Docket #0576 Date Filed: 2/17/2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:	Chapter 11 Cases
TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Reorganized Debtors.	14-40987-EDK 14-40988-EDK 14-40989-EDK Substantively Consolidated
STEPHEN B. DARR, TRUSTEE OF THE ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Plaintiff, v. FRANZ BALAN, A REPRESENTATIVE OF A CLASS OF DEFENDANT NET WINNERS, Defendants.	Adversary Proceeding No. 16-4006
STEPHEN B. DARR AS TRUSTEE OF THE ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Plaintiff, v. MARCO PUZZARINI AND SANDRO PAULO FREITAS, REPRESENTATIVES OF A CLASS OF DEFENDANT NET WINNERS, Defendants.	Adversary Proceeding No. 16-4007

MOTION BY DEFENDANT CLASSES TO EXTEND "PHASE I" DEADLINES TO COMPLETE DISCOVERY AND EXPERT REPORT

Class Representatives Frantz Balan, Marco Puzzarini, and Sandro Paulo Freitas (the "Class Representatives"), on behalf of classes of alleged "net winner" Defendants in

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Darr v. Argueta, Adv. Pro. 16–4006 (the "Domestic Case") and *Darr v. Alecci*, Adv. Pro. 16–4007 (the "International Case"), respectfully requests that the "Phase I" deadlines for expert discovery and expert reports be extended by 90 additional days in this matter, to allow for the completion of the Class Representatives' Expert Rebuttal Report and to accommodate ongoing discovery related to the admissibility of the Trustee's Expert Report. In support thereof, the Class Representatives state as follows:

1. On December 1, 2021, the Court entered an order approving the Motion by Liquidating Trustee to Schedule Case Management Conference Respecting Supplementation of Expert Report. (*Domestic Case* ECF No. 407; *International Case* ECF No. 557.) That order was conditioned upon certain cooperation by the parties and required that (a) the parties negotiate and file an amended fee arrangement for the Defendants; and that (b) the parties file either an agreed-to proposed scheduling order or separate competing proposed scheduling orders.

2. On January 4, 2022, the parties filed a stipulation respecting fees for professionals retained by the class action defendants. (*Main Case* ECF No. 3707.) On January 11, 2022, the Court approved the form and scope of the stipulation. (*Main Case* ECF No. 3710.) In the stipulation, the Parties conceptually agreed to conduct remaining class proceedings in two phases: "Phase I" and "Phase II."

3. The Trustee and the Defendants initially submitted separate scheduling orders. (*Domestic Case* ECF Nos. 414 & 415; *International Case* ECF No. 564 & 565.) The disagreements were resolved prior to hearing and a joint scheduling order (the

"Scheduling Order") was entered on February 16, 2022. (*Domestic Case* ECF No. 421; *International Case* ECF No. 571.)

4. The Trustee then moved for the Scheduling Order to be further modified to give the Trustee's expert additional time – until March 30, 2022 – to complete and serve his expert report. (*Domestic Case* ECF No. 424; *International Case* ECF No. 574.) Notably, the Trustee's additional request for more time was assented to by the Class Representatives. *Id.*

5. The Court granted the Trustee's motion for more time (*Domestic Case* ECF No. 425; *International Case* ECF No. 575), setting the remaining "Phase I" deadlines as follows:

- The Parties shall complete all "Phase I" fact discovery by **February 28, 2023**.
- The Class Representatives shall complete any discovery of Trustee's expert, Borelian, by **February 28, 2023**.
- The Class Representatives shall provide the Trustee with any rebuttal expert report on or before **February 28, 2023**.
- The Trustee shall complete any discovery of the Class Representatives' expert, StoneTurn, by **March 31, 2023**.
- The Trustee shall provide any reply expert report ("Reply Report") to the Class Representatives' Rebuttal Report on or before **March 31, 2023**.
- Any motions to exclude the supplemental expert report of Borelian ("Daubert Motion"), and any related dispositive motions, shall be filed by **April 30, 2023**.

6. While the Class Representatives have diligently conducted discovery related to the opinions expressed in the Trustee's Expert Report, difficulties in scheduling depositions with certain TelexFree participants have delayed the Class Representatives in their discovery.

7. The Class Representatives Expert, Joshua Dennis of StoneTurn Group, has likewise diligently worked on his Rebuttal Report, however his busy schedule and the holidays have delayed its completion. Further, Mr. Dennis would like the full benefit of the Class Representatives discovery to buttress and augment his Rebuttal Report regarding Mr. Cameron E. Freer's proposed aggregation of alleged net winners. For these reasons, Mr. Dennis requires an additional 90 days to complete his Rebuttal Report.

8. The Class Representatives efforts have been further delayed by the Trustee's recent scheduling of 21 depositions of Telexfree participants from February 15, 2023 to February 24, 2023—the last two weeks of the window to complete not only fact discovery but also for the Defendants to complete their expert report. Given this short time frame, there is no feasible way for the Defendants' expert to review 21 transcripts (assuming they become available in time) and incorporate the testimony and data related to those depositions into an expert report that is due only four days later.

9. The Trustee's scheduling of these 21 depositions has consumed most of the available days for the Defendants to complete their own depositions of key participants. The Defendants' depositions of chosen participants is crucial to the Defendants' Rebuttal Report, because the depositions involve testing the Trustee's Expert's assumptions underlying his aggregation methodology. Many of these deponents did not respond to subpoenas or appear at the times noticed, and the Defendants are attempting to reschedule.

