

**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**

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

Plaintiffs hereby move the Court, pursuant to Federal Rule of Civil Procedure 23(e), for final approval of the settlement reached with Fidelity Co-Operative Bank and John Merrill (the “Fidelity Defendants”). Plaintiffs seek entry of orders:

1. Granting final approval of the settlement agreement with the Fidelity Defendants as fair, reasonable, and adequate;
2. Certifying the settlement class;
3. Approving the manner and form of notice given to the class members as the best notice practicable under the circumstances; and
4. Entering final judgment as to the Fidelity Defendants.

The grounds for this motion are that (1) the settlement agreement meets the requirements for approval pursuant to Federal Rule of Civil Procedure 23(e); (2) the form and manner of providing notice met the requirements of Federal Rule of Civil Procedure 23(c) and due process; (3) the settlement class meets the requirements for certification under Federal Rule of Civil

Procedure 23; (4) the response of the class supports final approval; and (5) there is no just reason for delay in the entry of Final Judgment as to the Fidelity Defendants.

This motion is based upon this Motion and the Memorandum of Law in Support of Final Approval, the Declaration of Robert J. Bonsignore, and the Declaration of Eric S. Schachter and accompanying exhibits filed concurrently herewith, the complete files and records of this action, and such other written or oral arguments that may be presented to the Court.

WHEREFORE, Plaintiffs respectfully request that the Court enter the order attached hereto as Attachment A granting their Motion for Final Approval and enter judgment in to form attached hereto as Attachment B.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Plaintiffs hereby request oral argument on this motion. The Court has scheduled a hearing on this motion for February 26, 2021, at 2:30 p.m.

RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel for Plaintiffs contacted defense counsel by email on January 3, 2020 regarding this Motion and received one response from and engaged in conferral with counsel for Fidelity Co-Operative Bank, Ian Roffman.

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 4th day of January 2021, I caused the foregoing 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.

1. MOTION FOR FINAL APPROVAL OF SETTLEMENT WITH FIDELITY CO-OPERATIVE BANK AND JOHN MERRILL AND ATTACHED PROPOSED ORDER AND PROPOSED JUDGMENT;
2. MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL;
3. DECLARATION OF ROBERT J. BONSIGNORE IN SUPPORT OF MOTION FOR FINAL APPROVAL;
4. DECLARATION OF ERIC S. SCHACHTER IN SUPPORT OF MOTION FOR FINAL APPROVAL WITH EXHIBITS

/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

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**[PROPOSED] MEMORANDUM OF DECISION GRANTING MOTION FOR FINAL
APPROVAL OF SETTLEMENT WITH DEFENDANTS FIDELITY CO-OPERATIVE
BANK AND JOHN MERRILL**

On July 24, 2020, Plaintiffs filed their Motion for Final Approval of Settlement with Defendants Fidelity Co-Operative Bank and John Merrill and related individuals and entities (the “Fidelity Defendants”).¹ The Court having reviewed the motions for preliminary and final settlement approval, the settlement agreement, the pleadings and other papers on file in this action, and the statements and declarations of counsel and the parties, hereby finds that the motion should be GRANTED.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of this litigation, and the actions

¹ The Fidelity Defendants includes their past, present and future employees, officers, directors, incorporators, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributes, 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.

within this litigation and over the parties to the Settlement Agreement, attached hereto as Exhibit 1, including all members of the Settlement Class and the Fidelity Defendants.

2. For purposes of this Order, except as otherwise set forth herein, the Court adopts and incorporates the definitions contained in the Settlement Agreement, to the extent not contradictory or mutually exclusive.

3. The Court finds that Robert J. Bonsignore of Bonsignore Trial Lawyers, PLLC, previously appointed as Interim Lead Counsel for the Settlement Class, and R. Alexander Saveri of Saveri & Saveri, Inc., Ronald Dardeno of the Law Offices of Frank L. Dardeno, and D. Michael Noonan of Shaheen and Gordon, previously appointed as members of the Settlement Class Executive Committee, pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, have and will fairly and competently represent the interests of the Settlement Class and Igor Shikhman as Class Representative has and will fairly and adequately protect the interests of the Settlement Class.

