Docket #0040 Date Filed: 8/5/2016

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In re:	)	Chapter 11
	)	
	)	Case No. 14-40987
TELEXFREE LLC., et al.,[1]	)	
	)	Jointly Administered
Debtors.	)	
	)	
	)	
STEPHEN B. DARR AS TRUSTEE OF THE ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC.,	)	
	)	Adversary Proceeding No. 15-04055
Plaintiffs,	)	
	)	
v.	)	
	)	
RITA DOS SANTOS, INDIVIDUALLY AND AS PUTATIVE CLASS REPRESENTATIVE, AND MARIA MURDOCH, ANGELA BATISTA JIMINEZ, ELISANGELA OLIVEIRA AND DIOGO DE ARAUGO, AS PUTATIVE CLASS REPRESENTATIVES,	)	
	)	
Defendants.	)	

LOCAL BANKRUPTCY RULE 7056-1 STATEMENT OF UNDISPUTED MATERAL FACTS IN SUPPORT OF PIEC'S MOTION FOR SUMMARY JUDGMENT

The Plaintiffs' Interim Executive Committee (the "PIEC"), appointed by the United States District Court in this District as the representative of the victims of the Debtors' Ponzi scheme by orders entered in the multi-district litigation proceedings captioned *In re TelexFree Securities Litigation*, MDL No. 14-02566 (D. Mass.), submits this Statement of Undisputed

1 The debtors (the "Debtors") in these cases (collectively, the "Chapter 11 Cases") are TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.

Facts in Support of PIEC's Motion for Summary Judgment (hereafter, "SUF"), pursuant to Rule 7056-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Massachusetts, adopting Rule 56.1 of the Local Rules of the United States District Court for the District of Massachusetts, in support of its motion for summary judgment. The material facts as to which there is no genuine issue to be tried are as follows:

I. Victims' Claims

1. The PIEC is the authorized representative of the victims of the TelexFree Ponzi and pyramid scheme, charged with prosecuting litigation on their behalf. See *MDL Case Management Order No. 3*, In re TelexFree Securities Litigation, MDL No. 14-02566 (D. Mass) (the "MDL Proceedings") [Docket No. 79], at 1-2.[2]

2. In June 2014, victims of TelexFree brought several actions against the perpetrators and co-conspirators of the Debtors' scheme. See *Complaint*, Guevara v. Merrill, et al., C.A. No. 14-22405 (S.D. Fla.) [Docket No. 1]; *Complaint*, Cook v. TelexElectric, LLLP, et al., C.A. No. 14-00134 (N.D. Ga.) [Docket No. 1]; *Complaint*, Githere, et al. v. TelexElectric, LLLP, et al., C.A. No. 14-12825 (D. Mass) [Docket No. 1]; *Complaint*, Ferguson, et al. v. TelexElectric, LLLP, et al., C.A. No. 14-40138 (D. Mass) [Docket No. 1].[3]

3. On October 22, 2014, the District Court for the District of Massachusetts transferred these actions to MDL No. 14-02566. See *Transfer Order*, MDL No. 14-02566 [Docket No. 1].[4]

4. On April 30, 2015, the PIEC consolidated these prior actions in a single complaint naming over forty (40) defendants, including James Merrill and Wanzeler, the master-minds

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2 A true and accurate copy is attached hereto as **Exhibit A**.

3 True and accurate copies are attached hereto as **Exhibits B-E**.

4 A true and accurate copy is attached hereto as **Exhibit F**.

behind TelexFree, and certain other non-debtor promoters and co-conspirators for fraud, securities fraud, a variety of other torts, and for aiding and abetting these torts. See *Second Consolidated Amended Complaint*, MDL No. 14-02566 (the "SCAC") [Docket No. 141], at ¶¶ 39-100, 1004-1098.[5] The SCAC includes a count of unjust enrichment against all defendants. See id. at ¶¶ 1037-1043.

5. On September 23, 2015, the PIEC filed a complaint in the United States District Court for the District of Arizona (the "Arizona Action"), which substantially mirrored the SCAC, except that the complaint was expanded to include a request for certification of a defendant class of "Net Winners" who received payments from other Participants in the TelexFree scheme. See *Complaint*, Dos Santos v. TelexElectric LLLP et al., C.A. No. 15-01906 (D. Ariz.) (the "Arizona Action Complaint") [Docket No. 1] at ¶¶ 1012-1021.[6]

6. The Arizona Action was transferred to the United States District Court for the District of Massachusetts on October 21, 2015. See *Conditional Transfer Order (CTO-2)*, C.A. No. 15-01906 [Docket No. 12] at 1.[7]

7. On February 24, 2016, the PIEC commenced an action in the United States District Court for the District of Massachusetts, asserting an unjust enrichment claim against forty-seven "Net Winner" promoters (the "Oliveira Action" and together with the SCAC and the Arizona Action, the "Unjust Enrichment Claims"). See *Complaint*, Murdoch et al. v. TelexElectric LLLP et al., C.A. No. 16-40018 (D. Mass) [Docket No. 1].[8]

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5 A true and accurate copy is attached hereto as **Exhibit G**.

6 A true and accurate copy is attached hereto as **Exhibit H**.

7 A true and accurate copy is attached hereto as **Exhibit I**.

8 A true and accurate copy is attached hereto as **Exhibit J**.

8. On June 27, 2016, the PIEC filed an amended complaint in the Oliveira Action removing Maria Murdoch, Angela Batista Jiminez, and Diogo de Araugo as named plaintiffs. See *Amended Complaint*, C.A. No. 16-40018 (the "Amended Oliveira Complaint") [Docket No. 7].[9]

9. On October 7, 2015, Stephen Darr, the Chapter 11 Trustee, initiated this Adversary Proceeding, seeking a declaratory judgment that the PIEC's actions violated the automatic stay and an injunction prohibiting further prosecution of these actions insofar as they name TelexFree promoters as defendants. See *Verified Complaint* [Docket No. 1] at ¶¶ 39-48.[10] On February 26, 2016, the Trustee filed an amended complaint. See *Amended Complaint* (the "Amended Complaint") [Docket No. 21].[11]

10. The Trustee's proceeding is predicated on his allegation that all dollars paid by a Victim-Participant directly to a Promoter-Participant constitute a fraudulent transfer of TelexFree property for which the Trustee has the exclusive authority to recover. See id. at ¶¶ 33-43.

II. The Ponzi and Pyramid Scheme

11. The TelexFree scheme ostensibly revolved around the sale of membership plans and monthly voice over internet phone ("VoIP") packages. See Amended Complaint at ¶¶ 11, 14.

12. Each time a person purchased a membership plan or VoIP package, they became a participant ("Participant") in the scheme and the Debtors established a user account ("User Account") to track the Participant's activity. See id. at ¶¶ 9, 14.

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9 A true and accurate copy is attached hereto as **Exhibit K**.

10 A true and accurate copy is attached hereto as **Exhibit L**.

11 A true and accurate copy is attached hereto as **Exhibit M**.

13. TelexFree had the basic features of both a Ponzi and a pyramid scheme. See Amended Complaint at ¶ 11, 14. Its Ponzi scheme features are the promise of significant returns on investment simply for paying money over to TelexFree (or an existing Participant) and generating credits for posting internet ads for a VoIP product. See id. at ¶ 11. The pyramid features of the scheme are found in the relationship between Participants, where an existing Participant could recruit new Participants and receive payments directly from those Participants. See id. at ¶ 11.

14. A person could gain entry to the TelexFree scheme in one of two ways: (1) making a payment to TelexFree; or (2) making a payment to an existing Participant. See id. at ¶¶ 15-18.

15. In the case of a Participant making a payment to TelexFree, the Participant paid the membership fee to TelexFree, TelexFree received the money from the Participant, and TelexFree opened a User Account that would track the Participant's activity. See id. at ¶ 16.

16. In the case of a new Participant (a "Victim-Participant" or "Victim") making a payment (each, a "Participant-to-Participant Payment") to an existing Participant (a Promoter-Participant"), TelexFree issued an invoice to the Victim-Participant, the Promoter-Participant satisfied the invoice with credits previously accumulated by the Promoter-Participant, the Victim-Participant paid the invoice amount directly to TelexFree, and TelexFree opened a new User Account for the Victim-Participant. See Amended Complaint at ¶¶ 17-18. The Debtors never received or had possession of the money paid by the Victim-Participant to the Promoter Participant. See id. This alternative transaction is characterized by the Trustee as a "Triangular Transaction." See id. at ¶ 17.

17. The Victim-Participants themselves can be broken down into two categories: (1) new Participants who made one or more Participant-to-Participant Payments and did not thereafter recruit additional Participants; and (2) new Participants who made one or more Participant-to-Participant Payments and did thereafter recruit some new Participants but nonetheless ended up on a net basis suffering damage (that is a Victim-Participant who originally paid in $X and received $X-Y later, with Y being less than X). See Amended Complaint at ¶¶ 14-18.

18. The credits issued by TelexFree were part of an illegal scheme and in fact worthless. See Case No. 14-40987, November 24, 2015 Hr. Tr. (the "November 24th Hearing Transcript"), at 54:14-16[12]; *Affidavit of Stephen B. Darr* (the "Darr Affidavit"), Exhibit A to *Motion by Chapter 11 Trustee for Entry of Order Finding That Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief* [Docket No. 623], Case No. 14-40987, at ¶ 69.[13]

19. Most of the monies extracted from the Victims were extracted by other individual, non-debtor, non-insider Participants. See Darr Affidavit at ¶ 35. While TelexFree issued invoices associated with the sale of both membership plans and VoIP packages that purported to show a face value of $3,073,461,326, only $359,792,242, or approximately twelve percent (11.7%) of that amount, was paid in cash to the Debtors by Victims. See id. The near 90% balance of these invoices, totaling over $2,713,679,084, were actually Participant-to-Participant cash transactions, with the fictitious invoices and associated credits constituting the only aspects involving the Debtors. See id.

12 A true and accurate copy is attached hereto as **Exhibit N**.

13 A true and accurate copy is attached hereto as **Exhibit O**.

20. The Unjust Enrichment Claims brought by the Victim-Participants are brought only against Promoter-Participants who received those Participant-to-Participant Payments. See SCAC at ¶¶ 51-62; Arizona Action Complaint at ¶¶ 1012-1021; Amended Oliveira Complaint at ¶¶ 18-72.

Dated: August 5, 2016
Boston, Massachusetts

BONSIGNORE, PLLC

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For the Plaintiffs' Interim Executive Committee

CERTIFICATE OF SERVICE

The undersigned certifies that on August 5, 2016, the foregoing document was filed electronically, and therefore was sent by email to those receiving CM/ECF notices from the Court's electronic filing system. I further certify that I have caused to be sent by first class mail a copy to the following parties on this 5th day of August, 2016.

Charles R. Bennett, Jr., Esq.
Murphy & King, Professional Corporation
One Beacon Street
Boston, MA 02108

Richard King, Asst. United States Trustee
Office of the United States Trustee
446 Main Street
14th Floor
Worcester, MA 01608

/s/ Carol S. Ennis
Carol S. Ennis

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EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: TELEXFREE SECURITIES LITIGATION	)	
This Document Relates To:	)	**MDL No. 4:14-md-2566-TSH**
All Cases	)	

MDL Case Management Order No. 3
December 23, 2014

Hillman, D.J.

1. Plaintiffs' Unopposed Motion For Appointment Of Interim Lead Class Counsel And Steering Committee (Docket No. 20) is ***allowed*** as provided in this Order. The court appoints the law firm of Bonsignore, PLLC as Interim Lead Class Counsel.

2. The Court designates Ronald Dardeno of the Law Office of Frank L. Dardeno, LLP, William Baldiga of Brown Rudnick, D. Michael Noonan of Shaheen and Gordon, R. Alexander Saveri of Saveri & Saveri, and William L Coulthard of Kemp, Jones and Coulthard, LLP as members of Plaintiffs' Interim Executive Committee.

3. Plaintiffs' Interim Lead Class Counsel, after appropriate consultation and with the advice and consent of the Executive Committee, shall be responsible for coordinating and organizing Plaintiffs in the conduct of this litigation as to all claims and, in particular, shall have the following responsibilities:

a. To brief and argue motions and file opposing briefs in proceedings initiated by other parties;

b. To initiate and conduct discovery proceedings;

c. To act as spokesperson at pretrial conferences;

d. To negotiate with defense counsel with respect to settlement and other matters;

e. To call meetings of Plaintiffs' counsel when appropriate;

f. To make all work assignments to Plaintiffs' counsel to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort;

g. To assure that all Plaintiffs' counsel are kept informed of the progress of this litigation as necessary;

h. To conduct trial and post-trial proceedings;

i. To consult with and employ experts;

j. To coordinate the filing of any joint fee petition by Plaintiffs' counsel;

k. To perform such other duties and undertake such other responsibilities as it deems necessary or desirable; and

l. To coordinate and communicate with Defendants' counsel with respect to matters addressed in this paragraph.

3. The Executive Committee shall be consulted in an appropriate and efficient manner by Interim Lead Class Counsel on substantive issues to assist in the responsible and efficient prosecution of the litigation. Interim Lead Class Counsel

shall seek the advice and consent of the Executive Committee in connection with major decisions regarding the prosecution and/or settlement of the litigation.

4. Interim Lead Class Counsel and the Executive Committee shall together select working groups or committees to further the efficient prosecution of the litigation as is deemed necessary based on their collective judgment and consideration.

5. All counsel representing Plaintiffs shall maintain accurate and contemporaneous records of their time spent in this litigation and shall submit monthly time and expense reports to the Executive Committee no later than the 20 days after the end of each month. The failure to maintain such records and submit timely reports may result in such time or expenses being disallowed for purposes of any fee petition. The Executive Committee shall provide on a monthly basis to Interim Lead Class Counsel an aggregate report of all time spent by Plaintiffs' counsel.

6. Interim Lead Class Counsel, after consultation and with the advice and consent of the Executive Committee, shall assess the amounts necessary for common litigation costs necessary for the efficient and effective prosecution of the litigation and shall collect and maintain assessments from members of the Executive Committee. The failure to timely pay assessments may result in removal from membership on the Executive Committee.

7. No communications between Interim Lead Class Counsel, members of the Executive Committee, and other counsel representing plaintiffs in any cases consolidated or coordinated with this litigation, shall act as a waiver of any privilege or protection to which they are otherwise entitled.

8. The organizational structure of Plaintiffs' counsel established by this Order shall bind Plaintiffs' counsel in the individual cases consolidated under the Master Docket Number, at present and hereafter.

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

EXHIBIT B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Civil Action No.

FELICIA GUEVARA,

Plaintiff,

v.

JAMES M. MERRILL; CARLOS N. WANZELER; STEVEN M. LABRIOLA; JOSEPH H. CRAFT, a/k/a JOE H. CRAFT; CRAFT FINANCIAL SOLUTIONS, LLC; CARLOS COSTA; SANTIAGO DE LA ROSA; RANDY N. CROSBY; FAITH R. SLOAN; BANK OF AMERICA CORPORATION, BANK OF AMERICA, NA; TD BANK, NA; MIDDLESEX SAVINGS BANK; WELLS FARGO & COMPANY; WELLS FARGO BANK, NA; FMR, LLC, also known as FIDELITY INVESTMENTS; CITIZENS FINANCIAL GROUP, INC.; CITIZENS BANK OF MASSACHUSETTS; FIDELITY CO-OPERATIVE BANK, doing business as FIDELITY BANK; WADDELL & REED FINANCIAL, INC.; WADDELL & REED, INC.; GLOBAL PAYROLL GATEWAY INC.; INTERNATIONAL PAYOUT SYSTEMS, INC.; PROPAY, INC., doing business as PROPAY.COM; BASE COMMERCE, LLC, doing business as PHOENIX PAYMENTS; VANTAGE PAYMENTS, LLC; GERALD P. NEHRA, individually and doing business as LAW OFFICES OF NERHA AND WAAK; GERALD P. NEHRA ATTORNEY AT LAW, PLLC; RICHARD W. WAAK, individually and doing business as LAW OFFICES OF NERHA AND WAAK; RICHARD W. WAAK, ATTORNEY AT LAW, PLLC

Defendants

CLASS ACTION COMPLAINT FOR, *INTER ALIA*, VIOLATIONS OF STATE AND FEDERAL SECURITIES LAWS

DEMAND FOR TRIAL BY JURY

CLASS ACTION COMPLAINT FOR, INTER ALIA, VIOLATIONS OF STATE AND FEDERAL SECURITIES LAWS

Plaintiff, on behalf of herself and all others similarly situated (hereafter "Plaintiffs") bring this class action against Defendants.

JURISDICTIONAL STATEMENT

THE PLAINTIFF ASSERTS THAT THE JURISDICTION OF THIS COURT IS PROPER PURSUANT TO 28 U.S.C. SECTION 1332(d)(2) WHERE THE PLAINTIFF IS A PUTATIVE MEMBER OF A CLASS EXCEEDING 100 PERSONS, THE AMOUNT IN CONTROVERSY EXCEEDS 5 MILLION DOLLARS AND THE PLAINTIFF IS FROM A STATE DIVERSE FROM SOME OF THE DEFENDANTS.

INTRODUCTION

Plaintiff seeks compensation for losses resulting from the Defendants' fraudulent activities; that is, advertising, encouraging, and selling interests and unregistered securities an unlawful "Ponzi" Pyramid Scheme, then wrongfully sheltering, and circulating the money and taking money from the plaintiff.

THE PARTIES

THE PARTIES

1. Plaintiff, Felicia Guevara, is an individual who resides in Florida. Ms. Guevara, like many other victims of TelexFree's Pyramid Ponzi Scheme, tendered cash in exchange for a membership in TelexFree (a "TelexFree Membership") and its promised pre-March 9, 2014 return in investment (the Pre-March 9, 2014 Return on Investment").

2. TELEXELECTRIC, LLP and TELEX MOBILE HOLDINGS, INC. are separately organized in Nevada, but share the same agent; that

is, BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

3. TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. are Massachusetts corporations and are not defendants as a result of bankruptcy protection pursuant to Chapter 11 of the U.S. Bankruptcy Code.

4. Defendant JAMES M. MERRILL resides at 1 Coburn Drive in Ashland, Massachusetts 01721 and was President, Secretary, and Director of TelexFree, Inc., Manager of TelexFree, LLC, and President, Secretary, and Director of TelexFree Financial.

5. Defendant CARLOS N. WANZELER, Treasurer and Director of TelexFree, Inc., a Manager of TelexFree, LLC., and Vice-President, Treasurer, and Director of TelexFree Financial resides at .

6. Defendant STEVEN M. LABRIOLA was the sales director of TelexFree and resides at 21 Kiwanis Beach Road, in Upton, Massachusetts.

7. Defendant JOE H. CRAFT, CPA, the CFO of Telex Free, Inc. and TelexFree, LLC, resides at 825 E. Main Street in Boonville, Indiana 47601; CRAFT FINANCIAL SOLUTIONS, LLC is an Indiana limited liability corporation and is Craft's alter ego.

8. Defendant CARLOS COSTA, Manager of TelexFree, LLC resides at 44A McClintock Avenue, Unit A, in Worcester, Massachusetts 01604.

9. RANDY N. CROSBY, Promotions Manager, resides at 30 Club Court, in Alpharetta, Georgia 30005.

10. SANTIAGO DE LA ROSA, Promotions Manager for TelexFree, resides at 189 Beacon Hill Avenue, Unit 2, in Lynn, Massachusetts 01902.

11. Defendant FAITH R. SLOAN, Promotions Manager for TelexFree resides at 515 E. End Avenue, Unit 105, Calumet City, Illinois 60409.

12. Defendant GERALD P. NEHRA is a Michigan attorney with offices at 1710 Beach Street in Muskego, MI., and is also the alter ego of Gerald P. Nehra, Attorney at Law, PLLC and has represented Telexfree in various matters, and specializes in Multi Level Marketing.

13. Defendant RICHARD W. WAAK is a Michigan attorney with offices at 11300 East Shore Drive, Delton, Michigan 49046 and the alter ego of Defendant Richard W. Waak, Attorney at Law, PLLC and has represented Telexfree in various matters and also specializes in Multi-Level Marketing.

14. Defendant TD BANK, N.A. (hereinafter sometimes referred to as "TD Bank") is a national banking institution in the United States chartered and has a principal place of business in the Commonwealth of Massachusetts 02109.

15. The Defendant BANK OF AMERICA CORPORATION is a publicly traded corporation duly organized and existing under the laws of the State of Delaware. Bank of America is a

national bank in the United States chartered and has offices in the Commonwealth of Massachusetts 02110.

16. The Defendant, BANK OF AMERICA, N.A., has a principal place of business in Charlotte, North Carolina. Bank of America N.A. is a subsidiary of Bank of America Corporation, and conducts business in the Commonwealth of Massachusetts.

17. Defendant CITIZENS BANK OF MASSACHUSETTS is a subsidiary of Defendant CITIZENS FINANCIAL GROUP, INC., a banking institution with offices in the Commonwealth of Massachusetts and principal offices in Providence, Rhode Island.

18. Defendant FIDELITY CO-OPERATIVE BANK is a Massachusetts Chartered Banking Institution.

19. Defendant MIDDLESEX SAVINGS BANK has its principal offices at 6 Main Street, in Natick, County of Middlesex, Commonwealth of Massachusetts 01760.

20. The Defendant, WELLS FARGO & COMPANY has its principal office in San Francisco, California and conducts business nationally.

21. The Defendant, WELLS FARGO BANK, N.A. has a principal place of business in Sioux Falls, South Dakota and conducts business in the Commonwealth of Massachusetts and nationally.

22. The Defendant, FMR, LLC, a.k.a. FIDELITY INVESTMENTS has its principal offices in Commonwealth of Massachusetts 02110.

23. The Defendant, WADDELL & REED FINANCIAL, INC is a publicly traded corporation with offices in Massachusetts.

24. The Defendant, WADDELL & REED, INC. is a national financial and investment institution in the United States with a principal place of business at 6300 Lamar Avenue, Overland Park, Kansas 66202-4200.

25. Defendant GLOBAL PAYROLL GATEWAY, INC. is a corporation with principal offices at 18662 MacArthur Boulevard, Suite 200, in Irvine, California 92612. GPG processed payments for TelexFree to its Promoters/Investors.

26. Defendant INTERNATIONAL PAYOUT SYSTEMS, INC. has its principal offices at 2500 East Hallandale Beach Boulevard, Suite 800, Hallandale Beach, Florida 33009. IPS also processed payments for TelexFree to its Promoters/Investors.

27. Defendant PROPAY, INC. is a corporation with its principal offices at 3400 North Ashton Boulevard, Lehi, Utah 84043. PROPAY, INC., and also does business as PROPAY.COM and also processed payments for TelexFree to its Promoters and Investors.

28. Defendant BASE COMMERCE, LLC has its principal offices at 7910 S. Kyrene Road, Suite 106, Tempe, Arizona 85284, and also does business as PHOENIX PAYMENTS and also processed payments for TelexFree to its Promoters and Investors.

29. Defendant VANTAGE PAYMENTS, LLC has its principal offices at 8300 N. Hayden Road #A207, Scottsdale, Arizona 85251

and also processed payments for TelexFree to its Promoters/Investors.

30. Defendant TelexElectric was set up to further the fraud and disperse and dissipate money and make it difficult to recover stolen money when the fraud was discovered. TelexElectric is a Nevada limited liability limited partnership formed on December 2, 2013 by Co-Defendants Merrill and Wanzeler. Co-Defendants Merrill and Wanzeler are listed as the General Partners of TelexElectric with an address of 4705 S. Durango Drive, #100-J1 in Las Vegas, Nevada 89147, which is the same address for TelexFree, LLC and TelexElectric.

GENERAL ALLEGATIONS

1. The Telex and individual defendants solicit investors through the internet and other advertising mediums to participate in the TelexFree "Business."

2. There is no distinction between the business operations of TelexFree, LLC., TelexFree, Inc. and TelexFree Financial and TelexElectric and Telexmobile; they have shared common operations, management and ownership among defendants Merrill, Wanzeler, Labriola, Craft and Costa. Hundreds of millions of dollars paid by individuals believing they were purchasing investment securities in these entities are unaccounted for. These companies were specifically set up to carry out the fraud

by collecting, then sheltering money rightfully belonging to the putative class who were fraudulently induced to pay for illegal securities.

3. Telex Mobile is a Nevada corporation formed on November 26, 2013. According to its filings with the State of Nevada Secretary of State Office, Telex Mobile identifies its officers and directors as:

a. James M. Merrill is President, Secretary and Director, having an address at 4705 S. Durango Drive, #100-J1 (a post office box), Las Vegas, Nevada 89147.

b. Carlos Wanzeler is Treasurer and Director, having an address at 4705 S. Durango Drive, #100-J1 (a post office box), Las Vegas, Nevada 89147.

4. The Plaintiff was fraudulently induced to "invest" in at least two other business opportunities involving the offer or sale of unregistered securities, namely, 1) TelexFree's passive income scheme, and 2) an offer to invest in TelexFree's hotel program; he was also fraudulently induced to invest as an Associate, then pay more and invest as a Promoter and Manager, where in fact, they were unknowing Investors in a fraudulent Ponzi scheme.

5. TelexFree's financial statements reveal that TelexElectric received a $2,022,329.00 "loan" from TelexFree during the class period. TelexFree's financial statements further reveal that

TelexFree Mobile received a $500,870 "loan" from TelexFree during the class period.

6. These "loans" were in essence fraudulent transfers by TelexFree to evade claims by investors and creditors, and otherwise to unlawfully abscond with funds that rightfully belonged to creditors and investors.

7. At all times material herein, Defendants Merrill, Wanzeler, Labriola, Craft and Costa were responsible for the control and operation of TelexFree and its affiliated entities. TelexFree's Management not only controlled the activities and operations of TelexFree, but also knowingly and willfully conspired to perpetrate, and did in fact perpetrate, the TelexFree Pyramid Ponzi Scheme with full awareness of its fraudulent and illegal nature. Defendant Merrill served as the President, Secretary, and Director of TelexFree, Inc., a Manager of TelexFree, LLC, President, Secretary and Director of TelexFree Financial, General Partner of TelexElectric, and President, Secretary and Director of Telex Mobile Holdings.

8. In his capacities as Officer, Director, Manager and General Partner of the foregoing interrelated companies, Merrill exercised significant control over TelexFree's business operations; that is, the TelexFree Pyramid Ponzi Scheme. AS have other defenadants, Merrill has appeared in videos posted to the internet, in which he can be seen promoting TelexFree as a revenue opportunity for Promoters.

9. At all times material herein, Defendant Wanzeler served as Treasurer and a Director of TelexFree, Inc., a Manager of TelexFree, LLC, Vice President, Treasurer, and a Director of TelexFree Financial, General Partner of TelexElectric and Treasurer and Director of Telex Mobile Holdings. According to corporate filings on record with SOC, at all times material herein, Wanzeler has also served as the Chief Executive Officer of TelexFree, Inc.

10. In his capacities as Officer, Director, Manager and General Partner of the foregoing interrelated companies, Wanzeler exercised significant control over TelexFree's business operations. Wanzeler exercised significant control over the TelexFree Pyramid Ponzi Scheme. Defendant Wanzeler has also participated in marketing TelexFree to potential investors, appearing in videos posted to the Internet in which he can be seen promoting TelexFree as a revenue opportunity for Promoters.

11. The core of the Passive Income Scheme centers on the investment of either $289.00 or $1,375.00. A participant who invests $289.00 receives one advertisement kit and ten VoIP Programs. A participant who invests $1,375.00 receives five advertisement kits and fifty VoIP Programs.

12. According to an investigation conducted by the United States Securities and Exchange Commission between August 2012 and March 2014, TelexFree received slightly more than

$1,300,000. from the sale of approximately 26,300 VoIP Programs, while receiving more than $302 million in investments by Promoters – thus, less than one-half of one percent of total revenue during this period derived from sales of TelexFree's purported product. During this period, TelexFree promised to pay Promoters returns of over $1.1 billion – nearly a thousand times the amount of revenue derived from sales of the VoIP Programs.

13. TelexFree did not generate sufficient funds from sales of their phone service to pay the returns on investments that they had contracted to pay. Instead, the funds TelexFree used to pay the purported returns on investments were the principal investment funds (membership fees) tendered by subsequent TelexFree investors.

14. All Defendants knew that TelexFree was an illegal Pyramid Ponzi Scheme which involved the illegal sale of securities, but continued to aid, abet and further such illegal activities. Despite the foregoing knowledge, TelexFree and the other Defendants continued to participate in the attraction and processing of new investors, continued to allow payments to process through TelexFree's accounts, allowed TelexFree to continue to illegally sell securities and further its illegal Pyramid Ponzi Scheme, and otherwise continued to further TelexFree's illegal activities.

15. Nehra and Waak, along with the entities Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and

Richard W. Waak, Attorney at Law, PLLC are self-proclaimed "Multi-level Marketing" specialist attorneys. During the course of TelexFree's fraudulent scheme, the above-named Attorney Defendants acted as legal counsel to TelexFree. Attorney Nehra had previously acted as counsel to other multi-level marketing firms, which were forced, closed by federal and/or state authorities due to fraudulent pyramid and Ponzi schemes, Nehra and Waak have extensive experience in multi-level marketing, and with Ponzi schemes and managing the legal defense of multiple class action lawsuits. Nehra and Waak provided deceitful advice for the purpose of furthering perpetuating Defendants unlawful Pyramid Ponzi Scheme. Specifically, TelexFree's Contract at Section 2.6.5 (m) provides that the Promoter must not "use terms that distort the real meaning of products or the mechanism and functioning of multilevel marketing, including, without limitation, expressions that convey the idea of instant wealth for nothing in exchange, as well as speaking of registration costs as a 'financial investment.' Similarly, it is expressly prohibited to use the term 'INVESTMENT' at meetings and in promotional materials in general, orally or in writing. As general partners of the Law Offices of Nehra and Waak, Attorney Nehra and Attorney Waak are jointly and severally liable for torts and obligations of the firm. During the time that the Law Offices of Nehra and Waak provided legal counsel to TelexFree, Attorney Waak was Principal Attorney of the law firm. Attorney

Waak, as Principal Attorney of the Law Offices of Nehra and Waak, was charged with oversight of the daily activities of the law firm.

16. Defendants Craft and Craft Financial are indistinguishable with regards to their involvement with the TelexFree Pyramid Ponzi Scheme and knowingly perpetrated the fraud. Defendants Craft and Craft Financial knowingly participated in and perpetuated TelexFree's illegal Pyramid Ponzi Scheme. In his capacity as CFO and certified public accountant of TelexFree, Defendants Craft and Craft Financial have been responsible for preparing or approving TelexFree's financial statements, overseeing TelexFree's accounting methods and records, and otherwise exercising significant supervision and control over TelexFree. On April 23, 2013, in response to a request for a profit-and-loss statement issued by the Massachusets SOC, TelexFree produced a document purporting to be TelexFree's 2012 profit-and-loss statement. On February 5, 2014, the SOC requested a second profit-and-loss statement from TelexFree for 2012, which TelexFree produced on February 26, 2014. A comparison of these two profit-and-loss statements — each purporting to be TelexFree's profit-and-loss statement for 2012 — reveals massive discrepancies. The existence of duplicative accounting records containing egregious discrepancies is clear indicia of TelexFree's falsification of accounting records and failure to adhere to GAAP.

17. During the course of the TelexFree Pyramid Ponzi Scheme, Defendants Bank of America, Bank of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, GPG, IPS, ProPay, Base Commerce, and Vantage Payments provided crucial financial services to TelexFree, which enabled TelexFree to carry on its Pyramid Ponzi scheme. TelexFree's financial services providers, including the aforesaid banking institutions, investment service providers, and payment processing services providers, knowingly aided and abetted TelexFree's Pyramid Ponzi Scheme by:

a. Receiving transfers of funds from, and on behalf of, TelexFree in the course of TelexFree's fraudulent business, despite knowledge of the fraudulent nature of TelexFree's business enterprise;

b. Receiving transfers of funds from TelexFree, its affiliated entities, and its executive officers, which transfers deepened TelexFree's insolvency, despite having knowledge of TelexFree's actual or imminent insolvency at the time of such transfers;

c. Processing payments to, and on behalf of, TelexFree, including its affiliated entities and Management, in the course of TelexFree's fraudulent business, despite knowledge of the fraudulent nature of

TelexFree's business enterprise; and

d. Otherwise enabling the TelexFree Pyramid Ponzi Scheme to expand and continue by providing necessary financial services to TelexFree, despite actual knowledge of fraud on the part of TelexFree.

18. Defendants Bank of America, Bank of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, knew of the fraudulent nature of TelexFree's business operation, since at least June 2013 and despite knowledge of the fraudulent nature of TelexFree's business operations, these defendants continued to provide TelexFree with banking services necessary to the continuation of the Ponzi scheme.

19. Wells Fargo Bank maintained a depository account for TelexFree until March 14, 2014, long after TelexFree's Brazilian operation had been publicly exposed as a Pyramid Ponzi scheme and shut down, and after the issuance of a scam warning against TelexFree in the United Kingdom.

20. Defendants Fidelity Investments, Waddell & Reed Financial, Waddell & Reed knew about the fraud as the president of Fidelity is the brother of Defendant Merrill.

21. Defendants GPG, IPS, Propay, Base Commerce, and Vantage Payments, possessed actual knowledge of the fraudulent nature of TelexFree's business operations since at least June 2013.

22. IPS provided TelexFree with a service titled "e-Wallet,"

which was used by TelexFree to process electronic transfers of funds by Investors to TelexFree. According to a TelexFree balance sheet, dated December 31, 2013, posted by the Washington State Utilities and Transportation Commission, as of December 31, 2013, TelexFree claimed $31,640,192.30 in assets then held by IPS (under the brand name "e-Wallet") on behalf of TelexFree.

23. Defendant ProPay, which also does business as Propay.com, also processed such electronic transfers of funds on behalf of TelexFree. ProPay processed transfers of funds by and on behalf of TelexFree, its affiliated entities, and its Management, during which time TelexFree was insolvent, despite knowledge of the fraudulent nature of TelexFree's business operations, thereby deepening TelexFree's insolvency and assisting TelexFree and its Management in concealing assets.

CLASS ACTION ALLEGATIONS

24. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action on their own behalf, and on behalf of all other persons similarly situated ("the Class"). The Class that Plaintiffs seek to represent is:

> All persons who tendered funds to TelexFree between 1/1/2012 and April 15, 2014 and who did not recoup the amount of money they originally invested. Excluded from the Class are the Defendants and their officers, directors, and employees of Defendant; any entity in which Defendant have a controlling interest; the co conspirators, so called insider promoters,

legal representatives, attorneys, heirs, and assigns of the Defendants.

25. Plaintiffs meet the requirements of Federal Rules of Civil Procedures 23(a) because the members of the Class are so numerous that the joiner of all members is impractical. While the exact number of Class members is unknown to Plaintiffs at this time, based on information and belief, it is in the hundreds of thousands.

26. Plaintiffs meet the requirements of Federal Rules of Civil Procedures 23(a) because there is a well-defined community of interest among the members of the Class, common questions of law and fact predominate, Plaintiffs' claims are typical of the members of the Class, and Plaintiffs can fairly and adequately represent the interests of the Class. This action satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3) because it involves questions of law and fact common to the member of the Class that predominate or any questions affecting only individual members, including, but not limited to:

a. Whether TelexFree ran a Pyramid Ponzi Scheme on a knowing or negligent level;

b. Whether TelexFree ran a lawful Multi-Level Marketing program; whether TelexFree offered and sold securities in the form of unregistered investment contracts constituting securities.

c. Whether the other Defendants knowingly or negligently aided and abetted TelexFree in the sale of unregistered securities in

violation of the law;

e. Whether the Banking defendants knowingly aided and abetted TelexFree's Pyramid Ponzi Scheme or if not, whether they should have known;

d. Whether TelexFree and the other Defendants also violated Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons.

Whether Defendants violated Section 1965 of the Racketeer Influenced and Corrupt Organizations Act [18 U.S.C. § 1965];

27. Plaintiffs' claims are typical of those of other Class members because Plaintiffs were defrauded by the Defendants' scheme to fraudulently offer and sell unregistered securities; Plaintiffs will fairly and accurately represent the interests of the Class.

28. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the Defendants and would lead to repetitive adjudication of

common questions of law and fact. Accordingly, class treatment is superior to any other method for adjudicating the controversy. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action under Rule 23(b)(3).

29. Damages for any individual class member are likely insufficient to justify the cost of individual litigation, so that in the absence of class treatment, the Defendants' violations of law inflicting substantial damages in the aggregate would go un-remedied without certification of the Class.

30. The Defendants have acted or refused to act on grounds that apply generally to the class, as alleged above, and certification is proper under Rule 23(b)(2).

FIRST CLAIM FOR RELIEF

FRAUD

The Plaintiff realleges and incorporates by reference the preceding paragraphs.

31. All Defendants engaged in:

fraudulent or deceptive conduct in connection with the purchase or sale of securities, in violation of Section 10 (b) of the Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; (b) fraud in the offer or sale of securities, in violation of

Section 17(a) of the Securities Act of 1933 ("Securities Act"); and (c) the offer or sale of unregistered securities, in violation of Section 5 of the Securities Act; and violations of the Massachusetts General Laws, Chapter 93A, The Consumer Protection Act with the intent to defraud the plaintiff; unlawfully, willfully and knowingly used means and instrumentalities in connection with the purchase and sale of unregistered securities; and used and employed manipulative and deceptive devices and contrivances in violation of, *inter alia,* the Massachusetts Uniform Securities Act, M.G.L. c. 110A, Section 410b, and in the alternative, F.S. Chapter 517, the Florida Securities and Investor Protection Act.

SECOND CLAIM FOR RELIEF

MISREPRESENTATION

The Plaintiff realleges and incorporates by reference the preceding paragraphs.

32. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, and encouraged the plaintiff to rely on those representations to the detriment of the plaintiff; and/or acted with reckless disregard for the truth in that defendants failed to ascertain and to disclose such facts, even though such facts were available to them. Such misrepresentations and/or omissions were done knowingly or recklessly for the purpose and effect of concealing the true

information about the investments, including their financial condition and operations and encouraging the plaintiff to rely thereon. The ongoing fraudulent scheme described herein could not have been perpetrated over a substantial period of time, without the knowledge and complicity of Defendants and in full violation of Section 10 (b) of the Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; (b) fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"); and (c) the offer or sale of unregistered securities, in violation of Section 5 of the Securities Act; and violations of the Massachusetts General Laws, Chapter 93A, The Consumer Protection Act, the Massachusetts Uniform Securities Act, M.G.L. c. 110A, Section 410b, and in the alternative, F.S. Chapter 517, the Florida Securities and Investor Protection Act.

THIRD CLAIM FOR RELIEF

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The Plaintiff realleges and incorporates by reference the preceding paragraphs.

33. As a result of the intentional dissemination of materially false and misleading information and the failure to disclose material facts, as set forth above, the plaintiff paid artificially inflated prices for worthless membership interests in the investment during the Class Period and has greatly

suffered as a result of the loss of his life savings, plus money borrowed in reliance on the misrepresented circumstances fabricated by the defendants working together.

FOURTH CLAIM FOR RELIEF

NEGLIGENCE

34. Whereas, to the degree that various defendants individual and entities named herein owes a duty of care to the plaintiff either by statute, by ethical rule, by professional ethical mandates or by creating the precarious circumstances the result of which caused suffering to the plaintiff, the plaintiff should be entitled to punitive damages.

CONCLUSION

WHEREFORE, Plaintiff, on behalf of herself and her Class, pray for judgment as follows:

1. Declaring this action to be a Class Action properly maintained pursuant to the Federal Rules of Civil Procedure and certifying Plaintiffs as the class representatives;

2. Awarding Plaintiffs and Class members rescission and/or compensatory damages against Defendants for all damages sustained as a result of their wrongdoing, in an amount to be proven at trial, including interest;

3. For an award of actual damages, compensatory damages, statutory damages, and statutory penalties, in an amount to be determined;

4. For an award of punitive damages;

5. For an award of costs of suit and attorneys' fees, as allowable by law;

6. For an award of interest;

7. For the appointment of a receiver selected by Class Counsel and an accounting; and

8. For an award to Plaintiffs and the Class such other and further relief as may be just and proper under the circumstances including equitable relief.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of their claims to the extent authorized by law. However, the Plaintiffs do not consent to trial by jury in the United States Bankruptcy Court.

Respectfully submitted,
For Felicia Guevara
By her attorney,



Adriana Contartese, Esq.
Florida Bar # 0089634
Law Office Of Adriana Contartese
OCN Document Prep Suite 926
19W Flagler Street
Miami, FL 33130
617-268-3557
Adriana911@juno.com

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)* **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

Felicia Guevara

(b) County of Residence of First Listed Plaintiff Miami-Dade, FL
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Adriana Contartese, Esq.
OCN Document Prep Suite 926
19 W Flagler St
Miami, FL 33130

DEFENDANTS

James M. Merrill et al
(Re Telexfree (non-bankruptcy))

County of Residence of First Listed Defendant Middlesex, MA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

(d) Check County Where Action Arose: ☒ MIAMI- DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff
☐ 3 Federal Question *(U.S. Government Not a Party)*
☐ 2 U.S. Government Defendant
☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury - Med. Malpractice

PERSONAL INJURY
☐ 365 Personal Injury - Product Liability
☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 440 Other Civil Rights
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/ Accommodations
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities - Other
☐ 448 Education

PRISONER PETITIONS
Habeas Corpus:
☐ 463 Alien Detainee
☐ 510 Motions to Vacate Sentence
Other:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition
☐ 560 Civil Detainee – Conditions of Confinement

FORFEITURE/PENALTY
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 740 Railway Labor Act
☐ 751 Family and Medical Leave Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
☐ 462 Naturalization Application
☐ 465 Other Immigration Actions

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
☐ 375 False Claims Act
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 850 Securities/Commodities/ Exchange
☒ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 893 Environmental Matters
☐ 895 Freedom of Information Act
☐ 896 Arbitration
☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district *(specify)* ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) *(See instructions):*
a) Re-filed Case ☐ YES ☒ NO b) Related Cases ☒ YES ☐ NO
JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause *(Do not cite jurisdictional statutes unless diversity)*:
28 USC sec 1332(d)(2) CAFA
LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
DATE 6/26/14
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

TODD COOK, Individually and behalf of others similarly situated, Plaintiff, v. **TELEXELECTRIC, LLLP**; **TELEX MOBILE HOLDINGS, INC.**; **JAMES M. MERRILL**; **CARLOS N. WANZELER**; **STEVEN M. LABRIOLA**; **JOSEPH H. CRAFT**, a/k/a Joe H. Craft; **CRAFT FINANCIAL SOLUTIONS, LLC**; **CARLOS COSTA**; **GERALD P. NEHRA**, individually and doing business as Law Offices of Nehra And Waak; **GERALD P. NEHRA ATTORNEY AT LAW**, **PLLC**; **RICHARD W. WAAK**, individually and doing business as Law Offices of Nehra And Waak; **RICHARD W. WAAK, ATTORNEY AT LAW**, **PLLC**; **TD BANK, NA**; **CITIZENS FINANCIAL GROUP, INC.**; **CITIZENS BANK OF MASSACHUSETTS**; **FIDELITY CO-OPERATIVE BANK**, doing business as Fidelity Bank; **MIDDLESEX SAVINGS BANK**; **GLOBAL PAYROLL GATEWAY, INC**.; **INTERNATIONAL PAYOUT SYSTEMS, INC**.; **PROPAY, INC.**, doing business as PROPAY.COM, Defendants.	CIVIL ACTION NUMBER 2:14-CV-00134

CLASS ACTION COMPLAINT

COMES NOW Plaintiff Todd Cook, individually and on behalf of others similarly

situated (hereafter "Plaintiffs"), and, pursuant to Fed. R. Civ. P. 23, files this Class Action showing the following:

I. INTRODUCTION

1. Plaintiff and the putative class seek compensation for damages they sustained as a result of Defendants' conduct in carrying out, or aiding in carrying out, an unlawful Ponzi pyramid scheme that included, *inter alia*, Defendants' fraudulent unregistered offer and sale of securities in the form of unregistered investment contracts constituting securities.

2. During all times relevant to this complaint, non-parties TelexFree, Inc., TelexFree, LLC, and TelexFree Financial, Inc.[1] (collectively "TelexFree"), uniformly held itself out as a "multi-level marketing" (or "MLM") company systematically selling local and international telephone service plans that use "voice over internet protocol" ("VoIP") technology through investors, also called "Promoters."

3. The TelexFree VoIP was not patented or proprietary.

4. The TelexFree VoIp offered nothing more than what was otherwise available for free through other Internet providers such as Skype.

5. In reality, TelexFree's offer and sale of investment contracts constituted a pyramid-type Ponzi scheme (the "Pyramid Ponzi Scheme").

6. To carry out their unlawful enterprise, TelexFree and their officers, agents,

[1] TelexFree, Inc., TelexFree, LLC, and TelexFree Financial, Inc. are presently in Chapter 11 bankruptcy in Nevada and are not parties to this action.

servants and employees sold fraudulent unregistered securities to Plaintiff Todd Cook and to the members of the class he seeks to represent.

7. TelexFree sold unregistered securities in twenty-one states, including Georgia, and internationally from its offices in Marlborough, Massachusetts.

8. TelexFree's unregistered securities were deceptively and uniformly identified to Plaintiff Todd Cook and members of the putative class as "memberships."

9. In exchange for merely copying and placing duplicative and pre-written TelexFree ads on internet sites and for recruiting other investors to pay the membership fees, TelexFree falsely represented to its investors/promoters, that they could receive significant returns of over 200% annually.

10. TelexFree uniformly and systematically did not require its investors/promoters to sell its VoIP product in order to qualify for payments prior to March 9, 2014.

11. TelexFree's scheme constitutes an unlawful pyramid scheme because the proceeds from the sale of TelexFree's VoIP product alone could not sustain the massive pay structure.

12. To keep TelexFree's Pyramid Ponzi Scheme liquid, a constant influx of new participants was required.

13. At all times material herein, TelexFree and its Officers James M. Merrill, Carlos N. Wanzeler, Steven M. Labriola, Carlos Costa, Joseph H. Craft, a/k/a Joe H. Craft (collectively, "Defendant Officers") knew that the Pyramid Ponzi Scheme was not sustainable, and that the representations on TelexFree's website and in its marketing materials

were false, unfair, and deceptive including, but not limited to, those concerning the guaranteed returns.

14. Moreover, at all times material herein, Defendants knew that TelexFree was selling unregistered securities to the members of the putative classes.

15. Moreover, after Defendants knew that TelexFree was an illegal pyramid-type Ponzi scheme which involved the illegal sale of securities, they continued to aid, abet and further such illegal activities.

16. Despite the foregoing knowledge, Defendants continued to participate in the attraction and processing of new investors, continued to allow payments to process through TelexFree's accounts, allowed TelexFree to continue to illegally sell securities and further its illegal Pyramid Ponzi Scheme, and otherwise continued to further TelexFree's illegal activities.

17. On April 14, 2014, the Defendants TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. abruptly sought bankruptcy protection in Nevada under Chapter 11, admitting that they could not and cannot meet their obligations from VoIP revenues and seeking authority to reject all their current obligations to Promoters.

18. At all material times herein, Defendants have violated, *inter alia*, the anti-fraud and securities registration provisions of the federal and state securities laws.

19. At all material times herein and from at least in or about January 2012 , TelexFree and the other Defendants unlawfully, willfully and knowingly used the means and instrumentalities of interstate commerce and the mails, directly and indirectly, in connection

with the purchase and sale of unregistered securities.

20. TelexFree and the other Defendants violated Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons.

21. TelexFree and the other Defendants willfully or knowingly established a pyramid-type Ponzi scheme by paying certain investors purported returns on investment.

22. Making use of this sophisticated pyramid scheme, TelexFree defrauded its Promoters out of funds exceeding $300,000,000.00 dollars in just a few short years.

23. Certain Defendants share joint and severable liability, including certified public accountants and lawyers that specialized in sheltering so-called Multi-Level Marketing schemes having aided and abetted TelexFree's Pyramid Ponzi Scheme by providing TelexFree with legal and financial advice and assistance during the course of the fraud, despite knowledge of the fraudulent nature of TelexFree's operation.

24. The Payment Processing Services Companies and bank Defendants also share joint and several liability having aided and abetted the fraudulent and illegal activity by providing financial and payment processing services, also having knowledge of TelexFree's fraud.

II. PARTIES, JURISDICTION AND VENUE

25. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if as fully restated herein.

26. Plaintiff Todd Cook (hereinafter sometimes referred to as “Cook”), is a citizen of Georgia and resides in this district.

27. Plaintiff Cook, like many other victims of TelexFree's Pyramid Ponzi Scheme, tendered cash in exchange for a membership in TelexFree (a "TelexFree Membership") and its promised return in investment.

28. Defendant TELEXELECTRIC, LLLP (hereinafter sometimes referred to as “TelexElectric”) is a limited liability limited partnership duly organized and existing under the laws of the State of Nevada, and having its registered agent as BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

29. Defendant TELEX MOBILE HOLDINGS, INC. (hereinafter sometimes referred to as "Telex Mobile") is a corporation duly organized and existing under the laws of the State of Nevada, and having its registered agent as BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

30. Defendant JAMES M. MERRILL (hereinafter sometimes referred to as "Merrill") is an individual now or formerly of 1 Coburn Drive in Ashland, County of Middlesex, Commonwealth of Massachusetts 01721.

31. At all times material herein, Co-Defendant Merrill was President, Secretary, and Director of TelexFree, Inc.

32. At all times material herein, Co-Defendant, Merrill was a Manager of

TelexFree, LLC, and was listed with the Massachusetts Secretary of State Corporations Division as an authorized person to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property.

33. At all times material herein, Co-Defendant Merrill, was President, Secretary, and Director of TelexFree Financial.

34. Defendant CARLOS N. WANZELER (hereinafter sometimes referred to as "Wanzeler") is an individual now or formerly of 373 Howard Street, in Northborough, County of Worcester, Commonwealth of Massachusetts 01532.

35. At all times material herein, Co-Defendant Wanzeler was Treasurer and Director of TelexFree, Inc.

36. At all times material herein, Co-Defendant Wanzeler was a Manager of TelexFree, LLC.

37. At all times material herein, Co-Defendant Wanzeler was Vice-President, Treasurer, and Director of TelexFree Financial, and was listed with the Massachusetts Secretary of State Corporations Division as an authorized person to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property.

38. Defendant STEVEN M. LABRIOLA (hereinafter sometimes referred to as "Labriola") is an individual now or formerly of 21 Kiwanis Beach Road, in Upton, County of Worcester, Commonwealth of Massachusetts 01568.

39. Defendant Labriola functions as the international sales director of TelexFree.

40. Defendant JOSEPH H. CRAFT, also known as JOE H. CRAFT, (hereinafter

sometimes referred to as "Craft") is an individual now or formerly of 825 E. Main Street in Boonville, Indiana 47601-1885.

41. Defendant Craft is a Certified Public Accountant and maintains offices in Indiana and Kentucky under the name and style Joe H. Craft, CPA/PFS, CFP. In Indiana, he maintains offices at 825 E. Main Street in Boonville, Indiana 47601-1885.

42. At all material times herein, Defendant Craft serves as the Chief Financial Officer of Telex Free, Inc. and TelexFree, LLC, and was responsible for preparing or approving their financial statements.

43. Defendant CRAFT FINANCIAL SOLUTIONS, LLC (hereinafter sometimes referred to as "Craft Financial") is a limited liability company duly organized and existing under the laws of the state of Indiana, having a principal place of business at 825 E. Main Street in Boonville, Indiana 47601-1885.

44. Defendant Craft Financial is engaged in the business of providing accounting services and financial advice.

45. Defendant Craft is the sole member, manager, and registered agent for the Defendant Craft Financial, LLC.

46. Defendant CARLOS COSTA, (hereinafter sometimes referred to as "Costa") is an individual now or formerly of 44A McClintock Avenue, Unit A, in Worcester, County of Worcester, Commonwealth of Massachusetts 01604.

47. At all times material herein, Co-Defendant Costa was listed as Manager of TelexFree, LLC with the Massachusetts Secretary of State Corporations Division.

48. Defendant GERALD P. NEHRA (hereinafter sometimes referred to as "Nehra") is an individual now or formerly of Muskegon, Michigan.

49. Defendant Nehra maintains a second place of abode at 2149 Tall Oak Court, Sarasota, Florida 34232

50. Defendant Nehra is an attorney duly licensed to practice law in the State of Michigan with offices at 1710 Beach Street in Muskegon, Michigan 49441.

51. Defendant GERALD P. NEHRA, ATTORNEY AT LAW, PLLC, is a professional limited liability company engaged in the practice of law and duly organized and existing under the laws of the state of Michigan, having a principal place of business at 1710 Beach Street in Muskegon, Michigan 49441.

52. Defendant Gerald P. Nehra, Attorney at Law, PLLC, is engaged in the practice of law.

53. Defendant Nehra is the sole member, manager and registered agent for the Defendant Gerald P. Nehra, Attorney at Law, PLLC.

54. Defendant RICHARD W. WAAK (hereinafter sometimes referred to as "Waak") is an individual now or formerly of Muskegon, Michigan.

55. Defendant Waak is an attorney duly licensed to practice law in the State of Michigan with offices at 11300 East Shore Drive, Delton, Michigan 49046.

56. At all times material herein, Defendant Nehra was engaged in the practice of law with Co-Defendant Richard W. Waak, under the name LAW OFFICES OF NEHRA AND WAAK.

57. Defendant LAW OFFICES OF NEHRA AND WAAK had offices at 1710 Beach Street, Muskegon, Michigan 49441 and 11300 East Shore Drive, Delton, Michigan 49046.

58. At all times material herein, Defendant Waak was engaged in the practice of law with Co-Defendant Nehra, under the name Law Offices of Nehra and Walk, with primary offices at 11300 East Shore Drive, Delton, Michigan 49046, and secondary offices at 1710 Beach Street, in Muskegon, Michigan 49441.

59. Defendant Waak is the "Principal Attorney" of the Law Offices of Nehra and Walk.

60. Defendant RICHARD W. WAAK, ATTORNEY AT LAW, PLLC, is a professional limited liability company engaged in the practice of law and duly organized and existing under the laws of the state of Michigan, having a principal place of business at 11300 East Shore Drive, Delton, Michigan 49046.

61. Defendant Richard W. Waak, Attorney at Law, PLLC, is engaged in the practice of law.

62. Defendant Waak is the sole member, manager and registered agent of Defendant Richard W. Waak, Attorney at Law, PLLC.

63. The Law Offices of Nehra and Walk is a general partnership between Defendants Nehra, Waak, Gerald P. Nehra, Attorney at Law, PLLC, and Richard W. Walk, Attorney at Law, PLLC.

64. Defendant TD BANK, N.A. (hereinafter sometimes referred to as "TD Bank")

is a national banking institution in the United States chartered and supervised by the federal Office of the Comptroller of the Currency.

65. TD Bank has a principal place of business at 15 Broad Street in Boston, County of Suffolk, Commonwealth of Massachusetts 02109.

66. At all times material herein, Defendant TD Bank provided banking services, maintained accounts, and received transfers of funds for or for the benefit of TelexFree.

67. Defendant CITIZENS FINANCIAL GROUP, INC. (hereinafter sometimes referred to as "Citizens Financial") is a corporation duly organized and existing under the laws of the State of Delaware, having its principal offices in Providence, Rhode Island.

68. Citizens Financial is a banking institution with offices at 28 State Street, Boston, County of Suffolk, Commonwealth of Massachusetts 02109.

69. At all times material herein, Defendant Citizens Financial provided banking services, maintained accounts, and received transfers of funds for or for the benefit of TelexFree.

70. Defendant CITIZENS BANK OF MASSACHUSETTS (hereinafter sometimes referred to as "Citizens Bank") is a subsidiary of Citizens Financial.

71. Citizens Bank conducts business in the Commonwealth of Massachusetts at 28 State Street, in Boston, County of Suffolk, Commonwealth of Massachusetts 02109.

72. At all times material herein, Defendant Citizens Bank provided banking services, maintained accounts, and received transfers of funds for or for the benefit of TelexFree.

73. Defendant FIDELITY CO-OPERATIVE BANK doing business as FIDELITY BANK (hereinafter sometimes referred to as "Fidelity Bank") is a Massachusetts Chartered Banking Institution, having its principal offices at 675 Main Street, in Fitchburg, County of Worcester, Commonwealth of Massachusetts 01420.

74. At all times material herein, Defendant Fidelity Bank provided banking services, maintained accounts, and received transfers of funds for or for the benefit of TelexFree.

75. Defendant MIDDLESEX SAVINGS BANK (hereinafter sometimes referred to as "Middlesex Savings") is a Massachusetts Chartered Banking Institution, having its principal offices at 6 Main Street, in Natick, County of Middlesex, Commonwealth of Massachusetts 01760.

76. At all times material herein, Defendant Middlesex Savings provided banking services, maintained accounts, and received transfers of funds for or for the benefit of TelexFree.

77. Defendant GLOBAL PAYROLL GATEWAY, INC. (hereinafter sometimes referred to as "GPG") is a corporation duly organized and existing under the laws of the State of California, having its principal offices at 18662 MacArthur Boulevard, Suite 200, in Irvine, California 92612.

78. Defendant GPG provides payment processing services for companies, and acted as a conduit for payment between TelexFree and its Promoters/Investors.

79. Defendant INTERNATIONAL PAYOUT SYSTEMS, INC. (hereinafter

sometimes referred to as "IPS") is a corporation duly organized and existing under the laws of the State of Florida, having its principal offices at 2500 East Hallandale Beach Boulevard, Suite 800, Hallandale Beach, Florida 33009.

80. Defendant IPS provides payment processing services for companies and acted as a conduit for payment between TelexFree and its Promoters/Investors.

81. Defendant PROPAY, INC. (hereinafter sometimes referred to as "ProPay") is a corporation duly organized and existing under the laws of the State of Utah.

82. Defendant ProPay has its principal offices at 3400 North Ashton Boulevard, Lehi, Utah 84043 and also does business as PROPAY.COM.

83. Defendant ProPay provides payment-processing services for companies and acted as a conduit for payment between TelexFree and its Promoters/Investors.

84. It is believed that additional payment - processing services aided and abetted in TelexFree's Pyramid Ponzi scheme but their identities are as yet unknown. For ease of reference at this time they can only be referred to herein at this time as Defendant Payment - Processing Services Doe.

85. Plaintiff and the putative class seek to obtain damages and restitution, as defined below, from Defendants.

86. The District Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). In the aggregate, Plaintiff’s claims and the claims of the Putative Class exceed $5,000,000.00 exclusive of interest and costs, and there are numerous class members who are citizens of states other than TelexElectric, LLLP’s and TelexFree Mobile Holdings, Inc.’s state of

citizenship, which is Nevada.

87. Venue is also proper pursuant to 28 U.S.C. § 1391 because acts and transactions giving rise to this action occurred in this district.

88. James Merrill, Carlos Wanzeler, Steven Labriola, Carlos Costa, Joseph H. Craft conducted some of the unlawful business of TelexFree, LLC referenced and detailed in this complaint in Georgia during all material relevant times herein beginning on February 15, 2012 through approximately April 2014.

89. The District Court also has jurisdiction over this action pursuant to Sections 20(b), 20(d)(l) and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b), 77t(d)(l) & 77v(a)], Sections 21(d)(l), 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(l), 78u(d)(3)(A), 78u(e) and 78aa]. Defendants have, directly or indirectly, made use of the means of instrumentalities of interstate commerce and of the mails in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

90. Venue is also proper in this district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred within this district. Defendants transacted business and offered and sold the securities that are the subject of this action to investors in this district.

91. Furthermore, venue is proper under Section 1965 of the Racketeer Influenced and Corrupt Organizations Act [18 U.S.C. § 1965], as the Defendants have agents and/or

otherwise transact business material to this Complaint in this district.

III. FACTUAL ALLEGATIONS

92. Non-parties TelexFree, LLC or TelexFree, Inc. (hereafter collectively referred to as "TelexFree") is a marketer of telecommunications and advertising primarily targeting the hard-working Brazilian-American and Dominican-American communities.

93. Other minority groups have also been victimized.

94. TelexFree's business purportedly centers on the sale of its VoIP Program, 99 TelexFree, despite the fact that TelexFree's president testified to having limited knowledge of VoIP and never having been in the telecom business.

95. A VoIP computer program, such as 99TelexFree, allows an individual to place phone calls over the Internet.

96. In effect, an individual can use VoIP as a substitute for traditional landline phone services.

97. Using technology borrowed from Disk A Vontade, a nearly identical venture with common management, TelexFree rebranded the VoIP Program, offering it for a flat monthly fee of $49.90.

98. Unlike Disk A Vontade operations, however, TelexFree coupled the VoIP Program with a wildly lucrative and fraudulent scheme (hereinafter the "Passive Income Scheme").

99. The core of the Passive Income Scheme centers on the investment of either $289.00 or $1,375.00.

100. A participant who invests $289.00 receives one advertisement kit and ten VoIP Programs.

101. A participant who invests $1,375.00 receives five advertisement kits and fifty VoIP Programs.

102. The TelexFree advertisement kit enables participants to generate a return by posting pre-written advertisements, to pre-determined websites, through an automated TelexFree system.

103. A participant's daily use of the advertisement kits generates investment returns without the need for any VoIP Program sales.

104. As testified to, posting advertisements is an effortless process that takes only a few minutes per advertisement.

105. Indeed, many participants pay third parties to post advertisements - completely outsourcing any required work at a minimal cost.

106. By merely posting one advertisement each day of the week, the TelexFree participant receives an additional VoIP Program.

107. The participant can sell the additional VoIP Program to TelexFree for $20.00.

108. Thus, over the course of the year, a participant who initially invests $289.00 and does nothing more than place one advertisement per day can receive profit of at least $681.00 - a return in excess of 200%.

109. Alternatively, a participant who initially invests $1,375.00 and does nothing

more than place five advertisements per day can receive profit of at least $3,675.00 - a return in excess of 250%.

110. This feature alone has attracted thousands of individuals to invest in TelexFree.

111. The Passive Income Scheme generates further returns for participants through various bonus structures and recruitment commissions.

112. TelexFree tailors each of the additional income streams to incentivize recruitment.

113. By merely recruiting one individual into the TelexFree scheme, a participant can receive as much as $100.00.

114. By recruiting multiple individuals, TelexFree participants become eligible for revenue sharing bonuses of up to 3% of the TelexFree's VoIP Program sales.

115. Hidden among TelexFree's bonus structure and recruitment commissions is the fact that TelexFree participants may self-qualify.

116. Indeed, as testified by participants, a participant may invest in more than one advertisement kit and personally purchase the VoIP Program to earn bonuses.

117. Thus, a participant may purchase a VoIP Program, never use the program, and still qualify for additional income.

118. Without ever selling any VoIP Program, the participant receives a return far in excess of the 200-250% guaranteed return.

119. To drum up interest in recruiting, TelexFree held extravaganzas complete with a rock concert atmosphere and wild cheering, including the "wave."

120. Until recently, the TelexFree website and TelexFree presentations included pictures of cash and luxury property.

121. In one such presentation, TelexFree touted the Passive Income Scheme as "the opportunity of a lifetime."

122. Through such fantasies, reserved only for those at the top of the Passive Income Scheme, TelexFree induced investments drawn from participants' earnest earnings and savings.

123. Troublingly, TelexFree allowed certain participants to join the scheme despite prior run-ins with the law.

124. TelexFree's revenue from VoIP Programs sales alone is inadequate to satisfy participant returns.

125. In 2012 and 2013, TelexFree identified 4,845,576 VoIP Program transactions totaling $238,395,353.80.

126. Net revenue received by TelexFree from VoIP Program sales was significantly less due to substantial commission payments.

127. Importantly, TelexFree founder Wanzeler could not identify the number of individuals purchasing only a VoIP Program without also becoming a participant.

128. Wanzeler provided wildly varied estimates when challenged to identify the number of VoIP Programs sold to non-participants.

129. Over the same period, TelexFree had 783,771 investments of either $289.00 or $1,375.00 totaling $880,189,455.32.

130. Assuming that each participant invested only $289.00 and did no more than post one advertisement per day, TelexFree owed participants a total of $799,446,420.00.

131. Alternatively, if each participant invested only $1,375.00 and did no more than post five advertisements per day, TelexFree owed $3,997,232,100.00 to its participants.

132. According to data provided by TelexFree, $1,375.00 investments accounted for 88% of transactions through Massachusetts-based participants.

133. Even assuming that only 50% of all participant investments were for $1,375.00, TelexFree would still owe $2,398,897,200.00 - a number that far exceeds TelexFree's reported total revenues over the same period.

134. This figure of almost $2.4 billion does not even include further bonuses, recruitment commissions, and revenue sharing.

135. The inclusion of these additional payments would create an even greater disparity between the VoIP Program revenue and guaranteed money paid out of the Passive Income Scheme to participants.

136. In addition to the Passive Income Scheme, TelexFree, through a Brazilian affiliate, offered an investment in a Best Western Hotel.

137. As described by TelexFree's president, the Best Western Hotel opportunity was an important marketing tool to bolster TelexFree credibility worldwide.

138. TelexFree management facilitated the offer of the Best Western Hotel opportunity through the inclusion of the Best Western Hotel opportunity on the front page of the TelexFree website accessible in the Commonwealth.

139. Through a prominently placed website banner and video, TelexFree presented an investment opportunity with a guaranteed yearly return of over 8%.

140. The Best Western Hotel opportunity video remained on the United States-based TelexFree website for months despite the fact that the president of TelexFree was aware of the video and requested TelexFree's website staff to remove the video.

141. In fact, the difference between U.S. TelexFree operations and Brazilian operations is a distinction without a difference.

142. As described by TelexFree management, the ownership interests in TelexFree, Inc. (Massachusetts-based), TelexFree LLC (Nevada-based) and Ympactus (Brazilian-based), overlap.

143. Both Defendants Merrill and Wanzeler, self-proclaimed founders of TelexFree, hold 50% ownership interest in the United States entities and 20% and 40% interests, respectively, in the Brazilian entity.

144. Defendant Costa, head of Brazilian operations and longtime friend of Wanzeler, was an owner of TelexFree, LLC.

145. In late 2013, Costa withdrew his ownership for what Merrill characterized as "legal reasons."

146. Furthermore, TelexFree entities use the same website and back office support, merely providing identical information in multiple languages.

147. Perhaps most telling, both Merrill and Wanzeler testified to transferring at least $3,000,000.00 to Costa long after Brazilian authorities shut down Ympactus operations.

148. Over two years of operations, TelexFree has employed multiple financial accounts, including domestic and international bank accounts and various online payment processors, to facilitate the fraudulent offer or sale of securities.

151. Using various interrelated business operations, fraudulent practices, schemes, bank accounts and entities, TelexFree claims it has raised nearly $1,000,000,000.00 worldwide.

152. TelexFree has not received $1,000,000,000.00 worldwide.

153. As with all Ponzi or pyramid Schemes, TelexFree operations are untenable without a continuous influx of new capital.

154. Indeed, the financial basis of the TelexFree scheme centers on the recruitment of additional participants and placing online advertisements - not the sales of TelexFree Voice over Internet Protocol computer programs (hereinafter "VoIP Program(s)").

155. Class Members were fraudulently induced to invest in at least two other "scam" business opportunities involving the offer or sale of unregistered securities in Massachusetts, namely, 1) TelexFree's passive income scheme, and 2) an offer to invest in TelexFree's hotel program.

156. Despite the fact that upon the advise of their legal counsel, TelexFree referred to the members of the putative class as Associates and Promoters, Plaintiff Cook and all members of the putative class member are considered under federal and state securities law as "Investors".

157. In January 2013, the Brazilian Bureau of Consumer Protection (known as

Procon), began a investigation into TelexFree. In its January 11, 2013 press release, Procon indicated that it had "detected evidence of crimes":

The investigation initiated by civil prosecution of Consumer Protection (no. 01/2013) shows several controversial issues and possible crimes that put consumers at risk in time to accept that kind of deal. Among the possibilities, there is a breach in the Federal Law No. 1.521/51, art. 2, according to which the following is a crime:

> "Obtaining or attempting to obtain illicit gains at the expense of the people or of undetermined number of people through speculation or processes fraudulent ('snowball', 'chains', 'pichardismo' and any other equivalent)" including Ponzi pyramid".

There is also the possible violation of the Code of Consumer Protection (CDC), with false advertising, failure of product information and company, abuse of weakness or ignorance of consumers and conditions unreasonable disadvantage, among others.

158. Procon subsequently initiated an official complaint and notified the "State Prosecutors Office, the Minister of Finance and the Federal Police." The Ministry of Finance, after its investigation, declared that:

> The Telexfree business of selling packages of internet telephony (VoIP, its acronym in English), is not sustainable and suggests a Ponzi scheme, which is a crime against the popular economy.

159. As the matter processed through the Brazilian Court System, the Ministry of Finance was ordered to refrain from issuing further statements about the matter. In a

blatantly misleading and deceptive act, TelexFree circulated through its affiliates the following misrepresentation of the order:

> It's official! The investigation on TelexFree has been absolved of what Behind MLM has researched and posted.

160. On June 19, 2013, the Brazilian Court in Acre issued an injunction putting "a stop to TelexFree's business operations, including the registration of new affiliate investors, acceptance of new investments and paying any returns owed on existing affiliate investments."

161. At all times material herein, the other Defendants knew that TelexFree was and illegal Pyramid Ponzi Scheme which involved the illegal sale of securities, but continued to aid, abet and further such illegal activities. Despite the foregoing knowledge, TelexFree and the other Defendants continued to participate in the attraction and processing of new investors, continued to allow payments to process through TelexFree's accounts, allowed TelexFree to continue to illegally sell securities and further its illegal Pyramid Ponzi Scheme, and otherwise continued to further TelexFree's illegal activities.

162. On March 9, 2014, TelexFree changed its compensation plan, thereby requiring Promoters to sell its VoIP product in order to qualify for the payments that TelexFree had previously promised to pay them. The rule change generated a storm of protests from Promoters who were unable to recover their money.

163. On April 1, 2014, dozens of Investors descended upon TelexFree's Marlborough, Massachusetts office to protest this change and attempt to regain access to

their money. Local media covering interviewed one Investor who admitted that the VoIP service is "almost impossible to sell". On April 14, 2014, Defendants TelexFree, Inc., TelexFree, LLC and TelexFree Financial abruptly sought bankruptcy protection in Nevada under Chapter 11, admitting that they cannot meet their obligations from VoIP revenues and seeking authority to reject all its current obligations to promoters.

164. At all relevant times herein, Defendants engaged in: (a) fraudulent or deceptive conduct in connection with the purchase or sale of securities, in violation of Section 10 (b) of the Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; (b) fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"); and (c) the offer or sale of unregistered securities, in violation of Section 5 of the Securities Act.

165. Almost all financial institutions have terminated their relationship with TelexFree after only a few months of business.

166. Recently, frantic emails between TelexFree management and financial institutions paint an entirely bleak picture of continuing TelexFree financial operations.

167. TelexFree operations have become a risk that financial institutions are no longer willing to bear.

168. As described by one financial institution, "[n]o US Bank or Processor . . . will accept your [TelexFree] business given that you are on month five of the Visa Chargeback monitoring program. You are one of only three merchants in the USA on month five so you are a real hot-potato as they say."

169. Recently, on March 9, 2014, TelexFree management made several changes to its once wildly popular Passive Income Scheme.

170. A central component of the new changes affect the ease of participant withdrawals.

171. TelexFree participants are no longer able to withdraw money, even money already "earned," without making a specified number of retail sales and recruiting a number of new investors.

172. Certain TelexFree participants have frantically contacted the Division suspecting that these changes are the harbinger of TelexFree's collapse.

173. Not only is it now more difficult to withdraw money from TelexFree, TelexFree has also switched its compensation plan from one that pays participants in dollars to one that operates on TelexFree "credits."

174. These credits appear to be nothing more than IOUs.

175. In furtherance of their unlawful enterprise, TelexFree mailed fraudulent and inaccurate 1099 (Miscellaneous Income) forms to investors, possibly to create the illusion that they had made payments to investors.

176. The 1099 forms were provided long after the mandated January 31, 2014 deadline, and some after the April 15, 2014 federal tax filing deadline.

177. TelexFree falsely represented that investors had received income that they had in fact never received.

178. TelexFree did not generate sufficient funds from sales of their phone service

to pay the returns on investments that they had contracted to pay.

179. Instead, the funds TelexFree used to pay the purported returns on investments were the principal investment funds (membership fees) tendered by subsequent TelexFree investors.

180. To this end, on April 14, 2014, TelexFree filed for Chapter 11 bankruptcy protection in Nevada.

181. Defendant TelexElectric is a Nevada limited liability limited partnership formed on December 2, 2013 by Co-Defendants Merrill and Wanzeler.

182. According to its filings with the State of Nevada Secretary of State Office, Co-Defendants Merrill and Wanzeler are listed as the General Partners of TelexElectric.

183. Co-Defendants Merrill and Wanzler further list their address as 4705 S. Durango Drive, #100-J1 (a post office box), Las Vegas, Nevada 89147, which is the same location as TelexFree, LLC.

184. TelexElectric also lists as its address 4705 S. Durango Drive, #100-J1 (a post office box), Las Vegas, Nevada 89147.

185. Defendant Telex Mobile is a Nevada corporation formed on November 26, 2013.

186. According to its filings with the State of Nevada Secretary of State Office, Telex Mobile identifies its officers and directors as:

I. Co-Defendant James M. Merrill is President, Secretary and Director, having an address at 4705 S. Durango Drive, #100-J1 (a post office

box), Las Vegas, Nevada 89147.

ii. Co-Defendant Carlos Wanzeler is Treasurer and Director, having an address at 4705 S. Durango Drive, #100-J1 (a post office box), Las Vegas, Nevada 89147.

187. According to filings with the State of Nevada Secretary of State Office, both TelexElectric and Telex Mobile Holdings identify as their registered agent BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

188. TelexFree, LLC, TelexFree, Inc., TelexFree Financial, Defendants TelexElectric and TelexFree Mobile Holdings are alter ego entities, which combine to form a single enterprise.

189. TelexFree's financial statements reveal that TelexFree Electric received a $2,022,329.00 "loan" from TelexFree during the class period.

190. TelexFree's financial statements further reveal that TelexFree Mobile received a $500,870 "loan" from TelexFree during the class period.

191. TelexElectric was fraudulently set up for the purpose of sheltering funds rightfully belonging to the putative class.

192. These "loans" were in essence fraudulent transfers by TelexFree to evade claims by investors and creditors, and otherwise to unlawfully abscond with funds that rightfully belonged to creditors and investors.

193. At all times material herein, Defendants Merrill, Wanzeler, Labriola, Craft and Costa (hereinafter sometimes collectively "TelexFree's Management") were responsible for

the control and operation of TelexFree and its affiliated entities.

194. Moreover, TelexFree's Management not only controlled the activities and operations of TelexFree, but also knowingly and willfully conspired to perpetrate, and did in fact perpetrate, the TelexFree Pyramid Ponzi Scheme with full awareness of its fraudulent and illegal nature.

195. At all times material herein, Defendant Merrill served as the President, Secretary, and Director of TelexFree, Inc., a Manager of TelexFree, LLC, President, Secretary and Director of TelexFree Financial, General Partner of TelexElectric, and President, Secretary and Director of Telex Mobile Holdings.

196. In his capacities as Officer, Director, Manager and General Partner of the foregoing interrelated companies, Merrill exercised significant control over TelexFree's business operations.

197. More particularly, Merrill exercised significant control over the TelexFree Pyramid Ponzi Scheme.

198. Defendant Merrill has appeared in videos posted to the internet, in which he can be seen promoting TelexFree as a revenue opportunity for Promoters.

199. As of March 28, 2014, the TelexFree website included a biography of Merrill, which stated that Merrill was a 1985 graduate of Westfield State University in economics.

200. Also, as of March 28, 2013, the TelexFree website stated that Merrill is "well versed in one of the new technologies of the era (VoiP) [sic]."

201. As of April 28, 2014, the TelexFree Canadian website continued to state that

Merrill is a 1985 graduate of Westfield State University in economics and "[k]nowledgeable about a new era of technology (VOIP)."

202. According to testimony obtained by the Office of the Secretary of the Commonwealth of Massachusetts (hereinafter sometimes referred to as "SOC"), Merrill attended Westfield State University for a mere two years, without either receiving a degree or declaring a major.

203. Furthermore, in direct contravention to the representations of the TelexFree websites, Merrill testified to SOC that he had only a basic understanding of VoIP technology.

204. At all times material herein, Defendant Wanzeler served as Treasurer and a Director of TelexFree, Inc., a Manager of TelexFree, LLC, Vice President, Treasurer, and a Director of TelexFree Financial, General Partner of TelexElectric and Treasurer and Director of Telex Mobile Holdings.

205. According to corporate filings on record with SOC, at all times material herein, Wanzeler has also served as the Chief Executive Officer of TelexFree, Inc.

206. In his capacities as Officer, Director, Manager and General Partner of the foregoing interrelated companies, Wanzeler exercised significant control over TelexFree's business operations.

207. More particularly, Wanzeler exercised significant control over the TelexFree Pyramid Ponzi Scheme.

208. Defendant Wanzeler has also participated in marketing TelexFree to potential investors, appearing in videos posted to the Internet in which he can be seen promoting

TelexFree as a revenue opportunity for Promoters.

209. At all times material herein, Defendant Labriola, served as the International Marketing Director for TelexFree, Inc.

210. Labriola was one of the original Directors of Common Cents Communications, Inc., and at all material times herein exercised significant control over TelexFree's business operations and the operations of its interrelated companies.

211. Defendant Labriola has also appeared in several videos promoting TelexFree which were posted on the internet, and has acted as TelexFree's spokesman to Investors during post-bankruptcy petition conference calls.

212. As a Director of TelexFree, Inc., Defendant Labriola, has exercised significant control over the TelexFree Pyramid Ponzi Scheme.

213. As International Marketing Director for TelexFree, Inc., Labriola has also actively and knowingly perpetrated the TelexFree fraud through the dissemination of false and misleading advertising and marketing communications.

214. At all times material herein, Defendant Craft, also known as Joe H. Craft, has been a certified public accountant and served as the Chief Financial Officer ("CFO") of Telex Free, Inc and TelexFree, LLC.

215. In his capacity as CFO of TelexFree, Craft has been responsible for, inter alia, preparing or approving TelexFree's financial statements, overseeing TelexFree's accounting methods and records, and otherwise exercising significant supervision and control over TelexFree.

216. On April 23, 2013, in response to a request for a profit-and-loss statement issued by the SOC, TelexFree produced a document purporting to be TelexFree's 2012 profit-and-loss statement.

217. TelexFree did not make use of usual and accepted Multi-Level Marketing accounting practices. For example they did not separate out income generated by sales of VoIP from income generated by other means.

218. On February 5, 2014, the SOC requested a second profit-and-loss statement from TelexFree for 2012, which TelexFree produced on February 26, 2014.

219. A comparison of these two profit-and-loss statements - each purporting to be TelexFree's profit-and-loss statement for 2012 - reveals massive discrepancies.

220. For example, the first statement provided by TelexFree lists Total Income for 2012 at $1,864,939.70, while the second lists Total Income for 2012 at $2,834,835.70.

221. As further examples, Agent Commission is listed at $520,582.95 in the first, versus $2,105,925.61 in the second; Total Expenses are listed as $784,899.22 in the first, versus $2,333,893.09 in the second; Net Operating Income is listed as $1,080,040.48 in the first, versus $478,251.56 in the second; and Net Income is listed as $1,066,313.39 in the first, versus $477,652.23 in the second.

222. The existence of duplicative accounting records containing egregious discrepancies is clear indicia of TelexFree's falsification of accounting records and failure to adhere to Generally Accepted Accounting Principals ("GAAP").

223. As Chief Financial Officer for TelexFree, Inc. and TelexFree, LLC, as well as

a certified public accountant, Defendant Craft, knowingly perpetrated the TelexFree fraud by, inter alia:

a. Overseeing TelexFree's creation of falsified accounting records;

b. Failing to ensure that GAAP accounting methods were adopted and adhered to;

c. Fraudulently certifying TelexFree's business operations and accounting practices as good and lawful, despite actual knowledge of their unlawful and illegitimate nature;

d. Concealing the fact that the AdCentral Packages purveyed by TelexFree were actually securities; and

e. Concealing and absconding with investor assets.

224. At all times material herein, Defendant Costa, was listed as Manager of TelexFree, LLC with the Massachusetts Secretary of State Corporations Division.

225. Costa is one of the original founders of TelexFree.

226. At all times material herein, Costa was involved in the day-to-day management and oversight of TelexFree and was actively involved in and managed its Brazilian operations.

227. Costa has appeared on numerous websites and videos posted on the Internet promoting TelexFree and touting its huge financial return.

228. Costa was an outspoken advocate against the Brazilian Court's decision to enjoin TelexFree's Brazilian activities, and publicly supported TelexFree's illegal and corrupt

activities.

229. Costa is videoed displaying an Insurance Notification representing that it was proof of coverage for investors' returns; however, in actuality the document was a notification denying coverage. (See http://www.youtube.com/watch?v=q2A2IsAPd0I).

230. Defendants Gerald P. Nehra and Richard W. Waak, along with the entities Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and Richard W. Waak, Attorney at Law, PLLC (hereafter sometimes collectively referred to as "Attorney Defendants") are self-proclaimed multi-level marketing ("MLM") specialist attorneys. (See, e.g., Nehra Endorsement at 7:55)

231. During the course of TelexFree's fraudulent scheme, the above-named Attorney Defendants acted as legal counsel to TelexFree.

232. Attorney Nehra had previously acted as counsel to other multi-level marketing firms, which were forced, closed by federal and/or state authorities due to fraudulent pyramid and Ponzi schemes, including Zeek Rewards and AdSurfDaily.

233. In fact, during the investigation of the AdSurfDaily scheme, Attorney Nehra filed an affidavit in court representing that AdSurfDaily was "not a Ponzi Scheme." Subsequently, in 2008, AdSurfDaily was forced to cease operations by federal authorities after being found to be a Ponzi scheme; a fact later admitted to by its principal.

234. Attorney Nehra also previously served in an advisory capacity to Zeek Rewards. Zeek Rewards was later found to be an unlawful Ponzi scheme and was shut down by federal authorities.

235. Attorney Nehra's extensive experience in multi-level marketing, and particularly his involvement with the Ponzi schemes involving AdSurfDaily and Zeek Rewards, armed him with the knowledge of what constitutes violations of United States securities law. Indeed, Attorney Nehra was well aware that the use of semantics and obscured phraseology to obfuscate securities laws fails to legitimize TelexFree's illegal Pyramid Ponzi Scheme.

236. Attorney Waak also claims to have more than thirty years of experience in counseling MLM and direct-selling enterprises.

237. Attorney Waak claims to have managed the legal defense of multiple class action lawsuits involving claims for "pyramiding, securities fraud, false advertising and civil RICO."

238. Attorney Nehra and Attorney Waak are together the general partners of the Law Offices of Nehra and Waak.

239. On the website of the Law Offices of Nehra and Waak, Defendant Attorneys Nehra and Waak claim to specialize in counseling "domestic and foreign companies operating MLM (multi-level marketing) businesses in the United States."

240. Also, on the website of the Law Offices of Nehra and Waak, Attorneys Nehra and Waak boast "No Company that retained this firm BEFORE LAUNCH has been shut down by a regulator."

241. As general partners of the Law Offices of Nehra and Waak, Attorney Nehra and Attorney Waak are jointly and severally liable for torts and obligations of the firm.

242. During the time that the Law Offices of Nehra and Waak provided legal counsel to TelexFree, Attorney Waak was Principal Attorney of the law firm.

243. During this time, Attorney Waak, as Principal Attorney of the Law Offices of Nehra and Waak, was charged with oversight of the daily activities of the law firm.

244. TelexFree's Contract at Section 2.6.5 (m) mandates that Promoters are not to use the term investment with respect to the registration costs.

245. Specifically, TelexFree's Contract at Section 2.6.5 (m) specifically provides that the Promoter must not "use terms that distort the real meaning of products or the mechanism and functioning of multilevel marketing, including, without limitation, expressions that convey the idea of instant wealth for nothing in exchange, as well as speaking of registration costs as a 'financial investment.' Similarly, it is expressly prohibited to use the term 'INVESTMENT' at meetings and in promotional materials in general, orally or in writing."

246. Co-Defendant and Company Counsel Attorney Gerald P. Nehra, through his affiliated companies (Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and Richard W. Waak, Attorney at Law, PLLC), and under the direct supervision of Co-Defendants Richard W. Waak and Richard W. Waak Attorney at Law, PLLC provided this deceitful advice for the purpose of furthering perpetuating Defendants' unlawful Pyramid Ponzi Scheme.

247. During this time, Attorneys Nehra and Waak also maintained the Defendant Professional Limited Liability Companies, Gerald P. Nehra, Attorney at Law, PLLC and

Richard W. Waak, Attorney at Law, PLLC, which, upon information and belief, also provided legal and counseling services to TelexFree.

248. Among the Attorney Defendants, and during the course of TelexFree's scheme, there was no clear distinction among the services provided to TelexFree by the Law Offices of Nehra and Waak, the individual Defendants, and their respective Professional Limited Liability Companies.

249. The Attorney Defendants' role and involvement in the TelexFree Pyramid Ponzi Scheme exceeded merely providing legal counsel because they knowingly acted to further and perpetuate TelexFree's illegal Pyramid Ponzi Scheme, which caused Plaintiffs Waldemara Martins and Leandro Valentim and the similarly situated Putative class members to suffer economic loss.

250. The Attorney Defendants had actual knowledge that the TelexFree Business Model was a fraudulent Pyramid Ponzi Scheme.

251. Seeking to personally profit from TelexFree's exploitation of the members of the putative class, Defendant Gerald P. Nehra drew upon his prior experience to aid, abet and play an integral part in TelexFree's unlawful, unfair and deceptive acts and practices during times relevant to this complaint.

252. Attorney Nehru counseled TelexFree on methods to evade United States securities laws that were intended to offer, in part, protection from pyramid Ponzi schemes; all to enrich himself financially and serve his own selfish interests.

253. Attorney Nehra further encouraged TelexFree Investors to unknowingly

participate in the evasion of federal and state securities laws.

254. Defendant Nehra accomplished this by representing that his extensive experience as an MLM expert and his thorough research of TelexFree's business model allowed him to form a legal opinion that TelexFree was a legitimate business.

255. In making this professional opinion Defendant Nehra misrepresented TelexFree as a legitimate business concern.

256. For instance, by instructing Investors to avoid using the terms "investment" with reference to AdCentral Package (See TelexFree Contract, Paragraph 2.6.5(m)), he attempted to conceal, and encouraged others to conceal, the fact that TelexFree was involved in the sale of securities, and further attempted to strip Investors of the rights afforded them by federal and state securities laws.

257. In advising TelexFree Investors to act to avoid the protections offered by federal and state securities laws, Attorney Nehra never once advised the putative class member TelexFree Investors that so acting presented a risk to them, including the risk of participating in an unlawful scheme.

258. In advising TelexFree Investors to act to avoid the protections offered by federal and state securities laws, Attorney Nehra never once advised the putative class member TelexFree Investors that so acting was against their own interests or that it better served TelexFree and himself.

259. Attorney Nehra's acts of aiding, abetting and playing an integral part in TelexFree's unlawful, unfair and deceptive acts and practices exceed the scope of zealously

representing TelexFree.

260. Defendant Gerald Nehra contributed in an indispensable way to TelexFree's continued unlawful operation in the United States because, as a duly licensed member of the bar, he publicly stated to Investors that, in his professional opinion, TelexFree's business model and operations complied with federal and state laws.

261. TelexFree and its Officers knowingly used Attorney Nehra's legal opinions and misrepresentations as a marketing tool to unfairly and deceptively further and advance their illegal Pyramid Ponzi Scheme.

262. Attorney Nehra knew his legal opinions and representations would be used by TelexFree as a marketing tool to further and advance their business model.

263. Attorney Nehra's opinions were packaged and promoted as part of TelexFree's total "post Brazilian shut down package" to the members of the putative class.

264. As described in greater detail throughout, in the early spring of 2013 TelexFree Brazil was found to be an illegal pyramid and Ponzi scheme.

265. TelexFree suffered a financial crisis when the funds of hundreds of thousands of Brazilian affiliate investors were frozen in company accounts by order of the Brazilian Court.

266. To keep its Pyramid Ponzi Scheme going, TelexFree needed a constant influx of new investor cash.

267. In spring 2013, TelexFree was forced to focus on new markets, including new Investors from the United States and Canada, because their Brazilian operation had been

shuttered and all Brazilian assets were frozen. To enhance the credibility and marketability of their United States operation, TelexFree employed the Attorney Defendants as a guise to legalize their illegal and fraudulent methods, operation and business plan.

268. On the weekend of July 26th and 27, 2013, TelexFree held an event, which they dubbed a "super weekend," in Newport Beach, California. The focus of TelexFree's "super weekend" event included considerable efforts intended to reassure Investors that its United States operations and program were legitimate, lawful and worth putting their money behind.

269. Notwithstanding the fact that TelexFree's Brazilian bank accounts were frozen and all their Brazilian recruiting and Return on Investment payments had been suspended by court order in their largest affiliate market, Attorney Nehra advised attendees that the shut-down in Brazil would have no bearing on TelexFree's U.S. operations.

270. At this "super weekend" event, Attorney Nehra spoke at length to attending investors, assuring them of the legality of TelexFree's operation stating: "It is legally designed…you are on very solid legal ground," and stating that TelexFree's operation had been "vetted by the Nehra and Waak law firm."

271. In fact when asked by a concerned affiliate about the injunction granted against the company, Attorney Nehra first deflected its relevance by stating: "Okay, I am the MLM specialist and attorney for TelexFree in the United States only. So I gotta duck the question."

272. Attorney Nehra left no doubt that he and his firm were acting as legal counsel

to TelexFree to assist them in insuring their U.S. operations were lawfully conducted, knowing that, in fact, these operations were nothing more than an illegal Pyramid Ponzi Scheme.

273. Although, at all times material herein, Attorney Nehra emphatically assured Investors and potential Investors that, in his professional opinion, the TelexFree business model was legitimate and lawful, he had actual knowledge that TelexFree's operation was unlawful and illegitimate.

274. Furthermore, at all times material herein, Attorney Nehra assured Investors and potential Investors that, in his professional opinion, the TelexFree business model was legitimate, although he had actual knowledge that TelexFree Multilevel Marketing Network "Partnerships" involving TelexFree's AdCentral marketing packages were in fact unregistered securities. Attorney Nehra even provided advice on how to unlawfully circumvent federal and state securities laws.

275. In addition, and at all times material herein, Attorney Nehra assured Investors and potential Investors that, in his professional opinion, the TelexFree business model was legitimate and lawful, even though Attorney Nehra had specific knowledge of the ruling of the Brazilian Court and knowledge of and access to TelexFree's United States operations and their composition.

276. In fact, and more particularly, Attorney Nehra knew that:

a. TelexFree used the exact same business model in Brazil as they do in the United States and throughout the world;

b. The Brazilian court had made a specific finding of fraud and that TelexFree's United States operations and composition was an unlawful venture;

c. The Brazilian court described Telex business operations in terms of the quintessential pyramid scheme after TelexFree's own lawyers unwittingly admitted as much;

d. TelexFree's lawyer Djacir Falcão stated to the Brazilian court that if the injunction continues the company may enter into bankruptcy: "Running the company really becomes difficult because of the court decision, so we will appeal," said Falcão ;

e. Falcão tried to appeal to the Brazilian judges on the grounds that "should the company spend a few more days being prohibited from signing up new investors, they would have no money to pay the old ones;"

f. A Brazilian judge rejected this argument and denied TelexFree's injunction appeal;

g. TelexFree's other appeals were rejected by the Brazilian courts;

h. One Brazilian judge remarked that the issue is that the earnings will be exhausted when the main source of revenue of the group (new affiliate registrations) stops;

I. The above scenario is typically the result of a pyramid scheme;

j. Judge Samoel Evangelista, 2nd Civil Chamber of the Court of Acre (TJ-AC), entered an order to keep the TelexFree funds frozen, to block future payments

to TelexFree in Brazil and to enjoin TelexFree from signing on new investors in Brazil;

k. According to Brazilian Judge Thais Kalil, how TelexFree earnings are paid out was advantageous to the prosecutor's argument, in that adding publishers to the network is of more importance than actually trying to sell the VoIP product;

l. Judge Thais Kalil also wrote that "(t)he issue is that the earnings will be exhausted when the main source of revenue of the group (new affiliate registrations) stops. Many (affiliates) do not even have the opportunity to recover their initial investment (minimum U.S. $339) and this is detrimental."

277. Defendant Nehra's own comments make clear that he knew that TelexFree was an unlawful pyramid Ponzi scheme.

278. Defendant Nehra knew at all times relevant to his providing legal opinions and counsel at the request of TelexFree that TelexFree's conduct constituted a breach of duty to its Investors.

279. Defendant Nehra knew at all times relevant to his providing legal opinions and counsel at the request of TelexFree that his role was intended to give substantial assistance or encouragement to TelexFree to continue its unlawful business model.

280. Defendant Nehra knew at all times relevant to his providing legal opinions at the request of TelexFree that TelexFree intended to use Nehra prominently as a marketing tool on both their localized Brazilian (Portuguese) and Spanish (Spanish) website portals, in an effort to make TelexFree's illegal Pyramid Ponzi Scheme appear legitimate, thereby

continuing and perpetuating the ongoing fraud.

281. TelexFree in fact did, with his knowledge, use Attorney P. Nehra and his legal opinions supporting their business model as lawful prominently as a marketing tool on both their localized Brazilian (Portuguese) and Spanish (Spanish) website portals.

282. Defendant Nehra, in order to serve his own pecuniary self-interests, willfully aided, abetted, counseled, induced, and/or procured TelexFree's violations of law regarding the proper segregation and maintenance of customer funds, and acted in concert and combination with Defendant TelexFree in such violations.

283. Defendant Nehra gave substantial assistance to TelexFree in accomplishing a tortious result, and Nehra's own conduct, separately considered, constitutes a breach of duty to Investors because, inter alia, he:

a. Knowingly misrepresented the legality and sustainability of TelexFree's operations to the detriment of Investors, and received fees from TelexFree for doing so;

b. Knowingly obscured and obfuscated the illegal nature of TelexFree's scheme by the manipulative use of language, including, e.g., advising TelexFree that the use of the term "investment" must be avoided;

c. Breached his duty of professional care to investors, by failing to exercise proper due diligence in investigating the legality of TelexFree's operations;

d. Advised and encouraged Investors to evade United States securities laws to the benefit of TelexFree and detriment of the Investors and the public; and

e. Engaged in a civil conspiracy to defraud TelexFree's investors by means of a Pyramid Ponzi Scheme, and, in fact, took a leading role in the scheme.

284. Attorney Waak, as general partner and Principal Attorney of the Law Offices of Nehra and Waak, was aware of, oversaw, and, upon information and belief, participated in Attorney Nehra's tortious conduct with respect to the TelexFree Pyramid Ponzi Scheme.

285. Attorney Waak, as general partner and Principal Attorney of the Law Offices of Nehra and Waak, was aware of, oversaw, and, upon information and belief, participated in TelexFree Pyramid Ponzi Scheme.

286. As the Chief Financial Officer of TelexFree, Inc. and TelexFree, LLC, Defendant Craft, also known as Joe H. Craft, has been a certified public accountant and served as the Chief Financial Officer ("CFO") of Telex Free, Inc. and TelexFree, LLC.

287. Defendant Craft is also the sole Member and Manager of Craft Financial, an Indiana-based limited liability company.

288. Defendants Craft and Craft Financial are indistinguishable with regards to their involvement with the TelexFree Pyramid Ponzi Scheme.

289. Defendants Craft and Craft Financial knowingly participated in and perpetuated TelexFree's illegal Pyramid Ponzi Scheme.

290. In his dual capacity as CFO and certified public accountant of TelexFree, Defendants Craft and Craft Financial have been responsible for, inter alia, preparing or approving TelexFree's financial statements, overseeing TelexFree's accounting methods and records, and otherwise exercising significant supervision and control over TelexFree.

291. On April 23, 2013, in response to a request for a profit-and-loss statement issued by the SOC, TelexFree produced a document purporting to be TelexFree's 2012 profit-and-loss statement.

292. As stated, on February 5, 2014, the SOC requested a second profit-and-loss statement from TelexFree for 2012, which TelexFree produced on February 26, 2014.

293. As stated, a comparison of these two profit-and-loss statements - each purporting to be TelexFree's profit-and-loss statement for 2012 - reveals massive discrepancies.

294. For example, the first statement provided by TelexFree lists Total Income for 2012 at $1,864,939.70, while the second lists Total Income for 2012 at $2,834,835.70.

295. As further examples, Agent Commission is listed at $520,582.95 in the first, versus $2,105,925.61 in the second; Total Expenses are listed as $784,899.22 in the first, versus $2,333,893.09 in the second; Net Operating Income is listed as $1,080,040.48 in the first, versus $478,251.56 in the second; and Net Income is listed as $1,066,313.39 in the first, versus $477,652.23 in the second.

296. The existence of duplicative accounting records containing egregious discrepancies is clear indicia of TelexFree's falsification of accounting records and failure to adhere to GAAP.

297. As CFO and certified public accountant for TelexFree, Inc. and TelexFree, LLC, as well as a certified public accountant, Defendants Craft and Craft Financial, knowingly perpetrated the TelexFree fraud by, inter alia:

a. Overseeing TelexFree's creation of falsified accounting records;

b. Failing to ensure that GAAP accounting methods were adopted and adhered to;

c. Fraudulently certifying TelexFree's business operations and accounting practices as good and lawful, despite actual knowledge of their unlawful and illegitimate nature; and

d. Conspiring with TelexFree's Officers to structure and perpetuate an illegal pyramid Ponzi scheme designed to defraud Investors and enrich themselves.

298. Defendants Craft and Craft Financial disseminated, and otherwise allowed to be disseminated, false and inaccurate financial information among Investors, knowing that such information was false an designed to continue and perpetuate the illegal Pyramid Ponzi Scheme.

299. In particular, Defendants Craft and Craft Financial authorized TelexFree to provide Investors with inaccurate and fraudulent 1099 (Miscellaneous Income) forms, in many cased long after the January 31, 2014 required deadline, and in an effort to misrepresent payments made to Investors and conceal assets.

300. The fact that these inaccurate 1099's are expected to be filed with the Internal Revenue Service and State Revenue Offices will impose further an undue and massive hardship upon investors.

301. Defendants also prepared false financial documents for affiliated TelexFree entities and prepared false tax returns for the affiliated TelexFree entities.

302. During the course of the TelexFree Pyramid Ponzi Scheme, Defendants TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, GPG, IPS, and ProPay and the Does provided crucial financial services to TelexFree, which enabled TelexFree to carry on its Pyramid Ponzi scheme.

303. TelexFree's financial services providers, including the aforesaid banking institutions and payment processing services providers, knowingly aided and abetted TelexFree's Pyramid Ponzi Scheme by, inter alia:

a. Receiving transfers of funds from, and on behalf of, TelexFree in the course of TelexFree's fraudulent business, despite knowledge of the fraudulent nature of TelexFree's business enterprise;

b. Receiving transfers of funds from TelexFree, its affiliated entities, and its executive officers, which transfers deepened TelexFree's insolvency, despite having knowledge of TelexFree's actual or imminent insolvency at the time of such transfers;

c. Processing payments to, and on behalf of, TelexFree, including its affiliated entities and Management, in the course of TelexFree's fraudulent business, despite knowledge of the fraudulent nature of TelexFree's business enterprise; and

d. Otherwise enabling the TelexFree Pyramid Ponzi Scheme to expand and continue by providing necessary financial services to TelexFree, despite actual knowledge of fraud on the part of TelexFree.

304. Defendants, TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, and Middlesex Savings (hereinafter sometimes collectively referred to as "Banking Institution Defendants") possessed actual knowledge of the fraudulent nature of TelexFree's business operation, since at least June 2013.

305. Despite knowledge of the fraudulent nature of TelexFree's business operations, the Banking Institution Defendants continued to provide TelexFree with banking services.

306. In particular, upon information and belief, the Banking Institution Defendants received funds from Investors, which funds were then held for the benefit of TelexFree, its affiliated entities, and its Management.

307. Furthermore, the Banking Institution Defendants also received large transfers of funds from TelexFree, its affiliated entities, and its Management, during which time TelexFree was insolvent, despite knowledge of the fraudulent nature of TelexFree's business operations, thereby deepening TelexFree's insolvency and assisting TelexFree and its Management in concealing assets.

308. Defendants GPG, IPS, and ProPay (hereinafter sometimes collectively referred to as "Payment Processing Services Companies" or "PPSC Defendants") possessed actual knowledge of the fraudulent nature of TelexFree's business operations since at least June 2013.

309. Despite knowledge of the fraudulent nature of TelexFree's business operations, the PPSC Defendants continued to provide TelexFree with payment processing services.

310. More particularly, the PPSC Defendants processed payments by Investors to

TelexFree in the course of TelexFree's fraudulent business operations, which funds were then held for the benefit of TelexFree, its affiliated entities, and its Management.

311. Upon information and belief, the PPSC Defendants also processed large transfers of funds from TelexFree, its affiliated entities, and its Management, to Banking Institution Defendants and other receivers, during which time TelexFree was insolvent, despite knowledge of the fraudulent nature of TelexFree's business operations, thereby deepening TelexFree's insolvency and assisting TelexFree and its Management in concealing assets.

312. The PPSC Defendants received payment of substantial fees in return for providing these services.

313. More particularly, IPS provided TelexFree with a service titled "e-Wallet," which was used by TelexFree to process electronic transfers of funds by Investors to TelexFree.

314. According to a TelexFree balance sheet, dated December 31, 2013, posted by the Washington State Utilities and Transportation Commission, as of December 31, 2013, TelexFree claimed $31,640,192.30 in assets then held by IPS (under the brand name "e-Wallet") on behalf of TelexFree.

315. Defendant GPG also processed electronic transfers of funds by Investors to TelexFree.

316. Defendant ProPay, which also does business as Propay.com, also processed such electronic transfers of funds on behalf of TelexFree.

317. Furthermore, upon information and belief, ProPay processed transfers of funds by and on behalf of TelexFree, its affiliated entities, and its Management, during which time TelexFree was insolvent, despite knowledge of the fraudulent nature of TelexFree's business operations, thereby deepening TelexFree's insolvency and assisting TelexFree and its Management in concealing assets.

318. Defendants Merrill and Wanzeler are the general partners of Defendant TelexElectric.

319. Defendant TelexElectric received a fraudulent $2,022,329.00 "loan" from TelexFree following the closure of TelexFree Brazil by the Brazilian Courts.

320. Defendant TelexFree Mobile received a fraudulent $500,870 "loan" from TelexFree.

IV. CLASS ACTION ALLEGATIONS

321. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff Cook brings this action on his own behalf, and on behalf of all other persons similarly situated ("the Class"). The Class that Plaintiff seeks to represent is:

> All Georgia residents who tendered funds to TelexFree between January 1, 2012 and April 15, 2014 and who did not recoup the amount of money they originally invested. Excluded from the Class are the Defendants and their officers, directors, and employees of Defendant; any entity in which Defendant have a controlling interest; the co conspirators, so called insider promoters, legal representatives, attorneys, heirs, and assigns of the Defendants.

322. Plaintiff meets the requirements of Federal Rules of Civil Procedures 23(a) because the members of the Class are so numerous that the joinder of all members is impractical. While the exact number of Class members is unknown to Plaintiff at this time, based on information and belief, it is in the hundreds of thousands.

323. Plaintiff meets the requirements of Federal Rules of Civil Procedures 23(a) because there is a well-defined community of interest among the members of the Class, common questions of law and fact predominate, Plaintiff's claims are typical of the members of the Class, and Plaintiff can fairly and adequately represent the interests of the Class.

324. This action satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3) because it involves questions of law and fact common to the member of the Class that predominate or any questions affecting only individual members, including, but not limited to:

a. Whether the contract under which TelexFree claims to invoke the application of Nevada law is illegal and unenforceable as a matter of law.

b. Whether the contract under which TelexFree claims to invoke the application of Nevada law is otherwise void and unenforceable as a matter of law.

c. Whether TelexFree ran a Pyramid Ponzi Scheme;

d. Whether TelexFree ran a lawful Multi-Level Marketing program;

e. Whether TelexFree offered and sold securities in the form of unregistered investment contracts constituting securities.

f. Whether the Defendants aided and abetted TelexFree in the sale of unregistered securities in violation of the law;

g. Whether Georgia's Blue Sky Laws will apply to the claims of the Putative Class;

h. Whether Massachusetts' Blue Sky Laws will apply to the claims of the Putative Class;

I. Whether Defendant Officers, Banks, Payment Processing Services Companies, and Retained Licensed Professionals knew that TelexFree was an illegal pyramid-type Ponzi scheme which involved the illegal sale of securities, continued to aid, abet and further such illegal activities or are otherwise liable for the economic loss suffered by the Putative Class.

j. Whether TelexFree's financial services providers, including the aforesaid banking institutions and payment processing services providers, knowingly aided and abetted TelexFree's Pyramid Ponzi Scheme

k. Whether TelexFree and Defendants also violated Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons.

l. Whether Defendants violated Section 1965 of the Racketeer Influenced and Corrupt Organizations Act [18 U.S.C. § 1965];

m. Whether TelexFree mailed fraudulent and inaccurate 1099 (Miscellaneous Income) forms to investors;

n. Whether the 1099 (Miscellaneous Income) forms should be declared void as a matter of law or otherwise because they were provided long after the mandated January 31, 2014 deadline, and some after the April 15, 2014 filing deadline.

o. Whether Plaintiff and the Class are entitled to damages, civil penalties, punitive damages, and/or injunctive relief.

325. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants and would lead to repetitive adjudication of common questions of law and fact. Accordingly, class treatment is superior to any other method for adjudicating the controversy. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action under Rule 23(b)(3).

326. Damages for any individual class member are likely insufficient to justify the cost of individual litigation, so that in the absence of class treatment, Defendants' violations of law inflicting substantial damages in the aggregate would go un-remedied without certification of the Class.

327. Defendants have acted or refused to act on grounds that apply generally to the class, as alleged above, and certification is proper under Rule 23(b)(2).

V. CAUSES OF ACTION

COUNT I - VIOLATION OF GEORGIA SECURITIES LAW

(Against Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC)

328. Plaintiffs incorporate by reference the allegations contained in the preceding as if fully restated herein.

329. During the time in which Plaintiff and putative class invested in TelexFree (the "Class Period"), Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC and others, directly and indirectly, engaged and participated in a scheme and a continuous course of conduct to make materially false and misleading statements about the TelexFree investment dealings, financial condition and operations and to conceal adverse material information about these investments.

330. Said Defendants employed devices, schemes, and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and courses of conduct, as alleged herein, including the following: (1) making or participating in the making of untrue statements of material facts; (2) omitting to state the material facts necessary to make the statements about the investments not misleading; and (3) engaging in transactions, practices, and a course of business which operated as a fraud and deceit upon

investors during the Class Period.

331. Each of the said Defendants offered and sold securities by means of fraudulent misrepresentations and intentional omissions of material facts concerning the securities.

332. Said Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such misrepresentations and/or omissions were done knowingly or recklessly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

333. Defendants received information reflecting the true facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

334. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

335. The ongoing fraudulent scheme described herein could not have been perpetrated over a substantial period of time, without the knowledge and complicity of Defendants.

336. As a result of the dissemination of materially false and misleading information

and the failure to disclose material facts, as set forth above, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

337. In ignorance of the materially false and misleading nature of the reports and statements described above, Plaintiff and the other Class members relied, to their detriment, on Defendants for complete and accurate information about these investments.

338. By virtue of the foregoing, Defendants have violated the Georgia Uniform Securities Act of 2008 (O.C.G.A. § 10-5-1, *et seq.*), and Plaintiff and the Class have been damaged thereby, in an amount to be proven at trial.

COUNT II - FEDERAL SECURITIES VIOLATIONS

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and Others)

339. Plaintiffs incorporate by reference the allegations contained in the preceding as if fully restated herein.

340. During the time in which Plaintiff and putative class invested in TelexFree (the "Class Period"), Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a scheme and a continuous course of conduct to make materially false and misleading statements about the TelexFree investment dealings, financial condition and operations and to conceal adverse material information about these investments.

341. Defendants employed devices, schemes, and artifices to defraud, while in

possession of material adverse non-public information and engaged in acts, practices, and courses of conduct, as alleged herein, including the following: (1) making or participating in the making of untrue statements of material facts; (2) omitting to state the material facts necessary to make the statements about the investments not misleading; and (3) engaging in transactions, practices, and a course of business which operated as a fraud and deceit upon investors during the Class Period.

342. Each of the said Defendants offered and sold securities by means of fraudulent misrepresentations and intentional omissions of material facts concerning the securities.

343. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such misrepresentations and/or omissions were done knowingly or recklessly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

344. Defendants received information reflecting the true facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

345. Defendants knew and/or recklessly disregarded the falsity and misleading

nature of the information that they caused to be disseminated to Investors.

346. The ongoing fraudulent scheme described herein could not have been perpetrated over a substantial period of time, without the knowledge and complicity of Defendants.

347. As a result of the dissemination of materially false and misleading information and the failure to disclose material facts, as set forth above, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

348. In ignorance of the materially false and misleading nature of the reports and statements described above, Plaintiff and the other Class members relied, to their detriment, on Defendants for complete and accurate information about these investments.

349. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10 b-5 promulgated thereunder, and Plaintiff and the Class have been damaged thereby, in an amount to be proven at trial.

COUNT III - FEDERAL SECURITIES VIOLATIONS

(Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC)

350. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if as fully restated herein.

351. At the time of the wrongs alleged herein, Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC, were each a controlling person of TelexFree within

the meaning of Section 20(a) of the Exchange Act.

352. By reason of their respective positions of authority, Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC had the power and authority to influence and control, and did influence and control, the decision-making and activities of TelexFree and the affiliated TelexFree Entities and caused them to engage in the wrongful conduct described herein. Defendants, Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC, exercised control to cause the dissemination of false and misleading statements and omissions of material facts.

353. Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC also materially aided in the sale of TelexFree AdCentral packages, which constitute securities, by actively promoting such

354. By virtue of their positions as controlling persons, and as a result of the aforementioned conduct, Defendants are liable under Section 20(a) of the Exchange Act.

COUNT IV - FEDERAL SECURITIES VIOLATIONS

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and Others)

355. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated.

356. The Securities Act prohibits sale or delivery after sale of an unregistered

security.

357. Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others failed to file a true Registration Statement for TelexFree under the 1933 Act.

358. A Registration Statement must include the following: (1) the entity's properties and business, (2) a full description of the offered security, (3) information about the management of the entity, and (4) a financial statement certified by an independent auditor. None of these were provided.

359. By omitting this information, Defendants filed a false Form D.

360. Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others also did not apply for or receive an exemption under Regulation D.

361. Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others failed to provide to Plaintiff access to the information that they were required to provide, including audited financial statements.

362. Plaintiff purchased these securities without knowledge of the failure of Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others to file the required Registration Statement or receive an exemption therefrom.

363. Plaintiff would not have purchased the securities if Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others provided the information required in a Registration Statement.

364. By virtue of the foregoing, Plaintiff and the putative class have been damaged and are entitled to damages, including rescission, and other relief for violations by

Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others of Sections 5 and 12(a)(1) of the Securities Act of 1933 alleged herein.

COUNT V - FEDERAL SECURITIES VIOLATION

(Against Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC)

365. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

366. During the class period, Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC, fraudulently failed to convey facts material to the TelexFree AdCentral investment packages by failing to produce and file a Registration Statement.

367. In particular, the said Defendants intentionally avoided the requirement to produce a Registration Statement, and intentionally avoided disclosing that the AdCentral packages were, in fact, investments, and that financial returns on the AdCentral investments were derived from the proceeds received from the purchase of such investments, and not from the sale of the VoIP product.

368. Said Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein.

369. Such misrepresentations and/or omissions were done knowingly for the purpose and effect of concealing the true information about the investments, including their

financial condition and operations.

370. Said Defendants received information reflecting the true facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments.

371. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

372. Said Defendants knew and recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

373. The ongoing fraudulent scheme described herein could not have been perpetrated over a substantial period of time without the knowledge and complicity of the Defendants.

374. As a result of failure to disclose material facts, as set forth above, including their failure to file the requisite registration material, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

375. By virtue of the foregoing, said Defendants have violated Section 11 of the Securities Act, and Plaintiff and the putative class have been damaged thereby, in an amount to be proven at trial.

COUNT VI - FEDERAL SECURITIES VIOLATIONS

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and Others)

376. Plaintiff incorporates by reference the allegations contained in the preceding

Paragraphs as if fully restated herein.

377. Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others participated in the sale of securities to Plaintiff and the putative class that were unregistered and not exempt from registration.

378. At the time of their investments, Plaintiff and the putative class had no knowledge that the investments offered by Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others were subject to registration requirements.

379. In fact, Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others knew or reasonably should have known that the TelexFree Agreement Contract and investment scheme was subject to the registration requirement of the Securities Act.

380. Both the Telex Contract and related materials distributed to Plaintiff and the putative class and the oral communications with Plaintiff and the putative class contained material omissions and misstatements.

381. Plaintiff and the putative class had no knowledge of the falsity of these statements or of the material omissions in the written materials including, but not limited to, Monthly Accounting Statements prepared by the accounting Defendants and other misrepresentations made by Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others as described above. Plaintiff and the putative class reasonably believed such statements were true.

382. Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others knew, or in the exercise of reasonable diligence, should have known, of the untruths and omissions.

383. Plaintiff and the putative class would not have purchased the securities if they had this knowledge.

384. As a result of these investments, Plaintiff and the putative class have been damaged.

385. Plaintiff and the putative class are entitled to rescind their purchases and recover the value of their interest in TelexFree. Plaintiff and the putative class seek rescission of their purchase of membership interests in TelexFree.

COUNT VII - NEGLIGENCE

(Against all Defendants)

386. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

387. At all times material herein, Defendants owned a duty to Plaintiff and the putative class to act with a level of care to avoid misstating TelexFree's financial information or its returns; and to comply with all applicable laws concerning TelexFree, including, without limitation, federal and state securities laws.

388. By virtue of misstating and omitting relevant financial information, including the returns to Promoter/Investors, Defendants breached the duty of care owed to Plaintiff and the putative class.

389. As a direct and proximate result of Defendants' negligence and carelessness, Plaintiffs and the putative class have been caused to suffer and sustain damages and losses.

COUNT VIII - NEGLIGENT MISREPRESENTATION

(Against Defendants Merill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC)

390. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

391. Defendants Merill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC, and others, directly and through their agents, servants, employees and/or representatives, did negligently make false representations of material fact to the said Plaintiff and the class, with said misrepresentations being made for the purpose of obtaining and/or wrongfully appropriating and converting money from Plaintiff and the class.

392. Said Defendants made negligent representations although said Defendants knew, or should have known, that such representations were false.

393. Said representations and statements were material and were relied upon by Plaintiff and the class, inducing them to furnish money to Defendants.

394. In consequence of said reliance on the negligent misrepresentations, Plaintiff and the class have suffered great financial losses, and have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged.

COUNT VIII - INTENTIONAL MISREPRESENTATION

(Against Defendants Merill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC)

395. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

396. Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and others directly and through their agents, servants, employees and/or representatives, did intentionally make false representations of material fact to the said Plaintiff and the class with said misrepresentations being made for the purpose of obtaining and/or wrongfully appropriating and converting money from Plaintiff and the class.

397. Said Defendants made said intentional misrepresentations although Defendants knew that such representations were false.

398. Said representations and statements were material and were relied upon by Plaintiff and the class, inducing them to furnish money to Defendants.

399. In consequence of said reliance on the intentional misrepresentations, Plaintiff and the class have suffered great financial losses, and have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged.

COUNT X - PROFESSIONAL MALPRACTICE

(Against Defendants Craft, Craft Financial, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC)

400. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

401. At all times material herein, Defendants Craft, Craft Financial, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC, were the providers of professional accounting and legal

services.

402. The said Defendants had a duty to perform these services in conformance with the skill and knowledge normally possessed by members of the accounting and legal professions, using good, known, and accepted customs and practices of the these professions.

403. Said Defendants breached their duty to Plaintiff and the class by negligently certifying and representing to Plaintiff and the public that the business model and operations of TelexFree were legal, proper, and economically viable and sustainable, when in fact TelexFree's business model and operations constituted an illegal and unsustainable Ponzi scheme.

404. Said Defendants further failed to exercise proper due diligence in the discharge of their investigatory duties as certified public accountants and attorneys of TelexFree.

405. Furthermore, Defendants Craft and Craft Financial negligently failed to ensure that TelexFree maintained proper accounting records.

406. As a result of the professional negligence of said Defendants, Plaintiffs and the public were misled to believe that TelexFree was legal, proper, and economically viable and sustainable.

407. As a direct and proximate consequence of the aforementioned negligence of the said Defendants, Plaintiff and the class sustained injuries and losses.

COUNT XI - BREACH OF FIDUCIARY DUTY

(Against Defendants Merill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC)

408. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

409. Defendants Merill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC and others owe to Plaintiff and the class, a duty of utmost good faith and fair dealing.

