

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

In Re:

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

Debtors.

Chapter 11

Case No. 14-40987-MSH  
Case No. 14-40988-MSH  
Case No. 14-40989-MSH

Jointly Administered

**MOTION BY CHAPTER 11 TRUSTEE TO ESTABLISH OMNIBUS PROCEDURES  
FOR THE RESOLUTION OF DISPUTED PARTICIPANT CLAIMS**

To the Honorable Melvin S. Hoffman, Chief United States Bankruptcy Judge:

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" or "TelexFree"), respectfully requests, pursuant to Section 105 of the Bankruptcy Code and Rule 3007(c) of the Federal Rules of Bankruptcy Procedure ("FRBP"), entry of an order establishing omnibus procedures (the "Procedures") for the resolution of disputed claims in these proceedings, including relief from certain limitations on claims objections set forth in FRBP 3007 and Mass. Local Bankruptcy Rule ("MLBR") 3007. The Procedures are applicable only to the resolution of Participant claims. Claims of non-Participants are not covered by this motion and will be addressed separately.

**INTRODUCTION**

TelexFree operated one of the largest Ponzi and pyramid schemes in United States history, ensnaring upwards of 1,000,000 Participants who collectively lost in excess of \$1,700,000,000. TelexFree used the sale of voice over internet protocol service packages as a



subterfuge for its real business, which was the recruitment of new Participants and the use of membership fees paid by new Participants to pay the credits “earned” by existing Participants.

The scheme was extensive, complicated, and multi-tiered. Participants were dispersed throughout the world; eighty percent (80%) were located outside of the United States. Many Participants had little business sophistication, were recruited by friends or relatives, and spoke a primary language other than English. Most of the transactions conducted by Participants were triangular in nature, whereby existing Participants were recruited into the scheme and paid their membership fees directly to recruiting Participants who retained the membership fees and used their accumulated credits in existing accounts to satisfy the membership fee due to TelexFree.

The Trustee retrieved and reconstructed the TelexFree written and electronic records that were seized by the federal authorities shortly after the Chapter 11 cases were filed and used these records, along with other investigative tools, to determine the mechanics of the scheme and how transactions were processed and recorded. After this process was completed, the Trustee filed and obtained approval of a motion establishing that TelexFree had engaged in a Ponzi and pyramid scheme, which became the law of the case. As part of that same motion, the Trustee sought and obtained a determination by the Court that Participant claims would be calculated based on Net Equity as further described herein.

In consultation with his advisors, the Trustee established a website portal (the “Portal”) for Participants to file electronic proofs of claim (“ePOC’s” or “Participant Claims”). The ePOC process enabled a Participant to enter personal identifying information used when opening accounts (“User Accounts”) to access the TelexFree electronic records in order to complete and file the Participant’s claim.

As of September 28, 2017, 132,001 Participant Claims have been filed through the Portal. Of this amount, 112,471 were timely filed and comport with the Debtors' records and the Net Equity formula. The remaining 19,530 Participant Claims consist of 18,835 Claims that were timely filed but do not comport with the Debtors' records and the Net Equity formula and 695 Claims that were filed after the Final Bar Date of March 15, 2017.

The Trustee needs to establish and implement procedures to resolve disputed claims, considering the unique number of claims and the circumstances of these cases. By this motion, the Trustee requests an order authorizing the following provisions with respect to the resolution of Participant Claims:

- (i) Authority for the Trustee to send a Proposed Claim Allowance, as defined herein and in the form attached as Exhibit "A" hereto, to Participants that will propose disallowance of some or all of the Participant's Claims, provide the grounds for disallowance, and provide the Participant an opportunity to file a Claim Response;
- (ii) Authority for the Trustee to file omnibus objections to claims with certain modifications to the parameters set forth for such objections in FRBP and MLBR 3007;
- (iii) Authority to provide electronic notice to Participants with respect to the Proposed Claim Allowance and objections to claims, using the email address provided by the Participants on their Claims;
- (iv) Authority to transmit the Proposed Claim Allowance and objections to claim in English, Portuguese and Spanish;
- (v) Authority for certain Participants who filed a Claim through the Portal using a Standard Claim form (rather than a Participant Claim form) to have a limited

period of time within which to correct the deficiency and to file a Participant Claim;

- (vi) Authority for the Trustee to close the Portal within forty-five (45) days of approval of this motion; and
- (vii) An order directing that all Claim Responses transmitted to the Trustee, if not sent in English, be accompanied by a certified English translation.<sup>1</sup>

Each of these Procedures will facilitate the resolution of Participant claims. The implementation of the Proposed Claim Allowance will provide a cost-effective alternative to resolve certain Participant Claims while minimizing the use of judicial resources. The modification of permitted procedures for filing omnibus objections to claims will conserve resources of the parties and the Court and will further administrative convenience. The process will provide necessary due process protections, including notice reasonably calculated to apprise Participants of the relief requested and an opportunity to respond. The closure of the Portal will bring necessary finality to the claims process and preserve estate resources.

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

#### **PROCEDURAL BACKGROUND**

1. On April 13, 2014 (the "Petition Date"), 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.

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

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<sup>1</sup> As set forth herein, a similar order has been entered for all pleadings filed with the Court.

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 motion for joint administration was approved.

4. On May 6, 2014, the Court allowed the motion filed by the Securities and Exchange Commission ("SEC") to change the venue of the cases to the United States Bankruptcy Court for the District of Massachusetts (the "Court"). The cases were transferred to the Court on May 9, 2014.

5. On May 30, 2014, the Court allowed the motion by the Office of the United States Trustee's to appoint a Chapter 11 trustee, and the Trustee was appointed on June 6, 2014.

6. The Debtors did not file schedules or statements of financial affairs, nor a matrix of creditors. The Debtors filed only a list of the alleged thirty (30) largest creditors in the cases. The Trustee submitted schedules and statements of financial affairs on behalf of the Debtors on February 27, 2015 [docket entries 592, 593].

#### **THE TELEXFREE PONZI SCHEME**

7. The Debtors purported to be operating a multi-level marketing company engaged in the sale of voice over internet protocol ("VoIP") services, but, as set forth above, they were in fact perpetrating a Ponzi and pyramid scheme. The sale of VoIP was incidental, comprising less than one percent (1%) of total revenues. The primary business of the Debtors was the recruitment of new Participants to generate revenues for the Debtors and existing Participants.

8. Participants earned "credits" in their participation in TelexFree by posting electronic advertisements for TelexFree and by recruiting new Participants. The credits could be redeemed for cash, transferred to another Participant, or applied in payment of an invoice. Participants could purchase a membership or VoIP plan by making payment directly to the

Debtors, or by paying the membership or phone plan fee to a recruiting Participant, who used his/her accumulated credits to satisfy the invoice, in what has been referred to as a “Triangular Transaction”.

9. The TelexFree Ponzi and pyramid scheme was run in concert with a similar scheme based in Brazil by Ympactus, an affiliated entity. TelexFree ensnared as many as 1,000,000 or more Participants, approximately 170,000 of which were based in the United States. The remaining Participants were located in virtually every country throughout the world.

10. James Merrill and Carlos Wanzeler were the principals of TelexFree and were charged with various violations of the United States criminal code in connection with the implementation of the TelexFree Ponzi and pyramid scheme, in the case styled *United States of America v. James Merrill and Carlos Wanzeler*, case no. 14-CR-40028-TSH (the “Criminal Action”) pending in the United States District Court for the District of Massachusetts (the “District Court”). As set forth in the First Superseding Indictment (“Indictment”) filed on September 8, 2016 [docket 283], Merrill and Wanzeler were charged with Conspiracy to Commit Wire Fraud (Count One), Wire Fraud (Counts Two to Nine), and Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity (Counts Ten through Seventeen). On October 24, 2016, Merrill pled guilty to Counts One through Nine of the Indictment pursuant to a written plea agreement executed on October 24, 2016 [docket 314] and was sentenced to seventy-two (72) months in prison [docket 346]. Wanzeler fled the country and is believed to be in Brazil.

## SOURCES OF FUNDS AVAILABLE FOR DISTRIBUTION

11. Holders of allowed Participant Claims will be entitled to receive their *pro rata* distribution of the Forfeited Assets (defined below) and other funds available from those recovered by the Trustee during the course of the bankruptcy cases.<sup>2</sup>

12. The Forfeited Assets arise out of the Indictment of the Debtors' principals, the entry of a guilty plea by Merrill, and the entry of a Restitution Order in District Court.

13. The Indictment contained a forfeiture allegation, which provided notice that the United States sought forfeiture, upon conviction of one or more of the offenses charged in Counts One through Nine, of any property that constituted, or was derived from, proceeds traceable to the commission of the offenses. In addition, the Indictment contained a Money Laundering Forfeiture Allegation, which provided notice that the United States sought forfeiture, upon conviction of one or more of the offenses alleged in Counts Ten through Seventeen, of any property, involved in the offenses, and any property traceable to such property. Pursuant to these allegations, the United States sought to have certain identified assets forfeited to the government for distribution to victims of the Ponzi scheme.

14. As part of the plea agreement, Merrill consented to the forfeiture of the assets listed as an exhibit to the plea agreement.

15. On March 16, 2017, the United States submitted its Sentencing Memorandum to the District Court in the Criminal Action [docket 332]. The Sentencing Memorandum expressed the intention of the United States to use the pending bankruptcy cases and related claims filing process to distribute funds to victims, stating that "Pending entry of a final order of forfeiture and

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<sup>2</sup> As set forth herein, the Forfeited Assets will only be available for distribution to Participants. Other funds recovered by the Trustee will be available to pay estate expenses including administrative and priority claims, Participant Claims, and claims of non-Participants. The Trustee reserves all rights with respect to the order of priority of distribution of funds that are not part of the Forfeited Assets.

approval from the Department of Justice pursuant to 21 U.S.C. §853(i), the government anticipates using all of these assets to compensate victims of the fraud. The government would distribute the forfeited assets by first transferring the funds to the Chapter 11 trustee ("Trustee"), under an agreement that the Trustee only use it to compensate victims."

