

ATTACHMENT B
BONSIGNORE DECLARATION

**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 SETTLEMENTS WITH
DEFENDANTS JOSEPH CRAFT AND CRAFT FINANCIAL SOLUTIONS, INC.,
BASE COMMERCE, LLC, SYNOVUS BANK, AND CERTAIN RELATED PARTIES**

I, Robert J. Bonsignore, declare:

1. I am a partner in the law firm of Bonsignore Trial Lawyers, PLLC, and a member in good standing of the state bars of New Hampshire and Massachusetts. I am also admitted to multiple federal courts across the United States.

2. On December 24, 2014, I was appointed as Interim Lead Counsel for Plaintiffs and the putative class of approximately 750,000 victims (“Plaintiffs”) of the multi-billion dollar TelexFree pyramid/Ponzi scheme (the “Scheme”) who are seeking to obtain redress for the massive, unrecovered losses they have suffered through the civil actions consolidated before this Court for pretrial multidistrict litigation proceedings (the “MDL”). *See* Dkt. 79.

3. I make this declaration in support of Plaintiffs’ Motion for Final Approval of Settlements with Defendants Joseph Craft, Craft Financial Solutions, Inc., and Related Parties BWFC Processing Center, LLC, Ace LLP, and Audra Craft; Base Commerce, LLC, Synovus Bank, John Hughes, Brian Bonfiglio, John Kirchhefer and Alex Sidel (collectively, the “Settling

Defendants”). Except as otherwise stated, I have personal knowledge of the facts stated below and could and would testify competently thereto. The Motion is being made in accordance with the Court’s April 8, 2020 order which set out the amended schedule for Final Approval.

4. Based on the requests for exclusion that I received from A.B. Data, I understand that nine requests for exclusion were timely submitted by potential class members. Although certain of the requests for exclusion did not comply with the format directed by the Class Notice, I intend to treat all nine as valid requests for exclusion unless directed otherwise by the Court. I have based this decision on the fact that the six class members to request exclusion via email responded in the same manner in which they were contacted, at least one indicated that local restrictions due to the Covid-19 pandemic meant that he was not able to comply with the requirements for formally requesting exclusion, and they all make a clear request to be excluded from the class.

5. At my direction, A.B. Data provided counsel for the Settling Defendants with a copy of all objections and requests for exclusion received from potential class members on June 19, 2019 via email. I have not been informed that any of the Settling Defendants intend to terminate the settlements.

6. Plaintiffs’ Counsel, under my direction, have continued to vigorously represent the class. This work includes:

- a. Discovery: Plaintiffs have been and are continuing to manage a broad plan of formal discovery across all Defendants and third parties. This work has included issuing and responding to written discovery, cataloging, coding, reviewing, second level reviewing and placing into context or processing forward voluminous and highly complex financial data and documents that evidence or

actually supported TelexFree's sprawling and sophisticated international white collar fraud, related financial meeting and conferencing with witnesses and experts, meeting and conferring with multiple parties to resolve disputes and avoid motion practice, and review and analysis of the discovery produced by these Defendants and third parties.

- b. Pleading: At the same time, Plaintiffs have filed and responded to motions, including the preparation of a detailed proposed Fifth Consolidated Amended Complaint and the supporting motion for leave to amend.
- c. Settlement: Plaintiffs also continue to participate in settlement negotiations with other Defendants where those discussions will benefit the class and further facilitate the efficient resolution of this litigation.

7. Throughout the MDL pretrial proceedings, Plaintiffs' pursuit of both new evidence and amendment to include it has been continuous and diligent. It bears highlighting that Plaintiffs have faced great challenges to advancing their case, both during the four-year stay imposed within the MDL pretrial proceedings as well as thereafter.

