IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA JAMIL HAMAMA, et al., Petitioners and Plaintiffs, v. **REBECCA ADDUCCI**, et al., Respondents and Defendants.	Case No. 2:17-cv-11910 Hon. Mark A. Goldsmith Mag. David R. Grand Class Action

PETITIONERS/PLAINTIFFS' MOTION FOR EXPEDITED BRIEFING SCHEDULE FOR PLAINTIFFS/PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION AND TO EXTEND ORDER STAYING REMOVAL

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Local Rule 7.1(a)(1) requires petitioners to ascertain whether this motion is opposed. Petitioners' counsel Margo Schlanger communicated personally, via email, with Jennifer L. Newby, Assistant United States Attorney, Eastern District of Michigan, Defendant/Respondent Rebecca Adducci's counsel, explaining the nature of the relief sought and seeking concurrence. (No counsel has yet entered an appearance for Respondent/Defendant Thomas Homan or Defendant John Kelly, and Ms. Newby declined to state whether she would be counsel for these additional parties.) Ms. Newby denied concurrence, also by email.

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1. Due to the urgency of the circumstances in this matter, we request that the Court order an expedited briefing schedule on this motion.

2. On June 15, 2017, seven of the Plaintiffs/Petitioners filed a class action habeas petition on behalf of Iraqi nationals with final orders of removal arrested or detained by the Detroit ICE Field Office. On June 22, 2017, this Court granted an order staying removal for fourteen days of the Plaintiffs/Petitioners and all members of the class, defined by the Court as all Iraqi nationals within the jurisdiction of the Detroit ICE Field Office with final orders of removal, who have been, or will be, arrested and detained by ICE, including those detained in Michigan and transferred outside of Michigan to other detention locations. The Court found that these Plaintiffs/Petitioners face potentially irreparable harm given

the "significant chance of loss of life and lesser forms of persecution" that "far outweighs any conceivable interest the Government might have in the immediate enforcement of the removal orders, before this Court can clarify whether it has jurisdiction to grant relief to petitioners on the merits of their claims." Opinion and Order, ECF #32, Pg.ID#501.

3. This action and the Plaintiffs/Petitioners' original motion for a temporary restraining order/stay of removal were filed on an emergency basis after ICE arrested and detained a large number of Iraqi nationals in the Detroit Metro region on or about June 11, 2017, with plans to remove them to Iraq immediately.

4. As it became apparent that ICE was arresting a large number of Iraqi nationals around the country who faced imminent deportation, Plaintiffs/Petitioners on June 24, 2017 filed an amended habeas petition and complaint for declaratory, injunctive, and mandamus relief and further moved to expand this Court's Order Staying Removal to stay the removal of all Iraqi nationals in the United States with final orders of removal who have been, or will be, arrested and detained by ICE.

5. On June 26, 2017, the Court granted Plaintiffs/Petitioners' motion and stayed the removal of Plaintiffs/Petitioners and all members of the putative class for fourteen days, until July 10, 2017, unless otherwise ordered by the Court.

6. Because time remains of the essence, while the Court is considering the jurisdictional issues, Plaintiffs/Petitioners intend to move forward with a

motion for preliminary injunction, aided by the expedited discovery that Plaintiffs/Petitioners are seeking concurrent with this motion.

7. By this motion, Plaintiffs/Petitioners respectfully request the Court enter an order setting the briefing schedule for Plaintiffs/Petitioners' motion for preliminary injunction, with the deadline for the motion and supporting brief due on July 14, 2017, and the response and reply brief deadlines to be set by the Court.

8. Because the briefing for a preliminary injunction will extend beyond July 10, 2017, the date on which the June 26, 2017 stay is set to expire, Plaintiffs/Petitioners also request that, for good cause shown, the Court extend the stay of removal until the Court rules on the Plaintiffs/Petitioners' preliminary injunction motion.

9. For the reasons set forth above and in the accompanying brief, Plaintiffs/Petitioners respectfully request this Court to set an expedited briefing schedule for Plaintiffs/Petitioners' motion for preliminary injunction, with the deadline for the motion and supporting brief due July 14, 2017, and the response and reply brief deadlines to be set by the Court; and to extend the stay of removal until the Court rules on the Plaintiffs/Petitioners' preliminary injunction motion.

Date: June 29, 2017

Respectfully submitted,

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Kary L. Moss (P49759)
Bonsitu A. Kitaba (P78822)
Miriam J. Aukerman (P63165)

/s/Kimberly L. Scott
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/s/Susan E. Reed
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/s/Judy Rabinovitz
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* Application for admission forthcoming.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
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Petitioners and Plaintiffs,

v.

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Case No. 2:17-cv-11910

Hon. Mark A. Goldsmith

Mag. David R. Grand

Class Action

PLAINTIFFS/PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EXPEDITED BRIEFING SCHEDULE FOR PLAINTIFFS/PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION AND TO EXTEND ORDER STAYING REMOVAL

STATEMENT OF ISSUES PRESENTED

1. Because the potential harm to Iraqi nationals who are deported far outweighs the Government's interest in immediate removal, this Court granted a stay of removal while it determines its own jurisdiction. Plaintiffs/Petitioners intend to move for a preliminary injunction aided by expedited discovery sought from Defendants/Respondents. Should the Court set an expedited briefing schedule for Plaintiffs/Petitioners' motion for preliminary injunction?

Plaintiff/Petitioners' Answer: Yes.

2. This Court's stay of removal is set to expire on July 10, 2017. Because there is good cause for extending the stay, and the Court has the authority to do so, should the Court extend the stay to maintain the status quo until the Court rules on the Plaintiffs/Petitioners' preliminary injunction motion?

Plaintiffs/Petitioners' Answer: Yes

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Wright & Miller, 11A Fed. Prac. & Proc. Civ. § 2953, Temporary Restraining Orders—Duration and Modification (3d ed.)

United States v. United Mine Workers of Am., 330 U.S. 258 (1947)

Am. Federation of Musicians v. Stein, 213 F.2d 679 (6th Cir. 1954)

ARGUMENT

Plaintiffs/Petitioners intend to file a motion for preliminary injunction at the earliest opportunity. To thoroughly brief the issues that the parties have raised, Plaintiffs/Petitioners need additional information, which they are seeking with the concurrently filed Motion for Expedited Discovery of Class Member Information. ("Motion for Expedited Discovery"). Given the proposed deadline for providing this discovery and the necessity of this discovery to the issues raised in the case, Plaintiffs/Petitioners request that this Court set Plaintiffs/Petitioners' deadline for filing their motion for preliminary injunction for July 14, 2017, with deadlines for the response and reply briefs to be set by the Court.

