

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In Re:)	
)	
)	Chapter 11
)	
TELEXFREE, LLC ,)	Case No. 14-40987-MSH
TELEXFREE, INC.,)	Case No. 14-40988-MSH
TELEXFREE FINANCIAL, INC.,)	Case No. 14-40989-MSH
)	
Debtors.)	Jointly Administered
)	

**MOTION BY STEPHEN B. DARR, CHAPTER 11 TRUSTEE, TO CONDUCT RULE 2004
EXAMINATION OF JOELE FRANK, WILKINSON, BRIMMER, KATCHER**
(Expedited Determination Requested)

Stephen B. Darr, the duly appointed Chapter 11 trustee (the "Trustee") of the bankruptcy estates (the "Estates") of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors"), respectfully moves for the entry of an order authorizing the Trustee to issue subpoenas upon and to obtain Documents, as defined in Exhibit "A" hereto, relating to the Debtors from Joele Frank, Wilkinson, Brimmer, Katcher ("Joele Frank") all in accordance with Federal Rule of Bankruptcy Procedure 2004. Upon information and belief, Joele Frank provided public relations and investor relations services to the Debtors both prepetition and postpetition. The proposed examination is part of the Trustee's continuing investigation into the Debtors' financial affairs.

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

JURISDICTION

1. This Court has jurisdiction over this motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.



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2. The basis for the relief requested in this motion is Rule 2004 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

3. On April 13, 2014 (the "Petition Date"), each of 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.

4. The Debtors initially operated as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. On the Petition Date, the Debtors filed a motion for joint administration of the cases, with TelexFree, LLC as the lead case. By order dated April 24, 2014, the order for joint administration was approved.

6. The Debtors stated that they operated a telecommunications business that used multi-level marketing to assist in the distribution of voice over internet protocol telephone services. Individuals were allegedly promised substantial returns for placing TelexFree advertisements and for recruiting additional individuals.

7. On or about April 15, 2014, the Securities and Exchange Commission ("SEC") commenced an action against the Debtors and others in the United States District Court for the District of Massachusetts, alleging among other things that the Debtors were engaged in an illegal pyramid scheme and were raising funds through the fraudulent and unregistered offering of securities.

8. On or about April 22, 2014, the Office of the United States Trustee filed a motion for the appointment of a Chapter 11 Trustee.

9. On April 23, 2014, the SEC filed a motion to transfer venue of the cases to the United States Bankruptcy Court for the District of Massachusetts. By order dated May 6, 2014, the motion to change venue was approved. The cases were transferred on May 9, 2014.

10. On May 30, 2014, this Court approved the motion to appoint a Chapter 11 trustee, and the Trustee was appointed on June 6, 2014.

11. The principals of the Debtors as of the Petition Date were Carlos Wanzeler and James Merrill. Upon information and belief, Mr. Wanzeler is no longer in the United States. Mr. Merrill had been taken into federal custody. Upon information and belief, he has recently been released.

12. The Debtors have not filed schedules or statements. The Debtors filed a list of the alleged thirty largest creditors in the cases. Upon information and belief, the number of parties who may assert claims against the Debtors could exceed one million.

13. The Debtors' books and records at their principal offices in Marlborough, Massachusetts were seized by federal authorities shortly after the Petition Date. The Trustee is working with the applicable federal agencies to obtain access to these records.

14. Upon information and belief, Joele Frank provided public relations and investor relations services to the Debtors. The Debtors provided a retainer to Joele Frank of not less than \$85,000.

RELIEF REQUESTED

15. By this motion, the Trustee requests the Documents from Joele Frank and, to the extent deemed necessary, the Trustee reserves the right to later conduct oral examinations. The Documents pertain to the nature and scope of services rendered by Joele Frank, retainers and other payments made, and fees incurred by Joele Frank during its representation.

