

1 NANCY A. MITCHELL (*pro hac vice pending*)  
 2 MARIA J. DICONZA (*pro hac vice pending*)  
 3 GREENBERG TRAUERIG, LLP  
 4 The MetLife Building  
 5 200 Park Avenue  
 6 New York, New York 10166  
 Telephone: 212-801-9200  
 Facsimile: 212-801-6400  
 Email: mitchelln@gtlaw.com  
 diconzam@gtlaw.com

GREGORY E. GARMAN, NV Bar # 6654  
 THOMAS H. FELL, NV Bar # 3717  
 TERESA M. PILATOWICZ, NV Bar #9605  
 GORDON SILVER  
 3960 Howard Hughes Parkway, 9th flr.  
 Las Vegas, Nevada 89169  
 Telephone: 702-796-5555  
 Facsimile: 702-369-2666  
 Email: ggarman@gordonsilver.com  
 tfell@gordonsilver.com  
 tpilatowicz@gordonsilver.com

7 *Proposed Counsel for the Debtors*  
 8 *and Debtors in Possession*

9  
 10 **UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF NEVADA**

11 In re:

12 TELEXFREE, LLC,

13  Affects this Debtor

14  Affects all Debtors

15  Affects TELEXFREE, INC.

16  Affects TELEXFREE FINANCIAL, INC

Case No.: BK-S-14-12524-abl  
 Chapter 11

**[PROPOSED]**

**Jointly Administered with:**

14-12525-abl TelexFree, Inc.  
 14-12526-abl TelexFree Financial, Inc

Date: April 17, 2014  
 Time: 1:30 p.m.

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 19 **APPLICATION FOR ORDER SHORTENING TIME TO HEAR DEBTORS'**  
**FIRST DAY MOTIONS AND APPLICATIONS**

20  
 21 The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”)<sup>1</sup>  
 22 hereby submit this ex parte application (the “**Application**”) requesting that this Court hear  
 23 Debtors’ first day motions (collectively, the “**First Day Motions**”) as hereinafter described on  
 24 shortened time as the relief requested in the First Day Motions is necessary to Debtors’  
 25 continued operation as a going concern following Debtors’ filing of their voluntary petitions for

26 <sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four (4) digits of each Debtor’s federal tax  
 27 identification number, are: TelexFree, LLC (0853), TelexFree, Inc. (1309) and TelexFree Financial, Inc  
 28 (7555). The Debtors’ business address is 225 Cedar Hill Street, Suite 200, Marlborough, Massachusetts  
 01752.



1 relief (the “**Voluntary Petitions**”) [ECF No. 1] under Chapter <sup>2</sup>11 of the Bankruptcy Code. The  
 2 First Day Motions are necessary in order to avoid immediate and irreparable harm to the estate  
 3 and all creditors.

4 Specifically, Debtors’ First Day Motions are as follows:

- 5 1. *Emergency Motion of the Debtors for an Order Directing Joint*  
 6 *Administration of Chapter 11 Cases* (the “**Joint Administration**
- 7 2. *Emergency Motion of the Debtors Pursuant to Sections 105(a), 363, 364,*  
 8 *503, 507(a)(4), 507(a)(5), 541, 1007 and 1008 of the Bankruptcy Code*  
 9 *and Bankruptcy Rules 6003 and 6004(h) for Entry of an Order (A)*  
 10 *Authorizing Debtors to Pay (I) All Prepetition Employee Obligations, (II)*  
 11 *the Independent Contractors’ Fees and (III) the Contracting Agencies’*  
 12 *Fees and (B) Directing the Disbursing Bank to Honor Related Transfers*  
 13 *(the “**Wages Motion**”);*
- 14 3. *Emergency Motion of the Debtors for Entry of an Order (I) Authorizing*  
 15 *the Debtors to Pay Prepetition Income, Franchise and Similar Taxes and*  
 16 *Regulator Fees in the Ordinary Court of Business, and (II) Authorizing*  
 17 *Banks and Financial Institutions to Honor and Process Checks and*  
 18 *Transfers Related Thereto* (the “**Taxes Motion**”);
- 19 4. *Emergency Motion of the Debtors for Entry of Interim and Final Orders*  
 20 *Pursuant to Section 105(a) and 366 of the Bankruptcy Code (I)*  
 21 *Prohibiting Utilities from Altering, Refusing, or Discontinuing Service,*  
 22 *(II) Deeming Utilities Adequately Assured of Future Performance, and*  
 23 *(III) Establishing Procedures for Determine Adequate Assurance of*  
 24 *Payment* (the “**Utilities Motion**”);
- 25 5. *Emergency Motion of the Debtors for Entry of an Order Authorizing the*  
 26 *Debtors to Honor Prepetition Prepaid Voice Over Internet Protocol*  
 27 *Telephone Minutes* (the “**Consumer Programs Motion**”);
- 28 6. *Emergency Motion of the Debtors to Pursuant to Section 105(a) of the*  
*Bankruptcy Code, Bankruptcy Rules 1007, 2002(l), 2002(m), and 9007,*  
*Local Rule 2002 for Entry of an Order Approving Notice Procedures* (the  
 “**Notice Motion**”);
7. *Emergency Motion of the Debtors for Entry of an Order Designating and*  
*Approving the Form and Manner of Notice of the Motion of the Debtors*  
*for Entry of an Order Authorizing the Debtors to Reject Certain Executory*

