

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”)¹.

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. 1056.²

¹ 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.

² 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.³ 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.²

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.");

³ 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)).⁴

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 operations⁵ 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.

⁴ 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.”).

⁵ 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 options⁶ and it requested the professionals it was working with to locate financial service providers that would service them.⁷ Its existing banks and pay processors threatened to terminate their relationships⁸ and it was defined as a hot potato by John Hughes⁹. TelexFree was forced to seek overseas payment processing options and was unable to process tens of millions of dollars.¹⁰

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

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

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

⁸ 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.

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

¹⁰ 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.