Docket #0038 Date Filed: 7/11/2016

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:	
TELEXFREE LLC., et al.,	Chapter 11 Case No. 14-40987-MSH Jointly Administered
Debtors.	
STEPHEN B. DARR AS TRUSTEE OF THE ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC.,	
Plaintiff,	Adversary Proceeding No. 15-04055
v.	
RITA DOS SANTOS, INDIVIDUALLY AND AS PUTATIVE CLASS REPRESENTATIVE, AND MARIA MURDOCH, ANGELA BATISTA JIMENEZ, ELISANGELA OLIVEIRA AND DIOGO DE ARAUGO, AS PUTATIVE CLASS REPRESENTATIVES,	
Defendants.	

RESPONSE TO NOTICE OF FILING OF AMENDED COMPLAINT

The Plaintiff, Stephen B. Darr (the "Trustee"), as he is trustee of the Chapter 11 estates (the "Estates") of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively the "Debtors") submits this response to the *Notice of Filing of Amended Complaint in Civil Action No. 16-40018 (D. Mass.)* [Docket No. 37] (the "Notice") filed by the Plaintiffs' Interim Executive Committee (the "PIEC").

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The Notice contains two material misstatements which need to be addressed. The first is the PIEC's unsubstantiated and clearly erroneous assertion that as many as "80,000 participants" may have participated in the Debtors' scheme through triangular transactions and thus have not received notice of any of these proceedings. The second is the erroneous assumption that because the *Murdoch, et al. v. Telex Electric, LLP, et al.* action pending in the United States District Court, No. 16-cv-40188 (the "Murdoch Action") has been amended to dismiss Maria Murdoch, Julia Batista Jimenez, and Diogo De Araugo, those individuals are no longer parties to this adversary proceeding, and those individuals are not required to respond to discovery, which was timely served upon them.[1]

I. All Participants, Including Those Who Participated Through Triangular Transactions, Have Received Numerous Notices of These Proceedings.

1. The PIEC's assertion with respect to the absence of notice evidences a clear lack of understanding as to the Debtors' "SIG" recordkeeping system and the information contained therein. SIG contains information identifying who, when and in what amount individuals participated in the TelexFree scheme. SIG provides the information with respect to individual Participants, whether those Participants dealt directly with the Debtors or as part of a Triangular Transaction. Thus, the PIEC's underlying assumption that individuals who participated through Triangular Transactions were not recorded on the SIG system and therefore have not received notice is not accurate. Further, from the various pleadings the Trustee has filed, it should have been abundantly clear to the PIEC that individuals who participated in the TelexFree Ponzi scheme through Triangular Transactions were, in fact, recorded on the SIG system and have received notice in this case. The PIEC's allegation regarding a lack of notice appears to be part

[1] The Trustee received Responses from Murdoch, Jimenez and De Araugo, each of whom asserted they were not obligated to respond to the discovery requests because of the Amendment to the Murdoch Action.

of a broader and equally false narrative that the PIEC represents thousands of individuals who suffered losses as a result of the TelexFree Ponzi scheme, but never dealt with TelexFree and are unrepresented by the Trustee.

2. The Trustee has provided numerous notices to all Participants identified in SIG, including those who joined the Debtors' scheme through Triangular Transactions. Contrary to the PIEC's assertion, all Participants identified in SIG have been provided notice of significant actions taken throughout these proceedings, as set forth below:

(i) the hearing on the request for a Ponzi scheme determination;

(ii) the hearing on the request that Participant claims be calculated based upon a Net Equity determination;

(iii) the hearing on the establishment of a claims process including establishment of a bar date, and the development of an electronic proof of claim ("ePOC") and related internet portal;

(iv) the notice of bar date for submission of an ePOC and procedures for accessing the ePOC internet portal (in English, Spanish and Portuguese);

(v) The notice of Section 341 meeting of creditors (in English, Spanish, and Portuguese);

(vi) The notices of hearings on all professional applications for compensation.

Each time that Participants were sent the foregoing notices, Participants were provided with a link to the internet portal maintained by the Trustee's claim agent, Kurtzman Carson Consultants ("KCC"). The KCC portal provides extensive background information on the cases, includes copies of all material pleadings, and provides links to each pleading filed in these cases.

