

EXHIBIT 2

SETTLEMENT AGREEMENT¹

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into this 31th day of January, 2024 (“Execution Date”) by the Estate of Jeffrey A. Babener (“the Estate”) and Babener & Associates, on the one hand, and Jason Botelho, Rudeimaia A. Calcano, Anthony Cellucci, Jose Manuel Cuevas, Karina G Ramirez Grazia, Orlando Guillon Llorente, Veronica Martinez, Jesus Alberto Matienzo, Frank Maximchuk, Lee Mwaura Njeri, Francisco Marino Olivares (together, the “TelexFree Plaintiffs”) and all Members of the Settlement Class (as defined below), on the other hand (the Estate and the TelexFree Plaintiffs are collectively referred to as “Parties” or, individually, each a “Party”).

PREAMBLE

WHEREAS, the TelexFree Plaintiffs have brought the above-captioned action (herein, “MDL 2566 Action(s),” “Action(s)” or “TelexFree Litigation”), which was originally comprised of several underlying actions, individually and as putative class representatives on behalf of a class of all persons worldwide who purchased TelexFree AdCentral or AdCentral Family Packages during the period from January 1, 2012 to April 16, 2014 and suffered a Net Loss² (the “TelexFree Class”) against, among others, the Estate;

WHEREAS, TelexFree consulted with the late Attorney Jeffrey A. Babener from August 2013 until March 2014;

WHEREAS, the TelexFree Plaintiffs added Attorney Babener and his law firm Babener & Associates as Defendants in the TelexFree Litigation on June 6, 2017;

¹ The capitalized terms used herein are as defined in this Agreement unless noted otherwise.

² A “Net Loss” is defined as placing more funds into TelexFree than the total funds withdrawn from TelexFree.

WHEREAS, the TelexFree Plaintiffs allege that the TelexFree Class suffered ascertainable economic injury as a result of Attorney Babener's alleged aiding and abetting of TelexFree's unlawful pyramid scheme, as referenced in the MDL 2566 Fifth Consolidated Amended Class Action Complaint, filed on December 20, 2021 (the "Complaint");

WHEREAS, Attorney Babener and his Estate adamantly deny that Attorney Babener engaged in any wrongdoing or inappropriate conduct whatsoever;

WHEREAS, Attorney Babener passed away in March 2020;

WHEREAS, the Complaint substituted the Estate for Attorney Babener as a Defendant and removed Babener & Associates as a Defendant;

WHEREAS, throughout the entire TelexFree Litigation, Attorney Babener and the Estate unequivocally denied the allegations of the Complaint pertaining to Attorney Babener and Babener & Associates;

WHEREAS, the TelexFree Plaintiffs allege that as a result of Attorney Babener's relationship to TelexFree as referenced throughout the Complaint and as documented in emails produced by the Estate, Attorney Babener worked on behalf of TelexFree with the law firm of Garvey Schubert Barer, PC, Attorney Gerald Nehra, and others;

WHEREAS, (i) no payment or monies will be paid by or owed by the Estate in connection with this settlement under any circumstances, and (ii) any and all amounts to be paid in connection with this settlement will be paid by the Oregon Professional Liability Fund;

WHEREAS, formal alternative dispute resolution and other arm's-length settlement negotiations have taken place between the Parties and they were unable to reach a resolution until they participated in Court-referred mediation with Magistrate Judge David H. Hennessey on October 19, 2023;

WHEREAS, this Agreement was reached as a result of the Parties accepting a mediator's recommendation made by Magistrate Judge Hennessey during the October 19, 2023 mediation;

WHEREAS, the TelexFree Plaintiffs have concluded that resolving the claims against the Estate according to the terms set forth herein is in the best interests of the Settlement Class (as defined below);

WHEREAS, although the Estate and the Oregon Professional Liability Fund deny any liability of Attorney Babener and Babener & Associates, the Oregon Professional Liability Fund decided, with the Estate's agreement, to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against the Estate and the Releasees (as defined below) with respect to the TelexFree Pyramid Scheme, as more particularly set out below;

WHEREAS, the Action will continue against Defendants that are not Releasees, and this Agreement with the Estate will not impair the TelexFree Plaintiffs' ability to collect joint and several liability-driven damages from entities and persons other than the Releasees (as defined below) to which they and the Settlement Class (as defined below) may be entitled in the Actions; and

NOW, THEREFORE in consideration of the covenants, agreements, and releases set forth herein and for good and valuable consideration, it is agreed by and among the undersigned that the Actions be settled, compromised, and dismissed with prejudice as to the Releasees (as defined below), and, except as hereinafter provided, without costs as to the TelexFree Plaintiffs, the Settlement Class (as defined below), or the Estate, subject to the approval of the Court, on the following terms and conditions:

AGREEMENT

A. Definitions.

1. “Full Cooperation” refers to the provisions set forth in Paragraphs 14 - 20 and to the material representations made relating to the proceeds available under Jeffrey Babener’s and Babener & Associates’ coverage plan with the Oregon Professional Liability Fund.

