Docket #1039 Date Filed: 11/05/2018

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 B. DARR AS HE IS TRUSTEE OF THE CHAPTER 11 ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Plaintiff, v. CARLOS WANZELER, ET AL, Defendant(s).	Adversary Proceeding No.16-4032
STEPHEN B. DARR AS HE IS TRUSTEE OF THE CHAPTER 11 ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Plaintiff, v. BENJAMIN ARGUETA, ET AL Defendant(s).	Adversary Proceeding No.16-4006

MOTION BY TRUSTEE TO APPROVE STIPULATION OF SETTLEMENT AMONG UNITED STATES OF AMERICA, CHAPTER 11 TRUSTEE AND FABIO WANZELER AND CLAUDIA WANZELER

Stephen Darr, the duly appointed Chapter 11 Trustee (the "Chapter 11 Trustee") of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. ("TelexFree" or the "Debtors"),

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respectfully requests that the Court approve the stipulation ("Stipulation") attached hereto by and among the United States of America ("United States"), the Chapter 11 Trustee and Fabio Wanzeler ("Fabio") and his wife Claudia Wanzeler ("Claudia" and, collectively, the "Wanzelers"), pursuant to Federal Rule of Bankruptcy Procedure 9019. The Stipulation is anticipated to generate a substantial recovery for the TelexFree estates, will resolve disputes with respect to assets subject to forfeiture proceedings commenced by the United States, and will settle estate claims against substantial participants in the TelexFree scheme. In support of this motion, the Chapter 11 Trustee states as follows:

BACKGROUND

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

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

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

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

5. On November 25, 2015, the Court, on motion by the Chapter 11 Trustee and after notice, entered an Order, as amended on December 21, 2015, finding that the Debtors were engaged in a Ponzi scheme and that this ruling was the law of the case in each of the jointly administered cases.

6. On January 26, 2016, the Court entered an order approving a process for the determination of Participant claims based upon their involvement in the TelexFree scheme. The order approved the use of the "Net Equity" formula in determining a Participant's claim against the estates. Specifically, in determining whether a Participant was a Net Winner or Net Loser, the Court would consider amounts invested by a Participant, including amounts invested pursuant to Triangular Transactions,[1] less amounts received by the Participant from involvement in the scheme, including amounts received through Triangular Transactions.

I. The Wanzelers' Involvement in TelexFree

7. The Wanzelers were promoters of TelexFree. According to the Debtors' records of Participant activity that was reconstructed by the Chapter 11 Trustee, Fabio was a Net Winner in the aggregate amount of $633,578 on account of both direct transactions with TelexFree and Triangular Transactions. Claudia was a net loser in the amount of approximately $7,000.

II. Trustee Litigation

8. Fabio is the subject of two separate actions brought by the Chapter 11 Trustee (the "Adversary Proceedings").

[1] "Triangular Transactions" refer generally to transactions where a Participant purchased a TelexFree membership plan or phone package from the Debtors and paid the associated fee to the recruiting Participant, rather than directly to the Debtors, and the recruiting Participant satisfied the new recruit's invoice through the application of accumulated credits "earned" from involvement in the TelexFree program.

9. Fabio is an unnamed defendant in the domestic class action suit, adversary proceeding number 16-4006, in which the Chapter 11 Trustee seeks the recovery of fraudulent and preferential transfers from all Net Winners located within the United States (the "Domestic Class Action"). The defendant class has been certified and class counsel has been retained.

10. Fabio is one of many named defendants in adversary proceeding number 16-4032 (the "4032 Action"), which seeks recovery from Fabio for fraudulent transfers and related claims in furtherance of the TelexFree scheme. This action had been stayed because of the pendency of the criminal proceedings against the Debtors' principals.

III. District Court Litigation

11. On September 8, 2016, a federal grand jury sitting in the District of Massachusetts returned a seventeen-count First Superseding Indictment charging James Merrill and Carlos Wanzeler, with Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 1349 (Count One); Wire Fraud, in violation of 18 U.S.C. § 1343 (Counts Two through Nine); and Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity, in violation of 18 U.S.C. §§ 1957(a) and 2 (Counts Ten through Seventeen).

12. The First Superseding Indictment contained a Forfeiture Allegation, which gave notice that the United States sought forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), upon conviction of one or more of the offenses charged in Counts One through Nine of the First Superseding Indictment, of any property, real or personal, that constitutes, or is derived from, proceeds traceable to the commission of the offenses.

