

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**IN RE: TELEXFREE SECURITIES  
LITIGATION**

**MDL No. 4:14-md-2566-TSH**

**This Document Relates to:  
ALL CASES**

**MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL  
OF SETTLEMENT WITH FIDELITY CO-OPERATIVE BANK AND JOHN MERRILL**

**I. INTRODUCTION**

Pursuant to Federal Rule of Civil Procedure 23(e) and this Court’s Order granting preliminary approval of the proposed settlement (Dkt. No. 1097), Plaintiffs now seek final approval of the settlement reached with Fidelity Co-Operative Bank and John Merrill (together the “Fidelity Defendants”).

As explained in detail in Plaintiffs’ Motion for Preliminary Approval (Dkt. Nos. 1055-56), the settlement is a strong recovery for the class—securing a significant cash settlement and cooperation that will provide important evidence essential to the advancement of Plaintiffs’ claims and the prosecution of this ongoing case.

This Court granted preliminary approval on November 6, 2020 and directed that notice be given to the Settlement Class. Dkt. No. 1097. Notice has been provided as ordered by the Court and the reaction of the class members overwhelmingly supports final approval of the settlement. To date, only eight of the over 700,000 potential class members to whom notice was sent have requested exclusion from the settlement and no objections have been filed. Declaration of Robert J. Bonsignore in Support of Final Approval, ¶ 49; Declaration of Eric Schachter in Support of Final Approval, ¶ 15-16.

In light of the significant results achieved, the obstacles overcome, and the reaction of the settlement class, Plaintiffs request that the Court certify the settlement class, grant final approval of the settlement on the grounds that it is fair, reasonable and adequate, and direct that final judgment be entered as to the Fidelity Defendants.

## **II. FACTUAL AND PROCEDURAL HISTORY**

The factual and procedural history of this case was set forth in detail in Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Settlements with Defendants Fidelity Co-Operative Bank and John Merrill (Dkt. No. 1056) (hereinafter "Motion" or "Mot."). Mot. 2-4. Plaintiffs focus here on the events since the Motion was filed to avoid repetition.

### **a. Litigation Developments**

On July 28, 2020, the Court granted Plaintiffs' Motion for Final Approval of the settlements reached with Defendants Base Commerce, Synovus Bank, and Joseph Craft and several related parties and entered final judgment as to them. Dkt. Nos. 1057-1060. On the same day, the Court granted Plaintiffs' Motion for Litigation Expenses. Dkt. No. 1061.

On July 29, 2020, Plaintiffs sought leave to file a sur-reply to Wells Fargo Advisor's Motion to Compel. Dkt. No. 1064. Leave to file was granted and Plaintiffs filed their sur-reply on September 18, 2020. Dkt. Nos. 1077, 1080. Wells Fargo Advisor's Motion to Compel is now pending before the Court.

On August 6, 2020, Plaintiffs filed their reply memoranda in support of their pending Motion to Amend their complaint. Dkt. Nos. 1065-1071. On August 17, 2020, PNC Bank sought leave to file a sur-reply in opposition to Plaintiffs' Motion to Amend, which Mauricio Cardenas sought leave to join on August 21, 2020. Dkt. Nos. 1072-73. On August 26, 2020, the Estate of Babener filed a Motion to Strike Plaintiffs' reply memorandum submitted in support of

Plaintiffs' Motion to Amend as to the Babener Estate. Dkt. Nos. 1074-75. On September 16, 2020, this Court granted leave to file the sur-reply and Cardenas' motion for joinder. Dkt. Nos. 1077, 1078. PNC Bank filed its sur-reply on that same date. Dkt. No. 1079. The Babener-filed Motion remains pending before this Court.

On September 22, 2020, the Court heard argument on Plaintiffs' Motion to Amend. Dkt. Nos. 1083. This hearing continued over two further sessions, with arguments completed on October 14, 2020. Dkt. Nos. 1088 (October 7, 2020 hearing notes); 1091 (October 14, 2020 hearing notes). On October 22, 2020, Babener filed a supplemental opposition to the Motion to Amend, to which Plaintiffs responded. Dkt. Nos. 1092, 1093. Plaintiffs' Motion to Amend is now pending before the Court.

On October 29, 2020, the Court heard argument on Plaintiffs' Motion for Preliminary Approval of their settlement with Fidelity Co-Operative Bank and John Merrill. Dkt. No. 1094. On November 2, 2020, Plaintiffs submitted an amended Class Notice as directed by the Court at the preliminary approval hearing. Dkt. No. 1095. On November 6, 2020, the Court preliminarily approved the settlement, directed that Notice be given to the class, and scheduled a hearing on final approval. Dkt. Nos. 1096-97. On November 16, 2020, the Court clarified that Plaintiffs' fee briefing should be submitted by January 4, 2021. Dkt. No. 1098. Plaintiffs' fee brief is being submitted concurrently with this Motion for Final Approval.

**b. Notice and Class Response**

On November 24, 2020, A.B. Data commenced sending the Court-approved Class Notice to potential class members via email utilizing a list of class member email addresses received from the related TelexFree bankruptcy proceedings. Schachter Decl. ¶ 5, Exhibit 1 ("Notice"). Stephen Darr, the bankruptcy trustee, was also sent the Class Notice via email. *Id.* A.B. Data sent

the class notice to 716,185 email addresses. Of these, 75,471 emails were ultimately undeliverable. *Id.* at ¶¶ 7-9.

A.B. Data implemented a toll-free telephone number, (877) 829-4140, with an automated interactive voice response system to assist potential class members in understanding the terms of the previous settlements and their rights. *Id.* at ¶ 10. On November 23, 2020, A.B. Data updated the automated interactive voice response system to assist potential class members in understanding the terms of the Fidelity settlement and their rights. *Id.* at ¶ 11. Callers had the option to speak with a live operator during business hours if they needed further help, with assistance offered in five languages. *Id.* To date, the toll-free telephone number has received 1749 calls from potential class members, of whom 599 spoke to a live operator. *Id.* at 12.

On November 19, 2020, A.B. Data updated the case-specific website at [www.telexfreesettlement.com](http://www.telexfreesettlement.com) to include the Fidelity settlement. The website featured a summary version of the class Notice on the homepage, a link to download pdf versions of the full class Notice and related court documents, a list of important dates, and contact information for A.B. Data and Lead Counsel. *Id.* at ¶ 13. The website also includes a translate function allowing for the website content to be translated into over 100 languages. *Id.* On December 29, 2020, at the direction of Lead Counsel, A.B. Data issued a press release via PR Newswire announcing the settlement. *Id.* at ¶ 14.

The deadline to object to the settlement or request exclusion is January 11, 2020. *Id.* at ¶¶ 15-16, Notice, 1. The Preliminary Approval Order directed that objections and any supporting papers be filed with the Clerk of the Court and that requests for exclusion be mailed to the Settlement Administrator. Dkt. No. 1097 ¶ 14; Notice, 6. To date, no objections have been filed

and no requests for exclusion or objections have been received by the Settlement Administrator or Lead Counsel. Schachter Decl. ¶¶ 15-16; *See* Bonsignore Decl. ¶ 49.

**c. The Terms of The Settlement**

The Fidelity Defendants agreed to pay a total of \$22,500,000 in exchange for dismissal with prejudice and a release of all claims asserted or that could have been asserted against them. Fidelity Settlement Agreement (Dkt. No. 1056-2).<sup>1</sup> In addition, the Fidelity Defendants will cooperate with Plaintiffs in the ongoing pursuit of this litigation, according to the terms of the Settlement Agreement. *Id.* at ¶¶ 14-20. In return for the settlement payment and full cooperation, Plaintiffs and members of the Settlement Class will relinquish any claims they have against the Fidelity Defendants relating to TelexFree, including claims that were or could have been brought in this litigation. *Id.* at ¶ 21.

The settlement permits the Fidelity Defendants to terminate their settlement if 50 or more of the settlement class members or any number of settlement class members alleging a net loss of \$500,000 or more opt out of the settlement. *Id.* at ¶ 33. To date, 8 class members have purported to opt out of the settlement. Schachter Decl. ¶ 16. The deadline to opt out of the settlement is January 11, 2021. *Id.* Plaintiffs will provide an update to the Court regarding opt-outs and/or objections after the deadline has passed. The Fidelity Defendants have the right to terminate the settlement within 10 days of receiving notice that 50 or more class members or class members alleging a net loss of \$500,000 or more opt out of the settlement. Fidelity Settlement Agreement ¶ 33.