This Court has already granted an order staying for fourteen days the removal of the Plaintiffs/Petitioners and all members of the class, defined as "all Iraqi nationals in the United States with final orders of removal, who have been, or will be, arrested and detained by ICE as a result of Iraq's recent decision to issue travel documents to facilitate U.S. removals." Opinion and Order, ECF #43, Pg.ID#676. That stay is set to expire on July 10, 2017, unless otherwise ordered by the Court.

There is good cause to extend the stay until the Court rules on the Plaintiffs/Petitioners' preliminary injunction motion. *See* Fed. R. Civ. P. 65(b)(2) (authorizing the district court to extend a TRO beyond 14 days for good cause).

As the leading treatise in this area explains, "a showing that the grounds for originally granting the temporary restraining order continue to exist should be sufficient" to establish good cause. Wright & Miller, 11A Fed. Prac. & Proc. Civ. § 2953, Temporary Restraining Orders—Duration and Modification (3d ed.); *see also Am. Sys. Consulting, Inc. v. Devier*, 514 F. Supp. 2d 1001 (S.D. Ohio 2007) (finding good cause to extend a TRO where a preliminary injunction could not be held due to "scheduling issues" and the "irrevocabl[e] damage[] in the absence of continued temporary injunctive relief"); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Patinkin*, No. 91 C 2324, 1991 WL 83163, at *6 (N.D. Ill. May 9, 1991) (Ex. A) ("The court bases its finding [of good cause] on its belief that the plaintiff will suffer irreparable harm if the TRO is not extended."); *cf. Brit Interactive LLC v. A3 Media LLC*, No. 116CV02884TWPMJD, 2016 WL 6405635, at *3 (S.D. Ind. Oct. 31, 2016) (Ex. B) ("'Good cause' may be established by showing that the grounds for originally granting the TRO continue to exist.").

Here, the same grounds for the Court's decision to enter the stay-of-removal order continue to exist. Indeed, the detainees continue to "face extraordinarily grave consequences: death, persecution, and torture," if returned to Iraq. *See* Opinion and Order, ECF #43, Pg.ID# 674. Thus, the detainees continue to face irreparable harm in the absence of relief from this Court, which still "outweighs any interest the Government may have in proceeding with the removals

immediately," and the public interest will still be better "served by assuring that habeas rights are not lost before this Court can assess whether it has jurisdiction in this case." *See id*, Pg.ID#676. Thus, if the Court continues its consideration of jurisdiction, or decides that it affirmatively does have jurisdiction, good cause exists to extend the stay until the Court can rule on the preliminary injunction motion.

Moreover, as this Court properly observed, this Court may maintain the status quo until it can determine whether it has jurisdiction. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 290 (1947). This includes maintaining the status quo through a decision on the preliminary injunction motion. *Am. Federation of Musicians v. Stein*, 213 F.2d 679, 689 (6th Cir. 1954) ("[T]hese and other questions going to the jurisdiction of the district court to entertain the case were grave and difficult, and justified the district court in its issuance of the preliminary injunction in order to reserve its decision on jurisdiction to a time when, after a hearing, adequate study and reflection would be afforded properly to interpret and apply the law."); *Cont'l Cablevision of Michigan, Inc. v. Edward Rose Realty, Inc.*, 840 F.2d 16, at *4 n.7 (6th Cir. 1988) (unpublished table decision) ("Further, courts have the authority to issue preliminary injunctions and other orders in order to maintain the status quo while they are inquiring into whether they have jurisdiction."). *See also United Naturals, Inc. v. LRX Biotech,*

LLC , No. 15-14299, 2016 WL 8118008 (E.D. Mich. Mar. 14, 2016) ("district courts have some leeway to extend a restraining order beyond such time limits pending a hearing on the motion for a preliminary injunction").

CONCLUSION

For these reasons, Plaintiffs/Petitioners respectfully request this Court to set an expedited briefing schedule for Plaintiffs/Petitioners' motion for preliminary injunction, with the deadline for the motion and supporting brief due on July 14, 2017 and the response and reply brief deadlines to be set by the Court; and to extend the stay of removal until the Court rules on the Plaintiffs/Petitioners' preliminary injunction motion.

Dated: June 29, 2017

Respectfully submitted,

/s/Michael J. Steinberg
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* Application for admission forthcoming.

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2017, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF filers of record. I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

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Class Action

INDEX OF EXHIBITS TO PLAINTIFFS/PETITIONERS' MOTION TO EXPEDITE A BRIEFING SCHEDULE FOR PLAINTIFFS/PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION AND TO EXTEND ORDER STAYING REMOVAL

Exhibit A: *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Patinkin*, No. 91 C 2324, 1991 WL 83163 (N.D. Ill. May 9, 1991)

Exhibit B: *Brit Interactive LLC v. A3 Media LLC*, No. 116CV02884TWPMJD, 2016 WL 6405635 (S.D. Ind. Oct. 31, 2016)

Exhibit C: *United Naturals, Inc. v. LRX Biotech, LLC*, No. 15-14299, 2016 WL 8118008 (E.D. Mich. Mar. 14, 2016)

Exhibit A

1qq1 WL 83163
Only the Westlaw sitation is surrently available.
United States District Court,
N.D. Illinois, Eastern Division.

MERRILL LYNCH, PIERCE,
FENNER & SMITH, INC., Plaintiff,
v.
Stuart PATINKIN, Defendant.

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MKMORANDUM OPINION AND ORDKR

ANN C. WILLIAMS, District Judge.

*1 This matter is before the court on plaintiff's Motion to extend the Temporary Restraining Order issued April 19, 1991, pending an award and final decision of the arbitration panel of the New York Stock Exchange, defendant's Motion to Vacate the Temporary Restraining Order, and defendant's motion to increase bond set under the temporary restraining order. Plaintiff's motion to extend the Temporary Restraining Order is granted. The Temporary Restraining Order is extended until July 1, 1991. At that time the court will review the status of the arbitration proceedings, and may extend the TRO if there is good cause to do so. Defendant's Motion to Increase Bond Set on the order to $50,000 is granted. Defendant's motion to vacate the temporary restraining order is denied. Any further proceedings in this case are stayed pending an award and final decision of the arbitration panel in accordance with the Constitution and Rules of the New York Stock Exchange.