2. “Defendant(s)” for purposes of this Settlement Agreement means all Defendants named in the Complaint and all such other persons that may be further added as defendants in this Action while it is pending.

3. “Releasees” means the Estate, Jeffrey A. Babener, Rosalind Babener (individually and in her fiduciary capacity), Jeremy Babener, Babener & Associates, and all of their past, present, and future personal representatives, employers, employees, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, fiduciaries, partners, partnerships, law firms, affiliates, associated entities, principals, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, advisors, consultants, brokers, dealers, lenders, attorneys, representatives, accountants, insurers, professional liability coverage plans (including the Oregon Professional Liability Fund), co-insurers, reinsurers, associates, and their related parties.

4. “Releasers” shall refer jointly and severally, individually, and collectively to the TelexFree Plaintiffs and the Members of the Settlement Class, as well as their past, present, and future employees, officers, directors, incorporators, 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.

5. “Settlement Class” is defined as “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.

6. “Settlement Class Counsel” shall refer to Interim Lead Counsel, Plaintiffs’ Counsel, and members of Plaintiffs’ Interim Executive Committee, and the following Class Counsel:

Robert J. Bonsignore, Esq.
Melanie Porter, Esq.
BONSIGNORE TRIAL LAWYERS, PLLC
3771 Meadowcrest Drive
Las Vegas, NV 892121
Telephone: 781-856-7650
Email: rbonsignore@classactions.us
Interim MDL 2566 Lead Counsel

Hon. Steven W. Rhodes (Ret.), Esq.
1610 Arborview Blvd.
Ann Arbor, MI 48103
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Ronald A. Dardeno, Esq.
LAW OFFICES OF FRANK N. DARDENO
424 Broadway
Somerville, MA 02145
Telephone: 617-666-2600
Email: rdardeno@dardeno.com

7. “Settlement Fund” refers to the Settlement Amount (as defined below) paid by the Oregon Professional Liability Fund into the Escrow Account in connection with the Settlement Agreement.

8. “Member” means each member of the Settlement Class who does not timely elect to be excluded from the Settlement Class.

9. “TelexFree” for purposes of this Settlement Agreement includes all TelexFree entities, agents, and affiliated entities and persons, including, but not limited to, John Merrill; Carlos Wanzeler; Katia Wanzeler; Above and Beyond the Limit, LLC; TelexFree, Inc.; TelexFree, LLC; TelexFree Financial, Inc.; TelexElectric, LLLP; Telex Mobile Holdings, Inc.; TelexFree International, LLC; TelexFree, Ltd.; Ympactus Comercial Ltda; P.L.I. TelexFree Rwanda, Ltd.; TelexFree LLC DBA TelexFree of Miami; JC Real Estate Management Company, LLC; JC Real Estate Investment Company, LLC; Above & Beyond the Limit, LLC; Cleaner Image USA, LLC; K&C Cleaning, Inc.; KC Realty State, LLC; CNW Realty State, LLC; Acceris Realty Estate, LLC; Sun Wind Energy Group, LLLP; Brazilian Help, Inc.; Common Cents Communications Inc.;

Forever Diamond Realty, LLC; and Botafogo de Futebol e Regatas and those otherwise as identified in good faith by the TelexFree Plaintiffs or as contained in Attorney Babener's business records or personal files.

B. Settlement Amount.

10. "Settlement Amount" means three million, four hundred and fifty thousand dollars (USD \$3,450,000.00), inclusive of all attorneys' fees, court costs, and other administrative costs.

11. In consideration for the dismissal with prejudice of all claims that were brought or could have been brought against the Releasees, the Settlement Amount shall be paid by the Oregon Professional Liability Fund on behalf of the Estate into the Escrow Account (as described herein) within forty-five (45) calendar days of the later of (a) the Court granting preliminary approval of the Settlement, and (b) receipt by the Estate of payment instructions and a Form W-9 of the Escrow Account in its capacity as a "qualified settlement fund" (as described in Paragraph 13). The Releasees shall have no monetary obligation whatsoever in excess of the Settlement Amount.

