

# **EXHIBIT 1**

**B**ONSIGNORE TRIAL LAWYERS, PLLC

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**BONSIGNORE TRIAL LAWYERS, PLLC (“BTL” or “Firm”)** are highly successful and experienced trial lawyers who limit their practice to complex litigation, class actions, and cases involving significant economic loss or public policy. We have learned through experience that the best way to achieve the most favorable outcome for our clients is to prepare each case to win at trial.

BTL attorneys have successfully represented businesses, governmental entities, consumers, and unions in federal and state trial and appellate courts across the United States. BTL has earned a national and international reputation for its professional integrity, competence and an aggressive approach to case prosecution. BTL is capable of litigating any case in any jurisdiction.

BTL concentrates in the practice areas of antitrust, consumer protection, business-to-business wrongs, catastrophic personal injury, Ponzi pyramid schemes, and mass tort litigation. Over the years, BTL has successfully recovered over a billion dollars for their clients. In actions where BTL has served as Lead Trial Counsel, the firm has been involved in obtaining jury verdicts that exceeded \$450 million.

The BTL’s appellate briefing team has written multiple precedent setting legal briefs. Robert Bonsignore co-authored the New Hampshire Supreme Court brief in *LaChance v Smokeless Tobacco* which extended to consumers, small businesses, and governmental entities the right to sue antitrust violators.

Robert Bonsignore successfully persuaded the Ninth Circuit Court of Appeals to set aside a \$577 million-dollar settlement of antitrust price-fixing claims that improperly excluded governmental entities, consumers, and small businesses from certain states arbitrarily selected by class counsel from the economic recovery provided for in the settlement agreement. The oral argument before the circuit court may be found at [https://www.ca9.uscourts.gov/media/view\\_video.php?pk\\_vid=0000013465](https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000013465).

Other successes include two additional Ninth Circuit Court of Appeals cases relating to wage and hours claims against Wal-Mart and music royalty claims by legacy musicians against EMI Group Limited and representing 9 of 10 New Hampshire counties in the Opioid litigation. Each is referenced below.

For the last nine years Bonsignore has served as Lead Counsel in MDL 2566, *In re: TelexFree Securities Litigation*, (the largest pyramid scheme in United States history) which advances the

rights of over 750,000 class members and over \$4 billion dollars of projected loss. Several settlements have been reached.

The Bonsignore Firm also currently serves as Class Counsel for the Plaintiffs in *Garavanian, et al. v. JetBlue Airways Corporation and Spirit Airlines, Inc.* (Case No. 1:23-cv-10678-FDS). This is a private antitrust action seeking to prohibit the proposed elimination of Spirit Airlines by JetBlue Airways Corporation as a violation of Antitrust laws. Plaintiffs filed long before DOJ tag along actions advancing similar claims on behalf of the United States.

The Bonsignore Firm is also currently serving as Class Counsel in *California Crane School, Inc., et al. v. Google LLC, Apple Inc., Tim Cook, et al.* (Northern District of California Case No. 4:21-cv-10001-HSG). This is a private antitrust suit brought under Sections 4 and 16 of the Clayton Antritrust Act (15 USC 15, 26) for actual and potential damages and injunctive relief caused by reason of and made necessary by the Defendants' past, present, and substantially threatening contunuing violations of Sections 1 and 2 of the Sherman Antritrust Act (15 USC 1, 2). Plaintiffs allege that Google pays Apple billions of dollars a year not to compete in the search engine business. Plaintiffs filed long before DOJ tag along actions advancing similar claims on behalf of the United States.

BTL also presently serves as Class Counsel for *Rosemary D'Augusta, et al. v. American Petroleum Institute, et al.* (Northern District of California Case No. 3:22-cv-01979). This is a private antitrust suit brought under Section 7 of the Clayton Antritrust Act where Defendants combined and conspired between and among themselves, Russia, and Saudi Arabia to raise the price of oil and gasoline in direct violation of Sections 1 and 2 of the Sherman Antritrust Act (15 USC 1, 2). Plaintiffs allege that the rise in the price of gas was triggered by insider dealing Plaintiffs filed long before DOJ tag along actions advancing similar claims on behalf of the United States.

BTL and its principal have been appointed or retained to serve in leadership roles in many other complex multidistrict litigation actions. For example:

BTL serves as Lead Counsel for eight of 10 counties in New Hampshire in the Opioid Taxpayer Recoupment Litigation and represents 9 of 10. BTL also consults with them as existing clients on an as-needed basis on other matters. BTL also represents additional cities, towns, and counties in New Hampshire and Massachusetts.

Robert Bonsignore was Co-Lead Counsel in MDL 1735, the largest certified wage and hour case in United States history with over 2.5 million class members. Robert Bonsignore authored the lead appellate brief in MDL 1735 and successfully argued the appeal before the Ninth Circuit and won the leading case on the rights of parties to arbitration to further review.

Robert Bonsignore served as Lead Counsel in MDL 1631, *In re: Publication Paper Antitrust Litigation* which advanced and resolved the claims of all nation-wide end-use consumers of publication paper against international conspirators. All related claims have been settled.

Robert Bonsignore served together with Mark Robinson as the RCR firm representative to the California Tobacco litigation's Plaintiffs' Executive Committee All related claims have been settled.

Robert Bonsignore served as Lead Counsel for the appellants in *Cohen ET AL. v. Brown University ET AL.* (First Circuit # 21-1032) BTL represented a group of women athletes objecting to the stripping away of the original settlement in this Title VII case.

## **EXEMPLAR REPRESENTATIVE CASES BY PRACTICE AREA**

### **Exemplar Antitrust - Protection of Businesses**

#### ***In Re: Broiler Chicken Grower Litigation No. II (MDL 2977) (Eastern District of Oklahoma)***

BTL serves as class counsel in precedent setting private antitrust litigation brought by broiler chicken farmers against the allege that the major poultry defendants and their co-conspirators entered into an unlawful agreement, combination or conspiracy not to compete for chicken broiler grower services, with the purpose and effect of fixing, maintaining or stabilizing chicken broiler grower compensation below competitive levels. Among other things including the amount of economic loss suffered by the grower chicken farmers is the effect of the alleged conspiracy on the levels of chicken broiler grower compensation in the United States during the class period, at issue is whether the major poultry defendants alleged conspiracy violated Section 1 of the Sherman Antitrust Act and Section 202 of the Packers and Stockyards Act.

The parties have briefed and argued several Rule 12(b) motions to dismiss, and the Plaintiffs have propounded discovery requests and served third-party subpoenas, and the responding parties have begun to produce responsive documents. This matter has concluded and BTL clients served as Lead Plaintiffs and all class members were paid.

#### ***In re TelexFree Securities Litigation (MDL 2566) (USDC District of Massachusetts) -***

TelexFree was a sprawling international pyramid scheme, the largest in United States history, that affected nearly a million victims and resulted in an estimated \$4 billion dollars in damages. BTL filed against TelexFree, banks, pay processors, financial institutions, licensed professional, its owners and founders, insider promoters, and others for violations of state law, including the unregistered sale of securities, deceptive trade practices statutes, fraud, aiding and abetting and conspiracy. With the case eventually being given MDL status, Mr. Bonsignore was appointed and has acting Lead Counsel for about 10 years. Total settlements thus far exceed \$115 million dollars. The litigation is ongoing.

***In re: Automotive Parts Antitrust Litigation (MDL 2311) (USDC Eastern District of Michigan Southern Division)*** - BTL filed among the first 4 cases in one of the largest private antitrust litigation in United States history on behalf of a domestic wire harness manufacturer headquartered in Virginia. In the originally filed complaint, Plaintiffs alleged that the Defendant foreign suppliers engaged in a conspiracy over a 10-year period to illegally increase the price of “Wire Harness Systems Products,” which include wire harnesses, electrical wiring, lead wire assemblies, cable bond, wiring connectors, wiring terminals, electronic control units, fuse boxes, relay boxes, junction blocks, and power distributors. Notably, in a separate governmental investigation, two of the named Defendants, Furukawa Electric Co., Ltd. and Yazaki Corporation, as well as some of their executives, pleaded guilty for their involvement in the conspiracy and agreed to pay nearly \$700 million in criminal fines and serve prison sentences. Other guilty pleas have been entered as to other automotive suppliers. Since the cases’ filing, the number of parts involved in the litigation has increased with an additional 200 plus automotive parts anticipated to be added to the list. This litigation has been resolved through settlements.

***In re: Lithium Ion Batteries Antitrust Litigation (MDL 2420) (USDC Northern District of California)*** - BTL filed the second case nationally and represents direct purchasers of Lithium Ion Batteries. The complaint alleges that several of the largest lithium-ion battery producers, including LG Chem, Ltd., Panasonic Corporation, Sanyo Corporation, Sony Corp., Samsung SDI, Hitachi, Ltd. and Maxell Corporation of America collectively controlled between 60 to 90 percent of the market for lithium-ion batteries between 2000 and 2011 and unlawfully conspired to fix and artificially increase the price of the batteries, inflating the cost of notebooks and other portable computers paid by consumers. The complaint also alleges that battery prices fell by nearly 50 percent when several Korean companies entered the market in the early 2000s and that, in response, the Japanese companies who had long controlled the market entered into an illegal price-fixing agreement, resulting in a stabilization of prices that lasted until 2008. The lawsuit claims that in 2008 the Defendants received notice that they were being investigated for price-fixing activities by both American and European regulators. Almost immediately after the investigations were disclosed, prices began to fall again, about 10 percent in three months. This litigation has been resolved through settlements.

***In re: After Market Filters Antitrust Litigation (MDL 1957) (USDC Northern District of Illinois)*** – BTL represented direct purchasers of replacement automobile air and oil filters in this nationwide, antitrust price fixing case. This litigation has been resolved through settlements.

***In re: Optical Disc Drive Litigation (MDL 2143) (USDC Northern District of California)*** - BTL represents direct purchasers in an antitrust action challenging the price fixing of optical disc drives in this international antitrust case. This litigation has been resolved through settlements.

***In re: Employee Benefit Insurance Brokerage Litigation (MDL 1663) (USDC New Jersey)*** – BTL filed one of the first bid-rigging class actions in the country on behalf of a large upstate New York employer and major plastics manufacturer. The lawsuit alleged that insurance companies and brokers conspired with one another to allocate customers and markets and initiated kickbacks (“contingent commissions”) with certain insurance companies. It alleges that the kickback agreements were used to obtain inflated or false price quotes that the Defendants then used to steer their customers into purchasing higher priced insurance policies issued by the insurance companies that paid the brokers the highest kickbacks. BTL served as Class Counsel and was assigned to the Discovery and Class Certification Committees in the multi-district action pending in New Jersey. Robert J. Bonsignore was responsible for taking numerous depositions of the Defendants’ corporate officers and other firm members carried out numerous massive document review projects. The Class Plaintiffs have settled with the Zurich, Gallagher and Marsh Defendant groups for an aggregate amount in excess of \$218 million. This litigation has been resolved through settlements.

***In re: Cement Antitrust Litigation 1:05 cv 979 (USDC Southern District of Indiana)*** – BTL represented a direct purchaser (business) in an antitrust action challenging the price fixing of cement in the mid-west United States. The firm served as Class Counsel in the multi-district litigation that settled in the United States District Court for the District of Indiana. This litigation has been resolved through settlements.

***SKYVA International v. ABB (Privately Settled)*** – This was a complex matter involving arbitration, mediation, litigation and negotiation of multiple disputes revolving around a \$600 million contract and related business relationships and pending relationships with and between Microsoft, IBM, Adjenture, ABB and SKYVA. Choice of law issues involving this product technology included Swiss, New York, Delaware and Massachusetts law. This case has been settled.

***In re: Polyester Staple Antitrust Litigation (MDL 1516) (USDC North Carolina)*** – BTL filed one of the first direct purchaser (business) cases in the country representing Malden Mills, a major textile manufacturing firm. The firm represented direct purchasers of polyester staple alleging a single, nationwide conspiracy among Defendants to fix, raise, maintain and/or stabilize the price of, and/or allocate markets and customers for, polyester staple in the United States in violation of Section 1 of the Sherman Act, 15 U.S. C. § 1. The claims brought on behalf of Plaintiffs further alleged that, as a result of the unlawful conspiracy, they and other purchasers paid more for polyester staple than they would have paid absent the conspiracy. Defendants named in the Complaints included Wellman, Inc., Nan Ya Plastics Corporation; Nan Ya Plastics Corporation, America; E.I. DuPont de Nemours and Company; DAK Americas LLC; DAK Fibers LLC.; Arteva Specialties LLC d/b/a KoSa and now named INVISTA S.ar.l.; Arteva Specialties S.ar.l.; and Koch Industries. This litigation has been resolved through settlements.

***In re: Vehicle Carrier Services Antitrust Litigation (MDL No. 2471) (USDC North Carolina)*** – BTL filed one of the first cases in the country representing indirect purchasers of vehicle carrier services. Vehicle carriers transport large numbers of cars, trucks or other automotive vehicles including agriculture and construction equipment across large bodies of water using specialized cargo ships known as roll on/roll off vessels. The litigation alleges a conspiracy among certain vehicle carriers, between January 1, 2008 and May 24, 2013, to fix, raise, maintain and/or stabilize prices, and allocate the market and customers in the United States for, vehicle carrier services in violation of certain state and federal laws. This litigation has been resolved through settlements.

***In re: Aluminum Warehousing Antitrust Litigation (MDL No. 2481) (USDC Southern District of New York)*** – BTL filed a claim on behalf of an aluminum and precious metals company claiming that they overpaid for aluminum and other precious metals. Facts alleged in support included allegations that Defendants hoarded, stockpiled and manipulated the supply of physical aluminum stored in their warehouses in Detroit; Defendants hold 1.5 million tons of raw aluminum in 29 industrial warehouses throughout the Detroit-metro area; Defendants made illicit payments to potential customers to secure aluminum for storage in Detroit to further their scheme; Defendants shuttled 3,000 tons of aluminum per day from one Detroit area warehouse to another to further their scheme; and Defendants agreed to charge three times the market rate for storage in the Detroit warehouses. Branch offs of this case are being litigated. This matter has been concluded.

***In re: Dynamic Random-Access Memory 2 Antitrust Litigation (MDL TBD) (USDC Northern District of California)*** - BTL recently filed among the first-class action complaints advanced on behalf of all persons and entities in the United States who purchased Dynamic Random Access Memory (“DRAM”) directly from manufacturers between June 1, 2016, through February 1, 2018. The complaint alleges that the officers, directors, employees, agents, or other representatives entered a continuing contract, combination, or conspiracy to unreasonably restrain trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. and through their unlawful conspiracy, artificially raised, inflated, and maintained the market price of DRAM. This litigation has been resolved through settlements.

### **Exemplar Consumer Protection, Securities Litigation & Consumer-Based Antitrust Litigation**

***In re Apple Securities Litigation (Superior Court of California)*** – BTL filed on behalf of Apple shareholders claims that an exclusive group of tech elites created and/or ratified policies and protocols that suppressed innovation for ten years. The case asserted that Apple’s co-founder and former CEO, Steve Jobs, and executives entered into illegal non-solicitation agreements with

executives at other companies, such as Adobe Systems, Google, Inc., and Intel Corporation, with whom they had professional and personal relationships. These agreements provided that Apple and other companies would not recruit each other's employees, thus regulating the competition for talent and suppressing job mobility. "Silicon Valley's vast wealth and warped sense of entitlement led to an audacious conspiracy to suppress salaries," *Bloomberg Businessweek* had reported. Those agreements effectively stunted the success of the Bay Area's innovation which was based on the frequent turnover of employees to diffuse information and spur innovation.

***Dale Bozzio/Missing Persons v. EMI Group Limited et al (USDC Northern District of California Oakland Division and Ninth Circuit Court of Appeals #13-15685)*** - BTL filed a lawsuit in the Northern District of California, that arose from the widespread and systematic breach of recording contracts involving legacy musicians. The complaint was brought on behalf of a nationwide class for breach of contract and statutory violations of California law against Defendants EMI Group Limited; Capitol Records, LLC; EMI North America, LLC; EMI Recorded Music; and EMI Marketing (collectively referred to herein as "EMI"). The complaint alleged that EMI's failure to properly account for and pay its recording artists and music producers for income it received and continues to receive, from the licensees of its recorded music catalog for the sale of digital downloads, ringtones and streaming music (collectively, "digital content"). The Standard EMI Recording Agreement typically sets forth payments to EMI's recording artists and producers for licensing of masters at 50% of the receipts of EMI, rather than a lesser percentage (typically 12% to 20%) as a royalty paid to the artist or producer based on the price of each unit sold. The Ninth Circuit overturned the USDC dismissal of the action as to Bozzio on the basis of standing. BTL was co-author of the successful appellate briefing. This case was resolved following a successful 9<sup>th</sup> Circuit appeal.

***In re Contact Lens (MDL 2626) (USDC Middle District of Florida)*** - BTL co-filed a class action lawsuit on behalf its clients in sixteen states, and the District of Columbia. The complaint alleges a conspiracy among four manufacturers and the largest distributor of contact lenses in the United States (CooperVision, Inc., Alcon Laboratories, Inc., Bausch & Lomb Incorporated, and Johnson & Johnson Vision Care, Inc.) to eliminate discounting among retailers of contact lenses and to artificially fix, raise, maintain and/or stabilize the prices charged to consumers. Plaintiffs allege that they were subject to price floor policies during the period from and including June 1, 2013 through such time as the anticompetitive effects of Defendants' unlawful conduct ceases. As of mid-2014, nearly 40 million Americans wore contact lenses and spent \$4.2 billion on them annually. The manufacturer Defendants dominate and collectively control over 97% of the contact lens market in the United States. Plaintiffs allege that the Defendants set a minimum price below which no reseller could advertise or sell a particular line of contact lenses. This litigation has been resolved through settlements.



***In re: Vehicle Carrier Services Antitrust Litigation (MDL 2471) (USDC District of New Jersey)*** - BTL represented indirect purchasers of vehicle carrier services in eleven states.

Vehicle carriers transport large numbers of cars, trucks or other automotive vehicles including agriculture and construction equipment across large bodies of water using specialized cargo ships known as roll on/roll off vessels. The complaint alleges violations of certain state and federal laws as a direct result of a conspiracy among certain vehicle carriers, between January 1, 2008 and May 24, 2013, to fix, raise, maintain and/or stabilize prices, and allocate the market and customers in the United States for, vehicle carrier services. This litigation has been resolved.

***In re: Hyundai and Kia Fuel Economy Litigation (MDL 2424) (USDC Central District of California)*** - BTL filed a putative class-action lawsuit against Hyundai Motor America, Hyundai Motor Company of Korea, Kia Motors America, and Kia Motor Company of Korea as a result of their admission that they overstated the fuel economy for many vehicles they sold in the United States after independent tests by the Environmental Protection Agency (EPA) showed a discrepancy. The multi-district class action lawsuit in the District of Central California was brought on behalf all consumers who own or lease Hyundai and Kia vehicles whose EPA fuel economy ratings were less than the fuel economy rating produced by the applicable federal test in that model's year. BTL and others ("Non-Settling Parties") tested the sufficiency of a proposed settlement. BTL was requested to and played a major role in the related litigation advanced by the Non-Settling Parties and as a result the original settlement was greatly improved. Bonsignore LLC supports the current settlement that is pending final approval. Hyundai will lower fuel-consumption estimates on most Hyundai and Kia models produced in 2012 and 2013. This case was resolved through settlements.

