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)**

CLASS COUNSEL MEMORANDUM IN SUPPORT OF MOTION FOR AN INTERIM AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

I. INTRODUCTION

Class Counsel submit this Memorandum in Support of Motion For An Interim Award of Attorneys' Fees and Reimbursement of Expenses ("Fee Motion") on the grounds that they have obtained a series of significant settlements on behalf of the plaintiff class – $95,000,000 with Defendant T.D. Bank, N.A. ("TD Bank Settlement"), $500,000 with Defendants International Payout Systems, Eddie Gonzalez, and Natalia Yenatska ("IPS Settlement"), and $25,000 with Defendants Ryan Mitchell and Telecom Logic ("Telecom Settlement"). The combined value of these settlements (the "2023 Settlements") is Ninety-Five Million, Five Hundred and Twenty-Five Thousand Dollars. ($95,525,000.00). Class Counsel seeks a fee award of one-third of the 2023 Settlements—$31,841,667.00. Class Counsel also seek reimbursement for a limited subset of litigation expenses that includes bank fees, class notice,[1] court transcripts, the TelexFree specific case management system, the cost of the Document Depository, expert witness fees, and professional fees. These expenses total $927,312.98 (*See* Attached Exhibit 16).

[1] The period allotted by the Court for Class Notice has not concluded and so costs related to Class Notice have not yet been closed. Class Counsel may request this Court allow them to submit an updated and finalized billing following the completion of Class Notice.

The fee Class Counsel seek is fair and reasonable. The percentage award sought is consistent with awards in similar cases and is supported by the factors courts consider when awarding attorney fees in contingent class cases. The 2023 Settlements represent a significant recovery for the class. Plaintiffs' case is not only risky and complex; it has required a substantial amount of high-quality work by counsel in the face of vigorous and well-funded opposition by a host of law firms, including some of the largest and most powerful in the country. Class Counsel's lodestar for this MDL since the last fee submission exceeds $20.9 million.[2] (*See* Attached Exhibit 15). The lodestar cross-check of the most recent work eliminates any question of a windfall to Class Counsel because the fee sought is approximately 1.52 times the lodestar amount. An Interim Fee Award of $31,841,667.00 is even more reasonable when 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. Finally, the response of the class to date has been positive. No objections have been received.

Plaintiffs respectfully submit that an interim fee award is appropriate. The TD Bank Settlement is the second substantial settlement in the case and provides more than four times the value of the earlier settlement with Fidelity Bank. As described below and with granular detail in

[2] This is Class Counsel's second Motion for an Interim Award of Attorneys' Fees. On February 26, 2021, Class Counsel received an Interim Award of Fees from the Court for a settlement with Fidelity Bank and John Merrill ("Fidelity Settlement"). In that Interim Award, Class Counsel received fees equivalent to roughly one-third of their lodestar for the period through September 2020. The lodestar value cited above only includes legal work that has been performed since October 2020.

the contemporaneously-filed Declaration of Interim Lead Counsel, Class Counsel has amassed a substantial lodestar over the last three years as they revived and successfully maintained claims against previously dismissed defendants (including TD Bank), worked though massive amounts of data, engaged in extensive discovery disputes with defense counsel, extensively worked with consultants, provided support to consultants, fended off additional dispositive motions, engaged many Defendants in settlement efforts, and successfully negotiated and concluded settlements including those presented in the instant briefing.[3] This work by Class Counsel laid the foundation for the substantial recoveries obtained by the 2023 Settlements.

II. OVERVIEW

Class Counsel has effectively prosecuted this case against those who were individually and collectively responsible for the losses suffered by the victims of the TelexFree Scheme. In addition to the 2023 Settlements that have received preliminary approval from the Court, and the earlier settlements that have received final approval from the Court, Class Counsel has successfully revived dismissed claims against multiple defendants, defeated numerous Motions to Dismiss, and engaged in aggressive discovery motion practice.

As more fully described in Interim Lead Counsel's Declaration and below, the following factors deserve favorable consideration by the Court in considering this application:

The size of the Settlement Fund, $95.525 million in already-funded cash, is unquestionably substantial, and will provide a significant guaranteed recovery to the Class. This recovery is significant, particularly in light of the many challenges overcome by Class Counsel.

[3] Because almost all of the issues in this case alleging joint and several liability relate to all MDL Defendants – e.g., the nature and operation of the fraud, the interrelated activities of the defendants, the law of aiding and abetting and conspiracy, etc. – Class Counsel have chosen to highlight for the Court's consideration the work performed since October 2020 and the revival of the claims against the large financial institutions who provided TelexFree with access to the electronic banking that was the most essential component of their business operations.

Class Notice has been fully distributed and achieved a very noteworthy ninety-one percent (91%) successful delivery rate. Although some limited time remains to file objections, not a single Class Member has raised any objection to any term of the Settlement or the fully disclosed request for attorneys' fees and costs. The lack of objections from Class Members supports and confirms the excellent result that was reached and is strong evidence supporting Class Counsel's fee and expense request.

The litigation was vigorously and effectively prosecuted at all stages by Class Counsel. It was Class Counsel's skill, experience, tenacity, focus, dedication and of significant resources including staffing and funding and continuous hard work – including reviving claims against TD Bank, fending off numerous Motions to Dismiss from TD Bank (and other Defendants), garnering the focused and most powerful evidence, supporting that evidence with legal precedents, and presenting the law and facts persuasively – that enabled settlement of complex claims against one of the largest banks in the country and additional secondary defendants.

This litigation has proceeded over the course of almost a decade and these settlements were achieved only after a prolonged stay, extensive fact discovery, significant motion practice (including, among other things, discovery disputes, multiple rounds of Motions to Dismiss, and a Motion for Leave to File a Fifth Consolidated Amended Complaint), sustained early efforts at mediation and settlement that included the submission of extensive briefing and voluminous supporting documentation and analysis. (Lead Counsel Decl. ¶¶ 20-63, 90-116.)

