Docket #0001 Date Filed: 4/1/2016

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)

PLAINTIFFS	DEFENDANTS
Stephen Darr, as he is the Trustee of the Chapter 11 Estates of Each of the Debtors	Gerald P. Nehra, Nehra & Waak
ATTORNEYS (Firm Name, Address, and Telephone No.) Andrew G. Lizotte, Murphy & King, P.C., One Beacon Street, Boston, MA 02108	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☑ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☑ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

To recover payments made to the Defendant within two (2) years of the bankruptcy filing as fraudulent transfers, or, in the alternative, payments within one (1) year as preferential transfers.

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☑ 12-Recovery of money/property - §547 preference
- ☑ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $

Other Relief Sought



BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Telexfree, LLC, Telexfree, Inc., and Telexfree Financial, Inc.	BANKRUPTCY CASE NO. 14-40987-MSH	
DISTRICT IN WHICH CASE IS PENDING Massachusetts	DIVISION OFFICE Western	NAME OF JUDGE Hoffman
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE April 1, 2016	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Andrew G. Lizotte	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Debtors.	Chapter 11 Cases 14-40987-MSH 14-40988-MSH 14-40989-MSH Jointly Administered
STEPHEN DARR, AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF EACH OF THE DEBTORS, Plaintiff, v. GERALD P. NEHRA, NEHRA & WAAK, Defendants.	Adversary Proceeding No. 16-

COMPLAINT

Introduction

Stephen Darr is the duly appointed and acting trustee (the "Trustee") of the Chapter 11 bankruptcy estates ("Estates") of TelexFree, Inc. ("Inc."), TelexFree, LLC ("LLC") and TelexFree Financial, Inc. ("Financial" and, collectively, the "Debtors"). As Trustee, Mr. Darr brings this adversary proceeding to recover payments made to the Defendants within two years of the bankruptcy filings as fraudulent transfers.

Parties and Jurisdiction

1. The Trustee, who is the duly appointed Chapter 11 trustee of the Debtors, has a principal place of business in Boston, Massachusetts.

2. The Defendant Nehra & Waak is a law firm partnership with a place of business at 11300 East Shore Drive, Delton, Michigan 49046.

3. The Defendant Gerald Nehra is an attorney with a place of business at 11300 East Shore Drive, Delton, Michigan 49046.

4. This adversary proceeding is brought pursuant to §§ 547, 548, 550 and 551 of Title 11 of the United States Code for the avoidance and recovery of fraudulent conveyances and preferential transfers.

5. This Court has jurisdiction over the adversary proceeding pursuant to 28 U.S.C. § 1334.

6. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)(F)(H) and (O).

7. Venue in this district is proper under 28 U.S.C. § 1409.

Statement of Facts

8. TelexFree, Inc. is a Massachusetts corporation that, prior to February 2012, was known as Common Cents Communications, Inc. ("Common Cents"). Common Cents was incorporated in 2002 by Carlos Wanzeler, James Merrill, and Steven Labriola. Upon information and belief, the shareholders of TelexFree, Inc. are Wanzeler and Merrill.

9. TelexFree, LLC is a Nevada corporation that was incorporated by Wanzeler, Merrill, and Carlos Costa, a resident of Brazil, in July 2012 and registered to do business in Massachusetts in April 2013. Upon information and belief, the members of TelexFree, LLC are Wanzeler and Merrill.

10. TelexFree Financial, Inc. is a Florida corporation formed in 2013. Upon information and belief, TelexFree Financial, Inc. is wholly owned by TelexFree, LLC.

11. In the late 1990s, Wanzeler and Merrill became sales agents for WorldxChange, a multi-level marketing company that sold inexpensive long-distance telephone service using sales agents to recruit other sales agents as well as customers. In 2002, Wanzeler, Merrill, and Labriola incorporated Common Cents as a vehicle for their sales efforts on behalf of WorldxChange. In 2003, the three individuals ceased working with WorldxChange after it was acquired by another company and discontinued the multi-level marketing program.

12. In 2005, Wanzeler began selling analog telephone adapters, using the name "Brazilian Help" in the United States and "Disk A Vontade Telefonia" in Brazil. In 2007, Wanzeler incorporated Brazilian Help in Massachusetts.

13. In early 2012, Wanzeler, Merrill, and Costa changed the name of Common Cents to TelexFree, Inc. for the apparent purpose of using a multi-level marketing platform to sell voice over internet telephone service. In July 2012, Wanzeler, Merrill, and Costa formed TelexFree, LLC, purportedly to handle TelexFree transactions outside Massachusetts.

14. On or about February 2012, Wanzeler and Costa formed Ympactus Comercial Ltda. ("Ympactus"), a Brazilian affiliate of the Debtors that operated a similar scheme. In June 2013, Ympactus was shut down by the Brazilian authorities and was later found to have engaged in an illegal pyramid scheme.

15. Commencing in the spring of 2012, the Debtors operated a massive Ponzi and pyramid scheme, which involved more than a million participants ("Participants") from multiple countries. The Debtors ostensibly operated a "multi-level marketing" company with its headquarters in Marlborough, Massachusetts. It represented itself as being in the business of

selling telephone service plans that use "voice over internet protocol" ("VoIP") technology. The sale of VoIP, however, constituted only a minor portion of their business; the Debtors' actual business was the recruitment of Participants.

