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7 *Proposed Counsel for the Debtors*
 8 *and Debtors in Possession*

9
 10 **UNITED STATES BANKRUPTCY COURT**
FOR THE DISTRICT OF NEVADA

11 In re:

12 TELEXFREE, LLC,

13 Affects this Debtor

14 Affects all Debtors

15 Affects TELEXFREE, INC.

16 Affects TELEXFREE FINANCIAL, INC

Case No.: BK-S-14-12524-abl
 Chapter 11

[PROPOSED]

Jointly Administered with:

14-12525 TelexFree, Inc.
 14-12526 TelexFree Financial, Inc

Date: OST REQUESTED

Time: OST REQUESTED

17
 18
 19 **EMERGENCY MOTION OF THE DEBTORS PURSUANT TO SECTIONS**
 20 **105(a), 363, 364, 503, 507(a)(4), 507(a)(5), 541, 1107 AND 1108 OF THE BANKRUPTCY**
CODE AND BANKRUPTCY RULES 6003 AND 6004(h) FOR ENTRY OF AN ORDER
 21 **(A) AUTHORIZING DEBTORS TO PAY (I) ALL PREPETITION EMPLOYEE**
OBLIGATIONS, (II) THE INDEPENDENT CONTRACTORS' FEES AND (III) THE
 22 **CONTRACTING AGENCIES' FEES AND (B) DIRECTING THE DISBURSING BANK**
TO HONOR RELATED TRANSFERS

23 The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”)¹
 24 hereby move the Court (the “Motion”), pursuant to sections 105, 363, 364, 503, 507(a)(4),
 25 507(a)(5), 541, 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*

26
 27 ¹ The Debtors in these Chapter 11 Cases, along with the last four (4) digits of each Debtor’s federal tax
 28 identification number, are: TelexFree, LLC (0853), TelexFree, Inc. (1309) and TelexFree Financial, Inc
 (7555). The Debtors’ business address is 225 Cedar Hill Street, Suite 200, Marlborough, Massachusetts
 01752.



1 (the “**Bankruptcy Code**”), and Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy
2 Procedure (the “**Bankruptcy Rules**”), for entry of an order substantially in the form attached
3 hereto as **Exhibit 2** (a) authorizing, but not directing, the Debtors to pay (i) certain prepetition
4 employee obligations described in paragraphs 14 to 19 hereof (collectively the “**Employee**
5 **Obligations**”), (ii) the Independent Contractors’ Fees (as defined below) and (iii) the
6 Contracting Agencies’ Fees (as defined below) and (b) directing PNC Bank, N.A. (the
7 “**Disbursing Bank**”) to honor the Debtors’ prepetition checks or electronic transfers for payment
8 of any of the foregoing, and prohibiting the Disbursing Bank from placing holds on, or
9 attempting to reverse, any automatic transfers on account of the foregoing. In support of this
10 Motion, the Debtors respectfully state as follows:

11 **Status of the Case**

12 1. On the date hereof (the “**Petition Date**”), the Debtors commenced these cases (the
13 “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy
14 Code.

15 2. The Debtors have continued in possession of their properties and are operating
16 and managing their business as debtors-in-possession pursuant to sections 1107(a) and 1108 of
17 the Bankruptcy Code.

18 3. No request has been made for the appointment of a trustee or examiner and a
19 creditors’ committee has not yet been appointed in these Chapter 11 Cases.

20 **Jurisdiction, Venue and Statutory Predicates**

21 4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and
22 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is core within the
23 meaning of 28 U.S.C. § 157(b)(2).

24 5. The statutory predicates for the relief sought herein are sections 105(a), 363, 503,
25 507(a)(4), 507(a)(5), 541, 1107, and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003
26 and 6004(h).

27 6. Pursuant to Local Rule 9014.2, the Debtors consent to entry of final order(s) or
28 judgment(s) by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent

1 of the parties, cannot enter final orders or judgments consistent with Article III of the United
2 States Constitution.