12. Subject to the provisions hereof, and in full, complete, and final settlement of the Actions as provided herein, the Oregon Professional Liability Fund shall pay the Settlement Amount at the times and in the amounts set forth in Paragraphs 10 and 11 of this Agreement into an escrow account to be administered in accordance with the provisions of this Agreement (the "Escrow Account"). Nothing in this Paragraph shall relieve the Estate from its Full Cooperation obligations as specified in Paragraphs 14 - 20, which obligations shall survive the payment of any and all financial consideration by the Estate. The Releasers agree that the Settlement Amount shall be paid as stated in this Paragraph and they release and discharge the Releasees from any liability arising from the disbursement of the Settlement Amount as set forth in this Paragraph.

13. Escrow Account.

- a. An escrow account shall be maintained at Eastern Bank (the “Escrow Account”). Such escrow shall be administered under the Court’s continuing supervision and jurisdiction.
- b. All payments into the Escrow Account shall, at the direction of Settlement Class Counsel, be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including U.S. Treasury Bills, U.S. Treasury Money Market Funds, or a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit. Any interest earned on any of the foregoing shall become part of the Settlement Fund.
- c. All funds held in the Escrow Account shall be deemed and considered to be in legal custody of the MDL 2566 Court and shall remain subject to the jurisdiction of that Court, until such time as they are distributed pursuant to this Agreement and/or further order(s) of the Court.
- d. The Estate will not object to a proposed preliminary approval order providing that:
 - (1) the funds in the Escrow Account may be used as provided herein for reasonable disbursements of expenses associated with providing notice of the Settlement (“Class Notice” or “Notice”) to the Settlement Class and administrative (not legal) expenses for maintaining and administering the Settlement Fund, which may be paid without approval from the Court and shall not be refundable to the Estate in the event the Agreement is disapproved, rescinded, or otherwise fails to become effective for any reason;
 - (2) the funds in the Escrow Account may be used for such purposes, including, without limitation, validating or determining the identity of net losers and

updated addresses of class members, or otherwise restoring or working with TelexFree's user information management system (referred to as the "SIG" system) to ensure accuracy and completeness in an amount up to \$50,000.00, which Settlement Class Counsel shall deduct from the Settlement Fund. To preserve the cash component assets and otherwise serve the best interests of the putative class, and with the approval of the MDL 2566 Court, Notice for the Settlement with the Estate may be combined with Notice of Settlement with any or all other Defendants.

- e. No other disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court. The Estate shall have no further obligation to pay costs of Notice or the expense of maintaining and administering the Settlement Fund.
- f. Once the Court orders final approval to the Settlement Agreement, the Estate shall have no further input or make any motion as to the disposition of the remainder of the Settlement Amount.
- g. The Escrow Account is intended by the Parties to be treated as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1, and to that end the Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of the Estate, a "relation back election" as described in Treas. Reg. § 1.468B-1(j) shall be made to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, and the Parties shall take all actions as may be necessary or appropriate to this end. Settlement Class Counsel shall be appointed as the "administrator" as described in Treas. Reg. § 1.468B-2(k)(3) of the Escrow Account.

At the direction of Settlement Class Counsel, with notice to the Estate and without Court approval, Settlement Class Counsel will make payment of taxes or estimated taxes on any income earned on the funds in the Escrow Account, whether or not final approval as defined in Paragraph 31 (“Final Approval”) has occurred, and such payment shall be made solely with funds from the Settlement Fund. Except as set forth in this Paragraph, the TelexFree Plaintiffs shall have no responsibility to make any tax filings related to the Settlement Fund or to pay any taxes with respect thereto, and neither any Releasee nor any Releasor nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

- h. For purposes of this Settlement, all proceeds and payments shall be considered to have occurred in 2023.
- i. If this Agreement does not receive Final Approval, including final approval of the Settlement Class as defined in this Agreement, or if the Actions are not certified as class actions for settlement purposes, then all amounts paid by the Oregon Professional Liability Fund on behalf of the Estate into the Settlement Fund, shall be returned to the Oregon Professional Liability Fund from the Escrow Account along with any interest accrued thereon as soon as reasonably practicable but no later than thirty (30) calendar days following the Court’s Order denying Final Approval.
- j. Any costs and expenses associated with the administration of the Escrow Account shall be solely drawn from the Settlement Fund.

