

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

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In re:)	Chapter 11
TELEXFREE, INC. <i>ET AL.</i> ,)	Case No. 14-40987-MSH
)	14-40988-MSH-14-40989-
Debtors.)	MSH
)	(Jointly administered)-MSH
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WALDEMARA MARTIN <i>ET AL.</i> , PUTATIVE)	
CLAIMS REPRESENTATIVES AND THOSE)	
SIMILARLY SITUATED,)	
)	Adversary Proceeding
Plaintiffs,)	No. 14-4044
)	
v.)	
)	
TELEXFREE, INC. <i>ET AL.</i> ,)	
)	
Defendants.)	
<hr/>)
ANTHONY CELLUCCI <i>ET AL.</i> ,)	
PUTATIVE CLASS)	
REPRESENTATIVES AND THOSE)	
SIMILARLY SITUATED,)	Adversary Proceeding
)	No. 14-4057
Plaintiffs,)	
)	
v.)	
)	
TELEXFREE, INC. <i>ET AL.</i> ,)	
)	
Defendants.)	
<hr/>)
PAULO EDUARDO FERRARI, PUTATIVE)	
CLAIMS REPRESENTATIVES ON BEHALF OF)	
HIMSELF AND THOSE SIMILARLY SITUATED)	
<i>ET AL.</i> ,)	Adversary Proceeding
)	No. 14-4080
Plaintiffs,)	
)	
v.)	
)	
TELEXFREE, INC. <i>ET AL.</i> ,)	
)	
Defendants.)	
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**JOINT RESPONSE OF CERTAIN INTERESTED
PARTIES TO ORDER TO FILE STATUS REPORTS**

Bank of America, N.A., TD Bank, N.A., Wells Fargo Bank, N.A., Fidelity Co-Operative Bank, Base Commerce, LLC, John Hughes, and ProPay, Inc. (collectively, “Certain Interested Parties”)¹ submit this Joint Response to this Court’s Order to File Status Reports. Adv. No., 14-4057, Dkt. No. 290.² In that Order, the Court directed Plaintiffs in the above-captioned proceedings to file a “status report as to any actions taken by the Judicial Panel on Multidistrict Litigation with respect to these proceedings and whether a stay of these proceedings should continue.” *Id.* at 2. The Court permitted any other party to file a status report by June 17, 2016. *Id.*

Accordingly, Certain Interested Parties file this Joint Response and, for the reasons stated herein and in accordance with the Transfer Order of the Judicial Panel on Multidistrict Litigation (“JPML”) dated October 21, 2014, request that this Court administratively close the following Adversary Proceedings, each of which has been superseded by the matter entitled *In re: TelexFree Securities Litigation*, Docket No. 14-md-02566-TSH, pending before the Honorable Timothy S. Hillman of the United States District Court for the District of Massachusetts: *Cellucci et al. v. TelexFree, Inc. et al.*, Adv. No. 14-04057 (“*Cellucci*”); *Martin et al. v. TelexFree, Inc. et al.*, Adv. No. 14-04044 (“*Martin*”); and *Ferrari et al. v. TelexFree, Inc. et al.*, Adv. No. 14-04080 (“*Ferrari*”) (collectively, the “Adversary Proceedings”). As discussed below, this request is required by the proceedings before the JPML and Judge Hillman.

¹ Synovus Bank and PricewaterhouseCoopers LLP also support this Joint Response.

² This Joint Response is an administrative submission only. It simply seeks compliance with Judge Hillman’s CMO No. 4, and does not constitute consent to the jurisdiction of this Court to adjudicate any matter. Further, Certain Interested Parties do not consent to entry of final orders by this Court on any matter, nor do they waive their rights to have the reference withdrawn in any contested matter or adversary proceeding subject to mandatory or discretionary withdrawal.