3 Background

4 A. General

5 7. TelexFree, LLC, a Nevada limited liability company (“**TelexFree Nevada**”),
6 TelexFree, Inc., a Massachusetts corporation (“**TelexFree Massachusetts**”) and TelexFree
7 Financial, Inc, a Florida corporation (“**TelexFree Florida**” and together with TelexFree
8 Massachusetts and TelexFree Nevada, “**TelexFree**,” the “**Debtors**” or the “**Company**”) are a
9 telecommunications business that uses multi-level marketing to assist in the distribution of voice
10 over internet protocol (“**VoIP**”) telephone services. TelexFree’s retail VoIP product,
11 99TelexFree, allows for unlimited international calling to approximately seventy countries for a
12 flat monthly rate of \$49.90. Customers of the Debtors’ VoIP product (“**Customers**”) used
13 approximately 11 million minutes of the 99TelexFree VoIP service in February 2014. Since
14 99TelexFree was introduced in 2012, Customer usage increased on a monthly basis until March
15 2014.

16 8. TelexFree is operated as a multi-level marketing company, and currently has over
17 700,000 associates or promoters (the “**Promoters**”) worldwide. Prior to the filing of these
18 Chapter 11 Cases, TelexFree compensated Promoters for the sales of the VoIP product, the
19 placing of advertisements and the recruitment of other Promoters down line. Because questions
20 were raised about its compensation plan, the Company on March 9, 2014, discontinued its
21 original compensation plan (the “**Original Comp Plan**”) and replaced the Original Comp Plan
22 with a revised compensation plan (the “**Revised Comp Plan**” and together with the Original
23 Comp Plan, the “**Pre-Petition Comp Plans**”). At the time of the roll-out of the Revised Comp
24 Plan, the Company decided to honor certain discretionary payments to Promoters under the
25 Original Comp Plan. These discretionary payments quickly became a substantial drain on the
26 Company’s liquidity. The Company discontinued the Pre-Petition Comp Plans and ceased
27 making discretionary payments under the Original Comp Plan prior to the Petition Date.

28

1 9. The Company believes the sales of the 99TelexFree product, the TelexFree “app,”
2 and other new products will ultimately prove successful and profitable. The Company is
3 struggling, however, with several factors that required it to seek chapter 11 protection by filing
4 these Chapter 11 Cases. First, the Company experienced exponential growth in revenue between
5 2012 and 2013 (from de minimus amounts to over \$1 billion), which put tremendous pressure on
6 the Company’s financial, operational and management systems. Second, although the Company
7 revised its Original Comp Plan in order to address certain questions that were raised regarding
8 such plan, the Company believes that the Pre-Petition Comp Plans need to be further revised.
9 Finally, the trailing liabilities arising from the Original Comp Plan are difficult to quantify and
10 have resulted in substantial asserted liabilities against the Company, a number of which may not
11 be valid.

12 10. As a result, the Company filed these Chapter 11 Cases to obtain the breathing
13 room to address its operational and regulatory issues, revise the Pre-Petition Comp Plans, and
14 quantify and address the claims against it. The Debtors believe that a restructuring of its debt,
15 adoption of a post-petition revised compensation plan, unveiling of new products (including the
16 TelexFree app), and return to growing its Customer base will allow the Company to realize its
17 full potential and generate significant value for its constituents.

18 11. A detailed factual background of the Debtors’ businesses and operations, as well
19 as the events precipitating the commencement of these Chapter 11 Cases, is more fully set forth
20 in the *Omnibus Declaration of William H. Runge III in Support of the Debtors’ Chapter 11*
21 *Petitions and Requests for First Day Relief* (the “**First Day Declaration**”), filed
22 contemporaneously herewith and incorporated herein by reference.

23 **B. The Employees**

24 12. TelexFree Massachusetts operates primarily out of its headquarters in
25 Marlborough, Massachusetts, and employs fourteen (14) employees (the “**Employees**”), which
26 are paid by TelexFree Florida. TelexFree Massachusetts is the only Debtor that hires employees.

27 13. Two (2) of the Employees are salaried and twelve (12) work on an hourly basis.
28 The Employees provide customer service support for the Debtors’ independent representatives

1 and customers, as well as financial and marketing services for the Debtors. None of the Debtors'
2 insiders are employees of the Debtors.

3 **C. The Employee Obligations**

4 14. To retain its Employees, the Company incurs certain obligations discussed below
5 in the ordinary course of business, which obligations are consistent with similarly situated
6 companies. The Employee Obligations are not owed to any of the Debtors' insiders.