16. On March 22, 2017, the District Court entered a Preliminary Order of Forfeiture [docket entry 347] in the Criminal Action. Pursuant to the Preliminary Order, Merrill's interest in the Forfeited Assets was forfeited to the United States, subject to any claims of third parties. Pursuant to 21 U.S.C. §853(n)(1), the United States agreed to publish, for thirty (30) consecutive calendar days, notice of the Preliminary Order and the intent of the United States to dispose of such assets. Parties, other than Merrill, could petition the District Court to adjudicate an interest in the Forfeited Assets within sixty (60) days after the first date of publication, or within thirty (30) days of receipt of actual notice, whichever was earlier.

17. On June 16, 2017, Fabio Wanzeler filed a Notice of Intent to Contest Forfeiture as to two residential real properties in Florida [docket 364]. Upon information and belief, the United States Attorney has granted Carlos Wanzeler and his spouse Katia Wanzeler an extension of time to respond to the Preliminary Order. No other responses to the Preliminary Order have been filed. Upon adjudication of all third-party interests, the District Court will enter a Final Order of Forfeiture in which all interests will be addressed.

18. On July 11, 2017, the District Court entered a Restitution Order [docket 367] which provides restitution to victims in coordination with the bankruptcy cases. The Restitution Order directed that amounts recovered from the Forfeited Assets be paid by the Trustee to Net Loser Participants who timely filed Claims through the Portal that comport with the Net Equity ruling of the Court dated January 26, 2016 [docket 687]. The Trustee was directed to make the



distributions to Participants on a *pro rata* basis, without offset for administrative cost or other expenses.

19. The amount of Forfeited Assets potentially available for turnover to the Trustee, subject to resolution of competing claims, is in excess of \$100,000,000. The Forfeited Assets include cash, and real property and tangible personal property that will need to be monetized prior to distribution to Participants.

20. The Trustee has approximately \$20,700,000 on hand. The Trustee also has certain judgments and two pending class actions against Net Winners that may result in additional recoveries.

#### **RECONSTRUCTION OF THE DEBTORS' BOOKS AND RECORDS**

21. Upon his appointment, the Trustee had no access to the Debtors' books and records, because they had been seized by federal authorities, primarily Homeland Security Investigations ("HSI"). Neither of the Debtors' principals has been available. While certain of the Debtors' employees provided some assistance to the Trustee, others were either unavailable or unwilling to cooperate.

22. The Trustee obtained a copy of the Debtors' books and records from HSI and underwent an extensive recovery process to make the records usable, particularly the so-called "SIG" system that housed the activity for Participant transactions.

23. Most of the Debtors' records were kept electronically. The Debtors' computer system consisted of forty-six (46) computers and servers containing more than 20 terabytes of data. The Trustee did not have any copies of the Debtors' electronic records. HSI provided copies of the Debtors' computers and servers to the Trustee beginning in August 2014. Once a copy of the Debtors' computers and servers was provided to the Trustee, the Trustee and his

advisors performed the following tasks in order to make the information on the Debtors' computer system usable:

- (i) Located the key database server containing the bulk of the Debtors' operational and Participant activity;
- (ii) Determined the proper configuration of the Debtors' servers, so that the servers could interface with one another;
- (iii) Converted the data obtained from the Debtors' servers into "virtual servers" maintained by the Trustee's agents;
- (iv) Determined the other essential computers and servers needed to obtain necessary information respecting the Debtors' operations and Participant activity; and
- (v) Developed an understanding of the Debtors' database structure, including data fields and process flow.

24. The Trustee determined from these efforts that the Debtors maintained two separate applications for accessing its databases of Participant activity – SIG, which was used by the Debtors' personnel, and the Back Office, which was used by Participants.

25. SIG was the web browser based front-end application used by the Debtors' personnel to access the Debtors' database to obtain reports on and administer Participant activity.

26. Each time that a Participant purchased a membership plan or VoIP plan, an account was established with SIG (a "User Account").

27. When opening a User Account, Participants were prompted to provide a series of personal identifying data, including name, physical address, email address, home phone, cell phone, and passcode.

28. After a User Account was established, SIG tracked the activity of the Participant in that User Account, including the accumulation of credits for bonuses and commissions “earned”, the use or transfer of credits between User Accounts, and payments made to or from the Participant directly with the Debtors.

29. SIG does not provide a mechanism for linking all of a Participant’s User Accounts. Because of the absence of a mechanism to automatically link accounts for an individual Participant, the Trustee and his advisors had to develop a method for aggregating a Participant’s User Accounts.

30. The Back Office is a web browser-based front-end application used by Participants to access the Debtors' database, and was the primary way in which Participants interacted with the Debtors. For example, Participants logged onto the Back Office to obtain information on their accounts, such as account balances and the identification and status of the Participants within their multi-level “tree”, to create new accounts, to request payment, and to transfer credits among accounts.

#### **I. Ponzi Finding and Net Equity Determination**

31. After reconstructing the Debtors’ books and records and conducting other due diligence, the Trustee concluded, in consultation with his advisors and governmental authorities, that TelexFree had been operating as a Ponzi and pyramid scheme. Participants were promised astronomical returns for placing meaningless advertisements on the internet, and these returns were satisfied by fees paid by new recruits. Participants were able to effectively recruit themselves by opening additional User Accounts. There was no legitimate product other than the sale of VoIP plans which constituted less than one percent (1%) of total revenues; in

addition, less than one percent (1%) of the minutes available for usage on VoIP plans sold were ever used.

32. On October 7, 2015, the Trustee filed his *Motion by Chapter 11 Trustee for Entry of Order Finding that Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief* (the “Ponzi Motion”). By order dated November 25, 2015, as amended on December 21, 2015, the Court found the Debtors to have engaged in a Ponzi and pyramid scheme and that this finding was the law of the case.

33. As part of the Ponzi Motion, the Trustee requested a finding that, because the Debtors were operating a Ponzi and pyramid scheme, claims for accumulated credits should be disallowed and the claims of individuals who lost money from participating in the Debtor’s Ponzi and pyramid scheme (“Participants”) should be determined using the “Net Equity” formula (as described below). By supplemental order dated January 26, 2016, the Court approved the Net Equity formula for determining the allowed claims of Participants.

34. The Net Equity formula provided for the following:

- (i) in determining the amount of a Participant’s claim, any claim or portion of claim based upon accumulated credits in a Participant’s User Accounts as of the Petition Date shall be disallowed;
- (ii) Participant Claims shall be computed as follows: the amount invested by the Participant into the Debtors’ scheme, including amounts paid pursuant to Triangular Transactions, less amounts received by the Participant from the Debtors’ scheme, including amounts received pursuant to Triangular Transactions;

- (iii) In determining the amount of a claim of a Participant who has more than one User Account, the activity in all of the Participant's User Accounts shall be aggregated and netted against one another.

## **II. Development of the Portal and Claims Filing Process**

35. Having established the methodology of the Net Equity method for determining Participant's allowed claims, the Trustee needed to then establish a method for Participants to file claims.

36. In the initial stages of these cases, Participants filed claims both with the Court and with the Trustee's claims agent, Kurtzman Carson Consultants ("KCC"). Claims or victim notification forms were also filed with the Federal Bureau of Investigation and the Massachusetts Secretary of State. It was apparent from an initial review that these claims were deficient in numerous respects. The claims asserted wildly diverging amounts, often asserting claims for accumulated credits, punitive damages, and other claims not allowable in accordance with the Net Equity formula. The claims were largely handwritten, and often did not clearly identify the User Accounts claimed by the Participant or provide sufficient information to identify the Participant's User Accounts. It became evident that these claims would have to be reconciled with the Debtors' records on a painstaking claim-by-claim basis. Because there were upwards of one million Participants and more than one billion Participant transactions, a manual reconciliation of all claims could potentially have consumed all of the resources of the case.

37. The Trustee determined that he needed to establish a system that would enable him to confirm the accuracy of Participant claims filed against the Debtors' records and the Net Equity formula. In order to address these issues, an electronic claim filing process needed to be established that would enable Participants to access the Debtors' records and provide Participants

with an opportunity to confirm or deny Net Equity activity as reflected in the Debtors' records, or to make other adjustments.

38. On October 7, 2015, the Trustee filed his *Motion by Chapter 11 Trustee for Entry of Order Fixing Bar Date for Filing Proofs of Claim, Approving Form and Manner of Providing Notice, Directing that Claims Be Filed Electronically, and Approving Content of Electronic Proofs of Claim* (the "Claims Motion"). Pursuant to the Claims Motion, the Trustee sought to establish an electronic process for the filing of claims by Participants that would supersede the various types of claims that had been earlier submitted in multiple fora.

39. On January 26, 2016, the Court entered an order approving the Claims Motion (the "Claims Order"). The Claims Order provided for a bar date of not less than ninety (90) days after the Portal became operational and notice of the bar date had been served. The Claims Order approved the form and manner of notice of the bar date, including electronic mail notice to all known Participants in English, Spanish and Portuguese, and constructive notice through certain multi-level marketing websites. The Claims Order further directed Participants to file claims using the Participant Claim form and for all other claimants to use the Standard Claim form.

40. The Claims Order provides that the submission of an ePOC:

shall be the sole and exclusive method of filing claims in these cases. Any claims previously filed or hereinafter filed that do not comply with the ePOC process set forth herein shall be disallowed without further order of the Court, including any proofs of claim previously filed with KCC or the Court and any victim notification forms submitted to the FBI or the Massachusetts Secretary of State. Participants and other claimants are instructed not to file any proofs of claim with the Bankruptcy Court or with KCC. [Docket entry 688, ¶15].

41. Upon entering the Portal, Participants were provided an opportunity to input all personally identifiable information that was used in opening User Accounts with TelexFree,

including name, User Account number, address and phone information and passcodes. This information was then matched against the Debtors' records to identify User Accounts attributable to the Participant.

42. Participants then had an opportunity to accept or reject any User Account that was ascribed to them.

43. After the User Account identification process was completed, Participants were provided the detailed transaction activity associated with each User Account, including both direct transactions with TelexFree and Triangular Transactions. The ePOC aggregated the transaction activity in all of the User Accounts to arrive at a proposed claim amount. The Participant could then add, delete, or modify transactions and provide supporting documentation for any changes made. The Claim was then submitted.

44. On May 27, 2016, after the Portal became operational, the Trustee filed a *Notice of Deadline for Filing Electronic Proofs of Claim and Claims Procedures* (the "Bar Date Notice"). The Bar Date Notice established an initial bar date of September 26, 2016 (the "First Bar Date") for the filing of electronic claims and was served in accordance with the provisions of the Claims Order.

