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	**(Leave to file granted on 12/11/2023)**

DECLARATION OF INTERIM LEAD COUNSEL IN SUPPORT OF PLAINTIFFS' MOTION FOR AN INTERIM AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

I, Robert J. Bonsignore, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a partner in the law firm of Bonsignore Trial Lawyers, PLLC ("Bonsignore Firm" or "BTL") 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. As referenced on my curriculum vitae, for the past 20 years I have exclusively focused by practice on complex litigation, class actions, and multidistrict litigation. (*See* Exhibit 1, Bonsignore Firm CV).

2. On December 23, 2014, this Court appointed the Bonsignore Firm as interim lead counsel for all Plaintiff "Net Loser" victims of the TelexFree scheme. (Dkt. 79). On October 3, 2023, this Court appointed the Bonsignore Firm as Lead Counsel for the pending Settlement Class. (Dkts. 1723-1, 1748). I am principally responsible for the management of this matter.

3. I submit this declaration in support of the above-captioned motion for a second interim award of attorneys' fees (the "Motion") of Plaintiffs' Counsels in connection with the services rendered by Class Counsel in this action since it was originally filed in 2014.

4. This declaration generally addresses the efforts of Class Counsel and in support of an interim award of attorneys' fees in connection with three settlements between Plaintiffs and Defendants (collectively, the "2023 Settlements"). Specifically, they are (1) a $95,000,000 settlement with Defendant T.D. Bank, N.A. (the "TD Bank Settlement"), (2) a $500,000 settlement with Defendants International Payout Systems ("IPS"), Eddie Gonzalez, and Natalia Yenatska (the "IPS Settlement"), and a $25,000 settlement with Defendants Ryan Mitchell and Telecom Logic (the "Telecom Settlement"). I will refer to these six Defendants herein collectively as the "Settling Defendants."

5. Some of the related documents that I refer to in this Declaration are attached as exhibits to this Declaration. I refer to the documents cited to in this Declaration as Exhibits to the Class Counsel Memorandum in Support of Motion for an Interim Award of Attorneys' Fees and Reimbursement of Expenses ("Class Counsel Memorandum"). Certain other documents referred to in this declaration or in Class Counsel's Memorandum are too voluminous to include in these filings, but will be provided to the court upon request.

6. On this date I have submitted a second separate declaration (the "Bonsignore Declaration") describing my law firm's specific services rendered in connection with the 2023 Settlements.

7. At my request, my firm and all other Plaintiffs' firms in this action have opted to continue to hold and not claim in this Motion and at this time many other expenses we necessarily advanced out-of-pocket to advance this litigation (hereafter "Held Expenses"). Therefore, only a subset of so called "Common Expenses" are submitted at this time for reimbursement.

8. Except as otherwise stated, I have personal knowledge of the facts stated below and would testify competently thereto.

9. This Motion is being submitted in accordance with the Court's minute entry of October 3, 2023 (Dkt. 1748), which adopted Plaintiffs' proposed Preliminary Order of Settlement Approval with modifications and established a schedule for notice to the Class, Plaintiff's motion for attorneys' fees and expenses, and final approval of the settlements.

10. The instant settlements with the Settling Defendants are the third set of settlements in this MDL. The first set of settlements were reached with Joseph Craft[1] (Dkt. 763-1 at 11), Base Commerce[2] (Dkt. 763-1 at 54), and Synovus Bank (I*d*.). I will refer to these three Defendants herein collectively as the "Synovus/Craft/Base Defendants." The settlements with the Synovus/Craft/Base Defendants resulted in a recovery of $2.1 million for the Settlement Class. Class Counsel sought no award of interim fees for the Synovus/Craft/Base Defendants settlements.[3]

11. The second set of settlements was a single settlement with Fidelity Co-Operative Bank and John Merrill ("the Fidelity Settlement"). The Fidelity settlement resulted in a recovery of $22.5 million for the Settlement Class. On February 26, 2021, this Court awarded Class Counsel $6.75 million in fees (or one-third) for Counsel's work from the inception of the litigation up until the time of the Fidelity Settlement. (Dkt. 1113 at 2).

12. This third set of settlements represents an important milestone in the history of MDL 2566. The combined recovery of $95,525,000 obtained through these settlements is more than four times the size of the Fidelity Settlement. Notably, the bulk of the monetary recovery was

[1] The Craft-related settling Defendants were Joseph Craft and Craft Financial Solutions, Inc.

[2] The Base Commerce-related settling parties were Base Commerce, LLC, John Hughes, Brian Bonfiglio, John Kirchhefer, and Alex Sidel.

[3] On July 28, 2020, this Court awarded Class Counsel partial reimbursement of expenses incurred in connection with the Synovus/Craft/Base Defendants set of settlements. (Dkt. 1061).

obtained from TD Bank, N.A., a defendant whose earlier Motion to Dismiss was initially granted on January 29, 2019. (Dkt. 602).

13. This noteworthy settlement with TD Bank is the product of Class Counsel's skill, experience, tenacity, focus, diligence and significant resources, coupled with the assistance of Plaintiffs' experts and consultants[4]. Only that focus, hard work, and tenacity enabled Plaintiffs to replead a dismissed claim against TD Bank in the Fifth Consolidated Amended Complaint (5CAC), successfully defend that claim against another Motion to Dismiss, develop the necessary facts in discovery to sustain the claim and sufficiently support a recovery commensurate with the classes damages, and then present a compelling case in mediation for a significant recovery on behalf of the Settlement Class.

14. My observations and opinions are based upon my supervision and direct participation in all aspects of the litigation against the Settling Defendants, including the development of strategies, discovery battles and integration into proof, briefing, arm's-length negotiations, and mediation. I also draw upon my knowledge of this litigation's history since its inception, including the lengthy stay of the proceedings and the 2019 dismissal of T.D. Bank and other significant defendants.

[4] In January 2020, I retained the services of an independent judicial evaluator, the Hon. Gerald E. Rosen (Ret.), the former Chief Judge of the Eastern District of Michigan, who in his tenure on the Court, handled a number of MDLs and numerous class actions. Judge Rosen also served as Special Master for the Hon. Mark L. Wolf of the District of Massachusetts in the post-settlement activities in the State Street Bank Case, *Arkansas Teacher Retirement System v. State Street Bank and Trust Co.*, 2018 WL 11026335 (D. Mass. June 28, 2018). Since he joined our team, I have conferred directly with Judge Rosen on an almost daily basis on virtually every aspect of this litigation. I also recruited and added to our team nationally prominent attorneys. They are the Honorable Stephen W. Rhodes (ret.) and James M. Wagstaffe. Among other things, Judge Rhodes previously served as the chief judge of the U.S. Bankruptcy Court, Eastern District of Michigan and was appointed by the Sixth Circuit Court of Appeals to presided over the Detroit bankruptcy, the largest municipal bankruptcy in U.S. history and confirmed the city's plan of adjustment in 2014. Judge Rhodes is also the co-author of the widely respected book, *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes*. James Wagstaffe is the author of *The Wagstaffe Group Practice Guide: Federal Procedure Before Trial* published by Lexis Nexus. Jim has long served a member of the Federal Judicial Center Foundation Board, appointed by the Chief Justice of the United States. I also retained a number of highly respected, preeminent experts.