16. Federal Rule of Bankruptcy Procedure 2004 provides that upon motion of any party in interest, the Court may order the examination of any entity. The only limitation is that such examination may relate only to the "acts, conduct, or property or to the liabilities and financial

condition of the debtor, or to any matter which may affect the administration of the debtor's estate..." Fed. R. Bankr. Proc. 2004(b). The scope of such an examination is akin to a fishing expedition. *See In re Duratech Industries, Inc.*, 241 B.R. 283 (E.D.N.Y. 1999).

17. The Trustee seeks to obtain the Documents for the purposes of administering the Debtors' cases. A list of the Documents for which production is sought is set forth on Exhibit "A" hereto. The examination of Joele Frank is within the scope of Rule 2004.

REQUEST FOR EXPEDITED DETERMINATION

18. Pursuant to MLBR 9013-1(g), the Trustee requests expedited determination given his need for immediate access to information necessary to administer the cases.

WHEREFORE, the Trustee respectfully requests that the Court enter an order:

- (i) allowing this motion;
- (ii) authorizing the Trustee to subpoena the Documents scheduled on Exhibit A and to compel Joele Frank to produce these Documents for inspection and copying by delivering them to Murphy & King, P.C., One Beacon Street, Boston, MA 02108, within ten (10) days of the approval of the motion;
- (iii) authorizing the Trustee to compel Joele Frank to produce for inspection and copying any additional documents he deems necessary to complete his administration of the cases by delivering them to the undersigned upon ten (10) days notice;
- (iv) if necessary, requiring Joele Frank to designate a person or persons to attend an oral examination upon five (5) days notice relating to procedures followed by Joele Frank in locating and producing Documents and the basis upon which any Documents were withheld; and

(v) granting such further relief as the Trustee deems just and proper.

STEPHEN P. DARR,
CHAPTER 11 TRUSTEE,

By his attorneys,

/s/ Andrew G. Lizotte

Harold B. Murphy (BBO #362610)

Charles R. Bennett, Jr. (BBO #037380)

Andrew G. Lizotte (BBO #559609)

Christopher M. Condon (BBO #652430)

Murphy & King, Professional Corporation

One Beacon Street

Boston, MA 02108

Telephone: (617) 423-0400

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Dated: July 2, 2014
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EXHIBIT "A"

Joele Frank is requested to produce the following documents for inspection and copying at the offices of Murphy & King, P.C., located at One Beacon Street, Boston, Massachusetts 02108:

A. DEFINITIONS AND INSTRUCTIONS

- A. *Affiliate* means, as to any Debtor, each person or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Debtor.
- B. *Bank Accounts* shall mean all bank accounts or certificates of deposit in the name of any Debtor.
- C. *Communication* is defined to be synonymous in meaning and equal in scope to the usage of this term in Local Rule 26.5(c)(1) and shall include the transmittal of information (in the form of facts, ideas, inquiries or otherwise) in any form or medium.
- D. *Concerning* is defined to be synonymous in meaning and equal in scope to the usage of this term in Local Rule 26.5(c)(7) and shall mean relating to, referring to, describing, evidencing or constituting.
- E. *Correspondence* means any letter, telegram, telex, notice, message, memorandum, or other written communication or transcription or notes of a communication.
- F. *Debtor(s)* means TelexFree, LLC, TelexFree, Inc., and/or TelexFree Financial, Inc., including all of their officers, directors, employees, representatives, partners, parents, subsidiaries and affiliates.
- G. *Document* means the original (or, if the information called for cannot be provided or referred to in the original, then each and every non-identical copy of the original) of any writing, graphic matter, or other medium upon which intelligence or information can be recorded or retrieved, correspondence, notes, interoffice and intra-office communications, circulars, announcements, directories, declarations, filings, memoranda, agreements, contracts, legal instruments, reports, studies, work papers, records, instructions, specifications, notes, notebooks, scrapbooks, diaries, minutes, minutes of meetings, calendars, schedules, projections, plans, drawings, specifications, designs, sketches, pictures, photographs, photocopies, charts, graphs, curves, descriptions, accounts, journals, ledgers, bills, invoices, checks, receipts and the like, motion pictures, recordings, published or unpublished speeches or articles, publications, transcripts of telephone conversations, sound recordings, and any other retrievable data (whether encoded, taped, punched, or coded, either electrostatically, electromagnetically, on computer, or otherwise), in your possession, custody, or control or known to you wherever located, however produced or reproduced, including any non-identical copy (whether different from the original because of any alterations, notes, comments, initials, underscoring, indication of routing, or other material contained in that document or