45. On or about September 21, 2016, the Trustee filed a motion to extend the deadline set forth in the First Bar Date to December 31, 2016 (the "Second Bar Date"). This motion was granted by order dated September 23, 2016, and notice of the Second Bar Date was served in accordance with the terms of the Claims Order.

46. In light of the wide publicity emanating from Merrill's anticipated entry of a guilty plea, on or about December 8, 2016, the Trustee filed a second motion to extend the deadline for filing an ePOC to March 15, 2017 [docket entry 827, the "Final Bar Date"]. This

motion was granted by order dated December 21, 2016 and notice of the Final Bar Date was served in accordance with the terms of the Claims Order.

### **III. Issues with Participant Claims**

47. As set forth above, 132,001 Participant Claims have been filed through September 28, 2017, including 131,306 that were timely filed and 695 that were filed after the Final Bar Date.

48. The Participant Claims incorporate transactions with the Debtors reflected in 1,825,687 User Accounts. In approximately eighty-five percent (85%) of instances, the amounts asserted in each User Account within a Participant's Claim comport with the Debtors' records and the Net Equity formula. The timely filed Participant Claims that do not appear to conform with the Net Equity formula raise one or more of the following issues:

- (i) Multiple Participants claimed ownership of one or more of the same User Accounts;
- (ii) Participants deleted User Accounts associated with them by the Debtors' records without adequate explanation or documentation;
- (iii) Participants added User Accounts that were not associated with them by the Debtors' records without adequate explanation or documentation;
- (iv) Participants added or deleted a transaction or adjusted a transaction amount in a User Account without adequate explanation or documentation;
- (v) Participants adjusted the amount of their claim based on transactions not consistent with the Net Equity formula, without adequate explanation or documentation; and



- (vi) Participants asserted claims in foreign currencies or asserted punitive claims or other claims not allowable under the Net Equity formulation approved by the Court.

49. In addition to the foregoing issues that are unique to these cases, many other claims may be objectionable for reasons that typically arise in an omnibus claim objection, such as claims that are late filed, duplicative, or have been amended.

### **RELIEF REQUESTED**

50. In order to resolve the claims related issues, the Trustee has proposed a dual process consisting of the Proposed Claims Allowance and omnibus objections to claims. The Trustee has proposed to serve these documents on Participants using email addresses provided in Participant Claims in order to mitigate costs, expedite the transmittal process, and provide greater assurance of proper notice. The Trustee requests authority to close the Portal in order to bring finality to the claims review process, but only after providing Participants who filed their Claim using a Standard Claim form an opportunity to do so using the form specially designed for Participants.

#### **I. Proposed Claim Allowance**

51. In an effort to reduce the number of claims requiring adjudication by the Court, the Trustee requests authority to send Participants a Proposed Claim Allowance.

52. The Proposed Claim Allowance will do the following:

- (i) advise the Participant of the Trustee's assertion that the Claim is not in compliance with the Net Equity formula, identify one or more grounds for the objection, request additional explanation or documentation, and propose an allowed claim amount for that Participant;

- (ii) provide Participants with thirty (30) days to submit a Claim Response;
- (iii) provide that if a Participant fails to submit a timely Claim Response, the Trustee shall be authorized to file a Notice of Claim Allowance ("Notice"), in the form attached as Exhibit "B" hereto, that will constitute the Participant's allowed claim, unless the Participant files a response within fourteen (14) days and demonstrates good cause for failure to timely respond to the Proposed Claim Allowance;
- (iv) provide that if a Participant files a timely Claim Response to the Proposed Claim Allowance and the Trustee is unable to resolve the claim dispute with the Participant, the Trustee may file an objection to the claim with the Court, which shall comport with the omnibus claims procedures set forth below;
- (v) provide that if a Participant files a timely Claim Response to the Proposed Claim Allowance and the Trustee is able to reach a consensual resolution of the claim with the affected Participant, the Trustee will file with the Court an Affidavit of Claim Allowance (an "Affidavit"), in the form attached as Exhibit "C" hereto, which shall establish the allowed amount of the claim without further notice or order.

53. The Proposed Claim Allowance, Notice, and Affidavit are designed to streamline the resolution of claims and minimize the burden upon the Court.

54. The modified procedures are appropriate under the circumstances. *See, e.g., In re MF Global, Inc., Case No. 11-2790 (MG) SIPA*, (Bankr. S.D.N.Y. November 23, 2011, docket entry 423)(Trustee authorized to compromise and settle customer claims without further order of

the Court); *see also* FRBP 2002(a)(3)(court may direct that for cause shown notice of a hearing on approval of a compromise or settlement of a controversy not be sent).

## **II. Omnibus Objections to Claims.**

55. In those instances where a Proposed Claim Allowance is not practicable and/or does not result in claim resolution, the Trustee further requests authority at any time to submit omnibus objections to Participant claims, subject to the modified procedures set forth below (the “FRBP 3007 Modifications”).

56. FRBP 3007 limits the types of claims objections that an estate representative may assert against multiple claimants on an omnibus basis. FRBP 3007(c) provides that “unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.” FRBP 3007(d) permits omnibus objections only when the basis for each objection fall into one of the following categories:

- (i) The claims are duplicative;
- (ii) The claims are filed in the wrong case;
- (iii) The claims have been amended;
- (iv) The claims were not timely filed;
- (v) The claims have been satisfied or released during the case in accordance with the Bankruptcy Code, the applicable rules, or a court order;
- (vi) The claims were presented in a form that does not comply with applicable rules, and the objector is unable to determine the validity of the claim because of the noncompliance;
- (vii) The claims are interests, rather than claims; or

- (viii) The claims assert priority in an amount that exceeds the maximum amount permitted under Section 507 of the Bankruptcy Code.

57. In addition to the list of common objections set forth in FRBP 3007(d), the Trustee requests authorization to include within omnibus objections that the Claim does not comport with the Net Equity calculation for one or more of the following reasons:

- (i) Multiple Participants claimed ownership of one or more of the same User Accounts;
- (ii) Participants deleted User Accounts associated with them by the Debtors' records without adequate explanation or documentation;
- (iii) Participants added User Accounts that were not associated with them by the Debtors' records without adequate explanation or documentation;
- (iv) Participants added or deleted a transaction or adjusted a transaction amount in a User Account without adequate explanation or documentation;
- (v) Participants adjusted the amount of their claim based on transactions not consistent with the Net Equity formula, without adequate explanation or documentation;
- (vi) Participants asserted claims in foreign currencies or asserted punitive claims or other claims that do not qualify for allowance under the Net Equity formulation approved by the Court; and
- (vii) The claims are objectionable under Sections 502(d) of the Bankruptcy Code.

58. If the Trustee were required to file individual objections to Participant claims on the foregoing grounds, the Trustee could be required to file hundreds, or thousands, of largely duplicative objections which would cause confusion, unnecessarily burden the Court, and

increase the expense to the Estates. The Trustee therefore requests authority to include the foregoing as additional grounds for objection to Participant claims through the omnibus objection process.

59. FRBP 3007(e) provides requirements for the formatting of omnibus objections to claims, including the requirement that claimants be listed alphabetically and that objections be limited to 100 claims. Mass. Local Bankruptcy Rule 3007 contains a similar limitation of 100 objections per omnibus claim. The Trustee requests authority to modify these provisions in two respects.

60. First, the Trustee requests authority to categorize Participants claims based upon the Participant's country of origin. Because TelexFree was structured in a pyramid fashion, many Participants were recruited into the scheme by other Participants. Based upon anecdotal data gleaned from discussions with Participants, the Trustee believes that many Participants were drawn into the scheme by friends, family members, or co-workers. The Ponzi scheme expanded throughout the world, operating in more than 100 countries. Many Participants were likely recruited by other Participants in their county and may have been assisted in filing claims by such persons. For these reasons, categorizing claim objections by country may ease the burden to Participants of responding to objections to claims and may facilitate the resolution of claim disputes.

61. Second, the Trustee requests that the minimum number of Participant claims permitted in each omnibus objection be increased to 250. Given the potential for thousands of objections, increasing the minimum number of claims addressed in each objection should further judicial economy and ease administrative burdens.

62. Courts have approved similar modifications to the provisions of FRBP 3007 when shown to be appropriate. *See, e.g., In re Alpha Natural Resources, Inc. et al*, Case No. 15-33896 (Bankr. E.D. Va. May 3, 2016, docket entry 2303)(authorizing assertion of omnibus objections on additional grounds not included within FRBP 3007 and authorizing inclusion of up to 500 claims in any single omnibus objection and customization of notices to claimants); *see also In re Global Aviation Holdings, Inc. et al*, Case No. 12-40783 (CEC) (Bankr. E.D.N.Y. November 20, 2012, docket entry 752)(authorizing assertion of omnibus objections on additional grounds and authorizing objections in excess of 100 claims); *In re MSR Resort Golf Course, LLC*, Case No. 11-10372 (Bankr. S.D.N.Y. September 17, 2012).

### **III. Electronic Noticing**

63. The Trustee requests authority to serve the Proposed Claims Allowance and objections to claims on Participants by electronic mail using the email address provided by Participants in their Claim.

64. The Court previously authorized the Trustee to notify Participants electronically of the bar date for filing claims and required claims to be submitted electronically because of, among other things, the size and scope of the TelexFree Ponzi and pyramid scheme, the number of Participants, and their geographical dispersion. These same factors support the electronic noticing proposed by the Trustee herein.

65. Each of the Participants was required to provide an electronic mail address when completing a Claim. The Trustee requests authority to communicate with Participants exclusively through this email address during the claims resolution process, including the issuance of Proposed Claim Allowance, Notice, and Affidavit, and the filing of omnibus objections to claims.

66. Electronic notice to Participants via the email address provided in the Claim will provide the best assurance that notice is received, will expedite the delivery of documents to and from Participants and thereby accelerate the claims determination process, and will yield substantive savings to the Estates over the costs of providing physical notice to thousands of Participants, many of whom are located overseas.

67. The electronic noticing procedures proposed by the Trustee satisfy due process considerations. Due process requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.” In re Arch Wireless, Inc., 534 F.3d 76 (1<sup>st</sup> Cir. 2008).

