Docket #0672 Date Filed: 10/17/2024

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

AFFIDAVIT OF STEPHEN B. DARR IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT BETWEEN TRUSTEE AND DEFENDANT CLASSES, FOR APPROVAL OF FORM AND MANNER OF NOTICES, AND SCHEDULING FINAL FAIRNESS HEARING ON SETTLEMENT

I, Stephen B. Darr, being duly sworn, hereby submit this Affidavit in support of the *Joint Motion for Preliminary Approval of Settlement Agreement between Trustee and Defendant*

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Classes, for Approval of Form and Manner of Notices, and Scheduling Final Fairness Hearing on Settlement (the "Motion").[1]

1. I am the duly appointed Liquidating Trustee ("Trustee") of the substantively consolidated bankruptcy estates of TelexFree LLC, TelexFree Inc. and TelexFree Financial, Inc. ("TelexFree").

2. I was appointed as Chapter 11 trustee for TelexFree on June 6, 2014 and served in that capacity until the Effective Date of the First Amended Liquidating Plan of Reorganization ("Plan") on July 13, 2020. Since that time, I have served as Liquidating Trustee of TelexFree.

3. The statements provided herein are based upon information and knowledge I have derived through my involvement in these Chapter 11 cases and discussions I have had with the professionals I have retained in these cases as further set forth herein.

4. The Motion seeks preliminary approval of a settlement with the defendant classes of Net Winners in the TelexFree program (the "Class Settlement").

5. Preliminary approval requires a demonstration that the Court will likely be able to approve the Class Settlement on a final basis under Federal Rule of Civil Procedure ("FRCP") 23(e)(2). I understand that this preliminary approval, in turn, requires a consideration of:

(i) Whether the Class Representatives and Class Counsel have adequately represented the Defendant Classes (FRCP 23(e)(2)(A);
(ii) Whether the Settlement Agreement was negotiated at arm's length. FRCP 23(e)(2)(B);
(iii) Whether the relief provided in the Settlement Agreement is adequate, taking into account the costs, risks, and delay of trial and potentially appeal. FRCP 23(e)(2)(C)(i);
(iv) Whether settlement is effective in resolving claims against members of the Defendant Classes. FRCP 23(e)(2)(C)(ii);
(v) The terms of any proposed award of attorneys' fees. FRCP 23(e)(2)(C)(iii);
(vi) Any agreements in connection with the settlement. FRCP(e)(2)(C)(iv); and

[1] Terms not otherwise defined herein shall have the meanings set forth in the Motion or the memorandum filed in support of the Motion.

(vii) Whether the settlement treats Class members equitably relative to each other. FRCP 23(e)(2)(D).

I. Prior Proceedings

6. The Class Actions were instituted as Defendant class actions, which are infrequently implemented. The so-called "reverse class action" was necessitated by the size of the Defendant Classes, numbering over 80,000 persons. The Classes designated Franz Balan, in the domestic action, and Marco Puzzarini and Sandro Paulo, in the foreign action, as the Class Representatives. The Court approved Milligan Rona Duran & King, LLC as Class Counsel to each of the Defendant Classes. The Defendant Classes thereafter retained StoneTurn Group LLC ("StoneTurn") as their expert.

7. In order to ensure the Defendant Classes had adequate representation, I agreed to provide funding to Class Counsel and the Defendant Classes' expert witnesses for providing a substantial contribution to the cases up to prescribed amounts, thereby ensuring that the Defendant Classes had vigorous representation. The Defendants Classes have been well-represented by the Class Representatives and Class Counsel.

8. Participants could have hundreds or thousands of User Accounts belonging to them and the TelexFree database had no mechanism for linking User Accounts to the owners. Therefore, one of the principal issues in the Class Action Litigation has been the attribution of User Accounts to an individual Participant.

9. To address this issue, I and my professionals developed a methodology for aggregating User Accounts.

10. In November 2020, the Court conducted evidentiary Daubert hearings on the Trustee's methodology for aggregating User Account Clusters. Following the hearing, the Court ruled that the expert opinion was not admissible.

11. Subsequently, I sought and obtained authority to retain a second expert - Dr. Cameron Freer of Borelian Corporation – to address the User Account aggregation issues. Dr. Freer submitted an expert report (the "Freer Report").

12. The Freer Report was provided to Class Counsel and to StoneTurn. StoneTurn submitted a rebuttal report, which was followed by a reply report of Dr. Freer.

