

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

In re:	)	Chapter 11
	)	
	)	Case No. 14-40987
TELEXFREE LLC., et al., <sup>1</sup>	)	
	)	Jointly Administered
Debtors.	)	
	)	
	)	

**MOTION OF THE PLAINTIFFS' INTERIM  
EXECUTIVE COMMITTEE TO AMEND OR ALTER ORDER**

Lead Counsel and the Plaintiffs' Interim Executive Committee (together, the "PIEC") appointed by the United States District Court in this District as the representative of the victims of the Debtors' Ponzi scheme by orders entered in the multi-district litigation proceedings captioned *In re TelexFree Securities Litigation*, MDL No. 14-02566 (D. Mass) (the "MDL Proceeding"), hereby move (this "Motion") to amend or alter the Court's order [Dkt. No. 654] (the "Order") on the *Motion by Chapter 11 Trustee* (the "Trustee") *for Entry of Order Finding That Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief* [Dkt. No. 623] (the "Ponzi Scheme Motion") in certain limited respects as described below to more precisely follow the rulings made in open court at the hearing on the Ponzi Scheme Motion and so as to avoid the risk of later misinterpretation. In support thereof and as grounds therefor, the PIEC respectfully states as follows:

**BAGKGROUND**

1. On October 7, 2015, the Trustee filed the Ponzi Scheme Motion seeking entry of an order:

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<sup>1</sup> The debtors (the "Debtors") in these cases (collectively, the "Chapter 11 Cases") are TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.



- (i) finding that the Debtors operated a Ponzi and pyramid scheme;
- (ii) ordering that any claim or portion of claim of participants in the TelexFree scheme based upon accumulated credits in the participants' user accounts as of the Petition Date shall be disallowed and that claims should be determined on a "Net Equity" basis;
- (iii) ordering that the Debtors shall be jointly and severally liable for the claims of participants in the scheme; and
- (iv) ordering that the findings made pursuant to the Ponzi Scheme Motion shall be applicable throughout these proceedings, for all purposes.

Thus, the fourth prayer for relief appears to relate to each of the previous three prayers.

2. On November 12, 2015, the PIEC filed the *Opposition to Certain Aspects of the Relief Sought in the Motion by Chapter 11 Trustee for Entry of Order Finding that Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief* [Dkt. No. 649] (the "PIEC Opposition"), objecting to the Trustee's second and fourth prayers for relief on the grounds, *inter alia*, that the Ponzi Scheme Motion is deficient because it appears to seek, by motion, a determination of the validity of an interest in property and, to the extent that it does seek to determine an interest in property, there are no valid legal grounds for such a determination.

3. The Court held an evidentiary hearing on the Ponzi Scheme Motion on November 24, 2015 (the "Hearing"). The Court heard argument on the Trustee's first, third and fourth prayers for relief, including as to whether the Trustee's request for a determination that the Debtors operated a Ponzi/pyramid scheme (the first prayer for relief) properly should have been brought as an adversary proceeding. See, e.g., Tr. of Nov. 24, 2015 Hr'g at 34:15-35:3.<sup>2</sup> The Court did not hear argument on the Trustee's second prayer for relief, including the legal basis

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<sup>2</sup> Relevant excerpts of the transcript of the November 24 hearing are attached hereto as **Exhibit 1.**

for such a determination and the question of whether that request properly should have been brought as an adversary proceeding.

4. At the end of the Hearing, the Court made certain findings as to the first, third and fourth prayers for relief. The Court also ruled that it was making no findings whatsoever either on (i) the Trustee's second prayer for relief, as pertains to the proposed "Net Equity" calculation of claims, or (ii) the Trustee's fourth prayer for relief, inasmuch as it requested that findings on the Trustee's second prayer for relief apply throughout the case, "for all purposes." See Tr. of Nov. 24, 2015 Hr'g at 121:17-122:15. The Court likewise ruled that it was making no findings on whether the Trustee's second prayer for relief should have been brought as an adversary proceeding. The Court instead took those matters under advisement pending a further hearing.

5. On November 25, 2015, the Court entered the Order. As most relevant here, the Order (i) states that "the relief sought by the trustee in [the Ponzi Scheme Motion] did not require the commencement of an adversary proceeding pursuant to FRBP 7001," and (ii) states, without reservation, that all parties in interests and participants in the TelexFree scheme received adequate notice of the Trustee's fourth prayer for relief.