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<sup>1</sup> The full settlement agreement was submitted as part of Plaintiffs' Preliminary Approval Motion at Dkt. No. 1056-2. For ease of reading, the agreement is directly cited in this memorandum.

### III. ARGUMENT

A class action may only be settled with court approval. Fed. R. Civ. P. 23(e). Where a settlement will bind class members, the court must hold a hearing and must find that the settlement is fair, reasonable, and adequate. *Id.* In making this finding, the Court should consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

*Id.* Courts “enjoy great discretion to ‘balance [a settlement’s] benefits and costs’ and apply this [fair, reasonable, and adequate] standard.” *Voss v. Rolland*, 592 F.3d 242, 251 (1st Cir. 2010) (quoting *Nat’l Ass’n of Chain Drug Stores v. New England Carpenters Ass’n*, 582 F.3d 30, 45 (1st Cir. 2009)).

Where, as here, the settlement provides for certification of a settlement class, the Court must also ensure that the elements of Rule 23(a) and at least one branch of Rule 23(b) are met. Rule 23(a) requires numerosity (Fed. R. Civ. P. 23(a)(1)); commonality in the questions of law or fact (*Id.* at 23(a)(2)); typicality in the claims or defenses of the representative parties and the class (*Id.* at 23(a)(3)); and that the representative parties will “fairly and adequately protect the interests of the class.” *Id.* at 23(a)(4). Rule 23(b)(3) allows for class actions where common questions of law or fact predominate over individual questions and “where a class action is superior to the other available methods for fairly and efficiently adjudicating” the case. *Id.* at 23(b)(3).

**A. The Settlement Class Should be Certified**

The Court’s Preliminary Approval Order provisionally certified a Settlement Class consisting of persons who purchased TelexFree AdCentral or AdCentral Family packages and suffered a Net Loss during the period from January 1, 2012 to April 16, 2014 and submit to the jurisdiction of the MDL 2566 Court. Dkt. No. 1097, ¶ 19. A “Net Loss” means that the class member invested more funds than they withdrew. *Id.* In provisionally certifying the Settlement Class, this Court held that each of the elements for certification of a Rule 23(b)(3) Settlement Class were met. *Id.* at ¶ 21.

The Court should now certify the Settlement Class. As set forth in detail in Plaintiffs’ Motion, the Settlement Class meets all the criteria for certification as a Rule 23(b)(3) Settlement Class. Mot. 15-20. The Court has already found that each required element is met and, following notice, no class member has objected to the Settlement Class definition to date. Dkt. No. 1097, ¶ 21; Schachter Decl. ¶ 16; Bonsignore Decl. ¶ 49

**B. The Settlement Is Fair, Reasonable, and Adequate and Should Be Approved**

The Court preliminarily approved the settlement as “appearing on its face to be fair, reasonable, and adequate.” Dkt. No. 1097, ¶ 3. The settlement meets the requirements of Rule 23 and final approval is supported by the Settlement Class.

1. The Class Representative and Class Counsel Have Adequately Represented the Class

Class Counsel and the Class Representative have worked hard to represent the interests of the class and zealously litigate this case. This fact was recognized in the Court’s Preliminary Approval Order. *Id.* at ¶ 4 (noting that class counsel “have zealously represented the putative class”) and ¶ 20 (appointing class representative).

Class Counsel have continued this zealous representation, including engaging in discovery, drafting pleadings and arguing their Motion to Amend before the Court, securing a further report from their banking expert, and continuing to participate in settlement negotiations with other defendants. Bonsignore Decl. ¶¶ 33-37.

Throughout these proceedings, the Class Representative and Class Counsel have adequately represented the class and, therefore, this factor weighs in favor of final approval of the settlement.

2. The Settlement Was Negotiated at Arm's-Length

The settlement was negotiated at arm's-length over a significant period of time. Mot. 9-11; Bonsignore Decl. in Support of Prelim. Approval ¶¶ 14-20; Prelim. Approval Order ¶ 3. This factor also weighs in favor of final approval of the settlement.

3. The Relief Provided for the Class Is Fair, Reasonable, and Adequate

The settlement provides for a total cash recovery of \$22.5 million and the cooperation of the Fidelity Defendants, as set forth in the settlement agreement. The cash recovery is a substantial sum that provides a material benefit to the putative class and is reasonable in light of the financial standing of the Fidelity Defendants. Fidelity Bank is a community bank with relatively limited resources. John Merrill is an individual. The cash settlement amount exhausts all available insurance coverage and requires an additional payment by Fidelity Bank. Mot. 11. The settlement also serves as a further ice-breaker, incentivizing other defendants to come to the settlement table. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003). The relief provided for the class is fair, reasonable, and adequate and comports with the criteria outlined in Rule 23.



First, while Plaintiffs believe they have a strong case that should prevail on the merits, they also understand that the costs, risks, and delay are significant in complex class action litigation. Mot. 12. *See also In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, 2015 WL 9266493, \*4 (N.D. Cal. Dec. 17, 2015) (collecting cases). This case is already almost seven years old and the docket has reached over 1000 entries at the motion to dismiss stage. *See* § II(a), *supra*. Plaintiffs are awaiting an order on their motion to amend. Further discovery, related *Daubert* motions, trial, and any appeals remain. Settlement now avoids this extended litigation and secures an immediate cash recovery for the class.

Cooperation pursuant to the settlement agreement is also valuable in lowering the cost and difficulty of securing the evidence needed to pursue the litigation against the remaining Defendants. *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2015 WL 9266493 at \*6; *In re Processed Egg Products*, 284 F.R.D. 278, 303-05 (E.D. Pa. 2012); *In re New Motor Vehicles Canadian Export Antitrust Litig.*, MDL No. 1532, 2011 WL 1398485, \*3 n.17 (D. Me. Apr. 13, 2011) (supplemented by 800 F. Supp. 2d 328 (D. Me. Aug. 1, 2011)).

Second, Plaintiffs have proposed deferring distribution of the settlement fund until after further funds are secured to minimize administrative expenses and to ensure the maximum recovery for class members. Mot. 13. This approach is common in complex class actions involving multiple defendants. *See, e.g., In re Lithium Ion Batteries Antitrust Litig.*, Case No. 13-MD-02420 YGR (DMR), 2020 WL 7264559, \*25 (N.D. Cal. Dec. 10, 2020) (collecting cases regarding separate approval motions for settlements and plans of distribution for those settlements). Any plan of allocation will be informed by the ultimate size of the total settlement fund and will be submitted to the Court for approval. Fidelity Settlement Agreement, ¶ 41. Class members will have the opportunity to comment on or object to the proposed allocation. The

Court's Preliminary Approval Order also anticipates an administrative dispute resolution process for claims, both involving the claims administrator and allowing for an appeal to class counsel.

Dkt. No. 1097, ¶ 18. Finally, the class received notice of this approach and, with one week remaining in the objection period, no objections to the proposed deferral have been filed.

Schachter Decl. ¶ 16. The Class Notice specifically explained:

8. When can I get a payment?

No money will be distributed to any Settlement Class Member yet. The lawyers will continue to pursue the lawsuit against the other, non-settling Defendants to see if any future settlements or judgements can be obtained in the case and then the funds will be distributed in the best method available in order to reduce administrative expenses.

The plan of distribution for the settlement funds will depend on the total amount recovered from the Defendants, attorney fees and case costs. You will be notified when and how to submit a claim. The plan of distribution for the settlement funds must be approved by the Court before the funds can be distributed.

Notice, 5. This factor weighs in support of final approval.

