

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In re:

TELEXFREE, LLC,
TELEXFREE, INC. and
TELEXFREE FINANCIAL, INC.,

Debtors.

Chapter 11 Cases

14-40987-MSH
14-40988-MSH
14-40989-MSH

Jointly Administered

STEPHEN DARR, AS HE IS THE TRUSTEE
OF THE CHAPTER 11 ESTATES OF EACH
OF THE DEBTORS,

Plaintiff,

Adversary Proceeding
No. 16-4033

v.

INFINIUM WIRELESS,

Defendant.

**MOTION BY TRUSTEE TO APPROVE STIPULATION OF SETTLEMENT BETWEEN
CHAPTER 11 TRUSTEE AND INFINIUM WIRELESS**

Stephen B. Darr, the duly appointed Chapter 11 Trustee (the “Trustee”) of the bankruptcy estates (“Estates”) of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the “Debtors”), respectfully requests that the Court approve the stipulation (“Stipulation”) filed herewith by and between the Trustee and Infinium Wireless, LLC (“Infinium”) and Todd Betlejewski (“Betlejewski”), the principal of Infinium, pursuant to Federal Rule of Bankruptcy Procedure 9019. The Stipulation provides for a payment by Infinium of \$7,500 and the waiver of approximately \$90,000 in claims in settlement of the Trustee’s causes of action. In support of this motion, the Trustee states as follows:



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BACKGROUND

1. On April 13, 2014 (the “Petition Date”), the Debtors filed voluntary Chapter 11 petitions with the United States Bankruptcy Court for the District of Nevada.

2. By order dated May 6, 2014, the Nevada Bankruptcy Court approved a motion to change venue filed by the Securities and Exchange Commission. The cases were transferred to this Court on May 9, 2014.

3. On May 30, 2014, the Court approved the motion of the Office of the United States Trustee to appoint a Chapter 11 trustee, and the Trustee was appointed on June 6, 2014.

4. The Debtors ostensibly operated a “multi-level marketing” company with its headquarters in Marlborough, Massachusetts. It represented itself as being in the business of selling telephone service plans that use “voice over internet protocol” (“VoIP”) technology. The sale of VoIP, however, constituted only a minor portion of their business; the Debtors’ actual business was the recruitment of participants (“Participants”). The Debtors operated a massive Ponzi and pyramid scheme which involved more than a million Participants from multiple countries.

5. On November 25, 2015, the Court, on motion by the Trustee and after notice, entered an Order, as amended on December 21, 2015, finding that the Debtors were engaged in a Ponzi scheme and that this ruling was the law of the case in each of the jointly administered cases.

6. In the fall of 2013, the Debtors retained Infinium purportedly to build a mobile telephone application.

7. The mobile telephone application being built by Infinium was intended to be a joint venture between Infinium and Telex Mobile, LLC. The owners of Telex Mobile, LLC were Carlos Wanzeler and James Merrill, the Debtors' principals. The Debtors had no interest or rights in the product being developed by Infinium for which it was paying.

8. During the two years preceding the Petition Date, the Debtors made payments to Infinium totaling approximately \$630,000 for the buildout of the mobile platform.

9. During the ninety days preceding the Petition Date, the Debtors made payments to Infinium totaling approximately \$140,000 for the buildout of the mobile platform.

10. On or about April 4, 2016, the Trustee commenced this action against Infinium seeking avoidance of the foregoing payments as fraudulent and preferential transfers pursuant to 11 U.S.C. §§547, 548, 550, 551.

11. Infinium has denied any liability and has claimed that it is unable to pay any judgment.

12. Infinium has provided financial information to the Trustee evidencing its insolvency and inability to pay a substantial judgment. Infinium has also provided information on the use of funds paid to it by the Debtors, including employee compensation and other expenses.

13. The Parties have since had discussions and exchanged information regarding the merits of the Trustee's claims and any defenses. As a result of these discussions, and in order to avoid the costs, delays and uncertainty of litigation, the Parties have entered into the Stipulation, which provides that:

(i) Infinium shall pay the sum of \$7,500 (the "Settlement Amount") to the Trustee upon the entry of the order approving the Stipulation. Betlejewski guarantees Infinium's payment of the Settlement Amount. If Infinium shall breach its payment obligation, the Trustee may enforce the terms of this Stipulation against Infinium and/or

Betlejewski and may recover attorneys' fees from Infinium and Betlejewski associated with compelling compliance with the terms of the Stipulation;

(ii) Infinium shall waive, release, and discharge any and all claims against the Trustee, the Debtors, or the Debtors' estates;

(iii) The Trustee shall release any claims he may have against Infinium and Betlejewski, other than Infinium's and Betlejewski's obligations under the terms of the Stipulation;

(iv) Infinium and its principal, Todd Betlejewski, shall cooperate with the Trustee's prosecution of any other causes of action upon request, including serving as a witness, provided that the Trustee shall reimburse Betlejewski for travel expenses associated with such requested services;