410. Said Defendants violated their duty by actively misrepresenting and fraudulently failing to convey facts material to the TelexFree AdCentral investment packages, including:

(a) Providing false and misleading information as to the nature of TelexFree business operation;

(b) Misrepresenting the financial statements;

(c) Providing false and misleading information as to the value of the AdCentral Package;

(d) Providing false and misleading information as to the method and source from which income was derived;

(e) Providing false and misleading information as to the legality of TelexFree's business model;

(f) Providing false and misleading information as to the sustainability of the returns to Promoter/Investors;

(g) Providing false and misleading information regarding the investigation in

Brazil and subsequent closure of TelexFree's Brazilian operations,

(h) Knowingly participating in false and deceptive information televised over the internet and other media;

(I) Concealing the fact that the AdCentral Packages were actually securities;

(j) Failing to comply with federal and state securities laws; and

(k) Employing legal and accountant counsel to mask their illegal and fraudulent activities in an effort to further and perpetuate such illegal fraudulent activities.

411. Said Defendants had actual knowledge of the fraudulent and deceptive misrepresentations and omissions of material facts set forth herein.

412. Such misrepresentations and/or omissions were done knowingly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

413. Said Defendants received information reflecting the true facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments.

414. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

415. Said Defendants knew and recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

416. Said Defendants, through the aforesaid fraudulent and deceptive

misrepresentations and omissions of material facts, breached their fiduciary duties of care and loyalty to Plaintiff and the class.

417. As a result of the foregoing breach of fiduciary duty by Defendants, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

COUNT XII - BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

(Against Defendants TelexElectric, TelexFree Mobile Holdings, Merill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC)

418. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

419. Defendants owed to Plaintiff and the class a duty of utmost good faith and fair dealing, and thereby were obligated to consider the welfare of Plaintiff and the class and refrain from acting for purely selfish motives or private gain.

420. Defendants violated their duty by actively misrepresenting and fraudulently failing to convey facts material to the TelexFree AdCentral investment packages, including:

(a) Providing false and misleading information as to the nature of TelexFree business operation;

(b) Misrepresenting the financial statements;

(c) Providing false and misleading information as to the value of the AdCentral

Package;

(d) Providing false and misleading information as to the method and source from which income was derived;

(e) Providing false and misleading information as to the legality of TelexFree's business model;

(f) Providing false and misleading information as to the sustainability of the returns to Promoter/Investors;

(g) Providing false and misleading information regarding the investigation in Brazil and subsequent closure of TelexFree's Brazilian operations,

(h) Knowingly participating in false and deceptive information televised over the internet and other media;

(I) Concealing the fact that the AdCentral Packages were actually securities;

(j) Failing to comply with federal and state securities laws; and

(k) Employing legal and accountant counsel to mask their illegal and fraudulent activities in an effort to further and perpetuate such illegal fraudulent activities.

421. Said Defendants had actual knowledge of the fraudulent and deceptive misrepresentations and omissions of material facts set forth herein.

422. Such misrepresentations and/or omissions were done knowingly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

423. Said Defendants received information reflecting the true facts regarding the

investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments.

424. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

425. Said Defendants knew and recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

426. Said Defendants, through the aforesaid fraudulent and deceptive misrepresentations and omissions of material facts, breached their covenant of good faith and fair dealing owed to the Plaintiff and the class.

427. As a result of the foregoing breach of the covenant of good faith and fair dealing by Defendants, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

COUNT XIII - UNJUST ENRICHMENT

(Against Defendants TelexElectric, TelexFree Mobile Holdings, Merrill, Wanzeler, Labriola, Craft, Costa, and Others)

428. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

429. Plaintiff and the class furnished funds, directly or indirectly, to Defendants TelexElectric, TelexFree Mobile Holdings, Merrill, Wanzeler, Labriola, Craft, Costa, and others, which funds were accepted by Defendants without protest or defect.

430. Said Defendants have unlawfully and in bad faith denied Plaintiff and the class access to such funds, and have instead retained the benefit of such funds for themselves.

431. As a direct and proximate result of the foregoing actions of Defendants, as hereinabove set forth, the said Defendants are, and continue to be, unjustly enriched.

COUNT XIV - FRAUD

(Against Defendants Merill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC)

432. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

433. Defendants Merill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC, and others fraudulently misrepresented and intentionally failed to convey to Plaintiff and the class facts material to the TelexFree AdCentral investment packages.

434. Said Defendants' fraudulent misrepresentations and omissions include, *inter alia*:

(a) Providing false and misleading information as to the nature of TelexFree business operation;

(b) Misrepresenting the financial statements;

(c) Providing false and misleading information as to the value of the AdCentral Package;

(d) Providing false and misleading information as to the method and source from which income was derived;

(e) Providing false and misleading information as to the legality of TelexFree's business model;

(f) Providing false and misleading information as to the sustainability of the returns to Promoter/Investors;

(g) Providing false and misleading information regarding the investigation in Brazil and subsequent closure of TelexFree's Brazilian operations,

(h) Knowingly participating in false and deceptive information televised over the internet and other media;

(I) Concealing the fact that the AdCentral Packages were actually securities;

(j) Failing to comply with federal and state securities laws; and

(k) Employing legal and accountant counsel to mask their illegal and fraudulent activities in an effort to further and perpetuate such illegal fraudulent activities.

435. Said Defendants had actual knowledge of the fraudulent and deceptive misrepresentations and omissions of material facts set forth herein.

436. Such misrepresentations and/or omissions were done knowingly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

437. Defendants received information reflecting the true facts regarding the

investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments.

438. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

439. Defendants knew and recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

440. The ongoing fraudulent scheme described herein could not have been perpetrated over a substantial period of time, without the knowledge and complicity of Defendants.

441. As a result of the foregoing fraud perpetrated by Defendants, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

COUNT XV - AIDING AND ABETTING FRAUD

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Nehra, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, GPG, IPS, and Propay)

442. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

443. Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, TD Bank,

Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, GPG, IPS, and ProPay actively and substantially assisted in the commission of the TelexFree fraud.

444. Said Defendants rendered such substantial assistance despite their knowledge that TelexFree's operations constituted an illegal and unsustainable pyramid Ponzi scheme and financial fraud.

445. Such substantial assistance rendered by said Defendants despite their knowledge of the fraudulent nature of TelexFree's operations, include, inter alia:

(a) Managing and controlling TelexFree and its affiliated entities;

(b) Providing accounting services to TelexFree;

(c) Providing legal services to TelexFree;

(d) Publicly certifying that TelexFree's business model and operations were legal, proper, and economically viable and sustainable;

(e) Providing banking services for TelexFree and its management;

(f) Promoting TelexFree AdCentral packages;

(g) Processing payments to, from, and on behalf of TelexFree and its affiliated entities; and

(h) Process payments for transfers of funds which deepened TelexFree's insolvency.

446. As a direct and proximate result of TelexFree's fraud, to which the said Defendants provided substantial assistance, Plaintiff and the class sustained damages and losses.

COUNT XVI - COMMON LAW FRAUDULENT TRANSFER

(Against Defendants TelexElectric, Telex Mobile Holdings, Merrill, Wanzeler, Labriola, Craft, Costa, TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, GPG, IPS, and Propay)

447. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

448. Plaintiff and the class, at all times material herein, were and are creditors of TelexFree.

449. Defendants Telexelectric, Telex Mobile Holdings, Merrill, Wanzeler, Labriola, Craft, Costa, TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, GPG, IPS, and ProPay have knowingly made or accepted transfers of funds owed to Plaintiff and the class.

450. Such transfers were made or accepted with intent to hinder, delay, and/or defraud Plaintiff and the class.

451. More particularly, such transfers were made in an attempt to dissipate, convert and conceal funds that are lawfully due to Plaintiff and the class.

452. As a result of such fraudulent transfers, Plaintiff and the class have suffered, or will imminently suffer, damages and losses.

COUNT XVII - CIVIL CONSPIRACY

(Against Defendants TelexElectric, Telex Mobile Holdings, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC)

453. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

454. Defendants have combined to enter into a civil conspiracy, for an unlawful purpose and using unlawful means, with the intent of so combining to unlawfully defraud Plaintiff and the class out of funds.

455. In consequence of the foregoing, Plaintiff and the class sustained damages and losses.

COUNT XVIII - CONVERSION

(Against Defendants Merrill, Wanzeler, Labriola, Craft, and Costa)

456. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

457. Said Defendants have unlawfully converted Plaintiffs and the class' funds, by obtaining the same through knowing misrepresentations made to Plaintiffs and the public.

458. Said Defendants continue to retain funds unlawfully converted from Plaintiff and the class.

459. In consequence of the foregoing, Plaintiff and the class sustained damages and losses.

COUNT XIX - VIOLATIONS OF MASSACHUSETTS SECURITIES LAW

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Costa)

460. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if fully restated herein.

461. During the Class Period, Defendants Merrill, Wanzeler, Labriola, Craft, Costa, and others offered and sold securities to the Plaintiff and the putative class by means of a scheme and a continuous course of conduct to make materially false and misleading statements about the TelexFree investment dealings, financial condition and operations and to conceal adverse material information about these investments.

462. Said Defendants employed devices, schemes, and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and courses of conduct, as alleged herein, including the following: (1) making or participating in the making of untrue statements of material facts; (2) omitting to state the material facts necessary to make the statements about the investments not misleading; and (3) engaging in transactions, practices, and a course of business which operated as a fraud and deceit upon investors during the Class Period.

463. Each of the said Defendants offered and sold securities by means of fraudulent misrepresentations and intentional omissions of material facts concerning the securities.

464. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such misrepresentations and/or omissions were done knowingly or recklessly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

465. Defendants received information reflecting the true facts regarding the

investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

466. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

467. The ongoing fraudulent scheme described herein could not have been perpetrated over a substantial period of time without the knowledge and complicity of the said Defendants.

468. As a result of the dissemination of materially false and misleading information and the failure to disclose material facts, as set forth above, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

469. In ignorance of the materially false and misleading nature of the reports and statements described above, Plaintiff and the other Class members relied, to their detriment, on Defendants for complete and accurate information about these investments.

470. By virtue of the foregoing, Defendants have violated Section 410(a) of the Massachusetts Uniform Securities Act, M.G.L. c. 110A, and Plaintiff and the putative class have been damaged thereby, in an amount to be proven at trial.

COUNT XX - VIOLATION OF MASSACHUSETTS SECURITIES LAW

(Against Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Nehra,

Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC)

471. Plaintiff incorporates by reference the allegations contained in the preceding Paragraphs as if as fully restated herein.

472. At the time of the wrongs alleged herein, Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and others were each a controlling person, partner, officer, director, person occupying a similar status, or employee materially aiding in the sale of securities of TelexFree within the meaning of Section 410(b) of the Massachusetts Uniform Securities Act, M.G.L. c. 110A.

473. By reason of their respective positions of authority, Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and others had the power and authority to influence and control, and did influence and control, the decision-making and activities of TelexFree and the affiliated TelexFree entities and caused them to engage in the wrongful conduct described herein. Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, and Gerald P. Nehra, Attorney at Law, PLLC exercised control to cause the dissemination of false and misleading statements and omissions of material facts.

474. By virtue of their positions as controlling person and top-level promoters, and as a result of the aforementioned conduct, Defendants are liable under Section 20(a) of the Exchange Act.

475. Plaintiff seeks the award of actual damages on behalf of the Class.

WHEREFORE, Plaintiff, individually and behalf of the putative class, pray for the following:

A) Certification of this action as a Class Action properly maintained pursuant to the Federal Rules of Civil Procedure and certifying Plaintiff and his counsel as the class representatives and class counsel;

B) For an award to Plaintiffs and Class members of compensatory damages against Defendants for all damages sustained as a result of their wrongdoing, in an amount to be proven at trial, including interest;

C) For an award of actual damages, compensatory damages, statutory damages, and statutory penalties, in an amount to be determined;

D) For an award of punitive damages;

E) For an award of costs of suit and attorneys' fees, as allowable by law;

F) For an award of interest;

G). For all other and further relief as may be just and proper under the circumstances including equitable relief.

DEMAND FOR JURY TRIAL

Plaintiff and the putative class hereby demand a jury trial of their claims to the extent authorized by law.

This 24th day of June, 2014.

TATE LAW GROUP, LLC

/s/ Mark A. Tate
Mark A. Tate
Georgia Bar No. 698820
tlgservice@tatelawgroup.com

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JS44 (Rev. 1/13 NDGA)

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

Todd Cook, Individually and behalf of others similar situated

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT(S)

Telexelectric, LLLP
Telex Mobile Holdings, Inc.;
James M. Merrill;
Carlos N. Wanzeler;
Steven M. Labriola;
Joseph H. Craft aka Joe H. Craft;
Craft Financial Solutions,LLC;
Carlos Costa;
Gerald P. Nehra, individually and dba Law Offices of Nehra and Waak;
Gerald P. Nehra Attorney at Law, PLLC;
Richard W. Waak, individually and dba Law Offices of Nehra and Waak;
Richard W. Walk, Attorney at Law, PLLC;
TD Bank, N.A.; Citizens Financial Group, Inc.;
Citizens Bank of Massachusetts; Fidelity Co-Operative Bank,
dba Fidelity Bank; Middlesex Savings Bank; Globel Payroll Gateway, Inc.;
International Payout Systems, Inc.; Propay, Inc. dba Propay.Com

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Mark A. Tate
Tate Law Group, LLC
2 East Bryan Street, Suite 600
Savannah, Georgia 31401
912-234-3030
tlgservice@tatelawgroup.com

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN "X" IN ONE BOX ONLY)

- [ ] 1 U.S. GOVERNMENT PLAINTIFF
- [ ] 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
- [ ] 2 U.S. GOVERNMENT DEFENDANT
- [X] 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES
(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(FOR DIVERSITY CASES ONLY)

PLF	DEF		PLF	DEF	
[X] 1	[ ] 1	CITIZEN OF THIS STATE	[ ] 4	[ ] 4	INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
[ ] 2	[ ] 2	CITIZEN OF ANOTHER STATE	[ ] 5	[X] 5	INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
[ ] 3	[ ] 3	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[ ] 6	[ ] 6	FOREIGN NATION

IV. ORIGIN (PLACE AN "X "IN ONE BOX ONLY)

- [X] 1 ORIGINAL PROCEEDING
- [ ] 2 REMOVED FROM STATE COURT
- [ ] 3 REMANDED FROM APPELLATE COURT
- [ ] 4 REINSTATED OR REOPENED
- [ ] 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
- [ ] 6 MULTIDISTRICT LITIGATION
- [ ] 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. Section 1332(d)2; 28 U.S.C. Section 1391; Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 [15 U.S.C. Sections 77t(b), 77t(d)(1) & 77v(a); Sections 21(d)(1), 21(d)(3)(A), 21Ie) and 27 of the Security Exchange Act of 1934 [15 U.S.C. Sections 78u(d)(1); 78u(d)(3)(A), 78u(e) and 78aa]; Section 1121 of the Lanham Act [15 U.S.C. Section 1121] and Section 1965 of the Racketeer Influenced and Corrupt Organizations Act [18 U.S.C. Section 1965]

(IF COMPLEX, CHECK REASON BELOW)

- [X] 1. Unusually large number of parties.
- [ ] 2. Unusually large number of claims or defenses.
- [X] 3. Factual issues are exceptionally complex
- [ ] 4. Greater than normal volume of evidence.
- [ ] 5. Extended discovery period is needed.
- [ ] 6. Problems locating or preserving evidence
- [ ] 7. Pending parallel investigations or actions by government.
- [ ] 8. Multiple use of experts.
- [ ] 9. Need for discovery outside United States boundaries.
- [ ] 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT $_____ APPLYING IFP _____ MAG. JUDGE (IFP)_____

JUDGE_____ MAG. JUDGE_____ NATURE OF SUIT_____ CAUSE OF ACTION_____
(Referral)

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK
- ☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- ☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- ☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK
- ☐ 110 INSURANCE
- ☐ 120 MARINE
- ☐ 130 MILLER ACT
- ☐ 140 NEGOTIABLE INSTRUMENT
- ☐ 151 MEDICARE ACT
- ☐ 160 STOCKHOLDERS' SUITS
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY
- ☐ 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK
- ☐ 210 LAND CONDEMNATION
- ☐ 220 FORECLOSURE
- ☐ 230 RENT LEASE & EJECTMENT
- ☐ 240 TORTS TO LAND
- ☐ 245 TORT PRODUCT LIABILITY
- ☐ 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK
- ☐ 310 AIRPLANE
- ☐ 315 AIRPLANE PRODUCT LIABILITY
- ☐ 320 ASSAULT, LIBEL & SLANDER
- ☐ 330 FEDERAL EMPLOYERS' LIABILITY
- ☐ 340 MARINE
- ☐ 345 MARINE PRODUCT LIABILITY
- ☐ 350 MOTOR VEHICLE
- ☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
- ☐ 360 OTHER PERSONAL INJURY
- ☐ 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- ☐ 365 PERSONAL INJURY - PRODUCT LIABILITY
- ☐ 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- ☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK
- ☒ 370 OTHER FRAUD
- ☐ 371 TRUTH IN LENDING
- ☐ 380 OTHER PERSONAL PROPERTY DAMAGE
- ☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK
- ☐ 422 APPEAL 28 USC 158
- ☐ 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK
- ☐ 441 VOTING
- ☐ 442 EMPLOYMENT
- ☐ 443 HOUSING/ ACCOMMODATIONS
- ☐ 444 WELFARE
- ☐ 440 OTHER CIVIL RIGHTS
- ☐ 445 AMERICANS with DISABILITIES - Employment
- ☐ 446 AMERICANS with DISABILITIES - Other
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IMMIGRATION - "0" MONTHS DISCOVERY TRACK
- ☐ 462 NATURALIZATION APPLICATION
- ☐ 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK
- ☐ 463 HABEAS CORPUS- Alien Detainee
- ☐ 510 MOTIONS TO VACATE SENTENCE
- ☐ 530 HABEAS CORPUS
- ☐ 535 HABEAS CORPUS DEATH PENALTY
- ☐ 540 MANDAMUS & OTHER
- ☐ 550 CIVIL RIGHTS - Filed Pro se
- ☐ 555 PRISON CONDITION(S) - Filed Pro se
- ☐ 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK
- ☐ 550 CIVIL RIGHTS - Filed by Counsel
- ☐ 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK
- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- ☐ 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK
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- ☐ 720 LABOR/MGMT. RELATIONS
- ☐ 740 RAILWAY LABOR ACT
- ☐ 751 FAMILY and MEDICAL LEAVE ACT
- ☐ 790 OTHER LABOR LITIGATION
- ☐ 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK
- ☐ 820 COPYRIGHTS
- ☐ 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK
- ☐ 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK
- ☐ 861 HIA (1395ff)
- ☐ 862 BLACK LUNG (923)
- ☐ 863 DIWC (405(g))
- ☐ 863 DIWW (405(g))
- ☐ 864 SSID TITLE XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK
- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK
- ☐ 375 FALSE CLAIMS ACT
- ☐ 400 STATE REAPPORTIONMENT
- ☐ 430 BANKS AND BANKING
- ☐ 450 COMMERCE/ICC RATES/ETC.
- ☐ 460 DEPORTATION
- ☐ 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- ☐ 480 CONSUMER CREDIT
- ☐ 490 CABLE/SATELLITE TV
- ☐ 891 AGRICULTURAL ACTS
- ☐ 893 ENVIRONMENTAL MATTERS
- ☐ 895 FREEDOM OF INFORMATION ACT
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES
- ☐ 890 OTHER STATUTORY ACTIONS
- ☐ 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK
- ☐ 410 ANTITRUST
- ☒ 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK
- ☐ 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

☒ **CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23** **DEMAND $**_____

JURY DEMAND ☒ **YES** ☐ **NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)**

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE_____ **DOCKET NO.**_____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- ☐ **1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.**
- ☐ **2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.**
- ☐ **3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.**
- ☐ **4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.**
- ☐ **5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.**
- ☐ **6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):**
- ☐ **7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. , WHICH WAS DISMISSED. This case ☐ IS ☐ IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.**

/s/ Mark A. Tate 6/24/14

SIGNATURE OF ATTORNEY OF RECORD Mark A. Tate **DATE**

EXHIBIT D

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

REVEREND JEREMIAH GITHERE, JOSEPH SHIKHMAN, AND CHRISTOPHER MCCORMICK, INDIVIDUALLY AND AS PUTATIVE CLASS REPRESENTATIVES AND THOSE SIMILARLY SITUATED,

Plaintiffs,

v.

TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; JAMES M. MERRILL; CARLOS N. WANZELER; STEVEN M. LABRIOLA; JOSEPH H. CRAFT, a/k/a JOE H. CRAFT; CRAFT FINANCIAL SOLUTIONS, LLC; JOHN MERRILL: CARLOS COSTA; SANDERLEY RODRIGUES DE VASCONCELOS; WWW GLOBAL BUSINESS, INC.; SANTIAGO DE LA ROSA; RANDY N. CROSBY; FAITH R. SLOAN; GERALD P. NEHRA, individually and doing business as LAW OFFICES OF NERHA AND WAAK; GERALD P. NEHRA ATTORNEY AT LAW, PLLC; RICHARD W. WAAK, individually and doing business as LAW OFFICES OF NERHA AND WAAK; RICHARD W. WAAK, ATTORNEY AT LAW, PLLC; BANK OF AMERICA CORPORATION, BANK OF AMERICA, NA; TD BANK, NA; CITIZENS FINANCIAL GROUP, INC.; CITIZENS BANK OF MASSACHUSETTS; FIDELITY CO-OPERATIVE BANK, doing business as FIDELITY BANK; MIDDLESEX SAVINGS BANK; WELLS FARGO & COMPANY; WELLS FARGO BANK, NA; FMR, LLC, also known as FIDELITY INVESTMENTS; WADDELL & REED FINANCIAL, INC.; WADDELL & REED, INC.; GLOBAL PAYROLL GATEWAY INC.; INTERNATIONAL PAYOUT SYSTEMS, INC.; PROPAY, INC., doing business as PROPAY.COM; BASE COMMERCE, LLC, doing business as PHOENIX PAYMENTS; VANTAGE PAYMENTS, LLC; DOE INSIDER PROMOTERS 1- 66; DOE PROFESSIONAL SERVICES PROVIDERS; DOE BANKS; DOE INVESTMENT SERVICES PROVIDERS; DOE PAYMENT PROCESSORS; and PARALEGAL DOE,

Defendants.

CLASS ACTION COMPLAINT FOR, *INTER ALIA*, VIOLATIONS OF STATE AND FEDERAL LAWS INCLUDING THE

DEMAND FOR TRIAL BY JURY

CLASS ACTION COMPLAINT

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Global Business, Inc., De La Rosa, Crosby, Sloan, Costa, Waak, Nehra, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC, Richard W. Waak, Attorney At Law, PLLC, And Doe Insider Promoters110 ……109

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Plaintiffs, Putative Class Representatives Reverend Jeremiah Githere, Joseph Shikhman and Christopher McCormick on behalf of a putative class comprised of themselves and all others similarly situated ("Plaintiffs") bring this class action against individuals and various entities related to various TelexFree operations[1] including Defendants TelexElectric, LLLP and Telex Mobile, Holdings, Inc.[2] and other named and Doe Defendants.

I.

NATURE OF THE ACTION

1. During all times relevant to this complaint, the TelexFree Defendants systematically and uniformly held out "TelexFree Memberships" as the lawful product of a "multi-level marketing" company selling local and international telephone service plans that use "voice over internet protocol" ("VoIP") technology through so-called "Promoters."

2. However, as detailed detailed herein, the offer and sale of "TelexFree Memberships" was a thoughtfully executed pyramid-type Ponzi scheme (the "Pyramid Ponzi Scheme carried out from offices in Marlborough, Massachusetts.[3]

3. Since all activities were coordinated and eminated from TelexFree's TelexFree's Marlborough, Massachusetts head quarters, sales office, and administraive office, Massachusetts state law applies.

4. Plaintiffs seek compensation for ascertainable economic loss sustained because certain Defendants' carried out an unlawful, unfair, and deceptive pyramid Ponzi scheme. Plaintiffs also seek compensation for ascertainable economic loss because certain

[1] TelexFree entities are collectively referred to as "TelexFree Entities".

[2] TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. have not been named as defendants in this action. These Defendants have sought bankruptcy protection pursuant to Chapter 11 of the U.S. Bankruptcy Code. The Plaintiffs reserve the right to name these entities as Defendants in the action.

[3] Victims have been located in over twenty states and internationally in over 10 countries.

Defendants' conduct encouraged, aided, abbetted and enabled TelexFree's unlawful, unfair, and deceptive pyramid Ponzi scheme.

5. Other claims for relief arising from the defendants conduct are advanced under alternative theories including Intentional Misrepresentation; Professional Malpractice; Breach Of Fiduciary Duty; Breach Of The Covenant Of Good Faith And Fair Dealing; Unjust Enrichment;Fraud; Fraudulent Transfer; Deepening Insolvency; Conversion; and violations of Securities And Exchange Commission Rule 10b-5; Sections 5, 11,12(A)(L), and 15 of the Securities Act of 1933; Section 10(b) and 20(A) Of The Securities And Exchange Act Of 1934; Section 12(A)(2); Massachusetts General Laws, Chapter 110a, Section 410(A) and Section 410(B); Massachusetts General Laws, Chapter 93a, Section 2; the Racketeer Influenced And Corrupt Organizations Act, United States Code, Title 18, Section 1962;the Lanham Act, United States Code, Title 15, Section 1125.

6. TelexFree was a fraudulent investment operation. TelexFree's standard form contract and uniform marketing ommitted material facts and misrepresented other material fcats. TelexFree based the returns it promised to pay its investors solely on new capital paid to it by new investors. It did not earn a penny profit from its sale of VOIP product. TelexFree uniformly and through its standaard adds and marketing programs enticed new investors by offering higher returns than any other investments. TelexFree promised short-term returns that were abnormally high and unusually consistent.

7. The core of the pyramid Ponzi scheme centers on TelexFree's uniform and standard investment increments of $289.00 and $1,375.00. TelexFree offered no product of value as its VOIP was available for free elsewhere. Moreover, TelexFree's VOIP componnat generated less than one percent of its revenues. and requested its promoters to cut and place

adds.

8. A TelexFree Promoter ("Promoter") who invests in TelexFree's uniform and standard $289.00 package received one advertisement kit and ten VoIP Programs. A Promoter who invests in TelexFree's uniform and standard $1,375.00 package received five advertisement kits and fifty VoIP Programs.

9. A Promoter who initially invested $289.00 and sold no product and otherwise contributed no value, but cut and pasted one add on the Internet per day was promised a profit of at least $681.00. This amounted to a return of over 200 percent.

10. A Promoter who initially invested $1,375.00 and sold no product and otherwise contributed no value, but cut and paste five advertisements on the Internet per day was promised a profit of at least $3,675.00. This amounted to a return of over 350 percent.

11. According to the contractually guaranteed compensation plan TelexFree offered its promoters, and conservatively assuming that only 50% of all participant investments between August 2012 and March 2014 were for $1,375.00, TelexFree owes $2,398,897,200.00. That figure eclipses TelexFree's reported total revenues over the same period without taking into account contractually guaranteed bonuses, recruitment commissions, and revenue sharing.

12. The pyramid Ponzi scheme was also willfully and fraudulently designed and held out as generating further returns for promoters through various bonus structures and membership recruitment commissions. For example, by recruiting multiple individuals, TelexFree Promoter become eligible for revenue sharing bonuses of up to 3% of the TelexFree's VoIP Program sales.

13. Defendants concede that:

a. the TelexFree Multi Level marketing program could not be sustained by

sales of TelexFree VOIP alone;

b. the sale of promoter memberships accounted for over 99 % of Telexfree's income;

c. TelexFree Promoters were guaranteed compensation in exchange for recruiting other investors to pay the membership fees.

14. Defendants also concede that between August 2012 and March 2014:

a. less than one-half of one percent of TelexFree's total revenue came from sales of TelexFree's VOIP;

b. TelexFree received approximately $1.3 million from the sale of about 26,300 VoIP Programs;

c. TelexFree promised to pay Promoters returns of over $1.1 billion[4];

d. TelexFree had 783,771 investments of either $289.00 or $1,375.00 totaling $880,189,455.32.

15. TelexFree's scheme constitutes an unlawful pyramid scheme in large part because the proceeds from the sale of TelexFree's VoIP products alone could not possibly sustain the massive pay structure. TelexFree did not generate sufficient funds from sales of their phone service to pay the returns on investments that they had contracted to pay. Instead, the funds TelexFree used to pay the purported returns on investments were the principal investment funds (membership fees) tendered by subsequent TelexFree investors

16. To keep TelexFree's Pyramid Ponzi Scheme liquid, a constant influx of new participants was required, and, true to a Pyramid Ponzi Scheme, new investments would often pay older investors.

[4] $1.1 billion is approximately one thousand times the amount of revenue derived from sales of the VoIP Programs.

17. TelexFree's pyramid scheme collapsed in Brazil in 2013. On June 19, 2013, the Brazilian Court in Acre issued an injunction putting "a stop to TelexFree's business operations, including the registration of new affiliate investors, acceptance of new investments and paying any returns owed on existing affiliate investments (June 19, 2013 Injunction")."[5]

18. The response of TelexFree and the other Defendants was to ramp up its United States based pyramid scheme. Despite actual knowledge, or at least a general awareness, of the findings of the Brazilian Court in Acre the aiding and abetting defendants continued to substantially assist and encourage TelexFree's fraud.

19. Plaintiffs also make the following allegations upon information and belief and the investigation of their counsel, except on their own actions and the facts that are a matter of public record:

II.

JURISDICTION AND VENUE

20. The District Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). In the aggregate, Plaintiffs' claims and the claims of the other members of the Class exceed $5,000,000.00 exclusive of interest and costs, and there are numerous Defendants who are citizens of states other than Plaintiff Reverend Jeremiah Githere's state of citizenship, which is Massachusetts.

21. The District Court has original subject-matter jurisdiction over the federal claims in this action pursuant to 28 U.S.C. 1331.

22. The District Court also has jurisdiction over this action under Sections 20(b), 20(d)(l) and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b),

[5] Brazilian Court Suspends TelexFree's Operations, Behind MLM (June 20, 2013). http://behindmlm.com/companies/telexfree/brazilian-court-suspends-telexfree-operations/.

77t(d)(l) & 77v(a)], Sections 21(d)(l), 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(l), 78u(d)(3)(A), 78u(e) and 78aa], Section 1121 of the Lanham Act [15 U.S.C. § 1121].

23. Venue is also proper under 28 U.S.D. § 1391 since:

a. Defendants Merrill, Labriola, John Merrill, Vasconcelos, De La Rosa and certain other Defendants including WWW Global Business, Inc. reside in this district;

b. Acts and transactions giving rise to this action occurred in this district[6]; and

c. Multiple Defendants are subject to personal jurisdiction in this district[7];

24. Venue is proper in this district under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred within this district. Defendants transacted business and offered and sold the unregistered securities that are the subject of this action to investors in this district.

25. Venue is proper under Section 1965 of the Racketeer Influenced and Corrupt Organizations Act [18 U.S.C. § 1965], as the Defendants reside, have agents, or otherwise transact business material to this Complaint in this district.

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[6] Beginning on February 15, 2012 through approximately April, 2014, James Merrill, Carlos Wanzeler, Steven Labriola, Carlos Costa, Joseph H. Craft and other Defendants and others identified as Does conducted the unlawful business of TelexFree in Massachusetts. Some Defendants including Inside Promoters and the Doe Inside Promoters continue on with related nefarious activities in Massachusetts including those intended to allow them to continue to profit from the unlawful continuance of successor unlawful pyramid schemes.

[7] On April 13, 2014, related entities TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. sought bankruptcy protection in Nevada (See United States. Bankruptcy Court, District of Nevada, Case No.: BK-S-14-12524-ABL). On May 6, 2014, The United States Bankruptcy Court, District of Nevada ordered that "all the debtor's [TelexFree's] jointly administered cases are transferred to the U.S. Bankruptcy Court, District of Massachusetts, Central Division.

26. With respect to the state law claims, this Court has jurisdiction under 28 U.S.C. § 1367 and principles of pendent jurisdiction.

III.

THE PARTIES

A. Plaintiffs

27. Plaintiff Reverend Jeremiah Githere, ("Shik Reverend Githere", "Plaintiff" or Putative Class Representative") is an individual who resides in Massachusetts. Reverend Githere tendered valid consideration for membership(s) in TelexFree (a "TelexFree Membership") and its promised return in investment and suffered ascertainable economic loss.

28. Plaintiff Joseph Shikhman ("Shikhman", "Plaintiff" or Putative Class Representative") is an individual who resides in New York. Shikhman tendered valid consideration for TelexFree Membership(s) and its promised return on investment and suffered ascertainable economic loss.

29. Plaintiff Christopher McCormick ("McCormick", "Plaintiff" or Putative Class Representative") is an individual who resides in Georgia. McCormick tendered valid consideration for TelexFree Membership(s) and its promised return on investment and suffered ascertainable economic loss.

B. TelexFree Defendants

i. TelexFree Companies[8]

[8] Three TelexFree related entities have filed for bankruptcy and are not named. TelexFree, Inc. is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, having a last known principal place of business at 225 Cedar Hill Street, Suite 200, in Marlborough, County of Middlesex, Commonwealth of Massachusetts 01752. TelexFree, LLC is a limited liability company duly organized and existing under the laws of Nevada, having a purported place of business at 4705 S. Durango Drive, #100-J51 (a post office box in an unnamed Indian bodega), Las Vegas, Nevada 89147. TelexFree, LLC also

30. TelexElectric, LLLP ("TelexElectric") is a limited liability limited partnership duly organized and existing under the laws of the State of Nevada, and having its registered agent as BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

31. Telex Mobile, Holdings, Inc. ("Telex Mobile") is a corporation duly organized and existing under the laws of the State of Nevada. and having its registered agent as BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

32. Disc Martix is a d/b/a/ of Defendants James Merrill and Carlos Wanzeler that they operated from their offices in 225 Cedar Hill Street, Suite 200, in Marlborough, County of Middlesex, Commonwealth of Massachusetts 01752. Merrill and Wanzeler formed Disk Matrix after Brazilian authorities shut down TelexFree Brazil.

33. Disk A Vontade Telefonia, Ltd., has a last known usual place of business located at 225 Cedar Hill Street, Suite 200, in Marlborough, Massachusetts 01752. Also known as Diskavontade, also known as Disk (sometimes referred to as "Disk A Vontade"), is a Brazilian Limited Liability Company, formerly had its principal offices as Rua Jose Luiz Gabeira, NRO 170, APTO 103 Barro Vermelho.

ii. Owners, Officers and Directors and Various Businesses Associated with those Individuals

(continued)
maintained offices in the Commonwealth of Massachusetts at 225 Cedar Hill Street, Suite 200, in Marlborough, County of Middlesex, Commonwealth of Massachusetts 01752 between 2012 and at least April 2014. TelexFree Financial, Inc. is a corporation duly organized and existing under the laws of the State of Florida, having its last known principal place of business at 2321 NW 37th Avenue, in Coconut Creek, Florida 33063. TelexFree Financial is a wholly owned subsidiary of TelexFree, LLC.

34. James M. Merrill ("Merrill") is an individual with a last known usual place of abode located at 1 Coburn Drive in Ashland, County of Middlesex, Commonwealth of Massachusetts 01721. Merrill also did business as Disk Matrix in New York.[9] Merrill is President, Secretary and Director of Telex Mobile and a General Partner in Telex Electric. Merrill has never registered with the Commonwealth of Massachusetts as a broker or dealer of securities.

35. Carlos N. Wanzeler ("Wanzeler") with a last known usual place of abode located at 373 Howard Street, in Northborough, County of Worcester, Commonwealth of Massachusetts 01532. Wanzeler also did business as Disk Matrix in New York. See Attachment 1.[10] Wanzeler is Treasurer and Director of Telex Mobile. Wanzeler is a General Partner of Telex Electric. Wanzeler has never registered with the Commonwealth of Massachusetts as a broker or dealer of securities.

36. Steven M. Labriola ("Labriola") is an individual with a last known usual place of abode located at 21 Kiwanis Beach Road, in Upton, County of Worcester, Commonwealth of Massachusetts 01568. Labriola is identified as a Director of Common Cents Communications, Inc. in its filed Articles of Incorporations with the Massachusetts Secretary of State Office. Labriola also functions as the International sales Director of TelexFree. Labriola

[9] At all material times, Merrill was President, Secretary, and Director of TelexFree, Inc. Merrill was Manager of TelexFree, LLC, and was listed with the Massachusetts Secretary of State Corporations Division as an authorized person to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property. Merrill was also President, Secretary, and Director of TelexFree Financial.

[10] Wanzeler was Treasurer and Director of TelexFree, Inc. and Manager of TelexFree, LLC. Wanzeler was Vice-President, Treasurer, and Director of TelexFree Financial and was listed with the Massachusetts Secretary of State Corporations Division as an authorized person to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property.

was also an integral part of Disk Matrix in New York. Labriola has never registered with the Commonwealth of Massachusetts as a broker or dealer of securities.

37. Joseph "Joe" H. Craft ("Craft") is an individual with a last known usual place of abode located at 333 W. Tennyson Road, Boonville, Indiana 47601certified At times material to this complaint, Craft served as the Chief Financial Officer of TelexFree Inc. and TelexFree, LLC. Craft was also hired to serve as TelexFree, LLC's Chief Financial Officer on or before December, 2013. [11] Craft has never registered with the Commonwealth of Massachusetts as a broker or dealer of securities.

38. John F. Merrill is an individual with a last known usual place of abode located at 7 Kinnicutt Rd. Worcester, MA 01602-1528. John Merrill serves as President of Fidelity Bank. John Merrill is the brother of TelexFree founder and owner James M. Merrill and at all times acted in concert with him and provided him with advise and encouragement related to TelexFree's unlawful operation.

39. Carlos Costa ("Costa") is an individual with an as yet uncertain last known place of abode in Worcester, County of Worcester, Commonwealth of Massachusetts 01604. Costa was listed as Manager of TelexFree, LLC with the Massachusetts Secretary of State Corporations Division. Costa has never registered with the Commonwealth of Massachusetts as a broker or dealer of securities

40. Paralegal Doe served as TelexFree, LLC's agent, servant or employee to this complaint. She is identified at this time only by an email address. Paralegal Doe served as TelexFree's person on the ground and administrator in Las Vegas, Nevada.

iii. Insider Promoters including Insider Promoter Does 1-63

[11] *See* Omnibus Declaration of William H. Runge, Case 14-1552-abl, Doc. 13, ¶ 31, Exhibit 6. This was prior to the appointment of TelexFree Trustee Darr. Exhibit 7

41. Insider Promoter Sanderley Rodrigues de Vasconcelos ("Rodrigues") is an individual with a last known usual place of abode located at 100 Stockton Street, Apt. 49, in Chelsea, County of Suffolk, Commonwealth of Massachusetts 02150. Rodrigues is the sole Officer, Director, and Registered Agent of WWW Global Business.At no time has Rodrigues been registered with the Commonwealth of Massachusetts as a broker or dealer of securities.

42. Insider Promoter WWW Global Business, Inc. ("WWW Global Business") is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, having a principal place of business at 189 Squire Road, Suite 40, in Revere, County of Suffolk, Commonwealth of Massachusetts. Rodrigues organized WWW Global Business on or about February 7, 2013, to market and sell TelexFree investments. WWW Global Business has never registered with the Commonwealth of Massachusetts or with any other authority anywhere in the world as a broker or dealer of securities.

43. Insider Promoter Santiago de la Rosa ("De La Rosa") is an individual with a last known usual place of abode located at 189 Beacon Hill Avenue, Unit 2, in Lynn, County of Essex, Commonwealth of Massachusetts 01902. De La Rosa appears in internet videos promoting TelexFree and is one of TelexFree's most successful promoters, having recruited numerous other Promoters/Investors for TelexFree within the Dominican Community in Massachusetts and elsewhere. s. De La Rosa has never registered with the Commonwealth of Massachusetts or with any other authority anywhere in the world as a broker or dealer of securities

44. Insider Promoter Randy N. Crosby ("Crosby") is an individual with a last known usual place of abode located at 30 Club Court, in Alpharetta, Georgia 30005. Crosby appears in internet videos promoting TelexFree and is one of TelexFree's most successful

promoters, having recruited numerous other Promoters/Investors for Telexfree – especially through a website known as "everybodygetspaidweekly.biz". Crosby has never registered with the Commonwealth of Massachusetts or with any other authority anywhere in the world as a broker or dealer of securities.

45. Insider Promoter Faith R. Sloan ("Sloan") is an individual with a last known usual place of abode located at 515 E. End Avenue, Unit 105, in Calumet City, Illinois 60409. Sloan appears in internet videos promoting TelexFree, and is one of TelexFree's most successful Promoters, having recruited numerous Promoters/Investors for Telexfree – especially through a website known as "telexfreepower.com". Sloan has never registered with the Commonwealth of Massachusetts or with any other authority anywhere in the world as a broker or dealer of securities.

iv. Attorneys

46. Retained Licensed Professional ("RLP") Gerald P. Nehra ("Nehra") is an individual with a last known usual place of abode located at 1322 Peck St, Muskegon, MI 49441. Nehra maintains a second last known place of abode at 2149 Tall Oak Court, Sarasota, Florida 34232. Nehra is sued individually, as a lawyer and as a member of law firms referenced herein.

37. RLP Nehra is an attorney duly licensed to practice law in the State of Michigan with offices at 1710 Beach Street in Muskegon, Michigan 49441. Nehra is the sole member, manager, and registered agent for defendant

38. Retained Licensed Professional Gerald P. Nehra, Attorney at Law, PLLC, a professional limited liability company engaged in the practice of law and duly organized and

existing under the laws of Michigan, having a principal place of business at 1710 Beach Street in Muskegon, Michigan 49441.

39. Retained Licensed Professional Richard W. Waak ("Waak") with a last known usual place of abode located at 11300 E. Shore Dr. Delton, MI 49046-8483. Waak is sued individually, as a lawyer and as a member of law firms referenced herein.

37. RLP Waak is an attorney duly licensed to practice law in the State of Michigan with offices at 11300 East Shore Drive, Delton, Michigan 49046. Waak is the sole member, manager and registered agent for

38. Retained Licensed Professional Richard W. Waak, Attorney at Law, PLLC, a professional limited liability company engaged in the practice of law and duly organized and existing under the laws of Michigan, having a principal place of business at 11300 East Shore Drive, Delton, Michigan 49046.

39. Retained Licensed Professional Law Offices of Nerha and Waak is a law firm with usual places of business located at 11300 East Shore Drive, Delton, Michigan 49046, and 1710 Beach Street, in Muskegon, Michigan 49441. The Law Offices of Nehra and Walk is a general partnership between Defendants Nehra, Waak, Gerald P. Nehra, Attorney at Law, PLLC, and Richard W. Waak, Attorney at Law, PLLC.

v. Certified Public Accountant

40. Retained Licensed Professional Joseph H. Craft is certified public accountant who maintains regular places of business located at 333 W. Tennyson Road, Boonville, Indiana 47601 and 825 E. Main Street, Boonville, Indiana 47601-1885. Craft is sued individually, as a lawyer and as a member or owner of the accounting businesses referenced herein. Also as an officer of TelexFree entities as set forth above.

41. Retained Licensed Professional Joe H. Craft, CPA/PFS, CFP holds himself out as conducting business in Kentucky under the name and style.

42. Craft prepared and approved the financial statements and tax documents relating to the TelexFree pyramid Ponzi scheme. Prior to April 2012, Craft was retained to serve as TelexFree's accountant and prepared its financial statements and tax related documents.[12]

43. Retained Licensed Professional Financial Solutions, LLC ("Craft Financial") is a limited liability company duly organized and existing under the laws of Indiana, with a principal place of business at 825 E. Main Street in Boonville, Indiana 47601-1885. Craft Financial is engaged in the business of providing accounting services and financial advice. Defendant Joseph H. Craft is the sole member, manager, and registered agent of defendant Craft Financial.

C. Financial Institution Defendants

i. Banks

44. Fidelity Co-operative Bank doing business as Fidelity Bank, ("Fidelity Bank") is a Massachusetts Chartered Banking Institution, having its principal offices at 675 Main Street, in Fitchburg, County of Worcester, Commonwealth of Massachusetts 01420. At all times material herein, Defendant Fidelity Bank provided banking services, maintained accounts, and received transfers of funds from or for the benefit of TelexFree after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

45. Middlesex Savings Bank ("Middlesex Savings") is a Massachusetts Chartered Banking Institution, having its principal offices at 6 Main Street, in Natick, County of Middlesex, Commonwealth of Massachusetts 01760. At all times material herein, Defendant

[12] *See* Omnibus Declaration of William H. Runge, Case 14-1552-abl, Doc. 13, ¶ 31, Exhibit 6. Runge served as TelexFree's Chief Restructuring Officer prior to the appointment of TelexFree Trustee Darr. Exhibit 7

Middlesex Savings provided banking services, maintained accounts, and received transfers of funds from or for the benefit of TelexFree after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

46. TD Bank, N.A. ("TD Bank") is a national banking institution in the United States chartered and supervised by the federal Office of the Comptroller of the Currency with its principal place of business at 15 Broad Street in Boston, County of Suffolk, Commonwealth of Massachusetts 02109. At all times material herein, Defendant TD Bank provided banking services, maintained accounts, and received transfers of funds from or for the benefit of TelexFree after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

47. Bank of America Corporation ("Bank of America") is a publicly traded corporation duly organized and existing under the laws of the State of Delaware. Bank of America is a national banking institution in the United States chartered and supervised by the federal Office of the Comptroller of the Currency, with offices at 175 Federal Street, in Boston, County of Suffolk, Commonwealth of Massachusetts 02110. At all times material herein, the Defendant Bank of America provided banking services, maintained accounts, and received transfers of funds from or for the benefit of TelexFree after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

48. Bank of America, N.A. is a national banking institution in the United States chartered and supervised by the federal Office of the Comptroller of the Currency, with a principal place of business in Charlotte, North Carolina. Bank of America, N.A. is a subsidiary of Bank of America, and conducts business in the Commonwealth of Massachusetts at, *inter alia*, 100 Federal Street, in Boston, County of Suffolk, Commonwealth of Massachusetts

02110. At all times material herein, the Defendant Bank of America, N.A. provided banking services, maintained accounts, and received transfers of funds from or for the benefit of TelexFree after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

49. Citizens Financial Group, Inc. ("Citizens Financial") is a corporation duly organized and existing under the laws of the State of Delaware, having its principal offices in Providence, Rhode Island. Citizens Financial is a banking institution and has offices at 28 State Street, Boston, County of Suffolk, Commonwealth of Massachusetts 02109 after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

50. Citizens Bank of Massachusetts ("Citizens Bank") is a subsidiary of Citizens Financial and conducts business in the Commonwealth of Massachusetts at 28 State Street, in Boston, County of Suffolk, Commonwealth of Massachusetts 02109. At all times material herein, Defendant Citizens Bank provided banking services, maintained accounts, and received transfers of funds from or for the benefit of TelexFree after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

51. Wells Fargo & Company ("Wells Fargo") is a publicly traded corporation duly organized and existing under the laws of the State of Delaware, having its principal office in San Francisco, California; and conducting business within the Commonwealth of Massachusetts. At all times material herein, Wells Fargo provided banking services, maintained accounts, and received transfers of funds from or for the benefit of TelexFree after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

52. Wells Fargo Bank, N.A. ("Wells Fargo Bank") is a national banking institution in the United States chartered and is supervised by the federal Office of the Comptroller of the Currency, with a principal place of business in Sioux Falls, South Dakota. Wells Fargo Bank is a subsidiary of Wells Fargo, and conducts business in the Commonwealth of Massachusetts at, *inter alia*, 201 Washington Street, in Boston, County of Suffolk, Commonwealth of Massachusetts. At all times material herein, Defendant Wells Fargo Bank provided banking services, maintained accounts, and received transfers of funds from or for the benefit of TelexFree after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction

ii. Payment Processors

53. Global Payroll Gateway, Inc. ("GPG") is a corporation duly organized and existing under the laws of the State of California, having its principal offices at 18662 MacArthur Boulevard, Suite 200, in Irvine, California 92612. GPG provided payment processing services for companies and acted as a conduit for payment between TelexFree and its Promoters/Investors even after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

54. International Payout Systems, Inc. ("IPS") is a corporation duly organized and existing under the laws of the State of Florida, having its principal offices at 2500 East Hallandale Beach Boulevard, Suite 800, Hallandale Beach, Florida 33009. IPS provides provided payment processing services for companies and acted as a conduit for payment between TelexFree and its Promoters/Investors even after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

55. Propay, Inc. ("ProPay") is a corporation duly organized and existing under the laws of the State of Utah with its principal offices at 3400 North Ashton Boulevard, Lehi, Utah 84043 and also does business as PROPAY.COM. ProPay provided provided payment processing services for companies and acted as a conduit for payment between TelexFree and its Promoters/Investors even after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

56. Base Commerce, LLC ("Base Commerce") is a limited liability company duly organized and existing under the laws of the State of Arizona with its principal offices at 7910 S. Kyrene Road, Suite 106, Tempe, Arizona 85284, and it also does business as Phoenix Payments. Base Commerce provided provided payment processing services for companies and acted as a conduit for payment between TelexFree and its Promoters/Investors even after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

57. Vantage Payments, LLC ("Vantage Payments") is a limited liability company duly organized and existing under the laws of the State of Arizona, having its principal offices at 8300 N. Hayden Road #A207, Scottsdale, Arizona 85251. Defendant Vantage Payments provided provided payment processing services for companies and acted as a conduit for payment between TelexFree and its Promoters/Investors even after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

58. It is believed that additional payment – processing services aided and abetted in TelexFree's Pyramid Ponzi Scheme by providing payment processing services for companies and acted as a conduit for payment between TelexFree and its Promoters/Investors even after they knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013

Injunction but their identities are as yet unknown. For ease of reference, they can only be referred to herein at this time as Defendant Payment – Processing Services Doe.

iii. Other Defendants

59. FMR, LLC, also known as Fidelity Investments ("Fidelity Investments") has its principal offices at 245 Summer Street, Suite F7B, in Boston, County of Suffolk, Commonwealth of Massachusetts 02110 and is a Foreign Limited Liability Company, organized and existing under the laws of the State of Delaware,. At all times material herein, Defendant Fidelity Investments provided investment and asset management services, maintained accounts, and received transfers of funds from or for the benefit of TelexFree even after it knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

60. Waddell & Reed Financial, Inc. ("Waddell & Reed Financial") has a regular place of business located at 281 Winter Street, in Waltham, County of Middlesex, Commonwealth of Massachusetts 02451. Waddell & Reed Financial is a publicly traded corporation duly organized and existing under the laws of the State of Delaware. At all times material herein, Waddell & Reed Financial, Inc. provided investment and financial services, and provided accounts and received transfers of funds from or for the benefit of TelexFree even after it knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

61. Waddell & Reed, Inc. ("Waddell & Reed") has a regular place of business located at 281 Winter Street, in Waltham, County of Middlesex, Commonwealth of Massachusetts 02451. Waddell & Reed is a subsidiary of Waddell & Reed Financial and at all times material herein, it provided investment and financial services, and provided accounts

and received transfers of funds from or for the benefit of TelexFree even after it knew of the findings of the Brazilian Court in Acre issued and the June 19, 2013 Injunction.

The Putative Class Representatives seek to obtain damages, restitution and injunctive relief for the Class, as defined below, from the above identified defendants. And reserve their right to amend in accordance with the evidence.

IV.

FACTS AND ALLEGATIONS

A. Securities Defined

63. A **security** is a tradable financial asset of any kind.

64. The United States Securities Exchange Act of 1934 defines a security as: "Any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit, for a security, any put, call, straddle, option, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited."

65. The company or other entity issuing the security is called the issuer (“Issuer”). A country's regulatory structure determines what qualifies as a security. For example, private

investment pools may have some features of securities, but they may not be registered or regulated as such if they meet various restrictions.

66. An investment is the putting of money into an asset with the expectation of capital appreciation, dividends, and/or interest earnings. The traditional economic function of the purchase of securities is investment, with the view to receiving income and/or achieving capital gain.

67. Most generally, to lawfully sell a security, the Issuer must register with governmantal authorites. Issuer's are also required to fully disclose all material information that would allow project investors to identify and manage the risks related to the investment.

68. Securities are the traditional way that commercial enterprises raise new capital.[13] Through securities, capital is provided by investors who purchase the securities upon their initial issuance.

69. In the US, the public offer and sale of securities must be either registered pursuant to a registration statement that is filed with the U.S. Securities and Exchange Commission (SEC) or are offered and sold pursuant to an exemption therefrom. Dealing in securities is regulated by both federal authorities (SEC) and state securities departments.

70. With respect to investment schemes that do not fall within the traditional categories of securities listed in the definition of a security (Sec. 2(a)(1) of the 33 Act and Sec. 3(a)(10) of the 34 act) the US Courts have developed a broad definition for securities that must then be registered with the SEC.

71. When determining if there a is an "investment contract" that must be registered

[13] Securities may be an attractive alternative to bank loans depending on their pricing and market demand for particular characteristics. One disadvantage of bank loans as a source of financing is that the bank may seek a measure of protection against default by the borrower via extensive financial covenants.

the courts look for an investment of money, a common enterprise and expectation of profits to come primarily from the efforts of others.[14]

B. Ponzi Pyramid Schemes

72. The size and speed of today's financial transactions and the advent and growth of the Internet over past two decades, have spurred a proliferation of investment fraud schemes. By taking advantage of electronic communication and currency transfers financial fraud preditors are able to quickly amass staggering illigal profits from similarly situtated victims across broad geographic areas and demographic groups.

73. A Ponzi scheme is a fraudulent investment operation where the operator, an individual or organization, pays returns to its investors from new capital paid to the operators ("Operators") by new investors, rather than from profit earned by the operator.

74. Operators of Ponzi schemes usually entice new investors by offering higher returns than other investments, in the form of short-term returns that are either abnormally high or unusually consistent.

75. Here TelexFree falsely guaranteed their investors returns of 200% or more per year.

76. The perpetuation of the high returns requires an ever-increasing flow of money from new investors to sustain the scheme.

77. TelexFree entities and its Owners, Officers, Directors, Attorneys, Certified Public Accountants, Insider Promoters and Doe Insider Promoters knowingly and with scienter, acted as Operators in the TelexFree pyramid Ponzi scheme.

78. A pyramid scheme is an unsustainable business model that involves promising participants payment or services, primarily for enrolling other people into the scheme, rather

[14] See *SEC v. W.J. Howey Co.* 328 U.S. 293 (1946)

than supplying any real investment or sale of products or services to the public.

79. In a pyramid scheme, an Operator compels individuals to make a payment and join. In exchange, the Operator promises its new members a share of the money taken from every additional member that they recruit.

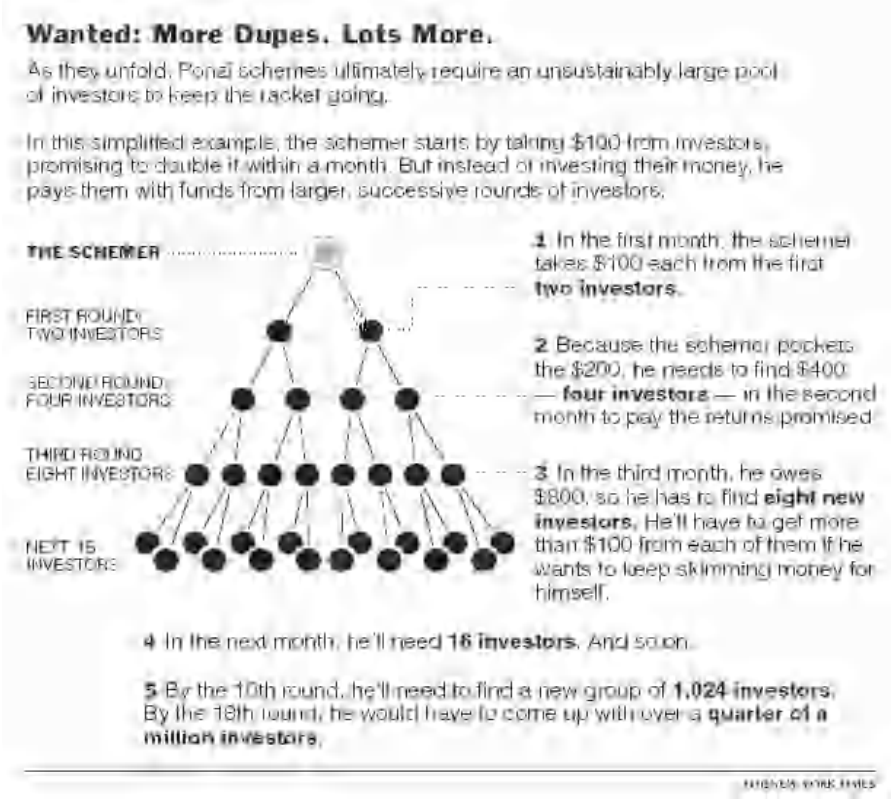
80. The highest Operator levels, for example the CEO, Owner or directors (those at the top of the pyramid) receive a share of these payments. For those at the top of the pyramid, the scheme is lucrative and has other benefits. Whether or not those at the top level offer any real product for sale, the organization's membership has a strong incentive to continue recruiting and funneling money to the top of the pyramid. Such organizations seldom involve sales of products or services with real value. Without creating any goods or services, the only ways for a pyramid scheme to generate revenue are to recruit more members or solicit more money from current members. Eventually, recruiting is no longer possible and the vast majority of members are unable to profit from the scheme.

81. According to the U.S. Federal Trade Commission, many multi level marketing schemes "simply use the product to hide their pyramid structure."[15]

82. The SEC warns that "….fraudsters behind a pyramid scheme may go to great lengths to make the program look like a legitimate multi-level marketing program. But despite their claims to have legitimate products or services to sell, these fraudsters simply use money coming in from new recruits to pay off early stage investors. But eventually the pyramid will collapse. At some point the schemes get too big, the promoter cannot raise enough money from new investors to pay earlier investors, and many people lose their money."

83.

[15] "Pyramid Schemes", May 13, 1998, Federal Trade Commission. See also, http://www.ftc.gov/system/files/documents/advisory_opinions/staff-advisory-opinion-pyramid-scheme-analysis/040114bizopp-pyramid.pdf



84. TelexFree Promoters were also offered compensation in exchange for the essentially passive process of copying and placing duplicative, pre-written TelexFree ads on internet sites.

85. The passive internet copy placement process generated little or no revenue for TelexFree and required virtually no effort by the investors and was an intentionally designed sham.

86. TelexFree uniformly and systematically did not require Promoters to sell its VoIP product to qualify for payments prior to March 9, 2014.

87. Within the TelexFree pyramid, there was nothing of value actually sold by its Promoters because there was no real product offered. The TelexFree VoIP was not patented or proprietary. The TelexFree VoIP offered nothing more than what was and is otherwise available for free through other Internet providers.

88. The only actual product offered was the promoters selling memberships. In essence, TelexFree's business model was nothing more than an illusion and so, a ponzi scheme.

89. TelexFree and the other Defendants willfully or knowingly established a pyramid-type Ponzi scheme. TelexFree and the other Defendants paid certain investors, including the Insider Promoters and Doe Insider Promoters unlawful, pyramid scheme returns on investment while wrongfully causing the Plaintiffs and similarly situated members of the class to suffer ascertainable economic loss in an amount in excess of $300 million.

C. General Allegations

90. TelexFree and its Officers James M. Merrill, Carlos N. Wanzeler, Steven M. Labriola, Carlos Costa, Joseph H. Craft, a/k/a Joe H. Craft (collectively, "Defendant Officers"), Sanderley Rodrigues de Vasconcelos; WWW Global Business, Inc.; Santiago de La Rosa; Randy N. Crosby; Faith R. Sloan (collectively sometimes referred to as the "Named Insider Promoters"), the Doe Insider Promoters, TelexFree's retained licensed professionals[16] including the Attorney Defendants, Paralegal Doe, Banking Institution Defendants[17], Investment Service Provider Defendants[18] and Payment Processing Services Companies[19] knew that the Pyramid

[16] Attorneys Gerald P Nehra, Esq, individually and doing business as the Law Offices of Nehra and Waak; Gerald P Nehra, Attorney at Law, PLLC; Richard W. Waak individually and doing business as the Law Offices of Nehra and Waak; Richard W. Waak Attorney at Law, PLLC; Joe H. Craft individually and d/b/a as Certified Public Accountant; Craft Financial Solutions, LLC as well as the Doe Professional Services Providers, are sometimes referred to herein as "Retained Licensed Professionals" or "RLP Defendants."

[17] Bank Of America Corporation, Bank Of America, N.A., TD Bank, N.A., Citizens Financial Group, Inc.,, Citizens Bank of Massachusetts, Fidelity Co-Operative Bank, Middlesex Savings Bank, Wells Fargo & Company, Wells Fargo Bank, N.A., and the Doe Banks are sometimes referred to herein as the "Banking Institution Defendants."

[18] FMR, LLC, also known as Fidelity Investments, Waddell & Reed Financial, Inc., Waddell & Reed, Inc., and the Doe Investment Services Providers are sometimes referred to herein as the "Investment Services Provider Defendants."

[19] Global Payroll Gateway Inc., International Payout Systems, Inc., Propay, Inc., doing business as Propay.com, Base Commerce, LLC, doing business as Phoenix Payments, and Vantage Payments, LLC are referred to herein as "Payment Process Services Companies" or "PPSC

Ponzi Scheme was not sustainable, and that the representations on TelexFree's website and in its marketing materials were false, unfair, and deceptive including, but not limited to, those concerning the guaranteed returns.

91. At all times material, TelexFree and its Defendant Officers, the Named Insider Promoters, the Doe Insider Promoters, Retained Licensed Professionals, Paralegal Doe, Banking Institution Defendants, Investment Service Provider Defendants and Payment Processing Services Companies knew that TelexFree was selling unregistered securities to the members of the putative classes.

92. Despite actual knowledge, or at least a general awareness, of the illegalities of TelexFree revenue generation and business model, and the findings of the Brazilian Court in Acre Defendant Officers, the Named Insider Promoters, Doe Insider Promoters, Retained Licensed Professionals, Paralegal Doe, Banking Institution Defendants, Investment Service Provider Defendants and Payment Processing Services Companies knew that TelexFree was an illegal Pyramid Ponzi Scheme which involved the illegal sale of securities, they continued to participate in the attraction and collection of funds from new investors and continued to substantially assist and encourage TelexFree's fraud and to aid, abet and further such illegal activities.

93. Despite actual knowledge, or at least a general awareness, of the illegalities of TelexFree revenue generation and business model, and the findings of the Brazilian Court in Acre Defendant Financial Institutions, Payment Processing Services Companies, Investment Service Providers, Retained Licensed Professionals and Officers, the Named Insider Promoters, Doe Insider Promoters, Retained Licensed Professionals, Paralegal Doe continued to participate in the attraction and collection of funds from new investors, continued to allow payments to

(continued)

Defendants."

process through TelexFree's accounts, allowed TelexFree to continue to illegally sell securities and otherwise continued to substantially assist and encourage TelexFree's its illegal Pyramid Ponzi Scheme, commit fraud and to aid, abet and further TelexFree's illegal activities.

94. On April 14, 2014, TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. abruptly sought bankruptcy protection in Nevada under Chapter 11, admitting that they could not and cannot meet their obligations from VoIP revenues and seeking authority to reject all their current obligations to Promoters.

95. At all material times, Defendants have violated the antifraud and securities registration provisions of the federal and state securities laws.

96. At all material times and from at least in or about January 2012 , TelexFree and the other Defendants unlawfully, willfully and knowingly used the means and instrumentalities of interstate commerce and the mails, directly and indirectly, for the purchase and sale of unregistered securities.

97. TelexFree and the other Defendants used and employed manipulative and deceptive devices and contrivances in violation of the Massachusetts Uniform Securities Act, MGL 110A, Sec. 410; used means and instrumentalities, directly and indirectly, for the purchase and sale of unregistered securities; and used and employed manipulative and deceptive devices and contrivances in violation of the Massachusetts Uniform Securities Act, MGL c. 110A, Section 410b, MGL 110A, Sec. 410(b) and MGL 93A.

98. TelexFree and the other Defendants engaged in: (a) fraudulent or deceptive conduct with the purchase or sale of securities, in violation of Section 10 (b) of the Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 there under; (b) fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"); and (c)

the offer or sale of unregistered securities, in violation of Section 5 of the Securities Act.

99. TelexFree and the other Defendants also violated Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons.

100. The Owners, Officers and Directors and Various Associated Individuals and Businesses each knew in advance that TelexFree pyramid Ponzi scheme and with unlawful intent or a general awareness acted to substantially assist or encourage the scam and in doing so, significantly profited from it. Most attended an invitation only meeting at TelexFree's headquarters and sales offices located at 225 Cedar Hill Street, Suite 200, in Marlborough, County of Middlesex, Commonwealth of Massachusetts 01752 prior to the March 9, 2014 change of TelexFree's form contract.

101. The Insider Promoters and Insider Promoter Does 1-62 each knew in advance that TelexFree pyramid Ponzi scheme and with unlawful intent or a general awareness acted to substantially assist or encourage the scam and in doing so, significantly profited from it. Most attended an invitation only meeting at TelexFree's headquarters and sales offices located at 225 Cedar Hill Street, Suite 200, in Marlborough, County of Middlesex, Commonwealth of Massachusetts 01752 prior to the March 9, 2014 change of TelexFree's form contract.

102. The RLP Defendants each knew in advance that TelexFree pyramid Ponzi scheme and with unlawful intent or a general awareness acted to substantially assist or encourage the scam and in doing so, significantly profited from it. Most attended an invitation

only meeting at TelexFree's headquarters and sales offices located at 225 Cedar Hill Street, Suite 200, in Marlborough, County of Middlesex, Commonwealth of Massachusetts 01752 prior to the March 9, 2014 change of TelexFree's form contract.

D. Background of Founders and Formation of TelexFree, Inc., f/k/a Common Cents, Inc.

103. TelexFree, Inc. was originally organized on December 31, 2002 under the name Common Cents Communications, Inc. ("CCCI"). CCCI's name was changed to TELEXFREE, INC on February 15, 2012.

104. Acting on Costa's proposal, Wanzeler and Merrill changed the name of Common Cents Communications, Inc. to TelexFree, Inc., and Wanzeler and Costa together created a website, "telexfree.com."

E. Brazilian Help, Disk A Vontade, and Ympactus

105. As early as 2005, Wanzeler and the other Direct Participant Defendants were operating purported telecommunications businesses in the United States and Brazil, under the names "Brazilian Help" and "Disk A Vontade Telefonia," respectively.

106. Disk A Vontade Telefonia, Ltd., also known as Diskavontade, also known as Disk (sometimes referred to as "Disk A Vontade"), is a Brazilian Limited Liability Company, now or formerly having its principal offices as Rua Jose Luiz Gabeira, NRO 170, APTO 103 Barro Vermelho, with a Massachusetts office located at 225 Cedar Hill Street, Suite 200, in Marlborough, Massachusetts 01752.

107. Disk A Vontade's Massachusetts office is in the same building in Marlborough, Massachusetts as TelexFree.

108. Carlos Wanzeler is the Chief Executive Officer of Disk A Vontade.

109. Merrill is Vice President and a Signatory of Disk A Vontade.

110. Disk A Vontade's domain ("discavontade.com") is registered to Defendant Carlos Wanzeler.

111. Brazilian Help, Inc. ("hereinafter sometimes referred to as "Brazilian Help") is a Domestic Profit Corporation organized and existing under the laws of the Commonwealth of Massachusetts, now or formerly having a principal place of business at 225 Cedar Hill Street, Suite 118, in Marlborough, Massachusetts 01752.

112. Wanzeler is the President, Secretary, Treasurer, and Registered Agent of Brazilian Help.

113. Brazilian Help's Massachusetts office is in the same building in Marlborough, Massachusetts as TelexFree.

114. Brazilian Help and Disk A Vontade were, , the American and Brazilian branches, respectively, of the same enterprise.

115. Between approximately 2005 and 2012, Costa, a longtime friend of Wanzeler, was employed by Disk A Vontade and was Wanzeler's top sales agent in Brazil.

116. In early 2012, Costa suggested to Wanzeler they solicit customers through online advertisement.

117. Disk A Vontade was the registered owner of the Telexfree.com domain name.

118. In July 2012, Wanzeler, Merrill and Costa together formed TelexFree, LLC.

119. Ympactus Comercial, Ltda-ME, is a Brazilian Limited Liability Company, which serves as TelexFree's Brazilian branch.

120. Ympactus has been jointly controlled by Wanzeler, Costa, and Merrill.

121. According to the SOC, there is no distinction between U.S. TelexFree operations and Brazilian operations. The United States and Brazilian TelexFree entities use the same

website and back office support, merely providing identical information in multiple languages.

122. TelexFree management described the ownership interests in TelexFree, Inc. (Massachusetts-based), TelexFree LLC (Nevada-based) and Ympactus (Brazilian-based), overlap.

123. In late 2013, Costa withdrew his ownership for what Merrill characterized as "*legal reasons*."[20]

124. Both Merrill and Wanzeler provided testimony to the SEC stating that they transferred at least $3,000,000.00 to Costa long after Brazilian authorities shut down Ympactus operations.[21]

F. TelexElectric, LLLP's and Telex Mobile Holding, Inc.'s Involvement in the Unlawful, Unfair, and Deceptive Pyramid Ponzi Scheme

125. TelexElectric is a Nevada limited liability limited partnership formed on December 2, 2013 by Co-Defendants Merrill and Wanzeler.

126. Co-Defendants Merrill and Wanzeler further list their address as 4705 S. Durango Drive, #100-J1 (a post office box), Las Vegas, Nevada 89147, which is the same location as TelexFree, LLC.

127. TelexElectric also lists as its address 4705 S. Durango Drive, #100-J1 (a post office box), Las Vegas, Nevada 89147.

128. Telex Mobile is a Nevada corporation formed on November 26, 2013.

129. Defendants TelexFree, LLC, TelexFree, Inc., TelexFree Financial, TelexElectric and TelexFree Mobile Holdings are alter ego entities, which combine to form a single enterprise.

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[20] See Administrative Complaint of instituted by the Commonwealth of Massachusetts, Office of the Secretary of the Commonwealth Securities Division, Docket No. 2014-0004, page 7.
[21] *Id.*

130. TelexFree's financial statements reveal that TelexElectric received a $2,022,329.00 "loan" from TelexFree during the class period. [22]

131. TelexFree's financial statements further reveal that TelexFree Mobile received a $500,870 "loan" from TelexFree during the class period.[23]

132. TelexElectric was fraudulently set up to shelter funds rightfully belonging to the putative class.

133. These "loans" were fraudulent transfers by TelexFree to evade claims by investors and creditors, and otherwise to unlawfully abscond with funds that rightfully belonged to creditors and investors.

G. TelexFree, LLC

134. Telex Free, LLC was organized under the laws of the State of Nevada on July 19, 2012.

135. There is no distinction between the business operations of TelexFree, LLC and TelexFree, Inc.

136. At all material times, TelexFree LLC was identified as a limited liability company as registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number 001105166).

137. TelexFree, LLC registered with the Secretary of State for the Commonwealth of Massachusetts on April 18, 2013.

138. TelexFree, LLC maintained a post office box at 4705 S. Durango Drive, #100-J51, Las Vegas, Nevada 89147.

[22] See TelexFree, LLC Balance Sheet as of December 31, 2013, marked as Exhibit 13
[23] *Id.*

139. At least between February 15, 2012 and approximately April 15, 2014, TelexFree, LLC operated a Massachusetts office at 225 Cedar Hill St., Suite 200, Marlborough, Massachusetts 01752.

140. At all material times, Co-Defendants Carlos Costa, James M. Merrill and Carlos N. Wanzeler were the Managers of TelexFree, LLC.

141. At least between February 15, 2012 and approximately April 15, 2014, TelexFree, LLC's registered agent for the Commonwealth of Massachusetts was James Merrill whose address is identified as 225 Cedar Hill St. Suite 200, Marlborough, MA 01752.

142. At least between February 15, 2012 and approximately April 15, 2014, Co-Defendants James Merrill, Carlos Wanzeler, Steven Labriola, Joseph H. Craft and Carlos Costa conducted the business of TelexFree, LLC in TelexFree's Massachusetts office.

143. TelexFree caused a copy the Business Entity Summary for TelexFree, LLC to be filed with the Corporations Division of the Secretary of the Commonwealth of Massachusetts.

144. Since mid-November 2013, TelexFree has transferred approximately $30 million from its operating accounts to accounts owned and controlled by TelexFree, its affiliated companies or the individual Defendants.

145. Tens of millions of additional investor funds received by TelexFree are unaccounted for.

H. TelexFree Financial, Inc.

146. TelexFree, Inc.[24], of which co-defendants Merrill and Wanzeler are officers and directors, is a domestic profit corporation registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number 000832397).

[24] Paragraph 2.1.2 of the standard TelexFree contract states "TELEXFREE INC, from its headquarters in, Marlboro, Massachusetts (U.S.), on the basis of an operating contract between

147. At least between February 15, 2012 and approximately April 15, 2014, TelexFree, Inc. maintained a principal office at 225 Cedar Hill St. Suite 200, Marlborough, MA 01752.

148. Since February 15, 2012, Co-Defendants James Merrill, Carlos Wanzeler, Steven Labriola, Joseph H. Craft and Carlos Costa conducted the business of TelexFree, Inc. in the Marlborough, Massachusetts office

149. Co-Defendant Joseph H. Craft incorporated TelexFree Financial on December 26, 2013.

150. TelexFree Financial was fraudulently set up to shelter funds rightfully belonging to the putative class.

151. At all material times, Co-Defendants James M. Merrill and Carlos N. Wanzeler are officers and directors of TelexFree Financial, and Co-Defendant Carlos N. Wanzeler is its registered agent.

152. On December 30 and December 31, 2013, TelexFree Financial received wire transfers totaling $4,105,000 from TelexFree, Inc. and TelexFree, LLC.

153. On April 14, 2014, Defendants TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. abruptly sought bankruptcy protection in Nevada under Chapter 11, admitting that they cannot meet their obligations from VoIP revenues, and sought authority to reject all their current obligations to Promoters.

(continued)
the latter and the CONTRACTOR (YMPACTUS), has as its primary activity VOIP telephony, using its equipment installed at its headquarters in Massachusetts, where it makes the necessary connections for these calls; it also provides virtual media, through the website www.telexfree.com to associates and to the PROMOTERS that YMPACTUS/TELEXFREE coordinates and controls, including the respective publicity channels."

I. Relationship Between Defendants TelexFree Mobile Holding, Inc. and TelexElectric, LLLP's and TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc.

154. At least since February 15, 2012, there has been a high degree of operational interdependence among all the TelexFree entities and the individuals who acted as Operators for them. The operations of these entities, and the individual actions of the Operators to line their own individual pockets are indistinguishable.

155. All shared common management and ownership and physical location of their operations right down to stamps, phone lines and copy paper. The TelexFree entities have also shared common financial, strategic, legal, and human resources.

156. Since February 15, 2012, Defendants Merrill, Wanzeler, Labriola, Craft and Costa have together owned and operated the TelexFree entities with no distinction among these entities.

157. At least between February 15, 2012 and approximately April 15, 2014, funds were freely transferred between the TelexFree entities with no distinction among these entities.

158. Between February 15, 2012 and at least April 15, 2014, the TelexFree entities have.

a. Conducted business from the same business addresses;

b. Retained the same employees;

c. Conducted business using the same telephone lines;

d. Utilized the same copy machines in business;

e. Utilized the same banks and bank accounts in business;

f. Utilized the same payment processing services companies in business;

g. Sought and received professional services from the same accountants; and

h. Sought and received professional services from the same attorneys.

159. Defendant TelexFree entities are alter ego entities, which combine to form a single enterprise.

160. On June 13, 2013, the 2nd Civil Court of Rio Branco, in the Brazilian State of Acre, enjoined all TelexFree entities from conducting any further business operations and froze its assets.

J. Telexfree's Unlawful, Unfair and Deceptive Pyramid Ponzi Scheme Involving the Unregistered Sale of Securities

161. As detailed above, the core of the Passive Income Scheme centers on the investment of either $289.00 or $1,375.00. A participant who invests $289.00 receives one advertisement kit and ten VoIP Programs. A participant who invests $1,375.00 receives five advertisement kits and fifty VoIP Programs.

162. The Direct Participant Defendants uniformally and identically represented to the Plaintiffs and the similarly situated members of the putative class that the advertisement kit enabled Promoters to generate a guaranteed return by posting pre-written advertisements, to pre-determined websites, through an automated TelexFree system.

163. The guarantee return to Promoters in exchange for their use of the advertisement kits generated investment returns without the need for any VoIP Program sales. Posting advertisements was a deception and a sham activity intended by the Direct Participant Defendants to mislead. Posting advertisements is an effortless process that takes less than a minutes per advertisement.

164. Promoters who initially invested $289.00 and did nothing more than place one advertisement per day were guaranteed a profit of at least $681.00 – a return in excess of 200%. A participant who initially invests $1,375.00 and places five advertisements per day was guaranteed a profit of $3,675.00. This is a return that exceeds 350%. Additional funds were

guaranteed to Promoters via various bonus structures and recruitment commissions

165. TelexFree participants become eligible for revenue sharing bonuses of up to 3% of the TelexFree's VoIP Program sales for recruiting multiple Promoters.

166. TelexFree prominently highlighted one such participant, Defendant Rodrigues, as the top promoter in the world on the TelexFree website. Rodrigues, a self-proclaimed millionaire, had previously operated a similar multi-level marketing phone card fraud shuttered by the SEC in 2006.

167. According to an investigation conducted by the United States Securities and Exchange Commission (hereinafter sometimes referred to as the "SEC"), between August 2012 and March 2014, TelexFree received slightly more than $1.3 million from the sale of approximately 26,300 VoIP Programs, while receiving more than $302 million in investments by Promoters – thus, less than one-half of one percent of total revenue during this period derived from sales of TelexFree's purported product. During this period, TelexFree promised to pay Promoters returns of over $1.1 billion – nearly a thousand times the amount of revenue derived from sales of the VoIP Programs.

168. TelexFree founder Wanzeler could not identify the number of individuals purchasing only a VoIP Program without also becoming a participant. Wanzeler provided wildly varied estimates when challenged to identify the number of VoIP Programs sold to non-participants.Over the same period, TelexFree had 783,771 investments of either $289.00 or $1,375.00 totaling $880,189,455.32. Even assuming that only 50% of all participant investments were for $1,375.00, TelexFree would still owe $2,398,897,200.00 – a number that far exceeds TelexFree's reported total revenues over the same period. This figure of almost $2.4 billion does not even include further bonuses, recruitment commissions, and revenue

sharing.

169. TelexFree did not generate sufficient funds from sales of their phone service to pay the returns on investments that they had contracted to pay. Instead, the funds TelexFree used to pay the purported returns on investments were the principal investment funds (membership fees) tendered by subsequent TelexFree investors.

170. TelexFree's Contract at Section 2.6.5 (m) mandates that Promoters are not to use the term investment with respect to the registration costs. Co-Defendant and Company Counsel Attorney Gerald P. Nehra, through his affiliated companies (Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and Richard W. Waak, Attorney at Law, PLLC), and under the direct supervision of Co-Defendants Richard W. Waak and Richard W. Waak Attorney at Law, PLLC provided this deceitful advice for the purpose of furthering perpetuating Defendants unlawful Pyramid Ponzi Scheme. Specifically, TelexFree's Contract at Section 2.6.5 (m) provides that the Promoter must not "use terms that distort the real meaning of products or the mechanism and functioning of multilevel marketing, including, without limitation, expressions that convey the idea of instant wealth for nothing in exchange, as well as speaking of registration costs as a 'financial investment.' Similarly, it is expressly prohibited to use the term 'INVESTMENT' at meetings and in promotional materials in general, orally or in writing.

171. In addition, TelexFree and the other Defendants unlawfully, willfully and knowingly used means and instrumentalities, directly and indirectly, for the purchase and sale of unregistered securities; and used and employed manipulative and deceptive devices and contrivances in violation of the Massachusetts Uniform Securities Act, M.G.L. c. 110A, Section 410b.

172. TelexFree is currently under investigation for offering fraudulent and unregistered securities by running a multi-level marketing scheme.

173. TelexFree is a marketer of telecommunications and advertising primarily, though not exclusively, targeting the hard-working Brazilian-American and Dominican-American communities. Its purported business is providing "99TelexFree" VoIP service, which costs 49.90 per month, even though TelexFree's president testified to having limited knowlede of VoIP services and never working in the telecom business. This VoIP service acts as a façade for TelexFree's actual business of recruiting new investors/promoters and paying them to place advertisements on the internet and recruit new investors/promoters, an act which of itself generates no revenue.

174. Merrill admitted in a March, 1, 2013 press release that "We [TelexFree] pay our representatives weekly if they follow our system and advertise our service on the Internet."

175. This scheme borrows elements from the once common phone card frauds of the mid-2000's, while supercharging its reach through an elaborate internet-marketing machine.

176. As with all Ponzi or Pyramid Schemes, TelexFree operations are untenable without a continuous influx of new capital.

177. The financial basis of the TelexFree scheme centers on the recruitment of additional participants and placing online advertisements – not actual sales of 99TelexFree Voice over Internet Protocol computer programs ("VoIP Program(s)").

178. Class Members were fraudulently induced to invest in at least two other "scam" business opportunities involving the offer or sale of unregistered securities in Massachusetts 1) TelexFree's passive income scheme, and 2) an offer to invest in TelexFree's hotel program.

179. Using technology borrowed from Disk A Vontade Telefonia, Ltda ("Disk A

Vontade"), TelexFree rebranded Disc A Vontade's VoIP Program, offering it for a flat monthly fee of $49.90.

180. Unlike Disk A Vontade operations, however, TelexFree coupled the VoIP Program with the wildly lucrative and fraudulent scheme (the "Passive Income Scheme").

181. The core of the Passive Income Scheme centers on the investment of either $289.00 or $1,375.00.

182. The "AdCentral" program costs $289.00 (plus a fifty dollar membership), for a one year contract. Promoters under this program received ten one-month pacjages of the VoIP service and had to place one inernet advertisement a day. For every week where they placed these advertisements, they received one addition VoIP package and were promised a weekly payment of $20 ($1040 for the entire year), a 207% return on the original investment.

183. The "AdCentral Family" program costs $1375.00 (plus the $50 membership fee) for a one-year contract. Promoters in this program received fifty one-month VoIP pckages and had to post five advertisements on the internet daily. Those who posted the advertisements received a five addition VoIP packages and a promised weekly payment of $100 ($5,200 over the year), an annual return of 265%.

184. The TelexFree advertisement kit enables participants to generate a return by posting pre-written advertisements, to pre-determined websites, through an automated TelexFree system.

185. A participant's daily use of the advertisement kits generates investment returns with no VoIP Program sales.

186. As testified to, posting advertisements is an effortless process that takes only a few minutes per advertisement.

187. Many participants pay third parties to post advertisements – completely outsourcing any required work at a minimal cost.

188. By merely posting one advertisement each day of the week, the TelexFree participant receives an additional VoIP Program.

189. The participant can sell the additional VoIP Programs to TelexFree for $20.00.

190. The Passive Income Scheme generates further returns for participants through various bonus structures and recruitment commissions. TelexFree tailors each of the additional income streams to incentivize recruitment.

191. Promoters were promised a one-time bonus of $20 for each recruited "AdCentral" member and $100 for each recruited "AdCentral Family" member. True to a pyramid scheme, promoters who recruited two additional promoters were promised a bonus of $20 for each direct and indirect participant in their "network", up to a maximum of $440. Under a "Team Builder Plan", AdCentral Family promoters who recruited ten other AdCentra Family members, each of whom sold five VoIp packages (to themselves or others), were promised 2% of TelexFree's net billing in the following month, up to $39,600.

192. Further, promoters were promised commissions based on sales of the VoIP service – 90% for the initial VoIP package sold to a customer he/she recruited,10% monthly for direct participants who renewed the service, and 2% monthly for each indirect participants who renewed their service down to the sixth level of the promoter's network. Promoters were also promised 2% of *all* VoIP package sales by direct or indirect participants in their network down to the sixth level of their network.

193. Hidden among TelexFree's bonus structure and recruitment commissions is that TelexFree participants may self-qualify for sales and commissions.

194. As testified by participants, a participant may invest in more than one advertisement kit and purchase the VoIP Program to earn bonuses. A participant may purchase a VoIP Program, never use the program, and still qualify for additional income. And therefore without ever selling any VoIP Program, the participant receives a return far over the 200-250% guaranteed return.

195. TelexFree's revenue from sales of VoIP Programs sales alone is inadequate to satisfy participant returns. During telexfree's scheme, revenue from sales of VoIP Programs has constituted only a tiny fraction of TelexFree's revenue and funds promised to Promoters.

196. According to an investigation conducted by the United States Securities and Exchange Commission (sometimes referred to as the "SEC"), between August 2012 and March 2014, TelexFree received slightly more than $1.3 million from the sale of approximately 26,300 VoIP Programs, while receiving more than $302 million in investments by Promoters – less than one-half of one percent of total revenue during this period derived from sales of TelexFree's purported product.

197. According to the SEC, during this period, TelexFree promised to pay Promoters returns of over $1.1 billion – nearly a thousand times the revenue derived from sales of the VoIP Programs – an amount TelexFree has not produced in revenue.

198. According to an investigation by the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (sometimes referred to as the "SOC") in 2012 and 2013, TelexFree identified 4,845,576 VoIP Program transactions totaling $238,395,353.80.

199. Net revenue received by TelexFree from VoIP Program sales was significantly less due to substantial commission payments.

200. Importantly, TelexFree founder Wanzeler could not identify the number of individuals purchasing only a VoIP Program without also becoming a participant.

201. Wanzeler provided wildly varied estimates when challenged to identify the number of VoIP Programs sold to non-participants.

202. Over the same period, TelexFree had 783,771 investments of either $289.00 or $1,375.00 totaling $880,189,455.32.

203. Assuming that each participant invested only $289.00 and did only post one advertisement per day, TelexFree owed participants $799,446,420.00. Alternatively, if each participant invested only $1,375.00 and did only post five advertisements per day, TelexFree owed $3,997,232,100.00 to its participants.

204. According to data provided by TelexFree, $1,375.00 investments accounted for 88% of transactions through Massachusetts-based participants.

205. Even assuming that only 50% of all participant investments were for $1,375.00, TelexFree would still owe $2,398,897,200.00 – a number that far exceeds TelexFree's reported total revenues over the same period. This figure of almost $2.4 billion does not even include further bonuses, recruitment commissions, and revenue sharing.

206. Including these additional payments would create an even greater disparity between the VoIP Program revenue and guaranteed money paid out of the Passive Income Scheme to participants.

207. TelexFree did not generate sufficient funds from sales of their phone service to pay the returns on investments they had contracted to pay. Instead, the funds TelexFree used to pay the purported returns on investments were the principal investment funds (membership fees) tendered by subsequent TelexFree investors.

208. Although upon the advice of their legal counsels, TelexFree referred to the members of the putative class as "*Associates*," "*Members,*" and "*Promoters*," Plaintiffs Martin and Valentim and all other members of the putative class are "Investors" under federal and state securities law.

209. TelexFree's Contract at Section 2.6.5 (m) mandates that Promoters are not to use the term investment regarding the registration costs.

210. Co-Defendant and Company Counsel Attorney Gerald P. Nehra, through his affiliated companies (Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and Richard W. Waak, Attorney at Law, PLLC), and under the direct supervision of Co-Defendants Richard W. Waak and Richard W. Waak Attorney at Law, PLLC provided this deceitful advice to further perpetuating Defendants unlawful, unfair, and deceptive Pyramid Ponzi Scheme.

211. Specifically, TelexFree's Contract at Section 2.6.5 (m) provides that the Promoter must not "use terms that distort the real meaning of products or the mechanism and functioning of multilevel marketing, including, without limitation, expressions that convey the idea of instant wealth for nothing in exchange, as well as speaking of registration costs as a 'financial investment.' Similarly, it is expressly prohibited to use the term 'INVESTMENT' at meetings and in promotional materials in general, orally or in writing.

212. However, promotional materials posted online by TelexFree specifically referred to income received by Promoters for placing ads as part of the AdCentral Packages as "*passive income*."[25]

213. Troublingly, TelexFree allowed certain participants to join the scheme despite

[25] See TelexFree Promotional Advertisements, attached herewith as Exhibit 7.

prior run-ins with the law.

214. TelexFree prominently highlighted one such participant, Defendant Rodrigues, as the top promoter in the world on the TelexFree website.

215. Rodrigues, a self-proclaimed millionaire, had previously operated a similar multi-level marketing phone card fraud shuttered by the SEC in 2006.

216. To drum up interest in recruiting, TelexFree held extravaganzas complete with a rock concert atmosphere and wild cheering, including the "wave."

217. Until recently, the TelexFree website and TelexFree presentations included pictures of cash and luxury property.

218. In one such presentation, TelexFree touted the Passive Income Scheme as "the opportunity of a lifetime."

219. Telexfree posted other promotional videos on websites such as YouTube to persuade others to invest in their operation.

220. Through such fantasies, reserved only for those at the top of the Passive Income Scheme, TelexFree induced investments drawn from participants' earnest earnings and savings.

K. Telexfree's Offer and Sale of Unregistered Investments in Best Western Hotel

221. Besides the Passive Income Scheme hereinbefore described, TelexFree, through Ympactus and Costa, offered an investment in a Best Western Hotel.

222. As described by TelexFree's president, the Best Western Hotel opportunity was an important marketing tool to bolster TelexFree credibility worldwide.

223. TelexFree management facilitated the offer of the Best Western Hotel opportunity through including the "Hotel Best Western Opportunity" on the front page of the TelexFree website accessible in the Commonwealth.

224. Through a prominently placed website banner and video on the TelexFree website, TelexFree presented this Best Western Hotel investment opportunity as having a guaranteed yearly return of over 8%.

225. TelexFree never registered this security offering with the SEC or released any prospectus or investor disclosure.

226. Crosby stated in an April, 2013 internet video that "This company has a joint venture with Best Western", but in actuality TelexFree has no relationship with Best Western.

227. The closest discernable link between TelexFree and Best Western is Ympctus Comercial's promotional agreement with a Brazilian company partnering with Best Western on a new hotel. This establishes no business relationship with TelexFree.

228. The Best Western Hotel opportunity video remained on the United States-based TelexFree website for months although the president of Best Western knew of the video and requested TelexFree's website staff to remove the video.

L. Investigation Of, and Injunctions Against, Telexfree's Brazilian Operations in Brazil was Notice of Scam

229. In January, 2013, the Brazilian Bureau of Consumer Protection (known as Procon), began an investigation into TelexFree. In its January 11, 2013 press release, Procon indicated that it had *"detected evidence of crimes":*

> The investigation initiated by civil prosecution of Consumer Protection (no. 01/2013) shows several controversial issues and possible crimes that put consumers at risk in time to accept that kind of deal.
>
> Among the possibilities, there is a breach in the Federal Law No. 1.521/51, art. 2, according to which it is a crime:
>
> "Obtaining or attempting to obtain illicit gains at the expense of the people or of undetermined number of people through speculation or processes fraudulent ('snowball', 'chains', 'pichardismo' and any other equivalent)" including Ponzi pyramid".

> There is also the possible violation of the Code of Consumer Protection (CDC), with false advertising, failure of product information and company, abuse of weakness or ignorance of consumers and conditions unreasonable disadvantage, among others.[26]

230. Procon subsequently initiated an official complaint and notified the "*State Prosecutors Office, the Minister of Finance and the Federal Police*."[27] The Ministry of Finance, after its investigation, declared that:

> The TelexFree business of selling packages of internet telephony (VoIP, its acronym in English), is not sustainable and suggests a Ponzi scheme, which is a crime against the popular economy.
> That is the conclusion of the Secretariat for Economic Monitoring of the Ministry of Finance (Seae / MF) in a statement on Thursday (14).[28]

231. As the matter processed through the Brazilian Court System, the Ministry of Finance was ordered to not issue further statements about the matter. In a blatantly misleading and deceptive act, TelexFree circulated through its affiliates the following misrepresentation of the order:

> *It's official! The investigation on TelexFree has been absolved of what Behind MLM has researched and posted*.[29]

232. On June 19, 2013, the Brazilian Court in Acre issued an injunction putting "*a stop to TelexFree's business operations, including the registration of new affiliate investors,*

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[26] "*TelexFree under criminal investigation in Brazil*", Behind MLM (Feb. 15, 2013), http://behindmlm.com/companies/telexfree-under-criminal-investigation-in-brazil/, attached herewith as Exhibit 8.

[27] "*Ministry of Finance: TelexFree 'not sustainable'*" Behind MLM (Mar. 17, 2013), http://behindmlm.com/companies/ministry-of-finance-telexfree-not-sustainable/, attached herewith as Exhibit 9.

[28] *Id.*

[29] "*Brazilian Court suspends TelexFree operations*", Behind MLM (June 20, 2013), http://behindmlm.com/companies/telexfree/brazilian-court-suspends-telexfree-operations/, attached herewith as Exhibit 10.

acceptance of new investments and paying any returns owed on existing affiliate investments."[30]

233. In addition, following a court order in Brazil by Judge Borges for Telexfree to turn over "data relating to the registration and operation of the accounts of each of the affiliates, including twelve months of retroactive data", Telexfree claimed they had no access to registrations and tranfers accounts of the promoters of the company. This claim is in direct contention with an internet video in which Costa is surrounded by stacks of books which he claims hold the requested affiliate data. [31]

M. Collapse of Telexfree's United States' Operations

234. Over two years of operations, TelexFree has employed multiple financial accounts, including domestic and international bank accounts and various online payment processors, to facilitate the fraudulent offer or sale of securities in the Commonwealth of Massachusetts.

235. Almost all financial institutions have eventually terminated their relationship with TelexFree as their operations have become a risk that financial institutions are no longer willing to bear.

236. Recently, frantic emails between TelexFree management and financial institutions paint an entirely bleak picture of continuing TelexFree financial operations.

237. As described by one financial institution, "[n]o US Bank or Processor . . . will accept your [TelexFree] business given that you are on month five of the Visa Chargeback monitoring program. You are one of only three merchants in the USA on month five so you

[30] *Id.*
[31] *See* "TelexFree claim no affiliate data, fined again" Behind MLM (Jan. 1, 2014) (explaining Judge Borges' request and Telexfree's contentious response)

are a real hot-potato as they say."[32]

238. On March 9, 2014, TelexFree changed its compensation plan, requiring Promoters to sell its VoIP product to qualify for the payments that TelexFree had previously promised to pay them.

239. A central component of the new changes affect the ease of participant withdrawals.

240. TelexFree participants can no longer withdraw money, even money already "earned," without making a specified number of retail sales and recruiting several new investors.

241. Following these changes, numerous TelexFree participants frantically contacted the Office of the Secretary of the Commonwealth, correctly suspecting these changes were the harbinger of TelexFree's collapse. The changes also generated a storm of protests from promoter who could not recover their money.

242. Not only is it now more difficult to withdraw money from TelexFree, TelexFree has also switched its compensation plan from one that pays participants in dollars to one that operates on TelexFree "credits," which are nothing more than IOUs.

243. On April 1, 2014, dozens of Promoters descended upon TelexFree's Marlborough, Massachusetts office to protest this change and attempt to regain access to their money. Local media covering interviewed one Promoter who admitted that the VoIP service is "almost impossible to sell".[33]

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[32] *Id.*

[33] Scott O'Connell, "*Upset customers look for answers at TelexFREE offices*", Wicked Local-Dennis (April 1, 2014 (updated April 17, 2014)), http://dennis.wickedlocal.com/article/20140401/NEWS/140409503?sect=More&map=0.

244. On April 14, 2014, Defendants TelexFree, Inc., TelexFree, LLC and TelexFree Financial abruptly sought bankruptcy protection in Nevada under Chapter 11, admitting that they cannot meet their obligations from VoIP revenues and seeking authority to reject all its current obligations to promoters.

N. Events Since Telexfree's Bankruptcy Filing

245. In furtherance of their unlawful enterprise, TelexFree mailed fraudulent and inaccurate 1099 (Miscellaneous Income) forms to investors, possibly to create the illusion they had made payments to investors when no such payments were made.

246. The 1099 forms were provided long after the mandated January 31, 2014 deadline, and some after the April 15, 2014 filing deadline.

247. TelexFree falsely represented that investors had received income they had not received.

248. TelexFree's former officers or employees stated to the TelexFree bankruptcy transition team that under the pre-March 2014 standard form contract, TelexFree owes its promoters over $5 billion dollars.

249. The other Defendants knew that TelexFree was an illegal Pyramid Ponzi Scheme which involved the illegal sale of securities, but continued to aid, abet and further such illegal activities. Despite the foregoing knowledge, TelexFree and the other Defendants continued to participate in the attraction and processing of new investors, continued to allow payments to process through TelexFree's accounts, allowed TelexFree to continue to illegally sell securities and further its illegal Pyramid Ponzi Scheme, and otherwise continued to further TelexFree's illegal activities.

250. On April 15, 2014, the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (sometimes referred to as the "SOC") filed an Administrative

Complaint against TelexFree, Inc. and TelexFree, LLC, alleging violations of the Massachusetts Uniform Securities Act, MASS. GEN. LAWS, ch. 110A.

251. The SOC is seeking injunctions and orders requiring TelexFree, Inc. and TelexFree, LLC to cease and desist from further conduct violating Massachusetts securities laws and regulations, to provide an accounting of all proceeds received because of the TelexFree's fraud, to provide restitution to Investors for losses attributable to the fraud operations, and to disgorge all profits.

252. Also on April 15, 2014, the U.S. Securities and Exchange Commission (sometimes referred to as the "SEC") filed a civil Complaint and Jury Demand against TelexFree, Inc. and TelexFree, LLC and Merrill, Wanzeler, Labriola, Craft, Rodrigues, De La Rosa, Crosby, and Sloan, alleging violations of the Securities Act of 1933, the Securities Exchange Act of 1934, and SEC Regulations.371. The SEC requested and was granted a preliminary injunction and an order freezing assets of TelexFree. The SEC is also seeking disgorgement of profits and additional civil penalties.

253. On Tuesday, April 15, 2014, the Federal Bureau of Investigation (sometimes referred to as the "FBI") and the U.S. Department of Homeland Security (sometimes referred to as the "DHS") conducted a raid of TelexFree's Marlborough, Massachusetts office.

254. During this raid by the FBI and DHS, the Defendant, Craft, was caught by federal agents attempting to leave the building with a laptop and approximately $38 million in cashier's checks in a bag, to abscond with ill-gotten funds.

256. When questioned, Craft misrepresented to the federal agents he was merely a "consultant", and claimed that the checks and computer were "personal". On or about May 1st, Montana Securities Commissioner filed cease and desist order against TelexFree.

257. The following day, the Nevada Bankruptcy Court, on Motion by the SEC, transferred the matter to the Federal District Court in Massachusetts, Central Division. TelexFree is now active and operating their Pyramid Ponzi Scheme in Canada, with offices in Richmond, British Columbia, but is being closely monitored by the B.C. Securities Commission.

258. During hearings, conducted on May 2, 2014, William H. Runge, III, Chief Restructuring Officer of TelexFree, estimated that, as of TelexFree's Bankruptcy filing, TelexFree had assets of $31 million in its bank accounts, $28 million in brokerage accounts, and nearly $30 million held by payment processing companies.

O. Telexfree's Directors, Officers, and Owners Knowingly Perpetrated the Unlawful, Unfair, and Deceptive Pyramid Ponzi Scheme

259. Defendants Merrill, Wanzeler, Labriola, Craft and Costa (sometimes collectively as the "Defendant Officers" or "TelexFree's Management") were responsible for the control and operation of TelexFree and its affiliated entities.

260. TelexFree's Management not only controlled the activities and operations of TelexFree, but also knowingly and willfully conspired to perpetrate, and did perpetrate, the TelexFree Pyramid Ponzi Scheme with full awareness of its fraudulent and illegal nature.

261. Defendant Merrill served as the President, Secretary, and Director of TelexFree, Inc., a Manager of TelexFree, LLC, President, Secretary and Director of TelexFree Financial, General Partner of TelexElectric, and President, Secretary and Director of Telex Mobile Holdings

262. In his capacities as Officer, Director, Manager and General Partner of the foregoing interrelated companies, Merrill exercised significant control over TelexFree's business operations.

263. More particularly, Merrill exercised significant control over the TelexFree Pyramid Ponzi Scheme.

264. Defendant Merrill has appeared in videos posted to the internet, in which he can be seen promoting TelexFree as a revenue opportunity for Promoters.

265. As of March 28, 2014, the TelexFree website included a biography of Merrill, which stated that Merrill was a 1985 graduate of Westfield State University in economics.

266. Also, as of March 28, 2013, the TelexFree website stated that Merrill is "well versed in one of the new technologies of the era (VoIP) [sic]."

267. As of April 28, 2014, the TelexFree Canadian website continued to state that Merrill is a 1985 graduate of Westfield State University in economics and "[k]nowledgeable about a new era of technology (VOIP)."

268. According to testimony obtained by the SOC, Merrill attended Westfield State University for a mere two years, without either receiving a degree or declaring a major.

269. In direct contravention to the representations of the TelexFree websites, Merrill testified to SOC he had only a basic understanding of VoIP technology.

270. Defendant Wanzeler served as Treasurer and a Director of TelexFree, Inc., a Manager of TelexFree, LLC, Vice President, Treasurer, and a Director of TelexFree Financial, General Partner of TelexElectric and Treasurer and Director of Telex Mobile Holdings.

271. According to corporate filings on record with SOC, , Wanzeler has also served as the Chief Executive Officer of TelexFree, Inc.

272. In his capacities as Officer, Director, Manager and General Partner of the foregoing interrelated companies, Wanzeler exercised significant control over TelexFree's business operations.

273. More particularly, Wanzeler exercised significant control over the TelexFree Pyramid Ponzi Scheme.

274. Defendant Wanzeler has also participated in marketing TelexFree to potential investors, appearing in videos posted to the Internet in which he can be seen promoting TelexFree as a revenue opportunity for Promoters.407. Among the other material misrepresentations made by TelexFree and its Defendant Officers include a website photograph of Merrill standing in front of a building in Marlborough, Massachusetts, with the caption "*Mr. Merrill in front of the headquarters of TelexFree in the USA*", when they only occupied one suite which they shared with 28 other companies. Merrill further misrepresented, in a press release on March 21, 2014, that TelexFree had "*been in VoIP telecommunications for more than a decade.*"

275. Defendant Labriola, served as the International Marketing Director for TelexFree, Inc.

276. Labriola was one of the original Directors of Common Cents Communications, Inc., and at all material times exercised significant control over TelexFree's business operations and the operations of its interrelated companies.

277. Defendant Labriola has also appeared in several videos promoting TelexFree posted on the internet, and has acted as TelexFree's spokesman to Investors during post-bankruptcy petition conference calls.

278. As a Director of TelexFree, Inc., Defendant Labriola, has exercised significant control over the TelexFree Pyramid Ponzi Scheme.

279. As International Marketing Director for TelexFree, Inc., Labriola has also actively and knowingly perpetrated the TelexFree fraud through the dissemination of false and misleading advertising and marketing communications.

280. Defendant Craft, also known as Joe H. Craft, has been a certified public accountant and served as the Chief Financial Officer ("CFO") of Telex Free, Inc and TelexFree, LLC.

281. In his capacity as CFO of TelexFree, Craft has been responsible for preparing or approving TelexFree's financial statements, overseeing TelexFree's accounting methods and records, and otherwise exercising significant supervision and control over TelexFree.

282. On April 23, 2013, in response to a request for a profit-and-loss statement issued by the SOC, TelexFree produced a document purporting to be TelexFree's 2012 profit-and-loss statement.[34]

283. TelexFree did not make use of usual and accepted Multi Level marketing accounting practices. For example they did not separate out income generated by sales of VoIP from income generated by other means.

284. On February 5, 2014, the SOC requested a second profit-and-loss statement from TelexFree for 2012, which TelexFree produced on February 26, 2014.[35]

285. A comparison of these two profit-and-loss statements – each purporting to be TelexFree's profit-and-loss statement for 2012 – reveals massive discrepancies.

286. The first statement provided by TelexFree lists Total Income for 2012 at $1,864,939.70, while the second lists Total Income for 2012 at $2,834,835.70.[36]

287. As further examples, Agent Commission is listed at $520,582.95 in the first, versus $2,105,925.61 in the second; Total Expenses are listed as $784,899.22 in the first, versus $2,333,893.09 in the second; Net Operating Income is listed as $1,080,040.48 in the first,

[34] *See* Administrative Complaint of instituted by the Commonwealth of Massachusetts, Office of the Secretary of the Commonwealth Securities Division, Docket No. 2014-0004, page 29.
[35] *Id.*
[36] *Id.*

versus $478,251.56 in the second; and Net Income is listed as $1,066,313.39 in the first, versus $477,652.23 in the second.[37]

288. The existence of duplicative accounting records containing egregious discrepancies is clear indicia of TelexFree's falsification of accounting records and failure to adhere to Generally Accepted Accounting Principles ("GAAP").

289. As Chief Financial Officer for TelexFree, Inc. and TelexFree, LLC, and a certified public accountant, Defendant Craft, knowingly perpetrated the TelexFree fraud by :

a. Overseeing TelexFree's creation of falsified accounting records;

b. Failing to ensure that GAAP accounting methods were adopted and adhered to;

c. Fraudulently certifying TelexFree's business operations and accounting practices as good and lawful, despite actual knowledge of their unlawful and illegitimate nature;

d. Concealing that the AdCentral Packages purveyed by TelexFree were securities; and

e. Concealing and absconding with investor assets.

290. Defendant Costa, was listed as Manager of TelexFree, LLC with the Massachusetts Secretary of State Corporations Division.

291. Costa is one of the original founders of TelexFree.

292. Costa was involved in the day-to-day management and oversight of TelexFree and was actively involved in and managed its Brazilian operations.

293. Costa has appeared on numerous websites and videos posted on the Internet promoting TelexFree and touting its huge financial return.

294. Costa was an outspoken advocate against the Brazilian Court's decision to

[37] *Id.*

enjoin TelexFree's Brazilian activities, and publicly supported TelexFree's illegal and corrupt activities.

295. Costa is videoed displaying an Insurance Notification representing that it was proof of coverage for investors' returns; however, in actuality the document was a notification denying coverage.[38]

P. Other Businesses Associated with TelexFree's Directors, Officers, and Owners Knowingly Perpetrated the Unlawful, Unfair, and Deceptive Pyramid Ponzi Scheme

296. Left Intentionally Blank/To be Supplemented

Q. TelexFree's Insider Promoters including Insider Promoter Does 1-66 Knowingly Perpetrated the Unlawful, Unfair, and Deceptive Pyramid Ponzi Scheme

297. In addition to the other acts detailed herein, the Insider promoters attended invite only meetings at TelexFree's Masschusetts headquarters. At those meetings they conspired with the other Direct Participant defendants to continue the operation of TelexFree's illegal pyramid Ponzi scheme.

R. Telexfree's Attorneys Aided, Abetted, and Played an Integral Role in the Unlawful, Unfair, and Deceptive Pyramid Ponzi Scheme

298. Defendants Gerald P. Nehra and Richard W. Waak, with the entities Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and Richard W. Waak, Attorney at Law, PLLC (sometimes collectively referred to as "Attorney Defendants") are self-proclaimed multi-level marketing ("MLM") specialist attorneys.[39]

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[38] See http://www.youtube.com/watch?v=q2A2IsAPd0I.

[39] "*Gerry Nehra gives 'legal blessing' to TelexFree*," Behind MLM (Aug. 2, 2013), http://behindmlm.com/companies/telexfree/gerry-nehra-gives-legal-blessing-to-telexfree/. The full length tape of his legal opinions and presentation can be found at: http://www.psquad.com/gerald-nehra.html (herein, "Nehra Endorsement") ("*After I left Amway in 1991, I had a very brief period as the vice-president and general counsel for Fuller Brush. Fuller Brush did not make it in attempting to convert from direct selling to multi-level direct*

299. During telexfree's fraudulent scheme, the above-named Attorney Defendants acted as legal counsel to TelexFree.

300. Attorney Nehra had previously acted as counsel to other multi-level marketing firms, which were forced, closed by federal and/or state authorities due to fraudulent pyramid and Ponzi schemes, including ZeekRewards and AdSurfDaily. [40]

301. During the investigation of the AdSurfDaily scheme, Attorney Nehra filed an affidavit in court representing that AdSurfDaily was "*not a Ponzi Scheme*."[41] Subsequently, in 2008, AdSurfDaily was forced to cease operations by federal authorities after being found to be a Ponzi scheme; a fact later admitted to by its principal.[42]

302. Attorney Nehra also previously served in an advisory capacity to ZeekRewards. ZeekRewards was later found to be an unlawful Ponzi scheme and was shut down by federal authorities.

303. Attorney Nehra's extensive experience in multi-level marketing, and particularly his involvement with the Ponzi schemes involving AdSurfDaily and Zeek Rewards, armed him with the knowledge of what constitutes violations of United States securities law. Attorney Nehra was well aware that the use of semantics and obscured phraseology to obfuscate securities laws fails to legitimize TelexFree's illegal Pyramid Ponzi Scheme.

304. Attorney Waak also claims to have over thirty years of experience in counseling MLM and direct-selling enterprises.[43]

(continued)

selling. And when that job wasn't going to work out I ended up returning from Colorado back to Michigan and opening up a private law practice. Since 1992, I have practiced law exclusively in multi-level direct selling law. That is all that I do.")

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *See* http://www.mlmatty.com/meet-mlm-attorneys/.

305. Attorney Waak claims to have managed the legal defense of multiple class action lawsuits involving claims for "*pyramiding, securities fraud, false advertising and civil RICO*."

306. Attorney Nehra and Attorney Waak are together the general partners of the Law Offices of Nehra and Waak.

307. On the website of the Law Offices of Nerha and Waak, Defendant Attorneys Nehra and Waak claim to specialize in counseling "*domestic and foreign companies operating MLM (multi-level marketing) businesses in the United States*."[44]

308. Also, on the website of the Law Offices of Nerha and Waak, Attorneys Nehra and Waak boldly boast that "*No Company that retained this firm BEFORE LAUNCH has been shut down by a regulator*."[45]

309. As general partners of the Law Offices of Nehra and Waak, Attorney Nehra and Attorney Waak are jointly and severally liable for torts and obligations of the firm.

310. While the Law Offices of Nehra and Waak provided legal counsel to TelexFree, Attorney Waak was Principal Attorney of the law firm.

311. Attorney Waak, as Principal Attorney of the Law Offices of Nehra and Waak, was charged with oversight of the daily activities of the law firm.

312. Attorneys Nehra and Waak also maintained the Defendant Professional Limited Liability Companies, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC, which, upon information and belief, also provided legal and counseling services to TelexFree.

313. Among the Attorney Defendants, and during telexfree's scheme, there was no

[44] *Id*.
[45] *Id.*

clear distinction among the services provided to TelexFree by the Law Offices of Nehra and Waak, the individual Attorney Defendants, and their respective Professional Limited Liability Companies.

314. The Attorney Defendants' role and involvement in the TelexFree Pyramid Ponzi Scheme exceeded merely providing legal counsel since they knowingly acted to further and perpetuate TelexFree's illegal Pyramid Ponzi Scheme, which caused Plaintiffs Martin and Valentim and the similarly situated Putative class members to suffer economic loss.

315. The Attorney Defendants had actual knowledge that the TelexFree Business Model was a fraudulent Pyramid Ponzi Scheme.

316. Seeking to profit from TelexFree's exploitation of the members of the putative class, Defendant Gerald P. Nehra drew upon his prior experience to aid, abet and play an integral part in TelexFree's unlawful, unfair and deceptive acts and practices during times relevant to this complaint.

317. Attorney Nehra counseled TelexFree on methods to evade United States securities laws intended to offer, in part, protection from Pyramid Ponzi schemes; all to enrich himself financially and serve his own selfish interests.

318. Attorney Nehra further encouraged TelexFree Investors to unknowingly participate in the evasion of federal and state securities laws.

319. Defendant Nehra accomplished this by representing that his extensive experience as an MLM expert and his thorough research of TelexFree's business model allowed him to form a legal opinion that TelexFree was a legitimate business.

320. In making this professional opinion Defendant Nehra misrepresented TelexFree as a legitimate business concern.

321. For instance, by instructing Investors to avoid using the terms "investment" regarding AdCentral Package (See TelexFree Contract, Paragraph 2.6.5(m)), he attempted to conceal, and encouraged others to conceal, that TelexFree was involved in the sale of securities, and attempted to strip Investors of the rights afforded them by federal and state securities laws.

322. In advising TelexFree Investors to act to avoid the protections offered by federal and state securities laws, Attorney Nehra never once advised the putative class member TelexFree Investors so acting presented a risk to them, including the risk of participating in an unlawful scheme.

323. In advising TelexFree Investors to act to avoid the protections offered by federal and state securities laws, Attorney Nehra never once advised the putative class member TelexFree Investors so acting was against their own interests or that it better served TelexFree and himself.

324. Attorney Nehra's acts of aiding, abetting and playing an integral part in TelexFree's unlawful, unfair and deceptive acts and practices exceed the scope of zealously representing TelexFree.

325. Defendant Gerald Nehra contributed in an indispensable way to TelexFree's continued unlawful operation in the United States because, as a duly licensed member of the bar, he publicly stated to Investors that, in his professional opinion, TelexFree's business model and operations complied with federal and state laws.

326. TelexFree and its Officers knowingly used Attorney Nehra's false legal opinions and misrepresentations as a marketing tool to unfairly and deceptively further and advance their illegal Pyramid Ponzi Scheme.

327. Attorney Nehra knew that his legal opinions were false, and that his representations would be used by TelexFree as a marketing tool to further and advance their business model and illegal activities.

328. Attorney Nehra's opinions were packaged and promoted as part of TelexFree's total "post Brazilian shut down package" to the members of the putative class.

329. As described in greater detail throughout, in the early spring of 2013 TelexFree Brazil was found to be an illegal pyramid and Ponzi scheme.

330. TelexFree suffered a financial crisis when the funds of hundreds of thousands of Brazilian affiliate investors were frozen in company accounts by order of the Brazilian Court.

331. To keep its Pyramid Ponzi Scheme ongoing, TelexFree needed a constant influx of new investor cash.

332. In spring 2013, TelexFree was forced to focus on new markets, including new Investors from the United States and Canada, because their Brazilian operation had been shuttered and all Brazilian assets were frozen. To enhance the credibility and marketability of their United States operation, TelexFree employed the Attorney Defendants to make their illegal and fraudulent methods, operation and business plan appear legitimate.

333. On the weekend of July 26th and 27, 2013, TelexFree held an event, which they dubbed a "super weekend," in Newport Beach, California. The focus of TelexFree's "super weekend" event included considerable efforts intended to reassure Investors that its United States operations and program were legitimate, lawful and worth putting their money behind.

334. Although TelexFree's Brazilian bank accounts were frozen and all their Brazilian recruiting and Return on Investment payments had been suspended by court order in their largest affiliate market, Attorney Nehra advised attendees that the shut-down in Brazil

would not affect TelexFree's U.S. operations.

335. At this "super weekend" event, Attorney Nehra spoke at length to attending investors, assuring them of the legality of TelexFree's operation stating: "*It is legally designed…you are on very solid legal ground," and stating that TelexFree's operation had been "vetted by the Nehra and Waak law firm*."[46]

336. When asked by a concerned affiliate about the injunction granted against the company, Attorney Nehra first deflected its relevance by stating: "*Okay, I am the MLM specialist and attorney for TelexFree in the United States only. So I gotta duck the question*."[47]

337. Attorney Nehra left no doubt he and his firm acted as legal counsel to TelexFree to assist them in insuring their U.S. operations were lawfully conducted, knowing that these operations were nothing more than an illegal Pyramid Ponzi Scheme.

338. Although Attorney Nehra emphatically assured Investors and potential Investors that, in his professional opinion, the TelexFree business model was legitimate and lawful, he had actual knowledge that TelexFree's operation was unlawful and illegitimate.

339. At all times material, Attorney Nehra assured Investors and potential Investors that, in his professional opinion, the TelexFree business model was legitimate, although he had actual knowledge that TelexFree Multilevel Marketing Network "*Partnerships*"[48] involving

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[46] "*Gerry Nehra gives 'legal blessing' to TelexFree*," Behind MLM (Aug. 2, 2013), http://behindmlm.com/companies/telexfree/gerry-nehra-gives-legal-blessing-to-telexfree/. The full length tape of his legal opinions and presentation can be found at: http://www.psquad.com/gerald-nehra.html (herein, "Nehra Endorsement")

[47] *Id,* See Nehra Endorsement, supra, at 24:20.

[48] Paragraph 2.2.1 of the standard TelexFree Contract states "*Synthesis of the legal relationship:*

The user, by accessing the website of TELEXFREE.COM can become a member through payment of the respective fee, which will provide access to the TelexFree Multilevel Marketing network for the period of one year, without extension or renewal. At this stage, the member is called a PARTNER. The PARTNER will have the right to acquire, at an exclusive discount, products that are offered on the website www.telexfree.com, with the principal VOIP

TelexFree's AdCentral marketing packages were unregistered securities. Attorney Nehra even advised on how to unlawfully circumvent federal and state securities laws.