13. In addition, the First Superseding Indictment contained a Money Laundering Forfeiture Allegation, which gave notice that the United States sought forfeiture, pursuant to 18 U.S.C. § 982(a)(1), upon conviction of one or more of the offenses alleged in Counts Ten

through Seventeen of the First Superseding Indictment, of any property, real or personal, involved in the offenses, and any property traceable to such property.

14. On October 24, 2016, at a hearing pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant James Merrill ("Merrill") pled guilty to Counts One through Nine of the First Superseding Indictment, pursuant to a written plea agreement signed by Merrill on October 24, 2016.[2]

15. In Section 8 of the written plea agreement, Merrill agreed to the forfeiture of the assets listed in Exhibit A to the plea agreement, which included the following two real properties:

a. the real property located at 4506 San Mellina Drive, Coconut Creek, Florida (the "San Mellina Drive Property");

b. the real property located at 10556 Cape Delabra Ct, Boynton Beach, Florida (the "Cape Delabra Property" and, together with the San Mellina Drive Properties, the "Florida Properties");

16. Merrill admitted that the assets listed in Exhibit A to the plea agreement, including the San Mellina Drive Property and the Cape Delabra Property, are subject to forfeiture on the grounds that they are property, real or personal, that constituted, or were derived from, proceeds traceable to the commission of the offenses charged in Counts One through Nine of the First Superseding Indictment, and Merrill consented to the entry of an order of forfeiture against such property.

17. On March 21, 2017, the United States filed an Assented-To Motion for Preliminary Order of Forfeiture in the United States District Court for the District of Massachusetts (the "District Court") seeking forfeiture of numerous assets, including the San Mellina Drive Property

[2] The United States agreed to dismiss Counts Ten through Seventeen of the First Superseding Indictment following the Court's imposition of Merrill's sentence.

and the Cape Delabra Property. On March 22, 2017, the District Court granted the Motion for Preliminary Order of Forfeiture. Upon entry of a final order of forfeiture, ownership of the Florida Properties would vest in the United States.

18. On March 22, 2017, the District Court sentenced Merrill to 72 months imprisonment and three years' supervised release.

19. On July 11, 2017, the District Court entered a Restitution Order against Merrill, which provided that based upon the complexity and volume of restitution payments to victims in this case, the Chapter 11 Trustee shall administer and pay restitution to Participants holding allowed claims (the "Restitution Order").

20. Notice of the Preliminary Order of Forfeiture was sent to all interested parties and published on the government website www.forfeiture.gov for thirty (30) consecutive calendar days, beginning on May 16, 2017, and ending on June 14, 2017, and also beginning on June 16, 2017, and ending on July 15, 2017.

21. On July 25, 2017, Fabio filed verified claims asserting an interest in the San Mellina Drive Property and the Cape Delabra Property. No other party has filed a petition claiming an interest in the San Mellina Drive Property or the Cape Delabra Property, and the time within which to do so has expired.

22. The United States, the Chapter 11 Trustee, and the Wanzelers have entered into negotiations to resolve issues respecting the competing claims in the Florida Properties and the disposition of any proceeds from the sale or refinance of such properties. As a result of such

negotiations, the parties have entered into the attached Stipulation, which provides in substance as follows:[3]

Settlement

23. Upon execution by the Parties, the Stipulation shall be filed with the District Court. The District Court and the Bankruptcy Court shall retain jurisdiction to enforce the provisions of the Stipulation.

24. Upon execution of the Stipulation, the United States shall file an assented-to motion to modify the restraining order entered against the San Mellina Drive Property and the Cape Delabra Property to allow the following:

a. The Wanzelers shall execute a deed transferring ownership of the San Mellina Drive Property to the Chapter 11 Trustee; and

b. The Wanzelers shall obtain a mortgage against the Cape Delabra Property for a net payment in the amount of $250,000, which funds shall be paid to the Chapter 11 Trustee, in lieu of forfeiture of the Cape Delabra Property.

25. The United States shall also execute a release of the lis pendens against the Cape Delabra Property and shall provide the original of the release of lis pendens to Fabio and Claudia Wanzeler at the closing of any mortgage against the Cape Delabra Property.

26. Upon modification of the Restraining Order, the Chapter 11 Trustee shall file the within motion. The District Court entered an order modifying the Restraining Order on November 2, 2018 [docket entry 412, District Court criminal no. 14-40028-TSH].

