Docket #0175 Date Filed: 7/25/2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:	Chapter 11 Cases
TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC.,	14-40987-EDK 14-40988-EDK 14-40989-EDK
Debtors.	Jointly Administered
STEPHEN B. DARR AS HE IS TRUSTEE OF THE CHAPTER 11 ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Plaintiff, v. CARLOS WANZELER, JAMES MERRILL, CARLOS COSTA, PRISCILA FREITAS COSTA, FABIO WANZELER, LYVIA MARA CAMPISTA WANZELER, MARIA EDUARDA WANZELER DE ALMEIDA E SOUZA, DRUCILA WANZELER, MARISA MACHADO WANZELER SALGADO, RENATO ALVES, ANA COSTA, NATHANA SANTOS REIS, FABIO FARIA, LELIO CELSO RAMIRES FARIAS, SANDERLY RODRIGUES, VAGNER ROZA, ROBERT BOURGUIGNON, REGINA CELIA MANHAES DA ROZA REGINA CELIA, MICHAEL CALAZANS, FABIO DE ARRAZ CRISPIM, SHEFFA MONTOYA, LUIS FERREIRA, SANDRES LEVIS, FEBE WANZELER DE ALMEIDA E SOUZA, BRUNO RANGEL CARDOZO, Defendant(s).	Adversary Proceeding No.16-4032-EDK

MOTION FOR ENTRY OF SCHEDULING ORDER

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The Plaintiff, Stephen B. Darr as He Is Trustee of The Chapter 11 Estates of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc., and the Defendant James Merrill hereby move the Court to enter the attached proposed Scheduling Order.

Respectfully submitted,

Stephen B. Darr, Trustee
By his Attorney
Murphy & King P.C.

/s/ Charles R. Bennett, Jr.
Charles R. Bennet, Jr.
Murphy & King, PC
28 State Street
Boston, Massachusetts 02109
Email: cbennett@ murphyking.com
Tel: 671 423 0400

James Merrill,
Pro Se

/s/ James Merrill
James Merrill, pro se

Email: jim-merrill@comcast.net
Tel: 508 887 8888

Dated: July 25, 2022

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(Proposed)
SCHEDULING ORDER

This Scheduling Order is intended to provide a reasonable timetable for discovery and motion practice in order to help ensure a fair and just resolution of this matter without undue expense or delay.

Timetable for Discovery and Motion Practice

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rule 16.1(f), it is hereby ORDERED that:

1. **Initial Disclosures.** Initial disclosures required by Fed. R. Civ. P. 26(a)(1) and by this Court's Notice of Scheduling Conference must be completed by August 10, 2022.

2. **Amendments to Pleadings.** Except for good cause shown, no motions seeking leave to add new parties or to amend the pleadings to assert new claims or defenses may be filed after August 10, 2022.

3. **Fact Discovery – Interim Deadlines.**

    a. All requests for production of documents and interrogatories (not to exceed twenty in number per party) must be served by August 15, 2022.

    b. All requests for admission must be served by August 15, 2022.

    c. All depositions, (not to exceed four per party) other than expert depositions, must be completed by September 20, 2022.

    d. Final Fact Discovery Deadline. All discovery, other than expert discovery, must be completed by September 20, 2022.

4. **Expert Discovery.**

    a. Trial experts for the party with the burden of proof must be designated, and the information contemplated by Fed. R. Civ. P. 26(a)(2) must be disclosed, by September 15 , 2022.

    b. Rebuttal trial experts must be designated, and the information contemplated by Fed. R. Civ. P. 26(a)(2) must be disclosed, by October 15, 2022.

    c. All trial experts must be deposed by October 31, 2022.

5. **Dispositive Motions.** Dispositive motions, such as motions for summary judgment or partial summary judgment and motions for judgment on the pleadings, must be filed by November 1 2022 with the opposition due thirty days thereafter. In the case of cross-motions the deadlines and page limits for the filings other than the Plaintiff's

initial motion are set forth in the Session's Standing Order on Summary Judgment Motions unless specifically modified.

6. **Status Conference.** A status conference will be held as Court deems appropriate or at the request of the parties

7. **Pretrial Conference.** A pretrial conference will be held on November 4, 2022 at 10:00 a.m. The parties shall prepare and submit a pretrial memorandum in accordance with Local Rule 16.5(d) five business days prior to the date of the conference. Unless a dispositive Motion has been filed and is pending; in which case the Court shall schedule a pretrial conference following the disposition of the any dispositive motions.

Procedural Provisions

8. **Extension of Deadlines.** Motions to extend or modify deadlines will be granted only for good cause shown. All motions to extend shall contain a brief statement of the reasons for the request; a summary of the discovery, if any, that remains to be taken; and a specific date when the requesting party expects to complete additional discovery, join other parties, amend the pleadings, or file a motion.

9. **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.

10. **Status Conferences.** The Court has scheduled a status conference after (or close to) the close of fact discovery for case management purposes. Any party who reasonably believes that a status conference will assist in the management or resolution of the case may request one from the Court upon reasonable notice to opposing counsel.

11. **Additional Conferences.** Upon request of counsel, or at the Court's own initiative, additional case-management or status conferences may be scheduled.

12. **Early Resolution of Issues.** The Court recognizes that, in some cases, resolution of one or more preliminary issues may remove a significant impediment to settlement or otherwise expedite resolution of the case. Counsel are encouraged to identify any such issues and to make appropriate motions at an early stage in the litigation.

13. **Pretrial Conference.** Lead trial counsel are required to attend any pretrial conference.

Dated at _____ this day of July, 2022

Elizabeth D Katz, Bankruptcy Judge

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DISTRICT OF MASSACHUSETTS

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JOINT CERTIFICATION

- **Certifications:** In accordance with Local Rule 16.1(D)(3), the parties and their respective counsel hereby affirm that the parties' counsel have conferred with a view towards establishing a budget for the costs of conducting the full course—and various alternative courses—of the litigation; and further, have considered the resolution of the litigation through the use of alternative dispute resolution programs, such as those outlined in Local Rule 16.1.
- **Settlement Conference:** In accordance with Local Rule 16.1(C), the Plaintiff and Defendants have conferred on the subject of settlement, but no agreement has been reached. The parties are prepared to discuss settlement at the scheduling conference.
- **Confidentiality:** The Parties agree to negotiate and enter into a confidentiality agreement to facilitate discovery and limit the disclosure of confidential documents and communications that are potentially relevant to this action.
- **Preservation of Evidence;** Counsel for the Plaintiff has advised the Trustee of his obligation to preserve documents and has informed the Defendant of his obligations. The defendant has acknowledged his obligation to preserve documents.
- **Jurisdiction:** The Plaintiff consents to the jurisdiction of the Court to enter final orders and Defendant does not currently consent to the Court entering final orders.
- **Jury Trial:** Plaintiff has not requested a jury trial. But the defendant requested a jury trial and currently has not agreed to waive the jury.
- **Length of trial:** The Parties anticipate that a jury waived trial would take approximately 3 day and if the case is tried before a jury the Parties anticipate 5 days.

Signatures next page

Stephen B. Darr, Trustee
By his Attorney
Murphy & King P.C.

/s/ Charles R. Bennett, Jr.
Charles R. Bennet, Jr.
Murphy & King, PC
28 State Street
Boston, Massachusetts 02109
Email: cbennett@ murphyking.com
Tel: 671 423 0400

James Merrill,
Pro Se

/s/ James Merrill
James Merril, pro se

Email: jim-merrill@comcast.net
Tel: 508 887 8888

Dated: July 25, 2022

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