

**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**

**MEMORANDUM IN SUPPORT OF MOTION FOR  
REIMBURSEMENT OF ATTORNEY EXPENSES.**

**I. INTRODUCTION**

Plaintiffs have reached settlements with Base Commerce, LLC, John Hughes, Brian Bonfiglio, John Kirchhefer, Alex Sidel and Synovus Bank (together the “Base/Synovus Defendants”), and Joseph Craft and Craft Financial Solutions, Inc. (together, the “Craft Defendants”) and Related Parties BWFC Processing Center, LLC, ACE LLP, and Audra Craft (collectively with the Craft Defendants, the “Craft Parties.”). These are the first settlements in this litigation and represent an excellent result for the class, totaling \$2,100,000.

With this motion, Plaintiffs are requesting an order reimbursing them for certain common litigation expenses totaling \$683,600.00. These common expenses include 1) mediators and consulting services in the amount of \$169,999.00; 2) expert services in the amount of \$258,600.00; 3) court reporter transcripts in the amount of \$264.00; and 4) document database management services in the amount of \$254,737.00. All of these expenses were reasonable and necessary for the prosecution of the litigation.

Plaintiffs brought this class action six years ago on a purely contingent-fee basis to recover the damages suffered by TelexFree’s victims. Since that time, Plaintiffs’ Counsel have aggressively litigated the case, devoting thousands of hours of attorney and para-professional

labor and committing out-of-pocket costs well over the requested \$700,000.00 to fund the litigation-based expenses. With the first settlements reached in this litigation, Plaintiffs now move the Court for an order directing reimbursement of certain of these litigation expenses. Plaintiffs do not request payment of attorneys' fees at this time nor incentive awards for the Class Representatives. Plaintiffs will seek attorneys' fees, expenses, and incentive awards from future settlements, if and when they occur.

## II. SUMMARY OF RELEVANT FACTS

Following TelexFree's collapse in April 2014, victims of the scheme filed lawsuits to recover their losses. On October 21, 2014, the Judicial Panel on Multidistrict Litigation issued a Transfer Order in *In re TelexFree Securities Litigation* (MDL No. 2566) transferring all actions to this Court.

Since 2014, Plaintiffs' Counsel have continued to litigate this case on a contingent fee basis to recover the massive losses the class suffered due to the TelexFree scheme. This work has included drafting amended complaints and defending numerous motions to dismiss. *See, e.g.*, Dkt. Nos. 121, 141, 232, 234-35, 254, 371, 503, 548, 651-52, 700, 779, 822, 824, 859. Most recently, on May 19, 2020, Plaintiffs filed their Motion for Leave to Amend seeking leave to file their Fifth Consolidated Amended Complaint, which attached the proposed Fifth Consolidated Amended Complaint. Dkt 983-984.<sup>1</sup> On May 26, 2020, the Court directed that all responses to Plaintiffs' motion be filed by July 2, 2020. Dkt. No. 992. Several defendants and proposed defendants have now filed their oppositions to Plaintiffs' motion. Dkt. Nos. 1003-4, 1007-8, 1011, 1013, 1019-21, 1024, 1026-27, 1029, 1030-34.

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<sup>1</sup> Plaintiffs' Motion for Leave to Amend was first filed on May 14, 2020 as part of Plaintiffs' Motion for Leave to File Excess Pages. The proposed Fifth Consolidated Amended Complaint was also attached to this Motion. Dkt. Nos. 978-80.

Formal discovery was stayed from March 10, 2015 until January 29, 2019. Dkt. Nos. 111, 414, 35, 606. However, during that time Plaintiffs continued to pursue informal discovery through public records and information received from third parties to bolster their case and identify additional facts. Since the stay was lifted—and particularly since December 2019—Plaintiffs have actively engaged in issuing and responding to formal written discovery. Plaintiffs have participated in numerous conferences with Defendants to attempt to reach settlements and to address discovery disputes and secure the evidence necessary to successfully prove their case. This discovery process has also required Plaintiffs to review, code, analyze and otherwise work with millions of document images of documents produced in discovery.