<sup>2</sup> All references to “Chapter” and “Section” herein shall be to the “Bankruptcy Code” appearing in Title 11 of the U.S. code; all references to a “Bankruptcy Rule” shall refer to the Federal Rules of Bankruptcy Procedure; and all references to a “Local Rule” shall refer to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

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*Contracts Nunc Pro Tunc as of the Petition Date* (the “**Rejection Notice Motion**”);

8. *Emergency Motion of the Debtors for Entry of an Order Authorizing the Debtors to Honor Credit Card Transactions, Chargebacks, Discounts and Commissions in the Ordinary Course of Business* (the “**Credit Card Motion**”); and

9. *Emergency Motion of the Debtors for Entry of an Interim Order (A) Authorizing the Maintenance of Accounts and Continued Use of Existing Business Forms and Checks, (B) Waiving Certain Investment and Deposit Guidelines & (C) Granting Administrative Expense Status to Post-Petition Intercompany Claims* (the “**Cash Management Motion**”).

10. *Emergency Application for Order Authorizing the Employment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent for Debtors* (the “**Claims Agent Motion**”).

The First Day Motions are supported by the *Omnibus Declaration of William H. Runge III in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* (the “**First Day Declaration**”)<sup>3</sup> [ECF No. 13] and the Declaration of William H. Runge III in Support of the Cash Management Motion (the “**Runge Declaration**”) [ECF No. 19] and Declaration of Evan Gershbein in support of the Claims Agent Motion [ECF No. 17] (the “**Gershbein Declaration**”)

This Application is made and based upon Bankruptcy Rule 9006, the following memorandum of points and authorities, the following declaration of Teresa Pilatowicz (the “**Pilatowicz Declaration**”), the Attorney Information Sheet filed contemporaneously with this Application, and the papers and pleadings on file with this Court, judicial notice of which is respectfully requested.

WHEREFORE, Debtors respectfully request that this Court grant this OST Application and issue an order shortening time to hear the First Day Motions at the Court’s earliest convenience, and for other and further relief as the Court deems just and proper.

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<sup>3</sup> All capitalized items not otherwise defined herein shall have those meanings ascribed in the First Day Declaration.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**  
3 **BACKGROUND**

4 1. TelexFree, LLC, a Nevada limited liability company (“**TelexFree Nevada**”),  
5 TelexFree, Inc., a Massachusetts corporation (“**TelexFree Massachusetts**”) and TelexFree  
6 Financial, Inc, a Florida corporation (“**TelexFree Florida**” and together with TelexFree  
7 Massachusetts and TelexFree Nevada, “**TelexFree**,” the “**Debtors**” or the “**Company**”) are a  
8 telecommunications business that uses multi-level marketing to assist in the distribution of voice  
9 over internet protocol (“**VoIP**”) telephone services. TelexFree’s retail VoIP product,  
10 99TelexFree, allows for unlimited international calling to approximately seventy countries for a  
11 flat monthly rate of \$49.90. Customers of the Debtors’ VoIP product (“**Customers**”) used  
12 approximately 11 million minutes of the 99TelexFree VoIP service in February 2014. Since  
13 99TelexFree was introduced in 2012, Customer usage increased on a monthly basis until March  
14 2014.