Third, Plaintiffs' Motion for Preliminary Approval and the Class Notice indicated that Plaintiffs would seek attorneys' fees, costs, and incentive awards from this settlement fund. Mot. 13; Notice, 8 (explaining class counsel would seek \$7,492,500 in attorneys' fees, plus reimbursement of costs, the actual cost of class notice up to \$500,000, and an incentive award of \$25,000). As described previously, the deadline to submit objections is January 11, 2021. Notice, 1. However, to date, no class member has objected to this request. Schachter Decl. ¶ 16. Notably, Plaintiffs' Motion for Attorneys' Fees filed concurrently herewith further limits the request to \$6,750,000 in fees at this time, with no request for expenses or incentive awards. This factor weighs in support of final approval.

Fourth, Rule 23(e)(3) requires that parties seeking approval of a settlement must identify any agreement made in connection with the proposal. The settlement agreement sets forth the

terms of the settlement and no other agreements have been made. Mot. 14; Bonsignore Decl. in Support of Preliminary Approval (Dkt. No. 1056-1), ¶ 20. This factor weighs in support of final approval.

In short, the relief provided for the class is fair, reasonable, and adequate and supports final approval of the settlement.

4. The Settlement Treats Class Members Equitably

The settlement provides for a single settlement class, with no subclasses. No class members are favored under the terms of the settlement and any plan of distribution will apply objective terms, such as *pro rata* weighting, to distribute funds in accordance with class members' respective losses.

5. The Class Response Supports Final Approval of the Settlement

Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator emailed notice of the settlement to potential class members and updated the case-dedicated website and toll-free telephone number to incorporate information about the Fidelity Settlement. Schacter Decl. ¶¶ 5-13. The Settlement Administrator also issued a press release announcing the settlement. *Id.* at ¶ 14. Of the 716,185 potential class members emailed, to date, only 8 have requested exclusion from the settlement. *Id.* at ¶¶ 9,16.

The Court's Preliminary Approval Order directed that objections to the settlement be submitted to the Clerk's Office by January 11, 2021. Dkt. No. 1097, ¶ 16, Notice, 6. To date, no objections have been filed on the docket and no objections have been received by the Settlement Administrator or Lead Counsel. Bonsignore Decl. ¶ 49; Schachter Decl. ¶ 16.

**C. The Court-Approved Notice Program Satisfies Due Process and Has Been Fully Implemented**

The Court-approved notice plan satisfies due process. *See*, § II(b), *supra*. Federal Rule of Civil Procedure 23(c)(2)(B) requires that the Court “direct to class members the best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B). This notice process may be through “United States mail, electronic means, or other appropriate means.” *Id.* “Individual notice of class proceedings is not meant to guarantee that every member entitled to individual notice receives such notice,’ but ‘it is the court’s duty to ensure that the notice ordered is reasonably calculated to reach the absent class members.’” *Reppert v. Marvin Lumber & Cedar Co., Inc.*, 359 F.3d 53, 56 (1st Cir. 2004) (quoting *Hallman v. Pa. Life Ins. Co.*, 536 F. Supp. 745, 748-49 (N.D. Ala. 1982)).

The notice plan implemented by A.B. Data was designed in response to TelexFree’s internet-based business model, the broad geographical sweep of class members, and in light of the e-mail notice program used in the related bankruptcy proceedings and for the prior settlements in this litigation. Mot. 20-22, Prelim. Approval Order (Dkt. No. 1097) ¶¶ 6, 11. Of the 716,185 email addresses to be sent email notice of the settlement, 75,471 emails were ultimately undeliverable. Schachter Decl. ¶ 9. Thus, email notice successfully reached approximately 89% of the email addresses. *Id.*

In addition, A.B. Data updated the case-specific website to publish the settlement notices as well as relevant pleadings and important dates and deadlines and issued a press release via PR Newswire. *Id.* at ¶¶ 13-14. The notice plan as implemented is the best notice practicable under the circumstances and reasonably calculated to reach absent class members. This factor supports final approval of the settlement.

A settlement notice is a summary, not a complete source, of information. *See, e.g., Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *In re “Agent Orange” Prod.*

*Liab. Litig. MDL No. 381*, 818 F.2d 145, 170 (2d Cir. 1987). The notice must clearly and concisely set out in plain language:

- (1) The nature of the action;
- (2) The definition of the class certified;
- (3) The class claims, issues, or defenses;
- (4) That a class member may enter an appearance through an attorney if the member so desires;
- (5) That the court will exclude from the class any member who requests exclusion;
- (4) The time and manner for requesting exclusion; and
- (5) The binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

The Court has already approved the Notice and the notice plan. Prelim. Approval Order ¶¶ 5, 6, 11. The Notice explained the nature of the action and the class claims, issues, and defenses. Notice, 1-4. It defined the certified class and explained that a class member may enter an appearance through his or her own attorney if wished. *Id.* at 4, 7. It also explained that the Court will exclude from the class any member who requested exclusion, detailed the process and deadlines to request exclusion, and explained the binding effect of a class judgment on members should they choose to remain in the class. *Id.* at 5-6. It also explained that Plaintiffs would seek attorneys' fees and expenses. *Id.* at 8. The Notice also explained that the full settlement agreement was available to settlement class members online at [www.telexfreesettlement.com](http://www.telexfreesettlement.com). *Id.* Consequently, every provision of the settlement was available to class members. The Notice provided to the class therefore constitutes valid, due, and sufficient notice to class members, is the best notice practicable under the circumstances, and supports final approval of the settlement.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter orders granting final approval of the settlement, certifying the settlement class, and granting final judgments of dismissal with prejudice as to the Fidelity Defendants.

Dated: January 4, 2021

Respectfully submitted,

TELEXFREE CLASS PLAINTIFFS

By their attorneys,

/s/ Robert J. Bonsignore

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**CERTIFICATE OF SERVICE**

I, Robert J. Bonsignore, hereby certify that on this 4<sup>th</sup> day of January 2021, I caused the foregoing together with the attachments identified in the associated MOTION FOR FINAL APPROVAL OF SETTLEMENTS WITH DEFENDANTS FIDELITY CO-OPERATIVE BANK AND JOHN MERRILL to be electronically filed with the Clerk of the Court by using the Case Management/Electronic Case Filing (CM/ECF) system, which will send a notice of electronic filing to all parties registered with the CM/ECF system in the above-captioned matter. A copy will be forwarded via first class mail, postage prepaid, to those parties not electronically registered at their last and/or only known address.

*/s/ Robert J. Bonsignore*  
Robert J. Bonsignore



# ATTACHMENT A

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**IN RE: TELEXFREE SECURITIES  
LITIGATION**

**MDL No. 4:14-md-2566-TSH**

**This Document Relates to:  
ALL CASES**

**DECLARATION OF ROBERT J. BONSIGNORE IN SUPPORT OF MOTION FOR  
FINAL APPROVAL OF SETTLEMENT WITH FIDELITY CO-OPERATIVE BANK  
AND JOHN MERRILL**

I, Robert J. Bonsignore, declare:

1. I am a partner in the law firm of Bonsignore Trial Lawyers, PLLC, and serve as Interim Lead Counsel for Plaintiffs in this action. I am a member in good standing of the State Bar for the Commonwealth of Massachusetts and the State of New Hampshire. I am also admitted to multiple federal trial and appellate courts across the United States.

2. I make this Declaration in support of Plaintiffs' Motion for Final Approval of Settlement with Defendants Fidelity Co-Operative Bank and John Merrill (together, the Fidelity Bank Defendants"). Except as otherwise stated, I have personal knowledge of the facts stated below and could and would testify competently thereto. This Motion is being made in accordance with the Court's Preliminary Approval Order which set out the schedule for final approval of the settlement.

3. I submit this Declaration in support of the MDL 2566 Plaintiffs' Motion for Final Approval of Settlement with Defendants Fidelity Co-operative Bank ("Fidelity Bank") and John

Merrill and related individuals and entities (together, the “Fidelity Bank Defendants” or “Settling Defendants”)<sup>1</sup>.

4. A true and correct copy of the Settlement Agreement was submitted Attached hereto as Exhibit 1 to Dkt 1056 (Bonsignore Preliminary Approval Declaration).

5. The Fidelity Bank Defendants have agreed to a cash settlement of twenty-two million five hundred thousand dollars (\$22,500,000.00) that has been paid into an escrow account established for the benefit of the class members. Settlement Agreement ¶¶ 10-11.

