Docket #0139 Date Filed: 6/25/2014

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: TELEXFREE, LLC Debtor.	**EXPEDITED DETERMINATION REQUESTED**
WALDEMARA MARTIN, LEANDRO VALENTIM, Putative Claims Representatives and Those Similarly Situated, Plaintiffs, v. TELEXFREE, INC., et al., Defendants.	**Chapter 11** **Case No. 14-40987 MSH** **Adversary Proceeding** **No. 14-ap-04044-MSH**

MOTION AND REQUEST FOR EXPEDITED DETERMINATION FOR AN EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND TO COMPLAINT

Pursuant to Fed. R. Bankr. P. 9006 and L. Bankr. R. 9013-1, Defendant Carlos Nataniel Wanzeler ("Wanzeler"), by and through his undersigned counsel, respectfully moves for an extension of time to answer or otherwise respond to the Complaint (Dkt. No. 1) until 10 days after the date of entry of any order deciding the pending motion to withdraw the reference (Dkt. No. 27) or August 11, 2014, whichever comes later. Wanzeler also requests expedited determination of this motion pursuant to L. Bankr. R. 9013-1(g)(1)(B).

As grounds for the motion, Wanzeler states as follows:

1. On April 13, 2014, TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (the "Debtors"), commenced individual chapter 11 cases (the "Chapter 11 Cases") by filing

voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada.

2. On or about April 16, 2014, Wanzeler left the United States and traveled to Brazil, where he currently resides.

3. On May 3, 2014, plaintiffs Martin and Valentim ("Martin") filed a purported class action adversary proceeding, alleging various claims for relief under Federal and State laws (the "Complaint"). (Dkt No. 1.)

4. On May 5, 2014, the Chapter 11 Cases were transferred to this Court, where they are currently being jointly administered for procedural purposes under the case caption *In re TelexFree, LLC*, Case No. 14-40987 (MSH) (jointly administered).

5. Also on May 5, 2014, Martin moved to withdraw the reference. (Dkt. No. 27.)

6. On June 6, 2014, Martin purported to serve Wanzeler with the Complaint by U.S. Mail to his former residence in Massachusetts. (Dkt. No. 117.) Assuming, without conceding, that Wanzeler was properly served, Wanzeler's answer or other response to the Complaint may be due as early as July 3, 2014. *See* Fed. R. Bankr. P. 7012(a).[1]

7. On June 13, 2014, Martin and defendant TD Bank stipulated to an extension of time to respond to the Complaint to August 4, 2014. (Dkt. No. 109.) The Court subsequently approved the stipulation. (Dkt. No. 133.)

8. Also on June 13, 2014, counsel to Wanzeler called Martin's counsel, Mr. Bonsignore, to request an extension of time to 30 days after the date of entry of any order deciding the motion to answer or otherwise respond to the Complaint. The call quality was poor, and counsel were unable to meet and confer.

[1] Wanzeler reserves all rights to assert any and all defenses and objections to the Complaint under Fed. R. Bankr. P. 7012 and Fed. R. Civ. P. 12.

9. On June 16, 2014, counsel to Wanzeler emailed Martin's counsel requesting an extension to 30 days after the Court decided the motion to withdraw the reference in this action, and a motion to withdraw the reference in another, related adversary proceeding, *Cellucci et al. v. Telexfree, Inc. et al.*, No. 14-04057-MSH. Martin's counsel refused to stipulate to an extension.

10. Following the meet-and-confer on June 16, counsel to Wanzeler began to gather information to answer or otherwise respond to the Complaint. Counsel has not yet had the opportunity and ability to gather sufficient information to respond to the Complaint in an informed manner.

11. On June 24, 2014, counsel to Wanzeler, in view of the insufficient opportunity and ability to gather information to respond to the Complaint, again emailed Martin's counsel to seek an extension. Counsel to Wanzeler also informed Martin that Wanzeler would file an opposed motion and seek expedited relief. Martin's counsel refused to assent to an extension.

12. Also on June 24, 2014, the chapter 11 trustee appointed in the Debtors' Chapter 11 cases moved for an extension of time to answer the Complaint through and including August 11, 2014 (Dkt. No. 136), the date by which he must also respond to the *Cellucci* plaintiffs' motion to withdraw the reference in that proceeding.