340. In addition Attorney Nehra assured Investors and potential Investors that, in his professional opinion, the TelexFree business model was legitimate and lawful, even though Attorney Nehra had knowledge of the ruling of the Brazilian Court and knowledge of and access to TelexFree's United States operations and their composition.

341. More particularly, Attorney Nehra knew that:

a. TelexFree used the exact same business model in Brazil as they do in the United States and throughout the world;

b. The Brazilian court had made a finding of fraud and that TelexFree's United States operations and composition was an unlawful venture;

c. The Brazilian court described Telex business operations in terms of the quintessential pyramid scheme after TelexFree's own lawyers unwittingly admitted as much;

d. TelexFree's lawyer Djacir Falcão stated to the Brazilian court that if the injunction continues the company may enter into bankruptcy: "*Running the company really becomes difficult because of the court decision, so we will appeal*," said Falcão[49];

(continued)

telephony accounts called 99TELEXFREE. The PARTNER, upon acquiring them in the form of a kit (ADCENTRAL or FAMILY kit) assumes the title of PROMOTER and, as such, receives a space on the site www.telexfree.com to promote the products/services that he has acquired. He also receives training and access to materials also made available on the TELEXFREE website so that he can undertake to promote the latter and avail himself of the opportunity to be a PARTNER and PROMOTER to others in his circle of relationships. All activities are performed by the PARTNER/PROMOTER without any employment relationship, and they are able individually to manage the team and the resources it seeks to make available for such purpose, of their own free will. For the promotion of products/services he will receive a bonus in direct proportion to his results, based on the levels explained in a separate section in these GENERAL REGULATIONS.

He must obey all the clauses of these GENERAL REGULATIONS so that the name of TELEXFREE and the juridical persons associated with it remain unblemished."

[49] Upon information and belief based upon quote in the newspaper Rio Branco, Tribune da Bahia so reported.

e. Falcão tried to appeal to the Brazilian judges because "*should the company spend a few more days being prohibited from signing up new investors, they would have no money to pay the old ones*;"

f. A Brazilian judge rejected this argument and denied TelexFree's injunction appeal;

g. TelexFree's other appeals were rejected by the Brazilian courts;

h. One Brazilian judge remarked that the issue is that the earnings will be exhausted when the main source of revenue of the group (new affiliate registrations) stops;

i. The above scenario is typically the result of a pyramid scheme;

j. Judge Samoel Evangelista, 2nd Civil Chamber of the Court of Acre (TJ-AC), entered an order to keep the TelexFree funds frozen, to block future payments to TelexFree in Brazil and to enjoin TelexFree from signing on new investors in Brazil;

k. According to Brazilian Judge Thais Kalil, how TelexFree earnings are paid out was advantageous to the prosecutor's argument, in that adding publishers to the network is of more importance than trying to sell the VoIP product;

l. Judge Thais Kalil also wrote that "*(t)he issue is that the earnings will be exhausted when the main source of revenue of the group (new affiliate registrations) stops. Many (affiliates) do not even have the opportunity to recover their initial investment (minimum U.S. $339) and this is detrimental*."

342. Defendant Nehra's own comments clarify that he knew that TelexFree was an unlawful pyramid Ponzi scheme.

343. Defendant Nehra knew to his providing legal opinions and counsel at the request of TelexFree that TelexFree's conduct constituted a breach of duty to its Investors.

344. Defendant Nehra knew to his providing legal opinions and counsel at the request of TelexFree that his role should give substantial assistance or encouragement to TelexFree to continue its unlawful business model.

345. Defendant Nehra knew to his providing legal opinions at the request of TelexFree that TelexFree intended to use Nehra prominently as a marketing tool on both their localized Brazilian (Portuguese) and Spanish (Spanish) website portals, in an effort to make TelexFree's illegal Pyramid Ponzi Scheme appear legitimate, continuing and perpetuating the ongoing fraud.

346. TelexFree used Nehra's false legal opinions as a marketing tool to promote its illegal Pyramid Ponzi scheme on Brazilian (Portuguese) and Spanish/Dominican (Spanish) website portals.

347. The Defendant Nerha and the other Attorney Defendants know these legal opinions were false, and these false opinion were used by TelexFree to promote and perpetuate TelexFree's illegal Pyramid Ponzi Scheme.

348. To serve his own selfish and pecuniary interests, Attorney Nehra willfully aided, abetted, counseled, induced, and/or procured TelexFree's violations of law regarding the proper segregation and maintenance of customer funds, and acted in concert and combination with Defendant TelexFree in such violations.

349. Defendant Nehra gave substantial assistance to TelexFree in accomplishing a tortious and illegal result, and Nehra's own conduct, separately considered, constitutes a breach of duty to Investors since he:

a. Knowingly misrepresented the legality and sustainability of TelexFree's operations to the detriment of Investors, and received fees from TelexFree;

b. Knowingly obscured and obfuscated the illegal nature of TelexFree's scheme by the manipulative use of language, including, e.g., advising TelexFree that using the term "*investment*" must be avoided;

c. Breached his duty of professional care to investors, by failing to exercise proper due diligence in investigating the legality of TelexFree's operations;

d. Advised and encouraged Investors to evade United States securities laws to the benefit of TelexFree and detriment of the Investors and the public;

e. Engaged in a civil conspiracy to defraud TelexFree's investors with a Pyramid Ponzi Scheme, and took a leading role in the scheme;[50]

f. Attorney Waak, as general partner and Principal Attorney of the Law Offices of Nehra and Waak, knew of, oversaw, and, upon information and belief, participated in Attorney Nehra's tortious and illegal conduct regarding the TelexFree Pyramid Ponzi Scheme; and

g. Attorney Waak, as general partner and Principal Attorney of the Law Offices of Nehra and Waak, knew of, oversaw, and, upon information and belief, participated in TelexFree Pyramid Ponzi Scheme.

S. Telexfree's Certified Public Accountant Aided, Abetted, and Played an Integral Role in the Unlawful, Unfair, and Deceptive Pyramid Ponzi Scheme

350. As the Chief Financial Officer of TelexFree, Inc. and TelexFree, LLC, Defendant Craft, also known as Joe H. Craft, has been a certified public accountant and served as the Chief Financial Officer ("CFO") of Telex Free, Inc. and TelexFree, LLC.

351. Defendant Craft is also the sole Member and Manager of Craft Financial, an

[50] As stated by Justice William O. Douglas, "just as a fine natural football player needs coaching in the wiles of the sport, so, too, it takes a corporation lawyers with a heart for the game to organize a great stock swindle or income tax dodge and drill the financiers in all the precise details of their play." William O, Douglas, "*Directors Who Do Not Direct,*" 47 Harv.L.Rev. 1305, 1329 (1934).

Indiana-based limited liability company.

352. Defendants Craft and Craft Financial are indistinguishable regarding their involvement with the TelexFree Pyramid Ponzi Scheme.

353. Defendants Craft and Craft Financial knowingly participated in and perpetuated TelexFree's illegal Pyramid Ponzi Scheme.

354. In his dual capacity as CFO and certified public accountant of TelexFree, Defendants Craft and Craft Financial have been responsible for preparing or approving TelexFree's financial statements, overseeing TelexFree's accounting methods and records, and otherwise exercising significant supervision and control over TelexFree.

355. On April 23, 2013, in response to a request for a profit-and-loss statement issued by the SOC, TelexFree produced a document purporting to be TelexFree's 2012 profit-and-loss statement.

356. On February 5, 2014, the SOC requested a second profit-and-loss statement from TelexFree for 2012, which TelexFree produced on February 26, 2014.

357. A comparison of these two profit-and-loss statements – each purporting to be TelexFree's profit-and-loss statement for 2012 – reveals massive discrepancies.

358. The first statement provided by TelexFree lists Total Income for 2012 at $1,864,939.70, while the second lists Total Income for 2012 at $2,834,835.70.

359. As further examples, Agent Commission is listed at $520,582.95 in the first, versus $2,105,925.61 in the second; Total Expenses are listed as $784,899.22 in the first, versus $2,333,893.09 in the second; Net Operating Income is listed as $1,080,040.48 in the first, versus $478,251.56 in the second; and Net Income is listed as $1,066,313.39 in the first, versus $477,652.23 in the second.

360. The existence of duplicative accounting records containing egregious discrepancies is clear indicia of TelexFree's falsification of accounting records and failure to adhere to GAAP.

361. As CFO and certified public accountant for TelexFree, Inc. and TelexFree, LLC, and a certified public accountant, Defendants Craft and Craft Financial, knowingly perpetrated the TelexFree fraud by :

a. Overseeing TelexFree's creation of falsified accounting records;

b. Failing to ensure that GAAP accounting methods were adopted and adhered to;

c. Fraudulently certifying TelexFree's business operations and accounting practices as good and lawful, despite actual knowledge of their unlawful and illegitimate nature; and

d. Conspiring with TelexFree's Officers to structure and perpetuate an illegal pyramid Ponzi scheme designed to defraud Investors and enrich themselves.

362. Defendants Craft and Craft Financial disseminated, and otherwise allowed to be disseminated, false and inaccurate financial information among Investors, knowing that such information was false an designed to continue and perpetuate the illegal Pyramid Ponzi Scheme.

363. Defendants Craft and Craft Financial authorized TelexFree to provide Investors with inaccurate and fraudulent 1099 (Miscellaneous Income) forms, in many cased long after the January 31, 2014 required deadline, and to misrepresent payments made to Investors and conceal assets.

364. That these inaccurate 1099's are expected to be filed with the Internal Revenue

Service and State Revenue Offices will impose further an undue and massive hardship upon investors.

365. Defendants also prepared false financial documents for affiliated TelexFree entities and prepared false tax returns for the affiliated TelexFree entities.

T. Banks and Doe Banks Providers Knowingly Aided and Abetted TelexFree's Unlawful, Unfair, and Deceptive Pyramid Ponzi Scheme and Knowingly Received Fraudulent Fund Transfers

366. During the TelexFree Pyramid Ponzi Scheme, Defendants Bank of America, Bank of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, GPG, IPS, ProPay, Base Commerce, Vantage Payments, and the Doe Banks and Doe Payment Processors provided crucial financial services to TelexFree, which enabled TelexFree to carry on its unlawful, unfair, and deceptive Pyramid Ponzi scheme.

367. TelexFree's financial services providers, including the aforesaid banking institutions, investment service providers, and payment processing services providers, knowingly aided and abetted TelexFree's Pyramid Ponzi Scheme by :

a. Receiving transfers of funds from, and on behalf of, TelexFree in telexfree's fraudulent business, despite knowledge of the fraudulent nature of TelexFree's business enterprise;

b. Receiving transfers of funds from TelexFree, its affiliated entities, and its executive officers, which transfers deepened TelexFree's insolvency, despite knowing of telexfree's actual or imminent insolvency at the time of such transfers;

c. Processing payments to, and on behalf of, TelexFree, including its affiliated

entities and Management, in telexfree's fraudulent business, despite knowledge of the fraudulent nature of TelexFree's business enterprise; and

d. Otherwise enabling the TelexFree Pyramid Ponzi Scheme to expand and continue by providing necessary financial services to TelexFree, despite actual knowledge of fraud by TelexFree.

368. Defendants Bank of America, Bank of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, (sometimes collectively referred to as "Banking Institution Defendants") possessed actual knowledge of the fraudulent nature of TelexFree's business operation, since at least June 2013.

369. Despite knowledge of the fraudulent nature of TelexFree's business operations, the Banking Institution Defendants continued to provide TelexFree with banking services.

370. Upon information and belief, the Banking Institution Defendants received funds from Investors, which funds were then held for the benefit of TelexFree, its affiliated entities, and its Management.[51]

371. TelexFree's investors were directed by TelexFree, as part of TelexFree's "*signup procedures*," to transfer investment funds to accounts held by TelexFree at Bank of America and TD Bank.[52]

372. Wells Fargo Bank maintained a depository account for TelexFree until March 14, 2014, long after TelexFree's Brazilian operation had been publicly exposed as a Pyramid

[51] See, e.g., check deposited by TelexFree into its account with Fidelity Bank, to wit, account number 211370707, attached herewith as Exhibit 14.

[52] *See* "*Signup procedures for TelexFREE*," attached herewith as Exhibit 15, also available at http://www.buysellproducts.net/down/sign_up_procedures_for_telexfree.pdf; See also PatrickPretty.com, "*TelexFree Affiliates Gave AdSurfDaily-Like Coaching Tips, Instructed Prospects to Make Deposits at Bank of America[…]TelexFree Also May Have TD Bank Account,*" http://patrickpretty.com/2013/07/08/telexfree-affiliates-gave-adsurfdaily-like-coaching-tips-instructed-prospects-to-make-deposits-at-bank-of-america-and-to-copy-slips-to-team-leaders-gmail-address-for-expedited-service-t/ (July 8, 2013) (including screen shot of TelexFree bank transfer instructions).

Ponzi scheme and shutdown, and after a scam warning against TelexFree had been issued in the United Kingdom.[53]

373. Defendants Fidelity Investments, Waddell & Reed Financial, Waddell & Reed (sometimes referred to as the "Investment Service Provider Defendants) possessed actual knowledge of the fraudulent nature of TelexFree's business operation, since at least June 2013.

374. Despite knowledge of the fraudulent nature of TelexFree's business operations, the Investment Service Provider Defendants continued to provide TelexFree and the Officer Defendants with both personal and business investment services.[54]

375. The Banking Institution Defendants and Investment Service Provider Defendants also received large transfers of funds from TelexFree, its affiliated entities, and its Management, during which TelexFree was insolvent, despite knowledge of the fraudulent nature of TelexFree's business operations, deepening TelexFree's insolvency and assisting TelexFree and its Management in concealing assets.[55]

376. Defendants GPG, IPS, Propay, Base Commerce, Vantage Payments, and the Doe Payment Processors (sometimes collectively referred to as "Payment Processing Services Companies" or "PPSC Defendants") possessed actual knowledge of the fraudulent nature of TelexFree's business operations since at least June 2013.

377. Despite knowledge of the fraudulent nature of TelexFree's business operations, the PPSC Defendants continued to provide TelexFree with payment processing services.[56]

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[53] *See* Declaration of Stuart A. MacMillan, Case No. 14-125234-ABL, Doc. 121, par. 12, attached herewith as Exhibit 16.
[54] *See* TelexFree, LLC Balance Sheet as of December 31, 2013, marked as Exhibit 13; see also Declaration of Stuart A. MacMillan, Case No. 14-125234-ABL, Doc. 121, par. 14, attached herewith as Exhibit 16.
[55] *Id.*
[56] *Id.*; *see also* Omnibus Declaration of William H. Runge, Case No. 14-125234-ABL, Doc. 13, par. 61, attached herewith as Exhibit 6.

378. More particularly, the PPSC Defendants processed payments by Investors to TelexFree in telexfree's fraudulent business operations, which funds were then held for the benefit of TelexFree, its affiliated entities, and its Management.

379. Upon information and belief, the PPSC Defendants also processed large transfers of funds from TelexFree, its affiliated entities, and its Management, to Banking Institution Defendants and other receivers, during which TelexFree was insolvent, despite knowledge of the fraudulent nature of TelexFree's business operations, deepening TelexFree's insolvency and assisting TelexFree and its Management in concealing assets.

380. The PPSC Defendants received payment of substantial fees in return for providing these services.

381. More particularly, IPS provided TelexFree with a service titled "e-Wallet," which was used by TelexFree to process electronic transfers of funds by Investors to TelexFree.

382. According to a TelexFree balance sheet, dated December 31, 2013, posted by the Washington State Utilities and Transportation Commission, as of December 31, 2013, TelexFree claimed $31,640,192.30 in assets then held by IPS (under the brand name "e-Wallet") on behalf of TelexFree.[57]

383. Defendants GPG, Base Commerce, and Vantage Payments, also processed electronic transfers of funds by Investors to TelexFree.

384. Defendant ProPay, which also does business as Propay.com, also processed such electronic transfers of funds on behalf of TelexFree.

385. Upon information and belief, ProPay processed transfers of funds by and on behalf of TelexFree, its affiliated entities, and its Management, during which TelexFree was

[57] *See* TelexFree, LLC Balance Sheet as of December 31, 2013, marked as Exhibit 13.

insolvent, despite knowledge of the fraudulent nature of TelexFree's business operations, deepening TelexFree's insolvency and assisting TelexFree and its Management in concealing assets.

386. The Putative Class Representatives seek to obtain damages, restitution and injunctive relief for the Class, as defined, below, from Defendants.

V.

CLASS ACTION ALLEGATIONS

387. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs sue on their own behalf, and on behalf of all other persons similarly situated ("the Class"). The Class that Plaintiffs seek to represent is:

> All persons located in the United States who tendered funds to TelexFree between 1/1/2012 and April 16, 2014 and who did not recoup the money they originally invested. Excluded from the Class are the Defendants and their officers, directors, and employees of Defendant; any entity in which Defendant have a controlling interest; the co conspirators, so called insider promoters, legal representatives, attorneys, heirs, and assigns of the Defendants.

388. Plaintiffs meet the requirements of Federal Rules of Civil Procedures 23(a) because the members of the Class are so numerous that the joiner of all members is impractical. While the exact number of Class members is unknown to Plaintiffs based on information and belief, it is in the hundreds of thousands.

389. Plaintiffs meet the requirements of Federal Rules of Civil Procedures 23(a) because there is a well-defined community of interest among the members of the Class, common questions of law and fact predominate, Plaintiffs' claims are typical of the members of the Class, and Plaintiffs can fairly and adequately represent the interests of the Class.

390. This action satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3) because it involves questions of law and fact common to the member of the Class that predominate or questions affecting only individual members, including, but not limited to:

a. Whether the contract under which TelexFree claims to invoke the application of Nevada law is illegal and unenforceable as a matter of law;

b. Whether the contract under which TelexFree claims to invoke the application of Nevada law is otherwise void and unenforceable as a matter of law;

c. Whether TelexFree ran a Pyramid Ponzi Scheme;

d. Whether TelexFree ran a lawful Multi-Level Marketing program;

e. Whether TelexFree offered and sold securities in unregistered investment contracts constituting securities;

f. Whether the other Defendants aided and abetted TelexFree in the sale of unregistered securities in violation of the law;

g. Whether the Defendant Officers, Named Insider Promoters, Doe Inside Promoters, Doe Paralegal, Banks and Financial Institutions, Payment Processing Services Companies, Retained Licensed Professionals and Doe Banks knew that TelexFree was an illegal pyramid-type Ponzi scheme which involved the illegal sale of securities, continued to aid, abet and further such illegal activities or are otherwise liable for the economic loss suffered by the Putative Class;

h. Whether TelexFree's financial services providers, including the aforesaid banking institutions and payment processing services providers, knowingly aided and abetted TelexFree's Pyramid Ponzi Scheme;

i. Whether Massachusetts Blue Sky Laws will apply to the claims of the Putative Class;

j. Whether TelexFree and the other Defendants used and employed manipulative and deceptive devices and contrivances in violation of MGL 110A, Sec. 410; used means and instrumentalities, directly and indirectly, for the purchase and sale of unregistered securities; and used and employed manipulative and deceptive devices and contrivances in violation of the Massachusetts Uniform Securities Act, MGL c. 110A, Section 410b, MGL 110A, Sec. 410(b) and MGL 93A;

k. Whether TelexFree and the other Defendants also violated Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons;

l. Whether TelexFree mailed fraudulent and inaccurate 1099 (Miscellaneous Income) forms to investors;

m. Whether the 1099 (Miscellaneous Income) forms should be declared void as a matter of law or otherwise because they were provided long after the mandated January 31, 2014 deadline, and some after the April 15, 2014 filing deadline; and

n. Whether Plaintiff and the Class are entitled to damages, civil penalties, punitive damages, and/or injunctive relief.

391. Plaintiffs' claims are typical of those of other Class members because Plaintiffs were defrauded by the Defendants' scheme to fraudulently offer and sell unregistered securities; Plaintiffs will fairly and accurately represent the interests of the Class.

392. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications regarding individual members of the Class, which would establish incompatible standards of conduct for the Defendants and would lead to repetitive adjudication of common questions of law and fact. Class treatment is superior to any other method for adjudicating the controversy. Plaintiffs know of no difficulty encountered in the management of this litigation that would preclude its maintenance as a class action under Rule 23(b)(3).

393. Damages for any individual class member likely can not justify the cost of individual litigation, so that absent class treatment, the Defendants' violations of law inflicting substantial damages in the aggregate would go un-remedied without certification of the Class.

394. Defendants have acted or refused to act on grounds that apply to the class, as alleged above, and certification is proper under Rule 23(b)(2).

VI.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

VIOLATIONS OF SECTION 10(b) OF THE SECURITIES AND EXCHANGE ACT OF 1934 AND SECURITIES AND EXCHANGE COMMISSION RULE 10B-5

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Costa, Rodrigues, WWW Global Business, Inc., De La Rosa, Crosby, Sloan, Doe Insider Promoters And Others)

395. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

396. Plaintiffs and the similarly situated members of the class purchased from the

Defendants identical Unregistered Securities.

397. Rule 10b-5 of the Securities And Exchange Act of 1934 (the "Exchange Act") prohibits the use of any "device, scheme, or artifice to defraud," and creates liability for any misstatement or omission of a material fact, or one that investors would think was important to their decision to buy or sell the stock.

398. As set forth above, cogent and compelling evidence that the Defendants acted with specific intent and had knowledge of the "wrongness" of the acts or events described above prior to committing them include:

a. TelexFree's Contract at Section 2.6.5 (m) deceptively mandated that Promoters not to use the term "investment" with respect to the registration costs.[58] Specifically, TelexFree's Contract at Section 2.6.5 (m) provides that the Promoter must not "use terms that distort the real meaning of products or the mechanism and functioning of multilevel marketing, including, without limitation, expressions that convey the idea of instant wealth for nothing in exchange, as well as speaking of registration costs as a 'financial investment.' Similarly, it is expressly prohibited to use the term 'INVESTMENT' at meetings and in promotional materials in general, orally or in writing.

b. An article appearing on the Nehru and Waak website makes clear the TelexFree revenue stream and business model is illegal. *See,* http://www.mlmatty.com/2012/06/business-volume-its-critical-importance/[59]

[58] Co-Defendant and Company Counsel Attorney Gerald P. Nehra, through his affiliated companies (Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and Richard W. Waak, Attorney at Law, PLLC), and under the direct supervision of Co-Defendants Richard W. Waak and Richard W. Waak Attorney at Law, PLLC in consulation and cooperation with the other Direct Participation defendants developed a consensus and jointly adopted this deceitful advice for the purpose of furthering perpetuating Defendants unlawful Pyramid Ponzi Scheme.

[59] "The next distinction, to my mind, is a make or break distinction and a legality versus pyramid test. Does the money the company make, and does the money paid to representatives, flow primarily from business volume and NOT from the mere act of sponsoring another

c. Sanderley Rodrigues de Vasconcelos ("Rodrigues") one of the most visible TelexFree faces. In 2007 Rodrigues settled charges in 2007 brought by the United States Securities and Exchange Commission (the "SEC") related to his operation of a fraudulent pyramid scheme. Rodrigues was Officer and Director of Universo FoneClub Corporation, another Massachusetts corporation. As a condition of this settlement he was permanently enjoined from violating Section 10(b) of the Exchange Act and Rule 10b-5, and Sections 5(a), 5(c) and 17(a) of the Securities Act. He was further disgorged of about $1.8 million in ill-gotten gains.

d. TelexFree's unregistered securities were uniformly identified to members of the putative class as "memberships." This representation was intended to deceive and was, in fact, false and deceptive.

e. On official corporate filings for the State of Nevada, Merrill and Wanzeler list their address as 4705 S. Durango Drive, #100-J1, Las Vegas, Nevada 89147 - a post office box);

399. During the Class Period, the Defendant TelexFree Companies, Owners, Officers and Directors, Various Businesses Associated With Those Individuals, and Insider Promoters including Insider Promoter Does 1-63, directly and indirectly, by means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a scheme and a continuous course of conduct to make false and misleading material statements about the TelexFree investment dealings, financial condition and operations, and to conceal adverse material

(continued)

representative? Ideally, ALL such money flow is triggered by business volume. If ANY money flows to the representative for recruiting another representative WITHOUT a business volume component, the terms "red flag" or "head-hunting fee" are used. In a legal compensation plan, the act of sponsoring alone can never trigger a commission payment. All compensation must be based on business volume, and no compensation can ever flow from the act of sponsoring alone. Even plans that are technically correct in design, but use inappropriate language to suggest the representative is paid for sponsoring, have significant risks. Such an error in design or implementation is a red flag to regulators investigating pyramids. In a legally designed plan, no one-not the company and not any representative-makes money, unless business volume is generated by products and services being purchased by consumers."

information about these investments in a uniform and systemwide way including but not limited to its standard contract.

400. Individually and by use of the advise or counsel of the Defendant attornies and certified public accountant defendants the Defendants knowingly omitted material facts designed and intended to manipulate or deceive Plaintiffs and similarly situated members of the class.

401. Defendants knowingly misrepresentated material facts designed and intended to manipulated or deceived Plaintiffs and similarly situated members of the class through systemic employed devices, schemes, and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and courses of conduct, as alleged, including: (1) making or participating in making untrue statements of material facts; (2) omitting material facts that would have made the statements about the investments not misleading; and (3) engaging in transactions, practices, and a course of business which operated fraudulently and deceitfully upon investors during the Class Period.

402. Each Defendant offered and sold securities with fraudulent misrepresentations and intentional omissions of material facts concerning the securities.

403. Defendants knew of the misrepresentations and omissions of material facts set forth, or acted with reckless disregard for the truth because they failed to ascertain and to disclose such facts, even though such facts were available to them. Such misrepresentations and/or omissions were done knowingly or recklessly for the purpose and effect of concealing the true information about the investments, specifically their financial condition and operations.

404. Defendants received information reflecting the facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading statements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments. Their control and/or association with the investment, made Defendants active and culpable participants in the

fraudulent scheme.

405. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information they caused and allowed to be disseminated to Investors and potential investors.

406. The ongoing fraudulent, unfair, and deceptive Pyramid Ponzi Scheme could not have been perpetrated over a substantial period without the knowledge and complicity of stated Defendants.

407. Because of the enabled dissemination of materially false and misleading information and failure to disclose material facts, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

408. In ignorance of the materially false and misleading nature of the reports and statements described above, Plaintiffs and the other Class members relied, to their detriment, on Defendants for complete and accurate information about these investments.

409. As a result of the aforesaid unlawful conduct, Plaintfss and the similarly situated class members suffered ascertainable damages.

410. As a result of the aforesaid unlawful conduct, Plaintffs and the similarly situated class members they seek to represent suffered ascertainable damages.

411. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

SECOND CLAIM FOR RELIEF

VIOLATIONS OF SECTION 20(A) OF THE SECURITIES AND EXCHANGE ACT 1934 AND SECTION 15 OF THE SECURITIES ACT OF 1933

(Against Defendants Merill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC And Richard W. Waak, Attorney At Law, PLLC)

412. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as

though fully set forth here.

413. Section (20)(a) of the Exchange Act imposes joint and several liability on persons who, directly or indirectly, control a person liable for a securities fraud violation by showing (1) the controlled company or person violated Federal Securities law and (2) the control of the primary violator by the defendant/s.

414. Control is shown by active participation in the decision making process of the fraudulent company or persons. It must be shown that defendants not only had the power to exercise control, but also did exercise control.

415. Although scienter is a requirement of the 10(b) claim against the controlled parties, the First Circuit has not made scienter a requirement for a 20(a) claim against a controlling party. [60]

416. As detailed in the First Claim for Relief, there is an original 10(b) violation by defendants Merrill, Wanzeler, Labriola, Craft, Costa, Rodrigues, WWW Global Business, Inc., De La Rosa, Crosby, Sloan, Doe Insider Promoters And Others.

417. At the time of the wrongs alleged, Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC, not only had the power to control the companies and persons involved with the 10(b) fraud, but also exercised control of the companies and persons.

418. By their respective positions of authority as officers within the TelexFree companies, defendants Merill, Wanzeler, Labriola, and Costa not only had the power and authority to influence and control TelexFree but also did influence and control TelexFree by being paramount in its decision making and its dissemination of false and misleading information as to the illegitimate scheme being perpetrated.

419. Attorney defendants also had the power to control all companies and persons in

[60] See *In re Stone & Webster, Inc., Securities Litigation*, 414 F.3d 187 at note 4 (Ct. App. 1st Cir. 2005)

violation of 10(b) by way of being there legal counsel and by way of having extensive experience in MLM enterprises. Further, defendant Attorneys did exercise their control by counseling TelexFree on methods of evading U.S. securities laws exemplified by instructing investors to avoid using the term "investment." Defendant attorney's further exercised control by providing false legal opinions to further the illegal Pyramid Ponzi Scheme and admitting that TelexFree had been "vetted by the Nehra and Waak Law firm"

420. Defendant Craft also had the power to control, and exercised that power. He had power by way of being TelexFree's CPA and exercised that power by preparing falsified financial documents for TelexFree in order to perpetuate their Pyramid Ponzi Scheme. Further, Craft provided inaccurate 1099 statements and inaccurate tax returns.

421. The stated Defendants also materially aided, with active promotion, in the sale of TelexFree AdCentral packages -- all of which constitute securities.

422. By their positions as controlling persons, and because of the aforementioned controlling conduct, Defendants violated Section 20(a) of the Exchange Act.

423. As a result of the aforesaid unlawful conduct, Plaintfss and the similarly situated class members suffered ascertainable damages.

424. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

THIRD CLAIM FOR RELIEF

VIOLATIONS OF SECTIONS 5 AND 12(A)(L) OF THE SECURITIES ACT OF 1933

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Costa And Others)

425. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

426. The Securities Act of 1933 (the "Securities Act") prohibits the sale and delivery after sale of any unregistered security. Defendants sold or delivered, after sale, unregistered

securities.

427. TelexFree's packages were unregistered securities because they were not accompanied by a registration statement.

428. Moreover, all packages the Defendants sold and issued did not have

(1) the entity's properties and business;
(2) a full description of the offered security;
(3) information about the management of the entity; and
(4) a financial statement certified by an independent auditor

429. Defendant TelexFree Entities, Merrill, Wanzeler, Labriola, Craft, Costa, the Insider Promoter Does and others failed to file a true Registration Statement for TelexFree pursuant the Securities Act, therefore making it an unregistered security.

430. By omitting this information, Defendants filed a false Form D.

431. These stated Defendants also did not apply for or receive an exemption under Regulation D.

432. Plaintiffs and the Putative Class would not have purchased the securities if these Defendants provided the information required in a Registration Statement.

433. By the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10 b-5 promulgated there under, and Plaintiffs and the Putative Class have been damaged, in an amount to be proven.

434. PlaintfFs and the similarly situated class members suffered ascertainable damages demand recission.

435. As a result of the aforesaid unlawful conduct violative of Sections 5 and 12(a)(1) of the Securities Act, Plaintfss and the similarly situated class members suffered ascertainable damages.

436. By the foregoing, Plaintiffs and the Putative Class have been damaged and are entitled to damages, including rescission, and other relief for violations by Defendant TelexFree Entities, Merrill, Wanzeler, Labriola, Craft, Costa, the Insider Promoter Does and others of Sections 5 and 12(a)(1) of the Securities Act.

437. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

FOURTH CLAIM FOR RELIEF

VIOLATIONS OF SECTION 11 OF THE SECURITIES ACT OF 1933

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC And Richard W. Waak, Attorney At Law, PLLC)

438. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

439. During the Class Period, Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Richard W. Waak, Attorney at Law, PLLC and Gerald P. Nehra, Attorney at Law, PLLC, fraudulently failed to convey facts material to the TelexFree AdCentral investment packages by failing to produce and file a Registration Statement.

440. Defendants intentionally avoided the requirement to produce a Registration Statement, and intentionally avoided disclosing that the AdCentral packages were investments, and that financial returns on the AdCentral investments were derived from the proceeds received from the purchase of such investments, and not from the sale of the VoIP product.

441. Defendants knew of the misrepresentations and omissions of material facts the omissions were done knowingly for the purpose and effect of concealing the true information about the investments, including their financial condition and operation.

442. Defendants received information reflecting the facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments.

443. Due to their control and/or association with the investment, Defendants were

active and culpable participants in the fraudulent scheme.

444. Defendants knew, and recklessly disregarded the falsity and misleading nature of the information they caused to be disseminated to Investors.

445. The ongoing fraudulent scheme described could not have been perpetrated over a substantial period without the knowledge and complicity of these Defendants.

446. Because of failure to disclose material facts, including their failure to file the requisite registration material, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

447. By the foregoing, said Defendants have violated Section 11 of the Securities Act, and Plaintiffs and the Putative Class have been damaged, in an amount to be proven.

448. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

FIFTH CLAIM FOR RELIEF

VIOLATIONS OF SECTION 12(A)(2) OF THE SECURITIES ACT OF 1933

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Costa And Others)

449. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

450. Defendants Merrill, Wanzeler, Labriola, Craft, Costa and others participated in the sale of securities to Plaintiffs that were unregistered and not exempt from registration.

451. At the time of their investments, Plaintiffs and the Putative Class had no knowledge that the investments offered by these Defendants were subject to registration requirements.

452. Said Defendants knew or reasonably should have known that the TelexFree Agreement Contract and investment scheme was subject to the registration requirement of the Securities Act.

453. Both the Telex Contract and related materials distributed to Plaintiffs and the Putative Class and the oral communications with Plaintiffs and the Putative Class by Defendants contained material omissions and misstatements.

454. Plaintiffs and the Putative Class did not know of the falsity of these statements or of the material omissions in the written materials including, but not limited to, Accounting Statements prepared by the Accounting Defendants and other misrepresentations made by Defendant TelexFree Entities, Merrill, Wanzeler, Labriola, Craft, Costa and others as described above. Plaintiffs reasonably believed such statements were true.

455. These stated Defendants knew, or in exercising reasonable diligence, should have known, of the falsehoods and omissions.

456. Plaintiffs and the Putative Class would not have purchased the securities if they had this knowledge.

457. Because of these investments, Plaintiffs and the Putative Class have been damaged.

458. Plaintiffs and the Putative Class are entitled to recission of their purchases and may recover the value of their interest in TelexFree. Plaintiffs and the Putative Class seek rescission of their purchase of membership interests in TelexFree.

459. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

SIXTH CLAIM FOR RELIEF

VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 110a, SECTION 410(A)

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Costa, Rodrigues, WWW Global Business, Inc., De La Rosa, Crosby, Sloan, And The Doe Insider Promoters)

460. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as

though fully set forth here.

461. TelexFree unlawfully sold unregistered securities in twenty-one states and internationally from its offices in Marlborough, Massachusetts.[61]

462. During the Class Period, Defendants Merrill, Wanzeler, Labriola, Craft, Costa, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan and the Doe Insider Promoters offered and sold securities to Plaintiffs with a scheme and a continuous course of conduct to make materially false and misleading statements about the TelexFree investment dealings, financial condition and operations and to conceal adverse material information about these investments.

463. Said Defendants employed devices, schemes, and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and courses of conduct, as alleged, including : (1) making or participating in making untrue statements of material facts; (2) omitting to state the material facts that would have made the statements about the investments not misleading; and (3) engaging in transactions, practices, and a course of business which operated as a fraud and deceit upon investors during the Class Period.

464. Each of said Defendants offered and sold securities with fraudulent misrepresentations and intentional omissions of material facts concerning the securities.

465. Said Defendants knew of the misrepresentations and omissions of material facts set forth, or acted with reckless disregard for the truth because they failed to ascertain and to disclose such facts, even though such facts were readily available to them. Such misrepresentations and/or omissions were done knowingly or recklessly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

466. Said Defendants received information reflecting the facts regarding the

[61] Since all sales were processed through their Massachusetts office, Massachusetts state law applies including MGL 110A, Sec. 410, MGL. 110A, Sec. 410(b) and MGL 93A.

investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments.

467. Due to their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

468. Said Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information they caused to be disseminated to Investors.

469. The ongoing fraudulent scheme described could not have been perpetrated over a substantial period without the knowledge and complicity of the said Defendants.

470. Because of the dissemination of materially false and misleading information and failing to disclose material facts, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

471. In ignorance of the materially false and misleading nature of the reports and statements described above, Plaintiffs and the other Class members relied, to their detriment, on Defendants for complete and accurate information about these investments.

472. By the foregoing, said Defendants have violated Section 410(a) of the Massachusetts Uniform Securities Act, M.G.L. c. 110A, and Plaintiffs and the Putative Class have been damaged.

473. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

SEVENTH CLAIM FOR RELIEF

VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 110a, SECTION 410(b)

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Nehra, Law Offices Of Nehra And Waak, Richard W. Waak, Attorney At Law, PLLC And Gerald P. Nehra, Attorney At Law, PLLC And Others)

474. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as

though fully set forth here.

475. At the time of the wrongs alleged, Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Richard W. Waak, Attorney at Law, PLLC, Gerald P. Nehra, Attorney at Law, PLLC and others were each a controlling person, partner, officer, director, person occupying a similar status, or employee materially aiding in the sale of securities, of TelexFree within the meaning of Section 410(b) of the Massachusetts Uniform Securities Act, M.G.L. c. 110A.

476. By their respective positions of authority, these Defendants had the power and authority to influence and control, and influenced and control, the decision-making and activities of TelexFree and the affiliated TelexFree entities and caused them to engage in the wrongful conduct described.

477. The stated Defendants actively participated in the leadership and decision-making process of the selling entity causing the dissemination of false and misleading statements and omissions of material facts.

478. By their positions as controlling person and top-level promoters, and because of the aforementioned conduct, Defendants are liable under Section 20(a) of the Exchange Act.

479. The stated Defendants are liable under 410(b) as a primary violation was under 410(a), Defendants materially aided in the sale of unregistered securities, and knew, or by reasonable diligance should have known, of the primary violation.

480. Plaintiffs and the Putative Class seek the award of actual damages on behalf of the Class.

481. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

EIGHTH CLAIM FOR RELIEF

NEGLIGENCE

(Against All Defendants)

482. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

483. Defendants owed a duty to Plaintiffs and the Putative Class to act with a level of care to avoid misstating TelexFree's financial information or its returns; and to comply with all laws concerning TelexFree, including, without limitation, federal and state securities laws.

484. By misstating and omitting relevant financial information, including the returns to Promoter/Investors, TelexFree breached its duty of care owed to Plaintiffs and the Putative Class .

485. As a direct and proximate result of Defendants' negligence and carelessness, Plaintiffs and the Putative Class have been caused to suffer and sustain damages and losses.

NINTH CLAIM FOR RELIEF

NEGLIGENT MISREPRESENTATION

(Against Defendants Merrill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Law Offices Of Nehra And Waak, Richard W. Waak, Attorney At Law, PLLC And Gerald P. Nehra, Attorney At Law, PLLC, Rodrigues, De La Rosa, Crosby, And Sloan)

486. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

487. The stated Defendants directly, and through their agents, servants, employees and/or representatives, negligently made misrepresentations of material fact to Plaintiffs and the Putative Class with the misrepresentations being made to obtain and/or wrongfully appropriating and converting money from Plaintiffs and the Putative Class.

488. Said Defendants made negligent representations although Defendants knew, or should have known, that such representations were false.

489. Said representations and statements were material and were relied upon by Plaintiffs, inducing them to furnish money to Defendants.

490. In consequence of the reliance on the negligent misrepresentations, Plaintiffs and the Putative Class have suffered great financial losses, have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged.

491. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

TENTH CLAIM FOR RELIEF

INTENTIONAL MISREPRESENTATION

(Against Defendants Merrill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Law Offices Of Nehra Richard W. Waak, Attorney At Law, PLLC And Waak, Gerald P. Nehra, Attorney At Law, PLLC, Rodrigues, De La Rosa, Crosby, And Sloan, Doe Insider Promoters And Others)

492. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

493. The stated Defendants directly, and through their agents, servants, employees and/or representatives, did intentionally make false representations of material fact to Plaintiffs and the Putative Class with reckless disregard for the truth. **Each defendant at the time knew the representation was false, or asserted that the representation was true without knowledge of its truthness.** Defendants made these misrepresentations to obtain and/or wrongfully appropriating and converting money from Plaintiffs and the Putative Class.

494. Defendants made these intentional misrepresentations although Defendants knew that such representations were false.

495. These misrepresentations and statements were material and were relied upon by

Plaintiffs, inducing them to furnish money to Defendants.

496. In consequence of the reliance on the intentional misrepresentations, Plaintiffs and the Putative Class have suffered great financial losses, and have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged.

497. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

ELEVENTH CLAIM FOR RELIEF

PROFESSIONAL MALPRACTICE

(Against Defendants Craft, Craft Financial, Nehra, Waak, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC And Richard W. Waak, Attorney At Law, PLLC)

498. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

499. Defendants Craft, Craft Financial, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC were the providers of professional accounting and legal services.

500. Said Defendants had a duty to perform these services in conformance with the skill and knowledge normally possessed by members of the accounting and legal professions, using the good, known, and accepted customs and practices of the fields. As to each defendant attorney and entity:

a. each defendant failed to exercise the care, skill, and diligence commonly possessed and exercised by a member of the legal profession;

b. the negligence was a proximate cause of the loss sustained by the plaintiff;

c. the Plaintiffs and each member of the Putative Class incurred ascertainable actual damages as a result of each Defendant Attorney's actions or inactions; and

d. "but for" the Attorney's negligence the Plaintiffs and each member of the Putative Class would not have sustained damages.

501. As to each defendant Accountant and entity:

a. the Accountant had a duty of care to the Plaintiffs and each member of the Putative Class;

b. the accountant was negligent in carrying out that duty;

c. the Plaintiffs and each member of the Putative Class incurred ascertainable actual damages as a result of each Defendant Accountant's actions or inactions; and

d. Each Accountant negligently failed to ensure that TelexFree maintained proper accounting records.

502. The stated Defendants breached their duty to Plaintiffs and the Putative Class by negligently certifying and representing to Plaintiffs and the public that the business model and operations of TelexFree were legal, proper, and economically viable and sustainable, when TelexFree's business model and operations constituted an unlawful, unfair, deceptive and unsustainable Ponzi scheme.

503. Further, the stated Defendants failed to exercise proper due diligence in the discharge of their investigatory duties as certified public accountants and attorneys of TelexFree.

504. Because of the professional negligence of Defendants, Plaintiffs, the Putative Class and the public were misled to believe that TelexFree were legal, proper, and economically viable and sustainable – when it was not.

505. As a direct and proximate consequence of the aforementioned negligence of said Defendants, Plaintiffs and the Putative Class sustained injuries and losses.

504. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

TWELFTH CLAIM FOR RELIEF

BREACH OF FIDUCIARY DUTY

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC And Richard W. Waak, Attorney At Law, PLLC)

505. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

506. Defendants Merrill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC and others owe to Plaintiffs and the Putative Class a duty of utmost good faith and fair dealing. They breached that duty and each personal benifited.

507. Said Defendants violated their duty by actively misrepresenting and fraudulently failing to convey facts material to the TelexFree AdCentral investment packages, including:

a. providing false and misleading information on the nature of TelexFree's business operation;

b. misrepresenting the financial statements;

c. providing false and misleading information on the value of the AdCentral Package;

d. providing false and misleading information on the method and source from which income was derived;

e. providing false and misleading information on the legality of TelexFree's business model;

f. providing false and misleading information on the sustainability of the returns to Promoter/Investors;

g. providing false and misleading information regarding the investigation in Brazil and subsequent closure of TelexFree's Brazilian operations,

h. knowingly participating in false and deceptive information televised over the internet and other media;

i. concealing that the AdCentral Packages were securities and were unregistered;

j. failing to comply with federal and state securities laws; and

k. employing legal and accountant counsel to mask their illegal and fraudulent activities to further and perpetuate such illegal fraudulent activities.

508. Said Defendants knew of the fraudulent and deceptive misrepresentations and omissions of material facts set forth.

509. Such misrepresentations and omissions were done knowingly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

510. Said Defendants received information reflecting the facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments.

511. Because of their control and/or association with the investment, the stated Defendants were active and culpable participants in the fraudulent scheme.

512. Said Defendants knew and recklessly disregarded the false and misleading nature of the information they caused to be disseminated to Investors.

513. Stated Defendants, through the aforesaid fraudulent and deceptive misrepresentations and omissions of material facts, breached their fiduciary duties of care and loyalty to Plaintiffs and the Putative Class.

514. Because of the foregoing breach of fiduciary duty by Defendants, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

515. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained injuries and losses.

THIRTEENTH CLAIM FOR RELIEF

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

Against Defendants Merill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC And Richard W. Waak, Attorney At Law, PLLC And Others

516. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

517. Defendants owed to Plaintiffs and the Putative Class a duty of utmost good faith and fair dealing, had to consider the welfare of Plaintiffs and the Putative Class and not act for purely selfish motives or private gain. They breached that duty and each personal benifited

518. Defendants violated their duty by actively misrepresenting and fraudulently failing to convey facts material to the TelexFree AdCentral investment packages, including:

a. providing false and misleading information on the nature of TelexFree's business operation;

b. misrepresenting the financial statements;

c. providing false and misleading information on the value of the AdCentral Package;

d. providing false and misleading information on the method and source from which income was derived;

a. providing false and misleading information on the legality of TelexFree's business model;

b. providing false and misleading information on the sustainability of the returns to Promoter/Investors;

c. providing false and misleading information regarding the investigation in Brazil and subsequent closure of TelexFree's Brazilian operations,

d. knowingly participating in false and deceptive information televised over the internet and other media;

e. concealing that the AdCentral Packages were securities;

j. failing to comply with federal and state securities laws; and

k. employing legal and accountant counsel to mask their illegal and fraudulent activities to further and perpetuate such illegal fraudulent activities.

519. Said Defendants knew of the fraudulent and deceptive misrepresentations and omissions of material facts set forth.

520. Such misrepresentations and/or omissions were made knowingly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

521. Said Defendants received information reflecting the facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments.

522. Due to their control and/or association with the investment, the stated Defendants were active and culpable participants in the fraudulent scheme.

523. Said Defendants knew and recklessly disregarded the falsity and misleading nature of the information they caused to be disseminated to Investors.

524. The stated Defendants, through the aforesaid fraudulent and deceptive misrepresentations and omissions of material facts, breached their covenant of good faith and fair dealing owed to the Plaintiffs and the Putative Class.

525. Because of this described breach of the covenant of good faith and fair dealing by the stated Defendants, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

526. As a direct and proximate consequence of the aforementioned breach of the covenant of good faith and fair dealing of said Defendants, Plaintiffs and the Putative Class sustained injuries and losses.

527. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

FOURTEENTH CLAIM FOR RELIEF

UNJUST ENRICHMENT

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, John Merrill, Costa, Rodrigues, WWWGlobal Business, Inc., De La Rosa Crosby, Sloan, Doe Insider Promoters And Others)

528. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as as though fully set forth here.

529. Plaintiffs and the Putative Class furnished funds, directly or indirectly, to the stated Defendants, who accepted them without protest or defect and unjustly retained and benefitted from them .

530. Said Defendants have knowingly and unlawfully and in bad faith denied Plaintiffs and the Putative Class access to such funds, and have instead retained the benefit of such funds for themselves.

531. As a direct and proximate result of said Defendants, as hereinabove set forth, said Defendants are, and continue to be, unjustly enriched.

532. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

FIFTEENTH CLAIM FOR RELIEF

FRAUD

(Against Defendants Merrill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC And Richard W. Waak, Attorney At Law, PLLC, Rodrigues, WWW Global Business, Inc., De La Rosa, Crosby, Sloan And Others)

533. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

534. Defendants TelexFree, Merrill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan and others deliberately practiced deception in order to secure unfair or unlawful gain. Including but not limited to repeatedly misrepresenting and intentionally omitting material facts material conveyed to Plaintiffs and the Putative Class including the TelexFree AdCentral investment packages.

535. Each Defendant made a false statement of a material fact despite advance knowledge on thier part that the statement is material statements were untrue.

536. Each Defendant had intent at the time of the false statements of material fact to deceive the Plaintiffs and members of the putative classes.

537. Plaintiffs and members of the putative classes justifiable relied on the false statements of material fact.

538. Plaintiffs and members of the putative classes suffered similar ascertainable economic loss.

539. Defendants' fraudulent misrepresentations and omissions include :

a. providing false and misleading information on the nature of TelexFree's business operation;

b. misrepresenting the financial statements;

c. providing false and misleading information on the value of the AdCentral Package;

d. providing false and misleading information on the method and source from which income was derived;

e. providing false and misleading information on the legality of TelexFree's business model;

f. providing false and misleading information on the sustainability of the returns to Promoter/Investors;

g. providing false and misleading information regarding the investigation in Brazil and subsequent closure of TelexFree's Brazilian operations,

h. knowingly participating in false and deceptive information televised over the internet and other media;

i. concealing that the AdCentral Packages were securities;

j. failing to comply with federal and state securities laws; and

k. employing legal and accountant counsel to mask their illegal and fraudulent activities to further and perpetuate such illegal fraudulent activities.

540. Defendants knew of the fraudulent and deceptive misrepresentations and omissions of material facts set forth.

541. These and other uniform systemic misrepresentations and omissions were knowingly made for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

542. Defendants received information reflecting the facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading statements and/or their association with the investment, and made them privy to confidential proprietary information concerning these investments.

543. Due to their control and/or association with the investment, the stated Defendants were active and culpable participants in the fraudulent scheme.

544. Defendants knew and recklessly disregarded the false and misleading nature of the information they caused to be disseminated to Investors.

545. The ongoing fraudulent scheme described could not have been perpetrated over a substantial period without the knowledge and complicity of the said Defendants.

546. Plaintiffs and the Putative Class relied upon such fraudulent statements and omissions.

547. Because of the foregoing fraud perpetrated by the stated Defendants, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

548. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

SIXTEENTH CLAIM FOR RELIEF

AIDING AND ABETTING FRAUD

(Against Defendants Telexelectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, John Merrill, Costa, Rodrigues, WWW Global Business, Inc., De La Rosa, Crosby, Sloan, Nehra, Waak, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC, Richard W. Waak, Attorney At Law, PLLC, Bank Of America, Bank Of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, Gpg, Ips, Propay, Base Commerce, Vantage Payments And The Doe Defendants)

549. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

550. There were an original fraudulent acts carried out by TelexFree and

a. each defendant provided 'substantial assistance or encouragement to the fraudulent party. As described herein, the substantial assistance provided by each was not "little aid" but was assistance that made it easier for the primary fraudulent violation. Each Defendant encouraged, incitated to action or instigated with foreseeable consequence; and

b. each defendant had unlawful intent, i.e., knowledge that the other party is breaching a duty/committing fraud and the intent to assist that party's actions or was general aware as esablished from the circumstances detailed herein. Further, as to those defendnats that claim they were not aware, each such defendant had a duty to inquire and breached that duty and so - knowledge is inferred.

551. These stated Defendants provided substantial assistance or encouragement to the fradulent parties, and did so with unlawful intent by way of knowing the fraudulent parties were selling unregistered securities yet continuing to substantially assist or encourage.

552. Defendants rendered this substantial assistance despite their knowledge that TelexFree's operations constituted an unlawful, unfair, deceptive and unsustainable Pyramid Ponzi Scheme and financial fraud.

553. Such substantial assistance rendered by Defendants despite their knowledge of, or with reasonable diligence should have known, the fraudulent nature of TelexFree's operations, include, but are not limited to :

a. managing and controlling TelexFree and its affiliated entities;
b. providing accounting services to TelexFree;
c. providing legal services to TelexFree;
d. publicly certifying that TelexFree's business model and operations were legal, proper, and economically viable and sustainable;
e. providing banking, investment and asset management services for TelexFree and its management;
f. promoting TelexFree AdCentral packages;
g. continuing to provide financial services following the Brazilian Court's injunction to stop TelexFree's business in Brazil;
h. processing payments to, from, and on behalf of TelexFree and its affiliated entities; and
i. processing payments for transfers of funds which deepened TelexFree's insolvency.

554. Plaintiffs and the Putative Class relied upon such fraudulent statements and omissions.

555. As a direct and proximate result of TelexFree's fraud, to which the stated Defendants provided substantial assistance, Plaintiffs and the Putative Class sustained ascertainable economic loss.

SEVENTEENTH CLAIM FOR RELIEF

COMMON LAW FRAUDULENT TRANSFER

(Against Defendants TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, John Merrill, Costa, Fidelity Bank, And Others)

556. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

557. Plaintiffs and the Putative Class were and are creditors of TelexFree Entities.

558. Defendants TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, John Merrill, Costa, Fidelity Bank, and Others have knowingly made or accepted transfers of funds owed to Plaintiffs and the Putative Class.

559. Such transfers were made or accepted with intent to hinder, delay, and/or defraud Plaintiffs.Each defendant made a transfer or incurred an obligation with an intent to hinder, delay, or defraud any creditors of the debtor and without receiving a reasonable equivalent value in exchange for the transfer or obligation

560. More particularly, such transfers were made to dissipate, convert and conceal funds lawfully due to Plaintiffs and the Putative Class.

561. Because of such fraudulent transfers, Plaintiffs and the Putative Class sustained ascertainable economic loss.

562. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

EIGHTEENTH CLAIM FOR RELIEF

DEEPENING INSOLVENCY

(Against Defendants TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, John Merrill, Costa, Bank Of America, Bank Of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, Gpg, Ips, Propay, Base Commerce, Vantage Payments, Doe Banks, Doe Payment Processors, Paralegal Doe And Others)

563. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

564. Plaintiffs and the Putative Class were and are creditors of Defendant TelexFree. Each defendant knowingly made or accepted transfer of funds owed to plaintiffs which in effect deepended insolvency and these transfers were made to conceal or dissipate funds lawfully due plaintiffs**.**

565. Defendant TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, John Merrill, Costa, Bank of America, Bank of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, GPG, IPS, ProPay, Base Commerce, Vantage Payments, Doe Banks, Doe Payment Processors, Paralegal Doe and others have knowingly made or accepted transfers of funds owed to Plaintiffs and the Putative Class, which transfers deepened TelexFree's insolvency.

566. Such transfers were made to dissipate, convert and conceal funds lawfully due to Plaintiffs and the Putative Class.

567. Such transfers have greatly decreased the probable extent of recovery by Plaintiff creditors and the Putative Class.

568. Because of the aforestated conduct, Plaintiffs and the Putative Class sustained

ascertainable economic loss.

569. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

NINETEENTH CLAIM FOR RELIEF

CIVIL CONSPIRACY

(Against Defendants TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, John Merrill, Costa, Rodrigues, WWW Global Business, Inc., De La Rosa, Crosby, Sloan, Nehra, Waak, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC And Richard W. Waak, Attorney At Law, PLLC, Doe Insider Promoters And Others)

570. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

571. As referenced herein Defendants TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, John Merril, Costa, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan, Nehra, Waak, Law Offices of Nehra And Waak, Gerald P. Nehra, Attorney at Law, PLLC, Richard W. Waak, Attorney at Law, PLLC, Doe Insider Promoters, and others have combined to enter into agreements to commit wrongful acts.

572. Each defendant participated in this civil conspiracy, for an unlawful purpose and using unlawful means, with the intent of so combining to unlawfully defraud Plaintiffs and the Putative Class out of funds.

573. As a consequence of the Defendants civil conspiracy, Plaintiffs and the Putative Class sustained ascertainable economic loss.

574. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

TWENTIETH CLAIM FOR RELIEF

CONVERSION

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan, Doe Insider Promoters And Others)

575. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

576. DefendantsTelex Electric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan, Doe Insider Promoters and others have unlawfully converted Plaintiffs' funds, by obtaining the same through knowing misrepresentations made to Plaintiffs, the Putative Class and the public.

577. Said Defendants continue to retain funds unlawfully converted from Plaintiffs. Plaintiffs and the Putative Class had clear legal ownership or right to possession of thier money at the time of each conversion. Defendant's uniformly converted those funds by a uniform system wide protocol which consisted of wrongful acts and the wrongful disposition of property rights.

578. In consequence of the foregoing, Plaintiffs and the Putative Class sustained ascertainable economic loss.

579. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

TWENTY-FIRST CLAIM FOR RELIEF

VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 93A

(Against Defendants TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Rodrigues, WWW Global Business, Inc., De La Rosa, Crosby, Sloan, Nehra, Waak, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC, Richard W. Waak, Attorney At Law, PLLC, Bank Of America, Bank Of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, Gpg, Ips, Propay, Base Commerce, Vantage Payments And the Doe Defendants)

580. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

581. Stated Defendants were engaged in Trade and Commerce as defined by Massachusetts General Laws Chapter 93A.

582. Plaintiffs and the Putative Class were engaged in Trade and Commerce as defined by Massachusetts General Laws Chapter 93A, Section 1.

583. The foregoing transactions, actions and inactions of the said Defendants constitute unfair and deceptive acts and practices as defined by, and in violation of, Massachusetts General Laws, Chapter 93A.

584. Plaintiffs and the Putative Class sustained ascertainable economic loss.

585. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

TWENTY-SECOND CLAIM FOR RELIEF

VIOLATIONS OF THE LANHAM ACT, UNITED STATES CODE, TITLE 15, SECTION 1125

(Against Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Rodrigues, WWW Global Business, Inc., De La Rosa, Crosby, Sloan, Costa, Waak, Nehra, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC , Richard W. Waak, Attorney At Law, PLLC, And Doe Insider Promoters)

586. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

587. As set forth more particularly throughout this Complaint, and in direct violation of the Lanham Act, 15 U.S.C. § 1125, Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan, Costa, Waak, Nehra, Law Offices of Nehra And Waak, Gerald P. Nehra, Attorney at Law, PLLC, Richard W. Waak, Attorney at Law, PLLC and Doe Insider Promoters have used false or misleading descriptions of material fact, and false and/or misleading representation of material fact, in promoting and selling TelexFree's AdCentral investment packages and VoIP products.

588. Each Defendant, in connection with goods or services, used in commerce words, terms, names, symbols, or devices, individually and in combination that were false designations of origin, false or misleading descriptions of fact, and false or misleading representation of fact (Falsities"). Moreover, these Falsities were likely to cause confusion or mistake as to affiliation with another person or group, or as to the origin of the goods, services, or commercial activities. The falsities ; or misrepresented the nature, characteristics, qualities, or origin of TelexFree's goods, services, and commerical activities.

589. Said Defendants have also used false and/or misleading descriptions of material fact, and false or misleading representations of material fact, in characterizing TelexFree's business operations, returns on investment, and the legality of the investments.

590. Defendants' false and/or misleading descriptions of material fact, and false or misleading representations of material fact, did deceive, or have the tendency to deceive, both

Plaintiffs, the Putative Class and the public.

591. As direct and proximate result of the false and misleading advertisements disseminated by the Defendants, Investors paid artificially inflated prices for thier investment during the Class Period.

593. As a direct and proximate consequence of the aforementioned breach of fiduciary duty of said Defendants, Plaintiffs and the Putative Class sustained ascertainable economic loss.

VII.

CONCLUSION

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for judgment:

1. Declaring this action to be a Class Action properly maintained under the Federal Rules of Civil Procedure and certifying Plaintiffs as the class representatives;

2. Awarding Plaintiffs and Class Members rescission and/or compensatory damages against Defendants for all damages sustained because of their wrongdoing, in an amount to be proven including interest;

3. Awarding actual damages, compensatory damages, statutory damages, and statutory penalties, in an amount to be determined;

4. Awarding punitive damages;

5. Awarding costs of suit and attorneys' fees, as allowable by law;

6. Awarding interest;

7. Appointing a receiver selected by Class Counsel and an accounting; and

8. Awarding Plaintiffs and the Class of such other and further relief as may be just and proper under the circumstances including equitable relief.

DEMAND FOR JURY TRIAL

Plaintiffs and the Putative Class demand a jury trial of their claims to the extent authorized by law.

Respectfully submitted,

Dated this 30th day of June, 2014.

/s/ Robert J. Bonsignore
Robert J. Bonsignore, Esq.
BBO #547880
BONSIGNORE, LLC
193 Plummer Hill Road
Belmont, NH 03220
Telephone: 781-856-7650
rbonsignore@classactions.us

Attorneys for REVEREND JEREMIAH GITHERE, JOSEPH SHIKHMAN, AND CHRISTOPHER MCCORMICK – putative class representatives and those similarly situated

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS Reverend Jeremial Githere, et. al.

DEFENDANTS TelexElectric, LLP, et al.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Robert J. Bonsignore, # 547880
Bonsignore, LLC
193 Plummer Hill Rd, Belmont, NH 03220

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☒ 4	☒ 4
Citizen of Another State	☒ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	☒ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☒ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☒ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☒ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. 1331 (a) (2)

Brief description of cause:
Classwide Ponzi Scheme

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ $300,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ◯ Yes ◯ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*: JUDGE _____ DOCKET NUMBER _____

DATE 6-30-14

SIGNATURE OF ATTORNEY OF RECORD Robert J. Bonsignore

FOR OFFICE USE ONLY

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Reverend Jeremiah Githerc, etal, v. TelexElectric, LLP, et al.

2. Category in which the case belongs based upon the numbered nature of suit code listad on the civil cover sheet. (See local rule 40.1(a)(1)).

☒ I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.

☐ II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,352, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.

☐ III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 380, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 525, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of reiated cases. (See local rule 40.1(g)). If more tban one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and hased on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionallty of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

8. Is this case required to be heard and determined hy a district court of three judges pursuant to titie 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachuserts ("governmentsl agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☒ Wsstern Division ☐

B. If no, in which divlsion do the majority of the plaintiffs or the only parties, excluding govornmental agencies, residing in Massachusetts reside?

Eastern Division ☒ Central Division ☐ Western Divisicn ☐

8. If filing a Notice of Removal - are there any motions pending in the state ccurt requiring the attention ef this Court? (If yes, submit a separate sheet identifying the motiens)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Robert J. Bonsignore, Bonsignore, LLC
ADDRESS 193 Plummer Hill Rd, Belmont, NH 03220
TELEPHONE NO. 781-856-7650

EXHIBIT E

UNITED STATES DISTRICT COURT

DISTRICT OF NORTH CAROLINA

Case No._

MADUAKO C. FERGUSON SR., KINGSLEY IGBOANUGO, BERNADETTE IGBOANUGO, OKOJI NDUKWE BOSE NDUKWE, SURU IYESI,HANNAH NGUGI, RUBY G. WALKER UDUKA OKOAFOR, EBERECHUKWU NWOBODO, CHIMA IRECHUKWU SAMUEL ELEKWACHI, VIOLET SMART EMEKA NWOKORO, NMAH ABBAH JOHN NKATA, UCHECHUKWU OKAM VERONICA SACCOH, STANLEY ONYEABO, EZINNE P. ONYEGBULE, ANTHONIA A. OCHIJE, CHINEDU CHIDEBE, OJEBE IFEGWU, LUCKY IMAFIDON, ALICE MBUTHIA, JOHN KALU

Plaintiffs,

v.

TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; JAMES M. MERRILL; CARLOS N. WANZELER; ; STEVEN M. LABRIOLA; JOSEPH H. CRAFT, a/k/a JOE H. CRAFT; CRAFT FINANCIAL SOLUTIONS, LLC; CARLOS COSTA; SANTIAGO DE LA ROSA; RANDY N. CROSBY; FAITH R. SLOAN; GERALD P. NEHRA, individually and doing business as LAW OFFICES OF NERHA AND WAAK; GERALD P. NEHRA ATTORNEY AT LAW, PLLC; RICHARD W. WAAK, individually and doing business as LAW OFFICES OF NERHA AND WAAK; RICHARD W. WAAK, ATTORNEY AT LAW, PLLC; BANK OF AMERICA CORPORATION, BANK OF AMERICA, NA; TD BANK, NA; CITIZENS FINANCIAL GROUP, INC.; CITIZENS BANK OF MASSACHUSETTS; FIDELITY CO-OPERATIVE BANK, doing business as FIDELITY BANK; MIDDLESEX SAVINGS BANK; WELLS FARGO & COMPANY; WELLS FARGO BANK, NA; FMR, LLC, also known as FIDELITY INVESTMENTS; WADDELL & REED FINANCIAL, INC.; WADDELL & REED, INC.; GLOBAL PAYROLL GATEWAY INC.; INTERNATIONAL PAYOUT SYSTEMS, INC.;

CLASS ACTION COMPLAINT FOR, *INTER ALIA*, VIOLATIONS OF STATE AND FEDERAL SECURITIES LAWS

DEMAND FOR TRIAL BY JURY

PROPAY, INC., doing business as PROPAY.COM; BASE COMMERCE, LLC, doing business as PHOENIX PAYMENTS; VANTAGE PAYMENTS, LLC; DOE INSIDER PROMOTERS; DOE PROFESSIONAL SERVICES PROVIDERS; DOE BANKS; DOE INVESTMENT SERVICES PROVIDERS; DOE PAYMENT PROCESSORS; and PARALEGAL DOE,

Defendants

CLASS ACTION COMPLAINT FOR, INTER ALIA, VIOLATIONS OF STATE AND FEDERAL SECURITIES LAWS

Plaintiffs, on behalf of themselves and all others similarly situated (hereafter "Plaintiffs") bring this class action against Defendants.

INTRODUCTION

1. Plaintiffs seek compensation for economic loss sustained as a result of Defendants' conduct in carrying out an unlawful Ponzi pyramid scheme and unregistered offer and sale of securities.

2. TELEXFREE, INC., f/k/a COMMON CENTS COMMUNICATIONS, INC., TELEXFREE, LLC, TELEXFREE FINANCIAL, INC., TELEXELECTRIC, LLLP, TELEX MOBILE, HOLDINGS, INC., ("TelexFree") uniformly held itself out as a "multi-level marketing" company. TelexFree systematically sold through so-called "Promoters."[1]

3. TelexFree and their officers, agents, servants and employees sold fraudulent unregistered securities to the Putative Class Representatives and to the members of the class the Representatives seek to represent.

4. TelexFree sold unregistered securities in twenty-one states and internationally.

5. TelexFree's unregistered securities were identified as "memberships."

[1] Merriam-Webster's Dictionary defines a "promoter" as a person or organization that helps something to happen, develop, or increase.

6. In exchange for placing duplicative and pre-written TelexFree ads on internet sites and for recruiting other investors to pay the membership fees, TelexFree held out that its investors, or "Promoters," could receive returns of 200% annually.

7. To keep TelexFree's Pyramid Ponzi Scheme

8. On June 19, 2013, the Brazilian Court in Acre issued an injunction putting "a stop to TelexFree's business operations, including the registration of new affiliate investors, acceptance of new investments and paying any returns owed on existing affiliate investments."

9. TelexFree and its Officers James M. Merrill, Carlos N. Wanzeler, Steven M. Labriola, Carlos Costa, Joseph H. Craft, a/k/a Joe H. Craft (collectively, "Defendant Officers"), Sanderley Rodrigues de Vasconcelos; WWW Global Business, Inc.; Santiago de La Rosa; Randy N. Crosby; Faith R. Sloan TelexFree's Retained Licensed Professionals, Paralegal Doe, Banking Institution Defendants[2], Investment Service Provider Defendants and Payment Processing Services Companies knew that the Pyramid Ponzi Scheme was not sustainable, and that the representations on TelexFree's website and in its marketing materials were false and deceptive including, but not limited to, those concerning the guaranteed returns.

10. TelexFree and its Defendant Officers, the Named Insider Promoters, the Doe Insider Promoters, Retained Licensed Professionals, Paralegal Doe, Banking Institution Defendants, Investment Service Provider Defendants and Payment Processing Services Companies knew that TelexFree was selling unregistered securities to the members of the putative classes.

11. After the Defendant Officers, the Insider Promoters, the Retained Licensed Professionals, the Banking Institution Defendants, Investment Service Provider Defendants and

[2] Fidelity Co-Operative Bank, Bank Of America Corporation, Bank Of America, N.A., TD Bank, N.A., Citizens Financial Group, Inc., Citizens Bank of Massachusetts, Middlesex Savings Bank, Wells Fargo & Company, Wells Fargo Bank, N.A., Bank Of America Corporation, Bank Of America, N.A., and others are referred to herein as the "Banking Institution Defendants."

Payment Processing Services Companies knew that TelexFree was an illegal Pyramid Ponzi scheme which involved the illegal sale of securities, they continued to aid, abet and further such illegal activities.

12. Despite advance knowledge, the Defendants continued to participate in the attraction and processing of new investors, continued to allow payments to process through TelexFree's accounts, allowed TelexFree to continue to illegally sell securities and further its illegal Pyramid Ponzi Scheme, and otherwise continued to further TelexFree's illegal activities.

13. Defendants have violated the antifraud and securities registration provisions of the federal and state securities laws.

14. TelexFree and the other Defendants used and employed manipulative and deceptive devices and contrivances in violation of MGL 110A, Sec. 410; Section 410b, MGL 110A, Sec. 410(b) and MGL 93A.

15. TelexFree and the other Defendants also violated Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons.

16. Defendants share joint and severable liability, because they aided and abetted TelexFree's Pyramid Ponzi Scheme by providing TelexFree with legal and financial advice and assistance during the course of the fraud, despite knowledge of the fraudulent nature of TelexFree's operation.

17. The Banking Institution Defendants, Investment Services Provider Defendants, and Payment Processing Services Companies and Banking share joint and several liability

because they aided and abetted the fraudulent and illegal activity by providing financial and payment processing services, while also having knowledge of TelexFree's fraud.

JURISDICTION AND VENUE

18. This Court has jurisdiction as to the claims for relief sought herein under 28 U.S.C. §§ 157 and 1334.

19. Venue is proper pursuant to 28 U.S.C. § 1409(a).

20. The District Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). In the aggregate, Plaintiffs' claims and the claims of the other members of the Class exceed $5,000,000.00 exclusive of interest and costs, and there are numerous class members who are citizens of states other than TelexFree, Inc's state of citizenship, which is Massachusetts.

21. The District Court also has jurisdiction over this action pursuant to Sections 20(b), 20(d)(l) and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b), 77t(d)(l) & 77v(a)], Sections 21(d)(l), 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(l), 78u(d)(3)(A), 78u(e) and 78aa], Section 1121 of the Lanham Act [15 U.S.C. § 1121], and Section 1965 of the Racketeer Influenced and Corrupt Organizations Act [18 U.S.C. § 1965]. Defendants have, directly or indirectly, made use of the means of instrumentalities of interstate commerce and of the mails in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

22. Venue is also proper pursuant to 28 U.S.D. §. 1391

23. Venue is also proper in this district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred within this district. Defendants transacted business and offered and sold the securities that are the subject of this action to investors in this district.

24. Furthermore, venue is proper under Section 1965 of the Racketeer Influenced and Corrupt Organizations Act [18 U.S.C. § 1965], as the Defendants reside, have agents, or otherwise transact business material to this Complaint in this district.

THE PARTIES

25. Plaintiff MADUAKO FERGUSON, Sr. (hereinafter sometimes referred to as "Ferguson") is an individual who resides in North Carolina. Ferguson, like many other victims of TelexFree's Pyramid Ponzi Scheme, tendered cash in exchange for a TelexFree Membership and its promised Pre-March 9, 2014 -Return in Investment (the Pre-March 9, 2014 Return on Investment").

26. Defendant TELEXFREE, INC. is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, having a last known principal place of business at 225 Cedar Hill Street, Suite 200, in Marlborough, County of Middlesex, Commonwealth of Massachusetts 01752. [3]

27. TelexFree, Inc. was formerly known as COMMON CENTS COMMUNICATIONS, INC.

28. TELEXFREE, LLC is a limited liability company duly organized and existing under the laws of the state of Nevada, having a purported place of business at 4705 S. Durango Drive, #100-J51 (a post office box), Las Vegas, Nevada 89147.

29. Defendant Paralegal Doe served as TelexFree, LLC's agent, servant or employee at all times relevant to this complaint.

30. At all times material herein, TelexFree, LLC also maintained offices in the Commonwealth of Massachusetts at 225 Cedar Hill Street, Suite 200, in Marlborough, County of Middlesex, Commonwealth of Massachusetts 01752 between 2012 and this date.

[3] See Office of the Secretary of the Commonwealth of Mass., Corporations Div., Corporate Summary for TelexFree, Inc., attached hereto as Exhibit 1.

31. TELEXFREE FINANCIAL, INC. (hereinafter sometimes referred to as "TelexFree Financial") is a corporation duly organized and existing under the laws of the State of Florida, having its last known principal place of business at 2321 NW 37th Avenue, in Coconut Creek, Florida 33063. TelexFree Financial is a wholly owned subsidiary of TelexFree, LLC.

32. TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. have not been named as defendants in this particular action since they have sought bankruptcy protection pursuant to Chapter 11 of the U.S. Bankruptcy Code. The Plaintiffs intend to specifically name the forgoing TelexFree entities as Defendants in the action if and when they are able to do so.

33. Defendant TELEXELECTRIC, LLLP (hereinafter sometimes referred to as "TelexElectric") is a limited liability limited partnership duly organized and existing under the laws of the State of Nevada, and having its registered agent as BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

34. Defendant TELEX MOBILE, HOLDINGS, INC. (hereinafter sometimes referred to as "Telex Mobile") is a corporation duly organized and existing under the laws of the State of Nevada, and having its registered agent as BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

35. Defendant JAMES M. MERRILL (hereinafter sometimes referred to as "Merrill") is an individual now or formerly of 1 Coburn Drive in Ashland, County of Middlesex, Commonwealth of Massachusetts 01721. Co-Defendant Merrill was President, Secretary, and Director of TelexFree, Inc. Co-Defendant, Merrill was a Manager of TelexFree, LLC, and was listed with the Massachusetts Secretary of State Corporations Division as an authorized person to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property. Co-Defendant Merrill, was President, Secretary, and Director of TelexFree Financial.

36. Defendant CARLOS N. WANZELER (hereinafter sometimes referred to as "Wanzeler") is an individual now or formerly of 373 Howard Street, in Northborough, County of Worcester, Commonwealth of Massachusetts 01532. Co-Defendant Wanzeler was Treasurer and Director of TelexFree, Inc. Co-Defendant Wanzeler was a Manager of TelexFree, LLC. Co-Defendant Wanzeler was Vice-President, Treasurer, and Director of TelexFree Financial, and was listed with the Massachusetts Secretary of State Corporations Division as an authorized person to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property.

37. Defendant STEVEN M. LABRIOLA (hereinafter sometimes referred to as "Labriola") is an individual now or formerly of 21 Kiwanis Beach Road, in Upton, County of Worcester, Commonwealth of Massachusetts 01568. Labriola was the sales director of TelexFree.

38. Defendant JOSEPH H. CRAFT, also known as JOE H. CRAFT, (hereinafter sometimes referred to as "Craft") is an individual now or formerly of 825 E. Main Street in Boonville, Indiana 47601-1885. Craft is a Certified Public Accountant and maintains offices in Indiana and Kentucky under the name and style Joe H. Craft, CPA/PFS, CFP. In Indiana, he maintains offices at 825 E. Main Street in Boonville, Indiana 47601-1885. Defendant Craft served as the Chief Financial Officer of Telex Free, Inc. and TelexFree, LLC, and was responsible for preparing or approving their financial statements. Craft was retained to serve as TelexFree's accountant and was responsible for preparing its financial statements and taxes. Craft was hired to serve as TelexFree, LLC's Chief Financial Officer on or before December 2013.

39. Defendant CRAFT FINANCIAL SOLUTIONS, LLC (hereinafter sometimes referred to as "Craft Financial") is a limited liability company duly organized and existing under

the laws of the state of Indiana, having a principal place of business at 825 E. Main Street in Boonville, Indiana 47601-1885. Craft Financial is engaged in the business of providing accounting services and financial advice.

40. Defendant CARLOS COSTA, (hereinafter sometimes referred to as "Costa") is an individual now or formerly of 44A McClintock Avenue, Unit A, in Worcester, County of Worcester, Commonwealth of Massachusetts 01604. Co-Defendant Costa was listed as Manager of TelexFree, LLC with the Massachusetts Secretary of State Corporations Division.

41. The Defendant, SANTIAGO DE LA ROSA (hereinafter sometimes referred to as "De La Rosa"), is an individual now or formerly of 189 Beacon Hill Avenue, Unit 2, in Lynn, County of Essex, Commonwealth of Massachusetts 01902. De La Rosa, has also appeared in videos promoting TelexFree which were posted on the internet.

42. The Defendant, RANDY N. CROSBY (hereinafter sometimes referred to as "Crosby"), is an individual now or formerly of 30 Club Court, in Alpharetta, Georgia 30005. Crosby, has also appeared in videos promoting TelexFree which were posted on the internet. Crosby, is one of TelexFree’s most successful Promoters, and has recruited numerous other Promoters/Investors for TelexFree, especially through a website known as “everybodygetspaidweekly.biz”.

43. The Defendant, FAITH R. SLOAN (hereinafter sometimes referred to as "Sloan"), is an individual now or formerly of 515 E. End Avenue, Unit 105, in Calumet City, Illinois 60409. Sloan, is one of TelexFree’s most successful Promoters, and has recruited numerous other Promoters/Investors for TelexFree, especially through a website known as “telexfreepower.com”.

44. Defendant GERALD P. NEHRA (hereinafter sometimes referred to as "Nehra") is an individual now or formerly of Muskegon, Michigan. Nehra maintains a second place of abode at 2149 Tall Oak Court, Sarasota, Florida 34232. Nehra is an attorney duly licensed to

practice law in the State of Michigan with offices at 1710 Beach Street in Muskegon, Michigan 49441.

45. Defendant GERALD P. NEHRA, ATTORNEY AT LAW, PLLC, is a professional limited liability company engaged in the practice of law and duly organized and existing under the laws of the state of Michigan, having a principal place of business at 1710 Beach Street in Muskegon, Michigan 49441.Defendant Nehra is the sole member, manager and registered agent for the Defendant Gerald P. Nehra, Attorney at Law, PLLC.

46. Defendant RICHARD W. WAAK (hereinafter sometimes referred to as "Waak") is an individual now or formerly of Muskegon, Michigan. Waak is an attorney duly licensed to practice law in the State of Michigan with offices at 11300 East Shore Drive, Delton, Michigan 49046.

47. At all times material herein, Defendant Nehra was engaged in the practice of law with Co-Defendant Richard W. Waak, under the name LAW OFFICES OF NERHA AND WAAK. LAW OFFICES OF NERHA AND WAAK had offices at 1710 Beach Street, Muskegon, Michigan 49441 and 11300 East Shore Drive, Delton, Michigan 49046. Defendant Waak was engaged in the practice of law with Co-Defendant Nehra, under the name Law Offices of Nehra and Walk, with primary offices at 11300 East Shore Drive, Delton, Michigan 49046, and secondary offices at 1710 Beach Street, in Muskegon, Michigan 49441.

48. Defendant Waak is the "*Principal Attorney*"[4] of the Law Offices of Nehra and Waak.

49. Defendant RICHARD W. WAAK, ATTORNEY AT LAW, PLLC, is a professional limited liability company engaged in the practice of law and duly organized and existing under the laws of the state of Michigan, having a principal place of business at 11300

[4] Law Offices of Nehra and Waak website, http://www.mlmatty.com/2014/02/firm-transition-news-gerry-has-not-retired/

East Shore Drive, Delton, Michigan 49046.Defendant Waak is the sole member, manager and registered agent of Defendant Richard W. Waak, Attorney at Law, PLLC.

50. Defendant TD BANK, N.A. (hereinafter sometimes referred to as "TD Bank") is a national banking institution in the United States chartered and has a principal place of business in the Commonwealth of Massachusetts 02109.

51. The Defendant, BANK OF AMERICA CORPORATION (hereinafter sometimes referred to as "Bank of America"), is a publicly traded corporation duly organized and existing under the laws of the State of Delaware. Bank of America is a national banking institution in the United States chartered and has offices in the Commonwealth of Massachusetts 02110.

52. The Defendant, BANK OF AMERICA, N.A., has a principal place of business in Charlotte, North Carolina. Bank of America N.A. is a subsidiary of Bank of America Corporation, and conducts business in the Commonwealth of Massachusetts.

53. Defendant CITIZENS FINANCIAL GROUP, INC. (hereinafter sometimes referred to as "Citizens Financial") is a having its principal offices in Providence, Rhode Island.

54. Citizens Financial is a banking institution with offices in the Commonwealth of Massachusetts 02109.

55. Defendant CITIZENS BANK OF MASSACHUSETTS (hereinafter sometimes referred to as "Citizens Bank") is a subsidiary of Citizens Financial.

56. Citizens Bank conducts business in the Commonwealth of Massachusetts.

57. Defendant FIDELITY CO-OPERATIVE BANK doing business as FIDELITY BANK (hereinafter sometimes referred to as "Fidelity Bank") is a Massachusetts Chartered Banking Institution. .

58. Defendant MIDDLESEX SAVINGS BANK has its principal offices at 6 Main Street, in Natick, County of Middlesex, Commonwealth of Massachusetts 01760.

59. The Defendant, WELLS FARGO & COMPANY has its principal office in San Francisco, California and conducts business within the Commonwealth of Massachusetts.

60. The Defendant, WELLS FARGO BANK, N.A. has a principal place of business in Sioux Falls, South Dakota. Wells Fargo Bank, N.A. and conducts business in the Commonwealth of Massachusetts.

61. The Defendant, FMR, LLC, also known as FIDELITY INVESTMENTS has its principal offices in Commonwealth of Massachusetts 02110.

62. The Defendant, WADDELL & REED FINANCIAL, INC is a publicly traded corporation with offices in Massachusetts.

63. The Defendant, WADDELL & REED, INC. is a national financial and investment institution in the United States with a principal place of business at 6300 Lamar Avenue, Overland Park, Kansas 66202-4200.

64. Defendant GLOBAL PAYROLL GATEWAY, INC. is a corporation with principal offices at 18662 MacArthur Boulevard, Suite 200, in Irvine, California 92612. GPG provides payment processing services for companies, and acted as a conduit for payment between TelexFree and its Promoters/Investors.

65. Defendant INTERNATIONAL PAYOUT SYSTEMS, INC. has its principal offices at 2500 East Hallandale Beach Boulevard, Suite 800, Hallandale Beach, Florida 33009. IPS provides payment processing services for companies and acted as a conduit for payment between TelexFree and its Promoters/Investors.

66. Defendant PROPAY, INC. is a corporation with its principal offices at 3400 North Ashton Boulevard, Lehi, Utah 84043. PROPAY, INC. also does business as PROPAY.COM.

67. Defendant BASE COMMERCE, LLC has its principal offices at 7910 S. Kyrene Road, Suite 106, Tempe, Arizona 85284, and also does business as PHOENIX PAYMENTS.

68. Defendant VANTAGE PAYMENTS, LLC has its principal offices at 8300 N. Hayden Road #A207, Scottsdale, Arizona 85251.

69. Additional payment – processing services aided and abetted in TelexFree's Pyramid Ponzi scheme but their identities are as yet unknown. For ease of reference at this time they are referred to herein at this time as Defendant Payment – Processing Services Doe.

GENERAL ALLEGATIONS

A. TELEXFREE, LLC

70. Telex Free, LLC was organized under the laws of the State of Nevada on July 19, 2012. There is no distinction between the business operations of TelexFree, LLC and TelexFree, Inc. Between February 15, 2012 and approximately April 15, 2014,TelexFree, LLC's registered agent for the Commonwealth of Massachusetts was James Merrill whose address is identified as 225 Cedar Hill St. Suite 200, Marlborough, MA 01752. Between February 15, 2012 and approximately April 15, 2014, Co-Defendants James Merrill, Carlos Wanzeler, Steven Labriola, Joseph H. Craft and Carlos Costa conducted the business of TelexFree, LLC in TelexFree's Massachusetts office. Hundreds of millions of investor funds received by TelexFree are unaccounted for.

B. TELEXFREE, INC f/k/a COMMON CENTS COMUNICATIONS, INC.

71. TelexFree, Inc.[5] is a domestic profit corporation registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number

[5] Paragraph 2.1.2 of the standard TelexFree contract states "TELEXFREE INC, from its headquarters in, Marlboro, Massachusetts (U.S.), on the basis of an operating contract between the latter and the CONTRACTOR (YMPACTUS), has as its primary activity VOIP telephony, using its equipment installed at its headquarters in Massachusetts, where it makes the necessary connections for these calls; it also provides virtual media, through the website www.telexfree.com to associates and to the PROMOTERS that YMPACTUS/TELEXFREE coordinates and controls, including the respective publicity channels."

000832397). Between February 15, 2012 and approximately April 15, 2014, TelexFree, Inc. maintained a principal office at 225 Cedar Hill St. Suite 200, Marlborough, MA 01752.

72. Co-Defendants James M. Merrill and Carlos N. Wanzeler are the officers and directors of TelexFree, Inc. Between February 15, 2012 and approximately April 15, 2014, TelexFree, Inc.'s registered agent was Defendant James Merrill, who listed an address of 225 Cedar Hill St., Suite 200, Marlborough, MA 01752. Since February 15, 2012, Co-Defendants James Merrill, Carlos Wanzeler, Steven Labriola, Joseph H. Craft and Carlos Costa conducted the business of TelexFree, Inc. in the Marlborough, Massachusetts office. TelexFree, Inc. was originally organized on December 31, 2002 under the name Common Cents Communications, Inc. ("CCCI"). CCCI's name was changed to TELEXFREE, INC on February 15, 2012.

C. TELEXFREE FINANCIAL, INC.

73. TelexFree Financial was incorporated by Co-Defendant Joseph H. Craft on December 26, 2013. TelexFree Financial was fraudulently set up for the purpose of sheltering funds rightfully belonging to the putative class. At all material times herein, Co-Defendants James M. Merrill and Carlos N. Wanzeler are officers and directors of TelexFree Financial, and Co-Defendant Carlos N. Wanzeler is its registered agent. On December 30 and December 31, 2013, TelexFree Financial received wire transfers totaling $4,105,000 from TelexFree, Inc. and TelexFree, LLC.

D. RELATIONSHIP OF TELEXFREE, LLC, TELEXFREE, INC. AND TELEXFREE FINANCIAL, INC.

74. Since February 15, 2012, there has been a high degree of operational interdependence among TelexFree, LLC, TelexFree, Inc., and TelexFree Financial (collectively referred to as "TelexFree"), to the extent that the operations of these entities are

(continued)

indistinguishable. TelexFree, LLC, TelexFree, Inc., and TelexFree Financial shared common management and ownership. Since February 15, 2012, Defendants Merrill, Wanzeler, Labriola, Craft and Costa have together owned and operated TelexFree, LLC, TelexFree, Inc., and TelexFree Financial without any distinction among these entities. Between February 15, 2012 and approximately April 15, 2014, funds were freely transferred between and among TelexFree, LLC, TelexFree, Inc., and TelexFree Financial without any distinction among these entities. TelexFree, LLC, TelexFree, Inc. and TelexFree Financial have also shared common financial, strategic, legal, and human resources.

75. TelexFree, LLC, TelexFree, Inc. and TelexFree Financial are alter ego entities, which combine to form a single enterprise.

E. TELEXFREE'S UNLAWFUL, UNFAIR AND DECEPTIVE PYRAMID PONZI SCHEME

177. TelexFree and the other Defendants engaged in: (a) fraudulent or deceptive conduct in connection with the purchase or sale of securities, in violation of Section 10 (b) of the Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 there under; (b) fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"); and (c) the offer or sale of unregistered securities, in violation of Section 5 of the Securities Act.

178. TelexFree and the other Defendants unlawfully, willfully and knowingly used means and instrumentalities in connection with the purchase and sale of unregistered securities; and used and employed manipulative and deceptive devices and contrivances in violation of, *inter alia*, the Massachusetts Uniform Securities Act, M.G.L. c. 110A, Section 410b.

179. TelexFree is currently under investigation for offering fraudulent and unregistered securities by running a multi-level marketing scheme. As with all Ponzi or Pyramid Schemes, TelexFree operations are untenable without a continuous influx of new capital.

180. Class Members were fraudulently induced to invest in at least two other "scam"

business opportunities involving the offer or sale of unregistered securities in Massachusetts, namely, 1) TelexFree's passive income scheme, and 2) an offer to invest in TelexFree's hotel program.

181. Upon the advice of their legal counsels, TelexFree referred to the members of the putative class as "*Associates*," "*Members*," and "*Promoters*," Plaintiffs Cellucci, Lake and Pacheco and all other members of the putative class are "Investors" under federal and state securities law.

182. The core of the Passive Income Scheme centers on the investment of either $289.00 or $1,375.00. A participant who invests $289.00 receives one advertisement kit and ten VoIP Programs. A participant who invests $1,375.00 receives five advertisement kits and fifty VoIP Programs.

183. The TelexFree advertisement kit enables participants to generate a return by posting pre-written advertisements, to pre-determined websites, through an automated TelexFree system. A participant's daily use of the advertisement kits generates investment returns without the need for any VoIP Program sales. Posting advertisements is an effortless process that takes only a few minutes per advertisement. Many participants pay third parties to post advertisements – completely outsourcing any required work at a minimal cost.

184. Over the course of the year, a participant who initially invests $289.00 and does nothing more than place one advertisement per day can receive profit of at least $681.00 – a return in excess of 200%. A participant who initially invests $1,375.00 and does nothing more than place five advertisements per day can receive profit of at least $3,675.00 – a return in excess of 350%.

185. The Passive Income Scheme generates further returns for participants through various bonus structures and recruitment commissions. By recruiting multiple individuals,

TelexFree participants become eligible for revenue sharing bonuses of up to 3% of the TelexFree's VoIP Program sales.

186. TelexFree prominently highlighted one such participant, Defendant Rodrigues, as the top promoter in the world on the TelexFree website. Rodrigues, a self-proclaimed millionaire, had previously operated a similar multi-level marketing phone card fraud shuttered by the SEC in 2006.

187. According to an investigation conducted by the United States Securities and Exchange Commission (hereinafter sometimes referred to as the "SEC"), between August 2012 and March 2014, TelexFree received slightly more than $1.3 million from the sale of approximately 26,300 VoIP Programs, while receiving more than $302 million in investments by Promoters – thus, less than one-half of one percent of total revenue during this period derived from sales of TelexFree's purported product. During this period, TelexFree promised to pay Promoters returns of over $1.1 billion – nearly a thousand times the amount of revenue derived from sales of the VoIP Programs.

188. TelexFree founder Wanzeler could not identify the number of individuals purchasing only a VoIP Program without also becoming a participant. Wanzeler provided wildly varied estimates when challenged to identify the number of VoIP Programs sold to non-participants.Over the same period, TelexFree had 783,771 investments of either $289.00 or $1,375.00 totaling $880,189,455.32. Even assuming that only 50% of all participant investments were for $1,375.00, TelexFree would still owe $2,398,897,200.00 – a number that far exceeds TelexFree's reported total revenues over the same period. This figure of almost $2.4 billion does not even include further bonuses, recruitment commissions, and revenue sharing.

189. TelexFree did not generate sufficient funds from sales of their phone service to pay the returns on investments that they had contracted to pay. Instead, the funds TelexFree used

to pay the purported returns on investments were the principal investment funds (membership fees) tendered by subsequent TelexFree investors.

190. TelexFree's Contract at Section 2.6.5 (m) mandates that Promoters are not to use the term investment with respect to the registration costs. Co-Defendant and Company Counsel Attorney Gerald P. Nehra, through his affiliated companies (Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and Richard W. Waak, Attorney at Law, PLLC), and under the direct supervision of Co-Defendants Richard W. Waak and Richard W. Waak Attorney at Law, PLLC provided this deceitful advice for the purpose of furthering perpetuating Defendants unlawful Pyramid Ponzi Scheme. Specifically, TelexFree's Contract at Section 2.6.5 (m) provides that the Promoter must not "use terms that distort the real meaning of products or the mechanism and functioning of multilevel marketing, including, without limitation, expressions that convey the idea of instant wealth for nothing in exchange, as well as speaking of registration costs as a 'financial investment.' Similarly, it is expressly prohibited to use the term 'INVESTMENT' at meetings and in promotional materials in general, orally or in writing.

F. BRAZILIAN HELP, DISK A VONTADE, AND YMPACTUS

191. As early as 2005, Wanzeler had been operating purported telecommunications businesses in the United States and Brazil, under the names "Brazilian Help" and "Disk A Vontade Telefonia," respectively.Disk A Vontade Telefonia, Ltda, also known as Diskavontade, also known as Disk (hereinafter sometimes referred to as "Disk A Vontade"), is a Brazilian Limited Liability Company, now or formerly having its principal offices as Rua Jose Luiz Gabeira, NRO 170, APTO 103 Barro Vermelho, and now or formerly having a Massachusetts office as 225 Cedar Hill Street, Suite 200, in Marlborough, Massachusetts 01752. Disk A Vontade's Massachusetts office is located in the same building in Marlborough, Massachusetts as TelexFree. Carlos Wanzeler is the Chief Executive Officer of Disk A Vontade. Merrill is Vice

President and a Signatory of Disk A Vontade.

192. Brazilian Help, Inc. ("hereinafter sometimes referred to as "Brazilian Help") is a Domestic Profit Corporation organized and existing under the laws of the Commonwealth of Massachusetts, now or formerly having a principal place of business at 225 Cedar Hill Street, Suite 118, in Marlborough, Massachusetts 01752. Wanzeler is the President, Secretary, Treasurer, and Registered Agent of Brazilian Help. Brazilian Help's Massachusetts office is located in the same building in Marlborough, Massachusetts as TelexFree.

193. Brazilian Help and Disk A Vontade were, at all times, the American and Brazilian branches, respectively, of the same enterprise. Acting on Costa's proposal, Wanzeler and Merrill changed the name of Common Cents Communications, Inc. to TelexFree, Inc., and Wanzeler and Costa together created a website, "telexfree.com." Disk A Vontade was the registered owner of the Telexfree.com domain name.

194. In July 2012, Wanzeler, Merrill and Costa together formed TelexFree, LLC.

G. TELEXFREE'S OFFER AND SALE OF UNREGISTERED INVESTMENTS IN BEST WESTERN HOTEL

195. TelexFree, through Ympactus and Costa, offered an investment in a Best Western Hotel. TelexFree management facilitated the offer of the Best Western Hotel opportunity through the inclusion of the Best Western Hotel opportunity on the front page of the TelexFree website accessible in the Commonwealth.

196. TelexFree never registered this security offering with the SEC or released any prospectus or investor disclosure.

H. INVESTIGATION OF, AND INJUCTION AGAINST, TELEXFREE'S BRAZILIAN OPERATIONS IN BRAZIL

197. In January, 2013, the Brazilian Bureau of Consumer Protection (known as

Procon), began an investigation into TelexFree.

198. As the matter processed through the Brazilian Court System, the Ministry of Finance was ordered to refrain from issuing further statements about the matter. TelexFree circulated through its affiliates the following misrepresentation of the order:

> "*It's official! The investigation on TelexFree has been absolved of what Behind MLM has researched and posted*."

199. On June 19, 2013, the Brazilian Court in Acre issued an injunction putting a stop to TelexFree's business operations.

I. COLLAPSE OF TELEXFREE'S UNITED STATES OPERATIONS

200. TelexFree used multiple financial accounts, including domestic and international bank accounts and various online payment processors, to further the fraudulent offer or sale of unregistered securities. Almost all financial institutions have eventually terminated their relationship with TelexFree.

201. As described by one financial institution, "[n]o US Bank or Processor . . . will accept your [TelexFree] business given that you are on month five of the Visa Chargeback monitoring program. You are one of only three merchants in the USA on month five so you are a real hot-potato as they say."

202. On March 9, 2014, TelexFree changed its compensation plan, thereby requiring Promoters to sell its VoIP product in order to qualify for the payments that TelexFree had previously promised to pay them. A central component of the new changes affect the ease of participant withdrawals. TelexFree participants are no longer able to withdraw money, even money already "earned," without making a specified number of retail sales and recruiting a number of new investors. Not only is it now more difficult to withdraw money from TelexFree, TelexFree has also switched its compensation plan from one that pays participants in dollars to

one that operates on TelexFree "credits," which are, in essence, nothing more than IOUs.

203. These rule changes generated protests from Promoters who were unable to recover their money. On April 1, 2014, dozens of Promoters descended upon TelexFree's Massachusetts office to regain access to their money.

204. On April 14, 2014, Defendants TelexFree, Inc., TelexFree, LLC and TelexFree Financial abruptly sought bankruptcy protection in Nevada under Chapter 11, admitting that they cannot meet their obligations from VoIP revenues and seeking authority to reject all its current obligations to promoters.

J. EVENTS SINCE TELEXFREE'S BANKRUPTCY FILING

205. In furtherance of their unlawful enterprise, TelexFree also mailed fraudulent 1099 forms to investors, possibly to create the illusion that they had made payments to investors when, in fact, no such payments were made. The 1099 forms were provided long after the mandated January 31, 2014 deadline, and some after the April 15, 2014 filing deadline. TelexFree falsely represented that investors had received income that they had in fact never received.

206. TelexFree's former officers or employees stated to the TelexFree bankruptcy transition team that under the pre-March 2014 standard form contract TelexFree owes its promoters over $5 billion dollars. All Defendants knew that TelexFree was an illegal Pyramid Ponzi Scheme which involved the illegal sale of securities, but continued to aid, abet and further such illegal activities. Despite the foregoing knowledge, TelexFree and the other Defendants continued to participate in the attraction and processing of new investors, continued to allow payments to process through TelexFree's accounts, allowed TelexFree to continue to illegally sell securities and further its illegal Pyramid Ponzi Scheme, and otherwise continued to further TelexFree's illegal activities.

207. On April 15, 2014, the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (hereinafter sometimes referred to as the "SOC") filed an

Administrative Complaint against TelexFree, Inc. and TelexFree, LLC, alleging violations of the Massachusetts Uniform Securities Act, MASS. GEN. LAWS, ch. 110A.

208. Also on April 15, 2014, the U.S. Securities and Exchange Commission (hereinafter sometimes referred to as the "SEC") filed a civil Complaint and Jury Demand against TelexFree, Inc. and TelexFree, LLC as well as Merrill, Wanzeler, Labriola, Craft, Rodrigues, De La Rosa, Crosby, and Sloan, alleging violations of the Securities Act of 1933, the Securities Exchange Act of 1934, and SEC Regulations.371. In its Complaint, the SEC requested and was granted a preliminary injunction and an order freezing assets of TelexFree. The SEC is also seeking, *inter alia*, disgorgement of profits and additional civil penalties.

209. On Tuesday, April 15, 2014, the Federal Bureau of Investigation (hereinafter sometimes referred to as the "FBI") and the U.S. Department of Homeland Security (hereinafter sometimes referred to as the "DHS") conducted a raid of TelexFree's Marlborough, Massachusetts office.

210. During this raid by the FBI and DHS, the Defendant, Craft, was caught by federal agents trying to leave the building with a laptop and approximately $38 million in cashier's checks in a bag. When questioned, Craft misrepresented to said federal agents that he was merely a "consultant", and claimed that the checks and computer were "personal".

211. The following day, the Nevada Bankruptcy Court, on Motion by the SEC, transferred the matter to the Federal District Court in Massachusetts, Central Division. TelexFree is now active and operating their Pyramid Ponzi Scheme in Canada, with offices in Richmond, British Columbia, but is being closely monitored by the B.C. Securities Commission.

212. During hearings in this case, conducted on May 2, 2014, William H. Runge, III, Chief Restructuring Officer of TelexFree, estimated that, as of TelexFree's Bankruptcy filing, TelexFree had assets of $31 million in its bank accounts, $28 million in brokerage accounts, and

nearly $30 million currently held by payment processing companies.

K. TELEXELECTRIC, LLLP'S AND TELEX MOBILE HOLDINGS, INC.'S INVOLVEMENT IN THE TELEXFREE PYRAMID PONZI SCHEME

303. TelexElectric is a Nevada limited liability limited partnership formed on December 2, 2013 by Co-Defendants Merrill and Wanzeler. Co-Defendants Merrill and Wanzeler are listed as the General Partners of TelexElectric. Co-Defendants Merrill and Wanzeler further list their address as 4705 S. Durango Drive, #100-J1 (a post office box), Las Vegas, Nevada 89147, which is the same location as TelexFree, LLC. TelexElectric also lists as its address 4705 S. Durango Drive, #100-J1 (a post office box), Las Vegas, Nevada 89147. Telex Mobile is a Nevada corporation formed on November 26, 2013.

304. According to its filings with the State of Nevada Secretary of State Office, Telex Mobile identifies its officers and directors as:

a. Co-Defendant James M. Merrill is President, Secretary and Director, having an address at 4705 S. Durango Drive, #100-J1 (a post office box), Las Vegas, Nevada 89147.

b. Co-Defendant Carlos Wanzeler is Treasurer and Director, having an address at 4705 S. Durango Drive, #100-J1 (a post office box), Las Vegas, Nevada 89147.

305. Defendants TelexFree, LLC, TelexFree, Inc., TelexFree Financial, TelexElectric and TelexFree Mobile Holdings are alter ego entities, which combine to form a single enterprise.

306. TelexFree's financial statements reveal that TelexElectric received a $2,022,329.00 "loan" from TelexFree during the class period. TelexFree's financial statements further reveal that TelexFree Mobile received a $500,870 "loan" from TelexFree during the class period. TelexElectric was fraudulently set up for the purpose of sheltering funds rightfully belonging to the putative class.

307. These "loans" were in essence fraudulent transfers by TelexFree to evade claims by investors and creditors, and otherwise to unlawfully abscond with funds that rightfully belonged to creditors and investors.

L. TELEXFREE'S OFFICERS AND OWNERS KNOWINGLY PERPETRATED THE UNLAWFUL TELEXFREE PYRAMID PONZI SCHEME AND CONSPIRACY

303. At all times material herein, Defendants Merrill, Wanzeler, Labriola, Craft and Costa (hereinafter sometimes collectively as the "Defendant Officers" or "TelexFree's Management") were responsible for the control and operation of TelexFree and its affiliated entities. TelexFree's Management not only controlled the activities and operations of TelexFree, but also knowingly and willfully conspired to perpetrate, and did in fact perpetrate, the TelexFree Pyramid Ponzi Scheme with full awareness of its fraudulent and illegal nature. Defendant Merrill served as the President, Secretary, and Director of TelexFree, Inc., a Manager of TelexFree, LLC, President, Secretary and Director of TelexFree Financial, General Partner of TelexElectric, and President, Secretary and Director of Telex Mobile Holdings

304. In his capacities as Officer, Director, Manager and General Partner of the foregoing interrelated companies, Merrill exercised significant control over TelexFree's business operations. Merrill exercised significant control over the TelexFree Pyramid Ponzi Scheme. Defendant Merrill has appeared in videos posted to the internet, in which he can be seen promoting TelexFree as a revenue opportunity for Promoters.

305. .At all times material herein, Defendant Wanzeler served as Treasurer and a Director of TelexFree, Inc., a Manager of TelexFree, LLC, Vice President, Treasurer, and a Director of TelexFree Financial, General Partner of TelexElectric and Treasurer and Director of Telex Mobile Holdings. According to corporate filings on record with SOC, at all times material herein, Wanzeler has also served as the Chief Executive Officer of TelexFree, Inc.

306. In his capacities as Officer, Director, Manager and General Partner of the foregoing interrelated companies, Wanzeler exercised significant control over TelexFree's business operations. Wanzeler exercised significant control over the TelexFree Pyramid Ponzi Scheme. Defendant Wanzeler has also participated in marketing TelexFree to potential investors, appearing in videos posted to the Internet in which he can be seen promoting TelexFree as a revenue opportunity for Promoters.

307. At all times material herein, Defendant Labriola, served as the International Marketing Director for TelexFree, Inc. Labriola was one of the original Directors of Common Cents Communications, Inc., and at all material times herein exercised significant control over TelexFree's business operations and the operations of its interrelated companies. Defendant Labriola has also appeared in several videos promoting TelexFree which were posted on the internet, and has acted as TelexFree's spokesman to Investors during post-bankruptcy petition conference calls. As a Director of TelexFree, Inc., Defendant Labriola, has exercised significant control over the TelexFree Pyramid Ponzi Scheme. As International Marketing Director for TelexFree, Inc., Labriola has also actively and knowingly perpetrated the TelexFree fraud through the dissemination of false and misleading advertising and marketing communications.

308. At all times material herein, Defendant Craft, also known as Joe H. Craft, has been a certified public accountant and served as the Chief Financial Officer ("CFO") of Telex Free, Inc and TelexFree, LLC. In his capacity as CFO of TelexFree, Craft has been responsible for, *inter alia*, preparing or approving TelexFree's financial statements, overseeing TelexFree's accounting methods and records, and otherwise exercising significant supervision and control over TelexFree. On April 23, 2013, in response to a request for a profit-and-loss statement issued by the SOC, TelexFree produced a document purporting to be TelexFree's 2012 profit-and-loss statement.

309. TelexFree did not make use of usual and accepted Multi Level marketing accounting practices. For example they did not separate out income generated by sales of VoIP from income generated by other means. On February 5, 2014, the SOC requested a second profit-and-loss statement from TelexFree for 2012, which TelexFree produced on February 26, 2014. A comparison of these two profit-and-loss statements – each purporting to be TelexFree's profit-and-loss statement for 2012 – reveals massive discrepancies. For example, the first statement provided by TelexFree lists Total Income for 2012 at $1,864,939.70, while the second lists Total Income for 2012 at $2,834,835.70. Also, Agent Commission is listed at $520,582.95 in the first, versus $2,105,925.61 in the second; Total Expenses are listed as $784,899.22 in the first, versus $2,333,893.09 in the second; Net Operating Income is listed as $1,080,040.48 in the first, versus $478,251.56 in the second; and Net Income is listed as $1,066,313.39 in the first, versus $477,652.23 in the second. The existence of duplicative accounting records containing egregious discrepancies is clear indicia of TelexFree's falsification of accounting records and failure to adhere to Generally Accepted Accounting Principles ("GAAP"). As Chief Financial Officer for TelexFree, Inc. and TelexFree, LLC, as well as a certified public accountant, Defendant Craft, knowingly perpetrated the TelexFree fraud.

310. Defendant Costa, was Manager of TelexFree, LLC. Costa is one of the original founders of TelexFree. Costa was involved in the day-to-day management and oversight of TelexFree and was actively involved in and managed its Brazilian operations. Costa has appeared on numerous websites and videos posted on the Internet promoting TelexFree and touting its huge financial return. Costa is videoed displaying an Insurance Notification representing that it was proof of coverage for investors' returns; however, in actuality the document was a notification denying coverage.[6]

[6] See http://www.youtube.com/watch?v=q2A2IsAPd0I.

M. TELEXFREE'S LAWYERS AIDED, ABBETTED AND PLAYED AN INTERGRAL PART IN TELEXFREE'S UNLAWFUL, UNFAIR AND DECEPTIVE PYRAMID PONZI SCHEME

311. Defendants Gerald P. Nehra and Richard W. Waak, along with the entities Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, and Richard W. Waak, Attorney at Law, PLLC (hereafter sometimes collectively referred to as "Attorney Defendants") are self-proclaimed multi-level marketing ("MLM") specialist attorneys. During the course of TelexFree's fraudulent scheme, the above-named Attorney Defendants acted as legal counsel to TelexFree. Attorney Nehra had previously acted as counsel to other multi-level marketing firms, which were forced, closed by federal and/or state authorities due to fraudulent pyramid and Ponzi schemes, including ZeekRewards and AdSurfDaily. [7]

312. Attorney Nehra's extensive experience in multi-level marketing, and particularly his involvement with the Ponzi schemes involving AdSurfDaily and Zeek Rewards, armed him with the knowledge of what constitutes violations of United States securities law. Indeed, Attorney Nehra was well aware that the use of semantics and obscured phraseology to obfuscate securities laws fails to legitimize TelexFree's illegal Pyramid Ponzi Scheme.

313. Attorney Waak also claims to have more than thirty years of experience in counseling MLM and direct-selling enterprises. Attorney Waak claims to have managed the legal defense of multiple class action lawsuits involving claims for "*pyramiding, securities fraud, false advertising and civil RICO*."

314. Attorney Nehra and Attorney Waak are together the general partners of the Law Offices of Nehra and Waak. On the website of the Law Offices of Nerha and Waak, Defendant Attorneys Nehra and Waak claim to specialize in counseling "*domestic and foreign companies operating MLM (multi-level marketing) businesses in the United States*." Also, on the website of

[7] *Id.*

the Law Offices of Nerha and Waak, Attorneys Nehra and Waak boldly boast that "*No Company that retained this firm BEFORE LAUNCH has been shut down by a regulator*."[8]

315. As general partners of the Law Offices of Nehra and Waak, Attorney Nehra and Attorney Waak are jointly and severally liable for torts and obligations of the firm. During the time that the Law Offices of Nehra and Waak provided legal counsel to TelexFree, Attorney Waak was Principal Attorney of the law firm. Attorney Waak, as Principal Attorney of the Law Offices of Nehra and Waak, was charged with oversight of the daily activities of the law firm.

316. Attorneys Nehra and Waak also maintained the Defendant Professional Limited Liability Companies, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC, which, upon information and belief, also provided legal and counseling services to TelexFree. During the course of TelexFree's scheme, there was no clear distinction among the services provided to TelexFree by the Law Offices of Nehra and Waak, the individual Attorney Defendants, and their respective Professional Limited Liability Companies.

317. The Attorney Defendants' role and involvement in the TelexFree Pyramid Ponzi Scheme exceeded merely providing legal counsel since they knowingly acted to further and perpetuate TelexFree's illegal Pyramid Ponzi Scheme, which caused Plaintiffs Cellucci, Lake and Pacheco and the similarly situated Putative class members to suffer economic loss. The Attorney Defendants had actual knowledge that the TelexFree Business Model was a fraudulent Pyramid Ponzi Scheme.

318. Seeking to personally profit from TelexFree's exploitation of the members of the putative class, Defendant Gerald P. Nehra drew upon his prior experience to aid, abet and play an integral part in TelexFree's unlawful, unfair and deceptive acts and practices during times relevant to this complaint. Attorney Nehra counseled TelexFree on methods to evade United

[8] *Id.*

States securities laws that were intended to offer, in part, protection from Pyramid Ponzi schemes; all to enrich himself financially and serve his own selfish interests. Attorney Nehra further encouraged TelexFree Investors to unknowingly participate in the evasion of federal and state securities laws. Defendant Nehra accomplished this by representing that his extensive experience as an MLM expert and his thorough research of TelexFree's business model allowed him to form a legal opinion that TelexFree was a legitimate business. In making this professional opinion Defendant Nehra misrepresented TelexFree as a legitimate business concern.

319. For instance, by instructing Investors to avoid using the terms "investment" with reference to AdCentral Package (See TelexFree Contract, Paragraph 2.6.5(m)), he attempted to conceal, and encouraged others to conceal, the fact that TelexFree was involved in the sale of securities, and further attempted to strip Investors of the rights afforded them by federal and state securities laws. Advising TelexFree Investors to act to avoid the protections offered by federal and state securities laws, Attorney Nehra never once advised the putative class member TelexFree Investors that so acting presented a risk to them, including the risk of participating in an unlawful scheme. Advising TelexFree Investors to act to avoid the protections offered by federal and state securities laws, Attorney Nehra never once advised the putative class member TelexFree Investors that so acting was against their own interests or that it better served TelexFree and himself. Attorney Nehra's acts of aiding, abetting and playing an integral part in TelexFree's unlawful, unfair and deceptive acts and practices exceed the scope of zealously representing TelexFree.

320. Defendant Gerald Nehra contributed in an indispensable way to TelexFree's continued unlawful operation in the United States because, as a duly licensed member of the bar, he publicly stated to Investors that, in his professional opinion, TelexFree's business model and operations complied with federal and state laws. TelexFree and its Officers knowingly used

Attorney Nehra's false legal opinions and misrepresentations as a marketing tool to unfairly and deceptively further and advance their illegal Pyramid Ponzi Scheme. Attorney Nehra knew that his legal opinions were false, and that his representations would be used by TelexFree as a marketing tool to further and advance their business model and illegal activities. Attorney Nehra's opinions were packaged and promoted as part of TelexFree's total "post Brazilian shut down package" to the members of the putative class.

321. As described in greater detail throughout, in the early spring of 2013 TelexFree Brazil was found to be an illegal pyramid and Ponzi scheme. TelexFree suffered a financial crisis when the funds of hundreds of thousands of Brazilian affiliate investors were frozen in company accounts by order of the Brazilian Court. To keep its Pyramid Ponzi Scheme ongoing, TelexFree needed a constant influx of new investor cash. In spring 2013, TelexFree was forced to focus on new markets, including new Investors from the United States and Canada, because their Brazilian operation had been shuttered and all Brazilian assets were frozen. To enhance the credibility and marketability of their United States operation, TelexFree employed the Attorney Defendants to make their illegal and fraudulent methods, operation and business plan appear legitimate. On the weekend of July 26th and 27, 2013, TelexFree held an event, which they dubbed a "super weekend," in Newport Beach, California. The focus of TelexFree's "super weekend" event included considerable efforts intended to reassure Investors that its United States operations and program were legitimate, lawful and worth putting their money behind.

322. Notwithstanding the fact that TelexFree's Brazilian bank accounts were frozen and all their Brazilian recruiting and Return on Investment payments had been suspended by court order in their largest affiliate market, Attorney Nehra advised attendees that the shut-down in Brazil would have no bearing on TelexFree's U.S. operations. At this "super weekend" event, Attorney Nehra spoke at length to attending investors, assuring them of the legality of

TelexFree's operation stating: "*It is legally designed…you are on very solid legal ground," and stating that TelexFree's operation had been "vetted by the Nehra and Waak law firm*."

323. At all times Attorney Nehra left no doubt that he and his firm were acting as legal counsel to TelexFree to assist them in insuring their U.S. operations were lawfully conducted, knowing that, in fact, these operations were nothing more than an illegal Pyramid Ponzi Scheme. Although, at all times material herein, Attorney Nehra emphatically assured Investors and potential Investors that, in his professional opinion, the TelexFree business model was legitimate and lawful, he had actual knowledge that TelexFree's operation was unlawful and illegitimate.

324. Attorney Nehra assured Investors and potential Investors that, in his professional opinion, the TelexFree business model was legitimate, although he had actual knowledge that TelexFree Multilevel Marketing Network "*Partnerships*" involving TelexFree's AdCentral marketing packages were in fact unregistered securities. Attorney Nehra even provided advice on how to unlawfully circumvent federal and state securities laws. Attorney Nehra assured Investors and potential Investors that, in his professional opinion, the TelexFree business model was legitimate and lawful, even though Attorney Nehra had specific knowledge of the ruling of the Brazilian Court and knowledge of and access to TelexFree's United States operations and their composition.

325. Defendant Nehra knew at all times relevant to his providing legal opinions and counsel at the request of TelexFree that TelexFree's conduct constituted a breach of duty to its Investors. Defendant Nehra knew at all times relevant to his providing legal opinions and counsel at the request of TelexFree that his role was intended to give substantial assistance or encouragement to TelexFree to continue its unlawful business model. Defendant Nehra knew at all times relevant to his providing legal opinions at the request of TelexFree that TelexFree intended to use Nehra prominently as a marketing tool on both their localized Brazilian

(Portuguese) and Spanish (Spanish) website portals, in an effort to make TelexFree's illegal Pyramid Ponzi Scheme appear legitimate, thereby continuing and perpetuating the ongoing fraud.

326. TelexFree used Nehra's false legal opinions as a marketing tool to promote its illegal Pyramid Ponzi scheme on, *inter alia*, Brazilian (Portuguese) and Spanish/Dominican (Spanish) website portals. Nerha and the other Attorney Defendants know that these legal opinions were false, and that these false opinion were used by TelexFree to promote and perpetuate TelexFree's illegal Pyramid Ponzi Scheme. In order to serve his own selfish and pecuniary interests, Attorney Nehra willfully aided, abetted, counseled, induced, and/or procured TelexFree's violations of law regarding the proper segregation and maintenance of customer funds, and acted in concert and combination with Defendant TelexFree in such violations.

327. Attorney Waak, as general partner and Principal Attorney of the Law Offices of Nehra and Waak, was aware of, oversaw, and, upon information and belief, participated in Attorney Nehra's tortious and illegal conduct with respect to the TelexFree Pyramid Ponzi Scheme. Attorney Waak, as general partner and Principal Attorney of the Law Offices of Nehra and Waak, was aware of, oversaw, and, upon information and belief, participated in TelexFree Pyramid Ponzi Scheme.

N. TELEXFREE'S CERTIFIED PUBLIC ACCOUNTANT AIDED, ABBETTED AND PLAYED AN INTERGRAL PART IN TELEXFREE'S UNLAWFUL, UNFAIR AND DECEPTIVE PYRAMID PONZI SCHEME

328. As the Chief Financial Officer of TelexFree, Inc. and TelexFree, LLC, Defendant Craft, also known as Joe H. Craft, has been a certified public accountant and served as the Chief Financial Officer ("CFO") of Telex Free, Inc. and TelexFree, LLC. Defendant Craft is also the sole Member and Manager of Craft Financial, an Indiana-based limited liability company.

329. Defendants Craft and Craft Financial are indistinguishable with regards to their

involvement with the TelexFree Pyramid Ponzi Scheme. Defendants Craft and Craft Financial knowingly participated in and perpetuated TelexFree's illegal Pyramid Ponzi Scheme. In his capacity as CFO and certified public accountant of TelexFree, Defendants Craft and Craft Financial have been responsible for preparing or approving TelexFree's financial statements, overseeing TelexFree's accounting methods and records, and otherwise exercising significant supervision and control over TelexFree.