Plaintiffs have also worked with their experts, including Professor Patricia McCoy, to analyze evidence gathered to date and to produce detailed expert reports analyzing, placing in context and otherwise explaining the role played by a number of the bank defendants. *See, e.g.*, Dkt. Nos. 869, 869-1, 869-2, 869-3.

Plaintiffs continue to engage in settlement discussions with various Defendants where those discussions will benefit the class and facilitate the efficient resolution of this litigation. Plaintiffs' settlements with Defendants Base Commerce, LLC, Synovus Bank, John Hughes, Brian Bonfiglio, John Kirchhefer and Alex Sidel (the "Base/Synovus Defendants") and Defendants Joseph Craft and Craft Financial Solutions Inc. (the "Craft Defendants"), and Related Parties BWFC Processing Center, LLC, ACE LLP, and Audra Craft (with the Craft Defendants, the "Craft Parties") are the first settlements reached through this process and are set for a hearing on final approval concurrently with this motion. Dkt. 948.

On November 5, 2019, Plaintiffs filed their Motion for Preliminary Approval of the settlements reached with the Base/Synovus Defendants and the Craft Parties. Dkt 762-63. On

April 8, 2020, the Court preliminary approved these settlements and directed that notice be given to the Settlement Class. Dkt 948.

From April 16, 2020, the Settlement Administrator sent the Court-approved Notice to the Settlement Class. Bonsignore Decl. ¶ 4. The Notice informed the Class that Class Counsel would ask the Court for attorneys' fees of one-third of the total settlement fund (\$700,000) plus reimbursement of their costs; payment for the actual cost of notice up to \$300,000; and to approve incentive awards of \$25,000 for each of the proposed class representatives totaling \$125,000. *See* Declaration of Robert J. Bonsignore ("Bonsignore Decl.") Ex. 1 (Class Notice), attached hereto as Attachment A. Nine class members requested to be excluded from the class and four class members submitted objections. *Id.* at ¶ 6.

### III. ARGUMENT

#### 1. Reimbursement of Attorneys' Fees and Expenses Is Appropriate in a Class Case.

Plaintiffs' Counsel have produced a benefit for the class in the form of a common fund and are entitled to payment of reasonable attorneys' fees and expenses from that fund. The Supreme Court has explained that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). "The common fund doctrine is founded on the equitable principle that those who have profited from litigation should share its costs." *In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F. 3d 295, 305 n. 6 (1st Cir. 1995). Courts may award fees from a common fund "either on a percentage of the fund basis or by fashioning a lodestar." *Id.* at 307. "Standard awards in the First Circuit range from 20% at the low end to 33% at the high end. More commonly, courts in this Circuit award fees between 25% (the benchmark) and 30%." *Bettencourt v. Jeanne D'Arc*

*Credit Union*, No. 17-cv-12548-NMG, 2020 WL 3316223, \*2 (D. Mass. June 17, 2020).

“[L]awyers 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 Fidelity/Micron Securities Litig.*, 167 F.3d 735, 737 (1st Cir. 1999). “Reasonableness is the touchstone . . . [and] trial courts must assess each request for fees and expenses on its own terms.” *Id.* “[W]ith respect to costs and expenses requested by counsel, the court must act pursuant to a ‘quasi-fiduciary’ duty to class members while exercising its ‘wide latitude in shaping the contours’ of an award of expenses.” *Walsh v. Popular, Inc.*, 839 F. Supp. 2d 476, 487 (D.P.R. 2012). Courts routinely award expenses in addition to fees. *See, e.g., Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 351-52 (D. Mass. 2015) (awarding fees, expenses, and incentive awards); *Carlson v. Target Enterprise, Inc.*, No. 18-40139-TSH, 2020 WL 1332839, \*4 (D. Mass. Mar. 23, 2020) (Hillman, J.) (awarding both fees and expenses). *But see Latorraca v. Centennial Techs. Inc.*, 834 F. Supp. 2d 25, 28 (D. Mass. 2011) (noting that the Court may set a percentage award “at a level which not only accounts for fees but covers reimbursable expenses as well.”)

