for 270 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement. McPhee may exercise this right to purchase the Receiver's interest in Sunset del Mar for USD \$250,000, as follows:

i. Payment; Early Payment Discount. McPhee shall pay USD \$250,000 within 270 days of the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement; PROVIDED THAT, the purchase price shall be reduced from USD \$250,000 to USD \$225,000 if McPhee pays the Receiver USD \$225,000 within 180 days of the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement.



ii. Operation of Sunset del Mar Resort. During the 270-day exclusive rights period described in this paragraph 6, or until full payment is made, McPhee shall properly and competently manage and operate the business of Sunset del Mar and Mar y Tierra, and McPhee shall provide to the Receiver bi-weekly (i.e. every two weeks) reports as to the income, expenditures, and significant events occurring during the two-week period. The phrase "properly and competently manage and operate the business" means that there may be no new payment defaults to any creditor or taxing agency, that all contractual obligations are honored, and that the property be adequately maintained. The phrase "the property be adequately maintained" shall mean, without limitation, that it shall be insured for "all hazards" to include damage from wind, rain, flood, earthquakes, fire, and all other events. If necessary, McPhee may request that the Receiver advance sufficient funds to pay for policies of insurance. In the event the Receiver advances funds for the purpose of paying for policies of insurance, the amounts advanced shall be added to the purchase price that McPhee must pay to purchase the interest in Sunset del Mar as contemplated hereunder.

iii. Cooperation. During the exclusive rights period set forth in this paragraph 6, or until full payment is made, McPhee shall provide to the Receiver all documents reasonably requested by the Receiver pertaining to McPhee's efforts to raise or borrow the purchase price.

iv. Destruction/Return of Sunset del Mar Transfer Documents. If McPhee purchases the Receiver's interests in Sunset del Mar as contemplated hereunder, then upon receipt of payment in full as required hereunder, and at McPhee's direction, the Receiver either shall destroy the Sunset del Mar Transfer Documents, or return them to McPhee and execute any other documents or instruments necessary to consummate the sale.

b. Non-Sale/Default Procedures. If McPhee (i) does not purchase the Receiver's interest in Sunset del Mar as transferred to him under the Sunset del Mar Transfer Documents within 270 days from the date on which the Court enters an order in the Lawsuit approving this Settlement Agreement, or (ii) otherwise materially defaults under this Settlement Agreement, then the Receiver shall be entitled to break the escrow in which the Sunset del Mar Transfer Documents are held and enforce them to confirm that the Receiver or his designee is the owner of McPhee's interests in Sunset del Mar. The Receiver or his designee also would be free to sell his interest in Sunset del Mar to anyone. The failure of McPhee to purchase the Receiver's interest in Sunset del Mar conveyed under the Sunset del Mar Transfer Documents within the 270-day period shall not, of itself, preclude McPhee and/or the relevant McPhee Entities from exercising other rights hereunder with respect to Apartment 15B, Apartment 7A, or the CAIF Fiji/Kadavulailai Interests.

c. Surrender. Notwithstanding any other provision contained herein, at any time McPhee may choose to waive his right to purchase the Receiver's interest in Sunset del Mar conveyed under the Sunset del Mar Transfer Documents as described in this paragraph 6, by choosing to surrender the interest in Sunset del Mar to the Receiver. Any

such decision to surrender the interest in Sunset del Mar shall be in writing sent by e-mail to the Receiver, and shall be effective upon the Receiver's receipt thereof. Once the decision to surrender the interest in Sunset del Mar is received by the Receiver, it shall be irrevocable. The decision to surrender the interest in Sunset del Mar in accordance with this subparagraph, by itself, shall not be deemed a "default" under any provision of this Agreement.

7. Tax Refunds. Within a reasonable period of time after approval of this Agreement by the Court, McPhee shall take all necessary actions to secure tax refunds owed to any of the Receivership Defendants and to cause such tax refunds to be transferred or paid to the Receiver, as follows:

a. Malaysia. Tax refunds owed to any of the Receivership Defendants by any governmental agency or taxing authority located in Malaysia shall be paid to the Receiver, as follows:

i. The first USD \$140,000 collected would be paid to the Receiver;

ii. The next USD \$10,000 collected, after the initial USD \$140,000, would be retained by McPhee; and

iii. All sums collected over USD \$150,000 would be split 60 percent to McPhee, 40 percent to the Receiver, except that McPhee would collect a total of no more than USD \$50,000 from all tax refunds obtained for the Receivership Defendants from any governmental agency or taxing authority located in Malaysia.

b. Australia. McPhee shall cause the tax refund of AUD \$16,327.82 owed to Matt Lloyd Publishing.com, Pty Ltd., d/b/a Matt Lloyd Publishing, d/b/a Home Business Builders (Australia), one of the Receivership Defendants, in Australia to be paid to the Receiver, after first deducting AUD \$2,184.00 to be paid to the Receivership Defendants' Australian accountants, Nexis.