15 2. TelexFree is operated as a multi-level marketing company, and currently has over  
16 700,000 associates or promoters (the “**Promoters**”) worldwide. Prior to the filing of these the  
17 above captioned chapter 11 cases (“**Chapter 11 Cases**”), TelexFree compensated Promoters for  
18 the sales of the VoIP product, the placing of advertisements and the recruitment of other  
19 Promoters down line. Because questions were raised about its compensation plan, the Company  
20 on March 9, 2014, discontinued its original compensation plan (the “**Original Comp Plan**”) and  
21 replaced the Original Comp Plan with a revised compensation plan (the “**Revised Comp Plan**”  
22 and together with the Original Comp Plan, the “**Pre-Petition Comp Plans**”). At the time of the  
23 roll-out of the Revised Comp Plan, the Company decided to honor certain discretionary  
24 payments to Promoters under the Original Comp Plan. These discretionary payments quickly  
25 became a substantial drain on the Company’s liquidity. The Company discontinued the Pre-  
26 Petition Comp Plans and ceased making discretionary payments under the Original Comp Plan  
27 prior to April 13, 2014 (“**Petition Date**”).

28

1 3. The Company believes the sales of the 99TelexFree product, the TelexFree “app,”  
2 and other new products will ultimately prove successful and profitable. The Company is  
3 struggling, however, with several factors that required it to seek chapter 11 protection by filing  
4 these Chapter 11 Cases. First, the Company experienced exponential growth in revenue between  
5 2012 and 2013 (from de minimus amounts to over \$1 billion), which put tremendous pressure on  
6 the Company’s financial, operational and management systems. Second, although the Company  
7 revised its Original Comp Plan in order to address certain questions that were raised regarding  
8 such plan, the Company believes that the Pre-Petition Comp Plans need to be further revised.  
9 Finally, the trailing liabilities arising from the Original Comp Plan are difficult to quantify and  
10 have resulted in substantial asserted liabilities against the Company, a number of which may not  
11 be valid.

12 4. As a result, the Company filed these Chapter 11 Cases to obtain the breathing  
13 room to address its operational and regulatory issues, revise the Pre-Petition Comp Plans, and  
14 quantify and address the claims against it. The Company believes that a restructuring of its debt,  
15 adoption of a post-petition revised compensation plan, unveiling of new products (including the  
16 TelexFree app), and return to growing its Customer base will allow the Company to realize its  
17 full potential and generate significant value for its constituents.

18 **II.**  
19 **FIRST DAY MOTIONS**

20 **A. The Joint Administration Motion**

21 1. The Debtors request the joint administration of the Debtors’ related Chapter 11  
22 Cases for procedural purposes only. Specifically, the Debtors request that the Court maintain  
23 one file and one docket for the Debtors’ cases under the TelexFree Nevada case and also request  
24 that the caption of their cases be modified to reflect the joint administration of the cases. *See*  
25 *First Day Declaration*, ¶ 45.

26 2. Joint administration of these cases (a) is warranted because the Debtors’ financial  
27 affairs and business operations are closely related, and (b) will ease the administrative burden on  
28 the Court and parties-in-interest in these cases. The Debtors anticipate that numerous notices,

1 applications, motions, pleadings, hearings, orders, and other documents in these cases will affect  
2 all of the Debtors. With three (3) affiliated Debtors, each with its own case docket, the failure to  
3 administer these cases jointly would result in numerous duplicative pleadings being filed and  
4 served upon parties identified in separate service lists. Such duplication of substantially identical  
5 documents would be extremely wasteful and would unnecessarily overburden the Debtors, the  
6 Clerk of the Court (the “**Clerk**”), creditors, and other parties-in-interest in these Cases. *See id.* at  
7 ¶ 46.