7 a. ***Wages, Salaries and Payroll Obligations***

8 15. All Employees are paid wages and salary (collectively, the "**Wages and**
9 **Salaries**") on a weekly basis, on every Friday, for the work period ending the previous Friday.
10 Payroll averages approximately \$9,878.00 per pay period in the aggregate, including the
11 Employee Taxes (as defined below). Eleven (11) of the Employees are paid through electronic
12 fund transfers, i.e. direct deposit, while the remaining Employees are paid by paper checks.

13 16. The Debtors' last regular payroll date was April 11, 2014, and the next payroll
14 date is scheduled for April 18, 2014. The Debtors estimate that, as of the Petition Date,
15 approximately \$12,000.00² in Wages and Salaries, commissions and payroll obligation have
16 accrued, and are owed to their Employees, with no employees owed in excess of \$12,425.00. By
17 this Motion, the Debtors request the authority to pay all unpaid Wages and Salaries to their
18 Employees in the ordinary course of business.

19 17. Harpers Payroll Services, Inc. ("**Harpers**") processes payroll for the Company.
20 On average, Harpers is owed a total of approximately \$160.00 per month on account of payroll
21 administration and certain other payroll related services. Harpers invoices the Company on a
22 weekly basis for services provided and obtains payment by accessing the primary account at the
23 Disbursing Bank. The Debtors estimate that there is \$40.00 of accrued and unpaid costs in
24 connection with payroll processing services. By this Motion, the Debtors request the authority to
25 continue to pay Harpers the weekly fee in the ordinary course of business.

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28 ² This figure includes the amount of Wages and Salaries owed for the week ending April 11, 2014, as well
as amounts that have been paid to Employees by checks that have not yet been cashed.

1 18. The Company, as employer, is required by law to withhold federal and state taxes
2 from Wages and Salaries for remittance to appropriate tax authorities (the “**Employee Taxes**”).
3 The Employee Taxes total approximately \$2,300.00 per pay period. In addition, the Company is
4 required to pay, from their own funds, the social security and Medicare taxes and pay, based on a
5 percentage of gross payroll and subject to state-imposed limits, additional amounts for state and
6 federal unemployment insurance (the “**Employer Taxes**,” and together with the Employee
7 Taxes, the “**Payroll Taxes**”) and remit the same to the appropriate authorities (collectively, the
8 “**Taxing Authorities**”). Social Security and Medicare taxes are collected under the Federal
9 Insurance Contribution Act’s authority (FICA). Employer Taxes total approximately \$1,600.00
10 per pay period. For permanent Employees, the Payroll Taxes are paid to various Taxing
11 Authorities in accordance with the Internal Revenue Code and applicable state law. The
12 Company’s average weekly total obligation for Payroll Taxes is approximately \$3,900.00. The
13 Debtors seek authority to honor, process, and pay the prepetition obligations with respect to the
14 Payroll Taxes.

15 b. *Vacation Time*

16 19. Full-time employees that have worked for the Debtors at least one year may
17 receive five (5) paid personal time off days to be used for vacation (“**PTO Days**”). Upon
18 termination from the Company, employees forfeit all unused PTO Days. As of the Petition Date,
19 the Debtors estimate that they owe approximately \$8,450.00 for accrued and unused PTO Days.
20 By this Motion, the Debtors request authority to continue to pay the PTO Days and any other
21 paid-time off obligations, to the extent required by law, and to honor all prepetition obligations
22 related thereto.

23 **D. The Independent Contractors**

24 20. In addition, the Company engages four (4) independent contractors (the
25 “**Independent Contractors**”). One (1) of the Independent Contractors provides product
26 development services and three (3) provide customer service support to the Company’s
27 independent representatives and customers. The Independent Contractors are engaged on an
28 hourly or salary basis. The Independent Contractors are paid on a weekly basis in the aggregate

1 amount of approximately \$3,054.73. As of the Petition Date, the aggregate amount outstanding
2 to the Independent Contractors totals approximately \$7,500.00³ (the “**Independent Contractor**
3 **Fees**”).

4 **E. The Contracting Agencies**

5 21. The Company also engages contracting agencies that engage other independent
6 contractors to provide IT and customer service support to the Company’s independent
7 representatives and customers. A list of the contracting agencies (the “**Contracting Agencies**”),
8 the labor provided, and the estimated monthly cost, is attached hereto as **Exhibit 1**. The
9 Contracting Agencies are paid on a monthly basis. As of the Petition Date, the aggregate amount
10 outstanding to the Contracting Agencies totals approximately \$111,500.00 (the “**Contracting**
11 **Agencies’ Fees**”).