27. If the Bankruptcy Court denies this motion, the Stipulation shall be null and void.

28. If the Bankruptcy Court approves this motion, then within 30 days after the date of the Bankruptcy Court's order granting the motion, Fabio and Claudia Wanzeler shall:

[3] To the extent of any inconsistencies between the Stipulation and this motion, the terms of the Stipulation attached as Exhibit A shall govern.

a. Execute and deliver to the Chapter 11 Trustee the deed attached hereto as Exhibit B, transferring ownership of the San Mellina Drive Property to the Chapter 11 Trustee for sale;

b. Release and waive any right, claim, interest, or exemption in the San Mellina Drive Property.

c. Vacate the San Mellina Drive Property and turn possession of the San Mellina Drive Property over to the Chapter 11 Trustee within ten days of Bankruptcy Court approval of the Stipulation (the "Vacancy Date"), leaving the property undamaged and free of personal effects, and shall cause any other party to vacate the property. On and after the Vacancy Date, the Chapter 11 Trustee may take any and all actions required to market and sell the San Mellina Drive Property for the benefit of the TelexFree estates. In the event that Fabio and Claudia Wanzeler or another may fail to timely vacate the property, the Chapter 11 Trustee may take all steps reasonably required to remove the occupants, and Fabio and Claudia Wanzeler shall be liable to the Chapter 11 Trustee for the costs and expenses associated therewith, including attorneys' fees;

d. Pay the sum of $250,000 to the Chapter 11 Trustee in lieu of forfeiture of the Cape Delabra Property, or in the event that Fabio and Claudia Wanzeler are unable to make payment of $250,000 within 30 days (or by such later time as agreed to by all Parties, in writing), Fabio and Claudia Wanzeler agree that the United States shall (i) forfeit the Cape Delabra Property, (ii) liquidate the Cape Delabra Property, (iii) retain from the net proceeds of the sale a total of $250,000, and (iv) return any remaining net sale proceeds to Fabio and Claudia Wanzeler less any debt owed to the United States or any agency of the United States, or any debt that the United States is authorized to collect from Fabio and Claudia Wanzeler.

29. If the Bankruptcy Court grants the motion described in Paragraph 4 above, then the United States shall:

a. Upon execution of the deed by Fabio and Claudia Wanzeler transferring ownership of the San Mellina Drive Property to the Chapter 11 Trustee, file a motion with the District Court to vacate the Preliminary Order of Forfeiture as to the San Mellina Drive Property;

b. Upon execution of the deed by Fabio and Claudia Wanzeler transferring ownership of the San Mellina Drive Property to the Chapter 11 Trustee provide the Chapter 11 Trustee a release of lis pendens against the San Mellina Drive Property;

c. Upon payment of the $250,000 by Fabio and Claudia Wanzeler to the Chapter 11 Trustee, file a notice with the District Court that in lieu of forfeiture of the Cape Delabra Property, $250,000 has been paid to the Chapter 11 Trustee toward restitution in the criminal matter, and shall further request that the District Court vacate the Preliminary Order of Forfeiture as to the Cape Delabra Property;

d. Upon failure of Fabio and Claudia Wanzeler to make payment of $250,000 to the United States in accordance with the terms of this Settlement Agreement, file a motion with the District Court for a final order of forfeiture for the Cape Delabra Property, which further orders the United States to (i) liquidate the Cape Delabra Property, (ii) retain from the net proceeds of the sale a total of $250,000, and (iii) return any remaining net sale proceeds to Fabio and Claudia Wanzeler less any debt owed to the United States or any agency of the United States, or any debt that the United States is authorized to collect from Fabio and Claudia Wanzeler.

30. If the Bankruptcy Court grants this motion, then the Chapter 11 Trustee shall:

a. Record the executed deed transferring ownership of the San Mellina Drive Property to the Chapter 11 Trustee, and record the release of lis pendens executed by the United States as to the San Mellina Drive Property;

b. Liquidate the San Mellina Drive Property, and utilize all net proceeds from the sale of the property to pay allowed administrative expenses of the Trustee and his professionals and to pay the allowed claims of victims;

c. After receipt of the $250,000 payment in lieu of forfeiture of the Cape Delabra Property, pay the funds to victims in accordance with the terms of the Restitution Order entered in the above-captioned criminal case.

31. The Parties agree that the settlement of this matter upon the terms and conditions set forth herein is in full, final, and complete satisfaction of any and all claims arising out of the forfeiture proceeding as to the San Mellina Drive Property and the Cape Delabra Property, and of the claims asserted against Fabio Wanzeler in the Adversary Proceedings.

