

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:

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

Debtors.

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

Plaintiff,

v.

LEILA TATIANA XAVIER, CHRIS
ARAUJO, JORGE LOPES, ENERSTINA
XAVIER, ATANAZIA XAVIER, VLADMIR
XAVIER, NERIA XAVIER, JAILSON
RAMOS, FRANCISCA XAVIER-DEPINA,
SILVIO MIRANDA, AND IVANILDA
NASCIMENTO,

Defendant(s).

Chapter 11 Cases

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

Jointly Administered

Adversary Proceeding
No. 16-04030-MSH

MOTION BY PLAINTIFF FOR ENTRY OF DEFAULT JUDGMENT

Pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7055 of the Federal Rules of Bankruptcy Procedure, Stephen B. Darr (the "Plaintiff" or "Trustee"), the duly-appointed trustee of the Chapter 11 estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (the "Debtors"), hereby submits this motion (the "Motion") for entry of default judgment against Leila Tatiana Xavier, Chris Araujo, Jorge Lopes, Enerstina Xavier, Atanazia Xavier, Vladmir Xavier, Neria Xavier, Jailson Ramos, Francisca



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Xavier-Depina, Silvio Miranda, and Ivanilda Nascimento (collectively the “Defendants”). A proposed *Judgment* is attached to this Motion as Exhibit A. In further support of this Motion, the Plaintiff respectfully states as follows:

1. 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 (the “Nevada Bankruptcy Court”).
2. The Debtors initially operated as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.
3. On the Petition Date, the Debtors filed a motion for joint administration of the cases, with TelexFree, LLC designated as the lead case. By order dated April 24, 2014, the order for joint administration was approved.
4. On or about May 6, 2014, the Nevada Bankruptcy Court entered an order approving a motion by the Securities and Exchange Commission (“SEC”) to change venue, and the cases were transferred to this Court on May 9, 2014.
5. 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.
6. On April 1, 2016, the Trustee commenced this action by filing the Complaint.
7. The Defendants did not submit a responsive pleading.
8. On September 9, 2016, the Trustee filed a Motion for Entry of Default, and on October 19, 2016, submitted an affidavit respecting service of the Complaint which is incorporated here by reference.
9. On November 17, 2016, the Court entered a Notice of Default.

10. The Defendants are not infants or incompetent persons and, upon information and belief, are not currently in military service within the meaning of the *Servicemembers Civil Relief Act*, 50 U.S.C. § 521.

11. Based upon the foregoing, the Plaintiff is entitled to judgment against the Defendants.

WHEREFORE, the Plaintiff respectfully requests that the Court enter judgment, substantially in the form attached hereto as Exhibit A, as a final judgment in this adversary proceeding against the Defendants and grant to the Plaintiff such other and further relief as this Court deems just and proper in the circumstances.

Respectfully Submitted,

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

By his attorneys,

/s/ Michael K. O'Neil

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DATED: December 14, 2016

718904

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
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XAVIER, NERIA XAVIER, JAILSON
RAMOS, FRANCISCA XAVIER-DEPINA,
SILVIO MIRANDA, AND IVANILDA
NASCIMENTO,

Defendant(s).

JUDGMENT

Upon consideration of the *Motion by Plaintiff for Entry of Default Judgment* (the
“Motion”)¹, and due cause appearing to me therefore, and due notice of the Motion having been
provided, it is hereby ORDERED and ADJUDGED as follows:

1. The Motion is granted.
2. No just reason for delay exists to enter the Judgment as a final judgment against
Defendants Leila Tatiana Xavier, Chris Araujo, Jorge Lopes, Enerstina Xavier, Atanazia Xavier,

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

Vladmir Xavier, Neria Xavier, Jailson Ramos, Francisca Xavier-Depina, Silvio Miranda, and Ivanilda Nascimento (collectively the “Defendants”).

3. Pursuant to the provisions of Rule 7055(b) of the Federal Rules of Bankruptcy Procedure and MLBR 7055-1, final Judgment shall be and hereby is entered on this date, with respect to the complaint (the “Complaint”) filed by of Stephen B. Darr (the “Plaintiff” or “Trustee”), the duly-appointed trustee of the Chapter 11 estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (the “Debtors”) initiating this adversary proceeding on or about April 1, 2016, in favor of the Trustee against the Defendants as follows:

- (i) On Count I of the Complaint, judgment enters in favor of the Trustee and any liens asserted by the Defendants are hereby determined invalid against property of the Debtors’ chapter 11 estates pursuant to 11 U.S.C. § 544.
- (ii) On Count II of the Complaint, judgment enters in favor of the Trustee avoiding the Defendants’ attempted perfection of security interests by the filing of the financing statements after the Petition Date pursuant to 11 U.S.C. § 549 (the “Transfers”). The Trustee is hereby entitled to recover, and preserve for the benefit of the Debtors’ chapter 11 estates, the avoided Transfers, or their value, from the Defendants pursuant to 11 U.S.C. §§ 550(a) and 551.
- (iii) On Count III of the Complaint, judgment enters in favor of the Trustee avoiding the Transfers as violations of the automatic stay set forth in 11 U.S.C. § 362.

4. The Court shall retain jurisdiction to enter any further orders necessary for the enforcement of this Judgment.

Dated: _____, 2016

Honorable Melvin S. Hoffman
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:

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

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OF THE CHAPTER 11 ESTATES OF EACH OF
THE DEBTORS,

Plaintiff,

Adversary Proceeding
No. 16-04030-MSH

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LEILA TATIANA XAVIER, CHRIS ARAUJO,
JORGE LOPES, ENERSTINA XAVIER,
ATANAZIA XAVIER, VLADMIR XAVIER,
NERIA XAVIER, JAILSON RAMOS,
FRANCISCA XAVIER-DEPINA, SILVIO
MIRANDA, AND IVANILDA NASCIMENTO,

Defendant(s).

CERTIFICATE OF SERVICE

I, Michael K. O'Neil, hereby certify that on December 14, 2016, I caused a copy of the *Motion by Plaintiff for Entry of Default Judgment* to be served through the ECF system upon the registered participants as identified on the Notice of Electronic Filing, and by first-class mail and/or electronic mail upon the parties as indicated on the annexed service list:

/s/ Michael K. O'Neil

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Dated: December 14, 2016
718925-v1

In re Telexfree, LLC, et al.
Chapter 11, Case No. 14-40987-MSH
Stephen Darr v. Leila Tatiana Xavier, et al.
Adversary Proceeding No. 16-04030

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