8. From the MDL's inception, any progress in Plaintiffs' pursuit of their claims and recovery for their losses was significantly impacted and slowed by deference given to the concurrent Department of Justice criminal prosecutions of TelexFree's founders, James Merrill and Carlos Wanzeler, and TelexFree's ongoing bankruptcy proceedings. Those proceedings removed any dispute as to TelexFree's status as a pyramid scheme and criminal enterprise and the criminal liability of its founders. *See* Order, Case 14-40987 (Bankr. D. Mass. Nov. 25, 2015, as amended Dec. 21, 2015) (finding TelexFree had engaged in a Ponzi and pyramid scheme). Nevertheless, the scope of that criminal enterprise and the extent to which other third-party

actors knowingly enabled its existence and exponential growth in the United States -- and those actors' liability to their innocent victims -- remains far from settled despite the passage of over five years since Plaintiffs' institution of their civil actions.

9. Shortly after the initial JPML transfers and the establishment of MDL 2566 in this Court, all formal discovery through the MDL was stayed in deference to the foregoing criminal proceedings. Dkt. 111. That stay, entered on March 10, 2015, remained in place -- and was thereafter supplemented by a blanket stay of all proceedings on March 2, 2016 -- for nearly four years until January 29, 2019. Dkt. 414, 435, 606.

10. Thus, obtaining the cooperation of witnesses who could provide background facts, context and authenticate evidence is bestowed with increased importance.

11. Foremost among the challenges in this case is the nature of the financial fraud at issue. The TelexFree Scheme was a highly complex white-collar crime that was accomplished via a labyrinth of multifaceted transactions that were carried out through continually changing accounts. TelexFree's activities -- and those of its enabling actors -- included a wide range of deceptive-by-design account and transaction manipulations, money laundering as well as the syphoning off and transferring-out-of-reach components of a massive financial fraud. Billions of dollars moved through millions of individual transactions in constantly changing accounts and funds were laundered and syphoned through them.

12. Adding to Plaintiffs' already-challenging prosecution, the sprawling Scheme spanned multiple years, was international in scope, and received sophisticated and effective assistance from TelexFree's financial service providers (including banking and pay processing insiders who knew exactly how to manipulate transactions to disguise their nefarious nature and

make them appear legitimate) and licensed professionals with well over a century of related specialization.

13. As this Honorable Court recognized when denying the motion for judgment on the pleading as to the tortious aiding and abetting claims asserted against payment processor Allied Wallet, Ltd., “direct evidence of actual knowledge of a Ponzi scheme is rare.” Dkt. 742 at 4.

14. As a result of the Settlements the Plaintiffs have obtained and will continue to obtain the cooperation of former TelexFree CFO Jonathan Craft. Mr. Craft provided highly probative insights that assisted Plaintiffs and their experts to work toward a deeper, more active and knowing understanding of the operations and interplaying roles played by many of the Defendants named in Plaintiffs’ initial pleading, some of whom have been dismissed from this case based upon the limited facts that Plaintiffs were able to obtain and allege against them in their initial pleadings. As set forth in Plaintiffs’ Motion for Leave to Amend (Dkt. 983-84), Mr. Craft’s assistance helped support new claims, including civil conspiracy as against them.

15. *In re TelexFree Securities Litigation*, with its nearly one million victims and their over \$1 billion in losses, is unique in its breadth and potential. With its focus upon the sophisticated financial and professional services providers who routinely elude scrutiny and liability for their wrongful activities -- but without whom schemes like TelexFree cannot exist -- it presents a rare opportunity to fill large gaps that exist in the current prosecutorial landscape for financial frauds, which consists primarily of governmental criminal actions against their founders and high-level insiders and, at times, bankruptcy proceedings after their inevitable collapse. Those gaps have fostered the continued proliferation of such frauds in the United States, despite increased efforts at quelling them.

16. This MDL litigation serves the public interest by addressing (1) the lack of deterrence of the institutional financial and professional services providers, who with their relatively limitless legal defense resources and locked files avoid even minimal scrutiny of their actions and retain the massive profits that incentivize them to provide services essential to such schemes, and (2) the failure to secure just and meaningful recompense for the often unsophisticated and resource-scarce victims who are left to suffer the consequences of those wrongful activities.