***In re: (CRT) Antitrust Litigation (MDL 1917) (USDC Northern District of California)*** - BTL filed one of the first indirect purchaser cases in the country and coordinated the filing of 12 other cases. The nationwide action alleges a price-fixing conspiracy in the CRT industry. Bonsignore waived a fee of over one million dollars to object to the settlement and now represents indirect end users from New Hampshire, Massachusetts, and Missouri who were excluded from the settlement. After BTL filed the lead appellate briefs, Mr. Bonsignore was selected to serve as lead off counsel at oral argument. Following oral argument, the Ninth Circuit ordered the parties to mediation. Mr. Bonsignore later served as co-lead negotiator for the appellants. The Ninth Circuit remanded the case to the district court, overturning a settlement of over \$500 million. This matter has been concluded.

***In re: Publication Paper Antitrust Litigation (M.D.L.1631) (USDC Connecticut)*** - Robert Bonsignore served as Lead Counsel in MDL 1631 for all Indirect End Use Purchasers. This action focused on alleged national and international price fixing of certain types of publication grade paper during certain time periods. Final approval of a class action settlement against the last remaining Defendants was approved. This case was resolved through settlements.

***In re: Massachusetts Smokeless Tobacco Litigation (Massachusetts Superior Court Business Litigation Session)*** - Robert Bonsignore was appointed as Co-Lead Counsel by the Chief Justice of the Business Litigation Session for the Commonwealth of Massachusetts. This action was fiercely litigated for 7 years. Notably, this was the first contested indirect purchaser class action in the Commonwealth of Massachusetts to be certified. The action sought economic damages for consumers and alleged that U.S. Smokeless unlawfully created and maintained an unlawful monopoly and artificially inflated prices. The action was also noteworthy because Mr. Bonsignore certified a fifteen-year class period by successfully establishing that fraudulent concealment of the bad acts was included in the questioned conduct. The all-cash settlement provided the greatest recovery per consumer (consumer class members were eligible to receive up \$700 cash) in any price-fixing action brought against the manufacturers of moist smokeless tobacco. This matter was resolved through settlements.

***In re: New Hampshire Smokeless Tobacco Litigation (New Hampshire Superior Court)*** - Robert Bonsignore served as Lead Counsel. Notably, this was the first contested indirect purchaser class action in the state of New Hampshire. The cause made its way to the New Hampshire Supreme Court who extended its narrow interpretation of consumer protection statutes and allowed the Plaintiffs' claims to proceed. This successfully created new common law right of end-use indirect purchasers to bring an action to recover economic loss was later codified. The action was also noteworthy because Mr. Bonsignore again certified a fifteen-year class period by successfully establishing that fraudulent concealment of the bad acts was included in the questioned conduct. This matter was resolved through settlements.

***In re: California Vitamin Cases (San Francisco Superior Court)*** – Robert Bonsignore served on the Executive Committee in *In re: Vitamin Cases* which was settled on behalf of California indirect purchasers. This action advanced antitrust claims against an international cartel of vitamin manufacturers accused of fixing prices and allocating markets in every level of the chain of distribution. The court granted final approval of a settlement with certain vitamin manufacturers in a class action alleging that these and other manufacturers engaged in price fixing of particular vitamins. This matter was resolved through settlements..

***In re: Dynamic Random Access Memory Antitrust Litigation (MDL 1486) (USDC Northern District of California)*** – Robert Bonsignore filed one of the first indirect purchaser DRAM cases in the country. Bonsignore was selected to serve as a member of the Executive Committee. Subsequent to filing, BTL coordinated the consolidation and coordination of like cases in 48 states. The nationwide action alleged a price-fixing conspiracy in the DRAM industry. Robert Bonsignore was appointed by the USDC to serve as interim lead counsel of a related putative class, later absorbed into MDL 1486. This matter was resolved through settlements.

***In re: Chocolate Antitrust Litigation (MDL 1935) (USDC Middle District of Pennsylvania)*** - BTL represented indirect end use purchasers of chocolate in 14 of 29 states involved in the litigation. The action alleged an international price-fixing conspiracy in the chocolate industry. Robert Bonsignore was responsible for taking numerous depositions of the Defendant's corporate officers, engaged in corporate document discovery, and was designated to serve as the discovery liaison with the largest purchaser of chocolate in the United States. Mr. Bonsignore also served on the 5-person Plaintiffs' Settlement Negotiation team and the expert witness and class certifications teams. Other firm members carried out numerous massive document review projects. This case was dismissed. An appeal was not taken.

### **Employment**

***In re: Wal-Mart Wage and Hour Practices Litigation (MDL 1735) (USDC District of Nevada and Ninth Circuit Court of Appeals)*** - This successfully and finally resolved multi-district class action is the largest certified class in a wage and hour case in United States history. The filing, coordination and prosecution of coordinated proceedings in 39 states were found to have been the brainchild of Robert Bonsignore. Bonsignore first successfully argued that the litigation should be granted MDL status and coordinated for all pre-trial proceedings. Mr. Bonsignore was then appointed to serve as national Co-Lead Counsel in this multi-district litigation and fully litigated the action. This action focused on allegations that Wal-Mart systematically failed to pay its hourly employees for all time worked, including supplemental benefits. The action settled for \$85 million dollars plus injunctive relief designed to prevent the alleged violations from occurring again. After the settlement received final approval a law firm that entered the case one-month prior to the execution of the Settlement Agreement purchased an interest in the attorney fees award ("Objector"). After allocation of the attorney fees was arbitrated, the Objector filed an federal Arbitration Act appeal of the arbitration award. The district court rejected that appeal in a lengthy opinion, finding the challenge to be meritless. The Objector appealed to the Ninth Circuit Court of Appeals. On December 18, 2013, nearly 10 years after the litigation was filed the Ninth Circuit found the appeal to be meritless and affirmed the district court's ruling. Robert Bonsignore briefed and argued all appeals. Mr. Bonsignore's oral argument before the Ninth Circuit Court of Appeals can be heard at [http://www.ca9.uscourts.gov/media/view.php?pk\\_id=0000011351](http://www.ca9.uscourts.gov/media/view.php?pk_id=0000011351). (*Carolyn Burton, et al. v. Class Counsel and Party to Arb, et al.*, No. 11-17718). This matter was resolved through settlements.

***In re: Wal-Mart Massachusetts Wage and Hour Litigation-*** Bonsignore served as Class Counsel in *Salvas v. Wal-Mart Stores, Inc.*, a certified Massachusetts class action of 67,000 hourly employees alleging wage and hour violations against Wal-Mart occurring in the Commonwealth of Massachusetts. This action is the largest certified employment class in Massachusetts state history. Notably, rulings and bodies of evidence obtained in this action have been relied upon in other employment litigation around the country. Attorney Robert Bonsignore

successfully convinced the Massachusetts Supreme Judicial Court to reverse a trial court decision decertifying the class. The argument, which is the second most watched archived SJC argument, set numerous precedents that have been frequently cited in numerous decisions. This matter was resolved through settlements.

### **Exemplar Products Liability & Mass Tort Cases**

***Opioids*** - (including but not limited to: **In Re: National Prescription Opiate Litigation (MDL 2804)** (United States District Court Northern District Of Ohio Eastern Division: **In re: Purdue Pharma, L.P., et al., Case No. 19-23649 (RDD)** (Bankr. S.D.N.Y. (\$10 billion settlement); **In Re Mallinckrodt PLC., et al., (United States Bankruptcy Court For The District Of Delaware)**( Case No.20-12522) (\$1.65 billion settlement) and **In Re Insys Therapeutics, Inc., Case No. 19-11292 (KG) (D. Del.)**) BTL has actively pursued the case against the manufacturers, distributors of Opioids on behalf of 9 of the 10 New Hampshire Counties and cities and towns throughout Massachusetts and New Hampshire. In this litigation BTL primarily served as Lead Local Counsel and was responsible for obtaining all evidence relating to the economic loss suffered by each governmental entity. Several settlements have been reached and others are pending including those in the bankruptcy Court. The Center for Disease Control has reported that in the United States, prescription opioid abuse costs may approximate \$55.7 billion annually and each governmental entity incurred significant expense related to the Opioid Epidemic and will certainly incur future related expenses.

***In re: Paraquat*** – Bonsignore actively represents victims of Paraquat including farm workers, sprayers, and people who lived in the proximity of farms that used Paraquat. Plaintiffs allege that Paraquat was negligently, willfully, and wrongfully designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, and sold. All Plaintiffs in this action suffer from Parkinson’s disease.

***In re: Round-Up*** – Bonsignore represents approximately 100 victims of Round Up. BTL’s clients are among the first in the country to settle their cases and he has already recovered over \$2 million with many more settlements still in the works. Plaintiffs allege that Monsanto negligently, willfully, and wrongfully designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, and sold Roundup® and other Monsanto glyphosate-containing products. All Plaintiffs in this action suffer from Non-Hodgkin’s Lymphoma (“NHL”) which was directly caused by the dangerous and defective nature of Roundup®, and its active ingredient, glyphosate.

***In r: Hernia Mesh (Pending in Diverse Jurisdictions)*** – Hernia mesh is an unnecessary product that was created as a profit center by unscrupulous medical device companies who then compounded their misconduct through a series of marketing ploys from medically unsound fish oil to bold, yet unsupported claims of efficacy. BTL so successfully litigated a claim on behalf of an individual mesh recipient that it was requested to create the consolidated litigation. The

Hernia Mesh complaints advance claims that focus on a number of theories, some specific to a particular product. They include defective design, manufacture, production, testing, study, research, training, inspection, labeling, marketing, advertising, sales, promotion, and/or distribution of the hernia mesh products. BTL represents approximately 250 mesh clients. The litigation is spread out across the country and continues.

***In re: Silicone Gel Breast Implant Product Liability Litigation (MDL 926) (USDC Northern District of Alabama and USDC Eastern District of Michigan)*** – Bonsignore represented over 400 pre-1991 recipients of saline and silicone breast implants. During the multi-district litigation, Bonsignore served as Co-Counsel and on the Discovery Committee and was part of the discovery team. A \$2.35 billion fund was created in one of the largest class action settlements in U.S. history. This case has been settled. Mr. Bonsignore resolved the claims of 2500 breast implant claimants.

***In re: Mercury Vaccine Litigation*** (multiple jurisdictions) – Bonsignore filed several of the first consumer protection class action cases in the country alleging that the toxic levels of mercury coupled with the increased number of vaccinations poisoned infants and directly caused their learning disabilities and autism. The action sought medical monitoring, a public release of related studies and data that could be used in diagnosis and treatment, and reimbursement of families as well as local and federal government for the staggering costs associated with the treatment of the affected children. The firm helped spearhead a collective group of North America's best trial lawyers and significantly contributed to this national litigation. Bonsignore served on the Executive, Science, Expert, Class Certification, State Coordination and Discovery Committees. The related claims gained no traction because the science relied upon were compromised when a researcher exaggerated his findings. The sudden and continuing spike in the rate of autism remains stunning and unexplained. This case was dismissed.

***In re: Rezulin Products Liability Litigation (MDL 1348) (USDC Southern District of New York)*** - Bonsignore filed one of the first wrongful death, liver failure and consumer protection class action cases in the country. The action alleged that the makers of the diabetes drug did not adequately test its safety and efficacy prior to mass marketing it to consumers. On March 21, 2000, per the FDA's request, Warner-Lambert finally issued the Rezulin recall after its controversial run on the U.S. market. Robert Bonsignore's early aggressive discovery led to the key admission that Warner Lambert had health department reviewers of the drug on its payroll at the time it was approved. Bonsignore served on the Science, Expert, Class Certification, State Coordination and Discovery Committees in the multi-district action. In addition, Bonsignore was selected to take critical depositions. Mr. Bonsignore secured the largest single award in an individual action, obtaining a \$3.75 million-dollar recovery for his client. The remainder of this matter was resolved through settlements.

***In re: Sulzer Orthopedics, Inc., Hip Prosthesis and Knee Prosthesis Product Liability Litigation (MDL 1410) (USDC Northern District of Ohio)*** - Bonsignore filed one of the first hip failure consumer protection class actions cases in the country. Bonsignore took and attended the first depositions obtaining key admissions. The aggressive discovery conducted by Bonsignore resulted in key admissions by one of its chief worldwide recall investigators. The multi-district class action alleged that the makers of hip and knee prostheses negligently coated these medical devices with commercial grade motor oil and did not adequately test safety and efficacy prior to mass marketing to consumers. The related products were recalled from the United States market. A settlement was reached approximating \$1 billion. This matter was resolved through settlements.

***In re: Lead Paint*** – Bonsignore represented the City of Providence Rhode Island in an action seeking to have the manufacturers of lead paint pay for its removal and to pay for the costs absorbed by the city for the health care and special education of children who suffered from lead paint poisoning.

## **PRINCIPAL**

**ROBERT J. BONSIGNORE.** Mr. Bonsignore began his career in the Office of the District Attorney for Middlesex County, Massachusetts. Since 1990 when he began his own law firm specializing in complex litigation and trial work, he has been lead trial counsel in cases with jury verdicts totaling in excess of \$350 million dollars. Mr. Bonsignore is AV rated by Martindale Hubbell and was awarded Diplomat status by the National College of Advocacy. Mr. Bonsignore is frequently requested to speak at Continuing Legal Education seminars across the country. He has lectured on topics ranging from antitrust to consumer advocacy and from trial techniques to ethics. He has co-authored a trial technique treatise on Direct Examination for Lexus/Nexus.

Mr. Bonsignore has extensive experience in antitrust, consumer protection, complex litigation, class actions, multi-district litigation, Judicial Panel on Multi-District Litigation proceedings, and commercial cases. He also has received significant jury verdicts in wrongful death and catastrophic injury cases.

Between 2001 and 2004, Mr. Bonsignore was appointed Lead Counsel in five separate certified class actions by the Chief Justice of the Business Litigation Session for the Commonwealth of Massachusetts advancing claims raised pursuant to the Massachusetts Consumer Protection statute - Massachusetts General Law 93A. All were finally approved without appeal. Mr. Bonsignore was also appointed Lead or Co-Lead counsel in four other certified and class actions that were finally approved. Mr. Bonsignore successfully argued the re-certification of the largest employment class action in Massachusetts' history at the Supreme Judicial Court level. At the

trial court level, Mr. Bonsignore presented the oral argument at the first contested end use consumer indirect purchaser monopolization class action to be certified pursuant to Mass. General Laws Chapter 93A.

Mr. Bonsignore is frequently called upon to serve as counsel in team approach litigation because of his decades-long experience and proven track record in multi-district litigation. After establishing himself as a trial lawyer and working cooperatively in the Silicon Breast Implant Litigation in 2000, Mr. Bonsignore was selected as the firm representative of Robinson, Calcagnie & Robinson to the “megafirm” of Herman, Middleton, Casey, Kitchens & Robinson (“HMCKR”). HMCKR formally brought together nationally top-ranked law firms to jointly prosecute MDL actions (multi-district class actions) and other complex litigation involving

antitrust, unfair competition, and pharmaceutical matters. Other mega-firm members selected Mr. Bonsignore based on his skill, experience, work ethic accomplishment, and demonstrated ability to work cooperatively with co-counsel and opposing counsel on a multitude of projects.

Mr. Bonsignore was extensively involved in trial preparation in cases against tobacco manufacturers brought by public entities as well as private attorneys general and was counsel of record for the former Governor of California as well as Orange and Los Angeles counties. He is presently retained by the majority of counties in New Hampshire to represent them in the Opioid Litigation. He also advises them on antitrust litigation. Mr. Bonsignore first drafted the State of Rhode Island’s indirect end use purchaser antitrust laws and advised the City of Providence, Rhode Island throughout the legislative process.

In cases pending in United States federal courts, Mr. Bonsignore has been appointed lead counsel in 3 cases assigned Multi-District Litigation status by the Judicial Panel on Multi-District Litigation. MDL 1631 consolidated all indirect purchaser anti-trust actions filed nationwide addressing price fixing in the publication paper industry. MDL 1735 consolidated cases nationwide addressing wage and our violations by Wal-Mart Inc. Both actions in which Mr. Bonsignore was appointed Lead Counsel were settled after being aggressively litigated and received final approval. Mr. Bonsignore presently serves as Lead Counsel in MDL 2566, *In re TelexFree Securities Litigation*.

Mr. Bonsignore has served as a member of the American Antitrust Institute’s Board of Directors since 2009. The American Trial Lawyers Association has selected him as a peer reviewed “Top Trial Lawyer” each year since 2007. In 2010, he received the Outstanding Public Service Award from the Ipswich River Foundation. He is a 2010 graduate of the Trial Lawyers College. Mr. Bonsignore served as antitrust advisor to the Chief Counsel for the City of Providence, Rhode Island. Legislation Mr. Bonsignore initially drafted that provided for municipalities and school districts to bring an indirect purchaser antitrust case was eventually signed into law in 2013. In

2020 he made a substantial donation to the Medford Public Library and a conference room was named in his family's honor in the new Bloomberg Public Library.

Mr. Bonsignore has successfully tried to verdict several high-profile cases including cases selected by the Association of Trial Lawyers of America (ATLA) as the most outstanding jury verdicts of the year. Legal publications have featured Mr. Bonsignore's success in first obtaining admissions of payoffs to medical reviewers in the Rezulin litigation. Mr. Bonsignore's finding of Sulzer's document destruction in the hip replacement litigation was publicized in the United States and Europe. His work on Sulzer hip litigation also merited a feature story in the European news magazine FACTS, where he was headlined as the "American Killer Lawyer."

Mr. Bonsignore is a past recipient of the F. Scott Baldwin Most Outstanding Young Trial Lawyer in America Award that he received in 1997. He also is a seven-time recipient of the prestigious Wiedemann-Wysocki Citation of Excellence Award that is awarded by the trial bar to the most outstanding members of its ranks. In 1994, he received the Massachusetts Junior Chamber of Commerce Most Outstanding Young Leader Award, and in 1997 he was honored by

the Massachusetts Bar Association with the Most Outstanding Young Lawyer Award. In 2005, Mr. Bonsignore was presented with the Joseph Tonihill award that is recognized as the most prestigious award presented by the Association of Trial Lawyers of America for consumer advocacy.

As a past Chair of the Association of Trial Lawyers of America, Young Lawyers Division, Mr. Bonsignore was credited with creating the practice of appointing one man and one woman representative wherever possible in each representative member state, province or country for the purpose of representing the interests of young lawyers to the bar. He created and instituted a program promoting local public service by young lawyers. In recognition of the nature and scope of this undertaking and before its demise, the Association of Trial Lawyers of America Young Lawyers Division, presented the Robert J. Bonsignore Public Service Award to a representative bar group that performs the most outstanding acts of public service.

Mr. Bonsignore previously served on the Boards of the non-profit Trial Lawyers for Public Justice and was a national officer for the Civil Justice Foundation. Mr. Bonsignore is a Life Member of the National Conference of Bar Presidents of the American Bar Association and has served on the Articles and Bylaws Committee since 1999. Mr. Bonsignore has previously served as a Consumer Advisory Commissioner for the Office of the Attorney General for the Commonwealth of Massachusetts and as an Assistant District Attorney for Middlesex County. Forbes Sky Radio selected Mr. Bonsignore as one of America's Best Lawyers. Mr. Bonsignore is an Assistant Scout Master for Scout Troop 143, St Viator School, Black Mountain District, Las



Vegas Area Counsel and the proud father of two Eagle Scouts and a pending Congressional Medal of Honor winner. His youngest daughter was the first female Scout in her District.

During 2018 and 2019 Mr. Bonsignore was requested to give about 10 Continuing Legal Education (CLE”) programs on behalf of “for pay” CLE companies on complex litigation, discovery, class actions, and e discovery. He is the author of Westlaw’s Litigating Tort Cases; Chapter 39. Direct Examination of Lay Witnesses. He most recent request to offer a course on CLE on MDL practice, class actions, and complex litigation has been put on hold in light of the above considerations.

