

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: TELEXFREE SECURITIES LITIGATION)

This document relates to:)

All Cases)

CIVIL ACTION

NO. 4:14-md-02566-TSH

SETTLEMENT AGREEMENT¹

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into this 11th day of August, 2023 (“Execution Date”) by TD Bank, N.A. (“TD Bank”), 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”), on the other hand (TD Bank 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 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, TD Bank;

WHEREAS, TelexFree maintained bank accounts at, and received banking services from, TD Bank from September 2012 to January 2014;

WHEREAS, the TelexFree Plaintiffs allege that the TelexFree Class suffered ascertainable economic injury as a result of TD Bank’s alleged aiding and abetting of TelexFree’s unlawful pyramid scheme, as referenced in the MDL 2566 Fifth Consolidated Amended Class Action Complaint (the “Complaint”);

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² A “Net Loss” is defined as placing more funds into TelexFree than the total funds withdrawn from TelexFree.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, TD Bank unequivocally denies the allegations of the Complaint;

WHEREAS, the TelexFree Plaintiffs allege that as a result of TD Bank's relationship to TelexFree as referenced throughout the Complaint, TD Bank, including certain of its officers and employees, gained knowledge concerning TelexFree's unlawful enterprise, and TD Bank unequivocally denies these allegations;

WHEREAS, each representation by TD Bank and the TelexFree Plaintiffs is a material term of the Settlement between the parties;

WHEREAS, no payment or monies will be owed by TD Bank in excess of the amount set forth below;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel and TD Bank and this Agreement was reached as a result of those negotiations;

WHEREAS, among other arm's-length settlement negotiations, settlement negotiations occurred under the guidance of professional mediator Robert Meyer of JAMS;

WHEREAS, the TelexFree Plaintiffs have concluded that resolving the claims against TD Bank according to the terms set forth herein is in the best interests of the Settlement Class;

WHEREAS, TD Bank specifically, and without admitting any liability, has agreed 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 TD Bank and the Releasees with respect to the TelexFree Pyramid Scheme based on the allegations in the Actions, as more particularly set out below;

WHEREAS, the Action will continue against Defendants that are not Releasees, and this Agreement with TD Bank will not impair the TelexFree Plaintiffs' ability to collect joint and several

liability-driven damages from entities and persons other than the Releasees to which they and the Settlement Class may be entitled in the Actions.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other 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, and, except as hereinafter provided, without costs as to the TelexFree Plaintiffs, the Settlement Class, or TD Bank, subject to the approval of the Court, on the following terms and conditions:

AGREEMENT

A. Definitions.

1. “Cooperation” and “Full Cooperation” refer to the provisions set forth in Paragraphs 14 - 20 and to the material representations made relating to the TD Bank financials and available and potential insurance.

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 TD Bank and its past, present, and future employees, officers, directors, corporators, 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.

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, corporators, 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.
Omar Koury, 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
rhodessw@comcast.net

James Wagstaffe, Esq.
WVBR LAW FIRM
100 Pine Street, Suite 2250
San Francisco, California 94111
Telephone: (415) 357-8900
Email: wagstaffe@wvbrlaw.com

J. Gerard Stranch, IV, Esq.
Michael Stewart, Esq.
Kyle C. Mallinak, Esq.
STRANCH, JENNINGS & GARVEY PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, Tennessee 37203
Telephone: (615) 254-8801
Email: gstranch@stranchlaw.com
Email: mstewart@stranchlaw.com
Email: kmallinak@stranchlaw.com

Geoff Rushing, Esq.
R. Alexander Saveri, Esq.
SAVERI & SAVERI, INC.
706 Sansome Street
San Francisco, CA 94111
Telephone: 415-217-6810
Email: rick@saveri.com

D. Michael Noonan, Esq.
SHAHEEN & GORDAN, P.A.
140 Washington Street
P.O. Box 977
Dover, NH 03821
Telephone: 603-749-5000
Email: mnoonan@shaheengordan.com

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 funds paid by TD Bank 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 TD Bank or as contained in TD Bank’s business records or personnel files.

B. Settlement Amount.

10. “Settlement Amount” means ninety-five million dollars (USD \$95,000,000.00), 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 or on behalf of TD Bank 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 TD Bank 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, TD Bank 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 Paragraph 13 of this Agreement (the "Escrow Account"). Nothing in this Paragraph shall relieve TD Bank from its Cooperation obligations as specified in Paragraphs 14 - 20, which obligations shall survive the payment of any and all financial consideration by TD Bank.

13. Escrow Account.

a. An escrow account shall be maintained at the 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. TD Bank 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 TD Bank 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 \$500,000.00, 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 TD Bank may be combined with Notice of Settlement with any or all other Defendants.

e. No disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court. TD Bank 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, TD Bank 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 TD Bank, 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 TD Bank 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 the Releasees 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 TD Bank into the Settlement Fund, minus the costs expended or incurred in accordance with Paragraphs 13(d) and 35, shall be returned to TD Bank from the Escrow Account along with any interest accrued thereon as soon as reasonably practicable but no later than thirty (30) calendar days following TD Bank's request for same.

