

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

In re:

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

Debtors.

Chapter 11 Cases

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

Jointly Administered

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

Plaintiff,

Adversary Proceeding  
No. 16-04030-MSH

v.

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

Defendant(s).

**MOTION BY PLAINTIFF FOR ENTRY OF DEFAULT JUDGMENT**

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



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proposed *Judgment* has been submitted contemporaneously with this Motion. In further support of this Motion, the Plaintiff respectfully states as follows:

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

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

3. On or about May 6, 2014, the Nevada Bankruptcy Court entered an order approving a motion by the Securities and Exchange Commission (“SEC”) to change venue, and the cases were transferred to this Court on May 9, 2014.

4. 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.

5. On April 1, 2016, the Trustee commenced this action by filing the Complaint.

6. The Defendants did not submit a responsive pleading.

7. On September 9, 2016, the Trustee filed a Motion for Entry of Default, and on October 19, 2016, submitted an affidavit respecting service of the Complaint.

8. On November 17, 2016, the Court entered a Notice of Default as to the Defendants.

9. As set forth in the *Affidavit of Michael K. O’Neil in Support of Motion by Plaintiff for Entry of Default Judgment*, filed contemporaneously herewith, the Defendants are not infants or incompetent persons and, upon information and belief, are not currently in military service within the meaning of the *Servicemembers Civil Relief Act*, 50 U.S.C. § 521.

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

**WHEREFORE**, the Plaintiff respectfully requests that the Court enter judgment, substantially in the form submitted with this motion, as a final judgment in this adversary

proceeding against the Defendants and grant to the Plaintiff such other and further relief as this Court deems just and proper in the circumstances.

Respectfully Submitted,

STEPHEN DARR AS HE IS THE TRUSTEE OF  
THE CHAPTER 11 ESTATES OF TELEXFREE,  
LLC, TELEXFREE, INC., and TELEXREE  
FINANCIAL, INC.

By his attorneys,

/s/ Michael K. O'Neil

Andrew G. Lizotte (BBO #559609)

Michael K. O'Neil (BBO #685025)

Murphy & King, Professional Corporation

One Beacon Street

Boston, MA 02108

Telephone: (617) 423-0400

Facsimile: (617) 423-0498

[moneil@murphyking.com](mailto:moneil@murphyking.com)

DATED: September 12, 2018

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SILVIO MIRANDA, AND IVANILDA  
NASCIMENTO,

Defendant(s).

**AFFIDAVIT OF MICHAEL K. O'NEIL IN SUPPORT OF  
PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT**

I, Michael K. O'Neil, being duly sworn, depose and state that:

1. I am an attorney with the law firm of Murphy & King, Professional Corporation which is counsel to Stephen Darr, as he is the Chapter 11 Trustee (the "Trustee") of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (the "Debtors"). I am making this affidavit based upon my personal knowledge.

2. On April 1, 2016, the Trustee commenced this action by filing the Complaint [docket no. 1]. The Trustee also filed, simultaneously with the Complaint, a motion seeking ex parte relief regarding the form and manner of providing notice of the Complaint (the “Notice Motion”).

3. By order dated April 18, 2016, the Court allowed the Notice Motion.

4. I caused copies of the summons and Complaint to be served upon each of Leila Tatiana Xavier, Chris Araujo, Jorge Lopes, Enerstina Xavier, Atanazia Xavier, Vladmir Xavier, Neria Xavier, Jailson Ramos, Francisca Xavier-Depina, Silvio Miranda, and Ivanilda Nascimento (collectively the “Defendants”) whether (i) pursuant to Federal Rule of Bankruptcy Procedure 7004 or (ii) by Court authorization to serve by electronic mail pursuant to the order granting the Notice Motion.

5. The deadline for each of the Defendants to file an answer to the Complaint expired, and no responsive pleading has been filed.

6. On September 9, 2016, the Trustee filed a Motion for Entry of Default, and on October 19, 2016, submitted an affidavit respecting service of the Complaint.

7. On November 17, 2016, the Court entered a Notice of Default as to the Defendants.

8. The Defendants are not infants or incompetent persons and, upon information and belief, are not currently in the military service within the meaning of the *Servicemembers Civil Relief Act of 1940*, 50 U.S.C. App. § 520(1).