Class Counsel faced significant risks in pursuing this litigation and more specifically, the instant settlements. From the outset, Class Counsel confronted determined opposition by TD Bank and its well-staffed and highly competent legal team. TD Bank vigorously denied any wrongdoing and asserted numerous defenses. The risks faced by Class Counsel were thrown in sharp relief by

the ability of one large bank defendant (PNC Bank) to prevail upon its Motion to Dismiss – a result with which the Plaintiffs respectfully yet fervently disagree - the claims in the Fifth Consolidated Amended Complaint and the ability of another large bank defendant (Bank of America) to win an early Motion for Summary Judgment before document discovery had been completed – a result with which Plaintiffs also strongly disagree and which is currently the subject of a motion.

More generally, Class Counsel at all times worked on a contingent fee basis and therefore received no compensation for three years while devoting over 35,000 hours and incurring over $920,000 in out-of-pocket expenses[4] aggressively prosecuting this action. Class Counsel were unable to devote that time and resources to other parts of their business during that period and had no assurance of eventual reimbursement. (*See* Lead Counsel Decl. ¶¶ 143-46.)

The fee request of one-third is consistent with fee awards in similar cases and with case law from this District as well as other federal courts, which routinely make such awards. Moreover, the one-third contingency fee agreement here readily approximates market conditions in the context of non-class contingency fee arrangements involving complex business litigation, where contingency fees of one-third (or more) are common and was contemplated in the retainer agreements with the Plaintiffs.

Public policy is served through the compensation of counsel who prosecute private claims on a contingent basis on behalf of persons or businesses who suffer loss and may not otherwise press forward with purely individual claims. Without a fee that accounts for the inherent risks, uncertainty and hard work required by contingency litigation, Class Counsel would be unable to continue to bring complex class actions that serve to protect the interests of the public, especially

[4] As referenced above and in the Declaration of Interim Lead Counsel, this amount represents a limited subset of litigation expenses that includes bank fees, class notice, court transcripts, the TelexFree-specific case management system, the cost of the Document Depository, expert witness fees, and professional fees.

against large well-funded and endlessly resourced defendants in litigation that the case law makes clear will most often be based upon circumstantial evidence and rarely have direct evidence in support.

For these reasons, which are detailed more completely below and in the Declaration of Interim Lead Counsel in Support of Class Counsel's Motion for an Interim Award of Attorneys' Fees and Reimbursement of Expenses, Class Counsel respectfully request that the Court approve Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses.

III. HISTORY OF THE LITIGATION

In mid-April 2014, TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. declared bankruptcy. Thereafter, in June 2014, Waldemara Martin retained interim lead counsel who filed the first civil action against TelexFree. Other complaints followed in various district courts across the country alleging an illegal pyramid/Ponzi scheme. (*See* Lead Counsel Decl. ¶¶ 22–24). In October 2014, the Judicial Panel on Multidistrict Litigation issued a Transfer Order in *In re TelexFree Securities Litigation*, Case No. 4:14-md-02566-TSH (D. Mass. 2014) transferring all actions to this Court. (*See* Dkt. 1).

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). On March 10, 2015, this Court granted the DOJ's motion and stayed all discovery. (Dkt. 111). That stay was supplemented by a blanket stay of all proceedings on March 2, 2016, "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). That stay remained in effect until January 29, 2019. (*See* Dkt. 606). During those four years, Plaintiffs were barred from obtaining formal discovery from Defendants.

(*See* Dkts. 435, 606). A further partial stay of discovery was entered on April 9, 2020.[5] (Dkt. 950).

A. Discovery and Motion Practice

On January 29, 2019, the Court granted TD Bank's motion to dismiss all claims alleged against it. (*See* Dkt. 602). On the same day, the Court granted IPS's motion to dismiss Plaintiffs' claims for statutory aiding-abetting and unjust enrichment while denying IPS's motion to dismiss Plaintiffs' claims for civil conspiracy and common law aiding-abetting. (Dkt. 601). Written discovery initially commenced in late 2019 against the then-remaining defendants and was ordered to be completed by February 28, 2020. (Dkt. 756). Pursuant to this Court's scheduling order, no depositions of fact witnesses were allowed pending entry of orders resolving any Motion to Dismiss that might be filed against the Fifth Consolidated Amended Complaint ("5CAC"). This order effectively imposed an informal stay on discovery. (Dkt. 950). The inability to take depositions created a hardship because Plaintiffs were unable to test and probe blanket denials that covered over the existence of documents, records and evidence that were eventually, and very, very recently uncovered for the first time as a result of both settlements and disclosures found within the documents of other Defendants' productions.[6]

In April 2020, the Court permitted Plaintiffs to seek leave to file the 5CAC. (Dkt. 947). Plaintiffs filed their motion for leave to further amend their complaint on May 19, 2020. (Dkt. 983). The Court granted the Plaintiffs leave to file the 5CAC on December 6, 2021. (Dkt. 1176). The 5CAC alleged claims against TD Bank for Aiding and Abetting and Unjust Enrichment.[7] (*See*

[5] The MDL proceedings have essentially operated under three consolidated complaints: The Second Consolidated Amended Complaint, filed on April 30, 2015 (Dkt. 141); the Fourth Consolidated Amended Complaint, filed on June 6, 2017 (Dkt. 503); and the Fifth Consolidated Amended Complaint (Dkt. 1186).

[6] These Defendants include Bank of America, Babener, Wells Fargo Bank, IPS, and ProPay.

[7] This Court had previously dismissed Plaintiffs' claims for unjust enrichment. Plaintiffs repleaded their claim against TD Bank for unjust enrichment solely to preserve their ability to seek appellate review. (*See* Dkt. 984 at 40–41).