12 **Relief Requested**

13 22. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a),
14 363, 503, 507(a)(4), 507(a)(5), 541, 1107, and 1108 of the Bankruptcy Code and Bankruptcy
15 Rules 6003 and 6004(h), (a) authorizing, but not directing, the Debtors to pay (i) the Employee
16 Obligations, (ii) the Independent Contractors’ Fees, and (iii) the Contracting Agencies’ Fees and
17 (b) directing the Disbursing Bank to honor the Debtors’ prepetition checks or electronic transfers
18 for payment of any of the foregoing, and prohibiting the Disbursing Bank from placing holds on,
19 or attempting to reverse, any automatic transfers on account of the foregoing.

20 **Basis for Relief Requested**

21 23. Courts generally acknowledge that it is appropriate to authorize the payment (or
22 other special treatment) of prepetition Employee Obligations in appropriate circumstances.
23 Pursuant to Bankruptcy Code sections 1107(a) and 1108, debtors-in-possession are authorized to
24 operate the business while maintaining a “fiduciary duty to act in the best interest of the estate as
25 a whole, including its creditors, equity interest holders and other parties in interest.” *LaSalle*
26 *Nat’l Bank v. Perelman*, 82 F.Supp.2d 279, 292 (D. Del. 2000) (citing *In re Intermagnetics*

27 ³ This figure includes amounts owed for services performed during the week ending April 11, 2014, as
28 well as checks that have not yet been cashed.

1 *America, Inc.*, 926 F.2d 912, 917 (9th Cir. 1991); *In re Harp*, 166 B.R. 740, 747 (Bankr. N.D.
2 Ala. 1993)). Implicit in the fiduciary duties of any debtor-in-possession is the obligation to
3 “protect and preserve the estate, including an operating business’s going-concern value.” *In re*
4 *CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Some courts have noted there are
5 instances in which a debtor can fulfill this fiduciary duty “by the preplan satisfaction of a
6 prepetition claim.” *Id.* The *CoServ* court specifically noted that preplan satisfaction of
7 prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is
8 the only means to effect a substantial enhancement of the estate.” *Id.* In the instant case, the
9 Debtors are operating as debtors-in-possession consistent with Bankruptcy Code sections
10 1107(a) and 1108 and payment of the Employee Obligations is necessary to protect and preserve
11 the Debtors’ business operations. Thus, the Court should authorize the relief requested in this
12 Motion.

13 24. Consistent with the Debtors’ fiduciary duties, this Court may also grant the relief
14 requested herein pursuant to sections 363(b), 363(c), and 105(a) of the Bankruptcy Code and the
15 “necessity of payment” doctrine (discussed below). 11 U.S.C. §§ 363(b), 363(c), and 105(a).
16 Section 363(b)(1) of the Bankruptcy Code states in pertinent part that: “The trustee, after notice
17 and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of
18 the estate.” 11 U.S.C. § 363(b)(1). If the debtor’s determination to use estate assets represents a
19 reasonable business judgment, the bankruptcy court should approve such use. Moreover, this
20 Court has approved the payment of prepetition claims of employees for wages, salaries,
21 expenses, and benefits on the ground that the payment of such claims was necessary to effectuate
22 a successful reorganization or liquidation. *See, e.g., In re Jerry’s Nugget, Inc.*, Case No. 12-
23 19387-mkn, ECF No. 52 (Bankr. D. Nev. August 17, 2012); *In re Ahern Rentals, Inc.*, Case No.
24 11-53860-btb, ECF No. 34 (Bankr. D. Nev. February 6, 2012); *In re Spanish Trail Country Club,*
25 *Inc.*, Case No. 11-23466-bam, ECF No. 27 (Bankr. D. Nev. Sept. 1, 2011); *In re 155 East*
26 *Tropicana, LLC*, 11-22216-bam, ECF No. 54 (Bankr. D. Nev. August 8, 2011).

27 ...

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1 25. Section 105(a) of the Bankruptcy Code further provides, in pertinent part, that a
2 “court may issue any order, process, or judgment that is necessary or appropriate to carry out the
3 provisions of this title.” 11 U.S.C. § 105(a).