C. Agreement To Cooperate.

- 14. In addition to payment of the Settlement Amount by the Oregon Professional Liability

Fund set forth in Paragraph 10, the Estate agrees:

- a. To have a representative of the Estate certify (by way of affidavit, if requested) that, to the best of the Estate's knowledge, the Estate has produced all of the discoverable business records and documents of Jeffrey A. Babener and Babener & Associates in its possession that have been requested in the document requests of the TelexFree Plaintiffs, and to certify this at its own expense.
- b. At the request of TelexFree Class Plaintiffs' Counsel, the Estate will provide one or more witnesses who can sign affidavits, upon personal knowledge, regarding the authentication of business records and documents of Jeffrey A. Babener and Babener & Associates that have been produced during this case in connection with motion practice by Plaintiffs' counsel and, if necessary, for the documents admitted into evidence at trial.
- c. All Cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided.
- d. All exchanges relating to the execution of this settlement agreement including proffers and meetings between counsel for the Parties were expressly carried out as such and are entitled to the protections of Federal Rule of Evidence 408. Neither party shall disclose the contents of those discussions, proffers, and exchanges of documents with any person or entity for any reason ever.
- e. From and after the date of this Settlement Agreement, the Estate will provide notice to, and a copy of, any correspondence, interview notice, deposition notice, or subpoena relating to the TelexFree Litigation they receive from another Defendant to Plaintiffs' Lead Counsel. The Estate will provide notice to

Plaintiffs' Lead counsel, or his designee, of any oral communication together with a summary of same within 48 hours.

- f. Any statements made by the Estate or its counsel in connection with and/or as part of this settlement shall be governed by Federal Rule of Evidence 408.
- g. Other than to enforce the terms of this Agreement, neither the Estate nor TelexFree Class Plaintiffs shall file motions against the other in this Action during the pendency of the Agreement.

15. The Releasees have no other obligation to cooperate with the TelexFree Plaintiffs or provide any other information to the TelexFree Plaintiffs, and the TelexFree Plaintiffs agree not to issue any additional subpoenas for documents or testimony to the Releasees. The TelexFree Plaintiffs agree that the Estate's obligation set forth in this Paragraph shall not prevent, prohibit, or delay either the TelexFree Plaintiffs from filing the Release and Satisfaction in the Oregon Probate Case, as set forth in Paragraph 57, or the Estate from closing the Oregon Probate Case.

16. If the TelexFree Plaintiffs take the position that the Estate is not providing the cooperation set forth above, the TelexFree Plaintiffs shall provide the Estate with notice of the non-cooperation and a reasonable period to cure of no less than fifteen (15) business days.

17. The TelexFree Plaintiffs' requests for cooperation as set forth above shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided.

18. Upon execution of this Settlement Agreement, the Estate will withdraw from all joint defense agreements relating to this matter, if any.

19. All exchanges prior to and relating to the execution of this Settlement Agreement, including proffers and meetings between counsel for the Parties, were expressly carried out as such and are entitled to the protections of Fed. R. Evid. 408. No Party shall disclose the contents of those

discussions, proffers, and exchanges of documents with any person or entity for any reason, other than as set forth in this Agreement.

20. The TelexFree Plaintiffs and Settlement Class Counsel agree that they and their experts will only use the information provided by the Estate in this Action in compliance with the Protective Order entered by the MDL 2566 Court on February 26, 2020 (Dkt. 885) and only for what is reasonably necessary for the prosecution of the TelexFree Plaintiffs' claims in the TelexFree Litigation or as otherwise required by law. While the TelexFree Plaintiffs may employ knowledge that they have obtained from the Estate in prosecuting their claims in the TelexFree Litigation, the TelexFree Plaintiffs, Settlement Class Counsel, and their experts shall treat all information obtained from the Estate in accordance with the protections of the Protective Order.

D. Release And Discharge.

21. Upon Final Approval (as defined in Paragraph 31), and in consideration of payment of the Settlement Amount, the Releasors completely release, acquit, and forever discharge the Releasees from any past, present, and future action, cause of action, suit, liability, claim, right of action, right of levy or attachment, or demand whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that Releasors and the persons, entities, and interests represented by them ever had, now have, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, including but not limited to those for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) TelexFree; (ii) any investments or transactions with TelexFree; (iii) the Releasees' relationship(s) with TelexFree and/or any of its personnel or any person acting by, through, or in

concert with TelexFree; (iv) the Releasees' provision of services to or for the benefit of or on behalf of TelexFree; (v) the handling of the claims of the TelexFree Plaintiffs by the Oregon Professional Liability Fund; or (vi) any matter that was asserted in, could have been asserted in, or relates in any respect to the subject matter of the TelexFree Litigation or any other proceeding concerning TelexFree pending or commenced in any forum (the "Released Claims").

22. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims unless the Agreement is, for any reason, not finally approved or is rescinded or otherwise fails to become effective.

23. In addition to the provisions of Paragraphs 21 and 22 of this Agreement, Releasors hereby expressly waive and release, solely with respect to the Released Claims and upon this Agreement becoming final, all provisions, rights, and benefits, conferred by § 1542 of the California Civil Code, which states

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Releasors further expressly waive and release, with respect to the Released Claims and upon this Agreement becoming final, any and all provisions, rights, and benefits, conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code.