Procedural Background

On August 27, 2014, this Court, granting the Trustee's Motion to Stay (Adv. No., 14-4057, Dkt. No. 247), stayed the *Cellucci* and *Martin* cases. Adv. No., 14-4057, Dkt. No. 273. The Court found that a stay would promote judicial economy because a motion to transfer and consolidate six related actions is currently pending before the JPML. *Id.* at 2. Accordingly, the Court ordered the Plaintiffs in the *Cellucci* and *Martin* cases to "file a statement as to actions taken" by the JPML and a copy of any order or decision issued by the Panel within seven days thereof.³ *Id.* at 3. As to the third adversary proceeding, *Ferrari*, the Court ordered Plaintiffs to "file a statement with the court . . . as to whether the actions currently pending before the Judicial Panel on Multidistrict Litigation are related" to their claims, and whether *Ferrari* therefore "should also be stayed." *Id.*

Approximately two weeks later, on September 11, 2014, the Plaintiffs in the *Ferrari* case responded to the Court's inquiry in the affirmative, explaining that: (i) the actions pending before the JPML are "related to the claims asserted in this adversary proceeding"; (ii) these actions "arise[] out of the same transaction," Plaintiffs are "members of the same class of victims and the allegations[,] and [the] causes of action are essentially the same"; and (iii) it is thus "in the interest of justice and judicial economy for this action to be allowed to proceed in the District Court and be consolidated with the other related actions" Adv. No. 14-4080, Dkt. No. 34, at 1. On the same date they filed the foregoing response, the *Ferrari* Plaintiffs asked the District Court to withdraw the reference "based on the same grounds" set forth in their response—*i.e.*, to "join in the Multidistrict Litigation." *Id.* at 2; *see* Adv. No. 14-4080, Dkt. No. 41.

On October 21, 2014, the JPML transferred *Cellucci*, *Martin*, and four other related cases arising out of the TelexFree Ponzi scheme to Judge Hillman. Case No. 14-md-2566, Dkt. No. 84, at 1 (Ex. A). In so doing, the Panel stressed that all six transferred actions "involve common

³ After the JPML transferred the TelexFree cases on October 21, 2014, Plaintiffs did not file the requisite statement with this Court.

questions of fact,” Judge Hillman is already “familiar with the factual and legal issues presented by these actions,” and “centralization in the District of Massachusetts will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.” *Id.* Those and other cases were ultimately consolidated under the caption *In re: TelexFree Securities Litigation*, Docket No. 14-md-02566-TSH.

On March 10, 2015, Judge Hillman entered Case Management Order (“CMO”) No. 4, further consolidating and streamlining the various TelexFree cases. *See* Case No. 14-md-2566, Dkt. No. 110 (Ex. B). To that end, Judge Hillman authorized Plaintiffs to file a “master Consolidated Complaint,” which “shall be the *operative pleading superseding the complaints* filed in the following actions: . . . *Cellucci, et al., v. TelexFree, Inc., et al.*, 14-40093, D. Mass (D. Mass.) (Bankr. Adv. No. 14-04057 (Bankr. D. Mass.)); *Ferrari v. TelexFree, Inc., et al.*, 14-40144-TSH (D. Mass.) (Bankr. Adv. No. 14-4080 (Bankr. D. Mass.)); *Martin, et al. v. TelexFree, Inc., et al.*, 14-40095-TSH (D. Mass.) (Bankr. Adv. No. 14-4044 (Bankr. D. Mass.)) (collectively, the ‘TelexFree Actions’).” Ex. B, ¶¶ 2-3 (emphasis added).

To avoid duplicative proceedings, Judge Hillman further ordered that, “Upon the filing of the Consolidated Complaint, all TelexFree Actions shall be *administratively closed* by the Clerk of Court and all claims asserted therein shall be *deemed waived*.” *Id.*, ¶ 4 (emphasis added). Consistent with Judge Hillman’s directives, upon Plaintiffs’ filing of their First Consolidated Amended Complaint on March 31, 2015, the District Court Clerk closed *Cellucci, Martin*, and *Ferrari* on May 1, 2015.⁴

⁴ On January 15, 2016, Judge Hillman withdrew the reference as to a *different* adversary proceeding, Adv. No. 15-4055, Dkt. No. 11. *See Darr et al. v. Dos Santos et al.*, Case No. 15-13614. Due to an apparent docketing error, however, Judge Hillman’s January 15, 2016, order was incorrectly filed on the dockets of three other matters— *Ferrari, Cellucci*, and *Martin*. *See* Case No. 14-40144, Dkt. No. 20; Case No. 14-40093, Dkt. No. 45; Case No. 14-40095, Dkt. No. 32.

