Docket #0138 Date Filed: 6/21/2022

# UNITED STATES BANKRUPTCY COURT
# DISTRICT OF MASSACHUSETTS

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| In re:<br><br>TELEXFREE, LLC,<br><br>Debtor | Chapter 11<br>Case No. 14-40987-EDK |
| STEPHEN DARR,<br>Chapter 11 Trustee,<br><br>Plaintiff<br>v.<br><br>CARLOS WANZELER, *et al.*,<br><br>Defendants | Adversary Proceeding<br>No. 16-4032 |

## SCHEDULING AND PRETRIAL ORDER

1. **A FURTHER PRETRIAL HEARING WITH REGARD TO DEFENDANT JAMES MERRILL IS SCHEDULED FOR November 4, 2022 at 10:00 a.m.** The continued pretrial hearing will be conducted by Zoom video conference. Parties may participate by following the link/dial-in information below.

   To participate by video:

   https://www.zoomgov.com/j/1611327560?pwd=VWN1eDRteUlRUHh4N1BkeTBGYUpJQT09

   Meeting ID: 161 132 7560
   Passcode: 072139

   To participate by phone:

   +1 669 254 5252

   Meeting ID: 161 132 7560
   Passcode: 072139



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2. **Unless otherwise ordered, the parties shall comply with all obligations and deadlines set forth herein.**

3. **Cooperation.** The parties and counsel must cooperate during all aspects of discovery. Failure by any party or counsel to make required disclosures or cooperate in discovery may warrant the imposition of sanctions under Fed. R. Civ. P. 37.

4. **Rule 26(f) Discovery Conference.** The parties are ordered to confer as soon as possible pursuant to Fed. R. Civ. P. 26, but no later than 21 days from the date of this Order.

5. **Rule 26(f) Discovery Conference Certification and Written Report. Within 14 days of the Rule 26(f) conference, the parties shall file a written report containing:**

    a. A certification that the Rule 26(f) conference has taken place.

    b. A proposed discovery plan that addresses all topics set forth in Fed. R. Civ. P. 26(f)(3) and, if applicable, contains protocols for the discovery or disclosure of electronically stored information.

    c. A statement that the parties have complied with the automatic disclosure provisions of Fed. R. Civ. P. 26(a)(1) and (2) *or* an explanation of why the parties have not complied and a description of the actions the parties are taking to comply.

    d. In the event any party anticipates the disclosure or discovery of electronically stored information,

        i. a certification that the parties have conferred regarding:

            1. the nature and extent of the contemplated electronically stored information discovery;

            2. any issues involving the preservation, disclosure, discovery, or presentation of electronically stored information, including the form (or forms) in which the electronically stored information will be provided;

            3. the various sources of electronically stored information within a party's control;

            4. the characteristics of the parties' information systems that may contain relevant electronically stored information, including, if appropriate, the identity of individuals with special knowledge of a party's computer systems; and

            5. whether either party has relevant electronically stored information that the party contends is not reasonably accessible pursuant to Fed. R. Civ. P. 26(b)(2)(B); and

ii. if either party contends that relevant information is not reasonably accessible pursuant to Fed. R Civ. P. 26(b)(2)(B), the estimated burden or costs of retrieving and reviewing that information.

e. A statement regarding the Court's authority to enter a final order as to each matter in dispute.

f. A statement as to whether each party consents to the entry of a final order by this Court as to each matter in dispute.

g. An estimated length of trial.

h. In the event any party has demanded a jury trial, a statement identifying:

i. the specific matters to which the jury demand applies;

ii. the legal basis for the right to a jury trial; and

iii. whether all parties consent to this Court conducting a jury trial.

6. **Completion of Discovery. Discovery must be completed by September 15, 2022**, unless otherwise ordered by the Court upon motion or after consideration of the discovery plan.

7. **Expert Witness Disclosures.** Disclosures under Fed. R. Civ. P. 26(a)(2), including the disclosure of the expert witness written report required by Fed. R. Civ. P. 26(a)(2)(B), must be completed within 60 days from the date of this order, unless otherwise ordered by the Court upon motion or after consideration of the discovery plan.

8. **Discovery-Related Disputes and Motions.** No discovery motion may be filed unless the moving party (1) has attempted in good faith, but without success, to resolve the dispute; and (2) pursuant to Fed. R. Civ. P. 16(b)(3)(B)(v), has requested a pre-motion conference with the Court.

a. The request must be made by filing a one-page written request with the Court that contains only a general summary of the issues to be discussed. Any request for a pre-motion conference shall not contain argument. No response to the request should be filed unless directed by the Court. If the Court does not grant the request for a pre-motion conference, or if the conference fails to resolve the dispute, a discovery motion may then be filed.

9. **Dispositive Motions. The deadline for filing dispositive motions is 30 days after the discovery deadline, or any later deadline the Court may impose upon motion.**

a. **Opposition/Response to Dispositive Motions. The deadline for filing an opposition, response, or cross-motion to any Dispositive Motion will be 21 days after the filing of the Dispositive Motion,** or any later deadline the Court may impose upon motion.

10. **Failure to Comply with this Order.** This Order and the deadlines set by the Court may not be modified absent further Court order. Failure to comply with the provisions of this Order may, pursuant to Fed. R. Civ. P. 16 and 37, result in sanctions, including the entry of a dismissal or default, exclusion of evidence or testimony, or monetary sanctions.

6/21/2022

Elizabeth D. Katz Dated
United States Bankruptcy Judge

Unless otherwise specified in the attached Order, **THE MOVING PARTY IS RESPONSIBLE FOR** serving a copy of the attached Order and this Notice upon all parties entitled to notice within two (2) business days and filing a certificate of service with respect to this notice seven (7) days after the date of issuance set forth below. If the hearing date is fewer than seven (7) days from the date of issuance, the certificate of service must be filed no later than the time of the hearing. If the movant fails to timely file a certificate of service, the court may deny the motion without a hearing.

## NOTICE REGARDING HEARING BY ZOOM VIDEO TRANSMISSION

1. **The Need for Video.** The dangers presented by the COVID-19 pandemic constitute good and compelling cause to allow certain hearings in this case to proceed via video transmission rather than in person or by means of telephonic transmission ("Zoom Hearings").

2. **Videoconference Platform.** If a Zoom Hearing is scheduled, all counsel, pro se parties, and other attendees who participate in the hearing via Zoom ("Participants") must undertake appropriate set up and testing of the Zoom application, which is available from Zoom Video Communications free of charge. Each Participant is responsible for downloading the Zoom application or accessing Zoom via a web browser, such as Safari or Chrome. Each Participant may use equipment such as a desktop or laptop computer, a tablet, or a cellphone to access Zoom and join the Hearing.

3. **Limit on Participation by Video.** If the number of parties wishing to participate in a Zoom Hearing, in the Court's view, exceeds the number which would permit the efficient, stable, and reliable transmission of the Hearing by video conference, the Court may require that certain parties participate in the Hearing only by telephone. The Court will provide to each party participating by telephone separate dial-in instructions, which may be used with any telephone equipment.

4. **Courtroom Formalities.** Although it will be conducted by video conference, a Zoom Hearing constitutes a court proceeding, and all formalities of a court proceeding must be observed in all respects, including proper decorum and attire.

5. **General Public Access.** Zoom Hearings are open to the general public. The public is invited to listen to Zoom Hearings by telephone.

6. **Recording Prohibited; Official Record.** No person may record or capture images during the Hearing from any location by any means. The audio recording maintained by the Court will be the sole basis for creation of a transcript that constitutes the official record of the Hearing.