Although Plaintiffs’ Counsel have invested thousands of hours in litigating this case, at this time Plaintiffs’ Counsel only seek reimbursement of \$683,600.00 in expenses. The Class Notice informed the Settlement Class that counsel would request up to one-third of the Settlement Fund in attorneys’ fees (\$700,000), reimbursement of expenses, incentive awards totaling \$125,000, and the costs of notice up to \$300,000. Bonsignore Decl. Ex. 1 at p. 8-9. However, Counsel here limit their request to \$683,600.00 in common expenses and propose deferring payment of attorneys’ fees and incentive awards, as appropriate, until later in this

litigation.

## **2. Interim Expense Awards Are Fair, Common, and Appropriate**

In complex class action litigation, litigation expenses are routinely reimbursed through interim orders. *See, e.g., In re Vitamin C Antitrust Litigation*, No. 06-MD-1738 (BMC)(JO), 2012 WL 5289514 (E.D.N.Y. Oct. 23, 2012) (awarding reimbursement of reasonable litigation expenses and noting that “[c]osts may be awarded even though the action is proceeding against other defendants.”); *In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 927-98 (9th Cir. 2020) (discussing fee and expense awards granted with each group of settlements reached in the litigation); *In re Domestic Airline Travel Antitrust Litig.*, No. 15-1404 (CKK), 2019 WL 5135424 (D.D.C. May 14, 2019) (granting interim reimbursement of litigation expenses following settlements with two defendants). Such awards are particularly appropriate in complex class action litigation where counsel must incur significant expenses to litigate the case and the litigation can run over many years.

## **3. The Costs Incurred Are Reasonable and Necessary**

Plaintiffs’ Counsel now seek reimbursement for \$683,600.00 in litigation expenses. These expenses are reasonable and necessary for the successful litigation of this case and precisely the type of expenses that are routinely billed to clients. *See In re MetLife Demutualization Litigation*, 689 F. Supp. 2d 297, 364 (E.D.N.Y. 2010) (noting expert fees and discovery costs, *inter alia*, are “necessarily incurred in litigation and routinely charged to clients billed by the hour”). While the total reasonable litigation expenses exceed this amount, Plaintiffs’ Counsel have limited their request at this time for reimbursement from the Settlement

Fund to \$683,600.00. Bonsignore Decl. ¶¶ 8-9, Ex. 2.<sup>2</sup>

a. Mediation and Consulting Services

Plaintiffs have retained the services of JAMS, Inc. for mediation and consulting services in the amount of \$169,999.00. Plaintiffs have sought the guidance of JAMS mediators and expert consultants in the prosecution of this litigation to guide strategy and facilitate a more efficient process for the resolution of this litigation. Bonsignore Decl. ¶ 10. Consultant expenses are properly reimbursed in common fund cases. *See, e.g., In re Celaxa & Lexapro Marketing & Sales Practice Litig.*, MDL No. 09-2067-NMG, 2014 WL 4446464, \*9 (D. Mass. 2014) (allowing request for reimbursement of costs including “1) costs of travel to hearings, depositions and meetings, 2) court fees, and 3) the cost of retaining experts and consultants.”).

b. Expert Fees

Plaintiffs have retained several experts in this litigation in the amount of \$258,600. With the convoluted nature of the TelexFree scheme, Plaintiffs require guidance from experts to understand and analyze the evidence and to unravel how the scheme worked. Plaintiffs’ expert Professor McCoy is a—if not the—leading expert in her field and is uniquely well placed to unravel and explain the fraud. Dkt. No. 869, 869-4. Professor McCoy’s assistance has been vital in assisting Plaintiffs’ Counsel to understand the evidence required to prove the case. Bonsignore Decl. ¶¶ 11-12. Professor McCoy has already prepared multiple expert reports for use in this litigation. *See, e.g.,* Dkt. Nos. 869, 869-1, 869-2, 869-3.