# **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE: TELEXFREE SECURITIES LITIGATION  
This document relates to:  
All Cases

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CIVIL ACTION  
NO. 4:14-md-02566-TSH

## **SETTLEMENT AGREEMENT<sup>1</sup>**

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 Loss<sup>2</sup> (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”);

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

<sup>2</sup> 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, incorporators, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, fiduciaries, partners, partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, principals, managing directors, members, managers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, advisors, consultants, brokers, dealers, lenders, attorneys, representatives, accountants, insurers, co-insurers, reinsurers, associates, and their related parties.

5. “Settlement Class” is defined as “all persons worldwide who submit to the jurisdiction of this Court who purchased TelexFree AdCentral or AdCentral Family packages and suffered a Net Loss during the period from January 1, 2012 to April 16, 2014. A “Net Loss” is defined as placing more funds into TelexFree than the total funds withdrawn from TelexFree.

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

Robert J. Bonsignore, Esq.  
Melanie Porter, Esq.

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

Hon. Steven W. Rhodes (Ret.), Esq.  
1610 Arborview Blvd.  
Ann Arbor, MI 48103  
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.

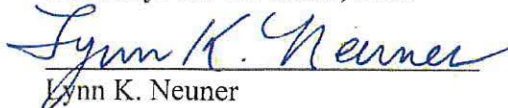
66. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement.

Dated this the 11th day of August, 2023.

[SIGNATURE PAGE FOLLOWS]

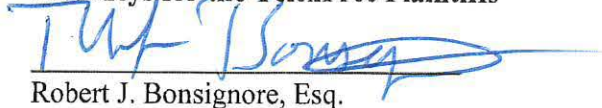
THE REPRESENTATIVE PARTIES AGREE TO THE ABOVE TERMS AND CONDITIONS

**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.  
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

# **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

	)	
	)	
IN RE: TELEXFREE SECURITIES LITIGATION	)	
	)	
This document relates to:	)	CIVIL ACTION
	)	NO. 4:14-md-02566-TSH
All Cases	)	
	)	
	)	
	)	
	)	

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into this 25<sup>th</sup> day of August 2023 (“Execution Date”) by International Payout Systems, Inc. (“IPS”), Natalia Yenatska and Edwin Gonzalez (together, the “IPS Defendants”), 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 “Putative Class Representatives” or “Releasing Parties”) individually and on behalf of and representing all persons who purchased TelexFree AdCentral or AdCentral Family packages and suffered a Net Loss during the period from January 1, 2012 to April 16, 2014 (the “TelexFree Class Plaintiffs”), on the other hand (the IPS Defendants and TelexFree Class Plaintiffs are collectively referred to as “Parties” or, individually, each a “Party”). A “Net Loss” is defined as providing more funds into TelexFree than the total funds withdrawn from TelexFree.

**PREAMBLE**

WHEREAS, TelexFree Class Plaintiffs have brought the above-captioned actions



(herein, “MDL 2566 Action(s),” “Action(s)” or “TelexFree Litigation”) individually and as putative class representatives on behalf of a class of victims of the TelexFree pyramid scheme (the “Pyramid Scheme”) against, among others, the IPS Defendants;

WHEREAS, IPS performed certain payment processing services for TelexFree from approximately September 2013 through April 2014, specifically, IPS only processed credits for TelexFree commission payments and did not debit bank accounts for TelexFree customers, nor did IPS receive or maintain information regarding TelexFree’s debiting of customer bank accounts;

WHEREAS, TelexFree Class Plaintiffs allege that they suffered ascertainable economic injury as a result of the IPS Defendants’ alleged assistance and participation in the unlawful TelexFree Pyramid Scheme, as referenced in TelexFree Class Plaintiffs’ MDL 2566 Consolidated Amended Class Action Complaints (the “Complaints”), and the IPS Defendants unequivocally deny the TelexFree Class Plaintiffs’ allegations;

WHEREAS, TelexFree Class Plaintiffs allege that as a result of its relationship to TelexFree as referenced throughout the Complaints and herein, IPS, including certain of its officers, employees and outside consultants gained knowledge concerning TelexFree’s unlawful enterprise, and the IPS Defendants unequivocally deny the TelexFree Class Plaintiffs’ allegations;

WHEREAS, the Court has granted IPS’s motion to dismiss the claim for unjust enrichment;

WHEREAS, the IPS Defendants have undertaken a full due diligence inquiry and represent that there is no applicable insurance policy applicable to the claims in the pending litigation, contested or uncontested, that might possibly under any interpretation, afford coverage to each and every one of the Releasees (as defined below), including IPS, its officers,

and executives, and this includes personal excess polices, and the completeness and truthfulness of such information is a material term and condition to this settlement, and all parties recognize that in reaching a settlement Plaintiffs are relying on the completeness and truthfulness of these representations;

WHEREAS, Settlement Class Counsel has received and reviewed financial information for IPS's fiscal year ending December 31, 2022;

WHEREAS, the IPS Defendants represent that, other than fees for services performed from 2013 through 2014, they received no benefit from TelexFree's alleged unlawful Pyramid Scheme or related business operations and will not in the future receive benefit directly or indirectly from TelexFree's alleged unlawful Pyramid Scheme or related business operations;

WHEREAS, each representation by the IPS Defendants and the TelexFree Class Plaintiffs is a material term of the Settlement between the parties;

WHEREAS, no payment or monies will be owed by the IPS Defendants and the other Releasees in excess of the amount set forth below.

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for the IPS Defendants, and this Agreement has been reached as a result of those negotiations;

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

WHEREAS, the IPS Defendants, specifically without admitting any liability, have 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 the IPS Defendants and Releasees (as defined below) with respect to the TelexFree Pyramid Scheme based on the allegations in the Actions, as more particularly set out below; and

WHEREAS, the Action will continue against Defendants that are not Releasees and this Agreement with the IPS Defendants will not impair TelexFree Class Plaintiffs' ability to collect the damages from 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 Class Plaintiffs, the Settlement Class, or the IPS Defendants, subject to the approval of the Court, on the following terms and conditions:

#### **AGREEMENT**

##### **A. Definitions**

1. "Defendant(s)," for purposes of this Settlement Agreement means all Defendants named in the Fifth Consolidated Amended Complaint and all such other persons that may be further added as Defendants in this Action while it is pending.

2. "Releasees" means IPS, Natalia Yenatska and Edwin Gonzalez and their past, present and future employees, officers, directors, incorporators, spouses, 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.

3. “Releasers” shall refer jointly and severally, individually and collectively to the TelexFree Class Plaintiffs and the members of the putative Settlement Class, as well as each of their parents, subsidiaries, affiliates, divisions, predecessors, heirs, successors and assigns, and their respective past and present officers, directors and employees.

4. “Settlement Class” is defined as all persons worldwide 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 providing more funds into TelexFree than the total funds withdrawn from TelexFree.

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

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

Hon. Steven W. Rhodes (Ret.) Esq.  
1610 Arborview Blvd.  
Ann Arbor, MI. 48103  
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

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

7. A “Net Loser” is defined as a participant who providing more funds into TelexFree than the total funds they withdrew from TelexFree.

8. “TelexFree” for purposes of this Settlement Agreement includes all TelexFree entities, 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 the IPS Defendants or as contained in IPS’s business records or personnel files.

9. “Final Approval” means the completion of all of the following events:
- (a) the Court has entered a final order certifying the Settlement Class and approving this Agreement under Federal Rule of Civil Procedure 23(e);
  - (b) the Court has entered a separate and final judgment dismissing the IPS Defendants from the TelexFree Litigation with prejudice as to all Settlement Class Members and without costs other than those provided for in this Agreement;
  - (c) the Court has entered a bar order consistent with Paragraphs 28(d) and (e) of this Agreement; and
  - (d) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a separate and final judgment as to the IPS Defendants described in (a) and (b) has expired or, if appealed, approval of this Agreement and the final judgment as to the IPS Defendants 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.

**B. Settlement Amount**

10. “Settlement Amount” means five hundred thousand dollars (USD \$500,000), 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 IPS Defendants, the Settlement Amount shall be paid by or on behalf of the IPS Defendants into the Escrow Account (as described herein) within thirty (30) calendar days of the Court granting preliminary approval of the settlement and

receipt of payment instructions and a Form W-9. The IPS Defendants shall have no monetary obligation whatsoever in excess of the Settlement Amount.

12. Escrow Account.

(a) An escrow account shall be maintained at Eastern Bank (the “Escrow Account”). Such escrow shall be administered under the Court’s continuing supervision and jurisdiction.

(b) All payments into the Escrow Account shall, at the direction of Settlement Class Counsel, be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including U.S. Treasury Bills, U.S. Treasury Money Market Funds or a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit. Any interest earned on any of the foregoing shall become part of the Settlement Fund.

(c) All funds held in the Escrow Account shall be deemed and considered to be in legal custody of the MDL 2566 Court and shall remain subject to the jurisdiction of that Court, until such time as they are distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) IPS 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 IPS 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 \$100,000.00, 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 IPS 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. IPS 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, IPS shall have no further input or make any motion as to the disposition of the remainder of the Settlement Amount.

(g) The Escrow Account is intended by the Parties to be treated as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1, and to that end the Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of the IPS Defendants, a "relation back election" as described in



Treas. Reg. § 1.468B-1(j) shall be made so as 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. At the direction of Settlement Class Counsel, with notice to the IPS Defendants and without Court approval, taxes or estimated taxes shall be paid on any income earned on the funds in the Escrow Account, whether or not final approval as defined in Paragraph 9 (“Final Approval”) has occurred. Except as set forth in this Paragraph, TelexFree Class 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) If this Agreement does not receive Final Approval, including final approval of the Settlement Class as defined in this Agreement, or if the Actions are not certified as class actions for settlement purposes, then all amounts paid by the IPS Defendants into the Settlement Fund shall be returned to the IPS Defendants from the Escrow Account along with any interest accrued thereon as soon as reasonably practicable but no later than thirty (30) calendar days following the IPS Defendants’ request for same.

**C. Discovery**

13. The TelexFree Class Plaintiffs retain their right to seek additional information from the IPS Defendants that is allowed by the Federal Rules of Civil Procedure. To the extent the TelexFree Class Plaintiffs seek any additional information, counsel for the TelexFree Class

Plaintiffs will first communicate with counsel for the IPS Defendants to facilitate the exchange of information without the need for any formal discovery requests or Court intervention. The exchange of information shall be coordinated in such a manner to avoid unnecessary duplication and expense. The IPS Defendants will fully cooperate in responding to these requests by: agreeing not to raise any non-privilege objections to additional information requests, and providing the requested information in a timely manner and without the need for any formal discovery requests or Court intervention.

14. The continued provision of truthful representations and mutual cooperation is a material term of the settlement between the parties.

15. The IPS Defendants agree to authenticate any documents they have produced, if the TelexFree Plaintiffs deem it necessary, pursuant to the Federal Rules of Evidence.

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

17. Should the IPS Defendant fail to cure within fifteen (15) business days, the TelexFree Plaintiffs may request a hearing before a Magistrate Judge for the USDC Massachusetts.

18. Counsel for the IPS Defendants shall refer to:

Richard J. Zack  
Brian M. Nichilo  
Troutman Pepper Hamilton Sanders LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103  
215-981-4000  
richard.zack@troutman.com

brian.nichilo@troutman.com

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.

**D. Release, Discharge, and Covenant Not to Sue**

20. Upon final approval by the Court of this settlement, and in consideration of payment of the Settlement Amount, as specified in Paragraphs 9 and 10, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature that Releasors, or each of them, ever had, now have, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating to TelexFree, including (a) any conduct alleged in the Complaints, (b) any act or omission of the Releasees (or any of them) alleged in the Complaints concerning the conduct of the IPS Defendants as relates to TelexFree, or (c) any conduct alleged and causes of action asserted or that could have been alleged or asserted, in any class action or other complaints filed in the Actions (the "Released Claims").

21. 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,

including if the Court terminates this Settlement pursuant to the process described in Paragraph 9 of this Agreement.

22. In addition to the provisions of Paragraph 20 of this Agreement, Releasors hereby expressly waive and release, solely with respect to the Released Claims and upon this Agreement becoming final, any and 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, solely 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.

**E. Approval of this Agreement and Dismissal of Claims against the IPS Defendants**

23. The TelexFree Class Plaintiffs and the IPS Defendants 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.

24. Within twenty-four (24) hours after the execution of this Agreement, TelexFree Class Plaintiffs shall notify the Court of the fact that the TelexFree Class Plaintiffs and the IPS Defendants have reached an agreement to settle all claims relating to IPS, Natalia Yenatska and

Edwin Gonzalez, and shall file a motion requesting that this Action be stayed as to the IPS Defendants. The TelexFree Class Plaintiffs shall draft and the IPS Defendants shall approve the Joint Notice and Motion for Stay. Other than as contemplated by terms of this Agreement, neither the IPS Defendants nor TelexFree Class Plaintiffs shall file motions against the other in this Action during the pendency of the Agreement.

25. Within thirty (30) days after the execution of this Agreement, the TelexFree Class 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 Class Plaintiffs shall submit a draft of the Motion to the IPS Defendants for approval consistent with the terms of this Settlement Agreement, which shall not be unreasonably withheld.

26. The TelexFree Class Plaintiffs shall seek authorization to electronically disseminate notice of the proposed settlement to the Settlement Class.

27. TelexFree Class Plaintiffs shall seek, and the IPS Defendants will not object unreasonably to, the entry of an order and final judgment approving the settlement.

28. 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 4 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 Members

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 e-based operation;
- (d) That all federal and state claims against the IPS Defendants for contribution or indemnification arising under or in any way related to the TelexFree Pyramid Scheme 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) As to the IPS Defendants, a directive that the Actions be dismissed with prejudice and, except as provided for in this Agreement, without costs;
- (f) Reservation of exclusive jurisdiction to the United States District Court for the District of Massachusetts over the settlement and this Agreement, including the administration and consummation of this settlement, as well as over the IPS Defendants for the duration this Agreement;
- (g) Determination under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and a directive that the judgment of dismissal as to the IPS Defendants shall be final; and
- (h) The terms of this Agreement shall remain binding on the parties following

dismissal and that the MDL 2566 court shall retain continuing jurisdiction.

29. This settlement shall become final when the Court has entered a final order certifying the Settlement Class described in Paragraph 9 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and a separate and final judgment dismissing the IPS Defendants from the above-captioned Actions with prejudice as to all Settlement Class Members and without costs other than those provided for in this Agreement, which are not subject to further review on appeal or otherwise.

30. 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 TelexFree Class Plaintiffs and the IPS Defendants have executed this Agreement, TelexFree Class Plaintiffs and the IPS Defendants 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**

31. Within thirty (30) business days after the end of the period to request exclusion from the Settlement Class, Settlement Class Counsel shall cause copies of requests for exclusion from the Settlement Class to be provided to counsel for the IPS Defendants and placed on file. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, the IPS Defendants reserve all of their legal rights and defenses.

32. If 300 or more of the Settlement Class Members or any number of Settlement Class Member alleging a Net Loss of \$2,500,000.00 or more opt out of the settlement with the IPS Defendants, then the IPS Defendants shall have the option, in their sole and absolute discretion, to declare that the Agreement is null and void. The IPS Defendants shall be deemed to waive their right to declare this Agreement null and void if they fail to notify the TelexFree Class Plaintiffs'

counsel of such an election within 10 days of receiving notice that 300 or more of the Settlement Class Members or any number of Settlement Class Member alleging a Net Loss of \$2,500,000.00 or more have opted out.

**G. Electronic Notice to The Class**

33. It is agreed to 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 35 below, which provides a period during which they shall be afforded the option of presenting the Court with an alternative form of Notice.

34. The IPS Defendants shall not be liable for any of the TelexFree Class 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.

35. If Settlement Class Counsel enter into any other settlements on behalf of a class of TelexFree Class Plaintiffs in the MDL 2566 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.

36. 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 following the Court's Order.

**H. The Settlement Fund**



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

38. After this settlement receives Final Approval within the meaning of Paragraph 9, 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.

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

39. Subject to Court approval, the TelexFree Class 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 Paragraph 9. Incentive awards to any of the TelexFree Class 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 from the Settlement Fund.

40. Neither the IPS Defendants 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 or the use of the evidence it provides.

41. In addition, neither the IPS Defendants 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**

42. 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 Paragraph 9 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then the IPS Defendants and the TelexFree Class Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety.

43. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 41. 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.

44. In the event that this Agreement or the settlement described herein does not become final, or this Agreement otherwise is terminated pursuant to Paragraph 41, then this Agreement shall be of no force or effect, and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to the IPS Defendants less only disbursements made, or obligations incurred in accordance with Paragraph 42 of this Agreement. In the event that this Agreement is terminated as to one, but not all of the IPS Defendants, pursuant to Paragraph 42, then the Court shall make a determination of the allocation of the Settlement Amount as among the IPS Defendants for purposes of returning funds pursuant to this paragraph.

45. In the event that this Agreement or the settlement described herein is rendered null and void, the IPS Defendants reserve the right to oppose certification of any class in this or any other proceeding, and TelexFree Class Plaintiffs and their counsel agree that IPS Defendants' consent to certification for purposes of this Settlement (a) shall not be deemed to constitute an admission by IPS Defendants 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 IPS Defendants 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 IPS Defendants to any other request for class certification.

46. The fact of and provisions contained in this Agreement, and all negotiations, discussions, actions and proceedings in connection with this Agreement 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**

47. Nothing in this Agreement shall prevent the TelexFree Class Plaintiffs from using documents produced by the IPS Defendants against any other Defendant for any purpose in the MDL 2566 Litigation as long as the Protective Order is complied with.

48. The Settlement Class Counsel will make no public statements regarding the settlement or claims relating to the IPS Defendants prior to the filing of a motion for preliminary approval of this settlement except as required to obtain preliminary and final approval of this settlement. Each Settlement Class Counsel shall refrain from any disparagement of the IPS Defendants or of any current or former employee, officer, or director of IPS. This non-disparagement obligation does not apply to any statement by Settlement Class Counsel to the Court, at trial, or to any Putative Class Representative.

49. 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 by the IPS Defendants. 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.

50. Counsel for TelexFree Class Plaintiffs 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”). Counsel for TelexFree Class Plaintiffs 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.

51. This Agreement does not settle or compromise any claim by the TelexFree Class 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 Class Plaintiffs and the Settlement Class.

52. 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 Class Plaintiffs and Settlement Class Members.

53. IPS Defendants' alleged involvement with TelexFree and its alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Actions as a potential basis for liability and damage claims against persons or entities other than the IPS Defendants and the Releasees and may be part of any joint and several liability claims against other current or future Defendants in the Actions or other persons or entities other than the Releasees.

54. The Court presiding over this Action 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 Class Plaintiffs and the IPS Defendants.

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

56. All persons and entities making claims under this Settlement Agreement shall be deemed to and voluntarily submit to the jurisdiction of the MDL 2566 Court, for purposes of this Agreement only.

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

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

59. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the TelexFree Class Plaintiffs and the IPS Defendants. Without limiting the generality of the foregoing, upon final approval of this Agreement each and every covenant and agreement made herein by the TelexFree Class Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members, Releasers and Releasees. The Releasees (other than the IPS Defendants which are parties 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.

60. This Agreement may be executed in counterparts by the TelexFree Class Plaintiffs and the IPS Defendants, and a facsimile or imaged signature shall be deemed an original signature for purposes of executing this Agreement.

61. Neither the TelexFree Class Plaintiffs nor the IPS Defendants 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.

62. 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 facsimile, or 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.

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

Dated: August 25<sup>th</sup>, 2023

[SIGNATURE PAGE FOLLOWS]


THE REPRESENTATIVE PARTIES AGREE TO THE ABOVE TERMS AND CONDITIONS

IPS DEFENDANTS

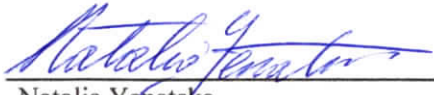
  
International Payout Systems, Inc.

