

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In re:

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

Debtors.

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

Plaintiff,

v.

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.

Chapter 11 Cases

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

Jointly Administered

Adversary Proceeding
No. 16-4032-EDK

MOTION BY TRUSTEE TO DISMISS CLAIMS AGAINST FABIO FARIA



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Plaintiff Stephen Darr, as the duly appointed liquidating trustee (the “Trustee” or “Plaintiff”) of the substantively consolidated, reorganized debtors TelexFree, Inc., TelexFree, LLC, and TelexFree Financial, Inc. (collectively, the “Debtors” or “TelexFree”), respectfully files this motion to voluntarily dismiss this action as against Defendant Fabio Faria, the last unresolved Defendant in this Adversary Proceeding, pursuant to Federal Rule of Civil Procedure (“FRCP”) 41(a)(2), as incorporated by Federal Rule of Bankruptcy Procedure 7041. In support thereof, the Trustee states as follows:

1. On April 1, 2016, the Trustee commenced this action against approximately twenty (20) Defendants alleged to be insiders of the Debtor, including the Debtor’s principals. The TelexFree system, as previously described, allowed Participants to accrue “credits” by performing online advertising and by recruiting other Participants, which credits could be converted to cash. Credits could also be purchased. Several of the Defendants were recipients of large amounts of credits issued manually by TelexFree unassociated with advertising, commissions, or other customary TelexFree activity (the “Manual Credit Recipients”). Fabio Faria was a Manual Credit Recipient, having received manual credits issued in the amount of approximately \$1,000,000. The Trustee sought recovery against Manual Credit Recipients in this action for engaging in civil conspiracy and for aiding and abetting the commission of tortious conduct by insiders.

2. On February 22, 2023, the Court denied Mr. Faria’s motion to dismiss the case. On March 15, 2023, Mr. Faria filed an Answer to the Complaint.

3. Since that time, Mr. Faria has provided informal discovery to the Trustee. In addition, the Trustee has made other informal inquiry of potential third party witnesses. Based upon this investigation, it appears that Mr. Faria’s unusual accumulation of credits was the result

of the correction of earlier accounting errors by TelexFree, and not as a result of collusive insider activity. The Trustee has therefore concluded that the claims against Mr. Faria may be dismissed.

4. FRCP 41(a)(2) provides that an action may be dismissed after the filing by the defendant of a responsive pleading by the Court upon terms that the Court considers proper.

5. Although the Trustee seeks dismissal of the claims against Mr. Faria in this action, the Trustee asserts that Mr. Faria was a net winner in the TelexFree Ponzi scheme and that he is properly an unnamed defendant in the defendant class action cases pending against alleged net winners, Adversary Proceedings No. 16-4006 and 16-4007 (the “Class Actions”).

6. Therefore, in order to preserve judicial economy and to avoid the risk of inconsistent findings and rulings in the separate adversary proceedings, the Trustee requests that the Court enter an order dismissing the claims by the Trustee in this action against Faria, while the Trustee continues to pursue the net winner claims against Mr. Faria in the Class Actions. Mr. Faria may assert any rights and defenses that he believes he may have in the context of the Class Actions.

7. Mr. Faria has previously alleged that he is not properly a class action defendant in the Class Actions because any claims against him would have had to be brought in the same adversary proceeding. The Trustee disputes this contention and further asserts that this assertion is not ripe for resolution in any event.

Wherefore, the Trustee prays that the Court:

1. Dismiss this action as against Fabio Faria, without prejudice to the Trustee’s rights to pursue the Trustee’s claims against Fabio Faria in the Class Actions, and without

prejudice to any rights and defenses that Fabio Faria may assert in the Class Actions;

and

2. Grant such other relief as is just and proper.

Respectfully submitted,

STEPHEN DARR, LIQUIDATING
TRUSTEE,

By his attorneys,

/s/ Andrew G. Lizotte

Charles R. Bennett, Jr. (BBO #037380)

Andrew G. Lizotte (BBO #559609)

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Dated: July 5, 2023

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CERTIFICATE OF SERVICE

I, Andrew G. Lizotte, hereby certify that on July 5, 2023, a copy of the foregoing *Motion by Trustee to Dismiss Claims Against Fabio Faria* was served by operation of the Court's ECF system upon the registered participants as identified on the Notice of Electronic Filing.

/s/ Andrew G. Lizotte

Andrew G. Lizotte

Dated: July 5, 2023

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