13. The parties exchanged information and conducted discovery into the factual basis and analysis utilized by each expert.

14. In July 2023, the Class Representatives filed a motion for summary judgment which, among other things, challenged the admissibility of the Freer Report and the estate filed a cross-motion for summary judgment. Summary judgment was denied, and the Court conducted a three day evidentiary Daubert hearing in October 2023 on the admissibility of the Freer Report. By order dated November 3, 2023, the Court thereafter ruled Dr. Freer's expert testimony to be admissible.

15. In May 2024, the Court conducted three additional days of evidentiary hearings on the following issues: (i) the use of the Lowest Rep ID to determine ownership by a Participant of a User Account Cluster; (ii) adoption of the User Account Clusters as established in the report of Dr. Freer; (iii) the inclusion of Triangular Transactions in the computation of Net Winnings; and (iv) the exclusion of Credit Transfers from the computation of Net Winnings.

16. The Court directed the parties to file post-trial briefs and proposed findings of fact and rulings of law.

II. Settlement Negotiations

17. During the period from May through August 2024, the parties engaged in extensive settlement negotiations, which were a continuation of discussions leading up to the

May 2024 evidentiary hearings. The settlement discussions required consideration of numerous items in contention including:

(i) Establishing a mechanism to compute Net Winnings, including disputes with respect to whether all Triangular Transactions were for cash and whether Net Winners were entitled to any reduction for Credit Transfers;

(ii) Determination of settlement discounts to be available to Net Winners who elected not to contest the Trustee's computation of Net Winnings;

(iii) Assessment and payment of Class Counsel fees;

(iv) Notice issues for implementation of the settlement; and

(v) Establishment of presumptions that would accompany any challenge by a Net Winner to the computation of their Net Winnings based upon Dr. Freer's report.

18. The parties agreed to a formula of 100% of Direct Transactions, 85% of Triangular Transactions, and 85% of Net Credit Transfers to determine the Maximum Liability of each Net Winner. These computations were the product of numerous discussions, taking into account the various factual and legal disputes surrounding the inclusion/exclusion of these transfers in the computation of Net Winnings, as further articulated in the memorandum filed on August 15, 2024 in support of the Motion.

19. The parties then agreed to discounts to the Maximum Liability for those Net Winners electing not to contest the amount of their Net Winnings. The multi-tier discount formula is structured to incentive and to promote settlements, taking into consideration the costs and delays associated with litigating the Net Winners' liability.

20. The settlement contains numerous presumptions in favor of the Trustee, subject to rights of rebuttal for the Participant. These presumptions were considered essential for the estate to realize a benefit from foregoing a trial on each of these issues and to minimize the risk of re-

litigating issues on an individual Net Winner basis. At the same time, the settlement preserves certain rights of Net Winners to assert individual defenses to liability.

21. The parties also agreed on the framework for an electronic portal that will enable Net Winners to access the User Account Clusters attributable to them and to exercise their rights to settle or contest the claims against them.

22. Absent entry into the settlement, the parties would need to submit their post-trial memoranda and proposed findings of fact and rulings of law, followed by a determination by the Court on the issues in Phase I of the litigation. This would not conclude the litigation as the parties would thereafter need to litigate the issues in Phase II of the litigation, including the class proofs of claim filed by the Class Defendants and establishing the other elements for avoidance of the transactions as fraudulent transfers.

23. The Settlement Agreement will resolve all class-wide issues in dispute, including: (i) presumptions respecting identifying the owners of each User Account Cluster; (ii) presumption as to the treatment of Triangular Transactions; (iii) presumptions as to the treatment of Credit Transfers; (iv) resolution of the Class Defendants' proofs of claim; (v) issues respecting notice to Defendants; and (vi) resolution of disputes respecting the rights of the Class Defendants' professionals to any further compensation from the estates. At the same time, the Settlement Agreement will provide a uniform mechanism whereby individual Defendants can access their User Account information and elect to either enter into a settlement with the TelexFree estate on a discounted basis or to contest certain presumptions as to the calculation of their Net Winnings.

24. There is no proposed "award" of attorneys' fees. The estate previously agreed to pay Class Counsel's fees within a prescribed budget. In any event, the Settlement Agreement

provides for a final resolution to any claims of the Defendants' professionals to payment of fees and expenses from the TelexFree estates.