13. As of the date of filing this motion, Martin's motion to withdraw the reference is still pending. (Dkt. No. 27.)

14. Wanzeler respectfully requests that the Court grant an extension to respond to the Complaint until after the decision on the motion to withdraw the reference in the interest of judicial efficiency. *See* Fed. R. Bankr. P. 1001. Should the Court decide to withdraw the reference, it would be more efficient for the District Court to address Wanzeler's response to the Complaint and any issues arising from it, along with all other pre-trial matters. Indeed, this is

Martin's preference: Martin's counsel has asked the Court to withdraw the reference "quickly" on the grounds that Martin's case is "stuck" in this Court and that withdrawal will make this case, and others, "streamlined and efficient." Hearing Tr. May 27, 2014 at 44-48; *see also* Dkt. No. 27 at 14-15 (arguing that "the District Court should conduct all pre-trial matters in this case," as it will enable the District Court "to streamline issues and discovery"). Additionally, Martin has argued that withdrawal of the reference is "mandatory" under 28 U.S.C. § 157, noting that most of the defendants (including Wanzeler) are nondebtor individuals or entities. (Dkt. No. 27 at 2-3.) Martin has also argued that permissive withdrawal of the reference is warranted for the additional reason that Martin has demanded a jury trial, to which all parties have not consented in this adversary proceeding. *Id.* at 3. Consequently, in the interest of judicial efficiency, any answer or other response to the Complaint should not occur until the motion to withdraw the reference is adjudicated.

15. Martin's actions also show that it will suffer no prejudice from the extension Wanzeler seeks. Martin's counsel, in this proceeding and the related *Cellucci* proceeding, has stipulated to the precise extension sought here or, alternatively, a 30-day extension. *See, e.g.*, Dkt. No. 109 [stipulating to a 30 day extension for TD Bank]; *Cellucci*, No. 14-0457, Dkt. No. 70 [same counsel stipulating to 30 day extension for TD Bank]; *Cellucci*, No. 14-0457, Dkt. No. 73 [same counsel stipulating to extension sought here];[2] *Cellucci*, No. 14-0457, Dkt. No. 99 [same stipulation sought here]. Martin's willingness to stipulate to the exact extension sought here shows that Martin will suffer no prejudice from granting this motion. Additionally,

[2] Defendant Middlesex Savings Bank filed a motion today that seeks a similar extension to which plaintiffs assented in the *Cellucci* case, namely, up to and including 10 days after the Court adjudicates the motion to withdraw the reference. (Dkt. No. 138.)

Martin's counsel has not articulated a reason why granting an extension to Wanzeler in particular would prejudice Martin.

16. Further, for the reasons stated above and under the circumstances, counsel to Wanzeler respectfully requests additional time to gather sufficient information to respond to the Complaint.

17. Finally, expedited determination of this motion is warranted under these circumstances. Wanzeler's response to the Complaint may be due in fewer than 14 days from the filing of this motion. As Martin will not assent to an extension despite the circumstances and Martin's willingness to grant extensions to other parties, Wanzeler's response to the Complaint may be due prior to the filing of Martin's opposition to this motion. In an abundance of caution, Wanzeler therefore seeks expedited determination of this motion.

WHEREFORE, it is respectfully requested that the Court grant this Motion and extend Wanzeler's time to answer or otherwise respond to the Complaint through and including 10 days following entry of any order deciding the motion to withdraw the reference or August 11, 2014, whichever comes later.

[*This space intentionally left blank*]

Dated: June 25, 2014

Respectfully submitted,

/s/ William D. Dalsen

William D. Dalsen (BBO # 689334)
PROSKAUER ROSE LLP
One International Place
Boston, MA 02110-2600
Telephone: (617) 526-9600
Facsimile: (617) 526-9899
wdalsen@proskauer.com

Robert J. Cleary (*pro hac vice* to be submitted)
Mark E. Davidson (*pro hac vice* to be submitted)
Scott K. Rutsky (*pro hac vice* to be submitted)
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036-8299
Tel: (212) 969-3000
Fax: (212) 969-2900
rcleary@proskauer.com
mdavidson@proskauer.com
srutsky@proskauer.com

CERTIFICATION PURSUANT TO RULE 9013-1(g)(1)(C)

The undersigned counsel hereby certifies that counsel for Defendant has conferred with counsel for plaintiffs regarding the relief sought by this motion, and that, as detailed above, counsel to plaintiffs have refused to assent to this motion.

/s/ William D. Dalsen
William D. Dalsen

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorneys of record to this action by operation of the Court's ECF filing system on this 25th day of June, 2014.

/s/ William D. Dalsen
William D. Dalsen