Docket #0185 Date Filed: 10/6/2022

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 Substantively Consolidated
STEPHEN DARR, LIQUIDATING TRUSTEE OF THE CHAPTER 11 ESTATES OF EACH OF THE DEBTORS, Plaintiff, v. CARLOS WANZELER, et al Defendants.	Adversary Proceeding No. 16-4032

MOTION TO APPROVE FORM AND SCOPE OF NOTICE WITH RESPECT TO MOTION BY TRUSTEE TO APPROVE STIPULATION OF SETTLEMENT BETWEEN TRUSTEE AND JAMES MERRILL

Stephen Darr, the Liquidating Trustee under the confirmed liquidating plan of reorganization, and formerly the Chapter 11 trustee (the "Trustee") of the substantively consolidated bankruptcy estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors" or "TelexFree"), respectfully requests that the Court approve the the form and scope of notice in connection with the attached stipulation ("Stipulation") by and between the Trustee and James Merrill ("Merrill"), a defendant in this adversary proceeding. In support of this motion, the Trustee states as follows:

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Background

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

2. On the Petition Date, the Debtors filed a motion for joint administration of the cases, with TelexFree, LLC designated as the lead case. By order dated April 24, 2014, the motion for joint administration was approved.

3. The cases were later transferred to this District.

4. On or about June 6, 2014, Stephen Darr was appointed Chapter 11 Trustee.

5. On July 9, 2020, the Court confirmed the *First Amended Liquidating Plan of Reorganization of Stephen Darr, Chapter 11 Trustee of TelexFree LLC, TelexFree Inc., and TelexFree Financial, Inc.* The plan became effective on July 14, 2020. Stephen Darr was appointed liquidating trustee under the confirmed plan. The plan resulted in the substantive consolidation of the Debtors.

6. On April 1, 2016, the Chapter 11 Trustee commenced this adversary proceeding against the Debtor's principals and other individuals who allegedly were actively involved in perpetrating the Ponzi scheme.

7. The Trustee alleged in this action that Merrill, one of the principals of TelexFree, received $3,260,934 in the two years preceding the Petition Date, which could be recovered by the Trustee as a fraudulent transfer. The Trustee also asserted claims against Merrill for breach of fiduciary duty, looting, and civil conspiracy.

8. The action had been stayed as a result of criminal proceeding pending against Merrill and Carlos Wanzeler, action no. 14-CR-40028 pending in the United States District

Court for the District of Massachusetts. Merrill subsequently pled guilty and was sentenced to a six year term in prison.

9. The Trustee and Merrill have reached an agreement to resolve the Trustee's claims in this action against Merrill.

Relief Requested

10. Bankruptcy Rule 2002(a)(3) provides that the Clerk of this Court, or such person as this Court may direct, shall give notice to all creditors of the hearing on the approval of a compromise or settlement of a controversy, unless this Court, for cause shown, directs that notice not to be sent. Bankruptcy Rule 2002(i) permits this Court to approve alternative forms of notice, and Bankruptcy Rule 9007 also grants this Court general authority to regulate notices.

11. On March 15, 2016, the Trustee filed a *Motion to Approve Form of Notice Respecting Settlement of Estate Claims* (the "Notice Motion", docket no. 715), which was intended to govern the form and scope of service of settlements under Federal Rule of Bankruptcy Procedure ("FRBP") 9019. The order approving the Notice Motion ("Notice Order", docket no. 732) directed service of settlements of estate claims pursuant to FRBP 9019 to the Office of the United States Trustee, governmental authorities participating in the case, parties requesting notice, and parties to a settlement, and that such settlements be posted on the website maintained by the Trustee's claims agent, Kurtzman Carson Consultants ("KCC").

12. On January 6, 2022, the Trustee filed a motion to approve form and scope of service in connection with approval of a fee agreement in the pending class action litigation ["Second Notion Motion", docket no. 3709]. The relief sought in the Second Notice Motion was similar to that sought in the Notice Motion. By order dated January 11, 2022 ["Second Notice

Order", docket no. 3710], the Court approved the Second Notice Motion, but requested that service of the motion also be provided to the twenty largest non-insider unsecured creditors.

13. Although the prior notice orders may govern the notice provisions as to the Stipulation, in an abundance of caution, the Trustee requests entry of an order that the scope of service as to the present motion and Stipulation, and any other settlements in the pending adversary proceedings, be governed by the same provisions as the Second Notice Order unless otherwise ordered by the Court.

14. Given the number of participants in the Debtors' cases, service upon all potential parties is unnecessary and would serve to deplete the resource of the estate. Participants may access information provided on the KCC website and may receive direct notices by filing an appearance in the cases.

15. The Trustee will serve this motion and any notice of hearing on the same parties for which notice is proposed to be provided. The Trustee respectfully requests that such notice be deemed sufficient and that no further notice be required.

Wherefore, the Trustee prays that this Court:

1. Approve the form and scope of notice for the motion and Stipulation as provided herein; and

2. Grant the Trustee such other and further relief as this Court deems necessary and proper.

STEPHEN B. DARR AS TRUSTEE
OF THE CHAPTER 11 ESTATES OF
TELEXFREE, LLC, TELEXFREE, INC.
AND TELEXFREE FINANCIAL, INC.
By his counsel,

/s/ Andrew G. Lizotte

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Date: October 5, 2022

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