15. The Settlement Class, which the Court has preliminarily certified for settlement purposes, consists of all individuals worldwide who invested more money in TelexFree than they received from TelexFree in distributions (the "Net Losers").

16. Class Counsel requests an interim award of attorneys' fees of $31,841,667.00, or one-third the gross recovery of the 2023 Settlements. Class Counsel's lodestar for this phase of the litigation exceeds $20.9 million and is the product of 35,000 hours of billable work. This interim award would be a modest 1.52 times the lodestar amount. An Interim Fee Award of $31,841,667.00 is even more reasonable if compared to the entire accumulated and uncompensated lodestar of Class Counsel from the inception of the case. At the time of the Fidelity Settlement, Class Counsel had already accumulated a lodestar of $18.45 million. (See Dkt. 1103-1). After receiving a First Interim Award of $6.75 million, Class Counsel still had $11.7 million in uncompensated, "trailing lodestar." Thus, Class Counsel's total uncompensated lodestar through June 20, 2023, is roughly $32.6 million—about $750,000 more than Class Counsel's current fee request. As fully briefed in the accompanying declaration and expert report of Brian T. Fitzpatrick, and as further factually supported herein, the one-third request is quite reasonable because this litigation has been extremely risky, complex and lengthy and especially in light of the fact that in the First Circuit, lodestar is to be considered as an optional cross check against a common fund percentage award. *See* Exhibit 1 to Class Counsel's Memorandum – Declaration of Brian T. Fitzpatrick.

17. Declarations and Charts of each firm are attached to Class Counsel's Memorandum as Exhibits 2–14. Upon request, the granular time sheets will be produced to the Court.

18. A chart detailing all related costs is attached to Class Counsel's Memorandum as Exhibit 16. Upon request the underlying invoices will be produced.

19. Prior to describing the extensive efforts and tasks accomplished by Plaintiffs' Counsel, I will review certain background factors that are relevant to this Court's evaluation of the present Motion, including Plaintiffs' counsel's diligent efforts in pursuing the class's rights, claims and evidence within this unique and challenging MDL.

SETTLEMENT BACKGROUND AND PROCEDURAL HISTORY

20. *In re TelexFree Securities Litigation* is by far the most complex and challenging matter I have ever litigated, in large part because of the practical implications and impact of the lengthy stay and the constantly changing state of evidence brought about by the delaying tactics of certain Defendants in their responses to discovery[5] as well as other conduct that resulted in piecemeal evaluation of the relevant evidence. In sum, the 2023 Settlements are the product of years of struggle through a procedural thicket of law and a factual morass of overlapping professional and financial relationships between defendants.

21. TelexFree was a sprawling multi-billion-dollar international pyramid scheme headquartered in Marlborough, Massachusetts that ensnared approximately 780,000 victims across the globe. The TelexFree Scheme could only be perpetrated by individuals who received assistance from sophisticated financial institutions capable of providing TelexFree with access to electronic banking. Both the perpetrators and their aiders and abettors were determined to cover their tracks.

22. Following the shuttering of TelexFree by United States and Massachusetts authorities and its bankruptcy filing in April 2014, victims of TelexFree filed suit in various district

[5] This is a well-known tactic in financial transaction-based cases, and especially Ponzi and pyramid scheme cases where the plaintiff's proof is often found buried within voluminous transactional statements, related reports and veiled, oblique, cyphered or surreptitiously worded emails, that often only reference related calls, meetings, inspections, or reports. The tactic is commonly referred to in the vernacular of Massachusetts' lawyers battling it in the trenches as "slow walking."

courts across the country. Victims alleged that TelexFree operated an unlawful business model and that certain businesses and entities provided substantial assistance after acquiring actual knowledge that the business model was unlawful.

23. In October 2014, the Judicial Panel on Multidistrict Litigation ("JPML") consolidated six actions from three districts and transferred them to this Court. (Dkt. 1).

24. Subsequently, the JPML transferred two additional actions to this Court as tag along cases on February 17, 2015, and October 16, 2015, from the Southern District of New York and the District of Arizona, respectively. (Dkts. 86, 299).

25. On December 12, 2014, the Department of Justice ("DOJ") filed a motion seeking a stay of all discovery pending resolution of its criminal cases against TelexFree's founders Carlos Wanzeler and James Merrill. (Dkt. 62).

26. On March 10, 2015, this Court granted the DOJ's motion and stayed all discovery. (Dkts. 111, 979-7).

27. On March 3, 2016, this Court entered a further order "staying all further action in this case until further notice" and directing Plaintiffs and their counsel to "take no further action" of any kind "until the stay is lifted by the Court." (Dkt. 414).

28. These stays remained in effect for nearly four years and prevented Plaintiffs from obtaining formal discovery from any Defendant during that time. (Dkt. 606). During that time, memories faded, and evidence became stale or disappeared.

29. Initial disclosures with certain Defendants were ordered to be exchanged by October 25, 2019. (Dkt. 756).

30. The complexity of MDL 2566 is compounded because the Defendants, co-conspirators, and some aiders-abettors took pains to conceal and obscure their fraud through the

use of money laundering techniques such as layering (routing transactions through multiple accounts to obscure the original source of funds) and sheltering (moving the illicitly obtained funds out of the reach of law enforcement through means such as offshore wire transfers).

31. As Plaintiffs' expert Professor Patricia McCoy testified, white-collar crime of this nature is difficult to detect, involves highly complex analysis, and was aided here by sophisticated defendants. (*See* Dkt. 742 at 4).

32. The relevant banking laws and regulations are complex and labyrinthine. The relevant case law observes that seldom, if ever, will there be direct evidence of knowledge in such cases. (*Id*.)

33. Delays in discovery, however, have given Defendants and third parties ample opportunities to claim that expected documents no longer exist, were "lost" or "misplaced," or have been overlooked by personnel who were not in place at the time Defendants worked with TelexFree. Many documents have only been uncovered after repeated LR 37.1 conferences, disclosures made by parties other than the one that originally created the documents, or motions to compel.

34. Newly produced documents and declarations have confirmed the existence of highly relevant evidence not previously located or produced by certain Defendants – including many documents that certain defendants repeatedly represented did not exist.

35. Although government agencies were able to gather evidence while it was fresh and comparatively accessible, banking regulations and investigative immunities of law enforcement agencies have effectively precluded Plaintiffs from obtaining the direct evidence gathered by the Department of Justice, the Securities and Exchange Commission, and the Secretary of the Massachusetts Commonwealth during the course of the various criminal and civil investigations.