#### **RELIEF REQUESTED**

6. The PIEC respectfully requests that the Court enter an amended Order, in the form attached hereto as **Exhibit 2**, to clarify and confirm its earlier oral rulings that the Court has made no findings whatsoever as to (i) the Trustee's second prayer for relief or (ii) the Trustee's fourth prayer for relief insofar as that prayer requests a finding related to the second prayer for relief.

### **ARGUMENT**

7. Federal Rule Civil Procedure 59(e) (“FRCP 59(e)”), made applicable to this case by Federal Rule of Bankruptcy Procedure 9023, provides that a motion to amend or alter judgment may be brought within 14 days of entry of the judgment.

8. The trial court has broad discretion in determining whether to grant a motion to amend under FRCP 59(e). See ACA Fin. Guar. Corp. v. Advest, Inc., 512 F.3d 46, 55 (1st Cir. 2008) (stating that Rule 59(e) “does not state what grounds would justify [ ] alteration” and that trial courts therefore “enjoy considerable discretion in deciding Rule 59(e) motions”); Robinson v. Watts Detective Agency, Inc., 685 F.2d 729, 743 (1st Cir. 1982) (“[A] Rule 59(e) motion is addressed the discretion of the [trial] court.”).

9. In two respects, the Order may be read to appear to extend the very specific rulings made at the Hearing in a way the PIEC respectfully believes the Court did not intend. First, the Order, after making certain findings related to the first and third prayer for relief, goes on to say that “the relief sought by the trustee in [the Ponzi Scheme Motion] did not require the commencement of an adversary proceeding pursuant to FRBP 7001.” This language (“the relief sought”) is subject to the interpretation that *none* of the relief requested required the commencement of an adversary proceeding. But the question of whether the Trustee’s second prayer for relief is an attempt to determine the validity of an interest in property, and thus requires the Trustee to commence an adversary proceeding, was not reached at the Hearing. It is respectfully submitted, therefore, that the Order should be clarified on this point to address only those matters reached at the Hearing and not reserved for further argument: (specifically, whether the Trustee’s first and third prayer for relief required the commencement of an adversary proceeding).

10. Second, by its terms, the Order says that adequate notice and an opportunity to be heard was given as to the fourth prayer for relief. Because the fourth prayer for relief refers back to the previous three, this part of the Order may be read to mean three separate things:

- (i) that adequate notice was given of the Trustee's request that all findings regarding whether the Debtors operated a Ponzi and pyramid scheme apply "throughout these proceedings, for all purposes" (undisputed);
- (ii) that adequate notice was given of the Trustee's request that any finding that the Debtors are be jointly and severally liable for the claims of participants in the scheme likewise apply "throughout these proceedings, for all purposes" (also undisputed); and
- (iii) that adequate notice was given of the Trustee's request that all findings on the "Net Equity" calculation (and any other aspects of the second prayer for relief reserved for further hearing) apply "throughout these proceedings, for all purposes."

11. This third meaning is contrary to the Court's noting at the Hearing that it was making no findings whatsoever related to the Trustee's second prayer for relief or any matters reserved for further hearing, including as to whether adequate notice was given as to the Trustee's request that any findings on the second prayer apply "throughout these proceedings, for all purposes." (Indeed, the Court has ordered extensive re-noticing of the Trustee's second prayer for relief.) Accordingly, without clarification that the Order's finding on the fourth prayer for relief does not relate to, and has no effect on, the intersection of the fourth prayer and the second prayer (or any matters reserved for further hearing), the Order

could be subject to a reading that is overly broad and permit needless and wasteful later debate and confusion. It is respectfully submitted, therefore, that the Order should be altered or amended to more precisely confirm that the Court has expressed no opinion as to whether adequate notice was given of the Trustee's fourth prayer for relief, insofar as that prayer requested that all findings made pursuant to the Ponzi Scheme Motion's second prayer for relief apply throughout these proceedings.

*[Remainder of this page intentionally left blank]*

**CONCLUSION**

WHEREFORE, for the foregoing reasons, the PIEC respectfully requests that this Court (a) amend or alter the Order to reflect that it has made no findings (i) on the Motion's second prayer for relief, or (ii) on the Ponzi Scheme Motion's fourth prayer for relief, insofar as prayer four requests a finding related to prayer two, and (b) grant such other and further relief as this Court finds just and proper.