32. The Wanzelers unconditionally release, indemnify, and hold harmless the United States, and its officers, agents, employees, and representatives, both past and present, including, but not limited to, the United States Department of Justice, the United States Attorney's Office and Department of Homeland Security, including Homeland Security Investigations, as well as any state, county, or local law enforcement agencies whose personnel assisted in the forfeiture proceedings against the San Mellina Drive Property and the Cape Delabra Property, from any and all claims, demands, damages, causes of actions or suits, of whatever kind and/or description and wheresoever situated, which might now or ever exist by reason of, or grow out of or affect, directly or indirectly, the seizure, restraint, and forfeiture proceedings against the San Mellina Drive Property and the Cape Delabra Property or the provisions of the instant Agreement.

33. The Wanzelers unconditionally release and waive any claims they may have against the Chapter 11 Trustee or the bankruptcy estates of TelexFree.

34. The Wanzelers unconditionally release, indemnity, and hold harmless the Chapter 11 Trustee and his agents, employees, and representatives, both past and present, from any and all claims, demands, damages, causes of actions or suits, of whatever kind and/or description and wheresoever situated, which might now or ever exist by reason of, or grow out of or affect, directly or indirectly, the San Mellina Drive Property and the Cape Delabra Property or the provisions of the Stipulation.

Basis for Approval of Stipulation

35. Bankruptcy Rule 9019(a) provides, in relevant part, that "On the motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Settlements and compromises are normal parts of the process of reorganization. While the decision to approve a particular settlement lies within the sound discretion of the Bankruptcy

Court, the Court should give some deference to the business judgment of the estate representative. Jeffrey v. Desmond, 70 F.3d 183 (1st Cir. 1995).

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

> The bankruptcy judge has the authority to approve a compromise of a claim pursuant to Bankruptcy Rule 9019(a). The ultimate issue on appeal is whether the bankruptcy court abused its discretion when it approved the compromise, which is a process requiring the bankruptcy court to "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." In re GHR Cos., 50 B.R. 925, 931 (Bankr. D. Mass. 1985) (quoting In re Boston & Providence R.R., 673 F.2d. 11, 12 (1st Cir. 1982)). The specific factors which a bankruptcy court considers when making this determination include: (i) the probability of success in the litigation being compromised; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premise. In re Anolik, 107 B.R. 427, 429 (D. Mass. 1989).
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> Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995).

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

better settlement might have been achieved, or a better result reached if litigation pursued. Instead, the court should approve settlements that meet a minimal threshold of reasonableness. Nellis v. Shugrue, 165 B.R. 115, 123 (S.D.N.Y. 1994); 10 Collier on Bankruptcy, ¶ 9019.02, at 9019-4.

38. The Chapter 11 Trustee asserts that the Stipulation is fair and reasonable and should be approved by the Court. Both of the Florida Properties were subject to the forfeiture proceedings of the United States. Under the Stipulation, the San Mellina Drive Property, which is believed to have a value in the range of $500,000 and which upon information and belief is unencumbered, will be deeded to the Chapter 11 Trustee so that it can be sold and the proceeds used to satisfy administrative expenses of the Chapter 11 Trustee and his professionals and allowed claims of Participants. The United States is expected to recover $250,000 from the refinance of the Cape Delabra Property, which funds will be made available for payment to Participants. The aggregate recovery from the Wanzelers, therefore, under the Stipulation is projected to be up to $700,000 or more. These amounts equal or exceed the aggregate net winnings obtained by Fabio from involvement in the TelexFree scheme, according to the books and records of TelexFree.

39. The Cape Delabra Property was appraised at $475,000 in June 2018. Any equity retained by the Wanzelers above the $250,000 to be paid as a result of the forfeiture proceedings is in consideration of claims by the Wanzelers that the Florida Properties, at least in part, were purchased with assets not derived from TelexFree and are not subject to forfeiture.

40. The Wanzelers provided a financial statement to the United States in connection with the settlement discussions. Based upon the financial statement, it appears that any assets of

the Wanzelers other than the Florida Properties consist principally of personal property that is not meaningful in value in the context of this settlement.

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

WHEREFORE, the Trustee prays that this Court:

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

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

/s/ Andrew G. Lizotte

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Dated: November 5, 2018
749657

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Criminal No. 14-40028-TSH
	)	
JAMES MERRILL,	)	
Defendant	)	
	)	
FABIO WANZELER,	)	
Claimant	)	

SETTLEMENT AGREEMENT

The United States of America, by its attorney, Andrew E. Lelling, United States Attorney for the District of Massachusetts ("United States"), and claimant Fabio Wanzeler (the "Claimant") and his wife, Claudia Wanzeler, and Stephen Darr, Bankruptcy Trustee for the Estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. pending in the United States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Court") in jointly administered cases Case No. 14-40987 et al. (the "Chapter 11 Trustee" and, collectively, the "Parties"), set forth the following:

The Criminal Forfeiture Action

WHEREAS, on September 8, 2016, a federal grand jury sitting in the District of Massachusetts returned a seventeen-count First Superseding Indictment charging James Merrill and Carlos Wanzeler, with Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 1349 (Count One); Wire Fraud, in violation of 18 U.S.C. § 1343 (Counts Two through Nine); and Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity, in violation of 18 U.S.C. §§ 1957(a) and 2 (Counts Ten through Seventeen);

WHEREAS, the First Superseding Indictment contained a Forfeiture Allegation, which gave the defendants notice that the United States sought forfeiture, pursuant to 18 U.S.C.