6. A material term of the settlement is that all available or potentially available insurance from each released individual and entity was disclosed. *Id.* at pp. 2-3. The amount paid exhausted all available policies and included a significant out-of-pocket contribution by the Fidelity Bank Defendants.

7. Many of the facts supporting approval of this settlement were described in detail in my declaration in support of Plaintiffs’ motion for preliminary approval of this settlement. Dkt. No. 1056.<sup>2</sup>

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<sup>1</sup> Fidelity Bank Defendants and Settling Defendants include their past, present and future employees, officers, directors, corporators, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, fiduciaries, partners, partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, principals, managing directors, members, managers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, advisors, consultants, brokers, dealers, lenders, attorneys, representatives, accountants, insurers, co- insurers, reinsurers, associates and their related parties.

<sup>2</sup> To preserve judicial efficiencies and to avoid duplication to the greatest extent practicable, I incorporate Dkt. No. 1056 (Hereafter Bonsignore Preliminary Approval Declaration) herein by reference. I also incorporate the contents of the Declaration I am submitting this day in support of Plaintiffs counsels request for compensation for their efforts.

8. The Attorneys' Fee Motion sets out certain of this case's history and background facts that the Court may find relevant to its evaluation of approval, including Plaintiffs' diligence in pursuing their rights and claims within this long pending and unique MDL.

**A. CLASS COUNSEL AND THE CLASS REPRESENTATIVES HAVE ADEQUATELY REPRESENTED THE CLASS**

**HISTORY OF LITIGATION AND EFFORTS UNDERTAKEN**

9. The Court is intimately familiar with the procedural history of this litigation and a summary was provided in the Bonsignore Preliminary Approval Declaration. Dkt 1056.

10. This was "from scratch litigation". No prior cases were found that offered template or cookie cutter exemplar pleadings or litigation plans. The litigation largely conceived a terrible wrong and largely driven by a commitment by a relatively small group of lawyers who shared a commitment that something should be done about it. As fully detailed elsewhere, the focus of the government prosecutions and enforcement actions was elsewhere and resulted only in a handful of prosecutions. The Bankruptcy Trustees express responsibilities and roles are not shared by the putative class of victims.

11. In sum, with few exceptions, the acts, practices and civil wrongful conduct that remain the focus of Plaintiffs' efforts and support Plaintiffs claims, are different than the bankruptcy and criminal proceedings regarding the TelexFree fraud. As a result, Plaintiffs had to painstakingly build their proof from scratch.

12. A fraud of this magnitude does not occur in a vacuum. Extraordinary effort was required to piece together how the scheme could be sustained. For a period of approximately 4 years TelexFree and its parent company, Ympactus, were operated by John Merrill and Carlos Wanzeler out of TelexFree's Marlboro Massachusetts World Headquarters.

13. A full understanding of how TelexFree operated was needed to identify the individual acts that were actionable and actors that should, in the end, be held civilly accountable. As described below, Fidelity was at or near the center of certain of TelexFree's activities for a finite period.

14. TelexFree was a sprawling international multi- billion-dollar Pyramid scheme. The victims number nearly a million, and the fraud was a financial fraud carried out electronically via the internet.

15. The unlawful financial transactions were hidden in a massive labyrinth of tens of millions of data bits generated through financial transactions that were subject to the full gambit of money laundering techniques from layering to sheltering, and even included smurfing. The business was willfully given a veneer of legitimacy so that all involved can vigorously assert their innocence and lack of knowledge. As such, the efforts undertaken in furtherance of our duty to zealously represent the class of Plaintiff victims were necessary to prove the claims against Fidelity and the remainder of banking and related Defendants such as pay processor and financial advisors.

16. TelexFree's principals, the providers of financial services, highly skilled and specialized professionals – some licensed – and others who profited from the scheme, all stood to rake in substantial profits by cloaking this unlawful MultiLayered Marketing scheme in a false shroud of legitimacy. They did in fact take extraordinary efforts to cover their tracks.

17. Gathering, sorting, categorizing, working and piecing the evidence together has been a long and difficult process. Apart from the review of scattered informal gatherings of documents that certain Defendants seeking to get out early picked and chose to provide,

plaintiffs were largely forced to forage and piece together evidence over an extended period of time until the lifting of the stay and the first of the settlements were reached.

18. The extent and depth of the fraudulent transactions required expert analysis and computer assisted analysis of 1.7 million images including excel spreadsheets obtained through formal and informal discovery by Plaintiffs' counsel.<sup>3</sup> Defendants have fought producing documents since the stay was lifted

19. On August 9, 2017, the bankruptcy trustee (the "Trustee") produced to Plaintiffs a very narrow and limited set of documents. The Trustee refused to produce the bulk of the documents he possessed on the grounds that they were subject to a confidentiality agreement.<sup>2</sup>

20. On September 23, 2019, this Court denied Certain Defendants' Motion to Quash or For a Protective Order with respect to the subpoena served in 2017 upon the TelexFree Trustee. Dkt. 752.

21. Without the hard work in the trenches, undertaken overtime to the best of Plaintiffs' counsel's ability, that lead to their becoming familiar with the far reaching and sprawling operations of the Pyramid scheme, the task of reducing the search for the specific acts that support the claims lodged against specific actors may not have been possible.

22. Aiding and abetting the commission of a tort subjects a defendant to joint and several liability. *Norman v. Brown, Todd & Heyburn*, 693 F. Supp. 1259, 1264 (D. Mass. 1988) ("Aiding and abetting is one variation of joint tort liability."); *Honeycutt v. U.S.*, 137 S. Ct. 1626, 1631 (2017) ("If two or more defendants jointly cause harm, each defendant is held liable for the entire harm; provided, however, that the plaintiff recover only once for the full amount.");

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<sup>3</sup> Plaintiffs have received 15 productions and 6 supplemental productions. Plaintiffs have spent in excess of 5,573 hours of document review on the above discovery totals alone.

*Federal Trade Commission v. WV Universal Management, LLC*, 877 F.3d 1234, 1240-41 (11th Cir. 2017) (“In tort, the aider-abettor is liable to the injured party ‘for the entire harm.’” (quoting Restatement (Second) of Torts § 875)).<sup>4</sup>

23. All of the work undertaken to date led to the instant settlement with Fidelity Bank. Fidelity provided TelexFree with the financial services that were essential to its ongoing operations<sup>5</sup> for a short, but critical time.

24. Plaintiffs’ counsel took great effort to investigate and develop the claims against Fidelity.

25. Plaintiffs’ allege, and Defendants vociferously deny, that Fidelity bank was used like the other banks to integrate unlawfully generated funds into the legitimate stream of commerce.

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<sup>4</sup> It is fundamental that “those who aid and abet or conspire in tortious conduct are jointly and severally liable with other participants in the tortious conduct, regardless of the degree of their participation or culpability in the overall scheme.” *Lumbard v. Maglia, Inc.*, 621 F. Supp. 1529, 1537 (S.D.N.Y. 1985), *citing* W. Prosser, *Handbook of the Law and Torts* 292–93 (4th ed. 1971). Joint and several liability renders an aider and abettor liable for the entire loss occasioned by the tort committed by the principal. *Lucas v. Allen*, 1997 Mass. App. Div. 9 (Dist. Ct. 1997) (holding aider and abettor liable for all of plaintiff’s losses) (“Aiding and abetting as a basis for joint liability is recognized in Massachusetts.”).

<sup>5</sup> TelexFree was a creation of and existed only through its continued financial transactions. It is not in dispute that TelexFree would have collapsed in a matter of months without continued financial services. *See In re TelexFree, Inc. et al.*, Mass. Bankr. No. 14-40987, Dkt. 636, ¶ 52 (Trustee Darr Ponzi Motion). This was made abundantly clear by those intimately involved in TelexFree’s business affairs, including TelexFree’s Chief Restructuring Advisor, William H. Runge, stating (*In re TelexFree, Inc. et al.*, Mass. Bankr. No. 14-40987, Dkt. 13, ¶ 64):

As a majority of the Debtors' revenues are generated from website-based purchases, the use of credit cards is inextricably linked to the Debtors' ability to continue normal postpetition operations. Even a slight delay in implementing the relief requested herein could cause the Debtor Credit Card Processors to refuse to do business with the Debtors on the terms and basis of their ordinary course relationships, which could have a significant and material adverse affect on the Debtors' business . . .