TELEXFREE CLASS PLAINTIFFS

By their attorneys,

  
Robert J. Bonsignore, Esq.  
Melanie Porter, Esq.  
Bonsignore Trial Lawyers  
3771 Meadowcrest Drive  
Las Vegas, NV 89121

MDL 2566 Interim Lead Counsel

  
Natalia Yenatska

  
Edwin Gonzalez



# **EXHIBIT 4**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into this 14th day of March, 2022 (“Execution Date”) by Ryan Mitchell and Telecon Logic (the “Mitchell Defendants”) and Paul Cellucci and Igor Shikhman (together “Putative Class Representatives” or “Releasing Parties”) individually and on behalf of and representing “[a]ll persons who purchased TelexFree AdCentral or AdCentral Family packages and suffered a Net Loss during the period from January 1, 2012 to April 16, 2014” falling under the jurisdiction of U.S.D.C. (D. Mass.) C.A. No. 4:14-md-2566 (the “TelexFree Class Plaintiffs”).<sup>1</sup>

### **PREAMBLE**

WHEREAS TelexFree Class Plaintiffs are currently prosecuting the above-entitled actions (herein, “MDL 2566 Action(s),” “Action(s)” or “TelexFree Litigation”) individually and as putative class representatives on behalf a class of victims of the TelexFree pyramid scheme (the “Pyramid Scheme”) against, among others, Ryan Mitchell and Telecon Logic.

WHEREAS, TelexFree Class Plaintiffs allege that they suffered ascertainable economic injury as a result of the Mitchell Defendants’ assistance and participation in the unlawful TelexFree Pyramid Scheme and including its related money laundering in violation of statutory and common law, as referenced in TelexFree Class Plaintiffs’ MDL 2566 Consolidated Amended Class Action Complaints (the “Complaints”) and the attachments to this Settlement Agreement;

WHEREAS Ryan Mitchell and Telecon Logic served as TelexFree’s VoIP Communication Engineer and advisor from in or about April 2012 through April 2014;

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<sup>1</sup> Hereinafter, the Mitchell Defendants, Mitchell and TelexFree Class Plaintiffs are sometimes collectively referred to as “Parties” or, individually, each a “Party.”

WHEREAS TelexFree contracted with Telecom Logic and Ryan Mitchell and Telecom Logic maintained TelexFree's VoIP program;

WHEREAS since TelexFree's inception and until its bankruptcy in April 2014, Mitchell developed, adapted and serviced the software necessary to operate TelexFree's VoIP program;

WHEREAS as a result of his work for and relationship with TelexFree Ryan Mitchell and Telecom Logic gained knowledge concerning TelexFree's operations, and those TelexFree did business with;

WHEREAS Ryan Mitchell individually and on behalf of all entities that he has a beneficial interest in has unequivocally represented that, other than fees for services performed from 2012 through 2014, he and his businesses, other than Telecom Logic, received no benefit from TelexFree's unlawful pyramid scheme or related business operations;

WHEREAS Ryan Mitchell, individually and on behalf of all persons and entities that he has a beneficial interest in, has unequivocally represented that, other than fees for services performed from 2012 through 2014, he and his businesses are not entitled to receive any future benefit from funds derived from TelexFree's unlawful pyramid scheme or related business operations;

WHEREAS, Ryan Mitchell individually and on behalf of all entities that he has a beneficial interest in has unequivocally represented that, other than fees for services performed from 2012 through 2014, he and his businesses have not secreted any funds derived from TelexFree's unlawful pyramid scheme or related business operations;

WHEREAS, Ryan Mitchell individually and on behalf of all entities that he has a beneficial interest in has unequivocally represented that, other than fees for services performed from 2012 through 2014, he and his businesses have no knowledge whatsoever of the location of funds

derived from TelexFree's unlawful pyramid scheme or related business operations that were secreted by others – other than that which has been seized by governmental authorities or the TelexFree Bankruptcy Trustee;

Whereas each representation by Ryan Mitchell individually and on behalf of all entities that he has a beneficial interest are material terms of the Settlement between the parties;

WHEREAS Ryan Mitchell individually and on behalf of all entities that he has a beneficial interest in has unequivocally represented that he has no insurance available to cover TelexFree Class Plaintiffs' claims and that neither he individually, through umbrella or other personal insurance of any type, or any of the Mitchell-owned entities involved with TelexFree have insurance policies. These representations are material terms of the Settlement between the parties.

WHEREAS no payment or monies will be paid or owed by the Mitchell Defendants and the other released party, unless it is later determined that they directly or indirectly have or will receive substantial income from TelexFree's unlawful pyramid scheme or business operations and secreted it or had insurance available. If the Mitchell Defendants and the other released party is found at some future date to have lied and to have directly or indirectly received non-disclosed substantial income or benefit from TelexFree's unlawful Pyramid scheme or related business operations, this agreement shall be null and void. If an insurance policy is later discovered to cover the claims released, Mitchell Defendants and the other released party shall make claim and assign their rights to that policy to the MDL 2566 Plaintiffs.

WHEREAS Ryan Mitchell has agreed to provide TelexFree Class Plaintiffs with a full and complete disclosure of his assets and financials together with an affirmation that they are true, accurate and complete as represented;

WHEREAS Ryan Mitchell individually and on behalf of all entities that he has a beneficial interest in has presented financials and sworn that his accounting of assets and interests are truthful and complete;

WHEREAS the parties agree that Ryan Mitchell's financials were relied upon as truthful and complete representations and, that the truthfulness and the completeness of the financials remain material terms to this Settlement Agreement;

WHEREAS Ryan Mitchell is released on the condition that if he does not cooperate as defined herein, or if he is found to have directly or indirectly secreted assets in his name or in the name of another, this release shall be subject to revocation and the action against him shall be subject to being reinstated nunc pro tunc as provided herein;

WHEREAS the failure of Ryan Mitchell or a Ryan Mitchell-affiliated person or entity to provide Full Cooperation as provided herein at all times shall be grounds for the Plaintiffs to seek to terminate the Settlement Agreement pursuant to the protocol described in Paragraph 15;

WHEREAS the Mitchell Defendants swear to always tell the truth and to cooperate as provided herein and that both are terms material to this release;

WHEREAS arm's-length settlement negotiations have taken place between Class Settlement Counsel (as defined below) and counsel for the Mitchell Defendants, and this Agreement has been reached as a result of those negotiations;

WHEREAS TelexFree Class Plaintiffs have requested all information and documents related to the subject matter of the MDL 2566 Litigation and the Mitchell Defendants have agreed to provide, within 120 days of the execution of this agreement, all related information they possess relating to the conduct referred to in the Actions through cooperative interviews and truthful testimony and will also provide documents, without any hold back or claim of

privilege, and will continue to cooperate on an ongoing basis as required by the needs of the litigation (“Full Cooperation” is also defined below);

WHEREAS, TelexFree Class Plaintiffs have concluded that resolving the claims against the Mitchell Defendants according to the terms set forth herein is in the best interests of putative class of TelexFree Plaintiffs;

WHEREAS, TelexFree Class Plaintiffs have investigated the facts and the law regarding the conduct alleged in the Actions and have concluded that resolving the claims against the Mitchell Defendants is in the best interests of TelexFree Plaintiffs Settlement Class because the value of the Full Cooperation and the payment of the \$25,000 out-of-pocket funds (“Full Cooperation”) that the Mitchell Defendants have agreed to provide pursuant to this Agreement exceeds the risk of further litigation and is otherwise fair, adequate, and serves the best interests of the Putative Class;

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

WHEREAS the Full Cooperation that the Mitchell Defendants have agreed to provide to TelexFree Class Plaintiffs, if allowed by the Court, will aid TelexFree Class Plaintiffs, by reducing the substantial burden and expense in the ongoing prosecution of the Actions and also by providing cash settlement funds; and

WHEREAS, because of potential joint and several liability, the Action will continue against Defendants that are not Releasees (as defined below) and this Agreement with the Mitchell Defendants will not impair TelexFree Class Plaintiffs' ability to collect the full amount of damages 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 Class Plaintiffs, the Settlement Class, or the Mitchell Defendants, 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 13-34 and to the material representations made relating to Mitchell's financials.

2. "Defendant(s)," for purposes of this Settlement Agreement, includes, but is not limited to, all Defendants named in the Fourth Consolidated Amended Complaint; all those entities and persons connected or related to TelexFree's unlawful Pyramid Scheme as identified in good faith by the Mitchell Defendants or contained in their business records or personnel files; and the persons and entities identified in Attachments A and B.<sup>2</sup>

3. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including without

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<sup>2</sup> A list of all Top-Level Promoters are identified on Attachment A (to be filed under seal) and a list of all soon to be named Defendants (including stayed Defendants) are identified on Attachment B (to be filed under seal).

limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term. For purposes of this Agreement, Document shall include all foreign and English translations in the Mitchell Defendants' custody, possession or control as well as those appearing in another language.

4. "Releasees" shall refer jointly and severally, individually and collectively to the Mitchell Defendants, their disclosed parents, subsidiaries, affiliates, divisions, predecessors and successors, their respective past and present officers, directors and employees, insurers, and reinsurers. The term Releasees does not include any Defendant in the Actions other than Ryan Mitchell, Telecon Logic and the disclosed Mitchell entities.

5. "Releasers" shall refer jointly and severally, individually and collectively to TelexFree Class Plaintiffs and the members of the putative Settlement Class, as well as each of their parents, subsidiaries, affiliates, divisions, predecessors, heirs, successors and assigns, and their respective past and present officers, directors and employees.

6. "Settlement Class" is defined as "[a]ll persons subject to the jurisdiction of the MDL 2566 Court who purchased TelexFree AdCentral or AdCentral Family packages and suffered a Net Loss<sup>3</sup> during the period from January 1, 2012 to April 16, 2014" in U.S.D.C. (D. Mass.) C.A. No. 4:14-md-2566."

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<sup>3</sup> "Net Loss" is defined as the class member having invested more funds than they withdrew.



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

Robert J. Bonsignore, Esq.  
Bonsignore Trial Lawyers, PLLC  
3771 Meadowcrest Drive  
Las Vegas, NV 892121  
Email: [rbonsignore@classactions.us](mailto:rbonsignore@classactions.us)  
Interim MDL 2566 Lead Counsel

Ronald A. Dardeno, Esq.  
Law Offices of Frank N. Dardeno  
424 Broadway  
Somerville, MA 02145  
Telephone: 617-666-2600  
Email: [rdardeno@dardeno.com](mailto:rdardeno@dardeno.com)

D. Michael Noonan, Esq.  
Shaheen and Gordan  
140 Washington Street  
P.O. Box 977  
Dover, NH 03821  
Telephone: 603-749-5000  
Email: [mnoonan@shaheengordan.com](mailto:mnoonan@shaheengordan.com)  
Fax: 603-749-1838

R. Alexander Saveri, Esq.  
Saveri & Saveri, Inc.  
706 Sansome Street  
San Francisco, CA 94111  
Telephone: 415-217-6810  
Email: [rick@saveri.com](mailto:rick@saveri.com)

Proposed Additional PIEC Law Firm:

Powell Miller  
The Miller Law Firm, P.C.  
950 W. University Dr., Ste. 300  
Rochester, MI 48307  
(248) 841-2200  
(248) 841-2203 (direct)  
Email: [epm@millerlawpc.com](mailto:epm@millerlawpc.com)

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, including the entities identified in Attachment C (to be filed under seal) and those otherwise as identified in good faith by the Mitchell Defendants or as contained in their business records or personnel files.

**B. Settlement Payment**

10. “Settlement Amount” means the Mitchell Defendants Settlement Amount as defined in paragraphs 10(a).

a. The Mitchell Defendants shall pay a total of USD \$25,000 inclusive of all attorneys’ fees and court costs, (the “Mitchell Defendants Settlement Amount”) into the Escrow Account as described herein upon TelexFree Class Plaintiffs’ (“Putative Class”) filing of a motion for certification of a settlement class and the Court granting preliminary approval of the Settlement Agreement (“Preliminary Approval”).

11. Subject to the provisions hereof, and in full, complete and final settlement of the Actions as provided herein, the Mitchell Defendants shall pay the “Settlement Amount” at the times and in the amounts set forth in Paragraph 10 of this Agreement into an escrow account to be administered in accordance with the provisions of Paragraph 12 of this Agreement (the “Escrow Account”). Nothing in this Paragraph shall relieve the Mitchell Defendants from their Cooperation obligations as specified in Paragraphs 13-34, which

obligations shall survive the payment of any and all financial consideration by the Mitchell Defendants.

12. Escrow Account.

(a) An escrow account shall be maintained at the nationally chartered Eastern Bank (the “Escrow Account”). Such escrow shall be administered under the Court’s continuing supervision and control.

(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 *custodia legis* of the MDL 2566 Court and shall remain subject to the jurisdiction of that Court, until such time as they are distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) The funds in the Escrow Account may be used as provided herein for reasonable disbursements of expenses associated with providing notice of the settlement (“Class Notice” or “Notice”) to the Settlement Class and administrative (not legal) expenses for maintaining and administering the Settlement Fund, which may be paid without approval from the Court and shall not be refundable to the Mitchell Defendants in the event the Agreement is disapproved, rescinded, or otherwise fails to become effective for any reason. To preserve the cash component assets and otherwise serve the best interests of the Putative class, and with the

approval of the MDL 2566 Court, Notice for the settlement with the Mitchell Defendants shall be combined with Notice of settlement with any or all other defendants. No other disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court. The Mitchell Defendants shall have no further obligation to pay costs of Notice or expense of maintaining and administering the Settlement Fund. Once the Court finally approves the Settlement Agreement the Mitchell Defendants shall have no say in the disposition of the Settlement Amount.

(e) The Escrow Account is intended by the Parties to be treated as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1, and to that end the Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of the Mitchell Defendants, a “relation back election” as described in Treas. Reg. § 1.468B-1(j) shall be made so as 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. At the direction of Settlement Class Counsel, with notice to the Mitchell Defendants and without Court approval, taxes or estimated taxes shall be paid on any income earned on the funds in the Escrow Account, whether or not final approval as defined in Paragraph 45 (“Final Approval”) has occurred. Except as set forth in this Paragraph, TelexFree Class 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.

(f) If this Agreement does not receive Final Approval, including final approval of the Settlement Class as defined in Paragraphs 44(a) and 45, or if the Actions are not certified as class actions for settlement purposes, then amounts left in the Settlement Fund shall be returned to the Mitchell Defendants from the Escrow Account along with any interest accrued thereon as soon as reasonably practicable but no later than thirty (30) calendar days following the Mitchell Defendants' request for same.

**C. Agreement to Cooperate.**

13. The Mitchell Defendants each agree to promptly, timely and fully provide Full Cooperation to TelexFree Class Plaintiffs as set forth below at their own expense except as specifically articulated within this Settlement Agreement.

14. "Cooperation Materials" means:

- a. as to the Mitchell Defendants: (i) any and all information relating to TelexFree and the conduct referred to in or related to MDL 2566; (ii) sworn Affidavit(s) relating to TelexFree and the conduct referred to in or related to MDL 2566; (iii) such follow up granular affidavits as are deemed necessary as the litigation progresses that will address the remaining defendants or issues including TelexFree's unlawful pyramid scheme or related business including businesses that did business with them; (iv) ongoing interviews and cooperation as required by the needs of the litigation; (v) an authorization to retrieve phone or electronic storage

data; and (vi) all documents or other material or information possessed by or under the control of the Mitchell Defendants without a claim of privilege.

b. The full cooperation of the Mitchell Defendants must be provided as needed during the litigation and a failure by Ryan Mitchell to fully cooperate shall constitute a material breach of the terms of this settlement agreement as to Ryan Mitchell and the Mitchell Defendants and trigger the provisions of Paragraph 15; and

c. After the Settlement Agreement is approved by the court, Plaintiffs will assume responsibility for all reasonable travel costs associated with Ryan Mitchell's and the Mitchell Defendants' cooperation.

d. If third parties file claims against the Mitchell Defendants, Plaintiffs will allow the Mitchell Defendants access to material provided by that party during discovery within 90 days.

15. The prompt, timely and full provision of Full Cooperation and the Cooperation Materials are material terms to this Agreement. If the Plaintiffs take the position that a Mitchell Defendant is not cooperating as required under the terms of this Agreement (including but not limited to the withholding of any non-privileged materials, witnesses or information that is required to be provided by the Mitchell Defendants under this Agreement), the Plaintiffs shall provide the non-cooperating Mitchell Defendant(s) with notice of the non-cooperation and a reasonable period to cure of no less than fifteen (15) days. If a Mitchell Defendant fails to cure within 15 days, or to commit that the cure will be complete within (30) days from the date of the notice of non-cooperation notice, the Plaintiffs shall be entitled to request that the Court make a determination whether or not that Mitchell Defendant has failed

to adhere to the terms of this Agreement. Upon a finding by the Court that a Mitchell Defendant has failed to adhere to a material term of the Settlement Agreement after the aforementioned proper notice and an opportunity to cure, the Plaintiffs shall have the right to request that the Court terminate this Settlement Agreement as to the Mitchell Defendants and authorize Plaintiffs to proceed to pursue the full extent of damages against said Mitchell Defendants nunc pro tunc.

16. Full Cooperation is used in accordance with its common meaning and usage and includes, but is not limited to, complying with each obligation described herein in its entirety and providing all records, documents and information and known facts, written or otherwise, that are required to be provided by Mitchell Defendants under this Agreement.

17. The timely provision of full, complete, accurate and truthful information, evidence, and responses are material terms and conditions.

18. Full Cooperation includes the prompt, timely and full production of relevant documents.

19. Relevant Documents shall include all English translations, to the extent they exist. To the extent that electronic documents exist, the Mitchell Defendants shall cooperate with Plaintiffs' efforts to extract the data including metadata from the Mitchells Defendants' and the other released Defendants' electronic devices. The Plaintiffs' shall carry the related costs of extracting the data. The Mitchells Defendants' and the other released Defendants' shall make their electronic devices available to Plaintiffs and their Vendor. Plaintiffs and their

Vendor shall restrict the use the data and documents retrieved from the Plaintiffs and their Vendor from the Mitchells Defendants' and the other released Defendants' to this litigation.

20. The Mitchell Defendants have agreed to complete document dumps of all files related to the Mitchell Defendants' relationship with TelexFree from inception to date and continuing that are required to be provided by them under this Agreement. These transmittals shall not waive the Mitchell Defendant's attorney-client privilege with regard to counsel in the MDL 2566 Action(s).

21. Each Mitchell Defendant shall provide Full Cooperation with TelexFree Class Plaintiffs in discovery in the TelexFree Litigation as follows:

i. Except as already provided to TelexFree Class Plaintiffs, the Mitchell Defendants will produce within one hundred and twenty (120) days of the execution of this Settlement Agreement and Court approval of the Protective Order all Documents as set forth herein in their respective possession, custody or control that were created or that otherwise came into their possession as of the date of inception relating to the allegations and claims in the TelexFree Litigation [which may include documents relating to the persons and entities identified in Attachments A, B and C]. The Documents shall include, but not be limited to, all such Documents that the Mitchell Defendants have produced to the Chapter 11 Trustee for TelexFree or in response to any subpoena issued by any governmental or investigatory agency related to TelexFree's



unlawful pyramid scheme or related business including businesses that did business with them. Additionally, the Mitchell Defendants will produce within one hundred and twenty (120) days of the execution of this Settlement Agreement and Court approval of the Protective Order all Documents as set forth herein in their respective possession, custody or control that were created or that otherwise came into their possession as of January 1, 2010 through to this date, all exchanges with any and all Defendants including their counsel or persons not named but otherwise involved in TelexFree's unlawful pyramid scheme or related business including businesses that did business with them but not named. To the extent that the formal discovery may involve confidential information concerning customers of the Mitchell Defendants, the Mitchell Defendants may move for an appropriate protective order before providing the formal discovery. The formal discovery will be scheduled for a

mutually agreeable time and location, which may be after preliminary court approval.

