

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**IN RE:**

**TELEXFREE SECURITIES LITIGATION**

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

**This Document Relates to:**

**ALL ACTIONS**

**JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT BETWEEN  
PLAINTIFFS AND DEFENDANT THE ESTATE OF JEFFREY A. BABENER,  
APPROVING FORM AND MANNER OF NOTICE, AND  
SCHEDULING HEARING ON FAIRNESS OF SETTLEMENT  
PURSUANT TO FED. R. CIV. P. 23(e)**

Plaintiffs and Defendant the Estate of Jeffrey A. Babener (the “Babener Estate”) (collectively, “the Parties”) hereby jointly move the Court, pursuant to Federal Rule of Civil Procedure 23, for preliminary approval of a settlement reached between the Parties. The Parties seek entry of orders:

- (i) granting preliminary approval of the settlement agreement between the Parties;
- (ii) provisionally certifying a settlement class with respect to the settlement (the Settlement Class”);<sup>1</sup>
- (iii) appointing Anthony Cellucci, Francisco Olivares, Veronica Martinez, and Jesus Alberto Matienzo, as Class Representatives of the Settlement Class;
- (iv) preliminarily appointing Robert Bonsignore, Esq. of Bonsignore Trial Lawyers, PLLC as Lead Counsel, the Hon. Steven W. Rhodes (Ret.) Esq. (Detroit,

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<sup>1</sup> The arguments in support of provisional class certification are being made solely by the Plaintiffs. The Babener Estate is not opposing the provisional certification of the class for settlement purposes, but in the event that the settlement is not approved, the Babener Estate reserves the right to challenge and oppose Plaintiffs’ attempt to certify the class, as well as all statements made by Plaintiffs and/or their counsel in this Joint Motion or otherwise.

Michigan), and James Wagstaffe, Esq. of Adamski Moroski Madden Cumberland & Green LLP (San Francisco, CA) as Class Counsel for the Settlement Class;

- (v) approving the manner and form of notice given of the settlement to class members;
- (vi) approving the administrative appeal process for claimants dissatisfied with their award;
- (vii) establishing a timetable for publishing class notice and lodging objections to the terms of the settlement;
- (viii) approving a means by which class members may contest administrative findings related to their claims;
- (ix) setting a date for Final Approval;
- (x) establishing a briefing schedule for Plaintiffs' application for an award of attorneys' fees and expenses and setting a hearing date therefor.

The grounds for this motion are that (1) the settlement agreement meets the requirements for approval pursuant to Federal Rule of Civil Procedure 23; (2) the form and manner of providing notice meet the requirements of Federal Rule of Civil Procedure 23; (3) the Settlement Class meet the requirements for certification under Federal Rule of Civil Procedure 23; and (4) an application for an award of attorneys' fees, expenses and incentive awards is appropriate at this time so that the class members may receive notice and comment or object.

In support of this Motion, the Parties submit herewith a Memorandum in Support of Preliminary Approval, the Declaration of Robert J. Bonsignore (Attachment 1 to the Memorandum), the Declaration of Eric Schachter (Attachment 9 to the Memorandum), the

Proposed Class Notice (Attachment 2 to the Declaration of Eric Schachter), and the Proposed Order (Attachment 1 to this Motion), the complete files and records of this action, and such other written or oral arguments that may be presented to the Court.

### REQUEST FOR A HEARING

Pursuant to Local Rule 7.1(d), the Parties request a hearing on this Joint Motion.

Dated: May 24, 2024

Respectfully submitted,  
PLAINTIFFS,

By their Attorneys,

/s/ Robert J. Bonsignore

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Respectfully submitted,  
DEFENDANT THE ESTATE OF JEFFREY  
A. BABENER

By its Attorneys,

/s/ Daniel R. Conte

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**CERTIFICATE OF SERVICE**

I, Robert J. Bonsignore, hereby certify that on this 24<sup>th</sup> day of May 2024, I caused the foregoing to be electronically filed with the Clerk of the Court by using the Case Management/Electronic Case Filing (CM/ECF) system, which will send a notice of electronic filing to all parties registered with the CM/ECF system in the above-captioned matter. A copy will be forwarded via first class mail, postage prepaid, to those parties not electronically registered at their last and/or only known address.

*/s/ Robert J. Bonsignore* \_\_\_\_\_

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**IN RE:**

**TELEXFREE SECURITIES LITIGATION**

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

**This Document Relates to:**

**ALL ACTIONS**

**ORDER PRELIMINARILY APPROVING SETTLEMENTS BETWEEN PLAINTIFFS  
AND DEFENDANT THE ESTATE OF JEFFREY A. BABENER,  
APPROVING FORM AND MANNER OF NOTICE, AND  
SCHEDULING HEARING ON FAIRNESS OF SETTLEMENT  
PURSUANT TO FED. R. CIV. P. 23(e)**