Their promises to cooperate with MDL 2566 counsel representing the victims were not fulfilled and not one of the aforementioned law enforcement or governmental agencies have produced a single page of evidence.

36. All these factors make it perilous for Plaintiffs to build their case without cooperation and testimony from at least some Defendants and/or third parties with ties to TelexFree. While Plaintiffs have worked hard to overcome the obstacles created by the stay and government agencies, Plaintiffs have had to make hard choices about where to spend their resources on discovery disputes and when to reach settlements for the purpose of obtaining cooperation and fulsome discovery.

37. While the essentially fraudulent nature of TelexFree itself has never been in doubt since the scheme collapsed in April 2014, the core questions of MDL 2566 have always been what TelexFree's service providers in various fields (among them accounting, banking, law, payment processing etc.) knew about TelexFree's unlawful nature, how and when they knew it, and what actions they took subsequently did that substantially assisted the TelexFree scheme. Securing answers to these questions has been the focus of Plaintiffs' counsel's work since the inception of this case.

38. Under well-established law, the claims that these Defendant service providers provided substantial assistance to TelexFree after having actual knowledge subject those Defendants to joint and several liability. *See 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."). A claim for aiding and abetting requires both evidence supporting an

inference that each Defendant had actual knowledge of a fraudulent scheme's unlawful nature and evidence that each Defendant provided substantial assistance to the scheme. These requirements are difficult when 1) Defendants include large and powerful entities with sophisticated legal counsel who delay or otherwise withhold critical evidence, 2) Plaintiffs are denied access to evidence collected by government agencies while they cannot independently gather evidence and significant time elapses, and 3) discovery of documents and witnesses is stayed for a prolonged period of time.

39. On August 9, 2017, the bankruptcy trustee (the "Trustee") finally produced to Plaintiffs a very narrow, limited set of documents. The Trustee refused to produce the bulk of the documents, including the bank records he possessed on the grounds that they were subject to a confidentiality agreement.[6]

40. On January 29, 2019, this Court granted the Motions to Dismiss filed by defendants Pricewaterhouse Cooper LLC (Dkt. 595), Richard W. Waak (Dkt. 596), Global Payroll Gateway (Dkt. 598), Synovus Bank (Dkt. 599), Bank of America, N.A. ("BANA") (Dkt. 602), and T.D. Bank (Dkt. 602).

41. On September 6, 2019, Plaintiffs entered into a settlement agreement with former TelexFree CFO Joseph Craft. Mr. Craft's firsthand knowledge provided Plaintiffs with new evidence, added important context to evidence that Plaintiffs already possessed, and gave Plaintiffs insight into the relationships and roles of various parties that they were unable to obtain otherwise. (Dkt. 763-1, Ex. 1).

[6] Prior to that Plaintiffs were required to engage in motion practice and were subjected to a lengthy stay. More specifically and by way of review, on May 26, 2017, this Court allowed Plaintiffs' motion to serve a subpoena upon the Trustee, which the putative class promptly did. (Dkt. 494). Thereafter, on June 22, 2017, certain defendants filed a Motion to Quash or For A Protective Order with respect to the subpoena upon the Trustee. (Dkt. 507). Plaintiffs opposed that motion and cross-moved to compel. (Dkt. 510).

42. 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).

43. On September 23, 2019, written discovery commenced on the Plaintiffs' Fourth Amended Consolidated Complaint. (Dkt. 756). The Court's original deadline for completion of fact discovery was February 23, 2020. (*Id*.). The Court ordered Plaintiffs to file any amended pleadings on or before November 29, 2019. (*Id*.).

44. On October 11, 2019, the Trustee produced 98,000 densely populated images of documents including bank records. Plaintiffs had less than fifty days to process this information.

45. With the limited time available to them, Class Counsel reviewed, coded, and conducted quality control measures on the materials through use of both predictive (computer driven) and manual (human) tools. This process was facilitated by Plaintiffs' access to a new cooperating witness, Mr. Craft.

46. On April 8, 2020, the Court granted Plaintiffs leave to file a new motion to amend the complaint. (Dkt. 947). The following day, the Court entered a new scheduling order that prohibited depositions of fact witnesses until the Court's entry of orders resolving any motions to dismiss that might be filed against a future version of the Fifth Consolidated Amended Complaint. (Dkt. 950).

47. The Plaintiffs filed their motion to amend on May 19, 2020. (Dkt. 983).

48. On July 28, 2020, the Court granted final approval of Plaintiffs' settlements Defendants Base Commerce, Synovus Bank, Joseph Craft, Craft Financial Services, and other assorted parties. (Dkts. 1057, 1058).

49. On February 26, 2021, the Court granted final approval for Plaintiffs' settlement with Defendants Fidelity Co-Operative Bank and John Merrill. (Dkt. 1112).

50. On December 6, 2021, this Court granted in part Plaintiffs' May 19, 2020 motion to amend and directed the Plaintiffs to file the proposed Fifth Consolidated Amended Complaint (5CAC) by December 31, 2021. (Dkt. 1176). This order permitted plaintiffs to add back into the case a number of defendants that had previously been dismissed on their initial Rule 12(b)(6) motions.

51. Plaintiffs filed their proposed 5CAC on December 30, 2021. (Dkt. 1186).

52. Defendants filed numerous motions to dismiss the 5CAC. These motions were heard by the Court on May 25, 2022.

53. On August 31, 2022, the Court filed a consolidated memorandum and opinion that resolved the pending motions to dismiss. (Dkt. 1418). This order effectively reopened discovery.

54. The Court fully or partially denied the Motions to Dismiss filed by three of the four largest MDL 2566 Defendants. The Court's Order of August 31, 2022, granted the Motion to Dismiss filed by Defendant PNC Bank.

55. The Court's first scheduling order after disposing the motions to dismiss ordered fact discovery to be completed March 31, 2023. (Dkt. 1480).

56. Within two months, however, numerous defendants had requested and received multiple extensions to file answers and initial discovery disclosures. (*See* Dkts. 1426, 1428, 1431, 1435, 1445 (first round of extensions); Dkts. 1454, 1455, 1458, 1468, 1469, 1470, 1471, 1475 (second round of extensions)).

57. Plaintiffs were not consulted by the Defendants prior to their filing their first request for an extension[7] and did not otherwise require an extension for their responses to Defendants' discovery requests and served those response on January 13, 2023.

58. In December 2022, the three largest remaining defendants obtained extensions on their responses to Plaintiffs' discovery requests (*See* Dkts. 1504, 1505, 1507, 1508 (extensions received by TD Bank, N.A., Wells Fargo Bank N.A., and Bank of America, N.A.)).

59. In the wake of these extensions, the Court extended the deadline for fact discovery to June 30, 2023. (Dkt. 1509).

60. The Court granted more extensions for defendants to respond to discovery in January 2023 and March 2023. (Dkts. 1526, 1536).