4. The Court finds that the prerequisites to certifying a Settlement Class under Rule 23 are satisfied for settlement purposes in that: (a) there are thousands of geographically dispersed Settlement Class members, making joinder of all members impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over individual issues; (c) the claims or defenses of the Class Representatives are typical of the claims or defenses of the Settlement Class; (d) the Class Representatives will fairly and adequately protect the interests of the Settlement Class, and have retained experienced counsel who have, and will continue to, adequately represent the Settlement Class; and (e) a Settlement Class resolution is superior to individual settlements.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies the following Settlement Class with respect to the Fidelity Defendants only:

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. A “Net Loss” means that the class member invested more funds than they withdrew.

6. In reviewing the settlement, the Court has considered: (1) that the Class Representative and Class Counsel have adequately represented the Settlement Class; (2) that the settlement was negotiated at arm’s-length; (3) that the relief provided for the Settlement Class is adequate, taking into account the costs, risks, and delay of trial and appeal, Plaintiffs’ proposal to defer distribution until later in the litigation, Plaintiffs’ request for reimbursement of attorneys’ fees, and that there appear to be no agreements required to be disclosed under Rule 23(e)(3); and (4) that the settlement treats all Settlement Class members equitably.

7. In light of the above considerations and after a hearing, pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finally approves and confirms the settlement terms as set forth in the Settlement Agreement and finds that the settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class.

8. This Court hereby dismisses on the merits and with prejudice the actions in favor of the Fidelity Defendants, with each party to bear their own costs and attorneys’ fees, except as provided in the Settlement Agreement.

9. The Releasees are hereby and forever released from all Released Claims as defined in the Settlement Agreement.

10. The notice given to the Settlement Class, was the best notice practicable under the circumstances. Said notice provided due and adequate notice of these proceedings and of the

matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of subdivisions (c)(2) and (e)(1) of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

11. Those persons/entities identified in the list attached hereto as Exhibit 2 are validly excluded from the Settlement Class. Such persons/entities are not entitled to any recovery of the settlement proceeds obtained in connection with the settlement.

12. Any member of the Settlement Class who failed to timely and validly request to be excluded from the Settlement Class shall be subject to and bound by the provisions of the Settlement Agreement, the Released Claims contained therein, and the Final Judgment with respect to all Released Claims, regardless of whether such members of the Settlement Class seek or obtain any distribution from the Settlement Fund.

13. ___ objections to the settlement were filed. The objections are hereby overruled.

14. Without affecting the finality of the Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement Agreement and any distribution to Settlement Class members pursuant to further orders of this Court; (b) disposition of the Settlement Fund; (c) hearing and determining applications by Plaintiffs for attorneys' fees, costs, expenses, and interest; (d) the actions until the Final Judgment has become effective and each and every act agreed to be performed by the parties all have been performed pursuant to the Settlement Agreement; (e) hearing and ruling on any matters relating to the plan of allocation of settlement proceeds; and (f) the parties to the Settlement Agreement for the purposes of enforcing and administering the Settlement Agreement and the mutual releases contemplated by or executed in connection with the Settlement Agreement.

15. The Court finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that Judgment should be entered and further finds that there is no just reason for delay in the entry of Judgment as to the parties to the Settlement Agreement. Accordingly, the Clerk is hereby directed to enter Judgment forthwith for the Fidelity Defendants.

16. The Court's certification of a Settlement Class as provided herein is without prejudice to, or waiver of, the rights of any non-settling Defendant to contest certification of any non-settlement class proposed in this Action. The Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any non-settlement class in this Action; and no party may cite or refer to the Court's approval of any Settlement Class as persuasive or binding authority with respect to any motion to certify any non-settlement class or any other dispositive motion filed by a non-settling Defendant. Nor shall such final approval prejudice any rights, claims, or defenses of any non-settling Defendant.

17. Massachusetts law, including the provisions of M.G.L. c. 231B, §4 which bars contribution actions against joint tortfeasors who settle in good faith, without regard to the principle of conflicts of law, shall govern the enforcement and interpretation of the Final Judgment and any other claims arising under or in any way related to the TelexFree Pyramid Scheme.

IT IS SO ORDERED.