16. From April 2012 to April 2014, individuals throughout the world, including many Participants of the Brazilian and Dominican immigrant communities in the United States, purchased membership plans with a transaction value of approximately $3,000,000,000. The memberships promised substantial returns – 200% per year or more – for becoming "promoters" of the business. The Debtors promised to pay Participants for placing ads on obscure classified ad sites on the internet and recruiting other Participants to do the same. The membership fees from Participants constituted approximately ninety-nine percent (99%) of the monies taken in by the Debtors.

17. The Defendants are providers of legal services and purportedly specialize in providing legal services to multi-level marketing companies.

18. The Defendants were retained by the Debtors in the spring of 2012 to provide advice with respect to the implementation of the Debtors' business plan.

19. The Defendants failed to provide the Debtors with any compensable advice during the two years of their retention by the Debtors.

20. In fact, Nehra was actively involved in promoting the Debtors' Ponzi scheme and duping Participants. After the enforcement action against Ympactus in Brazil, the leaders of TelexFree publicly claimed that TelexFree was different from illegal multi-level marketing programs, because it had an actual product to sell – the VoIP service. Gerald Nehra, who was identified on the company website as TelexFree's attorney, appeared in a video that was posted

on YouTube on August 2, 2013 with the title "TelexFREE Lawyer." Nehra stated, "The special ingredient is that you have a real product."

21. Throughout 2013 and 2014, the Debtors continued to recruit new Participants which provided the funding for compensation to existing Participants. When in March of 2014, the Debtors changed their compensation plan so that Participants would be required to sell the VoIP service in order to qualify for bonuses and commissions, the scheme collapsed resulting in the bankruptcy filings.

22. On April 13, 2014 (the "Petition Date"), the Debtors filed voluntary Chapter 11 petitions with the United States Bankruptcy Court for the District of Nevada.

23. By order dated May 6, 2014, the Nevada Bankruptcy Court approved a motion to change venue filed by the Securities and Exchange Commission. The cases were transferred to this Court on May 9, 2014.

24. On May 30, 2014, this Court approved the motion of the Office of the United States Trustee to appoint a Chapter 11 trustee, and the Trustee was appointed on June 6, 2014.

25. On November 25, 2015, the Court, on motion by the Trustee and after notice, entered an Order, as amended on December 21, 2015, that the Debtors were engaged in a Ponzi and pyramid scheme and that this ruling was the law of the case in each of the jointly administered cases.

26. During the two years preceding the Petition Date, the Debtors made the following payments to the Defendants (the "Transfers"):

(i) Payment dated May 18, 2012 in the amount of $6,000.00;

(ii) Payment dated June 29, 2012 in the amount of $5,000.00;

(iii) Payment dated July 21, 2012 in the amount of $4,000.00;

(iv) Payment dated January 25, 2013 in the amount of $211.96;

(v) Payment dated October 31, 2013 in the amount of $777.05;

(vi) Payment dated November 11, 2013 in the amount of $6,250.00;

(vii) Payment dated April 3, 2014 in the amount of $1,736.82.

COUNT ONE

Fraudulent Transfer -- Constructive – 11 U.S.C. §§ 548, 550 and 551

27. The Trustee realleges and repeats the allegations contained in the foregoing paragraphs and by reference incorporates them herein.

28. Each of the aforementioned payments constitutes a "transfer," as that term is defined in 11 U.S.C. § 548, of an asset or interest in an asset of the Debtors.

29. The Transfers were made within two years of the Petition Date.

30. Each of the Transfers was made while the Debtors were insolvent.

31. Each of the Transfers was made for less than reasonably equivalent value.

32. The Transfers constitute fraudulent transfers avoidable by the Trustee pursuant to § 548(a)(1)(B) of the Bankruptcy Code and recoverable from the Defendants pursuant to §§ 550 and 551 of the Bankruptcy Code.

33. As a result of the foregoing, the Trustee is entitled to a judgment against the Defendants: (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, and (c) recovering the Transfers in the amount of $23,975.83 from the Defendants for the benefit of the Estates.

COUNT TWO

Fraudulent Transfer – Actual Intent – 11 U.S.C. §§ 548, 550 and 551

34. The Trustee realleges and repeats the allegations contained in the foregoing paragraphs and by reference incorporates them herein.

35. Each of the Transfers was made within two years of the Petition Date.

36. Each of the Transfers was made with the actual intent to hinder, delay or defraud some or all of the Debtors' then existing and/or future creditors.

37. The Transfers constitute a fraudulent transfer avoidable by the Trustee pursuant to 11 U.S.C. § 548(a)(1)(A) and recoverable from the Defendants pursuant to §§550 and 551 of the Bankruptcy Code.

38. As a result of the foregoing, the Trustee is entitled to a judgment against the Defendants: (a) avoiding and preserving the Transfers, (b) directing that the Transfers be set aside, and (c) recovering the amount of $23,975.83 from the Defendants for the benefit of the Estates.

WHEREFORE, Stephen Darr as he is the Trustee of the Chapter 11 Estates of the Debtors respectfully prays that the Court enter judgment for him against the Defendant as follows:

1. On Count One: (a) avoiding and preserving the Transfers as fraudulent transfers, (b) directing the Transfers be set aside and (c) recovering $23,975.83 from the Defendants for the benefit of the Estates;

2. On Count Two: (a) avoiding and preserving the Transfers as fraudulent transfers, (b) directing the Transfers be set aside and (c) recovering $23,975.83 in Transfers from the Defendants for the benefit of the Estates;

3. And for such other and further relief as this Court deems just and proper.

STEPHEN DARR AS HE IS THE
TRUSTEE OF THE CHAPTER 11
ESTATES OF EACH OF THE DEBTORS
By his attorneys,

/s/ Andrew G. Lizotte

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