The Receiver will provide such assistance as he is reasonably and cost-effectively able to provide.

8. Representations and Warranties. McPhee represents and warrants as follows:

a. All information contained in his Financial Disclosure Form dated June 17, 2018, as amended and supplemented in writing thereafter, completely and accurately discloses all of his assets and liabilities.

b. He has complete authority to enter into this Settlement Agreement, both for himself and for the McPhee Entities (save for the Receivership Defendants), and that entering into this Settlement Agreement does not violate any statute, rule, court order or law in any jurisdiction.



c. He has not violated the Preliminary Injunction in any material fashion. For purposes of this subparagraph 8.c, McPhee's participation in Scale Fast Advertising or Scale Fast Secrets prior to June 1, 2019, shall not be considered a material default of the Preliminary Injunction.

d. He has, to the best of his knowledge, disclosed all of the Assets of the Receivership Defendants to the Receiver.

e. Neither he, nor any of the McPhee Entities, nor any other entity of which he owns 50 percent or more, has offered for sale, or planned to offer for sale, any cryptocurrency. In particular, to the best of his knowledge, MOBE Online Ltd. (Mauritius) has not offered for sale, or planned to offer for sale, MOBE Coin, MOBE Tokens, or any other cryptocurrency.

f. He does not know the names of any persons or entities who are operating the website located at <https://www.mobecoin.io/#home>.

g. MOBE Malta owns no assets and conducts no business, and has not owned any assets or conducted any business since the date on which the FTC filed the Lawsuit.

h. BET owns no assets and conducts no business, and has not owned any assets or conducted any business since the date on which the FTC filed the Lawsuit; EXCEPT THAT, BET owns or may own certain credit card reserves held by Peoples Trust Company, as has been disclosed previously by McPhee to the Receiver.

McPhee acknowledges that the Receiver has relied on the truthfulness of each of the representations and warranties set forth above.

9. Default, Remedies. An "Event of Default" shall occur hereunder upon the occurrence of any one or more of the following events or conditions:

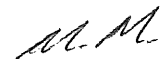
a. The failure of McPhee or the McPhee Entities, save for the Receivership Defendants, to pay when due any amounts owed hereunder;

b. The failure by McPhee or the McPhee Entities, save for the Receivership Defendants, to perform any act required to be performed by them hereunder, including without limitation the timely execution and delivery to the Receiver of all of the transfer documents and deeds described herein;

c. The occurrence of any material violation by McPhee or the McPhee Entities of any of the terms of the Preliminary Injunction or any other order entered by the Court in the Lawsuit;

d. The breach of any representation or warranty contained herein by McPhee or the McPhee Entities;

e. The death, or declaration of incompetency, of McPhee;



f. The entry of a judgment or the issuance of any attachment, levy or garnishment against McPhee or the McPhee Entities, save for the Receivership Defendants, or the property of McPhee or the McPhee Entities, save for the Receivership Defendants, or the repossession or seizure of any property of McPhee or the McPhee Entities, save for the Receivership Defendants, except as may occur in the Lawsuit;

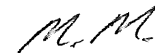
g. A good-faith determination by the Receiver that a material adverse change in the financial condition of McPhee or the McPhee Entities, save for the Receivership Defendants, has occurred after the Effective Date;

h. McPhee or the McPhee Entities, save for the Receivership Defendants, commits fraud or makes a material misrepresentation, or omits to disclose any material fact, at any time in connection with this Settlement Agreement; or

i. Any significant deterioration or impairment of the value of Apartment 15B, Apartment 7A, the Serenity Island resort hotel, or the Sunset del Mar resort hotel;

Upon the occurrence of any Event of Default, the Receiver, at his option and in his sole discretion, may (i) terminate some or all of his obligation under this Settlement Agreement; (ii) break any escrow with respect to any or all of the documents and instruments held in escrow, to declare himself, or his designee, to be the owner of the property described in such documents; (iii) require McPhee and/or the relevant McPhee Entities to perform some or all of their obligations hereunder, notwithstanding the occurrence of an Event of Default; (iv) obtain a monetary judgment against McPhee and the relevant McPhee Entities for all sums owed but unpaid hereunder, plus interest accruing at the rate of 12 percent per annum from the date of the Event of Default, plus reasonable attorneys' fees. The remedies provided herein are cumulative and not exclusive of any other remedies provided by applicable law.