Dkt. 1186). The 5CAC also added Ryan Mitchell and Telecom Logic as named Defendants. (*See id*.).

TD Bank filed a new Motion to Dismiss in March 2022. (Dkt. 1303). That motion, along with fourteen other Motions to Dismiss, were fully briefed and subsequently resolved via an omnibus ruling on August 31, 2022. (Dkt. 1418). The Court denied TD Bank's motion to dismiss Plaintiffs' claim for Aiding and Abetting the TelexFree Fraud. (*See id.* at 19). In that same ruling, the Court again granted IPS's motion to dismiss Plaintiffs' claim of unjust enrichment.[8] (Dkt. 1418 at 22). On January 13, 2023, The Court denied the motion to dismiss filed by Eddie Gonzalez and Natalia Yenatska. (Dkt. 1519).

After the Motions to Dismiss were resolved, discovery picked up again in November 2022. Discovery was ordered to be completed by March 31, 2023 (Dkt. 1480); this deadline was later extended to June 30, 2023 (Dkt. 1509) and then to July 21, 2023 (Dkt. 1657).

Plaintiffs timely complied and served their responses to the Defendants' written discovery on January 13, 2023. The parties jointly requested a further extension to the completion of written discovery on March 31, 2023, thereby extending the deadline for the substantial completion of document discovery to June 30, 2023. (Dkts. 1539, 1540).

Certain Defendants did not meet their discovery obligations, despite many meet-and-confers and repeated assurances. 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 Gerald 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

[8] IPS did not move to dismiss Plaintiffs' claims against IPS for civil conspiracy and common law aiding-abetting.

Dustin Sparman on June 26, 2023 (Dkt. 1668); (8) Wells Fargo Bank on July 21, 2023 (Dkt. 1692); and (9) ProPay on July 21, 2023 (Dkt. 1694).

During the course of this litigation, Plaintiffs received approximately 1,171,789 pages of documents received 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. TelexFree's SIG system is separately addressed below and in Interim Lead Counsel's attached Declaration.

Prior to formal mediation, Plaintiffs and the Settling Defendant TD Bank exchanged focused interrogatories and requests for production. (*See* Lead Counsel Decl. ¶¶ 92, 94, 95). Following the service of formal discovery, Interim Lead Counsel engaged in extensive pre-mediation correspondence and consultation with TD Bank Prior concerning targeted requests for documents and evidence that was essential to Plaintiffs' case-in-chief. Once the core TD Bank litigation team confirmed that we possessed information in all critical categories, Interim Lead Counsel increased the staffing and scope of the TD Bank document review team. 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, account opening documents, fraud and anti-money-laundering policies, training materials, deposit slips, check images, and internal communications from over a dozen custodians. Interim Lead Counsel subsequently assigned additional more senior-level attorneys to detailed analysis of these documents and devoted substantial time himself.

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. 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. Interim Lead Counsel also assembled a TD Bank mediation team to complement the efforts of the lawyers working on discovery. That team and our independent judicial advisor participated in strategy sessions leading up to the TD Bank mediation.

Ryan Mitchell has produced 8,575 documents and has otherwise cooperated during litigation.

On June 5, 2023, this Court entered an order compelling International Payout Systems ("IPS") to "conduct good faith searches for the materials listed and produce them as soon as possible." (Dkt. 1596). This order jumpstarted a new round of settlement negotiations. Plaintiffs then pressed IPS on two separate and distinct fronts – litigation in furtherance of this Court's order and settlement. Following this Court's order on the Motion to Compel, IPS produced nearly 6,000 pages of additional documents, including bank statements covering a critical time period for TelexFree transactions. Moreover, Plaintiffs also performed first, second and third level reviews of over 30,000 pages of documents previously produced by IPS.

B. Prior Settlements

On March 8, 2020, the Court granted preliminary approval for Plaintiffs' settlements with Defendants Base Commerce, Synovus Bank, Joseph Craft, Craft Financial Services, and other assorted parties. (Dkt. 948). Final approval of those settlements was granted on July 28, 2020. (Dkts. 1057, 1058).

On November 6, 2020, the Court granted preliminary approval for Plaintiffs' settlements with Defendants Fidelity Co-Operative Bank and John Merrill. (Dkt. 1096). Fidelity provided discrete financial services for TelexFree for roughly four months and processed about $22.5 million dollars in transactions. Plaintiffs settled with Fidelity Bank and its President, John Merrill, for $22.5 million dollars (*See* Dkt. 1056-5). Final approval of this settlement was granted on February 26, 2021. (Dkt. 1112).

C. Mediation and Settlement

Plaintiffs' settlement with TD Bank is the product of many months of preparation and negotiation. In addition to informal exchanges, the parties submitted multiple rounds of extensive briefing with voluminous supporting attachments prior to an extensive arm's length in-person mediation session. The parties agreed that the services of a professional mediator with extensive Ponzi/Pyramid and Big Bank experience and the time and resources to process and absorb extensive briefing would be required. After vetting and considering multiple options, the parties engaged the services of Robert Meyer, a JAMS mediator with extensive experience with disputes involving complex white-collar financial matters, securities litigation, and pyramid schemes. (Lead Counsel Decl. ¶ 96).

Despite multiple rounds of mediation statements and weeks of preliminary negotiations, the parties were unable to reach an agreement in their initial mediation session. Following an end of day "walk out" by Plaintiffs' Mediation team, Mr. Meyer did not quit. With the assistance and insistence of Mr. Meyer, negotiations continued, and the parties agreed to submit to a double-blind "Mediator's Proposal" to both sides simultaneously.

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 (Lead Counsel Decl. ¶ 106).

Following the establishment of an agreement-in-principle on the major points, Plaintiffs' counsel and counsel for TD Bank steadily worked their way through the remaining details in order to finalize the comprehensive terms of the TD Bank Settlement Agreement. (Lead Counsel Decl. ¶ 107).