8 **B. The Wages Motion**

9 3. The Debtors’ employees (the “**Employees**”) are essential to the continued  
10 operation of the Debtors’ business, and the Employees’ morale directly affects their effectiveness  
11 and productivity. Consequently, it is critical that the Debtors continue, in the ordinary course,  
12 any personnel policies, programs, and procedures that were in effect prior to the Petition Date.  
13 Accordingly, through (the “**Wages**”), the Debtors seek entry of an order (a) authorizing, but not  
14 directing, the Debtors to pay (i) certain prepetition employee obligations (collectively the  
15 “**Employee Obligations**”), (ii) the Independent Contractors’ Fees (as defined below) and (iii) the  
16 Contracting Agencies’ Fees and (b) directing PNC Bank, N.A. (the “**Disbursing Bank**”) to  
17 honor the Debtors’ prepetition checks or electronic transfers for payment of any of the foregoing,  
18 and prohibiting the Disbursing Bank from placing holds on, or attempting to reverse, any  
19 automatic transfers on account of the foregoing. *See id.* at ¶ 49.

20 4. The Debtors seek authority to pay the Taxes and Fees to avoid disruption to their  
21 business. *See id.* At ¶77-79

22 **C. The Taxes Motion**

23 5. In connection with the normal operation of their business, the Debtors pay certain  
24 income, franchise and similar taxes (collectively, the “**Taxes**”) to federal and state taxing  
25 authorities (collectively, the “**Taxing Authorities**”) and pay various regulatory fees (the  
26 “**Regulatory Fees**,” and together with Taxes, the “**Taxes and Fees**”) to certain governmental  
27 agencies and authorities (together with the Taxing Authorities, the “**Taxing and Regulatory**  
28 **Authorities**”). *See id.* at ¶ 76.

1 **D. The Utilities Motion**

2 6. In connection with the operation of their businesses and management of their  
3 properties, the Debtors obtain telephone services and internet provider services (collectively, the  
4 “**Utility Services**”) from certain utility companies (collectively, the “**Utility Providers**”). *See*  
5 *id.* at ¶ 73.

6 7. In the ordinary course of business, the Debtors regularly incur utility expenses for  
7 Utility Services provided by the Utility Providers. The Debtors have a long and established  
8 payment history with the Utility Providers. The Debtors’ aggregate average monthly cost for  
9 utility services is approximately \$18,500. *See id.* at ¶ 74.

10 8. Uninterrupted utility services are essential to the preservation of the Debtors’ estates  
11 and assets, and therefore, to the success of these Chapter 11 Cases. Should a Utility Provider  
12 refuse or discontinue service, even for a brief period, the Debtors’ ability to preserve and  
13 maximize the value of their estates could be severely and irreparably harmed. For example, a  
14 lack of telephonic or internet services would render the Debtors’ services inoperable, effectively  
15 corrupting the good-will of the Debtors’ businesses with end users of the Debtors’ products.  
16 Such a result could jeopardize the Debtors’ reorganization efforts and ultimately, value and  
17 creditor recoveries. It is therefore critical that utility services continue uninterrupted. *See id.* at ¶  
18 75.

19 **E. The Consumer Programs Motion**

20 9. As described in the First Day Declaration, the Debtors distribute a VoIP product,  
21 99TelexFree, which allows a subscriber to make unlimited international calls to over forty  
22 countries. A subscriber pays a monthly fee in order to obtain a month of service from the  
23 Debtors. Prior to the Petition Date the Debtors sold their VoIP services to a number of  
24 customers who anticipated utilizing the Debtors’ services for the month following their purchase  
25 (the “**Prepaid VoIP Minutes**”). The Debtors failure to honor the Prepaid VoIP Minutes would  
26 severely and irreparably harm the Debtors’ customer relations, as many of the Debtors’  
27 customers would be deprived of the services they purchased. *See id.* at ¶ 80.

28 10. The success and viability of the Debtors’ business and the Debtors’ ability to

1 successfully maximize value for the stakeholders in these cases are dependent primarily upon the  
2 patronage and loyalty of the customers who purchase the VoIP product. The ability to honor the  
3 Prepaid VoIP Minutes is fundamental to the continued success of the Debtors' business; without  
4 the ability to honor the Prepaid VoIP Minutes the Debtors business will be irreparably harmed.  
5 Moreover, honoring the Prepaid VoIP Minutes will preserve customer satisfaction; this will  
6 assist the Debtors in retaining current customers and assist the Debtors in their reorganizational  
7 efforts. Honoring the Prepaid VoIP Minutes is critical to the continuation of customer loyalty  
8 and satisfaction, whereas failure to honor the Prepaid VoIP Minutes would severely and  
9 irreparably impair the Debtors' customer relations and cause a severe loss in customer  
10 confidence. Accordingly, the Debtors submit that they should be authorized to honor the Prepaid  
11 VoIP Minutes. *See id.* at ¶ 81.