68. Bankruptcy courts have authorized notice via electronic mail where appropriate under the circumstances. *See In re Natural Products Group, LLC*, case no. 10-10239-BLS (Bankr. D. Del. 2010)(court authorized service of pleadings and notices electronically upon approximately 2,000,000 independent consultants in multi-level marketing case); *In re VarTec Telecom, Inc.*, case no. 04-81694-SAF-11 (Bankr. N.D. Tex. 2004)(authorization to serve pleadings electronically on 130,000 independent representatives in multi-level marketing business). Similarly, electronic notice has been found to comport with requirements of due process in many federal, nonbankruptcy cases. *See, e.g., Securities and Exchange Commission v. Rex Venture Group, LLC, d/b/a ZeekRewards.com and Paul Burks*, case no. 3:12-cv-519 (W.D.N.C. 2013)(court authorized electronic notice of bar date and proposed claim resolution to participants in multi-level pyramid scheme); *Browning v. Yahoo Inc.*, 2007 WL 4105971 (N.D. Cal. Dec. 27, 2006) (finding that electronic mail notice and publication notice was adequate for

members of a class in a class action settlement); *Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002) (finding service of a complaint via electronic mail valid); *RPost Holdings, Inc. v. Kagan*, 2012 WL 194388, at \*2 (E.D.Tex. Jan. 23, 2012) (electronic notice of complaint authorized); *Liberty Media Holdings, LLC v. Vinigay.com*, 2011 WL 810250, at 2-5 (D. Ariz. Mar.3, 2011) (same).

69. The Trustee seeks authority to provide customized notices to Participants, in lieu of attaching complete exhibits to an omnibus objection, where the use of such customized notices will, in the Trustee's judgment, provide superior notice to Participants and/or cost savings to the Debtors' estates.

**IV. Multilingual service of Proposed Claim Allowance and objections to claim.**

70. As set forth above, the Claims Order directed that the Bar Date Notices be served on Participants in English, Spanish, and Portuguese, the predominant native languages of Participants. The Trustee requests entry of a similar order for implementation of the Procedures, specifically, that the Proposed Claim Allowance and omnibus objections to claims be served upon Participants in English, Spanish, and Portuguese.

**V. Resolution of Participant Claims Filed Using Standard Claim Form.**

71. The Trustee requests authority to provide Participants who filed a Standard Claim thirty (30) days to correct this deficiency and file a Participant Claim.

72. As discussed above, the Portal provided Participants with an opportunity to interface with the Debtors' records in filing their Participant Claim by inputting personally identifiable information used in establishing User Accounts. The bar date notices that were sent to Participants on multiple occasions stated that the Participant ePOC was the exclusive method for a Participant to file a claim.



73. The Portal also provided an opportunity for creditors other than Participants to file a Standard Claim form electronically. Some Participants, incorrectly, filed a Standard Claim rather than a Participant Claim. The Standard Claim does not require a creditor to input identifying data that a Participant would have used when they were involved in the TelexFree program. Participants who filed a Standard Claim were therefore not given an opportunity to examine activity attributed to them by SIG and to accept or reject the information set forth therein. Participant claims incorrectly filed using a Standard Claim form are much more likely to contain inadequate information to reconcile against the Debtors' records.

74. Approximately 3,400 claimants filed Standard Claims and consist of claims filed by creditors who were not Participants, as well as Participants who submitted the incorrect ePOC form.

75. The Trustee proposes to issue a Notice to the affected Participants, substantially in the form appended as Exhibit "D" hereto, allowing such Participants a period of thirty (30) days in which to file a Participant Claim, failing which the Participant's claim will be disallowed without further Court order.

#### **VI. Closure of the Portal**

76. The Trustee requests authority to close the Portal to avoid the necessity of continued review for late filed claims.

77. The bar date, as extended, expired on March 15, 2017. Notwithstanding the expiration of time to file claims, the Portal has heretofore remained open to allow Participants to file late claims. The Trustee continues to incur costs in maintaining the Portal and in reviewing late claims filed.

78. The Trustee requests authority to terminate access to the Portal no earlier than forty-five (45) days after approval of this motion. This delay will allow Participants who erroneously filed a Standard Claim form with an opportunity to file a corrective Participant Claim. The closure of the Portal will allow the Trustee to conduct one final review of late claims and to file appropriate objections. If a Participant believes that they have a basis for filing a late claim after the closure of the Portal, their remedy will be to petition the Court for authority to file such a claim and to demonstrate excusable neglect under the applicable standards in this jurisdiction.

#### **VII. Responses in English**

79. Victims of TelexFree registered with upwards of 200 country codes (some countries have two or more country codes) in every region of the world, and Participants have numerous native languages. On or about May 10, 2016, the Court entered an order directing that all pleadings or documents that are not in the English language and which are presented or filed in the case, or associated adversary proceedings, be accompanied by a certified translation into English prepared by an interpreter certified by the Administrative Office of the United States Courts [see docket entry 741].

80. The Trustee requests that this order extend to any responses to the Proposed Claim Allowance sent by Participants to the Trustee to reduce cost to the estate and avoid unnecessary delays.

#### **VIII. Use of Participant Name**

81. Certain Participants did not identify their name in the "Name" column of the Participant Claim, but may have identified themselves in the "Signature" column. Other

Participants identified themselves with symbols other than the Latin alphabet, such as Chinese or Russian characters.

82. In connection with sending Proposed Claims Allowances and omnibus objections to claims, the Trustee requests that the order provide that if a Participant did not identify their name in the "Name" column of their Claim, the Trustee may use the name indicated in the "Signature" column of the Claim form for identification purposes. The Trustee further requests that if a Participant listed a name in a format other than the Latin alphabet, the Trustee may rely solely upon the Participant Claim number in communications with Participants and filings with the Court.

#### **AUTHORITY UNDER SECTION 105**

83. Section 105 of the Bankruptcy Code provides the Court with the authority to issue any order, process or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. Section 105 provides supplemental authority for the Court to make necessary modifications to procedures to best administer these cases. *See Canal Corp. v. Finnman (In re Johnson)*, 960 F.2d 396, 404 (4<sup>th</sup> Cir. 1992)(allowance or disallowance of a claim in bankruptcy is a matter of federal law left to the bankruptcy court's exercise of equitable powers).

84. The unique nature of these cases, including the number of Participants, their geographical dispersion and level of business sophistication, and the complicated manner in which the scheme was implemented, calls for a specially tailored claims process to resolve claims disputes in a timely and efficient manner while minimizing the administrative costs and inconvenience to the Court. If the claims filing and objection process were to be administered under conventional practice and procedure, the costs of that process could consume a substantial portion of the recovery available for Participants and significantly inconvenience the Court.

85. Good cause exists for the requested relief.

Wherefore, the Trustee prays that this Court:

1. Enter an order in the form attached hereto as Exhibit "E" approving the proposed Procedures; and
2. Grant such other relief as is just and proper.

STEPHEN B. DARR, CHAPTER 11 TRUSTEE,  
By his attorneys,



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Harold B. Murphy (BBO #362610)  
Andrew G. Lizotte (BBO #559609)  
Murphy & King, Professional Corporation  
One Beacon Street  
Boston, MA 02108  
Telephone: (617) 423-0400  
Facsimile: (617) 423-0498  
Email: [ALizotte@murphyking.com](mailto:ALizotte@murphyking.com)

Dated: October 16, 2017  
732657

**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

In Re:

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

Debtors.

Chapter 11

Case No. 14-40987-MSH  
Case No. 14-40988-MSH  
Case No. 14-40989-MSH

Jointly Administered

NOTICE OF PROPOSED CLAIM ALLOWANCE

*THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.*

Dear Participant:

You are receiving this Notice because you filed a claim in the TelexFree bankruptcy cases, the Trustee has reviewed the claim and determined that there are certain deficiencies in your claim, and the Trustee has proposed allowance of the claim in an amount different from the amount in the claim that you filed. Set forth below is a summary of the Trustee's determination and your rights.

Stephen B. Darr, the Chapter 11 bankruptcy trustee (the "Trustee") of TelexFree LLC, TelexFree Inc., and TelexFree Financial Inc. (together, "TelexFree") has reviewed the claim (the "Claim") that you filed with the electronic claims portal (the "Portal") hosted by the internet site [telexfreeclaims.com](http://telexfreeclaims.com). Based upon this review, the Trustee has concluded that your Claim does not fully comply with the Net Equity formula<sup>1</sup> as approved by the Court for one or more reasons and proposes an adjustment to the Claim. Exhibit "A" to this Notice provides a description of the types of objections that may apply and information or documentation that may assist in resolving the objections. Exhibit "A-1" identifies the proposed allowed amount of your Claim

<sup>1</sup> The Net Equity formula provided for the following:

- (i) in determining the amount of a Participant's claim, any claim or portion of claim based upon accumulated credits in a Participant's User Accounts as of the Petition Date shall be disallowed;
- (ii) Participant Claims shall be computed as follows: the amount invested by the Participant into the Debtors' scheme, including amounts paid pursuant to Triangular Transactions, less amounts received by the Participant from the Debtors' scheme, including amounts received pursuant to Triangular Transactions;
- (iii) In determining the amount of a claim of a Participant who has more than one User Account, the activity in all of the Participant's User Accounts shall be aggregated and netted against one another.

and the specific objections that apply to your Claim. Included as part of Exhibit A-1 is a schedule translating headings into English, Spanish, and Portuguese.

THE "PROPOSED ALLOWED AMOUNT OF CLAIM" AS SET FORTH ON EXHIBIT A-1 DOES NOT REPRESENT THE AMOUNT YOU WILL RECEIVE ON ACCOUNT OF YOUR CLAIM; IT REPRESENTS THE AMOUNT OF YOUR CLAIM THAT WILL PARTICIPATE IN A DISTRIBUTION WITH OTHER ALLOWED PARTICIPANT CLAIMS. THE AMOUNT THAT YOU ACTUALLY RECEIVE IN A DISTRIBUTION WILL BE BASED UPON THE TOTAL AMOUNT OF FUNDS THAT THE TRUSTEE HAS AVAILABLE TO DISTRIBUTE AS WELL AS THE TOTAL AMOUNT OF ALLOWED PARTICIPANT CLAIMS.

### **Your Right to Object.**

The Trustee's determination is based upon the Trustee's current information and the information you submitted in your Claim. You have the right to object to this determination. If you disagree with the Proposed Claim Allowance, you must file a written response (a "Claim Response") in the manner described below within thirty (30) days of the date of this Notice. The Claim Response should be sent electronically to the Trustee but should NOT be filed with the Bankruptcy Court. To object, you must: (i) identify your Name and Claim Number as set forth above; (ii) provide a statement of the reasons for your objection to this Proposed Claim Allowance and match your statement to the specific Reference Numbers on Exhibit A-1; (iii) submit copies of any documents that you rely upon that were not previously uploaded as part of your Claim; and (iv) identify your Name and Claim number and how to contact you by telephone and electronic mail.