61. On April 3, 2023, the MDL 2566 Court revised its previous schedule and ordered document discovery to be "substantially finished" by June 30, 2023. (Dkt. 1540). The deadline for fact depositions was extended until December 1, 2023.

62. On June 20, 2023, before the MDL 2566 Court extended all deadlines established in its April 3 order by three weeks. (Dkt. 1657).

63. Plaintiffs filed Motions to Compel various Defendants that did not meet their discovery obligations. Plaintiffs filed Motions to Compel Discovery against: (1) Bank of America on April 4, 2023. (Dkt. 1541); (2) International Payout Systems on May 4, 2023 (Dkt. 1564); (3) Katia Wanzeler on May 26, 2023; (4) Gerald P. Nehra and Gerlad P. Nehra Attorney at Law, PLLC on May 26, 2023, and May 30, 2023 (Dkts. 1582, 1586); (5) PNC Bank on May 30, 2023 (Dkt. 1584); (6) Wells Fargo Bank on June 2, 2023 (Dkt. 1591); (7) Vantage Payments and Dustin Sparman on June 26, 2023 (Dkt. 1668); (8) Wells Fargo Bank on July 21, 2023 (Dkt. 1692); and

[7] Defendants simply filed in violation of the Local Rule 7.1 and/or 37.1.

(9) Propay on July 21, 2023 (Dkt. 1694). (Plaintiffs have filed a motion for reconsideration of the summary judgment decision.)

64. On June 27, 2023 and before the close of fact discovery the Honorable MDL 2566 Court granted summary judgment in favor of Bank of America, N.A. (Dkt. 1672).

CLASS COUNSEL'S FEE REQUEST COMPORTS WITH THE RELEVANT FACTORS CONSIDERED WITHIN THE FIRST CIRCUIT

65. District Courts within the First Circuit have broad latitude when determining an appropriate award of fees. There is no fixed list of factors for this analysis; however, district courts have previously relied on the following eight factors:

(1) the extent of the benefit obtained;

(2) the reaction of the class members to the proposed settlement and proposed attorneys' fees;

(3) the skill and efficiency of the attorneys involved;

(4) the amount of time devoted to the case by counsel;

(5) the complexity and duration of the litigation;

(6) the risk that the litigation would be unsuccessful;

(7) fee awards in similar cases;

(8) the manner in which the fee request was negotiated between counsel and the lead plaintiff(s); and

(9) public policy considerations.[8]

66. Each of those factors comports with Class Counsel's request for an interim award of fees for the reasons detailed below.

[8] *See, e.g., In re Evergreen Ultra Short Opportunities Fund Secs. Litig.*, 2012 U.S. Dist. LEXIS 174711, at *5-6 (D. Mass. Dec. 10, 2012) (listing factors); *In re TJX Co. Retail Security Breach Litig.*, 584 F.Supp.2d 395, 401 (D. Mass. 2008) (same); *In re Tyco Int'l, Ltd.*, 535 F. Supp. 2d 249, 265-266 (D.N.H. 2007) (same); *In re Lupron*, 2005 U.S. Dist. LEXIS 17456 at *12 (same).

The Extent of the Benefit Obtained by the Class

67. The Settlement Class is comprised of all individuals worldwide who invested more money in TelexFree than they received from TelexFree in distributions (the "Net Losers").

68. The Settlement Agreements provide that the settling Defendants will pay or cause to be paid a total of $95.525 million into an interest-bearing escrow account for the benefit for the Settlement Class. Attached Exhibit 2 ¶¶ 10-12 (TD Bank Settlement); Attached Exhibit 3 ¶¶ 10-11 (IPS Settlement), Attached Exhibit 4 ¶¶ 10-11 (Telecom Settlement).

69. The TD Bank Settlement of $95 Million represents a particularly significant result for the Settlement Class. The Settlement is valued at more than twice the amount of all TelexFree-related transactions that TD Bank processed and is more than four times the size of the largest previous settlement in this MDL. (although it is considerably less than TD Bank's total exposure.)

70. In addition, the Settlement Agreements secure valuable cooperation by the Settling Defendants which will assist Plaintiffs in the pursuit of their claims in the ongoing MDL and which includes, among other things, providing documents in the possession of the Settling Defendants, making witnesses identified by Plaintiffs available for formal and informal interviews, providing evidentiary affidavits, and providing one or more witnesses to appear at trial. The full extent of this benefit will be further reported on at the Final Approval Hearing.

71. In return for the settlement payment and cooperation, Plaintiffs and members of the Settlement Class will relinquish any claims they have against the Settling Defendants relating to TelexFree, including claims that were or could have been brought in this litigation.

72. Plaintiffs believe that the 2023 Settlements will also benefit the Settlement Class as a further "icebreaker" – i.e., they will encourage additional settlements – in two regards. First, the size of the TD Bank Settlement sends a strong signal about the determination of Plaintiffs and the

resources that can now be brought to bear on the other Defendants. Second, the cooperation provisions of the IPS and Telecom Settlements demonstrate that Plaintiffs remain committed to obtaining and presenting evidence that was not previously produced by current and dismissed Defendants.

The Reaction of the Class Members to the Proposed Settlement and Proposed Attorneys' Fees

73. As of November 17, 2023, class notice has achieved an outstanding ninety-one (91%) percent successful delivery rate.

74. While the deadline for objections is still twenty days away, most class members received their notice some time ago and there have been no objections to the Settlement or an award of attorney's fees to Plaintiffs' Counsel and no exclusion requests have been received.

75. Attached as Exhibit 17 to the Class Counsel Memorandum is a true and correct copy of the Court-approved Class Notice distributed to potential class members. Information provided regarding the proposed attorneys' fees, expenses, and incentive awards can be found on page 8 of that Exhibit.

The Skill and Efficiency of Class Counsel

76. The biographies of the firms serving as Class Counsel are attached as part of Exhibits 2–14 to the Class Counsel Memorandum. Collectively, these firms have decades of experience in MDLs, complex class actions, and consumer protection cases.

77. Throughout the life of this MDL, Class Counsel has worked collaboratively and taken advantage of available efficiencies in discovery and motion practice. For instance, discovery requests were developed as a series of templates for different types of defendants to reduce redundancies in the drafting process. In certain areas, I have assigned specific firms to specialize

in particular aspects of the litigation process (e.g., defensive discovery responses, motions to compel, settlement negotiations with opposing parties) to ensure that the experience accumulated by those firms over the course of this MDL translates into greater efficiencies for Plaintiffs and the Court.

78. Finally, to a certain degree the size of the 2023 Settlements serves as prima facie evidence of Class Counsel's skill, dedication and devotion of significant resources including staffing and outlays of funds. In fact, securing a $95 million settlement from a Defendant when over nine years have passed since the alleged injury and the Defendant was previously able to obtain complete dismissal from the case is remarkable and an objective testament to the focus, hard work, and tenacity of Class Counsel, coupled with the assistance of their experts and consultants.