26. During the fall of 2013, TelexFree had run out of most of its banking options<sup>6</sup> and it requested the professionals it was working with to locate financial service providers that would service them.<sup>7</sup> Its existing banks and pay processors threatened to terminate their relationships<sup>8</sup> and it was defined as a hot potato by John Hughes<sup>9</sup>. TelexFree was forced to seek overseas payment processing options and was unable to process tens of millions of dollars.<sup>10</sup>

27. At account opening, Fidelity Bank was aware that TelexFree: (1) had been shuttered in Brazil; (2) had several of its bank accounts closed for suspected fraud; and (3) was a multi-level marketing company. Multi-level marketing companies (“MLMs”) are higher-risk because they pose the risk of pyramid scheme-type crimes.

28. Between August and December 2013, Fidelity Bank accepted \$50,156,841 in deposits from TelexFree and Carlos Wanzeler. These deposits included bulk deposits of money orders and checks from victims, large deposits upon the closure of TelexFree’s other bank accounts, and large deposits from payment processors – including a \$3,000,000 deposit from Defendant ProPay on August 23, 2013.

29. Fidelity Bank notified TelexFree of its determination to close its accounts on December 3, 2013. Despite this, Fidelity Bank continued to accept deposits from TelexFree until at least December 26, 2013, including deposits from victims. Fidelity also continued to provide

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<sup>6</sup> Dkt. 876-9 (Craft Affidavit 1-22-2020), ¶¶ 104-05.

<sup>7</sup> Dkt. 984-5 (Craft Affidavit 4-20-2020), ¶¶ 32-34.

<sup>8</sup> At account opening, Fidelity Bank and John Merrill knew that other banks were closing TelexFree’s accounts. Dkt. 984-5, ¶¶ 112-18. During November 2013, TD Bank closed certain of TelexFree’s accounts and John Merrill’s took efforts to help his brother’s business retain that relationship. *Id.* at ¶121-22.

<sup>9</sup> Dkt. 145-4 (Email of John Hughes dated 8-28-2013).

<sup>10</sup> Dkt 984-5 (Craft Affidavit 4-20-2020) ¶¶ 55-61, 115-16.



TelexFree with credit and depository services and act as a creditor and depository bank for TelexFree until at least December 31, 2013.

30. Fidelity Bank did not freeze or otherwise withhold the funds in TelexFree's accounts as required. Instead, Fidelity Bank transferred over \$10 million dollars of victims' funds out of TelexFree's accounts and into the personal accounts of Defendants James Merrill and Carlos Wanzeler. This included a \$3.5 million transfer by Carlos Wanzeler to a Singapore account on December 30, 2013. Carlos Wanzeler also transferred \$3.8 million from Fidelity Bank to Wells Fargo Bank. On or about the same date, Fidelity Bank made three more transfers totaling more than \$305,000 to Wells Fargo Bank.

31. During the account opening process, Fidelity Bank: (1) mischaracterized TelexFree as medium risk—when as an MLM it should have been designated high risk—to circumvent banking regulations requiring enhanced due diligence of high-risk customers; (2) omitted TelexFree's prior bank history, despite knowing that the prior bank was Citizen's Bank and that TelexFree had been forced out of Citizen's Bank; and (3) opened accounts despite TelexFree's false answers to material questions

32. During this critical time, Fidelity Bank served as a clearing house for large deposits of funds for TelexFree and later assisted TelexFree and its principals to transfer funds out to other banking Defendants as well as their own personal accounts. The funds were later transferred offshore.

33. Class Counsel continue to zealously represent the class and drive this litigation forwards. For example, since submitting the Motion for Preliminary Approval of this settlement, Plaintiffs have defended their motion to amend their complaint, responding to numerous oppositions through reply briefing (Dkt. Nos. 1065-1071) and at oral arguments that spanned

over three sessions. Dkt. Nos. 1083 (Sept. 22, 2020 hearing notes), 1088 (Oct. 7, 2020 hearing notes), 1091 (Oct. 14, 2020 hearing notes).

34. Plaintiffs are actively engaged in the discovery meet and confer process with numerous defendants and have defended against a Motion to Compel filed by Wells Fargo Advisors.

35. Plaintiffs continued to work with their banking expert – Professor McCoy – to secure an additional expert report on the role PNC Bank played in the TelexFree scheme, which was submitted to the Court in Plaintiffs’ supplemental expert disclosures filed on November 24, 2020. Dkt. No. 1099.

36. Plaintiffs also continue to participate in settlement discussions with other Defendants as appropriate where those discussion will benefit the class and further facilitate the efficient resolution of this litigation.

37. Plaintiffs continue to work with Counsel for Fidelity and will provide and update to the Court at Oral Argument.

38. Finally, and as described in great detail at Preliminary Approval, Defendants Counsels are skilled and accomplished lawyers.

**B. THE PROPOSED SETTLEMENT WAS NEGOTIATED AT ARMS LENGTH**

39. As described in great detail at the Preliminary Hearing, the agreement was only reached after many starts and stops. Plaintiffs and Defendants both walked away from early settlement attempts and it was only with the skilled assistance of nationally recognized mediator Jeb Melnick that the parties eventually – and after more stops and starts – come to terms. Plaintiffs investigated the assets of all Fidelity defendants and consulted with experts in both bank valuation and insurance.

**C. THE RELIEF PROVIDED FOR THE CLASS IS ADEQUATE**

40. The adequacy of the Proposed Settlement has been addressed in the accompanying briefing, above, and in great detail in the Preliminary Approval filing.

41. Plaintiffs also relied in their litigation consultants the Hon. Gerald Rosen who provided insights and opinions that were of great value and underscores the fact that the negotiations were at arm's length and settlement was reached after consideration of the costs, risks and delay of trial and appeal.

42. Plaintiffs will mirror the method of payment used by the Trustee in Bankruptcy and coordinate and consult with his Claims Administrator to ensure that the method of distribution is effective as well as fair.

43. The terms of Plaintiffs proposed award of attorney fees is provided in great detail in the accompanying briefing.

44. There is no agreement required to be identified under Rule 23 (e) (3).

45. Each class member is entitled under this proposed settlement to an equal recovery of their Net Loss. As referenced above and at Preliminary Approval, Plaintiffs will coordinate with and consult with the Bankruptcy Trustee to ensure fair and equal treatment.

**D. PLAINTIFFS COMPLIED WITH THIS COURT'S ORDER AND NOTICE TO THE CLASS WAS ADEQUATELY GIVEN**

46. In accordance with the Court's Order granting preliminary approval of this settlement, I worked with the settlement administrator, A.B. Data, to ensure the court-approved Notice was emailed to the class members.

47. I also directed A.B. Data to issue a press release concerning the settlement in an attempt to reach those potential class members who may not have received the class notice in light of the undeliverable emails reported to me by A.B. Data.

48. Since the Notice was distributed, I (and attorneys working at my direction) have regularly monitored the docket in this litigation for any objections filed with the Court in accordance with the terms of the Notice. Based on my review of the docket to date, I understand that no objections have yet been filed with the Court.

49. I have also checked for objections or exclusion requests that may have been sent to me in error by class members. To date, I have not received any objections or exclusion requests.

50. The Court Approved Notice Program satisfied due process and it was fully implemented.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 4, 2021 in Las Vegas, Nevada

/s/ Robert James Bonsignore  
Robert J. Bonsignore, Esq.

# ATTACHMENT B

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: TELEXFREE SECURITIES LITIGATION

MDL No. 4:14-md-2566-TSH

This Document Relates to:

ALL CASES

DECLARATION OF ERIC S. SCHACHTER IN SUPPORT OF MOTION FOR FINAL  
APPROVAL OF SETTLEMENT WITH FIDELITY BANK DEFENDANTS

I, Eric S. Schachter, declare:

1. I am a Vice President with A.B. Data, Ltd. ("A.B. Data"). I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. I make this declaration in connection with Plaintiffs' Motion for Final Approval of settlement with the Fidelity Bank Defendants (the "Settlement") and in compliance with the terms of the Court's Preliminary Approval Order entered on November 6, 2020.

