Docket #0585 Date Filed: 5/12/2023

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re: TELEXFREE, LLC, TELEXFREE, INC., TELEXFREE FINANCIAL, INC., Reorganized Debtors	Chapter 11 Case No. 14-40987-MSH Case No. 14-40988-MSH Case No. 14-40989-MSH Substantively Consolidated
STEPHEN B. DARR, Chapter 11 Trustee, Plaintiff, vs. FRANTZ BALAN, ET AL Defendants	Adv. Proc. No. 16-04006
STEPHEN B. DARR, Chapter 11 Trustee, Plaintiff, vs. MARCO PUZZARINI AND SANDRO PAULO FREITAS, ET AL., Defendants	Adv. Proc. No. 16-04007

MOTION BY TRUSTEE TO APPROVE AMENDED STIPULATION BETWEEN TRUSTEE AND DEFENDANT CLASS REPRESENTATIVES RESPECTING AMENDED FEE ARRANGEMENT FOR DEFENDANTS

Stephen Darr, the Liquidating Trustee under the confirmed liquidating plan of reorganization, and formerly the Chapter 11 trustee (the "Trustee") of the substantively

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consolidated bankruptcy estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors" or "TelexFree"), respectfully requests that the Court approve the attached amended stipulation ("Amended Stipulation") by and among the Trustee and Frantz Balan on his own behalf and as class representative on behalf of all similarly situated parties in Adversary Proceeding No. 16-4006 (the "Domestic Action") and Marco Puzzarini and Sandro Paulo Freitas on their own behalf and as class representatives on behalf of all similarly situated parties in Adversary Proceeding No. 16-4007 (the "Foreign Action" and, together with the Domestic Action, the "Class Actions"). Balan, Puzzarini, and Freitas shall be referred to collectively as the "Class Representatives", and the Trustee and the Class Representatives are referred to collectively as the "Parties". The Amended Stipulation is intended to make certain agreed modifications to the Stipulation previously approved by the Court.

In support of this motion, the Trustee states as follows:

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 Chapter 11 cases were later transferred to this District.

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

5. On or about January 15, 2016, the Trustee commenced these adversary proceedings by filing class action complaints (the "Complaints"). On or about October 16, 2016, the Court entered an order in the Domestic Action certifying a defendant class, appointing Frantz

Balan as Class Representative, and appointing Milligan Rona Duran & King, LLC ("MRDK") as class counsel. On or about August 3, 2017, the Court entered an order in the Foreign Action certifying a defendant class, appointing Marco Puzzarini and Sandro Paulo Freitas as Class Representatives, and appointing MRDK as class counsel. The Class Representatives subsequently retained StoneTurn Group ("StoneTurn") as financial advisors to the defendant classes. The Trustee provided funding to MRDK and StoneTurn for their representation in the Class Actions pursuant to the terms of the class certification orders.

6. On June 22, 2021, the Court entered a decision excluding the Trustee's expert report prepared and submitted by Timothy Martin of Huron Consulting Group.

7. On or about September 7, 2021, the Trustee filed the *Motion by Liquidating Trustee to Schedule a Case Management Conference Respecting Supplementation of Expert Reports* (the "Expert Motion"), wherein the Trustee sought among other things to retain a new expert witness in the Class Actions.

8. On November 1, 2021, the defendant classes filed the *Domestic & International Class Representatives' Opposition to the Trustee's Request to Appoint New Expert Witness* (the "Opposition").

9. On November 16, 2021, the Trustee filed a Reply to the Opposition.

10. On December 1, 2021, the Court entered orders [docket no. 407 in the Domestic Action and docket no. 557 in the Foreign Action] allowing the Expert Motion conditioned upon the submission of an amended fee arrangement for the professionals retained by the Class Representatives to be funded by the estate.

11. The Trustee and the Class Representatives thereafter reached an initial agreement on the terms of funding by TelexFree of the defense costs associated with the Class Actions, as

set forth in the Stipulation filed on January 6, 2022 [docket no. 3707] and the motion to approve Stipulation of even date [docket no. 3708]. The motion to approve Stipulation was granted by order dated February 7, 2022 [docket no. 3716].

12. The fee arrangement for MRDK and StoneTurn has been implemented since January 2022 in accordance with the terms of the Stipulation.

13. Among other things, the Stipulation bifurcated the budget established for MRDK for its services into two Phases – with a budget of $400,000 for Phase I and $300,000 for Phase II.

14. In its most recent Quarterly Fee Statement, MRDK requested fees and expenses that would, in the aggregate, exceed the budget established for MRDK for Phase I. The Trustee objected to payment of any fees in excess of the budgeted amount.

15. MRDK alleged that some of the services rendered in its Quarterly Fee Statement were applicable to Phase II as well as Phase I.

16. After discussions, the parties have reached agreement on modification to the terms of the Stipulation. The Amended Stipulation filed herewith provides, in substance, that: (i) the budget for MRDK for Phase I and Phase II will be consolidated into one aggregate budget of $700,000, and the budget for StoneTurn shall remain unchanged; (ii) that the Trustee may, but is not required, to object to any particular Quarterly Fee Statement pursuant to the agreed procedures; and (iii) that as to any Quarterly Fee Statement which includes a request in excess of the budgeted amount, the Trustee may object to both the amount in excess of the budget as well as any substantive objection to any Quarterly Fee Statement submitted, provided that MRDK and StoneTurn will not be required to disgorge any funds previously paid.

17. The Trustee requests that the Amended Stipulation be approved. The Amended Stipulation resolves the issue currently in dispute, will conserve administrative costs and further judicial economy, and potentially avoid the necessity of Court intervention on the dispute.

18. Good cause exists for the requested relief.

Wherefore, the Trustee prays that the Court:

1. Approve the Amended Stipulation; and

2. Grant such other relief as is just 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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