Plaintiffs also engaged in 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. (Lead Counsel Decl. ¶ 117). 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. (Lead Counsel Decl. ¶ 117). Asset searches of Ryan Mitchell reveal he generally lacks assets to satisfy any significant judgment.

The Plaintiffs have aggressively pursued their claims against the IPS Defendants. For example, as referenced above, Plaintiffs' have engaged in multiple rounds of discovery disputes with IPS ultimately resulting in this Court issuing an order compelling them to comply. Similarly, Plaintiffs' Counsels have engaged in multiple rounds of negotiations regarding the extent of the cooperation to be offered by the IPS Defendants, the appropriate discount for such cooperation when calculating a settlement payment, and the ability of the IPS Defendants to pay a significant judgment. Plaintiffs' counsel walked away from settlement multiple times, only recently agreeing to the terms of the settlement and only after the IPS Defendants were able to demonstrate that they could provide critical documents that were previously withheld in discovery by dismissed defendant Bank of America, N.A., provide the necessary context for those withheld documents, and provide information about how the IPS Defendants provided a software platform for other

banks and payment processors to provide services to TelexFree. The negotiations with IPS were long and extensive. The information that was essential to Plaintiffs' case against BANA was extracted over time and only following this Court's allowance of Plaintiffs' Motion to Compel. IPS's subsequent agreement to cooperate has already resulted in new, game changing evidence with more to come.

IV. CLASS COUNSEL'S FEE REQUEST IS REASONABLE

A. The Percentage-of-the-Fund Method is the Appropriate Method for Calculating Attorneys' Fees in This Case

Courts have long recognized that a lawyer who recovers a "common fund" on behalf of a class is entitled to reasonable attorneys' fees and expenses from the fund.[9] "Counsel who recovers common funds for a class is entitled to reasonable attorneys' fees and reimbursement of expenses prior to the distribution of the balance to the class."[10] Interim fee awards are commonplace in lengthy, complex class actions when settlements are reached with some, but not all, defendants.[11]

The Supreme Court has consistently held in common fund cases that it is appropriate for attorneys' fees to be determined on a percentage-of-the-fund ("POF") basis.[12] While district courts in the First Circuit have the discretion to use either a POF or lodestar method in making an attorney fee award in a common fund case, the First Circuit has acknowledged the "distinct advantages that the [POF] method can bring to bear"[13] in that it is less burdensome to administer, reduces the

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[9] *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Court Awarded Attorney Fees: Report of the Third Circuit Task Force*, 108 F.R.D. 237, 241 (1985) (a common fund allows "fair and just allowances for expenses and counsel fees").

[10] *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 245 (D. Mass. 2022).

[11] *See, e.g., In re Nineteen Appeals Arising Out of San Juan Dupont Hotel Fire Litig.*, 982 F.2d 603, 610 (1st Cir. 1992); *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 (BMC)(JO), 2012 WL 5289514, at *9 (E.D.N.Y. Oct. 23, 2012) ("Fees can be awarded based on an interim settlement."); *In re Air Cargo Shipping Services Antitrust Litig.*, No. 06-MD01775 (JG)(VVP), 2012 WL 3138596 (E.D.N.Y. Aug. 2, 2012) (third interim award).

[12] See *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165-66 (1939).

[13] A majority of the Circuit Courts of Appeal have approved the use of the POF method in common fund

possibility of collateral disputes, enhances efficiency throughout the litigation, is less taxing on judicial resources and better approximates the clearly stated preference for use of the POF method in determining fees.[14] Hence, most courts use the POF method with a lodestar cross-check.[15]

B. Application of the Relevant Factors Supports the Requested Fee Here

A district court in the First Circuit has "extremely broad" latitude in determining an appropriate fee award under the POF method.[16] Unlike other Circuits, the First Circuit does not require district courts to use a fixed list of factors in determining the appropriateness of a requested fee award.[17] Nonetheless, district courts have typically focused on a mix of the following considerations:

(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, if any.[18]

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cases. *See In re Lupron Mktg. & Sales Pracs. Litig.*, No. 01-CV-10861-RGS, 2005 WL 2006833, at *5 (D. Mass. Aug. 17, 2005) (citing the Courts of Appeals for the Second, Third, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and District of Columbia Circuits). *See also In re Ranbaxy,* 630 F. Supp. 3d at 245.

[14] *In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305-07 (1st Cir. 1995)("contrary to popular belief it is the lodestar method, not the [POF] method, that breaks from precedent.");
In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig., No. 3:10-CV-30163-MAP, 2014 WL 6968424, at *6 ((D. Mass. Dec. 9, 2014) ("The 'prevailing praxis' within the First Circuit is to use the percentage-of-the-fund ('POF') approach to calculate attorneys' fees in non-statutory fee cases.); *In re Lupron*, 2005 WL 2006833 at *5–6 (accord).

[15] *See In re* Prudential, 2014 U.S. Dist. LEXIS 170100 at *23; *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, No. CIV.A 05-11148-PBS, 2009 WL 3418628, *1 (D. Mass. Oct. 20, 2009) ("the weight of the case law [] approves of percentage of the fund as the methodology for determining attorneys' fees, with a lodestar calculation as a pragmatic cross-check."); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52 (D. Mass. 2005) (utilizing percentage-of-the-fund method with lodestar as a cross-check).

[16] *In re Tyco Int'l Ltd. MDL Litig.*, 535 F.Supp.2d 249, 265 (D.N.H. 2007) (quoting *In re Thirteen Appeals*, 56 F.3d at 309).

[17] *Id.*

[18] *See, e.g., In re Evergreen Ultra Short Opportunities Fund Secs. Litig.*, No. CIV.A. 08-11064-NMG, 2012 WL 6184269, at *1 (D. Mass. Dec. 10, 2012) (listing factors); *In re TJX Co. Retail Security Breach Litig.*, 584

As applied here, these factors favor an award of one-third the common fund. Law Professor Brian Fitzpatrick, who has extensively studied awards of fees in class action cases and published his findings over the last 13 years, concurs in this analysis (*See* Attached Exhibit 1, Fitzpatrick Declaration).