Relief Requested

Because Plaintiffs' "master Consolidated Complaint" expressly "supersed[es]" the complaints in *Cellucci*, *Martin*, and *Ferrari* under the terms of CMO No. 4, because Judge Hillman explicitly deemed waived all claims asserted in those proceedings, and because those actions were closed on their respective District Court dockets over one year ago in accordance with CMO No. 4, this Court should administratively close the *Celluci*, *Martin* and *Ferrari* Adversary Proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, S. Elaine McChesney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on June 16, 2016.

/s/ S. Elaine McChesney

EXHIBIT A

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

IN RE: TELEXFREE SECURITIES LITIGATION

MDL No. 2566

TRANSFER ORDER

Before the Panel:* Pursuant to 28 U.S.C. § 1407, plaintiffs in one District of Massachusetts action move to centralize this litigation in that district. The litigation consists of six actions pending in three districts, as listed on Schedule A.¹ Since the filing of the motion, the Panel has been notified of six related actions.² Plaintiffs in all actions and all responding defendants³ support or do not oppose centralization in the District of Massachusetts.

On the basis of the papers filed and the hearing session held, we find that the actions listed on Schedule A involve common questions of fact, and that centralization in the District of Massachusetts will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. These actions share factual questions relating to the allegation that the TelexFree companies⁴ operated a Ponzi pyramid scheme involving the recruitment of investors in marketing TelexFree's telephone service plan and that defendants directly participated in or aided and abetted the alleged scheme. Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings, especially with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary.

Weighing all factors, we are persuaded that the District of Massachusetts is the most appropriate location for this litigation. The events giving rise to the alleged claims primarily occurred in Massachusetts, which is the principal place of business of the TelexFree companies. The federal and state enforcement actions against TelexFree and affiliated individuals are pending there. Thus,

* Judge Ellen Segal Huvelle took no part in the decision of this matter.

¹ The *Ferguson* action listed on Schedule A originally was pending in the Eastern District of North Carolina, but recently was transferred to the District of Massachusetts.

² These and any other related actions are potential tag-along actions. *See* Panel Rules 1.1(h), 7.1 and 7.2.

³ The responding defendants are Citizens Bank of Massachusetts; Citizens Financial Group, Inc.; Fidelity Co-Operative Bank; Fidelity Bank; Middlesex Savings Bank; TD Bank, N.A.; Wells Fargo & Company; Wells Fargo Bank, N.A.; Bank of America Corporation; Bank of America, N.A.; Propay, Inc.; Propay.com; Waddell & Reed Financial, Inc.; Waddell & Reed, Inc.; Global Payroll Gateway, Inc.; and Base Commerce, LLC.

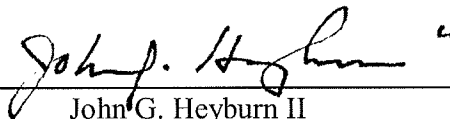
⁴ The TelexFree companies are TelexFree, Inc.; TelexFree, LLC; and TelexFree Financial, Inc.

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the primary witnesses and other evidence likely will be located in Massachusetts. Additionally, transfer of actions to this district will facilitate coordination with the TelexFree bankruptcy cases, which also are pending in this district. The Honorable Timothy S. Hillman, to whom we assign this litigation, presides over the related criminal action and thus is familiar with the factual and legal issues presented by these actions. We are confident he will steer this litigation on a prudent course.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the District of Massachusetts are transferred to the District of Massachusetts and, with the consent of that court, assigned to the Honorable Timothy S. Hillman for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Sarah S. Vance

IN RE: TELEXFREE SECURITIES LITIGATION

MDL No. 2566

SCHEDULE A

Southern District of Florida

GUEVARA v. MERRILL, ET AL., C.A. No. 1:14-22405

Northern District of Georgia

COOK v. TELEXELECTRIC, LLLP, ET AL., C.A. No. 2:14-00134

District of Massachusetts

GITHERE, ET AL. v. TELEXELECTRIC, LLLP, ET AL., C.A. No. 1:14-12825

MARTIN, ET AL. v. TELEXFREE, INC., ET AL., Bky. Adv. No. 4:14-04044

CELLUCCI, ET AL. v. TELEXFREE, INC., ET AL., Bky. Adv. No. 4:14-04057

FERGUSON, ET AL. v. TELEXELECTRIC, LLLP, ET AL., C.A. No. 4:14-40138

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: TELEXFREE SECURITIES
LITIGATION

This Document Relates To:

All Cases

MDL No. 4:14-md-2566-TSH

MDL Case Management Order No. 4

March 10, 2015

Hillman, D.J.