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Plaintiff's verified complaint alleges that Stuart Patinkin entered Plaintiff's employ on March 15, 1982, pursuant to an Account Executive Trainee Agreement ("the Agreement"). The Agreement provides that Merrill Lynch retains exclusive ownership of its client records and account information, which are to be kept confidential. The Agreement also provides that the defendant will not solicit any of Merrill Lynch's clients for a period of one year after the termination of his employment from Merrill Lynch.[1]

On April 12, 1991, defendant resigned from his job at Merrill Lynch, without notice, to work at Prudential Securities, a securities firm which is competitive with Merrill Lynch. Indeed, plaintiff claims that the day after Patinkin left Merrill Lynch, his former Merrill Lynch customers received letters from Prudential Securities soliciting their business.[2]

Plaintiff alleges that Patinkin took account records out of the Merrill Lynch office, and that the defendant used and transmitted information from these records in order to solicit Merrill Lynch's customers. On April 19, 1991, plaintiff filed this action for conversion, breach of fiduciary duty, and unfair competition. On that same day, plaintiff also requested immediate injunctive relief, in the form of a Temporary Restraining Order ("TRO"), prohibiting the defendant from further breaching the terms of the Agreement. In response to plaintiff's motion, the defendant presented a written motion to compel arbitration, and oral argument on both the motion to compel arbitration, and in opposition to the TRO. Defendant Stuart Patinkin was given the opportunity to testify at oral argument, but declined. Hence, the TRO was issued after notice was given to the Defendant, and after the court heard and considered the motions, oral evidence and other submissions by both parties.[3]

In issuing the TRO the court found that the Agreement "contain[ed] various restrictions on Defendant's ability to use Plaintiff's records and otherwise compete with Plaintiff upon a change in the Defendant's employment." (TRO, para. 2). Further, the court also found that the plaintiff had no adequate remedy at law for the alleged breach of the Agreement (TRO, para. 5), and that the plaintiff would suffer irreparable harm and loss if a TRO was not granted (TRO. para. 4). Finally, the court found that greater injury would be inflicted upon the plaintiff by the denial of the TRO than would be inflicted upon the defendant by granting the TRO. (TRO, para. 6).

*2 The TRO both enjoined and restrained the defendant from soliciting or accepting business from any client of plaintiff's whom defendant served, or whose name became known to the defendant while in plaintiff's

employ. [4] Defendant was also enjoined and restrained from accepting any business from any clients whom Defendant solicited for purposes of doing business with Prudential Bache. Finally, defendant was enjoined and restrained from using, disclosing or transmitting information contained in plaintiff's records, including the names and addresses and financial information of plaintiff's clients. Patinkin was ordered to deliver any original records or copies to plaintiff, or it's attorney.

The court also granted the defendant's motion to compel arbitration, and ordered the parties to submit to arbitration in this matter, as provided for by the Constitution and Rules of the New York Stock Exchange. [5] Finally, the court noted that the TRO was entered to maintain the status quo and without prejudice to the merits of the claims of defenses which had been or may be asserted in this litigation. Under the court's order, the TRO was in effect until April 29, 1991.

On April 23, 1991, the defendant filed a motion for an increase in the amount of bond posted by the plaintiff, which was stayed by the court pending resolution of this motion. The defendant also filed a motion to compel expedited arbitration. On the same day, the court heard oral argument on these issues.

The court denied the motion for expedited arbitration, finding that the contractual provisions of the Agreement did not provide for expedited arbitration. [6] Because the terms of the Agreement merely required the parties to arbitrate in accordance with the Constitution and rules of the New York Stock Exchange, the court could not force the plaintiff to submit to expedited arbitration. Lee e.g., Mevvill Lynsh r. Cunningham, 736 F.Supp. 887 (N.D.Ill.1990); and Mevvill Lynsh r. Tobiar, 90 C 20210, U.S. District Court, Western Division (July 17, 1990).

On April 29, 1991, the plaintiff brought this motion to extend the TRO pending an award and final decision of the arbitration panel in accordance with the Constitution and Rules of the NYSE. [7] A few minutes before motion call, the defendant submitted several documents and motions to the court, raising numerous arguments against the extension of the TRO. Defendant submitted a report on the status of the proceedings and accompanying affidavits, objections to plaintiff's motion to extend the TRO, and an answer to the plaintiff's complaint. The court continued the hearing until 5:00 p.m.. The plaintiff, at that time, submitted its response to the defendant's objections. The court extended the TRO one day, and referred the matter to the emergency judge, as this judge was absent from court on April 30, 1991. The emergency judge did not hear the merits of the motions, and the parties agreed to extend the TRO for one day. This court held a hearing on May 1, 1991.

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*3 This court has already determined that the dispute in this case is arbitrable, and has ordered the parties to submit their dispute to arbitration. Since that time, Patinkin has complied with the TRO by returning all documents to plaintiff's attorney. [8] Although Patinkin, Prudential Bache Securities, and Merrill Lynch have initiated arbitration of their disputes before the New York Stock Exchange, the parties apparently have not agreed to find a mutually convenient date to proceed with arbitration proceedings in Chicago.

Now that arbitration proceedings have been initiated and the documents have been returned to the plaintiff, the defendant asserts that any harm or loss that Merrill Lynch has ‘allegedly’ suffered prior to the entry of the TRO has ceased due to Patinkin's compliance with the TRO. Defendant reasons that the balance of the equities has now tipped overwhelmingly in favor of Patinkin who will be unable to earn a living while this injunction in force. Defendant also argues that because the plaintiff refuses to go to expedited arbitration, equity and fairness require the court to vacate the temporary restraining order.

Under Federal Rule of Civil Procedure 65, unless there is agreement for extension between the parties, the court cannot extend a TRO without good cause. The Rule provides that a TRO:

... shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for extension shall be entered of record....

This court's reading of the rule is that under Federal Rule of Civil Procedure 65, a court cannot extend a TRO without a showing of good cause. Evidence of good cause is especially important when the TRO has been issued without notice to the other side. [9] In the instant case, the defendant did of course, have notice and an opportunity to be heard before the TRO was issued. Therefore, the only question presented here is whether there is good cause to extend the TRO.