4 26. The “necessity of payment” doctrine authorizes the relief requested in this Motion
5 because the Employees are indispensable to both the Debtors’ operations and the successful
6 resolution of these Chapter 11 Cases. In addition, the Debtors believe that the unpaid wages and
7 other benefits earned within 180 days of the Petition Date that the Debtors seek to pay are
8 entitled to priority status under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and
9 individually do not exceed \$12,425.00 (*i.e.*, the maximum priority amount under that statute).
10 As a result, courts have held that, pursuant to Sections 105(a), 363(b)(1), 507(a)(4), and
11 507(a)(5), prepetition wage claims may be payable outside of a plan of reorganization by virtue
12 of their necessity, as well as their priority. *See In re CEI Roofing, Inc.*, 315 B.R. 50, 61 (Bankr.
13 N.D. Tex. 2004); *In re CoServ, L.L.C.*, 273 B.R. 487, 494 n. 10 (Bankr. N.D. Tex. 2002); *In re*
14 *The Colad Group, Inc.*, 324 B.R. 208, 214 (Bankr. W.D.N.Y. 2005); *In re Equalnet Comm.*
15 *Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000); *see also In re Adams Apple, Inc.*, 829 F.2d
16 1484, 1490 (9th Cir. 1987) (acknowledging the “doctrine of necessity,” and noting that cases
17 have permitted unequal treatment of pre-petition debts when necessary for rehabilitation,
18 including specifically within the context of pre-petition wages); *In re Ionosphere Clubs, Inc.*, 98
19 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (approving payment of pre-petition wages to current
20 employees where it was necessary to pay such claims “in order to preserve and protect its
21 business and ultimately reorganize, retain its currently working employees and maintain positive
22 employee morale”); *In re Gulf Air, Inc.*, 112 B.R. 152 (Bankr. W.D. La. 1989) (approving the
23 payment of certain pre-petition wages, health insurance premiums, life insurance premiums, and
24 workers’ compensation premiums).

25 27. As set forth in the First Day Declaration, the Employees are essential to the
26 continued operation of the Debtors’ business, and the Employees’ morale directly affects their
27 effectiveness and productivity. Consequently, it is critical that the Debtors continue, in the
28

1 ordinary course, any personnel policies, programs, and procedures that were in effect prior to the
2 Petition Date.

3 28. If the checks issued and electronic fund transfers requested in payment of any of
4 the compensation or other Employee obligations are dishonored, or if such obligations are not
5 timely paid postpetition, the Employees may likely suffer extreme personal hardship and may be
6 unable to pay their daily living expenses. A loss of employee morale and goodwill at this
7 juncture would undermine the Debtors' stability, and undoubtedly would have an adverse effect
8 on the Debtors, their customers, the value of their assets and business, and their ability to achieve
9 their objectives in chapter 11. As noted by the court in *In re Equalnet Communications Corp.*,
10 258 B.R. 368, "the need to pay pre-petition employee wage claims in an ordinary course of
11 business time frame is simple common sense. Employees are more likely to stay in place and to
12 refrain from actions which could be detrimental to the case and/or the estate if their pay and
13 benefits remain intact and uninterrupted." *Id.* at 370.

14 29. Payment of the Independent Contractors' Fees and the Contracting Agencies'
15 Fees is also necessary. Without the IT, hardware support, and customer service personnel they
16 provide, the Company will not be able to properly handle and resolve technical issues raised by
17 their customers, thereby harming the Company.

18 30. The relief requested in this Motion is necessary to the viability of the Debtors'
19 business and maximization of the value of the Debtors' assets. Accordingly, the Debtors submit
20 that the relief sought herein is consistent with sections 105(a), 507(a), and 541 of the Bankruptcy
21 Code.

22 31. Nothing in this Motion, nor any payments made by the Debtors pursuant to the
23 Motion, shall be deemed an assumption or rejection of any Employee Benefit Plan, employment
24 agreement, other program or contract, or otherwise affect the Debtors' rights under section 365
25 of the Bankruptcy Code to assume or reject any executory contract between the Debtors and any
26 Employee.

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Bankruptcy Rule 6003 Satisfied and Request for Waiver of Stay

1
2 32. The Debtors further submit that because the relief requested in this Motion is
3 necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein
4 and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief
5 requested herein should be granted.