1. The Certain Defendants' Motion To Consolidate, To Set A Schedule For Filing A Consolidated Amended Complaint, And For Related Procedural Relief (Docket No. 85) and Motion of Certain Defendants To Approve [Proposed] Case Management Order No. 3 (Docket No. 67) are denied.

2. Plaintiffs Interim Lead Counsel and Executive Committee have represented to the Court that they intend to file a master Consolidated Complaint. Leave is hereby granted to file a master Consolidated Complaint. That pleading is to be filed in the MDL master file under docket No. 4:14-md-2566-TSH. The Consolidated Complaint shall be filed on or before March 31, 2015.

3. The Consolidated Complaint shall be the operative pleading superseding the complaints filed in the following actions: *Githere, et al. v. TelexElectric, LLLP, et al.*, No. 14-

12825-TSH (D.Mass); *Cook v. Telexelectric, LLLP, et al.*, No. 14-40154-TSH (D.Mass); *Ferguson, et al., v. TelexElectric, LLLP, et al.*, No. 14-40138-TSH (D.Mass); *Guevara v. Merrill, et al.*, No. 14-40156-TSH (D.Mass); *Magalhaes, v. TelexFree, Inc., et al.*, No. 14-12437-TSH (D. Mass.); *Cellucci, et al., v. TelexFree, Inc., et al.*, 14-40093-D.Mass (D. Mass.)(Bankr. Adv. No. 14-04057 (Bankr. D. Mass.)); *Ferrari v. TelexFree, Inc., et al.*, 14-40144-TSH (D. Mass.)(Bankr. Adv. No. 14-4080 (Bankr. D. Mass.)); *Martin, et al. v. TelexFree, Inc., et al.*, 14-40095-TSH (D.Mass.)(Bankr. Adv. No. 14-04044 (Bankr. D. Mass.)); and *Abdelgadir, et al. v. TelexElectric, LLLP et al.*, 15-CV-40028 (D.Mass) (collectively, the “TelexFree Actions”).

4. Upon the filing of the Consolidated Complaint, all TelexFree Actions shall be administratively closed by the Clerk of the Court and all claims asserted there in shall be deemed waived.

5. *Griffith v. Merrill., et al.*, 14-12058, which has not been identified as a TelexFree Action, will remain an independent action.

6. The document titled “Plaintiffs First Consolidated Amended Complaint,” filed on November 23, 2014, in *In Re TelexFree Securities Litigation*, 14-MD-02566, without a civil action number and which was filed without leave of court, is hereby stricken.

7. Any Defendant that has been served, or has agreed to accept service, in any of the TelexFree Actions shall answer or otherwise respond to the Consolidated Complaint within thirty (30) days of its filing. Any Defendant that has not been served, or has not agreed to accept service, in any of the TelexFree Actions shall be served within forty-five (45) days of the filing of the Consolidated Complaint and such Defendants shall answer or otherwise respond to the Consolidated Complaint within thirty (30) days of service.

8. Within sixty (60) days of the filing of the Consolidated Complaint, the parties shall file a joint proposed scheduling order which includes the holding of a Rule 26(f) conference and the serving of initial disclosures pursuant to Fed.R.Civ.P. 26(a)(1). This provision shall be stayed as to any Defendant that files a motion to dismiss pending final resolution of such motion.

9. The Defendants are not obligated to make any initial disclosures or participate in a Rule 26(f) conference prior to the Court adopting the scheduling order referred to in the preceding paragraph. If the Consolidated Complaint is not filed in accordance with this Order, then on or before April 17, 2015, Defendants may file motions dismiss the individual complaints in which they are named.

So Ordered.

/s/ Timothy S. Hillman
Timothy S. Hillman
United States District Judge