

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.

CRAFT FINANCIAL SOLUTIONS, LLC,
CRAFT TRUST FINANCIAL, LLC a/k/a
CRAFT TRUST SERVICES, LLC,
JOSEPH CRAFT,

Defendant.

Chapter 11 Cases

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

Jointly Administered

Adversary Proceeding
No. 16-4035

**MOTION BY TRUSTEE TO APPROVE STIPULATION OF SETTLEMENT AMONG
CHAPTER 11 TRUSTEE AND CRAFT FINANCIAL SOLUTIONS, CRAFT TRUST
FINANCIAL AND JOSEPH CRAFT**

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 among the Trustee and Craft Financial Solutions, LLC ("CFS"), Craft Trust Financial, LLC, a/k/a Craft Trust Services, LLC ("CTF") and Joseph Craft ("Craft" and, together with CFS and CTF, the "Defendants"), pursuant to Federal Rule of



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Bankruptcy Procedure 9019. The Stipulation resolves the claims asserted by the Trustee in this adversary proceeding. In support of this motion, the Trustee states as follows:

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 engaged in the sale of voice over internet service. On November 25, 2015, the Court, on motion by the Trustee and after notice, entered an Order, as amended on December 21, 2015, 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.
5. Craft is the managing member and principal owner of CFS and CTF. Craft was represented as chief financial officer for the Debtors for several months prior to the Petition Date. TelexFree compensated Craft through CFS and CTF.
6. The Defendants provided accounting, investment, and tax services to the Debtors.
7. During the two years prior to the Petition Date, TelexFree paid the Defendants the aggregate sum of approximately \$613,000 (the "Transfers").
8. On or about April 4, 2016, the Trustee commenced this action against the Defendants, asserting that the Transfers could be recovered as fraudulent transfers. The Trustee

also sued the Defendants for recovery of insider preferential transfers allegedly made within one year of the Petition Date and for claims arising from aiding and abetting commission of tortious conduct by TelexFree and its principals.

9. The Defendants have provided the Trustee with an accounting of the Transfers. Approximately \$370,000 of the amounts paid by TelexFree to the Defendants was transferred to or for the benefit of Sunwind Energy Doyle North, LLC, Sunwind Energy Solutions, LLLP, and Sunwind Energy Group, LLLP ("Sunwind") in connection with a wind farm development project in Kansas. Craft is the president of the general partner of Sunwind. Of this amount, approximately \$250,000 was seized by federal authorities in connection with the shutdown of the TelexFree scheme (the "Sunwind Funds"). The Sunwind Funds are the same funds referenced in paragraph 1(f) of the Settlement Agreement by and among the Trustee and Sunwind filed on June 7, 2016 (docket entry no. 13 in adversary proceeding number 16-4019). Pursuant to that settlement, Sunwind agreed to cause the Sunwind Funds to be paid to the Trustee upon their release by the government.

10. The balance of the Transfers were paid by TelexFree to the Defendants on account of services rendered. The Defendants have represented to the Trustee that the funds represented by the Transfers, other than the Sunwind Funds, have been expended except for approximately \$36,000 in Defendants' counsel's IOLTA account.

11. The Defendants have also provided the Trustee with current financial statements, which show an aggregate negative net worth of the Defendants.

12. This adversary proceeding was stayed because of Craft's potential involvement as a witness in the criminal trial of James Merrill, one of the Debtors' principals.

13. On April 15, 2014, the Securities and Exchange Commission (“SEC”) commenced an action in the United States District Court for the District of Massachusetts against the Debtors and several insiders, including Craft, case no. 1:14-cv-11858-DJC (the “SEC Action”). The SEC asserted claims against Craft for ill-gotten gains associated with participation in the TelexFree fraud in the amount of \$272,812, together with prejudgment interest in the amount of \$25,896 and a civil penalty in the amount of \$50,000, for a total of \$348,708 (the “SEC Obligation”).

14. The SEC and the Trustee have identified certain property in which the Defendants, or entities controlled by the Defendants, maintain an interest, as further set forth herein.