The court recognizes that the defendant has returned the documents he removed from Merrill Lynch as required under the TRO. Because the documents have been returned, the only possible remaining harm to plaintiff is that the defendant may solicit its clients. The court finds that this possible harm justifies the extension of the TRO. As the Fourth Circuit Court of Appeals noted in Mevvill Lynsh r. Bvadley, 756 F.2d 1048 (4th Cir.1985), a case that was factually similar to this one, the continuing possibility that the defendant will solicit plaintiff's clients justifies the TRO's extension. Without injunctive relief the defendant's conduct might irreversibly damage the status quo:

When an account executive breaches his employment contract by soliciting his former employer's customers, a non-solicitation clause requires immediate application to have any effect. An injunction even a few days after solicitation has begun is unsatisfactory because the damage is done. The parties cannot be 'unsolicited.' It may be impossible for the arbitral award to return the parties substantially to the status quo ante because the prevailing parties' damages may be too speculative.

*4 Id. at 1054.

The Bvadley court therefore concluded that:

[W]here a dispute is subject to mandatory arbitration under the Federal Arbitration Act, a district court has the discretion to grant a preliminary injunction to preserve the status quo pending arbitration of the parties' dispute if the enjoined conduct would render that process a 'hallow formality.' The arbitration process would be a hallow formality where 'the arbitral award when rendered could not return the parties substantially to the status quo ante.' ... [this] decision will further, not frustrate, the policies underlying the Federal Arbitration Act.

Id. at 1053–1054.

Two other courts in this circuit have considered the issue of extending a temporary restraining order, in cases which were factually similar to this one. In Mevvill Lynsh r. Cunningham, 736 F.Supp. 887 (N.D.Ill.1990) and Mevvill Lynsh r. Tobiar, 90 C 20210, U.S. District Court, Western Division (July 17, 1990), both courts found that the extension of the TRO was justified because of plaintiff's likely, and threatened loss of clients, and the irreparable harm that plaintiff would suffer if the TRO was not extended. Lee alro, Mevvill Lynsh r. Mather, No. CY–90–3060–AAM, U.S. District Court, Eastern District of Washington (August 2, 1990) (Injunctive relief extended pending arbitration of parties dispute).

The defendant has attacked the extension of the TRO on a number of grounds. First, the defendant argues that the Agreement is not valid. At the hearing on the motion to extend the TRO, the defendant testified that he was told by his supervisor that he was bound to the terms of the Agreement for only a two year period. Since the Agreement was signed in 1982, Patinkin argues that he is no longer bound to the its terms. The court finds that this argument is not credible, and is not supported by the clear terms of the parties' Agreement, which the defendant admitted he read, and understood before signing. [10] No language in the Agreement suggests that it is enforceable for only a limited period of time. The court rejects this position.

Defendant also argues that the TRO should be vacated because the Agreement, which defendant alleges is a restrictive covenant, is unenforceable. Defendant testified that some seventy to eighty percent of the clients he served at Merrill Lynch were long time friends, neighbors, and relatives, which he solicited without any real input from Merrill Lynch. Defendant asserts that under Illinois law, since he developed his client base, and provided the information about his clients to Merrill Lynch, the information is not confidential. Defendant reasons that since the information is not confidential, Merrill Lynch does not have a legitimate protectable interest in enforcing the restrictive covenant.

As the court told the parties several times at oral argument, these arguments have little bearing on the court's ruling on the motion for the extension of the TRO. In general, this court will not consider the merits of this

case or the overall validity of the Agreement, as that is better left to the arbitration board. [11]

*5 Even if relevant to this motion, the court finds that the defendant's argument concerning his client base and the restrictive covenant has no weight. [12] Defendant's argument regarding the unenforceability of the Agreement as a restrictive covenant is based on Illinois law. Paragraph 4 of the Agreement explains, that the "Agreement shall be construed, and the validity, performance and enforcement thereof shall be governed by the laws of New York." Therefore, Illinois law does not apply. [13] Also, the court believes that this argument is weak on its face, since the relevant language of the contract makes no distinction between clients Patinkin brought to the firm, and those supplied by Merrill Lynch. [14]

Finally, the defendant pointed out that at least one court in this circuit has declined to extend a TRO pending arbitration of the dispute. In Mevvill Lynsh r. Rorenbaum 90 C 5031 (N.D.Ill.1990), once the defendant returned plaintiff's account information, and plaintiff's claim had been submitted to the New York Stock Exchange, Judge Conlon vacated the TRO because she found that the balance of the equities favored the defendant. Here, this court issued the TRO out of concern for plaintiff's interest in its client base as well as its business records, and therefore declines to follow the Rorenbaum decision.

In addition, the court is not persuaded by defendant's argument that he will suffer undue hardship by the loss of Merrill Lynch clients if the TRO stays in effect until this matter is resolved by the arbitration board. The court finds that although this argument has some merit, the defendant has the ability to contact new clients, to solicit business from them, and to receive customers from Prudential. The court also notes that the TRO does not restrict solicitation of business from family members. Further, while defendant testified as to the hardship he would face if the TRO remained in effect, he also testified that he was given a bonus when he joined Prudential.

Furthermore, defendant's argument that the hardship suffered by his Merrill Lynch clients requires the dissolution of the TRO must be also rejected. Those customers are free to do business with other brokers at Merrill Lynch, or they can transfer their accounts to other brokerage firms. There is no great public harm from the clients' temporary loss of Mr. Patinkin's services. His clients, like those of many others before him, can find other brokers to manage their accounts until this matter is resolved by the arbitration board. The court finds that the balance of the equities does not favor vacating the TRO.

As was noted above, the intent of the court when it entered the TRO on April 19, 1991, was to maintain the status quo without prejudice to the merits of the parties claims or defenses that were or may be asserted in this litigation, until an arbitration panel could hear, and make findings on the issues presented in this lawsuit. It was the court's intention that the TRO would stay in effect until the case was presented to the arbitration panel, which could use its expertise and knowledge in this field to resolve the dispute presented.

*6 After reading the submitted documents, the defendant's Answer to the verified complaint, and hearing testimony and oral argument on this motion, the court finds that there is still good cause for the issuance of the TRO. The court bases its finding on its belief that the plaintiff will suffer irreparable harm if the TRO is not extended. In doing so, this court joins several other courts which have found that Merrill Lynch suffers irreparable harm from the solicitation and loss of its clients, and that this is a harm for which there is no adequate legal remedy.