3. Pursuant to the Preliminary Approval Order, the Court approved the selection of A.B. Data to perform the duties of the Claims Administrator for the Settlement and directed A.B. Data to provide notice to the Settlement Class and Stephen Darr, the bankruptcy trustee.

4. Prior to emailing the approved Class Notice to potential Settlement Class Members, A.B. Data cleansed the list of email addresses received from the related TelexFree bankruptcy proceedings to remove duplicative and invalid email addresses. The removal of these duplicative and invalid email addresses is a necessary best practice as the presence of invalid email addresses

results in junk and spam filters blocking emails sent to valid email addresses. As a result of this cleansing process, 716,185 unique email addresses were identified as valid.

5. On November 24, 2020, A.B. Data commenced sending the approved Class Notice to potential Settlement Class Members by email. Stephen Darr, the bankruptcy trustee, was also sent the Class Notice. A true and correct copy of the Class Notice is attached hereto as Exhibit 1.

6. A.B. Data also implemented additional best practices to avoid SPAM and junk filters and maximize deliverability, such as: not including any attachments to the email; avoiding certain words and phrases likely to trigger filters; and staggering the emails in tranches to maximize deliverability.

7. A.B. Data sent the Class Notice to 716,185 email addresses. Of these, approximately 522,000 emails were successfully delivered on the first attempt.

8. Any email not successfully delivered after the first attempt was subsequently resent to the same email address. Of these second-round emails, approximately 119,000 were successfully delivered.

9. Of the 716,185 Settlement Class Member email addresses that were sent the Class Notice, 640,714 were successfully delivered (89%) and 75,471 were ultimately undeliverable.

10. On April 16, 2020, A.B. Data implemented a toll-free telephone number, (877) 829-4140, with an automated interactive voice response system to assist potential Settlement Class Members in understanding the terms of the previous settlements and their rights. Callers have the option to speak with a live operator during business hours if they need further help.

11. On November 23, 2020, A.B. Data updated the automated interactive voice response system to assist potential Settlement Class Members in understanding the terms of the Fidelity Settlement and their rights. Callers have the option to speak with a live operator during

business hours if they need further help, with assistance offered in many other languages including, but not limited to, Spanish, Portuguese, Italian, French, and Russian.

12. As of the date of this declaration, the toll-free telephone number has received 1,749 calls from potential Settlement Class Members, of whom 599 spoke with a live operator.

13. On November 19, 2020, A.B. Data updated the case-specific website for this matter at [www.telexfreesettlement.com](http://www.telexfreesettlement.com). Per the Court's request relayed to me by Lead Counsel, the website was significantly upgraded to accommodate non-English speaking potential Settlement Class Members. More specifically, A.B. Data created a fully customizable website with Google Translate functionality. Google Translate allows for all website content, including the Class Notice, to be instantly and seamlessly translated by the user into over 100 different languages. The website also features a summary version of the Class Notice on the homepage, the full Class Notice, related court documents, a list of important dates, and contact information for A.B. Data and Lead Counsel.

14. On December 29, 2020, A.B. Data issued a press release on behalf of and at the direction of Lead Counsel announcing the settlement. The press release was issued via PR Newswire. A true and correct copy of the press release is attached hereto as Exhibit 2.

15. The deadline to object to the Settlement is January 11, 2021. A.B. Data has not directly received any objections.

16. The postmark deadline for Settlement Class Members to request exclusion from the Settlement is January 11, 2021. As of the date of this declaration, A.B. Data has received eight purported requests for exclusion via email. A.B. Data will submit a supplemental declaration after the January 11, 2021 deadline for requesting exclusion that addresses all requests received.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 4, 2021 in Milwaukee, WI

A handwritten signature in black ink, appearing to read "Eric S. Schachter", written over a horizontal line.

Eric S. Schachter

# EXHIBIT 1

**From:** TelexFree Settlement Administrator <noreply@TelexFreeSettlement.com>  
**Sent:** XXXXXXXXXXXXXXXXXXXX  
**To:** XXXXXXXXXXXXXXXXXXXX  
**Subject:** Notice of Class Action Settlement – In re: TelexFree Securities Litigation

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS  
*In re: TelexFree Securities Litigation*  
Case No. 4:14-md-2566-TSH

**If You Bought a TelexFree AdCentral or AdCentral Family Package, a  
\$22.5 Million Class Action Settlement May Affect Your Rights**

*A Federal Court authorized this Notice.  
This is not a solicitation from a lawyer. You are not being sued.*

- A class action lawsuit brought on behalf of victims of the TelexFree pyramid scheme is currently pending.
- Plaintiffs allege that they were injured as a result of the Defendants' assistance and participation in the TelexFree pyramid scheme. Defendants dispute Plaintiffs' claims.
- A \$22.5 million settlement has now been reached in this litigation regarding claims against Fidelity Co-operative Bank ("Fidelity Bank") and John Merrill (together, the "Fidelity Bank Defendants" or "Settling Defendants").
- This is the fourth settlement reached in this litigation. Three settlements were previously reached with nine Defendants and three related third-parties and have received final approval by the Court.
- Your legal rights will be affected whether you act or do not act. This Notice includes information on the Fidelity Bank Defendants' settlement and the lawsuit. Please read the entire Notice carefully.
- The Court in charge of this case still has to decide whether to approve the settlement.

**This Notice and additional information translated in a variety of other languages is available by visiting [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com). You may**

**also call 877-829-4140 to obtain additional information in a variety of other languages. Translators are available upon request.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>OBJECT BY JANUARY 11, 2021</b>	Submit your objection explaining why you disagree with the settlement and/or the requested attorneys' fees, litigation expenses, and incentive awards. <i>See Question 9 for more information.</i>
<b>EXCLUDE YOURSELF BY JANUARY 11, 2021</b>	This is the only option that allows you to individually sue the Settling Defendants about the claims asserted in this case. You will no longer be a member of the Settlement Class and you will not receive any funds from this settlement. <i>See Question 9 for more information.</i>
<b>GO TO THE HEARING ON FEBRUARY 26, 2021</b>	Ask to speak in Court about any aspect of the settlement and/or the requested attorneys' fees, litigation expenses, and incentive awards. <i>See Questions 11-12 for more information.</i>
<b>DO NOTHING</b>	You will remain a member of the Settlement Class. You will give up any rights you currently have to separately sue the Settling Defendants for the conduct that is the subject of the lawsuits. <i>See Questions 9-10 for more information.</i>

## **WHAT THIS NOTICE CONTAINS**

### **Basic Information**

1. Why did I get this Notice?
2. Who are the Defendants?
3. What is this lawsuit about?
4. What is the status of the litigation?
5. What is a class action?

### **The Settlement Class**

6. How do I know if I'm part of the Settlement Class?
7. What does the settlement provide?
8. When can I get a payment?
9. What are my rights in the Settlement Class?
10. What am I giving up to stay in the Settlement Class?

### **The Settlement Approval Hearing**

11. When and where will the Court decide whether to approve the settlements?
12. Do I have to attend the hearing?

**The Lawyers Representing You**

- 13. Do I have a lawyer in the case?
- 14. How will the lawyers be paid?

**Getting More Information**

- 15. How do I get more information?

**BASIC INFORMATION**

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**1. Why did I get this Notice?**

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Records indicate that you may have purchased one or more TelexFree AdCentral or AdCentral Family packages and suffered a net loss between January 1, 2012, and April 16, 2014.

A “net loss” is defined as having occurred when the class member invested more funds in TelexFree than he or she withdrew.

You have the right to know about the case and about your legal rights and options before the Court decides whether to approve the settlements.

This Notice explains the litigation, the settlements, and your legal rights.

The litigation is before Judge Timothy S. Hillman of the United States District Court for the District of Massachusetts and the case is called *In re: TelexFree Securities Litigation*, Case Number 4:14-md-2566-TSH. The people who sued are called Plaintiffs and the companies and people they sued are called Defendants.

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**2. Who are the Defendants?**

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The Defendants fall into several categories.

**TelexFree Entities:** TelexElectric, LLLP, and Telex Mobile Holdings, Inc.

TelexFree, Inc., TelexFree, LLC, and TelexFree Financial, Inc. are not currently named as Defendants in the litigation due to their Chapter 11 bankruptcy protections.