24. The foregoing does not release the Parties' rights and obligations under the Settlement Agreement or bar the Parties from enforcing or effectuating the terms of the Settlement Agreement.

E. Approval of this Agreement and Dismissal of Claims against the Estate.

25. The TelexFree Plaintiffs shall use their best efforts to effectuate this Agreement, including cooperatively seeking the Court's approval for the establishment of procedures, including the giving of class notice under Federal Rule of Civil Procedure 23(e) electronically, to secure the complete and final dismissal with prejudice of the Actions as to the Releasees only. The Estate agrees not to oppose these efforts and to provide reasonable assistance to the TelexFree Plaintiffs to obtain such approval.

26. Within twenty-four (24) hours after the execution of this Agreement, the TelexFree Plaintiffs and Estate shall notify the Court of the fact that the TelexFree Plaintiffs and Estate have executed an agreement to settle all claims relating to Estate and that the Parties will file a motion requesting that this Action remain stayed as to the Estate. The Estate shall draft, and the TelexFree Plaintiffs shall approve, the Joint Notice and Motion for Stay. Other than as contemplated by the terms of this Agreement, neither the Estate nor the TelexFree Plaintiffs shall file motions against the other in this Action during the pendency of the Agreement except for breach of the Agreement.

27. Within thirty (30) days after the execution of this Agreement, the Parties shall submit to the Court a Joint Motion seeking preliminary approval of this Agreement. The Joint Motion for Preliminary Approval of this settlement shall include a request that this Action shall be stayed as to the Estate until further order of the Court and the Estate shall have no obligation to further participate in this case as a party, including any obligation to respond to discovery directed to the Estate as a party from any other party or respond to any Motions filed against it as a party by any other party, or attend any hearings other than those directly involving this settlement. Other than as contemplated by the terms of this Agreement, the TelexFree Plaintiffs will be responsible for the initial draft of the Joint Motion. The Joint Motion shall include that the Settlement Amount will be paid by the Oregon Professional Liability Fund, that the Oregon Professional Liability Fund made the determination that

settlement was the best resolution of the TelexFree Action for the Estate and for the Oregon Professional Liability Fund, that the Estate explicitly denies all liability, and that the settlement was made simply as a business decision by the Oregon Professional Liability Fund to avoid additional fees and costs and to allow the Oregon Professional Liability Fund, the Estate and the Babener family to resolve the case and move on from this matter. The Joint Motion shall also include the proposed form of an order preliminarily approving this Agreement, a proposed form of the electronic notice, and a request for a final approval hearing as soon as reasonably practicable. No less than ten (10) business days before filing, the TelexFree Plaintiffs shall submit a draft of the Joint Motion to the Estate's counsel for approval consistent with the terms of this Settlement Agreement, which shall not be unreasonably withheld. The TelexFree Plaintiffs agree to not object to reasonable revisions and additions to the Joint Motion by the Estate.

28. The TelexFree Plaintiffs shall seek, and the Estate shall support, authorization to electronically disseminate notice of the proposed settlement to the Settlement Class.

29. TelexFree Plaintiffs shall seek, and the Estate will not object unreasonably to, the entry of an order and final judgment approving the settlement.

30. The terms of that order and final judgment will include, at a minimum, the substance of the following provisions:

- a. Certification of the Settlement Class described in Paragraph 5 of this Agreement, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this Settlement;
- b. As to the Actions, final approval of this settlement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and direction of its consummation

according to its terms;

- c. As to Class Notice, approval of electronic notice as satisfying the requirements of Rule 23 because it is the “best notice that is practicable under the circumstances.” The sole use of Electronic Notice, without publication in printed materials including mail, is a material term of this Agreement. The Parties have taken into account that TelexFree was an online-based operation;
- d. That all claims against the Estate for contribution, indemnification and other liability claims arising under or in any way related to TelexFree shall be barred, including pursuant to M.G.L. c. 231B, §4, which bars contribution actions against joint tortfeasors who settle in good faith, without regard to the principles of conflicts of law;
- e. That the Court permanently bars, restrains, and enjoins the TelexFree Plaintiffs, the Settlement Class Members, and all other persons or entities anywhere in the world, whether acting on his or her or its own behalf or in concert with the TelexFree Plaintiffs or the Settlement Class Members or claiming by, through, or under them, or otherwise, all and individually, from directly, indirectly, or through a third party, instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against the Estate or any of the other Releasees, the TelexFree Litigation, or any action, lawsuit, cause of action, claim, investigation, demand, levy, complaint, or proceeding of any nature in any forum, including, without limitation, any court of first instance or any appellate court, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other

capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected with TelexFree; the TelexFree Litigation; the subject matter of the TelexFree Litigation; or any Released Claims; all of which includes but is not limited to any claim, however denominated and whether brought in the TelexFree Litigation or any other forum, seeking contribution, indemnity, damages, or other remedy where the alleged injury to such person or entity, or the claim asserted by such person or entity, is based upon such person or entity's liability to any of the TelexFree Plaintiffs or Settlement Class Members arising out of, relating to, or based in whole or in part upon money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to any TelexFree Plaintiffs, Settlement Class Members, or other person or entity, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise;

- f. As to the Estate, a directive that the Actions be dismissed with prejudice and, except as provided for in this Agreement, without costs;
- g. Reservation of exclusive jurisdiction to the United States District Court for the District of Massachusetts over the settlement and this Agreement, including the administration and consummation of this settlement, as well as over the Estate for the duration of, and with respect to, this Agreement;
- h. Determination under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and a directive that the judgment of dismissal as to the Estate shall be final; and
- i. The terms of this Agreement shall remain binding on the Parties following dismissal and that the MDL 2566 Court shall retain continuing jurisdiction.

31. “Final Approval” of this Settlement shall occur when (i) the Court has entered a final order certifying the Settlement Class described in Paragraph 5 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and a separate and final judgment dismissing the Estate from the TelexFree Litigation with prejudice as to all Settlement Class Members and without costs; (ii) the Court has entered a bar order consistent with Paragraphs 30(d) and (e); and (iii) the time for appeal or to seek permission to appeal from the Court’s approval of this Agreement and entry of a separate and final judgment as to the Estate described in (i) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to the Estate has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

32. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that the Parties have executed this Agreement, the Parties shall be bound by its terms, and this Agreement shall not be rescinded except in accordance with the terms of this Agreement.

F. Exclusions and Opt Outs.

33. Within thirty (30) business days after the end of the period to request exclusion from the Settlement Class, Settlement Class Counsel shall cause copies of requests for exclusion from the Settlement Class to be provided to counsel for the Estate and placed on file. With respect to any potential member of the Settlement Class who requests exclusion from the Settlement Class, the Estate reserves all of its legal rights and defenses.

34. If three hundred (300) or more potential members of the Settlement Class or any number of potential members of the Settlement Class alleging a Net Loss of two million, five hundred thousand dollars (\$2,500,000.00) or more opt out of the settlement with the Estate, then the

Estate shall have the option, in its sole and absolute discretion, to declare this Agreement null and void. The Estate shall be deemed to waive its right to declare this Agreement null and void if it fails to notify the TelexFree Plaintiffs' counsel of such an election within fourteen (14) days of receiving notice that three hundred (300) or more potential members of the Settlement Class or any number of potential members of the Settlement Class alleging a Net Loss of two million, five hundred thousand dollars (\$2,500,000.00) or more have opted out. Should the Estate opt out, the Plaintiffs shall be afforded a reasonable amount of time to complete discovery.

G. Electronic Notice to The Class

35. The Estate agrees to permit use of a maximum of fifty thousand dollars (\$50,000.00) in funds from the Settlement Fund monies paid by it for notice to the Settlement Class and the costs of administration of the Settlement Fund but shall have no obligation to perform or otherwise pay for any obligations in this Paragraph, which shall be performed solely by the TelexFree Plaintiffs. This shall include without limitation validating or determining the identity of net losers and updated addresses of class members, or otherwise restoring or working with the SIG system to ensure accuracy and completeness, as described in Paragraph 13(d).

36. It is agreed by the Parties that electronic notice is the best possible method of notice to this unique class. The use of electronic notice only, rather than mail or publication, is a material term to this Settlement Agreement, and should the Court not approve this term, the Parties have the right to terminate the Agreement subject to Paragraph 41 below, which provides a period during which they shall be afforded the option of presenting the Court with an alternative form of Notice.

37. The aforementioned notice, administration, and other expenses identified in Paragraph 13(d) up to the maximum of fifty thousand dollars (\$50,000.00) payable exclusively from the Settlement Fund are not recoverable if this settlement does not become final, is rescinded, or

otherwise fails to become effective to the extent such funds have actually been expended or the expenses have been incurred for notice and administration costs.