The Amount of Time Devoted to the Case by Counsel

79. Class Counsel has devoted a considerable amount of time over the last three years to the prosecution of this case against a daunting array of Defendants. The Time Reports compiled by Class Counsel are attached to the Class Counsel Memorandum as part of Exhibits 2–14.

80. The Time Reports comprising Class Counsel's lodestar calculations represent time billed by Class Counsel between October 1, 2020, and June 30, 2023.

81. The time spent was necessitated by the unique, hard fought, complex, and sprawling nature of this case, the difficult discovery referenced above, and the significant overlap and interrelationship between the factual and legal issues relating to all of the Defendants and wrongdoers whose conspiratorial and/or aiding and abetting activities served the TelexFree Scheme.

82. Developing evidence as to the full breadth of transactions performed by the financial

service providers—often interrelated—was absolutely necessary. For instance, Class Counsel could not have been adequately prepared to negotiate with the IPS Defendants without a detailed understanding of IPS's relationship to Bank of America and third parties that serviced the TelexFree fraud and an analysis of how IPS's cooperation might strengthen the case against other Defendants. Likewise, Class Counsel's effectiveness in the TD Bank mediation required a full understanding of the difficulties TelexFree was facing with other banks and financial service providers at the time TD Bank was opening and maintaining bank accounts for the benefit of TelexFree.

83. As part of my responsibilities as Lead Counsel, I set out the following parameters for, and limitations to, the time submissions by Plaintiffs' individual firms:

a. All timekeepers are limited to billing 12 hours in a given day, even if the timekeepers' actual time worked exceeded that amount;

b. Billable rates for non-lawyers are capped at $250 per hour; and

c. Billable rates for contract lawyers are capped at $250 per hour.

84. In addition to requiring each firm to submit time taken from underlying contemporaneous time records under oath, each firm was required to organize those time records and generate time sheets that displayed the following information: 1) Date; 2) Timekeeper; 3) Time Category; 4) Historic Hourly Rate and 5) Description of Activity.

85. Work was authorized or assigned by me as Interim Lead Counsel. Reasonable caps on the time spent were placed on a task-by-task basis. I monitored billings and on certain occasions ordered certain time to be excluded from billable records as excessive or unrelated to core tasks.

86. I have issued clear instructions that no time related to timekeeping or preparing fee-related documents is included in the time submissions. As part of my review of the time

submissions I instructed class counsel to remove any time inadvertently included in their submissions.

87. This granular detail received from the submitting attorneys and firms was reviewed by the Bonsignore Firm or other members of the Plaintiffs' Interim Executive Committee and then approved by me.

88. I have reviewed, or caused to be reviewed, the related reports and all time submitted for MDL 2566 for reasonableness and necessity to the litigation. Attached to the Class Counsel Memorandum as Exhibit 15 is a chart of the fees for which Plaintiffs now seek payment.

89. I have also reviewed, or caused to be reviewed, the common expenses as incurred and submitted for reimbursement herein by Class Counsel since October 2020 for reasonableness and necessity to the litigation. At this time Class Counsel seeks reimbursement for a total of $927,312.98. Attached to the Class Counsel Memorandum as Exhibit 16 is a chart of the expenses for which Plaintiffs now seek reimbursement. Upon request Class Counsel will submit the related invoices. Class Counsel have limited their request to the following categories of expenses:

(1) Court reports/transcripts;

(2) Expenses paid for retention of professionals and experts;

(3) Bank Service Expenses;

(4) Expenses associated with the Case Management System;

(5) Expenses associated with Plaintiffs' Document Depository; and

(6) Expenses associated with Class Notices.

Notably, this request does not include filing fees, commercial copies, computer research costs, postage costs, or travel expenses of any sort.

90. At this time, Class Counsel does not seek reimbursement for all of their expenses

or incentive awards for the class representatives. Class Counsel reserve their right to apply for payment of attorneys' fees, full reimbursement of expenses and incentive awards for the class representatives from future settlements if and when they occur.

91. During the course of this litigation, Plaintiffs received approximately 1,171,789 pages of documents from various Defendants and third parties. The file size of these documents ranged from 104.1 MB to 10.1 GB, the largest files of which took an extensive amount of time to review and analyze. Additionally, Plaintiffs reviewed and produced 136,903 documents comprised of 757,540 pages, including 7,892 Excel spreadsheets and 126,736 PDF, email, image, and Word documents.

92. Prior to formal mediation, Plaintiffs and the Settling Defendant TD Bank exchanged focused interrogatories and requests for production.

93. In the space of three months, Plaintiffs received, coded, and analyzed approximately 50,000 pages of documents from Settling Defendant TD Bank as well as 26,483 pages of documents relating to TD Bank from the Bankruptcy Trustee. These documents included densely populated account statements, as well as account opening documents, fraud and anti-money-laundering policies, training materials, deposit slips, check images, and internal communications from over a dozen custodians.

94. Plaintiffs carried out first, second, and third-level reviews of productions from TD Bank and other defendants. Because the operation of a Ponzi scheme and its ability to maintain its operation is dependent on the assistance of multiple financial service providers and professionals, TD Bank's knowledge and activities had to be contextualized by the contemporaneous knowledge and activities of other Defendants and third parties. Plaintiffs fully sequenced TD Bank's contacts

with the TelexFree scheme and tracked the dissemination of knowledge about TelexFree across TD Bank's various departments.

95. With the benefit of their Ponzi scheme expert, banking experts, Big Data expert, and independent judicial advisor, Plaintiffs translated that factual knowledge into an assessment of TD Bank's potential liability across a range of litigation scenarios. Plaintiffs also developed a damages model based on the principles of joint and several liability and the time periods in which TD Bank provided substantial assistance to TelexFree.

96. In a cooperative effort to evaluate the merits of the parties' divergent positions, and to place a value on settlement, I spent considerable time working with TD Bank lead counsel Lynn Neuner to ensure Plaintiffs obtained the focused discovery that I believe is essential to Plaintiffs proof. Once I concluded that Plaintiffs were sufficiently armed to fully press their theories of liability and damages, I agreed to participate in early ADR with TD Bank. My professional relationship with Ms. Neuner, while appropriately adverse, was it all times, forthcoming, straightforward, true, cordial and cooperative. I believe this professional relationship between council helped the parties to facilitate a settlement.

97. After considering the stakes of the litigation, the complexities of the case, and the particular nuances of the claims for aiding and abetting a Ponzi scheme, the parties agreed to engage the services of preeminent JAMS mediator Robert Meyers. (*See* Attached Exhibit 5, Robert Meyers CV). Among other things, Mr. Meyer has extensive large-scale, high stakes financial institution pyramid Ponzi scheme experience. Mr. Meyers also had the time, staffing and resources to process and fully work with the voluminous submissions.

