

September 23, 2014 at 2:00 P.M. to correspond with a previously-scheduled hearing in this matter. In further support of his motion, the Trustee 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.

2. By order dated May 6, 2014, the United States Bankruptcy Court for the District of Nevada allowed a motion to change venue. The cases were transferred to this Court on May 9, 2014.

3. On May 30, 2014, the Court approved the motion to appoint a Chapter 11 trustee, and the Trustee was appointed on June 6, 2014. The Trustee is the person empowered to waive the attorney-client privilege of TelexFree when, in the exercise of the Trustee's sound judgment it is not counter to the interests of the estate. *Commodity Futures Trading Commission v. Weintraub*, 471 U.S. 343, 105 S. Ct. 1986 (1985); *see also, e.g., In re AmeriLink, Ltd.*, 2014 U.S. Dist. LEXIS 69806, 6 (E.D.N.C. May 21, 2014) (holding that, to waive privilege, the Trustee need not "document a 'best interests' showing every time he chooses to waive the privilege," but only needs to show that the waiver is not contrary to the Trustee's fiduciary obligations).

4. On April 15, 2014, pursuant to certain search warrants which were issued on or about that date, the Department of Homeland Security and the Federal Bureau of Investigation executed search warrants at TelexFree's headquarters in Marlborough, Massachusetts, and at a local business that maintained TelexFree's servers. Federal law enforcement seized various assets of TelexFree, including servers used by TelexFree, about 38 boxes of documents, and about two dozen computer drives from TelexFree's offices. The search warrants were issued and executed in connection with a criminal investigation of whether TelexFree and its principals, Carlos Wanzeler and James Merrill, were engaged in an illegal pyramid scheme. Messrs.

Wanzeler and Merrill were subsequently indicted by a federal grand jury on charges of wire fraud and conspiracy to commit wire fraud.

5. In addition to the servers, governmental agencies seized various assets of TelexFree, including bank accounts and cashier's checks totaling about \$140 million, and other items of personal property of the Debtors. Law enforcement also seized assets of the Debtors' principals, Messrs. Wanzeler and Merrill, including two boats, a Ferrari, and several real properties.

6. The servers, computer drives, and documents contained a substantial amount of data and information. The electronic data alone is believed to be over 400 terabytes of material. The data on the computer drives and the seized paper materials includes communications between TelexFree and various attorneys who were retained by TelexFree and communications between TelexFree and consultants that were retained by TelexFree at the behest of attorneys.

7. Absent a waiver by the Trustee, the Governmental Authorities are required to have all of the information seized from TelexFree first reviewed by a team of lawyers and paraprofessionals, whose duty would be to examine all of the documents and remove any materials that appear to be attorney-client privileged before the documents would be made available to the Governmental Authorities for use in the Governmental Proceedings. Considering the amount of information involved, the employment of the so-called "taint team" would result in extremely substantial delays in examining the documents, and corresponding delays in proceeding with the matters before the various courts and the conclusion of forfeiture proceedings. A waiver would greatly accelerate the ongoing government enforcement proceedings and, because the Government Authorities have in their possession the vast majority

of TelexFree's assets in the United States, it would also accelerate securing additional assets of the estate.

8. The Trustee has been in contact with the Governmental Authorities since his appointment to, among other things, recover the Debtors' records to facilitate the Trustee's investigation of the Debtors' financial affairs and administration of Estate assets and exchange information that may ultimately aid in the recovery of funds for claimants harmed by the operation of the TelexFree enterprise.

9. The Trustee is in possession of voluminous documents he has obtained pursuant to various Orders issued pursuant to Rule 2004 of the Rules of Bankruptcy Procedure. The Trustee has agreed to make these documents available to the Governmental Authorities and to waive the privilege in connection with any review of these documents by the Governmental Authorities.

10. The Trustee and the Governmental Authorities have been engaged in discussions concerning a structure which will provide for the Trustee's review and resolution of the hundreds of thousands of claims that are anticipated to be filed against the Debtors' Estates and the distribution by the Trustee of funds recovered by the Governmental Authorities and the Trustee to pay the costs incurred in administering the Debtors' Estates and the claims of the Debtors' legitimate creditors. The Trustee and the Governmental Authorities, in the context of those discussions, are also discussing an agreement by which any monetary claims sought by the Governmental Authorities against the Debtors in the Governmental Proceedings would be subordinated to the payment of legitimate creditors of the Debtors, thereby enhancing those creditors' recovery.

11. Accordingly, there is a mutuality of interest between the Estates and the Governmental Authorities in expediting the various proceedings. Furthermore, it is in the public interest to have a full and complete disclosure of both inculpatory and potentially exculpatory documents to ensure a fair trial.

12. Therefore, in the exercise of the Trustee's sound judgment, he believes a waiver of the attorney-client privilege in connection with the Governmental Proceedings will serve the interest of the Estates and the interest of the public in general and is part of his duty as trustee to assist an investigation into possible fraud involving the Estate. *See* 28 U.S.C. § 586; *Weintraub*, 471 U.S. at 353 (trustee must investigate the conduct of prior management to uncover and assert causes of action against the debtor's officers and directors). Because of the nature of the relief sought, the Trustee seeks the authority of this Court, pursuant to Sections 105 and 1108 of the Bankruptcy Code, to do so.

13. The Trustee requests expedited determination to allow the Governmental Authorities to expeditiously prosecute the governmental enforcement proceedings and to allow the Trustee and the Governmental Authorities to finalize their discussions regarding the structure of the Trustee's administration of the claims against these Bankruptcy Estates. The Court has scheduled a hearing on separate matters in this bankruptcy case on Tuesday, September 23, 2014 at 2:00 PM (the "Hearing Date"). The Trustee requests that the Court set a hearing of this motion on the Hearing Date. The expedited determination of this motion and setting this motion for hearing on the Hearing Date will not prejudice any party in interest and will conserve judicial and estate resources.

14. WHEREFORE, the Trustee respectfully prays that this Court enter an order authorizing the Trustee to waiver of the attorney-client privilege in the Governmental Proceedings, and granting such other relief as is just and proper.

STEPHEN DARR AS TRUSTEE OF THE CHAPTER 11 ESTATES OF TELEXFREE LLC, TELEXFREE, INC. AND TELEXFREE FINANCIAL, INC.

By his attorneys,
MURPHY & KING, P.C.

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Dated: September 16, 2014

CERTIFICATE OF SERVICE

I, Charles R. Bennett, Jr., hereby certify that on September 16, 2014, I caused a copy of the foregoing document to be served by operation of the Court's CM/ECF system upon the following parties:

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Dated: September 16, 2014

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