If you file a timely objection, the Trustee will review the information that you have provided and will take one of three actions:

- (i) The Trustee may accept your response and documents and propose to allow your claim in the amount submitted through the Portal;
- (ii) The Trustee may propose a different amount to be allowed as your claim; or
- (iii) The Trustee may reject your explanation and documents and file a formal objection with the Bankruptcy Court. In such event, you will have an opportunity to file a response with the Court and have an opportunity to be heard.

If you do not file a timely Claim Response, the Trustee will request that the Court approve the Proposed Allowed Amount of Claim.

### **If you Agree with the Claim Determination.**

If you agree with this determination, you may either notify the Trustee at the electronic mail address listed below or take no further action.

If, at the conclusion of this process, you have an allowed Participant claim, you will be notified at the appropriate time when funds are available for distribution.

Respectfully Submitted,  
STEPHEN B. DARR,  
CHAPTER 11 TRUSTEE,  
By his counsel,

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Andrew G. Lizotte (BBO #559609)  
MURPHY & KING, P.C.  
One Beacon Street  
Boston, MA 02108-3107  
Telephone: (617) 423-0400  
Facsimile: (617) 423-0498  
[ALizotte@murphyking.com](mailto:ALizotte@murphyking.com)

Dated: \_\_\_\_\_, 2017  
734094



**EXHIBIT "A"**

**Objection Codes (see Exhibit A-1 for list of those objections that apply to your claim).**

<b>Objection Code</b>	<b>Explanation of Objection</b>	<b>Documents or Information to Provide in Response to Objection</b>
A	<p><u>Multiple Participants Claimed Same User Account</u> Multiple Participants have claimed ownership of 1 or more of the same User Accounts (a User Account is the account established in the TelexFree recordkeeping system when a Participant purchased a membership or phone plan).</p>	<p>Provide documentation that shows that you are the owner of the User Account identified on Exhibit A-1. Documentation may include correspondence to or from TelexFree regarding the User Accounts or payment records from the purchase of the User Accounts.</p>
B	<p><u>User Account(s) Deleted Without Adequate Explanation or Documentation</u> Participant entered information into the Portal (e.g., name, phone number, email address, etc.) which resulted in certain User Accounts being associated with Participant based on TelexFree's records. Participant deleted one or more of those User Account without adequate explanation or documentation.</p>	<p>Provide evidence that the deleted User Account does not belong to the Participant. The deleted User Accounts are itemized on Exhibit A-1.</p>
C	<p><u>User Account(s) Added Without Adequate Explanation or Documentation</u> Participant added User Account(s) not associated with them in TelexFree records. Participant did not provide adequate explanation or documentation to support the addition of the User Account(s).</p>	<p>Provide documentation that shows that Participant is the owner of the User Account(s). Documentation may include correspondence to or from TelexFree regarding the User Account(s) or payment records from the purchase of the User Accounts. Also supply as many identifiers as possible that were used by you when opening the User Account(s) to establish that the User Account(s) belongs to you. Added User Account(s) are itemized on Exhibit A-1.</p>

- D      Transactions Modified Without Adequate Explanation or Documentation  
The Portal required Participants to identify all User Accounts belonging to the Participant. The Participant was then presented with all Net Equity transactions associated with those User Account(s) in TelexFree's records. Participant changed the amount of transaction(s) without adequate explanation or documentation.      Provide documents showing amounts paid or received to support the transaction adjustment(s) and the User Account to which it relates. The modified transaction(s) are itemized on Exhibit A-1.
- E      Transactions Added Without Adequate Explanation or Documentation  
The Portal required Participants to identify all User Accounts belonging to the Participant. The Participant was then presented with all Net Equity transactions associated with those User Account(s) in TelexFree's records. Participant added a transaction not reflected in TelexFree's records without providing adequate explanation or documentation.      Provide documents supporting the added transaction and the User Account to which it relates. The added transaction(s) are itemized on Exhibit A-1.
- F      Additional Claim Component Added Without Adequate Explanation or Documentation  
Participant adjusted the amount of claim based on transactions not consistent with the Net Equity formula without providing adequate explanation or documentation.      Documents evidencing payment(s) to TelexFree or to another Participant for the purchase of a membership or phone plan and any associated User Account. The additional claim components are itemized on Exhibit A-1.
- G      Damages Not Included in Net Equity  
Participant asserted other damages not included in Net Equity formula.      If claims are not based on Net Equity formula, this portion of the Claim will be disallowed. The asserted damages are itemized on Exhibit A-1.

Exhibit A-1 to Notice of Proposed Claim Allowance

Name of Creditor: [Creditor Name] Amount of Claim Filed with Portal: \$ -  
 Claim Number: [Claim Number] Proposed Allowed Amount of Claim: \$ -  
 Basis of Reduction in Claim: [Objection Code(s)]

**Objection Code**

**A User Account(s) Claimed by Other Participant(s)**

Ref. #	User Account
1	[User Account]
2	[User Account]
3	[User Account]
4	[User Account]

**B User Account(s) Deleted Without Adequate Explanation or Documentation**

Ref. #	User Account
5	[User Account]

**C User Account(s) Added Without Adequate Explanation or Documentation**

Ref. #	User Account
6	[User Account]

**D Transactions Modified Without Adequate Explanation or Documentation**

Ref. #	User Account	Transaction Date	TelexFree Records	Amount of Adjustment	Amount Claimed
7	[User Account]	01/27/14	\$ (49.90)	\$ 49.90	\$ -
8	[User Account]	01/27/14	\$ (49.90)	\$ 49.90	\$ -

**E Transactions Added Without Adequate Explanation or Documentation**

Ref. #	User Account	Transaction Date	Transaction Amount
9	[User Account]	01/31/14	\$53,957.40

**F Additional Claim Components Added Without Adequate Explanation or Documentation**

Ref. #	Claim Amount	User Account	Participant Description
10	\$ 39,985.93	[User Account]	[Text of Participant Description]
11	\$ 43,400.00	[User Account]	[Text of Participant Description]
12	\$ 2,734.90	[User Account]	[Text of Participant Description]

**G Damages Not Included in Net Equity**

Ref. #	
13	[Trustee description of basis for proposed disallowance]

Note: Supporting explanations and documentation must identify the reference number (Ref. #) of the related item.

**EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

In Re:

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

Debtors.

Chapter 11

Case No. 14-40987-MSH  
Case No. 14-40988-MSH  
Case No. 14-40989-MSH

Jointly Administered

NOTICE OF CLAIM ALLOWANCE

In accordance with the order ("Order") dated \_\_\_\_\_ approving the *Motion by Chapter 11 Trustee to Establish Omnibus Procedures for the Resolution of Disputed Participant Claims*, Stephen B. Darr, the duly appointed Chapter 11 trustee (the "Trustee") of the bankruptcy estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors" or "TelexFree"), transmitted Notices of Proposed Claims Allowance to the Participants set forth on Exhibit "A" hereto (the "Exhibit A Participants"). The Exhibit A Participants did not file Claim Responses to the Notices of Proposed Claims Allowance within thirty (30) days as required by the terms of the Order.

The Exhibit A Participant claims shall be allowed in the amounts set forth on Exhibit A without further order or notice unless, within fourteen (14) days of the date hereof, an Exhibit A Participant files with the Court and serves on the Trustee a Claim Response disputing the proposed claim amount and demonstrating good cause for failure to timely respond to the Notice of Proposed Claim Allowance.

Respectfully Submitted,  
STEPHEN B. DARR,  
CHAPTER 11 TRUSTEE,  
By his counsel,

Andrew G. Lizotte (BBO #559609)  
MURPHY & KING, P.C.  
One Beacon Street  
Boston, MA 02108-3107  
Telephone: (617) 423-0400  
Facsimile: (617) 423-0498  
[ALizotte@murphyking.com](mailto:ALizotte@murphyking.com)

Dated: \_\_\_\_\_  
733745

**EXHIBIT C**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

In Re:

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

Debtors.

Chapter 11

Case No. 14-40987-MSH

Case No. 14-40988-MSH

Case No. 14-40989-MSH

Jointly Administered

AFFIDAVIT OF CLAIM ALLOWANCE

I, Stephen B. Darr, hereby submit the following Affidavit of Claim Allowance in accordance with the order ("Order") dated \_\_\_\_\_ approving the *Motion by Chapter 11 Trustee to Establish Omnibus Procedures for the Resolution of Disputed Participant Claims*.

1. I am the duly appointed Chapter 11 trustee (the "Trustee") in these cases, having been appointed by order of the Court dated June 6, 2014.

2. On \_\_\_\_\_, I served Notices of Proposed Claims Allowance upon the Participants identified on Exhibit "A" hereto (the "Exhibit A Participants") in accordance with the Order.

3. The Exhibit A Participants filed timely Claim Responses to the Proposed Claims Allowance.

4. The Exhibit A Participants and I were able to reach a consensual resolution of the claim asserted by the respective Participants.

5. The amounts set forth on Exhibit A hereto constitute the agreed to allowed claims of each of the respective Exhibit A Participants, without further notice or order of the Court, all in accordance with the Order.

I attest that, to the best of my knowledge, the foregoing is true and accurate.

Dated: \_\_\_\_\_

Stephen B. Darr  
Chapter 11 Trustee

733749

**EXHIBIT D**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

In Re:

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

Debtors.

Chapter 11

Case No. 14-40987-MSH  
Case No. 14-40988-MSH  
Case No. 14-40989-MSH

Jointly Administered

**NOTICE OF DEADLINE FOR PARTICIPANTS FILING STANDARD  
CLAIMS TO FILE A PARTICIPANT CLAIM**

*THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.*

Dear Participant:

You are receiving this Notice because you used an incorrect form when you filed a claim in the TelexFree bankruptcy cases with the electronic claims portal (the "Portal") hosted by the internet site [telexfreeclaims.com](http://telexfreeclaims.com). When completing your claim, you used the form that is to be used by creditors of TelexFree who were not Participants (such as vendors, utility providers, or governmental entities). In order to have your claim considered, you must file a Participant Claim.