98. After months of pre-mediation exchanges, a formal in-person mediation took place at JAMS Los Angeles offices in June 2023. Prior to the mediation, the parties simultaneously

submitted to the mediator voluminous mediation briefs together with even more voluminous supporting attachments.

99. Plaintiffs' briefing included a powerful presentation of law, granular factual detail, damages calculations, allocation of liability between defendants, and choice-of-law considerations.

100. Plaintiffs' supporting attachments ranged from the best documented evidence of actual knowledge to expert reports on liability and damages to the prejudgment interest that would be applied to different potential verdicts.

101. During the mediation, Plaintiffs prepared and submitted additional briefing to rebut TD Bank's factual and legal arguments.

102. Reaching a settlement was extremely challenging. From the outset, the parties exchanged sharply contrasting views of the facts as well as the law of aiding and abetting and the calculation of damages.

103. Plaintiffs relied on well-established case law and the Restatement of Torts to support their position that an aider-abettor is jointly liable for the same damages as the primary tortfeasor and that damages began to accrue on the first date Plaintiffs established actual damages.

104. TD Bank's initial position was that they were liable, if at all, only for the deposits that they handled and were not subsequently recovered by the Trustee or the federal government. TD Bank also argued that Plaintiffs could not establish TD Bank's actual knowledge that TelexFree was fraudulent.

105. After the business day for many had long ended, with little to no movement on the part of either side, each side pressed on. Eventually, I instructed Plaintiffs' counsel in attendance

to pack their bags, leave our designated room, walk out and wait for me by the JAMS elevator bank while I went to thank Mr. Meyer for his efforts.

106. Mr. Meyer kept me in the room until I agreed to gather my team, return to our room, and allow him to make a double-blind "Mediator's Proposal" to both sides simultaneously. Based upon Mr. Meyer's experience, our duty to the putative class, his work with the parties that day – and into the night, and the extensive work and work product that we had submitted – I agreed.

107. Mr. Meyer made his Mediator's Proposal on June 28, 2023. Two days later he informed the parties that both sides had accepted his proposal in principle.

108. After reaching an agreement in principle, counsel for both sides meticulously negotiated the procedural and substantive details of a comprehensive settlement agreement. This process was again hard fought, arm's length and involved many phone conferences with TD Bank counsel and many exchanges of draft agreements. This process was impacted by the near immediate dismissal of BANA. The dismissal of BANA made the negotiations more delicate, and as a practical matter greatly enhanced the risks assumed by Class Counsel.

109. The Parties finally agreed to sign a final Settlement Agreement on August 11, 2023.

110. Settlement negotiations between Plaintiffs and the IPS Defendants did not begin in earnest until after this Court granted Plaintiffs' Motion to Compel Discovery Directed to IPS. Prior to the Court's entry of that order on June 5, 2023, Plaintiffs did not believe they had sufficient knowledge of IPS's connections to the TelexFree scheme to properly evaluate a settlement proposal. Negotiations with IPS were contentious and Plaintiffs walked away multiple times. The gathering of related facts was made more difficult because of the evidentiary gaps created by law enforcement intransigence, banking privileges, and a prolonged stay. As the negotiations dragged on, Plaintiffs continued to process newly produced documents and the importance of the evidence

(exclusively in the possession of IPS and BANA) eventually made clear that an immediate settlement would serve the best interests of the Settlement Class.

111. For example, for years Bank of America has affirmatively led this Court to believe that it had effectively ceased to do business with TelexFree after May 2013. On June 27 and 28, 2023, this Court granted BANA's motion for summary judgment and denied Plaintiffs' Motions to Compel Bank of America as moot. (Dkts. 1672, 1673). Shortly thereafter, Plaintiffs confirmed the existence of communications between IPS and BANA that BANA withheld from Plaintiffs and this Court. These documents (contrary to BANA's unequivocal, relentless and endless representations) unquestionably evidence BANA's knowledge that its banking systems were regularly being used to process transactions for TelexFree long after May 2013.

112. The full implications of the previously withheld communications cannot be understood without an explanation of the relationship, power dynamics, and allocation of legal responsibilities between payment processors like IPS and the depository financial institutions like BANA. Even the simplest cases involving financial transactions and allegations of fraud require time and resources. Timely access to documents held by multiple parties makes the complex, tedious, and arduous task of piecing together the mosaic of evidence easier.

113. It is worth noting that as a result of the settlement with IPS, the MDL 2566 Plaintiffs have determined that in addition to previously withheld information about BANA's involvement with TelexFree, the IPS Defendants have knowledge concerning an estimated $150 million ($150,000,000.00) or more in TelexFree-related transactions by another financial institution. The extent of TelexFree's involvement with that other financial institution was previously unknown to Plaintiffs, the Trustee, and (apparently) government agencies. Plaintiffs are presently working with

IPS pursuant to the cooperation terms of the Settlement Agreement to obtain related records and testimonial evidence.

114. The IPS Defendants also have (and are obligated to offer) valuable information about payment processing industry practices and relationships that are directly relevant to the key questions of actual knowledge and substantial assistance by various financial institutions. Defendants IPS and Natalia Yenatska have already met with Plaintiffs, made a sworn proffer of their relevant knowledge concerning TelexFree and other MDL 2566 Defendants, and submitted to tests and verification of their knowledge by Class Counsel.

115. The IPS Defendants and Class Counsel have engaged in arm's length negotiation as to the monetary value of the settlement agreement and the extent of immediate and future cooperation.

116. As part of the settlement agreement, the IPS Defendants have committed to fulsome and truthful disclosure of all relevant TelexFree-related information that they possess and ongoing cooperation with Plaintiffs on factual and technical matters.

117. Plaintiffs engaged in several settlement discussions with Mr. Mitchell and Telecom Logic to ascertain his specific knowledge of TelexFree's Telecom and IT components that directly supported TelexFree's operations. Mr. Mitchell has imparted his knowledge of TelexFree's client software, databases, network system, and servers. He has agreed to ongoing cooperation relating to TelexFree's aforementioned systems and any other TelexFree-related matters where Defendants Mitchell/Telecom possess relevant information. Asset searches of Ryan Mitchell reveal he generally lacks assets to satisfy any significant judgment.

The Complexity and Duration of the Litigation

118. As described in more detail above, this litigation began almost a decade ago and is

extraordinarily complex. Many Defendants operated independently of each other. Some Defendants used intermediaries to facilitate their interactions with TelexFree. Deposits and distributions from TelexFree were often routed through the accounts of multiple Defendants and third parties. The roster of Defendants actively involved in facilitating TelexFree changed over time; in a few instances Defendants backed away from TelexFree only to re-engage with it at a later date. Much of the TelexFree "story" is locked within transactional records and account records that are indecipherable to those not equipped with specialized education, training, software or other tools.