The court also finds that greater injury will be inflicted on the plaintiff by the denial of the extension of the TRO than will be inflicted upon the defendant by granting the extension. The court notes that the injuries which the parties face involve more than economic losses. If the economic status of the parties was the only factor to be considered here defendant might very well prevail on this motion. The court believes that the denial of the extension of the TRO under the circumstances presented in this case would leave Merrill Lynch vulnerable to the same conduct from other employees. Hence, the potential harm plaintiff faces, on several levels, is enormous. [15]

Therefore, the court extends the TRO until July 1, 1991, or until the arbitration panel is able to address whether the TRO should remain in effect. The parties are instructed to cooperate with each other in order proceed to arbitration, under the Rules and Constitution of the NYSE, as expeditiously as possible.

Conslurion

The Plaintiff's motion to extend the temporary restraining order is granted. The TRO will remain in effect until July 1, 1991. The Defendant's motion to vacate the temporary restraining order is denied. Defendant's motion to increase bond to $50,000 is granted. Since the plaintiff refuses to agree to an expedited arbitration hearing, [6] and defendant will suffer some harm during the pendency of the TRO, an increase in the bond is warranted. A status hearing is set for 9:30 a.m. on Friday, June 28, 1991.

All Citationx

Not Reported in F.Supp., 1991 WL 83163

Footnotes

1 The agreement provides that:

1. All records of Merrill Lynch, including the names and addresses of its clients, are and shall remain the property of Merrill Lynch at all times during my employment with Merrill Lynch and after termination of my employment for any reason with Merrill Lynch. None of said records nor any part of them is to be removed by me from the premises of Merrill Lynch either in original form or in duplicated or copied form, and the names and addresses and other facts in such records are not to be transmitted verbally or in writing by me except in the ordinary course of conducting business for Merrill Lynch. All of said records or any part of them are the sole proprietary information of Merrill Lynch and shall be treated by me as confidential information of Merrill Lynch.

2. In the event of termination of my services with Merrill Lynch for any reason, I will not solicit, for a period of one year from the date of termination of my employment in any community or city served by the office of Merrill Lynch, or any subsidiary thereof, at which I was employed at any time, any of the clients of Merrill Lynch whom I served or whose names became known to me while in the employ of Merrill Lynch. In the event that any of the provisions contained in this paragraph and/or paragraph (1) above are violated, I understand that I will be liable to Merrill Lynch for any damages caused thereby.

2 The court notes that on May 1, 1991, the defendant testified at the hearing on the extension of the TRO and did not deny any of these factual allegations.

3 Defendant now argues that the TRO was issued without notice. This argument is meritless. Shortly before motion call for the TRO the defendant filed a motion to compel which was in excess of twenty pages. At oral argument, defendant raised numerous arguments against the issuance of the TRO.

4 At the hearing on the motion to extend the TRO, both counsel agreed that defendant was not restrained from accepting business with those Merrill Lynch customers he did not solicit. Hence, Patinkin is free to accept business from any clients he did not solicit. The TRO is accordingly modified to reflect this understanding.

5 The court specifically rejected defendant's argument that the Illinois Arbitration Act superseded the Federal Arbitration Act. Because the Federal Arbitration Act is applicable to this action, the court found that it is not bound by the Illinois Uniform Arbitration Act, which is superseded by the Federal Act. (See TRO, ¶¶ 8 and 9, *Conclusions of Law, and* 9 U.S.C. § 2. *See also, Zechman v. Merrill Lynch,* 742 F.Supp. 1359, notes 4 and 6 (N.D.Ill.1990).

The court further found that the Federal Arbitration Act did not preclude the issuance of a temporary restraining order in this case, pending arbitration. *See Merrill Lynch v. Tobias,* 90 C 20210, U.S. District Court N.D. Illinois, Western Division (July 17, 1990) (Roszkowski, J.) and *Merrill Lynch v. Cunningham,* 736 F.Supp. 887 (N.D.Ill.1990) (Hart, J.), and *see also, Sauer–Getribe KG v. White Hydraulics, Inc.,* 715 F.2d 348 (7th Cir.1983) (finding that it was error for a district court not to grant injunctive relief pending arbitration of a matter where the plaintiff established the factors for obtaining a preliminary injunction), and *Merrill Lynch v. Bradley,* 756 F.2d 1048, 1052 (4th Cir.1985).

6 9 U.S.C. §§ 3–4 of the Federal Arbitration Act specifically states that arbitration can be compelled only "in accordance with the terms of the agreement to arbitrate.

7 Merrill Lynch has, in accordance with these rules, notified the Director of Arbitration of the NYSE to open a file in this matter, submitted a fully executed Uniform Submission Agreement, paid the filing fee, demanded the constitution of a panel of three members in accordance with the Rules of the NYSE, requested a cite for arbitration in Chicago, filed a formal claim with the Director of Arbitration of the NYSE, served a request for the production of documents from the defendant as provided for under Rule 619 of the NYSE, and notified opposing counsel of its willingness to contact the NYSE to arrange a hearing date for arbitration.

8 The parties agree that Patinkin's attorney will be allowed to keep copies of the document, and to show and discuss the documents with his client for purposes of defending Mr. Patinkin in this litigation, and the pending arbitration.

9 See also, *Merrill Lynch v. Tobias,* a case which was extremely similar to this one factually, Judge Roszkowski found that "Rule 65 presumably contemplates TROs issued without notice to the adverse party. The rule is silent as to whether a TRO issued with notice to the adverse party expires after 10 days." (*Tobias,* at p. 5). Judge Roszkowski found that Illinois law was instructive on this procedural point, and that it suggests that when a TRO is issued with notice to the adverse party, it will not necessarily expire after ten days:

> In this regard, Illinois case law indicates that TROs with notice to the adverse party do not necessarily expire after 10 days. In *City of Chicago v. Westphalen,* 93 Ill.App.3d 1110 (1st Dist.1981), the court held that when notice is provided in conjunction with a TRO, the TRO can be issued for a period of greater than 10 days. *See also, Lawter International, Inc. v. Carroll,* 107 Ill.App.3d 938 (1st Dist.1982); *Kable Printing Co. v. Mount Morris Bookbinders Union Local 65–B,* 349 N.E.2d 36 (1976). This holding makes sense. The trade-off for an *ex parte* issuance of a TRO is that the TRO has a limited life. *Levas and Levas v. Village of Antioch, Ill.,* 684 F.2d 446, 448 (7th Cir.1982). This type of protection is not required when a TRO is issued with notice and both parties have an opportunity to present evidence before the court. *Id.* at 6.