(c) The Mitchell Defendants submit as part of this Settlement Agreement that the documents they produce, were business records and

1. each record was made and kept in the course of regularly conducted business activity;
2. each record is one that is routinely made and kept in the course of business, in the business's usual practice;
3. each record was made at or near the time of the event that it records; and
4. 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.

(d) The Mitchell Defendants' Cooperation obligations shall include, but are not limited to, the following:

- i) Ryan Mitchell will make himself available in the presence of counsel, for formal or informal interviews;
- ii) Mitchell will also provide a more comprehensive affidavit(s) to TelexFree Class Plaintiffs' counsel, concerning the interaction of persons and entities as relates to TelexFree's unlawful pyramid scheme or related business including businesses that did business with them including but not limited to the persons and entities identified in Attachments A, B and C prior to Preliminary Approval.

- iii) Failure to cooperate hereunder prior to the hearing on Final Approval of the Settlement Agreement will constitute the basis for Plaintiffs to request that the Court terminate this Settlement Agreement against all Mitchell Defendants as will the discovery of untruthfulness.
- iv) In the event that the Court enters an Order terminating the Settlement Agreement as to the Mitchell Defendants prior to Preliminary Approval, the Mitchell Defendants shall not be required to make any portion of the Mitchell Defendants' Settlement Payment hereunder and this Settlement Agreement shall be deemed null and void as to the Mitchell Defendants.
- v) Following execution of the Settlement Agreement and court approval of the Protective Order, Mitchell will provide informal discovery concerning any involvement of any person or entity relating to TelexFree's unlawful pyramid scheme or related business including businesses that did business with them and any and all allegations and claims referenced in the TelexFree Litigation to counsel for the Plaintiffs. The Mitchell informal discovery shall be used only in the TelexFree Litigation. To the extent that the informal discovery may involve confidential information concerning customers of the Mitchell Defendants, all such information may be coded to protect the interests of those customers.

22. Until the safe end of the Pandemic, all interviews may be conducted by ZOOM meeting or some other such provider.

23. The Protective Order shall be filed by TelexFree Class Plaintiffs' Counsel with the consent of the Mitchell Defendants' counsel, in the form attached hereto as Attachment E.

(a) The Protective Order will include a procedure by which, prior to disclosure to the Court, other parties in the TelexFree Litigation, or anyone else other than Plaintiffs' attorneys or experts employed by TelexFree Class Plaintiffs' Counsel or another Mitchell Defendant, Plaintiffs' counsel shall identify to a Mitchell Defendant all documents produced or provided by such Mitchell Defendant that they intend to file in Court or to disclose to anyone other than the persons allowed access by the Protective Order. The Mitchell Defendant who is the subject of a document deemed to disclose personal, confidential and/or privileged information to them shall then have a reasonable period of twenty (20) business days to identify protected personal, confidential and/or privileged information that must be redacted or removed by TelexFree Class Plaintiffs from the documents before the contents of the documents can be used in any way in the TelexFree Litigation or in any other way or that may be filed but only under seal. This requirement shall not relieve Plaintiffs of their own obligation to redact SSNs, protected personal information and full credit card numbers before producing or filing the same.

(b) Pursuant to the above procedure, in the event that the relevant Parties are unable to reach agreement on a document or witness related matter, the producing Mitchell Defendant shall file a motion for a Protective Order within fifteen (15) business days of Plaintiffs' notifying that Mitchell Defendant that they wish to make use of a document or witness to which such Mitchell Defendant objects. The parties shall

simultaneously request that the Court refer this dispute to Magistrate Judge Hennessey for resolution within 30 days of the filing of the Motion for Protective Order.

(c) TelexFree Class Plaintiffs shall comply with the terms of such a Protective Order in filing any documents received from the Mitchell Defendants in the ongoing TelexFree Litigation and in discovery therein.

(d) Any documents previously produced by the Mitchell Defendants to Plaintiffs in connection with this Settlement Agreement or the negotiation of the settlement described herein shall be treated as “Confidential” pursuant to such a Protective Order.

24. Plaintiffs shall be entitled to depose any Mitchell Defendant witness who appears for an informal interview pursuant to Paragraphs 21(b) and 22 above and 25, 26 and 27 below, or who is later identified as possessing evidence unique or personal to them alone for the purpose of preserving that witness’s testimony for trial; provided, however, such a deposition shall be in the city and state of the witness’s residence and otherwise conducted pursuant to the Federal Rules of Civil Procedure. It is understood that any such witness will testify as to their best current recollection.

25. At the request of TelexFree Class Plaintiffs’ Counsel, the Mitchell Defendants will provide one or more witnesses who are competent to testify and who can sign affidavits, upon personal knowledge, regarding Cooperation Materials and other informal or formal discovery responses, for the purpose of signing affidavits in connection with motion practice

by Plaintiffs' counsel. It is understood that any such witness will testify as to their best current recollection.

26. As Plaintiffs' counsel deems it necessary to have the Mitchell Defendants authenticate one or more documents for admission at trial, they shall identify those documents to the Mitchell Defendants' counsel and the Mitchell Defendants shall proffer one or more competent witnesses to appear at a deposition or to otherwise support the admission of the identified documents at trial. It is understood that any such witness will testify as to their best current recollection.

27. The Mitchell Defendants agree to provide one or more witnesses who have personal knowledge of admissible evidence to appear at trial. It is understood that any such witness will testify as to their best current recollection.

28. All Cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided. The Mitchell Defendants have not entered into any Joint Defense Agreement in this matter. All exchanges relating to the execution of this settlement agreement including proffers and meetings between counsel for the Parties were expressly carried out as such and are entitled to the protections of FRE 408. Neither party shall disclose the contents of those discussions, proffers, and exchanges of documents with any person or entity for any reason ever. The Settlement Class Counsel will be provided with correspondence from and to all non-Mitchell Defendants relating to the TelexFree Litigation, excepting therefrom any such correspondence subject to a joint defense privilege, and be invited to participate in any and all communications of whatever nature including informal attorney proffers, witness interviews, and depositions provided by Mitchell Defendants to any non-Mitchell Defendant as related to the subject matter of the Litigation and TelexFree's

Pyramid Scheme and money laundering. Should an impromptu communication take place it is the affirmative obligation of the Mitchell Defendants to immediately terminate it and provide a full disclosure to Plaintiffs' Counsel. Failure of any term within the agreement shall be considered a material breach.

29. From and after the date of this Settlement Agreement, the Mitchell Defendants will provide notice to, and a copy of, any correspondence, interview notice, deposition notice, or subpoena issued by another Defendant and all formal or informal written communication(s) relating to the TelexFree Litigation they receive from another Defendant. The notice and such copies shall be promptly provided upon receipt (to the extent any Mitchell Defendants is aware of such deposition notice or subpoena upon receipt of same). The Mitchell Defendants will provide notice to Plaintiffs' Lead counsel, or his designee, of any oral communication together with a summary of same within 48 hours.

30. Any statements made by the Mitchell Defendants' or their counsel in connection with and/or as part of this settlement shall be governed by Federal Rule of Evidence 408.

31. The obligation of each Mitchell Defendant to provide Cooperation includes providing ongoing assistance, to the extent known by the Mitchell Defendants, to TelexFree Class Plaintiffs to understand any transactional sales and cost data produced and concerning any involvement of any person or entity relating to TelexFree's unlawful pyramid scheme or related business including businesses that did business with them and any and all allegations and claims referenced in the TelexFree Litigation to TelexFree Class Plaintiffs by the Mitchell Defendants during the interviews conducted pursuant to this Agreement, and this assistance shall not be affected by the terms of the Release set forth in this Settlement

Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, the Mitchell Defendants' obligations to provide Full Cooperation under this Agreement shall continue as reasonably necessary to understand any transactional sales and cost data or until otherwise ordered by the Court, or the date that final judgment has been entered in the Action against the last Defendant. This obligation is subject to the time and scope limitations set forth in the Agreement.

32. Other than to enforce the terms of this Agreement, neither the Mitchell Defendants nor TelexFree Class Plaintiffs shall file motions against the other in this Action during the pendency of the Agreement.

33. Notwithstanding the Parties' agreement to inform the Court of the fact of this settlement, the Mitchell Defendants and TelexFree Class Plaintiffs agree not to disclose publicly or to any other person the terms of this Agreement until it is submitted to the Court.

34. The Mitchell Defendants shall use all best efforts to cooperate under the terms of this Agreement. If a Mitchell Defendant, or any current or former employee, officer, director or agent of a Mitchell Defendant fails to cooperate under the terms of this Agreement, and that failure continues after specific notice and a reasonable opportunity to cure of no less than fifteen (15) but no more than thirty (30) days, Settlement Class Counsel shall move for termination under Paragraph 15 of this Settlement Agreement or move for an Order from the Court compelling such cooperation. The non-cooperating witness shall bear all related costs and expenses including attorney fees and costs approved by the Court.

**D. Release, Discharge, and Covenant Not to Sue.**

35. Except as specified in Paragraphs 15, 23, and 32 above and in addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement



becoming final as set out in Paragraph 45 of this Agreement, and in consideration of payment of the Settlement Amount and Cooperation, as specified in Paragraphs 10 and 13-34, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature that Releasors, or each of them, ever had, now have, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating to TelexFree, including without limitation (a) any conduct alleged in the Complaints, (b) any act or omission of the Releasees (or any of them) alleged in the Complaints concerning the conduct of the Mitchell Defendants as relates to the TelexFree Pyramid Scheme, or (c) any conduct alleged and causes of action asserted or that could have been alleged or asserted, in any class action or other complaints filed in the Actions (the “Released Claims”).

36. 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 (i) the Agreement is, for any reason, not finally approved or is rescinded or otherwise fails to become effective or (ii) if the Mitchell Defendants are found by the MDL 2566 Court to have withheld

Cooperation or to have not fully cooperated or to have materially breached the terms of this Settlement Agreement, including being untruthful.

37. In exchange for the release, the Mitchell Defendants shall pay money as set forth herein and provide Full Cooperation to the TelexFree Class Plaintiffs as set forth herein, both of which are considered material terms.

38. In addition to the provisions of Paragraph 35 of this Agreement, Releasors hereby expressly waive and release, solely with respect to the Released Claims and upon this Agreement becoming final, any and all provisions, rights, and benefits, conferred by § 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.  
A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS  
SETTLEMENT WITH THE DEBTOR.

Releasors further expressly waive and release, solely 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.

**E. Approval of this Agreement and Dismissal of Claims against the Mitchell Defendants.**

39. TelexFree Class Plaintiffs and the Mitchell Defendants 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 Rules of

Civil Procedure 23(e) electronically to secure the complete and final dismissal with prejudice of the Actions as to the Releasees only.

40. As soon as practicable after the execution of this Agreement, TelexFree Class Plaintiffs and the Mitchell Defendants shall inform the Court that TelexFree Class Plaintiffs and the Mitchell Defendants have finalized an agreement to settle the Actions and that all actions pertaining to the Mitchell Defendants should be stayed.

41. As promptly as possible the TelexFree Class 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, and proposed form of the electronic notice. No less than five (5) business days before filing, TelexFree Class Plaintiffs

shall submit a draft of the Motion to the Mitchell Defendants for approval consistent with the terms of this Settlement Agreement, which shall not be unreasonably withheld.

42. Following receipt of the approval order, TelexFree Class Plaintiffs shall seek authorization to electronically disseminate notice of the proposed settlement to the Settlement Class (the “Notice Motion”).

43. TelexFree Class Plaintiffs shall seek, and the Mitchell Defendants will not object unreasonably, the entry of an order and final judgment, the text of which TelexFree Class Plaintiffs and the Mitchell Defendants shall mutually agree.

44. 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 6 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 Members 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, is a material term of this agreement. The parties have taken into account TelexFree was an e-based operation.

(d) That Massachusetts law, including the provisions of M.G.L.A. 231B, §4 which bars contribution actions against joint tortfeasors who settle in good faith, without regard to the principles of conflicts of law, shall govern the enforcement and interpretation of the final judgment and any other claims arising under or in any way related to the TelexFree Pyramid Scheme;

(e) As to the Mitchell Defendants a directive that the Actions be dismissed with prejudice and, except as provided for in this Agreement, without costs;

(f) Reservation of exclusive jurisdiction to the United States District Court for the District of Massachusetts over the settlement and this Agreement, including the administration and consummation of this settlement, as well as over the Mitchell Defendants for the duration of their provision of Cooperation pursuant to this Agreement;

(g) Determination under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and a directive that the judgment of dismissal as to the Mitchell Defendants shall be final; and

(h) The terms of this Agreement shall remain binding on the parties following dismissal and that this court shall retain continuing jurisdiction.

45. This Agreement shall become final when (i) the Court has entered a final order certifying the Settlement Class described in Paragraph 6 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and a separate and final judgment dismissing the

Mitchell Defendants from the above-captioned Actions with prejudice as to all Settlement Class Members and without costs other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a separate and final judgment as to the Mitchell Defendants described in (i) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to the Mitchell Defendants 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.

46. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be considered in determining the above-stated times. On the date that TelexFree Class Plaintiffs and the Mitchell Defendants have executed this Agreement, TelexFree Class Plaintiffs and the Mitchell Defendants shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 15, 48 or 56 of this Agreement.

**F. Exclusions**

47. Within thirty (30) business days after the end of the period to request exclusion from the Settlement Class, Settlement Class Counsel shall cause copies of requests for exclusion from the Settlement Class to be provided to counsel for the Mitchell Defendants and placed on file. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, the Mitchell Defendants reserve all their legal rights and defenses.

48. Opt Out. If more than twenty-five percent (25%) of the Settlement Class members, calculated by number of members or by amount of payments to TelexFree, opt out of the settlement with the Mitchell Defendants, then the Mitchell Defendants shall have the

option, in their sole and absolute discretion, to declare that the Settlement Agreement and the Term Sheet are null and void. The Mitchell Defendants shall be deemed to waive their right to declare this Settlement Agreement and the Term Sheet null and void if they fail to notify the TelexFree Class Plaintiffs' counsel of such an election within 10 days of receiving notice that more than 25% of the TelexFree Class Plaintiffs have opted out.

**G. Electronic Notice to The Class**

49. It is agreed to 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 52 below which provides a period during which they shall be afforded the option of presenting the Court with an alternative form of Notice.

50. The Mitchell Defendants shall not be liable for any of the Plaintiffs' costs or expenses of the litigation of 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.

51. If Settlement Class Counsel enter into any other settlements on behalf of a class of TelexFree Class Plaintiffs in the MDL 2566 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.

52. 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 14 days.

**H. The Settlement Fund.**

53. Releasors shall look solely to the Settlement Fund and Full Cooperation for satisfaction against the Releasees of all Released Claims and shall have no other recovery against the Mitchell Defendants or any Releasee.

54. After this Agreement becomes final within the meaning of Paragraph 45, 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, except for the provisions set forth in Paragraphs 14(c), 34, and 50 of this Agreement.

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

55. Subject to Court approval, TelexFree Class 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 Paragraph 45. Incentive awards to any of the TelexFree Class Plaintiffs named above, 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 from the Settlement Fund.

**J. Rescission If this Agreement Is Not Approved or Final Judgment Is Not Entered.**

56. 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 44 and 45 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then the Mitchell Defendants and TelexFree Class Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety except as to the discovery obligations of Mitchell.

57. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraphs 15, 48 or 56. 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.

58. In the event that this Agreement does not become final, or this Agreement otherwise is terminated pursuant to Paragraphs 15, 48 or 56, then this Agreement shall be of no force or effect, and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to the Mitchell

Defendants The Mitchell Defendants expressly reserve all their rights and defenses if this Agreement does not become final.

**K. Miscellaneous.**

59. Nothing in this Agreement shall prevent the TelexFree Class Plaintiffs from using Cooperation Materials produced pursuant to this Agreement against any other Defendant for any purpose in the MDL-2566 Litigation as long as the advance notice provisions in this Settlement Agreement and the Protective Order are complied with.

60. 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 and Cooperation by the Mitchell Defendants.

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

62. This Agreement does not settle or compromise any claim by TelexFree Class 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 TelexFree Class Plaintiffs and the Settlement Class.

63. 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 Class Plaintiffs and Settlement Class Members.

64. Mitchell Defendants' alleged involvement with TelexFree and its alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Actions as a potential basis for liability and damage claims against non-Mitchell Defendants and shall be part of any joint and several liability claims against other current or future Defendants in the Actions or other persons or entities other than the Releasees.

65. The United States District Court for the District of Massachusetts shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by TelexFree Class Plaintiffs and the Mitchell Defendants.

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

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

68. 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. With the exception of the limitations set forth in Paragraphs 22,

28, and 30 of this Agreement, the Mitchell Defendants will not object to complying with any of the other provisions set forth in this Agreement on the basis of jurisdiction.

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

70. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of TelexFree Class Plaintiffs and the Mitchell Defendants. Without limiting the generality of the foregoing, upon final approval of this Agreement each and every covenant and agreement made herein by TelexFree Class Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members, Releasors and Releasees. The Releasees (other than the Mitchell Defendants which are parties 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.

71. This Agreement may be executed in counterparts by TelexFree Class Plaintiffs and the Mitchell Defendants, and a facsimile or imaged signature shall be deemed an original signature for purposes of executing this Agreement.

72. Neither TelexFree Class Plaintiffs nor the Mitchell Defendants 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.

73. 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 facsimile, or 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.

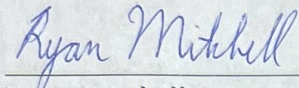
**(intentionally left blank)**

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

Dated: March 14, 2022

THE REPRESENTATIVE PARTIES AGREE TO THE ABOVE TERMS AND CONDITIONS

MITCHELL



Ryan Mitchell

TELEXFREE CLASS PLAINTIFFS

By their attorneys,

Robert J. Bonsignore  
MDL 2566 Interim Lead Counsel

D. Michael Noonan, Esq.  
Shaheen and Gordan  
140 Washington Street  
P.O. Box 977  
Dover, NH 03821  
Telephone: 603-749-5000  
Email: mnoonan@shaheengordan.com  
Fax: 603-749-1838

Ronald A. Dardeno, Esq.  
Law Offices of Frank N. Dardeno  
424 Broadway  
Somerville, MA 02145  
Telephone: 617-666-2600  
Email: rdardeno@dardeno.com

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

Powell Miller  
The Miller Law Firm, PC  
950 West University, Suite 300  
Rochester, Michigan 48307  
Telephone: 248-841-2200  
Email: epm@millerlawpc.com

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

Dated: March 14, 2022

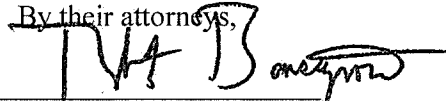
THE REPRESENTATIVE PARTIES AGREE TO THE ABOVE TERMS AND CONDITIONS

MITCHELL

\_\_\_\_\_  
Ryan Mitchell

TELEXFREE CLASS PLAINTIFFS

By their attorneys,



\_\_\_\_\_  
Robert J. Bonsignore  
MDL 2566 Interim Lead Counsel

D. Michael Noonan, Esq.  
Shaheen and Gordan  
140 Washington Street  
P.O. Box 977  
Dover, NH 03821  
Telephone: 603-749-5000  
Email: mnoonan@shaheengordan.com  
Fax: 603-749-1838

Ronald A. Dardeno, Esq.  
Law Offices of Frank N. Dardeno  
424 Broadway  
Somerville, MA 02145  
Telephone: 617-666-2600  
Email: rdardeno@dardeno.com

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

Powell Miller  
The Miller Law Firm, PC  
950 West University, Suite 300  
Rochester, Michigan 48307  
Telephone: 248-841-2200  
Email: epm@millerlawpc.com



**ATTACHMENT A**

**Targeted Identified U.S. Net Winners**

**Net Winner**

Maria Teresa Milagres Neves \

Benjamin Argueta

Alexandro Rocha

Marcos Lana

Luiz Antonio Da Silva

Jose Neto

Eduardo N. Silva

Julio C. Paz

Bruno Graziani

Michel Cristiano Santolin De Arruda

Francisdalva Siqueira

Alexander N. Aurio

Amilcar Lopez

Renato Sacramento

Euzebio Sudre Neto

Julio Silva

Davidson R. Teixeira

Jose Carlos Maciel

Jesus Osuna

Chai Hock Ng

Hugo Alvarado

Ana R. Ramos

Edilene Storck Navarro

Helio Barbosa

Gelalin-3377, LLC

Linda Suzanne Hackett

Soraya Ferreira

Ruddy Abreau

Edson F Souza

Vaming Services

Jorge Antonio Mejia Sequeira

Rodrigo Castro

Marco Almeida

David Reis

Rodrigo Montemor

Ana Santos

Wesley Dias

Timex Research Consulting Inc.