§ 981(a)(1)(C) and 28 U.S.C. § 2461(c), upon conviction of one or more of the offenses charged in Counts One through Nine of the First Superseding Indictment, of any property, real or personal, that constitutes, or is derived from, proceeds traceable to the commission of the offenses;

WHEREAS, in addition, the First Superseding Indictment contained a Money Laundering Forfeiture Allegation, which gave the defendants notice that the United States sought forfeiture, pursuant to 18 U.S.C. § 982(a)(1), upon conviction of one or more of the offenses alleged in Counts Ten through Seventeen of the First Superseding Indictment, of any property, real or personal, involved in the offenses, and any property traceable to such property;

WHEREAS, on October 24, 2016, at a hearing pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant James Merrill ("Merrill") pled guilty to Counts One through Nine of the First Superseding Indictment, pursuant to a written plea agreement signed by Merrill on October 24, 2016;[1]

WHEREAS, in Section 8 of the written plea agreement, Merrill agreed to the forfeiture of the assets listed in Exhibit A to the plea agreement, which included the following two real properties:

1. the real property located at 4506 San Mellina Drive, Coconut Creek, Florida, including all buildings, appurtenances, and improvements thereon, more fully described in a Special Warranty Deed, recorded on December 3, 2013, with the Broward County Registry of Deeds, book 50374, page 223 (the "San Mellina Drive Property");

2. the real property located at 10556 Cape Delabra Ct., Boynton Beach, Florida, described as Lot 271, Trails at Canyon – Plat Four, according to the plat thereof, as recorded in Plat Book 115, at Page 1, of the public records of Palm Beach County, Florida, more fully described in a Warranty Deed recorded on February 27, 2014, with the Palm Beach County Registry of Deeds, Book 26635, Page 1345 (the "Cape Delabra Property");

[1] The United States agreed to dismiss Counts Ten through Seventeen of the First Superseding Indictment following the Court's imposition of Merrill's sentence.

WHEREAS, in addition, Merrill admitted that the assets listed in Exhibit A to the plea agreement, including the San Mellina Drive Property and the Cape Delabra Property, are subject to forfeiture on the grounds that they are property, real or personal, that constituted, or were derived from, proceeds traceable to the commission of the offenses charged in Counts One through Nine of the First Superseding Indictment, and Merrill consented to the entry of an order of forfeiture against such property;

WHEREAS, on March 21, 2017, the United States filed an Assented-To Motion for Preliminary Order of Forfeiture seeking forfeiture of numerous assets, including the San Mellina Drive Property and the Cape Delabra Property;

WHEREAS, on March 22, 2017, the Court granted the Motion for Preliminary Order of Forfeiture;

WHEREAS, on March 22, 2017, the Court sentenced Merrill to 72 months imprisonment and three years' supervised release;

WHEREAS, on July 11, 2017, the Court entered a Restitution Order against Merrill, which provided that based upon the complexity and volume of restitution payments to victims in this case, the Chapter 11 Trustee in the related Chapter 11 cases for the TelexFree entities shall administer and pay restitution to victims (the "Restitution Order");

WHEREAS, notice of the Preliminary Order of Forfeiture was sent to all interested parties and published on the government website www.forfeiture.gov for thirty (30) consecutive calendar days, beginning on May 16, 2017, and ending on June 14, 2017, and also beginning on June 16, 2017, and ending on July 15, 2017;

WHEREAS, on July 25, 2017, Fabio Wanzler filed verified claims asserting an interest in the San Mellina Drive Property and the Cape Delabra Property;

WHEREAS, as of this date, no other party has filed a petition claiming an interest in the San Mellina Drive Property or the Cape Delabra Property, and the time within which to do so has expired;

The Adversary Proceeding in the TelexFree Bankruptcy

WHEREAS, the Chapter 11 Trustee has asserted that Claimant was a net winner in the Ponzi scheme operated by the TelexFree entities in the approximate amount of $630,000;