330. On April 23, 2013, in response to a request for a profit-and-loss statement issued by the SOC, TelexFree produced a document purporting to be TelexFree's 2012 profit-and-loss statement. On February 5, 2014, the SOC requested a second profit-and-loss statement from TelexFree for 2012, which TelexFree produced on February 26, 2014. A comparison of these two profit-and-loss statements – each purporting to be TelexFree's profit-and-loss statement for 2012 – reveals massive discrepancies.

331. The existence of duplicative accounting records containing egregious discrepancies is clear indicia of TelexFree's falsification of accounting records and failure to adhere to GAAP.

332. As CFO and certified public accountant for TelexFree, Inc. and TelexFree, LLC, as well as a certified public accountant, Defendants Craft and Craft Financial, knowingly perpetrated the TelexFree fraud.

333. Defendants Craft and Craft Financial disseminated, and otherwise allowed to be disseminated, false and inaccurate financial information among Investors, knowing that such information was false an designed to continue and perpetuate the illegal Pyramid Ponzi Scheme. Defendants Craft and Craft Financial authorized TelexFree to provide Investors with inaccurate and fraudulent 1099 (Miscellaneous Income) forms, in many cased long after the January 31, 2014 required deadline, and in an effort to misrepresent payments made to Investors and conceal

assets. Defendants also prepared false financial documents for affiliated TelexFree entities and prepared false tax returns for the affiliated TelexFree entities.

O. THE BANKING INSTITUTION AND FINANCIAL SERVICES PROVIDER DEFENDANTS KNOWINGLY AIDED AND ABETTED TELEXFREE'S SCHEME AND RECEIVED FRAUDULENT TRANSFERS OF FUNDS

334. During the course of the TelexFree Pyramid Ponzi Scheme, Defendants Bank of America, Bank of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, GPG, IPS, ProPay, Base Commerce, Vantage Payments, and the Doe Banks and Doe Payment Processors provided crucial financial services to TelexFree, which enabled TelexFree to carry on its Pyramid Ponzi scheme. TelexFree's financial services providers, including the aforesaid banking institutions, investment service providers, and payment processing services providers, knowingly aided and abetted TelexFree's Pyramid Ponzi Scheme by:

a. Receiving transfers of funds from, and on behalf of, TelexFree in the course of TelexFree's fraudulent business, despite knowledge of the fraudulent nature of TelexFree's business enterprise;

b. Receiving transfers of funds from TelexFree, its affiliated entities, and its executive officers, which transfers deepened TelexFree's insolvency, despite having knowledge of TelexFree's actual or imminent insolvency at the time of such transfers;

c. Processing payments to, and on behalf of, TelexFree, including its affiliated entities and Management, in the course of TelexFree's fraudulent business, despite knowledge of the fraudulent nature of TelexFree's business enterprise; and

d. Otherwise enabling the TelexFree Pyramid Ponzi Scheme to expand and continue by providing necessary financial services to TelexFree, despite actual knowledge of fraud on the part of TelexFree.

335. Defendants Bank of America, Bank of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, (hereinafter sometimes collectively referred to as "Banking Institution Defendants") possessed actual knowledge of the fraudulent nature of TelexFree's business operation, since at least June 2013 and despite knowledge of the fraudulent nature of TelexFree's business operations, the Banking Institution Defendants continued to provide TelexFree with banking services.

336. The Banking Institution Defendants received funds from Investors, which funds were then held for the benefit of TelexFree, its affiliated entities, and its Management. TelexFree's investors were directed by TelexFree, as part of TelexFree's "*signup procedures*," to transfer investment funds to accounts held by TelexFree at Bank of America and TD Bank.

337. Wells Fargo Bank maintained a depository account for TelexFree until March 14, 2014, long after TelexFree's Brazilian operation had been publicly exposed as a Pyramid Ponzi scheme and shutdown, and after a scam warning against TelexFree had been issued in the United Kingdom.[9]

338. Defendants Fidelity Investments, Waddell & Reed Financial, Waddell & Reed (sometimes referred to as the "Investment Service Provider Defendants) possessed actual knowledge of the fraudulent nature of TelexFree's business operation, since at least June 2013. The president of Fidelity is the brother of Defendant Merrill.

339. Despite knowledge of the fraudulent nature of TelexFree's business operations, the Investment Service Provider Defendants continued to provide TelexFree and the Officer

[9] See Declaration of Stuart A. MacMillan, Case No. 14-125234-ABL, Doc. 121, par. 12, attached herewith as Exhibit 16.

Defendants with both personal and business investment services. The Banking Institution Defendants and Investment Service Provider Defendants also received large transfers of funds from TelexFree, its affiliated entities, and its Management, during which time TelexFree was insolvent, despite knowledge of the fraudulent nature of TelexFree's business operations, thereby deepening TelexFree's insolvency and assisting TelexFree and its Management in concealing assets.

340. Defendants GPG, IPS, Propay, Base Commerce, Vantage Payments, and the Doe Payment Processors (hereinafter sometimes collectively referred to as "Payment Processing Services Companies" or "PPSC Defendants") possessed actual knowledge of the fraudulent nature of TelexFree's business operations since at least June 2013.

341. Despite knowledge of the fraudulent nature of TelexFree's business operations, the PPSC Defendants continued to provide TelexFree with payment processing services. The PPSC Defendants processed payments by Investors to TelexFree in the course of TelexFree's fraudulent business operations, which funds were then held for the benefit of TelexFree, its affiliated entities, and its Management. The PPSC Defendants also processed large transfers of funds from TelexFree, its affiliated entities, and its Management, to Banking Institution Defendants and other receivers, during which time TelexFree was insolvent, despite knowledge of the fraudulent nature of TelexFree's business operations, thereby deepening TelexFree's insolvency and assisting TelexFree and its Management in concealing assets. The PPSC Defendants received payment of substantial fees in return for providing these services.

342. IPS provided TelexFree with a service titled "e-Wallet," which was used by TelexFree to process electronic transfers of funds by Investors to TelexFree. According to a TelexFree balance sheet, dated December 31, 2013, posted by the Washington State Utilities and Transportation Commission, as of December 31, 2013, TelexFree claimed $31,640,192.30 in

assets then held by IPS (under the brand name "e-Wallet") on behalf of TelexFree.

343. Defendants GPG, Base Commerce, and Vantage Payments, also processed electronic transfers of funds by Investors to TelexFree.

344. Defendant ProPay, which also does business as Propay.com, also processed such electronic transfers of funds on behalf of TelexFree. ProPay processed transfers of funds by and on behalf of TelexFree, its affiliated entities, and its Management, during which time TelexFree was insolvent, despite knowledge of the fraudulent nature of TelexFree's business operations, thereby deepening TelexFree's insolvency and assisting TelexFree and its Management in concealing assets.

P. DOE INSIDER PROMOTERS

442. Although they remain unknown to the Putative Class Representatives and will remain unknown until discovery has been exchanged, certain promoters were provided with inside information by Defendants and in fact acted as agents servants of the Defendants.

443. The Putative Class Representatives seek to obtain damages, restitution and injunctive relief for the Class, as defined, below, from Defendants.

CLASS ACTION ALLEGATIONS

444. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action on their own behalf, and on behalf of all other persons similarly situated ("the Class"). The Class that Plaintiffs seek to represent is:

> All persons who tendered funds to TelexFree between 1/1/2012 and April 15, 2014 and who did not recoup the amount of money they originally invested. Excluded from the Class are the Defendants and their officers, directors, and employees of Defendant; any entity in which Defendant have a controlling interest; the co conspirators, so called insider promoters, legal representatives, attorneys, heirs, and assigns of the Defendants.

445. Plaintiffs meet the requirements of Federal Rules of Civil Procedures 23(a) because the members of the Class are so numerous that the joiner of all members is impractical.

While the exact number of Class members is unknown to Plaintiffs at this time, based on information and belief, it is in the hundreds of thousands.

446. Plaintiffs meet the requirements of Federal Rules of Civil Procedures 23(a) because there is a well-defined community of interest among the members of the Class, common questions of law and fact predominate, Plaintiffs' claims are typical of the members of the Class, and Plaintiffs can fairly and adequately represent the interests of the Class.

447. This action satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3) because it involves questions of law and fact common to the member of the Class that predominate or any questions affecting only individual members, including, but not limited to:

a. Whether TelexFree ran a Pyramid Ponzi Scheme;

b. Whether TelexFree ran a lawful Multi-Level Marketing program;

c. Whether TelexFree offered and sold securities in the form of unregistered investment contracts constituting securities.

d. Whether the other Defendants aided and abetted TelexFree in the sale of unregistered securities in violation of the law;

e. Whether Defendant Officers, Named Insider Promoters, Doe Inside Promoters, Doe Paralegal, Banks and Financial Institutions, Payment Processing Services Companies, Retained Licensed Professionals and Doe Banks knew that TelexFree was an illegal pyramid-type Ponzi scheme which involved the illegal sale of securities, continued to aid, abet and further such illegal activities or are otherwise liable for the economic loss suffered by the Putative Class;

h. Whether TelexFree's financial services providers, including the aforesaid banking institutions and payment processing services providers, knowingly aided and abetted TelexFree's Pyramid Ponzi Scheme;

i. Whether TelexFree and the other Defendants also violated Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons.

j. Whether Defendants violated Section 1965 of the Racketeer Influenced and Corrupt Organizations Act [18 U.S.C. § 1965];

k. Whether TelexFree mailed fraudulent and inaccurate 1099 (Miscellaneous Income) forms to investors;

448. Plaintiffs' claims are typical of those of other Class members because Plaintiffs were defrauded by the Defendants' scheme to fraudulently offer and sell unregistered securities; Plaintiffs will fairly and accurately represent the interests of the Class.

449. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the Defendants and would lead to repetitive adjudication of common questions of law and fact. Accordingly, class treatment is superior to any other method for adjudicating the controversy. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action under Rule 23(b)(3).

450. Damages for any individual class member are likely insufficient to justify the cost of individual litigation, so that in the absence of class treatment, the Defendants' violations of

law inflicting substantial damages in the aggregate would go un-remedied without certification of the Class.

451. The Defendants have acted or refused to act on grounds that apply generally to the class, as alleged above, and certification is proper under Rule 23(b)(2).

FIRST CLAIM FOR RELIEF
(FOR VIOLATIONS OF SECTION 10(B) OF THE SECURITIES AND EXCHANGE ACT OF 1934 AND SECURITIES AND EXCHANGE COMMISSION RULE 10B-5 -AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; MERRILL, WANZELER, LABRIOLA, CRAFT, COSTA, RODRIGUES; WWW GLOBAL BUSINESS, INC.; DE LA ROSA; CROSBY; SLOAN, DOE INSIDER PROMOTERS, AND OTHERS)

452. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

453. During the class period, Defendants, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a scheme and a continuous course of conduct to make materially false and misleading statements about the TelexFree investment dealings, financial condition and operations and to conceal adverse material information about these investments.

454. Defendants employed devices, schemes, and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and courses of conduct, as alleged herein, including the following: (1) making or participating in the making of untrue statements of material facts; (2) omitting to state the material facts necessary to make the statements about the investments not misleading; and (3) engaging in transactions, practices, and a course of business which operated as a fraud and deceit upon investors during the Class Period.

455. Each of the said Defendants offered and sold securities by means of fraudulent misrepresentations and intentional omissions of material facts concerning the securities.

456. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to

ascertain and to disclose such facts, even though such facts were available to them. Such misrepresentations and/or omissions were done knowingly or recklessly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

457. Defendants received information reflecting the true facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

458. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

459. The ongoing fraudulent scheme described herein could not have been perpetrated over a substantial period of time, without the knowledge and complicity of Defendants.

460. As a result of the dissemination of materially false and misleading information and the failure to disclose material facts, as set forth above, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

461. In ignorance of the materially false and misleading nature of the reports and statements described above, Plaintiffs and the other Class members relied, to their detriment, on Defendants for complete and accurate information about these investments.

462. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10 b-5 promulgated there under, and Plaintiffs and the Class have been damaged thereby, in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF

(FOR VIOLATIONS OF SECTION 20(A) OF THE SECURITIES AND EXCHANGE ACT 1934 AND SECTION 15 OF THE SECURITIES ACT OF 1933 AGAINST DEFENDANTS MERILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, WAAK, NEHRA, LAW OFFICES OF NEHRA AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC AND RICHARD W. WAAK, ATTORNEY AT

LAW, PLLC)

463. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

464. At the time of the wrongs alleged herein, Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC, were each a controlling person of TelexFree within the meaning of Section 20(a) of the Exchange Act.

465. By reason of their respective positions of authority, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Richard W. Waak, Attorney at Law, PLLC and Gerald P. Nehra, Attorney at Law, PLLC had the power and authority to influence and control, and did influence and control, the decision-making and activities of TelexFree and the affiliated TelexFree Entities and caused them to engage in the wrongful conduct described herein. Defendants, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Nehra, Law Offices of Nehra and Waak, Richard W. Waak, Attorney at Law, PLLC and Gerald P. Nehra, Attorney at Law, PLLC, exercised control to cause the dissemination of false and misleading statements and omissions of material facts.

466. Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Richard W. Waak, Attorney at Law, PLLC and Gerald P. Nehra, Attorney at Law, PLLC also materially aided in the sale of TelexFree AdCentral packages, which constitute securities, by actively promoting such

467. By virtue of their positions as controlling persons, and as a result of the aforementioned conduct, Defendants are liable under Section 20(a) of the Exchange Act.

THIRD CLAIM FOR RELIEF
(FOR VIOLATIONS OF SECTIONS 5 AND 12(A)(L) OF THE SECURITIES ACT OF 1933 AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; **MERRILL, WANZELER, LABRIOLA, CRAFT, COSTA, AND OTHERS)**

468. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

469. The Securities Act prohibits sale or delivery after sale of an unregistered security.

470. Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Costa, the Insider Promoter Does and others failed to file a true Registration Statement for TelexFree under the 1933 Act.

471. A Registration Statement must include the following: (1) the entity's properties and business, (2) a full description of the offered security, (3) information about the management of the entity, and (4) a financial statement certified by an independent auditor. None of these were provided.

472. By omitting this information, Defendants filed a false Form D.

473. Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Costa, the Insider Promoter Does and others also did not apply for or receive an exemption under Regulation D.

474. Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Costa, the Insider Promoter Does and others failed to provide to Plaintiffs access to the information that they were required to provide, including audited financial statements.

475. Plaintiffs purchased these securities without knowledge of the failure of Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Costa, the Insider Promoter Does and others to file the required Registration Statement or receive an exemption therefrom.

476. Plaintiffs would not have purchased the securities if Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.;, Merrill, Wanzeler, Labriola, Craft, Costa, the Insider Promoter Does and others provided the information required in a Registration Statement.

477. By virtue of the foregoing, Plaintiffs have been damaged and are entitled to damages, including rescission, and other relief for violations by Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Costa, the

Insider Promoter Does and others of Sections 5 and 12(a)(1) of the Securities Act of 1933 alleged herein.

FOURTH CLAIM FOR RELIEF
(FOR VIOLATIONS OF SECTION 11 OF THE SECURITIES ACT OF 1933 AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; MERILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, WAAK, NEHRA, LAW OFFICES OF NEHRA AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC AND RICHARD W. WAAK, ATTORNEY AT LAW, PLLC)

478. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

479. During the class period, Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Richard W. Waak, Attorney at Law, PLLC and Gerald P. Nehra, Attorney at Law, PLLC, fraudulently failed to convey facts material to the TelexFree AdCentral investment packages by failing to produce and file a Registration Statement.

480. In particular, they said Defendants intentionally avoided the requirement to produce a Registration Statement, and intentionally avoided disclosing that the AdCentral packages were, in fact, investments, and that financial returns on the AdCentral investments were derived from the proceeds received from the purchase of such investments, and not from the sale of the VoIP product.

481. Said Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein.

482. Such misrepresentations and/or omissions were done knowingly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

483. Said Defendants received information reflecting the true facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them

privy to confidential proprietary information concerning these investments.

484. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

485. Said Defendants knew and recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

486. The ongoing fraudulent scheme described herein could not have been perpetrated over a substantial period of time without the knowledge and complicity of the Defendants.

487. As a result of failure to disclose material facts, as set forth above, including their failure to file the requisite registration material, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

488. By virtue of the foregoing, said Defendants have violated Section 11 of the Securities Act, and Plaintiffs and the Class have been damaged thereby, in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF
(FOR VIOLATIONS OF SECTION 12(A)(2) OF THE SECURITIES ACT OF 1933 AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.;MERRILL, WANZELER, LABRIOLA, CRAFT, COSTA, AND OTHERS)

489. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

490. Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Costa and others participated in the sale of securities to Plaintiffs that were unregistered and not exempt from registration.

491. At the time of their investments, Plaintiffs had no knowledge that the investments offered by TelexFree or Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Costa, the Insider Promoter Does and others were subject to registration requirements.

492. In fact, Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS,

INC.; Merrill, Wanzeler, Labriola, Craft, Costa and others knew or reasonably should have known that the TelexFree Agreement Contract and investment scheme was subject to the registration requirement of the Securities Act.

493. Both the TelexFree Contract and related materials distributed to Plaintiffs and the oral communications with Plaintiffs contained material omissions and misstatements.

494. Plaintiffs had no knowledge of the falsity of these statements or of the material omissions in the written materials including, but not limited to, Accounting Statements prepared by the accounting Defendants and other misrepresentations made by Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Costa and others as described above. Plaintiffs reasonably believed such statements were true.

495. Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Costa and others knew, or in the exercise of reasonable diligence, should have known, of the untruths and omissions.

496. Plaintiffs would not have purchased the securities if they had this knowledge.

497. As a result of these investments, Plaintiffs have been damaged.

498. Plaintiffs are entitled to rescind their purchases and recover the value of their interest in TelexFree. Plaintiffs seek rescission of their purchase of membership interests in TelexFree.

SIXTH CLAIM FOR RELIEF
(FOR VIOLATIONS OF MASSACHUSETTS GE TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; NERAL LAWS, CHAPTER 110A, SECTION 410(A) AGAINST DEFENDANTS MERRILL, WANZELER, LABRIOLA, CRAFT, COSTA, RODRIGUES, WWW GLOBAL BUSINESS, INC., DE LA ROSA, CROSBY, SLOAN, AND THE DOE INSIDER PROMOTERS)

499. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

500. During the Class Period, Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Costa, Rodrigues, WWW

Global Business, De La Rosa, Crosby, Sloan, and the Doe Insider Promotersoffered and sold securities to the Plaintiffs by means of a scheme and a continuous course of conduct to make materially false and misleading statements about the TelexFree investment dealings, financial condition and operations and to conceal adverse material information about these investments.

501. Said Defendants employed devices, schemes, and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and courses of conduct, as alleged herein, including the following: (1) making or participating in the making of untrue statements of material facts; (2) omitting to state the material facts necessary to make the statements about the investments not misleading; and (3) engaging in transactions, practices, and a course of business which operated as a fraud and deceit upon investors during the Class Period.

502. Each of the said Defendants offered and sold securities by means of fraudulent misrepresentations and intentional omissions of material facts concerning the securities.

503. Said Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such misrepresentations and/or omissions were done knowingly or recklessly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

504. Said Defendants received information reflecting the true facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

505. Said Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

506. The ongoing fraudulent scheme described herein could not have been perpetrated over a substantial period of time without the knowledge and complicity of the said Defendants.

507. As a result of the dissemination of materially false and misleading information and the failure to disclose material facts, as set forth above, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

508. In ignorance of the materially false and misleading nature of the reports and statements described above, Plaintiffs and the other Class members relied, to their detriment, on said Defendants for complete and accurate information about these investments.

509. By virtue of the foregoing, said Defendants have violated Section 410(a) of the Massachusetts Uniform Securities Act, M.G.L. c. 110A, and Plaintiffs have been damaged thereby, in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF
(FOR VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 110A, SECTION 410(B) AGAINST DEFENDANTS MERILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, NEHRA, LAW OFFICES OF NEHRA AND WAAK, RICHARD W. WAAK, ATTORNEY AT LAW, PLLC AND GERALD P. NEHRA, ATTORNEY AT LAW, PLLC, AND OTHERS)

510. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

511. At the time of the wrongs alleged herein, Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Richard W. Waak, Attorney at Law, PLLC, Gerald P. Nehra, Attorney at Law, PLLC and others were each a controlling person, partner, officer, director, person occupying a similar status, or employee materially aiding in the sale of securities, of TelexFree within the meaning of Section 410(b) of the Massachusetts Uniform Securities Act, M.G.L. c. 110A.

512. By reason of their respective positions of authority, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, Richard W. Waak, Attorney at Law, PLLC and others had the power and authority to influence and control, and did influence and control, the decision-making and

activities of TelexFree and the affiliated TelexFree entities and caused them to engage in the wrongful conduct described herein. Defendants Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Richard W. Waak, Attorney at Law, PLLC and Gerald P. Nehra, Attorney at Law, PLLC exercised control to cause the dissemination of false and misleading statements and omissions of material facts.

513. By virtue of their positions as controlling person and top-level promoters, and as a result of the aforementioned conduct, Defendants are liable under Section 20(a) of the Exchange Act.

514. Plaintiffs seek the award of actual damages on behalf of the Class.

EIGHTH CLAIM FOR RELIEF
(NEGLIGENCE AGAINST ALL DEFENDANTS)

515. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

516. At all times material herein, Defendants owned a duty to Plaintiffs to act with a level of care to avoid misstating TelexFree's financial information or its returns; and to comply with all applicable laws concerning TelexFree, including, without limitation, federal and state securities laws.

517. By virtue of misstating and omitting relevant financial information, including the returns to Promoter/Investors, TelexFree breached its duty of care owed to Plaintiffs, the Putative Class Plaintiffs and similarly situated Plaintiffs.

518. As a direct and proximate result of Defendants' negligence and carelessness, Plaintiffs, the Putative Class Plaintiffs and similarly situated Plaintiffs have been caused to suffer and sustain damages and losses.

NINTH CLAIM FOR RELIEF
(NEGLIGENT MISREPRESENTATION AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; MERILL, WANZELER, LABRIOLA, COSTA, CRAFT, CRAFT FINANCIAL, COSTA, NEHRA, LAW OFFICES OF NEHRA AND WAAK, RICHARD W. WAAK, ATTORNEY AT LAW, PLLC AND GERALD P. NEHRA, ATTORNEY AT LAW, PLLC, RODRIGUES, DE LA ROSA, CROSBY, AND SLOAN)

519. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

520. Defendants, TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, Richard W. Waak, Attorney at Law, PLLC and others, directly and through their agents, servants, employees and/or representatives, did negligently make false representations of material fact to the said Plaintiffs, with said misrepresentations being made for the purpose of obtaining and/or wrongfully appropriating and converting money from Plaintiffs.

521. Said Defendants made negligent representations although Defendants knew, or should have known, that such representations were false.

522. Said representations and statements were material and were relied upon by the said Plaintiffs, inducing them to furnish money to Defendants.

523. In consequence of said reliance on the negligent misrepresentations, the said Plaintiffs have suffered great financial losses, and have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged.

TENTH CLAIM FOR RELIEF
(INTENTIONAL MISREPRESENTATION AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; MERILL, WANZELER, LABRIOLA, COSTA, CRAFT, CRAFT FINANCIAL, COSTA, NEHRA, LAW OFFICES OF NEHRA RICHARD W. WAAK, ATTORNEY AT LAW, PLLC AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC RODRIGUES, DE LA ROSA, CROSBY, AND SLOAN, DOE INSIDER PROMOTERS, AND OTHERS)

524. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

525. Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Waak, Nehra, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, Richard W. Waak, Attorney at Law, PLLC Rodrigues, De La Rosa, Crosby, And Sloan, Doe Insider Promoters and others directly and

through their agents, servants, employees and/or representatives, did intentionally make false representations of material fact to the said Plaintiffs with said misrepresentations being made for the purpose of obtaining and/or wrongfully appropriating and converting money from Plaintiffs.

526. Defendants made said intentional misrepresentations although Defendants knew that such representations were false.

527. Said representations and statements were material and were relied upon by the said Plaintiffs, inducing them to furnish money to Defendants.

528. In consequence of said reliance on the intentional misrepresentations, the said Plaintiffs have suffered great financial losses, and have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged.

ELEVENTH CLAIM FOR RELIEF

(PROFESSIONAL MALPRACTICE AGAINST DEFENDANTS CRAFT, CRAFT FINANCIAL, NEHRA, WAAK, LAW OFFICES OF NEHRA AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC AND RICHARD W. WAAK, ATTORNEY AT LAW, PLLC)

529. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

530. At all times material herein, Defendant Craft, Craft Financial, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC, were the providers of professional accounting and legal services.

531. The said Defendants had a duty to perform these services in conformance with the skill and knowledge normally possessed by members of the accounting and legal professions, using good, known, and accepted customs and practices of the these professions.

532. The said Defendants breached their duty to Plaintiffs by negligently certifying and representing to Plaintiffs and the public that the business model and operations of TelexFree were legal, proper, and economically viable and sustainable, when in fact TelexFree's business model and operations constituted an illegal and unsustainable Ponzi scheme.

533. The said Defendants further failed to exercise proper due diligence in the

discharge of their investigatory duties as certified public accountants and attorneys of TelexFree.

534. Furthermore, Defendants Craft and Craft Financial negligently failed to ensure that TelexFree maintained proper accounting records.

535. As a result of the professional negligence of said Defendants, Plaintiffs and the public were misled to belief that TelexFree were legal, proper, and economically viable and sustainable.

536. As a direct and proximate consequence of the aforementioned negligence of the said Defendants, Plaintiffs sustained injuries and losses.

TWELFTH CLAIM FOR RELIEF
(BREACH OF FIDUCIARY DUTY AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; MERILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, NEHRA, WAAK, LAW OFFICES OF NEHRA AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC AND RICHARD W. WAAK, ATTORNEY AT LAW, PLLC)

537. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

538. Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC and others owe to Plaintiffs, a duty of utmost good faith and fair dealing.

539. The said Defendants violated their duty by actively misrepresenting and fraudulently failing to convey facts material to the TelexFree AdCentral investment packages.

540. Said Defendants had actual knowledge of the fraudulent and deceptive misrepresentations and omissions of material facts set forth herein.

541. Such misrepresentations and/or omissions were done knowingly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

542. Said Defendants received information reflecting the true facts regarding the

investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments.

543. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

544. Said Defendants knew and recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

545. Said Defendants, through the aforesaid fraudulent and deceptive misrepresentations and omissions of material facts, breached their fiduciary duties of care and loyalty to Plaintiffs.

546. As a result of the foregoing breach of fiduciary duty by Defendants, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

THIRTEENTH CLAIM FOR RELIEF
(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; MERILL, WANZELER, LABRIOLA, COSTA, CRAFT, CRAFT FINANCIAL, COSTA, NEHRA, WAAK, LAW OFFICES OF NEHRA AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC AND RICHARD W. WAAK, ATTORNEY AT LAW, PLLC AND OTHERS)

547. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

548. Defendants owed to Plaintiffs a duty of utmost good faith and fair dealing, and thereby were obligated to consider the welfare of Plaintiffs and refrain from acting for purely selfish motives or private gain.

549. Defendants violated their duty by actively misrepresenting and fraudulently failing to convey facts material to the TelexFree AdCentral investment packages.

550. Said Defendants had actual knowledge of the fraudulent and deceptive misrepresentations and omissions of material facts set forth herein.

551. Such misrepresentations and/or omissions were made knowingly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

552. Said Defendants received information reflecting the true facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments.

553. Because of their control and/or association with the investment, said Defendants were active and culpable participants in the fraudulent scheme.

554. Said Defendants knew and recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

555. Said Defendants, through the aforesaid fraudulent and deceptive misrepresentations and omissions of material facts, breached their covenant of good faith and fair dealing owed to the Plaintiffs.

556. As a result of the foregoing breach of the covenant of good faith and fair dealing by said Defendants, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

FOURTEENTH CLAIM FOR RELIEF
(UNJUST ENRICHMENT AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; MERRILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, RODRIGUES, WWW GLOBAL BUSINESS, INC.,DE LA ROSA CROSBY, SLOAN, DOE INSIDER PROMOTERS AND OTHERS)

557. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

558. Plaintiffs furnished funds, directly or indirectly, to Defendants TelexFree, Merrill, Wanderer, Labriola, Craft, Craft Financial, Costa, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan and others, which funds were accepted by Defendants without protest or defect.

559. Said Defendants have unlawfully and in bad faith denied Plaintiffs access to such funds, and have instead retained the benefit of such funds for themselves.

560. As a direct and proximate result of the foregoing actions of said Defendants, as hereinabove set forth, the said Defendants are, and continue to be, unjustly enriched.

FIFTEENTH CLAIM FOR RELIEF
(FRAUD AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; MERILL, WANZELER, LABRIOLA, COSTA, CRAFT, CRAFT FINANCIAL, COSTA, NEHRA, WAAK, LAW OFFICES OF NEHRA AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC AND RICHARD W. WAAK, ATTORNEY AT LAW, PLLC, RODRIGUES, WWW GLOBAL BUSINESS, INC., DE LA ROSA, CROSBY, SLOAN, AND OTHERS)

561. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

562. Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Costa, Craft, Craft Financial, Costa, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan and others repeatedly misrepresented and intentionally failed to convey to Plaintiffs facts material to the TelexFree AdCentral investment packages.

563. Defendants had actual knowledge of the fraudulent and deceptive misrepresentations and omissions of material facts set forth herein.

564. Such misrepresentations and/or omissions were done knowingly for the purpose and effect of concealing the true information about the investments, including their financial condition and operations.

565. Defendants received information reflecting the true facts regarding the investment and TelexFree's business practices, exercised control over and/or receipt of the materially misleading misstatements and/or their association with the investment and made them privy to confidential proprietary information concerning these investments.

566. Because of their control and/or association with the investment, Defendants were active and culpable participants in the fraudulent scheme.

567. Defendants knew and recklessly disregarded the falsity and misleading nature of the information that they caused to be disseminated to Investors.

568. The ongoing fraudulent scheme described herein could not have been perpetrated over a substantial period of time, without the knowledge and complicity of Defendants.

569. As a result of the foregoing fraud perpetrated by Defendants, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

SIXTEENTH CLAIM FOR RELIEF
(AIDING AND ABETTING FRAUD AGAINST DEFENDANTS TELEXELECTRIC, TELEX MOBILE, MERRILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, RODRIGUES, WWW GLOBAL BUSINESS, INC., DE LA ROSA, CROSBY, SLOAN, NEHRA, WAAK, LAW OFFICES OF NEHRA AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC, RICHARD W. WAAK, ATTORNEY AT LAW, PLLC, BANK OF AMERICA, BANK OF AMERICA, N.A., TD BANK, CITIZENS FINANCIAL, CITIZENS BANK, FIDELITY BANK, MIDDLESEX SAVINGS, WELLS FARGO, WELLS FARGO BANK, FIDELITY INVESTMENTS, WADDELL & REED FINANCIAL, WADDELL & REED, GPG, IPS, PROPAY, BASE COMMERCE, VANTAGE PAYMENTS, AND THE DOE DEFENDANTS)

570. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

571. Defendants TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Rodrigues, Www Global Business, De La Rosa, Crosby, Sloan, Nehra, Waak, Law Offices Of Nehra And Waak, Gerald P. Nehra, Attorney At Law, PLLC, Richard W. Waak, Attorney At Law, PLLC, Bank Of America, Bank Of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, GPG, IPS, ProPay, Base Commerce, Vantage Payments, and The Doe Defendants actively and substantially assisted in the commission of the TelexFree fraud.

572. Said Defendants rendered such substantial assistance despite their knowledge that TelexFree's operations constituted an illegal and unsustainable pyramid Ponzi scheme and financial fraud.

573. As a direct and proximate result of TelexFree's fraud, to which the said Defendants provided substantial assistance, Plaintiffs sustained damages and losses.

SEVENTEENTH CLAIM FOR RELIEF

(COMMON LAW FRAUDULENT TRANSFER AGAINST DEFENDANTS TELEXELECTRIC, TELEX MOBILE, MERRILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, BANK OF AMERICA, BANK OF AMERICA, N.A., TD BANK, CITIZENS FINANCIAL, CITIZENS BANK, FIDELITY BANK, MIDDLESEX SAVINGS, WELLS FARGO, WELLS FARGO BANK, FIDELITY INVESTMENTS, WADDELL & REED FINANCIAL, WADDELL & REED, GPG, IPS, PROPAY, BASE COMMERCE, VANTAGE PAYMENTS, DOE BANKS, DOE PAYMENT PROCESSORS, PARALEGAL DOE AND OTHERS)

574. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

575. Plaintiffs, at all times material herein, were and are creditors of Defendant TelexFree.

576. Defendants TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Bank of America, Bank of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, GPG, IPS, ProPay, Base Commerce, Vantage Payments, Doe Banks, Doe Payment Processors, Paralegal Doe and Others have knowingly made or accepted transfers of funds owed to Plaintiffs.

577. Such transfers were made or accepted with intent to hinder, delay, and/or defraud Plaintiffs.

578. More particularly, such transfers were made in an attempt to dissipate, convert and conceal funds that are lawfully due to Plaintiffs.

579. As a result of such fraudulent transfers, Plaintiffs have suffered, or will imminently suffer, damages and losses.

EIGHTEENTH CLAIM FOR RELIEF

(DEEPENING INSOLVENCY AGAINST DEFENDANTS TELEXELECTRIC, TELEX MOBILE, MERRILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, BANK OF AMERICA, BANK OF AMERICA, N.A., TD BANK, CITIZENS FINANCIAL, CITIZENS BANK, FIDELITY BANK, MIDDLESEX SAVINGS, WELLS FARGO, WELLS FARGO BANK, FIDELITY INVESTMENTS, WADDELL & REED FINANCIAL, WADDELL & REED, GPG, IPS, PROPAY, BASE COMMERCE,

VANTAGE PAYMENTS, DOE BANKS, DOE PAYMENT PROCESSORS, PARALEGAL DOE AND OTHERS)

580. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

581. Plaintiffs, at all times material herein, were and are creditors of Defendant, TelexFree.

582. Defendants TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Bank of America, Bank of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, GPG, IPS, ProPay, Base Commerce, Vantage Payments, Doe Banks, Doe Payment Processors, Paralegal Doe and Others have knowingly made or accepted transfers of funds owed to Plaintiffs, which transfers deepened TelexFree's insolvency.

583. Such transfers were made in an attempt to dissipate, convert and conceal funds that are lawfully due to Plaintiffs.

584. Such transfers have greatly decreased the probable extent of recovery by Plaintiff creditors.

585. As a result of such fraudulent transfers, Plaintiffs have suffered, or will imminently suffer, damages and losses.

NINETEENTH CLAIM FOR RELIEF

(CIVIL CONSPIRACY AGAINST DEFENDANTS TELEXELECTRIC, TELEX MOBILE, MERRILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, RODRIGUES, WWW GLOBAL BUSINESS, INC., DE LA ROSA, CROSBY, SLOAN, NEHRA, WAAK, LAW OFFICES OF NEHRA AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC AND RICHARD W. WAAK, ATTORNEY AT LAW, PLLC, DOE INSIDER PROMOTERS, AND OTHERS)

586. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

587. Defendants TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan, Nehra, Waak, Law Offices of Nehra And Waak, Gerald P. Nehra, Attorney at Law, PLLC, Richard W. Waak, Attorney at Law, PLLC, Doe Insider Promoters, and Others have combined to enter into a civil conspiracy, for an unlawful purpose and using unlawful means, with the intent of so combining to unlawfully defraud Plaintiffs out of funds.

588. In consequence of the foregoing, Plaintiffs sustained damages and losses.

TWENTIETH CLAIM FOR RELIEF

(CONVERSION AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; MERRILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, RODRIGUES, WWW GLOBAL BUSINESS, DE LA ROSA, CROSBY, SLOAN, DOE INSIDER PROMOTERS, AND OTHERS)

589. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

590. Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan, Doe Insider Promoters, and Others have unlawfully converted Plaintiffs' funds, by obtaining the same through knowing misrepresentations made to Plaintiffs and the public.

591. Said Defendants continue to retain funds unlawfully converted from Plaintiffs.

592. In consequence of the foregoing, Plaintiffs sustained damages and losses.

TWENTY-FIRST CLAIM FOR RELIEF

(FOR VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 93A, SECTION 2 AGAINST DEFENDANTS TELEXELECTRIC, TELEX MOBILE, MERRILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, RODRIGUES, WWW GLOBAL BUSINESS, INC., DE LA ROSA, CROSBY, SLOAN, NEHRA, WAAK, LAW OFFICES OF NEHRA AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC, RICHARD W. WAAK, ATTORNEY AT LAW, PLLC, BANK OF AMERICA, BANK OF AMERICA, N.A., TD BANK, CITIZENS FINANCIAL, CITIZENS BANK, FIDELITY BANK, MIDDLESEX SAVINGS, WELLS FARGO, WELLS FARGO BANK, FIDELITY INVESTMENTS, WADDELL & REED FINANCIAL, WADDELL & REED, GPG, IPS, PROPAY, BASE COMMERCE, VANTAGE PAYMENTS, AND THE DOE DEFENDANTS)

593. Plaintiffs incorporate by reference all allegations set forth in all previous

paragraphs, as if the same were specifically set forth herein.

594. At all times material herein, Defendants, TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, Richard W. Waak, Attorney at Law, PLLC, Bank of America, Bank Of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, GPG, IPS, ProPay, Base Commerce, Vantage Payments, and the Doe Defendants were engaged in Trade and Commerce as defined by Massachusetts General Laws Chapter 93A, Section 1.

595. At all times material herein, Plaintiffs were engaged in Trade and Commerce as defined by Massachusetts General Laws Chapter 93A, Section 1.

596. The foregoing transactions, actions and inactions of the said Defendants constitute unfair and deceptive acts and practices as defined by, and in violation of, Massachusetts General Laws, Chapter 93A § 11.

597. In consequence of the said Defendants' unfair and deceptive acts and practices, Plaintiffs have suffered great financial losses, and have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged.

TWENTY-SECOND CLAIM FOR RELIEF

(FOR VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, UNITED STATES CODE, TITLE 18, SECTION 1962 AGAINST DEFENDANTS TELEXELECTRIC, TELEX MOBILE, MERRILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, COSTA, RODRIGUES, WWW GLOBAL BUSINESS, INC., DE LA ROSA, CROSBY, SLOAN, NEHRA, WAAK, LAW OFFICES OF NEHRA AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC, RICHARD W. WAAK, ATTORNEY AT LAW, PLLC, BANK OF AMERICA, BANK OF AMERICA, N.A., TD BANK, CITIZENS FINANCIAL, CITIZENS BANK, FIDELITY BANK, MIDDLESEX SAVINGS, WELLS FARGO, WELLS FARGO BANK, FIDELITY INVESTMENTS, WADDELL & REED FINANCIAL, WADDELL & REED, GPG, IPS, PROPAY, BASE COMMERCE, VANTAGE PAYMENTS, AND THE DOE DEFENDANTS)

598. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

599. At all times material herein, Defendants, TelexElectric, Telex Mobile, Merrill, Wanzeler, Labriola, Craft, Craft Financial, Costa, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan, Nehra, Waak, Law Offices of Nehra and Waak, Gerald P. Nehra, Attorney at Law, PLLC, Richard W. Waak, Attorney at Law, PLLC, Bank of America, Bank Of America, N.A., TD Bank, Citizens Financial, Citizens Bank, Fidelity Bank, Middlesex Savings, Wells Fargo, Wells Fargo Bank, Fidelity Investments, Waddell & Reed Financial, Waddell & Reed, GPG, IPS, ProPay, Base Commerce, Vantage Payments, and the Doe Defendants were associated in an enterprise as defined by 18 U.S.C. 1961(4).

600. Such enterprise was engaged in unlawful and illegal activities, including, *inter alia*, securities fraud and financial fraud, as set forth more fully throughout this Complaint, and which made use of the means and instrumentalities of interstate commerce and which crossed jurisdictional lines.

601. Throughout their involvement with such enterprise, the said Defendants engaged in a pattern of securities fraud, financial fraud, and other illegal and wrongful behavior, comprising numerous instances of such illegal and wrongful behavior.

602. Such illegal and wrongful behavior constitutes "racketeering activity" as defined by 18 U.S.C. 1961(1).

603. The said Defendants were aware of the illegal and fraudulent nature of the enterprise.

604. The said Defendants each actively participated in the enterprise and its pattern of racketeering activity.

605. The said Defendants each received income, directly or indirectly, as a result of the enterprise and its pattern of racketeering activity.

606. The said Defendants did further conspire to engage in such pattern of racketeering activity.

607. In consequence of the said Defendants' unlawful enterprise and pattern of racketeering activity Plaintiffs have suffered great financial losses, and have also incurred

considerable expenses and loss of income, and have otherwise been greatly damaged.

TWENTY-THIRD CLAIM FOR RELIEF

(FOR VIOLATIONS OF THE LANHAM ACT, UNITED STATES CODE, TITLE 15, SECTION 1125 AGAINST DEFENDANTS TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; MERRILL, WANZELER, LABRIOLA, CRAFT, CRAFT FINANCIAL, RODRIGUES, WWW GLOBAL BUSINESS, INC., DE LA ROSA, CROSBY, SLOAN, COSTA, WAAK, NEHRA, LAW OFFICES OF NEHRA AND WAAK, GERALD P. NEHRA, ATTORNEY AT LAW, PLLC, RICHARD W. WAAK, ATTORNEY AT LAW, PLLC, AND DOE INSIDER PROMOTERS)

608. Plaintiffs incorporate by reference all allegations set forth in all previous paragraphs, as if the same were specifically set forth herein.

609. As set forth more particularly throughout this Complaint, and in direct violation of the Lanham Act, 15 U.S.C. § 1125, the Defendants TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; Merrill, Wanzeler, Labriola, Craft, Craft Financial, Rodrigues, WWW Global Business, De La Rosa, Crosby, Sloan, Costa, Waak, Nehra, Law Offices of Nehra And Waak, Gerald P. Nehra, Attorney at Law, PLLC, Richard W. Waak, Attorney at Law, PLLC, and Doe Insider Promoters have used false or misleading descriptions of material fact, and false and/or misleading representation of material fact, in promoting and selling TelexFree's AdCentral investment packages and VoIP products.

610. In so doing, said Defendants made use of the means and instrumentalities of interstate commerce and crossed jurisdictional lines.

611. Said Defendants have also used false and/or misleading descriptions of material fact, and false or misleading representations of material fact, in characterizing the nature of TelexFree's business operations, returns on investment, and the legality of the investments.

612. Said Defendants' false and/or misleading descriptions of material fact, and false or misleading representations of material fact, did actually deceive, or have the tendency to deceive, both Plaintiffs and the public.

613. As direct and proximate result of the false and misleading advertisements disseminated by said Defendants, Investors paid artificially inflated prices for worthless membership interests in the investment during the Class Period.

CONCLUSION

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for judgment as follows:

1. Declaring this action to be a Class Action properly maintained pursuant to the Federal Rules of Civil Procedure and certifying Plaintiffs as the class representatives;

2. Awarding Plaintiffs and Class members rescission and/or compensatory damages against Defendants for all damages sustained as a result of their wrongdoing, in an amount to be proven at trial, including interest;

3. For an award of actual damages, compensatory damages, statutory damages, and statutory penalties, in an amount to be determined;

4. For an award of punitive damages;

5. For an award of costs of suit and attorneys' fees, as allowable by law;

6. For an award of interest;

7. For the appointment of a receiver selected by Class Counsel and an accounting; and

8. For an award to Plaintiffs and the Class such other and further relief as may be just and proper under the circumstances including equitable relief.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of their claims to the extent authorized by law. However, the Plaintiffs do not consent to trial by jury in the United States Bankruptcy Court.

Respectfully submitted,

This 2nd day of June, 2014

THE CRESCENT LAW PRACTICE

Ihuoma Igboanugo

Ihuoma Igboanugo, Esq.
North Carolina Bar No. 46618
P.O Box 41333
Raleigh, NC 27629

EXHIBIT F

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 defendants[3] 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 companies[4] 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,

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* 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.

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

I hereby certify on 10/22/14 that the
foregoing document is true and correct copy of the
☐ electronic docket in the captioned case
☒ electronically filed original filed on 10/21/14
☐ original filed in my office on _____

Robert M. Farrell
Clerk, U.S. District Court
District of Massachusetts

By: Sherry Jones
Deputy Clerk

EXHIBIT G

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**

CELIO DA SILVA, RITA DOS SANTOS, PUTATIVE CLASS REPRESENTATIVES AND THOSE SIMILARLY SITUATED, Plaintiffs, v. TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; JAMES M. MERRILL; CARLOS N. WANZELER; STEVEN M. LABRIOLA; JOSEPH H. CRAFT, a/k/a JOE H. CRAFT; CRAFT FINANCIAL SOLUTIONS, LLC; ANN GENET; CARLOS COSTA; KATIA WANZELER; SANDERLEY RODRIGUES DE VASCONCELOS; SANTIAGO DE LA ROSA; RANDY N. CROSBY; FAITH R. SLOAN; DANIIL SHOYFER; SCOTT MILLER; GERALD P. NEHRA, individually and doing business as LAW OFFICES OF NEHRA AND WAAK; GERALD P. NEHRA ATTORNEY AT LAW, PLLC; RICHARD W. WAAK, individually and doing business as LAW OFFICES OF NERHA AND WAAK; RICHARD W. WAAK, ATTORNEY AT LAW, PLLC; OPT3 SOLUTIONS, INC.; JASON A. BORROMEI; PRICEWATERHOUSECOOPERS, LLP; BANK OF AMERICA, NA; TD BANK, NA; RSB CITIZENS, N.A.; FIDELITY CO-OPERATIVE BANK, doing business as FIDELITY BANK; JOHN F. MERRILL; WELLS FARGO BANK, N.A.; SYNOVUS BANK; GLOBAL PAYROLL GATEWAY INC.; INTERNATIONAL PAYOUT SYSTEMS, INC.; PROPAY, INC., doing business as PROPAY.COM; BASE COMMERCE, LLC, doing business as PHOENIX PAYMENTS; JOHN HUGHES; VANTAGE PAYMENTS, LLC; DUSTIN SPARMAN; ALLIED WALLET, LTD; DOE TOP LEVEL PROMOTERS; DOE LICENSED PROFESSIONALS; DOE BANKS; DOE PAYMENT PROCESSING SERVICES AND PARALEGAL DOE, Defendants.	**CLASS ACTION** **SECOND CONSOLIDATED AMENDED COMPLAINT** **DEMAND FOR TRIAL BY JURY**

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Plaintiffs and Putative Class Representatives Celio Da Silva and Rita Dos Santos on behalf of themselves and all others similarly situated ("Plaintiffs") bring this action against the defendants named herein ("Defendants"). This complaint is based on information and belief, except those paragraphs that relate to Plaintiffs, which are based on personal knowledge. Plaintiffs allege as follows:

1. TelexFree, Inc., TelexFree, LLC, and TelexFree Financial, Inc. (collectively, "TelexFree") and its related entities and individuals operated an illegal scheme whereby it sold "memberships," ostensibly paid its "promoters" ("Members" or "Promoters") for placing advertisements for a "voice over internet protocol" ("VoIP") product, and in reality paid them to recruit other investors whose new membership fees kept the scheme afloat (the "TelexFree Program").

2. Until TelexFree, Inc. changed its compensation plan in March 2014, a month before it filed for bankruptcy, it did not require promoters to sell its VoIP product to be eligible for payments.

3. TelexFree's business and operations constituted an illegal Pyramid Scheme (the "Pyramid Scheme"). A pyramid scheme is a form of a Ponzi scheme wherein a business enterprise persuades people to invest money into a seemingly legitimate business model and in exchange guarantees profits. The actual sales or services provided, if any, are insufficient to pay the promised returns to investors. The operation of a pyramid scheme relies entirely on additional investment funding by new or existing investors. Once the influx of new investments stops, the pyramid scheme collapses because there are no new funds with which to pay previous investors. Pyramid schemes are lucrative for those who occupy top-level or other like positions and for those who service them.

4. Massachusetts General Laws ("M.G.L.") c. 93, § 69 makes pyramid schemes, as well as many of their traditional features, unlawful. M.G.L. c. 93, § 69(g) expressly declares that a violation of M.G.L. c. 93, § 69 is a per se violation of M.G.L. c. 93A, §2(a). For this reason, in addition to others, TelexFree and certain defendants otherwise violated M.G.L. c. 93A, §§ 2 and 11.

5. TelexFree raised as much as $1 billion dollars over the course of eighteen months as follows:

2012 Income	$15,490,349.71
2013 Income	$865,893,524.99
2014 Income	$161,116,265.38*

(*Law enforcement authorities shut down TelexFree on April 15, 2014.)

6. The financial services providers ("Financial Services Providers" or "Financial Services Defendants") processed hundreds of thousands of related transactions involving hundreds of millions of dollars, and the substantial assistance they provided was essential to TelexFree.

7. TelexFree's founders and principals, executive officers and top level promoters controlled the activities and operations of TelexFree and knowingly, maliciously and willfully conspired to perpetrate, and did perpetrate, the TelexFree Pyramid Scheme with full awareness of its unfair, deceptive, and unlawful nature. Licensed professionals and others were negligent or reckless in providing advice, directly participated in, or otherwise provided essential substantial assistance after knowing the TelexFree business enterprise was unlawful.

8. The Federal Financial Institutions Examination Council ("FFIEC" or "Council") regulates the TelexFree Financial Services Providers. The Council is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal

examination of financial institutions by the Board of Governors of the Federal Reserve System ("FRB"), the Federal Deposit Insurance Corporation ("FDIC"), the National Credit Union Administration ("NCUA"), the Office of the Comptroller of the Currency ("OCC"), and the Consumer Financial Protection Bureau ("CFPB"), and to make recommendations to promote uniformity in the supervision of financial institutions.

9. The Financial Services Defendants were required by federal law to, and did, maintain robust, sophisticated and thorough due diligence systems at all times.

10. The Financial Services Defendants are not just required to know their clients, they are required to obtain knowledge of and understand how each client's business operates, who is running it, and who is associated with it. The Financial Services Defendants did not simply have to gather information; they needed to analyze it and understand their clients' business models and key personnel, and continue to monitor their customers on an ongoing basis.

11. TelexFree was purportedly a contract-based business. All TelexFree Promoters, including Plaintiffs and members of the putative class, were similarly obligated to enter into TelexFree's identical form contract ("TelexFree Pre-March 9 Contract"). A true and correct copy of the Pre-March 9 TelexFree Contract is attached hereto as Exhibit 1.

12. At all times material herein, TelexFree was a "multi-level distribution company" as defined by M.G.L., Chapter 93, Section 69(a).

13. M.G.L., Chapter 93, Section 69(d)(2) prohibits any multi-level distribution company from offering or paying any "finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration" to any participant therein "solely for the solicitation or recruitment of other participants."

14. The TelexFree Pre-March 9 Contract, on its face, contains numerous instances of

promising payment merely for recruitment of new Participants[1] as defined by M.G.L., Chapter 93, Section 69, including, but not limited to, the following:

a. Clause 5.7: "A PROMOTER will achieve TEAM BUILDER status when he is active in an ADCentral FAMILY position (in the marketing network) that has 10 (ten) ADCentral FAMILIES on the incentive plan registered directly by him on his site."

b. Clause 5.7.1: "As long as he is fulfilling the qualification in clause 5.9.2[2] [sic], a TEAM BUILDER will earn a payment of 2% (two percent) of the company's net billing in the following month…the maximum amount for this earning, by contract, which is for one year, is up to US$ 39,600.00…" (emphasis added).

c. Clause 5.8: "THE PROMOTER shall receive as an incentive a bonus of US$ 20.00 (twenty U.S. dollars), for each VOIP ADCentral kit that his direct lower PARTNER acquires and a US$ 100.00 (one hundred U.S. dollars) bonus for each VOIP FAMILY kit that his direct lower PARTNER acquires."

d. Clause 6.1: "A PROMOTER who directly registers 2 (two) new promoters, with one on the left side and the other on the right side of his marketing network, qualifies for direct and indirect binary earnings, and for 2% (two percent) of the network from the first to the 6th level, assessed only on plans whose owners have at least one active VOIP client, that is, who have at least one active 99TELEXFREE plan."

e. Clause 6.1.1: Upon qualifying in the manner described in the clause above by selling 2 (two) new ADCENTRAL kits to people in his network, with 1 (one) on the left side and the other on the right side, he shall receive an additional gratuity of US$20 (twenty U.S. dollars), called the binary cycle, with the maximum daily earning in this status being US$ 440.00 (four hundred and forty U.S. dollars), for 22 (twenty-two) binary cycles."

f. Clause 6.1.2: If the sale is of 2 (two) VOIP ADCentral FAMILY kits, this cycle will yield an additional US$ 20.00 (twenty U.S. dollars), for the ADCentral principals, plus US$ 60 (sixty U.S. dollars), for 3 (three) of the 4 (four) ADCentral additional…"

g. Clause 8.1: "THE PROMOTER shall be entitled to a payment of 1% (one percent), in the form of ROYALTIES, from the company's net billing, if within 1 (one) calendar month (from the 1st (first) day – to the last day of the month) the

[1] For ease of reading, the terms "Member," "Promoter" or "Participant," regardless of capitalization, are at all times herein to be construed as "Participant" defined by M.G.L. Chapter 93, Section 69.

[2] The TelexFree Pre-March 9 Contract does not include a clause numbered 5.9.2.

PROMOTER shall have closed 22 (twenty-two) cycles in 20 (twenty) days, which need not necessarily be consecutive days."

15. The above provisions of the standard TelexFree Pre-March 9 Contract are clear and direct violations of M.G.L. c. 93, § 69(d), as they promise payments, including cash payments, "bonuses," "gratuities," "royalties," and dividends, merely for the recruitment of new TelexFree members/participants (i.e. through the sale of AdCentral membership accounts).

16. Furthermore, M.G.L. Chapter 93, Section 69(d)(3)-(4) also prohibits any multi-level distribution company from offering or paying any "finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration" to any participant therein:

a. "unless such participant performs a bona fide and essential supervisory, distributive, selling or soliciting function in the sale or delivery of such product or services,"

b. "where no amount of judgment or skill exercised by the participant has any appreciable effect" upon such payment," or

c. "where the participant is without that degree of control over the operation of such plan as to enable him substantially to affect the amount" of such payment.

17. The TelexFree Pre-March 9 Contract, on its face, contains clear, obvious and direct violations of M.G.L. c. 93, § 69(d)(3)-(4), including:

a. Clause 5.4: "ADCENTRAL PROMOTERS: After setting up his membership, a PARTNER may acquire an "ADCentral" kit consisting of 10 99TELEXFREE VOIP accounts, for which he must pay the equivalent of US$ 289.00 (two hundred and eighty-nine U.S. dollars)."

b. Clause 5.4.1: "with this qualification, the PARTNER will become a TELEXFREE PROMOTER and, accordingly, shall have his own active ad central for 12 (twelve) months, counting from the date of his membership (and not from the date of the purchase of the kit)."

c. Clause 5.4.2: "He must also post 1 (one) announcement (prepared by TELEXFREE) per day on internet announcement sites (whether free of charge or not), so that at the end of each cycle of 7 (seven) announcements for the week, the PROMOTER shall receive one 99TELEXFREE account."

d. Clause 5.5: "ADCENTRAL FAMILY MEMBERSHIP – A PROMOTER wishing to attain the status of an "ADCentral FAMILY Member" must pay the equivalent of US$ 1,375.00 (one thousand three hundred and seventy-five U.S. dollars)."

e. Clause 5.5.1: "With this membership, a PROMOTER shall have 5 (five) active announcement centrals for 12 (twelve) months, counting from the date of his activation."

f. Clause 5.5.2: "He must, in turn, post 1 (one) announcement (prepared by TELEXFREE) per day at internet announcement sites (whether free of charge or not) on each one of the 5 (five) ADCentral sites. At the end of the 35 (thirty-five) announcements the PROMOTER shall receive 5 (five) 99TELEXFREE accounts as remuneration for these announcements."

18. The above-cited language makes it clear to a sophisticated reader that TelexFree Members were not required to engage in any "bona fide and essential supervisory, distributive, selling or soliciting" nor exercise any "judgment," "skill" or "control over the operation."

19. Rather, Members were only required to engage in the activity of cutting-and-pasting spam advertisements, which were "prepared by TELEXFREE," onto "internet announcement sites," and would receive "remuneration for these announcements."

20. Furthermore, VoIP products distributed to Members as remuneration for this mindless spamming activity could be redeemed with TelexFree for cash, resulting in cash remuneration.

21. M.G.L. Chapter 93, Section 69(b) requires as follows: "Every multi-level distribution company shall provide in its contract of participation that such contract may be cancelled for any reason at any time by a participant upon notification in writing to the company of his election to cancel. If the participant has purchased products while the contract of participation was in effect, all unencumbered products in a resaleable condition then in the possession of the participant shall be repurchased …"

22. The TelexFree Pre-March 9 Contract, on its face, contains egregious, obvious

violations of M.G.L. c. 93, § 69(b), including:

a. Clause 10.1.2: "A PARTNER or PROMOTER can cancel his membership within 7 (seven) days of becoming a member, and receive a full refund of what he actually paid to TELEXFREE, including the membership fee and the price of the VOIP accounts he has not activated..."

b. Clause 10.1.4: "If a PARTNER or PROMOTER seeks cancellation of membership after the legal deadline, he is aware that he will not receive any reimbursement of any amount, since his position will continue to entail expenses for its maintenance."

23. In addition to these clear violations of M.G.L. c. 93, § 69(b), the TelexFree Pre-March 9 Contract also sets forth the following draconian terms for cancellation of membership:

> Clause 10.1.3: "To be disconnected from the TELEXFREE NETWORK Marketing System, a member must request cancellation of his participation on a specific form provided on his personal page, or in the event of absence or inability to use this resource, through a letter written and signed by him, with certified signature recognition, sent to the headquarters of the CONTRACTOR, correctly stating all of the information requested; if these data rigorously match the data reported when putting through the application, which is to be ascertained for reasons of security, the cancellation shall be approved in an irreversible manner."

24. These terms of cancellation are clearly designed to entangle members in TelexFree's Scheme and prevent Members from withdrawing.

25. Not only does the TelexFree Pre-March 9 Contract explicitly violate M.G.L. Chapter 93, Section 69 – it also lays bare several classic hallmarks of pyramid schemes, including paying participants solely for recruitment of new members, not requiring any meaningful sales or distributive activity by participants, and using coercive measures to prevent participant withdrawal from the scheme.

26. The mechanics of the TelexFree Program (e.g. AdCentral, AdCentral Family) were described in the TelexFree Pre-March 9 Contract and on TelexFree's website and otherwise accessible to the Financial Services Defendants. TelexFree's business model and operations were suspicious, tortious, or illegal to the sophisticated Financial Services Defendants, as

demonstrated by the following graphic taken from the public area of TelexFree's website, www.TelexFree.com:



27. Like the TelexFree Pre-March 9 Contract, TelexFree's own website set forth numerous plain violations of M.G.L. c. 93, § 69. For example, several violations were included in a key promotional video, entitled "Presentation," which was prominently featured on www.TelexFree.com, and which included, without limitation, the following violations of M.G.L. Chapter 93, Section 69:

a. promising that Members would "[e]arn US$20 for the direct registration of each new promoter," in violation of Section 69(d)(2);

b. promising that Members would "[e]arn US$20 per cycle each time you register 1 ADCentral in your left and 1 in your right, doesn't matter if they are direct, indirect, or gotten by transfer," in violation of Section 69(d)(2);

c. promising that Members would "[r]eceive 2% over what your network, direct or indirect up to the 6th level, is receiving from Telexfree in money for the ads posting [sic]," in violation of Section 69(d)(2);

d. promising that "[e]veryone who reaches 22 [cycles] of ADCENTRAL for 20 days, within the same month. [sic] Individually or by group will receive 1% of the business volume of the company, as extra bonus, will be divided equally among everyone qualified," in violation of Section 69(d)(2);

e. promising that "Team Builders," i.e. Promoters who are able to register at "10 direct ADCentral FAMILY in a period of 60 days," "will receive the share of 2% of the revenue of the monthly net sales for the company, divided equally among all the TEAM BUILDERS until receiving the maximum bonus for the TEAM BUILDER which is of $39,600," in violation of Section 69(d)(2);

f. promising that Members would receive income for "[o]nly posting 5 DAILY ADS ON INTERNET! [sic]," in violation of Section 69(d)(3) & (4);

g. guaranteeing to Members returns of $49.90 weekly, $199.60 monthly, and $2594.80 annually in exchange for the purchase of one AdCentral package, in violation of Section 69(e);

h. guaranteeing to Members returns of $249.50 weekly, $998.00 monthly, and $12,974 annually, on one AdCentral Family package, in violation of Section 69(e); and

i. providing a simulation of guaranteed earnings based solely on adding new Members to one's network, in violation of Section 69(d)(2) & (e).

28. The above violations of M.G.L. Chapter 93, Section 69 were also plain evidence to the sophisticated Financial Services Defendants that TelexFree promised passive income to participants, that recruitment of new participants predominated over product sales in TelexFree's business model, and TelexFree was therefore a pyramid scheme.

29. The facts and circumstances set forth herein establish that the sophisticated notice, investigation and evaluation systems of the Financial Services Defendants were exposed to open and notorious facts that reasonably placed them on notice of TelexFree's suspicious, tortious, malicious, unfair, deceptive and/or unlawful acts, practices and business enterprise.

30. As a result of their compliance with federal law, each of the Financial Services

Defendants was actually aware of facts and evidence of suspicious, tortious or illegal TelexFree activity ("Red Flags").

31. When a bank finds out that a client is laundering money or running an unlawful enterprise, it must stop servicing or shut down the accounts, terminate the banking relationship, and file a Suspicious Action Report ("SAR") with the Financial Crimes Enforcement Network.

32. During the class period, the Financial Services Providers unlawfully failed to timely or sufficiently meet these obligations.

33. Each of the Financial Services Defendants was a substantial and integral cog in TelexFree's unlawful United States Pyramid Scheme, and, without that assistance, the Scheme would not have been able to get off the ground, develop, maintain or thrive. Each Financial Services Defendant was motivated by substantial profits and other interests at the local and national level gained from its relationship with TelexFree and other Defendants, as well as a desire to maintain their personal and lucrative relationships with the multilevel marketing industry as a whole.

34. Similarly situated Plaintiffs seek compensation for the ascertainable economic loss they were similarly caused to suffer as a result of Defendants' participation in, or aiding or abetting of, TelexFree's illegal Pyramid Scheme. They also seek equitable relief.

I. JURISDICTION AND VENUE

35. This Court has subject-matter jurisdiction over the instant matter pursuant to 28 U.S.C. § 1332(d) and the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1711, *et seq*., which vest original jurisdiction in the district courts of the United States for any multi-state class action where the aggregate amount in controversy exceeds $5,000,000 and where the citizenship of any member of the class of plaintiffs is different from that of any defendant. The

$5,000,000 amount-in-controversy and diverse citizenship requirements of CAFA are satisfied in this case.

36. Venue is proper under 28 U.S.C. § 1391 since a substantial part of the acts, omissions and transactions giving rise to this action occurred in this district; certain Defendants reside in this district; and TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. (related entities not named as Defendants) are currently debtors in Chapter 11 proceedings pending in this district.

II. THE PARTIES

A. PLAINTIFFS

37. Plaintiff Rita D. Dos Santos ("Dos Santos") is an individual who resides in Massachusetts. Dos Santos, like many other victims of TelexFree's Pyramid Scheme, tendered funds for a TelexFree Membership and its promised pre-March 9, 2014 return on investment (the "Original Return on Investment").

38. Plaintiff Celio Da Silva (" Da Silva") is an individual who resides in Massachusetts. Da Silva, like many other victims of TelexFree's Pyramid Scheme, tendered funds for a TelexFree Membership and its promised Original Return on Investment.

B. DEFENDANTS

1. TELEXFREE DEFENDANTS

a. Third-Party TelexFree Bankrupt Entities

39. TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. are not currently Defendants due to their Chapter 11 bankruptcy protections, but they are third-party participants in the unlawful activities described in this complaint.

40. TelexFree, Inc. is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, registered with the Corporations Division of the Secretary to

the Commonwealth of Massachusetts (Identification Number 000832397), having a last known principal place of business at 225 Cedar Hill Street, Suite 200, in Marlborough, County of Middlesex, Commonwealth of Massachusetts 01752 (the "TelexFree Marlborough Office").

41. TelexFree, LLC is a limited liability company duly organized and existing under the laws of Nevada, having a purported place of business at 4705 S. Durango Drive, #100-J51 (a post office box), Las Vegas, Nevada 89147 (the "Nevada Post Office Box"). TelexFree, LLC also maintained offices in the Commonwealth of Massachusetts at the TelexFree Marlborough Office between 2012 and late April 2014. At all material times, TelexFree, LLC was identified as a limited liability company as registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number 001105166). TelexFree, LLC registered with the Secretary of State for the Commonwealth of Massachusetts on April 18, 2013.

42. The last unnamed TelexFree entity is TelexFree Financial, Inc. ("TelexFree Financial"). TelexFree Financial, Inc. is a corporation duly organized and existing under the laws of the State of Florida, having its last known principal place of business at 2321 NW 37th Avenue, in Coconut Creek, Florida 33063. TelexFree Financial is a wholly-owned subsidiary of TelexFree, LLC.

43. Throughout this complaint, for ease of reference, the named and unnamed TelexFree corporations as well as the Founders, Principals, Executive Office, Top Level Promoters and Associated Individuals; and the Licensed Professionals including Attorneys, Accountants, and Other Professional Services Providers (as defined herein) are alternatively referred to for ease of reading as "Operational Defendants." At times relevant to this complaint, the Operational Defendants served as principals, agents, servants, authorized representatives, co-

conspirators or employees of TelexFree.

b. Electric and Mobile

44. Defendant TelexElectric, LLLP ("Electric") is a limited liability limited partnership organized and under the laws of the State of Nevada. Its registered agent is BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

45. Defendant Telex Mobile, Holdings, Inc. ("Mobile") is a corporation organized and existing under the laws of the State of Nevada, and having its registered agent as BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

2. OTHER OPERATIONAL DEFENDANTS

a. Founders and Principals, Executive Office, Top Level Promoters and Associated Individuals

46. James M. Merrill ("Merrill") is an individual with a last known usual place of abode of 1 Coburn Drive in Ashland, County of Middlesex, Commonwealth of Massachusetts 01721. Merrill is a Founder, Principal, and a member of TelexFree's Executive Office.

47. Carlos N. Wanzeler ("Wanzeler") is an individual with a last known usual place of abode of 373 Howard Street, in Northborough, County of Worcester, Commonwealth of Massachusetts 01532. Wanzeler is a Founder, Principal, and a member of TelexFree's Executive Office.

48. Carlos Roberto Costa ("Costa") is an individual with a last known usual place of abode located at Rua Umbizeiro, 37, Bairro de Itapoa, Vila Velha, Espirito Santo, 29101-00 Brazil. Costa is a Founder, Principal and a member of TelexFree's Executive Office.

49. Merrill, Wanzeler and Costa are collectively referred to herein as "Founders."

50. Steven M. Labriola is an individual with a last known usual place of abode of 21 Kiwanis Beach Road, in Upton, County of Worcester, Commonwealth of Massachusetts

01568. Labriola is a Principal and a member of TelexFree's Executive Office.

51. Joseph H. Craft, also known as Joe H. Craft ("Craft") is an individual with a last known usual place of abode at 825 E. Main Street in Boonville, Indiana 47601-1885. Craft is a Principal and a member of TelexFree's Executive Office.

52. Merrill, Wanzeler, Costa, Labriola and Craft are collectively referred to herein as "Principals" or "Executive Office."

53. Defendant Ann Genet ("Genet") served as TelexFree, LLC's Nevada agent, servant or employee, was a resident of Las Vegas, Nevada who served TelexFree's Executive Office and is an individual associated with Craft and Bridgeway Financial Corporation. Her address is unknown at this time.

54. Katia Wanzeler is an individual with a last known usual place of abode of 373 Howard Street, in Northborough, County of Worcester, Commonwealth of Massachusetts 01532. Katia Wanzeler served as an agent servant or authorized representative of TelexFree's Executive Office and is otherwise an individual associated with TelexFree's Founders, Principals, Executive Office, and Top Promoters.

55. Genet and Katia Wanzeler are collectively referred to herein as "Associated Individual" Defendants.

56. Sanderley Rodrigues de Vasconcelos ("Rodrigues") has a last known usual place of abode of 100 Stockton Street, Apt. 49, in Chelsea, County of Suffolk, Commonwealth of Massachusetts 02150. Rodrigues is a TelexFree Top Level Promoter

57. Santiago de la Rosa ("De La Rosa") is an individual with a last known usual place of abode of 189 Beacon Hill Avenue, Unit 2, in Lynn, County of Essex, Commonwealth of Massachusetts 01902. De La Rosa is a TelexFree Top Level Promoter.

58. Randy N. Crosby ("Crosby") has a last known usual place of abode of 30 Club Court, in Alpharetta, Georgia 30005. Crosby is a TelexFree Top Level Promoter.

59. Scott Miller ("Miller") has a last known usual place of adobe of 973 Thornwood Drive, Greenwood, IN 46143. Miller is a TelexFree Top Level Promoter.

60. Faith R. Sloan ("Sloan") has a last known usual place of abode of 515 E. End Avenue, Unit 105, in Calumet City, Illinois 60409. Sloan is a TelexFree Top Level Promoter.

61. Daniil Shoyfer ("Shoyfer") has a last known usual place of abode of 123 Arbutus Avenue, in Staten Island, New York 10312. Shoyfer is a TelexFree Top Level Promoter.

62. Rodrigues, De La Rosa, Crosby, Sloan, Shoyfer, and Miller are collectively referred to herein as "Top Level Promoters."

63. TelexFree's Founders, Principal, Executive Office, Top Level Promoter Defendants are collectively referred to as "TelexFree's Executives" or "Executives."

64. By their acts and omissions, each above Founder, Principal, Executive Office, Top Level Promoter Defendant and Associated Individual Defendants transacted business in the Commonwealth of Massachusetts; contracted to supply services and things in the Commonwealth of Massachusetts; caused tortious injury to the putative class in the Commonwealth of Massachusetts; regularly solicited business and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; made use of the laws, rights, and protections offered by the Commonwealth of Massachusetts; and derived substantial revenue from goods used or consumed or services rendered in the Commonwealth of Massachusetts.

b. Licensed Professionals including Attorneys and Other Professional Services Providers

65. Defendant Gerald P. Nehra, Esq. ("Nehra") is an individual who now resides or formerly resided at 1710 Beach Street, Muskegon, Michigan, 49441 and also maintains a second

residence at 2149 Tall Oak Court, Sarasota, Florida 34232. Nehra is an attorney duly licensed to practice law in the State of Michigan.

66. Defendant Gerald P. Nehra, Attorney at Law, PLLC ("Nehra Law Firm") is a professional limited-liability company engaged in the practice of law and duly organized and existing under the laws of Michigan, with offices located at 1710 Beach Street, Muskegon, Michigan, 49441. Nehra is its sole member, manager, and registered agent.

67. Defendant Richard W. Waak ("Waak") is an individual who now resides or formerly resided at 11300 East Shore Drive, Delton, Michigan, 49046. Waak is an attorney duly licensed to practice law in the State of Michigan.

68. Defendant Richard W. Waak, Attorney at Law, PLLC ("Waak Law Firm") is a professional limited-liability company engaged in the practice of law and duly organized and existing under the laws of Michigan, with offices located at 11300 East Shore Drive, Delton, Michigan, 49046. Waak is its sole member, manager, and registered agent.

69. Defendant Law Offices of Nehra and Waak ("Nehra and Waak Law Firm") is a general partnership formed between Defendants Nehra, Waak, Nehra Law Firm, and Waak Law Firm with primary offices located at 11300 East Shore Drive, Delton, Michigan, 49046, and a secondary office is located at 1710 Beach Street, Muskegon, Michigan.

70. Nehra, Waak, Nehra Law Firm, Waak Law Firm, Nehra and Waak Law Firm, are collectively referred to herein as "Attorney Defendants."

71. Defendant Opt3 Solutions, Inc. ("Opt3") is a corporation duly organized and existing under the laws of the State of California, having its principal place of business at 120 Vantis, Suite 300, Alison Viejo, California.

72. Defendant Jason A. Borromei, also known as Jay Borromei ("Borromei"), is an

individual with a last known place of abode located at 23952 Catbird Court, Laguna Niguel, California 92677. At all material times, Borromei served as president and authorized representative of Opt3.

73. Borromei and Opt3 are collectively referred to herein as "Other Professional Services Providers."

74. By their acts and omissions, the Attorney Defendants and Other Professional Services Providers have transacted business in the Commonwealth of Massachusetts; contracted to supply services and things in the Commonwealth of Massachusetts; caused tortious injury to the putative class in the Commonwealth of Massachusetts; regularly solicited business and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; made use of the laws, rights, and protections offered by the Commonwealth of Massachusetts; and derived substantial revenue from goods used or consumed or services rendered in the Commonwealth of Massachusetts.

c. The Accountant Defendants

75. Defendant Craft is a certified public accountant who privately provided accounting services and financial advice to TelexFree and others before he served as the chief financial officer of TelexFree, Inc. and TelexFree, LLC.

76. Defendant Craft Financial Solutions, LLC ("Craft Financial") is a limited-liability company duly organized and existing under the laws of the State of Indiana with a principal place of business located at 825 E. Main Street, Boonville, Indiana, 47601-1885. Craft Financial provided accounting services and financial advice to TelexFree and others. Craft is also the sole member and manager of Craft Financial.

77. PricewaterhouseCoopers, LLP ("PricewaterhouseCoopers") is a Registered foreign limited liability partnership, organized and existing under the laws of the State of

Delaware, having a principal place of business in New York, New York, and having a place of business at 125 High Street, in Boston, County of Suffolk, Commonwealth of Massachusetts 02110. At times material herein, PricewaterhouseCoopers provided accounting services and other professional services to TelexFree.

78. Craft, Craft Financial and PricewaterhouseCoopers are collectively referred to herein as "Accountant Defendants."

79. By their acts and omissions, the Accountant Defendants have transacted business in the Commonwealth of Massachusetts; contracted to supply services and things in the Commonwealth of Massachusetts; caused tortious injury to the putative class in the Commonwealth of Massachusetts; regularly solicited business and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; made use of the laws, rights, and protections offered by the Commonwealth of Massachusetts; and derived substantial revenue from goods used or consumed or services rendered in the Commonwealth of Massachusetts.

80. The Attorney Defendants, Accountant Defendants and the foregoing Other Professional Services Providers are collectively referred to herein as "Licensed Professionals."

3. FINANCIAL SERVICES PROVIDERS

a. The Bank Defendants

81. TD Bank, N.A. ("TD Bank") is a national banking institution in the United States chartered and supervised by the federal Office of the Comptroller of the Currency (the "OCC") with its principal place of business at 15 Broad Street in Boston, County of Suffolk, Commonwealth of Massachusetts 02109.

82. Bank of America, N.A. ("Bank of America") is a national banking institution in the United States chartered and supervised by the OCC with a principal place of business in Charlotte, North Carolina. Bank of America, N.A. is a subsidiary of Bank of America, and

conducts business in the Commonwealth of Massachusetts at, *inter alia*, 100 Federal Street, in Boston, County of Suffolk, Commonwealth of Massachusetts 02110.

83. RSB Citizens, N.A. ("Citizens Bank") conducts business in the Commonwealth of Massachusetts at 725 Canton St., Norwood, County of Norfolk, Commonwealth of Massachusetts 02062 and has a branch at 290 Turnpike Road, Westborough, County of Worchester, Commonwealth of Massachusetts 01581. At all times material herein, Defendant Citizens Bank provided banking services, maintained accounts, and received and executed transfers of funds from or for the benefit of TelexFree.

84. Wells Fargo Bank, N.A. ("Wells Fargo") is a national banking institution in the United States chartered and is supervised by the federal Office of the Comptroller of the Currency, with an address at P.O. Box 6995, Portland, Oregon 97228 and a branch at 800 North Magnolia Ave., Orlando, Florida. Wells Fargo conducts business in the Commonwealth of Massachusetts at, *inter alia*, 201 Washington Street, in Boston, County of Suffolk, Commonwealth of Massachusetts. At all times material herein, Defendant Wells Fargo provided banking services, maintained accounts, and received and executed transfers of funds from or for the benefit of TelexFree.

85. Fidelity Co-operative Bank, doing business as Fidelity Bank, ("Fidelity Bank") is a Massachusetts Chartered Banking Institution, having its principal offices at 675 Main Street, in Fitchburg, County of Worcester, Commonwealth of Massachusetts 01420.

86. John F. Merrill is an individual with a last known usual place of abode of 7 Kinnicutt Road, in Worcester, Massachusetts 01602.

87. At all material times herein, John F. Merrill served as president and chief operating officer of Fidelity Bank.

88. Synovus Bank ("Synovus") is a Georgia Chartered Banking Institution, having its principal offices at 1148 Broadway, in Columbus, County of Muscogee, Georgia 31901.

89. TD Bank, Bank of America, Citizens Bank, Fidelity Bank, John F. Merrill, Wells Fargo and Synovus are collectively referred to herein as the "Defendant Banks."

b. Payment Processing Service Companies

90. Global Payroll Gateway, Inc. ("GPG") is a corporation duly organized and existing under the laws of the State of California, having its principal offices at 18662 MacArthur Boulevard, Suite 200, in Irvine, California 92612.

91. International Payout Systems, Inc. ("IPS") also doing business as i-Payout, is a corporation duly organized and existing under the laws of the State of Florida, having its principal offices at 2500 East Hallandale Beach Boulevard, Suite 800, Hallandale Beach, Florida 33009.

92. Propay, Inc. ("ProPay") is a corporation duly organized and existing under the laws of the State of Utah with its principal offices at 3400 North Ashton Boulevard, Lehi, Utah 84043 and also does business as PROPAY.COM.

93. Base Commerce, LLC ("Base Commerce") formerly known as Phoenix Payment, LLC, is a limited liability company duly organized and existing under the laws of the State of Arizona with its principal offices at 7910 S. Kyrene Road, Suite 106, Tempe, Arizona 85284, and also does business as Phoenix Payments.

94. John Hughes ("Hughes") is an individual with a last known usual place of abode of 6455 E. Rustic Drive, Mesa, Arizona 85215.

95. Vantage Payments, LLC ("Vantage Payments") is a limited liability company duly organized and existing under the laws of the State of Arizona, having its principal offices at

8300 N. Hayden Road #A207, Scottsdale, Arizona 85251.

96. Dustin Sparman ("Sparman") is an individual with a last known usual place of abode of 8702 E. Plaza Avenue 85610, Scottsdale, Arizona 85250.

97. Allied Wallet, Ltd. ("Allied Wallet") is a limited company having its central office in the United Kingdom, and having its United States office at 900 Sunset Boulevard, Suite 820, West Hollywood, California 90069.

98. GPG, IPS, ProPay, Base Commerce, Vantage Payments, Hughes, Sparman and Allied Wallet are collectively referred to herein as the "Payment Processing Service Companies."

99. Defendants Bank of America, TD Bank, Fidelity Bank, Synovus, GPG, IPS, ProPay, Base Commerce, Vantage Payments, Allied Wallet, John F. Merrill, Hughes, Sparman and the Doe Banks and Doe Payment Processors are referred to herein collectively as the "Financial Services Providers".

100. It is believed that additional parties participated and aided and abetted in TelexFree's Pyramid Scheme but their identities or nature or extent of unlawful participation are as yet unknown. For ease of reference, they can only be referred to herein at this time as Defendants Doe Top Level Promoters, Doe Licensed Professionals, Doe Banks, Doe Payment Processing Services and Paralegal Doe.

III. FACTS AND ALLEGATIONS

A. Chronological Overview

101. The template for TelexFree's Pyramid Scheme was developed and refined in the years immediately prior to the takeoff of its United States enterprise.

102. In 2010, TelexFree Founders and Principals Wanzeler, Merrill and Costa first

formed and registered Ympactus Comercial Ltda ("Ympactus") under the laws of Brazil.

103. Ympactus operated out of offices in Marlborough, Massachusetts and Brazil.

104. TelexFree's United States Pyramid Scheme operated out of the same location. [3]

105. Ympactus was registered as a company that would market cosmetics, perfumery and toilet products.

106. Later, in Brazil, Ympactus purported to sell internet telephone services, but in reality sold Pyramid Scheme "memberships" to investors.

107. TelexFree's United States business model and operations were essentially identical to Ympactus' business model and operations in Brazil.[4]

108. Ympactus and TelexFree's U.S. memberships offered investors (the "Members" or "Promoters") guaranteed high returns in exchange for promoting the company online and recruiting new investors.

109. Ympactus and TelexFree falsely advertised themselves as a "multi-level marketing" company selling local and international telephone service plans that used unique groundbreaking "voice over internet protocol" ("VoIP") technology.

110. The VoIP technology used by Ympactus and TelexFree was not unique or groundbreaking. In fact, it was substandard and offered nothing more than the free Google Voice and Skype.

111. In February 2012, Wanzeler and Merrill formed TelexFree, Inc. in the

[3] There was considerable overlap between Ympactus, which also operated as TelexFree, and TelexFree's United States companies and operations. To assist the reader, TelexFree's Brazilian Pyramid Scheme will be referred to as "TelexFree Brazil" or "Ympactus." "TelexFree" means the various United States-based TelexFree entities, as well as the Operational Defendants as defined herein.

[4] As in Brazil, TelexFree's business model has it accept $299 deposits from Members on the promise of a $20 a week rate of interest for 52 weeks. The company also pays Members directly based on how many deposits recruited down line affiliates make via a matrix.

Commonwealth of Massachusetts.

112. Wanzeler and Merrill formed TelexFree, Inc. with the intent to use the same unlawful Ympactus business model in the United States.

113. After they opened TelexFree in the United States, the Operational Defendants methodically released false or misleading information that was intended to, and did, separate publicly TelexFree and TelexFree Brazil or Ympactus and otherwise shower their Scheme with credibility.[5] While these calculated information releases were sufficient to mislead members of the class, they were detectable by the robust and sophisticated Financial Services Providers' Know Your Customer (as defined herein) investigations and evaluations.

114. In March 2012, Founders and Principals Costa, Merrill and Wanzeler repurposed Ympactus to front the TelexFree Brazil's VoIP pyramid scheme.

115. In April 2012, Craft was retained to serve as TelexFree's accountant and prepared its financial statements and taxes.[6]

116. As early as July 27, 2012, the multilevel marketing news site BehindMLM.com published a detailed analysis of TelexFree's business operation, concluding that:

> The corporate structure of TelexFree and the obvious business relationship between the company and Disk a Vontade and complete lack of disclosure on either company's website is cause for concern…
>
> Personally I believe the ridiculously high membership fee charged by TelexFree (a $299 fee to publish ads for the company?) and the fact that individual members are able to purchase up to five membership positions strongly indicates a lack of external revenue here.[7]

117. Over the ensuing months, the number of online articles and websites

[5] *See, e.g.,* ¶¶126, 127, 129, 133, 134, 142, 147, 151, 155, 164, 528, *infra*; s*ee also* http://behindmlm.com/companies/telexfree/gerry-nehra-gives-legal-blessing-to-telexfree/.

[6] *See* Omnibus Decl. of William H. Runge, Case 14-1552-abl, Doc. 13, ¶ 31. A true and correct copy of this Declaration is attached hereto as Exhibit 2.

[7] *See* Exhibit 3, Decl. of Gray Echavarria at Attachment 5.

characterizing TelexFree as a Pyramid Scheme increased.

118. During or about November 2012, TelexFree increased its focus on United States-based operations including the development of special relationships with United States-based banks, especially those located in the Commonwealth of Massachusetts.

119. TelexFree's business plan and operations were an unlawful Pyramid Scheme and not a lawful multi-level marketing ("MLM") enterprise. At all times relevant to this complaint, TelexFree violated the express terms of M.G.L. c. 93, § 69.

120. In January 2013, Ympactus/TelexFree Brazil came under legal scrutiny in Brazil by the Brazilian Bureau of Consumer Protection (known as Procon).

121. Procon was suspicious of the company's rapid recruitment of new investors and lack of substantial sales, and Brazilian authorities opened an investigation against Ympactus.

122. Prior to and at the time Brazilian authorities shut them down for running a Pyramid Scheme, Ympactus also operated under the name TelexFree.

123. In a January 11, 2013 press release, the Brazilian Bureau of Consumer Protection indicated that its investigation of TelexFree had "detected evidence of crimes."

124. During early 2013, "TelexFree affiliates were urging recruits to make walk-in deposits at a Bank of America branch located at 188 Boston Turnpike, Shrewsbury, Massachusetts 01545.[8]

125. In early 2013, TelexFree also preferred to use TD Bank.[9]

126. In a March 1, 2013 press release, Merrill admitted "[w]e [TelexFree] pay our representatives weekly if they follow our system and advertise our service on the Internet." This

[8] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 35 - Facebook Page with Instructions to Deposit at Bank of America, Shrewsbury, Massachusetts; *see also* Exhibit 3, Decl. of Gray Echavarria, Attachment 22.

[9] *Id.*

payment condition required no actual sales of the VoIP product.

127. On March 7, 2013, a TelexFree blog falsely claimed that the TelexFree "program" had "SEC approval from the USA."

128. During spring 2013, Labriola, director of marketing for TelexFree, Boston, announced via a TelexFree-approved email that TelexFree was "pulling out of Bank of America."

129. TelexFree's threatened pull out followed Bank of America's questioning of TelexFree's suspicious, tortious or illegal activity.

130. During spring 2013, Bank of America had exchanges with TelexFree about terminating their relationship and discontinuing the service of their accounts, but it did not do so until much later.

131. In an April 2013, TelexFree-approved internet video, Defendant Crosby stated "[t]his company has a joint venture with Best Western." TelexFree did not have the described business relationship with Best Western.

132. During spring 2013, the TelexFree website and its president and principal Merrill also falsely promoted the Best Western offer.

133. In or about May 2013, Defendant Miller appeared in an internet video deceptively touting TelexFree as an opportunity to earn "not just wealth, but generational wealth," which was posted on YouTube and widely distributed via social media, and in which he maliciously boasted of his earnings through TelexFree and encouraged others to join the scheme.[10]

134. As part of the June 13, 2013 Court in Acre's Public Prosecutor's injunction,

[10] *See* Administrative Complaint of instituted by the Secretary of the Commonwealth of Massachusetts, Securities Division, Dkt. No. 2014-0004, page 39, attached as Attachment 36 to Exhibit 3, Decl. of Gray Echavarria.

TelexFree Brazil faced fines of R$100,000 a day ($42,500 USD) if they signed up any more Brazilian affiliate investors or paid out any existing ones.

135. On June 19, 2013, the Brazilian Court in Acre issued an injunction putting "a stop to TelexFree Brazil's business operations, including the registration of new affiliate investors, acceptance of new investments and paying any returns owed on existing affiliate investments."[11]

136. On or about June 20, 2013, after the Court in Acre suspended TelexFree Brazil's activities, TelexFree Principals Merrill and Wanzeler and TelexFree Executive Office employee Labriola all maliciously made false, deceptive and misleading statements in a TelexFree-approved video intended to reassure United States Promoters. For example, Merrill stated that "[i]nquiries like this are very common in network marketing . . . . We have such unbelievable growth that we're going to draw attention."

137. Labriola stated that "[t]hese things happen to network marketing companies over and over again… Let's not worry about it."

138. Wanzeler added that "[w]e're still here. We're going to stay here for a long time."

139. During or before June 2013 (and within weeks of having their Brazilian operation shuttered), Wanzeler, Merrill, Labriola and Costa, with the participation and assistance of others including the Defendants named in this complaint, placed an increased focus on and rapidly expanded their fraud in the United States under the name TelexFree.

140. During or before June 2013, and after shifting its geographic target market to the United States, several TelexFree Top Level Promoters were recruited by Wanzeler, Costa, Merrill and Labriola and began to target the Brazilian-American and Dominican-American

[11] *Id.*

communities in the United States.

141. In July 2013, Newport Beach, California became the staging ground for TelexFree's first United States-based "Extravaganza." This was approximately one month after the Brazilian Court in Acre had frozen TelexFree's Brazilian assets and enjoined TelexFree from any further membership or registration related efforts in Brazil,

142. The July 2013 TelexFree "Super Weekend" was organized by Zeek Rewards' high-profile pitchman Thomas More.[12]

143. Thomas More was a key spokesperson and authorized representative for Zeek Rewards. More held out that he had acquired over a million Zeek Rewards VIP points and otherwise greatly profited (from the fraud) while it lasted.

144. At the time More organized TelexFree's Newport Beach "Super Weekend" extravaganza, he was a named defendant in a Zeek Rewards Ponzi scheme-related lawsuit.[13]

145. During the July 2013 "Super Weekend," Defendant Miller took the stage and falsely promoted a connection and promotion with Best Western Hotel.

146. During the July 2013 TelexFree "Super Weekend," Attorney Defendant Nehra gave his "blessing" to TelexFree, representing not only that it was a lawful enterprise and why, but also that he was a duly licensed attorney with extensive specialized skill and experience in MLM.[14]

147. During or about August 2013, Attorney Jeffery Babener, of the Law Firm Babener & Associates advised TelexFree Principals, Executive Office, Licensed Professionals

[12] In a widely viewed internet video of the event titled "TelexFree Corporate Speakers at Newport Beach Extravaganza," Merrill specifically thanked Tom More for putting it together.

[13] *See* Exhibit 4, Decl. Carol L. Harris, Exhibit 14.

[14] *Id.*

and others that TelexFree's business model, operations and payout scheme were an unlawful MLM and must be changed.

148. During or about August 2013, Attorney Babener advised TelexFree Principals, Executive Office, Licensed Professionals and others that the TelexFree MLM violated M.G.L. c. 93, §69 and, thus, M.G.L. c. 93A.

149. In or about August 2013, Brazilian Judge Braz Aristóteles dos Reis found that, in the public eye, TelexFree (Brazil) and Ympactus are one and the same company.

150. On August 19, 2013, the TelexFree FaceBook page falsely posted the following: "The President of Google involved with Telexfree!! Google's President will be speaking at our next Telexfree event in Brazil….11 year contract with Best Western 23 Millionaires in 1 year and now Google's President at our Next event. Hmmmm is he coming to your's [sic]?. Didn't think so.... It's time to get educated. You get what you pay for!"

151. In fall 2013, the Secretary of the Commonwealth of Massachusetts, Securities Division ("SOC") raised questions concerning TelexFree's business model.

152. In late 2013, Costa withdrew his ownership in Ympactus.

153. Between mid-November 2013 and March 2014, TelexFree transferred approximately $30 million from its operating accounts to its Principals and officers and to affiliate companies with the necessary assistance of the Financial Services Provider Defendants.

154. On or before December 2013, Craft was hired to serve and did thereafter serve as TelexFree, LLC's chief financial officer.

155. In a January 2014 TelexFree promotional video, Labriola misled potential Promoters with the intent that they invest in TelexFree by stating that "[t]here are some people that are making incredible money in this."

156. In January and February 2014, the SOC issued subpoenas.

157. On February 19, 2014, the National Bank of Rwanda, in conjunction with the Ministry of Trade and Industry of Rwanda, issued a report concluding that TelexFree's Rwanda-based affiliate, P.L.I. TelexFree Rwanda, Ltd., was a pyramid scheme and could facilitate money laundering, and that the Ministry of Trade and Industry subsequently banned any further operations in the country by TelexFree.

158. On February 20, 2014, United Kingdom authorities issued a public warning that TelexFree UK was a Ponzi scheme and that its Brazilian operation had been shut down.

159. During late February 2014 through early March 2014, TelexFree Principals, Executive Office, Licensed Professionals and Top Level Promoters developed during teleconferences strategies to siphon off funds and maximize the exploitation of the rank and file TelexFree Promoters.

160. During or about late February 2014 through early March 2014, TelexFree Principals, Executive Office, Licensed Professionals and Top Level Promoters held an invitation-only meeting at TelexFree's Marlborough, Massachusetts headquarters with the intent of siphoning off funds and maximizing the exploitation of the rank and file TelexFree Promoters.

161. On March 9, 2014, TelexFree unilaterally changed its compensation plan, for the first time requiring existing Promoters to actually sell its VoIP product to qualify for the payments that TelexFree had previously promised to pay them. Before making the change, TelexFree informed its highest grossing Top Level Promoters of the impending change in compensation and held a strategy meeting during which they discussed unfair, deceptive and unlawful ways to further fleece the rank and file TelexFree Members and ways to continue to profit from the unlawful business.

162. The March 9, 2014 TelexFree compensation plan change generated a storm of protests from Promoters who were unable to recover their money.

163. On March 9, 2014, Steven Labriola and others traveled to Haiti and made public that they arrived via private jet, and once on the ground, proclaimed "we got in the Prime Minister of Haiti's motorcade."

164. On April 1, 2014, dozens of Promoters descended upon TelexFree's Marlborough Office to protest the March 9 change and to attempt to reclaim their money. They left empty-handed.

165. On April 14, 2014, TelexFree, Inc. along with two affiliated companies, TelexFree, LLC and TelexFree Financial, Inc. (together, the "Bankrupt Companies"), filed for Chapter 11 bankruptcy protection in Nevada claiming that TelexFree revenues were insufficient to meet its obligations.

166. On or about April 15, 2014, the United States Department of Homeland Security, the Federal Bureau of Investigation (the "FBI") and others raided the offices of TelexFree, shutting down its operation, seizing records and other evidentiary items.

167. On May 9, 2014, the United States Department of Homeland Security filed criminal proceedings against two of TelexFree's Founders, Wanzeler and Merrill, for conspiracy to commit wire fraud.

168. Thereafter, the United States Department of Justice (the "DOJ") brought charges of wire fraud and conspiracy to commit wire fraud against TelexFree's owners Wanzeler and Merrill, and the same were indicted by grand jury on July 23, 2014.

169. TelexFree's other Principals and Operational Defendants are currently under state and federal investigation, and some are the subjects of lawsuits by the Securities and Exchange

Commission ("SEC") and the SOC for operating a Pyramid Scheme as detailed herein.

170. The DOJ announced at the March 3, 2015 status hearing in the above-captioned MDL 2566 that undisclosed Financial Service Providers are also the subjects of its ongoing investigations.

B. TelexFree's History, Formation and its Brazilian Links

171. In or about 2007, Wanzeler, Merrill, Costa and other Defendants began operating or assisting in the operation of purported telecommunications businesses in the United States and Brazil, under the names "Brazilian Help" and "Disk A Vontade Telefonia," respectively, charging $49.90 monthly for VoIP service.

172. Disk A Vontade Telefonia, Ltd., also known as Diskavontade, also known as Disk ("Disk A Vontade"), is a Brazilian limited liability company, now or formerly having its principal offices as Rua Jose Luiz Gabeira, NRO 170, APTO 103 Barro Vermelho.

173. Defendant Wanzeler is the chief executive officer of Disk A Vontade.

174. Defendant Merrill is vice president and a signatory of Disk A Vontade.

175. Disk A Vontade's domain ("discavontade.com") is registered to Defendant Wanzeler.

176. Brazilian Help, Inc. ("Brazilian Help") is a domestic profit corporation, organized and existing under the laws of the Commonwealth of Massachusetts, now or formerly having a principal place of business at 225 Cedar Hill Street, Suite 118, in Marlborough, Massachusetts 01752.

177. Brazilian Help's Massachusetts office is in the same building in Marlborough, Massachusetts as the Bankrupt TelexFree Companies.

178. Defendant Wanzeler is the president, secretary, treasurer, and registered agent of Brazilian Help.

179. Brazilian Help and Disk A Vontade were the American and Brazilian branches, respectively, of the same enterprise.

180. Costa, a longtime friend of Wanzeler, was employed by Disk A Vontade and was Wanzeler's top sales agent in Brazil.

C. Ympactus, TelexFree's Brazilian-Based Operations

181. Ympactus is a Brazilian limited liability company, which served as TelexFree's Brazilian branch.

182. Wanzeler, Costa and Merrill have jointly controlled Ympactus.

183. The records of the SOC demonstrate no meaningful distinction between U.S. TelexFree operations and Brazilian operations.

184. As described by TelexFree management, the ownership interests in TelexFree, Inc. (Massachusetts-based), TelexFree LLC (Nevada-based) and Ympactus (Brazilian-based) overlap.

185. At all times there has been a high degree of operational interdependence among Ympactus and the TelexFree entities and, in many ways, the operations of these entities are indistinguishable.

186. Paragraph 2.1.2 of the standard TelexFree Pre-March 9 Contract with its Members states "TELEXFREE INC, from its headquarters in, Marlboro [sic], Massachusetts (U.S.), on the basis of an operating contract between the latter and the CONTRACTOR (YMPACTUS), has as its primary activity VOIP telephony, using its equipment installed at its headquarters in Massachusetts, where it makes the necessary connections for these calls; it also provides virtual media, through the website www.telexfree.com to associates and to the Promoters that YMPACTUS/TELEXFREE coordinates and controls, including the respective

publicity channels."[15]

187. This contract was made available to each Defendant at or prior to the time they became involved with TelexFree.

188. Each of the Financial Services Defendants was obligated to, and did review the TelexFree contract during its Know Your Customer investigation, analysis and monitoring.

189. The TelexFree entities used the same executives, management, employees, back office support, physical address and offices, merely providing identical information in multiple languages and under a different name in part after Ympactus was shut down and had its assets seized.

190. At times relevant to this complaint, TelexFree used essentially identical fraudulent income generation methods as Ympactus.

191. At times relevant to this complaint, TelexFree used essentially identical promotional materials and marketing techniques as Ympactus.

192. In January 2013, Ympactus came under legal scrutiny in Brazil by the Brazilian Bureau of Consumer Protection (known as Procon). Suspicious of the company's rapid recruitment of new investors and lack of substantial sales, Brazilian authorities opened an investigation against Ympactus.

193. In late 2013, Costa withdrew his ownership in Ympactus for what Merrill characterized as "legal reasons."[16]

194. Both Merrill and Wanzeler provided testimony to the SEC stating that they transferred at least $3 million to Costa long after Brazilian authorities shut down Ympactus

[15] *See* TelexFree Pre-March 9 Contract, attached herewith as Exhibit 1.

[16] *See* Administrative Complaint of instituted by the SOC, Dkt. No. 2014-0004, page 7, attached as Attachment 36 to Exhibit 3, Decl. of Gray Echavarria.

operations.[17] This was accomplished only with the necessary assistance of the Financial Services Defendants.

195. The TelexFree entities use the same website and back office support as Ympactus, providing identical information in multiple languages.

196. Since at least February 15, 2012, there has been a high degree of operational interdependence among TelexFree entities and Ympactus, and, to sophisticated banks and payment processors, the operations of these entities were related.

197. The TelexFree entities and Ympactus shared common management and ownership.

198. For example, both Merrill and Wanzeler, self-proclaimed Founders of TelexFree, hold 50% ownership interest in the United States entities and 20% and 40% interests respectively in the Brazilian entity.

199. At times relevant to this complaint, Costa, head of Brazilian operations and longtime friend of Wanzeler, was an owner of TelexFree, LLC.

200. More particularly, and at least since February 15, 2012, Defendants Merrill, Wanzeler, Labriola, Craft and Costa have together owned, managed and/or operated the TelexFree entities and Ympactus with no distinction among these entities other than Ympactus' Brazilian operations being shut down by Brazilian authorities.

201. The TelexFree entities and Ympactus have also shared common financial, strategic, legal and human resources.

202. TelexFree entities and Ympactus were both wrongfully, fraudulently, unfairly or deceptively organized from the start to unlawfully convert, divert, launder or shelter funds

[17] *Id.*

rightfully belonging to Plaintiffs and the putative class.

D. The Bankrupt TelexFree Companies

203. Between mid-November 2013 and April 17, 2014, TelexFree, Inc. and TelexFree, LLC transferred approximately $30 million from their operating accounts to accounts owned and controlled by TelexFree, its affiliated companies or the individual Defendants.

204. Defendant Ann Genet served as TelexFree's advisor and person on the ground in Nevada.

205. The investment funds of the putative class inflated TelexFree accounts by hundreds of millions of additional dollars.

206. The funds of the putative class remain unaccounted for to date.

E. TelexFree, Inc.

207. Common Cents Communications, Inc. was formed by Merrill, Wanzeler and Labriola in December 2002.

208. Common Cents Communications, Inc. was a predecessor enterprise to TelexFree, Inc.

209. In 2012, Costa suggested to Wanzeler that they begin soliciting customers in the United States through online advertisements.

210. Acting on Costa's proposal, Wanzeler and Merrill changed the name of Common Cents Communications, Inc. to TelexFree, Inc. on February 15, 2012.

211. Wanzeler and Costa also caused the website, "www.telexfree.com" to be created.

212. Disk A Vontade was the registered owner of the telexfree.com domain name.

213. By February 15, 2012 and until approximately April 15, 2014, TelexFree, Inc. maintained a principal office at TelexFree's Marlborough Office.

214. Co-Defendants Merrill and Wanzeler are officers and directors of TelexFree, Inc.,

a domestic profit corporation.

215. Beginning on March 15, 2005, Merrill served as registered agent of Common Cents Communications, Inc., and continued as registered agent thereof after the change of name to TelexFree, Inc.

216. Since February 15, 2012, Merrill has maintained a registered address for service of process at TelexFree's Marlborough Office.

217. Merrill, Wanzeler, Labriola, Craft and Costa conducted the business of TelexFree, Inc. in TelexFree's Marlborough Office.

F. TelexFree, LLC

218. In July 2012, Wanzeler, Merrill and Costa together formed TelexFree, LLC.

219. Telex Free, LLC was organized under the laws of the State of Nevada on July 19, 2012.

220. TelexFree, LLC was wrongfully, fraudulently, unfairly or deceptively organized from the start to unlawfully convert, divert, launder or shelter funds rightfully belonging to Plaintiffs and the putative class.

221. There is no distinction between the business operations of TelexFree, LLC and TelexFree, Inc.

222. At all material times, TelexFree LLC was identified as a limited liability company as registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number 001105166). TelexFree, LLC registered with the Secretary of State for the Commonwealth of Massachusetts on April 18, 2013.

223. TelexFree, LLC maintained an address at the Nevada Post Office Box.

224. At least between February 15, 2012 and approximately April 15, 2014, TelexFree, LLC operated a Massachusetts office at TelexFree's Marlborough Office.

225. At all material times, Co-Defendants Costa, Merrill and Wanzeler were the managers of TelexFree, LLC.

226. At least between February 15, 2012 and approximately April 15, 2014, Merrill was TelexFree, LLC's registered agent for the Commonwealth of Massachusetts whose address is identified as TelexFree's Marlborough Office.

227. At least between February 15, 2012 and approximately April 15, 2014, Merrill, Wanzeler, Labriola, Craft and Costa conducted the business of TelexFree, LLC in TelexFree's Marlborough Office.

G. TelexFree Financial, Inc.

228. Defendant Craft incorporated TelexFree Financial on December 26, 2013.

229. TelexFree Financial was wrongfully, fraudulently, unfairly or deceptively organized from the start to unlawfully convert, divert, launder or shelter funds rightfully belonging to Plaintiffs and the putative class.

230. At all material times, Co-Defendants Merrill and Wanzeler were officers and directors of TelexFree Financial, and Co-Defendant Wanzeler is its registered agent.

231. On December 30 and December 31, 2013, TelexFree Financial received wire transfers totaling $4,105,000 from TelexFree, Inc. and TelexFree, LLC.

232. On April 14, 2014, Defendants TelexFree, Inc., TelexFree, LLC and TelexFree Financial abruptly sought bankruptcy protection in Nevada under the United States Bankruptcy Code, Chapter 11, admitting that they could not meet their obligations from VoIP revenues and seeking authority to reject all their current obligations to Promoters.

H. Relationship of the Bankrupt TelexFree Companies

233. Since at least February 15, 2012, there has been a high degree of operational interdependence among TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, and the

operations of these entities are indistinguishable.

234. TelexFree, LLC, TelexFree, Inc. and TelexFree Financial shared common management and ownership.

235. More particularly, and at least since February 15, 2012, Defendants Merrill, Wanzeler, Labriola, Craft and Costa have together owned, managed and/or operated TelexFree, LLC, TelexFree, Inc., and TelexFree Financial with no distinction among these entities.

236. At least between February 15, 2012 and approximately April 15, 2014, funds were freely transferred between and among TelexFree, LLC, TelexFree, Inc., and TelexFree Financial with no distinction among these entities.

237. TelexFree, LLC, TelexFree, Inc., and TelexFree Financial have also shared common financial, strategic, legal, and human resources.

238. TelexFree, LLC, TelexFree, Inc., and TelexFree Financial are alter ego entities that combine to form a single enterprise.

I. Defendants Electric and Mobile

239. Mobile is a Nevada corporation formed on November 26, 2013.

240. According to its filings with the State of Nevada Secretary of State Office, Mobile identifies its officers and directors as follows:

- Defendant Merrill is president, secretary and director, having an address at the Nevada Post Office Box;
- Defendant Wanzeler is treasurer and director, having an address at the Nevada Post Office Box;
- Defendant Ann Genet served as their advisor and person on the ground; and
- Defendant Craft provided essential services and integral advice, without which Mobile would not have been able to operate.

241. TelexFree, Inc. and TelexFree, LLC made a $500,870 "loan" to Mobile during the

class period, as indicated by financial statements prepared by Craft. The loan was a sham.

242. Wanzeler and Merrill formed Electric in December 2013 as a Nevada limited liability partnership.

243. Defendant Ann Genet served as Mobile's, Electric's and all TelexFree entities' advisor and person on the ground. Defendant Genet provided essential services and integral advice, which Electric and the other TelexFree Defendants used to further and operate the Pyramid Scheme.

244. Defendant Craft provided essential services and integral advice, without which Electric would not have been able to operate.

245. According to its filings with the State of Nevada Secretary of State Office, Co-Defendants Merrill and Wanzeler are Electric's general partners.

246. Merrill and Wanzeler further list their addresses as the Nevada Post Office Box.

247. Electric also lists its address as the Nevada Post Office Box.

248. TelexFree, Inc. and TelexFree, LLC made a $2,022,329 "loan" to Electric during the class period, as indicated by financial statements prepared by Craft.[18] The loan was a sham.

249. The loan was a sham carried out by Craft to wrongfully, fraudulently, unfairly or deceptively convert, divert, launder or shelter funds invested by Plaintiffs and the putative class.

250. Electric and Mobile possess funds rightfully belonging to the putative class.

J. TelexFree's Founders and Principals, Executive Officers and Top Level Promoters

251. At all material times Merrill was:

- President, secretary and director of Defendant Mobile and a general partner of Defendant Electric;

[18] *See* TelexFree, LLC Balance Sheet as of December 31, 2013, a true and correct copy of which is attached hereto as Exhibit 5.

- Founder, president, secretary, and director of third-party TelexFree, Inc.;
- Founder and manager of third-party TelexFree, LLC, and was listed with the Massachusetts Secretary of State Corporations Division as an authorized person to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property; and
- Founder, president, secretary, and director of third-party TelexFree Financial.

252. Merrill regularly discussed TelexFree's suspicious, tortious or unlawful business operations with his brother Defendant John Merrill who provided him with advice, services and access to banking.

253. At all material times, Wanzeler was:

- Founder and general partner of Defendant Electric and Founder, treasurer and director of Defendant Mobile;
- Founder, treasurer and director of third-party TelexFree, Inc.;
- Founder and manager of third-party TelexFree, LLC; and
- Founder, vice-president, treasurer, and director of third-party TelexFree Financial and was listed with the Massachusetts Secretary of State Corporations Division as an authorized person to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property.

254. At all times relevant to this complaint Labriola was:

- Director of Common Cents Communications, Inc., the predecessor of TelexFree, Inc., in its filed Articles of Incorporations with the Massachusetts Secretary of State Office.
- TelexFree's international sales director;
- TelexFree's frequent authorized spokes-person; and
- a member of TelexFree's Executive Office.

255. At all material times Costa:

- was a Founder, Principal, and a member of TelexFree's Executive Office;

- was a Founder of TelexFree, LLC;
- was a manager of TelexFree, LLC with the Massachusetts Secretary of State Corporations Division;
- made use of the laws, rights and protections of the Commonwealth of Massachusetts; and
- attended meetings at TelexFree's Marlborough Office.

256. While at TelexFree's Marlborough Office headquarters, on phone conferences and while located elsewhere, Costa unfairly and deceptively conspired with other Defendants to carry on TelexFree's unlawful enterprises.

257. At times relevant to this complaint, Costa and Craft:

- directly made unfair and deceptive misrepresentations to the putative class;
- transacted business in the Commonwealth;
- contracted to supply services or things in this Commonwealth;
- advanced TelexFree's unlawful enterprise;
- caused tortious injury by an act or omission in this Commonwealth;
- advanced TelexFree's unlawful enterprise;
- otherwise regularly did or solicited business, and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; and
- otherwise derived substantial revenue from TelexFree's and other goods used or consumed or services rendered in this Commonwealth.

258. At times relevant to this complaint, Craft:

- was a certified public accountant who maintained offices in Indiana and in Kentucky under the name Joe H. Craft, CPA/PFS, CFP;
- served as the chief financial officer of third parties TelexFree, Inc. and TelexFree, LLC;
- prepared and approved the financial statements for third parties TelexFree, Inc. and TelexFree, LLC; and

- was a member of TelexFree's Executive Office.

259. Katia Wanzeler was at all times relevant to this complaint Wanzeler's partner and co-conspirator in TelexFree's unlawful enterprise.

260. Katia Wanzeler actively assisted her husband, Carlos Wanzeler, in fraudulently stealing and laundering funds that were derived from the TelexFree Pyramid Scheme, and in converting said funds to their private use.

261. At all times relevant to this complaint, Rodrigues was a TelexFree Top Level Promoter.

262. At all times relevant to this complaint, De La Rosa was one of TelexFree's Top Level Promoters. De La Rosa appears in internet videos promoting the TelexFree Program and is one of its most successful Promoters, having recruited numerous other Promoters within the Dominican community in Massachusetts and elsewhere.

263. At all times relevant to this complaint, Crosby was a TelexFree Top Level Promoter. Crosby appears in internet videos promoting the TelexFree Program and is one of its most successful Promoters, having recruited numerous other Promoters, primarily through a website known as "everybodygetspaidweekly.biz," in Massachusetts and elsewhere.

264. At all times relevant to this complaint, Defendant Miller was a TelexFree Top Level Promoter. Miller appeared in internet videos promoting the TelexFree program, giving numerous "tutorials," and was one of its most successful at doing so, having recruited numerous other Promoters, primarily through his personal YouTube page at "https://www.youtube.com/user/TelexFreeTrainer" in Massachusetts and elsewhere.

265. At all times relevant to this complaint, Defendant Miller was a career MLM promoter, doing business primarily through his YouTube page at "https://www.youtube.com/user/TelexFreeTrainer" and "www.join-getpaid-period.com," using

many of the same graphics and techniques he used as a TelexFree Promoter.

266. At all times relevant to this complaint, Sloan was a TelexFree Top Level Promoter. Sloan appears in internet videos promoting the TelexFree Program, and is one of its most successful Promoters, having recruited numerous Promoters. Sloan promoted TelexFree through a website known as "telexfreepower.com."

267. At all times relevant to this complaint, Shoyfer was one of TelexFree's Top Level Promoters, managing a large network of TelexFree Members in New York City. Shoyfer recruited many Promoters through public meetings that he arranged and held in New York City. Shoyfer's TelexFree network had Members in other states as well, including Massachusetts.

268. TelexFree changed its compensation plan on or about March 9, 2014, much to the fury of affiliates, noted below. Shoyfer, however, continued to promote it unremittingly, sending group text messages to his network with such as the following:

> Hey..my team Telexfree! ! And here we go again..Come to check out and learn about new compensation plan TF 2.0.. and how to grow it even faster and MUCH more aggressively and efficiently than the one we had before.…Here is this week's schedule. . Monday 03/24 at Salon Delacqua (2027 86 str) at 8.00 pm (in English) ..Wednesday 03/26 at SOHO launch(2213 65th street) at 7.45 pm (in Russian) and Thursday 03/27 at 7.30 pm at 63-112 Woodhaven Blvd in a real estate office. In my case, since I have started from absulute zero during this passed week Mon 03/17- Sun 03/23/14 I booked 11,500 from new one and 21,600 still coming from old plan..A total of 31,100 in 7 short days… Go Telex!!!

269. After the institution of the new TelexFree compensation plan in March 2014, Shoyfer took part in a closed meeting with TelexFree's directors and owners in Marlborough, Massachusetts, at which Shoyfer was instructed not to discuss the new TelexFree compensation plan with others and non-insiders, as the new compensation plan was detrimental to Promoters and was adopted to forestall filing bankruptcy."

270. Shoyfer worked in concert with TelexFree management to dupe people into

enrolling right up until the time of TelexFree's bankruptcy filing.

271. Filings in the TelexFree bankruptcy case suggest that Shoyfer received nearly $88,000 from TelexFree in two separate payments just prior to the April 13 bankruptcy filing. The first, for $9,902.37, occurred on March 21, and the second, for $78,037.33, occurred on March 28.

272. Opt3 and Borromei have a history of providing technical services within the multilevel marketing industry and hold themselves out as having related specialized knowledge. For example, Borromei previously served as chief information officer of Joystar, Inc., later renamed Travelstar, a multilevel marketing company that collapsed in approximately late 2008, and subsequently entered involuntary chapter 7 bankruptcy.

273. Opt3 and Borromei intentionally, knowingly, unfairly and deceptively set up TelexFree's United States-based servers in Brazil with the intent of directly furthering, aiding or abetting their unlawful and fraudulent operation, including facilitating the placement of evidence of the Pyramid Scheme beyond the jurisdiction of the United States' courts.

274. Opt3 and Borromei otherwise intentionally, knowingly, unfairly and deceptively set up TelexFree's United States-based servers and electronic data systems with the intent of directly furthering, aiding or abetting their unlawful and fraudulent operation.

275. Opt3 presently holds itself out as providing substantial technical services to multilevel marketing companies Healthient, Inc. and Travelstar, Inc. Borromei serves as chief information officer of Healthient, Inc.

276. At times relevant to this complaint, Opt3 and Borromei:

- directly made unfair and deceptive misrepresentations to the putative class;
- transacted business in the Commonwealth;

- contracted to supply services or things in this Commonwealth;
- advanced TelexFree's unlawful enterprise;
- caused tortious injury by an act or omission in this Commonwealth;
- advanced TelexFree's unlawful enterprise;
- otherwise regularly did or solicited business, and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; and
- otherwise derived substantial revenue from TelexFree's and other goods used or consumed or services rendered in this Commonwealth

277. John F. Merrill is the brother of TelexFree Founder and Principal, Defendant James M. Merrill. At material times herein, John F. Merrill:

- served as president and chief operating officer of Fidelity Bank;
- personally performed integral services and provided essential advice and assistance, and access to banking services that was used to further TelexFree's unlawful business; and
- personally ensured TelexFree was given access to Fidelity Bank's banking services as well as the national banking system, and those banking services were used to further TelexFree's unlawful business.

278. Defendant Hughes served as manager and president of Base Commerce, LLC and personally handled TelexFree's account while providing numerous additional services to TelexFree. At times relevant to this complaint, Hughes:

- personally performed integral services and provided essential assistance that was used to further TelexFree's unlawful business;
- personally ensured TelexFree was given access to payment-processing and banking services and those services were used to further TelexFree's unlawful business; and
- personally ensured banking services that were used to further TelexFree's unlawful business, as well as access to the national banking system, were made available to TelexFree.

279. Sparman served as managing partner and founder of Vantage Payments, LLC and

personally handled TelexFree's account while providing numerous additional services to TelexFree. At all material times herein, Sparman:

- personally handled TelexFree's account with Vantage Payments;
- performed integral services and provided essential advice and assistance that was used to further TelexFree's unlawful business;
- personally ensured TelexFree was given access to payment-processing and banking services, as well as the national banking system, and those services were used to further TelexFree's unlawful business; and
- solicited services and negotiated with payment processors on TelexFree's behalf.

280. Despite having knowledge that TelexFree was an enterprise carrying out unlawful, unfair, or deceptive acts or practices, James Merrill, Carlos Wanzeler, Steven Labriola, Carlos Costa, Joseph Craft, Ann Genet, Opt 3 Solutions Inc., Jason Borromei, Katia Wanzeler, Sanderley Rodrigues de Vasconcelos, Santiago de la Rosa, Randy Crosby, Faith Sloan, Daniil Shoyfer, Scott Miller, John Merrill, John Hughes and Dustin Sparman all personally performed integral services and provided essential advice and assistance that was used to further TelexFree's unlawful business and fully and knowingly furthered TelexFree's unlawful Pyramid Scheme.

K. TelexFree's Unlawful, Unfair and Deceptive Pyramid Scheme

281. A pyramid scheme is a fraudulent business operation whereby an individual or organization guarantees and sometimes pays returns to its investors from new money paid into the operation by new victims, rather than from profit earned by the operator.

282. Typically, operators of pyramid schemes entice new victims by promising guaranteed returns that are short-term returns, abnormally high or unusually consistent.

283. Pyramid schemes inevitably fail when new investors are not recruited quickly enough to pay the promised returns to the earlier investors. Typically, this is when the

investment is revealed to be an illegal scam.

284. Financial services providers, including banks and payment processing companies, are required to be on alert for pyramid-type Ponzi schemes because they are one of the most common schemes presently being used by international thieves, and recently, by organized crime.