3. The notice of bar date for submission of an ePOC and the procedures for accessing the ePOC internet portal was also posted in several multi-level marketing websites.

4. In connection with the two class actions filed against net winners, the Trustee served copies of the complaints, motions for class certification and supporting memoranda on not only on the named defendants but also on all of the potential members of each class.

5. Thus, the PIEC's allegation that there is a large number of Participants who did not receive notice of those proceedings is wholly unsupported.

II. The PIEC's Assumption That Certain Defendants Are Excused from Responding to Discovery Served in this Adversary Proceeding Is Erroneous.

6. The PIEC's stated assumption that because the Murdoch Action was amended to dismiss Murdoch, Jimenez and De Araugo, those individuals need not respond to discovery that was timely served upon them is incorrect. The pending discovery is relevant to the issue of reliability of the SIG.

7. In this Adversary Proceeding, the PIEC has taken a position that it represents a class of individuals who were victims of the Ponzi scheme, but had no contact or involvement with TelexFree. In support of its position, the PIEC previously offered the testimony of Murdoch, who stated that she gave $25,000 to an unknown individual to participate in the TelexFree Ponzi scheme and that she never dealt directly with TelexFree and had no user account.[2] However, the Trustee, as part of his Initial Disclosures, provided information to the PIEC which demonstrated that Ms. Murdoch had over seventy-five (75) user accounts with TelexFree and that Ms. Murdoch actively dealt with TelexFree, thus materially undermining both

[2] See testimony of Ms. Murdoch on November 24, 2015, given in connection with the hearing on the Claim Motion [Doc. 625]. Ms. Murdoch's testimony is found beginning on page 111 of the transcript of the hearing [Doc. 658].

Murdoch's testimony and the PIEC's position that it represented individuals who were victims and had not dealt directly with TelexFree.

8. In fact, as part of his Initial Disclosures, the Trustee provided information to the PIEC which demonstrates that all of the PIEC's putative class representatives were actively and directly involved with TelexFree, and some were actually Net Winners. With respect to Ms. Dos Santos, the Trustee provided information that not only did she directly deal with TelexFree but her statement that she never received any payments from TelexFree was false. Further, the Trustee provided information that Ms. Dos Santos' proof of claim in the amount of $175,000 was materially overstated, as SIG reflects her net loss to be $7,000.

9. Thus, it is apparent that the PIEC seeks to remove these individuals from the action so that they are not required to produce the information requested by the Trustee, which information substantially undermines the gravamen of the PIEC's claim that they represent individuals who had no direct dealings with TelexFree. The Trustee is willing to withdraw the discovery requests to those individuals to the extent the PIEC withdraws the testimony of Murdoch and stipulates to the reliability of the information contained on SIG.

10. Based upon the information currently available to the Trustee and the disclosures made by the PIEC, it appears the PIEC has no person who would be representative of a class who were victims of the TelexFree Ponzi scheme and had no direct dealings with TelexFree. Whether these defendants remain as defendants should not relieve the PIEC of identifying a person who the PIEC asserts is representative of the purported class of victims and the Trustee should be allowed to conduct discovery of such person or persons. If the PIEC cannot identify any such class representative, the PIEC should be estopped from making an argument based upon the existence of such a class of individuals.

WHEREFORE, the Trustee requests the PIEC be directed to identify a person or persons who the PIEC asserts is representative of a class of individuals who suffered a loss as a result of the TelexFree scheme but had no direct dealings with TelexFree. The Trustee further requests that that testimony of Maria Murdoch be stricken and that Ms. Murdoch and Angela Batista Jimenez and Diogo De Araugo be prohibited from testifying in this Adversary Proceeding.

Respectfully submitted,

STEPHEN B. DARR,
CHAPTER 11 TRUSTEE,

By his attorneys,

/s/ Charles R. Bennett, Jr.

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July 11, 2016

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CERTIFICATE OF SERVICE

I, Charles R. Bennett, Jr., hereby certify that on July 11, 2016, I caused a copy of the foregoing *Response to Notice of Filing of Amended Complaint* to be served by electronic mail upon:

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