WHEREAS, the Chapter 11 Trustee commenced a class action against all net winners located in the United States in adversary proceeding number 16-4006 pending in the Bankruptcy Court (the "Class Action");

WHEREAS, the Claimant is also a defendant in adversary proceeding number 16-4032 commenced by the Chapter 11 Trustee in the Bankruptcy Court (the "Insider Action" and, together with the Class Action, the "Adversary Proceedings");

WHEREAS, the Parties desire to reach a full and final settlement regarding the San Mellina Drive Property and the Cape Delabra Property and the Adversary Proceeding;

WHEREAS, the Parties acknowledge that this Settlement Agreement does not constitute an admission by Claimant or Claudia Wanzeler of any facts or liability or wrongdoing, and Claimant and Claudia Wanzeler assert that they are innocent owners or, or bona fide purchasers for value of, the San Mellina Drive Property and the Cape Delabra Property.

NOW THEREFORE, it is stipulated and agreed by and between the undersigned parties as follows:

1. Upon execution by the Parties, this Settlement Agreement ("Agreement") shall be filed with the United States District Court for the District of Massachusetts (the "District Court"). The District Court and the Bankruptcy Court shall retain jurisdiction to enforce the

provisions of this Agreement.

2. Upon execution of the Settlement Agreement by the Parties, the United States shall file an assented-to motion to modify the restraining order entered against the San Mellina Drive Property and the Cape Delabra Property to allow the following:

a. Fabio and Claudia Wanzeler shall execute a deed transferring ownership of the San Mellina Drive Property to the Chapter 11 Trustee; and

b. Fabio and Claudia Wanzler shall obtain a mortgage against the Cape Delabra Property for a net payment by the lender of $250,000, which funds shall be paid to the Chapter 11 Trustee, in lieu of forfeiture of the Cape Delabra Property.

3. The United States shall also execute a release of the *lis pendens* against the Cape Delabra Property and shall provide the original of the release of *lis pendens* to Fabio and Claudia Wanzeler at the closing of any mortgage against the Cape Delabra Property, as contemplated in Paragraph 2.b above.

4. Upon modification of the Restraining Order, the Chapter 11 Trustee shall file a motion in the Adversary Proceedings requesting that the Court approve a compromise of the claims asserted against Fabio Wanzeler in the Adversary Proceedings on the terms outlined in this Settlement Agreement.

5. If the Bankruptcy Court denies the motion described in Paragraph 4 above, this Settlement Agreement shall be null and void.

6. If the Bankruptcy Court grants the motion described in Paragraph 4 above, then within 30 days after the date of the Bankruptcy Court's order granting the motion, Fabio and Claudia Wanzeler shall:

a. Execute and deliver to the Chapter 11 Trustee the deed attached hereto as

Exhibit 1, transferring ownership of the San Mellina Drive Property to the Chapter 11 Trustee for sale;

b. Release and waive any right, claim, interest, or exemption in the San Mellina Drive Property.

c. Vacate the San Mellina Drive Property and turn possession of the San Mellina Drive Property over to the Chapter 11 Trustee within ten days of Bankruptcy Court approval of this Settlement Agreement (the "Vacancy Date"), leaving the property undamaged and free of personal effects, and shall cause any other party to vacate the property. On and after the Vacancy Date, the Chapter 11 Trustee may take any and all actions required to market and sell the San Mellina Drive Property for the benefit of the TelexFree estates. In the event that Fabio and Claudia Wanzeler or another may fail to timely vacate the property, the Chapter 11 Trustee may take all steps reasonably required to remove the occupants, and Fabio and Claudia Wanzeler shall be liable to the Chapter 11 Trustee for the costs and expenses associated therewith, including attorneys' fees;

d. Pay the sum of $250,000 to the Chapter 11 Trustee in lieu of forfeiture of the Cape Delabra Property, or in the event that Fabio and Claudia Wanzeler are unable to make payment of $250,000 within 30 days (or by such later time as agreed to by all Parties, in writing), Fabio and Claudia Wanzeler agree that the United States shall (i) forfeit the Cape Delabra Property, (ii) liquidate the Cape Delabra Property, (iii) retain from the net proceeds of the sale a total of $250,000, and (iv) return any remaining net sale proceeds to Fabio and Claudia Wanzeler less any debt owed to the United States or any agency of the United States, or any debt that the United States is authorized to collect from Fabio and Claudia Wanzeler.