Fees paid to expert witnesses are routinely reimbursed from common fund recoveries. *See, e.g., In re Ocean Power Technologies, Inc.*, Nos. 3:14-CV-3799, 3:14-CV-3815, 3:14-CV-

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<sup>2</sup> The supporting Bonsignore Declaration provides a description of the breakdown of expenses. Plaintiffs are prepared to submit the full invoices for *in camera* review should the Court so advise.

4015, 3:14-CV-4592, 2016 WL 6778218, \*29 (D.N.J. Nov. 15, 2016) (noting expense reimbursement request—including fees and expenses of Plaintiff’s damages expert—were “the type of expenses routinely charged to hourly paying clients and, therefore, should be reimbursed out of the common fund”); *Castro v. Sanofi Pasteur Inc.*, 2017 WL 4776626, \*10 (D.N.J. Oct. 23, 2017) (finding expenses for expert consultants and witnesses and document management to be “properly charged to the class”); *Walsh v. Popular, Inc.*, 839 F. Supp. 2d 476, 487-88 (D. P.R. 2012) (finding expenses including, *inter alia*, expert fees, were reasonably incurred); *In re Domestic Airline Travel Antitrust Litigation*, No. 15-1404 (CKK), 2019 WL 5135424, \*1-2 (D.D.C. May 14, 2019) (granting reimbursement of litigation expenses including expert fees and document hosting).

c. Court Transcripts

Plaintiffs have paid \$264.00 for court transcripts. Court transcripts are routinely reimbursed out of common fund recoveries. *See, e.g., In re Domestic Airline Travel Antitrust Litig.*, 2019 WL 5135424 at \*1 (Approved litigation expenses included “hearing transcripts and other vendors providing litigation support services.”).

d. Document Hosting and E-Discovery

Plaintiffs have hired two document database management services companies in the amount of \$254,737.00. Plaintiffs have already received millions of images of potential evidence and this number continues to grow. Bonsignore Decl. ¶ 14. Document hosting and e-discovery services are essential to Plaintiffs’ ability to analyze and process these documents in order to prosecute the case. *Id.* Such expenses are routinely reimbursed in common fund cases. *See, e.g., In re Ocean Power Technologies, Inc.*, 2016 WL 6778218 at \*29; *Castro*, 2017 WL 4776626 at \*10; *Walsh*, 839 F. Supp. 2d at 487-88; *In re Domestic Airline Travel Antitrust Litig.*, 2019 WL



5135424 at \*1-2.

All of the expenses for which Counsel seek reimbursement are reasonable and necessarily incurred in the context of this complex class action and are appropriate for reimbursement from the common fund. In addition, the Class Notice included Plaintiffs' intention to seek reimbursement of litigation expenses, as well as attorneys' fees and incentive awards, and no class member has objected to the reimbursement of common expenses. Bonsignore Decl. ¶ 6.

#### IV. CONCLUSION

WHEREFORE, and for the reasons stated above, Plaintiffs respectfully request an order directing reimbursement of their litigation expenses totaling \$683,600.00 from the Settlement Fund.

Dated: July 8, 2020

Respectfully submitted,

TELEXFREE CLASS PLAINTIFFS  
By their attorneys,

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**CERTIFICATE OF SERVICE**

I, Robert J. Bonsignore, hereby certify that on this 8<sup>th</sup> day of July 2020, I caused the foregoing to be electronically filed with the Clerk of the Court by using the Case Management/Electronic Case Filing (CM/ECF) system, which will send a notice of electronic filing to all parties registered with the CM/ECF system in the above-captioned matter. A copy will be forwarded via first class mail, postage prepaid, to those parties not electronically registered at their last and/or only known address.

1. MOTION FOR REIMBURSEMENT OF ATTORNEY EXPENSES AND ATTACHED PROPOSED ORDER;
2. MEMORANDUM IN SUPPORT OF MOTION FOR REIMBURSEMENT OF ATTORNEY EXPENSES;
3. ATTACHMENT A: DECLARATION OF ROBERT J. BONSIGNORE IN SUPPORT OF MOTION FOR REIMBURSEMENT OF ATTORNEY EXPENSES INCLUDING EXHIBITS 1 AND 2.

*/s/ Robert J. Bonsignore*  
Robert J. Bonsignore