Dated: _____

Hon. Timothy S. Hillman
United States District Judge

ATTACHMENT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: TELEXFREE SECURITIES
LITIGATION

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

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**[PROPOSED] FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE AS TO
DEFENDANTS FIDELITY CO-OPERATIVE BANK AND JOHN MERRILL**

This matter has come before the Court to determine whether there is any cause why this Court should not approve the settlement between Plaintiffs and Defendants Fidelity Co-Operative Bank and John Merrill and related individuals and entities (the “Fidelity Bank Defendants”)¹, as set forth in the parties’ settlement agreement dated July 6, 2020 (the “Settlement Agreement”) in the above-captioned litigation. The Court, after carefully considering all papers filed and proceedings held herein and otherwise being fully informed, has determined (1) that the Settlement Agreement should be approved, and (2) that there is no just reason for delay of the entry of this Judgment approving the Settlement Agreement. Accordingly,

¹ The Fidelity Bank Defendants includes Fidelity Bank, John Merrill and 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.

the Court directs entry of Final Judgment which shall constitute a final adjudication of this case on the merits as to the parties to the Settlement Agreement.

Good cause appearing therefor, it is ORDERED, ADJUDGED, AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of this litigation and the actions within this litigation and over the parties to the Settlement Agreement, attached hereto as Exhibit 1, including all members of the Settlement Class and the Fidelity Bank Defendants.

2. For purposes of this Final Judgment, except as otherwise set forth herein, the Court adopts and incorporates the definitions contained in the Settlement Agreement, to the extent not contradictory or mutually exclusive.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, after a hearing, the Court hereby finally approves and confirms the settlement terms as set forth in the Settlement Agreement and finds that said settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies the following Settlement Class with respect to the Fidelity Defendants only:

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. A "Net Loss" means that the class member invested more funds than they withdrew.

5. Those persons identified in the list attached hereto as Exhibit 2 are validly excluded from the Settlement Class. Such persons are not included in or bound by this Final Judgment. Such persons/entities are not entitled to any recovery of the settlement proceeds obtained in connection with the Settlement Agreement.

6. Any member of the Settlement Class who failed to timely and validly request to be excluded from the Settlement Class shall be subject to and bound by the provisions of the Settlement Agreement, the Released Claims contained therein, and this Final Judgment with respect to all Released Claims, regardless of whether such members of the Settlement Class seek or obtain any distribution from the Settlement Fund.

7. The Court hereby dismisses on the merits and with prejudice these actions in favor of the Fidelity Bank Defendants, with each party to bear their own costs and attorneys' fees, except as provided in the Settlement Agreement.

8. All persons and entities who are Releasers are hereby barred and enjoined from commencing, prosecuting, or continuing, either directly or indirectly, against the Releasees, in this or any other jurisdiction, any and all claims, causes of action or lawsuits, which they had, have, or in the future may have, arising out of or related to any of the Released Claims as defined in the Settlement Agreement.

9. The Releasees are hereby and forever released from all Released Claims as defined in the Settlement Agreement.

10. Without affecting the finality of the Final Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement Agreement and any distribution to Settlement Class members pursuant to further orders of this Court; (b) disposition of the Settlement Fund; (c) hearing and determining applications by Plaintiffs for attorneys' fees, costs, expenses, and interest; (d) the actions until the Final Judgment has become effective and each and every act agreed to be performed by the parties all have been performed pursuant to the Settlement Agreement; (e) hearing and ruling on any matters relating to the plan of allocation of settlement proceeds; and (f) the parties to the settlement for the purposes of enforcing and

administering the Settlement Agreement and the mutual releases contemplated by or executed in connection with the Settlement Agreement.

11. All claims against the Fidelity Bank Defendants for contribution or indemnification arising under or in any way related to the TelexFree Pyramid Scheme are barred, including pursuant to the provisions of M.G.L. c. 231B, §4, which bars contribution actions against joint tortfeasors who settle in good faith, without regard to the principle of conflicts of law.

12. The Court finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that Final Judgment should be entered and further finds that there is no just reason for delay in the entry of Final Judgment as to the parties to the Settlement Agreement. Accordingly, the Clerk is hereby directed to enter Judgment forthwith for the Fidelity Defendants.

IT IS SO ORDERED.

Dated: _____

Hon. Timothy S. Hillman
United States District Judge

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