285. Pyramid schemes follow a pattern that is well known to the sophisticated personnel and systems that support financial services providers, including the Defendant Financial Services Providers.

286. As referenced herein, during the putative class period, the TelexFree Pyramid Scheme made use of pyramid-scheme techniques recognizable or known to the Financial Services Provider Defendants. They include but are not limited to the following:

287. **The Hook**: In a pyramid scheme, potential investors are promised that an investment opportunity will achieve an above normal rate of return on investment that is often specified, or very easy to figure out. The promised interest rate or return on investment in successful pyramid schemes will be an amount high enough to be worthwhile to the investor but not so high as to be unbelievable. This is called an "above normal rate of return on investment." In violation of M.G.L. c. 93, § 69, TelexFree promised, and purported to deliver to hard-working Promoters, a return rate of over 200% per year for placing ads and performing the other tasks included in its uniform contract and marketing materials. This was a false promise, as TelexFree's ability to pay any returns whatsoever was contingent on its bilking new victims.

288. In a pyramid scheme, in addition to lending credibility to the scam, the high rate of return serves as the goal for others to reach and an encouragement to borrow money or drain one's life savings. Other frequent reasons used to support the specified "above normal rate of

return" include "inside information" or "access to an investment opportunity not available to the general public." Here, TelexFree falsely promoted its VoIP technology as cutting edge and proprietary. It was not. The TelexFree product was a grade below what was available for free via Google Voice or Skype.

289. **The Scheme is Showered with Credibility**: The victims of pyramid schemes are always given a believable explanation of how their investment will earn the "above normal rate of return on investment." The explanation must be good enough to convince people to invest and reinvest their money and importantly, to recruit others. Many times the founders or those running the company operating the pyramid scheme are described as being highly successful, skilled, trained or educated. For example here, TelexFree falsely represented on its web site that the Founder and Principal Merrill was a college graduate with specialty degrees in a field related to the product they touted as driving the profit. TelexFree also deceptively touted its Principals long-term experience and involvement in telecommunications. Most often, perpetrators of pyramid schemes will hire lawyers, certified public accountants ("CPAs"), or other credible professionals to bless the scam as a legal and sound business opportunity. The lawyers, CPAs and other professionals vouch for the scam in exchange for payoffs. They will also often have other seemingly credible persons serve as shills by touting the investment as an incredibly great opportunity that worked for them. Shills include so-called rock stars and so-called regular people all of whom have "gotten rich quick" through the pyramid scheme.

290. As referenced herein, TelexFree made use of virtually all of the pyramid-scheme techniques recognizable or known to the Financial Services Provider Defendants. For example, TelexFree first had Defendant Nehra, an attorney who also heavily promoted himself as having specialized MLM experience, guarantee that TelexFree was a legitimate business enterprise. It

also promoted Nehra's partnership with another leading MLM attorney, Defendant Waak. TelexFree also hired CPA Craft to serve as its chief financial officer. TelexFree was also publicly tied to Bank of America and TD Bank. At all times, well-known MLM "professionals" with great experience or success were hired to state on TelexFree's behalf that the Pyramid Scheme was legal and a good investment. TelexFree made such use of Rodrigues, De La Rosa, Crosby, Sloan, Shoyfer, Smith and others.

291. TelexFree, like other major pyramid schemes before it, also held extravagant conferences at hotels that were beyond the means of its victims and hyped the success of individuals who had supposedly "gotten rich quick" through the scheme. The owners and a select few top promoters surrounded themselves with rich and lavish settings and publicly boasted of their supposed massive earnings and "rags to riches" stories.

292. **Initial Investors Paid Off**: In most pyramid schemes, some initial investors will receive the promised return. This trick is used to convince victims that the investment is not risky and that a return will be received. The scammers use smaller payouts to bring in bigger ones. Payouts are also used to prompt victims to bring in the investment cash of their family, friends, co-workers and others. It is also used to turn the $100 dollar investor into a $1,000 or $10,000 investor. Pyramid schemes succeed because the majority of victims invest over and over with larger amounts of cash. They also unwittingly recommend the scheme to their family, friends, and business associates, as the scam appears to provide them with benefits early on. This is all part of the scammers' deliberate plan. Scam artists will pay the initial investment money to the investors, plus the specified interest rate or return, to lure in more and greater investments. Many of TelexFree's Promoters initially invested small sums and then after receiving the above normal rate of return on investment invested a great deal more. Many

convinced their family and friends to invest. Some Promoters took out loans and others emptied their savings accounts.

293. **Communicated Successes**: Pyramid scheme principals and others at the top levels will uniformly and heavily promote success stories and build in a system that communicates motivating success stories. The historical success of the investment opportunity is another ploy intended to deceptively lend credibility to the pyramid scheme. Historically, the most damaging pyramid schemes put victims in a position where they believed convincing others close to them to invest money into the scam was doing them a great favor. TelexFree showered its investors and potential investors with stories and visuals evidencing big payoffs. TelexFree positioned its owners and Top Level Promoters as "Rock Stars" and they promoted the above normal rate of return on investment, often with great deal of flourish. Large-scale pyramid schemes also typically sponsor conferences and events at hotels or exotic locations, as did TelexFree. Large-scale pyramid schemes also commonly promote success stories involving tales of great income, early retirement or other dreams come true. TelexFree played each of those angles heavily. TelexFree spokespersons often sported expensive attire, and promoted the fact they owned luxury cars and boats, lived in enormous homes, and made their dreams come true.

294. The Federal Trade Commission first took concerted action against a pyramid scheme in the 1970's. By the 1990's, the incidence of pyramid and Ponzi schemes was increasing. Today, they are at epidemic levels.[19]

295. According to the Securities Exchange Commission (the "SEC") and the North

[19] *See* Dean Jobb, *People Continue to Fall for Ponzi Scheme Swindlers*, The Chronicle Herald, (Mar. 8, 2015), http://thechronicleherald.ca/thenovascotian/1273451-people-continue-to-fall-for-ponzi-scheme-swindlers; *see also* Benjamin B. Wagner, *Crimes on Main Street Are as Devastating as Those on Wall Street*, United States Department of Justice (Dec. 8, 2104), http://www.justice.gov/usao/priority-areas/financial-fraud/investment-fraud (citing surge in Ponzi scheme cases).

American Securities Administrators Association, scammers pitching phony securities cost U.S. investors between $10 and $15 billion a year – more than a million dollars an hour. Many of these scams use the Ponzi method – paying off a few early investors with other investors' money – to stir up business. Telemarketing boiler rooms, whose frauds cost an estimated $40 billion a year, often run Ponzi schemes.[20]

296. The Better Business Bureau has labeled Ponzi-style financial rings "the biggest single fraud threat confronting American investors."[21]

297. Since 2009, the Department has authorized 94 new Assistant U.S. Attorney positions, both criminal prosecutors and civil litigators, to combat financial fraud in districts all across the country.[22]

298. Enforcement cases brought by the Commodity Futures Trading Commission rose by 45% from September 2010 to September 2011, and the Federal Bureau of Investigation opened more than 1000 new investigations into the existence of such schemes during that same time period.[23] This represented a 150% increase from 2008.

299. Enforcement steps are having an impact. Between fiscal year 2008 and fiscal year 2011, the numbers of defendants prosecuted by the U.S. Attorneys' Offices for securities fraud and other financial fraud offenses increased dramatically each year. More prosecutions of

[20] Association of Certified Fraud Examiners, *Ponzi Schemes*, (last visited Apr. 30, 2015), http://www.acfe.com/ponzi-schemes.aspx.

[21] *Id.*

[22] Benjamin B. Wagner, *Crimes on Main Street Are as Devastating as Those on Wall Street*, United States Department of Justice (Dec. 8, 2104), http://www.justice.gov/usao/priority-areas/financial-fraud/investment-fraud.

[23] *See* Ben Protess, *Post-Madoff, A Greater Awareness of Ponzi Schemes,* DealB%k (Nov. 14, 2011), http://dealbook.nytimes.com/2011/11/14/post-madoff-a-greater-awareness-of-ponzi-schemes/?_r=0.

defendants also mean more restitution orders for victims and more forfeiture of ill-gotten gains.[24]

300. With respect to the TelexFree Scheme, the Federal Trade Commission stated that TelexFree utilized a pyramid scheme structure offering straight recruitment commissions and binary recruitment commissions. These commissions directly compensate existing affiliates upon the recruitment of new affiliates into the scheme.

301. At times relevant to this complaint, the Defendant Founders, Principals, Executive Office, Top Level Promoters and Associated Individual Defendants knew that TelexFree was a Pyramid Scheme and yet actively assisted and profited thereby.

302. At times relevant to this complaint, the Defendant Attorneys, Defendant Accountants, other Professional Service Providers, and Persons Associated with them knew that TelexFree was a Pyramid Scheme and yet unfairly or deceptively actively assisted, aided and abetted and profited thereby.

303. At times relevant to this complaint, the Defendant Financial Services Providers knew that TelexFree was a Pyramid Scheme and yet unfairly and deceptively actively assisted, aided and abetted and profited thereby and were unjustly enriched.

304. TelexFree presented itself to the putative class as a marketer of telecommunications.

305. The records and the TelexFree Pre-March 9 Contract, however, establish that TelexFree did not compensate its "Promoters" primarily for sales of the VoIP product, nor for carrying out legitimate advertising.

306. TelexFree, with the integral assistance of numerous banks, payment processors,

[24] Benjamin B. Wagner, *Crimes on Main Street Are as Devastating as Those on Wall Street*, United States Department of Justice (Dec. 8, 2104), http://www.justice.gov/usao/priority-areas/financial-fraud/investment-fraud.

professionals and other third parties, operated an unlawful Pyramid Scheme of nationwide and international scope.

307. As referenced herein, TelexFree was nothing more than a retooling of its illegal operation in Brazil.

308. Using run-of-the-mill and essentially borrowed technology, TelexFree rebranded Disc A Vontade's VoIP program, offering it for a flat monthly fee of $49.90.

309. TelexFree deceptively promoted its unlawful enterprise as offering a cutting edge VoIP service program called "99TelexFree."

310. Because it featured an inferior product that offered no improvement over what others Google Voice, Skype, or others made available elsewhere for free, Wanzeler, Merrill and Costa's Disk A Vontade's phone service had been unprofitable. Departing from the unsuccessful Disk A Vontade business model, TelexFree coupled the VoIP program with a purportedly lucrative and fraudulent scheme. The VoIP program served purely as a façade.

311. TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. operated a Pyramid Scheme that defrauded hundreds of thousands of individuals out of hundreds of millions of dollars.

312. TelexFree was willfully and knowingly, wrongfully and maliciously, unfairly and deceptively organized and maintained. From the start it was intended to, and did, unlawfully convert, divert, launder and shelter funds invested by Plaintiffs and the putative class.

313. TelexFree could not have successfully carried out its unlawful enterprise, nor launder or shelter its ill-gotten funds, without the integral assistance of the other Defendants, including the cooperating Defendant financial institutions, payment processing service companies and Operational Defendants.

314. TelexFree purported to sell internet telephone services but, in actuality, generated its income almost exclusively through its recruitment of "Members" (also referred to interchangeably herein as "Promoters").

315. TelexFree promised its Promoters a guaranteed return on investment in excess of 200% annually, purportedly in exchange for promoting TelexFree's business.

316. TelexFree created memberships, known as "AdCentral" packages, which entitled Promoters to be paid for cutting-and-pasting spam advertisements on the Internet, creating the illusion that they were performing valuable services in exchange for compensation.

317. TelexFree promised its Promoters a guaranteed financial return in exchange for their participation in a passive income scheme.

318. Promoters were financially motivated to recruit and "build" their own network of new Members because they were promised additional compensation when they did. TelexFree did not monitor the futile make-work activity of cutting-and-pasting of spam advertisements by its Promoters.

319. At all times relevant to this complaint, TelexFree and each of its Executives and Top Level Promoters, knew that the purported requirement made upon TelexFree Members to place ads was a sham, yet an integral part of the unfair and deceptive acts and practices necessary to carry out and further their unlawful business enterprise.

320. At times relevant to this complaint, TelexFree and each of its Licensed Professionals, and Financial Services Providers also knew that the purported requirement made upon TelexFree Members to place ads was economically worthless, yet an integral part of TelexFree's business enterprise.

321. Though TelexFree was purportedly a separate and distinct legal entity from

Ympactus, Wanzeler, Labriola, Merrill and Costa intermingled the resources and assets of the two businesses including the labor and representation of employees and executives, telephones, addresses, office furniture and space, bank and other financial accounts, finances, computer network systems, and postage.

322. Wanzeler, Labriola, Merrill and Costa used the TelexFree entity as a convenient vehicle to re-create in the United States the same massive Pyramid Scheme that they had earlier conducted in Brazil, even to the extent, for example, that both companies also provided the same information on their websites.

323. Contrary to the malicious, false, unfair and deceptive representations made by TelexFree, the TelexFree VoIP service was not groundbreaking, and offered nothing more than what was and is otherwise available for free. In fact, the TelexFree VoIP technology was not patented or proprietary.

324. Wanzeler, Merrill, Labriola and Costa, and those working with them, specifically targeted unwitting purchasers (the Members/Promoters) for memberships that promised annualized returns of over 200% in exchange for placing duplicative advertisements on social media. The bait for TelexFree's scheme was the right to promote and profit from its VoIP product - an illusory menial task willfully designed to convince purchasers of the legitimacy of the business model.

325. TelexFree similarly used its membership fees ploy to further grow its unlawful and fraudulent enterprise as well as to unjustly and unfairly line the pockets of the Defendants with profits earned through the victimization of the putative class representatives and the other members of the putative class they seek to represent.

326. Notwithstanding the earlier shutdown of TelexFree's essentially identical

operation, Ympactus, and many other indicators of unlawful business operations, each of the Defendants chose to earn handsome fees for providing services to TelexFree's suspicious and unlawful enterprise.

327. Over time, TelexFree's revenue from sales of its VoIP service plans only accounted for only approximately $1.3 million (or approximately 0.1%) of the nearly $1.1 billion needed to honor its promises to Promoters. This was because TelexFree had virtually no legitimate business, and almost all of its receipts were simply new investments of more people duped into expecting sizeable returns.

328. Financial Services Providers who performed the Know Your Customer investigations and analysis were aware of this because the Red Flags directed them to the suspicious, tortious and unlawful activity referenced herein.

329. The Financial Services Providers who performed the Know Your Customer investigations and analysis were able to recognize with the help of their robust or sophisticated systems or personnel that TelexFree's actual business was the unlawful recruitment of new Promoters.

330. With hundreds of thousands of victims, TelexFree appears to be one of the largest, if not the largest, pyramid schemes in history by number of members.

331. New Promoters generated no income by placing advertisements on the Internet. New Promoters did, however, generate income for TelexFree through the recruitment of more new Promoters who paid its membership fees. TelexFree's operations were unsustainable without a continuous influx of new capital coming from the recruitment of additional participants.

332. The income-generating activity that drove TelexFree's unlawful passive income

scheme was the payment of a fee in the amount of either $289 or $1,375 to become a Promoter. TelexFree offered options that provided for a tiered return.

333. The first option was known as the "AdCentral" program. Participation in AdCentral cost $289 plus a $50 membership fee for a one-year contract.

334. The $50 membership fee purchased a purported license to sell the product and entitlement to otherwise profit from various bonus structures and recruitment commissions, including the sale of additional memberships.

335. Promoters participating in TelexFree through the AdCentral program received ten one-month packages of the VoIP service and in return were instructed to place one internet advertisement a day.

336. For every week a Promoter placed advertisements, they received one additional VoIP package and were guaranteed a weekly payment of $20 ($1,040 for the entire year).

337. Each of the Financial Services Provider Defendants was given access to TelexFree's Promotional Advertisements at the commencement of or during its relationship with TelexFree.[25]

338. Each of the Financial Services Provider Defendants reviewed TelexFree's Promotional Advertisements at the commencement of or during its relationship with TelexFree.[26]

339. The AdCentral program offered a 207% return on the original amount paid.[27]

340. The second option, known as the "AdCentral Family" program, cost $1,375 plus the $50 membership fee for a one-year contract, a purported license to sell the product.[28]

[25] *See* TelexFree Promotional Advertisements, attached herewith as Exhibit 6.
[26] *Id.*
[27] *Id.*
[28] *Id.*

341. Promoters in the AdCentral Family program received fifty one-month VoIP packages and had to post five advertisements on the Internet daily.[29]

342. The promotional materials stated that those who posted the required advertisements received five additional VoIP packages and were guaranteed a weekly payment of $100 if they did ($5,200 over the year).

343. The AdCentral Family program offered an annual return of 265%.[30]

344. The TelexFree advertisement kit enabled participants to be paid for posting pre-written advertisements, to pre-determined websites, through an automated TelexFree system. A participant's daily posting of advertisements generated payments regardless of whether or not Promoters sold any VoIP Programs.

345. TelexFree's promotional material stated "(y)ou just place your Ad and get paid weekly regardless of if anyone buys what you are selling or regardless of if you ever recruit a single person into this opportunity or not. . . . Sounds good doesn't it?"[31]

346. Posting advertisements was an effortless process that took, at maximum, a minute per advertisement. In fact, TelexFree touted, "We will take care of your add (sic) posting and teach you the trick to submit your five ad (sic) in one click"[32]

347. Members were not required or expected to close any internet phone sales.

348. Members were compensated solely for recruiting new Members and for performing the menial, pretextual activity of cutting-and-pasting advertisements. The posting of these supposed advertisements was meaningless.

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[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*

349. Promoters were posting a massive volume of nearly identical ads on the same websites in an already saturated market. Members were not paid according to how many viewers clicked the ads.

350. The marketing strategy of TelexFree was to recruit more Promoters, not to sell its VoIP programs.

351. For example, in early April 2014, Adpost.com had in excess of 33,000 TelexFree ads, and ClassifiedsGiant.com had in excess of 25,000 ads posted since February 1, 2014.

352. Promoters also had other income options. For example, he or she could sell the additional VoIP Programs they "earned" back to TelexFree for $20.

353. The TelexFree passive income scheme generated even further returns for participants through various bonus structures and recruitment commissions. TelexFree and the Defendant Founders deceptively tailored additional income streams to incentivize recruitment. For example, TelexFree provided marketing materials on its website that current Promoters could download and use to recruit new members;[33] new Promoters were promised a one-time bonus of $20 for each recruited AdCentral member and $100 for each recruited AdCentral Family member; and Promoters who recruited two additional Promoters were promised a bonus of $20 for each direct and indirect participant in their "network," up to a maximum of $440. All these options were maliciously, willfully and knowingly reverse-engineered to unfairly and deceptively drive membership-related income into TelexFree's coffers and did not drive sales of its VoIP product.

354. TelexFree's unlawful enterprise was particularly reprehensible because it encouraged its Promoters to unwittingly turn their family, friends and close associates into

[33] *Id.*

victims. TelexFree and the Defendant Founders deceptively tailored income streams to capitalize on the tight social and familial immigrant communities they targeted. Under a "Team Builder Plan," AdCentral Family Promoters who recruited ten other AdCentral Family members, each of whom sold five VoIP packages (to themselves or others), were promised 2% of TelexFree's net billing in the following month, up to $39,600. Promoters were promised commissions based on sales of the VoIP service: 90% for the initial VoIP package sold to a customer he/she recruited, 10% monthly for direct participants who renewed the service, and 2% monthly for each indirect participant who renewed their service down to the sixth level of the Promoter's network.

355. As represented in the TelexFree website and promotional materials mailed out and handed to participants at TelexFree's "Extravaganzas" by Defendant Principals, Executive Office and Top Level Promoters, a Promoter was allowed to invest in more than one advertisement kit and purchase the VoIP Program to earn bonuses.

356. A feature of TelexFree's bonus structure and recruitment commissions is the fact that TelexFree participants could self-qualify for sales and commissions.

357. A Promoter was allowed to purchase a VoIP program, never use the program, and still qualify for additional income.

358. Therefore, without selling any VoIP programs, the Promoter could receive, or expect to receive, a return far over the 200-250% guaranteed return.[34]

359. TelexFree's revenue from sales of VoIP programs alone was entirely inadequate to satisfy the payments it promised to Promoters.

360. According to an investigation conducted by the SEC, between August 2012 and

[34] *Id.*

March 2014, TelexFree received slightly more than $1.3 million from the sale of approximately 26,300 VoIP programs, while receiving more than $302 million in investments by Promoters, less than one-half of one percent of total revenue during this period from sales of its purported product.

361. During this period, TelexFree, the Defendant Founders and Top Level Promoters promised to pay Promoters over $1.1 billion.

362. TelexFree did not produce anywhere near $1.1 billion dollars in VoIP revenue.

363. According to an investigation by the SOC, in 2012 and 2013 TelexFree identified 4,845,576 VoIP program transactions totaling $238,395,353.80.

364. Net revenue received by TelexFree from VoIP program sales was inhibited by substantial commission payments.

365. In other words, only a trivial number, if any, of non-Promoters purchased the VoIP product. In his statement to the Massachusetts SOC, TelexFree Founder Wanzeler could not identify the number of individuals who purchased only a VoIP program without also becoming a participant, and provided wildly varied estimates when challenged to identify the number of VoIP programs sold to non-participants.

366. Over the same period, TelexFree received 783,771 package purchases of either $289 or $1,375 totaling $880,189,455.32.

367. Under this compensation plan, if each of the 783,771 Promoters invested in only one AdCentral package at $289 and only posted one advertisement per day, TelexFree would have owed Promoters $799,446,420.

368. Under this compensation plan, if each of the 783,771 Promoters invested in the AdCentral Family package at $1,375 and only posted five advertisements per day, TelexFree

would have owed $3,997,232,100 to Promoters.

369. According to data provided by TelexFree, the $1,375 AdCentral Family memberships accounted for 88% of the transactions by Massachusetts-based participants.

370. Even assuming that only 50% of all participant memberships were at the AdCentral Family level, TelexFree would still have owed $2,398,897,200, a number that far exceeded TelexFree's reported total revenues over the same period.

371. This figure of almost $2.4 billion omits further bonuses, recruitment commissions and revenue sharing; including these additional payments would create an even greater disparity between the VoIP program revenue and the guaranteed money paid out of the passive income scheme to Promoters.

372. At no time during the class period did TelexFree generate sufficient funds from sales of their phone service to make the payments they had contracted to pay to existing Promoters. Those funds came from the registration fees of subsequent TelexFree Promoters.

L. Gallery of Rogues Assembled

1. The Seasoned Scam Artists

373. TelexFree, Wanzeler, Merrill, Costa, Labriola and others enlisted the involvement of persons and entities that operated or otherwise had highly publicized involvement in business models that were later found to be fraudulent and unlawful Ponzi Schemes.

374. For example, prior to his involvement with TelexFree, Rodrigues was charged by the SEC with operating a fraudulent pyramid scheme under the name of Universo FoneClub Corporation, another Massachusetts corporation formed by Rodrigues, in which he acted as officer and director.

375. Rodrigues settled these charges in 2007. As a condition of his settlement, Rodrigues was permanently enjoined from violating Section 10(b) of the Exchange Act and Rule

10b-5, and Sections 5(a), 5(c) and 17(a) of the Securities Act.

376. As a condition of his settlement, Rodrigues was further ordered disgorged of approximately $1.8 million of related ill-gotten gains.

377. Rodrigues formed and organized WWW Global Business, Inc. ("WWW Global Business") on or about February 7, 2013, to market and sell TelexFree Memberships. WWW Global Business was and is a "shell" corporation holding no, or virtually no, assets and having no employees beyond its principal, Defendant Rodrigues, who served as its sole director, officer, and agent for service. WWW Global Business was organized for the sole purpose of marketing and selling TelexFree Memberships, *i.e.* AdCentral packages, and did not engage in the sale of TelexFree's purported VoIP product.

378. At all times material herein, WWW Global Business was effectively an alter ego of Defendant Rodrigues, and furthermore, had no legitimate business purpose, failed to maintain corporate formalities, had no independent board of directors and otherwise served as a "façade" for the sole benefit of Defendant Rodrigues.

379. Rodrigues attended meetings at TelexFree's Marlborough Office headquarters. While at TelexFree's headquarters, on phone conferences and while located elsewhere, he unfairly and deceptively conspired with other Defendants to carry on TelexFree's unlawful enterprises. Despite having knowledge that TelexFree was an enterprise carrying out unlawful, unfair, or deceptive acts or practices, Rodrigues personally performed integral services and provided substantial and essential advice and assistance that were used to further TelexFree's unlawful business.

380. Rodrigues's SEC and criminal related history was available to the Financial Services Provider Defendants while they were carrying out Know Your Customer due diligence

investigations.

381. TelexFree and the Defendant Founders and Principals willfully and knowingly utilized Rodrigues. Rodrigues was allowed to join and market the program despite his previous criminal convictions. In fact, Rodriques was selected for a prominent role in TelexFree because he had experience running a related scam.

382. Another example is Brandon Bradshaw, who had formerly served as vice president and sales director of AddWallet, a now-defunct pyramid scheme, through March 29, 2013. AddWallet was a successor to Zeek Rewards, an infamous Ponzi scheme. Zeek Rewards ran from January 2011 into August 2012 when the SEC shut it down. The Zeek Rewards Ponzi scheme bilked investors out of a purported $850 million dollars. Prior to being shut down, Zeek Rewards was alleged to have paid out $350 million dollars to early investors.

383. Under the guise of a penny auction, Zeek Rewards let its members invest in the company and paid out a daily rate of investment that guaranteed affiliates (investors) that over 90 days, they would receive more than 100% of their investment back. At the time the SEC shut them down, they only had enough capital to keep the business afloat for 90 days. AddWallet's business structure was based on Zeek Rewards and was intended to lure in former Zeek Rewards members, many of whom had already lost funds in Zeek Reward's collapse.

384. In March 2013, AddWallet held a conference call intended to assure investors. During the call, AddWallet representatives assured investors that it was an offshore company and immune from the SEC.

385. Bradshaw answered most of the questions on the call. He started by lamenting the loss of Zeek Rewards and highlighting the intentional similarities that exist between it and AddWallet. He stated that:

- [4:52] "After the fall of the major player Zeek (Rewards), we. . . saw a lot of things there."
- [13:34] "It's unfortunate what happened, a lot of good people got hurt. I thought Zeek was doing a fantastic job."
- [5:26] "We put a base operating system down. Yes, it's very much like Zeek when you go into the retail profit pool earnings, you see something that you've seen before."

386. In August 2013, as the AddWallet scheme dwindled, Bradshaw abruptly left his position with AddWallet, without providing any reason to members. Almost immediately, Bradshaw was a TelexFree spokesperson.

387. Bradshaw spoke during a September 6, 2013 TelexFree conference call hosted by Labriola, during which Bradshaw promoted sales of TelexFree memberships and instructed and otherwise provided advice to Promoters and potential Promoters on behalf of TelexFree that furthered its unlawful enterprise.

388. During the September 6, 2013 TelexFree conference call, Bradshaw advised those on the call of the fastest way to transfer payments of membership fees to TelexFree. Bradshaw directly made other unfair and deceptive misrepresentations to the putative class that furthered TelexFree's unlawful enterprise.

389. In 2014, Bradshaw became a co-founder of another pyramid scheme, Genesis Global Network, which was characterized in online promotional materials as "operat[ing] just like Zeek and Add Wallet. The early members in Zeek earned over $1 Million and this one is better and completely offshore."[35]

390. Another example is Defendant Miller, another big player in the infamous $850 million Zeek Rewards Ponzi scheme, which had a component similar to TelexFree's AdCentral.

[35] *See* https://www.facebook.com/mlmsuccessgroup/posts/772337832778294; *see also* Exhibit 3, Decl. of Gray Echavarria, Attachment 25.

Like TelexFree Members, Zeek members were told they got paid for posting ads about the company online. Zeek Rewards told its "Affiliates" that in order to "earn" their points, they were required to place a short, free digital ad each day on one of the many free classified websites available on the Internet. According to Zeek receiver Kenneth D. Bell, "[i]n reality the ads were just an attempt to manufacture a cover for what was nothing more than the investment of money by Affiliates with the expectation of receiving daily 'profit' distributions." Bell targeted Miller in his prosecution of Zeek's massive Ponzi scheme. Miller spoke on behalf of TelexFree at TelexFree events and was one of its key pitchmen.

391. According to a video playing on YouTube, Miller was one of the featured TelexFree speakers at the Newport Beach event. Members of his group claim in videos that, if one sends $15,125 to TelexFree to purchase a "contract," one will emerge with guaranteed earnings of at least $1,100 a week for a year. The math of the claim is basically this: $1,100 a week for 52 weeks equals $57,200. Subtract the original outlay of $15,125, and emerge with $42,075 on the plus side.

392. Indeed, TelexFree was at all times relevant to the complaint staffed by what amounted to an "all-star team" of online network marketing scam artists.

.2. The Professional Legitimizers' Roles

393. TelexFree, Wanzeler, Merrill, and Costa also enlisted the involvement of persons and entities who provided advice and blessed, or provided opinions that purported to legitimize, business models that were later found to be fraudulent and unlawful pyramid schemes. For example, Defendant Attorney Nehra publicly opined, during TelexFree conferences and "Super Weekend" events,[36] as well as in communications with the press,[37] that he had examined

[36] *See* Exhibit 4, Decl. of Carol L. Harris, Exhibit 14.

TelexFree's business model and determined it to be legal, and that TelexFree "pays ONLY on the sale of its VOIP long distance product."

394. TelexFree's operations had many signs of unlawful, unfair and deceptive wrongdoing that were highly suspicious and in fact constituted Red Flags recognized by the Federal Financial Institutions Examinations Counsel ("FFIEC").

395. Moreover, each Defendant had knowledge of the Brazilian authorities' seizure of Ympactus' assets that were directly connected to Wanzeler, Merrill and Costa.

396. After authorities shut down TelexFree's Brazilian unlawful predecessor, Ympactus, the Licensed Professionals and Financial Services Providers knew that TelexFree was nothing other than a new entity created by the same principals to engage in the same unlawful enterprise yet did business with it.

397. At times relevant to this complaint, TelexFree had a website that was managed by its Executives and designed and maintained by Opt3 Solutions Inc. and Defendant Borromei.

398. The promotional materials posted online by TelexFree and its Executives specifically referred to income received by Promoters for placing ads as part of the AdCentral Packages as "passive income"[38] in violation of Massachusetts black letter law.

399. In addition to the March 1, 2013 press release, where Merrill admitted TelexFree did not condition payment actual sales of its VoIP product, the multitude of marketing materials provided on the TelexFree website only contained *a single slide* mentioning the VoIP service.

400. The great bulk of the content centered on the payment for posting of ads, such as "Work over the Internet Posting ads daily," and the membership commission structure.

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[37] *Id.*

[38] *See* TelexFree Promotional Advertisements, attached herewith as Exhibit 6.

401. The website emphasized the simplicity of its advertising system, stating "TelexFree turnkey marketing system makes internet advertising simply & duplicatelable [sic]," and "[w]e have it all computerized [sic], with only 3 steps, in your virtual office."

402. All of this served as "Red Flags" to the sophisticated Financial Services Defendants and Licensed Professionals Defendants who had sophisticated Know Your Client protocols and systems as well as expertise in MLM.

403. Nehra and Waak Law Firm, Nehra Law Firm, Waak Law Firm, Nehra and Waak were also persons who the Financial Services Providers knew had prior involvement in pyramid or unlawful MLM schemes.

404. Defendants Nehra, Waak, Nehra Law Firm, Waak Law Firm, and Nehra and Waak Law Firm each provided legal services to TelexFree. There was no clear distinction between Nehra, Waak, Nehra Law Firm, Waak Law Firm, and Nehra and Waak Law Firm with regard to the legal services that they provided to TelexFree.

405. The Attorney Defendants each are self-proclaimed MLM and direct marketing specialist attorneys.[39]

406. The Attorney Defendants each boast on their respective websites that they have vast knowledge and experience representing MLM and direct-sales clients.[40]

407. The Attorney Defendants each boast on their respective websites that they have specialized knowledge and experience and can discern between legitimate and lawful MLM and direct-sales ventures and illegitimate and unlawful pyramid or Ponzi scheme ventures.[41]

408. Nehra represented or advised ventures that had been shuttered by state or federal

[39] *See* Exhibit 4, Decl. of Carol L. Harris, ¶¶ 6-49, Exhibits 1-14.
[40] *See id.*
[41] *See id.*

authorities as fraudulent pyramid or Ponzi schemes, including Zeek Rewards and AdSurfDaily, both before and concurrent with Nehra's provision of services to TelexFree.

409. During the investigation of the AdSurfDaily scheme, Attorney Nehra filed an affidavit in court representing that AdSurfDaily was "not a Ponzi Scheme."

410. AdSurfDaily's operations were shut down as a Ponzi scheme in 2010.

411. Zeek Rewards' operations were shut down as an unlawful pyramid and Ponzi scheme in August 2012.

412. Nehra's extensive experience with MLM and direct-sales ventures, particularly his involvement with the unlawful AdSurfDaily and Zeek Rewards ventures, armed him with the knowledge of what constitutes violations of United States securities law.

413. The Attorney Defendants were used in an attempt to hide TelexFree's Pyramid Scheme activity with obfuscating phraseology.

414. Similar to Nehra, Waak claims to have over thirty years advising MLM and direct-selling enterprises. Waak claims to have managed the legal defense of multiple class action lawsuits involving claims for "pyramiding, securities fraud, false advertising and civil RICO."

415. As counsel for TelexFree, the Attorney Defendants had actual personal knowledge of TelexFree's product and business model.

416. Nehra, negligently or recklessly gave his professional opinion as a duly licensed attorney who specialized in MLM for decades. He informed the putative class in July 2013 that he had "vetted" and "bless[ed]" TelexFree's business model and operation.[42]

417. The Attorney Defendants negligently or recklessly drew upon their prior

[42] See Exhibit 4, Decl. of Carol L. Harris, ¶ 19, Exhibit 14.

experience to substantially aid, abet, and play an integral role in TelexFree's unlawful, unfair, and deceptive acts and practices during the times relevant to this complaint.

418. Despite their actual knowledge, rather than decline or cease rendering services to TelexFree, the Attorney Defendants failed to adequately provide even minimally acceptable legal counsel.

419. In spring 2013, TelexFree was forced to focus on new markets, including the United States and Canada, because its Brazilian operations had been shut down and all of its Brazilian assets frozen. TelexFree used the presence, representations and statements of the Attorney Defendants to perpetuate and advance the Pyramid Scheme in those new markets.

420. Nehra's representations and statements that TelexFree's operations in the United States were legitimate and lawful were part of its total "post Brazilian shut down package."

421. Nehra was aware of how his representations and statements were being used by TelexFree, yet willingly spoke on behalf of TelexFree at an event dubbed a "Super Weekend" in Newport Beach, California on July 26 and 27, 2013. His focus at the "Super Weekend" event was to reassure Promoters that TelexFree's United States operations were legitimate, lawful and worthy of investment.

422. Although at the time of the "Super Weekend," TelexFree's Brazilian bank accounts had been frozen and all of TelexFree's Brazilian recruiting and payments had been suspended by court order in its largest affiliate market, Nehra advised attendees that the shutdown in Brazil would not affect TelexFree's operations in the United States.

423. Nehra spoke at length during that "Super Weekend" and reassured the attendees of the legality and legitimacy of TelexFree's operations in the United States, stating "It is legally designed . . . you are on very solid legal ground," and that TelexFree's operations had been

"vetted by the Nehra and Waak law firm."

424. Nehra's statements and opinions provided legal representations. Nehra's statements and opinions constituted legal advice. Nehra knew that TelexFree's conduct constituted a breach of duty to its Promoters.

425. In addition, at all relevant times, the Attorney Defendants consented to be and acted as agents of Telex Free and had authority to represent and bind TelexFree.

426. As agents of TelexFree, the Attorney Defendants owed a duty to the putative class not to negligently or recklessly make statements or misrepresentations, or offer incorrect opinions that would support the TelexFree business model or smooth the way for the additional influx of membership driven funding.

427. The Attorney Defendants drew direct financial benefit from assisting TelexFree to perpetuate and further the Pyramid Scheme to the detriment and loss of the putative class.

428. Plaintiffs and all other members of the putative class are "Investors" under Massachusetts state securities law.

429. However, upon the advice of the Nehra and Waak attorneys, TelexFree referred to the members of the putative class as "Associates," "Members," and "Promoters."

430. The TelexFree Pre-March 9 Contract at Section 2.6.5 (m) mandates that Promoters are not to use the term "investment" regarding the registration costs.

431. Specifically, the TelexFree Pre-March 9 Contract at Section 2.6.5 (m) provides that the Promoter must not "use terms that distort the real meaning of products or the mechanism and functioning of multilevel marketing, including, without limitation, expressions that convey the idea of instant wealth for nothing in exchange, as well as speaking of registration costs as a 'financial investment.' Similarly, it is expressly prohibited to use the term 'INVESTMENT' at

meetings and in promotional materials in general, orally or in writing."

432. TelexFree, the Operational Defendants and the Licensed Professional Defendants, including the Accountant and Attorney Defendants, provided the bad advice that distorted, furthered and perpetuated the unlawful, unfair and deceptive Pyramid Scheme.

433. Promotional materials also falsely represented that TelexFree was a "*clean & scam free business.*" (Emphasis in original).

M. TelexFree's Fraudulent and Deceptive Use of Best Western Hotel

434. In addition to the passive income scheme described above, TelexFree maliciously, falsely and deceptively represented that it had a connection with Best Western Hotel in South America that it could offer to its Promoters. TelexFree represented that they had an interest in a Best Western but did not.

435. TelexFree's president Merrill falsely described the Best Western Hotel offer. His promotion of this false opportunity was an important marketing tool intended to bolster TelexFree's credibility.

436. TelexFree's management maliciously, willfully, knowingly and deceptively featured the offer of the "Hotel Best Western Opportunity" on the front page of the TelexFree website with an accompanying banner and video.

437. TelexFree presented this Best Western Hotel opportunity as having a guaranteed yearly return of over 8%.

438. There was no business relationship between TelexFree and Best Western. TelexFree, Opt 3 and Borromei willfully and knowingly kept the Best Western Hotel opportunity video deceptively on the United States-based TelexFree website for months, being visible for months after the president of Best Western became aware of the video and requested TelexFree's website staff to remove it as part of its "post Brazilian shut down package." Defendant Opt 3

lists Best Western Hotel as a client although Best Western International Inc has never actually retained it.

439. Defendants Opt 3 and Defendant Borromei had actual knowledge of and involvement in TelexFree's false representation concerning the Best Western investment.

N. Investigation of, and Injunctions against, TelexFree's Brazilian Operations in Brazil

440. The following activities were taking place as TelexFree was carrying out approximately $865,893,524.99 in transactions with the Defendant Financial Services Providers.

441. In or about January 2013, the Brazilian Bureau of Consumer Protection (known as Procon) began to investigate TelexFree.

442. In its January 11, 2013 press release, Procon indicated that it had "detected evidence of crimes":

> The investigation initiated by civil prosecution of Consumer Protection (no. 01/2013) shows several controversial issues and possible crimes that put consumers at risk in time to accept that kind of deal.
>
> Among the possibilities, there is a breach in the Federal Law No. 1.521/51, art. 2, according to which it is a crime:
>
> Obtaining or attempting to obtain illicit gains at the expense of the people or of undetermined number of people through speculation or processes fraudulent ('snowball', 'chains', 'pichardismo' and any other equivalent) including Ponzi pyramid.
>
> There is also the possible violation of the Code of Consumer Protection (CDC), with false advertising, failure of product information and company, abuse of weakness or ignorance of consumers and conditions unreasonable disadvantage, among others.[43]

443. Procon subsequently initiated an official complaint and notified the "State Prosecutors Office, the Minister of Finance and the Federal Police."[44]

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[43] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 6.

[44] *See*, Exhibit 3, Decl. of Gray Echavarria, Attachment 38.

444. Shortly after January 11, 2013, Procon's investigation of TelexFree was widely reported online by English-language media.

445. On February 15, 2013, the MLM news site BehindMLM.com reported that TelexFree was under criminal investigation in Brazil for having operated an illegal Ponzi scheme.[45]

446. On February 17, 2013, A (MLM) Skeptic, an MLM blog, reported that Brazil's Bureau of Consumer Protection had investigated TelexFree upon suspicion of operating a Ponzi scheme, and had subsequently forwarded the case to the State Prosecutor's office for filing of formal charges.[46]

447. On March 9, 2013, the Ministry of Finance, after its investigation, declared that:

> The TelexFree business of selling packages of internet telephony (VoIP, its acronym in English), is not sustainable and suggests a Ponzi scheme, which is a crime against the popular economy.
>
> That is the conclusion of the Secretariat for Economic Monitoring of the Ministry of Finance (Seae / MF) in a statement on Thursday (14).[47]

448. As the matter progressed through the Brazilian court system, the Ministry of Finance was ordered not to issue further statements about the matter.

449. TelexFree and the Defendant Founders seized upon that fact and circulated through its affiliates the following misleading misrepresentation of the order:

> It's official! The investigation on TelexFree has been absolved of what Behind MLM has researched and posted.[48]

450. On June 19, 2013, the Brazilian Court in Acre issued an injunction putting "a stop to TelexFree's business operations, including the registration of new affiliate investors,

[45] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 6.

[46] *See,* Exhibit 3, Decl. of Gray Echavarria, Attachment 27.

[47] *Id.*

[48] *See,* Exhibit 3, Decl. of Gray Echavarria, Attachment 7.

acceptance of new investments and paying any returns owed on existing affiliate investments."[49]

451. In addition, following a court order in Brazil by Judge Borges for TelexFree to turn over "data relating to the registration and operation of the accounts of each of the affiliates, including twelve months of retroactive data," TelexFree claimed it had no access to registrations and transfer accounts of the company's Promoters.

452. This claim directly contradicts the internet video in which Costa is surrounded by stacks of books he falsely claims holds the requested affiliate data.[50]

453. At no point did TelexFree sell VoIP products legally in Brazil.

454. On January 26, 2015, the Brazilian government filed a criminal complaint seeking fines and jail time against Defendant Founders Wanzeler and Costa for their failure to register their offering of VoIP products with the Brazilian National Telecommunications Agency.

O. TelexFree's Continued United States' Operations

455. After the Brazilian government's seizure of Ympactus in June 2013, TelexFree continued to operate its Pyramid Scheme in the United States.

456. In late summer or fall of 2013, TelexFree retained a consulting group, The Sheffield Group, which also markets itself as having extensive MLM expertise and experience, to review its business plan. At this time, the advice provided by Sheffield Group and whether it was followed is unknown.

457. Jeffrey Babener of Babener & Associates advised TelexFree that its business plan was unlawful and needed to be redesigned in 2013. Babener markets himself as having specialized MLM expertise and experience.

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[49] *Id.*

[50] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 24; "*TelexFree claim no affiliate data, fined again,*" Behind MLM (Jan. 1, 2014) (explaining Judge Borges' request and TelexFree's contentious response).

458. Despite being advised of the illegality of the TelexFree program by Babener and Babener & Associates, TelexFree and its Defendant Founders continued operations without modification until March 2014.

459. Each Defendant knew TelexFree was an unlawful Pyramid Scheme, but continued to participate in or aid, abet and further such illegal activities. Each Defendant knew that TelexFree was shut down in Brazil, but continued to participate, substantially aid and abet and act to further its unlawful operations and activities in the United States.

P. Collapse of TelexFree's United States Operations

460. On or about February 5, 2014, the SOC, in connection with an investigation of TelexFree's operations, served TelexFree with subpoenas.

461. At least six banks, not named here as Defendants, rejected TelexFree's business.

462. However over several years of operations, TelexFree did employ financial accounts, including domestic and international bank accounts and various online payment processors to carry out and facilitate its fraudulent and deceptive scheme in the Commonwealth of Massachusetts including a nearly continuous banking relationship with Bank of America and TD Bank.

463. At least three banks, not named here as Defendants, terminated their relationship with TelexFree as its illegal and tortious operations became apparent.

464. Emails between TelexFree management and financial institutions painted a bleak picture of TelexFree's continuing financial operations.

465. In an August 28, 2013 email to Defendants Merrill, Craft and Wanzeler, Defendant Hughes, President of Base Commerce, a payment processing company serving TelexFree, clearly stated "[n]o US Bank or Processor . . . will accept your [TelexFree] business given that you are on month five of the Visa Chargeback monitoring program. You are

one of only three merchants in the USA on month five so you are a real hot-potato as they say."[51]

466. Financial institutions were an essential part of the TelexFree Pyramid Scheme and provided substantial assistance or encouragement, without which payments from Promoters could not be obtained or funneled through various shell companies and personal accounts. Without the substantial services of the Financial Service Defendants, TelexFree would not have been able to grow, be maintained or flourish as it did.

Q. TelexFree's Belated Efforts to Legitimize Its Scheme

467. On March 9, 2014, TelexFree abruptly changed its compensation plan, requiring Promoters to sell its VoIP product to qualify for the payments that TelexFree had previously promised to pay them. A central component of the new change affected the ease of participant withdrawals. TelexFree Participants could no longer withdraw money, even money already "earned," without making a specified number of retail sales and recruiting several new investors.

468. These changes were put in place in an attempt to forestall the impending collapse of the scheme.

469. Following these changes, numerous TelexFree Participants frantically contacted the Office of the Secretary of the Commonwealth, correctly suspecting the harbinger of TelexFree's collapse. The changes also generated a storm of protests from Promoters who could not recover their money.

470. As it became more difficult to withdraw money from TelexFree, TelexFree switched its compensation plan from one that paid participants in United States currency to one that operated on TelexFree "credits," which were essentially worthless.

471. The switch from payment in United States currency to payment in "credits" was

[51] *Id.*

made without any announcement or forewarning to TelexFree's Members, and was designed merely to forestall the impending collapse of the Scheme.

472. Furthermore, the value of the "credits" issued by TelexFree was not fixed in relation to any currency, thus giving TelexFree and its Executives the power to alter the value of the "credits" to suit their own interests and avoid compensating TelexFree's Members.

473. On April 1, 2014, dozens of Promoters descended upon TelexFree's Marlborough Office to protest the changes and to attempt to regain access to their money. Local media covering the chaos interviewed one Promoter who admitted that the VoIP service is "almost impossible to sell."[52]

474. On April 14, 2014, TelexFree, Inc., TelexFree, LLC and TelexFree Financial abruptly sought bankruptcy protection in Nevada under Chapter 11, admitting that they could not meet their obligations from VoIP revenues and seeking authority to reject all its current obligations to Promoters.

475. In furtherance of the enterprise, TelexFree mailed fraudulent and inaccurate 1099 (Miscellaneous Income) forms to Promoters in or about mid-April 2014, an attempt to create the illusion that TelexFree had made payments to Promoters when no such payments were made.

476. The 1099 forms were provided long after the mandated January 31, 2014 deadline, and some after the April 15, 2014 filing deadline.

477. TelexFree falsely represented that Promoters had received income that they in fact had not received.

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[52] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 33; *see also* Scott O'Connell, "*Upset customers look for answers at TelexFREE offices,*" Wicked Local-Dennis (April 1, 2014 (updated April 17, 2014)), http://dennis.wickedlocal.com/article/20140401/NEWS/140409503?sect=More&map=0.

478. TelexFree's former officers or employees stated to the TelexFree bankruptcy transition team that under the TelexFree Pre-March 9 Contract, TelexFree owed its Promoters over $5 billion dollars.

R. Events Since TelexFree's Bankruptcy Filing

479. On April 15, 2014, the SOC filed an Administrative Complaint against TelexFree, Inc. and TelexFree, LLC, alleging violations of the Massachusetts Uniform Securities Act, MASS. GEN. LAWS, c. 110A.

480. The SOC sought injunctions and orders requiring TelexFree, Inc. and TelexFree, LLC to cease and desist from further conduct violating Massachusetts securities laws and regulations, to provide an accounting of all proceeds received because of TelexFree's fraud, to provide restitution to Promoters for losses attributable to the fraud operations, and to disgorge all profits.

481. Also on April 15, 2014, the SEC filed a civil Complaint and Jury Demand against TelexFree, Inc. and TelexFree, LLC as well as Defendants Merrill, Wanzeler, Labriola, Craft, Rodrigues, De La Rosa, Crosby, and Sloan, alleging violations of the Securities Act of 1933, the Securities Exchange Act of 1934, and SEC Regulations. The SEC requested and was granted a preliminary injunction and an order freezing the assets of TelexFree. The SEC is also seeking disgorgement of profits and additional civil penalties.

482. Additionally on April 15, 2014, the FBI and the DHS conducted a raid of TelexFree's Marlborough Office.

483. During this raid by the FBI and DHS, federal agents apprehended Defendant Craft as he attempted to leave the building with a laptop and approximately $38 million in cashier's checks in a bag. He also tried to leave with TelexFree computer equipment containing incriminating data.

484. When questioned, Craft stated to the federal agents he was merely a "consultant," and claimed that the checks and computer were "personal."

485. Defendant Katia Wanzeler was apprehended as she attempted to board a flight to Brazil, on which she had a one-way ticket, cash and seventy pounds of luggage.

486. On or about May 1, 2014, the Montana Securities Commissioner filed a cease and desist order against TelexFree.

487. The following day, the United States Bankruptcy Court for the District of Nevada, on motion by the SEC, transferred the matter to the federal district court in Massachusetts, Central Division.

488. During hearings conducted on May 2, 2014, William H. Runge, III, former Chief Restructuring Officer of TelexFree, estimated that as of TelexFree's bankruptcy filing TelexFree had assets of $31 million in its bank accounts, $28 million in brokerage accounts, and nearly $30 million held by payment processing companies.

489. The location of hundreds of millions of dollars received by TelexFree from Promoters remains unknown.

S. TelexFree's Principals, Founders and Executive Office Controlled TelexFree, Knowingly Perpetrated the Unlawful, Unfair, and Deceptive Pyramid Scheme and Made False Representations about TelexFree

490. Defendants Merrill, Wanzeler, Labriola, Craft and Costa were responsible for the control and operation of TelexFree**.**

491. These Defendants, TelexFree's Founders and Principals, Executive Office and Top Level Promoters knowingly and willfully conspired to perpetrate, and did perpetrate, the TelexFree Pyramid Scheme with full awareness of its unfair, deceptive, and unlawful nature.

492. Defendant Merrill served as the president, secretary, and director of TelexFree, Inc.; a manager of TelexFree, LLC; president, secretary and director of TelexFree Financial;

general partner of Defendant Electric, and president, secretary and director of Defendant Mobile, and in those capacities, exercised significant control over TelexFree's business operations.

493. Merrill exercised significant control over the TelexFree Pyramid Scheme. Merrill has appeared in videos posted to the internet – including, among numerous others, a November 3, 2012 YouTube video entitled "TelexFree James Merrill Brasil,"[53] a June 20, 2013 YouTube video entitled "James Merrill Speaks About TelexFREE BR Investigation,"[54] and the highly promoted "TelexFree 1st Extravaganza" video made available on www.TelexFree.comin which he can be seen promoting TelexFree as a revenue opportunity for Promoters.

494. Merrill also otherwise made numerous false representations in furtherance of the Pyramid Scheme.

495. In a March 21, 2014 press release, Merrill misrepresented that TelexFree had been "in the VoIP business for more than a decade."

496. Through to at least March 28, 2014, the TelexFree website included a biography of Merrill, which falsely stated that Merrill was a 1985 graduate of Westfield State University in economics, and that he is "well versed in one of the new technologies of the era (VoIP)."

497. According to testimony obtained by the SOC, Merrill attended Westfield State University for a mere two years, without either receiving a degree or declaring a major.

498. In further direct contravention to the representations made on the TelexFree websites, Merrill also testified to the SOC on March 25, 2014 that he had only a basic understanding of VoIP technology.

499. Defendant Merrill received $3,136,200 on December 26 and 27, 2013 from one of the named Financial Service Provider Defendants.

[53] Available at https://www.youtube.com/watch?v=8hYuvWNIL2M.

[54] Available at https://www.youtube.com/watch?v=zO4xe-0tE-4.

500. Defendant Wanzeler served as treasurer and a director of TelexFree, Inc.; a manager of TelexFree, LLC; vice president, treasurer, and a director of TelexFree Financial; general partner of Defendant Electric and treasurer and director of Defendant Mobile, and, according to corporate filings on record with SOC, as the chief executive officer of TelexFree, Inc.

501. In those capacities, Wanzeler exercised significant control over TelexFree's business operations.

502. Wanzeler exercised significant control over the TelexFree Pyramid Scheme and participated in marketing TelexFree to potential investors.

503. Wanzeler appeared in TelexFree videos posted to the Internet in which he willfully, maliciously, unfairly, deceptively:

- promoted TelexFree as a revenue opportunity for Promoters;
- detailed the, unlawful and fraudulent TelexFree Program; and
- made false representations regarding returns.

504. Wanzeler received $4,317,800 on December 26 and 27, 2013, and wired $3.5 million to the Oversea-Chinese Banking Corporation in Singapore on January 2, 2014.

505. Defendant Labriola served as the international marketing director for TelexFree, Inc.

506. Labriola was one of the original directors and founders of Common Cents Communications, Inc.

507. At all material times, Labriola exercised significant control over TelexFree's business operations and the operations of its interrelated companies.

508. Labriola also appeared in several videos posted on the Internet promoting TelexFree as a revenue opportunity for Promoters, detailing the fraudulent TelexFree program

and making false representations regarding returns.

509. Labriola has acted as TelexFree's spokesman to Promoters during post-bankruptcy petition conference calls.

510. As a director of TelexFree, Inc., Labriola exercised significant control over the TelexFree Pyramid Scheme.

511. As international marketing director for TelexFree, Inc., Labriola maliciously and knowingly perpetrated the TelexFree fraud through the dissemination of false and misleading advertising and marketing communications.

512. Defendant Craft is a CPA and served as the chief financial officer ("CFO") of Telex Free, Inc. and TelexFree, LLC.

513. In his capacity as CFO of TelexFree, Craft was responsible for preparing or approving TelexFree's financial statements, overseeing TelexFree's accounting methods and records, and otherwise exercising significant supervision and control over TelexFree.

514. According to the SEC, two companies controlled by Craft received more than $2 million from TelexFree between November 19, 2013 and March 14, 2014.

515. On April 23, 2013, in response to a request for a profit-and-loss statement issued by the SOC, TelexFree produced a document purporting to be TelexFree's 2012 profit-and-loss statement.[55]

516. TelexFree did not make use of usual and accepted MLM accounting practices. For example, they did not separate out income generated by sales of VoIP from income generated by other means.

517. On February 5, 2014, the SOC requested a second profit-and-loss statement from

[55] *See* Administrative Complaint of instituted by the SOC, Dkt. No. 2014-0004, page 39, attached as Attachment 36 to Exhibit 3, Decl. of Gray Echavarria.

TelexFree for 2012, which TelexFree produced on February 26, 2014.[56]

518. A comparison of these two profit-and-loss statements – each purporting to be TelexFree's profit-and-loss statement for 2012 – reveals massive discrepancies (and "conflicting statements").

519. The first statement provided by TelexFree lists total income for 2012 at $1,864,939.70, while the second lists total income for 2012 at $2,834,835.70.[57]

520. As further examples, agent commission is listed at $520,582.95 in the first, versus $2,105,925.61 in the second; total expenses are listed as $784,899.22 in the first, versus $2,333,893.09 in the second; net operating income is listed as $1,080,040.48 in the first, versus $478,251.56 in the second; and net income is listed as $1,066,313.39 in the first, versus $477,652.23 in the second.[58]

521. The existence of duplicative accounting records containing egregious discrepancies indicates TelexFree's falsification of accounting records and negligent failure to adhere to Generally Accepted Accounting Principles ("GAAP").

522. As CFO for TelexFree, Inc. and TelexFree, LLC, and a certified public accountant, Defendant Craft negligently or recklessly perpetuated the TelexFree unlawful enterprise by:

- overseeing TelexFree's creation of accounting records;
- failing to ensure that GAAP accounting methods were adopted and adhered to;
- certifying TelexFree's business operations and accounting practices as good and lawful; and

[56] *Id.*
[57] *Id.*
[58] *Id.*

- concealing that the AdCentral packages purveyed by TelexFree were securities.

523. Defendant Costa was listed as manager of TelexFree, LLC with the Massachusetts Secretary of State Corporations Division.

524. Costa is one of the original founders of TelexFree, and was involved in the day-to-day management and oversight of TelexFree and was actively involved in and managed its Brazilian operations.

525. Costa has appeared on numerous websites and videos posted on the Internet promoting TelexFree as a revenue opportunity for Promoters, detailing the fraudulent TelexFree Program and touting its huge financial return.

526. In an August 15, 2013 video, Costa fraudulently claims that TelexFree "never was, never will be" an illegal pyramid scheme because of its VoIP sales. He further misrepresented that "[w]e do not depend on everyone coming in in order to pay the people who are already in."

527. Costa was an outspoken advocate against the Brazilian Court's decision to enjoin TelexFree's Brazilian activities, and publicly supported TelexFree's illegal and corrupt activities.

528. On June 25, 2013, in an outright misrepresentation, Costa is videoed displaying an insurance notification representing that it was proof of coverage for Promoters' payments; however, in actuality, the document was a notification denying coverage.[59]

T. TelexFree's Top Level Promoters Played an Integral, Essential and Primary Role and also Aided and Abetted the Pyramid Scheme

529. TelexFree conducted its Pyramid Scheme through the use and with the participation of several high profile Promoters referred to herein as "Top Level Promoters," including Defendants Rodrigues, De La Rosa, Crosby, Miller, Sloan, Shoyfer and others.

[59] *See* http://www.youtube.com/watch?v=q2A2IsAPd0I.

530. TelexFree's Top Level Promoters played a primary role in the Pyramid Scheme and were integral and essential co-conspirators who at all times knew that they were involved in unlawful activities designed to wrongfully take the funds invested by the class. In fact, that is why the Founders, Principals, and Executive Office recruited many of them for involvement in TelexFree.

531. The presence of the Top Level Promoters as well as their suspicious, tortious or unlawful activities were Red Flags for the Financial Services Defendants as identified by the FFIEC.

532. Each Top Level Promoter deceptively, fraudulently and misleadingly promoted and furthered the Pyramid Scheme with knowledge of its illegality.

U. TelexFree's Attorneys Played an Integral Role in and Aided and Abetted the Unlawful, Unfair, and Deceptive Pyramid Scheme

533. TelexFree's Attorney Defendants were a critical component of the TelexFree Pyramid Scheme as their representation of TelexFree went beyond the ordinary attorney-client relationship of delivering legal advice.

534. At times relevant to this complaint, the Attorney Defendants had actual knowledge that the TelexFree business model was a fraudulent Pyramid Scheme.

535. The Attorney Defendants were obligated to advise their clients on how to comply with the law, yet TelexFree's Attorney Defendants negligently, recklessly, willfully, knowingly, unfairly and deceptively advised their clients how to avoid detection, maintain the appearance of legality, and maintain and build the Pyramid Scheme. They knowingly extended their roles to become supporters of the Pyramid Scheme by lending legitimacy to its operation.

536. Throughout TelexFree's profitable Pyramid Scheme, the Attorney Defendants acted as legal counsel to TelexFree, and used their positions of authority, education and respect

of the profession of law within the targeted immigrant and other communities as an integral part of the Pyramid Scheme "and its post Brazilian shut down package."

537. Beyond his licensure, Attorney Nehra's extensive experience in MLM, and particularly his involvement with the Ponzi schemes involving AdSurfDaily and Zeek Rewards, armed him with the knowledge of what constitutes violations of United States securities law, which he used in an attempt to hide TelexFree's Pyramid Scheme activity with obfuscating phraseology.

538. Similar to Attorney Nehra, Attorney Waak also claimed to have over thirty years of experience in counseling MLM and direct-selling enterprises.[60]

539. On the website of the Law Offices of Nehra and Waak, the Defendant Attorneys boasted that "[n]o Company that retained this firm BEFORE LAUNCH has been shut down by a regulator."[61] (emphasis in original).

540. On their website, Attorney Nehra and Attorney Waak claim to specialize in counseling "domestic and foreign companies operating MLM (multi-level marketing) businesses in the United States."[62]

541. The Law Offices of Nehra and Waak provided legal counsel to TelexFree, and Attorney Waak was principal attorney of the law firm and was charged with oversight of the firm's daily activities.

542. Attorneys Nehra and Waak also maintained the Defendant professional limited liability companies Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC, which also provided legal and counseling services to TelexFree.

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[60] *See* Exhibit 4, Decl. of Carol L. Harris, Exhibit 2. http://www.mlmatty.com/meet-mlm-attorneys/.

[61] *Id.*

[62] *Id*.

543. Among the Attorney Defendants, and throughout TelexFree's Scheme, there was no clear distinction among the services provided to TelexFree by the Law Offices of Nehra and Waak, the individual Attorney Defendants, and their respective professional limited liability companies.

544. As general partners of the Law Offices of Nehra and Waak, Attorney Nehra and Attorney Waak are jointly and severally liable for torts and obligations of the firm.

545. Seeking to profit from TelexFree's exploitation of the members of the putative class, Defendant Nehra drew upon his prior experience to aid, abet and play a substantial and integral part in TelexFree's unlawful, unfair and deceptive acts and practices during times relevant to this complaint.

546. The Attorney Defendants attended meetings at TelexFree's headquarters in Massachusetts to discuss TelexFree's product, business model, and operations, participated in teleconferences with Defendant Founders, Principals, Executive Office, and Top Level Promoters to discuss TelexFree's product, business model, and operations and had access to and input into TelexFree's documents, including the contracts entered into between TelexFree and the putative class.

547. Attorney Nehra negligently, recklessly, willfully, knowingly, unfairly or deceptively counseled TelexFree on actions that would serve to evade United States securities laws that were intended to offer, in part, to provide the members of the putative class with protection from pyramid schemes, and advised TelexFree Promoters (excluding Top Level Promoters) to unknowingly participate in the evasion of federal and state securities laws, to enrich himself financially and serve his own selfish interests.

548. Attorney Nehra otherwise negligently, recklessly, willfully, knowingly, unfairly

or deceptively counseled and advised TelexFree Promoters (except the Top Level Promoters) to unknowingly participate in the evasion of federal and state securities laws.

549. Defendant Nehra accomplished this through his reputation as a licensed attorney, his purported experience as an MLM expert and his purported research of TelexFree's business model, which allowed him to hold out TelexFree as a legal business.

550. Defendant Nehra did this in a variety of ways, including his instruction to Investors to avoid using the terms "investment" regarding AdCentral Packages (*see* TelexFree Pre-March 9 Contract, Paragraph 2.6.5(m)), which was an attempt to conceal, and encouraged others to conceal, TelexFree's sale of securities in an attempt to strip Promoters of the rights afforded them by federal and state securities laws.

551. In company videos, Attorney Nehra failed, refused and neglected to advise prospective TelexFree Promoters, the putative class members, that their participation in TelexFree presented a risk, including the risk of participating in an unlawful scheme, or that his advice was, in fact, against their own interests.

552. Attorney Nehra perpetuated and enhanced the Scheme by not advising the putative class member TelexFree Investors that his web-published purported professional advice was intended to serve the interests of TelexFree and himself.

553. Attorney Nehra's actions exceeded the scope of zealous representation of TelexFree. Although he was licensed to practice law and purported to offer legal opinions, active and integral participation in a Pyramid Scheme does not fall within the parameters of the profession in which he was licensed to practice.

554. Nehra negligently told Promoters and prospective members that TelexFree's actions were within the purview of federal and state law. As described above, the Defendant

Founders, Principals, Executive Office and Top Level Promoters knowingly used Attorney Nehra's false legal opinions and misrepresentations as a marketing tool to unfairly and deceptively further the illegal Pyramid Scheme.

555. Attorney Nehra's opinions, and the opinions of other Attorney Defendants, were packaged and promoted as part of TelexFree's total "post Brazilian shut down package" to the members of the putative class.[63]

556. On an internet video posted on August 2, 2013, Attorney Nehra provided false and deceptive assurances to Promoters and potential Promoters, stating that "[t]he special ingredient is that you have a real product."

557. Attorney Nehra assured Promoters on internet postings, in writing, and in person at marketing promotions that, in his professional opinion, the TelexFree business model was legitimate despite having actual knowledge that TelexFree MLM Network "*Partnerships*"[64] involving TelexFree's AdCentral marketing packages were unlawful, as he had actual knowledge of the ruling of the Brazilian Court, knowledge of and access to TelexFree's United States operations and its composition, and knowledge of United States law.

558. More particularly, when he advised potential participants of the soundness of the venture, Attorney Nehra knew that a Brazilian court had determined that TelexFree's activity was fraudulent, and that its Brazilian attorneys essentially admitted it was a pyramid scheme.

559. Defendant Nehra's own comments suggest that when providing legal opinions at the request of TelexFree and Defendant Founders, he knew that TelexFree intended to use his advice and likeness prominently as a marketing tool on both their localized Brazilian

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[64] *See* Exhibit 1 - Standard TelexFree Contract at ¶2.2.1 ¶

(Portuguese) and Spanish (Spanish) website portals, in an effort to make TelexFree's business appear legitimate thereby continuing and perpetuating the ongoing fraud.

560. Defendant Nehra knew TelexFree used his legal opinions as a marketing tool to promote its suspicious, tortious or unlawful Pyramid Scheme on Brazilian (Portuguese) and Spanish/Dominican (Spanish) website portals.

561. Attorney Nehra aided, abetted, counseled, induced, and/or procured TelexFree's violations of law regarding the proper segregation and maintenance of customer funds, and acted in concert and combination with TelexFree in such violations.

562. Defendant Nehra gave substantial assistance to TelexFree and Defendant Founders in accomplishing a tortious and illegal result, and Nehra's own conduct, separately considered, constitutes a breach of duty to Promoters since he:

- negligently misrepresented the legality and sustainability of TelexFree's operations to the detriment of Promoters, and received fees from TelexFree;
- negligently obscured and obfuscated the illegal nature of TelexFree's Scheme by the manipulative use of language, including, e.g., advising TelexFree that using the term "investment" must be avoided;
- breached his duty of professional care to Promoters by failing to exercise proper due diligence in investigating the legality of TelexFree's operations;
- breached his duty of care by encouraging and advising individuals to become and remain Promoters to their detriment, despite his knowledge of the illegality of TelexFree's operations; and
- engaged in a civil conspiracy to defraud TelexFree's Promoters with a Pyramid Scheme, and took a leading role in the Scheme.[65]

[65] As stated by Justice William O. Douglas, "just as a fine natural football player needs coaching in the wiles of the sport, so, too, it takes a corporation lawyers with a heart for the game to organize a great stock swindle or income tax dodge and drill the financiers in all the precise details of their play." William O. Douglas, "*Directors Who Do Not Direct,*" 47 Harv. L. Rev. 1305, 1329 (1934).

563. Attorney Waak, as general partner and principal attorney of the Law Offices of Nehra and Waak, and the other Attorney Defendants knew of, oversaw, and participated in Attorney Nehra's tortious and illegal conduct regarding the TelexFree Pyramid Scheme.

564. With their specialized knowledge of the laws governing MLM and direct-sales ventures and their personal knowledge of TelexFree's product, business model, and operations which were identical to its Brazilian product, business model, and operations, the following publicly available information caused or should have caused the Attorney Defendants to recognize that TelexFree was an unlawful pyramid or Ponzi scheme and decline or cease providing services to it or provide advice to change the program and make sure it was promptly changed:

- a Brazilian court found TelexFree's Brazilian operations to be fraudulent;
- a Brazilian court described TelexFree's operations in terms of the quintessential pyramid scheme after TelexFree's own Brazilian lawyers unwittingly admitted as much;
- TelexFree's Brazilian lawyer Djacir Falcão ("Falcão") advised the Brazilian court that an injunction would cause the company to enter bankruptcy: "Running the company really becomes difficult because of the court decision, so we will appeal";
- Falcão informed the Brazilian court that "should the company spend a few more days being prohibited from signing up new investors, they would have no money to pay the old ones";
- all of TelexFree's appeals in the Brazilian courts were denied;
- a Brazilian court remarked that the problem is that the earnings will be exhausted when the main source of revenue—new member registrations—stops;
- a Brazilian court remarked that adding new Members was more important to TelexFree than trying to sell its VoIP product;
- a Brazilian court remarked that it is detrimental that many affiliates do not even have the opportunity to recover their initial payment to Telexfree; and

- a Brazilian court entered an order freezing TelexFree's funds in Brazil, blocking future payments to TelexFree in Brazil, and enjoining TelexFree from signing on new members in Brazil.

565. Despite having knowledge that TelexFree was an enterprise carrying out unlawful, unfair, or deceptive acts or practices, Nehra and Defendant Nehra Law Firm performed integral services and provided essential advice and substantial assistance that was used to further TelexFree's unlawful business.

566. The Attorney Defendants used their knowledge and experience with MLM and direct-sales ventures, the laws applicable to those types of ventures, and their personal knowledge of TelexFree's product, business model, and operations to assist TelexFree in perpetrating the Pyramid Scheme. More specifically the Attorney Defendants:

- belatedly advised TelexFree that its compensation plan required amendment;
- advised TelexFree on how to avoid detection from state and federal agencies;
- advised TelexFree on how to maintain the appearance of legality, including to avoid using the term "investment" regarding the AdCentral Packages (TelexFree Pre-March 9 Contract, Paragraph 2.6.5(m)), which was an attempt to conceal, and encourage others to conceal, TelexFree's sale of securities in an attempt to strip Promoters of the rights afforded them by federal and state securities laws;
- advised TelexFree on how to maintain and advance TelexFree;
- advised TelexFree on how to avoid United States securities laws intended to offer, in part, protection from pyramid and Ponzi schemes;
- advised TelexFree Promoters (excluding Top Level Promoters) to unknowingly participate in the evasion of federal and state securities laws;
- advised TelexFree on laws concerning the proper segregation and maintenance of consumer funds;
- failed to inform the putative class that the Attorney Defendants' web-published professional "advice" was intended to serve the interests of TelexFree and the Attorney Defendants;

- failed to inform the putative class that participation in TelexFree presented a risk, including the risk of participating in an unlawful scheme, or that their advice was against the putative class's interests;

- advised Promoters and represented to the putative class that TelexFree was a lawful, legitimate, and sustainable venture under state and federal laws, which TelexFree then used as a potent marketing tool to recruit new members;

- provided legal representations and statements to Defendant Founders, Principals, Executive Office, and Top Level Promoters that Attorney Defendants knew would be used by TelexFree in its efforts to recruit and retain members;

- allowed their names, experience, and likenesses to be used by TelexFree in propaganda aimed at retaining and obtaining members to the Pyramid Scheme like online postings, in-person meetings, company "super weekends" and "extravaganzas," brochures, and videos;

- gave speeches to the putative class at TelexFree's recruiting and retention "extravaganzas," "super weekends," and other events proclaiming with an air of authority that TelexFree's product and model was legitimate and lawful;

- informed the putative class that the Brazilian government's shutdown of TelexFree's activities in Brazil would not affect TelexFree's operations in the United States;

- refused to address questions asked by the putative class regarding implications of the injunction granted against TelexFree's operations in Brazil;

- informed the putative class that TelexFree "is legally designed . . . you are on very solid legal ground," and that TelexFree's operation had been "vetted" and "bless[ed]" by the Attorney Defendants;

- encouraged the putative class to become or remain Promoters; and

- provided assurances to Promoters and the putative class on website postings and other writings, and in person that TelexFree was legitimate and lawful, including assurances that "[t]he special ingredient is that you have a real product."

567. The acts and omissions of the Attorney Defendants were integral for TelexFree to perpetuate and further the Pyramid Scheme and constitute substantial assistance in that Scheme

by the Attorney Defendants.

568. The Attorney Defendants committed their respective acts and omissions with the knowledge and purpose of assisting and benefiting TelexFree and themselves and to the detriment and loss of the putative class.

569. The Attorney Defendants knew their representations and statements would be and were used by TelexFree as a marketing tool to further advance its business model and illegal activities.

570. The Attorney Defendants knowingly allowed TelexFree to utilize their statements and representations regarding the legality of TelexFree as propaganda to retain and maintain members in the Pyramid Scheme.

571. The Attorney Defendants negligently, recklessly, willfully, knowingly, unfairly or deceptively failed to exercise proper diligence in investigating the legality, legitimacy, and sustainability of TelexFree's product, business model, and operations or otherwise offered bad advice.

V. TelexFree's Accountants and Professional Services Providers Played an Integral Role in and Aided and Abetted the Unlawful, Unfair, and Deceptive Pyramid Scheme

572. Defendants Craft and Craft Financial participated in and perpetuated TelexFree's unlawful business operation.

573. In his dual capacity as CFO and CPA for TelexFree, Craft and Craft Financial were responsible for preparing or approving TelexFree's financial statements and overseeing TelexFree's accounting methods and records, and otherwise exercised significant supervision and control over TelexFree.

574. In exercising their duties, Craft Financial and Craft negligently participated in, supervised and controlled conflicting financial statements for TelexFree that reveal massive

discrepancies.

575. As the CFO and CPA for TelexFree, Inc. and TelexFree, LLC, Craft and Craft Financial negligently assisted in perpetuating TelexFree's fraudulent Pyramid Scheme by:

- directing or overseeing TelexFree's creation of inaccurate, false or falsified accounting records;
- failing to ensure that GAAP was adopted and adhered to by TelexFree;
- certifying TelexFree's business operations and accounting practices as good and lawful;
- preparing inaccurate financial documents for the affiliated TelexFree entities;
- preparing inaccurate tax returns for the affiliated TelexFree entities;
- knowingly disseminating or allowing to be disseminated inaccurate financial information among and between Promoters; and
- conspiring with TelexFree's Officers to structure and perpetuate the TelexFree business model while enriching TelexFree, Craft Financial and Craft.

576. Defendants Craft and Craft Financial knew when providing their financial assistance that their roles would give substantial assistance or encouragement to the Pyramid Scheme.

577. Defendant PricewaterhouseCoopers ("PwC") also negligently provided accounting and consulting services to TelexFree during the Pyramid Scheme.

578. More particularly, TelexFree retained PwC in January 2014, several months after TelexFree had been shuttered by government authorities in Brazil, to provide tax and financial consultation, including assistance with the development of international tax structures.

579. PwC negligently advised TelexFree to prepare and issue unfair, deceptive, inaccurate, suspicious, and unlawful 1099 (Miscellaneous Income) forms.

580. In an effort to maintain the illusion that it had made payments to its members and

on the negligent advice of PwC, TelexFree mailed fraudulent and inaccurate 1099 (Miscellaneous Income) forms to its members as described above.

581. Craft Financial and Craft also negligently assisted in preparing and sending the inaccurate 1099 forms to TelexFree's members.

582. Those inaccurate 1099 forms were filed with the Internal Revenue Service and State Revenue Offices and will impose an undue burden and hardship on Promoters who may now be liable to pay taxes on income they never received.

583. The CPA Defendants also negligently prepared financial documents for affiliated TelexFree entities and prepared tax returns for the affiliated TelexFree entities.

584. PwC also negligently assisted TelexFree in responding to the Massachusetts SOC Securities Division's information requests.

585. PwC negligently provided TelexFree with its services despite having access to TelexFree's internal financial documents that demonstrated that TelexFree received virtually no income from the sale of its VoIP product and was, in fact, an illegal Pyramid Scheme.

586. Craft Financial, Craft, and PwC negligently performed services and provided assistance and advice that was integral and essential to TelexFree and used to further TelexFree's unlawful business.

587. Craft Financial, Craft and PwC negligently provided TelexFree with these professional services despite having access to TelexFree's internal financial documents, which demonstrated that TelexFree received virtually no income from the sale of its VoIP product and was, in fact, an illegal Pyramid Scheme.

588. Craft Financial, Craft and PwC knew when providing their professional services to TelexFree that their role would give substantial assistance or encouragement to TelexFree to

continue its unlawful business model and would further the illegal Scheme.

589. Craft Financial, Craft and PwC knew their representations and statements were false and misleading and that they would be and were used by TelexFree as a marketing tool to further advance its business model and illegal activities.

590. At all times relevant to this complaint, Craft Financial, Craft and PwC acted subject to pervasive control of TelexFree and were subject to TelexFree's will. Despite having actual knowledge that TelexFree's Brazilian operations had been found fraudulent and enjoined by Brazilian courts, Craft Financial, Craft and PwC, at the direction of and with information provided by TelexFree, negligently crafted financial statements and negligently made representations designed to misrepresent and hide the true nature of TelexFree's product, business model, and operations in the United States and the effect of the Brazilian courts' findings and orders.

591. At all times relevant to this complaint, Craft Financial, Craft, and PwC consented to be agents of TelexFree. Craft Financial, Craft and PwC knowingly allowed TelexFree to utilize their deceptive and misleading financial statements and representations regarding TelexFree as propaganda to retain and maintain members in the Pyramid Scheme.

592. As agents of TelexFree, Craft Financial, Craft and PwC owed a duty to the putative class not to make deceptive statements or misrepresentations in order to induce the putative class to buy into TelexFree's Pyramid Scheme.

593. Craft Financial, Craft and PwC committed their respective acts and omissions with the knowledge of assisting TelexFree to perpetuate and advance the Pyramid Scheme to the benefit of TelexFree and Craft Financial, Craft and PwC, but to the detriment and loss of the putative class.

594. At all material times, Defendant Borromei served as the direct contact and liaison between Defendant Opt3 and TelexFree.

595. At all material times, Borromei had actual knowledge that TelexFree was an unlawful Pyramid Scheme.

596. In addition to providing technical support and assistance with payment processing, Opt3 and Borromei managed and oversaw the technological aspects of TelexFree's fraudulent and illegal activities.

597. In or around 2012, Opt3 and Borromei were contracted by TelexFree to provide internet technology ("IT") services, to establish TelexFree's electronic database in Brazil, to maintain and service TelexFree's computers and electronic database, to provide assistance with processing payments and financial transactions, and to provide other technical support.

598. Opt3 and Borromei set up and maintained TelexFree's electronic database. Together with TelexFree, Opt3 and Borromei conspired to set up TelexFree's servers in Brazil with the goal of evading U.S. regulators and hindering investigation of TelexFree in the event that TelexFree's Scheme should collapse or be shut down.

599. On August 13, 2013, Defendant Borromei co-hosted an open webinar with Defendant Labriola, which promoted TelexFree's payment system, which had been established by Opt3 and which utilized Defendant GPG's electronic payment gateway, to TelexFree Investors and potential investors and encouraged them to make further investments using this system.

600. On August 16, 2013, Borromei hosted an additional open webinar, in which he further promoted the payment system, including Defendant GPG's electronic payment gateway, and encouraged further investments in TelexFree using this system.

601. By email dated September 27, 2013, Borromei petitioned GPG to allow TelexFree's continued use of its electronic gateway for transmitting Member credit card data.

602. By email dated September 27, 2013, in response to Borromei's email earlier that same day, Jayme Amirie, President of GPG, indicated to Borromei that, although TelexFree represented a "reputational risk" for GPG, GPG would continue to allow TelexFree to use GPG's electronic gateway to transfer electronic data to Defendant Allied Wallet for processing Members' credit card payments.

603. Borromei also worked with Defendants Sparman and Vantage Payments to establish TelexFree's payment processing through Allied Wallet.

604. Opt3 and Borromei continued to provide services to TelexFree until the time of TelexFree's bankruptcy petition.

605. Opt3 is listed as a trade creditor in TelexFree's initial bankruptcy filings.

606. Borromei was also copied on numerous emails between and among TelexFree, Defendant Base Commerce's John Hughes, and GPG's Jayme Amirie, discussing the transition of TelexFree's payment processing to Allied Wallet and transfers of funds.

607. Through their close relationship with co-Defendants Merrill, Wanzeler and Craft, and through their providing TelexFree with technological oversight and support, Borromei and Opt3 had actual knowledge of TelexFree's illegal and fraudulent activities yet continued to provide substantial assistance in the furtherance thereof.

W. The Financial Services Providers Were Required to Comply With Various Statutory and Regulatory Investigation and Monitoring Obligations

608. Each of the Financial Services Provider Defendants is a "financial institution" under the terms of the Bank Secrecy Act, 31 U.S.C. § 5312.

609. Each of the Financial Services Provider Defendants is required to implement in

their business operations proven solutions to assure compliance with key anti-bribery and corruption regulations, including the Bank Secrecy Act ("BSA"), Foreign Corrupt Practices Act ("FCPA"), and critical anti-money laundering ("AML") mandates such as Know Your Customer ("KYC") and the Customer Information Program ("CIP").

610. Each of the Financial Services Provider Defendants is required by key anti-bribery and corruption regulations to possess AML expertise.

611. At least six financial institutions not named in this action turned TelexFree away before opening an account.

612. At least six financial institutions not named in this action turned TelexFree away because of suspicious activity and other numerous "Red Flags" alerting them of fraud during the same time period that the Defendant Banks transacted millions of dollars in business with TelexFree.

613. Other banks not named in this action discharged TelexFree within weeks of opening a financial service relationship with them.

614. Each Financial Services Provider profited from its relationship with TelexFree and the other Defendants.

615. Given TelexFree's unlawful business operation and the "Know Your Customer" and AML regulations, each Financial Services Provider was obligated to refuse to open any accounts or process any transactions for the benefit of TelexFree.

616. Each of the Defendant Financial Services Providers was required to maintain robust, sophisticated and effective due diligence systems for purposes of BSA and AML compliance.

617. During times relevant to the complaint, each of the Defendant Financial Services

Providers did maintain robust, sophisticated and effective due diligence systems for purposes of BSA and AML compliance.

618. When a Financial Services Provider finds out that a client is laundering money or running an unlawful enterprise it should:

- terminate the banking relationship;
- shut down the accounts; and
- file a Suspicious Action Report ("SAR").

619. Each of the Financial Services Provider Defendants are required to take precautions against violations of the BSA and AML laws by clearly understanding the risk in their customer base and conducting comprehensive enhanced due diligence that prioritizes those risks.

620. At all times relevant to this complaint, each of the Financial Services Provider Defendants was subject to federal regulatory law obligations that required them to:

- obtain and possess knowledge of and understand[66] their clients' business operations;
- obtain and possess knowledge of and understand their clients' relationships and activities;
- continue to monitor such information throughout the term of their relationship; and
- take certain and defined steps once indicators of suspicious, tortious or illegal activity existed.

621. In particular, each of the Financial Services Provider Defendants was obligated by, without limitation, the BSA, the USA Patriot Act of 2001 (the "Patriot Act"), and federal regulations including 31 C.F.R. § 103.121 and amended 31 C.F.R. § 1020, et seq. (the "Federal

[66] In other words, the Financial Services Defendants did not simply have to gather information; they needed to analyze it and understand their clients' business models and key personnel.

Regulations") to perform a reasonable investigation of TelexFree to determine and understand:

- the true identity of its management;
- the true nature of its business activities;
- the true nature of its customer base;
- the true nature of its product offerings; and
- prior to agreeing to provide any financial services or access to the federally regulated banking system.[67]

622. Specifically, pursuant to the KYC analysis mandated by 31 C.F.R. § 103.121 and amended 31 C.F.R. § 1020, et seq. (the "Know-Your-Customer Regulations"), each of the Financial Services Providers Defendants was required to collect information sufficient to determine whether TelexFree, or any other customer of the Defendant involved with TelexFree, posed a threat of criminal or other improper conduct.

623. KYC controls typically include the following:

- collection and analysis of basic identity information (referred to in U.S. regulations and practice as "Customer Identification Program" or CIP);
- name matching against lists of known parties;
- determination of the customer's risk in terms of propensity to commit money laundering, terrorist finance, or identity theft;
- creation of an expectation of a customer's transactional behavior;
- monitoring of a customer's transactions against its expected behavior and recorded profile; and
- monitoring of a customer's transactions against that of the customer's peers.

624. In addition, at all times relevant to this complaint, the Defendant Financial Services Providers were mandated to conduct due diligence prior to opening an account pursuant

[67] *See also* Federal Financial Institution Examination Council, BANK SECRECY ACT ANTI-MONEY LAUNDERING EXAMINATION MANUAL (June 2005).

to 31 C.F.R. 1010.620.

625. At all times relevant to this complaint, the Defendant Financial Services Providers were also mandated without limitation by the BSA, the Money Laundering Control Act of 1986 (the "Money Laundering Control Act"), the Patriot Act, and the Know-Your-Customer Regulations *to continue* to actively monitor TelexFree's business activities, customer base, *and product offerings* once it became a customer.

626. Each of the Financial Services Provider Defendants processed transactions in excess of $25,000 in the aggregate on behalf of TelexFree.

627. Processed transactions in excess of $25,000 in the aggregate on behalf of TelexFree were suspicious and triggered the SAR requirements set forth in the BSA and the Patriot Act.

628. A transaction is "suspicious" if the transaction: (1) involves funds derived from illegal activities, or is conducted to disguise funds derived from illegal activities; (2) is designed to evade the reporting or recordkeeping requirements of the BSA or regulations under the Act; or (3) has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction. 31 C.F.R. § 1020.320(a)(2)(i) - (iii).

629. As a result of their obligation to file SARs with the Financial Crimes Enforcement Network of the U.S. Department of the Treasury and other appropriate federal law enforcement agencies, as required by the BSA and accompanying Federal Regulations, 31 U.S.C. § 5312 et seq. and 12 CFR § 21.11 (the "Obligation"), each of the Financial Services Providers Defendants was obligated to determine the nature of TelexFree's normal business activities at the beginning

of their relationship with TelexFree.

630. The Obligation to file a SAR with the Financial Crimes Enforcement Network of the U.S. Department of the Treasury and other appropriate federal law enforcement agencies was required on an ongoing basis during the course of each Defendant Financial Services Provider's relationship with TelexFree.

631. Each of the Defendant Financial Services Providers performed the above SAR-related investigations at times relevant to this complaint.

632. During times relevant to this complaint, TelexFree's Financial Services Providers knowingly participated in and aided and abetted TelexFree's Pyramid Scheme by, *inter alia*, enabling the TelexFree Pyramid Scheme to operate, expand and continue by providing necessary financial services to TelexFree, the Operational Defendants, and each other, despite actual knowledge that they were engaged in suspicious, tortious or illegal activity.

633. Each of the Defendant Financial Services Providers understood, at a minimum, TelexFree's business models and key personnel prior to opening accounts.

634. Each of the Defendant Financial Services Providers performed the above investigations and understood, at a minimum, TelexFree's business models and key personnel at all times after they opened them and while they were servicing TelexFree's accounts.

635. At times relevant to this complaint, each of the Financial Services Providers Defendants willfully and knowingly acted unfairly, deceptively and in bad faith by failing to timely or properly act on their knowledge of TelexFree's suspicious, tortious or illegal business operation, and to otherwise fulfill their obligations under the BSA, 31 U.S.C. § 5311 et seq.; the Patriot Act, § 326, 31 U.S.C. § 5318; and 31 C.F.R. § 1020 *et seq.*, or, in the alternative, by failing to disclose or report the nature of TelexFree's business operations.

636. At all times material herein, the Financial Services Providers maintained departments responsible for ensuring compliance with the investigation, reporting, and procedural requirements contained in, *inter alia*, the Know-Your-Customer Regulations, 31 U.S.C. § 5312 *et seq.*, 31 U.S.C. § 5311 *et seq.*, the Patriot Act, § 326, and 12 CFR § 21.11 (hereinafter, "Regulatory Account Monitoring Department").

637. Each of the Financial Services Providers maintained a Regulatory Account Monitoring Department.

638. Each of the Financial Services Providers performed the initial investigations required by the foregoing laws.

639. Each of the Financial Services Providers performed the continual monitoring required by the foregoing laws.

640. At all times relevant to this complaint, in the course of complying with their regulatory duties and obligations, the Financial Services Providers and their employees and officers obtained actual knowledge that TelexFree, its Defendant Executive Officers and Top Level Promoters were engaged in suspicious, tortious or illegal activity.

641. In addition to what has already been set forth, actual knowledge of TelexFree's unlawful operation was based in part on the:

- large magnitude and long duration of the Scheme;
- nature and volume of the deposits;
- open association with others known to have been closely tied to past high profile Ponzi and pyramid schemes;
- extensive negative news reports; and
- the fact that the related accounts and transactions bore the classic hallmarks of a Pyramid Scheme.

642. Each of the Financial Service Provider Defendants possess and made use

of highly sophisticated software programs that provided them with background information and financial details about prospective customers that are not available to the general public.

643. Under the federal AML laws, the Defendant Financial Service Providers must investigate the top managers, directors, and principal owners of their clients.

644. The Defendant Financial Service Providers also were aware of many Red Flags of suspicious, tortious, and criminal misconduct by TelexFree.

645. At least eleven major news and watchdog websites covering the MLM industry, Ponzi schemes, and online scams analyzed TelexFree in 2012, 2013 and 2014, including, but not limited to:

- BehindMLM.com, an internet watchdog and journalism site dedicated to the MLM industry;
- PatrickPretty.com, an internet watchdog and journalism site covering Ponzi schemes and internet crime;
- Skeptic.blogspot.com, an internet watchdog and blog covering the MLM industry and online scams;
- ASDUpdates.com, an online journal covering internet scams;
- BusinessForHome.org, an internet news site analyzing direct-selling and MLM opportunities;
- CitizenCorps.com, an internet news site analyzing work-from-home and online income opportunities;
- EthanVanderbuilt.com, an internet watchdog and news site covering online scams;
- MLMHelpDesk.com, a blog and news site dedicated to the MLM industry;
- PonziTracker.com, an internet watchdog and news site covering and analyzing Ponzi schemes;
- Scam.com, a community-operated message board analyzing and discussing internet scams; and

- ScamXPoser.com, an internet watchdog site analyzing online income opportunities.

646. In addition to the above-listed websites dedicated to the MLM industry, the following websites specifically dedicated to Ponzi schemes and other online scams conducted analysis and exposés on TelexFree in 2012, 2013, and 2014, including, but not limited to:

- http://www.dailymotion.com/video/xwbhex_telexfree-has-launched-in-usa-english-presentation_news, - video posted on December 30, 2012 by TelexFree Promoter Kelly Isom Tolar, which shows TelexFree Promoters "showering" cash on each other while on stage at a promotional event, and states that TelexFree began in Brazil in January 2012, that it promises "up to $15,360" in income per day, that income is guaranteed without any sales of VoIP, and that TelexFree and Best Western Hotels had partnered to build 500 hotels in Brazil;

- http://www.slideshare.net/growrichteam/telexfree-marketing-plan-english - slide presentation posted on January 18, 2013, which discusses the pyramid structure of TelexFree's operation and states that TelexFree promises payment for posting of ads only, with no sales required;

- http://mmoljbp.blogspot.com/p/telexfree.html - blog posted on January 24, 2013, which repeatedly characterizes TelexFree as a "passive income opportunity," with the opportunity for "six generations of passive income," and discusses the pyramid structure of the operation;

- http://www.getresponse.com/archive/interestedpeople/Interested-People-TelexFree-Earn-20-a-week-for-a-year-no-recruiting-at-all-10992068.html - blog posted by a TelexFree Promoter named "Suzanna" on April 27, 2013, which states that TelexFree had been "sued by the Brazilian SEC"; and

- http://www.realscam.com/f9/telexfree-scam-not-2366/ - inquiry posted on a user-operated message board of the MLM community on May 30, 2013, stating "It looks like a Ponzy [sic] for me," and requesting feedback, which included a link to BehindMLM.com's exposé of July 27, 2012.

647. TelexFree's *own website* admitted TelexFree's connection to Brazil, legal problems, and lack of legitimate income in a way intended to deceive its Promoters, but not in a way that would avoid detection by the robust and sophisticated systems and personnel of the Financial Services Defendants. For example:

- As of February 25, 2012, the front page of www.TelexFree.com stated "99 TelexFree grows everyday in Brazil" and also included a slideshow presentation "by our President Mr. Jim Merrill" discussing the pyramid structure of the operation;

- As of January 19, 2013, the front page of www.TelexFree.com included a pop-up which stated as follows: "During this week we have been in contact with several government agencies which was extremely useful to clarify the operation of TelexFree…some [Promoters] are making practices [sic] that go against the law of Brazil…";

- During 2013, www.TelexFree.com included photographs of Defendants Merrill, Wanzeler, Costa and numerous Promoters together on stage at the "1°Extravaganza" event, at which "jumbo" checks were distributed, and Members were encouraged to become "TelexFree millionaires" through increased promotion;

- During the entirety of 2013 until approximately November 6, 2013, the front page of www.TelexFree.com included a certificate stating that, according to data analyst Alexa Internet, Inc., "we are among the most visited sites in Brazil." (Importantly, no similar certification with respect to any other country was included); and

- From approximately June 2012 through approximately May 25, 2013, the tab header for www.TelexFree.com announced, "Make money by posting ads."

648. Moreover, setting aside the highly advanced BSA and AML due diligence programs utilized by the Financial Services Provider Defendants, even the most basic internet investigation of TelexFree's clients or its business model or principals would have revealed to these sophisticated corporate entities with experience in identifying illegal and suspicious operations that TelexFree was running an unlawful Pyramid Scheme in the United States that was essentially identical to its shuttered and enjoined Brazilian operation and was otherwise suspicious, tortious or illegal.

649. At a minimum, the following high-profile English-language Google search results generated simply by entering the search term "telexfree" required the Defendant Financial

Services Providers to carry out closer-than-standard inquiry and monitoring:[68]

- January 1, 2013. The first page of Google search results includes a video posted by promoter Kelly Isom Tolar to dailymotion.com that clearly sets forth the payment structure of company, as well as the Best Western investment opportunity (http://www.dailymotion.com/video/xwbhex_telexfree-has-launched-in-usa-english-presentation_news). The visible video description by Kelly Isom Tolar states the following: *http://telexfreeusateam.com* "TelexFree has taken over Brazil since January 2012. Now the USA has the green light to open their doors as of November 2012. In just 11 months, Brazil has created 8 millionaires with 380,000+ reps company wide. Here comes the USA and our opportunity with TelexFREE. I look forward to a lucrative business partnership with you."

- January 24, 2013. A prominent Google result is a Blogspot webpage discussing the income scheme – including references to "6 Generations of Passive Income" – that unambiguously describes a pyramid scheme, and also discusses the hotel opportunity (http://mmoljbp.blogspot.com/p/telexfree.html) .

- March 1, 2013. A first-page Google result is a video entitled "TelexFree Marketing Plan," with transcript, posted to slideshare.net (http://www.slideshare.net/growrichteam/telexfree-marketing-plan-english) that sets forth the structure of TelexFree, clearly describing a pyramid scheme.

- April 27, 2013. A posting by promoter "Suzanna" on getresponse.com, an online marketing community site, discloses that TelexFree is a "company that originated in Brazil and has even been examined and sued by the Brazilian SEC." She also describes TelexFree as a passive income opportunity. (http://www.getresponse.com/archive/interestedpeople/Interested-People-TelexFree-Earn-20-a-week-for-a-year-no-recruiting-at-all-10992068.html).

650. There were also many other videos posted to YouTube and other sites that constituted Red Flags to the Financial Services Provider Defendants.

651. The already sophisticated eye of the Financial Service Providers in AML monitoring is buttressed by the requirements imposed on them by federal banking regulators

[68] *See also* search engine trends for TelexFree (provided by MLMRankings.com): http://www.mlmrankings.com/telexfree/trend.htm.

under the auspices of the FFEIC.

652. FFIEC's Bank Secrecy Act and Anti-Money Laundering Examination Manual (the "FFIEC Examination Manual") requires Financial Services Providers operating in the United States to establish mandatory Anti-Money Laundering Programs and Guidelines.

653. According to the FFIEC Examination Manual, every Financial Services Provider must have a written Customer Identification Program ("CIP") that has been approved by the bank's board of directors.

654. The purpose of the CIP is to enable the Financial Services Provider to form a reasonable belief that it knows the true identity of each customer.

655. The CIP should describe, among other things:

- circumstances in which the Financial Services Providers should not open an account;
- when the Financial Services Providers should close an account after attempts to verify a customer's identity have failed; and
- when the Financial Services Providers should file a SAR.

656. The CIP must include procedures for determining whether the customer appears on any federal government list of known or suspected terrorists or terrorist organizations, Office of Foreign Assets Control lists, and lists compiled under 31 CFR 1010.520 (Section 314(a) requests).[69]

657. Most major Financial Services Providers use specialized software programs to run these database checks.

658. According to the FFIEC Examination Manual, the Financial Services Provider's

[69] The Patriot Act Section 314(b) permits financial institutions, upon providing notice to the United States Department of the Treasury, to share information with one another to identify and report to the federal government activities that may involve money laundering or terrorist activity. Financial institutions wanting to do so may notify the Treasury Department by clicking on the Section 314(b) Certification link and supplying the required information.

board of directors must also approve a written BSA/AML compliance program for the institution.

659. The Financial Services Provider's board of directors must also evaluate the Financial Services Provider's audit and training programs to ensure that the CIP is adequately incorporated.

660. The Financial Services Provider's account opening procedures must mandate that the Provider conduct a risk assessment of prospective customers and classify them as low-risk, medium-risk or higher-risk.

661. This risk assessment classification will affect how intensive the Financial Services Provider's BSA and AML due diligence process must be.

662. The FFIEC Examination Manual states "the bank may determine that a customer poses a higher risk because of the customer's business activity, ownership structure, anticipated or actual volume and types of transactions, including those transactions involving higher-risk jurisdictions." If so, the bank should consider obtaining, both at account opening and throughout the relationship, the following information on the customer:

- purpose of the account;
- source of funds and wealth;
- individuals with ownership or control over the account, such as beneficial owners, signatories, or guarantors. *Guidance on Obtaining and Retaining Beneficial Ownership Information* was issued by FinCEN, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, and Securities and Exchange Commission, in consultation with the U.S. Commodity Futures Trading Commission, in May 2010. The guidance consolidates existing regulatory expectations for obtaining beneficial ownership information for certain accounts and customer relationships;
- occupation or type of business (of customer or other individuals with ownership or control over the account);

- financial statements;
- banking references;
- domicile (where the business is organized);
- proximity of the customer's residence, place of employment, or place of business to the bank;
- description of the customer's primary trade area and whether international transactions are expected to be routine;
- description of the business operations, the anticipated volume of currency and total sales, and a list of major customers and suppliers; and
- explanations for changes in account activity.

663. AML experts consider MLM companies such as TelexFree to be higher-risk customers for BSA and AML purposes, partly because they pose the risk of Ponzi schemes and violations of the Securities Act of 1933.

664. AML experts also regard MLMs as higher-risk because those companies have high volumes of sales, high customer dissatisfaction rates, and guaranteed money-back policies.

665. In 2013, the Financial Crimes Enforcement Network ("FinCen") instituted a BSA proceeding against TD Bank, which assessed a $37.5 million civil money penalty against that bank for failing to detect and report another Ponzi scheme and was predicated on the theory that Financial Services Providers should treat MLMs as higher-risk for purposes of BSA and AML due diligence.[70]

666. FinCen's action supports the conclusion that MLM companies should be treated as higher-risk for purposes of BSA and AML compliance.

667. To comply with the requirements in FFIEC Examination Manual, the Defendant

[70] Concurrently, the Office of the Comptroller of the Currency assessed a second $37.5 million penalty against TD Bank for related violations and the SEC imposed a $15 million penalty on that bank for related securities violations.

Financial Services Providers must also inquire into and consider:

- the customer's source of funds and particularly high volumes of cash transactions;
- the anticipated destination of those funds; and
- the countries and clients with which the customer is doing business.

668. The Defendant Financial Services Providers must ascertain and form a reasonable belief as to the true identity of a customer, including any higher-risk customers.

669. In addition to what was set forth above, to comply with the requirements in FFIEC's Examination Manual, Financial Services Providers must ascertain the customer's true identity by at a minimum, obtaining the customer's name, date of birth (for individuals), address, and identification number.

670. In addition, for customers that are business entities, the Defendant Financial Services Providers must obtain documents showing the legal existence of the entity (such as certified articles of incorporation, an unexpired government-issued business license, a partnership agreement, or a trust instrument).

671. The Defendant Financial Services Providers may require added identifying information for higher-risk customers.

672. Specifically, where, based on their risk assessment of a new account opened by a customer that is not an individual, the Defendant Financial Services Providers should obtain information about individuals with authority or control over such accounts including signatories, to verify the customer's identity.

673. This verification method applies when the Defendant Financial Services Providers cannot verify the customer's true identity using documentary or non-documentary methods.

674. For example, a Financial Services Provider may need to obtain information about

and verify the identity of a sole proprietor or the principals in a partnership when the bank cannot otherwise satisfactorily identify the sole proprietorship or the partnership.

675. The Defendant Financial Services Providers must also verify the customer's identity within a reasonable period of time after opening the account.

676. The Defendant Financial Services Providers must report any suspicious activity by completing a Suspicious Activity Elevation Form and submitting it to the appropriate federal regulator.

677. The FFIEC Examination Manual also requires Financial Services Providers to conduct "Customer Due Diligence" or "CDD."

678. The FFIEC Examination Manual states, "the bank should obtain information at account opening sufficient to develop an understanding of normal and expected activity for the customer's occupation or business operations."

679. According to FFIEC, "much of the CDD information can be confirmed through an information-reporting agency, banking references (for larger accounts), correspondence and telephone conversations with the customer, and visits to the customer's place of business. Additional steps may include obtaining third-party references or researching public information (e.g., on the Internet or commercial databases)."

680. In addition to ascertaining the customer's identity, the Defendant Financial Services Providers must be entirely satisfied with their understanding of the customer's beneficial ownership, management structures, and usual transaction flows.

681. In that regard, the Defendant Financial Services Providers must verify the personal identity of the customer's major shareholders and top managers (especially authorized signatories).

682. During CDD, the Defendant Financial Services Providers should also pay attention to any Red Flags.

683. FFIEC has identified a long list of BSA and AML Red Flags, including, but not limited to:

- "A customer makes frequent or large transactions and has no record of past or present employment experience."
- "Many funds transfers are sent in large, round dollar, hundred dollar, or thousand dollar amounts."
- "Funds transfer activity occurs . . . when the activity is inconsistent with the customer's business or history."
- "Many small, incoming transfers of funds are received."
- "Funds transfer activity is unexplained, repetitive, or shows unusual patterns."
- "Payments or receipts with no apparent links to legitimate contracts, goods, or services are received."
- "A large volume of cashier's checks, money orders, or funds transfers is deposited into, or purchased through, an account when the nature of the accountholder's business would not appear to justify such activity."
- "Unusual transfers of funds occur among related accounts or among accounts that involve the same or related principals."
- "Goods or services purchased by the business do not match the customer's stated line of business."
- "Payments to or from the company have no stated purpose, do not reference goods or services, or identify only a contract or invoice number."
- "Customer receives large and frequent deposits from online payments systems yet has no apparent online or auction business."
- "A large number of incoming or outgoing funds transfers take place through a business account, and there appears to be no logical business or other economic purpose for the transfers, particularly when this activity involves higher-risk locations."

684. Subsequent to an account opening, the Defendant Financial Services Providers must monitor the account and the customer.

685. Specifically, to comply with FFIEC's Examination Manual, it is not enough to only conduct CDD at account opening.

686. In addition, according to FFIEC, "banks should monitor their lower-risk customers through regular suspicious activity monitoring and customer due diligence processes. If there is indication of a potential change in the customer's risk profile (e.g., expected account activity, change in employment or business operations), management should reassess the customer risk rating and follow established bank policies and procedures for maintaining or changing customer risk ratings."

687. The FFIEC goes on to state that the Defendant Financial Services Provider's CDD processes "should include periodic risk-based monitoring of the customer relationship to determine whether there are substantive changes to the original [CDD] information (e.g., change in employment or business operations)."

688. Furthermore, the FFIEC clearly mandates that higher-risk customers must undergo enhanced due diligence ("EDD") and that higher-risk customers should be reviewed more frequently and intensively than lower-risk customers and particularly if new Red Flags appear.

689. It is generally accepted industry opinion in the financial services industry that customers who have the same amount coming in from hundreds of thousands of people with different last names require closer inquiry and monitoring.

690. When a bank finds out that a client is laundering money or running an unlawful enterprise it should terminate the banking relationship, shut down the accounts and file a SAR.

X. TelexFree's Suspicious, Tortious and Unlawful Operation Displayed Red

Flags Detectable by the Defendant Financial Service Providers

691. After authorities began to shut down TelexFree, Wanzeler, Merrill and Costa's unlawful Pyramid Scheme in Brazil in June of 2013, they simply switched their geographic target market to the United States.

692. During the putative class period, the Financial Services Defendants maintained robust, sophisticated, and effective due diligence systems that detected TelexFree's Red Flags because the components of TelexFree's switch from its Brazil-targeted Pyramid Scheme to its United States-targeted Pyramid Scheme would have been included within their search parameters, including, but not limited to, the following:

- use of the identical business name;
- use of the identical business model;
- use of the same product;
- specifically naming their unlawful business operation in Brazil –Ympactus – in their standard contract as owning the product and as a party to the contract;
- use of the same people to serve as officers, executives and management;
- use of the same address, office space and office equipment;
- use of the same back office support;
- changing its public name to TelexFree;
- indiscriminately transferring money from account to account including business to personal;
- obtaining cashiers checks for millions of dollars from business accounts after changing its compensation and business plan; and
- obtaining cashiers checks for millions of dollars from business accounts after filing for bankruptcy.

693. The following graphics taken from the public areas of both the English and

Spanish TelexFree websites, as well as numerous Promoters' websites and video "tutorials," made no secret of the pyramid structure of the business:













694. Sophisticated parties such as the Defendant Financial Services Providers could not have been fooled by the public announcements and key marketing representations advanced by TelexFree, its Principals, Executive Officers and the Operating Defendants.

695. For example, as noted above, in promoting TelexFree and himself, Merrill held himself out, including through direct references on the TelexFree website, as having experience in VoIP and internet phone service and having a college degree. Neither claim was true.[71]

696. In carrying out their FFIEC due diligence, the Financial Service Provider Defendants were required under the circumstances to investigate and uncover false facts such as the false past experience and education of a corporate principal.

697. As a result of their compliance with the foregoing laws, each of the Financial Services Providers was actually aware of the facts and evidence of suspicious, tortious, or illegal activity, or Red Flags as follows, as well as those offered elsewhere in the complaint:

- the TelexFree Program violated the express terms of M.G.L. c. 93, § 69 governing multi-level distribution companies (i.e., MLMs), and thereby M.G.L. c. 93A prohibiting unfair or deceptive acts or practices;

[71] In sworn testimony given to the SOC on March 25, 2014, Merrill testified to having limited knowledge of VoIP services and never working in the telecom business.

- the TelexFree business operations in Brazil were shuttered by Brazilian authorities and TelexFree and its Principals and Executive Office were enjoined from doing further business;

- the TelexFree program was the subject of extensive MLM coverage warning that it was an unlawful, tortious and suspicious Pyramid Scheme;

- the TelexFree business model expressly sold memberships that enabled Promoters to be paid without the sales of any actual product;

- less than 0.5% of TelexFree's total revenue was derived from sales of its VoIP product, with the remainder deriving from membership fees;

- Promoters were expressly paid for merely placing spam advertisements on the internet or recruiting additional promoters and product sales were expressly unrelated to a *guaranteed* return on investment ("ROI");

- the guaranteed ROI promised to Promoters was exceedingly high with no apparent risk;

- the memberships were not registered with any governmental agency but were nevertheless marketed and sold to members of the general public via public solicitation over the Internet and otherwise;

- the vast majority of Investors were of Brazilian/Dominican-American ethnicity as evidenced by their sur-names;

- videos by Defendant Founders and Inside Promoters;

- the advertisements posted by Promoters were merely spam ads;

- various Defendant Founders, Principals, and Top Level Promoters were associated with other unlawful and previously exposed Pyramid Schemes;

- an extremely large number of account transactions occurred and that number increased rapidly over time;

- many funds transfers and deposits were received in the exact same dollar amounts and with no apparent links to legitimate contracts, goods, or services. This latter factor and the high volume of small incoming transactions are considered by the FFIEC as a red flag in its examination handbook;

- credit card payments involving TelexFree were subject to an exceptionally high rate of credit card fraud and chargebacks;

- as a MLM company, TelexFree was regarded as a high-risk customer by banks and payment processing companies;

- funds were commingled between TelexFree entities;

- TelexFree failed to keep financial records in accordance with GAAP standards;

- huge wire transfers of funds were made to personal accounts of certain Defendant Founders and shell corporations;

- wire transfers of large sums to foreign entities occurred;

- TelexFree was widely regarded as a fraudulent scheme by the online MLM community;

- TelexFree maintained a Brazilian affiliate, also operating under the name TelexFree, which was under investigation by the Brazilian government as of February 2013 under suspicion of operating an illegal Ponzi scheme;

- in a March 1, 2013 press release available online, Defendant Merrill, president of TelexFree, admitted that "the real 'secret sauce' of our [TelexFree's] success is our compensation plan…We [TelexFree] pay our representatives weekly if they follow our system and advertise our service on the Internet," while making no mention of any product or service;

- in June 2013, TelexFree's Brazilian affiliate had publicly falsely claimed that MAPFRE, an international insurance company, served as insurer to TelexFree, prompting MAPFRE to release a public statement online denying any relationship with TelexFree and threatening legal action against TelexFree for making this false statement; and

- in June 2013, TelexFree's Brazilian affiliate Ympactus, also operating under the name TelexFree, was shut down and enjoined from doing further business by the Brazilian government for operating an illegal Ponzi scheme. This event was promptly reported online in English language news sources as was follow up news.

698. Pursuant to FFEIC guidelines, the payments being deposited into the accounts maintained at the Bank Defendants or processed by the Defendant Payment Processing Service Companies originated in the majority of instances from individuals bearing foreign surnames, raising actionable concerns regarding potential violations of the Patriot Act and other federal banking laws and regulations regarding issues of potential money laundering, terrorism, drug

trafficking, and Ponzi schemes.

699. The overwhelming number of Red Flags referenced throughout this complaint was sufficient to have compelled a reasonable Financial Services Provider to make further inquiries and/or decline to provide financial services (as some banks did). Other information about TelexFree that was available to the Financial Services Providers went beyond raising the specter of suspicious activity and constituted reasonable evidence of tortious or unlawful conduct, of which the Financial Services Providers had actual knowledge.

700. To the extent that any of the Financial Services Providers did not comply with its regulatory duties and/or knowingly failed and/or refused to report the results of such Financial Services Provider's own investigation of TelexFree to the proper authorities despite the improper activity revealed by such investigation, it turned a blind eye to the tortious conduct it knew was occurring.

701. TelexFree's Financial Services Providers had sufficient notice of wrongdoing in this case to give rise to a duty on their part to undertake heightened scrutiny of the TelexFree accounts, inquire further and take reasonable steps to prevent a diversion of funds.

702. Upon their knowledge of suspicious, tortious or unlawful conduct, TelexFree's Financial Services Providers were required to refuse to do business with TelexFree initially, freeze TelexFree's existing accounts, stop doing new business with TelexFree, and report the activities to federal authorities.

703. TelexFree's Financial Services Providers received substantial compensation in exchange for the services they provided to TelexFree and the other TelexFree Pyramid Scheme participant Defendants.

704. Each of the Financial Services Providers was an integral cog in the TelexFree

Scheme and without them, TelexFree would not have been able to get off the ground, develop, maintain or grow its Pyramid Scheme.

705. The Financial Services Providers were also an integral cog in the siphoning off of funds by the Operational Defendants.

706. Without the active assistance and cooperation of the Financial Services Providers, the Operational Defendants would not have been able to wrongfully convert the class members' funds to their own personal possession and use.

707. Notwithstanding knowledge of suspicious, tortious or illegal activity, the Bank Defendants accepted, processed and maintained deposit accounts on behalf of TelexFree, accepted payment of AdCentral package membership fees from the Promoters on behalf of TelexFree and made transfers of the payments derived from the Scheme.

708. Notwithstanding knowledge of suspicious, tortious or illegal activity, the Payment Processing Services Company Defendants processed payments between TelexFree, the Operational Defendants, and its Promoters.

709. Notwithstanding knowledge of suspicious, tortious or illegal activity the Payment Processing Services Company Defendants provided the electronic gateway used to send and receive such payments, and provided the electronic interface services used by both TelexFree and its Promoters and were thereby enriched.

Y. The Bank Defendants

710. During the time they did business with TelexFree, the Defendant Banks possessed actual knowledge of the fraudulent nature of TelexFree's business operation and substantially assisted the tortious conduct.

711. As detailed herein, at times material to this complaint, the Defendant Banks received significant funds from TelexFree and other Defendants and provided banking services,

maintained accounts, and received and executed transfers of funds from or for the benefit of TelexFree.

712. For example, in 2013, Citizens maintained accounts on behalf of TelexFree and processed thousands of transactions amounting to millions of dollars for TelexFree.

713. Similarly, Wells Fargo also maintained accounts on behalf of TelexFree and processed transactions amounting tens of millions of dollars for TelexFree in 2013.

714. Activity undertaken on behalf of TelexFree or the other Operational Defendants generated income to the Financial Services Defendants.

715. At times material herein, the Defendant Banks received investment funds of Plaintiffs.

716. At times material herein, the Defendant Banks profited from their relationship with TelexFree and other Defendants and were unjustly enriched.

717. At diverse times, TelexFree processed through the Defendant Financial Services Providers over 783,771 investments of either $289 or $1,375 (including combinations thereof) totaling over $880,189,455.32.

718. The Financial Service Providers derived substantial income from their services to TelexFree.

719. More particularly, the Defendant Banks earned fees from their participation in the TelexFree Scheme on several levels:

- interest on amounts held on behalf of TelexFree at or above the Federal Funds Rate, currently set at .25%;
- processing fees for each transaction, typically in an amount of 1-4% of the amount transferred per transaction, or, in some cases, $40 per transaction;
- annual ACH processing charges;
- return deposit item fees;

- chargeback fees; and
- miscellaneous fees and servicing charges.

720. In general, the Defendant Banks possessed a federal regulatory duty to look for certain types of facts or lack thereof, including the identity and purpose of the individuals opening and making payments into their accounts.

721. Even a perfunctory investigation of TelexFree in accordance with their regulatory duties would have revealed the existence of the tortious Pyramid Scheme.

722. Each of the Defendant Banks became aware of the Red Flags surrounding TelexFree and its conduct pursuant to their regulatory duties.

723. Each of the Defendant Banks also became aware of strong evidence of suspicious, tortious or illegal activity including the outright fraud on the part of TelexFree, its Founders and Principals pled with excruciating particularity herein.

724. The overwhelming number of Red Flags and other indicia of fraud established the existence of TelexFree's tortious conduct and the Pyramid Scheme and the Defendant Banks thereby gained actual knowledge of its tortious conduct.

725. In the alternative, if any Defendant Banks failed to perform any of the required investigations and account monitoring, it turned a blind eye to the tortious conduct it actually knew underlied TelexFree's activities despite its general awareness of the unlawful nature of the Scheme.

726. At times material herein, despite having knowledge that TelexFree was an enterprise carrying out suspicious, tortious, or unlawful, unfair or deceptive acts or practices, the Defendant Banks performed integral services and provided essential assistance that was used to further TelexFree's unlawful business.

727. At times material herein, despite having knowledge that TelexFree was an

enterprise carrying suspicious, tortious, or unlawful, unfair or deceptive acts or practices, the Defendant Banks ensured TelexFree was given access to banking services and those banking services were used to further TelexFree's unlawful business.

728. Despite actual knowledge of the fraudulent nature of TelexFree's business operations, the Defendant Banks continued to provide TelexFree with banking services and substantially assisted its tortious conduct.

729. As an integral part of the Pyramid Scheme, the Defendant Banks received funds from Promoters, which funds were then held for the benefit of or transferred from or to TelexFree, its affiliated entities, and its Defendant Founders and Principals, Executive Office, Top Level Promoters and Licensed Professionals.[72]

730. Obtaining, maintaining and transferring Promoters' funds was the essence of the TelexFree Pyramid Scheme and without the services of the Defendant Banks, the TelexFree United States Pyramid Scheme could not have been opened, been maintained, thrived and been exploited through to the end where Principals and other Defendants were issued cashiers checks and either successfully absconded with significant funds or were caught while in the act of doing so.

731. Despite their actual knowledge, the Defendant Banks agreed and undertook to provide banking services that were essential to the operation of the Pyramid Scheme.

732. The services provided by each Defendant Bank included, *inter alia*, the following:

- processing and opening of depository accounts;
- receiving payments made by Promoters to TelexFree to become Members of the TelexFree Program;

[72] *See, e.g.,* check deposited by TelexFree into its account with Fidelity Bank, to wit, account number 211370707, attached as Exhibit 7.

- maintaining depository accounts containing funds paid by Promoters to TelexFree for AdCentral Package membership fees;
- making payments to certain Promoters as part of TelexFree's purported return on investment;
- transferring funds paid by Promoters to TelexFree among TelexFree entities, Defendant Founders' personal accounts, foreign companies and shell companies; and
- allowing TelexFree to use the bank's name in its promotional materials thereby lending TelexFree the use of the bank's reputation as a large, nationwide banking institution and credibility.

733. Additional facts specific to each Defendant Bank provide additional particulars of its further involvement, participation and aiding and abetting of the TelexFree Pyramid Scheme.

1. Defendant Bank of America

734. As documented in the criminal complaint filed by the DHS dated May 9, 2014, against Defendants Wanzeler and Merrill (¶ 61), Bank of America first opened accounts in TelexFree's name in February 2012.

735. Bank of America's North American Account Opening Guide (the "Guide") specifically provides that the opening of accounts is "subject to significant scrutiny by regulators and the bank."