15. The Trustee, the SEC, and the Defendants have entered into negotiations respecting a settlement of the SEC Obligation and the claims asserted by the Trustee against the Defendants in the adversary proceeding. As a result of these negotiations, the SEC has accepted Craft’s proposal of settlement, subject to the entry of a proposed final judgment (“SEC Judgment”), and the Trustee and the Defendants have entered into this Stipulation.

16. Now therefore, for good and valuable consideration, and in order to avoid the costs, delays and uncertainty of litigation, the Parties have entered into the Stipulation, which provides substantially as follows:

Stipulation

A. The Defendants shall release any interest in the Sunwind Funds. Upon release of the Sunwind Funds that were seized by the federal governmental, the Defendants shall cause such funds to be immediately paid to the Trustee.

B. In addition to the Sunwind Funds, the Defendants shall be jointly and severally

liable to pay the amount of the SEC Obligation to the Trustee as set forth below.

C. The Defendants, on behalf of themselves and Audie Craft, Craft Accounting Services, The Lakewood Trust, Genesis International Enterprises, BWFC Processing Center, LLC, Oak Revocable Trust, Ace LLP, Southern Wholesale Media, Benjamin Craft, and Audra Craft, shall release any interest in the following financial accounts, and such assets shall be paid to the Trustee:

#	Name(s) on Account	Bank	Account No.
1	Joseph and Audie Craft	Bank of America	xxxx8903
2	Craft Accounting Services	Bank of America	xxxx9545
3	DBA Craft Accounting Services	Bank of America	xxxx9943
4	The Lakewood Trust	Bank of America	xxxx5784
5	Genesis International Enterprises	Bank of America	xxxx8610
6	BWFC Processing Center LLC	Banterra Bank	xxxx5292
7	Oak Revocable Trust	Banterra Bank	xxxx5446
8	Ace LLP	Banterra Bank	xxxx0903
9	Southern Wholesale Media	Banterra Bank	xxxx6464
10	Craft Trust Services, LLC	Banterra Bank	xxxx6545
11	Joseph and Audie Craft	Banterra Bank	xxxx2688
12	Benjamin P Craft or Audra or Joseph H Craft	Banterra Bank	xxxx3330
13	Joseph Craft	Wells Fargo	xxxx7493
14	Joseph Craft	Wells Fargo	xxxx0984

D. The Defendants shall release any interest in the funds held in the Dwyer LLC IOLTA account for the benefit of Craft, in the account ending in xxxx9024, which funds shall be paid to the Trustee.

E. Within sixty (60) days of entry of the SEC Judgment, the Defendants shall pay to the Trustee any portion of the SEC Obligation not satisfied pursuant to paragraphs C and D herein, and excluding the Sunwind Funds.

F. Upon full compliance by the Defendants with the terms of the SEC Judgment and

the terms of the Stipulation, the Trustee shall release the Defendants of any and all claims that the Trustee may have against the Defendants.

G. The Defendants release and waive any and all claims they may have against the Trustee or the TelexFree estates.

H. The effectiveness of the Stipulation shall be contingent upon, and subject to, the entry of the SEC Judgment.

I. The Trustee shall not assess any costs or expenses against the assets recovered pursuant to this settlement, other than the Trustee's commission, and the fees and expenses associated with the liquidation and distribution of the assets and proceeds thereof recovered in the settlement, including reasonable attorneys' fees.

Basis for Approval of Stipulation

17. 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).

18. 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).

19. 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.

20. The Trustee asserts that the Stipulation should be approved by the Court. The Defendants have accounted for the funds advanced by TelexFree to assist the Sunwind wind farm project and have agreed to release any remaining interest the Defendants have in such funds to the Trustee. In addition, the Defendants have agreed to pay to the Trustee an amount equal to the SEC Obligation. The source of these payments is expected to be the financial accounts referenced above

as well as interests in certain real property. In the aggregate, the recoveries to the TelexFree estates are expected to be nearly the amount of the Transfers made to the Defendants and forming the basis of this adversary proceeding. These recoveries will be achieved without the necessity of litigation and as a product of negotiations amongst the Trustee, the Defendants and the SEC, and without regard to the defenses that might otherwise be asserted by the Defendants.

21. In summary, the Trustee asserts that the settlement will result in a substantial recovery for the TelexFree estates and benefit to the victims of the TelexFree Ponzi scheme and should be approved by the Court.

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,



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