*Signed under the pains and penalties of perjury this 12<sup>th</sup> day of September, 2018.*

/s/ Michael K. O’Neil  
Michael K. O’Neil

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

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TELEXFREE, INC. and  
TELEXFREE FINANCIAL, INC.,

Debtors.

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

Plaintiff,

v.

LEILA TATIANA XAVIER, CHRIS  
ARAUJO, JORGE LOPES, ENERSTINA  
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**JUDGMENT**

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

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

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

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

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

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

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

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

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

**UNITED STATES BANKRUPTCY COURT  
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SILVIO MIRANDA, AND IVANILDA  
NASCIMENTO,

Defendant(s).

**CERTIFICATE OF SERVICE**

I, Michael K. O'Neil, hereby certify that on September 12, 2018, I caused copies of the following documents to be served through the ECF system upon the registered participants as identified on the Notice of Electronic Filing, and by first-class mail and/or electronic mail upon the parties as indicated on the annexed service list:

- *Motion by Plaintiff for Entry Of Default Judgment;*
- *[Proposed] Judgment;* and
- *Affidavit Of Michael K. O'Neil in Support of Plaintiff's Motion for Entry of Default Judgment.*



/s/ Michael K. O'Neil

Michael K. O'Neil (BBO #685025)  
Murphy & King Professional Corporation  
One Beacon Street, 21st Floor  
Boston, Massachusetts 02108-3107  
Telephone: (617) 423-0400  
Facsimile: (617) 423-0498  
[moneil@murphyking.com](mailto:moneil@murphyking.com)

Dated: September 12, 2018

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In re Telexfree, LLC, et al.  
Chapter 11, Case No. 14-40987-MSH  
Stephen Darr v. Leila Tatiana Xavier, et al.  
Adversary Proceeding No. 16-04030  
714522

**BY FIRST CLASS MAIL:**

Leila Tatiana Xavier  
2311 TOPAZ TRL  
KISSIMMEE, FL 34743

Leila Tatiana Xavier  
4118 Vista Lago Circle, Apt. 308  
Kissimmee, FL 34741

Chris Araujo  
30 VASSAR ST  
DORCHESTER, MA 02121-2128

Chris Araujo  
P.O. BOX 421295  
KISSIMMEE, FL 34742

Jorge Lopes  
2703 Eagle Creek Court  
Kissimmee FL 34741-0743

Enerstina Xavier  
12 MARIE ST. APT.2  
BOSTON, MA 02122

Atanazia Xavier  
25 FLORENCE STREET APT 1  
BROCKTON, MA 02301

Vladmir Xavier  
30 VASSAR ST  
DORCHESTER, MA 02121

Neria Xavier  
6 BRINSLEY ST  
DORCHESTER, MA 02121

Jailson Ramos  
35 HARTWELL ST  
DORCHESTER, MA 02121

Francisca Xavier-Depina  
12 MARIE ST.  
BOSTON, MA 02122

Silvio Miranda  
3005 MARTA CIR., APT 101  
KISSIMMEE, FL 34741-0744

Ivanilda Nascimento  
25 FLORENCE STREET APT 1  
BROCKTON, MA 02301

**BY EMAIL:**

Leila Tatiana Xavier  
[XAVIERTATIANA@YAHOO.COM](mailto:XAVIERTATIANA@YAHOO.COM)

Chris Araujo  
[XAVIERTATIANA@YAHOO.COM](mailto:XAVIERTATIANA@YAHOO.COM)

Jorge Lopes  
[djodjolopes@yahoo.com](mailto:djodjolopes@yahoo.com)

Enerstina Xavier  
[xaviertatiana@yahoo.com](mailto:xaviertatiana@yahoo.com)

Francisca Xavier-Depina  
[fxavier212@gmail.com](mailto:fxavier212@gmail.com)

Silvio Miranda  
[laurinda\\_xavier@wgresorts.com](mailto:laurinda_xavier@wgresorts.com)

Ivanilda Nascimento  
[tanytety@yahoo.com](mailto:tanytety@yahoo.com)  
[inascimento@student.bridgew.edu](mailto:inascimento@student.bridgew.edu)