Dated: December 8, 2015  
Boston, Massachusetts

**BONSIGNORE, PLLC**

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*For the Plaintiffs' Interim Executive Committee*

# **EXHIBIT 1**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS - WORCESTER

IN THE MATTER OF: : Case No. 14-40987  
14-40988, 14-40989  
TELEXFREE, LLC, TELEXFREE : (Jointly Administered)  
INC., and TELEXFREE  
FINANCIAL, INC., : Boston, Massachusetts  
**November 24, 2015**  
Debtors. : 2:05:52 p.m.

[illegible]

TRANSCRIPT OF HEARING ON:  
 [#623] MOTION OF CHAPTER 11 TRUSTEE FOR  
 FOR ENTRY OF ORDER FINDING THAT DEBTORS  
 ENGAGED IN PONZI AND PYRAMID SCHEME AND  
 RELATED RELIEF AND [#625] MOTION OF CHAPTER 11  
 TRUSTEE TO SET BAR DATE; AND [#635] RESPONSE  
 OF PLAINTIFFS' INTERIM EXECUTIVE COMMITTEE  
 BEFORE THE HONORABLE MELVIN S. HOFFMAN, J.U.S.B.C.

**APPEARANCES :**

For the United States  
Trustee:

Office of the U. S. Trustee  
BY: LISA TINGUE, ESQ.  
446 Main Street, 14th Floor  
Worcester, MA 01608

Audio Operator: YVONNE WOODBURY, ECRO

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 **APPEARANCES (continued):**

2  
3 For Interim Lead Class  
4 Counsel and Plaintiffs'  
5 Interim Executive Committee:

Brown Rudnick LLP  
BY: KIERSTEN A. TAYLOR, ESQ.  
WILLIAM R. BALDIGA, ESQ.  
One Financial Center  
Boston, MA 02111

6 For Stephen Darr,  
7 Chapter 11 Trustee:

Murphy & King, P.C.  
BY: ANDREW G. LIZOTTE, ESQ.  
HAROLD B. MURPHY, ESQ.  
CHARLES BENNETT, JR., ESQ.  
One Beacon Street, 21st Floor  
Boston, MA 02108

9  
10 For Carlos N. Wanzeler  
11 and James Merrill:

Partridge Snow & Hahn LLP  
BY: WILLIAM MOORMAN, JR., ESQ.  
30 Federal Street  
Boston, MA 02110

12 ALSO PRESENT:

STEPHEN DARR  
Chapter 11 Trustee  
265 Franklin Street  
Boston, MA 02210

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1 other than in the claims allowance process.

2 THE COURT: Well, I ask you the same question I asked  
3 Mr. Baldiga. What is the principal reason why a court should  
4 restrict findings that it makes and rulings that it makes that  
5 are final the way you're requesting? Why would I do that?

6 MR. MOORMAN: Well, this was not an action brought  
7 against Mr. Wanzeler or Mr. Merrill. If the trustee desires  
8 some relief to be binding upon them, applicable to them in this  
9 area, it should have been done by adversary proceeding.

10 There are other issues such as whether or not it would  
11 be a core proceeding as it relates to seeking a finding that  
12 would be binding on them and as --

13 THE COURT: Well, not binding on them, specifically.  
14 They're not mentioned at all in any of this. Just binding for  
15 all purposes in this case and to the extent that they want to  
16 come into this case, why shouldn't they be bound with, with  
17 notice?

18 MR. MOORMAN: Only to them coming into this case,  
19 that's, that's one thing, but if -- what we're questioning is  
20 extending it beyond this case and to some other case.

21 THE COURT: How, how altogether do these individuals  
22 have standing in this case in any way? Can you explain that to  
23 me, please?

24 MR. MOORMAN: As to whether or not they have standing,  
25 Your Honor?

1 THE COURT: Yes.

2 MR. MOORMAN: It appears to us that the debtor is  
3 seeking to have a, a finding that is binding upon them. If  
4 he's seeking to do that, then I think they have standing to  
5 come in and oppose that type of a finding. I think it, it  
6 comes about from --

7 THE COURT: Well, you have -- I think you have -- you  
8 have the cart before the horse. He's seeking a finding that is  
9 for all purposes in this case. If -- if a -- if they don't  
10 want to be bound by that finding, they can stay out of the  
11 case.