1. The extent of the benefit obtained

The Class is comprised of all individuals worldwide who invested more money in TelexFree than they received from TelexFree in distributions (the "Net Losers"). These Class Members will share in the $95.525 million cash Settlement Fund, net of any attorneys' fees and expenses granted by the Court. Their recovery is both quantifiable and immediate. The magnitude of this recovery is substantial, both in absolute terms and particularly when assessed in light of the considerable obstacles and risks faced by Class Counsel in this case.[19] As detailed in the Lead Counsel Decl. (¶¶ 20-63, 117-45) and in the Memorandum in Support of Preliminary Approval (pp. 4-10), these obstacles were numerous, significant, time consuming and costly.

In light of these risks and obstacles, the 2023 Settlements for a combined $95.525 million represent a significant recovery for the class in this case. (See Fitzpatrick Decl. ¶ 20). This is particularly true considering that Defendants contested liability and the claims against Defendants require Plaintiffs to prove Defendants' actual knowledge that TelexFree was unlawful and substantial assistance to the scheme.

2. The reaction of the class members to the proposed settlement and proposed attorneys' fees

F.Supp.2d 395, 401 (D. Mass. 2008) (same); *In re Tyco Int'l, Ltd.*, 535 F. Supp. 2d at 265-266 (same); *In re Lupron*, 2005 WL 2006833 at *3 (same).

[19] *See In re Prudential*, 2014 WL 6968424 at *3 (settlement providing substantial payment considered a benefit to the class); *In re Relafen*, 231 F.R.D. at *76 (multi-million-dollar cash settlement fund for direct purchases of prescription drug conferred a substantial benefit on the class).

Following preliminary approval, individual notice of the Settlement was publicized via direct email and has already achieved a ninety-one (91) percent delivery rate. The notice informed Class Members that Class Counsel would be seeking fees of up to one-third of the Settlement Fund, reimbursement of expenses, and incentive awards for each of the Class Representatives.

Class Counsel has received no objections from the Class to date,[20] indicating the overwhelming support of the Class for the settlement and for the requested award of fees, expenses, and incentive awards.[21]

3. The skill and efficiency of the attorneys involved

As detailed above and in the Declaration of Interim Lead Counsel, Class Counsel's experience and skill are amply evidenced by Class Counsel's effective prosecution of this action, including the highly favorable Settlements achieved.[22] (*See* Fitzpatrick Decl. ¶ 26). This skill also resulted in the partial denial of IPS's motions to dismiss, the denial of TD Bank's 2022 motion to dismiss, the grant of Plaintiffs' Motion to Compel additional discovery from IPS, and hard-fought but successful settlement negotiations.[23]

4. The amount of time devoted to the case by counsel

Class Counsel have expended over 35,000 hours and advanced over $920,000 in expenses

[20] *See* Lead Counsel Decl. ¶ 73. As clearly stated in the notice, the deadline for receipt of objections is December 7, 2023. In the event that an objection is received, Class Counsel will promptly inform the Court.

[21] *See In re Rite Aid Sec. Litig.*, 396 F.3d 294, 305 (3rd Cir. 2005); *In re Relafen*, 231 F.R.D. 52 (overruling objections from four consumers in a class of 272,229); *Bennett v. Roark Capital Group, Inc.*, No. 2:09-CV-00421-GZS, 2011 WL 1703447 (D. Me. May 4, 2011) (in approving fee request, noting that no member of the class objected to the requested fee award). *See also In re Prudential*, 2014 WL 6968424 at *4 (overruling 11 objections, finding that the majority support for the settlement "strongly favors final approval").

[22] *See, e.g., In re Pharm. Ind. AWP Litig.*, 2008 U.S. Dist. LEXIS 111818, *82 (D. Mass. Dec. 15, 2008) (in awarding 30% fees from a $28.6 million settlement, noting that class counsel "vigorously and effectively pursued the Class Members' claims…in this highly complex case [and] that the Settlement was obtained as a direct result of their advocacy."); *In re TJX*, 584 F.Supp.2d at 408 (fact that class counsel was comprised of attorneys from firms experienced in type of litigation at issue and demonstrated "more than satisfactory skill and effort in the course of their advocacy" weighed in favor of granting requested fee award).

[23] *See generally* Lead Counsel Decl. ¶¶ 13, 81, 95-116.

on this case.[24] As the court observed in *Varacallo v. Massachusetts Mut. Life Ins. Co.*,[25] "[o]ver the course of years, it is reasonable that so much time would have been spent on these complex cases, particularly given the excellent counsel of Defendants and their contested nature." Such was the case here. From the pre-complaint investigation through discovery, and dispositive motion practice, Class Counsel expended an enormous amount of time, energy and resources in litigating this case against highly skilled, well-funded, and highly resistant adversaries. The foregoing represents a very significant commitment of time, personnel, and out-of-pocket expense outlays to this case. All these commitments were made without a guarantee of recovery. Awarding the requested fee would not in any way provide an underserved "windfall" to Class Counsel. (*See* Fitzpatrick Decl. ¶ 22).

5. The complexity and duration of the litigation

There is an inherent and inevitable complexity associated with prosecuting a case against financial service providers for aiding and abetting a Ponzi scheme. The wrongful conduct of the Defendants, together with TelexFree, created an obfuscated and exceedingly dense web of transactions between a constellation of different bank accounts, financial institutions, and payment systems. The ability of the TelexFree scheme to run its operations through mainstream financial channels and aggregate its transactions with legitimate businesses made its fraudulent nature more difficult for victims to perceive during the life of the Ponzi scheme and more difficult to trace in the wake of the scheme's collapse.