Celso Roberto Silva Filho

Team Global Adverting LLC

LWC Marketing, Inc.  
Bartolo Castillo  
Gaspar Jesus  
Laureano Arellano  
Aaron Ataide  
Luisa E. Lopez  
Marcio Souza Nery  
Debora C. Brasil  
Joelito Souza Caldas Junior  
Rosane Cruz  
United Group USA  
Jean 2004 Enterprise Corp  
Rudmar Gentil  
New Generation Med Supply Inc.  
Daneng Xiong  
Omar Quinonez  
Carlos C. Dejesus  
Carlos Alfaro  
Lusette Balan  
Technovia Inc.  
Faith Sloan  
Mariza S Marinelli  
Nubia R Goulart  
Roberto Nunez  
Gilson Nassar  
Bingjian Pan  
Chen, Vue  
Rodrigo R Breda  
Paulo Giuliano Diogenes De Bessa Rosado  
Jose Miguel Filho  
Bilkish Sunesara  
Lan Lan Ji  
Ezau Soares Ferreira  
Venerando Contreras  
Jap International Network LLC  
Andres Bolivar Estevez  
Walace Augusto Da Silva  
Fabiana Acacia Da Cruz Dos Santos  
Eddie Alberto Duverge  
Global Marketing Strategies  
Carlos Vanterpool  
Devendra Shah  
Pat Jackson  
Silverio Reyes  
Jose Lopez  
Dwayne Jones

Gerald Agnew  
Joseph Pietropaolo  
Jamilson Marcos Conceicao  
Sonya Crosby  
Wesley Nascimento Alves  
Antonio Oliveira  
Ronei Barreto  
Ana Rosa Lopez  
Milagros Adames  
Lm Davar Inc.  
Frantz Balan  
Parrot Bay Homes, Inc.  
Edgar Borelli  
Ricardo Fabin  
Daniel Chavez  
Faustino Torres  
Randy Crosby  
Marcelo Dasilva

**ATTACHMENT B**

List of Defendants – See 5<sup>th</sup> CAC

**ATTACHMENT C**

**Exemplar TelexFree Entities, collectively known as “TelexFree”**

Above and Beyond

TelexFree, Inc.

TelexFree, LLC

TelexFree Financial, Inc.

Telexelectric, LLLP

Telex Mobile, Holdings, Inc.

TelexFree International, Inc.

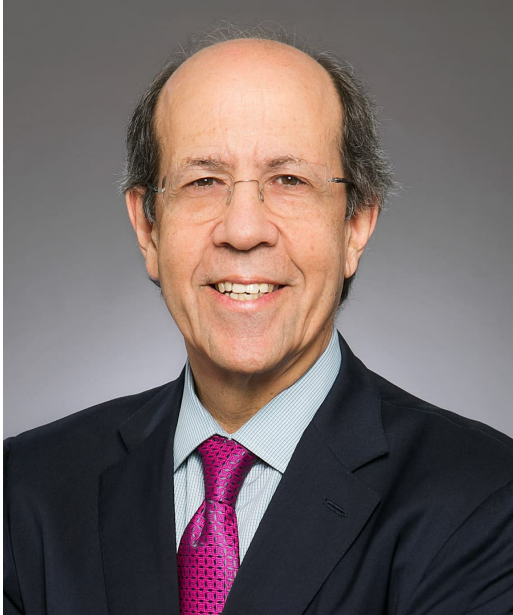
TelexFree, Ltd.

Ympactus Comercial Ltda

P.L.I. TelexFree Rwanda, Ltd.

JC REALTY Co.’s

# **EXHIBIT 5**



## Robert A. Meyer, Esq.

Mediator, Arbitrator, Referee/Special Master, Neutral Evaluator, Hearing Officer, Temporary Judge/Judge Pro Tem

## Contact Information

### Joshua Kroll

1925 Century Park East 14th Floor  
Los Angeles, CA 90067  
T: 310-309-6206  
F: 310-396-7576

**Robert A. Meyer, Esq.** serves as a mediator in complex business litigation pending throughout the United States, including securities and derivative class actions, professional liability lawsuits against accounting and law firms, litigation involving banking and complex financial instruments, cases arising under ERISA, intellectual property disputes, consumer class actions, high-profile employment matters and other commercial disputes.

Mr. Meyer brings the skill set of both an experienced mediator and trial lawyer to his matters. He is a Fellow of the American College of Trial Lawyers and has represented both plaintiffs and defendants in securities litigation, class actions and derivative suits, intellectual property litigation (including copyright, trademark, and right of publicity lawsuits), attorneys' and accountants' professional liability lawsuits, and claims involving breach of contract and commercial fraud. As a mediator for more than 12 years, Mr. Meyer has focused on building trust with clients and counsel. He comes to each session prepared and regularly conducts pre-mediation conference calls

with counsel (and as necessary, with insurers). Mr. Meyer develops creative solutions when negotiations stall. He is persistent with follow-up after mediation sessions, keeping discussions alive, often achieving post-session settlements. Mr. Meyer is ranked on the exclusive "National Mediators" List, *Chambers USA* (2019-2023), where he is recognized for being an "extraordinarily effective [mediator] because he comes well prepared and his views carry a lot of credibility."

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## ADR Experience and Qualifications

- Successfully mediated numerous securities lawsuits, in federal and state courts, involving both Fortune 500 companies and start-ups. Cases include '34 Act class actions and IPO and SPO class actions under the '33 Act
- Mediation of numerous merger-related and derivative cases pending in Delaware Chancery Court and other courts throughout the country
- Mediation of complex antitrust and competition-related lawsuits
- Expertise in settling consumer class actions pending throughout the United States
- Leading mediator of ERISA lawsuits, including class actions, ESOP litigation and claims by the U.S. Department of Labor
- Extensive experience addressing insurance issues and working with insurance towers
- Mediations of complex business disputes across numerous industries, including financial services, technology, oil & gas, pharmaceuticals and medical devices, entertainment, healthcare, manufacturing retail and professional services
- Nearly 40 years of experience as a litigation attorney (for plaintiffs and defendants)
- **Antitrust and Competition Law**
  - Multi-million-dollar antitrust class action involving a door company that allegedly manipulated its stock price while incurring millions of dollars in liability from competing lawsuit
  - Mediation of antitrust claims against health insurers involving alleged conspiracy in restraint of trade
  - *In Re Transpacific Passenger Air Transportation Antitrust Litigation*– \$21 million settlement of class action involving claims that defendant conspired to fix the price of air travel
  - *Pending* \$40 million settlement of class action involving pricing of dairy products
  - Mediation of antitrust claims against credit card issuer
- **Banking, Financial Services and Complex Financial Matters**
  - *21 Institutional Investors/JP Morgan* - \$4.5 billion settlement of mortgage repurchase and servicing claims involving 330 RMBS trusts
  - Settlement of multiple claims by FDIC against former officers and directors of failed banks
  - Settlement of numerous lawsuits (both class actions and individual claims) arising out of purchase of complex instruments, including auction rate securities and mortgage backed securities
- **Consumer Class Actions**
  - Settlement of several class actions against retailers and manufacturers of consumer products, including claims of product defects, pricing misrepresentation and unfair competition



- **Employment Law**
  - Multiple mediations of sexual harassment claims and wrongful termination against high profile individuals and public companies
  - Currently serving as arbitrator in nine related wage-and-hour claims against oil services company
- **Entertainment and Intellectual Property**
  - Settlement of claims arising out of sale of film library
  - Settlement of claims to trademark by three different claimants
  - As attorney, handled profits accounting litigation arising from motion picture and recording agreements; motion picture finance; copyright infringement of video games; and successful defense of claims by Estate of Princess Diana alleging Lanham Act violations and publicity rights; and trial of ownership of Hard Rock Café trademark
- **ERISA and ESOP Litigation**
  - Action by participants in company ESOP, alleging fiduciaries failed to take corrective action in connection with alleged artificial inflation of IBM stock
  - Numerous “church plan” class actions involving claims of non-compliance with ERISA by religiously-affiliated hospitals and health care corporations
  - Multiple lawsuits involving large union health plan, including claims against administrators and claims by and against physician groups
  - *U.S. Department of Labor v. First Bankers Trust*(S.D.N.Y. and D.N.J.) – settlement of three lawsuits against independent fiduciary
  - *Jessop v. Bankers Trust (Mona Vie)*– settlement of parallel class action and DOL claims arising out of ESOP transaction
  - *Hans v. Tharaldson* (D.N.D.) – settlement of lawsuit arising out of sale of shares in private corporation to ESOP
  - *Calvin v. San Antonio Spurs*(W.D. Texas) – settlement of ERISA class action by retired players in the American Basketball Association
  - *Frazier v. Honeywell Pension & Savings Plan* (D. Arizona) – settlement of ERISA class action
  - *In re Merck & Co., Inc. Securities, Derivative & ERISA Litigation*(MDL 1658) (District of New Jersey) – settlement of shareholder “stock drop” lawsuits by participants in ERISA plans
  - *In re Xerox Corp. ERISA Litigation* (District of Connecticut) - settlement of shareholder “stock drop” class actions by participants in retirement plans
- **Life Sciences**
  - Lawsuit by purchaser of drug development division of foreign company seeking purchase price adjustment; defendant allegedly misled purchaser concerning regulatory approvals in China
  - Buyout of founders in company developing technology to expedite new drug approvals
  - Mediation of shareholder class action against foreign drug manufacturer
  - Mediation of shareholder class action involving a genetics testing lab
  - Shareholder class action case against an international producer and distributor of diagnostic platforms and tests
  - Shareholder class action involving a clinical-stage drug development company
- **Mediation of Mass Arbitrations**
  - Mediations of mass arbitrations involving data breaches, wage and hour violations,

biometric scanning and banking disclosures. These matters have involved both pre-filing and filed arbitrations where claims involved both hundreds and thousands of claims.

- **Mergers and Acquisitions/Shareholder Derivative Litigation**

- *In re Good Technology Corporation Stockholder Litigation* (Delaware Chancery Court – \$52 million in settlements of shareholder derivative claims against directors, investment funds and bank arising out of corporate acquisition)
- *In re Sanchez Energy Corp. Derivative Litigation* (Delaware Chancery Court – \$30 million settlement of derivative lawsuit alleging breach of fiduciary duty and claims involving controlling shareholder)
- *In re EZCorp Consulting Agreement Derivative Litigation* (Delaware Chancery Court) – settlement of derivative lawsuit against directors and controlling shareholder
- *3-Sigma Value Financial Opportunities LP v. Jones (Certus)* – \$19.2 million settlement of claims of self-dealing by officers and directors of financial services company
- *Laborers Local #231 Pension Fund v. Websense, Inc.* (San Diego County Superior Court) – settlement of shareholder claims arising out of leveraged buy-out
- *In Re PLX Technology Inc. Stockholder Litigation* – settlement of breach of fiduciary duty claims alleging flawed sales process in connection with merger transaction
- *In re Gardner Denver, Inc. Shareholder Litigation* (Delaware Chancery Court) – \$29 million settlement of shareholder litigation over fairness of merger transaction
- *In re ACS Shareholder Litigation* (Delaware Chancery Court) – settlement of fiduciary duty/shareholder cases arising out of \$6 billion corporate acquisition
- Successful mediations of post-merger adjustment claims

- **Professional Liability**

- Settlement of claims by manager of investment fund against Big Four accounting firm for failing to detect embezzlement of investment manager
- Settlement of malicious prosecutions against law firm and bank
- *Bankers' Bank Northeast et al. v. Berry, Dunn, McNeil & Parker* (D. Maine) – settlement of professional malpractice claims by third party lenders against accounting firm
- *Gascoyne v. Avellino (New York Supreme Court)* – settlement of claims arising out of Madoff-related investment
- *Hoberman v. Aspiriant, LLC* (Los Angeles County Superior Court) – settlement of malpractice action against business management and accounting firms
- *The Westervelt Company v. Bradley Arant Boult Cummings LLP* (Circuit Court, Alabama) – settlement of legal malpractice action involving corporate benefit and compensation plans
- Settlement of claims by withdrawn partner against former law firm; issues involving partnership agreement and valuation of interest in class action litigation
- Served as sole arbitrator and member of arbitration panel in legal malpractice actions

- **Securities Class Actions**

- Mediations of shareholder class actions, in federal and state courts, against pharmaceutical and medical device companies alleging misrepresentations involving the development and sale of new and mature products
- Shareholder dispute involving a Chinese investment company accused of hiding

- illegal lending practices from prospective investors
- *Willis v. Big Lots, Inc.* (S.D. Ohio) – settlement of '34 Act claims
- *Weston v. RCS Capital Corp.* (S.D.N.Y.) – settlement of '34 Act claims
- *In re Ubiquiti Networks, Inc. Securities Litigation* (N.D. Cal.) – settlement of '33 Act claims
- *In re Commvault Systems, Inc. Securities Litigation* (D.N.J.) – settlement of '34 Act claims
- *In re GoPro, Inc. Shareholder Litigation* (San Mateo County Superior Court – settlement of '33 Act claims
- *In re CafePress Inc. Shareholder Litigation* (San Mateo County Superior Court) – settlement of section 11 class action under '33 Act
- *Plymouth County Retirement System v. Model N, Inc.* (San Mateo County Superior Court) – settlement of section 11 class action under '33 Act
- *In re Colonial BancGroup Inc. Securities Litigation* (M.D. Alabama) – settlement of securities class action against directors and officers and outside auditor of failed bank
- *In re Washington Mutual Mortgage Backed Securities Litigation* (W.D. Wash.) – settlement of class action by purchasers of residential mortgage backed securities
- *In re AOL Time Warner Securities Litigation* (Southern District of New York) – counsel to the Special Master; assisted in the mediation of the shareholder class actions (\$2.5 billion) as well as related ERISA, derivative, and opt-out lawsuits
- *Carlson v. Xerox Corporation* (D. Conn.) – settlement (\$750 million) of 21 consolidated shareholder class actions against corporation, management and outside auditor

## Honors, Memberships, and Professional Activities

*Completed Virtual ADR training conducted by the JAMS Institute, the training arm of JAMS.*

- Recognized as a "Best Lawyer in Bet-the-Company Litigation," "Best Lawyer in Commercial Litigation," and "Best Lawyer in Litigation - Securities," *Best Lawyers in America*, 2023
- Named "Best Lawyer," *The Best Lawyers in America*, 2020-2023
- Included on the "National Mediators" List, *Chambers USA*, 2019-2023
- Named "Best Lawyer" in Bet-the-Company Litigation, Commercial Litigation and Securities Litigation, *The Best Lawyers in America*, published by Woodward White, Inc., 2010-2016
- Named "Los Angeles Litigation – Securities Lawyer of the Year," *Best Lawyers*, 2014
- Named in "Southern California Super Lawyers" in Business Litigation, Securities Litigation, and Entertainment & Sports, a *Thomson Reuters* business, 2004-2015; Listed in the Top 100 Southern California Super Lawyers, 2005
- Highest "AV Preeminent (5 out of 5)" Professional Rating, *Martindale-Hubbell Law Directory*
- Fellow, American College of Trial Lawyers
- Member, Central District of California Attorney Settlement Officer Panel
- Board of Directors, Public Counsel (the largest pro bono law office in the United States)
- Board of Directors, Attorneys Insurance Mutual (legal malpractice insurer)
- Frequent lecturer before bar associations and for conferences on various topics including

mediation, legal ethics, and attorney malpractice

## ADR Profiles

- "Trust is Key," *Daily Journal*, ADR Profile, October 13, 2017

## Background and Education

- Partner, Chair of Professional Services Litigation and General Counsel, Loeb & Loeb LLP, 1975-2017
- J.D., Georgetown University Law Center, 1975
- B.A., *cum laude*, American University School of International Service, 1972

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Can't complete call

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# **EXHIBIT 6**



## IT CONSULTANT PROFILE: ARTHUR OLSEN

### BACKGROUND

Specializing in the areas of data analysis, database development, and database administration, Mr. Olsen has over 25 years of professional IT experience. He has a strong background in both Oracle and Microsoft database technologies, with a focus in developing large-scale applications and designing reporting solutions for publicly traded corporations. Additionally, he has had valuable experience in analyzing and processing massive amounts of data for use in litigation support.

### SKILLS

- ✱ Considerable experience compiling, analyzing and processing data in support of corporate and class-action litigation.
- ✱ Extensive training and experience creating functional designs and logical data models.
- ✱ Proficient in the wide range of database development and administration technologies including: Microsoft SQL Server; Oracle RDBMS; and Teradata RDBMS.
- ✱ Relevant experience designing, implementing and maintaining large scale database solutions on Oracle and SQL Server, including both online transaction based systems and data warehouses.
- ✱ Reporting specialist with experience developing custom reporting solutions based on financial systems such as Microsoft Dynamics and Oracle Financials, as well as custom applications.

### AWARDS

- ✱ Award for Operational Excellence | Microsoft  
Recognized for outstanding contribution to the design and implementation of the data warehousing solution for the Microsoft Licensing division.

### CERTIFICATIONS

- ✱ Oracle Certified Professional
- ✱ Certified Oracle Database Administrator

## EXPERIENCE

### Data Expert: Litigation Specialist | retained by various law firms

- Data expert supporting massive multi-district class action litigation, (MDL No. 2036 – *In Re: Checking Account Overdraft Litigation*).
- Processed and analyzed data in support of class action litigation, (*Arnett v. Bank of America, N.A.*, D. Or. Case No. 3:11-CV-01372).
- Processed and analyzed data in support of class action litigation, (*Sheila I. Hofstetter et. al. v. JP Morgan Chase Bank, N.A.*, N.D. Cal. Case No. CV-10-1313 WHA).
- Processed and analyzed data in support of class action litigation, (*Veronica Gutierrez et. al. v. Wells Fargo Bank, N.A.*, N.D. Cal. Case No. 07-05923 WHA), that resulted in a \$203 million class restitution award.

### Database Engineer: Reporting Specialist | under contract at various clients

- Developed a custom Chart of Accounts management solution that integrates with Microsoft Great Plains for small to mid-size companies.
- Designed and implemented several custom financial reporting solutions, including one for a Fortune 500 company, based on Microsoft Business Intelligence, MOSS, and Excel Services.
- Architected a solution for a large corporation that integrated with Oracle Financials and automated the process of calculating inventory reserves.

### Database Administrator, Developer & Litigation Support Specialist | under contract at Hewlett Packard, Cupertino, CA

- Primary Database Administrator responsible for both Oracle and SQL Server support for three divisions, including 20+ applications spread out over a total of 30+ development, test and production servers.
- Lead analyst responsible for compiling, analyzing and processing data from various systems throughout HP for use in litigation support.
- Participated as the principal authority in the composition and implementation of SQL Server database standards across the three divisions, including security models, backup and recovery plans, programming standards, and general database naming conventions.

