Docket #0045 Date Filed: 3/26/2019

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 and, Counterclaim Defendant, v. UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Defendant and Counterclaim Plaintiff.	Adversary Proceeding No. 18-04091

JOINT MOTION TO MODIFY SCHEDULING ORDER

The Plaintiff Stephen Darr, as he is the Trustee (the "Trustee") of the Chapter 11 Estates of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. (collectively "TelexFree") and the Defendant United States of America (together, the "Parties") jointly move that the Court amend the *Joint Discovery Plan and Rule 26(f) Certification* (the "Scheduling Order") by extending certain deadlines therein. In support thereof, the Parties state as follows:

1. The proposed Scheduling Order was filed on October 10, 2018 and was approved by the Court by order entered on October 11, 2018.

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2. On October 19, 2018, the Trustee filed a motion for partial summary judgment as to Counts IV and V of the Complaint.

3. On November 9, 2018, the United States filed an opposition to the Trustee's motion for partial summary judgment and filed a cross-motion for summary judgment.

4. On November 9, 2018, the Trustee filed an opposition to the Defendant's cross-motion for summary judgment. On or about December 10, 2018, the United States filed a reply to the Trustee's opposition.

5. On February 6, 2019, the Court held a hearing on the competing motions for summary judgment and thereafter took the matter under advisement.

6. The Parties require an extension of the deadlines set forth in the Scheduling Order to provide a further opportunity to develop an agreed statement of material facts, or to otherwise narrow the factual issues in dispute, to conduct any necessary discovery, and for completion and submission of expert reports.

7. The Parties therefore request that the Scheduling Order be modified as provided below:[1]

(i) The Trustee shall provide the United States with a proposed statement of agreed facts, a list of principal witnesses he may use at trial and, as to any witness qualifying or sought to be qualified under Rule 26(a)(2)(B), an expert report, by June 1, 2019;

(ii) The United States shall complete its fact and expert discovery by July 1, 2019;

(iii) The United States shall provide the Trustee with a proposed statement of agreed facts, a list of principal witnesses it may use at trial and, as to any witness

[1] Except as otherwise modified, the terms of the Scheduling Order shall remain in effect.

qualifying or sought to be qualified under Rule 26(a)(2)(B), an expert report, by July 15, 2019;

(iv) The Trustee shall complete his fact and expert discovery by August 30, 2019;

(v) Dispositive motions may be brought at any time after the conclusion of discovery and on or before September 20, 2019;

(vi) The Parties shall file a Joint Pretrial Memorandum by September 20, 2019;

(vii) The Parties request that the Court schedule a hearing on any dispositive motions and, in the absence of any dispositive motions, a trial on the merits.

8. Approval of the modifications requested herein will facilitate the efficient administration of the adversary proceeding.

WHEREFORE, the parties respectfully request that the Court enter an order modifying the Scheduling Order as set forth herein and granting such other relief as the Court deems just and proper in the circumstances.

Respectfully submitted,

STEPHEN B. DARR, AS HE IS TRUSTEE OF THE CHAPTER 11 ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. AND TELEXFREE FINANCIAL, INC.

By his attorneys,

/s/ Andrew G. Lizotte

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FOR UNITED STATES OF AMERICA,
Defendant and Counterclaim Plaintiff

By:

/s/ Carl L. Moore (with permission)
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Dated: March 26, 2019

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

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ORDER APPROVING JOINT MOTION TO MODIFY SCHEDULING ORDER

A motion having been filed by the Plaintiff Stephen Darr, as he is the Trustee (the "Trustee") of the Chapter 11 Estates of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. (collectively "TelexFree") and the Defendant United States of America (together, the "Parties") to amend the *Joint Discovery Plan and Rule 26(f) Certification* (the "Scheduling

Order"), and good cause appearing therefor, it is hereby ORDERED that the Scheduling Order is modified as follows:[1]

(i) The Trustee shall provide the United States with a proposed statement of agreed facts, a list of principal witnesses he may use at trial and, as to any witness qualifying or sought to be qualified under Rule 26(a)(2)(B), an expert report, by June 1, 2019;

(ii) The United States shall complete its fact and expert discovery by July 1, 2019;

(iii) The United States shall provide the Trustee with a proposed statement of agreed facts, a list of principal witnesses it may use at trial and, as to any witness qualifying or sought to be qualified under Rule 26(a)(2)(B), an expert report, by July 15, 2019;

(iv) The Trustee shall complete his fact and expert discovery by August 30, 2019;

(v) The Parties may file dispositive motions at any time after the conclusion of discovery and on or before September 20, 2019;

(vi) The Parties shall file a Joint Pretrial Memorandum by September 20, 2019;

(vii) A hearing on any dispositive motions shall be held on _____ _____ and, in the absence of any dispositive motions, a trial on the merits shall commence on _____.

Dated: _____

_____
Hon. Melvin S. Hoffman
United States Bankruptcy Judge

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[1] Unless otherwise modified herein, the terms of the Scheduling Order shall remain in effect.

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
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CERTIFICATE OF SERVICE

I, Andrew G. Lizotte, hereby certify that I have this day caused to be served a copy of the *Joint Motion to Modify Scheduling Order* via this Court's CM/ECF System and by First Class Mail, postage prepaid as indicated to the service list below.

/s/ Andrew G. Lizotte
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DATED: March 26, 2019
755851

Telexfree Case #16-4032

BY ECF:

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BY FIRST CLASS MAIL:

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