Accordingly, it was (and continues to be) a painstaking and difficult task to understand and document the workings of the TelexFree fraud, and the roles played in it by each of the Defendants. Class Counsel has been required to review and analyze over a million pages of communications

[24] *See* Lead Counsel Decl. ¶ 16.
[25] 226 F.R.D. 207, 252 (D.N.J. 2005).

and financial records to document each defendant's knowledge of the fraudulent scheme and its specific activities that assisted the scheme. This task has often required tracing the movement of money into, out of and between TelexFree accounts (including accounts held by TelexFree insiders and TelexFree-related entities, as well as accounts held in the name of financial service providers that assisted TelexFree) on a daily basis. As one of Plaintiffs' experts, Professor Patricia McCoy, initially made clear, white-collar crime of this nature is difficult to detect, involves highly complex analysis, and was aided here by sophisticated Defendants. (Lead Counsel Decl. ¶ 31). In addition, the relevant banking laws and regulations are complex and labyrinthine. (*Id*. ¶ 32). The relevant case law indicates that direct evidence will seldom (if ever) be available to plaintiffs. (*See* Dkt. 742 at 4). To compensate for this paucity of direct evidence, Class Counsel was required to carry out independent investigations and to retain experts and independent advisors for consultation on a variety of key issues. The experts have included a Ponzi scheme expert, banking practices experts, a Big Data analyst, a forensic accountant and an independent judicial advisor. (Lead Counsel Decl. ¶¶ 13, 124–39).

Plaintiffs' task has been made substantially more difficult by the fact that the bulk of the evidence demonstrating their liability is in the possession of Defendants and third parties, many of whom vigorously resisted discovery. Defendants have enormous resources and their army of lawyers have fought Plaintiffs at every turn. Defendants have opposed virtually all discovery in the action and have succeeded in delaying, sometimes for years, access to important evidence. For example, by filing a meritless motion to quash, delaying discovery responses, denying the existence of documents which were only discovered through the productions made by other defendants, the Defendants even delayed Plaintiffs' access to a critical trove of documents in the possession of the TelexFree Bankruptcy Trustee for years. This large production - - over 90,000

pages plus approximately 150,000 images[26] within Excel spreadsheets - - contained evidence that eventually helped Plaintiffs replead their claims in a manner that satisfied the heightened pleading standards required for claims relating to fraud.

6. The risk that the litigation will be unsuccessful

A determination of a fair fee must include consideration of the nature of contingent class actions in the wake of a fraudulent scheme's collapse. Prosecution of private claims entails the uncertain nature of the fee, the wholly contingent outlay of large out-of-pocket sums by plaintiffs, and the fact that the risks of failure (due to the heightened requirements of pleading and proof in a fraud case) or uncollectability (due to dissipation or limited assets in the possession of the Defendants closest to the fraud) in a Ponzi scheme case are very high.[27] As such, numerous courts have observed that the risk assumed by an attorney is "perhaps the foremost" factor in determining the appropriate fee award.[28]

The risks of non-recovery have been particularly profound throughout this case. Class Counsel undertook comprehensive, time-consuming investigation regarding complex financial relationships. Class Counsel also obtained and reviewed millions of pages of documents in the leadup to summary judgment. As the case proceeded, Class Counsel undertook substantial additional risk, expending 35,000 additional hours and over $920,000 in out-of-pocket expenses

[26] Plaintiffs have received data in a range of forms. "Images" as used here is roughly equivalent to a page in a hardcopy document.

[27] *Cf. Milliron v. T-Mobile USA, Inc.*, No. CIV.A. 08-4149 (JLL), 2009 WL 3345762, *11 (D.N.J. Sept. 10, 2009) (noting that the risk of taking a case on contingency is "a real and important factor" because "success is never guaranteed and counsel face[s] serious risks since both trial and review are unpredictable.") (quotation omitted).

[28] *In re Lupron*, 2005 WL 2006833 at * 4 (quoting *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000)); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 CIV. 8144 (CM), 2009 WL 5178546, *18 (S.D.N.Y. Dec. 23, 2009) (the risk associated with a case "bears heavily" upon the determination of an appropriate fee award).

further investigating the Class's claims, retaining and working with experts in multiple fields, briefing numerous discovery motions, and preparing for summary judgment.[29]

All of this work would have been for naught absent settlement or prevailing before a jury on all elements, including the burden of proving "actual knowledge" and "substantial assistance" by the Defendants, and defending that jury verdict on appeal. (*See* Fitzpatrick Decl. ¶ 21).

7. Fee awards in similar cases

A comparison with attorneys' fees awarded in similar cases also supports the fee requested by Class Counsel in the present case. The requested fee is consistent with awards granted in other complex fraud and Ponzi scheme cases.[30] Courts within and outside this District have consistently awarded fees of one-third of a settlement fund.[31] And in a comprehensive review of 289 settlements, the court in *In re Rite Aid Corp. Sec. Litig.* Determined there is an "average attorney's fees percentage [of] 31.71%" with a median value that "turns out to be one-third."[32] Professor Fitzpatrick agrees that Class Counsel's fee request is both within "the most populous range awards

[29] *See, e.g., In re Tyco*, 535 F.Supp.2d at 268 (in securities class action, noting that had class lost at summary judgment trial class counsel would have lost the tens of millions of dollars expended as well as attorney time invested).