38. Other than through the funds paid associated with providing notice of this settlement and administration of the Settlement Fund, as set forth in Paragraph 35, above, which shall not exceed fifty thousand dollars (\$50,000.00) and shall be paid exclusively from the Settlement Fund and not in addition to the Settlement Fund, the Estate shall not be liable for any other of the TelexFree Plaintiffs' costs or expenses in litigating the Actions, including attorneys' fees and costs, expenses of expert witnesses and consultants, motion practice, hearings before the Court or any Special Master, appeals, trials, or the negotiation of other settlements, or for class administration and costs.

39. The Estate shall not be liable for any of the TelexFree Class Plaintiffs' costs or expenses in litigating the Actions, including attorneys' fees, fees and expenses or expert witnesses and consultants, motion practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of other settlements, or for class administration and costs.

40. If Settlement Class Counsel enter into any other settlements on behalf of a class of TelexFree Plaintiffs in the TelexFree Litigation after the Execution Date, but before notice of this Agreement is given to the Settlement Class, Settlement Class Counsel shall use reasonable efforts to provide a single notice to prospective Settlement Class members of all such settlements.

41. If the Court does not approve electronic notice as the sole notice to the class, the Parties shall have the option of formulating and agreeing to propose to the Court a mutually agreeable alternative notice program within fourteen (14) days. In no event will the Estate or any Releasee or Releasor pay additional monies into the Settlement Fund.

H. The Settlement Fund.

42. Releasors shall look solely to the Settlement Fund for satisfaction against the Releasees of all Released Claims and shall have no other recovery against the Estate or any Releasee.

43. After this settlement becomes final within the meaning of Paragraphs 30 and 31, the Settlement Fund shall be distributed in accordance with a plan to be submitted at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration, with the exception of the provisions set forth in Paragraph 13(d) of this Agreement.

I. Settlement Class Counsel's Attorneys' Fees, Payment of Costs and Expenses, and Incentive Awards for Class Representatives.

44. Subject to Court approval, the TelexFree Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for past, current, or future litigation costs and expenses and any award of attorneys' fees after this Agreement becomes final within the meaning of Paragraphs 30 and 31. Disputes relating to the distribution of the awarded fees shall be submitted to binding arbitration with JAMS. Incentive awards to any of the TelexFree Plaintiffs, if approved by the Court, will also be paid solely out of the Settlement Fund. Attorneys' fees and costs and expenses awarded by the Court shall be payable exclusively from the Settlement Fund.

45. Neither the Estate nor any Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel of any fee or cost and expense award in the Actions and shall take no position on the proposed distribution of the funds it pays.

46. In addition, neither the Estate nor any Releasee under this Agreement shall have any

responsibility for, or interest in, or liability whatsoever with respect to the allocation among Settlement Class Counsel, or any other person who may assert some claim thereto, of any fee or cost and expense award that the Court may make in the Actions.

J. Rescission If This Agreement Is Not Approved Or Final Judgment Is Not Entered.

47. If the Court refuses to approve this Agreement or any material term herein or if the Court does not certify a settlement class in accordance with the specific Settlement Class definition set forth in this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraphs 30 and 31 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then the Parties shall each, in their sole discretion, have the option to rescind this Agreement in its entirety.

48. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 68. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees or costs and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

49. In the event that this Agreement or the settlement described herein does not become final, then this Agreement shall be of no force or effect, and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to the Oregon Professional Liability Fund. The Estate expressly reserves all of its rights and defenses if this Agreement does not become final.

50. In the event that this Agreement or the settlement described herein is rendered null and void, the Estate reserves the right to oppose certification of any class in this or any other proceeding, and the TelexFree Plaintiffs and their counsel agree that the Estate's consent to

certification for purposes of this Settlement (a) shall not be deemed to constitute an admission by the Estate with respect to class certification for any other purpose or in any other case or context, (b) shall not be deemed to constitute a waiver by the Estate of any rights to oppose any other request for class certification, (c) shall not be cited or mentioned in support of, or in connection with, any other request for class certification, and (d) shall have no prejudicial, precedential, or preclusive effect whatsoever with respect to any subsequent opposition by the Estate to any other request for class certification.

51. The fact of and provisions contained in this Agreement, and all negotiations, discussions, actions, and proceedings in connection with this Stipulation shall not be deemed or constitute a presumption, concession, or an admission by any Party, any signatory hereto, or any Releasee of any fault, liability, or wrongdoing or lack of any fault, liability, or wrongdoing, as to any facts or claims alleged or asserted in the Action or any other actions or proceedings, and shall not be interpreted, construed, deemed, involved, invoked, offered, or received in evidence or otherwise used by any person in the Action or any other action or proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to enforce the terms of this Agreement. All negotiations, discussions, actions and proceedings leading up to the execution of this Agreement are confidential. The fact of and provisions contained in this Agreement, and all negotiations, discussions, actions, and proceedings leading up to the execution of this Stipulation, are intended for settlement discussions only.