The other Defendants are people and entities alleged to have participated in, or aided or abetted, the pyramid scheme.

**TelexFree Founders, Principals, Executive Office Members, and Associated Individuals:**

James M. Merrill, Carlos N. Wanzeler, Carlos Roberto Costa, Steven M. Labriola, Joseph H. Craft, Ana Paula Oliveira, Andreia B. Moreira, and Katia Wanzeler.

**Other Co Conspirators:** Sanderley Rodrigues de Vasconcelos, Santiago de la Rosa, Randy N. Crosby, Scott Miller, Faith R. Sloan, and Daniil Shoyfer.

**Attorney Defendants:** Gerald P. Nehra, Esq., Gerald P. Nehra, Attorney at Law, PLLC, Law Offices of Nehra and Waak, Garvey Schubert Barer, P.C., Robert Weaver, Samuel C. Kauffman, Gary P. Tober, Sara P. Sandford, Jeffrey A. Babener, and Babener & Associates.

**Other Professional Services Providers:** The Sheffield Group, Inc.

**Accountant Defendants:** Joseph H. Craft, Craft Financial Solutions, LLC.

**Bank Defendants:** Fidelity Co-operative Bank, John F. Merrill, Synovus Bank, and PNC Bank, N.A.

**Payment Processing Service Companies:** International Payout Systems, Inc., ProPay, Inc., Base Commerce, LLC, John Hughes, Alexander Sidel, Jason Doolittle, John Kirchhefer, Brian Bonfiglio, Vantage Payments, LLC, Dustin Sparman, Allied Wallet, Ltd., Bank Card Consultants, Inc., and John Yurick.

**Investment Services Providers:** Wells Fargo Advisors, LLC, and Mauricio Cardenas.

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**3. What is this lawsuit about?**

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Plaintiffs allege that they were injured as a result of the Defendants' assistance and participation in the TelexFree Pyramid/Ponzi Scheme.

Plaintiffs allege that TelexFree, Inc., TelexFree, LLC, TelexFree Financial, Inc. and their related entities and individuals operated an illegal scheme whereby they sold memberships and ostensibly paid promoters for placing advertisements for a voice over internet protocol ("VOIP") product, but in reality paid them to recruit other investors whose new membership fees kept the scheme afloat. Plaintiffs further allege that TelexFree, Inc., TelexFree, LLC, TelexFree Financial, Inc. and their related entities and individuals carried out other related ongoing operations, including, but not limited to, money laundering and the transfer of funds and operations offshore and beyond the reach of the United States' justice system. Plaintiffs allege that TelexFree's business and operations constituted a hybrid illegal Pyramid/Ponzi Scheme. Plaintiffs seek compensation for the economic loss they suffered as a result of the Defendants' participation in, and/or aiding or abetting of, TelexFree's illegal Scheme. Plaintiffs also seek equitable relief.

Defendants dispute Plaintiffs' claims. The Fidelity Bank Defendants further deny that they knew

TelexFree was an illegal scheme when they provided banking services to the company. The Court has not yet decided who is right.

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**4. What is the status of the litigation?**

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This settlement with the Fidelity Bank Defendants is the fourth settlement reached in the litigation.

Three settlements, which have been finally approved by the Court, were previously reached regarding claims against twelve parties, nine of which are Defendants and three of which are related third-parties. The first settlement was with Defendants Base Commerce, LLC (formerly known as Phoenix Payments, LLC), John Hughes, Brian Bonfiglio, John Kirchhefer and Alex Sidel (collectively, the "Base Commerce Defendants"). The second settlement was with Defendant Synovus Bank. The third settlement was with Defendants Joseph Craft and Craft Financial Solutions, Inc. and related third-parties BWFC Processing Center, LLC, ACE LLP and Audra Craft. For more information on these settlements, including the settlement agreements and related Court orders and filings, please visit [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com).

The litigation will continue against the other named Defendants until all Defendants reach a settlement or the case is dismissed or goes to trial. The funds obtained may be used for the benefit of the class in the ongoing litigation.

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**5. What is a class action?**

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In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All these people are members of the class, except for those who exclude themselves from the class.

Important information about the case will be posted on the website, [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com), as it becomes available. Please check the website to be kept informed about any future developments.

## **THE SETTLEMENT CLASSES**

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**6. How do I know if I'm part of the settlement classes?**

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The Settlement Class includes persons who purchased TelexFree AdCentral or AdCentral Family packages and suffered a Net Loss during the period from January 1, 2012, to April 16, 2014.

A "Net Loss" means that the Settlement Class Member invested more funds than they withdrew.

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**7. What do the settlements provide?**

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This settlement with the Fidelity Bank Defendants provides for a payment of \$22,500,000 in cash and continuing cooperation by the Fidelity Bank Defendants. In return for the payment and benefits, Settlement Class Members are required to give up their claims against Fidelity Bank, John Merrill and their past, present and future employees, officers, directors, incorporators, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, fiduciaries, partners, partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, principals, managing directors, members, managers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, advisors, consultants, brokers, dealers, lenders, attorneys, representatives, accountants, insurers, coinsurers, reinsurers, associates and their related parties.

More details are in the Fidelity Bank Defendants Settlement Agreement, available at [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com).

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**8. When can I get a payment?**

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No money will be distributed to any Settlement Class Member yet. The lawyers will continue to pursue the lawsuit against the other, non-settling Defendants to see if any future settlements or judgments can be obtained in the case and then the funds will be distributed in the best method available in order to reduce administrative expenses.

The plan of distribution for the settlement funds will depend on the total amount recovered from the Defendants, attorney fees and case costs. You will be notified when and how to submit a claim. The plan of distribution for the settlement funds must be approved by the Court before the funds can be distributed.

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**9. What are my rights in the settlement classes?**

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**Remain in the Settlement Class:** If you wish to remain a member of the Settlement Class, you do not need to take any action at this time. If you remain in the Settlement Class and participate in the settlement, you retain your right to administratively contest the amount you are awarded after you are notified what that amount is.

**Opt Out of the Settlement Class:** If you wish to keep your rights to sue the Settling Defendants about the conduct alleged in this litigation, any act or omission of the Settling Defendants alleged in the Complaints as it relates to the TelexFree Scheme or any conduct alleged and causes of action asserted or that could have been alleged or asserted, in any class action or other complaints filed in this litigation, you must exclude yourself from the Settlement Class. You will not get any money from the settlement if you exclude yourself.

To exclude yourself from the Settlement Class, you must send a letter that includes the following:



- a. Your name, home address at time of your transactions with TelexFree, your current home address if different, your phone number, your current email, your email address(es) at the time you conducted business with TelexFree, evidence of your transactions with TelexFree, and your estimate of the date range of your transactions with TelexFree, your estimated dollar transactions with TelexFree;
- b. the name and contact information for all legal counsel(s) that you have consulted with as relates to TelexFree or that represent you;
- c. A statement saying that you wish to be excluded from the settlement class in *In re TelexFree Securities Litigation* – Case No. 4:14-md-2566-TSH, as to the Fidelity Bank Defendants for which you wish to retain your rights to sue; and
- d. Your signature and the date you sign.

You must mail your exclusion request, postmarked no later than **January 11, 2021**, to:

In re TelexFree Securities Litigation  
c/o A.B. Data, Ltd.  
ATTN: EXCLUSIONS  
P.O. Box 173001  
Milwaukee, WI 53217

**Remain in the settlement classes and object:** You can ask the Court to deny approval of the settlement by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval of the settlement, no payments from that settlement will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Fairness Hearing, either in person or through your own attorney. If you wish to speak at the Final Approval Hearing, you must send a letter so informing the Clerk of the Court, Lead Class Counsel, and Settling Defendants' Counsel. If you appear through your own attorney, you are responsible for paying that attorney.