119. Delays in discovery created considerable difficulties for Plaintiffs' experts while reconstructing an elaborate and largely opaque fraud like TelexFree. The size and complexity of the fraud created a pressing need for firsthand testimony about the fraud's structure, operations, and key personnel. TelexFree's recordkeeping practices and tangled network of facilitators and intermediaries has been extraordinarily difficult for outside investigators to decipher. For instance, following the questioning of the Trustee in Bankruptcy's methodology in extracting data from the so-called "SIG System," which contains TelexFree's records of investments and credits owed to investors, required extensive work by Plaintiffs' experts to reconstruct extract meaningful amounts of data in an intelligible manner. In fact, that work is still ongoing.

120. The Bankruptcy Court initially approved use of the Bankruptcy Trustee's operational TelexFree SIG System to identify Net Losers, determine the amount of the net loss, and make distributions to TelexFree Net Losers, as well as identify and disqualify Net Winners or participants who had knowledge that TelexFree was engaged in a fraudulent scheme. *In re TelexFree*, Case No. 14-4098, at 2-3 (Bankr. D. Mass. Jan. 26, 2016), Dkt. No. 687. As part of the MDL Plaintiffs' cooperation agreement with the Bankruptcy Trustee and in furtherance of their

obligations to avoid duplication of work while avoiding potential windfall payments to Net Winners or investors "in the know" about TelexFree, Plaintiffs intended to rely on the data derived from the Trustee's reconstruction of the SIG System.

121. On August 24, 2020, eighteen TelexFree Participants appealed the bankruptcy court's denial of their claims to the federal District Court of Massachusetts. *In re TelexFree*, Case No. 14-4098 (Bankr. D. Mass. Aug. 24, 2020), Dkt. No. 3531; *In re Panagiotis Iatrou, et al.*, Case No. 4:20-cv- 40112-DPW, (D. Mass. Jan. 25, 2022), Dkt. No. 1. In their appeal, these TelexFree Participants challenged the recordkeeping methods used by TelexFree which disqualified their claims based upon the fact that TelexFree's recordkeeping SIG system identified them as Net Winners. *In re Panagiotis Iatrou, et al.*, Case No. 4:20-cv- 40112-DPW, (D. Mass. Jan. 25, 2022), Dkt. No. 18. The eighteen TelexFree Participants requested a full trial. *Id*. at 15.

122. In a Memorandum and Order of January 25, 2022, Judge Douglas P. Woodlock called into question the methodology by which the Trustee's accountant aggregated the user account data for each participant:

> *As discussed in Part I.A.3, Judge Hoffman persuasively rejected the reliability of Mr. Martin's aggregation method. Mr. Martin failed to provide reasoned explanations for 1) why his method centered on self-reported name field data, 2) how the poor-quality data in the TelexFree database impacted the aggregation process, and 3) how the data excluded from the aggregation process altered his net equity calculations.*

Id. at 23.

123. Judge Woodlock ultimately "remanded [the matter] to the bankruptcy court for *de novo* evaluation, including an evidentiary hearing regarding the question whether to allow the subject claims of the Appellant-Participants." *Id.* at 26

124. Thereafter, the Bankruptcy Trustee advised Class Counsel that it had retained experts associated with the Massachusetts Institute of Technology, that it was addressing all the concerns raised by Judge Woodlock's ruling, and that it felt entirely comfortable that their SIG

System adjustments would be completed within a reasonable period and that it would receive court approval.

125. Notwithstanding those assurances, in December 2022, Plaintiffs retained Art Olsen, a preeminent "Big Data" expert, to reconstruct the SIG System for the benefit of the Plaintiffs.[9] (Attached Exhibit 6, Art Olsen CV).

126. Art Olsen and his team were required to expend extensive time converting the SIG System's raw data. Running the conversion programs alone took months longer than initially anticipated.

127. TelexFree's database was created in MYSQL and installed on an Ubuntu server. The server was virtualized using VMware by the Trustee's advisors as seized from seized TelexFree hard drives in 2014.

128. Once the VMware files were downloaded from Amazon Web Services, they had to be mounted to a VMware server to run the virtual machine.

129. The database consisted of six (6) objects, four (4) total files, two (2) folders and 295.6 gigabytes (295,590,505,442 bytes).

130. After the data was converted into a useable format, additional work was needed to clean up the data fields and bring the system and contents up to an acceptable and cleanly working format.

131. Following that process, considerable time was spent trying to read and interpret the data fields.

132. Eventually, during late May/early June of 2023, Art Olsen eventually concluded

[9] In my role as MDL 2566 Lead Plaintiffs' Counsel, I have advised the Bankruptcy Trustee of who we have retained and offered to share our experts results on multiple occasions.

that the SIG system had been properly reconstructed and was fully operational; however, a forensic accountant would be required to fully interpret the data within the system.

133. Immediately upon being advised that further expertise in a different specialty would be required, Plaintiffs researched and vetted several potential top-tier forensic accounting firms. In short order, I selected and retained one of the preeminent forensic accountants in the United States: Karyl M. Van Tassel, Senior Managing Director for Global Investigations at JS Held. (*See* Attached Exhibit 7, Karyl M. Van Tassel CV).

134. Ms. Van Tassel and her team ("Van Tassell team") have notable Ponzi Scheme experience and a proven track record of working the most complex investigatory, litigation and financial transaction related challenges. In investigatory matters, she has presented her findings to several regulatory agencies in the U.S. and abroad, including the Department of Justice, Securities and Exchange Commission, Internal Revenue Service, and the Treasury Department.

135. The Van Tassel team was of immediate assistance with the TD Bank settlement.

136. By mid-July 2023 the Van Tassel team was fully involved in getting the complex and multi-language data organized.

137. To understand the SIG System, the Van Tassel team employed team members in several specialties including:

a. ERP systems and database investigations

b. Forensic data analytics;

c. Data science;

d. Verified financial intelligence (transforming, validating and analyzing bank statements);

e. Forensic accounting; and

f. Economic damages calculations in Ponzi schemes

138. Banking regulations and variations in Defendants' internal processes have presented another challenge. So-called Suspicious Activity Reports, which would ordinarily contain extremely relevant evidence of the actual knowledge of financial service providers, are protected from disclosure of their existence and contents. The size and sophistication of fraud detection systems and anti-money-laundering controls varies widely between and even within Defendants (in instances where multiple departments of a Defendant interacted with TelexFree).

139. Class Counsel have necessarily, reasonably, and considerably expended much more effort and resources since the last fee petition. Overcoming the challenges referenced throughout this filing has required the assistance of a battery of experts. In addition to Art Olsen and the Van Tassel team, Class Counsel have retained the following subject matter experts to assist them:

a. Ross Delston, an expert in the Bank Secrecy Act and anti-money-laundering regulation;

b. Patrick McElroy, an expert in the Bank Secrecy Act and anti-money-laundering regulation;

c. Kathy Bazoian Phelps, a well-known expert in Ponzi schemes like TelexFree; and

d. Patricia McCoy, a Banking expert.