### Database Engineer | Microsoft Licensing, Inc., Reno, NV

- Participated in the design, implementation and support of an extensive data warehousing solution for Microsoft's licensing division. System included nearly twenty data sources and several thousand end users, including select customers who accessed the system remotely via the Internet.
- Developed numerous DTS packages to pull delta information from various source systems, process and denormalize data and push it to one of several data repositories.
- Created and documented plans for database maintenance, backup and recovery, and high availability.

**Database Engineer** | under contract at Microsoft Corporation, Redmond, WA

- ✿ Lone Oracle database administrator and general Oracle resource for all teams associated with an enterprise level online end user billing system, including: Management, Development, Testing, Production Support and Infrastructure.
- ✿ Primary owner of a 24 x 7 production database that resided on a DEC Alpha failover cluster.
- ✿ Designed replication model using Oracle replication to satisfy extensive reporting requirements.
- ✿ Tuned SQL statements as written by members of the development team. Developed PL/SQL triggers, stored procedures, SQL scripts and NT scripts as needed to enhance applications and to correct problems as discovered.
- ✿ Acted as liaison between Microsoft and Oracle for all technical issues related to the databases, and between Microsoft and Digital for all technical issues related specifically to the Alpha cluster.

## **EDUCATION**

- ✿ Microsoft Internal Training – Redmond, WA | March 2000  
Instructor led SQL Server training, including courses on Database Architecture and Administration, Database Tuning, and Microsoft's TSQL
- ✿ ARIS Education Center – Bellevue, WA | June 1996  
Oracle DBA Program, including courses on Relational Database Design, Database Architecture and Administration, SQL and PL/SQL, Application Tuning, Database Tuning, and Advanced Database Concepts
- ✿ University of Washington – Seattle, WA | June 1989  
BA in Business Administration with a concentration in Finance.



**CASE LIST: ARTHUR OLSEN**

TESTIMONY GIVEN IN DEPOSITION OR AT TRIAL SINCE JANUARY 2016

<b>Case Name</b>	<b>Filing Date</b>	<b>Case Number</b>	<b>Court</b>
<i>Bickerstaff v. SunTrust Bank</i>	7/12/2010	10EV010485H	State Court of Fulton County, Georgia
<i>Corvello v. Wells Fargo Home Mortgage</i>	10/20/2010	4:10-CV-05072-VC	U.S. District Court, Northern District of California
<i>Hawkins, et al. v. First Tennessee Bank</i>	9/6/2011	CT-004085-11	Circuit Court of Shelby County, Tennessee
<i>In re: Fifth Third Early Access Cash Advance Litigation</i>	11/2/2012	1:12-cv-00851-MRB	U.S. District Court, Southern District of Ohio
<i>Hernandez, et al. v. Point Loma Credit Union</i>	6/18/2013	37-2013-00053519-CU-BT-CTL	Superior Court of San Diego County, California
<i>Moss, et al., v. First Premier Bank</i>	9/30/2013	2:13-CV-05438-JFB-GRB	U.S. District Court, Eastern District of New York
<i>Lusnak, et al. v. Bank of America</i>	3/12/2014	2:14-cv-01855-GW	U.S. District Court Central District of California
<i>All-South Subcontractors v. Sunbelt Rentals</i>	8/22/2014	1:14-cv-00124-WLS	U.S. District Court, Middle District of Georgia
<i>Lynch, et al. v. San Diego County Credit Union</i>	3/12/2015	37-2015-00008551-CU-BT-CTL	Superior Court of San Diego County, California
<i>IN RE: TD Bank, N.A. Debit Card Overdraft Fee Litigation</i>	Consolidated 4/15/2015	MDL No. 2613. Civil Action No. 6:15-MN-2613-BHH	U.S. District Court, District of South Carolina

<b>Case Name</b>	<b>Filing Date</b>	<b>Case Number</b>	<b>Court</b>
<i>Hunters Run, et al. v. WCA Waste Corporation</i>	6/17/2015	1:15-cv-151-MW-GRJ	U.S. District Court, Northern District of Florida
<i>Gunter, et al. v. United Federal Credit Union</i>	9/21/2015	3:15-cv-00483-MMD-WGC	U.S. District Court, District of Nevada
<i>Stathakos, et al. v. Columbia Sportswear</i>	10/2/2015	4:15-cv-04543-YGR	U.S. District Court Northern District of California
<i>Morrow, et al. v. Carter's, Inc.</i>	5/6/2016	1:16-cv-01485-ELR	U.S. District Court Northern District of Georgia
<i>Childress, et al. v. JP Morgan Chase</i>	5/31/2016	5:16-cv-00298-BO	U.S. District Court Eastern District of North Carolina
<i>Roberts, et al. v. Capital One, N.A.</i>	6/22/2016	1:16-cv-04841-LGS	U.S. District Court Southern District of New York
<i>Kirkpatrick, et al. v. HomeAway.com</i>	6/23/2016	1:16-cv-00733-LY	U.S. District Court Western District of Texas
<i>Baker, et al., v. City of Florissant</i>	10/31/2016	4:16-cv-1693	U.S. District Court, Eastern District of Missouri
<i>Webb, et al., v. City of Maplewood</i>	11/1/2016	4:16-cv-1703	U.S. District Court, Eastern District of Missouri
<i>Liberty Salad, Inc., et al. v. Groundhog Enterprises</i>	1/17/2017	2:17-cv-00226	U.S. District Court, Eastern District of Pennsylvania
<i>Hoggard, et. al. v. Nationstar Mortgage</i>	1/13/2017	1:17cv00099-TK	U.S. District Court, District of Columbia
<i>Custom Hair Design, et al. v. Central Payment</i>	8/21/2017	8:17-cv-00310	U.S. District Court, District of Nebraska

<b>Case Name</b>	<b>Filing Date</b>	<b>Case Number</b>	<b>Court</b>
<i>Smith, et al. v. Flagstar Bank</i>	8/22/2018	3:18-CV-05131-WHA	U.S. District Court, Northern District of California
<i>Clark v. Bank of America, N.A.</i>	11/29/2018	1:18-cv-3672-SAG	U.S. District Court, District of Maryland
<i>Garcia, et al. v. UMB Bank</i>	1/15/2019	1916-CV01874	Circuit Court of Jackson County, Missouri
<i>Baker, et al. v. State Farm</i>	2/7/2019	4:19-cv-00014-CDL	U.S. District Court, Middle District of Georgia
<i>Blankenship, et al., v. HAPO Community Credit Union</i>	2/20/2019	19-2-00922-03	Superior Court of Washington, County of Benton
<i>Howell, et al., v. Eastman Credit Union</i>	4/25/2019	C42517	Circuit Court for Sullivan County, Tennessee
<i>Walkingstick, et al., v. Simmons Bank</i>	5/22/2019	6:19-cv-03184-RK	U.S. District Court, Western District of Missouri
<i>Garcia v. JSC Federal Credit Union</i>	5/23/2019	2019-35818	District Court of Harris County, Texas
<i>Yarski, et al., v. Knoxville TVA Emp Credit Union</i>	6/13/2019	3-220-19	Circuit Court of Knox County, Tennessee
<i>Carnley v. Conduent Business Services</i>	9/5/2019	5:19-cv-01075-XR	U.S. District Court, Western District of Texas
<i>Nguyen, et al., v. Raymond James &amp; Associates, Inc.</i>	1/14/2020	8:20-cv-195-CEH-AAS	U.S. District Court, Middle District of Florida
<i>Precision Roofing, et al., v. Centerstate Bank</i>	4/6/2020	3:20-cv-00352-BJD-JRK	U.S. District Court, Middle District of Florida

<b>Case Name</b>	<b>Filing Date</b>	<b>Case Number</b>	<b>Court</b>
<i>Wilkins v. Simmons Bank</i>	4/14/2020	3:20-cv-00116-DPM	U.S. District Court, Eastern District of Arkansas
<i>Loguidice v. Gerber Life Insurance Co.</i>	4/24/2020	7:20-CV-03254 (KMK)	U.S. District Court, Southern District of New York
<i>Grant, et al., v. Centerstate Bank</i>	8/18/2020	8:20-cv-1920-MSS-AAS	U.S. District Court, Middle District of Florida
<i>Flores v. Intrust Bank, N.A.</i>	6/1/2021	2021-CV-001724-OT	District Court, Sedgwick County, Kansas
<i>Morrow v. Navy Federal Credit Union</i>	6/15/2021	1:21-cv-722-MSN-LRV	U.S. District Court, Eastern District of Virginia
<i>Perkins v. Vantage Credit Union</i>	8/16/2021	21SL-CC03736	Circuit Court of St. Louis County, State of Missouri
<i>Bulls v. USAA Federal Savings Bank</i>	11/24/2021	5:21-cv-00488-BO	U.S. District Court, Eastern District of North Carolina
<i>Polvay v. FCTI, Inc.</i>	5/25/2022	1:22-cv-04315-JSR	U.S. District Court, Southern District of New York
<i>Adams v. Max Credit Union</i>	5/11/2023	46-cv-2020-900119	Circuit Court of Macon County, Alabama

# **EXHIBIT 7**

**Karyl M. Van Tassel, CPA, CFE**  
Senior Managing Director, Global Investigations



## Summary of Experience

Karyl Van Tassel is a Senior Managing Director in the Houston office of J.S. Held and leads the Global Investigation practice for North America. She has over thirty years of experience providing investigative and dispute services. She works with clients to address compliance procedures, accounting issues, financial damages, forensic accounting, economic and valuation challenges they face in a wide variety of investigation and litigation matters including securities, intellectual property, breach of contract, antitrust, lender liability, fraud, forensic accounting, and wrongful terminations.

## Key Expertise

- Financial & Accounting Investigations
- Anti-Bribery & Corruption Compliance
- Fraud Investigations
- Economic Damages in Commercial Litigation
- Valuation of Businesses
- Forensic Accounting Testimony
- Oil & Gas Industry
- FCPA Monitorships
- Internal Controls

## Education

BS, Business Administration, emphasis in Accounting, University of Northern Colorado, 1985

## Project Geographical Experience

U.S., Canada, South American, Africa, Asia, Europe, Middle East, Australia

## Speaking Engagements

Karyl has presented on many topics including anti-corruption/bribery compliance, training, due diligence, and continuous monitoring. She has also presented on current SEC and DOJ developments, economic damages, valuation issues in various types of matters, and oil and gas economic damages developments.

## Expert/Testifying Experience

Karyl has provided expert witness testimony in both federal and state courts as well as presented written and oral expert witness testimony in alternate dispute resolution procedures including mediation, AAA, and ICC arbitration proceedings.

In investigatory matters, she has presented her findings to several regulatory agencies in the U.S. and internationally, including the Department of Justice, Securities and Exchange Commission, Internal Revenue Service, and the Treasury Department.

## Professional Affiliations/Memberships/Licenses/Training

Certified Public Accountant

Certified Fraud Examiner

American Institute of Certified Public Accountants

Association of Certified Fraud Examiners

## Role at J.S. Held

As the North American Global Investigations leader, Karyl oversees multi-disciplinary teams with a proven track record of working with clients to deliver high-value solutions to their most complex investigatory, litigation and financial challenges. She is often retained by outside counsel, audit committees and/or companies to assist in investigating allegations of accounting and financial improprieties and forensic accounting (including economic damages) in some of the largest cases in the country.

## Contact

333 Clay Street, Suite 3960, Houston, TX 77002 | +1 346-353-5172 (O) | +1 713-504-8778 (M) | kvantassel@jsheld.com

**Karyl M. Van Tassel, CPA, CFE**  
Senior Managing Director, Global Investigations



## Work Experience

Prior to joining J.S. Held, Karyl held various positions at international accounting and consulting firms, including as a partner at PricewaterhouseCoopers (PwC) in the Advisory Forensic Services practice where she was also the Forensic Energy Sector leader based in Houston. Prior to joining PwC, she was a Senior Managing Director in the FTI Consulting Forensic and Litigation Consulting practice. She was a former partner in KPMG's Forensic Dispute Advisory Services practice as well. Early in her career she provided audit and tax services to oil and gas companies, manufacturing facilities, high technology companies, auto dealerships, construction clients and governmental agencies. She has also provided accounting services and investment analysis to financial institutions.

## Select Project Experience

### Commercial Disputes:

Analyzed the economic damages of a drilling equipment company alleging the misappropriation of its intellectual property due to Defendants' recruiting and hiring of its employees. Allegations included misappropriation of client information, competitive analyses, proprietary bid information and other proprietary data. Analyzed the relevant markets for the companies to determine cross-over of potential clients as well as client bid and revenue data to determine actual overlap between customers and whether the Defendant had previous business with the overlapping customers. Analyzed historical market demand and company's financial response to economic and market/competitive changes. Determined variable and step-fixed costs to reduce the lost revenue over the prospective time period.

Rebutted a lost profits analysis related to a case alleging misappropriation of trade secrets, breach of fiduciary duties and tortious interference with a contract in the chemical distribution industry. Analyzed the relevant markets for the Plaintiff and Defendant, and reviewed the asserted lost profit revenue for overlap between the companies, impact of market/economic conditions on actual and prospective revenue, analyzed future market demand and prospective growth rates to determine propriety of lost profits model. Opined that revenues were overstated and expenses understated, resulting in overstated lost profits projected over an unreasonably long time period. Further opined on an alternative economic damages analysis as well as rebuttal of Plaintiff's model.

Analyzed the economic damages of a precast concrete company due to the alleged breach of contract, breach of fiduciary duties and other claims due to certain employees and officer's opening a competing business. Analyzed contracts obtained by newly competing company and over-lap with the legacy precast company's operations. Also analyzed bid sheets and interviewed clients to determine the relevant lost contracts, as well as the lost gross margin on contracts due to the increased competition. Analyzed historical costs to utilize as offsets to contract losses, as well as utilized a market demand analysis over the relevant actual and prospective period to determine the lost profits to the company.

Rebutted the \$100 million lost profits claim made by an equipment provider in the oilfield services industry due to breach of contract and other claims. Analyzed the lost profits asserted and opined amounts were not supported, were speculative and provided no causal link on which to base a claim for damages. Analyzed the contract for the intellectual property exchanged with the equipment to determine the propriety of the manner in which the claim was made based upon the contract. Opined as to the insufficiency of the analysis performed, case evidence contrary to the economic damages assumptions and the speculative nature of the claimed damages based upon supported and peer reviewed economic damage methodologies.

Rebutted the \$48 million economic damages claim made by a value-added reseller (VAR) against a company providing cyber security protection across enterprise organizations, involving breach of contract and other claims. Analyzed the prospective 10-year analysis compared to the VAR's historical results of operations, noting historical negative trends and other data inconsistent with the loss of clients and growth rate asserted. Utilizing supported and peer reviewed methodologies, opined that asserted economic damages analysis did not provide a causal link between the alleged wrongful actions and the economic damages claimed, that the claim was unsupported, speculative, incomplete and should not be relied upon.

Analyzed the payments made under a treaty whereby client ceded obligations under a reinsurance agreement in the variable annuity business. The allegations involved whether the contract was wrongfully terminated if underpayment of premium had not been made by insurance company to reinsurer. The issues involved included obtaining an understanding of the payment terms for the reinsurance coverage over an extended period on reinsurance of the guaranteed minimum death benefit of variable annuity life

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insurance policies. Led a multidisciplinary team working with large volumes of transactions data. Team included data analysis and electronic discovery specialists for the extraction of data over an extended time period with millions of transactions. Also, worked with actuaries to understand variables assumed in their analysis of the book of business and with underwriters to understand policies and procedures. Testified in arbitration that client had not underpaid over the period of time at issue in the matter.

Analyzed the economic damages in a breach of contract and tort matter between client insurance company and a third-party administrator. Analyzed the damages alleged by plaintiff's damage expert and provided rebuttal analysis of damages. Issues in the damage calculation related to valuation of a book of business for dread disease policies and calculation of amounts owed under a contract.

Analyzed the economic damages sustained by an investor in a failed joint venture in a urea plant in Columbia. Opinion included a valuation of the business enterprise as of the date of the alleged breach, involving various analyses of the urea market, the prospective operation results and ability to attract lenders.

Analyzed the lost profits sustained by a petrochemical company related to an alleged breach of a joint venture/operations agreement. Issues related to imbalance in the manufacturing facility due to inappropriate levels of various feedstock to the plant. Inability to maintain contracted levels of product forced inefficient plant operations, decreasing profitability.

Performed various forensic "audits" based upon contract requirements, regulatory requirements, and/or standard industry practices for energy sector clients. These involve preparing direct expert and rebuttal reports and testifying in arbitration and trial. These involve royalty disputes, analysis of joint interest billing (JIB), take or pay contracts, as well as other contract and regulatory issues.

In a breach of contract dispute, analyzed the economic losses sustained by the creator and distributor of personal care products. Analysis included working with a marketing expert to determine effects of demographic differences of consumers on buying habits and its impact on the subject company's profits and long-term viability.

Analyzed the economic damage claim of a producer of accounting software. Provided testimony with regard to the out-of-pocket costs incurred for an internally developed product, which was used to replace the component, which the defendant did not deliver. Also analyzed the lost profit damages under a first to market theory.

Analyzed the lost profits of a used car dealership related to a breach of contract. Analyzed industry margins compared with subject and other market conditions.

Analyzed the economic damages of an exclusive distributor of sporting good products due to product defects. Calculated the economic impact to the distributor over an eight-year period, including lost profits, carrying costs of inventory and other incremental costs. Project necessitated analyzing the performance of over forty products and determining the cause factors impacting the diminution of profits.

Determined the lost profits allegedly sustained by a provider of programming to the hotel industry, related to a breach of the right of first refusal for a satellite transponder. Coordinated industry experts in various areas including hotel/motel management, advertising, consumer demands, economic trends, cable programming and venture capital availability to analyze the feasibility of the programmer's claim.

Calculated the economic damages, including lost profits and incremental expenses, in the largest asbestos case in Colorado for a major suburban shopping mall.

In a contract dispute, determined the value of the restaurant operations included as part of a major Colorado ski resort. Analyzed market trends and restaurant industry comparables for use in the valuation. Also used industry information to benchmark against actual results, to determine management effectiveness.

Analyzed the value of a franchise fast food establishment related to a breach of contract. Engagement included analyzing various offering circulars for franchises to determine relevant value drivers for similar franchises. Analyzed demographic data related to California communities included in franchise agreement.

Analyzed a lost profit claim related to a chain of fast food restaurants in a breach of contract matter. Analyzed store-by-store financial metrics to determine average store results compared to subject stores. Analyzed economic and demographic trends in areas adjacent to subject stores.



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Analyzed damages sustained by a company due to imbalances in production of petro-chemicals. Provided various analyses regarding different economic outcomes based on proposed business settlements between the parties.

For the Eagle Ford shale area, retained by global energy company to analyze contractual agreements with joint venture partners related to thousands of leasehold interests, including costs to obtain leases, drilling and operation costs, royalty payments and tracing cash distribution.

#### **Forensic Accounting and Investigations:**

Involved in various investigatory matters related to compliance with Foreign Corrupt Practices Act (FCPA), including assisting a monitor appointed under a deferred prosecution agreement of a company to analyze accounting and internal control procedures. Prepared work plan for compliance testing and directed site visits, conducted interviews, and assisted in preparing report of findings. As a result of our work, have reported to head of enforcement at the Department of Justice. With the three-year term of the monitorship, have ongoing responsibilities for follow up with the company and oversight of responses to monitor's requests and reported findings, as well as follow up site visits for each year.

Retained by audit committee of a drilling company to investigate issues related to potential FCPA violations. One issue involved potential payments by the company to paramilitary groups in a Latin American country for protection of its rigs against attack. Work involved determining whether payments were made by false invoices from an authorized vendor, the authenticity of the endorsements and bank accounts used for payments to these vendors, and the background investigatory work to determine ultimate recipient offunds.