10. Release. McPhee and each of the McPhee Entities, save for the Receivership Defendants, each hereby fully and unconditionally releases and forever discharges the Receiver and the Receivership Defendants, their agents, employees, directors, partners, officers, attorneys, relatives, affiliates, subsidiaries, successors and assigns and all persons, firms, companies, corporations and organizations acting on any of their behalfs (the "Receiver Released Parties") of and from any and all claims, liabilities, demands, obligations, damages, losses, actions and causes of action whatsoever which McPhee and/or the McPhee Entities, save for the Receivership Defendants, may now have or claim to have against the Receiver Released Parties, whether presently known or unknown and of any nature and extent whatsoever, including, without limitation, on account of or in any way affecting, concerning or arising out of or founded upon this Agreement or the facts or circumstances described or identified herein, including but not limited to all such loss or damage of any kind heretofore sustained or that may arise as a consequence of the dealings between the parties up to and including the date hereof. In particular, neither McPhee nor any of the McPhee Entities, save for the Receivership Defendants, will file any claim or request for payment in the Lawsuit, or otherwise seek to recover any amounts from the Receiver or the Receivership Defendants.



11. Entire Agreement. Each party acknowledges that there are no other agreements, representations, either or oral or written, expressed or implied, not referenced or embodied in this Agreement.

12. Voluntary Agreement. The parties each represent and warrant that each is or could have been represented by legal counsel of each party's choice and that each party's counsel has or had the opportunity to review this Agreement, that each party is fully aware of the terms contained herein, and that each party has voluntarily and without coercion or duress of any kind or nature whatsoever entered into this Agreement. The provisions of this Agreement shall survive the execution and delivery of this Agreement.

13. Governing Law and Binding Effect. This Agreement shall be deemed to be a contract under the laws of the State of Florida, United States of America, and for all purposes shall be governed by and construed and enforced in accordance with the laws of the State of Florida. Any action to enforce this Agreement may only be brought by motion filed in the Lawsuit; and the parties hereto consent to the jurisdiction of the Court, and to submission of any disputes hereunder to the Court by motion filed in the Lawsuit.

14. Notices. Notice hereunder shall be deemed sufficient if provided by e-mail, as follows:

a. To the Receiver or the Receivership Defendants:

Mark J. Bernet, Receiver, e-mail mark.bernet@akerman.com

b. To McPhee or the McPhee entities, save for the Receivership Defendants:

Matthew Lloyd McPhee, e-mail workwithmattlloyd@gmail.com, with copy to:

Andrew N. Cove, Esquire, e-mail anc@covelaw.com

c. To the Escrow Agent:

Andrew N. Cove, e-mail anc@covelaw.com

15. Miscellaneous. This Agreement is made for the sole benefit and protection of the parties hereto, and their respective successors and assigns. No other persons shall have any rights hereunder. If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall remain in effect without impairment, unless the provision held invalid or unenforceable goes to the essence of this Agreement. All representations and warranties of the parties hereto contained herein or made in connection herewith shall survive the making of this Agreement. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, the singular the plural and the part the whole, and "or" has the inclusive meaning represented by the phrase "and/or". The words "hereof", "herein", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The section and other headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the



interpretation thereof in any respect. Section and subsection references are to this Agreement unless otherwise specified.

Mark J. Bernet Receiver
Mark J. Bernet, Receiver for MOBE Ltd., d/b/a MOBE, d/b/a My Online Business Education, d/b/a My Own Business Empire (Malaysia), MOBEProcessing.com, Inc. (US), MOBETraining.com, Inc. (US), Transaction Management USA, Inc. (US), MOBE Pro Limited (UK), MOBE Online Ltd. (Mauritius), 9336-0311 Quebec, Inc., d/b/a Business Education Training (Canada), Matt Lloyd Publishing.com, Pty Ltd., d/b/a Matt Lloyd Publishing, d/b/a Home Business Builders (Australia), and MOBE Inc. (Panama)

Matthew Lloyd McPhee
Matthew Lloyd McPhee
Date signed: 6th August, 2019

Andrew N. Cove
Andrew N. Cove
Escrow Agent

Dated signed: Sept. 3, 2019

Date Signed: 8/6/19

BUSINESS EDUCATION TRAINING LTD.

CAIF PROPERTY HOLDINGS – FIJI LTD.

By: Matthew L. McPhee
Printed: Matthew L. McPhee
Title: CEO

By: Matthew L. McPhee
Printed: Matthew L. McPhee
Title: CEO

CAIF PROPERTY HOLDINGS CR, S.A.

CAIF PROPERTY HOLDINGS LTD. (Hong Kong)

By: Matthew L. McPhee
Printed: Matthew L. McPhee
Title: CEO

By: Matthew L. McPhee
Printed: Matthew L. McPhee
Title: CEO

KADAVULAILAI DEVELOPMENT
PTE LIMITED

By: *matt mcphee*
Printed: Matthew L. McPhee
Title: CEO

MAR y TIERRA del OESTE M.T.O., S.A.

By: *matt mcphee*
Printed: Matthew L. McPhee
Title: CEO

MOBE HOLDINGS LIMITED (Malta)

By: *matt mcphee*
Printed: Matthew L. McPhee
Title: CEO

SUNSET del MAR INVESTMENTS S.R.L.

By: *matt mcphee*
Printed: Matthew L. McPhee
Title: CEO