Please be advised that you have until \_\_\_\_\_ to complete and file a Participant Claim on the [telexfreeclaims.com](http://telexfreeclaims.com) website. If you fail to do so, your claim will be disallowed without further notice or order of the Court.

Participants must file the electronic proof of claim specifically designated for Participants (the "Participant ePOC") through the Portal. The Participant ePOC can be accessed by clicking the orange "File a Participant ePOC" button on the upper right hand side of the "Welcome" screen on the Portal. Detailed instructions for completing the Participant ePOC are included in the Portal.

If, at the conclusion of this process, you have an allowed Participant Claim, you will be notified at the appropriate time when funds are available for distribution.

STEPHEN B. DARR,  
CHAPTER 11 TRUSTEE,  
By his counsel,

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Andrew G. Lizotte (BBO #559609)  
MURPHY & KING, P.C.  
One Beacon Street  
Boston, MA 02108-3107  
Telephone: (617) 423-0400  
Facsimile: (617) 423-0498  
[ALizotte@murphyking.com](mailto:ALizotte@murphyking.com)

Dated: \_\_\_\_\_, 2017  
733838

**EXHIBIT E**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

**In Re:**

**TELEXFREE, LLC ,  
TELEXFREE, INC.,  
TELEXFREE FINANCIAL, INC.,**

**Debtors.**

**Chapter 11**

**Case No. 14-40987-MSH**

**Case No. 14-40988-MSH**

**Case No. 14-40989-MSH**

**Jointly Administered**

**ORDER APPROVING MOTION BY CHAPTER 11 TRUSTEE TO ESTABLISH  
OMNIBUS PROCEDURES FOR THE RESOLUTION OF  
DISPUTED PARTICIPANT CLAIMS**

A hearing having been held on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ on the Motion by Stephen B. Darr, the duly appointed Chapter 11 Trustee (the "Trustee") of the bankruptcy estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors" or "TelexFree" to Establish Omnibus Procedures for the Resolution of Disputed Participant Claims (the "Motion"), and notice of the Motion having been given to all parties in interest in accordance with the order of the Court,

**THE COURT HEREBY FINDS THAT:**

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

B. Service of the Motion was appropriate.

C. The establishment of the claims procedures will expedite the administration of the Debtors' estates and is in the best interest of creditors and parties in interest.

**NOW THEREFORE**, taking into consideration the foregoing findings and all of the evidence before the Court, it is **HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

1. The Motion is hereby GRANTED.

**I. Proposed Claim Allowance.**

2. The Trustee is authorized to send Participants<sup>1</sup> a Proposed Claim Allowance substantially in the form annexed as Exhibit "A" to the Motion.

3. Participants shall have thirty (30) days from the date of receipt of the Proposed Claim Allowance to file a response ("Claim Response") to the Proposed Claim Allowance. The Claim Response to a Proposed Claim Allowance shall be delivered to the Trustee but not filed with the Court.

4. If a Participant fails to file a timely Claim Response, the Trustee shall be authorized to file a Notice of Claim Allowance ("Notice"), substantially in the form annexed as Exhibit "B" to the Motion, that will constitute the Participant's allowed claim, unless the Participant files a response within fourteen (14) days of the filing of the Notice and demonstrates good cause for failure to timely file a Claim Response.

5. If a Participant files a timely Claim Response to the Proposed Claim Allowance and the Trustee is unable to resolve the claim dispute with the Participant, the Trustee may file an objection to the claim with the Court, which shall comport with the omnibus claims procedures set forth in Section II below.

6. If a Participant files a timely Claim Response to the Proposed Claim Allowance and the Trustee is able to reach a consensual resolution of the claim with the affected Participant, the Trustee shall file with the Court an Affidavit of Claim Allowance (an "Affidavit"),

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<sup>1</sup> Terms not otherwise defined herein shall have the meanings ascribed in the Motion.

substantially in the form annexed as Exhibit "C" to the Motion, which shall establish the allowed amount of the Participant Claim without further notice or order.

## **II. Omnibus Objections to Claims**

7. In connection with the filing of any omnibus objections to Participant claims, in addition to the list of common objections set forth in FRBP 3007(d), the Trustee shall be authorized to include within the objections that the Claim does not comport with the Net Equity calculation for one or more of the following reasons:

- a. Multiple Participants claimed ownership of one or more of the same User Accounts;
- b. Participants deleted User Accounts associated with them by the Debtors' records without adequate explanation or documentation;
- c. Participants added User Accounts that were not associated with them by the Debtors' records without adequate explanation or documentation;
- d. Participants added or deleted a transaction or adjusted a transaction amount in a User Account without adequate explanation or documentation;
- e. Participants adjusted the amount of their claim based on transactions not consistent with the Net Equity formula, without adequate explanation or documentation;
- f. Participants asserted claims in foreign currencies or asserted punitive claims or other claims that do not qualify for allowance under the Net Equity formulation approved by the Court; and
- g. The claims are objectionable under Sections 502(d) of the Bankruptcy Code.

8. The Trustee shall be authorized to categorize Participant claims based upon the Participant's country of origin. The maximum number of Participant claims permitted in each omnibus objection shall be 250.

9. Claim Responses to omnibus objections to claims shall be filed with the Court and served upon the Trustee and Trustee's counsel.

### **III. Electronic Noticing**

10. The Trustee shall be authorized to serve the Proposed Claims Allowance and objections to claims on Participants by electronic mail using the electronic mail address provided by Participants in their Claim.

11. The Trustee shall be authorized to provide customized notices to Participants, in lieu of attaching complete exhibits to an omnibus objection, where the use of such customized notices will, in the Trustee's judgment, provide superior notice to Participants and/or cost savings to the Debtors' estates

### **IV. Service of Proposed Claim Allowance, objections to claims, and Claim Response.**

12. The Trustee shall serve the Proposed Claim Allowance and omnibus objections to claims upon Participants in English, Spanish, and Portuguese.

13. If any Claim Response is sent to the Trustee in a foreign language, the Participant shall accompany the Claim Response with a certified translation into English prepared by an interpreter certified by the Administrative Office of the United States Courts.

14. All pleadings and notices filed with the Court, if sent in a foreign language, shall be accompanied by a certified translation into English prepared by an interpreter certified by the Administrative Office of the United States Courts, pursuant to the prior order of the Court.

### **V. Resolution of Participant Claims filed using Standard Claim Form.**

15. The Trustee shall be authorized to send Participants a Notice substantially in the form annexed as Exhibit "D" to the Motion directing Participants who filed a Standard Claim form to file a Participant Claim form within thirty (30) days of the date of the Notice, failing which the Participant's claim shall be disallowed without further Court order.

**VI. Closure of the Portal**

16. The Trustee shall be authorized to terminate access to the Portal at any time after the expiration of forty-five (45) days from the date of this Order.

**VII. Miscellaneous**

17. In connection with sending Proposed Claims Allowances and omnibus objections to claims, if a Participant did not identify their name in the "Name" column of their Claim, the Trustee may use the name indicated in the "Signature" column of the Claim form. If a Participant listed a name in a format other than the Latin alphabet, the Trustee may rely solely upon the Participant Claim number in communications with Participants and filings with the Court.

18. The foregoing Procedures shall apply with respect to the determination of Participant Claims. The Trustee reserves all rights with respect to the procedures to be established and implemented in connection with the resolution of Claims other than Participants.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
The Honorable Melvin S. Hoffman  
United States Bankruptcy Judge

733750



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

In Re:

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

Debtors.

Chapter 11

Case No. 14-40987-MSH

Case No. 14-40988-MSH

Case No. 14-40989-MSH

Jointly Administered

CERTIFICATE OF SERVICE

I, Andrew G. Lizotte, hereby certify that I have this day caused to be served a copy of the *Motion by Chapter 11 Trustee to Establish Omnibus Procedures for the Resolution of Disputed Participant Claims* via operation of this Court's CM/ECF System, by electronic mail and/or by first class mail, postage prepaid to the attached service list as indicated.

/s/ Andrew G. Lizotte

Andrew G. Lizotte (BBO #559609)  
Murphy & King, Professional Corporation  
One Beacon Street  
Boston, MA 02108  
Telephone: (617) 423-0400  
Facsimile: (617) 423-0498  
Email: [ALizotte@murphyking.com](mailto:ALizotte@murphyking.com)

Dated: October 16, 2017  
734182

Telexfree, LLC  
Short Service List  
#670980

**BY ECF:**

- Charles R. Bennett   cbennett@murphyking.com,  
bankruptcy@murphyking.com;imccormack@murphyking.com
- Kendra Berardi   kberardi@rc.com, mjewell@rc.com
- Deena R. Bernstein   bernsteind@sec.gov, #brodocket@sec.gov
- Roger Bertling   roger@bertlinglaw.com, rbertlin@law.harvard.edu
- Robert J. Bonsignore   rbonsignore@class-actions.us, jnewlon@class-actions.us
- C. Elizabeth Brady Murillo   emurillo@burnslev.com
- Alan L. Braunstein   abraunstein@riemerlaw.com, ahall@riemerlaw.com
- Douglas Brooks   dbrooks@libbyhoopes.com
- Orestes G. Brown   obrown@metaxasbrown.com
- Evans J. Carter   ejcatty1@verizon.net
- Brian Casaceli   bcasaceli@mirickoconnell.com
- John Commisso   john.commisso@jacksonlewis.com,  
ann.macdonald@jacksonlewis.com
- Christopher M. Condon   cmc@murphyking.com, imccormack@murphyking.com
- Jonathan Crafts   jcrafts@dwyer-llc.com
- Gary W. Cruickshank   gwc@cruickshank-law.com
- Edward Dangel   tdangel@dangeldwyer-llc.com
- Ronald A. Dardeno   rdardeno@dardeno.com
- Joseph P. Davis   davisjo@gtlaw.com, ponsettoj@gtlaw.com
- Christine E. Devine   cdevine@mirickoconnell.com, bankrupt@mirickoconnell.com
- Adam K. Doerr   adoerr@rbh.com,  
akelly@robinsonbradshaw.com,fbarringer@robinsonbradshaw.com
- Martin B. Dropkin   nmatza@hotmail.com,  
nastor@dropkinmatza.com;mdropkin@dropkinmatza.com
- Daniel Dullea   scott@goldberganddullea.com
- Timothy J. Durken   tdurken@jagersmith.com,  
bankruptcy@jagersmith.com;tdurken@ecf.inforuptcy.com
- James P. Ehrhard   ehrhard@ehrhardslaw.com, cote@ehrhardslaw.com
- John C. Elstad   jelstad@verrilldana.com
- Kate P. Foley   kfoley@mirickoconnell.com
- Robert W. Fuller   rfuller@rbh.com
- Andrew J. Gallo   andrew.gallo@bingham.com, brian.katz@morganlewis.com
- Stuart M. Glass   sglass@choate.com
- Valentin D. Gurvits   vgurvits@bostonlawgroup.com
- William J. Hanlon   whanlon@seyfarth.com, bosdocket@seyfarth.com
- Carol E Head   carol.head@morganlewis.com
- Lawrence P. Heffernan   lheffernan@rc.com, kberardi@rc.com