6 33. Specifically, Bankruptcy Rule 6003 provides:

7 Except to the extent that relief is necessary to avoid immediate and
8 irreparable harm, the court shall not, within 21 days after the filing
9 of the petition, grant relief regarding the following: . . . (b) a
10 motion to use, sell, lease, or otherwise incur an obligation
regarding property of the estate, including a motion to pay all or
part of a claim that arose before the filing of the petition, but not a
motion under Rule 4001.

11 Fed. R. Bankr. P. 6003.

12 34. One court in the Ninth Circuit has, in an unpublished opinion, addressed the
13 “immediate and irreparable harm” language in the context of Bankruptcy Rule 6003. That court
14 noted “that Rule 6003 allows the court to authorize payments on prepetition debt if necessary to
15 avoid immediate and irreparable harm, but does not require that such harm be to the bankruptcy
16 estate. The court finds that a delay in payment would result in immediate and irreparable harm to
17 both the dairy farmers and the debtor, and for this reason authorizes payment now.” *In re*
18 *Humboldt Creamery, LLC*, 2009 Bankr. LEXIS 2477, 3 n. 3 (Bankr. N.D. Cal. Apr. 23, 2009).
19 The harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g.*,
20 *Acierno v. New Castle County*, 40 F.2d 645, 653-55 (3d Cir. 1994).

21 35. The Debtors further seek a waiver of any stay of the effectiveness of the order
22 approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, “[an] order
23 authorizing the use, sale, or lease of property other than cash collateral is stayed until the
24 expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” As
25 set forth above, the relief requested herein is essential to prevent irreparable damage to the
26 Debtors’ operations, going-concern value, and their efforts to pursue a sale or restructuring of
27 their assets and liabilities.

28

1 36. Accordingly, the relief requested herein is appropriate under the circumstances
2 and under Bankruptcy Rules 6003 and 6004(h).

3 **Notice**

4 37. Notice of this Motion has been given to the following parties or, in lieu thereof, to
5 their counsel, if known: (a) the Office of the United States Trustee for the District of Nevada; (b)
6 creditors holding the thirty (30) largest unsecured claims as set forth in the consolidated list filed
7 with the Debtors' petitions; (c) the Independent Contractors and Contracting Agencies; (d) those
8 parties requesting notice pursuant to Rule 2002; (e) the Office of the United States Attorney
9 General for the District of Nevada; (f) the Massachusetts Security Division; (g) the Nevada
10 Department of Employment, Training & Rehab, Employment Security Division; (h) the Nevada
11 Department of Taxation, Bankruptcy Section; (i) the Internal Revenue Service; and (j) the
12 Securities and Exchange Commission. The Debtors submit that, in light of the nature of the
13 relief requested, no other or further notice need be given.

14 **No Prior Request**

15 38. No previous application for the relief sought herein has been made to this or any
16 other court.

17 **Conclusion**

18 WHEREFORE, the Debtors respectfully request that this Court enter an order
19 substantially in the form of the proposed order attached hereto as **Exhibit 2**, pursuant to sections
20 105(a), 363, 503, 507(a)(4), 507(a)(5), 541, 1107, and 1108 of the Bankruptcy Code and
21 Bankruptcy Rules 6003 and 6004(h), (a) authorizing, but not directing, the Debtors to pay (i) the
22 Employee Obligations, (ii) the Independent Contractors' Fees, and (iii) the Contracting
23 Agencies' Fees, (b) directing the Disbursing Bank to honor and process the Debtors' prepetition

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1 checks or electronic transfers for payment of any of the foregoing, and prohibiting the
2 Disbursing Bank from placing holds on, or attempting to reverse, any automatic transfers on
3 account of the foregoing, and (c) granting the Debtors such other and further relief as is just and
4 proper.

5 DATED this 13 day of April, 2014.

6 GORDON SILVER

7
8 By:



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11 AND

12
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14 MARIA J. DICONZA (*pro hac vice pending*)
15 GREENBERG TRAUERIG, LLP
16 The MetLife Building
200 Park Avenue
New York, New York 10166

17 *Proposed Counsel for the Debtors*
18 *and Debtors in Possession*
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Exhibit 1

Contracting Agencies

Contracting Agency	Labor Provided	Estimated Prepetition Amount Owed
Opt 3 Solutions, Inc.	IT and Customer Service Support	\$68,000.00
Telecom Logic, LLC	IT Hardware Support	\$16,000.00
Jetbi Inc.	Customer Service Support	\$7,500.00
Genius Trend	IT Services for Product Development	\$20,000.00
	TOTAL	\$111,500.00

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Exhibit 2

NANCY A. MITCHELL (*pro hac vice pending*)
MARIA J. DICONZA (*pro hac vice pending*)
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*Proposed Counsel for the Debtors
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

TELEXFREE, LLC,

Affects this Debtor

Affects all Debtors

Affects TELEXFREE, INC.