12 **F. The Notice Motion**

13 11. Through the Notice Motion, the Debtors seek entry of an order establishing notice  
14 procedures and establishing a master service list (the "**Master Service List**"). *See id.* at ¶ 69.

15 12. TelexFree Nevada entered into various enrollment agreements (the "**Contracts**")  
16 with over 700,000 parties allowing these parties to utilize and/or promote the Company's  
17 services. The Company can initiate communication with the counterparties to Contracts (the  
18 "**Counterparties**") in two ways. First, the Company can email the Counterparties directly to the  
19 email addresses provided by the Counterparties. Pursuant to the Contracts, each Counterparty  
20 agrees that the Company can contact the Counterparties via email and that such email address is  
21 "valid for legal purposes." Second, the Company provides a virtual environment (the "**Back**  
22 **Office**") which Counterparties use to access certain of the Company's services and obtain  
23 information with respect to the counterparty's individual account. Each Counterparty has a  
24 unique user name and password to access the Back Office and in the ordinary course of business  
25 the Company regularly posts messages to the Back Office. *See id.* at ¶ 70.

26 13. With such a large number of Counterparties, the service of pleadings on them via  
27 traditional means would prove expensive, inefficient, and unduly burdensome. The Debtors  
28 therefore propose that, when the Debtors are obligated to notice the Counterparties, the Debtors



1 shall be authorized to serve the Counterparties via (a) electronic mail at the email address  
2 provided to the Company and/or (b) utilizing the messaging services provided by the Back  
3 Office, as described herein. *See id.* at ¶ 71.

4 **G. The Rejection Notice Motion**

5 14. Through the Rejection Notice Motion, the Debtors seek approval of procedures to  
6 provide notice to the Promoters of the hearing on, and objection deadline for, the Rejection  
7 Motion. *See id.* at ¶ 87.

8 15. The Debtors believe that providing notice as set forth in the Rejection Notice  
9 Motion is proper and sufficient under the existing circumstances and necessary as a first day  
10 moot given the nunc pro tunc relief requested. *See id.* at ¶ 88

11 **H. The Credit Card Motion**

12 16. In the normal course of business, approximately twenty-five percent (25%) of  
13 the Debtors' total sales are settled through credit card transactions. During the post-petition  
14 period, the Debtors expect to continue accepting credit cards as a source of payments for  
15 purchases in the normal course of their day-to-day operations. Through the Credit Card Motion,  
16 the Debtors seek entry of an order pursuant to sections 105(a), 363 and 553 of the Bankruptcy  
17 Code authorizing the Debtors to continue to honor certain credit card transactions, chargebacks,  
18 discounts and related expenses. *See id.* at ¶ 60.

19 **I. The Cash Management Motion**

20 17. Prior to the commencement of the Chapter 11 Cases, and in the ordinary course of  
21 their businesses, the Debtors maintained approximately 16 bank, brokerage or other accounts  
22 (collectively, the "**Accounts**"). *See* Runge Declaration ¶ 9.

23 18. The Debtors' transition into chapter 11 will be significantly less disruptive if the  
24 Accounts are maintained following the commencement of the Chapter 11 Cases with the same  
25 account numbers until the Debtors can rationalize their cash management system. The Debtors  
26 further request authority to deposit funds in and withdraw funds from the PNC Account  
27 postpetition, subject to the same access rights and limitations existing prior to the Petition Date,  
28 including, but not limited to, checks, wire transfers, ACH, electronic funds transfers, and other

1 debits and to treat the Accounts for all purposes as debtor-in-possession accounts. *See id.* at ¶  
2 14.