10. The Trustee's recent scheduling of these 21 depositions has also presented difficulties for scheduling the deposition of Trustee's expert Mr. Freer. It is crucial that the Defendants be allowed to depose Mr. Freer with the full knowledge of what the other expert-related discovery will reveal.

11. Additionally, the high volume of Trustee's depositions in a short span of time has forced Counsel for the Class Representatives to attend and participate in these depositions, to represent the interests of the Class Representatives. The additional work created by these recently scheduled depositions has diverted much of Counsel's available time and resulted in further delays of the Class Representatives' preparation of their own fact and expert discovery.

12. The Class Representatives now request an additional 90 days to complete their expert discovery and to complete their rebuttal report, and that all other deadlines set forth in Paragraph 6 also be extended by approximately 90 days, as reflected in proposed amended scheduling order is attached hereto as Exhibit A.

WHEREFORE, the Class Representatives pray that this Court:

1. approve the proposed amended scheduling order attached hereto; and
2. Grant such other relief as is just and proper.

FRANTZ BALAN,
CLASS REPRESENTATIVE FOR
DOMESTIC CLASS ACTION,

MARCO PUZZARINI AND SANDRO
PAULO FREITAS,
CLASS REPRESENTATIVES
FOR INTERNATIONAL CLASS ACTION,

By their counsel,

Dated: February 17, 2023

/s/Ilyas J. Rona
Ilyas J. Rona (BBO #642964)
Michael J. Duran (BBO # 569234)
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MLBR 9013-1 CERTIFICATION

On February 6, 2023, my colleague Michael J. Duran sent an email to counsel for the Trustee asking if they would be "willing to discuss some modifications to the scheduling order" because "we are still in the midst of some discovery that we would like to complete" and "[i]t appears that the Trustee is also trying to conduct some additional discovery." On February 7, 2023, Mr. Charles R. Bennett, counsel for the Trustee, called my firm and later spoke to Michael J. Duran and indicated that the Trustee would not agree to any extension of deadlines.

Dated: February 17, 2023

/s/Ilyas J. Rona
Ilyas J. Rona, Esq.

CERTIFICATE OF SERVICE

I, Ilyas J. Rona, hereby certify that I have caused a copy of the **Motion by Defendant Classes to Extend "Phase I" Deadlines to Complete Discovery and Expert Report** to be served on counsel for the Trustee by email as follows and all registered electronic filers appearing in this case via the Court's CM/ECF system:

Charles R. Bennett, Jr.
MURPHY & KING P.C.
28 State Street, Suite 3101
Boston, MA 02109
cbennett@murphyking.com

Dated: February 17, 2023

/s/ Ilyas J. Rona
Ilyas J. Rona, Esq.

Exhibit A.

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[PROPOSED] ORDER REGARDING REMAINING "PHASE I" SCHEDULE

This matter comes before the Court on Motion by Defendant Classes to Extend "Phase I" Deadlines to Complete Discovery and Expert Report, which seeks to extend

by approximately 90 days the deadlines previously set in the Amended Scheduling Order dated March 24, 2022 (ECF No. 425 in Adv. Pro. 16-4006 and ECF No. 575 in Adv. Pro. 16-4007) ("Amended Scheduling Order") with respect to "Phase I" of Adversary Proceedings 16-4006 and 16-4007 (the "Adversary Proceedings"), as defined in the Amended Scheduling Order.

Now, with all parties in interest having been notified and due cause appearing therefor, it is hereby Ordered that the Amended Scheduling Order is amended as follows:

A. With respect to "Phase I" of the Adversary Proceedings:

a. The Parties shall complete all "Phase I" fact discovery by **May 31, 2023**.

b. The Class Representatives shall complete any discovery of Trustee's expert, Borelian, by **May 31, 2023**.

c. The Class Representatives shall provide the Trustee with any rebuttal expert report ("Rebuttal Report") on or before **May 31, 2023**.

d. The Trustee shall complete any discovery of the Class Representatives' expert, StoneTurn, by **June 30, 2023**.

e. The Trustee shall provide any reply expert report ("Reply Report") to the Class Representatives' Rebuttal Report on or before **June 30, 2023**.

f. Any motions to exclude the supplemental expert report of Borelian ("Daubert Motion"), and any related dispositive motions, shall be filed by **July 31, 2023**.

g. If a *Daubert* Motion or related dispositive motion is filed, the Court will enter a separate scheduling order setting the date for the submission of a pretrial memorandum and establishing a trial date, if applicable.

h. After the Court issues its rulings with respect to Phase I, the Court shall determine the necessity of Phase II.

i. If no Daubert Motion or dispositive motions are filed, and if the cases have not otherwise been resolved or disposed of, the Parties will proceed to Phase II.

B. With respect to "Phase II," if required

a. Within twenty-four (24) days of the conclusion of Phase I, the Parties shall submit a joint scheduling order, or competing scheduling orders in the event an order cannot be agreed to, which shall address issues remaining to be litigated, designate additional discovery required, and establish a schedule for the filing of dispositive motions.

Dated at Boston within said District this _____ day of _____ 2023.

_____
Honorable Elizabeth D. Katz
United States Bankruptcy Judge