(v) Upon Court approval of this Stipulation and payment by Infinium of the Settlement Amount, this adversary proceeding shall be dismissed;

(vi) If any of the financial information provided by Infinium or Betlejewski to the Trustee are later demonstrated to be materially misleading, the Trustee shall not be bound by the release granted in the Stipulation and may pursue additional recovery against Infinium and any mediate transferees;

(vii) While the Trustee shall retain no causes of action against Infinium and Betlejewski, nothing contained in the Stipulation shall impair, release, or discharge claims that have been or could be asserted, whether or not such claims have to date been asserted, by the plaintiffs in the multi-district litigation pending in the United States District Court for the District of Massachusetts, *captioned* In re TelexFree Securities Litigation, MDL No. 4:14-md-2566- TSH. For the avoidance of doubt, the Trustee agrees he shall not attempt to assert any claims or causes of action against Infinium and Betlejewski in this multi-district litigation or otherwise. Nothing in this release grants the plaintiffs in the multi-district litigation any claims or causes of action that they would otherwise not have absent the Stipulation.

Basis for Approval of Stipulation

14. Bankruptcy Rule 9019(a) provides, in relevant part, that "On the motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Settlements and compromises are normal parts of the process of reorganization. While the decision to approve a particular settlement lies within the sound discretion of the Bankruptcy Court, the Court should give some deference to the business judgment of the estate representative. Jeffrey v. Desmond, 70 F.3d 183 (1st Cir. 1995).

15. The Court of Appeals has described the test to be used by Bankruptcy Courts called upon to approve or reject proposed compromises and settlements as follows:

The bankruptcy judge has the authority to approve a compromise of a claim pursuant to Bankruptcy Rule 9019(a). The ultimate issue on appeal is whether the bankruptcy court abused its discretion when it approved the compromise, which is a process requiring the bankruptcy court to “assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” In re GHR Cos., 50 B.R. 925, 931 (Bankr. D. Mass. 1985) (quoting In re Boston & Providence R.R., 673 F.2d 11, 12 (1st Cir. 1982)). The specific factors which a bankruptcy court considers when making this determination include: (i) the probability of success in the litigation being compromised; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premise. In re Anolik, 107 B.R. 427, 429 (D. Mass. 1989).

Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995).

16. In determining whether the proposed settlement is fair and equitable, two principles should guide the court. First, “[c]ompromises are favored in bankruptcy[.]” 10 Lawrence P. King, *Collier on Bankruptcy*, ¶ 9019.01, at 9019-2 (15th ed. Rev. 1997) (citing *Marandas v. Bishop (In re Sassales)*, 160 B.R. 646, 653 (D. Ore. 1993)). See also *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986) (“The law favors compromise and not litigation[.]”). Second, settlements should be approved if they fall above the lowest point on the continuum of reasonableness. “[The] responsibility of the bankruptcy judge . . . is not to decide the numerous questions of law and fact raised . . . but rather to canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2nd Cir. 1983); *In re Planned Protective Services, Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991). Thus, the question is not whether a better settlement might have been achieved, or a better result reached if litigation pursued. Instead, the court should approve settlements that meet a minimal threshold of reasonableness.

Nellis v. Shugrue, 165 B.R. 115, 123 (S.D.N.Y. 1994); 10 *Collier on Bankruptcy*, ¶ 9019.02, at 9019-4.

17. The Trustee asserts that the Stipulation is fair and reasonable and should be approved by the Court. The settlement is based principally upon the apparent inability of Infinium to satisfy a meaningful judgment. The assets of Infinium appear to have minimal value and its current liabilities exceed \$130,000. Infinium does not have any current operations. Therefore, it does not appear that the Trustee would be able to obtain a substantial recovery from Infinium. It further does not appear that Betlejewski received excessive compensation from Infinium that might warrant a claim against him as a mediate transferee of the subject transfers.

18. The Stipulation provides for an immediate recovery of \$7,500 and the waiver by Infinium of \$74,000 of prepetition claims and approximately \$19,000 in potential administrative claims relating to services rendered in developing the mobile platform, including hosting fees paid postpetition while the Trustee conducted his due diligence. Although the Debtors did not have a direct interest in TelexMobile, Infinium could nonetheless seek allowance of a claim for services rendered as having provided some benefit to the Debtors. The settlement is premised upon the accuracy of the financial information provided to the Trustee, and any misrepresentations would be grounds for revocation of the release.

19. Under the circumstances, the Trustee has concluded that the settlement is favorable to the Estates and should be approved.

Wherefore, the Trustee prays that this Court:

1. Approve the Stipulation for the reasons set forth; and
2. Grant such other relief as is just and proper.

STEPHEN DARR AS HE IS THE
TRUSTEE OF THE CHAPTER 11
ESTATES OF EACH OF THE DEBTORS
By his attorneys,

/s/ Andrew G. Lizotte

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Dated: November 22, 2016

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