3 **J. The Claims Agent Motion**

4 19. KCC is a bankruptcy administrator that specializes in providing comprehensive  
5 Chapter 11 administrative services including noticing, claims processing, balloting, and other  
6 related services critical to the effective administration of Chapter 11 cases. Indeed, KCC has  
7 developed efficient and cost-effective methods to properly handle the voluminous mailings  
8 associated with the noticing, claims processing, and balloting portions of Chapter 11 cases to  
9 ensure the orderly and fair treatment of creditors, equity security holders, and all parties in  
10 interest. Further, KCC will work with the Clerk's office to ensure that such methodology  
11 conforms with all of the Court's procedures, the Bankruptcy Code, the Bankruptcy Rules, the  
12 Local Rules, and any orders entered by this Court. KCC's services are necessary given the size  
13 and complexity of these Chapter 11 Cases. *See* Gershbein Declaration.

14 **III.**  
15 **DECLARATION OF TERESA PILATOWICZ**

16 I, Teresa Pilatowicz, declare as follows:

17 1. I am over the age of 18, am mentally competent, have personal knowledge of the  
18 facts in this matter, and if called upon to testify, could and would do so.

19 2. I am an associate with the law firm of Gordon Silver, proposed Nevada counsel  
20 for Debtors in the Chapter 11 Cases and duly licensed to practice law in the State of Nevada.

21 3. Debtors have filed this Application to hear the First Day Motions on shortened  
22 time as necessary to the ongoing operation of Debtors' businesses post-petition and to a  
23 successful reorganization.

24 4. As detailed in this Application, cause exists with which this Court may grant the  
25 Application on the basis that the relief requested by Debtors through the First Day Motions is  
26 necessary to allow Debtors to continue their day-to-day business operations following the filing  
27 of Debtors' Chapter 11 Cases. Without such immediate relief, the likelihood of Debtors'  
28 successful reorganization would be greatly harmed.

1 I declare under penalty of perjury of the laws of the United States that these facts are true  
2 to the best of my knowledge and belief.

3 DATED this 14 day of April, 2014.

4   
TERESA M. PILATOWICZ

5  
6 **IV.**  
**LEGAL ARGUMENT**

7 Section 105 allows this Court to issue such orders as are necessary to carry out the  
8 provisions of this title. Bankruptcy Rule 9006(c)(1) generally permits a Bankruptcy Court, for  
9 cause shown and in its discretion, to reduce the period during which any notice is given in  
10 accordance with the Bankruptcy Rules. Bankruptcy Rule 9006(c)(1) provides as follows:

11 Except as provided in paragraph (2) of this subdivision, when an act is  
12 required or allowed to be done at or within a specified time by these rules  
13 or by a notice given thereunder or by order of court, the court for cause  
shown may in its discretion with or without motion or notice order the  
period reduced.

14 11 U.S.C. § 105. Local Rule 9006 provides further authority for shortening the time for a  
15 hearing. According to Local Rule 9006(b), every motion for an order shortening time must be  
16 accompanied by an affidavit stating the reasons for an expedited hearing. As set forth in the  
17 Pilatowicz Declaration, Debtors' successful transition to their Chapter 11 Cases is predicated  
18 upon the First Day Motions being heard on shortened time.

19 Local Rule 9006 requires the moving party to submit an Attorney Information Sheet  
20 indicating whether opposing counsel was provided with notice, whether opposing counsel  
21 consented to the hearing on an order shortening time, the date counsel was provided with notice  
22 and how notice was provided or attempted to be provided. An Attorney Information Sheet was  
23 filed contemporaneously with this OST Application.

24 **V.**  
**CONCLUSION**

25 WHEREFORE, Debtors respectfully request that this Honorable Court grant this  
26 Application and issue an order shortening time to hear the First Day Motions on shortened time  
27  
28

1 on April 17, 2014 at 1:30 p.m., and for such other and further relief as the Court deems just and  
2 proper.

3 DATED this 14 day of April, 2014.

4 GORDON SILVER

5  
6 By 

GREGORY E. GARMAN, ESQ.

THOMAS H. FELL, ESQ.

TERESA M. PILATOWICZ, ESQ.

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

9  
10 AND

11 NANCY A. MITCHELL (*pro hac vice pending*)

MARIA J. DICONZA (*pro hac vice pending*)

12 GREENBERG TRAUERIG, LLP

The MetLife Building

200 Park Avenue

13 New York, New York 10166

14  
15 *Proposed Counsel for the Debtors  
and Debtors in Possession*