Docket #0589 Date Filed: 6/15/2023

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re: TELEXFREE, LLC, TELEXFREE, INC., and TELEXFREE FINANCIAL, INC., Reorganized Debtors.	Chapter 11 Cases Case No. 14-40987-EDK Case No. 14-40988-EDK Case No. 14-40989-EDK Substantively Consolidated
STEPHEN B. DARR, TRUSTEE OF THE ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Plaintiff, vs. FRANTZ BALAN, ET AL, A REPRESENTATIVE OF A CLASS OF DEFENDANT NET WINNERS, Defendants.	Adv. Proc. No. 16-04006
STEPHEN B. DARR, AS TRUSTEE OF THE ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Plaintiff, vs. MARCO PUZZARINI AND SANDRO PAULO FREITAS, REPRESENTATIVES OF A CLASS OF DEFENDANT NET WINNERS, Defendants.	Adv. Proc. No. 16-04007

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LIMITED OPPOSITION TO MOTION BY DEFENDANT CLASSES FOR A 30-DAY ENLARGMENT OF TIME TO FILE DAUBERT AND RELATED DISPOSITIVE MOTIONS

The Trustee, Stephen B. Darr ("the Trustee") opposes the Class Representatives' expedited motion for an additional 30-day extension to file Daubert and related motions on the following grounds.

1. The Order Regarding Remaining "Phase 1" Schedule issued on February 28, 2023 ("the Scheduling Order"). The Scheduling Order was the product of negotiation between counsel, and it set June 22, 2023 as the deadline for the filing of "*any motions to exclude the supplemental report of Borelian, and any related dispositive motions*". Class Counsel made no objection to the Daubert deadline at the time.
2. The Borelian Report was served on Class Counsel on April 29, 2022, per the Scheduling Order.
3. Class Counsel deposed Dr. Freer on April 4, 2023.
4. Class Counsel served the Rebuttal Report of Joshua W. Dennis on April 14, 2023, per the Scheduling Order.
5. Mr. Dennis was deposed on May 9, 2023, prior to the May 22, 2023 deadline for completing discovery of the Class Representative's expert.
6. Borelian filed its Reply Report on May 22, 2023, per the Scheduling Order.
7. At no time throughout this period did Class Counsel suggest that the Daubert deadline needed to be extended.
8. Based on the Dennis Deposition, the following facts are detailed in Dr. Freer's Reply Report:

a. Mr. Dennis, a business major in college, has effectively no formal training in statistical analysis, having taken only one semester-long course in college. Mr. Dennis minored in computer science but couldn't remember any course other than "coursework related to at that time Microsoft Access". His subsequent continuing data science education ("a number of years ago now") is limited to one SQL[1] course that "spanned a couple of weeks."

b. Mr. Dennis has no experience working in high level probabilistic computing methods, including using the Fellegi Sunter methodology used by Dr. Freer in his assignment, or any of the peer reviewed Python packages used by Dr. Freer for calculating record linkage.

c. During his deposition, Mr. Dennis was unable to answer questions requiring basic statistical knowledge, admitted that he has only limited knowledge of Python, and ran only "portions" of Dr. Freer's code, with the assistance of another, for only two of ten steps used in the Freer Aggregation Methodology.

d. Mr. Dennis admitted that he has formed no opinions and performed no affirmative analysis to determine whether the handful of cherry-picked individual accounts actually represent aggregation errors in Dr. Freer's work, and offers no statistical analysis on the sufficiency of the data quality in the Telex data set.

[1] Structured Query Language (SQL) is a programming query language used to manage and query relational datasets, including access, modify, join, update and delete commands. Python is the principal data science, machine learning and data engineering programming language, primarily because of the multiple libraries developed by the Python community that perform complex data-related tasks.

9. Class Counsel has stipulated to a budget through trial. See Stipulation Between Trustee and Defendant Class Representatives Respecting Amended Fee Arrangement for Defendants (Docket No. 409, January 4, 2022), as follows:

    23. "MRDK shall have one consolidated budget for services incurred subsequent to November 1, 2021 in Phase I in the amount of $400,000 and shall not exceed such amount. Amounts not used in Phase I may be added to the Phase II budget.

10. Class Counsel has submitted invoices through March 31, 2023 to the Trustee in the amount of $453,826.92.[2] The Trustee expects that the next quarterly invoice, which will include multiple depositions and both the Rebuttal and Reply Reports, as well as any Daubert and related dispositive motions, will eat up the lion's share of Class Counsel's remaining budget.

11. Pursuing a Daubert motion under the above circumstances would be frivolous and would needlessly drain the Class Defendants' budget that has been funded by the Trustee.

WHERFORE, the Trustee respectfully opposes the Defendant Classes motion. If the Court is inclined to grant additional time, the Trustee requests that the extension be limited to fourteen (14) days, and that such extension be without prejudice to the Trustee's stated position regarding any future increase over the existing court-approved Phase I/II Budget.

[2] The Trustee allowed Class Counsel to collapse Phase I and Phase II into one $700,000 consolidated budget that the Court has approved, but the Trustee has warned Class Counsel that he will object to additional fee requests beyond the $700,000.

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

/s/ Daniel J. Lyne

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Dated: June 15, 2023

CERTIFICATE OF SERVICE

I, Daniel J. Lyne, hereby certify that on June 15, 2023, I caused copies of the following documents to be served by operation of the Court's ECF system upon the registered participants as identified on the Notice of Electronic Filing.

/s/ Daniel J. Lyne

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Dated: June 15, 2023