10 Although the court believes that this is an issue which should go before the arbitration board, for purposes of the motion to extend the TRO, this argument is rejected. The court makes this tentative finding, which is not binding on the arbitration board for the limited purpose of deciding the motion to extend the TRO.

11 Indeed, the court specifically declined to turn the motion for an extension of the TRO into a hearing on a preliminary injunction, because issuing a preliminary injunction would require inquiry into plaintiff's likelihood of success on the merits to a greater extent than that required for the issuance of a TRO. The court agrees that "such a judicial inquiry would inject into the merits of issues more appropriately left to the arbitration panel." *Tobias,* at p. 7.

Similarly, the court also believes that defendant's general argument that the employment agreement is too broad to be enforceable, is also better left to the arbitration board, which is already responsible for finally determining whether the Agreement is enforceable.

12 Again, the court notes that these are tentative rulings for purposes of deciding the motion to extend the TRO.

13 Similarly, defendant's testimony regarding confidentiality at Merrill Lynch, and how easily he and others gained access to customer names and files is not an issue that this court will deal with at this time. In the initial motion for a TRO, the plaintiff submitted an affidavit explaining how client files are only available to those Merrill Lynch employees who have access to the firm's computer password. Based on this evidence, the court found that the customer lists were intended to be confidential, meaning that they are only intended to be used by Merrill Lynch employees. In light of this reasoning, defendant's arguments regarding his own access to names of Merrill Lynch customers before they became clients of Merrill Lynch is unpersuasive. The point here is that once an individual becomes a client of Merrill Lynch, the firm makes an effort to keep information about that client confidential.

14 Paragraphs 2 states in pertinent part that:

> In the event of termination of my services with Merrill Lynch for any reason, will not solicit, for a period of one year from the date of termination ... any of the clients of Merrill Lynch whom I served or whose names became known to me while in the employ of Merrill Lynch.

15 Although the defendant testified that other former brokers at Merrill Lynch kept, retained and ultimately used client information for their own personal benefit, the court cannot rely on these conclusory, hearsay allegations, which lacked sufficient foundation for reliability.

16 The defendant determined that the Arbitration Board could hear this matter on an expedited basis on May 8, 1991. The court is now unsure as to when an arbitration hearing will be held.

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Exhibit B

2016 WL 6405635
Only the Westlaw citation is currently available.
United States District Court,
S.D. Indiana, Indianapolis Division.

Britt Interactive LLC an Indiana limited liability company, Townepost Network Inc. an Indiana corporation, Plaintiffs,
v.
A3 Media LLC an Indiana limited liability company, Collective Publishing LLC an Indiana limited liability company, Yelena Lucas, Neil Lucas, Janelle Morrison, Defendants.

Case No. 1:16-cv-02884-TWP-MJD
|
Signed 10/31/2016

Attorneys and Law Firms

Josh F. Brown, Stephanie Maris, Law Offices of Josh F. Brown, LLC, Carmel, IN, for Plaintiffs.

Townepost Network Inc., pro se.

P. Adam Davis, Davis & Sarbinoff LLC, Carmel, IN, for Defendants.

ENTRY ON PENDING MOTIONS

TANYA WALTON PRATT, DISTRICT JUDGE

***1** This matter is before the Court on Plaintiffs Britt Interactive, LLC's ("Britt Interactive") and TownePost Network, Inc.'s ("TownePost") (collectively "Plaintiffs") Motion to Extend Temporary Restraining Order ("TRO") (Filing No. 11) and Defendants A3 Media, LLC ("A3 Media"), Neil Lucas, Lena Lucas and Collective Publishing, LLC ("Collective Publishing") (collectively "Defendants") Emergency Motion for Extension of Time to File Response. (Filing No. 20). For the reasons stated below Plaintiffs' Motion to Extend the Temporary Restraining Order is granted and Defendants' Motion for Extension of Time to File Response is granted in part and denied in part.

I. BACKGROUND

On October 17, 2016, a Hamilton Superior Court judge granted Plaintiffs' TRO motion, finding that Plaintiffs would suffer irreparable harm if Defendants A3 Media, Neil Lucas, Lena Lucas and Collective Publishing were to distribute any subsequent issues of "Zionsville Magazine" or "Carmel Magazine." The TRO expires October 31, 2016 at 3:55pm. Plaintiffs seek to extend the TRO, asserting that they will suffer immediate and irreparable harm if the TRO is not extended until the date of the Preliminary Injunction hearing. Defendants were given until October 31, 2016 at 10:00 a.m. to respond to Plaintiff's motion. Defendants failed to file a timely response, however at 12:14 p.m., a belated motion for extension of time to respond was filed.

A brief recitation of the background facts set forth in the state court record is instructive. Tom Britt ("Mr. Britt") founded Britt Interactive in 2003. (Filing No. 3-4 at 8.) Britt Interactive published a monthly newsletter and magazine, known as Geist Community Newsletter, as well as a website, atGeist.com. *Id.* Britt Interactive also sold licenses to third-parties to use its methods, techniques, intellectual property, and system to produce monthly publications in designated territories. *Id.* On December 21, 2012 and October 17, 2013, respectively, Britt Interactive entered into a License Agreement with A3 Media, operated by Neil and Lena Lucas, to produce monthly local publications in Zionsville and Carmel, Indiana. *Id.* at 8-9. The magazines were known as "Zionsville Community Newsletter" and "Carmel Community Newsletter" (collectively the "magazines"). *Id.* at 9. Under the License Agreements, Britt Interactive retained ownership of the magazines, as well as their website domains, "atZionsville.com" and "atCarmel.com." *Id.* Britt interactive also retained the naming rights of the magazines and domains, as well as, ownership of the business processes, customer data, intellectual property and design. *Id.* at 9-10. A3 Media was not permitted to modify the design or change the name of the magazine in any manner unless Britt Interactive gave written approval. *Id.* at 9.