736. Citing the Know-Your-Customer Requirements, the Guide also states that "[r]egulators require us to be entirely satisfied with our understanding of our clients' identities, beneficial ownership, management structures and usual transaction flows."

737. Bank of America performed an investigation of TelexFree prior to agreeing to accept it as a customer and did further comply with its own requirements.

738. At times relevant to this complaint, Bank of America complied with due diligence requirements when opening TelexFree's accounts, including the Know Your Customer Requirements and it was aware of the Pyramid Scheme nature of TelexFree's business plan.

739. Despite Bank of America's knowledge of the illegal nature of TelexFree's business activities, including the fact it obviously violated M.G.L. c. 93, § 69, Bank of America agreed to accept TelexFree as a customer and began to perform banking services for TelexFree, which it continued to perform until at least December 31, 2013.

740. In addition to opening and maintaining accounts for TelexFree, Bank of America was specifically named in TelexFree's "signup procedures" document which was available online as an entity holding TelexFree accounts into which transfers of membership funds could be made by Members.[73]

741. As described above, during 2013, TelexFree affiliates were urging recruits to make walk-in deposits at a Bank of America branch in Massachusetts and the instructions given strongly resembled instructions given to recruits in 2008 by another infamous Ponzi scheme, AdSurfDaily.

742. More specifically, Members were directed to transfer their membership fees to a "corporate" account at Bank of America under the name "TelexFREE LLC," were provided with the applicable account and routing numbers, and were provided with the Bank of America branch address, "188 Bosyon [sic] Tpke Shrewsbury Ma 01545."[74]

743. Bank of America knowingly permitted TelexFree to identify it in promotional materials as the holder of its accounts and thereby lent an aura of legitimacy and credibility to TelexFree's business operations through TelexFree's connection with a large and well-

[73] *See* "*Signup procedures for TelexFREE*," attached to Exhibit 3, Decl. of Gray Echavarria, Attachment 37, http://PatrickPretty.com, "*TelexFree Affiliates Gave AdSurfDaily-Like Coaching Tips, Instructed Prospects to Make Deposits at Bank of America[…]TelexFree Also May Have TD Bank Account,*" http://patrickpretty.com/2013/07/08/telexfree-affiliates-gave-adsurfdaily-like-coaching-tips-instructed-prospects-to-make-deposits-at-bank-of-america-and-to-copy-slips-to-team-leaders-gmail-address-for-expedited-service-t/ (July 8, 2013) (including screen shot of TelexFree bank transfer instructions).

[74] *See id*; *see also* TelexFree Recruitment Presentation, available at http://webopportunities.weebly.com/uploads/1/5/8/5/15857054/telex.pp.2.13.pdf.

established financial institution.

744. In addition to maintaining and servicing depository accounts, Bank of America also provided credit to TelexFree, via at least two credit cards, which are identified in TelexFree's 2013 balance sheet as "Bank of America Braz Help 0033" and "Bank of America Telexfree 2658."

745. Pursuant to its obligations to perform ongoing customer monitoring of TelexFree, Bank of America's Regulatory Account Monitoring Office, employees and officers discovered the Red Flags and evidence of the suspicious, tortious or unlawful activities described herein and deliberately ignored them.

746. In addition, the fact that virtually all deposits into Bank of America's account xxxxxxxx7408 were made for the purchase of an AdCentral package, and not TelexFree's purported VoIP product, was known to Bank of America's Regulatory Account Monitoring Office, employees and officers and was an additional indication that TelexFree was operating an illegal Pyramid Scheme.

747. Specifically, between June 2012 and May 2013, Bank of America account xxxxxxxx7408, held in the name of TelexFree, Inc., received 1,133 deposits, totaling $12,203,496.48.

748. Furthermore, between September 2012 and May 2013 there were 813 deposits into account xxxxxxxx7408 in the exact amount of the fee for an AdCentral Family package ($1,425 or $1,375), totaling $1,142,625.

749. During this same period, there were only nine deposits in the amount of $49.90 – the VOIP purchase price – into account xxxxxxxx7408.

750. Notably, TelexFree's marketing materials that were available online made clear to

what these sums corresponded.

751. Bank of America, while examining TelexFree during the initial account opening process and later while conducting ongoing monitoring of TelexFree following account opening, investigated TelexFree's management, business activities, customer base, and product offerings and discovered the Red Flags and evidence of suspicious, tortious or unlawful activities.

752. As a result of Bank of America's required initial investigation and ongoing monitoring of TelexFree, Bank of America possessed actual knowledge that TelexFree was engaged in an illegal Pyramid Scheme.

753. On or about April 24, 2013, Bank of America informed TelexFree that it would cease doing business with TelexFree due to concern over TelexFree's illegal business activities.[75] Additionally, on or about April 24, 2013, Defendant Labriola announced, in a mass email to TelexFree Members that TelexFree would be "pulling out" of Bank of America.[76]

754. Despite the foregoing representation that Bank of America would cease doing business with TelexFree, Bank of America continued to perform banking services for TelexFree and its Defendant Founders for at least another eight months, until about December 2013.

755. As an example of services continued, on August 30, 2013, Defendant Labriola

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[75] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 22, http://patrickpretty.com/2013/07/08/telexfree-affiliates-gave-adsurfdaily-like-coaching-tips-instructed-prospects-to-make-deposits-at-bank-of-america-and-to-copy-slips-to-team-leaders-gmail-address-for-expedited-service-t/ ("Steve Labriola, Director of Marketing for Telex FREE, Boston, announced via email earlier today that they are 'pulling out of Bank of America.' These appear to be dated April 24, 2013. The claims appear on sites slugged telexfreeunitedkingdon.weebly.com and mytelexfree4u.blogspot.com and telexfreeunitedstates.com. So, this leads to questions about whether TelexFree had the 'Zeek problem' — i.e., whether the banks pulled the plug on TelexFree. The sites also make this claim: ' . . . For now, and those on the East Coast, please use TD Bank for your walk-in deposits.'").

[76] *See* http://telexfreeunitedkingdon.weebly.com/telexfree-updates.html (recruitment website of TelexFree 'Team Builder' Leonardo de Souza] and http://mytelexfree4u.blogspot.com/ (website of TelexFree Promoter).

announced during a public conference call with TelexFree Members that payments due-and-owing from Bank of America to members as of July 30, 2013 required manual sorting, since "Bank of America didn't give them a sorted list" as to which of the payments had already been made by Bank of America.[77]

756. As another example, a document dated November 11, 2013, establishes that Defendant Merrill, on behalf of TelexFree, directed Allied Wallet, a Defendant payment processor, to transfer funds via international wire transfer to a TelexFree account with Bank of America.[78]

757. Furthermore, Bank of America continued to provide credit, via at least two credit cards, at least through December 31, 2013, as indicated on TelexFree's 2013 balance sheet.

758. Bank of America continued to provide credit to TelexFree despite its knowledge of the suspicious, tortious or illegal nature of TelexFree's conduct, also lending an aura of legitimacy and credibility to TelexFree's business operations through TelexFree's connection with a large and well-established financial institution.

759. Although Bank of America possessed knowledge of the tortious nature of TelexFree's business activities from the time of its initial investigation and during its monitoring of TelexFree, it continued to provide TelexFree with credit and depository services integral to the TelexFree Scheme.

760. Through its actions, Bank of America substantially assisted in the perpetration of, and otherwise became an integral part of, TelexFree's fraudulent Scheme.

761. At a minimum, Bank of America's initial investigation and ongoing monitoring of

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[77] *See* http://teamstelexfree.blogspot.com/p/blog-page_7.html (recruitment website of TelexFree Promoter)

[78] *See,* Allied Wallet Bank Information Form for Bank of America, attached herewith as Exhibit 8.

TelexFree, made it aware that TelexFree was engaged in suspicious, tortious or unlawful conduct, but it willfully turned a blind eye to the results of its investigation and monitoring because it refused to suspend service or terminate its banking relationship with them or Operational Defendants and it continued to provide TelexFree with credit and depository services integral to the TelexFree Scheme until at least December 2013.

762. Through its actions, Bank of America knew TelexFree's conduct constituted a breach of duty and violated M.G.L. c. 93, § 69 and M.G.L. c. 93A, and it gave substantial assistance and encouragement to the perpetuation of, and otherwise became an integral part of, TelexFree's unlawful Scheme.

2. Defendant TD Bank

763. Defendant TD Bank, N.A., has over 1,300 domestic locations in 16 states and one foreign branch without a physical location. TD Bank is a large national bank with approximately $212 billion in assets and approximately 25,000 employees. TD Bank is a member of TD Bank Group and a subsidiary of The Toronto-Dominion Bank of Toronto, Canada. The Toronto-Dominion Bank trades on the NYSE Euronext under the ticker symbol "TD."

764. TD Bank has previously settled accusations that it provided active assistance to large Ponzi schemes in violation of the BSA and other laws, including Scott Rothstein's $1.2 billion Florida-based Ponzi scheme, for which it was civilly prosecuted and fined.

765. The Office of the Comptroller of the Currency ("OCC") is TD Bank's federal functional regulator. In September 2013, the OCC determined that TD Bank violated the BSA from April 2008 through September 2009, by failing to file SARs in a timely manner, in violation of 31 C.F.R. § 1020.320 and 31 U.S.C. § 5318(g). TD Bank agreed to a $37.5 million

civil money penalty assessed by the OCC.[79]

766. The September 22, 2013 consent decree followed several years of active investigation and negotiations. At all times in 2012, 2013, and 2014 that TD Bank was servicing TelexFree, it was under investigation by the OCC because it "willfully violated the Bank Secrecy Act's reporting requirements by failing to detect and adequately report suspicious activities in a timely manner in violation of 31 U.S.C. § 5318(g) and 31 C.F.R. § 1020.320."[80]

767. TD Bank violated BSA suspicious activity reporting requirements by failing to detect and report suspicious activity and by filing late SARs in relation to the so-called Rothstein Ponzi scheme. TD Bank failed to properly identify, monitor, and report suspicious activity in Rothstein's accounts. A lack of adequate training for both the business and BSA/AML staff also contributed to TD Banks' failure to recognize this suspicious activity.

768. In May 2010, Coquina Investments filed a lawsuit alleging that TD Bank aided and abetted the Rothstein Ponzi scheme, made fraudulent misrepresentations and engaged in a pattern of racketeering in violation of RICO.

769. In January 2012, a jury returned a verdict against TD on both aiding and abetting and fraudulent misrepresentation, awarding $32,000,000 in compensatory damages and $35,000,000 in punitive damages.

770. Evidence showed that TD Bank, through its then-regional vice president, Frank Spinosa, and other employees, aided and abetted the scheme and made fraudulent misrepresentations.

771. Evidence established TD Bank N.A. had in place standard protocols to detect

[79] *See* Exhibit 9 – September 20, 2013 OCCurrency Consent Decree.

[80] *Id.* at 2.

suspicious and/or illegal banking activities. The evidence also established that to facilitate the Ponzi Scheme TD Bank N.A. ignored alerts generated by its standard protocols for years. These protocols included its AML system that would alert it to suspicious activity and a related "Standard Investigative Protocol," which provided guidance concerning reportable or non-reportable suspicious activity and provided procedures that TD Bank employees were to follow without exception.

772. TD Bank N.A. ignored 17 months of alerts on the AML system. The amount of money moving through the accounts and the speed with which it moved was also a focus of the OCC. TD Bank N.A. also ignored numerous concerns raised by multiple TD Bank, N.A. executives relative to the selling of settlements, the limited banking relationship with various parties seeking to open accounts with significant balance changes, and the large value of wires being received.

773. TD Bank N.A.'s awareness of the Ponzi scheme and the Red Flags associated with Ponzi schemes generally was highlighted not only through the *Coquina* verdict and the evidence supporting it.

774. TD Bank's awareness of the Ponzi scheme and the Red Flags associated with Ponzi schemes generally was also highlighted through TD Bank's actions through counsel and its witnesses because during the course of the litigation TD Bank willfully withheld evidence of Red Flags showing illegal activity.

775. During discovery, Coquina requested documents evidencing potential illegal activity, including documents related to the standard protocols. In response, TD Bank willfully provided only limited documents despite the requirements imposed upon it by the Federal Rules of Civil Procedure.

776. The Coquina plaintiffs filed five motions for sanctions, three before or during trial and two after trial, alleging serious discovery violations willfully carried out by TD Bank and/or its counsel.

777. These motions unveiled the following among other things:

- Just before the close of discovery and subsequent to the deposition of the 30(b)(6) corporate representative, Vincent Auletta (vice president of global due diligence), wherein he testified that there were no Rothstein alerts before September 2009 and no more than 5 alerts after, the bank produced 150 pages of AML alerts from September 2009 –November 2009.

- On the eve of trial, TD Bank, N.A. produced 17 months' worth of AML alerts generated by the Searchspace system for Rothstein accounts which had not been previously disclosed and which were separate and distinct from normal fraud alerts, in addition to numerous communications indicating that TD Bank executives were aware of the investment schemes.

- After the trial had concluded, during the course of different litigation against TD Bank, Coquina learned that TD Bank did in fact have a document called "Standard Investigative Protocol," which it had repeatedly denied having during discovery and trial and that a document they had received, the CDD (Customer Due Diligence) form generated by the Cash Management Department of TD Bank, was not produced in color, which resulted in the absence of important and relevant information including the presence of a red banner at the top proclaiming that the account was "HIGH RISK."

778. The district court sanctioned TD Bank for willful misconduct in failing to provide the color copy of the CDD and other relevant documents.

779. At all times relevant to the complaint, Defendant TD Bank maintained multiple accounts on behalf of TelexFree, another Ponzi scheme.

780. TD Bank first opened accounts in TelexFree's name in September 2012.[81]

781. TD Bank performed its KYC investigation of TelexFree prior to agreeing to

[81] *See* DHS Criminal Complaint dated May 9, 2014 against Wanzeler and Merrill at ¶ 62(b).

accept TelexFree as a customer and otherwise complied with all banking regulations when opening TelexFree's accounts.

782. TD Bank continually performed its KYC investigations of TelexFree and otherwise complied with all banking regulations at all times it continued to service TelexFree during the 2012-2014 class period.

783. Yet, despite the obvious illegal nature of TelexFree's business activities, TD Bank agreed to accept TelexFree as a customer and began to perform banking services for it.

784. Despite the obvious illegal nature of TelexFree's business activities, TD Bank did not suspend servicing or terminate its relationship with TelexFree or any of the Operational Defendants until at least January 2014.

785. TelexFree continued to maintain three depository accounts with TD Bank as of December 31, 2013.[82]

786. In addition to opening and maintaining accounts for TelexFree, TD Bank was specifically named in TelexFree's "signup procedures" document which was available online as an entity holding TelexFree accounts into which transfers of membership funds could be made by Members.[83]

787. Specifically, TelexFree Promoters were directed to transfer their membership fees to a "corporate" account at TD Bank under the name "TelexFREE LLC," and were provided with the applicable account and routing numbers.[84]

788. TD Bank knowingly permitted TelexFree to identify it as the holder of its accounts and thereby lent an aura of legitimacy and credibility to TelexFree's business

[82] *See* TelexFree's December 31, 2013 Balance Sheet, attached hereto as Exhibit 5.

[83] *See* "*Signup procedures for TelexFREE*," Exhibit 3, Decl. of Gray Echavarria, Attachment 37; *see also n.* 71.

[84] *Id.*

operations through TelexFree's connection with a large and well-established financial institution.

789. On or about September 6, 2013, TelexFree leadership instructed its members via a public conference call that the fastest way to send money to TelexFree was by direct deposit to TelexFree's accounts with TD Bank.[85]

790. The person speaking on behalf of TelexFree during this conference call was Bradshaw, the above-described high profile pyramid scheme regular formerly active with the now-defunct pyramid schemes Zeek Rewards and AddWallet.

791. The fact that well over ninety percent (90%) of deposits into TD Bank's accounts held in the name of TelexFree, LLC were made for the purchase of an AdCentral package, and not TelexFree's purported VoIP product, was known to TD Bank's Regulatory Compliance Office, employees and officers and was an additional indication that TelexFree was operating an illegal Pyramid Scheme.

792. Specifically, between October 9, 2013, and January 17, 2014, TD Bank account xxxxxx8409 held in the name of TelexFree, LLC received 478 incoming wire transfers ranging from $309 to $142,500, totaling $2,638,712.

793. Of these deposits into account xxxxxx8409, 2,474 were in the amount of $1,425 – the AdCentral Family package purchase price – totaling $3,525,450.

794. During this same period, there was only one deposit into account xxxxxx8409 in the amount of $49.90 – the VoIP purchase price.

795. Notably, TelexFree's marketing materials that were available online made clear to what these sums corresponded.

[85] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 34, BehindMLM.com, "*TelexFree US business plagued with 'rampant fraud'"*, Sept. 7, 2013, http://behindmlm.com/companies/telexfree/telexfree-us-business-plagued-with-rampant-fraud/.

796. Between September 2012 and July 2013, there were 1,550 deposits by cash, check, money order or wire transfer into TD Bank account xxxxxx2808, held in the name of TelexFree, LLC, in the exact amount of $1,425, the AdCentral Family package purchase price.

797. During this same period, there was only one deposit into account xxxxxx2808 in the amount of $49.90 – the VOIP purchase price.

798. Between June 2013 and October 2013, there were 1,800 deposits into TD Bank account TD Bank account xxxxxxx334, held in the name of TelexFree, LLC, in the exact amount of $1,425, the AdCentral Family package purchase price.

799. During this same period, there was only one deposit into account xxxxxxx334 in the amount of $49.90 – the VOIP purchase price.

800. While examining TelexFree during the initial account opening process and later while conducting ongoing customer monitoring of TelexFree, TD Bank investigated TelexFree's management, business activities, customer base, and product offerings.

801. While examining TelexFree during the initial account opening process and later during its ongoing customer monitoring of TelexFree, TD Bank's Regulatory Account Compliance Office, other employees or officers discovered the Red Flags and other evidence described throughout this complaint, indicating that TelexFree was engaging in suspicious, tortious or unlawful conduct.

802. At a minimum, TD Bank's initial investigation and ongoing monitoring of TelexFree, made it aware that TelexFree was engaged in suspicious, tortious or unlawful conduct, but it willfully turned a blind eye to the results of its investigation and monitoring because it refused to suspend service or terminate its banking relationship with them or Operational Defendants and it continued to provide TelexFree with credit and depository

services integral to the TelexFree Scheme until at least January 2014.

803. Through its actions, TD Bank knew TelexFree's conduct constituted a breach of duty and violated M.G.L. c. 93, § 69 and M.G.L. c. 93A and gave substantial assistance and encouragement to the perpetuation of, and otherwise became an integral part of, TelexFree's unlawful Scheme.

3. Fidelity Bank

804. Fidelity Bank opened three accounts for TelexFree, two on August 8, 2013 with initial deposits of $7,123,784.58 and one on September 12, 2013 with deposits of $2,951,337.12.

805. Fidelity Bank helped TelexFree to conduct its business more easily by using remote deposit capture.

806. Fidelity Bank continued to accept deposits from TelexFree until at least December 26, 2013.

807. Notably, the president and chief operating officer of Fidelity Bank, Defendant John Merrill, is the brother of Defendant James Merrill, one of the Founders of the TelexFree Pyramid Scheme.

808. John Merrill's knowledge is imputed to Fidelity Bank because at all times material he was its president and chief operating officer.

809. This familial relationship facilitated the relationship between TelexFree and Fidelity Bank and made Fidelity Bank privy to information regarding TelexFree and its suspicious, tortious or unlawful conduct.

810. At all material times, through his personal relationship with his brother, Defendant John F. Merrill was fully aware of the fact that TelexFree's business operation was nothing more than a Pyramid Scheme, and that TelexFree's other banking relationships were souring.

811. Despite this knowledge, Defendant John F. Merrill used his position and influence with Fidelity Bank to procure the described banking services from Fidelity Bank for TelexFree and others including the Defendant Founders.

812. Despite Fidelity Bank's actual knowledge of the suspicious, tortious or unlawful nature of TelexFree's business activities, Fidelity Bank agreed to accept TelexFree as a customer and acted as a creditor and depository bank for TelexFree until at least December 31, 2013.

813. Fidelity Bank's Regulatory Account Compliance Office did in fact perform an investigation of TelexFree prior to agreeing to accept TelexFree as a customer in or about August 2013.

814. Although Fidelity Bank possessed knowledge of the suspicious, tortious or unlawful nature of TelexFree's business activities from the time of its initial investigation of TelexFree, it continued to provide TelexFree with credit and depository services.

815. Either through Fidelity Bank's attempts to comply with all banking regulations when opening and maintained its accounts, including the Know-Your-Customer Regulations, or because of the familial relationship between its President and one of TelexFree's masterminds, Fidelity was aware of the Pyramid Scheme characteristics and of TelexFree's unlawful business operation and stopped servicing, terminated its relationship and filed SAR reports but it did not.

816. An investigation was initiated by the SOC against Fidelity Bank on April 30, 2014, concerning Fidelity's banking relationship with TelexFree.

817. That investigation resulted in the entry into a Consent Decree, dated September 22, 2014, whereby Fidelity Bank agreed to establish an escrow fund of $3.5 million for victims of the Scheme.[86]

[86] *Id.*

818. The SOC alleged, *inter alia*, that Fidelity Bank's account opening process in 2013 was inadequate and insufficient to handle the voluminous TelexFree deposit accounts. [87]

819. These failures to comply even minimally with mandatory banking regulations allowed the bank's president John F. Merrill to obtain the account services for his brother James Merrill, the other TelexFree Founders and TelexFree itself.

820. The Consent Decree establishes that Fidelity Bank wrongfully permitted TelexFree to deposit funds received from victims of its illegal Pyramid Scheme in Fidelity Bank's accounts between August 8 and December 26, 2013.[88]

821. On or about November 23, 2013, pursuant to Fidelity Bank's obligations to perform ongoing customer monitoring of TelexFree, Fidelity Bank's compliance and BSA officer discovered Red Flags, other evidence of suspicious, tortious or unlawful conduct.

822. That officer also discovered further indicators of fraud in the TelexFree business model, and he notified president Merrill and an outside compliance consultant utilized by Fidelity Bank.

823. The outside consultant advised Fidelity Bank of his conclusions that TelexFree was a high-risk customer based upon its account balance and extensive wire transfers and that TelexFree's accounts would "require the appropriate monitoring level for a high risk customer."

824. Less than two weeks after this initial investigation, Fidelity Bank made a determination it should close TelexFree's accounts.

825. Fidelity Bank notified TelexFree of its determination to close its accounts on December 3, 2013.

826. Despite that determination, Fidelity Bank continued to receive the victims' funds

[87] *Id.*

[88] SOC Consent Order E 2014-0073 is herewith attached and marked as Exhibit 10.

obtained by TelexFree until December 27, 2013 and to perform other banking services until December 31, 2013.

827. Fidelity Bank did not terminate its relationship with TelexFree, refuse to accept victims' funds, or stop servicing accounts and report suspicious activity, after its internal review revealed the suspicious, tortious or unlawful conduct.

828. As a result of the direct influence and unfair, deceptive and unlawful involvement of Fidelity Bank president and chief operating officer, Defendant John F. Merrill, Fidelity Bank opened personal accounts for TelexFree Founders and Principals, including Defendant James Merrill (president Merrill's brother) and Wanzeler after Fidelity's internal review revealed the tortious conduct.

829. After its November 27, 2013 receipt of the outside consultant's report, Fidelity Bank unfairly, deceptively and unlawfully transferred over $10 million dollars out of TelexFree's and Defendant Founders' accounts and into the personal accounts of Defendants James Merrill and Wanzeler.

830. This wrongful transfer included a $3.5 million transfer by Wanzeler to a Singapore account on December 30, 2013.

831. The SOC concluded that the use of Fidelity Bank's corporate and personal accounts caused harm to the victims of the TelexFree fraud.

832. At a minimum, as a result of Fidelity Bank's initial investigation and ongoing monitoring, the relationship between the Merrill brothers, and its investigation and ongoing monitoring of TelexFree, Fidelity Bank was aware that TelexFree was engaged in tortious conduct, but it deliberately and willfully turned a blind eye to its knowledge and the results of its investigation and monitoring and continued to act as its banking institution, causing the members

of the putative class to suffer ascertainable economic harm.

833. Although Defendant Fidelity Bank and Defendant John F. Merrill possessed actual knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities at all times it received or held TelexFree funds, they willfully acted in concert with them to until at least December 31, 2013 to:

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully siphon class member funds;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide TelexFree and James Merrill and Carlos Wanzeler services integral to the TelexFree Scheme; and
- continue to provide TelexFree and James Merrill and Carlos Wanzeler with substantial assistance and encouragement essential to their unlawful plan.

834. Through its actions, Fidelity Bank and John Merrill provided substantial assistance and encouragement and otherwise became an integral part of TelexFree's fraudulent Scheme. Fidelity Bank and John Merrill also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

4. Synovus

835. At all material times, Defendant Synovus served as the "sponsor" bank of Defendants Base Commerce and GPG, and provided depository account and funds transfer services in connection with Base Commerce's and GPG's payment processing services.

836. At all material times, Defendants Synovus, Base Commerce, and GPG shared a close business relationship, which included serving common clients, including TelexFree, and sharing information regarding said clients.

837. At all material times, Base Commerce served as an agent of Synovus with respect to Synovus' relationship with TelexFree, which began in April 2013.

838. Synovus performed an investigation of TelexFree prior to agreeing to accept TelexFree as a customer and its initial investigation and ongoing monitoring of TelexFree revealed indicia of suspicious, tortious and unlawful activities.

839. Given Synovus' knowledge of the illegal nature of TelexFree's business operations, Synovus was obligated to refuse to open any accounts, process any transactions, or serve as a conduit for payments for the benefit of TelexFree.

840. Synovus agreed to accept TelexFree as a customer and began to act as a conduit for TelexFree in April 2013, which services it continued to perform until at least January 16, 2014.

841. In August 2013, due to concerns regarding public accusations that TelexFree was running a Pyramid Scheme, and the possibility of an investigation by the Federal Trade Commission or other federal agencies, Defendant Synovus indicated that it would no longer hold funds on TelexFree's behalf.

842. More particularly, Synovus instructed Base Commerce and GPG to cease performing payment-processing services for TelexFree by August 31, 2013.

843. Nevertheless, Synovus continued to act as the sponsor bank for GPG and Base Commerce thereafter and continued to process payments and make transfers for the benefit of TelexFree.

844. For example, Synovus acted as the sponsor bank for Base Commerce's $5 million transfer on or about September 26, 2013 authorized by Base Commerce's Hughes for the benefit of TelexFree.

845. Synovus continued to act as GPG's sponsor bank for its electronic payments transmitting credit card processing data to Defendant Allied Wallet until at least January 16, 2014, for the benefit of TelexFree.

846. At a minimum, Synovus' initial investigation and ongoing monitoring of TelexFree made it aware that TelexFree was engaged in suspicious, tortious or unlawful conduct and was at a minimum violative of M.G.L. c. 93, § 69, but it continued to provide TelexFree with payment processing services, integral to the TelexFree Scheme until at least January 16, 2014.

847. Through its actions, Synovus provided substantial assistance and encouragement to TelexFree. Synovus also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

Z. Defendant Payment Processing Service Companies

848. Defendants GPG, IPS, Propay, Base Commerce, Vantage Payments, Allied Wallet, and the Doe Payment Processors possessed actual knowledge of the suspicious, tortious and unlawful nature of TelexFree's business operations, yet substantially assisted and encouraged them by providing essential payment processing services as early as October 2012.[89]

849. Despite actual knowledge of the suspicious, tortious, or unlawful nature of TelexFree's business operations, the Payment Processing Service Company Defendants continued to encourage and provide TelexFree with payment processing services and substantially assisted and encouraged its suspicious, tortious or unlawful conduct.

850. As an integral part of the Pyramid Scheme, the Payment Processing Service Company Defendants processed payments between TelexFree and its Members, provided the electronic gateway used to send and receive such payments, and provided the electronic interface

[89] *See also* Omnibus Decl. of William H. Runge, Case No. 14-125234-ABL, Doc. 13, ¶61, attached herewith as Exhibit 2.

services used by both TelexFree and its Members.

851. As set forth below, certain Payment Processing Companies went far beyond this role and became active direct participants in TelexFree's unlawful business enterprise by providing specialized advice and assisting them to skirt the law.

852. The services of the Payment Processing Service Company Defendants, including the capturing, maintenance and transferring of Promoters' funds, was essential and without their integral assistance TelexFree's Pyramid Scheme could not have operated.

853. Each Payment Processing Service Company Defendant possessed a regulatory duty to look for certain types of facts or lack thereof, including the identity and purpose of the individuals opening and making payments into their accounts.

854. In 2012, TelexFree underwent a "several day" period during which they double-billed customers, resulting in a temporary spike in the rate of customer chargebacks, according to an interoffice email of Defendant Base Commerce, dated May 22, 2013.[90]

855. As a result of this period of especially heavy chargebacks, TelexFree was added to MasterCard's MATCH database in 2012, indicating that TelexFree was no longer to receive any credit card processing services due to exceptionally high risk.

856. In addition to the alert from Mastercard's MATCH database in 2012, each of the Payment Processing Service Company Defendants became aware of other Red Flags and evidence of suspicious, tortious or unlawful activities surrounding TelexFree and pursuant to their regulatory duties they carried out further investigation.

857. Each Payment Processing Service Company Defendant discovered the news reports and other evidence detailed in this complaint that reasonably evidenced TelexFree's

[90] *See* email from John Hughes, dated May 22, 2013, attached herewith as Exhibit 11.

unlawful conduct during the time they serviced them.

858. Each Payment Processing Service Company Defendant performed all of the investigations and monitoring required of it by the federal government yet it:

- failed to act as required;
- failed to monitor the suspicious, tortious or unlawful conduct they identified;
- turned a blind eye to suspicious, tortious or unlawful conduct; and
- failed to detect or report suspicious, tortious or unlawful conduct.

859. The services provided by each Payment Processing Service Company Defendant included, *inter alia*, the following:

- processing and opening of TelexFree payment processing accounts;
- receiving payments made by Promoters to TelexFree to become members of the TelexFree Program;
- processing payments by Promoters to TelexFree in the course of TelexFree's fraudulent business operations, which funds were then held for the benefit of TelexFree, its affiliated entities and its Defendant Founders;
- maintaining accounts containing funds paid by Promoters to TelexFree for AdCentral Package membership fees;
- making payments to certain Promoters as part of TelexFree's purported return on investment; and
- transferring funds paid by Promoters to TelexFree between TelexFree entities, Defendant Founders' personal accounts, foreign companies and shell companies.

1. Propay

860. Defendant ProPay processed electronic transfers of funds on behalf of TelexFree.

861. ProPay agreed to accept TelexFree as a customer and began processing transactions for the benefit of TelexFree in or about October 2012.

862. ProPay continued to process transactions for the benefit of TelexFree until at least January 16, 2014.

863. According to TelexFree's December 2012 Balance Sheet, as of December 31, 2012, ProPay held a total of $546,947.23 in two accounts for the benefit of TelexFree.

864. Furthermore, as of December 31, 2012, ProPay held an additional amount of $279,209.46, which is listed as "on hold" by TelexFree's 2012 Balance Sheet.

865. Between October 2012 and December 2012, ProPay processed a total of $1,506,856.60 in incoming transfers of membership fees for the benefit of TelexFree.

866. According to TelexFree's July 2013 Balance Sheet, as of July 31, 2013, Propay held a total of $3,743,049.03 in funds for the benefit of TelexFree.

867. Furthermore, as of July 31, 2013, ProPay held an additional amount of $4,698,867.83, which is listed as "on hold" by TelexFree's July 2013 Balance Sheet.

868. According to TelexFree's December 2013 Balance Sheet, as of December 31, 2013, ProPay continued to hold funds in the amount of $98,463.24 for the benefit of TelexFree.

869. In addition to this amount, as of December 31, 2013, ProPay continued to hold funds in the amount $4,468,411.11 in a "reserve" account for the benefit of TelexFree.

870. In the course of providing services to TelexFree, ProPay directly communicated with fellow Defendant Payment Processing Service Companies Base Commerce and GPG regarding the inherent risks and concerns with TelexFree.

871. More particularly, in an email to Defendant Hughes, president of Base Commerce, a Payment Processing Company serving TelexFree, ProPay characterized TelexFree as an extremely high-risk client and indicated that no United States bank or processor would be willing to take on TelexFree as a client given this risk. This email was referenced in a

subsequent email from Hughes to Defendants Merrill, Wanzeler, and Craft, as well as Defendant GPG, dated August 28, 2013.

872. Hughes, as President of Base Commerce, stated in that August 28, 2013 email to Defendants Merrill, Craft, and Wanzeler, "[n]o US Bank or Processor . . . will accept your [TelexFree] business given that you are on month five of the Visa Chargeback monitoring program. You are one of only three merchants in the USA on month five so you are a real hot-potato as they say."[91]

873. Despite ProPay's knowledge of TelexFree's legal issues and the risk surrounding TelexFree, and despite ProPay's own warnings to Base Commerce regarding these issues, ProPay continued to provide payment processing services to TelexFree into January 2014.

874. ProPay continued to provide payment-processing services to TelexFree until at least January 16, 2014 and during that time ProPay conducted its continued monitoring obligations under the law.

875. Pursuant to its obligations to perform ongoing customer monitoring of TelexFree, ProPay's Regulatory Monitoring Office, employees and officers discovered the Red Flags and evidence of suspicious, tortious or unlawful conduct described above.

876. At a minimum, ProPay's initial investigation and ongoing monitoring of TelexFree made it aware that TelexFree was engaged in suspicious, tortious or unlawful conduct that was at a minimum violative of M.G.L. c. 93, § 69, but it continued to provide TelexFree with payment processing services, integral to the TelexFree Scheme until at least January 16, 2014.

877. Through its actions, ProPay provided substantial assistance and encouragement to

[91] *See* email from Hughes to Merrill, dated August 28, 2013, attached hereto as Exhibit 12.

TelexFree. ProPay also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was violative of M.G.L. c. 93, § 69.

2. GPG

878. Defendant GPG is a Payment Processing Service Provider that specializes in making outgoing payroll and commission payments for clients as well as processing credit card transactions for incoming payment.

879. On April 17, 2013, GPG and TelexFree entered into a Corporate Client Payroll & Commission Processing and Payment Services Agreement, and it continued to render TelexFree substantial assistance that was necessary for TelexFree's operation to continue until at least January 16, 2014.

880. In the course of providing services to TelexFree, on August 13, 2013, Defendant Borromei co-hosted an open webinar with Defendant Labriola, which promoted GPG's payment system to TelexFree Investors and potential investors and encouraged them to make further investments in TelexFree using GPG's system.

881. On August 16, 2013, Borromei hosted an additional open webinar, in which he further promoted the payment system that GPG was providing to TelexFree, and encouraged further investments in TelexFree using GPG's payment system.

882. On August 28, 2013, GPG received an email from Defendant Hughes, president of Base Commerce, that included prior statements by ProPay characterizing TelexFree as an extremely high-risk client and indicating that no United States bank or processor would be willing to take on TelexFree as a client given this risk.

883. Despite previous correspondence indicating that it would cease doing business with TelexFree by August 31, 2013, and the explicit instructions from its "sponsor bank," Defendant Synovus, to cease performing any services for TelexFree by August 31, 2013, GPG

continued to provide services to TelexFree well after this date.

884. These services included permitting TelexFree to utilize GPG's electronic payment conduit, or "GPG Gateway," to transmit credit card processing data to Allied Wallet until at least January 16, 2014.

885. More particularly, in an email from GPG to Defendants Merrill, Wanzeler, and Labriola, as well as Base Commerce, dated September 3, 2013, GPG's Jayme Amirie indicated that, against the specific instructions of its sponsor bank, which had instructed it to cease all services for TelexFree, GPG "sneaked" payouts from the bank on TelexFree's behalf.[92]

886. In his email of September 27, 2013 to Defendant Borromei and copied to Merrill, GPG's Jayme Amirie acknowledged that "TelexFree can continue to use the GPG gateway to transmit electronic data to Allied Wallet."[93]

887. Pursuant to its obligations to perform initial and ongoing customer monitoring of TelexFree, GPG's Regulatory Monitoring Office, employees and officers discovered the Red Flags and evidence indicating that TelexFree was engaging in suspicious, tortious or unlawful conduct.

888. As a result of GPG's required initial investigation and ongoing monitoring of TelexFree, ProPay possessed actual knowledge that TelexFree was engaged in an illegal Pyramid Scheme, yet they willfully chose to offer substantial assistance and encouragement and directly became involved as described herein.

889. Although Defendant GPG and Borromei possessed knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities, at all times it received or held

[92] *See* email from Jayme Amirie to James Merrill dated September 3, 2013, attached hereto and marked as Exhibit 13.

[93] *See* email from Jayme Amirie to Jay Borromei dated September 27, 2013, attached hereto and marked as Exhibit 14.

TelexFree funds, it willfully acted in concert with them to:

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully siphon class member funds;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide services integral to the TelexFree Scheme; and
- continue to provide TelexFree with substantial assistance and encouragement essential to their unlawful plan.

890. Through its actions, GPG provided substantial assistance and encouragement to TelexFree and otherwise became an integral part of TelexFree's fraudulent Scheme. GPG also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

891. At a minimum, GPG's initial investigation and ongoing monitoring of TelexFree, made it generally aware that TelexFree was engaged in tortious conduct, but it deliberately and willfully turned a blind eye to the results of its investigation and monitoring.

892. Although GPG possessed knowledge of the tortious nature of TelexFree's business activities from the time of its initial investigation of TelexFree and during its monitoring of TelexFree, it continued to promote and to provide TelexFree with payment processing services integral to the TelexFree Scheme until at least January 16, 2014.

3. Base Commerce

893. At all times material times, Defendants GPG, Base Commerce and Synovus shared a close business relationship, acting as payment processing partners and sharing information regarding customers, including TelexFree.

894. In April 2013, Defendants Merrill and Wanzeler, on behalf of TelexFree, submitted an application for payment processing services to Base Commerce, which also does

business as Phoenix Payments, GPG's credit card processing partner.

895. Despite Base Commerce's knowledge of the suspicious, tortious or unlawful nature of TelexFree's business activities, Base Commerce agreed to accept TelexFree as a customer and began to perform payment processing services for TelexFree, which services it continued to perform until at least December 31, 2013.

896. Although TelexFree's application to Base Commerce for payment processing services requested the Social Security number and date of birth of Wanzeler and Merrill as co-owners of TelexFree, Wanzeler refused to provide his Social Security number and date of birth, which was a Red Flag that prompted Base Commerce to perform additional credit checks, or "pull credit," on both Merrill and Wanzeler.

897. Base Commerce's additional credit check involved running a "FraudDefender" search on TelexFree, which resulted in a score of 30/50 for TelexFree, indicating moderate risk, and score of 20/50 for Wanzeler, indicating moderately high risk.

898. The results of this "FraudDefender" search were an additional "red flag" to Base Commerce and indicate its actual knowledge of TelexFree's tortious conduct.

899. In an interoffice letter dated May 22, 2013, Defendant Hughes, president of Base Commerce, noted that TelexFree was formerly known as Common Cents Communications, stating:

> [t]hat program paid people residual commissions for placing ads online and the network marketing commentators accused them of being a Ponzi scheme as the commission advertised appeared unrealistically high and therefore fictitious.

900. At that time, TelexFree was widely and prominently marketed and advertised as a similar passive income scheme in which Members would be paid commissions for placement of online advertisements.

901. In the same interoffice letter dated May 22, 2013, Hughes indicated that TelexFree's "current primary market" was Brazil, and that TelexFree would receive a $19 million annual receivable from Ympactus Comercial, Ltda, "a Brazilian Company to whom they license their IOP System."

902. Despite Base Commerce's actual knowledge of TelexFree's negative press, its Brazilian investigation and the accusations of operating a Pyramid Scheme, it ultimately accepted TelexFree's application.

903. Beginning in June 2013, Base Commerce provided TelexFree with payment processing services via an account held by Base Commerce's "sponsor bank," Defendant Synovus, from which Base Commerce deducted its monthly processing, chargeback, and other service fees.

904. The assistance that Base Commerce provided to TelexFree was substantial. For example, Base Commerce's total deductions from the TelexFree account for the months of June 2013 through January 2014, were as follows:

June 2013	$340,106.76
July 2013	$565,582.16
August 2013	$1,164,038.56
September 2013	$113,672.76
October 2013	$99,326.90
November 2013	$61,438.21
December 2013	$108,181.78
January 2014	$98,903.07

905. Base Commerce received instruction from its sponsor bank Defendant Synovus to cease performing payment-processing services for TelexFree by August 31, 2013.

906. Only due to this pressure from Synovus, Hughes forwarded a letter to Merrill on August 20, 2013, advising him that Base Commerce would terminate its services with TelexFree "as of 5:00 PM Pacific Standard Time on August 31, 2013."[94]

907. In a subsequent email from Hughes to Defendants Merrill, Wanzeler, and Craft, as well as GPG, dated August 28, 2013, Hughes stated, regarding TelexFree

> [we] have an MLM with a huge amount of negative news and serious accusations. Hence, banks and processors are running away based on what the FTC, Treasury Dept., FDIC and Justice Dept. has done to them lately to include suing them,,[sic] fining them and freezing their settlement funds.[95]

908. Hughes characterized TelexFree as an extremely high-risk client and indicated that no United States bank or processor would be willing to take on TelexFree as a client given this risk.[96]

909. In the same email, in which Hughes also characterized TelexFree as "a real hot-potato as they say," Hughes indicated that Base Commerce had worked, and was continuing to work, to find a replacement processor for TelexFree "such that [TelexFree's] business was not interrupted" and that he had arranged, via Defendant Vantage Payments, for Defendant Allied Wallet, a United Kingdom-based payment processor, to take over payment processing services for TelexFree.

910. Hughes also indicated that Base Commerce was actively applying to off-shore banks on TelexFree's behalf, noting "no US Bank or Processor, as evidenced by the email from PROPAY [sic], will accept your business. . . ."[97]

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[94] *See* Letter from John Hughes to James Merrill, dated August 20, 2013, attached herewith as Exhibit 15.

[95] *See* Exhibit 12, email from John Hughes to James Merrill, dated August 28, 2013.

[96] *See id.*

[97] *See* Exhibit 12 email from John Hughes to James Merrill, dated August 28, 2013.

911. Hughes also offered Merrill business planning advice, which included advising that TelexFree charge members for its $1,425 AdCentral membership packages by ACH instead of credit card.

912. In another email from Defendant Merrill to Hughes, also dated August 28, 2013, Merrill indicated that he believed that Base Commerce's activity in soliciting off-shore banking services on TelexFree's behalf was connected with TelexFree's desire to separate its international, U.S.-based, and Brazil-based business among different banks and processors.

913. In approximately August 2013, Defendant Sparman, managing partner of Vantage Payments, was contacted by Hughes regarding TelexFree.

914. More particularly, Hughes asked Vantage Payments to act as a broker on TelexFree's behalf, and to contact banks and processors with whom it had a business relationship to secure payment-processing services for TelexFree, which services Vantage Payments agreed to perform.

915. In an email from Hughes to Defendants Merrill and Wanzeler, dated September 27, 2013, Hughes indicated that, against the instructions of Synovus, he had authorized approximately $5 million in transfers on September 26, 2013, stating:

> "The bank is clearly not happy with me but we are still trying to do the best job we can for you. Their concerns are that if, god forbid, TelexFree came under a publicized FTC investigation, there could be an indeterminate wave of chargeback's. . . ."[98]

916. In September 2013, Base Commerce successfully applied to IPS, on TelexFree's behalf, for TelexFree to receive its ACH processing services through IPS. This went well beyond its role as a Financial Services Provider. By working in concert with them to skirt the law, Base Commerce and Hughes became active participants in TelexFree's unlawful operation.

[98] *See* email from Hughes to Merrill, dated September 27, 2013, attached herewith as Exhibit 16.

917. Thereafter, TelexFree's ACH processing was conducted by IPS, also doing business as e-Wallet.

918. On or about October 10, 2013, Hughes reiterated to Merrill his concern over the possibility of a FTC investigation.

919. In an email from Defendant Merrill to Hughes, dated January 16, 2014, Merrill indicated that TelexFree, which was continuing to do business with GPG, was having "a great deal of issues with GPG," specifically, regarding TelexFree's reserve balance and cash flow in and out of GPG.

920. Hughes, on behalf of Base Commerce, responded that Base Commerce was "happy to help" regarding TelexFree's issue with GPG.

921. Despite the numerous Red Flags and evidence of suspicious, tortious or unlawful activity that Base Commerce was aware of, and despite being instructed by its sponsor bank to cease providing services by August 31, 2013, Base Commerce continued to provide services to TelexFree.

922. These services included: processing transactions for TelexFree until at least January 2014, connecting TelexFree with off-shore processors, applying for accounts at off-shore banks on TelexFree's behalf and proving advice and guidance regarding TelexFree's business operations. By working so in concert with them to skirt the law, Base Commerce and Hughes became active participants in TelexFree's unlawful operation.

923. As a result of Base Commerce's required initial investigation and ongoing monitoring of TelexFree, Base Commerce and Hughes possessed actual knowledge that TelexFree was engaged in an illegal Pyramid Scheme.

924. At a minimum, Base Commerce's initial investigation and ongoing monitoring of

TelexFree, made it generally aware that TelexFree was engaged in tortious conduct, but it deliberately and willfully turned a blind eye to the results of its investigation and monitoring.

925. Although Base Commerce and Hughes possessed knowledge of the tortious nature of TelexFree's business activities from the time of its initial investigation of TelexFree and during its monitoring of TelexFree, it continued to promote and to provide TelexFree with payment processing services integral to the TelexFree Scheme.

926. Although Defendant Base Commerce and Hughes possessed knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities at all times it received or held TelexFree funds, they willfully acted in concert with them to:

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide services integral to the TelexFree Pyramid Scheme; and
- continue to provide TelexFree with substantial assistance and encouragement essential to their unlawful business enterprise.

927. Through its actions, Base Commerce and Hughes provided substantial assistance and encouragement to TelexFree and otherwise became an integral part of TelexFree's Pyramid Scheme. Base Commerce and Hughes also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

4. Vantage Payments

928. Defendant Vantage Payments, which characterizes itself as an "Independent Sales Agent," served as a broker between TelexFree and other banks and processors for purposes of securing payment-processing services.

929. Despite Vantage Payments' knowledge of the suspicious, tortious or unlawful

nature of TelexFree's business activities and operation, Vantage Payments agreed to accept TelexFree as a customer in August 2013 and began to solicit payment processing services on behalf of TelexFree, which services it continued to perform up to the time that TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. declared bankruptcy in April 2014.

930. In approximately August 2013, Defendant Sparman, managing partner of Vantage Payments, was contacted by Defendant Hughes of Base Commerce regarding TelexFree, asking it to act as a broker on TelexFree's behalf and to contact banks and processors with whom it had a business relationship to secure payment processing services for TelexFree, which services Vantage Payments agreed to perform.

931. Thereafter, Vantage Payments contacted Defendant Allied Wallet, and applied on TelexFree's behalf for Allied Wallet to provide payment-processing services to TelexFree.

932. Vantage Payments also contacted an additional payment processor based in the United Kingdom, who, at that time, refused to provide services to TelexFree due to known accusations of fraud regarding TelexFree's operations.

933. Vantage Payments was able to secure Allied Wallet's agreement to provide payment processing services to TelexFree, pursuant to which agreement Allied Wallet would provide a "processing account" and process both incoming and outgoing payments for the benefit of TelexFree, among other services.[99]

934. In connection with TelexFree's agreement with Allied Wallet, Defendant Merrill instructed Allied Wallet to transfer funds from TelexFree's processing account with Allied Wallet to accounts with Fidelity Bank.

935. Vantage Payments, on behalf of TelexFree, also registered an entity in the United

[99] *See* Allied Wallet Card Payment Processing Agreement, dated August 26, 2013, attached herewith and marked as Exhibit 17.

Kingdom, known as "TelexFree, LTD," to serve as TelexFree's EU-based operation.

936. In fact, as Vantage Payments was aware, "TelexFree, LTD" was a shell company with no physical presence beyond a mere address.

937. On or about October 10, 2013, Allied Wallet informed TelexFree that, due to an increase in both payment volume and chargebacks, it would be increasing the rolling reserve on TelexFree's processing account to 20%.

938. Thereafter, Vantage Payments negotiated extensively with Allied Wallet on TelexFree's behalf, to have this rolling reserve reduced.

939. These negotiations entailed, *inter alia*, Sparman meeting personally with the CEO of Allied Wallet in Los Angeles, California on TelexFree's behalf.

940. Ultimately, after extensive lobbying by Vantage Payments on TelexFree's behalf, Allied Wallet agreed to reduce its rolling reserve on the TelexFree processing account to 10%, and also agreed to increase the maximum processing volume on the account

941. On or about November 13, 2013, Sparman, on behalf of Vantage Payments, and acting on behalf of TelexFree, once again contacted another United Kingdom-based payment processor in hopes of securing TelexFree additional payment processing volume.[100]

942. This effort was ultimately unsuccessful, as this additional United Kingdom-based payment processor declined to perform services for TelexFree in light of the accusations of fraud and illegality surrounding TelexFree.

943. The foregoing activities were beyond the scope of Vantage Payments' role as a Financial Services Provider. By working so in concert with the indicted parties to skirt the law, Vantage Payments and Sparman were active participants in TelexFree's unlawful operation.

[100] *See* email from Dustin Sparman to James Merrill, dated November 13, 2013, attached hereto and marked as Exhibit 18.

944. By agreement with TelexFree, Vantage Payments also provided TelexFree with access to its Customer Dispute Resolution Network ("CDRN") Portal to Verifi by Visa's CDRN, the purpose of which was to provide TelexFree with the capability to address issues relating to customer payment disputes.[101]

945. TelexFree executed a CDRN Portal Agreement with Vantage Payments on December 5, 2013.

946. This authorized TelexFree to make use of Vantage Payments' online CDRN portal for processing of ACH and credit card transactions.

947. In return for these services, Vantage Payments charged TelexFree a flat rate of $40 per transaction.

948. In connection with this Agreement, Merrill authorized Vantage Payments to transmit all incoming payments to the account of TelexFree, Inc. at Fidelity Bank.

949. Vantage Payments continued to provide TelexFree with these portal access services until at least March 13, 2014.

950. In an email from Defendant Merrill to Sparman, dated January 15, 2014, Merrill stated, regarding dividing TelexFree's payment processing between Vantage Payments and IPS, "[T]here will be plenty of business to go around. You deserve your share for getting us started…Whomever treats us best will get most of the business."[102]

951. Despite having direct knowledge of the shutdown of TelexFree in Brazil and Rwanda, the United Kingdom scam warning against TelexFree, well-publicized accusations of fraud and illegality on the part of TelexFree, and an enormous number of Red Flags and indicia

[101] *See* Vantage Payments CDRN Portal Agreement, attached hereto and marked as Exhibit 19.

[102] *See* email from James Merrill to Dustin Sparman, dated January 15, 2014, attached hereto and marked as Exhibit 20.

of the suspicious, tortious or unlawful nature of TelexFree's business operations, Vantage Payments continued to provide processing and processing-related services to TelexFree up to the time that TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. declared bankruptcy in April 2014.

952. Although Defendant Vantage Payments possessed knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities at all times it received or held TelexFree funds, they willfully acted in concert with them to:

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide services integral to the TelexFree Pyramid Scheme; and
- continue to provide TelexFree with substantial assistance and encouragement essential to their unlawful business enterprise.

953. Through its actions, Vantage Payments provided substantial assistance and encouragement to TelexFree and otherwise became an integral part of TelexFree's Pyramid Scheme. Vantage Payments also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

954. At a minimum, Vantage Payments' initial investigation and ongoing monitoring of TelexFree, made it generally aware that TelexFree was engaged in suspicious, tortious or unlawful conduct, but it deliberately and willfully turned a blind eye to the results of its investigation and monitoring.

955. Although Vantage Payments possessed knowledge of the tortious nature of TelexFree's business activities from the time of its initial investigation of TelexFree and during its monitoring of TelexFree, it continued to promote and to provide TelexFree with payment processing services integral to the TelexFree Scheme until at least April 2014.

5. Allied Wallet

956. Defendant Allied Wallet shared a close business relationship with Defendants Vantage Payments and Sparman, and was kept informed by Sparman of information regarding TelexFree, including public accusations of operating a Pyramid Scheme and the investigation and shutdown of TelexFree's operations in Brazil.

957. Despite Allied Wallet's knowledge of the suspicious, tortious, or unlawful nature of TelexFree's business activities and operation, Allied Wallet agreed to accept TelexFree as a customer and began in late August 2013 to perform payment processing services for TelexFree.

958. Allied Wallet had extensive connections with Vantage Payments in facilitating the Scheme.

959. Upon Vantage Payments' application on behalf of TelexFree, Allied Wallet agreed to provide payment-processing services to TelexFree, pursuant to which agreement Allied Wallet would provide a "processing account" and process both incoming and outgoing payments for the benefit of TelexFree, among other services.[103]

960. In connection with TelexFree's agreement with Allied Wallet, Defendant Merrill instructed Allied Wallet to transfer funds from TelexFree's processing account with Allied Wallet to accounts with Fidelity Bank.

961. On or about October 10, 2013, Allied Wallet informed TelexFree that, due to an increase in both payment volume and chargebacks, it would be increasing the rolling reserve on TelexFree's processing account to 20%.

962. Thereafter, Vantage Payments negotiated extensively with Allied Wallet on TelexFree's behalf, to have this rolling reserve reduced.

[103] *See* Allied Wallet Card Payment Processing Agreement, dated August 26, 2013, attached herewith and marked as Exhibit 17.

963. These negotiations entailed, *inter alia*, Sparman meeting personally with the CEO of Allied Wallet in Los Angeles, California on TelexFree's behalf.

964. Ultimately, after extensive lobbying by Vantage Payments on TelexFree's behalf, Allied Wallet agreed to reduce its rolling reserve on the TelexFree processing account to 10%, and also agreed to increase the maximum processing volume on the account.

965. Allied Wallet also made transfers from TelexFree's corporate accounts to private accounts held in the names of Defendant Founders, despite knowledge of the suspicious, tortious or unlawful nature of TelexFree's business enterprise and operations.

966. Despite having direct knowledge of the shutdown of TelexFree in Brazil and Rwanda, the United Kingdom scam warning against TelexFree, well-publicized accusations of fraud and illegality on the part of TelexFree, and an enormous number of Red Flags and indicia indicating the suspicious, tortious or unlawful nature of TelexFree's operations, Allied Wallet continued to provide processing and processing-related services to TelexFree up to the time that TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. declared bankruptcy in April 2014.

967. Although Defendant Allied Wallet possessed knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities at all times it received or held TelexFree funds, it willfully acted in concert with TelexFree to:

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide services integral to the TelexFree Pyramid Scheme; and
- continue to provide TelexFree with substantial assistance and encouragement essential to their unlawful business enterprise.

968. Through its actions, Allied Wallet provided substantial assistance and

encouragement and otherwise became an integral part of TelexFree's Pyramid Scheme. Allied Wallet also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

969. At a minimum, Allied Wallet's initial investigation and ongoing monitoring of TelexFree, made it generally aware that TelexFree was engaged in suspicious, tortious or unlawful conduct, but it deliberately and willfully turned a blind eye to the results of its investigation and monitoring.

970. Although Allied Wallet possessed knowledge of the tortious nature of TelexFree's business activities from the time of its initial investigation of TelexFree and during its monitoring of TelexFree, it continued to promote and to provide TelexFree with payment processing services integral to the TelexFree Scheme until at least April 2014.

6. IPS

971. In September 2013, Defendant Base Commerce successfully applied to IPS, on TelexFree's behalf, for TelexFree to receive its ACH processing services through IPS.

972. Thereafter, TelexFree's ACH processing was conducted by IPS, also doing business as e-Wallet.

973. In approximately December 2013, TelexFree entered into a further agreement with IPS for additional payment processing services, under the name and address of "TelexFree, LTD," the shell company established by Vantage Payments.[104]

974. Thereafter, beginning in approximately January 2014, IPS provided TelexFree with a service titled "e-Wallet," which was used by TelexFree for additional processing of funds transferred by Promoters to TelexFree.

[104] *See* email from Sparman to Merrill, dated December 27, 2013, attached herewith as Exhibit 21.

975. IPS performed an investigation of TelexFree prior to agreeing to accept TelexFree as a customer and its initial investigation and ongoing monitoring of TelexFree revealed indicia of fraud and illegality, or Red Flags, and other evidence of fraud cited above.

976. Given IPS's knowledge of the illegal nature of TelexFree's business operations, IPS was obligated to refuse to open any accounts or process any transactions for the benefit of TelexFree.

977. Despite IPS's knowledge of the illegal nature of TelexFree's business activities, IPS agreed to accept TelexFree as a customer and began to perform payment processing services for TelexFree in September 2013.

978. IPS has a history of representing Ponzi schemes. Prior clients include the well-publicized Ponzi schemes Spinding, Wealth4AllTeam, Primus Hub, (an attempted reboot of Wealth4AllTeam following Wealth4AllTeam's collapse), Funky Shark (a planned Ponzi scheme that shut down prior to launch after receiving legal advice and a $40,000 fine), Team Vinh International, MyAdvertisingPays (a 120% return-on-investment advertising-based Ponzi scheme, similar to TelexFree), Diamond Banners, Argent Network (which was advertised as advertised as "a mixture of Zeek Rewards and TelexFree"), and 1BuckAdShare.

979. Despite the overwhelming evidence of TelexFree's fraudulent activities, in an October 2013 public statement to the news website *BehindMLM.com*, IPS audaciously stated that they had "done a complete due diligence on TelexFree" and "confirmed the product as compliant with all US laws." This activity was beyond the scope of its role as a Financial Services Provider. By publicly endorsing their business model, IPS became an active participant in TelexFree's unlawful operation.

980. On or about February 12, 2014, IPS announced that they were partnering with

MLM attorney Kevin Thompson of Thompson Burton, PLLC, to "provide up-to-date compliance guidance to their new and existing clients in the Direct Selling and Multi-Level Marketing industry."

981. TelexFree was a recipient of such "compliance guidance" services.

982. According to a TelexFree balance sheet, dated December 31, 2013, posted by the Washington State Utilities and Transportation Commission, as of December 31, 2013, TelexFree claimed $31,640,192.30 in assets then held by IPS (under the name "e-Wallet") on behalf of TelexFree.[105] The assistance that IPS offered TelexFree was substantial.

983. IPS continued to provide payment-processing services to TelexFree until April 17, 2014, at which time IPS finally disabled its electronic services.

984. Thereafter, in place of the previous e-Wallet online interface, IPS posted a message online stating that TelexFree's payment processing services had been disabled, and suggested that this could be due to TelexFree having "violated Anti-Money Laundering policies."

985. Despite having direct knowledge of the shutdown of TelexFree in Brazil and Rwanda, the United Kingdom scam warning against TelexFree, well-publicized accusations of fraud and illegality on the part of TelexFree, and an enormous number of Red Flags and indicia of fraud indicating the fraudulent and illegal nature of TelexFree's operations, IPS continued to provide processing and processing-related services to TelexFree up to the time that TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. declared bankruptcy in April 2014.

986. Although Defendant IPS possessed knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities at all times it received or held TelexFree funds, it

[105] *See* TelexFree, LLC Balance Sheet as of December 31, 2013, marked as Exhibit 5.

willfully acted in concert with TelexFree to:

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide services integral to the TelexFree Pyramid Scheme; and
- continue to provide TelexFree with substantial assistance and encouragement essential to their unlawful business enterprise.

987. Through its actions, IPS provided substantial assistance and encouragement and otherwise became an integral part of TelexFree's Pyramid Scheme. IPS also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

988. At a minimum, IPS's initial investigation and ongoing monitoring of TelexFree, made it generally aware that TelexFree was engaged in suspicious, tortious or unlawful conduct, but it deliberately and willfully turned a blind eye to the results of its investigation and monitoring.

989. Although IPS possessed knowledge of the suspicious, tortious or unlawful nature of TelexFree's business activities from the time of its initial investigation of TelexFree and during its monitoring of TelexFree, it continued to promote and to provide TelexFree with payment processing services integral to the TelexFree Scheme until April 17, 2014.

990. Each of the Financial Services Providers failed to timely or adequately respond to information relating to TelexFree, or persons or entities it was related to, and as a direct and proximate result caused each member of the putative class to similarly suffer ascertainable economic harm.

991. Various persons or entities that are not named as Defendants herein have participated as co-conspirators or aiders and abettors in the violations and other claims alleged

herein and have performed acts and made statements in furtherance thereof. These persons or entities have directly participated because they have facilitated, adhered to, and/or communicated with others regarding the Pyramid Scheme or offered substantial assistance or encouragement. Plaintiffs reserve the right to name some or all of these persons as Defendants at a later date.

992. Plaintiffs and the putative class representatives seek to obtain damages, restitution and injunctive relief for the Class, as defined, below, from Defendants.

IV. CLASS ACTION ALLEGATIONS

993. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs sue on their own behalf, and on behalf of all other persons similarly situated ("the Class"). The Class that Plaintiffs seek to represent is:

> All persons residing in the United States who purchased TelexFree AdCentral or AdCentral Family packages and suffered a Net Loss[106] during the period from January 1, 2012 to April 16, 2014 (the "Class Period")

994. Excluded from the Class are Defendants and their officers, directors, and employees; any entity in which any Defendant has a controlling interest; the co-conspirators, the so-called Top Level Promoters, legal representatives, attorneys, heirs, and assigns of Defendants.

995. Plaintiffs meet the requirements of Federal Rules of Civil Procedure 23(a) because the members of the Class are so numerous that the joiner of all members is impractical. While the exact number of Class members is unknown to Plaintiffs, it is in the hundreds of thousands.

996. Plaintiffs meet the requirements of Federal Rules of Civil Procedure 23(a) because there is a well-defined community of interest among the members of the Class, common questions of law and fact predominate, Plaintiffs' claims are typical of the members of the Class,

[106] "Net Loss" is defined as the class member having invested more funds than they withdrew.

and Plaintiffs can fairly and adequately represent the interests of the Class.

997. This action satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3) because it involves questions of law and fact common to the members of the Class that predominate or questions affecting only individual members, including, but not limited to:

- whether the contract under which TelexFree claims to invoke the application of Nevada law is illegal and unenforceable as a matter of law;
- whether TelexFree's claim to invoke the application of Nevada law is enforceable;
- whether TelexFree ran an unlawful Pyramid Scheme or a legitimate business;
- whether TelexFree ran a lawful MLM program or an unlawful pyramid scheme;
- whether each Defendant knew that TelexFree was an illegal Pyramid Scheme, yet continued to aid, abet and further such illegal activities or are otherwise liable for the economic loss suffered by the Putative Class;
- whether the aid that each Defendant provided was a substantial in the context of aiding and abetting;
- was TelexFree a "multi-level distribution company" as defined by Massachusetts General Laws Chapter 93, Section 69(a);
- did the standard TelexFree Pre-March 9 Contract contain promises to pay merely for the recruitment of new members in violation of Massachusetts General Laws Chapter 93, Section 69(a);
- did the standard TelexFree Pre-March 9 Contract contain offers to pay a "finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration" to Participants in the TelexFree Program in violation of Massachusetts General Laws Chapter 93, Section 69(a);
- did the TelexFree Program offer its Members payment without requiring them to engage in any "bona fide and essential supervisory, distributive, selling or soliciting" nor exercise any "judgment," "skill," or "control over the operation in violation of Massachusetts General Laws Chapter 93, Section 69(a);
- did each of the Financial Services Defendants have actual knowledge of TelexFree's suspicious, tortious or unlawful activities;

- when did each of the Financial Services Defendants have actual knowledge of TelexFree's suspicious, tortious or unlawful activities;

- whether TelexFree's Financial Services Providers, including the aforesaid banking institutions and payment processing services providers aided and abetted TelexFree's Pyramid Scheme;

- whether TelexFree violated M.G.L. c. 93A;

- whether Massachusetts' Blue Sky Laws will apply to the claims of the Putative Class;

- whether TelexFree violated M.G.L. c. 110A, § 410 - Massachusetts' Blue Sky Laws;

- whether certain Defendants used and employed manipulative and deceptive devices and contrivances in violation of M.G.L. c. 110A, § 410; used means and instrumentalities, directly and indirectly, for the purchase and sale of unregistered securities; and used and employed manipulative and deceptive devices and contrivances in violation of the Massachusetts Uniform Securities Act, M.G.L. c. 110A, § 410(b) and M.G.L. c. 93A;

- whether TelexFree mailed fraudulent and inaccurate 1099 (Miscellaneous Income) forms to investors;

- whether the 1099 (Miscellaneous Income) forms should be declared void as a matter of law;

- whether Defendants' conduct violated any of the articulated Massachusetts state common laws; and

- whether Plaintiff and the Class are entitled to damages, civil penalties, punitive damages, and/or injunctive relief.

998. Plaintiffs' claims are typical of those of other Class members because Plaintiffs were defrauded by Defendants' common Scheme.

999. Plaintiffs will fairly and accurately represent the interests of the Class.

1000. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications regarding individual members of the Class, which would establish incompatible standards of conduct for Defendants and would lead to repetitive adjudication of common questions of law and fact.

1001. Class treatment is superior to any other method for adjudicating the controversy. Plaintiffs know of no difficulty likely to be encountered in the management of this litigation that would preclude its maintenance as a class action under Rule 23(b)(3).

1002. Damages for any individual class member likely cannot justify the cost of individual litigation, so that absent class treatment, the Defendants' violations of law inflicting substantial damages in the aggregate would go un-remedied without certification of the Class.

1003. Defendants have acted or refused to act on grounds that apply to the Class, as alleged above, and certification is proper under Rule 23(b)(2).

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 93, SECTIONS 12 and 69
(Against All Operational Defendants)

1004. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1005. The Operational Defendants were engaged in acts in violation of Massachusetts General Laws Chapter 93, Section 69.

1006. Massachusetts General Laws Chapter 93, Section 12 provides for a private right of action for violations of Chapter 93, Section 69.

1007. In consequence of said Defendants' violative conduct, Plaintiffs and the Putative Class have suffered great financial losses, and have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged.

1008. In consequence of said Defendants' violative conduct or other unfair and deceptive acts and practices, Plaintiffs and the Putative Class have been similarly caused to

suffer ascertainable economic loss, have incurred expense and have otherwise been similarly damaged. Because the Operational Defendants' violations of Massachusetts General Laws Chapter 93, Section 69 were engaged in with malicious intent to injure the members of the Putative Class, the Class is entitled to (up to) three times the amount of actual damages sustained, together with the costs of suit, including reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF
VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 93A, SECTIONS 2 AND 11
(Against All Operational Defendants)

1009. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1010. All Operational Defendants were engaged in "trade" and "commerce" as defined by Massachusetts General Laws Chapter 93A, Section 1.

1011. Plaintiffs and the Putative Class were engaged in "trade" and "commerce" as defined by Massachusetts General Laws Chapter 93A, Section 1.

1012. The transactions, actions or inaction of the Operational Defendants constitute unfair and deceptive acts and practices as defined by, and in violation of, Massachusetts General Laws, Chapter 93A, Sections 2 and 11.

1013. In addition, said Defendants engaged in acts in violation of Massachusetts General Laws Chapter 93, Section 69. Pursuant to Chapter 93, Section 69(g) any violation of the provisions of M.G.L. c. 93, section 69 shall constitute an unlawful method, act or practice within the meaning of clause (a) of section two of chapter ninety-three A.

1014. As a result, the foregoing transactions, actions and inactions of said Defendants thereby constitute per se an unlawful method, act or practice within the meaning of Massachusetts General Laws, Chapter 93A, Section 2(a) by operation of Massachusetts General

Laws, Chapter 93, Section 69(g).

1015. The foregoing transactions, actions and inactions of said Defendants thereby constitute per se unfair and deceptive acts and practices as defined by, and in violation of, Massachusetts General Laws Chapter 93A, §§ 2 and 11.

1016. In consequence of said Defendants' violative acts, and unfair methods of competition or unfair or deceptive acts or practices, Plaintiffs and the Putative Class have been similarly caused to suffer ascertainable economic loss, have incurred expense and have otherwise been similarly damaged. The Operational Defendants' violations of Massachusetts General Laws Chapter 93A, Section 69 were willful or knowing, and the Class is otherwise entitled to (up to) three times the amount of actual damages sustained, together with the costs of suit, including reasonable attorneys' fees.

THIRD CLAIM FOR RELIEF
AIDING AND ABETTING VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 93, SECTIONS 12 and 69, AND MASSACHUSETTS GENERAL LAWS, CHAPTER 93A, SECTIONS 2(a) or 11
(Against TelexFree And All Defendants)

1017. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1018. As described above, to comply with federal anti-money laundering and other banking laws, the Financial Services Provider Defendants, including Bank of America, TD Bank, Fidelity Bank, Wells Fargo, Citizens Bank, Synovus, GPG, IPS, ProPay, Base Commerce, Vantage Payments, Allied Wallet and individual defendants John F. Merrill, John Hughes and Dustin Sparman, must understand their customers' business model and must know their clients.

1019. Under the attendant facts, any application of the mandated Know-Your-Customer Regulations by each of the Financial Services Providers obviously included evaluating whether

TelexFree's business model and operations violated Massachusetts General Laws Chapter 93, Section 69.

1020. Violations of Massachusetts General Laws c. 93, § 69 are per se violations of Massachusetts General Laws Chapter 93A, Section 2(a).

1021. Under the attendant facts, that TelexFree violated Massachusetts General Laws Chapter 93, Section 69 during 2013 and 2014 was obvious or at a minimum apparent, to the sophisticated eye, as focused by the FFIEC, of the Financial Services Providers.

1022. As described herein, TelexFree and the Operational Defendants, except for Katia Wanzeler, otherwise violated MGL c. 93A.

1023. Massachusetts General Laws Chapter 93, Sections 12 and 69 and Massachusetts General Laws Chapter 93A created a duty carried by TelexFree and each of the Operational Defendants that inured to the benefit of the putative class.

1024. The Operational Defendants and the Financial Services Providers knew that TelexFree's conduct was suspicious, tortious, unlawful, and constituted a breach of duty owed to each member of the putative class.

1025. The Operational Defendants and the Financial Services Providers knew that TelexFree Program violated Massachusetts General Laws Chapter 93, Sections 12 and 69 and that TelexFree's conduct was unfair, deceptive, suspicious, tortious, and unlawful constituted a breach of duty owed to each member of the putative Class.

1026. During the TelexFree Pyramid Scheme, the Financial Services Providers provided essential financial services to TelexFree, the Operational Defendants, and each other, which substantially assisted and enabled them to carry on their unlawful, unfair, and deceptive Pyramid Scheme notwithstanding the presence of suspicious, tortious or illegal activity on TelexFree's

part.

1027. As described herein, the assistance and encouragement given to TelexFree by the Financial Services Providers to conduct its business operations was essential because TelexFree's business operations were entirely dependent on them.

1028. For example, without the indispensible services provided by the Financial Services Providers, TelexFree would not have been able to accept, process or misappropriate the funds invested by the putative class.

1029. Without the indispensible services provided by the Financial Services Providers, TelexFree would not have been able to otherwise open shop in the United States , develop and maintain its unlawful business operations.

1030. As described herein, the assistance and encouragement given to TelexFree by the Financial Services Providers to conduct its business operations was substantial. According to an investigation by the SOC, in 2012 and 2013 TelexFree identified 4,845,576 VoIP Program transactions totaling $238,395,353.80. Over the same period, TelexFree received 783,771 package purchases of either $289 or $1,375 totaling $880,189,455.32.

1031. Each Defendant, while knowing that the other's conduct provided essential and substantial encouragement to TelexFree, the Operational Defendants, and each other, substantially assisted and enabled them to carry on their unlawful, unfair, and deceptive Pyramid Scheme notwithstanding the presence of suspicious, tortious or illegal activity on TelexFree's part.

1032. Each Defendant provided substantial assistance and/or encouragement to the other Defendants in committing the violations of M.G.L. c. 93, § 69 and M.G.L. c. 93A alleged herein, and did so with unlawful intent and knowledge that such parties were perpetuating a fraudulent

and illegal Pyramid Scheme, and yet continued to substantially assist or encourage said Scheme.

1033. Each Defendants rendered this substantial assistance despite their knowledge that TelexFree's operations constituted an unlawful, unfair, deceptive and unsustainable Pyramid Scheme and violated M.G.L. c. 93 § 69 and M.G.L. c. 93A.

1034. Such substantial assistance was rendered by Defendants despite their knowledge of the illegal nature of TelexFree's operations, is detailed within this complaint and includes, but is not limited to:

a. managing and controlling TelexFree and its affiliated entities;

b. providing accounting services to TelexFree;

c. providing legal services to TelexFree;

d. publicly certifying that TelexFree's business model and operations were legal, proper, and economically viable and sustainable;

e. providing banking, investment and asset management services for TelexFree and its management;

f. promoting TelexFree AdCentral packages;

g. continuing to provide financial services following the Brazilian Court's injunction to stop TelexFree's business in Brazil;

h. processing payments to, from, and on behalf of TelexFree and its affiliated entities;

i. processing payments for transfers of funds which deepened TelexFree's insolvency;

j. making transfers from TelexFree's corporate accounts to private accounts held in the names of Defendant Founders, despite knowledge

of the fraudulent nature of TelexFree's business enterprise;

k. investing ill-gotten funds for the benefit of TelexFree's Founders, despite knowledge of the suspicious, tortious or illegal nature of TelexFree's business enterprise;

l. providing TelexFree's Founders with cashier's checks in amounts totaling millions of dollars and purchased using funds in TelexFree's corporate accounts;

m. providing credit to TelexFree;

n. participating in a cover-up by knowingly failing and/or refusing to report the results of such financial services provider's own investigation of TelexFree to the proper authorities, despite the suspicious, tortious or illegal activity revealed by such investigation;

o. soliciting financial services for the benefit of TelexFree;

p. negotiating with financial services providers on TelexFree's behalf;

q. incorporating foreign "shell corporations" on TelexFree's behalf in order to expand TelexFree's suspicious, tortious or illegal business internationally;

r. providing financial advice to TelexFree designed to keep the violations of M.G.L. c. 93 § 69 and M.G.L. c. 93A and the unlawful MLM Pyramid Scheme alive and avoid detection by regulators;

s. "sneaking" payments out of bank accounts to TelexFree in order to avoid detection;

t. appearing in online videos with TelexFree Founders promoting

TelexFree to the public;

u. publicly falsely stating that TelexFree's business operations had been assessed by the financial services provider and determined to be legal; or

v. otherwise becoming an integral part of TelexFree's Pyramid Scheme by, *inter alia*, enabling the TelexFree Pyramid Scheme to expand and continue by providing necessary financial services to TelexFree, despite actual knowledge of violations of M.G.L. c. 93 § 69 and M.G.L. c. 93A by TelexFree and other suspicious, tortious or illegal activities.

1035. By each Defendant's actions participating in the Pyramid Scheme as described herein, as alleged above, each Defendant aided and abetted the commission of the causes of action alleged herein.

1036. As a direct and proximate result of TelexFree's illegal Pyramid Scheme and all the activities performed in connection therewith, to which said Defendants provided substantial assistance, Plaintiffs and the Putative Class sustained ascertainable damages and losses and demand they be made whole.

FOURTH CLAIM FOR RELIEF
UNJUST ENRICHMENT
(Against All Defendants)

1037. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1038. Plaintiffs and the Putative Class conferred a benefit upon the Defendants by furnishing funds, directly or indirectly, to Defendants, who accepted them without protest or defect and retained and benefitted from them.

1039. Defendants had an appreciation or knowledge of the benefit.

1040. Defendants knew of such funds received by them.

1041. Defendants have unlawfully and in bad faith denied Plaintiffs and the putative Class access to such funds, and have instead knowingly retained the benefit of such funds for themselves.

1042. Acceptance or retention by Defendants of the benefit under the circumstances set forth herein would otherwise be inequitable without payment for its value.

1043. As a direct and proximate result of Defendants' actions, as hereinabove set forth, Defendants are, and continue to be, unjustly enriched and Plaintiffs demand they and the Putative Class be made whole.

FIFTH CLAIM FOR RELIEF
CIVIL CONSPIRACY
(Against TelexFree, All Operational Defendants, John Merrill, John Hughes, Dustin Sparman, Fidelity Bank, Base Commerce, GPG, and IPS)

1044. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1045. TelexFree, the Operational Defendants, Katia Wanzeler, John Merrill, John Hughes, Dustin Sparman, Fidelity Bank, Base Commerce, GPG and IPS have combined by common design to enter into a civil conspiracy.

1046. Said Defendants conspired with each other to operate and maintain in operation a Pyramid Scheme in violation of Massachusetts General Laws Chapter 93, Section 69 and Chapter 93A.

1047. Said Defendants, by agreement or common design, engaged directly in the operation of, or otherwise worked in concert to further the activities of, the unlawful Pyramid Scheme.

1048. As detailed above, each of said Defendants engaged in a tortious act in

furtherance of the agreement or common design to engage in the lawful Pyramid Scheme.

1049. Said Defendants conspired with each other, making use of confidential information, and used this confidential information to misappropriate the funds of the Putative Class through the operation and maintenance of unlawful Pyramid Scheme.

1050. Said Defendants, for an unlawful purpose and using unlawful means, with the intent of so combining, unlawfully defrauded Plaintiffs and the Putative Class out of funds.

1051. Said Defendants' conduct constitutes a conspiracy to operate an unlawful enterprise, rendering all Defendants jointly and severally liable for the breaches of each other's obligations.

1052. As a direct and proximate cause of said Defendants' conspiracy, the Putative Class has and will continue to suffer substantial direct and consequential damages and Plaintiffs demand they and the Putative Class be made whole.

SIXTH CLAIM FOR RELIEF
PROFESSIONAL NEGLIGENCE
(Against All Licensed Professional Defendants)

1053. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1054. Craft, Craft Financial, Ann Genet, Nehra, Nehra Law Firm, Waak, Waak Law Firm, Nehra and Waak Law Firm, Opt3 Solutions, Inc., PricewaterhouseCoopers, Jason A. Borromei and each of the Licensed Professional Defendants owed a duty to Plaintiffs and the Putative Class to act with reasonable care to avoid negligently misstating, misrepresenting or being misleading about the true nature of TelexFree's operation and its financial information or its returns, and to comply with all laws. Each and everyone failed and similarly caused the Putative Class to suffer ascertainable economic loss.

1055. By negligently misstating and omitting relevant information, including the source of and sufficiency of funds for payments to Promoters, said Defendants breached the duty of care they owed to Plaintiffs and the Putative Class.

1056. Each of the Licensed Service Provider Defendants owed Plaintiffs and the Putative Class a duty to act with reasonable care and to exercise the ordinary skill and ability commonly exercised by such professionals.

1057. Plaintiffs and the Putative Class relied upon said Defendants' expertise and/or performance of their duties or was similarly affected and similarly caused to incur ascertainable economic loss.

1058. Plaintiffs and the Putative Class reposed faith, confidence and trust in said Defendants' representations and advice.

1059. As a direct and proximate result of said Defendants' negligence and carelessness, Plaintiffs and the Putative Class have been caused to suffer and sustain damages and losses and demand they be made whole.

SEVENTH CLAIM FOR RELIEF
NEGLIGENT MISREPRESENTATION
(Against Operational Defendants Except Katia Wanzeler)

1060. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1061. The Operational Defendants, except Katia Wanzeler, directly, and through their agents, servants, employees and/or representatives, negligently made false misrepresentations of material fact and omissions to Plaintiffs and the Putative Class in the course of their businesses for the purpose of obtaining and/or wrongfully appropriating and converting money from Plaintiffs and the Putative Class.

1062. The said Operational Defendants made negligent misrepresentations and

omissions although said Defendants knew, or should have known, that such representations were false.

1063. Said representations, statements and omissions were material and were relied upon by Plaintiffs and the Putative Class, inducing them to furnish money to Defendants.

1064. Further, the Licensed Service Provider Defendants failed to exercise proper due diligence in the discharge of their investigatory duties as certified public accountants and attorneys of TelexFree, and knew or should have known Plaintiffs and the Putative Class would have relied upon their expertise and misrepresentations.

1065. Plaintiffs and the Putative Class reposed faith, confidence and trust in said Operational Defendants' representations and advice.

1066. In consequence of the reliance on the negligent misrepresentations of said Defendants, Plaintiffs and the Putative Class have suffered great financial losses, have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged and demand they be made whole.

EIGHTH CLAIM FOR RELIEF
VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 110a, SECTION 410(b)
(Against All Operational Defendants except for PricewaterhouseCoopers)

1067. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1068. For the purposes of this cause of action alone, Defendant PricewaterhouseCoopers is not included within the definition of Licensed Professionals.

1069. At the time of the wrongs alleged, the Defendant Founders, Top Level Promoters and Licensed Professionals were each a controlling person, partner, officer, director, person

occupying a similar status, agent or employee materially aiding in the sale of securities, of TelexFree within the meaning of Section 410(b) of the Massachusetts Uniform Securities Act, Massachusetts General Laws Chapter 110A.

1070. By their respective positions of authority, the Defendant Founders and Principals, Executive Office and Licensed Professional had the power and authority, to influence and control, and influenced and controlled, the decision-making and activities of TelexFree and the affiliated TelexFree entities and caused them to engage in the wrongful conduct described and in violations of Section 410(a) of the Massachusetts Uniform Securities Act, M.G.L. c. 110A.

1071. The Defendant Founders and Principals, Executive Office and Licensed Professional actively participated in the leadership and decision-making process of the selling entity causing the dissemination of false and misleading statements and omissions of material facts.

1072. By their positions as controlling persons, partners and officers and directors of TelexFree, and because of the aforementioned conduct, said Defendants are liable under Section 410(b) of the Massachusetts Uniform Securities Act, Massachusetts General Laws Chapter 110A..

1073. In addition, the Defendant Top Level Promoters and Licensed Professionals were agents who materially aided in the sales of the fraudulent securities in violation of Sections 410 (b) of the Massachusetts Uniform Securities Act, Massachusetts General Laws Chapter 110A.

1074. Said Defendants made significant contributions toward making the sales to Plaintiffs and the Putative Class possible through their actions detailed above.

1075. Said Defendants prepared and provided information on, and endorsed and actively promoted the opportunity regarding the securities on websites and at TelexFree events and

extravaganzas. Each of the said Defendants provided print materials, electronic materials, and made oral representations to the Putative Class

1076. The stated Defendants are liable under 410(b) as a primary violation by TelexFree was under 410(a) because Defendants materially aided in the sale of unregistered securities, and knew, or by reasonable diligence should have known, of the primary violation.

1077. Said Defendants are jointly and severally liable for the primary violations under Section 410(a)(2) detailed above.

1078. Plaintiffs and the Putative Class seek the award of actual damages on behalf of the Class.

1079. The Putative Class has and will continue to suffer irreparable harm as a result of the Defendants' conduct that cannot adequately be redressed at law.

1080. Unless this Court grants injunctive relief, the Putative Class will be irreparably harmed in a manner not fully compensable by money damages.

NINTH CLAIM FOR RELIEF
FRAUD
(Against Operational Defendants)

1081. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1082. The Operational Defendants directly, and through their agents, servants, employees and/or representatives, did intentionally or recklessly make false representations and omissions of material fact to Plaintiffs and the Putative Class with these misrepresentations being made to obtain and/or wrongfully appropriate and convert money from Plaintiffs and the Putative Class.

1083. Said Defendants' fraudulent or reckless misrepresentations and omissions are

detailed above and include, but are not limited to:

a. providing false and misleading information on the nature of TelexFree's business operation;

b. misrepresenting the financial statements;

c. providing false and misleading information on the value of the AdCentral package;

d. providing false and misleading information on the method and source from which income was derived;

e. providing false and misleading information on the legality of TelexFree's business model;

f. providing false and misleading information on the sustainability of the returns to Promoter;

g. providing false and misleading information regarding the investigation in Brazil and subsequent closure of TelexFree's Brazilian operations;

h. knowingly participating in false and deceptive information televised over the internet and other media;

i. failing to comply with federal and state laws;

j. employing legal and accountant counsel to mask their illegal and fraudulent activities to further and perpetuate such illegal fraudulent activities; and

k. setting up TelexFree's computer servers in a foreign country with the intent to avoid prosecution, legal service on the benefits of

United States legal process and otherwise with knowledge that TelexFree was an unlawful Pyramid Scheme.

1084. Said Defendants knew of the fraudulent or reckless deceptive misrepresentations and omissions of material facts set forth.

1085. Said Defendants made these intentional or reckless misrepresentations although Defendants knew that such representations were false for the purpose of inducing Plaintiffs and the Putative Class to purchase initially and to continue to purchase memberships and to recruit new members.

1086. Such misrepresentations and omissions were done knowingly or recklessly for the additional purpose and effect of concealing the true information about the TelexFree Program, including its financial condition and operations.

1087. Said Defendants received information reflecting the facts regarding TelexFree's business practices and exercised control over the materially misleading misstatements.

1088. Because of their control over and/or association with the TelexFree Program, said Defendants were active and culpable participants in the fraudulent Scheme.

1089. Said Defendants knew and recklessly disregarded the false and misleading nature of the information they caused to be disseminated to Promoters and potential Promoters.

1090. The ongoing fraudulent Pyramid Scheme could not have been perpetrated over a substantial period without the knowledge and complicity of said Defendants.

1091. These misrepresentations and statements were material and were relied upon by Plaintiffs as true, inducing them to furnish money, directly or indirectly, to said Defendants and recruit new members.

1092. In consequence of the reliance on the negligent, intentional or reckless

misrepresentations, Plaintiffs and the Putative Class have paid artificially inflated prices for worthless membership interests, suffered great financial losses, and have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged during the Class Period and demand to be made whole.

TENTH CLAIM FOR RELIEF
TORTIOUS AIDING AND ABETTING
(Against All Defendants)

1093. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1094. Each Defendant provided substantial assistance or encouragement to the other Defendants in committing the primary causes of action alleged herein, and did so with unlawful intent and knowledge that such parties were perpetuating an illegal Pyramid Scheme yet continuing to substantially assist or encourage.

1095. Defendants rendered this substantial assistance despite their knowledge that TelexFree's operations constituted an unlawful, unfair, deceptive and unsustainable Pyramid Scheme and financial fraud.

1096. Such substantial assistance rendered by Defendants despite their knowledge of, or with reasonable diligence they should have known of, the illegal nature of TelexFree's operations, is detailed above and includes, but is not limited to:

a. managing and controlling TelexFree and its affiliated entities;

b. providing accounting services to TelexFree;

c. providing legal services to TelexFree;

d. publicly certifying that TelexFree's business model and operations were legal, proper, and economically viable and sustainable;

e. providing banking, investment and asset management services for

TelexFree and its management;

f. promoting TelexFree AdCentral packages;

g. continuing to provide financial services following the Brazilian Court's injunction to stop TelexFree's business in Brazil;

h. processing payments to, from, and on behalf of TelexFree and its affiliated entities;

i. processing payments for transfers of funds which deepened TelexFree's insolvency; and

j. setting up TelexFree's computer servers in a foreign country with the intent to avoid prosecution, legal service on the benefits of United States legal process and otherwise with knowledge that TelexFree was an unlawful Pyramid Scheme.

1097. By each Defendant's actions participating in the Pyramid Scheme, as alleged above, each said Defendant aided and abetted the commission of the causes of action alleged herein.

1098. As a direct and proximate result of TelexFree's illegal Pyramid Scheme and all the activities performed in connection therewith, to which Defendants provided substantial assistance, Plaintiffs and the Putative Class sustained damages and losses and demand to be made whole.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for judgment against Defendants as follows:

1. The Court determine that this action be maintained as a class action under Rule

23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiffs as Class Representatives and their counsel of record as Class Counsel, and direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class;

2. The unlawful conduct alleged herein be adjudged and decreed an unlawful Pyramid Scheme in violation of Massachusetts General Laws Chapter 93, § 69 and Chapter 93A, §§ 2 and 11;

3. Plaintiffs and the members of the Class recover damages, as provided by law, to the maximum extent allowed under the law, including, without limitations, multiple damages, against Defendants;

4. Plaintiffs and the members of the Class recover their costs of suit, including reasonable attorneys' fees, as provided by law;

5. Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining, or renewing the conduct alleged herein, or from entering into, adopting, or following any practice, plan, program, or device having a similar purpose or effect;

6. Plaintiffs and the members of the Class be awarded pre- and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of this complaint;

7. Plaintiffs and the members of the Class be granted such other and further relief as the case may require and the Court may deem just and proper.

VII. DEMAND FOR JURY TRIAL

Plaintiffs and the Putative Class demand a jury trial of their claims to the extent

authorized by law.

Respectfully submitted,

Dated this 30th day of April, 2015

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CERTIFICATE OF SERVICE

I, Robert J. Bonsignore, hereby certify that on this 30th day of April, 2015, I caused the foregoing to be electronically filed with the Clerk of the Court by using the Case Management/Electronic Case Filing (CM/ECF) system, which will send a notice of electronic filing to all parties registered with the CM/ECF system in the above-captioned matter. A copy will be forwarded via first class mail, postage prepaid, to those parties not electronically registered.

/s/ Robert J. Bonsignore
Robert J. Bonsignore

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

RITA DOS SANTOS, PUTATIVE CLASS REPRESENTATIVES AND THOSE SIMILARLY SITUATED, Plaintiffs, v. TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; JAMES M. MERRILL; CARLOS N. WANZELER; STEVEN M. LABRIOLA; JOSEPH H. CRAFT, a/k/a JOE H. CRAFT; CRAFT FINANCIAL SOLUTIONS, LLC; ANN GENET; CARLOS COSTA; KATIA WANZELER; SANDERLEY RODRIGUES DE VASCONCELOS; SANTIAGO DE LA ROSA; RANDY N. CROSBY; FAITH R. SLOAN; DANIIL SHOYFER; SCOTT MILLER; GERALD P. NEHRA, individually and doing business as LAW OFFICES OF NEHRA AND WAAK; GERALD P. NEHRA ATTORNEY AT LAW, PLLC; RICHARD W. WAAK, individually and doing business as LAW OFFICES OF NERHA AND WAAK; RICHARD W. WAAK, ATTORNEY AT LAW, PLLC; OPT3 SOLUTIONS, INC.; JASON A. BORROMEI;	Case No. _____ CLASS ACTION COMPLAINT DEMAND FOR TRIAL BY JURY

PRICEWATERHOUSECOOPERS, LLP; BANK OF AMERICA, NA; TD BANK, NA; RSB CITIZENS, N.A.; FIDELITY CO-OPERATIVE BANK, doing business as FIDELITY BANK; JOHN F. MERRILL; WELLS FARGO BANK, N.A.; SYNOVUS BANK; GLOBAL PAYROLL GATEWAY INC.; INTERNATIONAL PAYOUT SYSTEMS, INC.; PROPAY, INC., doing business as PROPAY.COM; BASE COMMERCE, LLC, doing business as PHOENIX PAYMENTS; JOHN HUGHES; VANTAGE PAYMENTS, LLC; DUSTIN SPARMAN; ALLIED WALLET, LTD; DOE TOP LEVEL PROMOTERS; DOE LICENSED PROFESSIONALS; DOE BANKS; DOE PAYMENT PROCESSING SERVICES, PARALEGAL DOE, and a Defendant Class of Direct Victim Payment Recipients, Defendants.	

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Plaintiff and Putative Class Representative Rita Dos Santos on behalf of herself and all others similarly situated (collectively, "Plaintiffs," "Putative Class" or "Net Losers") bring this action against the defendants named herein ("Defendants"). This complaint is based on information and belief, except those paragraphs that relate to Plaintiffs, which are based on personal knowledge. Plaintiffs allege as follows:

1. TelexFree, Inc., TelexFree, LLC, and TelexFree Financial, Inc. (collectively, "TelexFree") and its related entities and individuals operated an illegal scheme whereby it sold "memberships," ostensibly paid its "promoters" ("Members," "Promoters" or "Participants") for placing advertisements for a "voice over internet protocol" ("VoIP") product, and in reality paid them to recruit other investors whose new membership fees kept the scheme afloat (the "TelexFree Program").

2. Until TelexFree, Inc. changed its compensation plan in March 2014, a month before it filed for bankruptcy, it did not require Promoters to sell its VoIP product to be eligible for payments.

3. TelexFree's business and operations constituted an illegal pyramid scheme (the "Pyramid Scheme" or "Scheme"). A pyramid scheme is a form of Ponzi scheme wherein a business enterprise persuades people to invest money into a seemingly legitimate business model and in exchange guarantees profits. The actual sales or services provided, if any, are insufficient to pay the promised returns to investors. The operation of a pyramid scheme relies entirely on additional investment funding by new or existing investors. Once the influx of new investments stops, the

pyramid scheme collapses because there are no new funds with which to pay previous investors. Pyramid schemes are lucrative for those who occupy top-level or other like positions and for those who service them.

4. Participants entered the TelexFree Scheme by purchasing a membership plan or a new VoIP package and opening an account with the company.[1] When a newly-recruited Participant purchased a new membership plan or a new VoIP package, TelexFree issued an invoice to that Participant. As relevant here, the newly-recruited Participant would then satisfy that invoice by making a cash payment not to TelexFree, but directly to the recruiting Participant. Those payments made from one Participant (the recruited) to another (the recruiter) are collectively referred to herein as "Direct Victim Payments."[2]

5. Participants received nothing of value in return for making the Direct Victim Payments. Although ostensibly Participants received access to a TelexFree user account, because TelexFree was running an illegal pyramid scheme, those accounts were worthless. Moreover, TelexFree, as a criminal enterprise, had no right to the monies paid as Direct Victim Payments.

6. Massachusetts General Laws ("M.G.L.") c. 93, § 69 makes pyramid schemes, as well as many of their traditional features, unlawful. M.G.L. c. 93, § 69(g) expressly declares that a violation of M.G.L. c. 93, § 69 is a per se violation of M.G.L.

[1] Participants could open a single account or could (and did) open hundreds or thousands of user accounts.

[2] These transactions and amounts of payments are ascertainable.

c. 93A, §2(a). For this reason, in addition to others, TelexFree and certain defendants otherwise violated M.G.L. c. 93A, §§ 2 and 11.

7. TelexFree raised as much as $1 billion dollars over the course of eighteen months as follows:

2012 Income	$15,490,349.71
2013 Income	$865,893,524.99
2014 Income	$161,116,265.38*

(*Law enforcement authorities shut down TelexFree on April 15, 2014.)

8. The financial services providers ("Financial Services " or "Financial Services Defendants") processed hundreds of thousands of related transactions involving hundreds of millions of dollars, and the substantial assistance they provided was essential to TelexFree.

9. TelexFree's founders and principals, executive officers and top level promoters controlled the activities and operations of TelexFree and knowingly, maliciously and willfully conspired to perpetrate, and did perpetrate, the TelexFree Pyramid Scheme with full awareness of its unfair, deceptive, and unlawful nature. Licensed professionals and others were negligent or reckless in providing advice, directly participated in, or otherwise provided essential substantial assistance after knowing the TelexFree business enterprise was unlawful.

10. The Federal Financial Institutions Examination Council ("FFIEC" or "Council") regulates the Financial Services Defendants. The Council is a formal

interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System ("FRB"), the Federal Deposit Insurance Corporation ("FDIC"), the National Credit Union Administration ("NCUA"), the Office of the Comptroller of the Currency ("OCC"), and the Consumer Financial Protection Bureau ("CFPB"), and to make recommendations to promote uniformity in the supervision of financial institutions.

11. The Financial Services Defendants were required by federal law to, and did, maintain robust, sophisticated and thorough due diligence systems at all times.

12. The Financial Services Defendants are not just required to know their clients, they are required to obtain knowledge of and understand how each client's business operates, who is running it, and who is associated with it. The Financial Services Defendants did not simply have to gather information; they needed to analyze it and understand their clients' business models and key personnel, and continue to monitor their customers on an ongoing basis.

13. TelexFree was purportedly a contract-based business. All TelexFree Promoters, including Plaintiffs and members of the Putative Class, were similarly obligated to enter into TelexFree's identical form contract ("TelexFree Pre-March 9 Contract"). A true and correct copy of the Pre-March 9 TelexFree Contract is attached hereto as **Exhibit 1**.

14. At all times material herein, TelexFree was a "multi-level distribution

company" as defined by M.G.L., Chapter 93, Section 69(a).

15. M.G.L., Chapter 93, Section 69(d)(2) prohibits any multi-level distribution company from offering or paying any "finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration" to any participant therein "solely for the solicitation or recruitment of other participants."

16. The TelexFree Pre-March 9 Contract, on its face, contains numerous instances of promising payment merely for recruitment of new Participants[3] (as defined by M.G.L., Chapter 93, Section 69), including, but not limited to, the following:

a. Clause 5.7: "A PROMOTER will achieve TEAM BUILDER status when he is active in an ADCentral FAMILY position (in the marketing network) that has 10 (ten) ADCentral FAMILIES on the incentive plan registered directly by him on his site."

b. Clause 5.7.1: "As long as he is fulfilling the qualification in clause 5.9.2[4] [sic], a TEAM BUILDER will earn a payment of 2% (two percent) of the company's net billing in the following month…the maximum amount for this earning, by contract, which is for one year, is up to US$ 39,600.00…" (emphasis added).

c. Clause 5.8: "THE PROMOTER shall receive as an incentive a bonus of US$ 20.00 (twenty U.S. dollars), for each VOIP ADCentral kit that his direct lower PARTNER acquires and a US$ 100.00 (one hundred U.S. dollars) bonus for each VOIP FAMILY kit that his direct lower PARTNER acquires."

d. Clause 6.1: "A PROMOTER who directly registers 2 (two) new promoters, with one on the left side and the other on the right side of his marketing network, qualifies for direct and indirect binary earnings, and for 2% (two percent) of the network from the first to the 6th level,

[3] For ease of reading, the terms "Member," "Promoter" or "Participant," regardless of capitalization, are at all times herein to be construed as "Participant", as that term is defined by M.G.L. Chapter 93, Section 69.

[4] The TelexFree Pre-March 9 Contract does not include a clause numbered 5.9.2.

assessed only on plans whose owners have at least one active VOIP client, that is, who have at least one active 99TELEXFREE plan."

e. Clause 6.1.1: Upon qualifying in the manner described in the clause above by selling 2 (two) new ADCENTRAL kits to people in his network, with 1 (one) on the left side and the other on the right side, he shall receive an additional gratuity of US$20 (twenty U.S. dollars), called the binary cycle, with the maximum daily earning in this status being US$ 440.00 (four hundred and forty U.S. dollars), for 22 (twenty-two) binary cycles."

f. Clause 6.1.2: If the sale is of 2 (two) VOIP ADCentral FAMILY kits, this cycle will yield an additional US$ 20.00 (twenty U.S. dollars), for the ADCentral principals, plus US$ 60 (sixty U.S. dollars), for 3 (three) of the 4 (four) ADCentral additional…"

g. Clause 8.1: "THE PROMOTER shall be entitled to a payment of 1% (one percent), in the form of ROYALTIES, from the company's net billing, if within 1 (one) calendar month (from the 1st (first) day – to the last day of the month) the PROMOTER shall have closed 22 (twenty-two) cycles in 20 (twenty) days, which need not necessarily be consecutive days."

17. The above provisions of the standard TelexFree Pre-March 9 Contract are clear and direct violations of M.G.L. c. 93, § 69(d), as they promise payments, including cash payments, "bonuses," "gratuities," "royalties," and dividends, merely for the recruitment of new TelexFree Members/Participants (i.e. through the sale of AdCentral membership accounts).

18. Furthermore, M.G.L. Chapter 93, Section 69(d)(3)-(4) also prohibits any multi-level distribution company from offering or paying any "finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration" to any participant therein:

a. "unless such participant performs a bona fide and essential supervisory, distributive, selling or soliciting function in the sale or delivery of such product or services,"

b. "where no amount of judgment or skill exercised by the participant has any appreciable effect" upon such payment," or

c. "where the participant is without that degree of control over the operation of such plan as to enable him substantially to affect the amount" of such payment.

19. The TelexFree Pre-March 9 Contract, on its face, contains clear, obvious and direct violations of M.G.L. c. 93, § 69(d)(3)-(4), including:

a. Clause 5.4: "ADCENTRAL PROMOTERS: After setting up his membership, a PARTNER may acquire an "ADCentral" kit consisting of 10 99TELEXFREE VOIP accounts, for which he must pay the equivalent of US$ 289.00 (two hundred and eighty-nine U.S. dollars)."

b. Clause 5.4.1: "with this qualification, the PARTNER will become a TELEXFREE PROMOTER and, accordingly, shall have his own active ad central for 12 (twelve) months, counting from the date of his membership (and not from the date of the purchase of the kit)."

c. Clause 5.4.2: "He must also post 1 (one) announcement (prepared by TELEXFREE) per day on internet announcement sites (whether free of charge or not), so that at the end of each cycle of 7 (seven) announcements for the week, the PROMOTER shall receive one 99TELEXFREE account."

d. Clause 5.5: "ADCENTRAL FAMILY MEMBERSHIP – A PROMOTER wishing to attain the status of an "ADCentral FAMILY Member" must pay the equivalent of US$ 1,375.00 (one thousand three hundred and seventy-five U.S. dollars)."

e. Clause 5.5.1: "With this membership, a PROMOTER shall have 5 (five) active announcement centrals for 12 (twelve) months, counting from the date of his activation."

f. Clause 5.5.2: "He must, in turn, post 1 (one) announcement (prepared by TELEXFREE) per day at internet announcement sites (whether free of charge or not) on each one of the 5 (five) ADCentral sites. At the end of the 35 (thirty-five) announcements the PROMOTER shall receive 5 (five) 99TELEXFREE accounts as remuneration for these announcements."

20. The above-cited language makes it clear to a sophisticated reader that

TelexFree Members were not required to engage in any "bona fide and essential supervisory, distributive, selling or soliciting" or exercise any "judgment," "skill" or "control over the operation."

21. Rather, Members were only required to engage in the activity of cutting-and-pasting spam advertisements, which were "prepared by TELEXFREE," onto "internet announcement sites," and would receive "remuneration for these announcements."

22. Furthermore, VoIP products distributed to Members as remuneration for this mindless spamming activity could be redeemed with TelexFree for cash, resulting in cash remuneration.

23. M.G.L. Chapter 93, Section 69(b) requires as follows: "Every multi-level distribution company shall provide in its contract of participation that such contract may be cancelled for any reason at any time by a participant upon notification in writing to the company of his election to cancel. If the participant has purchased products while the contract of participation was in effect, all unencumbered products in a resaleable condition then in the possession of the participant shall be repurchased …"

24. The TelexFree Pre-March 9 Contract, on its face, contains egregious, obvious violations of M.G.L. c. 93, § 69(b), including:

a. Clause 10.1.2: "A PARTNER or PROMOTER can cancel his membership within 7 (seven) days of becoming a member, and receive a full refund of what he actually paid to TELEXFREE, including the membership fee and the price of the VOIP accounts he has not activated..."

b. Clause 10.1.4: "If a PARTNER or PROMOTER seeks cancellation of membership after the legal deadline, he is aware that he will not receive any reimbursement of any amount, since his position will continue to entail expenses for its maintenance."

25. In addition to these clear violations of M.G.L. c. 93, § 69(b), the TelexFree Pre-March 9 Contract also sets forth the following draconian terms for cancellation of membership:

> Clause 10.1.3: "To be disconnected from the TELEXFREE NETWORK Marketing System, a member must request cancellation of his participation on a specific form provided on his personal page, or in the event of absence or inability to use this resource, through a letter written and signed by him, with certified signature recognition, sent to the headquarters of the CONTRACTOR, correctly stating all of the information requested; if these data rigorously match the data reported when putting through the application, which is to be ascertained for reasons of security, the cancellation shall be approved in an irreversible manner."

26. These terms of cancellation are clearly designed to entangle Members in TelexFree's Scheme and prevent Members from withdrawing.

27. Not only does the TelexFree Pre-March 9 Contract explicitly violate M.G.L. Chapter 93, Section 69, but it also lays bare several classic hallmarks of pyramid schemes, including paying participants solely for recruitment of new members, not requiring any meaningful sales or distributive activity by participants, and using coercive measures to prevent participant withdrawal from the scheme.

28. The mechanics of the TelexFree Program (e.g. AdCentral, AdCentral Family) were described in the TelexFree Pre-March 9 Contract and on TelexFree's website and otherwise accessible to the Financial Services Defendants. TelexFree's

business model and operations were suspicious, tortious, or illegal to the sophisticated Financial Services Defendants, as demonstrated by the following graphic taken from the public area of TelexFree's website, www.TelexFree.com:



29. Like the TelexFree Pre-March 9 Contract, TelexFree's own website set forth numerous plain violations of M.G.L. c. 93, § 69. For example, several violations were included in a key promotional video, entitled "Presentation," which was prominently featured on www.TelexFree.com, and which included, without limitation, the following violations of M.G.L. Chapter 93, Section 69:

a. promising that Members would "[e]arn US$20 for the direct registration of each new promoter," in violation of Section 69(d)(2);

b. promising that Members would "[e]arn US$20 per cycle each time you register 1 ADCentral in your left and 1 in your right, doesn't matter if they are direct, indirect, or gotten by transfer," in violation of Section 69(d)(2);

c. promising that Members would "[r]eceive 2% over what your network, direct or indirect up to the 6th level, is receiving from TelexFree in money for the ads posting [sic]," in violation of Section 69(d)(2);

d. promising that "[e]veryone who reaches 22 [cycles] of ADCENTRAL for 20 days, within the same month. [sic] Individually or by group will receive 1% of the business volume of the company, as extra bonus, will be divided equally among everyone qualified," in violation of Section 69(d)(2);

e. promising that "Team Builders," i.e. Promoters who are able to register at "10 direct ADCentral FAMILY in a period of 60 days," "will receive the share of 2% of the revenue of the monthly net sales for the company, divided equally among all the TEAM BUILDERS until receiving the maximum bonus for the TEAM BUILDER which is of $39,600," in violation of Section 69(d)(2);

f. promising that Members would receive income for "[o]nly posting 5 DAILY ADS ON INTERNET! [sic]," in violation of Section 69(d)(3) & (4);

g. guaranteeing to Members returns of $49.90 weekly, $199.60 monthly, and $2594.80 annually in exchange for the purchase of one AdCentral package, in violation of Section 69(e);

h. guaranteeing to Members returns of $249.50 weekly, $998.00 monthly, and $12,974 annually, on one AdCentral Family package, in violation of Section 69(e); and

i. providing a simulation of guaranteed earnings based solely on adding new Members to one's network, in violation of Section 69(d)(2) & (e).

30. The above violations of M.G.L. Chapter 93, Section 69 were also plain evidence to the sophisticated Financial Services Defendants that TelexFree promised passive income to participants, that recruitment of new participants predominated over product sales in TelexFree's business model, and TelexFree was therefore a pyramid

scheme.

31. The facts and circumstances set forth herein establish that the sophisticated notice, investigation and evaluation systems of the Financial Services Defendants were exposed to open and notorious facts that reasonably placed them on notice of TelexFree's suspicious, tortious, malicious, unfair, deceptive and/or unlawful acts, practices and business enterprise.

32. As a result of their compliance with federal law, each of the Financial Services Defendants was actually aware of facts and evidence of suspicious, tortious or illegal TelexFree activity (collectively, the "Red Flags").

33. When a bank finds out that a client is laundering money or running an unlawful enterprise, it must stop servicing or shut down the accounts, terminate the banking relationship, and file a Suspicious Action Report ("SAR") with the Financial Crimes Enforcement Network.

34. During the class period, the Financial Services Providers unlawfully failed to timely or sufficiently meet these obligations.

35. Each of the Financial Services Defendants was a substantial and integral cog in TelexFree's unlawful United States Pyramid Scheme, and, without that assistance, the Scheme would not have been able to get off the ground, develop, maintain or thrive. Each Financial Services Defendant was motivated by substantial profits and other interests at the local and national level gained from its relationship with TelexFree and other Defendants, as well as a desire to maintain their personal and

lucrative relationships with the multilevel marketing industry as a whole.

36. Similarly situated Plaintiffs seek compensation for the ascertainable economic loss they were similarly caused to suffer as a result of Defendants' participation in, or aiding or abetting of, TelexFree's illegal Pyramid Scheme. They also seek equitable relief.

37. An identifiable class of individual Defendants (each a "Direct Victim Payment Recipient" or collectively, the "Defendant Class")[5] profited from ascertainable payments Plaintiffs -- not TelexFree -- made to those Defendants.[6]

38. Plaintiffs seek compensation from the Defendant Class members solely for the payments made directly by Plaintiff (net loser) victims to Direct Victim Payment Recipients, and which were wrongfully retained by the Direct Victim Payment Recipients, to offset the Plaintiff victims' net losses suffered as a result of the Scheme. As such, the sole cause of action asserted against those Defendants is for unjust enrichment.

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[5] Plaintiffs intend to move pursuant to Federal Rule of Civil Procedure 23(a) and (b)(1)(A) and (B) to certfy a class comprised of all persons who (1) were Net Winners and (2) received at least one Direct Victim Payment from Plaintiffs. A"Net Winner" is simply a Participant who received more money from their participation in the Scheme (whether in the form of "earnings," "commissions," "bonuses" or otherwise) than he or she paid to participate in the Scheme. The Federal Rules of Civil Procedure allow for such a defendant class. Rule 23(a) states that "[o]ne or more members of a class may sue *or be sued* . . . ." *See* Fed. R. Civ. P. 23(a) (emphasis added); *see also Henson v. East Lincoln Twp.*, 814 F.2d 410, 412 (7th Cir. 1987) ("It is apparent from the words of Rule 23(a) ('sue or be sued as representative parties') that suits against a defendant class are permitted.").

[6] To avoid doubt, Plaintiffs seek recompense ***solely*** for monies ***they*** paid to the members of the Defendant Class. They do not seek recovery of any monies ***TelexFree*** paid to that Class.

I. JURISDICTION AND VENUE

39. This Court has subject-matter jurisdiction over the instant matter pursuant to 28 U.S.C. § 1332(d) and the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1711, *et seq*., which vest original jurisdiction in the district courts of the United States for any multi-state class action where the aggregate amount in controversy exceeds $5,000,000 and where the citizenship of any member of the class of plaintiffs is different from that of any defendant. The $5,000,000 amount-in-controversy and diverse citizenship requirements of CAFA are satisfied in this case.

40. Venue is proper under 28 U.S.C. § 1391 as to Defendant Sparman because he resides in this district.

II. THE PARTIES

A. PLAINTIFFS

41. Plaintiff Rita D. Dos Santos ("Dos Santos") is an individual who resides in Massachusetts. Dos Santos, like many other victims of TelexFree's Pyramid Scheme, tendered funds for a TelexFree Membership and its promised pre-March 9, 2014 return on investment (the "Original Return on Investment").

42. Ms. Dos Santos invested approximately $350,000 into the TelexFree Program during the class period. She did not receive any payments from TelexFree.

B. DEFENDANTS

1. TELEXFREE DEFENDANTS

a. Third-Party TelexFree Bankrupt Entities

43. TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. are not currently Defendants due to their Chapter 11 bankruptcy protections, but they are third-party participants in the unlawful activities described in this complaint.

44. TelexFree, Inc. is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number 000832397), having a last known principal place of business at 225 Cedar Hill Street, Suite 200, in Marlborough, County of Middlesex, Commonwealth of Massachusetts 01752 (the "TelexFree Marlborough Office").

45. TelexFree, LLC is a limited liability company duly organized and existing under the laws of Nevada, having a purported place of business at 4705 S. Durango Drive, #100-J51 (a post office box), Las Vegas, Nevada 89147 (the "Nevada Post Office Box"). TelexFree, LLC also maintained offices in the Commonwealth of Massachusetts at the TelexFree Marlborough Office between 2012 and late April 2014. At all material times, TelexFree, LLC was identified as a limited liability company as registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number 001105166). TelexFree, LLC registered with the Secretary of State for the Commonwealth of Massachusetts on April 18, 2013.

46. The last unnamed TelexFree entity is TelexFree Financial, Inc. ("TelexFree Financial"). TelexFree Financial, Inc. is a corporation duly organized and existing under the laws of the State of Florida, having its last known principal place of

business at 2321 NW 37th Avenue, in Coconut Creek, Florida 33063. TelexFree Financial is a wholly-owned subsidiary of TelexFree, LLC.

47. Throughout this complaint, for ease of reference, the named and unnamed TelexFree corporations as well as the Founders, Principals, Executive Office, Top Level Promoters and Associated Individuals; and the Licensed Professionals including Attorneys, Accountants, the Other Professional Services Providers (as defined herein), are alternatively referred to for ease of reading as "Operational Defendants."

48. At times relevant to this complaint, the Operational Defendants served as principals, agents, servants, authorized representatives, co-conspirators or employees of TelexFree.

b. Electric and Mobile

49. Defendant TelexElectric, LLLP ("Electric") is a limited liability limited partnership organized and under the laws of the State of Nevada. Its registered agent is BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

50. Defendant Telex Mobile, Holdings, Inc. ("Mobile") is a corporation organized and existing under the laws of the State of Nevada, and having its registered agent as BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

2. OTHER OPERATIONAL DEFENDANTS

a. Founders and Principals, Executive Office, Top Level Promoters and Associated Individuals

51. James M. Merrill ("Merrill") is an individual with a last known usual place of abode of 1 Coburn Drive in Ashland, County of Middlesex, Commonwealth of Massachusetts 01721. Merrill is a Founder, Principal, and a member of TelexFree's Executive Office.

52. Carlos N. Wanzeler ("Wanzeler") is an individual with a last known usual place of abode of 373 Howard Street, in Northborough, County of Worcester, Commonwealth of Massachusetts 01532. Wanzeler is a Founder, Principal, and a member of TelexFree's Executive Office.

53. Carlos Roberto Costa ("Costa") is an individual with a last known usual place of abode located at Rua Umbizeiro, 37, Bairro de Itapoa, Vila Velha, Espirito Santo, 29101-00 Brazil. Costa is a Founder, Principal and a member of TelexFree's Executive Office.

54. Merrill, Wanzeler and Costa are collectively referred to herein as "Founders."

55. Steven M. Labriola is an individual with a last known usual place of abode of 21 Kiwanis Beach Road, in Upton, County of Worcester, Commonwealth of Massachusetts 01568. Labriola is a Principal and a member of TelexFree's Executive Office.

56. Joseph H. Craft, also known as Joe H. Craft ("Craft") is an individual with a last known usual place of abode at 825 E. Main Street in Boonville, Indiana 47601-1885. Craft is a Principal and a member of TelexFree's Executive Office.

57. Merrill, Wanzeler, Costa, Labriola and Craft are collectively referred to herein as "Principals" or "Executive Office."

58. Defendant Ann Genet ("Genet") served as TelexFree, LLC's Nevada agent, servant or employee, was a resident of Las Vegas, Nevada who served TelexFree's Executive Office and is an individual associated with Craft and Bridgeway Financial Corporation. Her address is unknown at this time.

59. Katia Wanzeler is an individual with a last known usual place of abode of 373 Howard Street, in Northborough, County of Worcester, Commonwealth of Massachusetts 01532. Katia Wanzeler served as an agent servant or authorized representative of TelexFree's Executive Office and is otherwise an individual associated with TelexFree's Founders, Principals, Executive Office, and Top Promoters.

60. Genet and Katia Wanzeler are collectively referred to herein as "Associated Individual" Defendants.

61. Sanderley Rodrigues de Vasconcelos ("Rodrigues") has a last known usual place of abode of 100 Stockton Street, Apt. 49, in Chelsea, County of Suffolk, Commonwealth of Massachusetts 02150. Rodrigues is a TelexFree Top Level Promoter

62. Santiago de la Rosa ("De La Rosa") is an individual with a last known usual place of abode of 189 Beacon Hill Avenue, Unit 2, in Lynn, County of Essex, Commonwealth of Massachusetts 01902. De La Rosa is a TelexFree Top Level Promoter.

63. Randy N. Crosby ("Crosby") has a last known usual place of abode of 30

Club Court, in Alpharetta, Georgia 30005. Crosby is a TelexFree Top Level Promoter.

64. Scott Miller ("Miller") has a last known usual place of adobe of 973 Thornwood Drive, Greenwood, IN 46143. Miller is a TelexFree Top Level Promoter.

65. Faith R. Sloan ("Sloan") has a last known usual place of abode of 515 E. End Avenue, Unit 105, in Calumet City, Illinois 60409. Sloan is a TelexFree Top Level Promoter.

66. Daniil Shoyfer ("Shoyfer") has a last known usual place of abode of 123 Arbutus Avenue, in Staten Island, New York 10312. Shoyfer is a TelexFree Top Level Promoter.

67. Rodrigues, De La Rosa, Crosby, Sloan, Shoyfer, and Miller are collectively referred to herein as "Top Level Promoters."

68. TelexFree's Founders, Principal, Executive Office, Top Level Promoter Defendants are collectively referred to as "TelexFree's Executives" or "Executives."