7. If the Bankruptcy Court grants the motion described in Paragraph 4 above, then

the United States shall:

a. Upon execution of the deed by Fabio and Claudia Wanzeler transferring ownership of the San Mellina Drive Property to the Chapter 11 Trustee, file a motion with the District Court to vacate the Preliminary Order of Forfeiture as to the San Mellina Drive Property;

b. Upon execution of the deed by Fabio and Claudia Wanzeler transferring ownership of the San Mellina Drive Property to the Chapter 11 Trustee provide the Chapter 11 Trustee a release of *lis pendens* against the San Mellina Drive Property;

c. Upon payment of the $250,000 by Fabio and Claudia Wanzeler to the Chapter 11 Trustee, file a notice with the District Court that in lieu of forfeiture of the Cape Delabra Property, $250,000 has been paid to the Chapter 11 Trustee toward restitution in this criminal matter, and shall further request that the District Court vacate the Preliminary Order of Forfeiture as to the Cape Delabra Property;

d. Upon failure of Fabio and Claudia Wanzeler to make payment of $250,000 to the United States in accordance with the terms of this Settlement Agreement, file a motion with the District Court for a final order of forfeiture for the Cape Delabra Property, which further orders the United States to (i) liquidate the Cape Delabra Property, (ii) retain from the net proceeds of the sale a total of $250,000, and (iii) return any remaining net sale proceeds to Fabio and Claudia Wanzeler less any debt owed to the United States or any agency of the United States, or any debt that the United States is authorized to collect from Fabio and Claudia Wanzeler.

8. If the Bankruptcy Court grants the motion described in Paragraph 4 above, then the Chapter 11 Trustee shall:

a. Record the executed deed transferring ownership of the San Mellina Drive

Property to the Chapter 11 Trustee, and record the release of *lis pendens* executed by the United States as to the San Mellina Drive Property;

b. Liquidate the San Mellina Drive Property, and utilize all net proceeds from the sale of the property to pay allowed administrative expenses of the Trustee and his professionals and to pay the allowed claims of victims;

c. After receipt of the $250,000 payment in lieu of forfeiture of the Cape Delabra Property, pay the funds to victims in accordance with the terms of the Restitution Order entered in the above-captioned criminal case.

9. The Parties agree that the settlement of this matter upon the terms and conditions set forth herein is in full, final, and complete satisfaction of any and all claims arising out of the forfeiture proceeding as to the San Mellina Drive Property and the Cape Delabra Property, and out of the claims asserted against Fabio Wanzler in the Adversary Proceedings.

10. Fabio and Claudia Wanzeler unconditionally release, indemnify, and hold harmless the United States, and its officers, agents, employees, and representatives, both past and present, including, but not limited to, the United States Department of Justice, the United States Attorney=s Office and Department of Homeland Security, including Homeland Security Investigations, as well as any state, county, or local law enforcement agencies whose personnel assisted in the forfeiture proceedings against the San Mellina Drive Property and the Cape Delabra Property, from any and all claims, demands, damages, causes of actions or suits, of whatever kind and/or description and wheresoever situated, which might now or ever exist by reason of, or grow out of or affect, directly or indirectly, the seizure, restraint, and forfeiture proceedings against the San Mellina Drive Property and the Cape Delabra Property or the provisions of the instant Agreement.

11. Fabio and Claudia Wanzeler unconditionally release and waive any claims they

may have against the Chapter 11 Trustee or the bankruptcy estates of TelexFree.

12. Fabio and Claudia Wanzeler unconditionally release, indemnity, and hold harmless the Chapter 11 Trustee and his agents, employees, and representatives, both past and present, from any and all claims, demands, damages, causes of actions or suits, of whatever kind and/or description and wheresoever situated, which might now or ever exist by reason of, or grow out of or affect, directly or indirectly, the San Mellina Drive Property and the Cape Delabra Property or the provisions of the instant Agreement.

13. All rights of appeal are hereby waived by the Parties. Except as otherwise provided in this Agreement, each party shall bear its own fees, including attorneys' fees and other expenses, incurred by it in connection with any of the proceedings pertaining directly or indirectly to this forfeiture action.

14. Fabio and Claudia Wanzeler agree that nothing in this Settlement Agreement shall be construed to satisfy or offset any tax liability or any other debt owed to the United States by them.

15. Claimant hereby acknowledges that he is, and has been, represented by competent counsel in connection with the negotiation of this Agreement, that the provisions of this Agreement and the legal effects thereof have been explained to him, and that he is entering into this Agreement freely and voluntarily, without coercion, duress, or undue influence.

16. Claudia Wanzeler acknowledges that she understands the provisions of this Agreement and the legal effects thereof, and that she is entering into this Agreement freely and voluntarily, without coercion, duress, or undue influence.