12 MR. MOORMAN: In terms of coming in and filing a claim  
13 or something like that.

14 THE COURT: Right.

15 MR. MOORMAN: But they might be brought involuntarily  
16 into the case by way an adversary proceeding being filed  
17 against them. If that occurs, then they should be able to  
18 litigate this issue through a proper adversary proceeding.

19 THE COURT: And how was this, apart from -- I'm  
20 looking at 7001, which lists ten, ten different proceedings  
21 that are called adversary proceedings. I don't see this  
22 particular one here, or anything like it. But apart from the  
23 formalities, how is this any different than an adversary  
24 proceeding in terms of your clients? They had ample notice of  
25 this. They're here opposing it. What else do they need?

1 MR. MOORMAN: I think the formalities are important in  
2 terms of service of service, the applicable Rules of procedure.  
3 Judge, this was done in a very quick time frame.

4 THE COURT: When was your motion filed, Mr. Murphy?

5 MR. MURPHY: October 7th, Your Honor.

6 THE COURT: Yeah.

7 MR. MOORMAN: The, the other proceedings that they are  
8 subjected to are going to take months and months of trial.

9 THE COURT: Not here, not with me. You know,  
10 bankruptcy moves quickly.

11 MR. MOORMAN: Right, but they're not, they're not  
12 parties to this proceeding. We filed this as a protective  
13 measure, Your Honor, to the extent that the trustee seeks to  
14 have them bound in some other proceeding.

15 THE COURT: One of the things I think you, that came  
16 up in your opposition was a comment about needing to do  
17 discovery. Can you elaborate on that? What kind of discovery  
18 would your clients need here?

19 MR. MOORMAN: Your Honor, I'm not sure exactly what  
20 discovery they would want to engage in here.

21 THE COURT: Okay. Thank you.

22 MR. MOORMAN: I imagine it would be extensive  
23 discovery, though, that I'm not -- I'm here for the procedural  
24 mechanism of this proceeding, the fact this was done by motion,  
25 and the fact that I --

1 transmitted - she would have a claim in this bankruptcy case  
2 for that \$25,000 under that determination. That, that would be  
3 part of it.

4 And that -- those -- if you will, payments into  
5 (indiscernible) would be included in part of their claim and it  
6 would not just include direct, but it would also include what  
7 we call the triangular transactions. I'll use, probably, a  
8 different term for purposes of explaining that to people.

9 Is that what you want me to explain in the notice,  
10 Your Honor?

11 THE COURT: Yes. Thank you.

12 MR. MURPHY: Thank you.

13 THE COURT: So now let's talk about the next hearing  
14 and how much time we need for this.

15 MR. BALDIGA: And, Your Honor --

16 THE COURT: Yes.

17 MR. BALDIGA: -- you've addressed the first three  
18 prayers for relief. Prayer 4, is that also to be argued  
19 further at that next hearing?

20 THE COURT: I -- I -- Prayer 4 is the -- I, I  
21 addressed that. That's -- I -- I -- I'm finding that the Ponzi  
22 scheme, pyramid scheme finding is the law of this case. That's  
23 Prayer 4.

24 MR. BALDIGA: And, and the Ponzi scheme finding, yes.  
25 And -- and -- I guess I should have been more specific.

1 If there is to then be a ruling on the triangular  
2 aspect of it, which is not the Ponzi scheme, the only thing  
3 that people really are fighting about today is whether a  
4 finding on the triangular aspect of the proof of claim form  
5 that you're reserving on, whether that because a law of the  
6 case for purposes other than the allowance of claims.

7 THE COURT: Oh, okay.

8 MR. BALDIGA: That is, I think, the entire core of the  
9 dispute here. And I just want to be sure that's not lost in  
10 the shuffle of today's proceedings.

11 THE COURT: What I've done today does not affect that  
12 one was or the other.

13 MR. BALDIGA: That's what I understood.

14 THE COURT: So you still have the opportunity to  
15 address that at the next hearing.

16 MR. BALDIGA: Very good. Thank you.

17 THE COURT: And lastly, Your Honor, have you  
18 determined that the credits, the disallowance of credits for  
19 claim purposes is, is okay for today?