All written objections must be made under penalty of perjury and the supporting papers must include:

- a. A heading that clearly identifies the case name and number (In re TelexFree Securities Litigation – Case No. 4:14-md-2566-TSH);
- b. The objector's name, address, telephone number, and the contact information for any attorney retained in connection with the objection or otherwise in connection with the lawsuit;
- c. A detailed statement of the specific factual and legal basis for the objection to the proposed settlement with the Fidelity Bank Defendants;

- d. A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address and telephone number;
- e. A list of any witnesses the objector may call at the Final Approval Hearing, together with a brief summary of each witness's expected testimony;
- f. A list of and copies of any exhibits which the objector may seek to use at the Final Approval Hearing;
- g. A list of any legal authority the objector may present at the Final Approval Hearing; and
- h. The objector's signature executed under penalty of perjury.

**Objections must be submitted to the Court by mailing them to the Clerk's Office, United States District Court for Massachusetts, Donohue Federal Building, 595 Main Street, Worcester, Massachusetts 01608.**

Objections must be filed or postmarked on or before **January 11, 2021**.

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**10. What am I giving up to stay in the settlement classes?**

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Unless you exclude yourself from the Settlement Class, you can't sue the Fidelity Bank Defendants or be part of any other lawsuit against the Fidelity Bank Defendants, or their disclosed parents, subsidiaries, affiliates, divisions, predecessors and successors, their respective past and present officers, directors and employees, insurers and reinsurers, about the legal issues in this case. It also means that all of the decisions made by the Court will bind you. The "Release of Claims" included in the Settlement Agreement covers all claims against the Settling Defendants relating to TelexFree and includes any causes of action asserted or that could have been asserted in the lawsuit.

The precise terms and conditions of the settlement agreements are available at [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com).

## **THE SETTLEMENT APPROVAL HEARING**

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**11. When and where will the Court decide whether to approve the settlements?**

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The Court will hold a virtual Fairness Hearing in Courtroom 2 at **2:30 p.m. on February 26, 2021**, at the United States District Courthouse, Donohue Federal Building, 595 Main Street, Worcester, Massachusetts 01608. Instructions on how to attend the virtual hearing will be posted on the settlement website. The virtual hearing may be moved to a different date or time without additional notice, so it is a good idea to check the settlement website for information. At this virtual hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. After the virtual

hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take.

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**12. Do I have to attend the hearing?**

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No. Class Counsel will answer any questions the Court may have. But you are welcome to join the virtual hearing at your own expense. If you file or mail an objection, you don't have to attend the virtual hearing to talk about it. As long as you filed or mailed your written objection on time and comply with the above objection requirements, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

**THE LAWYERS REPRESENTING YOU**

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**13. Do I have a lawyer in the case?**

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Yes. The Court has appointed the law firm of Bonsignore Trial Lawyers, PLLC to represent you as Interim Lead Counsel. The Court has also appointed the following attorneys to represent you as members of the Interim Executive Committee: R. Alexander Saveri of Saveri & Saveri, Inc.; D. Michael Noonan of Shaheen and Gordon; and Ronald Dardeno of the Law Offices of Frank L. Dardeno, LLP (collectively "Class Counsel"). You do not have to pay Class Counsel. If you want to be represented by your own lawyer, and have that lawyer appear in court for you in this case, you may hire one at your own expense.

The contact information for Class Counsel is as follows:

Robert J. Bonsignore, Esq. Lisa Sleboda, Esq. Bonsignore Trial Lawyers, PLLC 23 Forest St. Medford, MA 02155 Telephone: 781-856-7650	R. Alexander Saveri, Esq. Saveri & Saveri, Inc. 706 Sansome Street San Francisco, CA 94111 Telephone: 415-217-6810
D. Michael Noonan, Esq. Shaheen and Gordon 353 Central Ave., 2nd Floor P.O. Box 977 Dover, NH 03821 Telephone: 603-749-5000	Ronald A. Dardeno, Esq. Law Offices of Frank N. Dardeno 424 Broadway Somerville, MA 02145 Telephone: 617-666-2600

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**14. How will the lawyers be paid?**

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Class Counsel will submit an Application for Attorneys' Fees, Expenses, and Class Representative Incentive Awards to be heard at the same time as the Fairness Hearing on **February 26, 2021**. Class Counsel will ask the Court for attorneys' fees of one-third of the total settlement fund, or

\$7,492,500.00, plus reimbursement of their costs as approved by the Court. In accordance with the provisions of the Settlement Agreement, Class Counsel will also request payment for the actual cost of class notice not to exceed \$500,000.00.

Class Counsel will also ask the Court to approve an incentive award of \$25,000 for the proposed class representative.

Class Counsel will file their Application for Attorneys' Fees, Expenses, and Class Representative Incentive Awards on or before **January 4, 2021**. On the same day, Class Counsel will post their Application for Attorneys' Fees, Expenses, and Class Representative Incentive Awards on the settlement website, [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com).

You may comment on or object to Class Counsel's Application for Attorneys' Fees, Expenses, and Class Representative Incentive Awards by following the procedure set forth in Question 9 above. Any comment or objection must be filed with the Court or postmarked by **January 11, 2021**.

## GETTING MORE INFORMATION

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### 15. How do I get more information?

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This notice summarizes the proposed settlements. For the precise terms and conditions of the settlements, please see the settlement agreements available at [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com).

You can also get more information by contacting Class Counsel at the addresses listed above under Question 13, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.mad.uscourts.gov/cgi-bin/login.pl>, or by visiting the office of the Clerk of the Court for the United States District Court for the District of Massachusetts, Donohue Federal Building, 595 Main Street, Worcester, Massachusetts 01608 between 8:30 a.m. and 5:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE CLERK'S OFFICE TO INQUIRE ABOUT THE SETTLEMENT OR THE CLAIM PROCESS.**

Dated: 11/02/2020 BY ORDER OF THE COURT

**For More Information: Call (877) 829-4140 or Visit [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com)**

Please do not reply to this email, as it was delivered from an unmonitored email account. For more information, visit [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com).

Unsubscribe

# EXHIBIT 2

# Bonsignore Trial Lawyers, PLLC announces a settlement has been reached in the In re: TelexFree Securities Litigation

USA - English ▾

NEWS PROVIDED BY

**Bonsignore Trial Lawyers, PLLC** →

Dec 29, 2020, 12:30 ET

**If You Bought a TelexFree AdCentral or AdCentral Family Package, a \$22.5 Million Class Action Settlement May Affect Your Rights**

WORCESTER, Mass., Dec. 29, 2020 /PRNewswire/ --

- A class action lawsuit brought on behalf of victims of the TelexFree pyramid scheme is currently pending.
- Plaintiffs allege that they were injured as a result of the Defendants' assistance and participation in the TelexFree pyramid scheme. Defendants dispute Plaintiffs' claims.
- A \$22.5 million settlement has now been reached in this litigation regarding claims against Fidelity Co-operative Bank ("Fidelity Bank") and John Merrill (together, the "Fidelity Bank Defendants" or "Settling Defendants").
- This is the fourth settlement reached in this litigation. Three settlements were previously reached with nine Defendants and three related third-parties and have received final approval by the Court.
- Your legal rights will be affected whether you act or do not act. The complete Notice, available at [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com), includes information on the Fidelity Bank Defendants' settlement and the lawsuit. Please read the entire Notice carefully.
- The Court in charge of this case still has to decide whether to approve the settlement.
- **The Notice and additional information translated in a variety of other languages is available by visiting [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com) You may also call 877-829-4140 to obtain additional information in a variety of other languages. Translators are available upon request.**

YOUR LEGAL RIGHTS AND OPTIONS	
<b>OBJECT BY JANUARY 11, 2021</b>	Submit your objection explaining why you disagree with the settlement and/or the requested attorneys' fees, litigation expenses, and incentive awards.
<b>EXCLUDE YOURSELF BY JANUARY 11, 2021</b>	This is the only option that allows you to individually sue the Settling Defendants about the claims asserted in this case. You will no longer be a member of the Settlement Class and you will not receive any funds from this settlement.
<b>GO TO THE HEARING ON FEBRUARY 26, 2021</b>	Ask to speak in Court about any aspect of the settlement and/or the requested attorneys' fees, litigation expenses, and incentive awards.
<b>DO NOTHING</b>	You will remain a member of the Settlement Class. You will give up any rights you currently have to separately sue the Settling Defendants for the conduct that is the subject of the lawsuits.

For More Information visit [www.TelexFreeSettlement.com](http://www.TelexFreeSettlement.com)