K. Confidentiality and Non-Disparagement

52. Other than disclosures necessary to effectuate this Settlement and comply with this Agreement, the TelexFree Plaintiffs and their counsel agree not to further disclose any information regarding the terms of this Agreement or to discuss the Released Claims, including but not limited to

for any advertising or marketing purposes.

53. The TelexFree Putative Class Representatives and their attorneys shall not disparage the Estate, Jeffrey A. Babener, or any of the other Releasees, and shall not make, disseminate, or publish any statement outside of court, including, but not limited to, statements to the press and comments on any type of social media, intended to denigrate, embarrass, or have the effect of damaging their professional or personal reputations.

L. Miscellaneous.

54. Nothing in this Agreement shall prevent the TelexFree Plaintiffs from using documents produced by the Estate against any other Defendant for any purpose in the TelexFree Litigation.

55. Within thirty (30) days of the Final Approval and expiration of all periods of Appeal, the TelexFree Plaintiffs shall file a Release and Satisfaction of any and all claims in the Oregon Probate Case of the Estate of Jeffrey A. Babener, Oregon Probate Court Case No. 20PB02538. The Estate's Counsel agree to send a draft of the Release and Satisfaction to the TelexFree Plaintiffs' counsel for review and approval before it is filed.

56. This Agreement shall be construed and interpreted to effectuate the intent of the Parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Releasee as provided in this Agreement in exchange for the payment of the Settlement Amount. The fact of and provisions contained in this Agreement shall not be deemed or constitute a presumption, concession, or an admission by any Party, any signatory hereto, any Releasee, or any Releasor of any fault, liability, or wrongdoing or lack of any fault, liability, or wrongdoing, as to any facts or claims alleged or asserted in the Actions or any other actions or proceedings.

57. The Estate's counsel shall determine in good faith all materials reasonably required to be sent to appropriate Federal and State officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"). The Estate will prepare all notices required under CAFA and shall mail the CAFA notices. No part of this clause shall violate the express terms of CAFA or its interpretive cases.

58. This Agreement does not settle or compromise any claim by the TelexFree Plaintiffs, or any other Settlement Class Member asserted in the Complaint or, if amended, any subsequent Complaint, against any Defendant or alleged co-conspirator other than the Releasees. All rights against such other Defendants or alleged co-conspirators are specifically reserved by the TelexFree Plaintiffs and the Settlement Class.

59. All rights of any Settlement Class Member against any and all former, current, or future Defendants or co-conspirators or any other person other than the Releasees for their involvement with TelexFree and others' alleged illegal conduct, are specifically reserved by TelexFree Plaintiffs and Settlement Class Members.

60. The Court presiding over the TelexFree Litigation shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by the TelexFree Plaintiffs and the Estate.

61. Nothing shall prohibit the Parties from mutually agreeing to have disputes arising under this Agreement submitted to binding arbitration.

62. All persons and entities making claims under this Settlement Agreement shall be deemed to voluntarily submit to the jurisdiction of the MDL 2655 Court.

63. This Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Massachusetts without regard to its choice of law or conflict of laws principles. The Estate will not object to complying with the provisions set forth in this Agreement on the basis of jurisdiction.

64. This Agreement constitutes the entire, complete, and integrated agreement among the Parties pertaining to the settlement of the TelexFree Litigation against the Estate, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions, either oral or written, between the Parties in connection herewith. This Agreement may not be modified or amended except in writing executed by the Parties and approved by the Court.

65. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties. Without limiting the generality of the foregoing, upon Final Approval, each and every covenant and agreement made herein by the TelexFree Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members, Releasors, and Releasees. The Releasees (other than the Estate, which is a Party hereto) are third-party beneficiaries of this Agreement who are bound by this Agreement and are otherwise authorized to enforce its terms applicable to them.

66. This Agreement may be executed in counterparts by the Parties, and an imaged signature shall be deemed an original signature for purposes of executing this Agreement.

67. Neither Party shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, rule of interpretation, or construction that would or might cause any provision to be construed against the drafter of this Agreement.

68. Where this Agreement requires either Party to provide notice or any other

communication or document to the other, such notice shall be in writing, and such notice, communication, or document shall be provided by electronic mail (provided that no notice of rejection or non-delivery of email is received) or letter by overnight delivery to the undersigned counsel of record for the Party to whom notice is being provided.

69. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement.

Dated this the 1st day of February, 2024.

[SIGNATURE PAGE FOLLOWS}

THE REPRESENTATIVE PARTIES AGREE TO THE ABOVE TERMS AND
CONDITIONS

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Babener



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