- Nellie E Hestin nhestin@mcguirewoods.com,  
mkrizan@mcguirewoods.com; aauld@mcguirewoods.com; kdevyver@mcguirewoods.com
- Jonathan Horne jhorne@murthalaw.com
- Franklin C. Huntington huntingtonf@sec.gov
- Vernon C. Jolley jolleylaw@comcast.net
- Paul V. Kelly paul.kelly@jacksonlewis.com
- Nicholas R. Kennedy nkennedy@mcguirewoods.com,  
bsieg@mcguirewoods.com; khosmer@mcguirewoods.com
- Richard King USTPRegion01.WO.ECF@USDOJ.GOV
- Richard T. King richard.t.king@usdoj.gov
- Andrew G. Lizotte agl@murphyking.com,  
bankruptcy@murphyking.com; pas@murphyking.com; ddk@murphyking.com; agl@murphyking.com
- Danielle Andrews Long dlong@rc.com, jsantiago@rc.com
- Michael M. McArdle mike@mcardlelaw.com, morgan@mcardlelaw.com
- S. Elaine McChesney Elaine.mcchesney@bingham.com
- Wendy M. Mead wendymeadpc@verizon.net
- Harold B. Murphy bankruptcy@murphyking.com, ddk@murphyking.com
- Michael K. O'Neil moneil@murphyking.com, dkonusevska@murphyking.com
- F. Anthony Paganelli tony@paganelligroup.com
- Carmenelisa Perez-Kudzman carmenelisa@pklolaw.com, evan@pklolaw.com
- James Radke jradke@murthalaw.com, lmulvehill@murthalaw.com
- David P Reiner II dpr@reinerslaw.com, eservice@reinerslaw.com
- Ian D. Roffman iroffman@nutter.com,  
epleadings@nutter.com; cfeldman@nutter.com; kcannizzaro@nutter.com
- Ilyas J. Rona ijr@milliganrona.com, gnc@milliganrona.com
- Mark C. Rossi bostonian.ecf@gmail.com, Esher.RossiECF2@gmail.com
- Paul S. Samson psamson@riemerlaw.com, ahall@riemerlaw.com
- Kenneth I. Schacter kenneth.schacter@bingham.com
- Hilary Schultz hschultz@engelschultz.com
- Ari M. Selman ari.selman@bingham.com
- Jordan L. Shapiro JSLAWMA@aol.com
- Matthew Shayefar matt@bostonlawgroup.com
- Monica Snyder msnyder@murthalaw.com, jbabula@murthalaw.com
- Lisa D. Tingue lisa.d.tingue@usdoj.gov
- Joseph Toomey jtoomey@nutter.com
- Thomas S. Vangel tvangel@murthalaw.com
- Sarah W. Walsh sarah.walsh@jacksonlewis.com
- Elton Watkins watkinslaw@comcast.net
- Jason C. Weida jweida@jonesday.com

**By Electronic Mail: Top 30**

Joselia Sangali	<a href="mailto:jozelia_miriam@hotmail.com">jozelia_miriam@hotmail.com</a>
Leonardo Francisco	<a href="mailto:leocaul@hotmail.com">leocaul@hotmail.com</a>
DL1, Inc.	<a href="mailto:davidbeebea@gmail.com">davidbeebea@gmail.com</a>
Renato Alves	<a href="mailto:renato.alves.88@hotmail.com">renato.alves.88@hotmail.com</a>
Benjamin Argueta	<a href="mailto:benjamin_Gauchao@yahoo.com">benjamin_Gauchao@yahoo.com</a>
Marco Almeida	<a href="mailto:marcobrum53@hotmail.com">marcobrum53@hotmail.com</a>
JMC, Inc.	<a href="mailto:marcosclubflorida@gmail.com">marcosclubflorida@gmail.com</a>
Edwin H.M Lima	<a href="mailto:aldemar.neto@ac.gov.br">aldemar.neto@ac.gov.br</a>
David Martinez	<a href="mailto:dmj500@charter.net">dmj500@charter.net</a>
Paola Zollo Alecci	<a href="mailto:paolazollo3@gmail.com">paolazollo3@gmail.com</a>
Robert Bourguignon	<a href="mailto:flavioarraz@gmail.com">flavioarraz@gmail.com</a>
Carla Peres	<a href="mailto:carlagperes@outlook.com">carlagperes@outlook.com</a>
Pedro Taveras	<a href="mailto:ptc59@hotmail.com">ptc59@hotmail.com</a>
Nathana Santos Reis	<a href="mailto:nathanasreis@gmail.com">nathanasreis@gmail.com</a>
Jose Anominondas	<a href="mailto:wjempreendimentos@icloud.com">wjempreendimentos@icloud.com</a>
Vagner Roza	<a href="mailto:vagnerflamengo2009@hotmail.com">vagnerflamengo2009@hotmail.com</a>
Norberto Rey	<a href="mailto:reytrucking@yahoo.com">reytrucking@yahoo.com</a>
Jose Carlos Maciel	<a href="mailto:jcmkkgb@hotmail.com">jcmkkgb@hotmail.com</a>
Bruno Graziani	<a href="mailto:graziani8926@gmail.com">graziani8926@gmail.com</a>
Renato Ribeiro	<a href="mailto:renatousa05@gmail.com">renatousa05@gmail.com</a>
Marcelino Salazar Bacilio	<a href="mailto:marcelino@sb@outlook.com">marcelino@sb@outlook.com</a>
Edison O.J. Aleman	<a href="mailto:oswaldojuradoaleman@gmail.com">oswaldojuradoaleman@gmail.com</a>
Roman Mishuk	<a href="mailto:mishuknew@gmail.com">mishuknew@gmail.com</a>
Rosa M.C. Souto	<a href="mailto:telexfree.r@hotmail.com">telexfree.r@hotmail.com</a>
Du Painting	<a href="mailto:edpnegocios@hotmail.com">edpnegocios@hotmail.com</a>
Graca Luisa Andrade	<a href="mailto:projectosfx@gmail.com">projectosfx@gmail.com</a>
Paulo Francisco da Silva	<a href="mailto:avpaulo_207@hotmail.com">avpaulo_207@hotmail.com</a>
Leone da Silva Santos	<a href="mailto:araujommn@gmail.com">araujommn@gmail.com</a>
David Fine, Esq.	<a href="mailto:dfine@kslaw.com">dfine@kslaw.com</a>
Craig Dunlap, Esq.	<a href="mailto:cdunlap@fclaw.com">cdunlap@fclaw.com</a> , <a href="mailto:tnealon@fclaw.com">tnealon@fclaw.com</a>
Opt3 Solutions, Inc.	<a href="mailto:infor@opt3.com">infor@opt3.com</a>

**BY ELECTRONIC MAIL: APPEARANCES**

Ihuoma Igboanugo (for Maduako C. Ferguson, Sr. et al)  
The Crescent Law Practice  
P.O. Box 41333  
Raleigh, NC 27692  
919-389-6963  
[thecrescentlaw@gmail.com](mailto:thecrescentlaw@gmail.com)

Timothy S. Cory (for Ismail Karatekin) and (for Leonardo Barros Pereira)  
Durham Jones & Pinegar  
10785 W. Twain Ave., Ste 200  
Las Vegas, NV 89135  
(702) 870-6060  
(702) 870-6090 (fax)  
[tcory@djplaw.com](mailto:tcory@djplaw.com)

Jonathan Horne (for Opt3 Solutions, Inc.)  
Jager Smith P.C.  
One Financial Center 4th Fl.  
Boston, MA 02111  
617.951.0500  
[jhorne@jagersmith.com](mailto:jhorne@jagersmith.com)

Douglas Brooks (for Propay, Inc.)  
LibbyHoopes  
399 Boylston Street  
Boston, MA 02116  
617-338-9300  
[dbrooks@libbyhoopes.com](mailto:dbrooks@libbyhoopes.com)

William Baldiga, Esq. (for Plaintiffs' Interim Executive Committee)  
Jill C. Wexler, Esq.  
Kellie Fisher, Esq.  
Brown Rudnick  
One Financial Center  
Boston MA 02111  
[wbaldiga@brownrudnick.com](mailto:wbaldiga@brownrudnick.com)  
[jwexler@brownrudnick.com](mailto:jwexler@brownrudnick.com)  
[kfisher@brownrudnick.com](mailto:kfisher@brownrudnick.com)

D. Michael Noonan, Esq. (for Plaintiffs' Interim Executive Committee)  
Shaheen & Gordon PA  
140 Washington Street  
Dover NH 03821  
[mnoonan@shaheengordon.com](mailto:mnoonan@shaheengordon.com)

R. Alexander Saveri, Esq. (for Plaintiffs' Interim Executive Committee)  
Saveri & Saveri, Inc.  
706 Sansome St.  
San Francisco CA 94111  
[rick@saveri.com](mailto:rick@saveri.com)

William L. Coulthard, Esq. (for Plaintiffs' Interim Executive Committee)  
Kemp Jones & Coulthard, LLP  
Wells Fargo Tower  
3800 Howard Hughes Parkway  
17<sup>th</sup> Floor  
Las Vegas NV 89169  
[w.coulthard@kempjones.com](mailto:w.coulthard@kempjones.com)

Neil Gallagher  
USAMA  
[Neil.Gallagher@usdoj.gov](mailto:Neil.Gallagher@usdoj.gov)

Cory Flashner  
USAMA  
[Cory.Flashner@usdoj.gov](mailto:Cory.Flashner@usdoj.gov)

BY FIRST CLASS MAIL: APPEARANCES

Stephen Darr  
Huron Consulting Services, LLC  
100 High Street, 23<sup>rd</sup> Floor  
Boston MA 02110

