

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-60082-CIV-DIMITROULEAS/Snow

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

FREDERIC ELM, f/k/a Frederic Elmaleh, ELM TREE  
INVESTMENT ADVISORS LLC, ELM TREE  
INVESTMENT FUND LP, ELM TREE 'E'CONOMY  
FUND LP, ELM TREE MOTION OPPORTUNITY LP,  
and AMANDA ELM, f/k/a Amanda Elmaleh,

Defendants.

---

**ORDER**

THIS CAUSE is before the Court on non-party Phil Elmaleh's Motion for Protective Order (ECF No. 180), which was referred to United States Magistrate Judge Lurana S. Snow.

On August 21, 2017, Phil Elmaleh, on behalf of MojiLife, Inc., filed the instant motion challenging a subpoena duces tecum noticed by the Receiver in this case directed to a former employee of MojiLife. Mr. Elmaleh requested a hearing to determine whether the Receiver should be permitted to obtain MojiLife's proprietary information, including MojiLife's source code from the deponent. Mr. Elmaleh requested time to hire an attorney in advance of a hearing on the issue. A corporate entity must be represented by counsel to appear in federal court. Palazzo v. Gulf Oil Corp., 764 F.2d 1381, 1385 (11th Cir. 1985) (“the long standing and consistent court interpretation of § 1654 is that [corporations] must be represented by licensed counsel”)(quoting Turner v. American Bar Ass’n, 407 F. Supp. 451, 476 (N.D. Ind. 1975), aff’d sub nom., Taylor v. Montgomery, 539 F.2d 715 (7th Cir. 1976), cert. denied, 474 U.S. 1058, 106 S.Ct. 799, 88 L.Ed.2d 775 (1986)).

On August 22, 2017, the Court entered an order requiring MojiLife to, on or before September 5, 2017, retain counsel (ECF No. 182). The Court warned that failure to do so would result in an order striking the motion for protective order. Because no licensed attorney entered a timely appearance on behalf of MojiLife, the Court entered an order striking MojiLife's motion for protective order. (ECF No. 183)

On September 18, 2017, Mr. Elmaleh, on behalf of MojiLife filed a motion requesting more time to hire a lawyer, explaining that MojiLife is located in Canada, and he did not receive the undersigned's order requiring MojiLife to retain counsel until August 31, 2017. Also, the medical condition of a family member hindered his ability to obtain U.S. counsel to represent MojiLife. Mr. Elmaleh also reported that he obtained a PACER account in order to monitor the activity in this case. (ECF No. 184) Under the circumstances, the Court vacated its order striking Mr. Elmaleh's Motion for Protective Order and granted MojiLife until October 13, 2017 to obtain counsel to represent its interests in this action. (ECF No. 185) The Court warned that should MojiLife fail to retain counsel, the Court would enter an order striking its motion for protective order. Id. As of this date, MojiLife has not retained counsel to represent its interests in this case. Accordingly, it is hereby

ORDERED AND ADJUDGED that non-party Phil Elmaleh's Motion for Protective Order on Behalf of MojiLife, Inc. (ECF No. 180) is STRICKEN.

DONE AND ORDERED at Fort Lauderdale, Florida, this 16th day of October, 2017.

Copies to:

All Counsel of Record

Phil Elmaleh (Via U.S. Mail)  
MojiLife, Inc.  
59 McCabe Crescent  
Thornhill, Ontario  
Canada  
L4J 2S6

  
LURANA S. SNOW  
UNITED STATES MAGISTRATE JUDGE