69. By their acts and omissions, each above Founder, Principal, Executive Office, Top Level Promoter Defendant and Associated Individual Defendants transacted business in the Commonwealth of Massachusetts; contracted to supply services and things in the Commonwealth of Massachusetts; caused tortious injury to the putative class in the Commonwealth of Massachusetts; regularly solicited business and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; made use of the laws, rights, and protections offered by the Commonwealth of Massachusetts; and derived substantial revenue from goods used or consumed or services rendered in the

Commonwealth of Massachusetts.

b. Licensed Professionals including Attorneys and Other Professional Services Providers

70. Defendant Gerald P. Nehra, Esq. ("Nehra") is an individual who now resides or formerly resided at 1710 Beach Street, Muskegon, Michigan, 49441 and also maintains a second residence at 2149 Tall Oak Court, Sarasota, Florida 34232. Nehra is an attorney duly licensed to practice law in the State of Michigan.

71. Defendant Gerald P. Nehra, Attorney at Law, PLLC ("Nehra Law Firm") is a professional limited-liability company engaged in the practice of law and duly organized and existing under the laws of Michigan, with offices located at 1710 Beach Street, Muskegon, Michigan, 49441. Nehra is its sole member, manager, and registered agent.

72. Defendant Richard W. Waak ("Waak") is an individual who now resides or formerly resided at 11300 East Shore Drive, Delton, Michigan, 49046. Waak is an attorney duly licensed to practice law in the State of Michigan.

73. Defendant Richard W. Waak, Attorney at Law, PLLC ("Waak Law Firm") is a professional limited-liability company engaged in the practice of law and duly organized and existing under the laws of Michigan, with offices located at 11300 East Shore Drive, Delton, Michigan, 49046. Waak is its sole member, manager, and registered agent.

74. Defendant Law Offices of Nehra and Waak ("Nehra and Waak Law Firm") is a general partnership formed between Defendants Nehra, Waak, Nehra Law

Firm, and Waak Law Firm with primary offices located at 11300 East Shore Drive, Delton, Michigan, 49046, and a secondary office is located at 1710 Beach Street, Muskegon, Michigan.

75. Nehra, Waak, Nehra Law Firm, Waak Law Firm, Nehra and Waak Law Firm, are collectively referred to herein as "Attorney Defendants."

76. Defendant Opt3 Solutions, Inc. ("Opt3") is a corporation duly organized and existing under the laws of the State of California, having its principal place of business at 120 Vantis, Suite 300, Alison Viejo, California.

77. Defendant Jason A. Borromei, also known as Jay Borromei ("Borromei"), is an individual with a last known place of abode located at 23952 Catbird Court, Laguna Niguel, California 92677. At all material times, Borromei served as president and authorized representative of Opt3.

78. Borromei and Opt3 are collectively referred to herein as "Other Professional Services Providers."

79. By their acts and omissions, the Attorney Defendants and Other Professional Services Providers have transacted business in the Commonwealth of Massachusetts; contracted to supply services and things in the Commonwealth of Massachusetts; caused tortious injury to the putative class in the Commonwealth of Massachusetts; regularly solicited business and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; made use of the laws, rights, and protections offered by the Commonwealth of Massachusetts; and derived substantial revenue from

goods used or consumed or services rendered in the Commonwealth of Massachusetts.

c. The Accountant Defendants

80. Defendant Craft is a certified public accountant who privately provided accounting services and financial advice to TelexFree and others before he served as the chief financial officer of TelexFree, Inc. and TelexFree, LLC.

81. Defendant Craft Financial Solutions, LLC ("Craft Financial") is a limited-liability company duly organized and existing under the laws of the State of Indiana with a principal place of business located at 825 E. Main Street, Boonville, Indiana, 47601-1885. Craft Financial provided accounting services and financial advice to TelexFree and others. Craft is also the sole member and manager of Craft Financial.

82. PricewaterhouseCoopers, LLP ("PricewaterhouseCoopers") is a Registered foreign limited liability partnership, organized and existing under the laws of the State of Delaware, having a principal place of business in New York, New York, and having a place of business at 125 High Street, in Boston, County of Suffolk, Commonwealth of Massachusetts 02110. At times material herein, PricewaterhouseCoopers provided accounting services and other professional services to TelexFree.

83. Craft, Craft Financial and PricewaterhouseCoopers are collectively referred to herein as "Accountant Defendants."

84. By their acts and omissions, the Accountant Defendants have transacted business in the Commonwealth of Massachusetts; contracted to supply services and

things in the Commonwealth of Massachusetts; caused tortious injury to the putative class in the Commonwealth of Massachusetts; regularly solicited business and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; made use of the laws, rights, and protections offered by the Commonwealth of Massachusetts; and derived substantial revenue from goods used or consumed or services rendered in the Commonwealth of Massachusetts.

85. The Attorney Defendants, Accountant Defendants and the foregoing Other Professional Services Providers are collectively referred to herein as "Licensed Professionals."

3. FINANCIAL SERVICES PROVIDERS

a. The Bank Defendants

86. TD Bank, N.A. ("TD Bank") is a national banking institution in the United States chartered and supervised by the federal Office of the Comptroller of the Currency (the "OCC") with its principal place of business at 15 Broad Street in Boston, County of Suffolk, Commonwealth of Massachusetts 02109.

87. Bank of America, N.A. ("Bank of America") is a national banking institution in the United States chartered and supervised by the OCC with a principal place of business in Charlotte, North Carolina. Bank of America conducts business in the Commonwealth of Massachusetts at, inter alia, 100 Federal Street, in Boston, County of Suffolk, Commonwealth of Massachusetts 02110.

88. RSB Citizens, N.A. ("Citizens Bank") conducts business in the

Commonwealth of Massachusetts at 725 Canton St., Norwood, County of Norfolk, Commonwealth of Massachusetts 02062 and has a branch at 290 Turnpike Road, Westborough, County of Worchester, Commonwealth of Massachusetts 01581. At all times material herein, Defendant Citizens Bank provided banking services, maintained accounts, and received and executed transfers of funds from or for the benefit of TelexFree.

89. Wells Fargo Bank, N.A. ("Wells Fargo") is a national banking institution in the United States chartered and is supervised by the federal Office of the Comptroller of the Currency, with an address at P.O. Box 6995, Portland, Oregon 97228 and a branch at 800 North Magnolia Ave., Orlando, Florida. Wells Fargo conducts business in the Commonwealth of Massachusetts at, *inter alia*, 201 Washington Street, in Boston, County of Suffolk, Commonwealth of Massachusetts. At all times material herein, Defendant Wells Fargo provided banking services, maintained accounts, and received and executed transfers of funds from or for the benefit of TelexFree.

90. Fidelity Co-operative Bank, doing business as Fidelity Bank, ("Fidelity Bank") is a Massachusetts Chartered Banking Institution, having its principal offices at 675 Main Street, in Fitchburg, County of Worcester, Commonwealth of Massachusetts 01420.

91. John F. Merrill is an individual with a last known usual place of abode of 7 Kinnicutt Road, in Worcester, Massachusetts 01602.

92. At all material times herein, John F. Merrill served as president and chief

operating officer of Fidelity Bank.

93. Synovus Bank ("Synovus") is a Georgia Chartered Banking Institution, having its principal offices at 1148 Broadway, in Columbus, County of Muscogee, Georgia 31901.

94. TD Bank, Bank of America, Citizens Bank, Fidelity Bank, John F. Merrill, Wells Fargo and Synovus are collectively referred to herein as the "Defendant Banks."

95. By their acts and omissions, the Defendant Banks have transacted business in the Commonwealth of Massachusetts; contracted to supply services and things in the Commonwealth of Massachusetts; caused tortious injury to the putative class in the Commonwealth of Massachusetts; regularly solicited business and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; made use of the laws, rights, and protections offered by the Commonwealth of Massachusetts; and derived substantial revenue from goods used or consumed or services rendered in the Commonwealth of Massachusetts.

b. Payment Processing Service Companies

96. Global Payroll Gateway, Inc. ("GPG") is a corporation duly organized and existing under the laws of the State of California, having its principal offices at 18662 MacArthur Boulevard, Suite 200, in Irvine, California 92612.

97. International Payout Systems, Inc. ("IPS") also doing business as i-Payout, is a corporation duly organized and existing under the laws of the State of

Florida, having its principal offices at 2500 East Hallandale Beach Boulevard, Suite 800, Hallandale Beach, Florida 33009.

98. Propay, Inc. ("ProPay") is a corporation duly organized and existing under the laws of the State of Utah with its principal offices at 3400 North Ashton Boulevard, Lehi, Utah 84043 and also does business as PROPAY.COM.

99. Base Commerce, LLC ("Base Commerce") formerly known as Phoenix Payment, LLC, is a limited liability company duly organized and existing under the laws of the State of Arizona with its principal offices at 7910 S. Kyrene Road, Suite 106, Tempe, Arizona 85284, and also does business as Phoenix Payments.

100. John Hughes ("Hughes") is an individual with a last known usual place of abode of 6455 E. Rustic Drive, Mesa, Arizona 85215.

101. Vantage Payments, LLC ("Vantage Payments") is a limited liability company duly organized and existing under the laws of the State of Arizona, having its principal offices at 8300 N. Hayden Road #A207, Scottsdale, Arizona 85251.

102. Dustin Sparman ("Sparman") is an individual with a last known usual place of abode of 8702 E. Plaza Avenue 85610, Scottsdale, Arizona 85250.

103. Allied Wallet, Ltd. ("Allied Wallet") is a limited company having its central office in the United Kingdom, and having its United States office at 900 Sunset Boulevard, Suite 820, West Hollywood, California 90069.

104. GPG, IPS, ProPay, Base Commerce, Vantage Payments, Hughes, Sparman and Allied Wallet are collectively referred to herein as the "Payment

Processing Service Companies."

105. By their acts and omissions, the Payment Processing Service Companies have transacted business in the Commonwealth of Massachusetts; contracted to supply services and things in the Commonwealth of Massachusetts; caused tortious injury to the putative class in the Commonwealth of Massachusetts; regularly solicited business and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; made use of the laws, rights, and protections offered by the Commonwealth of Massachusetts; and derived substantial revenue from goods used or consumed or services rendered in the Commonwealth of Massachusetts.

106. Defendants Bank of America, TD Bank, Fidelity Bank, Citizens Bank, Wells Fargo, Synovus, GPG, IPS, ProPay, Base Commerce, Vantage Payments, Allied Wallet, John F. Merrill, Hughes, Sparman and the Doe Banks and Doe Payment Processors are referred to herein collectively as the "Financial Services Providers".

107. It is believed that additional parties participated and aided and abetted in TelexFree's Pyramid Scheme but their identities or nature or extent of unlawful participation are as yet unknown. For ease of reference, they can only be referred to herein at this time as Defendants Doe Top Level Promoters, Doe Licensed Professionals, Doe Banks, Doe Payment Processing Services and Paralegal Doe.

4. DEFENDANT CLASS REPRESENTATIVE

108. As described in further detail in the "Defendant Class Allegations" section below, Defendant Shoyfer is the proposed named representative for the Defendant

Class.

III. FACTS AND ALLEGATIONS

A. Chronological Overview

109. The template for TelexFree's Pyramid Scheme was developed and refined in the years immediately prior to the takeoff of its United States enterprise.

110. In 2010, TelexFree Founders and Principals Wanzeler, Merrill and Costa first formed and registered Ympactus Comercial Ltda ("Ympactus") under the laws of Brazil.

111. Ympactus operated out of offices in Marlborough, Massachusetts and Brazil.

112. TelexFree's United States Pyramid Scheme operated out of the same location. [7]

113. Ympactus was registered as a company that would market cosmetics, perfumery and toilet products.

114. Later, in Brazil, Ympactus purported to sell internet telephone services, but in reality sold pyramid scheme "memberships" to investors.

115. TelexFree's United States business model and operations were essentially identical to Ympactus' business model and operations in Brazil.[8]

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[7] There was considerable overlap between Ympactus, which also operated as TelexFree, and TelexFree's United States companies and operations. To assist the reader, TelexFree's Brazilian pyramid scheme will be referred to as "TelexFree Brazil" or "Ympactus." "TelexFree" means the various United States-based TelexFree entities, as well as the Operational Defendants as defined herein.

[8] As in Brazil, TelexFree's business model has it accept $299 deposits from Members on the

116. Ympactus and TelexFree's U.S. memberships offered investors (the "Members" or "Promoters") guaranteed high returns in exchange for promoting the company online and recruiting new investors.

117. Ympactus and TelexFree falsely advertised themselves as a "multi-level marketing" company selling local and international telephone service plans that used unique groundbreaking "voice over internet protocol" ("VoIP") technology.

118. The VoIP technology used by Ympactus and TelexFree was not unique or groundbreaking. In fact, it was substandard and offered nothing more than the free Google Voice and Skype.

119. In February 2012, Wanzeler and Merrill formed TelexFree, Inc. in the Commonwealth of Massachusetts.

120. Wanzeler and Merrill formed TelexFree, Inc. with the intent to use the same unlawful Ympactus business model in the United States.

121. After they opened TelexFree in the United States, the Operational Defendants methodically released false or misleading information that was intended to, and did, separate publicly TelexFree and TelexFree Brazil or Ympactus and otherwise shower their Scheme with credibility.[9] While these calculated information releases were sufficient to mislead members of the Putative Class, they were detectable by the robust and sophisticated Financial Services Providers' Know Your Customer (as

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promise of a $20 a week rate of interest for 52 weeks. The company also pays Members directly based on how many deposits recruited down line affiliates make via a matrix.

[9] *See, e.g.*, ¶¶126, 127, 129, 133, 134, 142, 147, 151, 155, 164, 528, *infra*; *see also* http://behindmlm.com/companies/telexfree/gerry-nehra-gives-legal-blessing-to-telexfree/.

defined herein) investigations and evaluations.

122. In March 2012, Founders and Principals Costa, Merrill and Wanzeler repurposed Ympactus to front the TelexFree Brazil's VoIP pyramid scheme.

123. In April 2012, Craft was retained to serve as TelexFree's accountant and prepared its financial statements and taxes.[10]

124. As early as July 27, 2012, the multilevel marketing news site BehindMLM.com published a detailed analysis of TelexFree's business operation, concluding that:

> The corporate structure of TelexFree and the obvious business relationship between the company and Disk a Vontade and complete lack of disclosure on either company's website is cause for concern…
>
> Personally I believe the ridiculously high membership fee charged by TelexFree (a $299 fee to publish ads for the company?) and the fact that individual members are able to purchase up to five membership positions strongly indicates a lack of external revenue here.[11]

125. Over the ensuing months, the number of online articles and websites characterizing TelexFree as a Pyramid Scheme increased.

126. During or about November 2012, TelexFree increased its focus on United States-based operations including the development of special relationships with United States-based banks, especially those located in the Commonwealth of Massachusetts.

127. TelexFree's business plan and operations were an unlawful Pyramid

[10] *See* Omnibus Decl. of William H. Runge, Case 14-1552-abl, Doc. 13, ¶ 31. A true and correct copy of this Declaration is attached hereto as Exhibit 2.

[11] *See* Exhibit 3, Decl. of Gray Echavarria at Attachment 5.

Scheme and not a lawful multi-level marketing ("MLM") enterprise. At all times relevant to this complaint, TelexFree violated the express terms of M.G.L. c. 93, § 69.

128. In January 2013, Ympactus/TelexFree Brazil came under legal scrutiny in Brazil by the Brazilian Bureau of Consumer Protection (known as Procon).

129. Procon was suspicious of the company's rapid recruitment of new investors and lack of substantial sales, and Brazilian authorities opened an investigation against Ympactus.

130. Prior to and at the time Brazilian authorities shut them down for running a Pyramid Scheme, Ympactus also operated under the name TelexFree.

131. In a January 11, 2013 press release, the Brazilian Bureau of Consumer Protection indicated that its investigation of TelexFree had "detected evidence of crimes."

132. During early 2013, "TelexFree affiliates were urging recruits to make walk-in deposits at a Bank of America branch located at 188 Boston Turnpike, Shrewsbury, Massachusetts 01545.[12]

133. In early 2013, TelexFree also preferred to use TD Bank.[13]

134. In a March 1, 2013 press release, Merrill admitted "[w]e [TelexFree] pay our representatives weekly if they follow our system and advertise our service on the Internet." This payment condition required no actual sales of the VoIP product.

[12] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 35 - Facebook Page with Instructions to Deposit at Bank of America, Shrewsbury, Massachusetts; *see also* Exhibit 3, Decl. of Gray Echavarria, Attachment 22.

[13] *Id.*

135. On March 7, 2013, a TelexFree blog falsely claimed that the TelexFree "program" had "SEC approval from the USA."

136. During spring 2013, Labriola, director of marketing for TelexFree, Boston, announced via a TelexFree-approved email that TelexFree was "pulling out of Bank of America."

137. TelexFree's threatened pull out followed Bank of America's questioning of TelexFree's suspicious, tortious or illegal activity.

138. During spring 2013, Bank of America had exchanges with TelexFree about terminating their relationship and discontinuing the service of their accounts, but it did not do so until much later.

139. In an April 2013, TelexFree-approved internet video, Defendant Crosby stated "[t]his company has a joint venture with Best Western." TelexFree did not have the described business relationship with Best Western.

140. During spring 2013, the TelexFree website and its president and principal Merrill also falsely promoted the Best Western offer.

141. In or about May 2013, Defendant Miller appeared in an internet video deceptively touting TelexFree as an opportunity to earn "not just wealth, but generational wealth," which was posted on YouTube and widely distributed via social media, and in which he maliciously boasted of his earnings through TelexFree and encouraged others to join the scheme.[14]

[14] *See* Administrative Complaint of instituted by the Secretary of the Commonwealth of

142. As part of the June 13, 2013 Court in Acre's Public Prosecutor's injunction, TelexFree Brazil faced fines of R$100,000 a day ($42,500 USD) if they signed up any more Brazilian affiliate investors or paid out any existing ones.

143. On June 19, 2013, the Brazilian Court in Acre issued an injunction putting "a stop to TelexFree Brazil's business operations, including the registration of new affiliate investors, acceptance of new investments and paying any returns owed on existing affiliate investments."[15]

144. On or about June 20, 2013, after the Court in Acre suspended TelexFree Brazil's activities, TelexFree Principals Merrill and Wanzeler and TelexFree Executive Office employee Labriola all maliciously made false, deceptive and misleading statements in a TelexFree-approved video intended to reassure United States Promoters. For example, Merrill stated that "[i]nquiries like this are very common in network marketing . . . . We have such unbelievable growth that we're going to draw attention."

145. Labriola stated that "[t]hese things happen to network marketing companies over and over again… Let's not worry about it."

146. Wanzeler added that "[w]e're still here. We're going to stay here for a long time."

147. During or before June 2013 (and within weeks of having their Brazilian operation shuttered), Wanzeler, Merrill, Labriola and Costa, with the participation and

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Massachusetts, Securities Division, Dkt. No. 2014-0004, page 39, attached as Attachment 36 to Exhibit 3, Decl. of Gray Echavarria.

[15] *Id.*

assistance of others including the Defendants named in this complaint, placed an increased focus on and rapidly expanded their fraud in the United States under the name TelexFree.

148. During or before June 2013, and after shifting its geographic target market to the United States, several TelexFree Top Level Promoters were recruited by Wanzeler, Costa, Merrill and Labriola and began to target the Brazilian-American and Dominican-American communities in the United States.

149. In July 2013, Newport Beach, California became the staging ground for TelexFree's first United States-based "Extravaganza." This was approximately one month after the Brazilian Court in Acre had frozen TelexFree's Brazilian assets and enjoined TelexFree from any further membership or registration related efforts in Brazil,

150. The July 2013 TelexFree "Super Weekend" was organized by Zeek Rewards' high-profile pitchman Thomas More.[16]

151. Thomas More was a key spokesperson and authorized representative for Zeek Rewards. More held out that he had acquired over a million Zeek Rewards VIP points and otherwise greatly profited (from the fraud) while it lasted.

152. At the time More organized TelexFree's Newport Beach "Super Weekend" extravaganza, he was a named defendant in a Zeek Rewards Ponzi scheme-

[16] In a widely viewed internet video of the event titled "TelexFree Corporate Speakers at Newport Beach Extravaganza," Merrill specifically thanked Tom More for putting it together.

related lawsuit.[17]

153. During the July 2013 "Super Weekend," Defendant Miller took the stage and falsely promoted a connection and promotion with Best Western Hotel.

154. During the July 2013 TelexFree "Super Weekend," Attorney Defendant Nehra gave his "blessing" to TelexFree, representing not only that it was a lawful enterprise and why, but also that he was a duly licensed attorney with extensive specialized skill and experience in MLM.[18]

155. During or about August 2013, Attorney Jeffery Babener, of the Law Firm Babener & Associates advised TelexFree Principals, Executive Office, Licensed Professionals and others that TelexFree's business model, operations and payout scheme were an unlawful MLM and must be changed.

156. During or about August 2013, Attorney Babener advised TelexFree Principals, Executive Office, Licensed Professionals and others that the TelexFree MLM violated M.G.L. c. 93, §69 and, thus, M.G.L. c. 93A.

157. In or about August 2013, Brazilian Judge Braz Aristóteles dos Reis found that, in the public eye, TelexFree (Brazil) and Ympactus are one and the same company.

158. On August 19, 2013, the TelexFree FaceBook page falsely posted the following: "The President of Google involved with Telexfree!! Google's President will be speaking at our next Telexfree event in Brazil….11 year contract with Best Western

[17] *See* Exhibit 4, Decl. Carol L. Harris, Exhibit 14.

[18] *Id.*

23 Millionaires in 1 year and now Google's President at our Next event. Hmmmm is he coming to your's [sic]?. Didn't think so.... It's time to get educated. You get what you pay for!"

159. In fall 2013, the Secretary of the Commonwealth of Massachusetts, Securities Division ("SOC") raised questions concerning TelexFree's business model.

160. In late 2013, Costa withdrew his ownership in Ympactus.

161. Between mid-November 2013 and March 2014, TelexFree transferred approximately $30 million from its operating accounts to its Principals and officers and to affiliate companies with the necessary assistance of the Financial Services Provider Defendants.

162. On or before December 2013, Craft was hired to serve and did thereafter serve as TelexFree, LLC's chief financial officer.

163. In a January 2014 TelexFree promotional video, Labriola misled potential Promoters with the intent that they invest in TelexFree by stating that "[t]here are some people that are making incredible money in this."

164. In January and February 2014, the SOC issued subpoenas.

165. On February 19, 2014, the National Bank of Rwanda, in conjunction with the Ministry of Trade and Industry of Rwanda, issued a report concluding that TelexFree's Rwanda-based affiliate, P.L.I. TelexFree Rwanda, Ltd., was a pyramid scheme and could facilitate money laundering, and that the Ministry of Trade and Industry subsequently banned any further operations in the country by TelexFree.

166. On February 20, 2014, United Kingdom authorities issued a public warning that TelexFree UK was a Ponzi scheme and that its Brazilian operation had been shut down.

167. During late February 2014 through early March 2014, TelexFree Principals, Executive Office, Licensed Professionals and Top Level Promoters developed during teleconferences strategies to siphon off funds and maximize the exploitation of the rank and file TelexFree Promoters.

168. During or about late February 2014 through early March 2014, TelexFree Principals, Executive Office, Licensed Professionals and Top Level Promoters held an invitation-only meeting at TelexFree's Marlborough, Massachusetts headquarters with the intent of siphoning off funds and maximizing the exploitation of the rank and file TelexFree Promoters.

169. On March 9, 2014, TelexFree unilaterally changed its compensation plan, for the first time requiring existing Promoters to actually sell its VoIP product to qualify for the payments that TelexFree had previously promised to pay them. Before making the change, TelexFree informed its highest grossing Top Level Promoters of the impending change in compensation and held a strategy meeting during which they discussed unfair, deceptive and unlawful ways to further fleece the rank and file TelexFree Members and ways to continue to profit from the unlawful business.

170. The March 9, 2014 TelexFree compensation plan change generated a storm of protests from Promoters who were unable to recover their money.

171. On March 9, 2014, Steven Labriola and others traveled to Haiti and made public that they arrived via private jet, and once on the ground, proclaimed "we got in the Prime Minister of Haiti's motorcade."

172. On April 1, 2014, dozens of Promoters descended upon TelexFree's Marlborough Office to protest the March 9 change and to attempt to reclaim their money. They left empty-handed.

173. On April 14, 2014, TelexFree, Inc. along with two affiliated companies, TelexFree, LLC and TelexFree Financial, Inc. (together, the "Bankrupt Companies"), filed for Chapter 11 bankruptcy protection in Nevada claiming that TelexFree revenues were insufficient to meet its obligations.

174. On or about April 15, 2014, the United States Department of Homeland Security, the Federal Bureau of Investigation (the "FBI") and others raided the offices of TelexFree, shutting down its operation, seizing records and other evidentiary items.

175. On May 9, 2014, the United States Department of Homeland Security filed criminal proceedings against two of TelexFree's Founders, Wanzeler and Merrill, for conspiracy to commit wire fraud.

176. Thereafter, the United States Department of Justice (the "DOJ") brought charges of wire fraud and conspiracy to commit wire fraud against TelexFree's owners Wanzeler and Merrill, and the same were indicted by grand jury on July 23, 2014.

177. TelexFree's other Principals and Operational Defendants are currently under state and federal investigation, and some are the subjects of lawsuits by the

Securities and Exchange Commission ("SEC") and the SOC for operating a Pyramid Scheme as detailed herein.

178. The DOJ announced at the March 3, 2015 status hearing in the above-captioned MDL 2566 that undisclosed Financial Service Providers are also the subjects of its ongoing investigations.

B. TelexFree's History, Formation and its Brazilian Links

179. In or about 2007, Wanzeler, Merrill, Costa and other Defendants began operating or assisting in the operation of purported telecommunications businesses in the United States and Brazil, under the names "Brazilian Help" and "Disk A Vontade Telefonia," respectively, charging $49.90 monthly for VoIP service.

180. Disk A Vontade Telefonia, Ltd., also known as Diskavontade, also known as Disk ("Disk A Vontade"), is a Brazilian limited liability company, now or formerly having its principal offices as Rua Jose Luiz Gabeira, NRO 170, APTO 103 Barro Vermelho.

181. Defendant Wanzeler is the chief executive officer of Disk A Vontade.

182. Defendant Merrill is vice president and a signatory of Disk A Vontade.

183. Disk A Vontade's domain ("discavontade.com") is registered to Defendant Wanzeler.

184. Brazilian Help, Inc. ("Brazilian Help") is a domestic profit corporation, organized and existing under the laws of the Commonwealth of Massachusetts, now or formerly having a principal place of business at 225 Cedar Hill Street, Suite 118, in

Marlborough, Massachusetts 01752.

185. Brazilian Help's Massachusetts office is in the same building in Marlborough, Massachusetts as the Bankrupt TelexFree Companies.

186. Defendant Wanzeler is the president, secretary, treasurer, and registered agent of Brazilian Help.

187. Brazilian Help and Disk A Vontade were the American and Brazilian branches, respectively, of the same enterprise.

188. Costa, a longtime friend of Wanzeler, was employed by Disk A Vontade and was Wanzeler's top sales agent in Brazil.

C. Ympactus, TelexFree's Brazilian-Based Operations

189. Ympactus is a Brazilian limited liability company, which served as TelexFree's Brazilian branch.

190. Wanzeler, Costa and Merrill have jointly controlled Ympactus.

191. The records of the SOC demonstrate no meaningful distinction between U.S. TelexFree operations and Brazilian operations.

192. As described by TelexFree management, the ownership interests in TelexFree, Inc. (Massachusetts-based), TelexFree LLC (Nevada-based) and Ympactus (Brazilian-based) overlap.

193. At all times there has been a high degree of operational interdependence among Ympactus and the TelexFree entities and, in many ways, the operations of these entities are indistinguishable.

194. Paragraph 2.1.2 of the standard TelexFree Pre-March 9 Contract with its Members states "TELEXFREE INC, from its headquarters in, Marlboro [sic], Massachusetts (U.S.), on the basis of an operating contract between the latter and the CONTRACTOR (YMPACTUS), has as its primary activity VOIP telephony, using its equipment installed at its headquarters in Massachusetts, where it makes the necessary connections for these calls; it also provides virtual media, through the website www.telexfree.com to associates and to the Promoters that YMPACTUS/TELEXFREE coordinates and controls, including the respective publicity channels."[19]

195. This contract was made available to each Defendant at or prior to the time they became involved with TelexFree.

196. Each of the Financial Services Defendants was obligated to, and did review the TelexFree contract during its Know Your Customer investigation, analysis and monitoring.

197. The TelexFree entities used the same executives, management, employees, back office support, physical address and offices, merely providing identical information in multiple languages and under a different name in part after Ympactus was shut down and had its assets seized.

198. At times relevant to this complaint, TelexFree used essentially identical fraudulent income generation methods as Ympactus.

199. At times relevant to this complaint, TelexFree used essentially identical

[19] *See* TelexFree Pre-March 9 Contract, attached herewith as Exhibit 1.

promotional materials and marketing techniques as Ympactus.

200. In January 2013, Ympactus came under legal scrutiny in Brazil by the Brazilian Bureau of Consumer Protection (known as Procon). Suspicious of the company's rapid recruitment of new investors and lack of substantial sales, Brazilian authorities opened an investigation against Ympactus.

201. In late 2013, Costa withdrew his ownership in Ympactus for what Merrill characterized as "legal reasons."[20]

202. Both Merrill and Wanzeler provided testimony to the SEC stating that they transferred at least $3 million to Costa long after Brazilian authorities shut down Ympactus operations.[21] This was accomplished only with the necessary assistance of the Financial Services Defendants.

203. The TelexFree entities use the same website and back office support as Ympactus, providing identical information in multiple languages.

204. Since at least February 15, 2012, there has been a high degree of operational interdependence among TelexFree entities and Ympactus, and, to sophisticated banks and payment processors, the operations of these entities were related.

205. The TelexFree entities and Ympactus shared common management and ownership.

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[20] *See* Administrative Complaint of instituted by the SOC, Dkt. No. 2014-0004, page 7, attached as Attachment 36 to Exhibit 3, Decl. of Gray Echavarria.

[21] *Id.*

206. For example, both Merrill and Wanzeler, self-proclaimed Founders of TelexFree, hold 50% ownership interest in the United States entities and 20% and 40% interests respectively in the Brazilian entity.

207. At times relevant to this complaint, Costa, head of Brazilian operations and longtime friend of Wanzeler, was an owner of TelexFree, LLC.

208. More particularly, and at least since February 15, 2012, Defendants Merrill, Wanzeler, Labriola, Craft and Costa have together owned, managed and/or operated the TelexFree entities and Ympactus with no distinction among these entities other than Ympactus' Brazilian operations being shut down by Brazilian authorities.

209. The TelexFree entities and Ympactus have also shared common financial, strategic, legal and human resources.

210. TelexFree entities and Ympactus were both wrongfully, fraudulently, unfairly or deceptively organized from the start to unlawfully convert, divert, launder or shelter funds rightfully belonging to Plaintiffs and the putative class.

D. The Bankrupt TelexFree Companies

211. Between mid-November 2013 and April 17, 2014, TelexFree, Inc. and TelexFree, LLC transferred approximately $30 million from their operating accounts to accounts owned and controlled by TelexFree, its affiliated companies or the individual Defendants.

212. Defendant Ann Genet served as TelexFree's advisor and person on the ground in Nevada.

213. The investment funds of the putative class inflated TelexFree accounts by hundreds of millions of additional dollars.

214. The funds of the putative class remain unaccounted for to date.

E. TelexFree, Inc.

215. Common Cents Communications, Inc. was formed by Merrill, Wanzeler and Labriola in December 2002.

216. Common Cents Communications, Inc. was a predecessor enterprise to TelexFree, Inc.

217. In 2012, Costa suggested to Wanzeler that they begin soliciting customers in the United States through online advertisements.

218. Acting on Costa's proposal, Wanzeler and Merrill changed the name of Common Cents Communications, Inc. to TelexFree, Inc. on February 15, 2012.

219. Wanzeler and Costa also caused the website, "www.telexfree.com" to be created.

220. Disk A Vontade was the registered owner of the telexfree.com domain name.

221. By February 15, 2012 and until approximately April 15, 2014, TelexFree, Inc. maintained a principal office at TelexFree's Marlborough Office.

222. Co-Defendants Merrill and Wanzeler are officers and directors of TelexFree, Inc., a domestic profit corporation.

223. Beginning on March 15, 2005, Merrill served as registered agent of

Common Cents Communications, Inc., and continued as registered agent thereof after the change of name to TelexFree, Inc.

224. Since February 15, 2012, Merrill has maintained a registered address for service of process at TelexFree's Marlborough Office.

225. Merrill, Wanzeler, Labriola, Craft and Costa conducted the business of TelexFree, Inc. in TelexFree's Marlborough Office.

F. TelexFree, LLC

226. In July 2012, Wanzeler, Merrill and Costa together formed TelexFree, LLC.

227. Telex Free, LLC was organized under the laws of the State of Nevada on July 19, 2012.

228. TelexFree, LLC was wrongfully, fraudulently, unfairly or deceptively organized from the start to unlawfully convert, divert, launder or shelter funds rightfully belonging to Plaintiffs and the putative class.

229. There is no distinction between the business operations of TelexFree, LLC and TelexFree, Inc.

230. At all material times, TelexFree LLC was identified as a limited liability company as registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number 001105166). TelexFree, LLC registered with the Secretary of State for the Commonwealth of Massachusetts on April 18, 2013.

231. TelexFree, LLC maintained an address at the Nevada Post Office Box.

232. At least between February 15, 2012 and approximately April 15, 2014, TelexFree, LLC operated a Massachusetts office at TelexFree's Marlborough Office.

233. At all material times, Co-Defendants Costa, Merrill and Wanzeler were the managers of TelexFree, LLC.

234. At least between February 15, 2012 and approximately April 15, 2014, Merrill was TelexFree, LLC's registered agent for the Commonwealth of Massachusetts whose address is identified as TelexFree's Marlborough Office.

235. At least between February 15, 2012 and approximately April 15, 2014, Merrill, Wanzeler, Labriola, Craft and Costa conducted the business of TelexFree, LLC in TelexFree's Marlborough Office.

G. TelexFree Financial, Inc.

236. Defendant Craft incorporated TelexFree Financial on December 26, 2013.

237. TelexFree Financial was wrongfully, fraudulently, unfairly or deceptively organized from the start to unlawfully convert, divert, launder or shelter funds rightfully belonging to Plaintiffs and the putative class.

238. At all material times, Co-Defendants Merrill and Wanzeler were officers and directors of TelexFree Financial, and Co-Defendant Wanzeler is its registered agent.

239. On December 30 and December 31, 2013, TelexFree Financial received wire transfers totaling $4,105,000 from TelexFree, Inc. and TelexFree, LLC.

240. On April 14, 2014, Defendants TelexFree, Inc., TelexFree, LLC and TelexFree Financial abruptly sought bankruptcy protection in Nevada under the United States Bankruptcy Code, Chapter 11, admitting that they could not meet their obligations from VoIP revenues and seeking authority to reject all their current obligations to Promoters.

H. Relationship of the Bankrupt TelexFree Companies

241. Since at least February 15, 2012, there has been a high degree of operational interdependence among TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, and the operations of these entities are indistinguishable.

242. TelexFree, LLC, TelexFree, Inc. and TelexFree Financial shared common management and ownership.

243. More particularly, and at least since February 15, 2012, Defendants Merrill, Wanzeler, Labriola, Craft and Costa have together owned, managed and/or operated TelexFree, LLC, TelexFree, Inc., and TelexFree Financial with no distinction among these entities.

244. At least between February 15, 2012 and approximately April 15, 2014, funds were freely transferred between and among TelexFree, LLC, TelexFree, Inc., and TelexFree Financial with no distinction among these entities.

245. TelexFree, LLC, TelexFree, Inc., and TelexFree Financial have also shared common financial, strategic, legal, and human resources.

246. TelexFree, LLC, TelexFree, Inc., and TelexFree Financial are alter ego

entities that combine to form a single enterprise.

I. Defendants Electric and Mobile

247. Mobile is a Nevada corporation formed on November 26, 2013.

248. According to its filings with the State of Nevada Secretary of State Office, Mobile identifies its officers and directors as follows:

- Defendant Merrill is president, secretary and director, having an address at the Nevada Post Office Box;
- Defendant Wanzeler is treasurer and director, having an address at the Nevada Post Office Box;
- Defendant Ann Genet served as their advisor and person on the ground; and
- Defendant Craft provided essential services and integral advice, without which Mobile would not have been able to operate.

249. TelexFree, Inc. and TelexFree, LLC made a $500,870 "loan" to Mobile during the class period, as indicated by financial statements prepared by Craft. The loan was a sham.

250. Wanzeler and Merrill formed Electric in December 2013 as a Nevada limited liability partnership.

251. Defendant Ann Genet served as Mobile's, Electric's and all TelexFree entities' advisor and person on the ground. Defendant Genet provided essential services and integral advice, which Electric and the other TelexFree Defendants used to further and operate the Pyramid Scheme.

252. Defendant Craft provided essential services and integral advice, without which Electric would not have been able to operate.

253. According to its filings with the State of Nevada Secretary of State Office, Co-Defendants Merrill and Wanzeler are Electric's general partners.

254. Merrill and Wanzeler further list their addresses as the Nevada Post Office Box.

255. Electric also lists its address as the Nevada Post Office Box.

256. TelexFree, Inc. and TelexFree, LLC made a $2,022,329 "loan" to Electric during the class period, as indicated by financial statements prepared by Craft.[22] The loan was a sham.

257. The loan was a sham carried out by Craft to wrongfully, fraudulently, unfairly or deceptively convert, divert, launder or shelter funds invested by Plaintiffs and the putative class.

258. Electric and Mobile possess funds rightfully belonging to the putative class.

J. TelexFree's Founders and Principals, Executive Officers and Top Level Promoters

259. At all material times Merrill was:

- President, secretary and director of Defendant Mobile and a general partner of Defendant Electric;
- Founder, president, secretary, and director of third-party TelexFree, Inc.;
- Founder and manager of third-party TelexFree, LLC, and was listed with the Massachusetts Secretary of State Corporations Division as an authorized person to execute, acknowledge, deliver,

[22] *See* TelexFree, LLC Balance Sheet as of December 31, 2013, a true and correct copy of which is attached hereto as Exhibit 5.

and record any recordable instrument purporting to affect an interest in real property; and

- Founder, president, secretary, and director of third-party TelexFree Financial.

260. Merrill regularly discussed TelexFree's suspicious, tortious or unlawful business operations with his brother Defendant John Merrill who provided him with advice, services and access to banking.

261. At all material times, Wanzeler was:

- Founder and general partner of Defendant Electric and Founder, treasurer and director of Defendant Mobile;
- Founder, treasurer and director of third-party TelexFree, Inc.;
- Founder and manager of third-party TelexFree, LLC; and
- Founder, vice-president, treasurer, and director of third-party TelexFree Financial and was listed with the Massachusetts Secretary of State Corporations Division as an authorized person to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property.

262. At all times relevant to this complaint Labriola was:

- Director of Common Cents Communications, Inc., the predecessor of TelexFree, Inc., in its filed Articles of Incorporations with the Massachusetts Secretary of State Office.
- TelexFree's international sales director;
- TelexFree's frequent authorized spokes-person; and
- a member of TelexFree's Executive Office.

263. At all material times Costa:

- was a Founder, Principal, and a member of TelexFree's Executive Office;

- was a Founder of TelexFree, LLC;
- was a manager of TelexFree, LLC with the Massachusetts Secretary of State Corporations Division;
- made use of the laws, rights and protections of the Commonwealth of Massachusetts; and
- attended meetings at TelexFree's Marlborough Office.

264. While at TelexFree's Marlborough Office headquarters, on phone conferences and while located elsewhere, Costa unfairly and deceptively conspired with other Defendants to carry on TelexFree's unlawful enterprises.

265. At times relevant to this complaint, Costa and Craft:

- directly made unfair and deceptive misrepresentations to the putative class;
- transacted business in the Commonwealth;
- contracted to supply services or things in this Commonwealth;
- advanced TelexFree's unlawful enterprise;
- caused tortious injury by an act or omission in this Commonwealth;
- advanced TelexFree's unlawful enterprise;
- otherwise regularly did or solicited business, and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; and
- otherwise derived substantial revenue from TelexFree's and other goods used or consumed or services rendered in this Commonwealth.

266. At times relevant to this complaint, Craft:

- was a certified public accountant who maintained offices in Indiana and in Kentucky under the name Joe H. Craft, CPA/PFS, CFP;

- served as the chief financial officer of third parties TelexFree, Inc. and TelexFree, LLC;
- prepared and approved the financial statements for third parties TelexFree, Inc. and TelexFree, LLC; and
- was a member of TelexFree's Executive Office.

267. Katia Wanzeler was at all times relevant to this complaint Wanzeler's partner and co-conspirator in TelexFree's unlawful enterprise.

268. Katia Wanzeler actively assisted her husband, Carlos Wanzeler, in fraudulently stealing and laundering funds that were derived from the TelexFree Pyramid Scheme, and in converting said funds to their private use.

269. At all times relevant to this complaint, Rodrigues was a TelexFree Top Level Promoter.

270. At all times relevant to this complaint, De La Rosa was one of TelexFree's Top Level Promoters. De La Rosa appears in internet videos promoting the TelexFree Program and is one of its most successful Promoters, having recruited numerous other Promoters within the Dominican community in Massachusetts and elsewhere.

271. At all times relevant to this complaint, Crosby was a TelexFree Top Level Promoter. Crosby appears in internet videos promoting the TelexFree Program and is one of its most successful Promoters, having recruited numerous other Promoters, primarily through a website known as "everybodygetspaidweekly.biz," in Massachusetts and elsewhere.

272. At all times relevant to this complaint, Defendant Miller was a TelexFree

Top Level Promoter. Miller appeared in internet videos promoting the TelexFree program, giving numerous "tutorials," and was one of its most successful at doing so, having recruited numerous other Promoters, primarily through his personal YouTube page at "https://www.youtube.com/user/TelexFreeTrainer" in Massachusetts and elsewhere.

273. At all times relevant to this complaint, Defendant Miller was a career MLM promoter, doing business primarily through his YouTube page at "https://www.youtube.com/user/TelexFreeTrainer" and "www.join-getpaid-period.com," using many of the same graphics and techniques he used as a TelexFree Promoter.

274. At all times relevant to this complaint, Sloan was a TelexFree Top Level Promoter. Sloan appears in internet videos promoting the TelexFree Program, and is one of its most successful Promoters, having recruited numerous Promoters. Sloan promoted TelexFree through a website known as "telexfreepower.com."

275. At all times relevant to this complaint, Shoyfer was one of TelexFree's Top Level Promoters, managing a large network of TelexFree Members in New York City. Shoyfer recruited many Promoters through public meetings that he arranged and held in New York City. Shoyfer's TelexFree network had Members in other states as well, including Massachusetts.

276. TelexFree changed its compensation plan on or about March 9, 2014, much to the fury of affiliates, noted below. Shoyfer, however, continued to promote it

unremittingly, sending group text messages to his network with such as the following:

> Hey..my team Telexfree! ! And here we go again..Come to check out and learn about new compensation plan TF 2.0.. and how to grow it even faster and MUCH more aggressively and efficiently than the one we had before.…Here is this week's schedule. . Monday 03/24 at Salon Delacqua (2027 86 str) at 8.00 pm (in English) ..Wednesday 03/26 at SOHO launch(2213 65th street) at 7.45 pm (in Russian) and Thursday 03/27 at 7.30 pm at 63-112 Woodhaven Blvd in a real estate office. In my case, since I have started from absulute zero during this passed week Mon 03/17- Sun 03/23/14 I booked 11,500 from new one and 21,600 still coming from old plan..A total of 31,100 in 7 short days… Go Telex!!!

277. After the institution of the new TelexFree compensation plan in March 2014, Shoyfer took part in a closed meeting with TelexFree's directors and owners in Marlborough, Massachusetts, at which Shoyfer was instructed not to discuss the new TelexFree compensation plan with others and non-insiders, as the new compensation plan was detrimental to Promoters and was adopted to forestall filing bankruptcy."

278. Shoyfer worked in concert with TelexFree management to dupe people into enrolling right up until the time of TelexFree's bankruptcy filing.

279. Filings in the TelexFree bankruptcy case suggest that Shoyfer received nearly $88,000 from TelexFree in two separate payments just prior to the April 13 bankruptcy filing. The first, for $9,902.37, occurred on March 21, and the second, for $78,037.33, occurred on March 28.

280. Opt3 and Borromei have a history of providing technical services within the multilevel marketing industry and hold themselves out as having related specialized knowledge. For example, Borromei previously served as chief information officer of

Joystar, Inc., later renamed Travelstar, a multilevel marketing company that collapsed in approximately late 2008, and subsequently entered involuntary chapter 7 bankruptcy.

281. Opt3 and Borromei intentionally, knowingly, unfairly and deceptively set up TelexFree's United States-based servers in Brazil with the intent of directly furthering, aiding or abetting their unlawful and fraudulent operation, including facilitating the placement of evidence of the Pyramid Scheme beyond the jurisdiction of the United States' courts.

282. Opt3 and Borromei otherwise intentionally, knowingly, unfairly and deceptively set up TelexFree's United States-based servers and electronic data systems with the intent of directly furthering, aiding or abetting their unlawful and fraudulent operation.

283. Opt3 presently holds itself out as providing substantial technical services to multilevel marketing companies Healthient, Inc. and Travelstar, Inc. Borromei serves as chief information officer of Healthient, Inc.

284. At times relevant to this complaint, Opt3 and Borromei:

- directly made unfair and deceptive misrepresentations to the putative class;
- transacted business in the Commonwealth;
- contracted to supply services or things in this Commonwealth;
- advanced TelexFree's unlawful enterprise;
- caused tortious injury by an act or omission in this Commonwealth;
- advanced TelexFree's unlawful enterprise;

- otherwise regularly did or solicited business, and engaged in persistent courses of conduct in the Commonwealth of Massachusetts; and

- otherwise derived substantial revenue from TelexFree's and other goods used or consumed or services rendered in this Commonwealth

285. John F. Merrill is the brother of TelexFree Founder and Principal, Defendant James M. Merrill. At material times herein, John F. Merrill:

- served as president and chief operating officer of Fidelity Bank;

- personally performed integral services and provided essential advice and assistance, and access to banking services that was used to further TelexFree's unlawful business; and

- personally ensured TelexFree was given access to Fidelity Bank's banking services as well as the national banking system, and those banking services were used to further TelexFree's unlawful business.

286. Defendant Hughes served as manager and president of Base Commerce, LLC and personally handled TelexFree's account while providing numerous additional services to TelexFree. At times relevant to this complaint, Hughes:

- personally performed integral services and provided essential assistance that was used to further TelexFree's unlawful business;

- personally ensured TelexFree was given access to payment-processing and banking services and those services were used to further TelexFree's unlawful business; and

- personally ensured banking services that were used to further TelexFree's unlawful business, as well as access to the national banking system, were made available to TelexFree.

287. Sparman served as managing partner and founder of Vantage Payments, LLC and personally handled TelexFree's account while providing numerous additional

services to TelexFree. At all material times herein, Sparman:

- personally handled TelexFree's account with Vantage Payments;
- performed integral services and provided essential advice and assistance that was used to further TelexFree's unlawful business;
- personally ensured TelexFree was given access to payment-processing and banking services, as well as the national banking system, and those services were used to further TelexFree's unlawful business; and
- solicited services and negotiated with payment processors on TelexFree's behalf.

288. Despite having knowledge that TelexFree was an enterprise carrying out unlawful, unfair, or deceptive acts or practices, James Merrill, Carlos Wanzeler, Steven Labriola, Carlos Costa, Joseph Craft, Ann Genet, Opt 3 Solutions Inc., Jason Borromei, Katia Wanzeler, Sanderley Rodrigues de Vasconcelos, Santiago de la Rosa, Randy Crosby, Faith Sloan, Daniil Shoyfer, Scott Miller, John Merrill, John Hughes and Dustin Sparman all personally performed integral services and provided essential advice and assistance that was used to further TelexFree's unlawful business and fully and knowingly furthered TelexFree's unlawful Pyramid Scheme.

K. TelexFree's Unlawful, Unfair and Deceptive Pyramid Scheme

289. A pyramid scheme is a fraudulent business operation whereby an individual or organization guarantees and sometimes pays returns to its investors from new money paid into the operation by new victims, rather than from profit earned by the operator.

290. Typically, operators of pyramid schemes entice new victims by promising

guaranteed returns that are short-term returns, abnormally high or unusually consistent.

291. Pyramid schemes inevitably fail when new investors are not recruited quickly enough to pay the promised returns to the earlier investors. Typically, this is when the investment is revealed to be an illegal scam.

292. Financial services providers, including banks and payment processing companies, are required to be on alert for pyramid-type Ponzi schemes because they are one of the most common schemes presently being used by international thieves, and recently, by organized crime.

293. Pyramid schemes follow a pattern that is well known to the sophisticated personnel and systems that support financial services providers, including the Defendant Financial Services Providers.

294. As referenced herein, during the putative class period, the TelexFree Pyramid Scheme made use of pyramid-scheme techniques recognizable or known to the Financial Services Provider Defendants. They include but are not limited to the following:

295. **The Hook**: In a pyramid scheme, potential investors are promised that an investment opportunity will achieve an above normal rate of return on investment that is often specified, or very easy to figure out. The promised interest rate or return on investment in successful pyramid schemes will be an amount high enough to be worthwhile to the investor but not so high as to be unbelievable. This is called an "above normal rate of return on investment." In violation of M.G.L. c. 93, § 69,

TelexFree promised, and purported to deliver to hard-working Promoters, a return rate of over 200% per year for placing ads and performing the other tasks included in its uniform contract and marketing materials. This was a false promise, as TelexFree's ability to pay any returns whatsoever was contingent on its bilking new victims.

296. In a pyramid scheme, in addition to lending credibility to the scam, the high rate of return serves as the goal for others to reach and an encouragement to borrow money or drain one's life savings. Other frequent reasons used to support the specified "above normal rate of return" include "inside information" or "access to an investment opportunity not available to the general public." Here, TelexFree falsely promoted its VoIP technology as cutting edge and proprietary. It was not. The TelexFree product was a grade below what was available for free via Google Voice or Skype.

297. **The Scheme is Showered with Credibility**: The victims of pyramid schemes are always given a believable explanation of how their investment will earn the "above normal rate of return on investment." The explanation must be good enough to convince people to invest and reinvest their money and importantly, to recruit others. Many times the founders or those running the company operating the pyramid scheme are described as being highly successful, skilled, trained or educated. For example here, TelexFree falsely represented on its web site that the Founder and Principal Merrill was a college graduate with specialty degrees in a field related to the product they touted as driving the profit. TelexFree also deceptively touted its Principals long-term experience

and involvement in telecommunications. Most often, perpetrators of pyramid schemes will hire lawyers, certified public accountants ("CPAs"), or other credible professionals to bless the scam as a legal and sound business opportunity. The lawyers, CPAs and other professionals vouch for the scam in exchange for payoffs. They will also often have other seemingly credible persons serve as shills by touting the investment as an incredibly great opportunity that worked for them. Shills include so-called rock stars and so-called regular people all of whom have "gotten rich quick" through the pyramid scheme.

298. As referenced herein, TelexFree made use of virtually all of the pyramid-scheme techniques recognizable or known to the Financial Services Provider Defendants. For example, TelexFree first had Defendant Nehra, an attorney who also heavily promoted himself as having specialized MLM experience, guarantee that TelexFree was a legitimate business enterprise. It also promoted Nehra's partnership with another leading MLM attorney, Defendant Waak. TelexFree also hired CPA Craft to serve as its chief financial officer. TelexFree was also publicly tied to Bank of America and TD Bank. At all times, well-known MLM "professionals" with great experience or success were hired to state on TelexFree's behalf that the Pyramid Scheme was legal and a good investment. TelexFree made such use of Rodrigues, De La Rosa, Crosby, Sloan, Shoyfer, Smith and others.

299. TelexFree, like other major pyramid schemes before it, also held extravagant conferences at hotels that were beyond the means of its victims and hyped

the success of individuals who had supposedly "gotten rich quick" through the scheme. The owners and a select few top promoters surrounded themselves with rich and lavish settings and publicly boasted of their supposed massive earnings and "rags to riches" stories.

300. **Initial Investors Paid Off**: In most pyramid schemes, some initial investors will receive the promised return. This trick is used to convince victims that the investment is not risky and that a return will be received. The scammers use smaller payouts to bring in bigger ones. Payouts are also used to prompt victims to bring in the investment cash of their family, friends, co-workers and others. It is also used to turn the $100 dollar investor into a $1,000 or $10,000 investor. Pyramid schemes succeed because the majority of victims invest over and over with larger amounts of cash. They also unwittingly recommend the scheme to their family, friends, and business associates, as the scam appears to provide them with benefits early on. This is all part of the scammers' deliberate plan. Scam artists will pay the initial investment money to the investors, plus the specified interest rate or return, to lure in more and greater investments. Many of TelexFree's Promoters initially invested small sums and then after receiving the above normal rate of return on investment invested a great deal more. Many convinced their family and friends to invest. Some Promoters took out loans and others emptied their savings accounts.

301. **Communicated Successes**: Pyramid scheme principals and others at the top levels will uniformly and heavily promote success stories and build in a system that

communicates motivating success stories. The historical success of the investment opportunity is another ploy intended to deceptively lend credibility to the pyramid scheme. Historically, the most damaging pyramid schemes put victims in a position where they believed convincing others close to them to invest money into the scam was doing them a great favor. TelexFree showered its investors and potential investors with stories and visuals evidencing big payoffs. TelexFree positioned its owners and Top Level Promoters as "Rock Stars" and they promoted the above normal rate of return on investment, often with great deal of flourish. Large-scale pyramid schemes also typically sponsor conferences and events at hotels or exotic locations, as did TelexFree. Large-scale pyramid schemes also commonly promote success stories involving tales of great income, early retirement or other dreams come true. TelexFree played each of those angles heavily. TelexFree spokespersons often sported expensive attire, and promoted the fact they owned luxury cars and boats, lived in enormous homes, and made their dreams come true.

302. The Federal Trade Commission first took concerted action against a pyramid scheme in the 1970's. By the 1990's, the incidence of pyramid and Ponzi schemes was increasing. Today, they are at epidemic levels.[23]

303. According to the Securities Exchange Commission (the "SEC") and the

[23] *See* Dean Jobb, *People Continue to Fall for Ponzi Scheme Swindlers*, The Chronicle Herald, (Mar. 8, 2015), http://thechronicleherald.ca/thenovascotian/1273451-people-continue-to-fall-for-ponzi-scheme-swindlers; *see also* Benjamin B. Wagner, *Crimes on Main Street Are as Devastating as Those on Wall Street*, United States Department of Justice (Dec. 8, 2104), http://www.justice.gov/usao/priority-areas/financial-fraud/investment-fraud (citing surge in Ponzi scheme cases).

North American Securities Administrators Association, scammers pitching phony securities cost U.S. investors between $10 and $15 billion a year – more than a million dollars an hour. Many of these scams use the Ponzi method – paying off a few early investors with other investors' money – to stir up business. Telemarketing boiler rooms, whose frauds cost an estimated $40 billion a year, often run Ponzi schemes.[24]

304. The Better Business Bureau has labeled Ponzi-style financial rings "the biggest single fraud threat confronting American investors."[25]

305. Since 2009, the Department has authorized 94 new Assistant U.S. Attorney positions, both criminal prosecutors and civil litigators, to combat financial fraud in districts all across the country.[26]

306. Enforcement cases brought by the Commodity Futures Trading Commission rose by 45% from September 2010 to September 2011, and the Federal Bureau of Investigation opened more than 1000 new investigations into the existence of such schemes during that same time period.[27] This represented a 150% increase from 2008.

307. Enforcement steps are having an impact. Between fiscal year 2008 and

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[24] Association of Certified Fraud Examiners, *Ponzi Schemes*, (last visited Apr. 30, 2015), http://www.acfe.com/ponzi-schemes.aspx.

[25] *Id.*

[26] Benjamin B. Wagner, *Crimes on Main Street Are as Devastating as Those on Wall Street*, United States Department of Justice (Dec. 8, 2104), http://www.justice.gov/usao/priority-areas/financial-fraud/investment-fraud.

[27] *See* Ben Protess, *Post-Madoff, A Greater Awareness of Ponzi Schemes*, DealB%k (Nov. 14, 2011), http://dealbook.nytimes.com/2011/11/14/post-madoff-a-greater-awareness-of-ponzi-schemes/?_r=0.

fiscal year 2011, the numbers of defendants prosecuted by the U.S. Attorneys' Offices for securities fraud and other financial fraud offenses increased dramatically each year. More prosecutions of defendants also mean more restitution orders for victims and more forfeiture of ill-gotten gains.[28]

308. With respect to the TelexFree Scheme, the Federal Trade Commission stated that TelexFree utilized a pyramid scheme structure offering straight recruitment commissions and binary recruitment commissions. These commissions directly compensate existing affiliates upon the recruitment of new affiliates into the scheme.

309. At times relevant to this complaint, the Defendant Founders, Principals, Executive Office, Top Level Promoters and Associated Individual Defendants knew that TelexFree was a Pyramid Scheme and yet actively assisted and profited thereby.

310. At times relevant to this complaint, the Defendant Attorneys, Defendant Accountants, other Professional Service Providers, and Persons Associated with them knew that TelexFree was a Pyramid Scheme and yet unfairly or deceptively actively assisted, aided and abetted and profited thereby.

311. At times relevant to this complaint, the Defendant Financial Services Providers knew that TelexFree was a Pyramid Scheme and yet unfairly and deceptively actively assisted, aided and abetted and profited thereby and were unjustly enriched.

312. TelexFree presented itself to the putative class as a marketer of

[28] Benjamin B. Wagner, *Crimes on Main Street Are as Devastating as Those on Wall Street,* United States Department of Justice (Dec. 8, 2104), http://www.justice.gov/usao/priority-areas/financial-fraud/investment-fraud.

telecommunications.

313. The records and the TelexFree Pre-March 9 Contract, however, establish that TelexFree did not compensate its "Promoters" primarily for sales of the VoIP product, nor for carrying out legitimate advertising.

314. TelexFree, with the integral assistance of numerous banks, payment processors, professionals and other third parties, operated an unlawful Pyramid Scheme of nationwide and international scope.

315. As referenced herein, TelexFree was nothing more than a retooling of its illegal operation in Brazil.

316. Using run-of-the-mill and essentially borrowed technology, TelexFree rebranded Disc A Vontade's VoIP program, offering it for a flat monthly fee of $49.90.

317. TelexFree deceptively promoted its unlawful enterprise as offering a cutting edge VoIP service program called "99TelexFree."

318. Because it featured an inferior product that offered no improvement over what others Google Voice, Skype, or others made available elsewhere for free, Wanzeler, Merrill and Costa's Disk A Vontade's phone service had been unprofitable. Departing from the unsuccessful Disk A Vontade business model, TelexFree coupled the VoIP program with a purportedly lucrative and fraudulent scheme. The VoIP program served purely as a façade.

319. TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. operated a Pyramid Scheme that defrauded hundreds of thousands of individuals out of hundreds of

millions of dollars.

320. TelexFree was willfully and knowingly, wrongfully and maliciously, unfairly and deceptively organized and maintained. From the start it was intended to, and did, unlawfully convert, divert, launder and shelter funds invested by Plaintiffs and the putative class.

321. TelexFree could not have successfully carried out its unlawful enterprise, nor launder or shelter its ill-gotten funds, without the integral assistance of the other Defendants, including the cooperating Defendant financial institutions, payment processing service companies and Operational Defendants.

322. TelexFree purported to sell internet telephone services but, in actuality, generated its income almost exclusively through its recruitment of "Members" (also referred to interchangeably herein as "Promoters").

323. TelexFree promised its Promoters a guaranteed return on investment in excess of 200% annually, purportedly in exchange for promoting TelexFree's business.

324. TelexFree created memberships, known as "AdCentral" packages, which entitled Promoters to be paid for cutting-and-pasting spam advertisements on the Internet, creating the illusion that they were performing valuable services in exchange for compensation.

325. TelexFree promised its Promoters a guaranteed financial return in exchange for their participation in a passive income scheme.

326. Promoters were financially motivated to recruit and "build" their own

network of new Members because they were promised additional compensation when they did. TelexFree did not monitor the futile make-work activity of cutting-and-pasting of spam advertisements by its Promoters.

327. At all times relevant to this complaint, TelexFree and each of its Executives and Top Level Promoters, knew that the purported requirement made upon TelexFree Members to place ads was a sham, yet an integral part of the unfair and deceptive acts and practices necessary to carry out and further their unlawful business enterprise.

328. At times relevant to this complaint, TelexFree and each of its Licensed Professionals, and Financial Services Providers also knew that the purported requirement made upon TelexFree Members to place ads was economically worthless, yet an integral part of TelexFree's business enterprise.

329. Though TelexFree was purportedly a separate and distinct legal entity from Ympactus, Wanzeler, Labriola, Merrill and Costa intermingled the resources and assets of the two businesses including the labor and representation of employees and executives, telephones, addresses, office furniture and space, bank and other financial accounts, finances, computer network systems, and postage.

330. Wanzeler, Labriola, Merrill and Costa used the TelexFree entity as a convenient vehicle to re-create in the United States the same massive Pyramid Scheme that they had earlier conducted in Brazil, even to the extent, for example, that both companies also provided the same information on their websites.

331. Contrary to the malicious, false, unfair and deceptive representations made by TelexFree, the TelexFree VoIP service was not groundbreaking, and offered nothing more than what was and is otherwise available for free. In fact, the TelexFree VoIP technology was not patented or proprietary.

332. Wanzeler, Merrill, Labriola and Costa, and those working with them, specifically targeted unwitting purchasers (the Members/Promoters) for memberships that promised annualized returns of over 200% in exchange for placing duplicative advertisements on social media. The bait for TelexFree's scheme was the right to promote and profit from its VoIP product - an illusory menial task willfully designed to convince purchasers of the legitimacy of the business model.

333. TelexFree similarly used its membership fees ploy to further grow its unlawful and fraudulent enterprise as well as to unjustly and unfairly line the pockets of the Defendants with profits earned through the victimization of the putative class representatives and the other members of the putative class they seek to represent.

334. Notwithstanding the earlier shutdown of TelexFree's essentially identical operation, Ympactus, and many other indicators of unlawful business operations, each of the Defendants chose to earn handsome fees for providing services to TelexFree's suspicious and unlawful enterprise.

335. Over time, TelexFree's revenue from sales of its VoIP service plans only accounted for only approximately $1.3 million (or approximately 0.1%) of the nearly $1.1 billion needed to honor its promises to Promoters. This was because TelexFree

had virtually no legitimate business, and almost all of its receipts were simply new investments of more people duped into expecting sizeable returns.

336. Financial Services Providers who performed the Know Your Customer investigations and analysis were aware of this because the Red Flags directed them to the suspicious, tortious and unlawful activity referenced herein.

337. The Financial Services Providers who performed the Know Your Customer investigations and analysis were able to recognize with the help of their robust or sophisticated systems or personnel that TelexFree's actual business was the unlawful recruitment of new Promoters.

338. With hundreds of thousands of victims, TelexFree appears to be one of the largest, if not the largest, pyramid schemes in history by number of members.

339. New Promoters generated no income by placing advertisements on the Internet. New Promoters did, however, generate income for TelexFree through the recruitment of more new Promoters who paid its membership fees. TelexFree's operations were unsustainable without a continuous influx of new capital coming from the recruitment of additional participants.

340. The income-generating activity that drove TelexFree's unlawful passive income scheme was the payment of a fee in the amount of either $289 or $1,375 to become a Promoter. TelexFree offered options that provided for a tiered return.

341. The first option was known as the "AdCentral" program. Participation in AdCentral cost $289 plus a $50 membership fee for a one-year contract.

342. The $50 membership fee purchased a purported license to sell the product and entitlement to otherwise profit from various bonus structures and recruitment commissions, including the sale of additional memberships.

343. Promoters participating in TelexFree through the AdCentral program received ten one-month packages of the VoIP service and in return were instructed to place one internet advertisement a day.

344. For every week a Promoter placed advertisements, they received one additional VoIP package and were guaranteed a weekly payment of $20 ($1,040 for the entire year).

345. Each of the Financial Services Provider Defendants was given access to TelexFree's Promotional Advertisements at the commencement of or during its relationship with TelexFree.[29]

346. Each of the Financial Services Provider Defendants reviewed TelexFree's Promotional Advertisements at the commencement of or during its relationship with TelexFree.[30]

347. The AdCentral program offered a 207% return on the original amount paid.[31]

348. The second option, known as the "AdCentral Family" program, cost $1,375 plus the $50 membership fee for a one-year contract, a purported license to sell

[29] *See* TelexFree Promotional Advertisements, attached herewith as Exhibit 6.

[30] *Id.*

[31] *Id.*

the product.[32]

349. Promoters in the AdCentral Family program received fifty one-month VoIP packages and had to post five advertisements on the Internet daily.[33]

350. The promotional materials stated that those who posted the required advertisements received five additional VoIP packages and were guaranteed a weekly payment of $100 if they did ($5,200 over the year).

351. The AdCentral Family program offered an annual return of 265%.[34]

352. The TelexFree advertisement kit enabled participants to be paid for posting pre-written advertisements, to pre-determined websites, through an automated TelexFree system. A participant's daily posting of advertisements generated payments regardless of whether or not Promoters sold any VoIP Programs.

353. TelexFree's promotional material stated "(y)ou just place your Ad and get paid weekly regardless of if anyone buys what you are selling or regardless of if you ever recruit a single person into this opportunity or not. . . . Sounds good doesn't it?"[35]

354. Posting advertisements was an effortless process that took, at maximum, a minute per advertisement. In fact, TelexFree touted, "We will take care of your add (sic) posting and teach you the trick to submit your five ad (sic) in one click"[36]

355. Members were not required or expected to close any internet phone sales.

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[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

356. Members were compensated solely for recruiting new Members and for performing the menial, pretextual activity of cutting-and-pasting advertisements. The posting of these supposed advertisements was meaningless.

357. Promoters were posting a massive volume of nearly identical ads on the same websites in an already saturated market. Members were not paid according to how many viewers clicked the ads.

358. The marketing strategy of TelexFree was to recruit more Promoters, not to sell its VoIP programs.

359. For example, in early April 2014, Adpost.com had in excess of 33,000 TelexFree ads, and ClassifiedsGiant.com had in excess of 25,000 ads posted since February 1, 2014.

360. Promoters also had other income options. For example, he or she could sell the additional VoIP Programs they "earned" back to TelexFree for $20.

361. The TelexFree passive income scheme generated even further returns for participants through various bonus structures and recruitment commissions. TelexFree and the Defendant Founders deceptively tailored additional income streams to incentivize recruitment. For example, TelexFree provided marketing materials on its website that current Promoters could download and use to recruit new members;[37] new Promoters were promised a one-time bonus of $20 for each recruited AdCentral member and $100 for each recruited AdCentral Family member; and Promoters who

[37] *Id.*

recruited two additional Promoters were promised a bonus of $20 for each direct and indirect participant in their "network," up to a maximum of $440. All these options were maliciously, willfully and knowingly reverse-engineered to unfairly and deceptively drive membership-related income into TelexFree's coffers and did not drive sales of its VoIP product.

362. TelexFree's unlawful enterprise was particularly reprehensible because it encouraged its Promoters to unwittingly turn their family, friends and close associates into victims. TelexFree and the Defendant Founders deceptively tailored income streams to capitalize on the tight social and familial immigrant communities they targeted. Under a "Team Builder Plan," AdCentral Family Promoters who recruited ten other AdCentral Family members, each of whom sold five VoIP packages (to themselves or others), were promised 2% of TelexFree's net billing in the following month, up to $39,600. Promoters were promised commissions based on sales of the VoIP service: 90% for the initial VoIP package sold to a customer he/she recruited, 10% monthly for direct participants who renewed the service, and 2% monthly for each indirect participant who renewed their service down to the sixth level of the Promoter's network.

363. As represented in the TelexFree website and promotional materials mailed out and handed to participants at TelexFree's "Extravaganzas" by Defendant Principals, Executive Office and Top Level Promoters, a Promoter was allowed to invest in more than one advertisement kit and purchase the VoIP Program to earn bonuses.

364. A feature of TelexFree's bonus structure and recruitment commissions is the fact that TelexFree participants could self-qualify for sales and commissions.

365. A Promoter was allowed to purchase a VoIP program, never use the program, and still qualify for additional income.

366. Therefore, without selling any VoIP programs, the Promoter could receive, or expect to receive, a return far over the 200-250% guaranteed return.[38]

367. TelexFree's revenue from sales of VoIP programs alone was entirely inadequate to satisfy the payments it promised to Promoters.

368. According to an investigation conducted by the SEC, between August 2012 and March 2014, TelexFree received slightly more than $1.3 million from the sale of approximately 26,300 VoIP programs, while receiving more than $302 million in investments by Promoters, less than one-half of one percent of total revenue during this period from sales of its purported product.

369. During this period, TelexFree, the Defendant Founders and Top Level Promoters promised to pay Promoters over $1.1 billion.

370. TelexFree did not produce anywhere near $1.1 billion dollars in VoIP revenue.

371. According to an investigation by the SOC, in 2012 and 2013 TelexFree identified 4,845,576 VoIP program transactions totaling $238,395,353.80.

372. Net revenue received by TelexFree from VoIP program sales was

[38] *Id.*

inhibited by substantial commission payments.

373. In other words, only a trivial number, if any, of non-Promoters purchased the VoIP product. In his statement to the Massachusetts SOC, TelexFree Founder Wanzeler could not identify the number of individuals who purchased only a VoIP program without also becoming a participant, and provided wildly varied estimates when challenged to identify the number of VoIP programs sold to non-participants.

374. Over the same period, TelexFree received 783,771 package purchases of either $289 or $1,375 totaling $880,189,455.32.

375. Under this compensation plan, if each of the 783,771 Promoters invested in only one AdCentral package at $289 and only posted one advertisement per day, TelexFree would have owed Promoters $799,446,420.

376. Under this compensation plan, if each of the 783,771 Promoters invested in the AdCentral Family package at $1,375 and only posted five advertisements per day, TelexFree would have owed $3,997,232,100 to Promoters.

377. According to data provided by TelexFree, the $1,375 AdCentral Family memberships accounted for 88% of the transactions by Massachusetts-based participants.

378. Even assuming that only 50% of all participant memberships were at the AdCentral Family level, TelexFree would still have owed $2,398,897,200, a number that far exceeded TelexFree's reported total revenues over the same period.

379. This figure of almost $2.4 billion omits further bonuses, recruitment

commissions and revenue sharing; including these additional payments would create an even greater disparity between the VoIP program revenue and the guaranteed money paid out of the passive income scheme to Promoters.

380. At no time during the class period did TelexFree generate sufficient funds from sales of their phone service to make the payments they had contracted to pay to existing Promoters. Those funds came from the registration fees of subsequent TelexFree Promoters.

L. Gallery of Rogues Assembled

1. The Seasoned Scam Artists

381. TelexFree, Wanzeler, Merrill, Costa, Labriola and others enlisted the involvement of persons and entities that operated or otherwise had highly publicized involvement in business models that were later found to be fraudulent and unlawful Ponzi Schemes.

382. For example, prior to his involvement with TelexFree, Rodrigues was charged by the SEC with operating a fraudulent pyramid scheme under the name of Universo FoneClub Corporation, another Massachusetts corporation formed by Rodrigues, in which he acted as officer and director.

383. Rodrigues settled these charges in 2007. As a condition of his settlement, Rodrigues was permanently enjoined from violating Section 10(b) of the Exchange Act and Rule 10b-5, and Sections 5(a), 5(c) and 17(a) of the Securities Act.

384. As a condition of his settlement, Rodrigues was further ordered disgorged of approximately $1.8 million of related ill-gotten gains.

385. Rodrigues formed and organized WWW Global Business, Inc. ("WWW Global Business") on or about February 7, 2013, to market and sell TelexFree Memberships. WWW Global Business was and is a "shell" corporation holding no, or virtually no, assets and having no employees beyond its principal, Defendant Rodrigues, who served as its sole director, officer, and agent for service. WWW Global Business was organized for the sole purpose of marketing and selling TelexFree Memberships, *i.e.* AdCentral packages, and did not engage in the sale of TelexFree's purported VoIP product.

386. At all times material herein, WWW Global Business was effectively an alter ego of Defendant Rodrigues, and furthermore, had no legitimate business purpose, failed to maintain corporate formalities, had no independent board of directors and otherwise served as a "façade" for the sole benefit of Defendant Rodrigues.

387. Rodrigues attended meetings at TelexFree's Marlborough Office headquarters. While at TelexFree's headquarters, on phone conferences and while located elsewhere, he unfairly and deceptively conspired with other Defendants to carry on TelexFree's unlawful enterprises. Despite having knowledge that TelexFree was an enterprise carrying out unlawful, unfair, or deceptive acts or practices, Rodrigues personally performed integral services and provided substantial and essential advice and assistance that were used to further TelexFree's unlawful business.

388. Rodrigues's SEC and criminal related history was available to the Financial Services Provider Defendants while they were carrying out Know Your

Customer due diligence investigations.

389. TelexFree and the Defendant Founders and Principals willfully and knowingly utilized Rodrigues. Rodrigues was allowed to join and market the program despite his previous criminal convictions. In fact, Rodriques was selected for a prominent role in TelexFree because he had experience running a related scam.

390. Another example is Brandon Bradshaw, who had formerly served as vice president and sales director of AddWallet, a now-defunct pyramid scheme, through March 29, 2013. AddWallet was a successor to Zeek Rewards, an infamous Ponzi scheme. Zeek Rewards ran from January 2011 into August 2012 when the SEC shut it down. The Zeek Rewards Ponzi scheme bilked investors out of a purported $850 million dollars. Prior to being shut down, Zeek Rewards was alleged to have paid out $350 million dollars to early investors.

391. Under the guise of a penny auction, Zeek Rewards let its members invest in the company and paid out a daily rate of investment that guaranteed affiliates (investors) that over 90 days, they would receive more than 100% of their investment back. At the time the SEC shut them down, they only had enough capital to keep the business afloat for 90 days. AddWallet's business structure was based on Zeek Rewards and was intended to lure in former Zeek Rewards members, many of whom had already lost funds in Zeek Reward's collapse.

392. In March 2013, AddWallet held a conference call intended to assure investors. During the call, AddWallet representatives assured investors that it was an

offshore company and immune from the SEC.

393. Bradshaw answered most of the questions on the call. He started by lamenting the loss of Zeek Rewards and highlighting the intentional similarities that exist between it and AddWallet. He stated that:

- [4:52] "After the fall of the major player Zeek (Rewards), we. . . saw a lot of things there."
- [13:34] "It's unfortunate what happened, a lot of good people got hurt. I thought Zeek was doing a fantastic job."
- [5:26] "We put a base operating system down. Yes, it's very much like Zeek when you go into the retail profit pool earnings, you see something that you've seen before."

394. In August 2013, as the AddWallet scheme dwindled, Bradshaw abruptly left his position with AddWallet, without providing any reason to members. Almost immediately, Bradshaw was a TelexFree spokesperson.

395. Bradshaw spoke during a September 6, 2013 TelexFree conference call hosted by Labriola, during which Bradshaw promoted sales of TelexFree memberships and instructed and otherwise provided advice to Promoters and potential Promoters on behalf of TelexFree that furthered its unlawful enterprise.

396. During the September 6, 2013 TelexFree conference call, Bradshaw advised those on the call of the fastest way to transfer payments of membership fees to TelexFree. Bradshaw directly made other unfair and deceptive misrepresentations to the putative class that furthered TelexFree's unlawful enterprise.

397. In 2014, Bradshaw became a co-founder of another pyramid scheme,

Genesis Global Network, which was characterized in online promotional materials as "operat[ing] just like Zeek and Add Wallet. The early members in Zeek earned over $1 Million and this one is better and completely offshore."[39]

398. Another example is Defendant Miller, another big player in the infamous $850 million Zeek Rewards Ponzi scheme, which had a component similar to TelexFree's AdCentral. Like TelexFree Members, Zeek members were told they got paid for posting ads about the company online. Zeek Rewards told its "Affiliates" that in order to "earn" their points, they were required to place a short, free digital ad each day on one of the many free classified websites available on the Internet. According to Zeek receiver Kenneth D. Bell, "[i]n reality the ads were just an attempt to manufacture a cover for what was nothing more than the investment of money by Affiliates with the expectation of receiving daily 'profit' distributions." Bell targeted Miller in his prosecution of Zeek's massive Ponzi scheme. Miller spoke on behalf of TelexFree at TelexFree events and was one of its key pitchmen.

399. According to a video playing on YouTube, Miller was one of the featured TelexFree speakers at the Newport Beach event. Members of his group claim in videos that, if one sends $15,125 to TelexFree to purchase a "contract," one will emerge with guaranteed earnings of at least $1,100 a week for a year. The math of the claim is basically this: $1,100 a week for 52 weeks equals $57,200. Subtract the original outlay of $15,125, and emerge with $42,075 on the plus side.

[39] *See* https://www.facebook.com/mlmsuccessgroup/posts/772337832778294; *see also* Exhibit 3, Decl. of Gray Echavarria, Attachment 25.

400. Indeed, TelexFree was at all times relevant to the complaint staffed by what amounted to an "all-star team" of online network marketing scam artists.

2. The Professional Legitimizers' Roles

401. TelexFree, Wanzeler, Merrill, and Costa also enlisted the involvement of persons and entities who provided advice and blessed, or provided opinions that purported to legitimize, business models that were later found to be fraudulent and unlawful pyramid schemes. For example, Defendant Attorney Nehra publicly opined, during TelexFree conferences and "Super Weekend" events,[40] as well as in communications with the press,[41] that he had examined TelexFree's business model and determined it to be legal, and that TelexFree "pays ONLY on the sale of its VOIP long distance product."

402. TelexFree's operations had many signs of unlawful, unfair and deceptive wrongdoing that were highly suspicious and in fact constituted Red Flags recognized by the Federal Financial Institutions Examinations Counsel ("FFIEC").

403. Moreover, each Defendant had knowledge of the Brazilian authorities' seizure of Ympactus' assets that were directly connected to Wanzeler, Merrill and Costa.

404. After authorities shut down TelexFree's Brazilian unlawful predecessor, Ympactus, the Licensed Professionals and Financial Services Providers knew that TelexFree was nothing other than a new entity created by the same principals to engage

[40] *See* Exhibit 4, Decl. of Carol L. Harris, Exhibit 14.

[41] *Id.*

in the same unlawful enterprise yet did business with it.

405. At times relevant to this complaint, TelexFree had a website that was managed by its Executives and designed and maintained by Opt3 Solutions Inc. and Defendant Borromei.

406. The promotional materials posted online by TelexFree and its Executives specifically referred to income received by Promoters for placing ads as part of the AdCentral Packages as "passive income"[42] in violation of Massachusetts black letter law.

407. In addition to the March 1, 2013 press release, where Merrill admitted TelexFree did not condition payment actual sales of its VoIP product, the multitude of marketing materials provided on the TelexFree website only contained *a single slide* mentioning the VoIP service.

408. The great bulk of the content centered on the payment for posting of ads, such as "Work over the Internet Posting ads daily," and the membership commission structure.

409. The website emphasized the simplicity of its advertising system, stating "TelexFree turnkey marketing system makes internet advertising simply & duplicatelable [sic]," and "[w]e have it all computerized [sic], with only 3 steps, in your virtual office."

410. All of this served as "Red Flags" to the sophisticated Financial Services

[42] *See* TelexFree Promotional Advertisements, attached herewith as Exhibit 6.

Defendants and Licensed Professionals Defendants who had sophisticated Know Your Client protocols and systems as well as expertise in MLM.

411. Nehra and Waak Law Firm, Nehra Law Firm, Waak Law Firm, Nehra and Waak were also persons who the Financial Services Providers knew had prior involvement in pyramid or unlawful MLM schemes.

412. Defendants Nehra, Waak, Nehra Law Firm, Waak Law Firm, and Nehra and Waak Law Firm each provided legal services to TelexFree. There was no clear distinction between Nehra, Waak, Nehra Law Firm, Waak Law Firm, and Nehra and Waak Law Firm with regard to the legal services that they provided to TelexFree.

413. The Attorney Defendants each are self-proclaimed MLM and direct marketing specialist attorneys.[43]

414. The Attorney Defendants each boast on their respective websites that they have vast knowledge and experience representing MLM and direct-sales clients.[44]

415. The Attorney Defendants each boast on their respective websites that they have specialized knowledge and experience and can discern between legitimate and lawful MLM and direct-sales ventures and illegitimate and unlawful pyramid or Ponzi scheme ventures.[45]

416. Nehra represented or advised ventures that had been shuttered by state or federal authorities as fraudulent pyramid or Ponzi schemes, including Zeek Rewards

[43] *See* Exhibit 4, Decl. of Carol L. Harris, ¶¶ 6-49, Exhibits 1-14.

[44] *See id.*

[45] *See id.*

and AdSurfDaily, both before and concurrent with Nehra's provision of services to TelexFree.

417. During the investigation of the AdSurfDaily scheme, Attorney Nehra filed an affidavit in court representing that AdSurfDaily was "not a Ponzi Scheme."

418. AdSurfDaily's operations were shut down as a Ponzi scheme in 2010.

419. Zeek Rewards' operations were shut down as an unlawful pyramid and Ponzi scheme in August 2012.

420. Nehra's extensive experience with MLM and direct-sales ventures, particularly his involvement with the unlawful AdSurfDaily and Zeek Rewards ventures, armed him with the knowledge of what constitutes violations of United States securities law.

421. The Attorney Defendants were used in an attempt to hide TelexFree's Pyramid Scheme activity with obfuscating phraseology.

422. Similar to Nehra, Waak claims to have over thirty years advising MLM and direct-selling enterprises. Waak claims to have managed the legal defense of multiple class action lawsuits involving claims for "pyramiding, securities fraud, false advertising and civil RICO."

423. As counsel for TelexFree, the Attorney Defendants had actual personal knowledge of TelexFree's product and business model.

424. Nehra, negligently or recklessly gave his professional opinion as a duly licensed attorney who specialized in MLM for decades. He informed the putative class

in July 2013 that he had "vetted" and "bless[ed]" TelexFree's business model and operation.[46]

425. The Attorney Defendants negligently or recklessly drew upon their prior experience to substantially aid, abet, and play an integral role in TelexFree's unlawful, unfair, and deceptive acts and practices during the times relevant to this complaint.

426. Despite their actual knowledge, rather than decline or cease rendering services to TelexFree, the Attorney Defendants failed to adequately provide even minimally acceptable legal counsel.

427. In spring 2013, TelexFree was forced to focus on new markets, including the United States and Canada, because its Brazilian operations had been shut down and all of its Brazilian assets frozen. TelexFree used the presence, representations and statements of the Attorney Defendants to perpetuate and advance the Pyramid Scheme in those new markets.

428. Nehra's representations and statements that TelexFree's operations in the United States were legitimate and lawful were part of its total "post Brazilian shut down package."

429. Nehra was aware of how his representations and statements were being used by TelexFree, yet willingly spoke on behalf of TelexFree at an event dubbed a "Super Weekend" in Newport Beach, California on July 26 and 27, 2013. His focus at the "Super Weekend" event was to reassure Promoters that TelexFree's United States

[46] See Exhibit 4, Decl. of Carol L. Harris, ¶ 19, Exhibit 14.

operations were legitimate, lawful and worthy of investment.

430. Although at the time of the "Super Weekend," TelexFree's Brazilian bank accounts had been frozen and all of TelexFree's Brazilian recruiting and payments had been suspended by court order in its largest affiliate market, Nehra advised attendees that the shutdown in Brazil would not affect TelexFree's operations in the United States.

431. Nehra spoke at length during that "Super Weekend" and reassured the attendees of the legality and legitimacy of TelexFree's operations in the United States, stating "It is legally designed . . . you are on very solid legal ground," and that TelexFree's operations had been "vetted by the Nehra and Waak law firm."

432. Nehra's statements and opinions provided legal representations. Nehra's statements and opinions constituted legal advice. Nehra knew that TelexFree's conduct constituted a breach of duty to its Promoters.

433. In addition, at all relevant times, the Attorney Defendants consented to be and acted as agents of Telex Free and had authority to represent and bind TelexFree.

434. As agents of TelexFree, the Attorney Defendants owed a duty to the putative class not to negligently or recklessly make statements or misrepresentations, or offer incorrect opinions that would support the TelexFree business model or smooth the way for the additional influx of membership driven funding.

435. The Attorney Defendants drew direct financial benefit from assisting TelexFree to perpetuate and further the Pyramid Scheme to the detriment and loss of the putative class.

436. Plaintiffs and all other members of the putative class are "Investors" under Massachusetts state securities law.

437. However, upon the advice of the Nehra and Waak attorneys, TelexFree referred to the members of the putative class as "Associates," "Members," and "Promoters."

438. The TelexFree Pre-March 9 Contract at Section 2.6.5 (m) mandates that Promoters are not to use the term "investment" regarding the registration costs.

439. Specifically, the TelexFree Pre-March 9 Contract at Section 2.6.5 (m) provides that the Promoter must not "use terms that distort the real meaning of products or the mechanism and functioning of multilevel marketing, including, without limitation, expressions that convey the idea of instant wealth for nothing in exchange, as well as speaking of registration costs as a 'financial investment.' Similarly, it is expressly prohibited to use the term 'INVESTMENT' at meetings and in promotional materials in general, orally or in writing."

440. TelexFree, the Operational Defendants and the Licensed Professional Defendants, including the Accountant and Attorney Defendants, provided the bad advice that distorted, furthered and perpetuated the unlawful, unfair and deceptive Pyramid Scheme.

441. Promotional materials also falsely represented that TelexFree was a "clean & scam free business." (Emphasis in original).

M. TelexFree's Fraudulent and Deceptive Use of Best Western Hotel

442. In addition to the passive income scheme described above, TelexFree maliciously, falsely and deceptively represented that it had a connection with Best Western Hotel in South America that it could offer to its Promoters. TelexFree represented that they had an interest in a Best Western but did not.

443. TelexFree's president Merrill falsely described the Best Western Hotel offer. His promotion of this false opportunity was an important marketing tool intended to bolster TelexFree's credibility.

444. TelexFree's management maliciously, willfully, knowingly and deceptively featured the offer of the "Hotel Best Western Opportunity" on the front page of the TelexFree website with an accompanying banner and video.

445. TelexFree presented this Best Western Hotel opportunity as having a guaranteed yearly return of over 8%.

446. There was no business relationship between TelexFree and Best Western. TelexFree, Opt 3 and Borromei willfully and knowingly kept the Best Western Hotel opportunity video deceptively on the United States-based TelexFree website for months, being visible for months after the president of Best Western became aware of the video and requested TelexFree's website staff to remove it as part of its "post Brazilian shut down package." Defendant Opt 3 lists Best Western Hotel as a client although Best Western International Inc has never actually retained it.

447. Defendants Opt 3 and Defendant Borromei had actual knowledge of and involvement in TelexFree's false representation concerning the Best Western

investment.

N. Investigation of, and Injunctions against, TelexFree's Brazilian Operations in Brazil

448. The following activities were taking place as TelexFree was carrying out approximately $865,893,524.99 in transactions with the Defendant Financial Services Providers.

449. In or about January 2013, the Brazilian Bureau of Consumer Protection (known as Procon) began to investigate TelexFree.

450. In its January 11, 2013 press release, Procon indicated that it had "detected evidence of crimes":

> The investigation initiated by civil prosecution of Consumer Protection (no. 01/2013) shows several controversial issues and possible crimes that put consumers at risk in time to accept that kind of deal.
>
> Among the possibilities, there is a breach in the Federal Law No. 1.521/51, art. 2, according to which it is a crime:
>
> Obtaining or attempting to obtain illicit gains at the expense of the people or of undetermined number of people through speculation or processes fraudulent ('snowball', 'chains', 'pichardismo' and any other equivalent) including Ponzi pyramid.
>
> There is also the possible violation of the Code of Consumer Protection (CDC), with false advertising, failure of product information and company, abuse of weakness or ignorance of consumers and conditions unreasonable disadvantage, among others.[47]

451. Procon subsequently initiated an official complaint and notified the "State

[47] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 6.

Prosecutors Office, the Minister of Finance and the Federal Police."[48]

452. Shortly after January 11, 2013, Procon's investigation of TelexFree was widely reported online by English-language media.

453. On February 15, 2013, the MLM news site BehindMLM.com reported that TelexFree was under criminal investigation in Brazil for having operated an illegal Ponzi scheme.[49]

454. On February 17, 2013, A (MLM) Skeptic, an MLM blog, reported that Brazil's Bureau of Consumer Protection had investigated TelexFree upon suspicion of operating a Ponzi scheme, and had subsequently forwarded the case to the State Prosecutor's office for filing of formal charges.[50]

455. On March 9, 2013, the Ministry of Finance, after its investigation, declared that:

> The TelexFree business of selling packages of internet telephony (VoIP, its acronym in English), is not sustainable and suggests a Ponzi scheme, which is a crime against the popular economy.
>
> That is the conclusion of the Secretariat for Economic Monitoring of the Ministry of Finance (Seae / MF) in a statement on Thursday (14).[51]

456. As the matter progressed through the Brazilian court system, the Ministry of Finance was ordered not to issue further statements about the matter.

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[48] *See,* Exhibit 3, Decl. of Gray Echavarria, Attachment 38.

[49] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 6.

[50] *See,* Exhibit 3, Decl. of Gray Echavarria, Attachment 27.

[51] *Id.*

457. TelexFree and the Defendant Founders seized upon that fact and circulated through its affiliates the following misleading misrepresentation of the order:

> It's official! The investigation on TelexFree has been absolved of what Behind MLM has researched and posted.[52]

458. On June 19, 2013, the Brazilian Court in Acre issued an injunction putting "a stop to TelexFree's business operations, including the registration of new affiliate investors, acceptance of new investments and paying any returns owed on existing affiliate investments."[53]

459. In addition, following a court order in Brazil by Judge Borges for TelexFree to turn over "data relating to the registration and operation of the accounts of each of the affiliates, including twelve months of retroactive data," TelexFree claimed it had no access to registrations and transfer accounts of the company's Promoters.

460. This claim directly contradicts the internet video in which Costa is surrounded by stacks of books he falsely claims holds the requested affiliate data.[54]

461. At no point did TelexFree sell VoIP products legally in Brazil.

462. On January 26, 2015, the Brazilian government filed a criminal complaint seeking fines and jail time against Defendant Founders Wanzeler and Costa for their failure to register their offering of VoIP products with the Brazilian National Telecommunications Agency.

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[52] *See,* Exhibit 3, Decl. of Gray Echavarria, Attachment 7.

[53] *Id.*

[54] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 24; "*TelexFree claim no affiliate data, fined again,*" Behind MLM (Jan. 1, 2014) (explaining Judge Borges' request and TelexFree's contentious response).

O. TelexFree's Continued United States' Operations

463. After the Brazilian government's seizure of Ympactus in June 2013, TelexFree continued to operate its Pyramid Scheme in the United States.

464. In late summer or fall of 2013, TelexFree retained a consulting group, The Sheffield Group, which also markets itself as having extensive MLM expertise and experience, to review its business plan. At this time, the advice provided by Sheffield Group and whether it was followed is unknown.

465. Jeffrey Babener of Babener & Associates advised TelexFree that its business plan was unlawful and needed to be redesigned in 2013. Babener markets himself as having specialized MLM expertise and experience.

466. Despite being advised of the illegality of the TelexFree program by Babener and Babener & Associates, TelexFree and its Defendant Founders continued operations without modification until March 2014.

467. Each Defendant knew TelexFree was an unlawful Pyramid Scheme, but continued to participate in or aid, abet and further such illegal activities. Each Defendant knew that TelexFree was shut down in Brazil, but continued to participate, substantially aid and abet and act to further its unlawful operations and activities in the United States.

P. Collapse of TelexFree's United States Operations

468. On or about February 5, 2014, the SOC, in connection with an investigation of TelexFree's operations, served TelexFree with subpoenas.

469. At least six banks, not named here as Defendants, rejected TelexFree's

business.

470. However over several years of operations, TelexFree did employ financial accounts, including domestic and international bank accounts and various online payment processors to carry out and facilitate its fraudulent and deceptive scheme in the Commonwealth of Massachusetts including a nearly continuous banking relationship with Bank of America and TD Bank.

471. At least three banks, not named here as Defendants, terminated their relationship with TelexFree as its illegal and tortious operations became apparent.

472. Emails between TelexFree management and financial institutions painted a bleak picture of TelexFree's continuing financial operations.

473. In an August 28, 2013 email to Defendants Merrill, Craft and Wanzeler, Defendant Hughes, President of Base Commerce, a payment processing company serving TelexFree, clearly stated "[n]o US Bank or Processor . . . will accept your [TelexFree] business given that you are on month five of the Visa Chargeback monitoring program. You are one of only three merchants in the USA on month five so you are a real hot-potato as they say."[55]

474. Financial institutions were an essential part of the TelexFree Pyramid Scheme and provided substantial assistance or encouragement, without which payments from Promoters could not be obtained or funneled through various shell companies and personal accounts. Without the substantial services of the Financial Service

[55] *Id.*

Defendants, TelexFree would not have been able to grow, be maintained or flourish as it did.

Q. TelexFree's Belated Efforts to Legitimize Its Scheme

475. On March 9, 2014, TelexFree abruptly changed its compensation plan, requiring Promoters to sell its VoIP product to qualify for the payments that TelexFree had previously promised to pay them. A central component of the new change affected the ease of participant withdrawals. TelexFree Participants could no longer withdraw money, even money already "earned," without making a specified number of retail sales and recruiting several new investors.

476. These changes were put in place in an attempt to forestall the impending collapse of the scheme.

477. Following these changes, numerous TelexFree Participants frantically contacted the Office of the Secretary of the Commonwealth, correctly suspecting the harbinger of TelexFree's collapse. The changes also generated a storm of protests from Promoters who could not recover their money.

478. As it became more difficult to withdraw money from TelexFree, TelexFree switched its compensation plan from one that paid participants in United States currency to one that operated on TelexFree "credits," which were essentially worthless.

479. The switch from payment in United States currency to payment in "credits" was made without any announcement or forewarning to TelexFree's Members,

and was designed merely to forestall the impending collapse of the Scheme.

480. Furthermore, the value of the "credits" issued by TelexFree was not fixed in relation to any currency, thus giving TelexFree and its Executives the power to alter the value of the "credits" to suit their own interests and avoid compensating TelexFree's Members.

481. On April 1, 2014, dozens of Promoters descended upon TelexFree's Marlborough Office to protest the changes and to attempt to regain access to their money. Local media covering the chaos interviewed one Promoter who admitted that the VoIP service is "almost impossible to sell."[56]

482. On April 14, 2014, TelexFree, Inc., TelexFree, LLC and TelexFree Financial abruptly sought bankruptcy protection in Nevada under Chapter 11, admitting that they could not meet their obligations from VoIP revenues and seeking authority to reject all its current obligations to Promoters.

483. In furtherance of the enterprise, TelexFree mailed fraudulent and inaccurate 1099 (Miscellaneous Income) forms to Promoters in or about mid-April 2014, an attempt to create the illusion that TelexFree had made payments to Promoters when no such payments were made.

484. The 1099 forms were provided long after the mandated January 31, 2014 deadline, and some after the April 15, 2014 filing deadline.

[56] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 33; *see also* Scott O'Connell, "*Upset customers look for answers at TelexFREE offices,*" Wicked Local-Dennis (April 1, 2014 (updated April 17, 2014)), http://dennis.wickedlocal.com/article/20140401/NEWS/140409503?sect=More&map=0.

485. TelexFree falsely represented that Promoters had received income that they in fact had not received.

486. TelexFree's former officers or employees stated to the TelexFree bankruptcy transition team that under the TelexFree Pre-March 9 Contract, TelexFree owed its Promoters over $5 billion dollars.

R. Events Since TelexFree's Bankruptcy Filing

487. On April 15, 2014, the SOC filed an Administrative Complaint against TelexFree, Inc. and TelexFree, LLC, alleging violations of the Massachusetts Uniform Securities Act, MASS. GEN. LAWS, c. 110A.

488. The SOC sought injunctions and orders requiring TelexFree, Inc. and TelexFree, LLC to cease and desist from further conduct violating Massachusetts securities laws and regulations, to provide an accounting of all proceeds received because of TelexFree's fraud, to provide restitution to Promoters for losses attributable to the fraud operations, and to disgorge all profits.

489. Also on April 15, 2014, the SEC filed a civil Complaint and Jury Demand against TelexFree, Inc. and TelexFree, LLC as well as Defendants Merrill, Wanzeler, Labriola, Craft, Rodrigues, De La Rosa, Crosby, and Sloan, alleging violations of the Securities Act of 1933, the Securities Exchange Act of 1934, and SEC Regulations. The SEC requested and was granted a preliminary injunction and an order freezing the assets of TelexFree. The SEC is also seeking disgorgement of profits and additional civil penalties.

490. Additionally on April 15, 2014, the FBI and the DHS conducted a raid of TelexFree's Marlborough Office.

491. During this raid by the FBI and DHS, federal agents apprehended Defendant Craft as he attempted to leave the building with a laptop and approximately $38 million in cashier's checks in a bag. He also tried to leave with TelexFree computer equipment containing incriminating data.

492. When questioned, Craft stated to the federal agents he was merely a "consultant," and claimed that the checks and computer were "personal."

493. Defendant Katia Wanzeler was apprehended as she attempted to board a flight to Brazil, on which she had a one-way ticket, cash and seventy pounds of luggage.

494. On or about May 1, 2014, the Montana Securities Commissioner filed a cease and desist order against TelexFree.

495. The following day, the United States Bankruptcy Court for the District of Nevada, on motion by the SEC, transferred the matter to the federal district court in Massachusetts, Central Division.

496. During hearings conducted on May 2, 2014, William H. Runge, III, former Chief Restructuring Officer of TelexFree, estimated that as of TelexFree's bankruptcy filing TelexFree had assets of $31 million in its bank accounts, $28 million in brokerage accounts, and nearly $30 million held by payment processing companies.

497. The location of hundreds of millions of dollars received by TelexFree from Promoters remains unknown.

S. TelexFree's Principals, Founders and Executive Office Controlled TelexFree, Knowingly Perpetrated the Unlawful, Unfair, and Deceptive Pyramid Scheme and Made False Representations about TelexFree

498. Defendants Merrill, Wanzeler, Labriola, Craft and Costa were responsible for the control and operation of TelexFree.

499. These Defendants, TelexFree's Founders and Principals, Executive Office and Top Level Promoters knowingly and willfully conspired to perpetrate, and did perpetrate, the TelexFree Pyramid Scheme with full awareness of its unfair, deceptive, and unlawful nature.

500. Defendant Merrill served as the president, secretary, and director of TelexFree, Inc.; a manager of TelexFree, LLC; president, secretary and director of TelexFree Financial; general partner of Defendant Electric, and president, secretary and director of Defendant Mobile, and in those capacities, exercised significant control over TelexFree's business operations.

501. Merrill exercised significant control over the TelexFree Pyramid Scheme. Merrill has appeared in videos posted to the internet – including, among numerous others, a November 3, 2012 YouTube video entitled "TelexFree James Merrill Brasil,"[57] a June 20, 2013 YouTube video entitled "James Merrill Speaks About TelexFREE BR Investigation,"[58] and the highly promoted "TelexFree 1st Extravaganza" video made available on www.TelexFree.comin which he can be seen promoting TelexFree as a revenue opportunity for Promoters.

[57] Available at https://www.youtube.com/watch?v=8hYuvWNIL2M.

[58] Available at https://www.youtube.com/watch?v=zO4xe-0tE-4.

502. Merrill also otherwise made numerous false representations in furtherance of the Pyramid Scheme.

503. In a March 21, 2014 press release, Merrill misrepresented that TelexFree had been "in the VoIP business for more than a decade."

504. Through to at least March 28, 2014, the TelexFree website included a biography of Merrill, which falsely stated that Merrill was a 1985 graduate of Westfield State University in economics, and that he is "well versed in one of the new technologies of the era (VoIP)."

505. According to testimony obtained by the SOC, Merrill attended Westfield State University for a mere two years, without either receiving a degree or declaring a major.

506. In further direct contravention to the representations made on the TelexFree websites, Merrill also testified to the SOC on March 25, 2014 that he had only a basic understanding of VoIP technology.

507. Defendant Merrill received $3,136,200 on December 26 and 27, 2013 from one of the named Financial Service Provider Defendants.

508. Defendant Wanzeler served as treasurer and a director of TelexFree, Inc.; a manager of TelexFree, LLC; vice president, treasurer, and a director of TelexFree Financial; general partner of Defendant Electric and treasurer and director of Defendant Mobile, and, according to corporate filings on record with SOC, as the chief executive officer of TelexFree, Inc.

509. In those capacities, Wanzeler exercised significant control over TelexFree's business operations.

510. Wanzeler exercised significant control over the TelexFree Pyramid Scheme and participated in marketing TelexFree to potential investors.

511. Wanzeler appeared in TelexFree videos posted to the Internet in which he willfully, maliciously, unfairly, deceptively:

- promoted TelexFree as a revenue opportunity for Promoters;
- detailed the, unlawful and fraudulent TelexFree Program; and
- made false representations regarding returns.

512. Wanzeler received $4,317,800 on December 26 and 27, 2013, and wired $3.5 million to the Oversea-Chinese Banking Corporation in Singapore on January 2, 2014.

513. Defendant Labriola served as the international marketing director for TelexFree, Inc.

514. Labriola was one of the original directors and founders of Common Cents Communications, Inc.

515. At all material times, Labriola exercised significant control over TelexFree's business operations and the operations of its interrelated companies.

516. Labriola also appeared in several videos posted on the Internet promoting TelexFree as a revenue opportunity for Promoters, detailing the fraudulent TelexFree program and making false representations regarding returns.

517. Labriola has acted as TelexFree's spokesman to Promoters during post-bankruptcy petition conference calls.

518. As a director of TelexFree, Inc., Labriola exercised significant control over the TelexFree Pyramid Scheme.

519. As international marketing director for TelexFree, Inc., Labriola maliciously and knowingly perpetrated the TelexFree fraud through the dissemination of false and misleading advertising and marketing communications.

520. Defendant Craft is a CPA and served as the chief financial officer ("CFO") of Telex Free, Inc. and TelexFree, LLC.

521. In his capacity as CFO of TelexFree, Craft was responsible for preparing or approving TelexFree's financial statements, overseeing TelexFree's accounting methods and records, and otherwise exercising significant supervision and control over TelexFree.

522. According to the SEC, two companies controlled by Craft received more than $2 million from TelexFree between November 19, 2013 and March 14, 2014.

523. On April 23, 2013, in response to a request for a profit-and-loss statement issued by the SOC, TelexFree produced a document purporting to be TelexFree's 2012 profit-and-loss statement.[59]

524. TelexFree did not make use of usual and accepted MLM accounting practices. For example, they did not separate out income generated by sales of VoIP

[59] *See* Administrative Complaint of instituted by the SOC, Dkt. No. 2014-0004, page 39, attached as Attachment 36 to Exhibit 3, Decl. of Gray Echavarria.

from income generated by other means.

525. On February 5, 2014, the SOC requested a second profit-and-loss statement from TelexFree for 2012, which TelexFree produced on February 26, 2014.[60]

526. A comparison of these two profit-and-loss statements – each purporting to be TelexFree's profit-and-loss statement for 2012 – reveals massive discrepancies (and "conflicting statements").

527. The first statement provided by TelexFree lists total income for 2012 at $1,864,939.70, while the second lists total income for 2012 at $2,834,835.70.[61]

528. As further examples, agent commission is listed at $520,582.95 in the first, versus $2,105,925.61 in the second; total expenses are listed as $784,899.22 in the first, versus $2,333,893.09 in the second; net operating income is listed as $1,080,040.48 in the first, versus $478,251.56 in the second; and net income is listed as $1,066,313.39 in the first, versus $477,652.23 in the second.[62]

529. The existence of duplicative accounting records containing egregious discrepancies indicates TelexFree's falsification of accounting records and negligent failure to adhere to Generally Accepted Accounting Principles ("GAAP").

530. As CFO for TelexFree, Inc. and TelexFree, LLC, and a certified public accountant, Defendant Craft negligently or recklessly perpetuated the TelexFree unlawful enterprise by:

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[60] *Id.*

[61] *Id.*

[62] *Id.*

- overseeing TelexFree's creation of accounting records;
- failing to ensure that GAAP accounting methods were adopted and adhered to;
- certifying TelexFree's business operations and accounting practices as good and lawful; and
- concealing that the AdCentral packages purveyed by TelexFree were securities.

531. Defendant Costa was listed as manager of TelexFree, LLC with the Massachusetts Secretary of State Corporations Division.

532. Costa is one of the original founders of TelexFree, and was involved in the day-to-day management and oversight of TelexFree and was actively involved in and managed its Brazilian operations.

533. Costa has appeared on numerous websites and videos posted on the Internet promoting TelexFree as a revenue opportunity for Promoters, detailing the fraudulent TelexFree Program and touting its huge financial return.

534. In an August 15, 2013 video, Costa fraudulently claims that TelexFree "never was, never will be" an illegal pyramid scheme because of its VoIP sales. He further misrepresented that "[w]e do not depend on everyone coming in in order to pay the people who are already in."

535. Costa was an outspoken advocate against the Brazilian Court's decision to enjoin TelexFree's Brazilian activities, and publicly supported TelexFree's illegal and corrupt activities.

536. On June 25, 2013, in an outright misrepresentation, Costa is videoed

displaying an insurance notification representing that it was proof of coverage for Promoters' payments; however, in actuality, the document was a notification denying coverage.[63]

T. TelexFree's Top Level Promoters Played an Integral, Essential and Primary Role and also Aided and Abetted the Pyramid Scheme

537. TelexFree conducted its Pyramid Scheme through the use and with the participation of several high profile Promoters referred to herein as "Top Level Promoters," including Defendants Rodrigues, De La Rosa, Crosby, Miller, Sloan, Shoyfer and others.

538. TelexFree's Top Level Promoters played a primary role in the Pyramid Scheme and were integral and essential co-conspirators who at all times knew that they were involved in unlawful activities designed to wrongfully take the funds invested by the class. In fact, that is why the Founders, Principals, and Executive Office recruited many of them for involvement in TelexFree.

539. The presence of the Top Level Promoters as well as their suspicious, tortious or unlawful activities were Red Flags for the Financial Services Defendants as identified by the FFIEC.

540. Each Top Level Promoter deceptively, fraudulently and misleadingly promoted and furthered the Pyramid Scheme with knowledge of its illegality.

U. TelexFree's Attorneys Played an Integral Role in and Aided and Abetted the Unlawful, Unfair, and Deceptive Pyramid Scheme

541. TelexFree's Attorney Defendants were a critical component of the

[63] *See* http://www.youtube.com/watch?v=q2A2IsAPd0I.

TelexFree Pyramid Scheme as their representation of TelexFree went beyond the ordinary attorney-client relationship of delivering legal advice.

542. At times relevant to this complaint, the Attorney Defendants had actual knowledge that the TelexFree business model was a fraudulent Pyramid Scheme.

543. The Attorney Defendants were obligated to advise their clients on how to comply with the law, yet TelexFree's Attorney Defendants negligently, recklessly, willfully, knowingly, unfairly and deceptively advised their clients how to avoid detection, maintain the appearance of legality, and maintain and build the Pyramid Scheme. They knowingly extended their roles to become supporters of the Pyramid Scheme by lending legitimacy to its operation.

544. Throughout TelexFree's profitable Pyramid Scheme, the Attorney Defendants acted as legal counsel to TelexFree, and used their positions of authority, education and respect of the profession of law within the targeted immigrant and other communities as an integral part of the Pyramid Scheme "and its post Brazilian shut down package."

545. Beyond his licensure, Attorney Nehra's extensive experience in MLM, and particularly his involvement with the Ponzi schemes involving AdSurfDaily and Zeek Rewards, armed him with the knowledge of what constitutes violations of United States securities law, which he used in an attempt to hide TelexFree's Pyramid Scheme activity with obfuscating phraseology.

546. Similar to Attorney Nehra, Attorney Waak also claimed to have over

thirty years of experience in counseling MLM and direct-selling enterprises.[64]

547. On the website of the Law Offices of Nehra and Waak, the Defendant Attorneys boasted that "[n]o Company that retained this firm BEFORE LAUNCH has been shut down by a regulator."[65] (emphasis in original).

548. On their website, Attorney Nehra and Attorney Waak claim to specialize in counseling "domestic and foreign companies operating MLM (multi-level marketing) businesses in the United States."[66]

549. The Law Offices of Nehra and Waak provided legal counsel to TelexFree, and Attorney Waak was principal attorney of the law firm and was charged with oversight of the firm's daily activities.

550. Attorneys Nehra and Waak also maintained the Defendant professional limited liability companies Gerald P. Nehra, Attorney at Law, PLLC and Richard W. Waak, Attorney at Law, PLLC, which also provided legal and counseling services to TelexFree.

551. Among the Attorney Defendants, and throughout TelexFree's Scheme, there was no clear distinction among the services provided to TelexFree by the Law Offices of Nehra and Waak, the individual Attorney Defendants, and their respective professional limited liability companies.

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[64] *See* Exhibit 4, Decl. of Carol L. Harris, Exhibit 2. http://www.mlmatty.com/meet-mlm-attorneys/.

[65] *Id.*

[66] *Id.*

552. As general partners of the Law Offices of Nehra and Waak, Attorney Nehra and Attorney Waak are jointly and severally liable for torts and obligations of the firm.

553. Seeking to profit from TelexFree's exploitation of the members of the putative class, Defendant Nehra drew upon his prior experience to aid, abet and play a substantial and integral part in TelexFree's unlawful, unfair and deceptive acts and practices during times relevant to this complaint.

554. The Attorney Defendants attended meetings at TelexFree's headquarters in Massachusetts to discuss TelexFree's product, business model, and operations, participated in teleconferences with Defendant Founders, Principals, Executive Office, and Top Level Promoters to discuss TelexFree's product, business model, and operations and had access to and input into TelexFree's documents, including the contracts entered into between TelexFree and the putative class.

555. Attorney Nehra negligently, recklessly, willfully, knowingly, unfairly or deceptively counseled TelexFree on actions that would serve to evade United States securities laws that were intended to offer, in part, to provide the members of the putative class with protection from pyramid schemes, and advised TelexFree Promoters (excluding Top Level Promoters) to unknowingly participate in the evasion of federal and state securities laws, to enrich himself financially and serve his own selfish interests.

556. Attorney Nehra otherwise negligently, recklessly, willfully, knowingly,

unfairly or deceptively counseled and advised TelexFree Promoters (except the Top Level Promoters) to unknowingly participate in the evasion of federal and state securities laws.

557. Defendant Nehra accomplished this through his reputation as a licensed attorney, his purported experience as an MLM expert and his purported research of TelexFree's business model, which allowed him to hold out TelexFree as a legal business.

558. Defendant Nehra did this in a variety of ways, including his instruction to Investors to avoid using the terms "investment" regarding AdCentral Packages (*see* TelexFree Pre-March 9 Contract, Paragraph 2.6.5(m)), which was an attempt to conceal, and encouraged others to conceal, TelexFree's sale of securities in an attempt to strip Promoters of the rights afforded them by federal and state securities laws.

559. In company videos, Attorney Nehra failed, refused and neglected to advise prospective TelexFree Promoters, the putative class members, that their participation in TelexFree presented a risk, including the risk of participating in an unlawful scheme, or that his advice was, in fact, against their own interests.

560. Attorney Nehra perpetuated and enhanced the Scheme by not advising the putative class member TelexFree Investors that his web-published purported professional advice was intended to serve the interests of TelexFree and himself.

561. Attorney Nehra's actions exceeded the scope of zealous representation of TelexFree. Although he was licensed to practice law and purported to offer legal

opinions, active and integral participation in a Pyramid Scheme does not fall within the parameters of the profession in which he was licensed to practice.

562. Nehra negligently told Promoters and prospective members that TelexFree's actions were within the purview of federal and state law. As described above, the Defendant Founders, Principals, Executive Office and Top Level Promoters knowingly used Attorney Nehra's false legal opinions and misrepresentations as a marketing tool to unfairly and deceptively further the illegal Pyramid Scheme.

563. Attorney Nehra's opinions, and the opinions of other Attorney Defendants, were packaged and promoted as part of TelexFree's total "post Brazilian shut down package" to the members of the putative class.

564. On an internet video posted on August 2, 2013, Attorney Nehra provided false and deceptive assurances to Promoters and potential Promoters, stating that "[t]he special ingredient is that you have a real product."

565. Attorney Nehra assured Promoters on internet postings, in writing, and in person at marketing promotions that, in his professional opinion, the TelexFree business model was legitimate despite having actual knowledge that TelexFree MLM Network "Partnerships"[67] involving TelexFree's AdCentral marketing packages were unlawful, as he had actual knowledge of the ruling of the Brazilian Court, knowledge of and access to TelexFree's United States operations and its composition, and knowledge of United States law.

[67] *See* Exhibit 1 - Standard TelexFree Contract at ¶2.2.1.

566. More particularly, when he advised potential participants of the soundness of the venture, Attorney Nehra knew that a Brazilian court had determined that TelexFree's activity was fraudulent, and that its Brazilian attorneys essentially admitted it was a pyramid scheme.

567. Defendant Nehra's own comments suggest that when providing legal opinions at the request of TelexFree and Defendant Founders, he knew that TelexFree intended to use his advice and likeness prominently as a marketing tool on both their localized Brazilian (Portuguese) and Spanish (Spanish) website portals, in an effort to make TelexFree's business appear legitimate thereby continuing and perpetuating the ongoing fraud.

568. Defendant Nehra knew TelexFree used his legal opinions as a marketing tool to promote its suspicious, tortious or unlawful Pyramid Scheme on Brazilian (Portuguese) and Spanish/Dominican (Spanish) website portals.

569. Attorney Nehra aided, abetted, counseled, induced, and/or procured TelexFree's violations of law regarding the proper segregation and maintenance of customer funds, and acted in concert and combination with TelexFree in such violations.

570. Defendant Nehra gave substantial assistance to TelexFree and Defendant Founders in accomplishing a tortious and illegal result, and Nehra's own conduct, separately considered, constitutes a breach of duty to Promoters since he:

- negligently misrepresented the legality and sustainability of TelexFree's operations to the detriment of Promoters, and received fees from TelexFree;
- negligently obscured and obfuscated the illegal nature of TelexFree's Scheme by the manipulative use of language, including, e.g., advising TelexFree that using the term "investment" must be avoided;
- breached his duty of professional care to Promoters by failing to exercise proper due diligence in investigating the legality of TelexFree's operations;
- breached his duty of care by encouraging and advising individuals to become and remain Promoters to their detriment, despite his knowledge of the illegality of TelexFree's operations; and
- engaged in a civil conspiracy to defraud TelexFree's Promoters with a Pyramid Scheme, and took a leading role in the Scheme.[68]

571. Attorney Waak, as general partner and principal attorney of the Law Offices of Nehra and Waak, and the other Attorney Defendants knew of, oversaw, and participated in Attorney Nehra's tortious and illegal conduct regarding the TelexFree Pyramid Scheme.

572. With their specialized knowledge of the laws governing MLM and direct-sales ventures and their personal knowledge of TelexFree's product, business model, and operations which were identical to its Brazilian product, business model, and operations, the following publicly available information caused or should have caused the Attorney Defendants to recognize that TelexFree was an unlawful pyramid or Ponzi

[68] As stated by Justice William O. Douglas, "just as a fine natural football player needs coaching in the wiles of the sport, so, too, it takes a corporation lawyers with a heart for the game to organize a great stock swindle or income tax dodge and drill the financiers in all the precise details of their play." William O. Douglas, "*Directors Who Do Not Direct*," 47 Harv. L. Rev. 1305, 1329 (1934).

scheme and decline or cease providing services to it or provide advice to change the program and make sure it was promptly changed:

- a Brazilian court found TelexFree's Brazilian operations to be fraudulent;
- a Brazilian court described TelexFree's operations in terms of the quintessential pyramid scheme after TelexFree's own Brazilian lawyers unwittingly admitted as much;
- TelexFree's Brazilian lawyer Djacir Falcão ("Falcão") advised the Brazilian court that an injunction would cause the company to enter bankruptcy: "Running the company really becomes difficult because of the court decision, so we will appeal";
- Falcão informed the Brazilian court that "should the company spend a few more days being prohibited from signing up new investors, they would have no money to pay the old ones";
- all of TelexFree's appeals in the Brazilian courts were denied;
- a Brazilian court remarked that the problem is that the earnings will be exhausted when the main source of revenue—new member registrations—stops;
- a Brazilian court remarked that adding new Members was more important to TelexFree than trying to sell its VoIP product;
- a Brazilian court remarked that it is detrimental that many affiliates do not even have the opportunity to recover their initial payment to Telexfree; and
- a Brazilian court entered an order freezing TelexFree's funds in Brazil, blocking future payments to TelexFree in Brazil, and enjoining TelexFree from signing on new members in Brazil.

573. Despite having knowledge that TelexFree was an enterprise carrying out unlawful, unfair, or deceptive acts or practices, Nehra and Defendant Nehra Law Firm performed integral services and provided essential advice and substantial assistance that was used to further TelexFree's unlawful business.