20 THE COURT: Disallowance of credits.

21 MR. MURPHY: That was, I think, one of the --

22 THE COURT: That's --

23 MR. MURPHY: -- one of the prongs we had, that the  
24 credits that were in the --

25 THE COURT: No. That, that's part of Prayer 2. That

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

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In re:	) Chapter 11
	)
	) Case No. 14-40987
TELEXFREE LLC, <u>et al.</u> , <sup>1</sup>	)
	) Jointly Administered
Debtors.	)
	)
	)

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**[PROPOSED] REVISED ORDER ON MOTION BY CHAPTER 11 TRUSTEE FOR  
ENTRY OF ORDER FINDING THAT DEBTORS ENGAGED IN PONZI  
AND PYRAMID SCHEME AND RELATED RELIEF**

A hearing (the “Hearing”) having been held on November 24, 2015, on the *Motion by Chapter 11 Trustee* (the “Trustee”) *for Entry of Order Finding That Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief* [Dkt. No. 623] (the “Motion”)<sup>2</sup>; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this Chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having considered the evidence admitted and arguments made at the Hearing, the Motion and the oppositions filed thereto; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby **ORDERED** that:

1. The Motion is **GRANTED** in part and **DENIED** in part as set forth herein.
2. All creditors and parties in interest, including Participants, received adequate notice and an opportunity to be heard as to prayers (i) and (iii) of the Motion.

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<sup>1</sup> The debtors (the “Debtors”) in these cases (collectively, the “Chapter 11 Cases”) are TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.

<sup>2</sup> Capitalized terms used but not defined herein have the meaning ascribed to them in the Motion.



3. The relief sought by the Trustee in prayers (i) and (iii) of the Motion did not require the commencement of an adversary proceeding pursuant to Fed. R. Bankr. P. 7001.

4. Each of the Debtors in these jointly administered cases operated a Ponzi and pyramid scheme. This ruling is the law of the case in each of the jointly administered cases.

5. The Debtors shall be jointly and severally liable for the claims of Participants (as defined in the Motion) in these Chapter 11 cases. This ruling is the law of the case in each of the jointly administered cases.

6. The entry of this Order does not constitute any finding, and the Court makes no finding whatsoever, as to prayer (ii) of the Motion (including as to whether all or any part of the relief sought by prayer (ii) of the Motion required the commencement of an adversary proceeding pursuant to Fed. R. Bankr. P. 7001), or as to prayer (iv) of the Motion insofar as prayer (iv) of the Motion requests a finding related to prayer (ii) of the Motion.

7. A further non-evidentiary hearing shall be held as to prayer (ii) of the Motion, and prayer (iv) of the Motion insofar as prayer (iv) of the Motion requests a finding related to prayer (ii) of the Motion, on **January 26, 2016 at 10:00 a.m. (Prevailing Eastern Time)**. Responses, including proposed orders, shall be filed no later than **January 9, 2016 at 4:30 p.m. (Prevailing Eastern Time)**. On or before **December 7, 2015**, the Trustee shall serve notice of such hearing and response deadline as well as a plain language explanation of the relief sought on the same parties and in the same manner as the Motion was previously served, and shall file a certificate of such service.

8. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the construction, performance, enforcement and implementation of the terms of this Order.

Dated: \_\_\_\_\_, 2015  
Boston, Massachusetts

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Hon. Melvin S. Hoffman  
Chief United States Bankruptcy Judge

62251608

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

In re:	)	Chapter 11
	)	
	)	Case No. 14-40987
TELEXFREE LLC., et al., <sup>1</sup>	)	
	)	Jointly Administered
Debtors.	)	
	)	
	)	

**CERTIFICATE OF SERVICE**

The undersigned certifies that on December 8, 2015, the foregoing document was filed electronically, and therefore was sent by email to those receiving CM/ECF notices from the Court's electronic filing system. I further certify that I have caused to be sent by first class mail a copy to the following parties on this 8th day of December, 2015.

Charles R. Bennett, Jr., Esq.  
Murphy & King, Professional Corporation  
One Beacon Street  
Boston, MA 02108

Richard King, Asst. United States Trustee  
Office of the United States Trustee  
446 Main Street  
14th Floor  
Worcester, MA 01608

/s/ Carol S. Ennis  
Carol S. Ennis, Paralegal

62223975

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<sup>1</sup> The debtors (the "Debtors") in these cases (collectively, the "Chapter 11 Cases") are TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.