[30] *See Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (in fraud case, affirming district court's fee grant of one-third and noting the lower court's reasoning that "courts have frequently awarded attorney fees between 25 and 36 percent of a common fund in class actions"); *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at *4 (S.D. Fla. Sept. 26, 2012), *report and recommendation adopted*, No. 03-22778-CIV, 2012 WL 5289628 (S.D. Fla. Oct. 25, 2012) (in RICO case, granting requested 33% fee); *Carroll v. Stettler*, No. CIV.A. 10-2262, 2011 WL 5008361, at *7 (E.D. Pa. Oct. 19, 2011) (in Ponzi scheme case, awarding "33 1/3% of the total settlement fund"); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (in complex securities fraud case, granting "one-third of the net settlement fund," amounting to $170,084,950); *Wells v. Dartmouth Bancorp, Inc.*, 813 F. Supp. 126, 130 (D.N.H. 1993) (in securities fraud case, awarding $250,000, "slightly more than 30 percent of the net recovery for the Class").

[31] *See In re Solodyn Antitrust Litig.*, No. CV114MD2503DJC, 2018 WL 7075881, at *2 (D. Mass. July 18, 2018); Gordan v. Mass. Mut. Life Ins. Co., 2016 WL 11272044, at *1 (D. Mass. Nov. 3, 2016); *Sylvester v. CIGNA Corp.*, 401 F. Supp. 2d 147 (D. Me. 2005); *Mowbray v. Waste Management Holdings*, C.A. No. 98-11534-WGY (D. Mass. Aug. 2, 2001); *Wilensky v. Digital Equip. Corp.*, C.A. No. 94-10752-JLT (D. Mass. July 11, 2001); *Chalverus v. Pegasystems, Inc.*, C.A. No. 97-12570-WGY (D. Mass. Dec. 19, 2000); *In re Peritus Software Services Inc.*, C.A. No. 98-10578-WGY (D. Mass. Feb. 28, 2000). *See also In re Relafen Antitrust Litig.*, 231 F.R.D. at 77 (noting that one-third was "not out of proportion with large class actions.") (citing Eisenberg & Miller, *Attorney's Fees in Class Action Settlements: An Empirical Study*, 1 Journal of Empirical Legal Studies (2004) (noting that "one-third is the benchmark for privately-negotiated contingent fees")).

[32] 146 F.Supp.2d 706, 735 (E.D. Pa. 2001).

by federal district courts" and within "the most populous range awarded in the First Circuit." (Fitzpatrick Decl. ¶¶ 15–16).

8. Public policy considerations

As the Supreme Court has observed, the class action vehicle enables a large group of people to band together and press claims that would otherwise be prohibitively expensive to litigate.[33] When the class action vehicle results in the creation of a common fund for the benefit of the class, public policy is one of the major rationales for awarding attorneys' fees to those prosecuting private claims for violation of the antitrust, securities or consumer protection laws.[34]

Such public policy considerations weigh in favor of the requested fee here. Governmental actions and bankruptcy proceedings related to the TelexFree fraud have focused on a very limited set of TelexFree principals. This narrow focus has almost completely ignored the legal responsibilities of the financial institutions and professionals whose services are essential to perpetrate and perpetuate the modern Ponzi scheme, and left a huge gap between the losses suffered by TelexFree's victims and the restitution obtained by the Government from TelexFree's principals. This MDL litigation may well present the only opportunity to fill that gap. (*See* Dkt. 979-3).

As was the case in *In re Tyco*,[35] in which the district court there found that public policy considerations favored granting the requested fees, this case was extremely complex and strenuously resisted in all respects. As discussed above, Class Counsel have devoted over 35,000 hours and over $927,000 in expenses into bringing this case on a contingent basis. Without a fee

[33] *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985).

[34] *See In re Lupron*, 2005 WL 2006833 at *6 (in awarding attorneys' fees, noting public interest in obtaining redress for prescription drug consumers and making defendants disgorge proceeds of predatory market behavior); *In re Tyco*, 535 F.Supp.2d at 270 (without a fee that reflected the risk and effort involved in litigation, attorneys might hesitate in future to be similarly aggressive and persistent in bringing claims).

[35] *In re Tyco*, 535 F.Supp.2d at 270.

award that takes into account the enormous efforts and risks undertaken by Class Counsel in prosecuting this case, Class Counsel would be unable to continue to bring large complex class actions that serve to protect the interests of those who may not otherwise prosecute such claims individually.[36] (Fitzpatrick Decl. ¶ 19). Accordingly, this factor strongly supports the fee request here.

C. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

As noted above, although the First Circuit does not require courts to cross-check the percentage award against the lodestar in its determination of the reasonableness of the fee,[37] such a cross-check here reveals that Class Counsel's requested fee award is reasonable.

Since the last fee petition, Class Counsel have worked over 35,000 hours on this case, which is collectively over $20.9 million in time based on current billing rates. (*See* Lead Counsel Decl. ¶ 16.)[38] A one-third fee award would equate to a "multiplier" of 1.52.[39] An examination of recently approved multipliers in other complex fraud cases reveals that the multiplier requested here is commensurate with, and in fact lower than, fees previously awarded.[40] To compensate for

[36] *See, e.g., id.; Gunter v. Ridgewood Energy Corp.,* 223 F.3d 190, 198 (3d Cir. 2000) (noting the "stated goal in percentage fee-award cases of ensuring that competent counsel be willing to undertake risky, complex and novel litigation" and recognizing "the importance of financial incentives to entice qualified attorneys to devote their time to complex, time-consuming cases in which they risk non-payment.")

[37] *See, e.g., In re Relafen*, 231 F.R.D at 81.

[38] Class Counsel carefully allocated assignments in a manner that effectively prosecuted the case while avoiding duplication of effort. *See* Lead Counsel Decl. ¶ 76.

[39] As noted above, this multiplier relies on a conservative calculation that uses only Class Counsel's lodestar since October 2020. *See* FN 3, *supra*. Beyond this, Plaintiffs have not included in their lode star multiplier example/comparison, their full trailing lode star which, if included, would be about $750,000.00 more than the current fee request.