Affects TELEXFREE FINANCIAL, INC

Case No.: BK-S-14-12524-abl
Chapter 11

[PROPOSED]

Jointly Administered with:

14-12525 TelexFree, Inc.

14-12526 TelexFree Financial, Inc

**ORDER (A) AUTHORIZING DEBTORS TO PAY (I) ALL PREPETITION EMPLOYEE
OBLIGATIONS, (II) THE INDEPENDENT CONTRACTORS' FEES AND (III) THE
CONTRACTING AGENCIES' FEES AND (B) DIRECTING THE DISBURSING BANK
TO HONOR RELATED TRANSFERS**

1 Upon the motion (the “**Motion**”)¹, filed by the above-captioned debtors and debtors-in-
 2 possession (collectively, the “**Debtors**”) for entry of an order, pursuant to sections 105, 363, 364,
 3 503, 507(a)(4), 507(a)(5), 541, 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§
 4 101, *et seq.* (the “**Bankruptcy Code**”), and Rules 6003 and 6004(h) of the Federal Rules of
 5 Bankruptcy Procedure (the “**Bankruptcy Rules**”), (a) authorizing, but not directing, the Debtors
 6 to pay (i) Employee Obligations, (ii) the Independent Contractors’ Fees and (iii) the Contracting
 7 Agencies’ Fees and (b) directing the Disbursing Bank to honor and process the Debtors’
 8 prepetition checks or electronic transfers for payment of any of the foregoing, and prohibiting the
 9 Disbursing Bank from placing holds on, or attempting to reverse, any automatic transfers on
 10 account of the foregoing; and upon the *Omnibus Declaration of William H. Runge III in Support*
 11 *of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* (the “**First Day**
 12 **Declaration**”); and the Court having jurisdiction to consider the Motion, and the relief requested
 13 therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the
 14 relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being
 15 proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of
 16 the Motion having been provided; and it appearing that no other or further notice need be
 17 provided; and the relief requested in the Motion being in the best interests of the Debtors and
 18 their estate and creditors; and the Court having determined that the legal and factual bases set
 19 forth in the Motion establish just cause for the relief granted herein; and upon all of the
 20 proceedings had before the Court and after due deliberation and sufficient cause appearing
 21 therefor, it is

22 **IT IS HEREBY ORDERED THAT:**

- 23 1. For the reasons set forth on the record, the Motion is GRANTED.
- 24 2. The Debtors are hereby authorized, but not directed, to pay the Employee
 25 Obligations, the Independent Contractors’ Fees, and Contracting Agencies’ Fees, as more fully
 26 described in the Motion, in the ordinary course of business.

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28 ¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

1 3. The Disbursing Bank is authorized and directed to honor the Debtors' prepetition
2 checks or electronic transfers for payment of any of the foregoing, and shall not place holds on,
3 or attempting to reverse, any automatic transfers on account of the Employee Obligations, the
4 Independent Contractors' Fees, or the Contracting Agencies' Fees.

5 4. Notwithstanding the relief granted herein or any actions taken hereunder, nothing
6 contained in this Order shall constitute, nor is intended to constitute, an admission as to the
7 validity or priority of any claim against the Debtors, the creation of an administrative priority
8 claim on account of the prepetition obligations sought to be paid, or the assumption or adoption
9 of any contract or agreement under section 365 of the Bankruptcy Code.

10 5. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the
11 Debtors are not subject to any stay in the implementation, enforcement, or realization of the
12 relief granted in this Order, and the Debtors may, in their discretion and without further delay,
13 take any action and perform any act authorized under this Order.

14 6. Notice of the Motion as provided therein shall be deemed good and sufficient
15 notice of the Motion and the requirements of Bankruptcy Rule 6004(a) are hereby waived.

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1 7. This Court shall retain jurisdiction to hear and determine all matters arising from
2 or relating to the interpretation or implementation of this Order.

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4 Submitted by:
5 GORDON SILVER

6
7 By: _____
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13 AND

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