Before the Court is the Joint Motion of Plaintiffs and Defendant the Estate of Jeffrey A. Babener (“the Babener Estate”) (collectively, “the Parties”) for an Order: (1) preliminarily approving the settlement between the Parties; (2) approving the form of notice (the “Notice”) and the dissemination of such Notice; (3) provisionally certifying a settlement class under Fed. R. Civ. P. 23(a) and (b)(3) for purposes of effectuating the settlement agreement and the final approval thereof (the “Settlement Class”); and (4) scheduling a hearing to consider final approval of the settlement agreement (the “Settlement Agreement”) pursuant to Fed. R. Civ. P. 23(e). Upon the Court’s consideration of such Joint Motion, the Settlement Agreement, and the pleadings and records on file, and good cause appearing, it is hereby ORDERED as follows:

1. To the extent not otherwise defined herein, all capitalized terms shall have the same meaning as used in the Settlement Agreement.
2. The Court has jurisdiction over the subject matter of the cases comprising MDL 2566 and over all parties to those cases, including all members of the Settlement Class

and the Babener Estate.

3. The Settlement Agreement is hereby PRELIMINARILY APPROVED as appearing on its face to be fair, reasonable, and adequate; to be in the best interests of the Settlement Class; to fall within the range of possible final approval; to have been the product of serious, informed, and extensive arm's-length negotiations among the parties; to reflect a hard-fought compromise of claims that have been actively litigated before this Court since this MDL was established in October 2014; and to merit submission to the members of the Settlement Class for their consideration.

4. The Court hereby appoints Robert J. Bonsignore, Bonsignore Trial Lawyers, PLLC, 3771 Meadowcrest Drive Las Vegas, NV 89121 as Lead Counsel for the Settlement Class. The Court also hereby appoints the following attorneys as members of the Settlement Class Executive Committee: Hon. Steven W. Rhodes (Ret.), Esq., 1610 Arborview Blvd., Ann Arbor, MI 48103; and James Wagstaffe, Esq., WVBR LAW FIRM, 100 Pine Street, Suite 2250 (collectively "Class Counsel").

5. The Court further finds that class counsel has zealously represented the putative class.

6. The Court finds that the form as provided in Attachment 2 to the Memorandum in Support of the Joint Motion for Preliminary Approval and method of Notice to the Settlement Class is APPROVED.

7. TelexFree has conducted its business via the internet and communicated with Class Members through email, and this digital means of providing notice by email is the best practicable under the circumstances. Notice by email to members of the Settlement Class meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and satisfies the due process

rights of the Class Members. The proposed notice plan is designed to effectively reach potential Class Members utilizing direct notice by email, will deliver plain language notice that will capture potential Class Members' attention and provide them with the information in an informative and easy to understand manner that is necessary to effectively understand their rights and options. The additional support including a toll-free number and a website also supports the proposed method and manner of notice. The Notice will provide that Class Members may request exclusion by sending a written, mailed request to the Claims Administrator.

8. The Court hereby APPROVES the selection of A.B. Data, Ltd. to perform the duties of the Claims Administrator for the Settlement Agreement.

9. The Claims Administrator shall provide notice to the Settlement Class in substantially the form provided in Attachment 2 to the Memorandum in Support of the Motion for Preliminary Approval. Notice shall also be provided to Stephen Darr, as Trustee of the bankruptcy estates of TelexFree, LLC and TelexFree Financial, Inc.

10. The Babener Estate shall provide notice of the proposed settlement to appropriate Federal and State Officials, pursuant to 28 U.S.C. § 1715, and to Stephen Darr, as Trustee of the bankruptcy estates of TelexFree, LLC and TelexFree Financial, Inc.

11. The Claims Administrator shall serve the Notice and shall file an affidavit or declaration attesting to the dissemination of the Notice and listing all valid requests for exclusion from the Settlement Class.

12. The Court finds further that the form and manner of delivery of the Notice directed hereby and in the Settlement Agreement meets the requirements of Fed. R. Civ. P. 23(e)(1)(B) and due process, constitute the best notice practicable under the circumstances, and



shall constitute due and sufficient notice to all members of the Settlement Class.

13. A Final Approval Hearing is hereby SCHEDULED to be held before the Court on

\_\_\_\_\_, 2024, at \_\_\_\_m in Courtroom \_\_\_\_\_ for the following purposes:

- a) to determine finally whether the Settlement Class satisfies the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23(a) and (b)(3);
- b) to determine whether the proposed Settlement Agreement is fair, reasonable, and adequate, and should be approved by the Court;
- c) to determine whether the Final Judgment should be entered, and to determine whether the Babener Estate should be released from liability as provided in Paragraphs 21-24 of the Babener Estate Settlement Agreement;
- d) to determine whether the Class benefits described in Paragraphs 10-15 of the Babener Estate Settlement Agreement are fair and reasonable, and should be approved by the Court; and
- e) to rule upon such other matters as the Settlement Agreement contemplate, and as the Court may deem appropriate.

14. The parties' papers with respect to any matter to be considered during the Final Approval Hearing shall be filed with the Court and served on all other parties on or before \_\_\_\_\_, 2024. Copies of such materials shall be available for inspection at the Office of the Clerk.