[40] *See, e.g., In re Neurontin Mktg. & Sales Pracs. Litig.*, 58 F. Supp. 3d 167, 172 (D. Mass. 2014) (in fraudulent pharmaceutical case, granting "a multiplier of 3.32" which is "well within the [multiplier] range"); *Shapiro v. JPMorgan Chase & Co.*, No. 11 CIV. 7961 CM, 2014 WL 1224666, at *24 (S.D.N.Y. Mar. 24, 2014) (in Madoff Ponzi scheme case, approving multiplier of "approximately 3.05," collecting cases approving multipliers between 3 and 5, and noting that "multipliers of nearly 5 have been deemed 'common' by courts in this District"); *Billitteri v. Sec. Am., Inc.*, No. 3:09-CV-01568-F, 2011 WL 3585983, at *9 (N.D. Tex. Aug. 4, 2011) (in Ponzi scheme case, finding multiplier of 1.97 reasonable). *In re Relafen Antitrust Litig.*, 231 F.R.D. at 82 (in complex antitrust suit, finding a "multiplier of 2.02 is appropriate" and collecting cases with multipliers up to 19.6).

the contingent nature of class actions, courts often award a fee that exceeds the lodestar by a multiplier of 2 to 4.[41] "By the standards of other cases, [the requested multiplier of 1.52] is downright ordinary." (Fitzpatrick Decl. ¶ 25).

V. CLASS COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

It is well-settled that counsel who have created a common fund for the benefit of a class are entitled to be reimbursed for their out-of-pocket expenses that were "reasonable" and "necessary to bring the action to a climax."[42] The categories of expenses for which Class Counsel seek reimbursement here are the type of expenses routinely and necessarily charged to hourly-fee paying clients, and therefore, should be reimbursed out of the common fund. Specifically, Class Counsel's expenses as presented in the Declaration of Interim Lead Counsel reflect only a limited subset of litigation expenses that includes bank fees, class notice,[43] court transcripts, the TelexFree specific case management system, the cost of the Document Depository, expert witness fees, legal fees and professional fees. Other costs of similar expenses that are routinely permitted such as costs associated with computerized research, travel and lodging expenses, postage, and copying costs will continue to be carried by MDL 2566 class counsel who reserve the right to submit them for consideration at a later date.[44]

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[41] *See, e.g., Mooney v. Domino's Pizza, Inc.*, 2018 WL 1023918 (4.77 multiplier); *Gordan*, 2016 WL 11272044 (3.66 multiplier); *Neurontin* at 171-72 (3.32 multiplier); *In re Relafen*, 231 F.R.D. at 81 (2.02 multiplier); *In re Tyco*, 535 F. Supp. 2d at 271 (2.697 multiplier); *In re TJX*, 584 F. Supp. 2d at 408 (1.97 multiplier).

[42] *In re Fidelity/Micron Sec. Litig.,* 167 F.3d 735, 737 (1st Cir. 1999) (Holding that "lawyers whose efforts succeed in creating a common fund for the benefit of a class are entitled not only to reasonable fees, but also to recover from the fund, as a general matter, expenses, reasonable in amount, that were necessary to bring the action to a climax."); *In re Lupron*, 2005 WL 2006833 at *2 (Same, quoting *In re Fidelity/Micron Sec. Litig.*).

[43] The time allotted by the Court for Class Notice has not concluded and so costs related to Class Notice have not yet been closed. Class Counsel may request this Court allow them to submit an updated and finalized billing following the completion of Class Notice.

[44] *See In re Remeron Direct Purchaser Antitrust Litig.*, No. CIV.03-0085 FSH, 2005 WL 3008808, at *17 (D.N.J. Nov. 9, 2005), *judgment entered*, No. 03-CV-0085 (FSH), 2005 WL 8181042 (D.N.J. Nov. 9, 2005) (citing *Oh v. AT & T Corp.*, 225 F.R.D. 142, 154 (D.N.J. 2004)) (finding the following expenses to be reasonable: "(1) travel

A large component of these expenses (over $487,000) consists of fees paid to experts, advisors, consultants, and mediators who were instrumental in, among other things, helping Plaintiffs understand 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 obtaining this favorable Settlement for the Class. These expenses were necessarily incurred in obtaining this result for the Class.[45]

VI. CONCLUSION

For the reasons set forth above and in the Bonsignore Declaration, Class Counsel respectfully request that the Court approve the fee and expense application and enter an Order awarding Class Counsel fees in an amount of $31,841,667.00—equal to one-third of the value of the 2023 Settlements—and reimbursement of expenses in the amount of $927,312.98.

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and lodging, (2) local meetings and transportation, (3) depositions, (4) photocopies, (5) messengers and express services, (6) telephone and fax, (7) Lexis/Westlaw legal research, (8) filing, court and witness fees, (9) overtime and temp work, (10) postage, (11) the cost of hiring a mediator, and (12) NJ Client Protection Fund-pro hac vice.")). *See also In re Prandin Direct Purchaser Antitrust Litig.*, No. 2:10-CV-12141-AC-DAS, 2015 WL 1396473, at *5 (approving "reasonable and necessary" expenses.); *In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 2:12-CV-83, 2014 WL 2946459, at *3 (same); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 751 (E.D. Pa. 2013) (same).

[45] The individual affidavits of some Class Counsel list "contribution to the litigation fund" (or similar phrase) as an expense. This refers to contributions made by Class Counsel to a common litigation fund which was administered by Interim Lead Counsel and used solely and exclusively to pay some of the reasonable expenses described above. Most MDL 2566 Plaintiff firms have contributed to the Common Fund, and it was from the Common Fund that the expenses that are sought to be reimbursed were paid. No separate claim for reimbursement of funds put toward the Common Fund is requested. Certain other expenses, particularly travel expenses, copies, postage, and legal research were paid directly by Class Counsel individually and are held and not submitted for reimbursement at this time.

Dated: November 17, 2023

Respectfully submitted,
TELEXFREE CLASS PLAINTIFFS
By their attorneys,

/s/ Robert J. Bonsignore

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