Additionally, investigated payments made in a West African country to a freight handler and potential governmental authorities. Analyzed invoices and payments, traced cash used to fund payments to the various entities to determine source of the funds, determined completeness through general ledger testing, and compiled findings for reporting to the Department of Justice.

Retained as lead investigator by the Receiver for the \$8 billion Stanford Financial Ponzi scheme in 2009 and continue in that capacity providing expert testimony and forensic analyses. Oversaw team of up to 125 professionals related to forensic accounting, data analytics, economic damages and electronic evidence work streams. Coordinated with the Receiver, SEC, DOJ, IRA, Treasury, and other state governmental agencies. Testified for the SEC in administrative proceedings against brokers.

Retained by the audit committee on matters related to allegations of round trip trading in the energy industry. Assisted in providing multidisciplinary teams to extract data, analyze trades, document risk management practices, and analyze appropriate accounting treatment, including potential restatement. Reports provided to audit committees to assist them in responding to SEC inquiries and investigations.

Retained by company to perform analysis of costs incurred for provider of energy in submitting a claim in the refund of overpayments related to the California power settlements. Reviewed regulatory filings to determine if costs and methodologies complied with FERC guidelines and state mandates. Analyzed source documents as well as documenting the methodology utilized for compiling the information.

Retained by counsel for a special committee of a publicly traded software company to investigate allegations of potential backdating of stock options. Led a team of accounting and electronic evidence personnel to assist in acquiring and analyzing written and electronic information related to the stock option process and individuals involved. Worked extensively with counsel analyzing accounting issues related to measurement dates and the appropriate accounting of stock grants for new hires, new account acquisition, employee ranking, compensation in lieu of cash, and sales incentive plans. Analyzed appropriate accounting treatment and estimate of annual financial impact based upon alternative measurement dates. Reported results to Board of Directors and auditors of the company.

Analyzed historical rates of return for a variety of mutual funds and equity investments to determine the impact of various investing options related to the assets of a trust. Compared actual returns to several indices to determine the difference and the potential damages allegedly incurred by the trust.

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In a securities matter related to the mining industry, analyzed the impact of the accounting and financial disclosures on the stock of a company. Analyzed various returns on equity investments for guideline companies in the industry as well as equity indices to measure impact of announcements and disclosures on the company stock.

Retained by the audit committee of an electronics company to investigate allegations by the SEC related to revenue recognition issues, overstatement of inventory and property, plant and equipment and self-dealing by top level executives. Company eventually settled with the SEC and announced restated financial statements.

Retained by a hospital chain to analyze billings to Medicaid and insurance providers to determine if billings were appropriate based upon contractual provisions and consistent with the patients file and diagnosis. Worked with multidisciplinary team consisting of computer specialists to retrieve data, database specialists to analyze information and medical personnel to review medical files.

Retained to analyze various factors and transactions in matters asserting alter ego claims. Involved in a variety of matters where we provided detailed analyses of corporate governance, financial operational and control factors to determine the extent to which the information would indicate the existence of separate entities.

Involved in analyzing various complex financial and accounting transactions regarding alleged improprieties in a variety of industries, either for internal investigations or litigation.

Analyzed accounting treatment of revenues and related party disclosures for a defendant in a securities matter. Software company allegedly had overstated revenues by inappropriate application of accounting principles and improperly disclosed various related party transactions.

Analyzed the economic damages sustained in a patent infringement matter by an inventor in the sporting goods industry. Detailed analysis including addressing Georgia Pacific factors related to determining a reasonable royalty. Opinion included market royalty rates, royalty rates on other company products, incremental gross profit on patented property, and profit split method.

Analyzed and traced assets between various related and affiliated companies, which involved complex accounting treatments. Traced cash and other assets to offshore companies. Testified in hearing for contempt of court regarding the disposition of certain cash receipts subsequent to the issuance of a temporary restraining order that limited the transfer of assets.

Analyzed the alleged fraudulent activities of two major auto body repair shops for an insurance company. Determined the overall profitability of the auto body repair shops compared to the industry as a whole. From a large production of documents, also determined the availability of financial documents from the body shops, and their relationship to and substantiation of the results of inspections performed on vehicles after the repairs were completed. Assisted the economist in regard to the total business conducted over a 15-year period and extrapolated sample results to the entire population.

Retained by a lender to the defendant in a case involving an alleged Ponzi scheme in the computer hardware industry. Analysis included determining the flow of transactions in the company between actual business operations and alleged fraudulent activities. Utilized large-scale database application to track transactions within the company, to the bank and to the potential investors. Analyzed the companies banking transactions to determine if the bank had allowed a "float" on the account, which the trustee alleged to be an additional loan to the company from the bank. Engagement resulted in settlement with company trustee.

Analyzed the billings of a construction company related to the renovation and partial construction of a residence. Analyzed application of percentage of completion in monthly billings to determine overcharges throughout a three-year construction period.

Analyzed the costs of producing a compact product for shipping hazardous materials. Determined if improper allocations were made based upon cost accounting theories, resulting in overcharging to clients.

#### **Post-Acquisition Disputes:**

In a post-acquisition dispute, analyzed the results of certain long-term contracts obtained as part of a purchase of an international engineering firm. Analyzed the accounting treatment and financial results of the contracts, both pre- and post-acquisition, and the impact on the valuation of the business.

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Analyzed the lost profits due to alleged fraudulent misrepresentations in a purchase of a restaurant chain. Analysis included store-by-store data of prospective revenue and profitability, compared to those actually achieved. Analyzed market and economic trends in regions in which the restaurants operated to determine impact on profitability and sales from issues unrelated to the alleged misrepresentations.

Served as an arbitrator in a dispute involving the closing balance sheet working capital provisions of a purchase agreement. In the medical insurance industry, analyzed the proposed adjustments to working capital including accounts receivable, reserves for losses and contingent liabilities.

Prepared a claim of working capital adjustment related to the closing-balance sheet provisions of a purchase agreement in the computer storage industry. Analysis included inventory accounting, accounts receivable and deferred revenue.

Analyzed the propriety of accounts receivables included in the representations and warranties in the purchase of an environmental services company. Allegations involved intentional overstatement of accounts receivable later determined to be uncollectible by the purchaser.

#### **Intellectual Property:**

Analyzed the economic damages allegedly sustained by companies alleging theft of trade secrets in the energy, high tech manufacturing, and telecommunications sectors. Calculated losses on a variety of bases based upon the circumstances of the case including the Plaintiff's losses, Defendant's profits (unjust enrichment), reasonable royalty and other methods for payment of property misappropriated. Performed detailed analysis of client overlaps, working with industry experts as needed.

Analyzed the economic damages sustained by a construction product manufacturer due to an alleged patent infringement. Also analyzed the lost profits of the defendant company in a counterclaim for breach of contract. Analyzed market potential for the product, impact of non-infringing substitutes, marketing and distribution channels and other factors impacting sales volume and expenses.

On a consulting basis, analyzed the damages of a producer and global marketer of rubber-based products. Allegations included patent infringement trademark infringement, copyright violations, theft of trade secrets and fraud. Claim for damages exceeded \$1 billion. Working for the defendant, analysis included impact of market and distribution channels on lost profits as well as reasonable royalty calculation.

Analyzed the economic damages of one of the largest software companies in the world related to a patent infringement case. Analysis included determining product gross profitability for those alleged to have infringed the property. Also assisted in analyzing the appropriate royalty rate and allocating the revenue to the patented and nonpatented features of the product. Case settled for \$100,000,000 less than claim.

Analyzed the damages in a patent infringement matter related to modular cells for prison units. Engagement included a detailed analysis of a reasonable royalty, based in part upon the Georgia Pacific factors. Reasonable royalty was based upon market derived data, established rates by licensor and licensee, prior licensing history between the parties and analytical analysis of various profit measures.

Analyzed value of patented technology for various biomedical devices held by a company for a potential acquisition. Analyzed the patented and nonpatented products to determine synergies and purchase drivers between the products since only a portion of the portfolio of products was to be purchased. Also considered impact of governmental approval process on value of patented properties that were still in clinical trials. Determined range of values based upon reasonable royalties obtained in the market place and from other analytical measures.

Analyzed the value of patented technology in a laser device used for noninvasive surgeries and dental work for a transfer to an off-shore entity for tax purposes. Engagement included analyzing the profit stream from the laser device as well as market derived rates.

Analyzed the range of reasonable royalty for physicians developing a drug for cancer treatment. Patented property was related to improving efficacy of radiation treatments. Using analytical data and market derived rates, assisted in negotiating license with a biotechnology company.

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Analyzed the economic losses in a matter involving the alleged infringement of trademarks for a line of personal beauty products. Testified for the defendant in deposition regarding the economic damages sustained as well as presented counter claim testimony. Issues included analyzing relevant markets for personal care products, product survey information regarding product characteristics influencing buyers' decisions, internet advertising, and product distribution channels for impact on damage analysis. Case resolved in settlement.

Analyzed the lost profits sustained by the developer of a sporting good product resulting from an alleged trademark infringement. The economic damages were calculated both as the lost profits of the developer of the product based upon its own historical results as well as analyzing the profits of the alleged infringing entity. Also analyzed damages related to the cost of corrective advertising in conjunction with an advertising expert.

Testified for the defendant in an injunction hearing regarding the nature of the advertising revenue as the primary source of income, the overlap in advertising between the "webzine" and magazine and the potential impact on economic damages. Case related to an alleged trademark infringement by a "webzine" of a magazine title.

Analyzed damages of plaintiff related to disparagement of Ameritech Corporation's management of the alarm company post-acquisition. The case related to the alleged infringement of a trademark for a burglar alarm company purchased by the plaintiffs. Analyzed detail records of clients for overlap caused by clients subscribing to the defendant company due to disparaging information supplied to Ameritech clients in violation of a non-compete agreement as well as infringing use of trademarks.

Performed royalty examinations for a multinational software company. Supervised multilingual and disciplinary teams to perform royal "audits" in several countries and domestically. Developed regular maintenance program for ongoing audits of contracts on a scheduled basis. Resulted in recovery in excess of \$10,000,000 and assisted in favorable renegotiations with joint venture partners.

Performed a royalty examination in a dispute between a software producer and distributor. Calculated the economic damages allegedly sustained by the software producer due to the alleged under reporting of software sales. Testified in arbitration regarding the results of our findings.

Performed royalty examinations of five different licensees under contract "audit" rights for a developer of software. Worked with clients and licensees to resolve disputes, recovery of more than \$1,500,000, and renegotiation of contracts.

#### **Insurance Claims:**

Analyzed the claim by a hospital related to the flooding of the facility. Engagement involved detailed analysis of the impacted departments and the financial impact of substituting less profitable services for higher margin services due to inability to provide full service medical operations. Also analyzed specific incremental staff costs incurred during the flood and cleanup period.

Analyzed and assisted in preparing the claim of a large food manufacturer related to an explosion and fire in its primary manufacturing facility. Claim exceeded \$100 million, which was settled expeditiously.

Assisted risk management officer in analyzing a claim related to a fire at a resort community. Claim involved business interruption for a variety of resort functions as well as property losses.

#### **Construction Industry:**

Retained by the audit committee of Fortune 500 company to analyze historical accounting issues related to accounting for long-term construction contracts. Issued report and had meetings with the SEC to discuss findings and accounting issues.

Analyzed the lost profits to a large engineering firm related to the inability to complete the construction of a polystyrene plant in the Middle East. Analysis involved analyzing the percentage of completion methods and determining profit at time of invasion, compared to projected profit had the event not occurred. Claim was submitted to the neutral arbitrators in Switzerland.

Provided rebuttal analysis of a \$20 million claim for lost profits in a construction claim for an Arkansas highway project. Addressed the issues of causation as well as analyzing the underlying assumptions of the lost profit claim. The indirect claim for lost profits was dismissed on summary judgment, in part based upon our financial analysis of the causation issue.

**Karyl M. Van Tassel, CPA, CFE**  
Senior Managing Director, Global Investigations



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## **Speaking Engagements**

Valuation Intricacies  
Financial Statement Analysis and Presenting Financial Data at Trial  
Use of Economic Experts in Commercial Litigation and Case Management  
Valuation Issues in Fraudulent Conveyance Matters  
Valuation in a Cram Down Bankruptcy Proceeding  
Valuation of Businesses in Mergers and Acquisitions  
Valuation of Intellectual Property  
Valuation Issues for Biotechnology  
FCPA/Anti-Corruption Basic Training  
FCPA/Anti-Corruption Due Diligence  
Current SEC/DOJ Recent Developments  
Oil and Gas Developments in Economic Damages  
Fraud and Anti-Corruption Issues in M & A Transactions

## **Publications**

The Practitioner's Guide to Global Investigations: Forensic Accounting Skills in Investigations (co-author)

**Karyl M. Van Tassel, CPA, CFE**  
Senior Managing Director, Global Investigations



## TESTIMONY HISTORY

### Deposition Testimony

Rodney Montello, et al v. Alcoa Inc., Reynolds Metals Company, Bon L. Campo and Tredegar

Highland Crusader Offshore Partners, L.P. et al v. Motient Corporation

Fair Isaac Corporation v. Texas Mutual Insurance Company

RCA Holdings, Ltd., et al. v. Commonwealth Insurance Company, et al.

Arthur R. Hausmann; Arthus R. Hausmann P.C. Defined Benefit Pension Plan; and Arthur R. Hausmann P.C. Defined Benefit Pension Plan Trust v. Union Bank of California, N.A. Investment Services LLC; The Hartford Life and Annuity Insurance Company; Christopher Montagna; William Fortner; Econocmic Concepts, Inc. ("ECI") and DOES 1-100

Ralph S. Janvey, in his Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al. v. James R. Alguire, et al. 2010

Laura Pendergest-Holt, et al. v. Certain Underwriters at Lloyd's of London, et al.

Ralph S. Janvey, in his Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al. v. James R. Alguire, et al. 2011

In re Stanford International Bank, Ltd. Debtor in a Foreign Proceeding

Ralph S. Janvey, in his Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al. v. Dillon Gage Inc. of Dallas and Dillon Gage Inc. 2012

Ralph S. Janvey, in his Capacity as Court-Appointed receiver for the Stanford International Bank Ltd., et al. and the Official Stanford Investors Committee v. Peter F. Romero

Ralph S Janvey, In his capacity as court-appointed receiver for the Stanford International Bank, LTD. ET AL., and the official Stanford Investors Committee, Plaintiffs, VS. the University of Miami

Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al v Dillon Gage Inc. of Dallas and Dillon Gage Inc. 2015

Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al. and the Official Stanford Investors Committee v. Adams & Reese, LLP, et al.

Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al. v. James R. Alguire, et al. 2015

Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al v. GMAG LLC, Magness Securities LLC, and Gary D. Magness, Individually and His Capacity as Trustee of the Gary D. Magness Irrevocable Trust 2016

Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al. v. Daniel T. Bogar, et al. Tech Pharmacy Services, LLC v. Alixa Rx LLC and Golden Gate National Senior Care LLC d/b/a Golden Living Centers

Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford Receivership Estate, and the Official Stanford Investors Committee v. Proskauer Rose, LLP, and Thomas V. Sjoblom

Peggy Roif Rotstain, et al. and the Official Stanford Investors Committee v. Trustmark National Bank, et al.

4-S Manufacturing Texas, LLC (successor to the claims of East Texas Precast Co., Ltd. and Gulf Coast Precast Erectors, LLC), Stites Management, L.L.C., Dale Stites and Michael T. Stites v. Harlow Management, L.L.C and Manaki Capital Investments, LLC, and Robert Diakiw, Richard Schultz, Tom Haines, Hussein Sinjari, Pat Cooledge, Jeronimo Trejo, Helen Huereca, Legacy Precast, LLC and Legacy Precast Administrative Group, LLC

Ralph S. Janvey, in his capacity as court-appointed receiver for the Stanford International Bank, Ltd., et al. v. James R. Alguire, et al. 2018

**Karyl M. Van Tassel, CPA, CFE**  
Senior Managing Director, Global Investigations



Ralph S. Janvey, in his capacity as court-appointed receiver for the Stanford International Bank, Ltd., et al. v. James R. Alguire, et al. 2019

Ralph S. Janvey, in his capacity as court-appointed receiver for the Stanford Receivership Estate, et al. v. Greenberg Traurig, LLP, et al.

Peggy Roif Rotstain, et al. v. Trustmark National Bank, et al.

Peggy Roif Rotstain, et al. v. Trustmark National Bank, et al. 2

Sentry Wellhead Systems, LLC, v. Bestway Oilfield, Inc.

American General Life Insurance Company, American Home Assurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., and the United States Life Insurance Company of The City of New York, v. Schahin Petr leo E G s S.A., Schahin li Finance Company (Spv) Limited, Milton Schahin, Salim Schahin, Fernando Schahin, and Nomura Securities International, Inc.,

Cox Operating, L.L.C v. Wells Fargo Bank, N.A.

CrowdStrike, Inc. v. DFND Security, Inc.

Mabvax v. Barry Honig, et al.

American Plant Food v. BASF and NeuAg LLC

## **Trial & Arbitration Testimony**

SOURCECORP, Incorporated, SOURCECORP DMS, Inc and Information Management Services, Inc. v. Steve Shill, Rita Shill, Robin Meyer, and Mark Meyer

David Graben and Frank Strickler v. Western Reserve Life Assurance Company of Ohio; Intersecurities, Inc., and Timothy Hutton

Bencor, Inc. v. The Variable Annuity Life Insurance Company

Gascoigne Melotte Holdings LLC (U.S.A.), Boumatic LLC (U.S.A.), Boumatic-Melotte SPRL (Belgium) v. Punch Technix N.V. (The Netherlands), et al

Securities and Exchange Commission v Daniel Bogar, Bernerd E. Young, and Jason T. Green

Ralph S. Janvey, in his Capacity as Court-Appointed receiver for the Stanford International Bank LTD., ET AL. and the Official Stanford Investors Committee vs. Peter F Romero

Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al v Dillon Gage Inc. of Dallas and Dillon Gage Inc.

Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., v. Patricia Maldonado

Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Ltd., et al v. GMAG LLC, Magness Securities LLC, and Gary D. Magness, Individually and His Capacity as Trustee of the Gary D. Magness Irrevocable Trust

Tech Pharmacy Services, LLC v. Alixa Rx LLC and Golden Gate National Senior Care LLC d/b/a Golden Living Centers

4-S Manufacturing Texas, LLC (successor to the claims of East Texas Precast Co., Ltd. and Gulf Coast Precast Erectors, LLC), Stites Management, L.L.C., Dale Stites and Michael T. Stites v. Harlow Management, L.L.C and Manaki Capital Investments, LLC, and Robert Diakiw, Richard Schultz, Tom Haines, Hussein Sinjari, Pat Cooledge, Jeronimo Trejo, Helen Huereca, Legacy Precast, LLC and Legacy Precast Administrative Group, LLC

BM-Bank JSC (f/k/a BM-Bank PJSC and Bank of Moscow) v. Marker Craig LLC and Marker LLC

Lotte Chemical USA Corporation, a Delaware Corporation and Subsidiary of Lotte Chemical Corporation of the Republic of Korea v. Eagle Us 2 LLC, a Delaware Limited Liability Company and Indirect Subsidiary of Westlake Chemical Corporation

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Senior Managing Director, Global Investigations



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CrowdStrike, Inc. v. DFND Security, Inc.

GMS Industrial Supply, Inc. v. G&S Supply, LLC, Westly L. Greer, Sabrina Greer, Greer Group, LLC, Gregory K. Spires, County Roads, LLC, Thomas Hayes, Gregory S. Spires, Mike Welton, HMC Supply, LLC, and Wartech Industries, LLC

WCW Houston Properties, LLC (as assigned from Architectural Services International, Inc) v. Texas REIT LLC, et al.