Docket #0588 Date Filed: 6/13/2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Reorganized Debtors.	Chapter 11 Cases 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 **Request for Expedited Determination**

MOTION BY DEFENDANT CLASSES FOR A 30-DAY ENLARGEMENT OF TIME TO FILE *DAUBERT* AND RELATED DISPOSITIVE MOTIONS, AND REQUEST FOR EXPEDITED DETERMINATION

1440987230613000000000001

Class Representatives Frantz Balan, Marco Puzzarini, and Sandro Paulo Freitas (the "Class Representatives"), on behalf of classes of alleged "net winner" Defendants in *Darr v. Argueta*, Adv. Pro. 16–4006 (the "Domestic Case") and *Darr v. Alecci*, Adv. Pro. 16–4007 (the "International Case"), respectfully request a 30-day enlargement of the deadline to file motions to exclude the supplemental expert report of Borelian ("*Daubert* Motion"), and any related dispositive motions. In support thereof, the Class Representatives state as follows:

1. Both sides have completed fact discovery, expert disclosures, and expert discovery.

2. Under the existing schedule (ECF No. 433 in the Domestic Case; ECF No. 583 in the International Case), the deadline for class representatives to file their *Daubert* Motion and any related dispositive motions is June 22, 2023.

3. Due to the complexity of the expert issues in this case and a few unforeseen scheduling issues, counsel needs an additional 30 days[1]—up to and including July 21, 2023—to prepare the briefs.

4. Counsel for the Defendants believe this additional time will benefit the Court in its ultimate determination of the issues presented.

5. Counsel for the Defendants also believe that the additional time will benefit the Trustee by narrowing the areas of focus that the Trustee would have to address.

6. Counsel for the Defendants has contacted counsel for the Trustee to determine whether the Trustee assents to a brief extension. Counsel objected.

[1] The requested extension is actually for 29 days, as the 30th day following June 22nd falls on July 22nd, which is a Saturday.

WHEREFORE, the Class Representatives request that the deadline for filing of a Daubert Motion and any related dispositive motions be extended to **July 21, 2023**.

FRANTZ BALAN,
CLASS REPRESENTATIVE FOR
DOMESTIC CLASS ACTION,

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

By their counsel,

Dated: June 13, 2023

/s/Ilyas J. Rona

Ilyas J. Rona (BBO #642964)
Michael J. Duran (BBO # 569234)
MILLIGAN RONA DURAN & KING LLC
28 State Street, Suite 802
Boston, MA 02109
Tel: (617) 395-9570
Fax: (855) 395-5525
ijr@mrdklaw.com
mjd@mrdklaw.com

MLBR 9013-1 CERTIFICATION

On June 12, 2023, I sent an email to counsel for the Trustee asking if they would be willing to agree to an extension of the deadline discussed above. Mr. Daniel J. Lyne, counsel for the Trustee, objected to the request, stating:

> The Phase 1 Stipulation was fully negotiated between our respective offices. Counsel attended a hearing on February 15, 2022 where the schedule was discussed. The Court issued its Phase I Order on February 28, 2022. The Order set the Daubert schedule. Your office offered no objection to the June 22 deadline. Dr. Freer served his Expert Report on April 29, 2022. Mr. Dennis had almost a year to read and consider Dr. Freer's Report (including an additional 45-day extension

> at your office's request). Your office took Dr. Freer's deposition on April 4, 2023, more than two months before the Daubert deadline. Beyond this, you have a fixed budget that we are not going to agree to increase. Wasting it on a Daubert motion that relies on the opinions of a unqualified business consultant is not going to succeed. Frankly, I thought long and hard about filing a Daubert motion on Mr. Dennis's education, training and experience, coupled with his almost complete inability to answer basic statistical and data analysis questions during his deposition. I would encourage you to consider sheparding [*sic*] your remaining financial resources for the trial. Regardless, I'm not agreeing to another extension request.

(*See* Exhibit A.)

Movants request expedited determination to prevent expiry of the deadline before this motion is heard.

Dated: June 13, 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 for a 30-Day Enlargement of Time to File Daubert and Related Dispositive Motions, and Request for Expedited Determination** 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: June 13, 2023

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

Exhibit A.