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 set forth in Paragraph 10, TD Bank agrees to promptly, timely, and fully provide Full Cooperation to TelexFree Class Plaintiffs as set forth below at its own expense except as specifically articulated within this Settlement Agreement.

15. "Cooperation Materials" and "Full Cooperation" means and includes the following:

a. With respect to all business records previously produced by TD Bank, TD Bank agrees to provide an affidavit, if requested, that the documents it produced were business records and that:

- i. each record was made and kept in the course of regularly conducted business activity;
- ii. each record is one that is routinely made and kept in the course of business, in the business's usual practice;
- iii. each record was made at or near the time of the event that it records; and
- iv. each record was made by a person with knowledge, or from information transmitted by a person with knowledge, and who reported such knowledge in

the regular course of business.

- b. If the TelexFree Plaintiffs' counsel deems it necessary to have TD Bank authenticate one or more documents in connection with a motion for summary judgment or admission at trial, they shall identify those documents to the TD Bank counsel and TD Bank shall proffer one or more competent witnesses to appear at a deposition or to otherwise authenticate the identified documents. It is understood that any such witness will be qualified to so testify and will testify as to his or her best recollection.

16. If the TelexFree Plaintiffs take the position that TD Bank is not cooperating as required under the terms of this Agreement, the TelexFree Plaintiffs shall provide TD Bank with notice of the non-cooperation and a reasonable period to cure of no less than fifteen (15) business days.

17. All Cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided.

18. Upon filing the Notice described in Paragraph 26, TD Bank 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.

20. The TelexFree Plaintiffs and Settlement Class Counsel agree that they and their experts will only use the information provided by TD Bank 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 TD Bank in prosecuting their claims in the TelexFree Litigation, the TelexFree Plaintiffs, Settlement Class Counsel, and their experts shall treat all information obtained from TD Bank in accordance with the protections of the Protective Order.

D. Release And Discharge.

21. Upon final approval by the Court of this settlement, and in consideration of payment of the Settlement Amount, the Releasors completely release, acquit, and forever discharge the Releasees from any 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, 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 Releasee's relationship(s) with TelexFree and/or any of its personnel or any person acting by, through, or in concert with TelexFree; (iv) TD Bank's or any Releasee's provision of services to or for the benefit of or on behalf of TelexFree; or (v) 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. Further, the foregoing releases do not bar or release any claims that TD Bank may have against any Releasee, including, but not limited to, TD Bank's insurers, reinsurers, employees, and agents.

E. Approval of this Agreement and Dismissal of Claims against TD Bank.

25. The TelexFree Plaintiffs and TD Bank 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.

26. Within twenty-four (24) hours after the execution of this Agreement, the TelexFree Plaintiffs and TD Bank shall notify the Court of the fact that the TelexFree Plaintiffs and TD Bank have reached an agreement to settle all claims relating to TD Bank and that the Parties will file a motion requesting that this Action be stayed as to TD Bank. TD Bank 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 TD Bank nor TelexFree Plaintiffs shall file motions against the other in this Action during the pendency of the Agreement.

27. Within thirty (30) days after the execution of this Agreement, the TelexFree Plaintiffs shall submit to the Court a motion seeking preliminary approval of this Agreement. The Motion shall 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 five (5) business days before filing, the TelexFree Plaintiffs shall submit a draft of the Motion to TD Bank for approval consistent with the terms of this Settlement Agreement, which shall not be unreasonably withheld.

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

29. TelexFree Plaintiffs shall seek, and TD Bank 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 TD Bank for contribution or indemnification 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 TD Bank 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 TD Bank, 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 TD Bank 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 TD Bank 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. This Settlement shall become final 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 TD Bank from the TelexFree Litigation with prejudice as to all Settlement Class Members and without costs other than those provided for in this Agreement; (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 TD Bank described in (i) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to TD Bank 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 TelexFree Plaintiffs and TD Bank have executed this Agreement, the TelexFree Plaintiffs and TD Bank 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 TD Bank and placed on file. With respect to any potential member of the Settlement Class who requests exclusion from the Settlement Class, TD Bank 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 TD Bank, then TD Bank shall have the option, in its sole and absolute discretion, to declare that the Agreement is null and void. TD Bank 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.