17. This agreement may be executed in any number of counterparts, each of which

when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

STEPHEN B. DARR,
CHAPTER 11 TRUSTEE OF
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FINANCIAL, INC.,

By counsel:

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Dated: 10/22/18

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Dated: 10/25/18

FABIO WANZELER,
individually,

Fabio Wanzeler

Dated: 10/18/18

FABIO WANZELER,
by his attorney,

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10 18 2018

EXHIBIT B

Prepared by:
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One Beacon Street
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QUIT CLAIM DEED

This Quit Claim Deed, dated this _____ day of _____, 2018.

By and between: **Fabio N. Wanzeler and Claudia Caires-Wanzeler**, hereinafter referred to collectively as Grantor, whose mailing address is 4506 San Mellina Drive, Coconut Creek, Florida 33073 and **Stephen Darr**, as Chapter 11 Trustee of Telexfree, LLC, Telexfree, Inc. and Telexfree Financial, Inc., as Grantee, whose mailing address is c/o Murphy & King, P.C., One Beacon Street, 21st Floor, Boston, MA 02108.

Witnesseth, that the said Grantor, for and in consideration of the sum of One Dollar ($1.00), the receipt whereof is hereby acknowledged, does hereby remise, release and quit claim unto the said Grantee forever, all the right, title, interest, claim and demand which the said Grantor has in and to the following described lot, piece or parcel of land, situate, lying and being in the County of Broward, State of Florida and all improvements thereon, to-wit:

Parcel ID Number: 484217-10-0010 Location at 4506 San Mellina Drive, Coconut Creek, Broward County, Florida 33073.

Lot 1 of San Mellina, according to the Plat thereof recorded in Plat Book 176 Page 44, of the public records of Broward County Florida.

To Have and To Hold, the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the use, benefit and behalf of the said Grantee forever.

In Witness Whereof, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

_____ _____

Witness #1: Signature Fabio N. Wanzeler
Name:

_____

Witness #2: Signature
Name:

749773

Signed, sealed and delivered in the presence of:

_____ _____

Witness #1: Signature Claudia Caires-Wanzeler
Name:

_____

Witness #2: Signature
Name:

STATE OF: Florida **COUNTY OF:**

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this ___ day of ____, 2017 by Fabio N. Wanzeler whom is personally known to me or has produced _____ as identification.

_____

NOTARY PUBLIC
Expiration Date:

STATE OF: Florida **COUNTY OF:**

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this ___ day of ____, 2017 by Claudia Caires-Wanzeler who is personally known to me or has produced _____ as identification.

_____

NOTARY PUBLIC
Expiration Date:

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, v. CARLOS WANZELER, JAMES MERRILL, CARLOS COSTA, PRISCILA FREITAS COSTA, FABIO WANZELER, LYVIA MARA CAMPISTA WANZELER, MARIA EDUARDA WANZELER DE ALMEIDA E SOUZA, DRUCILA WANZELER, MARISA MACHADO WANZELER SALGADO, RENATO ALVES, ANA COSTA, NATHANA SANTOS REIS, FABIO FARIA, LELIO CELSO RAMIRES FARIAS, SANDERLY RODRIGUES, VAGNER ROZA, ROBERT BOURGUIGNON, REGINA CELIA MANHAES DA ROZA REGINA CELIA, MICHAEL CALAZANS, FABIO DE ARRAZ CRISPIM, SHEFFA MONTOYA, LUIS FERREIRA, SANDRES LEVIS, FEBE WANZELER DE ALMEIDA E SOUZA, BRUNO RANGEL CARDOZO, Defendants.	Adversary Proceeding No. 16-4032

STEPHEN B. DARR AS HE IS TRUSTEE OF THE CHAPTER 11 ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. AND TELEXFREE FINANCIAL, INC., Plaintiff, V. BENJAMIN ARGUETA, ET AL. Defendants(s).	Adversary Proceeding No. 16-4006

CERTIFICATE OF SERVICE

I, Andrew G. Lizotte, hereby certify that I have this day caused to be served a copy of the following document:

- *Motion by Trustee to Approve Stipulation of Settlement Among United States of America, Chapter 11 Trustee and Fabio Wanzeler and Claudia Wanzeler*

via this Court's CM/ECF System, by electronic mail, and First Class Mail, postage prepaid as indicated to the service list below.

/s/ Andrew G. Lizotte
Andrew G. Lizotte (BBO #559609)
Murphy & King Professional Corporation
One Beacon Street
Boston, MA 02108
(617) 423-0400
ALizotte@murphyking.com

DATED: November 5, 2018
750111

Telexfree, LLC
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