MILLIGAN RONA DURAN & KING
A PROFESSIONAL LIMITED LIABILITY COMPANY

Ilyas Rona <ijr@mrdklaw.com>

RE: TelexFree [Privileged/Work Product]

Daniel J. Lyne <DLyne@murphyking.com> Tue, Jun 13, 2023 at 3:24 PM
To: Ilyas Rona <ijr@mrdklaw.com>
Cc: "Charles R. Bennett" <CBennett@murphyking.com>, "Andrew G. Lizotte" <ALizotte@murphyking.com>, "Alexandra M. Papas" <APapas@murphyking.com>

Ilyas,

The Phase 1 Stipulation was fully negotiated between our respective offices. Counsel attended a hearing on February 15, 2022 where the schedule was discussed. The Court issued its Phase I Order on February 28, 2022. The Order set the Daubert schedule. Your office offered no objection to the June 22 deadline. Dr. Freer served his Expert Report on April 29, 2022. Mr. Dennis had almost a year to read and consider Dr. Freer's Report (including an additional 45-day extension at your office's request). Your office took Dr. Freer's deposition on April 4, 2023, more than two months before the Daubert deadline. Beyond this, you have a fixed budget that we are not going to agree to increase. Wasting it on a Daubert motion that relies on the opinions of a unqualified business consultant is not going to succeed. Frankly, I thought long and hard about filing a Daubert motion on Mr. Dennis's education, training and experience, coupled with his almost complete inability to answer basic statistical and data analysis questions during his deposition. I would encourage you to consider sheparding your remaining financial resources for the trial. Regardless, I'm not agreeing to another extension request. Regards,

Dan

Daniel J. Lyne

Shareholder

MK | Murphy&King Professional Corporation Counsellors at Law

28 State Street, Suite 3101, Boston, MA 02109

T: 617-423-0400 I F: 617-423-0498

Direct: 617-226-3420 I **Direct Fax:** 617-305-0620

Email: dlyne@murphyking.com

www.murphyking.com

From: Ilyas Rona <ijr@mrdklaw.com>
Sent: Tuesday, June 13, 2023 11:41 AM
To: Daniel J. Lyne <DLyne@murphyking.com>
Cc: Charles R. Bennett <CBennett@murphyking.com>; Andrew G. Lizotte <ALizotte@murphyking.com>; Alexandra M. Papas <APapas@murphyking.com>
Subject: Re: TelexFree [Privileged/Work Product]

This Message originated outside your organization.

Dan,

Could you tell me the basis for your objection?

Thanks,

Ilyas J. Rona, Esq.

MILLIGAN RONA DURAN & KING LLC

28 State Street, Suite 802

Boston, Massachusetts 02109

Main: (617) 395-9570 | Direct: (617) 395-9573

MILLIGAN RONA DURAN & KING
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On Mon, Jun 12, 2023 at 10:16 AM Daniel J. Lyne <DLyne@murphyking.com> wrote:

> Ilyas,
>
> Yes, I do object to extending the schedule.
>
> Daniel J. Lyne
>
> Shareholder
>
> MK | Murphy&King Professional Corporation Counsellors at Law
>
> 28 State Street, Suite 3101, Boston, MA 02109
>
> T: 617-423-0400 I F: 617-423-0498
>
> **Direct:** 617-226-3420 I **Cell:** 978-761-461

Email: dlyne@murphyking.com

www.murphyking.com

From: Charles R. Bennett
Sent: Monday, June 12, 2023 9:48 AM
To: Daniel J. Lyne <DLyne@murphyking.com>; Andrew G. Lizotte <ALizotte@murphyking.com>
Subject: FW: TelexFree [Privileged/Work Product]

Dan

I defer to you on this.

From: Ilyas Rona <ijr@mrdklaw.com>
Sent: Monday, June 12, 2023 9:46 AM
To: Andrew G. Lizotte <ALizotte@murphyking.com>; Charles R. Bennett <CBennett@murphyking.com>
Cc: Michael Duran <mjd@mrdklaw.com>
Subject: TelexFree

This Message originated outside your organization.

Charles and Andrew,

In looking at our schedules, we would like to extend the upcoming deadline to file Daubert/dispositive motions by 45 days. Do you have any objections?

Thanks,

Ilyas J. Rona, Esq.

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