15. At the Final Approval Hearing, the Court shall consider comments or objections to the certification of the Settlement Class under Fed. R. Civ. P. 23(a) and (b)(3), the Settlement Agreement, and the Class benefits provided by the Settlement Agreement, but only if such comments or objections and any supporting papers are filed in writing or electronically with

the Clerk of the Court, United States District Court for the District of Massachusetts, Robert M. Farrell, Donohue Federal Building, 595 Main Street, Worcester, Massachusetts 01608, on or before a date that is thirty-five (35) days after the initial dissemination of class Notice, and, by the same date, copies of all papers are served on each of the following:

**Lead Class Counsel:**

Robert J. Bonsignore  
Bonsignore Trial Lawyers, PLLC  
23 Forest St.  
Medford, MA 02155  
Telephone: 781-354-1800  
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**The Babener Estate's  
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16. Persons wishing to speak at the Final Approval Hearing must send a letter so informing the Clerk of the Court, Lead Class Counsel, and the Babener Estate's Counsel, following the procedure set forth in the Notice.

17. Attendance at the Final Approval Hearing is not necessary in order to object to the Settlement Agreement; however, persons wishing to object orally at the Final Approval Hearing to the approval of the Settlement Agreement or any provision thereof shall state in their written objection(s) their intention to appear at the Final Approval Hearing. As specified in the Notice, written objections must be made under penalty of perjury and must include the following information:

- a) A heading referring to the lawsuit;
- b) The Objector's name, address, telephone number, and the contact information for any attorney retained by the Objector in connection with the objection or otherwise in connection with the lawsuit;

- c) A detailed statement of the specific factual and legal basis for each objection;
- d) A statement as to whether the Objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address and telephone number, and
- e) The Objector's signature executed under penalty of perjury.

18. Any member of the Settlement Class may request exclusion by submitting an Exclusion Letter, signed by the person requesting exclusion, as specified in the Notice. Such request must be postmarked on or before a date that is 30 days after the initial dissemination of class notice. The Court finds that the Notice adequately apprises Class Members of their right to request exclusion and the procedure for doing so. A Class Member who submits a valid exclusion request will not be bound by the release of any claims pursuant to Paragraphs 21-24 of the Estate of Jeffrey Babener Settlement Agreement, and will not be allowed to make any objection to the Settlement Agreement.

19. The Settlement Class is hereby PROVISIONALLY CERTIFIED for purposes of Settlement and as used herein consists of: "all persons worldwide who submit to the jurisdiction of this Court who purchased TelexFree AdCentral or AdCentral Family packages and suffered a Net Loss during the period from January 1, 2012, to April 16, 2014. A "Net Loss" is defined as placing more funds into TelexFree than the total funds withdrawn from TelexFree.

20. Plaintiffs Anthony Cellucci, Francisco Olivares, Veronica Martinez, and Jesus Alberto Matienzo are hereby appointed as Class Representatives for the Settlement Class.

21. The Settlement Class satisfies the requirements of Fed. R. Civ. P. 23(b)(3) as follows:

- a) Members of the Settlement Class are sufficiently numerous that joinder of all members would be impracticable.

- b) The claims of the Proposed Class Representative for the Settlement Class are typical of the claims of the members of the Settlement Class.
- c) The Class Representative and Class Counsel are all fair and adequate to represent the interests of the Settlement Class.
- d) There exist questions of law and fact that are common to the claims of the Settlement Class members.
- e) The common questions of law or fact predominate over individualized issues for the Settlement Class members.
- f) A class action is superior to other methods available for resolving this controversy.

22. Pending the Final Approval Hearing, the parties and all members of the Settlement Class are hereby BARRED AND ENJOINED from instituting or prosecuting any action that asserts any claim asserted in any Consolidated Amended Complaint or covered by Paragraphs 21-24 of the Babener Estate Settlement Agreement.

23. If the Settlement Agreement is terminated or the Court does not enter Final Judgment approving their terms, this Preliminary Approval Order shall be null, void and of no further force or effect.

24. Neither the Settlement Agreement nor the Notice, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Notice is or may be deemed to be an admission of, or evidence of, the validity of any of Plaintiffs' claims in MDL 2566, or of any wrongdoing or liability on the part of the Jeffrey A. Babener or the Babener Estate.

25. The Court's certification of a Settlement Class as provided herein is without prejudice to, or waiver of, the rights of any non-settling Defendant to contest certification of any non-settlement class proposed in this Action. The Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any non-settlement class in this Action; and

no party may cite or refer to the Court's approval of any Settlement Class as persuasive or binding authority with respect to any motion to certify any non-settlement class or any other dispositive motion filed by a non-settling Defendant. Nor shall such preliminary approval prejudice any rights, claims or defenses of any non-settling Defendant.

26. The Court hereby retains jurisdiction for purposes of implementing the Settlement Agreement and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Settlement Agreement as may from time to time be appropriate for the resolution of any and all questions or disputes arising thereunder. The Court may, for good cause shown, extend any of the deadlines set forth in this Preliminary Approval Order or in the Settlement Agreement without notice, or further notice, to the Settlement Class, including the date of the Final Approval Hearing.

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

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Nathaniel M. Gorton  
United States District Judge