Maria J. Diconza, Esq., Nancy A. Mitchell, Esq.  
& Matthew Hinker, Esq.  
Greenberg Traurig, LLP  
Metlife Building  
200 Park Ave  
New York, NY 10166

Richard F. Holley, Esq.  
400 S. Fourth St., 3rd Floor  
Las Vegas, NV 89101

Thomas H. Fell, Esq., Gregory Garman, Esq.  
Gordon Silver  
3960 Howard Hughes Pky, 9th Flr  
Las Vegas, NV 89169

Sandra W. Lavigna  
U. S. Securities And Exchange Comm.  
5670 Wilshire Blvd, 11th Flr  
Los Angeles, CA 90036

Evan J. Gershbein & Drake D. Foster  
Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, CA 90245

David L. Neale, Esq.  
Levene, Neale, Bender, Yoo & Brill LLP  
10250 Constellation Blvd., Suite 1700  
Los Angeles, Ca 90067

Teresa M. Pilatowicz, Esq., Mark M. Weisenmiller, Esq.  
Gordon Silver, Ltd.  
3960 Howard Hughes Pkwy, 9th Flr  
Las Vegas, NV 89169

Securities and Exchange Commission  
Boston District Office  
33 Arch Street, 23<sup>rd</sup> Floor  
Boston MA 02110

Roger W Wenthe  
United States Attorney  
333 Las Vegas Blvd So, #5000  
Las Vegas, Nv 89101

Carmen Milagros Ortiz  
United States Attorney  
U.S. Courthouse, Suite 9200  
One Courthouse Way  
Boston MA 02210

Internal Revenue Service  
Special Procedures Function  
STOP 2080, P.O. Box 9112  
25 New Sudbury St., JFK Federal Bldg.  
Boston MA 02203

Commonwealth of Massachusetts  
Division of Unemployment Assistance  
Executive Office of Labor & Workplace Develop.  
19 Staniford St., Hurley Bldg.  
Boston MA 02114

Securities and Exchange Commission  
100 F Street, N.E.  
Washington DC 20549

Loretta E. Lynch  
Attorney General of The United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington DC 2053-0001

Commonwealth of Mass/DOR  
Bankruptcy Unit, P.O. Box 9564  
100 Cambridge Street, 7<sup>th</sup> floor  
Boston MA 02114-9564

Massachusetts Department of Revenue  
Bankruptcy Unit  
PO Box 9564  
Boston, MA 02114-9564

Office of the Attorney General  
Commonwealth of MA  
Consumer Protection Division  
One Ashburton Place, 19<sup>th</sup> Floor  
Boston MA 02108

William H. Runge, III  
Alvarez & Marshal North America, LLC  
Monarch Tower,  
3424 Peachtree Road, NE, #1500  
Atlanta GA 30326

Internal Revenue Service  
PO Box 21126  
Philadelphia PA 19114

Internal Revenue Service  
Centralized Insolvency Operation  
PO Box 7346  
Philadelphia PA 19101-7346

Daniel M. Feigenbaum, Esq.  
Deputy General Counsel  
Alvarez & Marshal Holdings, LLC  
600 Madison Avenue  
New York, NY 10022

Internal Revenue Service  
500 N. Capital St., NW  
Washington DC 20221

Internal Revenue Service  
Centralized Insolvency Operation  
2970 Market Street  
Philadelphia PA 19104

Massachusetts Securities Division  
William Neelon, Esq.  
Enforcement Section  
One Ashburton Place, Room 1701  
Boston MA 02108

Stuart MacMillan  
Chairman and Managing Partner  
Impact This Day, Inc.  
126 3<sup>rd</sup> Avenue North, Suite 206  
Safety Harbor, FL 34695

Joele Frank  
Wilkinson Brimmer Katcher  
622 Third Avenue, 36<sup>th</sup> Floor  
New York, NY 10017

Lee A Armstrong, Esq.  
222 E. 41st Street  
New York, NY 10017

The Sheffield Group  
2239 N. Hayden Road  
Suite 103  
Scottsdale AZ 85257

Lane Powell  
601 S.W. Second Avenue  
Suite 2100  
Portland OR 97204



Telecom Logic, LLC  
818 SW 3<sup>rd</sup> Avenue  
Suite 137  
Portland OR 97204

Legal Services Center  
Roger Berling  
122 Boylston Street  
Jamaica Plain, MA 02130

Cotton Driggs Walch Holley Woloson & Thompson  
Richard Holley Ogonna Atamoh  
400 S. 4<sup>th</sup> Street, 3<sup>rd</sup> floor  
Las Vegas, NV 89101

Rodman, Rodman & Sandman  
Richard Sandman  
442 main Street, Suite 300  
Malden MA 02148

Lee M Pollack  
Law Firm of Jones Day  
222 E. 41st Street  
New York, NY 10017

Babener & Associates  
121 SW Morrison, Suite 1020  
Portland OR 97204

Telexfree  
Stuart MacMillan  
225 Cedar Hill St., Suite 200  
Marlborough MA 01752

Richard W. Waak  
11300 East Shore Drive  
Delton MI 49046

Gerald P. Nehra  
1710 Beach Street  
Muskegon MI 49441-1008

PayPal Worldwide Operations  
12312 Port Grace Blvd  
La Vista Nebraska 68128

PayPal Corporate Headquarters  
2211 North First Street  
San Jose, CA 95131

International Payout Systems Inc.  
2500 E. Hallandale Beach Blvd.  
Suite 800  
Hallandale Beach FL 33009

Global Payroll Gateway, Inc.  
18662 MacArthur Blvd.  
Suite 200  
Irvine CA 92612

Argus Payments Inc.  
220 Humboldt Court  
Sunnyvale CA 94089

ProPay Inc.  
3400 N. Ashton Blvd.  
Suite 200  
Lehi, UT 84043

Allied Wallet  
1 Northcumberland Avenue  
Trafalgar Square  
LONDON, WC2N 5BW  
UNITED KINGDOM

Allied Wallet  
9000 W. Sunset Blvd, #820  
West Hollywood CA 90069

Garvey Schubert Barer  
100 Wall Street  
20<sup>th</sup> fl  
New York, NY 10005-3708

Garvey Schubert Barer  
Bank of America Financial Center  
121 SW Morrison Street, 11<sup>th</sup> floor  
Portland OR 97204-3141

Lane Powell Prof. Corporation  
301 West Northern Lights Blvd.  
Suite 301  
Anchorage AK 99503

Garvey Schubert Barer  
Flour Mill Building  
1000 Potomac Street, NW, 5<sup>th</sup> Floor  
Washington DC 20007-3501

Andrea L. Marconi, Esq.  
Fennemore Craig, P.C.  
3003 N Central Ave  
Suite 2600  
Phoenix, AZ 85012

Lane Powell Prof. Corporation  
1420 Fifth Avenue, Suite 4200  
PO Box 91302  
Seattle WA 98111

David Meadows, Esq. & Phyllis B. Sumner, Esq.  
King & Spauling, LLP  
1180 Peachtree Street  
Atlanta GA 30309-3521

Opt3 Solutions, Inc.  
15642 Sand Canyon Avenue, #52255  
Irvine CA 92619-2255

Ronald P. Passatempo, Esq.  
Law Offices of Ronald P. Passatempo  
200 Broadway, Suite 102  
Lynnfield MA 01940

Elizabeth Mueller, Esq., D. Scott Carlton, Esq.  
& Thomas Zaccaro, Esq.  
Law Firm of Paul Hastings, LLP  
515 S. Flower Street  
Los Angeles, CA 90071

Edward F. Manzi, Jr.  
Fidelity CoOperative bank  
675 Main Street  
Fitchburg, MA 01420

Ciao Telecomm, Inc.  
8390 LBJ Freeway  
Dallas, TX 75243

TD Bank  
185 Franklin Street  
Boston MA 02110

Impact This Day Inc.  
c/o Debra L. Squier  
506 Roxbury Drive  
Safety Harbor, FL 34695

J.P. Morgan Chase, N.A.  
c/o CT Corporation System  
155 Federal Street, Suite 700  
Boston, MA 02110

Robert M. Goldstein, Esq.  
20 Park Plaza  
Suite 2000  
Boston MA 02116

Digital Federal Credit Union  
853 Donald Lynch Blvd.  
Marlborough MA 01752

Bank of America, N.A.  
100 Federal Street  
Boston MA 02110

Santander Bank  
75 State Street  
Boston MA 02109

Citizens Bank  
28 State Street  
Boston MA 02109

Bertin C. Emmons, Esq.  
Sovereign Bank  
75 State Street, 4<sup>th</sup> floor  
Boston MA 02109

Oriental Bank  
Old San Juan Branch  
204 Tetuan Street  
San Juan, PR 00901

Michael S. Held, Esq. & Lawrence Waks, Esq.  
Jackson Walker LLP  
901 Main Street, Suite 6000  
Dallas TX 75202

Wells Fargo Bank, N.A.  
c/o Corporation Service Co.  
84 State Street  
Boston MA 02109

Joseph R. Middleton, Esq.  
KPMG, LLP  
60 South Street  
Boston MA 02111

Nicholas R. Kennedy, Esq.  
McGuireWoods, LLP  
One James Center  
901 East Cary St.  
Richmond, VA 23219

Timothy Martin  
Huron Consulting Services LLC  
100 High Street, 23<sup>rd</sup> Floor  
Boston MA 02110

Juanita F. Garza  
KPMG LLP  
811 Main Street  
Houston TX 77002

Miranda L. Hughes, Esq.  
Brown, Winick, Graves, Gross,  
Baskerville, & Schoenebaum P.L.C.  
666 Grand Avenue, Suite 2000 Ruan Center  
Des Moines, IA 50309

Andrew Lelling, Esq.  
United States Attorney  
U.S. Courthouse, Suite 9200  
One Courthouse Way  
Boston MA 02210

Mary Murrane, Esq.  
United States Attorney  
U.S. Courthouse, Suite 9200  
One Courthouse Way  
Boston MA 02210

Blue to Green Realty  
ATT: Kim Fatta  
500 S. Australian Avenue  
Suite 600  
West Palm Beach, FL 33401

Moecker Realty, Inc.  
ATT: Terry Keller  
1883 Marina Mile Blvd.  
Suite 106  
Fort Lauderdale, Florida 33315