140. Since October 2020, Class Counsel has incurred $487,822.54 in common expenses while retaining the services of these and other professionals and consultants to assist them in analyzing produced documents, identifying deficiencies in document productions, identifying key individuals of interest, understanding the legal and financial framework necessary to establish liability and causation; calculate damages; refute TD Bank's defenses; prepare for summary

judgment and trial; and all efforts necessary to obtain this favorable Settlement for the Class and manage the litigation effectively and efficiently. (*See* Exhibit 16 to Class Counsel Memorandum).

The Risk that the Litigation Will be Unsuccessful

141. As this district has recognized, "Many cases recognize that the risk assumed by an attorney is 'perhaps the foremost factor' in determining an appropriate fee award." *In re Lupron Mktg. & Sales Practices*, 2005 WL 2006833, at *4 (D. Mass. Aug. 17, 2005) (quoting *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 54 (2d Cir. 2000)). The nature of Plaintiffs' claims and the procedural history of this case provides ample and irrefutable evidence of the significant risks that Class Counsel has borne throughout the history of this MDL.

142. As discussed above, aiding and abetting claims require adequate pleading and eventual proof of actual knowledge by Defendants that TelexFree was unlawful. Whereas in other cases corporate negligence can lead to massive liability, Defendants in MDL 2566 can use alleged mere negligence as a means of avoiding liability altogether. (Cf. Dkt. 1418 at 18 ("The 5CAC's allegations of red flags - - suspicious transactions and high-profile websites declaring TelexFree a fraud - - are insufficient on their own to establish actual knowledge."). Additionally, claims of aiding and abetting fraud are subject to the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). (*See* Dkt. 1418 at 6). The obstacles to discovery referenced throughout are unique to MDL 2566, and extraordinarily enhanced the risk the MDL 2566 Plaintiffs face. Thus, the MDL 2566 Plaintiffs face additional obstacles at the pleading stage, discovery stage, additional obstacles at the summary judgment stage, and additional obstacles at the trial stage when compared to a more run-of-the-mill case alleging corporate negligence.

143. Additionally, the complexity and duration of this MDL (as described above) has increased the risk that Class Counsel would either fail to establish liability or fail to recover

sufficient assets from Defendants to fairly compensate them for their time and expenses. The complex web of financial relationships between TelexFree and its service providers adds risk. Delays in discovery associated with the criminal investigations and bankruptcy proceedings deprived Class Counsel of the ability to collect testimonial and documentary evidence when it was fresh and more easily accessible.

144. The history of MDL 2566 demonstrates the significance of these risks. It took Class Counsel six years to obtain a settlement (with Fidelity Bank) that could even support a partial interim award of fees. Even then, the Class Counsel was only in a position to request compensation for roughly a third of their lodestar. And at the time this Court granted that first award of interim fees, both of the other sizable banks named as Defendants had prevailed on their initial Motions to Dismiss. (*See* Dkt. 602 (January 2019 order granting the Motions to Dismiss filed by Bank of America, N.A. and TD Bank, N.A.)). With the benefit of the TelexFree Bankruptcy Trustee's 2019 production, Plaintiffs were in a position to replead their claims, but there was no guarantee that they would even get permission to file a Fifth Consolidated Amended Complaint, let alone defeat a set of renewed Motions to Dismiss.

145. Nevertheless, Class Counsel persisted. After receiving permission to file the 5CAC, Class Counsel repleaded its claims against Bank of America and TD Bank and added two additional major banks as Defendants: Wells Fargo Bank, N.A. and PNC Bank, N.A. As expected, each of these Defendants vigorously pressed their arguments in their Motions to Dismiss. Plaintiffs managed to defeat three of those Motions, but PNC Bank was able to obtain dismissal from the case (a result with which the Plaintiffs vigorously disagree and will respectfully appeal).

146. Of course, the Motions to Dismiss were not the "beginning of the end" but merely "the end of the beginning", and Plaintiffs immediately faced the formidable task of assembling

evidence of actual knowledge and substantial assistance from roughly two dozen defendants on a compressed litigation schedule. The risks associated with this stage were thrown into further sharp relief when Bank of America, N.A. prevailed on an early Motion for Summary Judgment before the period for document discovery had expired (another result with which the plaintiffs respectfully, yet fervently disagree and which is the subject of a pending motion for reconsideration). The remaining Defendants will have at least three opportunities to avoid significant liability: (1) by opposing Plaintiffs' Motion for Class Certification; (2) by filing their own Motions for Summary Judgment; and (3) by prevailing in a jury trial. Class Counsel has already overcome long odds to achieve the 2023 Settlements, and while these Settlements may prod other remaining Defendants to reconsider their stance on settlement, future successes by the Plaintiffs are not a certainty.

Fee Award in Similar Cases

147. The Requested Fee Award sits comfortably within the range of awards approved in other cases. Specific citations to similar cases are provided in the Memorandum In Support of Motion for an Interim Award of Attorney's Fees and Reimbursement of Expenses.

The Manner in Which the Fee Request Was Negotiated Between Counsel and the Lead Plaintiff

148. Lead Plaintiff's retainer agreement expressly permitted Counsel to seek an award of fees equal to or greater than one-third of the gross recovery. This fee request is consistent with the terms of that retainer agreement.

Public Policy Considerations

149. TelexFree presents a rare opportunity to fill large gaps existing in the prosecutorial landscape for financial frauds, which consists primarily of criminal prosecutions against a fraudulent scheme's leaders and high-level insiders. Those gaps have fostered the continued

proliferation of large frauds within the United States.

150. 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 suffer the consequences of those wrongful activities.

151. These consolidated civil actions are the only means for the approximately 780,000 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 were unsophisticated and many lost all or a great bulk of their entire life savings, and some of whom unknowingly recruited family members, friends and colleagues into the same fate—have not been able to recover a meaningful portion of their collective losses to date, despite criminal and bankruptcy proceedings and regulatory actions against TelexFree's founders and top promoters. To date the Department of Justice, the Securities Exchange Commission, the Commonwealth of Massachusetts Secretary of the Commonwealth, and the Bankruptcy Trustee together have recovered less than[10] ten cents on the dollar.

152. 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

[10] An estimated.

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 of recovery for victims from the TelexFree estate itself is also subject to limitation. Victims are but one category of claimants within the broad pool of general unsecured creditors who stand last in line for distribution of the estate's proceeds.

153. The Department of Justice only prosecuted about a handful of the highest-level individuals directly involved in the Scheme, such as its founders and top recruiters and those prosecutions essentially resulted in no recovery for the victims to our class members here. Additionally, 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 only "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.

154. None of the foregoing government agencies are obliged to consider the TelexFree victims as their top priority. Because they recovered only pennies on the dollar, MDL 2566 is the last best chance for the victims of TelexFree's scheme to obtain compensation. This settlement

also serves as deterrent to future providers of assistance to fraudulent schemes.

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

Executed on November 17, 2023 in Las Vegas, Nevada.

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