attached to that document, or otherwise), and whether a draft or a final version. Document is defined to be synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure. A draft or non-identical copy is a separate document within the meaning of this term.

NB. The term *document* expressly encompasses both paper-based documents, and documents maintained on electronic, magnetic or other non-paper media, including those resident on computer servers, desktop hard drives and back-up or archive tapes.

- H. *ESI* means electronically stored information.
- I. *Joele Frank* means Joele Frank, Wilkinson Brimmer & Katcher.
- J. *Relating* means referring to, describing, evidencing or constituting.
- K. *Subsidiary* means, with reference to any Debtor, any corporation, partnership, limited liability company or other legal entity, of which the Debtor owns, directly or indirectly, 50% or more of the stock or other equity or beneficial interests, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.
- L. Except as set forth below, Joele Frank will produce ESI in single-page TIFF format with corresponding load files and multi-page OCR text files. TIFF files shall be created directly from the original electronic documents; a party may not create a TIFF file from ESI by printing out paper copies of that electronic document and then scanning that paper copy of the ESI. All TIFF files will conform to the following specifications:
 - i. All TIFF files will be single page, black and white CC ITT group 4 TIFF at 600 x 600 dpi resolution and 8 ½ x 11 inch page size, except for documents requiring different resolution or page size.
 - ii. A standard format load file (e.g., Opticon opt, Summation Dii, etc.) containing the production control number of each page and the appropriate unitization of the documents shall accompany the TIFF production. The Trustee shall specify the requested load file format in advance of the production.
 - iii. If Joele Frank does not produce e-mail files in .pst format, it shall produce as CSV or text files with the following metadata fields:
 - 1. Attachment ids
 - 2. Attach range
 - 3. From
 - 4. To
 - 5. Cc
 - 6. Bcc
 - 7. Subject
 - 8. Datesent

9. Date create (documents)
10. Parent id
11. Other ids
12. Media (e-mail or attachment)
13. DocID (bates or other control number)

- iv. Any sound files shall be produced in native format (wave, mp3, etc).
- v. The parties' technical personnel shall promptly consult in good faith on a reasonable protocol for producing spreadsheet and database files. In the event the parties are unable to agree, either party may promptly move the Court for an Order.
- vi. In the event that a party locates a relevant file that is not capable of TIFF conversion, the party shall produce a single page TIFF "placeholder" page for each such file bearing a bates number and the file name, file type, and file extension.

M. Other than as set forth above, native format files of electronic documents shall be produced.

N. Each request shall be applicable to the Debtors, their Affiliates and Subsidiaries, Carlos Wanzeler, James Merrill, and Carlos Costa.

B. REQUESTS

1. All Documents, including but not limited to emails, correspondence, internal memoranda or other work product, phone records and cellular phone records, concerning the Debtors, their Affiliates or Subsidiaries.

2. All Documents concerning payments and retainers made by or on behalf of any Debtor, Affiliate or Subsidiary to or on behalf of Joele Frank.

3. All Documents concerning invoices, billing records and other supporting documents respecting fees incurred by Joele Frank in rendering services to or on behalf of the Debtors.

4. All internal communications of Joele Frank respecting the Debtors, their Affiliates, or Subsidiaries.

5. All public relations notices issued on behalf of the Debtors.

6. All presentations or promotional materials prepared by or on behalf of the Debtors.

7. All electronically stored information of the Debtors, their Affiliates, or Subsidiaries not included within the foregoing requests.

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