In 2014, Mr. Britt established TownePost Network, which acquired all of Britt Interactive's intellectual property and License Agreements. *Id.* at 11. On February 1, 2014, Britt Interactive and TownePost informed Britt Interactive's

Licensees that customers and Licensees should submit fees and payments to TownePost. *Id.* A3 Media, as well as other licensees, submitted management fees, page layout fees, as well as all other fees and cost, to TownePost. *Id.*

***2** On July 21, 2015, TownePost informed the Licensees that the names and logos of the publications would change from "newsletter" to "magazine." *Id.* at 13. A3 Media's magazines changed from "Zionsville Community Newsletter" and "Carmel Community Newsletter" to "Zionsville Magazine" and "Carmel Magazine." *Id.* On July 11, 2016, TownePost also informed A3 Media, as well as other Licensees, that it was converting to the franchise model, and offered to sale franchises as opposed to licenses. *Id.* at 14. The pertinent clause in the A3 Media's agreement states, "[i]n the event that Britt chooses to transform the licensees to franchisees, Licensee will be given the opportunity to purchase the territory franchise for $1.00." *Id.* If a Licensee did not want to become a TownePost Network franchisee, then TownePost would buy out the Licensee pursuant to the Licensee Agreement. *Id.*

Neil and Lena Lucas did not inform Mr. Britt whether A3 Media would become a franchisee or select the buy-out option. *Id.* However, on August 8, 2016, A3 Media applied for state trademarks for the names "Zionsville Magazine" and "Carmel Magazine." *Id.* at 13. On August 24, 2016, Lena Lucas solicited quotes from printing companies. *Id.* at 16. Lena Lucas then contacted several TownePost customers informing them to cancel agreements with TownePost and to make all checks payable to A3 Media rather than to TownePost. *Id.* at 16-17. On September 15, 2016, customers contacted TownePost regarding A3 Media's decision to abandon TownePost's license. *Id.* at 14. On September 20, 2016, A3 Media sent a letter to TownePost, terminating services. *Id.* at 18. That same day, Lena Lucas sent an email to 4,038 customers informing them of her change in email. *Id.* Thereafter, several customers contacted Mr. Britt, asserting that they were confused regarding which magazine they may advertise in and which company they should pay. *Id.* at 19.

On September 23, 2016, Plaintiffs filed a Complaint and Motion for Preliminary Injunction in the Hamilton Superior Court 3 ("Superior Court") against the Defendants, asserting tortious interference with contracts, tortious interference with business relationships, conversion, trademark infringement, trademark infringement pursuant to the Lanham Act, violations of Indiana trademark act, and breach of contract. (Filing No. 3-2 at 13-22; Filing No. 3-3 at 3-7.) A3 Media continued publishing and distributing the magazines under the names "Zionsville Magazine" and "Carmel Magazine." (Filing No. 3-3 at 63-65, 68-70; Filing No. 3-4 at 22.) Thereafter, on October 11, 2016, Plaintiffs filed an Amended Complaint and a TRO Motion. (Filing No. 3-4 at 7-42; Filing No. 3-3 at 43-50.) On October 17, 2016, the Superior Court held a hearing and granted Plaintiffs' TRO, restraining and enjoining Defendants from distributing October issues, and any subsequent issues of the magazines, as well as, interfering with the contracts between TownePost and its advertisers, among other things. (Filing No. 14.) On October 21, 2016, Defendants removed the case to federal court pursuant to 28 U.S.C. §§ 1441 and 1446. (Filing No. 3.) The Plaintiffs now seek to extend the TRO, which expires on October 31, 2016 at 3:55pm, asserting that there is a continued risk of irreparable harm to Plaintiffs if the TRO is not extended until Plaintiffs' Motion for Preliminary Injunction hearing. (Filing No. 11.) The Plaintiffs also filed a Motion to Hold Defendants in Contempt for Violating the TRO. (Filing No. 17.) As stated earlier, Defendants failed to file a timely response, instead they have filed an Emergency Motion for Extension of Time to File Response. (Filing No. 20).

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 65, a TRO "expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension." Fed. R. Civ. P. 65(b)(2). The reasons for an extension must be entered in the record. *Id.* Where parties to a TRO have notice and an opportunity to be heard, the only question presented is whether there is good cause to extend the TRO. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Patinkin,* No. 91 C 2324, 1991 WL 83163, at *3 (N.D. Ill. May 9, 1991). A TRO is generally limited to one extension and a maximum duration of 28 days. *H-D Mich., LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 844 (7th Cir. 2012). However, "where a court expressly extends a TRO issued after notice and a hearing beyond the [28 day] statutory limit, the TRO does not cease to exist but instead becomes an enforceable preliminary injunction subject to appellate

review." *Id.* at 844-45 (citing *Sampson v. Murray,* 415 U.S. 61, 86–88 (1974)).

III. DISCUSSION

***3** Plaintiffs request the Court to extend the TRO and hold Defendants in contempt, asserting that Defendants violated the TRO and continue to irreparably harm Plaintiffs. As a preliminary matter, Plaintiffs' Motion to hold Defendants in contempt (Filing No. 17) is referred to Magistrate Judge Dinsmore. The parties should establish a briefing schedule regarding the contempt Motion when meeting with Judge Dinsmore on November 3, 2016.

Regarding the TRO, Plaintiffs argue that the facts and circumstances remain the same, and if Defendants are permitted to publish and distribute their versions of the magazines, Plaintiffs will suffer harm. "Good cause" may be established by showing that the grounds for originally granting the TRO continue to exist. *Patinkin,* 1991 WL 83163, at *3 (citing Merrill Lynch v. Bradley, 756 F.2d 1048 (4th Cir. 1985)) (holding that the continuing possibility that the defendant will solicit plaintiff's clients justifies extending the TRO).

In the state court order granting motion for temporary restraining order (Filing No. 14), Defendants were enjoined from distributing October issues, and any subsequent issues of the magazines, using marks that are the same as or confusingly similar to TownePost's Licensed Marks or common law marks in any manner, as well as, interfering with the contracts between TownePost and its advertisers, among other things. Plaintiffs present evidence that Defendants violated the TRO by continuing to use the names "Carmel Magazine" and "Zionsville Magazine" on their websites with links to magazines that were published by TownePost and that contains TownePost's Licensed Marks. (Filing No. 19-7; Filing No. 19-6.) The Plaintiffs also present evidence that Defendants plan to distribute November issues of the magazines once the TRO expires on October 31. Just days after the TRO hearing, on October 19, 2016, Neil Lucas sent email solicitations to TownePost advertisers, requesting that they advertise in Defendants' Magazine. (Filing No. 19-8.) Plaintiffs assert that because of Defendants' solicitations and other actions, numerous advertisers and customers are confused, leading several to withdraw their advertisements in Plaintiffs' magazines. (Filing No. 19-9.)