17. As a case in point, these consolidated civil actions are the only means for the approximately 750,000 victims of the TelexFree Scheme to bring their rightful claims against the majority of TelexFree's co-conspirators, aiders, and abettors. Most of those victims -- many of whom lost their entire life savings, and unknowingly recruited their loved ones into the same fate -- have not been able to recover even a portion of their collective over \$1 billion losses to date, despite bankruptcy proceedings and regulatory actions against the Scheme's founders and top winners.

18. The reach of the bankruptcy proceedings is limited because the Trustee, who assumes only the rights of TelexFree, is precluded under the doctrine of *in pari delicto* from recovering against any other malfeasor, such as the financial institutions, payment processors, and licensed professionals who aided and abetted the TelexFree Scheme. *See In Re Bernard L. Madoff Inv. Securities LLC*, 424 B.R. 122 (Bankr. S.D.N.Y. Jun. 20, 2010) (holding bankruptcy trustee barred by doctrine of *in pari delicto* from pursuing claims on behalf of the debtor or victims against various financial institutions and other aiders and abettors on Madoff scheme); *see also Caplin v. Marine Midland Grace Trust Co. of N.Y.*, 406 U.S. 416 (1972) The extent, indeed existence, of recovery for victims from the TelexFree estate itself is also subject to

significant uncertainty. In addition to being one category of claimants within the broad pool of general unsecured creditors who stand last in line for distribution of the estate's proceeds, a recent bankruptcy court decision granted the I.R.S. an elevated prepetition, priority unsecured claim to over \$15.5 million of those proceeds for a 2013 erroneous tax refund given to TelexFree, which takes precedence the claims of all general unsecured creditors, including the putative class of victims. *See In re: TelexFree, LLC*, Case No. 14-40987, Adv. Proc. No. 18-4091, 2020 WL 1659472 (Bankr. D. Mass. Mar. 26, 2020).

19. Likewise, the Department of Justice has only prosecuted a small number of the high-level individuals directly involved in the Scheme, such as its founders and top recruiters, and the SEC's ability to pursue aiders and abettors under U.S. and state securities regulations is very narrowly circumscribed in comparison with tort actions. Secondary liability, the closest equivalent to aiding-and-abetting liability under federal securities law, will lie only in limited circumstances. Typically, this involves liability of "controlling persons" who have a direct role in the sale or offering of unregistered or fraudulent securities. *See* Securities Act of 1933 § 15, 15 U.S.C. § 77o; Securities Exchange Act of 1934 § 20(a), 15 U.S.C. § 78t. Also, section 209(e) of the Investment Advisers Act (IAA), 15 U.S.C. § 80b-9(e) (1982), authorizes the SEC to bring actions to enjoin any person violating the provisions of the act, including any person who "has aided, abetted, counseled, commanded, induced, or procured" a violation. Most aiding-and-abetting claims therefore necessarily rest with the putative class, rendering this pending action absolutely crucial for the victims to achieve any substantive recovery.

20. None of the foregoing entities are obliged to consider the TelexFree victims as their top priority, as is the case for this MDL, and it is clear from the history of those entities' proceedings that they are not doing so. As such, this MDL litigation may well present the only

opportunity to achieve rightful recompense for the victims of TelexFree and to send the heretofore unissued warning to those who would enable and foster fraudulent financial schemes in the future.

21. The financial components of the respective settlements were only reached after Plaintiffs' counsels carried out assets searches of all Defendants as well as engaged in consultation with financial experts. Most importantly, the truthfulness of the representations which upon Plaintiffs integrally relied are material terms to the settlements.

22. The cooperation secured through the instant settlements provide Plaintiffs, within the limited informal means available to victims of financial frauds, the ability to investigate and uncover wrongdoing by exceedingly well-resourced institutional corporate entities. They have pursued all potential sources of additional voluntary information during the stay of compulsory formal discovery that might provide further support for their claims or reveal the identity and activities of new parties who had played knowing and essential roles in furthering the Scheme and who therefore bear legal culpability for their massive losses.

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

Executed on July 8, 2020 in Las Vegas, Nevada

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