25. The Settlement Agreement is the governing document for this settlement, and there are no other agreements that are applicable. The Settlement Agreement has been filed with the Court.

26. The Settlement Agreement provides for the same treatment to all members of the Defendant Classes with no subclasses.

27. The computation of Maximum Liability is uniform for each Net Winner Defendant. Similarly, the discount percentages available for settlement are calculated uniformly for each Net Winner Defendant. No settlement will provide for identical treatment for each of thousands of Class Defendants. The Settlement Agreement was designed, however, to provide for members to be treated equitably.

28. The only differentiation is the provision that permits Class Representatives to receive a $15,000 credit against their Settlement Amount, after other discounts in the Settlement Agreement are applied. This provision is a reasonable accommodation in consideration of the efforts and time expended by Class Representatives in connection with the prosecution of the Class Action Litigation and participation in negotiating the terms of settlement.

29. On balance, I concluded that the Settlement Agreement was fair and reasonable to the parties by providing a fair basis for Net Winners to settle their liability, establishing the estate's prima facie case, and preserving the Defendants' individual defenses.

II. Notice

30. I understand that, if preliminary approval of the Class Settlement is granted, the Court must direct notice in a reasonable manner to Defendant class members who would be bound by the proposal.

31. With respect to the issuance of notice to affected parties, during the course of these cases I have retained two nationally recognized claims and noticing firms – Kurtzman Carson Consultants ("KCC") and the BMC Group ("BMC"). These firms specialize in large scale noticing in bankruptcy cases, including legal notifications, email and postal mailing, website design, call center support, claims processing, check and voucher disbursements, and other related services critical to the effective administration of a case.

32. KCC provided substantially all of the noticing for the claims resolution process for purported Net Losers of the TelexFree program, including notification of claims objections and claims hearings.

33. BMC was retained to design an interactive, electronic portal for the submission of electronic proofs of claim ("ePOC") by purported Net Losers. A Participant was able to access the claims portal and input personal identifying information used when the Participant created his/her User Account. The portal then used this data to generate User Accounts believed to be attributable to the Participant based upon an algorithm. Participants could then modify the data, or accept the data as provided, before submitting the ePOC.

34. Based upon the claims resolution process, I have established a database of approximately 77,000 Net Losers who have allowed claims and who completed the payment information request, thereby entitling them to receive distributions in the cases. The Motion contains a form of notice to be sent to Participants in this database of Net Losers informing them that a settlement has been reached and will provide a hyperlink that will enable review of the Motion and memorandum.

35. Based upon the work performed by Dr. Freer and the generation of his expert report, I similarly have established a database of approximately 80,000 Participants believed to be Net Winners in the TelexFree program who are Defendants in this Class Action Litigation.

The proposed form of Net Winner Notice provides a plain English explanation of the nature and status of the Class Actions, the terms of the Settlement Agreement, and the rights of individual Net Winners. Once approved, the Trustee will upload the settlement documentation in English, Spanish, and Portuguese. The Net Winner Notice is intended to be a summary, not a complete source, of information. Defendants will have electronic access on the TelexFree website to the full Settlement Agreement and related pleadings if they seek additional information.

36. All notices to be provided to Net Losers and Net Winners will be done by electronic means, which has been virtually the exclusive method of service used in these cases to provide notice. Electronic mail notice shall be provided using the electronic mail addresses contained in the TelexFree database, as modified and supplemented by Participants in the ePOC filing process and supplemental notifications provided to me or my claims agents.

37. TelexFree was an e-commerce entity which conducted business almost exclusively through its online presence. I have provided electronic notice to Participants on numerous occasions, including to claimants throughout the claims resolution process, the liquidating plan process, distributions to Participants, and in connection with any notices *required to be sent to parties-in-interest.*

Attested to this 17th day of October 2024.

Stephen B. Darr

Stephen B. Darr

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CERTIFICATE OF SERVICE

I, Andrew G. Lizotte, hereby certify that on October 17, 2024, I caused a copy of the *Affidavit of Stephen B. Darr in Support of Joint Motion for Preliminary Approval of Settlement Agreement Between Trustee and Defendant Classes, for Approval of Form and Manner of Notices, and Scheduling Final Fairness Hearing on Settlement* to be served electronically

through the Court's ECF System upon the registered participants as identified on the Notice of Electronic Filing.

Dated: October 17, 2024

/s/ Andrew G. Lizotte
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