To date, Defendants have not objected to the Motion to Extend the Temporary Restraining Order. Defendants' counsel, Mr. Davis, failed to file a Response Brief, despite an explicit order directing Defendants to file a response by October 31 before 10:00 a.m. Defendants, instead, filed the motion requesting an extension of time to file a Response Brief, consenting to the TRO being extended until November 1. (Filing No. 20.) Defendants counsel stated only that Defendants calendared the deadline wrong for the deadline to file a response to the TRO Extension, which was set for October 31, 2016, (the "Response Deadline") but failed to see the "before 10:00 a.m." portion of the Order.

In the State Court record, Mr. Davis consented to the $24,000 bond imposed on Plaintiffs, stating that it was "a fair amount", and requested only "that if the [preliminary injunction] decision is not rendered in enough time for our December issue that [Plaintiffs] be required to post additional amount for a bond." (Filing No. 13-3 at 69.) A TRO may be extended for good cause or for a period the adverse party consents to. Fed. R. Civ. P. 65(b)(2). Because Defendants' counsel has not objected to an extension of the TRO, has consented to an extension until November 1, 2016 and indicated in the state court record that a TRO is acceptable until closer to publication of a December 1 st issue, the Court finds good cause to temporarily extend the TRO until November 14, 2016 at 3:00 p.m. This extended deadline will give Defendants time to file a Response Brief, which counsel indicated would be filed on October 31, 2016 and allow the parties to meet with the magistrate judge as scheduled on November 3, 2016.

IV. CONCLUSION

***4** For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion to Extend the Temporary Restraining Order and the TRO is extended until **November 14 at 3:00 pm**. (Filing No. 11.) The Court **GRANTS in part and DENIES in part** Defendants' Motion for Extension of Time to Respond. (Filing No. 20). The motion is granted in that Defendants have until the end of the day on October 31, 2016 to file their response, and denied in that the Court is extending the TRO until November 14, 2016.

Further, the Court refers Plaintiffs' Motion to Hold Defendants in Contempt (Filing No. 17) to Magistrate Judge Dinsmore to issue a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

SO ORDERED.

Date: 10/31/2016.

All Citations

Slip Copy, 2016 WL 6405635

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Exhibit C

2016 WL 8118008
Only the Westlaw citation is currently available.
United States District Court,
E.D. Michigan, Southern Division.

United Naturals, Inc., Plaintiffs,
v.
LXR Biotech, LLC; Capital Sales Company;
Capital Sales Distributing, LLC; and
Capital Sales II, LLC, Defendants.

Case No. 15-14299
|
Signed 03/14/2016

Attorneys and Law Firms

Kevin F. O'Shea, Marc L. Newman, Miller Law Firm, Rochester, MI, Kristin C. Davis, Reed Smith LLP, Michael Bertrand Roberts, Washington, DC, for Plaintiffs.

John A. Vanophem, Vanophem IP Law PLC, Milford, MI, Megan Piper McKnight, Michael J. Barton, Plunkett Cooney, Bloomfield Hills, MI, Andrew Goddeeris, Jeffrey K. Lamb, Robert M. Riley, Honigman Miller Schwartz and Cohn LLP, Detroit, MI, J. Michael Huget, Honigman Miller Schwartz and Cohn LLP, Ann Arbor, MI, for Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE, TO DISSOLVE TRO [100]

Nancy G. Edmunds, United States District Judge

***1** Before the Court is Defendant LXR Biotech's emergency motion for reconsideration of this Court's Order of clarification (Dkt. 99), or in the alternative, to dissolve the temporary restraining order.

Pursuant to Rule 7.1(h) of the Local Rules for the Eastern District of Michigan, a party may file a motion for reconsideration within fourteen days after a court issues an order to which the party objects. Although a court has the discretion to grant such a motion, it generally will not grant a motion for reconsideration that "merely present[s] the same issues ruled upon by the court, either expressly or by reasonable implication." E.D. Mich. L. R. 7.1(h). To persuade the court to grant the motion, the movant "must not only demonstrate a palpable defect by which the court and the parties and other parties entitled to be heard on the motion have been misled but also show that correcting the defect will result in a different disposition of the case." *Id.*

Defendant LXR Biotech's motion does not satisfy the requirements of Rule 7.1(h). Defendant has not set out a palpable defect by which the Court has been misled. The stipulated temporary restraining order (TRO) entered by this Court on December 22, 2015 stated it would expire on February 10, 2016, at 5:00 p.m. unless extended by the Court. (Dkt. 14.) February 10 was the date scheduled for the hearing on Plaintiff's preliminary injunction motion, upon which date Defendants were ordered to "show cause why a further injunction should not issue." (*Id.*) In light of new documents presented to the Court on February 10, however, the Court reset the hearing for April 6 with agreement from all parties on the reset date. Because the hearing was reset, the Court subsequently clarified that the TRO remains in effect and is extended in the interim. [1]

As a preliminary matter, the Court notes that by its terms, the time limits in Rule 65(b) apply only to TROs issued without notice. Fed. R. Civ. P. 65(b). Here, the Court entered the stipulated TRO after notice was given, a telephone conference with all parties was held, Defendants were provided an opportunity to respond, and a hearing on the motion for a TRO was held. (*See, e.g.*, Dkt. 5, 8, 10, 11.) But even if the time limits were applicable, the clarification Order is supported by case law stating that district courts have some leeway to extend a restraining order beyond such time limits pending a hearing on the motion for a preliminary injunction. *See, e.g.*, *Maine v. Fri*, 483 F.2d 439, 441 (1st Cir. 1973) (citing 11A Wright & Miller, Fed. Prac. & Proc. Civ. § 2953 (noting that extending a TRO beyond time limits "might be legitimate ... when the preliminary injunction hearing has not been held within that time")); *Almetals, Inc. v. Wickeder Westfalenstahl, GMBH*, No. 08-10109, 2008 WL 624067, at *2-3 (E.D. Mich. Mar. 6, 2008) (Edmunds, J.); *United States v. Prof'l Air Traffic Controllers Org. (PATCO)*, 527 F. Supp. 1344, 1346 n.1 (N.D. Ill. 1981). The preliminary injunction hearing was rescheduled to be held as expeditiously as possible, and the extension of the TRO until such reset hearing date is appropriate here.

***2** For these reasons, the Court DENIES Defendant's motion for reconsideration, or in the alternative, to dissolve the TRO.

SO ORDERED.

All Citations

Slip Copy, 2016 WL 8118008

Footnotes

1 Though the clarification Order did not explicitly state, the extension of the TRO is to the date of the hearing on the preliminary injunction (April 6, 2016), unless otherwise ordered.

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