G. Electronic Notice to The Class

35. TD Bank agrees to permit use of a maximum of five hundred thousand dollars (\$500,000.00) 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. 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 40 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 five hundred thousand dollars (\$500,000.00) 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 five hundred thousand dollars (\$500,000.00) and shall be paid exclusively from the Settlement Fund, TD Bank shall not be liable for any other of the TelexFree Plaintiffs' costs or expenses in litigating the Actions, including attorneys' fees, fees, and 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. 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, and the administrative costs associated with providing notice and administration of the Settlement Fund shall be allocated proportionately among TD Bank and the other settling Defendants, but in no event shall the payment attributable to the TD Bank Settlement Fund exceed the five hundred thousand dollar (\$500,000.00) cap on such payments.

40. 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. The Parties agree that if there are additional costs associated with the alternative notice program, those additional costs will come out of the Settlement Fund. In no event will TD Bank pay additional monies into the Settlement Fund.

H. The Settlement Fund.

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

42. 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.

43. Subject to Court approval, the TelexFree Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all 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.

44. Neither TD Bank 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.

45. In addition, neither TD Bank 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.

46. 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 TD Bank and the TelexFree Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety.

47. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 65. 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.

48. 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 TD Bank less only disbursements made, or obligations incurred in accordance with, Paragraph 37 of this Agreement.

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

certification for purposes of this Settlement (a) shall not be deemed to constitute an admission by TD Bank 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 TD Bank 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 TD Bank to any other request for class certification.

50. 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. Miscellaneous.

51. Nothing in this Agreement shall prevent the TelexFree Plaintiffs from using documents produced by TD Bank against any other Defendant for any purpose in the TelexFree Litigation as long as the Protective Order is complied with.

52. In connection with the Settlement and this Settlement Agreement, the TelexFree

Plaintiffs and their counsel shall not make, disseminate, or publish any statement outside of court, including a statement in the press, that would denigrate or embarrass, or that is otherwise negative or derogatory towards, TD Bank or the other Releasees.

53. 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.

54. TD Bank'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"). TD Bank 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.

55. This Agreement does not settle or compromise any claim by the TelexFree Plaintiffs, or any other Settlement Class Member asserted in the Complaints 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.

56. 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.

57. 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 TD Bank.

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

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

60. 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. TD Bank will not object to complying with the provisions set forth in this Agreement on the basis of jurisdiction.

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

62. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the TelexFree Plaintiffs and TD Bank. Without limiting the generality of the foregoing,

upon final approval of this Agreement each and every covenant and agreement made herein by the TelexFree Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members, Releasers, and Releasees. The Releasees (other than TD Bank, 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.

63. This Agreement may be executed in counterparts by the TelexFree Plaintiffs and TD Bank, and an imaged signature shall be deemed an original signature for purposes of executing this Agreement.

64. Neither the TelexFree Plaintiffs nor TD Bank 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.

65. 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.

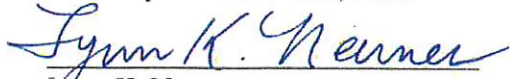
66. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement.

Dated this the 11th day of August, 2023.

[SIGNATURE PAGE FOLLOWS]

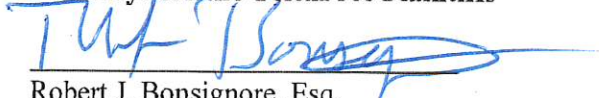
THE REPRESENTATIVE PARTIES AGREE TO THE ABOVE TERMS AND CONDITIONS

Attorneys for TD Bank, N.A.



Lynn K. Neuner
Patrick K. Barry
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, NY 10017
Tel: (212) 455-2000
Fax: (212) 455-2502
lneuner@stblaw.com
patrick.barry@stblaw.com

Attorneys for the TelexFree Plaintiffs



Robert J. Bonsignore, Esq.
Melanie Porter, Esq.
Omar Koury, 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
rhodessw@comcast.net

James Wagstaffe, Esq.
WVBR LAW FIRM
100 Pine Street, Suite 225
San Francisco, California 94111
Telephone: (415) 357-8900
Email: wagstaffe@wvbrlaw.com

J. Gerard Stranch, IV, Esq.
Michael Stewart, Esq.
Kyle C. Mallinak, Esq.
STRANCH, JENNINGS & GARVEY
PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, Tennessee 37203
Telephone: (615) 254-8801
Email: gstranch@stranchlaw.com
Email: mstewart@stranchlaw.com
Email: kmallinak@stranchlaw.com

Geoff Rushing, Esq.
R. Alexander Saveri, Esq.
SAVERI & SAVERI, INC.
706 Sansome Street
San Francisco, CA 94111
Telephone: 415-217-6810
Email: rick@saveri.com

D. Michael Noonan, Esq.
SHAHEEN & GORDAN, P.A.
140 Washington Street
P.O. Box 977
Dover, NH 03821
Telephone: 603-749-5000
Email: mnoonan@shaheengordan.com

Ronald A. Dardeno, Esq.
LAW OFFICES OF FRANK N.
DARDENO
424 Broadway
Somerville, MA 02145
Telephone: 617-666-2600
Email: rdardeno@dardeno.com