574. The Attorney Defendants used their knowledge and experience with MLM and direct-sales ventures, the laws applicable to those types of ventures, and their personal knowledge of TelexFree's product, business model, and operations to assist TelexFree in perpetrating the Pyramid Scheme. More specifically the Attorney Defendants:

- belatedly advised TelexFree that its compensation plan required amendment;
- advised TelexFree on how to avoid detection from state and federal agencies;
- advised TelexFree on how to maintain the appearance of legality, including to avoid using the term "investment" regarding the AdCentral Packages (TelexFree Pre-March 9 Contract, Paragraph 2.6.5(m)), which was an attempt to conceal, and encourage others to conceal, TelexFree's sale of securities in an attempt to strip Promoters of the rights afforded them by federal and state securities laws;
- advised TelexFree on how to maintain and advance TelexFree;
- advised TelexFree on how to avoid United States securities laws intended to offer, in part, protection from pyramid and Ponzi schemes;
- advised TelexFree Promoters (excluding Top Level Promoters) to unknowingly participate in the evasion of federal and state securities laws;
- advised TelexFree on laws concerning the proper segregation and maintenance of consumer funds;
- failed to inform the putative class that the Attorney Defendants' web-published professional "advice" was intended to serve the interests of TelexFree and the Attorney Defendants;
- failed to inform the putative class that participation in TelexFree presented a risk, including the risk of participating in an unlawful

scheme, or that their advice was against the putative class's interests;

- advised Promoters and represented to the putative class that TelexFree was a lawful, legitimate, and sustainable venture under state and federal laws, which TelexFree then used as a potent marketing tool to recruit new members;
- provided legal representations and statements to Defendant Founders, Principals, Executive Office, and Top Level Promoters that Attorney Defendants knew would be used by TelexFree in its efforts to recruit and retain members;
- allowed their names, experience, and likenesses to be used by TelexFree in propaganda aimed at retaining and obtaining members to the Pyramid Scheme like online postings, in-person meetings, company "super weekends" and "extravaganzas," brochures, and videos;
- gave speeches to the putative class at TelexFree's recruiting and retention "extravaganzas," "super weekends," and other events proclaiming with an air of authority that TelexFree's product and model was legitimate and lawful;
- informed the putative class that the Brazilian government's shutdown of TelexFree's activities in Brazil would not affect TelexFree's operations in the United States;
- refused to address questions asked by the putative class regarding implications of the injunction granted against TelexFree's operations in Brazil;
- informed the putative class that TelexFree "is legally designed . . . you are on very solid legal ground," and that TelexFree's operation had been "vetted" and "bless[ed]" by the Attorney Defendants;
- encouraged the putative class to become or remain Promoters; and
- provided assurances to Promoters and the putative class on website postings and other writings, and in person that TelexFree was legitimate and lawful, including assurances that "[t]he special ingredient is that you have a real product."

575. The acts and omissions of the Attorney Defendants were integral for

TelexFree to perpetuate and further the Pyramid Scheme and constitute substantial assistance in that Scheme by the Attorney Defendants.

576. The Attorney Defendants committed their respective acts and omissions with the knowledge and purpose of assisting and benefiting TelexFree and themselves and to the detriment and loss of the putative class.

577. The Attorney Defendants knew their representations and statements would be and were used by TelexFree as a marketing tool to further advance its business model and illegal activities.

578. The Attorney Defendants knowingly allowed TelexFree to utilize their statements and representations regarding the legality of TelexFree as propaganda to retain and maintain members in the Pyramid Scheme.

579. The Attorney Defendants negligently, recklessly, willfully, knowingly, unfairly or deceptively failed to exercise proper diligence in investigating the legality, legitimacy, and sustainability of TelexFree's product, business model, and operations or otherwise offered bad advice.

V. TelexFree's Accountants and Professional Services Providers Played an Integral Role in and Aided and Abetted the Unlawful, Unfair, and Deceptive Pyramid Scheme

580. Defendants Craft and Craft Financial participated in and perpetuated TelexFree's unlawful business operation.

581. In his dual capacity as CFO and CPA for TelexFree, Craft and Craft Financial were responsible for preparing or approving TelexFree's financial statements and overseeing TelexFree's accounting methods and records, and otherwise exercised

significant supervision and control over TelexFree.

582. In exercising their duties, Craft Financial and Craft negligently participated in, supervised and controlled conflicting financial statements for TelexFree that reveal massive discrepancies.

583. As the CFO and CPA for TelexFree, Inc. and TelexFree, LLC, Craft and Craft Financial negligently assisted in perpetuating TelexFree's fraudulent Pyramid Scheme by:

- directing or overseeing TelexFree's creation of inaccurate, false or falsified accounting records;
- failing to ensure that GAAP was adopted and adhered to by TelexFree;
- certifying TelexFree's business operations and accounting practices as good and lawful;
- preparing inaccurate financial documents for the affiliated TelexFree entities;
- preparing inaccurate tax returns for the affiliated TelexFree entities;
- knowingly disseminating or allowing to be disseminated inaccurate financial information among and between Promoters; and
- conspiring with TelexFree's Officers to structure and perpetuate the TelexFree business model while enriching TelexFree, Craft Financial and Craft.

584. Defendants Craft and Craft Financial knew when providing their financial assistance that their roles would give substantial assistance or encouragement to the Pyramid Scheme.

585. Defendant PricewaterhouseCoopers ("PwC") also negligently provided

accounting and consulting services to TelexFree during the Pyramid Scheme.

586. More particularly, TelexFree retained PwC in January 2014, several months after TelexFree had been shuttered by government authorities in Brazil, to provide tax and financial consultation, including assistance with the development of international tax structures.

587. PwC negligently advised TelexFree to prepare and issue unfair, deceptive, inaccurate, suspicious, and unlawful 1099 (Miscellaneous Income) forms.

588. In an effort to maintain the illusion that it had made payments to its members and on the negligent advice of PwC, TelexFree mailed fraudulent and inaccurate 1099 (Miscellaneous Income) forms to its members as described above.

589. Craft Financial and Craft also negligently assisted in preparing and sending the inaccurate 1099 forms to TelexFree's members.

590. Those inaccurate 1099 forms were filed with the Internal Revenue Service and State Revenue Offices and will impose an undue burden and hardship on Promoters who may now be liable to pay taxes on income they never received.

591. The CPA Defendants also negligently prepared financial documents for affiliated TelexFree entities and prepared tax returns for the affiliated TelexFree entities.

592. PwC also negligently assisted TelexFree in responding to the Massachusetts SOC Securities Division's information requests.

593. PwC negligently provided TelexFree with its services despite having access to TelexFree's internal financial documents that demonstrated that TelexFree

received virtually no income from the sale of its VoIP product and was, in fact, an illegal Pyramid Scheme.

594. Craft Financial, Craft, and PwC negligently performed services and provided assistance and advice that was integral and essential to TelexFree and used to further TelexFree's unlawful business.

595. Craft Financial, Craft and PwC negligently provided TelexFree with these professional services despite having access to TelexFree's internal financial documents, which demonstrated that TelexFree received virtually no income from the sale of its VoIP product and was, in fact, an illegal Pyramid Scheme.

596. Craft Financial, Craft and PwC knew when providing their professional services to TelexFree that their role would give substantial assistance or encouragement to TelexFree to continue its unlawful business model and would further the illegal Scheme.

597. Craft Financial, Craft and PwC knew their representations and statements were false and misleading and that they would be and were used by TelexFree as a marketing tool to further advance its business model and illegal activities.

598. At all times relevant to this complaint, Craft Financial, Craft and PwC acted subject to pervasive control of TelexFree and were subject to TelexFree's will. Despite having actual knowledge that TelexFree's Brazilian operations had been found fraudulent and enjoined by Brazilian courts, Craft Financial, Craft and PwC, at the direction of and with information provided by TelexFree, negligently crafted financial

statements and negligently made representations designed to misrepresent and hide the true nature of TelexFree's product, business model, and operations in the United States and the effect of the Brazilian courts' findings and orders.

599. At all times relevant to this complaint, Craft Financial, Craft, and PwC consented to be agents of TelexFree. Craft Financial, Craft and PwC knowingly allowed TelexFree to utilize their deceptive and misleading financial statements and representations regarding TelexFree as propaganda to retain and maintain members in the Pyramid Scheme.

600. As agents of TelexFree, Craft Financial, Craft and PwC owed a duty to the putative class not to make deceptive statements or misrepresentations in order to induce the putative class to buy into TelexFree's Pyramid Scheme.

601. Craft Financial, Craft and PwC committed their respective acts and omissions with the knowledge of assisting TelexFree to perpetuate and advance the Pyramid Scheme to the benefit of TelexFree and Craft Financial, Craft and PwC, but to the detriment and loss of the putative class.

602. At all material times, Defendant Borromei served as the direct contact and liaison between Defendant Opt3 and TelexFree.

603. At all material times, Borromei had actual knowledge that TelexFree was an unlawful Pyramid Scheme.

604. In addition to providing technical support and assistance with payment processing, Opt3 and Borromei managed and oversaw the technological aspects of

TelexFree's fraudulent and illegal activities.

605. In or around 2012, Opt3 and Borromei were contracted by TelexFree to provide internet technology ("IT") services, to establish TelexFree's electronic database in Brazil, to maintain and service TelexFree's computers and electronic database, to provide assistance with processing payments and financial transactions, and to provide other technical support.

606. Opt3 and Borromei set up and maintained TelexFree's electronic database. Together with TelexFree, Opt3 and Borromei conspired to set up TelexFree's servers in Brazil with the goal of evading U.S. regulators and hindering investigation of TelexFree in the event that TelexFree's Scheme should collapse or be shut down.

607. On August 13, 2013, Defendant Borromei co-hosted an open webinar with Defendant Labriola, which promoted TelexFree's payment system, which had been established by Opt3 and which utilized Defendant GPG's electronic payment gateway, to TelexFree Investors and potential investors and encouraged them to make further investments using this system.

608. On August 16, 2013, Borromei hosted an additional open webinar, in which he further promoted the payment system, including Defendant GPG's electronic payment gateway, and encouraged further investments in TelexFree using this system.

609. By email dated September 27, 2013, Borromei petitioned GPG to allow TelexFree's continued use of its electronic gateway for transmitting Member credit card data.

610. By email dated September 27, 2013, in response to Borromei's email earlier that same day, Jayme Amirie, President of GPG, indicated to Borromei that, although TelexFree represented a "reputational risk" for GPG, GPG would continue to allow TelexFree to use GPG's electronic gateway to transfer electronic data to Defendant Allied Wallet for processing Members' credit card payments.

611. Borromei also worked with Defendants Sparman and Vantage Payments to establish TelexFree's payment processing through Allied Wallet.

612. Opt3 and Borromei continued to provide services to TelexFree until the time of TelexFree's bankruptcy petition.

613. Opt3 is listed as a trade creditor in TelexFree's initial bankruptcy filings.

614. Borromei was also copied on numerous emails between and among TelexFree, Defendant Base Commerce's John Hughes, and GPG's Jayme Amirie, discussing the transition of TelexFree's payment processing to Allied Wallet and transfers of funds.

615. Through their close relationship with co-Defendants Merrill, Wanzeler and Craft, and through their providing TelexFree with technological oversight and support, Borromei and Opt3 had actual knowledge of TelexFree's illegal and fraudulent activities yet continued to provide substantial assistance in the furtherance thereof.

W. The Financial Services Providers Were Required to Comply With Various Statutory and Regulatory Investigation and Monitoring Obligations

616. Each of the Financial Services Provider Defendants is a "financial institution" under the terms of the Bank Secrecy Act, 31 U.S.C. § 5312.

617. Each of the Financial Services Provider Defendants is required to implement in their business operations proven solutions to assure compliance with key anti-bribery and corruption regulations, including the Bank Secrecy Act ("BSA"), Foreign Corrupt Practices Act ("FCPA"), and critical anti-money laundering ("AML") mandates such as Know Your Customer ("KYC") and the Customer Information Program ("CIP").

618. Each of the Financial Services Provider Defendants is required by key anti-bribery and corruption regulations to possess AML expertise.

619. At least six financial institutions not named in this action turned TelexFree away before opening an account.

620. At least six financial institutions not named in this action turned TelexFree away because of suspicious activity and other numerous "Red Flags" alerting them of fraud during the same time period that the Defendant Banks transacted millions of dollars in business with TelexFree.

621. Other banks not named in this action discharged TelexFree within weeks of opening a financial service relationship with them.

622. Each Financial Services Provider profited from its relationship with TelexFree and the other Defendants.

623. Given TelexFree's unlawful business operation and the "Know Your Customer" and AML regulations, each Financial Services Provider was obligated to refuse to open any accounts or process any transactions for the benefit of TelexFree.

624. Each of the Defendant Financial Services Providers was required to maintain robust, sophisticated and effective due diligence systems for purposes of BSA and AML compliance.

625. During times relevant to the complaint, each of the Defendant Financial Services Providers did maintain robust, sophisticated and effective due diligence systems for purposes of BSA and AML compliance.

626. When a Financial Services Provider finds out that a client is laundering money or running an unlawful enterprise it should:

- terminate the banking relationship;
- shut down the accounts; and
- file a Suspicious Action Report ("SAR").

627. Each of the Financial Services Provider Defendants are required to take precautions against violations of the BSA and AML laws by clearly understanding the risk in their customer base and conducting comprehensive enhanced due diligence that prioritizes those risks.

628. At all times relevant to this complaint, each of the Financial Services Provider Defendants was subject to federal regulatory law obligations that required them to:

- obtain and possess knowledge of and understand[69] their clients' business operations;

[69] In other words, the Financial Services Defendants did not simply have to gather information; they needed to analyze it and understand their clients' business models and key personnel.

- obtain and possess knowledge of and understand their clients' relationships and activities;
- continue to monitor such information throughout the term of their relationship; and
- take certain and defined steps once indicators of suspicious, tortious or illegal activity existed.

629. In particular, each of the Financial Services Provider Defendants was obligated by, without limitation, the BSA, the USA Patriot Act of 2001 (the "Patriot Act"), and federal regulations including 31 C.F.R. § 103.121 and amended 31 C.F.R. § 1020, et seq. (the "Federal Regulations") to perform a reasonable investigation of TelexFree to determine and understand:

- the true identity of its management;
- the true nature of its business activities;
- the true nature of its customer base;
- the true nature of its product offerings; and
- prior to agreeing to provide any financial services or access to the federally regulated banking system.[70]

630. Specifically, pursuant to the KYC analysis mandated by 31 C.F.R. § 103.121 and amended 31 C.F.R. § 1020, et seq. (the "Know-Your-Customer Regulations"), each of the Financial Services Providers Defendants was required to collect information sufficient to determine whether TelexFree, or any other customer of the Defendant involved with TelexFree, posed a threat of criminal or other improper

[70] *See also* Federal Financial Institution Examination Council, BANK SECRECY ACT ANTI-MONEY LAUNDERING EXAMINATION MANUAL (June 2005).

conduct.

631. KYC controls typically include the following:

- collection and analysis of basic identity information (referred to in U.S. regulations and practice as "Customer Identification Program" or CIP);
- name matching against lists of known parties;
- determination of the customer's risk in terms of propensity to commit money laundering, terrorist finance, or identity theft;
- creation of an expectation of a customer's transactional behavior;
- monitoring of a customer's transactions against its expected behavior and recorded profile; and
- monitoring of a customer's transactions against that of the customer's peers.

632. In addition, at all times relevant to this complaint, the Defendant Financial Services Providers were mandated to conduct due diligence prior to opening an account pursuant to 31 C.F.R. 1010.620.

633. At all times relevant to this complaint, the Defendant Financial Services Providers were also mandated without limitation by the BSA, the Money Laundering Control Act of 1986 (the "Money Laundering Control Act"), the Patriot Act, and the Know-Your-Customer Regulations *to continue* to actively monitor TelexFree's business activities, customer base, *and product offerings* once it became a customer.

634. Each of the Financial Services Provider Defendants processed transactions in excess of $25,000 in the aggregate on behalf of TelexFree.

635. Processed transactions in excess of $25,000 in the aggregate on behalf of

TelexFree were suspicious and triggered the SAR requirements set forth in the BSA and the Patriot Act.

636. A transaction is "suspicious" if the transaction: (1) involves funds derived from illegal activities, or is conducted to disguise funds derived from illegal activities; (2) is designed to evade the reporting or recordkeeping requirements of the BSA or regulations under the Act; or (3) has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction. 31 C.F.R. § 1020.320(a)(2)(i) - (iii).

637. As a result of their obligation to file SARs with the Financial Crimes Enforcement Network of the U.S. Department of the Treasury and other appropriate federal law enforcement agencies, as required by the BSA and accompanying Federal Regulations, 31 U.S.C. § 5312 et seq. and 12 CFR § 21.11 (the "Obligation"), each of the Financial Services Providers Defendants was obligated to determine the nature of TelexFree's normal business activities at the beginning of their relationship with TelexFree.

638. The Obligation to file a SAR with the Financial Crimes Enforcement Network of the U.S. Department of the Treasury and other appropriate federal law enforcement agencies was required on an ongoing basis during the course of each Defendant Financial Services Provider's relationship with TelexFree.

639. Each of the Defendant Financial Services Providers performed the above SAR-related investigations at times relevant to this complaint.

640. During times relevant to this complaint, TelexFree's Financial Services Providers knowingly participated in and aided and abetted TelexFree's Pyramid Scheme by, *inter alia*, enabling the TelexFree Pyramid Scheme to operate, expand and continue by providing necessary financial services to TelexFree, the Operational Defendants, and each other, despite actual knowledge that they were engaged in suspicious, tortious or illegal activity.

641. Each of the Defendant Financial Services Providers understood, at a minimum, TelexFree's business models and key personnel prior to opening accounts.

642. Each of the Defendant Financial Services Providers performed the above investigations and understood, at a minimum, TelexFree's business models and key personnel at all times after they opened them and while they were servicing TelexFree's accounts.

643. At times relevant to this complaint, each of the Financial Services Providers Defendants willfully and knowingly acted unfairly, deceptively and in bad faith by failing to timely or properly act on their knowledge of TelexFree's suspicious, tortious or illegal business operation, and to otherwise fulfill their obligations under the BSA, 31 U.S.C. § 5311 et seq.; the Patriot Act, § 326, 31 U.S.C. § 5318; and 31 C.F.R. § 1020 *et seq.*, or, in the alternative, by failing to disclose or report the nature of TelexFree's business operations.

644. At all times material herein, the Financial Services Providers maintained departments responsible for ensuring compliance with the investigation, reporting, and procedural requirements contained in, *inter alia*, the Know-Your-Customer Regulations, 31 U.S.C. § 5312 *et seq.*, 31 U.S.C. § 5311 *et seq.*, the Patriot Act, § 326, and 12 CFR § 21.11 (hereinafter, "Regulatory Account Monitoring Department").

645. Each of the Financial Services Providers maintained a Regulatory Account Monitoring Department.

646. Each of the Financial Services Providers performed the initial investigations required by the foregoing laws.

647. Each of the Financial Services Providers performed the continual monitoring required by the foregoing laws.

648. At all times relevant to this complaint, in the course of complying with their regulatory duties and obligations, the Financial Services Providers and their employees and officers obtained actual knowledge that TelexFree, its Defendant Executive Officers and Top Level Promoters were engaged in suspicious, tortious or illegal activity.

649. In addition to what has already been set forth, actual knowledge of TelexFree's unlawful operation was based in part on the:

- large magnitude and long duration of the Scheme;
- nature and volume of the deposits;
- open association with others known to have been closely tied to past high profile Ponzi and pyramid schemes;

- extensive negative news reports; and
- the fact that the related accounts and transactions bore the classic hallmarks of a Pyramid Scheme.

650. Each of the Financial Service Provider Defendants possess and made use of highly sophisticated software programs that provided them with background information and financial details about prospective customers that are not available to the general public.

651. Under the federal AML laws, the Defendant Financial Service Providers must investigate the top managers, directors, and principal owners of their clients.

652. The Defendant Financial Service Providers also were aware of many Red Flags of suspicious, tortious, and criminal misconduct by TelexFree.

653. At least eleven major news and watchdog websites covering the MLM industry, Ponzi schemes, and online scams analyzed TelexFree in 2012, 2013 and 2014, including, but not limited to:

- BehindMLM.com, an internet watchdog and journalism site dedicated to the MLM industry;
- PatrickPretty.com, an internet watchdog and journalism site covering Ponzi schemes and internet crime;
- Skeptic.blogspot.com, an internet watchdog and blog covering the MLM industry and online scams;
- ASDUpdates.com, an online journal covering internet scams;
- BusinessForHome.org, an internet news site analyzing direct-selling and MLM opportunities;
- CitizenCorps.com, an internet news site analyzing work-from-home and online income opportunities;

- EthanVanderbuilt.com, an internet watchdog and news site covering online scams;
- MLMHelpDesk.com, a blog and news site dedicated to the MLM industry;
- PonziTracker.com, an internet watchdog and news site covering and analyzing Ponzi schemes;
- Scam.com, a community-operated message board analyzing and discussing internet scams; and
- ScamXPoser.com, an internet watchdog site analyzing online income opportunities.

654. In addition to the above-listed websites dedicated to the MLM industry, the following websites specifically dedicated to Ponzi schemes and other online scams conducted analysis and exposés on TelexFree in 2012, 2013, and 2014, including, but not limited to:

- http://www.dailymotion.com/video/xwbhex_telexfree-has-launched-in-usa-english-presentation_news, - video posted on December 30, 2012 by TelexFree Promoter Kelly Isom Tolar, which shows TelexFree Promoters "showering" cash on each other while on stage at a promotional event, and states that TelexFree began in Brazil in January 2012, that it promises "up to $15,360" in income per day, that income is guaranteed without any sales of VoIP, and that TelexFree and Best Western Hotels had partnered to build 500 hotels in Brazil;
- http://www.slideshare.net/growrichteam/telexfree-marketing-plan-english - slide presentation posted on January 18, 2013, which discusses the pyramid structure of TelexFree's operation and states that TelexFree promises payment for posting of ads only, with no sales required;
- http://mmoljbp.blogspot.com/p/telexfree.html - blog posted on January 24, 2013, which repeatedly characterizes TelexFree as a "passive income opportunity," with the opportunity for "six

generations of passive income," and discusses the pyramid structure of the operation;

- http://www.getresponse.com/archive/interestedpeople/Interested-People-TelexFree-Earn-20-a-week-for-a-year-no-recruiting-at-all-10992068.html - blog posted by a TelexFree Promoter named "Suzanna" on April 27, 2013, which states that TelexFree had been "sued by the Brazilian SEC"; and

- http://www.realscam.com/f9/telexfree-scam-not-2366/ - inquiry posted on a user-operated message board of the MLM community on May 30, 2013, stating "It looks like a Ponzy [sic] for me," and requesting feedback, which included a link to BehindMLM.com's exposé of July 27, 2012.

655. TelexFree's *own website* admitted TelexFree's connection to Brazil, legal problems, and lack of legitimate income in a way intended to deceive its Promoters, but not in a way that would avoid detection by the robust and sophisticated systems and personnel of the Financial Services Defendants. For example:

- As of February 25, 2012, the front page of www.TelexFree.com stated "99 TelexFree grows everyday in Brazil" and also included a slideshow presentation "by our President Mr. Jim Merrill" discussing the pyramid structure of the operation;

- As of January 19, 2013, the front page of www.TelexFree.com included a pop-up which stated as follows: "During this week we have been in contact with several government agencies which was extremely useful to clarify the operation of TelexFree…some [Promoters] are making practices [sic] that go against the law of Brazil…";

- During 2013, www.TelexFree.com included photographs of Defendants Merrill, Wanzeler, Costa and numerous Promoters together on stage at the "1°Extravaganza" event, at which "jumbo" checks were distributed, and Members were encouraged to become "TelexFree millionaires" through increased promotion;

- During the entirety of 2013 until approximately November 6, 2013, the front page of www.TelexFree.com included a certificate stating that, according to data analyst Alexa Internet, Inc., "we are among the most visited sites in Brazil." (Importantly, no similar certification with respect to any other country was included); and

- From approximately June 2012 through approximately May 25, 2013, the tab header for www.TelexFree.com announced, "Make money by posting ads."

656. Moreover, setting aside the highly advanced BSA and AML due diligence programs utilized by the Financial Services Provider Defendants, even the most basic internet investigation of TelexFree's clients or its business model or principals would have revealed to these sophisticated corporate entities with experience in identifying illegal and suspicious operations that TelexFree was running an unlawful Pyramid Scheme in the United States that was essentially identical to its shuttered and enjoined Brazilian operation and was otherwise suspicious, tortious or illegal.

657. At a minimum, the following high-profile English-language Google search results generated simply by entering the search term "telexfree" required the Defendant Financial Services Providers to carry out closer-than-standard inquiry and monitoring:[71]

- January 1, 2013. The first page of Google search results includes a video posted by promoter Kelly Isom Tolar to dailymotion.com that clearly sets forth the payment structure of company, as well as the Best Western investment opportunity (http://www.dailymotion.com/video/xwbhex_telexfree-has-launched-in-usa-english-presentation_news). The visible video description by Kelly Isom Tolar states the following:

[71] *See also* search engine trends for TelexFree (provided by MLMRankings.com): http://www.mlmrankings.com/telexfree/trend.htm.

http://telexfreeusateam.com "TelexFree has taken over Brazil since January 2012. Now the USA has the green light to open their doors as of November 2012. In just 11 months, Brazil has created 8 millionaires with 380,000+ reps company wide. Here comes the USA and our opportunity with TelexFREE. I look forward to a lucrative business partnership with you."

- January 24, 2013. A prominent Google result is a Blogspot webpage discussing the income scheme – including references to "6 Generations of Passive Income" – that unambiguously describes a pyramid scheme, and also discusses the hotel opportunity (http://mmoljbp.blogspot.com/p/telexfree.html) .

- March 1, 2013. A first-page Google result is a video entitled "TelexFree Marketing Plan," with transcript, posted to slideshare.net (http://www.slideshare.net/growrichteam/telexfree-marketing-plan-english) that sets forth the structure of TelexFree, clearly describing a pyramid scheme.

- April 27, 2013. A posting by promoter "Suzanna" on getresponse.com, an online marketing community site, discloses that TelexFree is a "company that originated in Brazil and has even been examined and sued by the Brazilian SEC." She also describes TelexFree as a passive income opportunity. (http://www.getresponse.com/archive/interestedpeople/Interested-People-TelexFree-Earn-20-a-week-for-a-year-no-recruiting-at-all-10992068.html).

658. There were also many other videos posted to YouTube and other sites that constituted Red Flags to the Financial Services Provider Defendants.

659. The already sophisticated eye of the Financial Service Providers in AML monitoring is buttressed by the requirements imposed on them by federal banking regulators under the auspices of the FFEIC.

660. FFIEC's Bank Secrecy Act and Anti-Money Laundering Examination Manual (the "FFIEC Examination Manual") requires Financial Services Providers operating in the United States to establish mandatory Anti-Money Laundering Programs

and Guidelines.

661. According to the FFIEC Examination Manual, every Financial Services Provider must have a written Customer Identification Program ("CIP") that has been approved by the bank's board of directors.

662. The purpose of the CIP is to enable the Financial Services Provider to form a reasonable belief that it knows the true identity of each customer.

663. The CIP should describe, among other things:

- circumstances in which the Financial Services Providers should not open an account;
- when the Financial Services Providers should close an account after attempts to verify a customer's identity have failed; and
- when the Financial Services Providers should file a SAR.

664. The CIP must include procedures for determining whether the customer appears on any federal government list of known or suspected terrorists or terrorist organizations, Office of Foreign Assets Control lists, and lists compiled under 31 CFR 1010.520 (Section 314(a) requests).[72]

665. Most major Financial Services Providers use specialized software programs to run these database checks.

666. According to the FFIEC Examination Manual, the Financial Services Provider's board of directors must also approve a written BSA/AML compliance

[72] The Patriot Act Section 314(b) permits financial institutions, upon providing notice to the United States Department of the Treasury, to share information with one another to identify and report to the federal government activities that may involve money laundering or terrorist activity. Financial institutions wanting to do so may notify the Treasury Department by clicking on the Section 314(b) Certification link and supplying the required information.

program for the institution.

667. The Financial Services Provider's board of directors must also evaluate the Financial Services Provider's audit and training programs to ensure that the CIP is adequately incorporated.

668. The Financial Services Provider's account opening procedures must mandate that the Provider conduct a risk assessment of prospective customers and classify them as low-risk, medium-risk or higher-risk.

669. This risk assessment classification will affect how intensive the Financial Services Provider's BSA and AML due diligence process must be.

670. The FFIEC Examination Manual states "the bank may determine that a customer poses a higher risk because of the customer's business activity, ownership structure, anticipated or actual volume and types of transactions, including those transactions involving higher-risk jurisdictions." If so, the bank should consider obtaining, both at account opening and throughout the relationship, the following information on the customer:

- purpose of the account;
- source of funds and wealth;
- individuals with ownership or control over the account, such as beneficial owners, signatories, or guarantors. *Guidance on Obtaining and Retaining Beneficial Ownership Information* was issued by FinCEN, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, and Securities and Exchange Commission, in consultation with the U.S. Commodity Futures

Trading Commission, in May 2010. The guidance consolidates existing regulatory expectations for obtaining beneficial ownership information for certain accounts and customer relationships;

- occupation or type of business (of customer or other individuals with ownership or control over the account);
- financial statements;
- banking references;
- domicile (where the business is organized);
- proximity of the customer's residence, place of employment, or place of business to the bank;
- description of the customer's primary trade area and whether international transactions are expected to be routine;
- description of the business operations, the anticipated volume of currency and total sales, and a list of major customers and suppliers; and
- explanations for changes in account activity.

671. AML experts consider MLM companies such as TelexFree to be higher-risk customers for BSA and AML purposes, partly because they pose the risk of Ponzi schemes and violations of the Securities Act of 1933.

672. AML experts also regard MLMs as higher-risk because those companies have high volumes of sales, high customer dissatisfaction rates, and guaranteed money-back policies.

673. In 2013, the Financial Crimes Enforcement Network ("FinCen") instituted a BSA proceeding against TD Bank, which assessed a $37.5 million civil money penalty against that bank for failing to detect and report another Ponzi scheme and was predicated on the theory that Financial Services Providers should treat MLMs as higher-

risk for purposes of BSA and AML due diligence.[73]

674. FinCen's action supports the conclusion that MLM companies should be treated as higher-risk for purposes of BSA and AML compliance.

675. To comply with the requirements in FFIEC Examination Manual, the Defendant Financial Services Providers must also inquire into and consider:

- the customer's source of funds and particularly high volumes of cash transactions;
- the anticipated destination of those funds; and
- the countries and clients with which the customer is doing business.

676. The Defendant Financial Services Providers must ascertain and form a reasonable belief as to the true identity of a customer, including any higher-risk customers.

677. In addition to what was set forth above, to comply with the requirements in FFIEC's Examination Manual, Financial Services Providers must ascertain the customer's true identity by at a minimum, obtaining the customer's name, date of birth (for individuals), address, and identification number.

678. In addition, for customers that are business entities, the Defendant Financial Services Providers must obtain documents showing the legal existence of the entity (such as certified articles of incorporation, an unexpired government-issued business license, a partnership agreement, or a trust instrument).

[73] Concurrently, the Office of the Comptroller of the Currency assessed a second $37.5 million penalty against TD Bank for related violations and the SEC imposed a $15 million penalty on that bank for related securities violations.

679. The Defendant Financial Services Providers may require added identifying information for higher-risk customers.

680. Specifically, where, based on their risk assessment of a new account opened by a customer that is not an individual, the Defendant Financial Services Providers should obtain information about individuals with authority or control over such accounts including signatories, to verify the customer's identity.

681. This verification method applies when the Defendant Financial Services Providers cannot verify the customer's true identity using documentary or non-documentary methods.

682. For example, a Financial Services Provider may need to obtain information about and verify the identity of a sole proprietor or the principals in a partnership when the bank cannot otherwise satisfactorily identify the sole proprietorship or the partnership.

683. The Defendant Financial Services Providers must also verify the customer's identity within a reasonable period of time after opening the account.

684. The Defendant Financial Services Providers must report any suspicious activity by completing a Suspicious Activity Elevation Form and submitting it to the appropriate federal regulator.

685. The FFIEC Examination Manual also requires Financial Services Providers to conduct "Customer Due Diligence" or "CDD."

686. The FFIEC Examination Manual states, "the bank should obtain

information at account opening sufficient to develop an understanding of normal and expected activity for the customer's occupation or business operations."

687. According to FFIEC, "much of the CDD information can be confirmed through an information-reporting agency, banking references (for larger accounts), correspondence and telephone conversations with the customer, and visits to the customer's place of business. Additional steps may include obtaining third-party references or researching public information (e.g., on the Internet or commercial databases)."

688. In addition to ascertaining the customer's identity, the Defendant Financial Services Providers must be entirely satisfied with their understanding of the customer's beneficial ownership, management structures, and usual transaction flows.

689. In that regard, the Defendant Financial Services Providers must verify the personal identity of the customer's major shareholders and top managers (especially authorized signatories).

690. During CDD, the Defendant Financial Services Providers should also pay attention to any Red Flags.

691. FFIEC has identified a long list of BSA and AML Red Flags, including, but not limited to:

- "A customer makes frequent or large transactions and has no record of past or present employment experience."
- "Many funds transfers are sent in large, round dollar, hundred dollar, or thousand dollar amounts."

- "Funds transfer activity occurs . . . when the activity is inconsistent with the customer's business or history."
- "Many small, incoming transfers of funds are received."
- "Funds transfer activity is unexplained, repetitive, or shows unusual patterns."
- "Payments or receipts with no apparent links to legitimate contracts, goods, or services are received."
- "A large volume of cashier's checks, money orders, or funds transfers is deposited into, or purchased through, an account when the nature of the accountholder's business would not appear to justify such activity."
- "Unusual transfers of funds occur among related accounts or among accounts that involve the same or related principals."
- "Goods or services purchased by the business do not match the customer's stated line of business."
- "Payments to or from the company have no stated purpose, do not reference goods or services, or identify only a contract or invoice number."
- "Customer receives large and frequent deposits from online payments systems yet has no apparent online or auction business."
- "A large number of incoming or outgoing funds transfers take place through a business account, and there appears to be no logical business or other economic purpose for the transfers, particularly when this activity involves higher-risk locations."

692. Subsequent to an account opening, the Defendant Financial Services Providers must monitor the account and the customer.

693. Specifically, to comply with FFIEC's Examination Manual, it is not enough to only conduct CDD at account opening.

694. In addition, according to FFIEC, "banks should monitor their lower-risk

customers through regular suspicious activity monitoring and customer due diligence processes. If there is indication of a potential change in the customer's risk profile (e.g., expected account activity, change in employment or business operations), management should reassess the customer risk rating and follow established bank policies and procedures for maintaining or changing customer risk ratings."

695. The FFIEC goes on to state that the Defendant Financial Services Provider's CDD processes "should include periodic risk-based monitoring of the customer relationship to determine whether there are substantive changes to the original [CDD] information (e.g., change in employment or business operations)."

696. Furthermore, the FFIEC clearly mandates that higher-risk customers must undergo enhanced due diligence ("EDD") and that higher-risk customers should be reviewed more frequently and intensively than lower-risk customers and particularly if new Red Flags appear.

697. It is generally accepted industry opinion in the financial services industry that customers who have the same amount coming in from hundreds of thousands of people with different last names require closer inquiry and monitoring.

698. When a bank finds out that a client is laundering money or running an unlawful enterprise it should terminate the banking relationship, shut down the accounts and file a SAR.

X. TelexFree's Suspicious, Tortious and Unlawful Operation Displayed Red Flags Detectable by the Defendant Financial Service Providers

699. After authorities began to shut down TelexFree, Wanzeler, Merrill and

Costa's unlawful Pyramid Scheme in Brazil in June of 2013, they simply switched their geographic target market to the United States.

700. During the putative class period, the Financial Services Defendants maintained robust, sophisticated, and effective due diligence systems that detected TelexFree's Red Flags because the components of TelexFree's switch from its Brazil-targeted Pyramid Scheme to its United States-targeted Pyramid Scheme would have been included within their search parameters, including, but not limited to, the following:

- use of the identical business name;
- use of the identical business model;
- use of the same product;
- specifically naming their unlawful business operation in Brazil – Ympactus – in their standard contract as owning the product and as a party to the contract;
- use of the same people to serve as officers, executives and management;
- use of the same address, office space and office equipment;
- use of the same back office support;
- changing its public name to TelexFree;
- indiscriminately transferring money from account to account including business to personal;
- obtaining cashiers checks for millions of dollars from business accounts after changing its compensation and business plan; and
- obtaining cashiers checks for millions of dollars from business accounts after filing for bankruptcy.

701. The following graphics taken from the public areas of both the English and Spanish TelexFree websites, as well as numerous Promoters' websites and video "tutorials," made no secret of the pyramid structure of the business:













702. Sophisticated parties such as the Defendant Financial Services Providers could not have been fooled by the public announcements and key marketing representations advanced by TelexFree, its Principals, Executive Officers and the Operating Defendants.

703. For example, as noted above, in promoting TelexFree and himself, Merrill held himself out, including through direct references on the TelexFree website, as having experience in VoIP and internet phone service and having a college degree. Neither claim was true.[74]

[74] In sworn testimony given to the SOC on March 25, 2014, Merrill testified to having limited knowledge of VoIP services and never working in the telecom business.

704. In carrying out their FFIEC due diligence, the Financial Service Provider Defendants were required under the circumstances to investigate and uncover false facts such as the false past experience and education of a corporate principal.

705. As a result of their compliance with the foregoing laws, each of the Financial Services Providers was actually aware of the facts and evidence of suspicious, tortious, or illegal activity, or Red Flags as follows, as well as those offered elsewhere in the complaint:

- the TelexFree Program violated the express terms of M.G.L. c. 93, § 69 governing multi-level distribution companies (i.e., MLMs), and thereby M.G.L. c. 93A prohibiting unfair or deceptive acts or practices;
- the TelexFree business operations in Brazil were shuttered by Brazilian authorities and TelexFree and its Principals and Executive Office were enjoined from doing further business;
- the TelexFree program was the subject of extensive MLM coverage warning that it was an unlawful, tortious and suspicious Pyramid Scheme;
- the TelexFree business model expressly sold memberships that enabled Promoters to be paid without the sales of any actual product;
- less than 0.5% of TelexFree's total revenue was derived from sales of its VoIP product, with the remainder deriving from membership fees;
- Promoters were expressly paid for merely placing spam advertisements on the internet or recruiting additional promoters and product sales were expressly unrelated to a *guaranteed* return on investment ("ROI");
- the guaranteed ROI promised to Promoters was exceedingly high with no apparent risk;

- the memberships were not registered with any governmental agency but were nevertheless marketed and sold to members of the general public via public solicitation over the Internet and otherwise;
- the vast majority of Investors were of Brazilian/Dominican-American ethnicity as evidenced by their sur-names;
- videos by Defendant Founders and Inside Promoters;
- the advertisements posted by Promoters were merely spam ads;
- various Defendant Founders, Principals, and Top Level Promoters were associated with other unlawful and previously exposed Pyramid Schemes;
- an extremely large number of account transactions occurred and that number increased rapidly over time;
- many funds transfers and deposits were received in the exact same dollar amounts and with no apparent links to legitimate contracts, goods, or services. This latter factor and the high volume of small incoming transactions are considered by the FFIEC as a red flag in its examination handbook;
- credit card payments involving TelexFree were subject to an exceptionally high rate of credit card fraud and chargebacks;
- as a MLM company, TelexFree was regarded as a high-risk customer by banks and payment processing companies;
- funds were commingled between TelexFree entities;
- TelexFree failed to keep financial records in accordance with GAAP standards;
- huge wire transfers of funds were made to personal accounts of certain Defendant Founders and shell corporations;
- wire transfers of large sums to foreign entities occurred;
- TelexFree was widely regarded as a fraudulent scheme by the online MLM community;

- TelexFree maintained a Brazilian affiliate, also operating under the name TelexFree, which was under investigation by the Brazilian government as of February 2013 under suspicion of operating an illegal Ponzi scheme;

- in a March 1, 2013 press release available online, Defendant Merrill, president of TelexFree, admitted that "the real 'secret sauce' of our [TelexFree's] success is our compensation plan…We [TelexFree] pay our representatives weekly if they follow our system and advertise our service on the Internet," while making no mention of any product or service;

- in June 2013, TelexFree's Brazilian affiliate had publicly falsely claimed that MAPFRE, an international insurance company, served as insurer to TelexFree, prompting MAPFRE to release a public statement online denying any relationship with TelexFree and threatening legal action against TelexFree for making this false statement; and

- in June 2013, TelexFree's Brazilian affiliate Ympactus, also operating under the name TelexFree, was shut down and enjoined from doing further business by the Brazilian government for operating an illegal Ponzi scheme. This event was promptly reported online in English language news sources as was follow up news.

706. Pursuant to FFEIC guidelines, the payments being deposited into the accounts maintained at the Bank Defendants or processed by the Defendant Payment Processing Service Companies originated in the majority of instances from individuals bearing foreign surnames, raising actionable concerns regarding potential violations of the Patriot Act and other federal banking laws and regulations regarding issues of potential money laundering, terrorism, drug trafficking, and Ponzi schemes.

707. The overwhelming number of Red Flags referenced throughout this complaint was sufficient to have compelled a reasonable Financial Services Provider to make further inquiries and/or decline to provide financial services (as some banks did).

Other information about TelexFree that was available to the Financial Services Providers went beyond raising the specter of suspicious activity and constituted reasonable evidence of tortious or unlawful conduct, of which the Financial Services Providers had actual knowledge.

708. To the extent that any of the Financial Services Providers did not comply with its regulatory duties and/or knowingly failed and/or refused to report the results of such Financial Services Provider's own investigation of TelexFree to the proper authorities despite the improper activity revealed by such investigation, it turned a blind eye to the tortious conduct it knew was occurring.

709. TelexFree's Financial Services Providers had sufficient notice of wrongdoing in this case to give rise to a duty on their part to undertake heightened scrutiny of the TelexFree accounts, inquire further and take reasonable steps to prevent a diversion of funds.

710. Upon their knowledge of suspicious, tortious or unlawful conduct, TelexFree's Financial Services Providers were required to refuse to do business with TelexFree initially, freeze TelexFree's existing accounts, stop doing new business with TelexFree, and report the activities to federal authorities.

711. TelexFree's Financial Services Providers received substantial compensation in exchange for the services they provided to TelexFree and the other TelexFree Pyramid Scheme participant Defendants.

712. Each of the Financial Services Providers was an integral cog in the

TelexFree Scheme and without them, TelexFree would not have been able to get off the ground, develop, maintain or grow its Pyramid Scheme.

713. The Financial Services Providers were also an integral cog in the siphoning off of funds by the Operational Defendants.

714. Without the active assistance and cooperation of the Financial Services Providers, the Operational Defendants would not have been able to wrongfully convert the class members' funds to their own personal possession and use.

715. Notwithstanding knowledge of suspicious, tortious or illegal activity, the Bank Defendants accepted, processed and maintained deposit accounts on behalf of TelexFree, accepted payment of AdCentral package membership fees from the Promoters on behalf of TelexFree and made transfers of the payments derived from the Scheme.

716. Notwithstanding knowledge of suspicious, tortious or illegal activity, the Payment Processing Services Company Defendants processed payments between TelexFree, the Operational Defendants, and its Promoters.

717. Notwithstanding knowledge of suspicious, tortious or illegal activity the Payment Processing Services Company Defendants provided the electronic gateway used to send and receive such payments, and provided the electronic interface services used by both TelexFree and its Promoters and were thereby enriched.

Y. The Bank Defendants

718. During the time they did business with TelexFree, the Defendant Banks

possessed actual knowledge of the fraudulent nature of TelexFree's business operation and substantially assisted the tortious conduct.

719. As detailed herein, at times material to this complaint, the Defendant Banks received significant funds from TelexFree and other Defendants and provided banking services, maintained accounts, and received and executed transfers of funds from or for the benefit of TelexFree.

720. For example, in 2013, Citizens maintained accounts on behalf of TelexFree and processed thousands of transactions amounting to millions of dollars for TelexFree.

721. Similarly, Wells Fargo also maintained accounts on behalf of TelexFree and processed transactions amounting tens of millions of dollars for TelexFree in 2013.

722. Activity undertaken on behalf of TelexFree or the other Operational Defendants generated income to the Financial Services Defendants.

723. At times material herein, the Defendant Banks received investment funds of Plaintiffs.

724. At times material herein, the Defendant Banks profited from their relationship with TelexFree and other Defendants and were unjustly enriched.

725. At diverse times, TelexFree processed through the Defendant Financial Services Providers over 783,771 investments of either $289 or $1,375 (including combinations thereof) totaling over $880,189,455.32.

726. The Financial Service Providers derived substantial income from their

services to TelexFree.

727. More particularly, the Defendant Banks earned fees from their participation in the TelexFree Scheme on several levels:

- interest on amounts held on behalf of TelexFree at or above the Federal Funds Rate, currently set at .25%;
- processing fees for each transaction, typically in an amount of 1-4% of the amount transferred per transaction, or, in some cases, $40 per transaction;
- annual ACH processing charges;
- return deposit item fees;
- chargeback fees; and
- miscellaneous fees and servicing charges.

728. In general, the Defendant Banks possessed a federal regulatory duty to look for certain types of facts or lack thereof, including the identity and purpose of the individuals opening and making payments into their accounts.

729. Even a perfunctory investigation of TelexFree in accordance with their regulatory duties would have revealed the existence of the tortious Pyramid Scheme.

730. Each of the Defendant Banks became aware of the Red Flags surrounding TelexFree and its conduct pursuant to their regulatory duties.

731. Each of the Defendant Banks also became aware of strong evidence of suspicious, tortious or illegal activity including the outright fraud on the part of TelexFree, its Founders and Principals pled with excruciating particularity herein.

732. The overwhelming number of Red Flags and other indicia of fraud

established the existence of TelexFree's tortious conduct and the Pyramid Scheme and the Defendant Banks thereby gained actual knowledge of its tortious conduct.

733. In the alternative, if any Defendant Banks failed to perform any of the required investigations and account monitoring, it turned a blind eye to the tortious conduct it actually knew underlied TelexFree's activities despite its general awareness of the unlawful nature of the Scheme.

734. At times material herein, despite having knowledge that TelexFree was an enterprise carrying out suspicious, tortious, or unlawful, unfair or deceptive acts or practices, the Defendant Banks performed integral services and provided essential assistance that was used to further TelexFree's unlawful business.

735. At times material herein, despite having knowledge that TelexFree was an enterprise carrying suspicious, tortious, or unlawful, unfair or deceptive acts or practices, the Defendant Banks ensured TelexFree was given access to banking services and those banking services were used to further TelexFree's unlawful business.

736. Despite actual knowledge of the fraudulent nature of TelexFree's business operations, the Defendant Banks continued to provide TelexFree with banking services and substantially assisted its tortious conduct.

737. As an integral part of the Pyramid Scheme, the Defendant Banks received funds from Promoters, which funds were then held for the benefit of or transferred from or to TelexFree, its affiliated entities, and its Defendant Founders and Principals,

Executive Office, Top Level Promoters and Licensed Professionals.[75]

738. Obtaining, maintaining and transferring Promoters' funds was the essence of the TelexFree Pyramid Scheme and without the services of the Defendant Banks, the TelexFree United States Pyramid Scheme could not have been opened, been maintained, thrived and been exploited through to the end where Principals and other Defendants were issued cashiers checks and either successfully absconded with significant funds or were caught while in the act of doing so.

739. Despite their actual knowledge, the Defendant Banks agreed and undertook to provide banking services that were essential to the operation of the Pyramid Scheme.

740. The services provided by each Defendant Bank included, *inter alia*, the following:

- processing and opening of depository accounts;
- receiving payments made by Promoters to TelexFree to become Members of the TelexFree Program;
- maintaining depository accounts containing funds paid by Promoters to TelexFree for AdCentral Package membership fees;
- making payments to certain Promoters as part of TelexFree's purported return on investment;
- transferring funds paid by Promoters to TelexFree among TelexFree entities, Defendant Founders' personal accounts, foreign companies and shell companies; and

[75] *See, e.g.*, check deposited by TelexFree into its account with Fidelity Bank, to wit, account number 211370707, attached as Exhibit 7.

- allowing TelexFree to use the bank's name in its promotional materials thereby lending TelexFree the use of the bank's reputation as a large, nationwide banking institution and credibility.

741. Additional facts specific to each Defendant Bank provide additional particulars of its further involvement, participation and aiding and abetting of the TelexFree Pyramid Scheme.

1. Defendant Bank of America

742. As documented in the criminal complaint filed by the DHS dated May 9, 2014, against Defendants Wanzeler and Merrill (¶ 61), Bank of America first opened accounts in TelexFree's name in February 2012.

743. Bank of America's North American Account Opening Guide (the "Guide") specifically provides that the opening of accounts is "subject to significant scrutiny by regulators and the bank."

744. Citing the Know-Your-Customer Requirements, the Guide also states that "[r]egulators require us to be entirely satisfied with our understanding of our clients' identities, beneficial ownership, management structures and usual transaction flows."

745. Bank of America performed an investigation of TelexFree prior to agreeing to accept it as a customer and did further comply with its own requirements.

746. At times relevant to this complaint, Bank of America complied with due diligence requirements when opening TelexFree's accounts, including the Know Your Customer Requirements and it was aware of the Pyramid Scheme nature of TelexFree's business plan.

747. Despite Bank of America's knowledge of the illegal nature of TelexFree's business activities, including the fact it obviously violated M.G.L. c. 93, § 69, Bank of America agreed to accept TelexFree as a customer and began to perform banking services for TelexFree, which it continued to perform until at least December 31, 2013.

748. In addition to opening and maintaining accounts for TelexFree, Bank of America was specifically named in TelexFree's "signup procedures" document which was available online as an entity holding TelexFree accounts into which transfers of membership funds could be made by Members.[76]

749. As described above, during 2013, TelexFree affiliates were urging recruits to make walk-in deposits at a Bank of America branch in Massachusetts and the instructions given strongly resembled instructions given to recruits in 2008 by another infamous Ponzi scheme, AdSurfDaily.

750. More specifically, Members were directed to transfer their membership fees to a "corporate" account at Bank of America under the name "TelexFREE LLC," were provided with the applicable account and routing numbers, and were provided with the Bank of America branch address, "188 Bosyon [sic] Tpke Shrewsbury Ma 01545."[77]

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[76] *See* "*Signup procedures for TelexFREE*," attached to Exhibit 3, Decl. of Gray Echavarria, Attachment 37, http://PatrickPretty.com, "*TelexFree Affiliates Gave AdSurfDaily-Like Coaching Tips, Instructed Prospects to Make Deposits at Bank of America[…]TelexFree Also May Have TD Bank Account*," http://patrickpretty.com/2013/07/08/telexfree-affiliates-gave-adsurfdaily-like-coaching-tips-instructed-prospects-to-make-deposits-at-bank-of-america-and-to-copy-slips-to-team-leaders-gmail-address-for-expedited-service-t/ (July 8, 2013) (including screen shot of TelexFree bank transfer instructions).

[77] *See id*; *see also* TelexFree Recruitment Presentation, available at

751. Bank of America knowingly permitted TelexFree to identify it in promotional materials as the holder of its accounts and thereby lent an aura of legitimacy and credibility to TelexFree's business operations through TelexFree's connection with a large and well-established financial institution.

752. In addition to maintaining and servicing depository accounts, Bank of America also provided credit to TelexFree, via at least two credit cards, which are identified in TelexFree's 2013 balance sheet as "Bank of America Braz Help 0033" and "Bank of America Telexfree 2658."

753. Pursuant to its obligations to perform ongoing customer monitoring of TelexFree, Bank of America's Regulatory Account Monitoring Office, employees and officers discovered the Red Flags and evidence of the suspicious, tortious or unlawful activities described herein and deliberately ignored them.

754. In addition, the fact that virtually all deposits into Bank of America's account xxxxxxxx7408 were made for the purchase of an AdCentral package, and not TelexFree's purported VoIP product, was known to Bank of America's Regulatory Account Monitoring Office, employees and officers and was an additional indication that TelexFree was operating an illegal Pyramid Scheme.

755. Specifically, between June 2012 and May 2013, Bank of America account xxxxxxxx7408, held in the name of TelexFree, Inc., received 1,133 deposits, totaling $12,203,496.48.

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http://webopportunities.weebly.com/uploads/1/5/8/5/15857054/telex.pp.2.13.pdf.

756. Furthermore, between September 2012 and May 2013 there were 813 deposits into account xxxxxxxx7408 in the exact amount of the fee for an AdCentral Family package ($1,425 or $1,375), totaling $1,142,625.

757. During this same period, there were only nine deposits in the amount of $49.90 – the VOIP purchase price – into account xxxxxxxx7408.

758. Notably, TelexFree's marketing materials that were available online made clear to what these sums corresponded.

759. Bank of America, while examining TelexFree during the initial account opening process and later while conducting ongoing monitoring of TelexFree following account opening, investigated TelexFree's management, business activities, customer base, and product offerings and discovered the Red Flags and evidence of suspicious, tortious or unlawful activities.

760. As a result of Bank of America's required initial investigation and ongoing monitoring of TelexFree, Bank of America possessed actual knowledge that TelexFree was engaged in an illegal Pyramid Scheme.

761. On or about April 24, 2013, Bank of America informed TelexFree that it would cease doing business with TelexFree due to concern over TelexFree's illegal business activities.[78] Additionally, on or about April 24, 2013, Defendant Labriola

[78] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 22, http://patrickpretty.com/2013/07/08/telexfree-affiliates-gave-adsurfdaily-like-coaching-tips-instructed-prospects-to-make-deposits-at-bank-of-america-and-to-copy-slips-to-team-leaders-gmail-address-for-expedited-service-t/ ("Steve Labriola, Director of Marketing for Telex FREE, Boston, announced via email earlier today that they are 'pulling out of Bank of America.' These appear to be dated April 24, 2013. The claims appear on sites slugged

announced, in a mass email to TelexFree Members that TelexFree would be "pulling out" of Bank of America.[79]

762. Despite the foregoing representation that Bank of America would cease doing business with TelexFree, Bank of America continued to perform banking services for TelexFree and its Defendant Founders for at least another eight months, until about December 2013.

763. As an example of services continued, on August 30, 2013, Defendant Labriola announced during a public conference call with TelexFree Members that payments due-and-owing from Bank of America to members as of July 30, 2013 required manual sorting, since "Bank of America didn't give them a sorted list" as to which of the payments had already been made by Bank of America.[80]

764. As another example, a document dated November 11, 2013, establishes that Defendant Merrill, on behalf of TelexFree, directed Allied Wallet, a Defendant payment processor, to transfer funds via international wire transfer to a TelexFree account with Bank of America.[81]

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telexfreeunitedkingdon.weebly.com and mytelexfree4u.blogspot.com and telexfreeunitedstates.com. So, this leads to questions about whether TelexFree had the 'Zeek problem' — i.e., whether the banks pulled the plug on TelexFree. The sites also make this claim: ' . . . For now, and those on the East Coast, please use TD Bank for your walk-in deposits.'").

[79] *See* http://telexfreeunitedkingdon.weebly.com/telexfree-updates.html (recruitment website of TelexFree 'Team Builder' Leonardo de Souza] and http://mytelexfree4u.blogspot.com/ (website of TelexFree Promoter).

[80] *See* http://teamstelexfree.blogspot.com/p/blog-page_7.html (recruitment website of TelexFree Promoter)

[81] *See*, Allied Wallet Bank Information Form for Bank of America, attached herewith as Exhibit 8.

765. Furthermore, Bank of America continued to provide credit, via at least two credit cards, at least through December 31, 2013, as indicated on TelexFree's 2013 balance sheet.

766. Bank of America continued to provide credit to TelexFree despite its knowledge of the suspicious, tortious or illegal nature of TelexFree's conduct, also lending an aura of legitimacy and credibility to TelexFree's business operations through TelexFree's connection with a large and well-established financial institution.

767. Although Bank of America possessed knowledge of the tortious nature of TelexFree's business activities from the time of its initial investigation and during its monitoring of TelexFree, it continued to provide TelexFree with credit and depository services integral to the TelexFree Scheme.

768. Through its actions, Bank of America substantially assisted in the perpetration of, and otherwise became an integral part of, TelexFree's fraudulent Scheme.

769. At a minimum, Bank of America's initial investigation and ongoing monitoring of TelexFree, made it aware that TelexFree was engaged in suspicious, tortious or unlawful conduct, but it willfully turned a blind eye to the results of its investigation and monitoring because it refused to suspend service or terminate its banking relationship with them or Operational Defendants and it continued to provide TelexFree with credit and depository services integral to the TelexFree Scheme until at least December 2013.

770. Through its actions, Bank of America knew TelexFree's conduct constituted a breach of duty and violated M.G.L. c. 93, § 69 and M.G.L. c. 93A, and it gave substantial assistance and encouragement to the perpetuation of, and otherwise became an integral part of, TelexFree's unlawful Scheme.

2. Defendant TD Bank

771. Defendant TD Bank, N.A., has over 1,300 domestic locations in 16 states and one foreign branch without a physical location. TD Bank is a large national bank with approximately $212 billion in assets and approximately 25,000 employees. TD Bank is a member of TD Bank Group and a subsidiary of The Toronto-Dominion Bank of Toronto, Canada. The Toronto-Dominion Bank trades on the NYSE Euronext under the ticker symbol "TD."

772. TD Bank has previously settled accusations that it provided active assistance to large Ponzi schemes in violation of the BSA and other laws, including Scott Rothstein's $1.2 billion Florida-based Ponzi scheme, for which it was civilly prosecuted and fined.

773. The Office of the Comptroller of the Currency ("OCC") is TD Bank's federal functional regulator. In September 2013, the OCC determined that TD Bank violated the BSA from April 2008 through September 2009, by failing to file SARs in a timely manner, in violation of 31 C.F.R. § 1020.320 and 31 U.S.C. § 5318(g). TD Bank agreed to a $37.5 million civil money penalty assessed by the OCC.[82]

[82] *See* Exhibit 9 – September 20, 2013 OCCurrency Consent Decree.

774. The September 22, 2013 consent decree followed several years of active investigation and negotiations. At all times in 2012, 2013, and 2014 that TD Bank was servicing TelexFree, it was under investigation by the OCC because it "willfully violated the Bank Secrecy Act's reporting requirements by failing to detect and adequately report suspicious activities in a timely manner in violation of 31 U.S.C. § 5318(g) and 31 C.F.R. § 1020.320."[83]

775. TD Bank violated BSA suspicious activity reporting requirements by failing to detect and report suspicious activity and by filing late SARs in relation to the so-called Rothstein Ponzi scheme. TD Bank failed to properly identify, monitor, and report suspicious activity in Rothstein's accounts. A lack of adequate training for both the business and BSA/AML staff also contributed to TD Banks' failure to recognize this suspicious activity.

776. In May 2010, Coquina Investments filed a lawsuit alleging that TD Bank aided and abetted the Rothstein Ponzi scheme, made fraudulent misrepresentations and engaged in a pattern of racketeering in violation of RICO.

777. In January 2012, a jury returned a verdict against TD on both aiding and abetting and fraudulent misrepresentation, awarding $32,000,000 in compensatory damages and $35,000,000 in punitive damages.

778. Evidence showed that TD Bank, through its then-regional vice president, Frank Spinosa, and other employees, aided and abetted the scheme and made fraudulent

[83] *Id.* at 2.

misrepresentations.

779. Evidence established TD Bank N.A. had in place standard protocols to detect suspicious and/or illegal banking activities. The evidence also established that to facilitate the Ponzi Scheme TD Bank N.A. ignored alerts generated by its standard protocols for years. These protocols included its AML system that would alert it to suspicious activity and a related "Standard Investigative Protocol," which provided guidance concerning reportable or non-reportable suspicious activity and provided procedures that TD Bank employees were to follow without exception.

780. TD Bank N.A. ignored 17 months of alerts on the AML system. The amount of money moving through the accounts and the speed with which it moved was also a focus of the OCC. TD Bank N.A. also ignored numerous concerns raised by multiple TD Bank, N.A. executives relative to the selling of settlements, the limited banking relationship with various parties seeking to open accounts with significant balance changes, and the large value of wires being received.

781. TD Bank N.A.'s awareness of the Ponzi scheme and the Red Flags associated with Ponzi schemes generally was highlighted not only through the *Coquina* verdict and the evidence supporting it.

782. TD Bank's awareness of the Ponzi scheme and the Red Flags associated with Ponzi schemes generally was also highlighted through TD Bank's actions through counsel and its witnesses because during the course of the litigation TD Bank willfully withheld evidence of Red Flags showing illegal activity.

783. During discovery, Coquina requested documents evidencing potential illegal activity, including documents related to the standard protocols. In response, TD Bank willfully provided only limited documents despite the requirements imposed upon it by the Federal Rules of Civil Procedure.

784. The Coquina plaintiffs filed five motions for sanctions, three before or during trial and two after trial, alleging serious discovery violations willfully carried out by TD Bank and/or its counsel.

785. These motions unveiled the following among other things:

- Just before the close of discovery and subsequent to the deposition of the 30(b)(6) corporate representative, Vincent Auletta (vice president of global due diligence), wherein he testified that there were no Rothstein alerts before September 2009 and no more than 5 alerts after, the bank produced 150 pages of AML alerts from September 2009 –November 2009.

- On the eve of trial, TD Bank, N.A. produced 17 months' worth of AML alerts generated by the Searchspace system for Rothstein accounts which had not been previously disclosed and which were separate and distinct from normal fraud alerts, in addition to numerous communications indicating that TD Bank executives were aware of the investment schemes.

- After the trial had concluded, during the course of different litigation against TD Bank, Coquina learned that TD Bank did in fact have a document called "Standard Investigative Protocol," which it had repeatedly denied having during discovery and trial and that a document they had received, the CDD (Customer Due Diligence) form generated by the Cash Management Department of TD Bank, was not produced in color, which resulted in the absence of important and relevant information including the presence of a red banner at the top proclaiming that the account was "HIGH RISK."

786. The district court sanctioned TD Bank for willful misconduct in failing to

provide the color copy of the CDD and other relevant documents.

787. At all times relevant to the complaint, Defendant TD Bank maintained multiple accounts on behalf of TelexFree, another Ponzi scheme.

788. TD Bank first opened accounts in TelexFree's name in September 2012.[84]

789. TD Bank performed its KYC investigation of TelexFree prior to agreeing to accept TelexFree as a customer and otherwise complied with all banking regulations when opening TelexFree's accounts.

790. TD Bank continually performed its KYC investigations of TelexFree and otherwise complied with all banking regulations at all times it continued to service TelexFree during the 2012-2014 class period.

791. Yet, despite the obvious illegal nature of TelexFree's business activities, TD Bank agreed to accept TelexFree as a customer and began to perform banking services for it.

792. Despite the obvious illegal nature of TelexFree's business activities, TD Bank did not suspend servicing or terminate its relationship with TelexFree or any of the Operational Defendants until at least January 2014.

793. TelexFree continued to maintain three depository accounts with TD Bank as of December 31, 2013.[85]

794. In addition to opening and maintaining accounts for TelexFree, TD Bank

[84] *See* DHS Criminal Complaint dated May 9, 2014 against Wanzeler and Merrill at ¶ 62(b).

[85] *See* TelexFree's December 31, 2013 Balance Sheet, attached hereto as Exhibit 5.

was specifically named in TelexFree's "signup procedures" document which was available online as an entity holding TelexFree accounts into which transfers of membership funds could be made by Members.[86]

795. Specifically, TelexFree Promoters were directed to transfer their membership fees to a "corporate" account at TD Bank under the name "TelexFREE LLC," and were provided with the applicable account and routing numbers.[87]

796. TD Bank knowingly permitted TelexFree to identify it as the holder of its accounts and thereby lent an aura of legitimacy and credibility to TelexFree's business operations through TelexFree's connection with a large and well-established financial institution.

797. On or about September 6, 2013, TelexFree leadership instructed its members via a public conference call that the fastest way to send money to TelexFree was by direct deposit to TelexFree's accounts with TD Bank.[88]

798. The person speaking on behalf of TelexFree during this conference call was Bradshaw, the above-described high profile pyramid scheme regular formerly active with the now-defunct pyramid schemes Zeek Rewards and AddWallet.

799. The fact that well over ninety percent (90%) of deposits into TD Bank's accounts held in the name of TelexFree, LLC were made for the purchase of an

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[86] *See* "*Signup procedures for TelexFREE*," Exhibit 3, Decl. of Gray Echavarria, Attachment 37; *see also n.* 71.

[87] *Id.*

[88] *See* Exhibit 3, Decl. of Gray Echavarria, Attachment 34, BehindMLM.com, "*TelexFree US business plagued with 'rampant fraud'*", Sept. 7, 2013, http://behindmlm.com/companies/telexfree/telexfree-us-business-plagued-with-rampant-fraud/.

AdCentral package, and not TelexFree's purported VoIP product, was known to TD Bank's Regulatory Compliance Office, employees and officers and was an additional indication that TelexFree was operating an illegal Pyramid Scheme.

800. Specifically, between October 9, 2013, and January 17, 2014, TD Bank account xxxxxx8409 held in the name of TelexFree, LLC received 478 incoming wire transfers ranging from $309 to $142,500, totaling $2,638,712.

801. Of these deposits into account xxxxxx8409, 2,474 were in the amount of $1,425 – the AdCentral Family package purchase price – totaling $3,525,450.

802. During this same period, there was only one deposit into account xxxxxx8409 in the amount of $49.90 – the VoIP purchase price.

803. Notably, TelexFree's marketing materials that were available online made clear to what these sums corresponded.

804. Between September 2012 and July 2013, there were 1,550 deposits by cash, check, money order or wire transfer into TD Bank account xxxxxx2808, held in the name of TelexFree, LLC, in the exact amount of $1,425, the AdCentral Family package purchase price.

805. During this same period, there was only one deposit into account xxxxxx2808 in the amount of $49.90 – the VOIP purchase price.

806. Between June 2013 and October 2013, there were 1,800 deposits into TD Bank account TD Bank account xxxxxxx334, held in the name of TelexFree, LLC, in the exact amount of $1,425, the AdCentral Family package purchase price.

807. During this same period, there was only one deposit into account xxxxxxx334 in the amount of $49.90 – the VOIP purchase price.

808. While examining TelexFree during the initial account opening process and later while conducting ongoing customer monitoring of TelexFree, TD Bank investigated TelexFree's management, business activities, customer base, and product offerings.

809. While examining TelexFree during the initial account opening process and later during its ongoing customer monitoring of TelexFree, TD Bank's Regulatory Account Compliance Office, other employees or officers discovered the Red Flags and other evidence described throughout this complaint, indicating that TelexFree was engaging in suspicious, tortious or unlawful conduct.

810. At a minimum, TD Bank's initial investigation and ongoing monitoring of TelexFree, made it aware that TelexFree was engaged in suspicious, tortious or unlawful conduct, but it willfully turned a blind eye to the results of its investigation and monitoring because it refused to suspend service or terminate its banking relationship with them or Operational Defendants and it continued to provide TelexFree with credit and depository services integral to the TelexFree Scheme until at least January 2014.

811. Through its actions, TD Bank knew TelexFree's conduct constituted a breach of duty and violated M.G.L. c. 93, § 69 and M.G.L. c. 93A and gave substantial assistance and encouragement to the perpetuation of, and otherwise became an integral part of, TelexFree's unlawful Scheme.

3. Fidelity Bank

812. Fidelity Bank opened three accounts for TelexFree, two on August 8, 2013 with initial deposits of $7,123,784.58 and one on September 12, 2013 with deposits of $2,951,337.12.

813. Fidelity Bank helped TelexFree to conduct its business more easily by using remote deposit capture.

814. Fidelity Bank continued to accept deposits from TelexFree until at least December 26, 2013.

815. Notably, the president and chief operating officer of Fidelity Bank, Defendant John Merrill, is the brother of Defendant James Merrill, one of the Founders of the TelexFree Pyramid Scheme.

816. John Merrill's knowledge is imputed to Fidelity Bank because at all times material he was its president and chief operating officer.

817. This familial relationship facilitated the relationship between TelexFree and Fidelity Bank and made Fidelity Bank privy to information regarding TelexFree and its suspicious, tortious or unlawful conduct.

818. At all material times, through his personal relationship with his brother, Defendant John F. Merrill was fully aware of the fact that TelexFree's business operation was nothing more than a Pyramid Scheme, and that TelexFree's other banking relationships were souring.

819. Despite this knowledge, Defendant John F. Merrill used his position and

influence with Fidelity Bank to procure the described banking services from Fidelity Bank for TelexFree and others including the Defendant Founders.

820. Despite Fidelity Bank's actual knowledge of the suspicious, tortious or unlawful nature of TelexFree's business activities, Fidelity Bank agreed to accept TelexFree as a customer and acted as a creditor and depository bank for TelexFree until at least December 31, 2013.

821. Fidelity Bank's Regulatory Account Compliance Office did in fact perform an investigation of TelexFree prior to agreeing to accept TelexFree as a customer in or about August 2013.

822. Although Fidelity Bank possessed knowledge of the suspicious, tortious or unlawful nature of TelexFree's business activities from the time of its initial investigation of TelexFree, it continued to provide TelexFree with credit and depository services.

823. Either through Fidelity Bank's attempts to comply with all banking regulations when opening and maintained its accounts, including the Know-Your-Customer Regulations, or because of the familial relationship between its President and one of TelexFree's masterminds, Fidelity was aware of the Pyramid Scheme characteristics and of TelexFree's unlawful business operation and stopped servicing, terminated its relationship and filed SAR reports but it did not.

824. An investigation was initiated by the SOC against Fidelity Bank on April 30, 2014, concerning Fidelity's banking relationship with TelexFree.

825. That investigation resulted in the entry into a Consent Decree, dated September 22, 2014, whereby Fidelity Bank agreed to establish an escrow fund of $3.5 million for victims of the Scheme.[89]

826. The SOC alleged, *inter alia*, that Fidelity Bank's account opening process in 2013 was inadequate and insufficient to handle the voluminous TelexFree deposit accounts. [90]

827. These failures to comply even minimally with mandatory banking regulations allowed the bank's president John F. Merrill to obtain the account services for his brother James Merrill, the other TelexFree Founders and TelexFree itself.

828. The Consent Decree establishes that Fidelity Bank wrongfully permitted TelexFree to deposit funds received from victims of its illegal Pyramid Scheme in Fidelity Bank's accounts between August 8 and December 26, 2013.[91]

829. On or about November 23, 2013, pursuant to Fidelity Bank's obligations to perform ongoing customer monitoring of TelexFree, Fidelity Bank's compliance and BSA officer discovered Red Flags, other evidence of suspicious, tortious or unlawful conduct.

830. That officer also discovered further indicators of fraud in the TelexFree business model, and he notified president Merrill and an outside compliance consultant utilized by Fidelity Bank.

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[89] *Id.*

[90] *Id.*

[91] SOC Consent Order E 2014-0073 is herewith attached and marked as Exhibit 10.

831. The outside consultant advised Fidelity Bank of his conclusions that TelexFree was a high-risk customer based upon its account balance and extensive wire transfers and that TelexFree's accounts would "require the appropriate monitoring level for a high risk customer."

832. Less than two weeks after this initial investigation, Fidelity Bank made a determination it should close TelexFree's accounts.

833. Fidelity Bank notified TelexFree of its determination to close its accounts on December 3, 2013.

834. Despite that determination, Fidelity Bank continued to receive the victims' funds obtained by TelexFree until December 27, 2013 and to perform other banking services until December 31, 2013.

835. Fidelity Bank did not terminate its relationship with TelexFree, refuse to accept victims' funds, or stop servicing accounts and report suspicious activity, after its internal review revealed the suspicious, tortious or unlawful conduct.

836. As a result of the direct influence and unfair, deceptive and unlawful involvement of Fidelity Bank president and chief operating officer, Defendant John F. Merrill, Fidelity Bank opened personal accounts for TelexFree Founders and Principals, including Defendant James Merrill (president Merrill's brother) and Wanzeler after Fidelity's internal review revealed the tortious conduct.

837. After its November 27, 2013 receipt of the outside consultant's report, Fidelity Bank unfairly, deceptively and unlawfully transferred over $10 million dollars

out of TelexFree's and Defendant Founders' accounts and into the personal accounts of Defendants James Merrill and Wanzeler.

838. This wrongful transfer included a $3.5 million transfer by Wanzeler to a Singapore account on December 30, 2013.

839. The SOC concluded that the use of Fidelity Bank's corporate and personal accounts caused harm to the victims of the TelexFree fraud.

840. At a minimum, as a result of Fidelity Bank's initial investigation and ongoing monitoring, the relationship between the Merrill brothers, and its investigation and ongoing monitoring of TelexFree, Fidelity Bank was aware that TelexFree was engaged in tortious conduct, but it deliberately and willfully turned a blind eye to its knowledge and the results of its investigation and monitoring and continued to act as its banking institution, causing the members of the putative class to suffer ascertainable economic harm.

841. Although Defendant Fidelity Bank and Defendant John F. Merrill possessed actual knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities at all times it received or held TelexFree funds, they willfully acted in concert with them to until at least December 31, 2013 to:

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully siphon class member funds;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide TelexFree and James Merrill and Carlos Wanzeler services integral to the TelexFree Scheme; and

- continue to provide TelexFree and James Merrill and Carlos Wanzeler with substantial assistance and encouragement essential to their unlawful plan.

842. Through its actions, Fidelity Bank and John Merrill provided substantial assistance and encouragement and otherwise became an integral part of TelexFree's fraudulent Scheme. Fidelity Bank and John Merrill also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

4. Synovus

843. At all material times, Defendant Synovus served as the "sponsor" bank of Defendants Base Commerce and GPG, and provided depository account and funds transfer services in connection with Base Commerce's and GPG's payment processing services.

844. At all material times, Defendants Synovus, Base Commerce, and GPG shared a close business relationship, which included serving common clients, including TelexFree, and sharing information regarding said clients.

845. At all material times, Base Commerce served as an agent of Synovus with respect to Synovus' relationship with TelexFree, which began in April 2013.

846. Synovus performed an investigation of TelexFree prior to agreeing to accept TelexFree as a customer and its initial investigation and ongoing monitoring of TelexFree revealed indicia of suspicious, tortious and unlawful activities.

847. Given Synovus' knowledge of the illegal nature of TelexFree's business

operations, Synovus was obligated to refuse to open any accounts, process any transactions, or serve as a conduit for payments for the benefit of TelexFree.

848. Synovus agreed to accept TelexFree as a customer and began to act as a conduit for TelexFree in April 2013, which services it continued to perform until at least January 16, 2014.

849. In August 2013, due to concerns regarding public accusations that TelexFree was running a Pyramid Scheme, and the possibility of an investigation by the Federal Trade Commission or other federal agencies, Defendant Synovus indicated that it would no longer hold funds on TelexFree's behalf.

850. More particularly, Synovus instructed Base Commerce and GPG to cease performing payment-processing services for TelexFree by August 31, 2013.

851. Nevertheless, Synovus continued to act as the sponsor bank for GPG and Base Commerce thereafter and continued to process payments and make transfers for the benefit of TelexFree.

852. For example, Synovus acted as the sponsor bank for Base Commerce's $5 million transfer on or about September 26, 2013 authorized by Base Commerce's Hughes for the benefit of TelexFree.

853. Synovus continued to act as GPG's sponsor bank for its electronic payments transmitting credit card processing data to Defendant Allied Wallet until at least January 16, 2014, for the benefit of TelexFree.

854. At a minimum, Synovus' initial investigation and ongoing monitoring of

TelexFree made it aware that TelexFree was engaged in suspicious, tortious or unlawful conduct and was at a minimum violative of M.G.L. c. 93, § 69, but it continued to provide TelexFree with payment processing services, integral to the TelexFree Scheme until at least January 16, 2014.

855. Through its actions, Synovus provided substantial assistance and encouragement to TelexFree. Synovus also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

Z. Defendant Payment Processing Service Companies

856. Defendants GPG, IPS, Propay, Base Commerce, Vantage Payments, Allied Wallet, and the Doe Payment Processors possessed actual knowledge of the suspicious, tortious and unlawful nature of TelexFree's business operations, yet substantially assisted and encouraged them by providing essential payment processing services as early as October 2012.[92]

857. Despite actual knowledge of the suspicious, tortious, or unlawful nature of TelexFree's business operations, the Payment Processing Service Company Defendants continued to encourage and provide TelexFree with payment processing services and substantially assisted and encouraged its suspicious, tortious or unlawful conduct.

858. As an integral part of the Pyramid Scheme, the Payment Processing Service Company Defendants processed payments between TelexFree and its Members,

[92] *See also* Omnibus Decl. of William H. Runge, Case No. 14-125234-ABL, Doc. 13, ¶61, attached herewith as Exhibit 2.

provided the electronic gateway used to send and receive such payments, and provided the electronic interface services used by both TelexFree and its Members.

859. As set forth below, certain Payment Processing Companies went far beyond this role and became active direct participants in TelexFree's unlawful business enterprise by providing specialized advice and assisting them to skirt the law.

860. The services of the Payment Processing Service Company Defendants, including the capturing, maintenance and transferring of Promoters' funds, was essential and without their integral assistance TelexFree's Pyramid Scheme could not have operated.

861. Each Payment Processing Service Company Defendant possessed a regulatory duty to look for certain types of facts or lack thereof, including the identity and purpose of the individuals opening and making payments into their accounts.

862. In 2012, TelexFree underwent a "several day" period during which they double-billed customers, resulting in a temporary spike in the rate of customer chargebacks, according to an interoffice email of Defendant Base Commerce, dated May 22, 2013.[93]

863. As a result of this period of especially heavy chargebacks, TelexFree was added to MasterCard's MATCH database in 2012, indicating that TelexFree was no longer to receive any credit card processing services due to exceptionally high risk.

864. In addition to the alert from Mastercard's MATCH database in 2012, each

[93] *See* email from John Hughes, dated May 22, 2013, attached herewith as Exhibit 11.

of the Payment Processing Service Company Defendants became aware of other Red Flags and evidence of suspicious, tortious or unlawful activities surrounding TelexFree and pursuant to their regulatory duties they carried out further investigation.

865. Each Payment Processing Service Company Defendant discovered the news reports and other evidence detailed in this complaint that reasonably evidenced TelexFree's unlawful conduct during the time they serviced them.

866. Each Payment Processing Service Company Defendant performed all of the investigations and monitoring required of it by the federal government yet it:

- failed to act as required;
- failed to monitor the suspicious, tortious or unlawful conduct they identified;
- turned a blind eye to suspicious, tortious or unlawful conduct; and
- failed to detect or report suspicious, tortious or unlawful conduct.

867. The services provided by each Payment Processing Service Company Defendant included, *inter alia*, the following:

- processing and opening of TelexFree payment processing accounts;
- receiving payments made by Promoters to TelexFree to become members of the TelexFree Program;
- processing payments by Promoters to TelexFree in the course of TelexFree's fraudulent business operations, which funds were then held for the benefit of TelexFree, its affiliated entities and its Defendant Founders;
- maintaining accounts containing funds paid by Promoters to TelexFree for AdCentral Package membership fees;

- making payments to certain Promoters as part of TelexFree's purported return on investment; and
- transferring funds paid by Promoters to TelexFree between TelexFree entities, Defendant Founders' personal accounts, foreign companies and shell companies.

1. Propay

868. Defendant ProPay processed electronic transfers of funds on behalf of TelexFree.

869. ProPay agreed to accept TelexFree as a customer and began processing transactions for the benefit of TelexFree in or about October 2012.

870. ProPay continued to process transactions for the benefit of TelexFree until at least January 16, 2014.

871. According to TelexFree's December 2012 Balance Sheet, as of December 31, 2012, ProPay held a total of $546,947.23 in two accounts for the benefit of TelexFree.

872. Furthermore, as of December 31, 2012, ProPay held an additional amount of $279,209.46, which is listed as "on hold" by TelexFree's 2012 Balance Sheet.

873. Between October 2012 and December 2012, ProPay processed a total of $1,506,856.60 in incoming transfers of membership fees for the benefit of TelexFree.

874. According to TelexFree's July 2013 Balance Sheet, as of July 31, 2013, Propay held a total of $3,743,049.03 in funds for the benefit of TelexFree.

875. Furthermore, as of July 31, 2013, ProPay held an additional amount of $4,698,867.83, which is listed as "on hold" by TelexFree's July 2013 Balance Sheet.

876. According to TelexFree's December 2013 Balance Sheet, as of December 31, 2013, ProPay continued to hold funds in the amount of $98,463.24 for the benefit of TelexFree.

877. In addition to this amount, as of December 31, 2013, ProPay continued to hold funds in the amount $4,468,411.11 in a "reserve" account for the benefit of TelexFree.

878. In the course of providing services to TelexFree, ProPay directly communicated with fellow Defendant Payment Processing Service Companies Base Commerce and GPG regarding the inherent risks and concerns with TelexFree.

879. More particularly, in an email to Defendant Hughes, president of Base Commerce, a Payment Processing Company serving TelexFree, ProPay characterized TelexFree as an extremely high-risk client and indicated that no United States bank or processor would be willing to take on TelexFree as a client given this risk. This email was referenced in a subsequent email from Hughes to Defendants Merrill, Wanzeler, and Craft, as well as Defendant GPG, dated August 28, 2013.

880. Hughes, as President of Base Commerce, stated in that August 28, 2013 email to Defendants Merrill, Craft, and Wanzeler, "[n]o US Bank or Processor . . . will accept your [TelexFree] business given that you are on month five of the Visa Chargeback monitoring program. You are one of only three merchants in the USA on month five so you are a real hot-potato as they say."[94]

[94] *See* email from Hughes to Merrill, dated August 28, 2013, attached hereto as Exhibit 12.

881. Despite ProPay's knowledge of TelexFree's legal issues and the risk surrounding TelexFree, and despite ProPay's own warnings to Base Commerce regarding these issues, ProPay continued to provide payment processing services to TelexFree into January 2014.

882. ProPay continued to provide payment-processing services to TelexFree until at least January 16, 2014 and during that time ProPay conducted its continued monitoring obligations under the law.

883. Pursuant to its obligations to perform ongoing customer monitoring of TelexFree, ProPay's Regulatory Monitoring Office, employees and officers discovered the Red Flags and evidence of suspicious, tortious or unlawful conduct described above.

884. At a minimum, ProPay's initial investigation and ongoing monitoring of TelexFree made it aware that TelexFree was engaged in suspicious, tortious or unlawful conduct that was at a minimum violative of M.G.L. c. 93, § 69, but it continued to provide TelexFree with payment processing services, integral to the TelexFree Scheme until at least January 16, 2014.

885. Through its actions, ProPay provided substantial assistance and encouragement to TelexFree. ProPay also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was violative of M.G.L. c. 93, § 69.

2. GPG

886. Defendant GPG is a Payment Processing Service Provider that specializes

in making outgoing payroll and commission payments for clients as well as processing credit card transactions for incoming payment.

887. On April 17, 2013, GPG and TelexFree entered into a Corporate Client Payroll & Commission Processing and Payment Services Agreement, and it continued to render TelexFree substantial assistance that was necessary for TelexFree's operation to continue until at least January 16, 2014.

888. In the course of providing services to TelexFree, on August 13, 2013, Defendant Borromei co-hosted an open webinar with Defendant Labriola, which promoted GPG's payment system to TelexFree Investors and potential investors and encouraged them to make further investments in TelexFree using GPG's system.

889. On August 16, 2013, Borromei hosted an additional open webinar, in which he further promoted the payment system that GPG was providing to TelexFree, and encouraged further investments in TelexFree using GPG's payment system.

890. On August 28, 2013, GPG received an email from Defendant Hughes, president of Base Commerce, that included prior statements by ProPay characterizing TelexFree as an extremely high-risk client and indicating that no United States bank or processor would be willing to take on TelexFree as a client given this risk.

891. Despite previous correspondence indicating that it would cease doing business with TelexFree by August 31, 2013, and the explicit instructions from its "sponsor bank," Defendant Synovus, to cease performing any services for TelexFree by August 31, 2013, GPG continued to provide services to TelexFree well after this date.

892. These services included permitting TelexFree to utilize GPG's electronic payment conduit, or "GPG Gateway," to transmit credit card processing data to Allied Wallet until at least January 16, 2014.

893. More particularly, in an email from GPG to Defendants Merrill, Wanzeler, and Labriola, as well as Base Commerce, dated September 3, 2013, GPG's Jayme Amirie indicated that, against the specific instructions of its sponsor bank, which had instructed it to cease all services for TelexFree, GPG "sneaked" payouts from the bank on TelexFree's behalf.[95]

894. In his email of September 27, 2013 to Defendant Borromei and copied to Merrill, GPG's Jayme Amirie acknowledged that "TelexFree can continue to use the GPG gateway to transmit electronic data to Allied Wallet."[96]

895. Pursuant to its obligations to perform initial and ongoing customer monitoring of TelexFree, GPG's Regulatory Monitoring Office, employees and officers discovered the Red Flags and evidence indicating that TelexFree was engaging in suspicious, tortious or unlawful conduct.

896. As a result of GPG's required initial investigation and ongoing monitoring of TelexFree, ProPay possessed actual knowledge that TelexFree was engaged in an illegal Pyramid Scheme, yet they willfully chose to offer substantial assistance and encouragement and directly became involved as described herein.

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[95] *See* email from Jayme Amirie to James Merrill dated September 3, 2013, attached hereto and marked as Exhibit 13.

[96] *See* email from Jayme Amirie to Jay Borromei dated September 27, 2013, attached hereto and marked as Exhibit 14.

897. Although Defendant GPG and Borromei possessed knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities, at all times it received or held TelexFree funds, it willfully acted in concert with them to:

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully siphon class member funds;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide services integral to the TelexFree Scheme; and
- continue to provide TelexFree with substantial assistance and encouragement essential to their unlawful plan.

898. Through its actions, GPG provided substantial assistance and encouragement to TelexFree and otherwise became an integral part of TelexFree's fraudulent Scheme. GPG also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

899. At a minimum, GPG's initial investigation and ongoing monitoring of TelexFree, made it generally aware that TelexFree was engaged in tortious conduct, but it deliberately and willfully turned a blind eye to the results of its investigation and monitoring.

900. Although GPG possessed knowledge of the tortious nature of TelexFree's business activities from the time of its initial investigation of TelexFree and during its monitoring of TelexFree, it continued to promote and to provide TelexFree with payment processing services integral to the TelexFree Scheme until at least January 16,

2014.

3. Base Commerce

901. At all times material times, Defendants GPG, Base Commerce and Synovus shared a close business relationship, acting as payment processing partners and sharing information regarding customers, including TelexFree.

902. In April 2013, Defendants Merrill and Wanzeler, on behalf of TelexFree, submitted an application for payment processing services to Base Commerce, which also does business as Phoenix Payments, GPG's credit card processing partner.

903. Despite Base Commerce's knowledge of the suspicious, tortious or unlawful nature of TelexFree's business activities, Base Commerce agreed to accept TelexFree as a customer and began to perform payment processing services for TelexFree, which services it continued to perform until at least December 31, 2013.

904. Although TelexFree's application to Base Commerce for payment processing services requested the Social Security number and date of birth of Wanzeler and Merrill as co-owners of TelexFree, Wanzeler refused to provide his Social Security number and date of birth, which was a Red Flag that prompted Base Commerce to perform additional credit checks, or "pull credit," on both Merrill and Wanzeler.

905. Base Commerce's additional credit check involved running a "FraudDefender" search on TelexFree, which resulted in a score of 30/50 for TelexFree, indicating moderate risk, and score of 20/50 for Wanzeler, indicating moderately high risk.

906. The results of this "FraudDefender" search were an additional "red flag" to Base Commerce and indicate its actual knowledge of TelexFree's tortious conduct.

907. In an interoffice letter dated May 22, 2013, Defendant Hughes, president of Base Commerce, noted that TelexFree was formerly known as Common Cents Communications, stating:

> [t]hat program paid people residual commissions for placing ads online and the network marketing commentators accused them of being a Ponzi scheme as the commission advertised appeared unrealistically high and therefore fictitious.

908. At that time, TelexFree was widely and prominently marketed and advertised as a similar passive income scheme in which Members would be paid commissions for placement of online advertisements.

909. In the same interoffice letter dated May 22, 2013, Hughes indicated that TelexFree's "current primary market" was Brazil, and that TelexFree would receive a $19 million annual receivable from Ympactus Comercial, Ltda, "a Brazilian Company to whom they license their IOP System."

910. Despite Base Commerce's actual knowledge of TelexFree's negative press, its Brazilian investigation and the accusations of operating a Pyramid Scheme, it ultimately accepted TelexFree's application.

911. Beginning in June 2013, Base Commerce provided TelexFree with payment processing services via an account held by Base Commerce's "sponsor bank," Defendant Synovus, from which Base Commerce deducted its monthly processing, chargeback, and other service fees.

912. The assistance that Base Commerce provided to TelexFree was substantial. For example, Base Commerce's total deductions from the TelexFree account for the months of June 2013 through January 2014, were as follows:

June 2013	$340,106.76
July 2013	$565,582.16
August 2013	$1,164,038.56
September 2013	$113,672.76
October 2013	$99,326.90
November 2013	$61,438.21
December 2013	$108,181.78
January 2014	$98,903.07

913. Base Commerce received instruction from its sponsor bank Defendant Synovus to cease performing payment-processing services for TelexFree by August 31, 2013.

914. Only due to this pressure from Synovus, Hughes forwarded a letter to Merrill on August 20, 2013, advising him that Base Commerce would terminate its services with TelexFree "as of 5:00 PM Pacific Standard Time on August 31, 2013."[97]

915. In a subsequent email from Hughes to Defendants Merrill, Wanzeler, and Craft, as well as GPG, dated August 28, 2013, Hughes stated, regarding TelexFree

> [we] have an MLM with a huge amount of negative news and serious accusations. Hence, banks and processors are running

[97] *See* Letter from John Hughes to James Merrill, dated August 20, 2013, attached herewith as Exhibit 15.

> away based on what the FTC, Treasury Dept., FDIC and Justice Dept. has done to them lately to include suing them,,[sic] fining them and freezing their settlement funds.[98]

916. Hughes characterized TelexFree as an extremely high-risk client and indicated that no United States bank or processor would be willing to take on TelexFree as a client given this risk.[99]

917. In the same email, in which Hughes also characterized TelexFree as "a real hot-potato as they say," Hughes indicated that Base Commerce had worked, and was continuing to work, to find a replacement processor for TelexFree "such that [TelexFree's] business was not interrupted" and that he had arranged, via Defendant Vantage Payments, for Defendant Allied Wallet, a United Kingdom-based payment processor, to take over payment processing services for TelexFree.

918. Hughes also indicated that Base Commerce was actively applying to off-shore banks on TelexFree's behalf, noting "no US Bank or Processor, as evidenced by the email from PROPAY [sic], will accept your business. . . ."[100]

919. Hughes also offered Merrill business planning advice, which included advising that TelexFree charge members for its $1,425 AdCentral membership packages by ACH instead of credit card.

920. In another email from Defendant Merrill to Hughes, also dated August 28, 2013, Merrill indicated that he believed that Base Commerce's activity in soliciting off-

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[98] *See* Exhibit 12, email from John Hughes to James Merrill, dated August 28, 2013.

[99] *See id.*

[100] *See* Exhibit 12 email from John Hughes to James Merrill, dated August 28, 2013.

shore banking services on TelexFree's behalf was connected with TelexFree's desire to separate its international, U.S.-based, and Brazil-based business among different banks and processors.

921. In approximately August 2013, Defendant Sparman, managing partner of Vantage Payments, was contacted by Hughes regarding TelexFree.

922. More particularly, Hughes asked Vantage Payments to act as a broker on TelexFree's behalf, and to contact banks and processors with whom it had a business relationship to secure payment-processing services for TelexFree, which services Vantage Payments agreed to perform.

923. In an email from Hughes to Defendants Merrill and Wanzeler, dated September 27, 2013, Hughes indicated that, against the instructions of Synovus, he had authorized approximately $5 million in transfers on September 26, 2013, stating:

> "The bank is clearly not happy with me but we are still trying to do the best job we can for you. Their concerns are that if, god forbid, TelexFree came under a publicized FTC investigation, there could be an indeterminate wave of chargeback's. . . ."[101]

924. In September 2013, Base Commerce successfully applied to IPS, on TelexFree's behalf, for TelexFree to receive its ACH processing services through IPS. This went well beyond its role as a Financial Services Provider. By working in concert with them to skirt the law, Base Commerce and Hughes became active participants in TelexFree's unlawful operation.

[101] *See* email from Hughes to Merrill, dated September 27, 2013, attached herewith as Exhibit 16.

925. Thereafter, TelexFree's ACH processing was conducted by IPS, also doing business as e-Wallet.

926. On or about October 10, 2013, Hughes reiterated to Merrill his concern over the possibility of a FTC investigation.

927. In an email from Defendant Merrill to Hughes, dated January 16, 2014, Merrill indicated that TelexFree, which was continuing to do business with GPG, was having "a great deal of issues with GPG," specifically, regarding TelexFree's reserve balance and cash flow in and out of GPG.

928. Hughes, on behalf of Base Commerce, responded that Base Commerce was "happy to help" regarding TelexFree's issue with GPG.

929. Despite the numerous Red Flags and evidence of suspicious, tortious or unlawful activity that Base Commerce was aware of, and despite being instructed by its sponsor bank to cease providing services by August 31, 2013, Base Commerce continued to provide services to TelexFree.

930. These services included: processing transactions for TelexFree until at least January 2014, connecting TelexFree with off-shore processors, applying for accounts at off-shore banks on TelexFree's behalf and proving advice and guidance regarding TelexFree's business operations. By working so in concert with them to skirt the law, Base Commerce and Hughes became active participants in TelexFree's unlawful operation.

931. As a result of Base Commerce's required initial investigation and ongoing

monitoring of TelexFree, Base Commerce and Hughes possessed actual knowledge that TelexFree was engaged in an illegal Pyramid Scheme.

932. At a minimum, Base Commerce's initial investigation and ongoing monitoring of TelexFree, made it generally aware that TelexFree was engaged in tortious conduct, but it deliberately and willfully turned a blind eye to the results of its investigation and monitoring.

933. Although Base Commerce and Hughes possessed knowledge of the tortious nature of TelexFree's business activities from the time of its initial investigation of TelexFree and during its monitoring of TelexFree, it continued to promote and to provide TelexFree with payment processing services integral to the TelexFree Scheme.

934. Although Defendant Base Commerce and Hughes possessed knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities at all times it received or held TelexFree funds, they willfully acted in concert with them to:

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide services integral to the TelexFree Pyramid Scheme; and
- continue to provide TelexFree with substantial assistance and encouragement essential to their unlawful business enterprise.

935. Through its actions, Base Commerce and Hughes provided substantial assistance and encouragement to TelexFree and otherwise became an integral part of TelexFree's Pyramid Scheme. Base Commerce and Hughes also assisted TelexFree and its Principals to further achieve their unfair, deceptive and

unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

4. Vantage Payments

936. Defendant Vantage Payments, which characterizes itself as an "Independent Sales Agent," served as a broker between TelexFree and other banks and processors for purposes of securing payment-processing services.

937. Despite Vantage Payments' knowledge of the suspicious, tortious or unlawful nature of TelexFree's business activities and operation, Vantage Payments agreed to accept TelexFree as a customer in August 2013 and began to solicit payment processing services on behalf of TelexFree, which services it continued to perform up to the time that TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. declared bankruptcy in April 2014.

938. In approximately August 2013, Defendant Sparman, managing partner of Vantage Payments, was contacted by Defendant Hughes of Base Commerce regarding TelexFree, asking it to act as a broker on TelexFree's behalf and to contact banks and processors with whom it had a business relationship to secure payment processing services for TelexFree, which services Vantage Payments agreed to perform.

939. Thereafter, Vantage Payments contacted Defendant Allied Wallet, and applied on TelexFree's behalf for Allied Wallet to provide payment-processing services to TelexFree.

940. Vantage Payments also contacted an additional payment processor based in the United Kingdom, who, at that time, refused to provide services to TelexFree due

to known accusations of fraud regarding TelexFree's operations.

941. Vantage Payments was able to secure Allied Wallet's agreement to provide payment processing services to TelexFree, pursuant to which agreement Allied Wallet would provide a "processing account" and process both incoming and outgoing payments for the benefit of TelexFree, among other services.[102]

942. In connection with TelexFree's agreement with Allied Wallet, Defendant Merrill instructed Allied Wallet to transfer funds from TelexFree's processing account with Allied Wallet to accounts with Fidelity Bank.

943. Vantage Payments, on behalf of TelexFree, also registered an entity in the United Kingdom, known as "TelexFree, LTD," to serve as TelexFree's EU-based operation.

944. In fact, as Vantage Payments was aware, "TelexFree, LTD" was a shell company with no physical presence beyond a mere address.

945. On or about October 10, 2013, Allied Wallet informed TelexFree that, due to an increase in both payment volume and chargebacks, it would be increasing the rolling reserve on TelexFree's processing account to 20%.

946. Thereafter, Vantage Payments negotiated extensively with Allied Wallet on TelexFree's behalf, to have this rolling reserve reduced.

947. These negotiations entailed, *inter alia*, Sparman meeting personally with the CEO of Allied Wallet in Los Angeles, California on TelexFree's behalf.

[102] *See* Allied Wallet Card Payment Processing Agreement, dated August 26, 2013, attached herewith and marked as Exhibit 17.

948. Ultimately, after extensive lobbying by Vantage Payments on TelexFree's behalf, Allied Wallet agreed to reduce its rolling reserve on the TelexFree processing account to 10%, and also agreed to increase the maximum processing volume on the account

949. On or about November 13, 2013, Sparman, on behalf of Vantage Payments, and acting on behalf of TelexFree, once again contacted another United Kingdom-based payment processor in hopes of securing TelexFree additional payment processing volume.[103]

950. This effort was ultimately unsuccessful, as this additional United Kingdom-based payment processor declined to perform services for TelexFree in light of the accusations of fraud and illegality surrounding TelexFree.

951. The foregoing activities were beyond the scope of Vantage Payments' role as a Financial Services Provider. By working so in concert with the indicted parties to skirt the law, Vantage Payments and Sparman were active participants in TelexFree's unlawful operation.

952. By agreement with TelexFree, Vantage Payments also provided TelexFree with access to its Customer Dispute Resolution Network ("CDRN") Portal to Verifi by Visa's CDRN, the purpose of which was to provide TelexFree with the capability to address issues relating to customer payment disputes.[104]

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[103] *See* email from Dustin Sparman to James Merrill, dated November 13, 2013, attached hereto and marked as Exhibit 18.

[104] *See* Vantage Payments CDRN Portal Agreement, attached hereto and marked as Exhibit 19.

953. TelexFree executed a CDRN Portal Agreement with Vantage Payments on December 5, 2013.

954. This authorized TelexFree to make use of Vantage Payments' online CDRN portal for processing of ACH and credit card transactions.

955. In return for these services, Vantage Payments charged TelexFree a flat rate of $40 per transaction.

956. In connection with this Agreement, Merrill authorized Vantage Payments to transmit all incoming payments to the account of TelexFree, Inc. at Fidelity Bank.

957. Vantage Payments continued to provide TelexFree with these portal access services until at least March 13, 2014.

958. In an email from Defendant Merrill to Sparman, dated January 15, 2014, Merrill stated, regarding dividing TelexFree's payment processing between Vantage Payments and IPS, "[T]here will be plenty of business to go around. You deserve your share for getting us started…Whomever treats us best will get most of the business."[105]

959. Despite having direct knowledge of the shutdown of TelexFree in Brazil and Rwanda, the United Kingdom scam warning against TelexFree, well-publicized accusations of fraud and illegality on the part of TelexFree, and an enormous number of Red Flags and indicia of the suspicious, tortious or unlawful nature of TelexFree's business operations, Vantage Payments continued to provide processing and processing-related services to TelexFree up to the time that TelexFree, LLC, TelexFree, Inc., and

[105] *See* email from James Merrill to Dustin Sparman, dated January 15, 2014, attached hereto and marked as Exhibit 20.

TelexFree Financial, Inc. declared bankruptcy in April 2014.

960. Although Defendant Vantage Payments possessed knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities at all times it received or held TelexFree funds, they willfully acted in concert with them to:

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide services integral to the TelexFree Pyramid Scheme; and
- continue to provide TelexFree with substantial assistance and encouragement essential to their unlawful business enterprise.

961. Through its actions, Vantage Payments provided substantial assistance and encouragement to TelexFree and otherwise became an integral part of TelexFree's Pyramid Scheme. Vantage Payments also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

962. At a minimum, Vantage Payments' initial investigation and ongoing monitoring of TelexFree, made it generally aware that TelexFree was engaged in suspicious, tortious or unlawful conduct, but it deliberately and willfully turned a blind eye to the results of its investigation and monitoring.

963. Although Vantage Payments possessed knowledge of the tortious nature of TelexFree's business activities from the time of its initial investigation of TelexFree and during its monitoring of TelexFree, it continued to promote and to provide TelexFree with payment processing services integral to the TelexFree Scheme until at

least April 2014.

5. Allied Wallet

964. Defendant Allied Wallet shared a close business relationship with Defendants Vantage Payments and Sparman, and was kept informed by Sparman of information regarding TelexFree, including public accusations of operating a Pyramid Scheme and the investigation and shutdown of TelexFree's operations in Brazil.

965. Despite Allied Wallet's knowledge of the suspicious, tortious, or unlawful nature of TelexFree's business activities and operation, Allied Wallet agreed to accept TelexFree as a customer and began in late August 2013 to perform payment processing services for TelexFree.

966. Allied Wallet had extensive connections with Vantage Payments in facilitating the Scheme.

967. Upon Vantage Payments' application on behalf of TelexFree, Allied Wallet agreed to provide payment-processing services to TelexFree, pursuant to which agreement Allied Wallet would provide a "processing account" and process both incoming and outgoing payments for the benefit of TelexFree, among other services.[106]

968. In connection with TelexFree's agreement with Allied Wallet, Defendant Merrill instructed Allied Wallet to transfer funds from TelexFree's processing account with Allied Wallet to accounts with Fidelity Bank.

969. On or about October 10, 2013, Allied Wallet informed TelexFree that, due

[106] *See* Allied Wallet Card Payment Processing Agreement, dated August 26, 2013, attached herewith and marked as Exhibit 17.

to an increase in both payment volume and chargebacks, it would be increasing the rolling reserve on TelexFree's processing account to 20%.

970. Thereafter, Vantage Payments negotiated extensively with Allied Wallet on TelexFree's behalf, to have this rolling reserve reduced.

971. These negotiations entailed, *inter alia*, Sparman meeting personally with the CEO of Allied Wallet in Los Angeles, California on TelexFree's behalf.

972. Ultimately, after extensive lobbying by Vantage Payments on TelexFree's behalf, Allied Wallet agreed to reduce its rolling reserve on the TelexFree processing account to 10%, and also agreed to increase the maximum processing volume on the account.

973. Allied Wallet also made transfers from TelexFree's corporate accounts to private accounts held in the names of Defendant Founders, despite knowledge of the suspicious, tortious or unlawful nature of TelexFree's business enterprise and operations.

974. Despite having direct knowledge of the shutdown of TelexFree in Brazil and Rwanda, the United Kingdom scam warning against TelexFree, well-publicized accusations of fraud and illegality on the part of TelexFree, and an enormous number of Red Flags and indicia indicating the suspicious, tortious or unlawful nature of TelexFree's operations, Allied Wallet continued to provide processing and processing-related services to TelexFree up to the time that TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. declared bankruptcy in April 2014.

975. Although Defendant Allied Wallet possessed knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities at all times it received or held TelexFree funds, it willfully acted in concert with TelexFree to:

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide services integral to the TelexFree Pyramid Scheme; and
- continue to provide TelexFree with substantial assistance and encouragement essential to their unlawful business enterprise.

976. Through its actions, Allied Wallet provided substantial assistance and encouragement and otherwise became an integral part of TelexFree's Pyramid Scheme. Allied Wallet also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

977. At a minimum, Allied Wallet's initial investigation and ongoing monitoring of TelexFree, made it generally aware that TelexFree was engaged in suspicious, tortious or unlawful conduct, but it deliberately and willfully turned a blind eye to the results of its investigation and monitoring.

978. Although Allied Wallet possessed knowledge of the tortious nature of TelexFree's business activities from the time of its initial investigation of TelexFree and during its monitoring of TelexFree, it continued to promote and to provide TelexFree with payment processing services integral to the TelexFree Scheme until at least April 2014.

6. IPS

979. In September 2013, Defendant Base Commerce successfully applied to IPS, on TelexFree's behalf, for TelexFree to receive its ACH processing services through IPS.

980. Thereafter, TelexFree's ACH processing was conducted by IPS, also doing business as e-Wallet.

981. In approximately December 2013, TelexFree entered into a further agreement with IPS for additional payment processing services, under the name and address of "TelexFree, LTD," the shell company established by Vantage Payments.[107]

982. Thereafter, beginning in approximately January 2014, IPS provided TelexFree with a service titled "e-Wallet," which was used by TelexFree for additional processing of funds transferred by Promoters to TelexFree.

983. IPS performed an investigation of TelexFree prior to agreeing to accept TelexFree as a customer and its initial investigation and ongoing monitoring of TelexFree revealed indicia of fraud and illegality, or Red Flags, and other evidence of fraud cited above.

984. Given IPS's knowledge of the illegal nature of TelexFree's business operations, IPS was obligated to refuse to open any accounts or process any transactions for the benefit of TelexFree.

985. Despite IPS's knowledge of the illegal nature of TelexFree's business activities, IPS agreed to accept TelexFree as a customer and began to perform payment

[107] *See* email from Sparman to Merrill, dated December 27, 2013, attached herewith as Exhibit 21.

processing services for TelexFree in September 2013.

986. IPS has a history of representing Ponzi schemes. Prior clients include the well-publicized Ponzi schemes Spinding, Wealth4AllTeam, Primus Hub, (an attempted reboot of Wealth4AllTeam following Wealth4AllTeam's collapse), Funky Shark (a planned Ponzi scheme that shut down prior to launch after receiving legal advice and a $40,000 fine), Team Vinh International, MyAdvertisingPays (a 120% return-on-investment advertising-based Ponzi scheme, similar to TelexFree), Diamond Banners, Argent Network (which was advertised as advertised as "a mixture of Zeek Rewards and TelexFree"), and 1BuckAdShare.

987. Despite the overwhelming evidence of TelexFree's fraudulent activities, in an October 2013 public statement to the news website *BehindMLM.com*, IPS audaciously stated that they had "done a complete due diligence on TelexFree" and "confirmed the product as compliant with all US laws." This activity was beyond the scope of its role as a Financial Services Provider. By publicly endorsing their business model, IPS became an active participant in TelexFree's unlawful operation.

988. On or about February 12, 2014, IPS announced that they were partnering with MLM attorney Kevin Thompson of Thompson Burton, PLLC, to "provide up-to-date compliance guidance to their new and existing clients in the Direct Selling and Multi-Level Marketing industry."

989. TelexFree was a recipient of such "compliance guidance" services.

990. According to a TelexFree balance sheet, dated December 31, 2013, posted

by the Washington State Utilities and Transportation Commission, as of December 31, 2013, TelexFree claimed $31,640,192.30 in assets then held by IPS (under the name "e-Wallet") on behalf of TelexFree.[108] The assistance that IPS offered TelexFree was substantial.

991. IPS continued to provide payment-processing services to TelexFree until April 17, 2014, at which time IPS finally disabled its electronic services.

992. Thereafter, in place of the previous e-Wallet online interface, IPS posted a message online stating that TelexFree's payment processing services had been disabled, and suggested that this could be due to TelexFree having "violated Anti-Money Laundering policies."

993. Despite having direct knowledge of the shutdown of TelexFree in Brazil and Rwanda, the United Kingdom scam warning against TelexFree, well-publicized accusations of fraud and illegality on the part of TelexFree, and an enormous number of Red Flags and indicia of fraud indicating the fraudulent and illegal nature of TelexFree's operations, IPS continued to provide processing and processing-related services to TelexFree up to the time that TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. declared bankruptcy in April 2014.

994. Although Defendant IPS possessed knowledge of the suspicious, tortious or illegal nature of TelexFree's business activities at all times it received or held TelexFree funds, it willfully acted in concert with TelexFree to:

[108] *See* TelexFree, LLC Balance Sheet as of December 31, 2013, marked as Exhibit 5.

- further the unlawful Pyramid Scheme;
- unfairly, deceptively and unlawfully convert class member funds;
- continue to provide services integral to the TelexFree Pyramid Scheme; and
- continue to provide TelexFree with substantial assistance and encouragement essential to their unlawful business enterprise.

995. Through its actions, IPS provided substantial assistance and encouragement and otherwise became an integral part of TelexFree's Pyramid Scheme. IPS also assisted TelexFree and its Principals to further achieve their unfair, deceptive and unlawful Scheme that was at a minimum violative of M.G.L. c. 93, § 69.

996. At a minimum, IPS's initial investigation and ongoing monitoring of TelexFree, made it generally aware that TelexFree was engaged in suspicious, tortious or unlawful conduct, but it deliberately and willfully turned a blind eye to the results of its investigation and monitoring.

997. Although IPS possessed knowledge of the suspicious, tortious or unlawful nature of TelexFree's business activities from the time of its initial investigation of TelexFree and during its monitoring of TelexFree, it continued to promote and to provide TelexFree with payment processing services integral to the TelexFree Scheme until April 17, 2014.

998. Each of the Financial Services Providers failed to timely or adequately respond to information relating to TelexFree, or persons or entities it was related to, and as a direct and proximate result caused each member of the putative class to similarly suffer ascertainable economic harm.

999. Various persons or entities that are not named as Defendants herein have participated as co-conspirators or aiders and abettors in the violations and other claims alleged herein and have performed acts and made statements in furtherance thereof. These persons or entities have directly participated because they have facilitated, adhered to, and/or communicated with others regarding the Pyramid Scheme or offered substantial assistance or encouragement. Plaintiffs reserve the right to name some or all of these persons as Defendants at a later date.

1000. Plaintiffs and the putative class representatives seek to obtain damages, restitution and injunctive relief for the Class, as defined, below, from Defendants.

IV. CLASS ACTION ALLEGATIONS

1001. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs sue on their own behalf, and on behalf of all other persons similarly situated (the "Plaintiff Class"). The Plaintiff Class that Plaintiffs seek to represent is:

> All persons residing in the United States who purchased TelexFree AdCentral or AdCentral Family packages and suffered a Net Loss[109] during the period from January 1, 2012 to April 16, 2014 (the "Class Period").

1002. Excluded from the Plaintiff Class are Defendants and their officers, directors, and employees; any entity in which any Defendant has a controlling interest; the co-conspirators, the so-called Top Level Promoters, legal representatives, attorneys, heirs, and assigns of Defendants.

[109] A Plaintiff Class member suffered a "Net Loss" if he or she invested more funds than he or she withdrew.

1003. The Plaintiff Class meets the requirements of Federal Rules of Civil Procedure 23(a) because the members of the Plaintiff Class are so numerous that the joinder of all members is impractical. While the exact number of Plaintiff Class members is unknown to Plaintiffs, it is estimated to be in the hundreds of thousands.

1004. The Plaintiff Class meets the requirements of Federal Rules of Civil Procedure 23(a) because there is a well-defined community of interest among the members of the Plaintiff Class, common questions of law and fact predominate, Plaintiffs' claims are typical of the members of the Plaintiff Class, and Plaintiffs can fairly and adequately represent the interests of the Class.

1005. This action satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3) because it involves questions of law and fact common to the members of the Plaintiff Class that predominate or questions affecting only individual members, including, but not limited to:

- whether TelexFree operated an unlawful Pyramid Scheme;
- whether the class of Direct Victim Payment Recipients was unjustly enriched;
- whether the funds paid by the Plaintiff Class directly to the Defendant Class must be repaid, without regard to the individual circumstances of participation in the Scheme, because it constituted unjust enrichment;
- whether TelexFree ran an unlawful Pyramid Scheme or a legitimate business;
- whether TelexFree ran a lawful MLM program or an unlawful pyramid Scheme;

- whether each Defendant knew that TelexFree was an illegal Pyramid Scheme, yet continued to aid, abet and further such illegal activities or are otherwise liable for the economic loss suffered by the Putative Class;
- whether the aid that each Defendant provided was a substantial in the context of aiding and abetting;
- was TelexFree a "multi-level distribution company" as defined by Massachusetts General Laws Chapter 93, Section 69(a);
- did the standard TelexFree Pre-March 9 Contract contain promises to pay merely for the recruitment of new members in violation of Massachusetts General Laws Chapter 93, Section 69(a);
- did the standard TelexFree Pre-March 9 Contract contain offers to pay a "finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration" to Participants in the TelexFree Program in violation of Massachusetts General Laws Chapter 93, Section 69(a);
- did the TelexFree Program offer its Members payment without requiring them to engage in any "bona fide and essential supervisory, distributive, selling or soliciting" nor exercise any "judgment," "skill," or "control over the operation in violation of Massachusetts General Laws Chapter 93, Section 69(a);
- did each of the Financial Services Defendants have actual knowledge of TelexFree's suspicious, tortious or unlawful activities;
- when did each of the Financial Services Defendants have actual knowledge of TelexFree's suspicious, tortious or unlawful activities;
- whether TelexFree's Financial Services Providers, including the aforesaid banking institutions and payment processing services providers aided and abetted TelexFree's Pyramid Scheme;
- whether TelexFree violated M.G.L. c. 93A;
- whether Massachusetts' Blue Sky Laws will apply to the claims of the Putative Class;

- whether TelexFree violated M.G.L. c. 110A, § 410 - Massachusetts' Blue Sky Laws;
- whether certain Defendants used and employed manipulative and deceptive devices and contrivances in violation of M.G.L. c. 110A, § 410; used means and instrumentalities, directly and indirectly, for the purchase and sale of unregistered securities; and used and employed manipulative and deceptive devices and contrivances in violation of the Massachusetts Uniform Securities Act, M.G.L. c. 110A, § 410(b) and M.G.L. c. 93A;
- whether TelexFree mailed fraudulent and inaccurate 1099 (Miscellaneous Income) forms to investors;
- whether the 1099 (Miscellaneous Income) forms should be declared void as a matter of law;
- whether Defendants' conduct violated any of the articulated Massachusetts state common laws; and
- whether Plaintiff and the Class are entitled to damages, civil penalties, punitive damages, and/or injunctive relief.

1006. Plaintiffs' claims are typical of those of other Plaintiff Class members because Plaintiffs were defrauded by Defendants' common Scheme.

1007. Plaintiffs will fairly and accurately represent the interests of the Plaintiff Class.

1008. The prosecution of separate actions by individual members of the Plaintiff Class would create a risk of inconsistent or varying adjudications regarding individual members of the Plaintiff Class, which would establish incompatible standards of conduct for Defendants and would lead to repetitive adjudication of common questions of law and fact.

1009. Class treatment is superior to any other method for adjudicating the

controversy. Plaintiffs know of no difficulty likely to be encountered in the management of this litigation that would preclude its maintenance as a class action under Rule 23(b)(3).

1010. Damages for any individual class member likely cannot justify the cost of individual litigation, so that absent class treatment, the Defendants' violations of law inflicting substantial damages in the aggregate would go un-remedied without certification of the Plaintiff Class.

1011. Defendants have acted or refused to act on grounds that apply to the Plaintiff Class, as alleged above, and certification is proper under Rule 23(b)(2).

V. DEFENDANT CLASS ALLEGATIONS

1012. Plaintiffs also bring a portion of this action as a defendant class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(1)(A) and (B) against a class consisting of all persons or entities who (1) were Net Winners and (2) received at least one Direct Victim Payment from Plaintiffs or those similarly situated.

1013. The members of the putative Defendant Class are so numerous that joinder of all members is impracticable. Upon information and belief, there are in excess of 20,000 members of the putative Defendant Class. Any potential dissimilarities among the members of the proposed Defendant Class do not impair the ability to reach a common resolution to the core issues of law and fact in this case.

1014. The named Defendant Shoyfer, who qualifies as a Net Winner Defendant and who was among the largest Net Winners of the TelexFree Scheme and is already a

party to this action, should be appointed, without cost to the class as representative of the class of Direct Victim Payment Recipients (the "Defendant Class Representative").

1015. The putative Defendant Class Representative Shoyfer and each similarly situated member of the Defendant Class participated in the same events and courses of conduct that has given rise to the Defendant Class. Specifically, they each participated in the TelexFree Pyramid Scheme, they were Net Winners, and they received at least one Direct Victim Payment from members of the Plaintiff Class.

1016. The putative Defendant Class Representative Shoyfer shares the same defenses against liability for repayment of the ill-gotten proceeds taken from the Plaintiff Class, and the common legal and factual questions do not depend on the personal circumstances of any particular member of the putative Defendant Class .

1017. The putative Defendant Class Representative is among the largest Net Winners. Defendant Shoyfer reported earning $300,000 per week and acquired lavish properties in Florida and New York. Shoyfer has a sufficient stake in the outcome to bear the burdens of the litigation. He has retained counsel to mount his defense. The Defendant Class Representative will be an adequate and appropriate representative of the Defendant Class in the course of and by virtue of his own defense to the same claims. Because he has substantially more (or certainly at least as much) incentive to vigorously defend against Plaintiffs' claims for return of his unjustly-received monies as any unnamed member of the Defendant Class, this defendant will fairly and adequately protect and represent the interests of the unnamed members of the Defendant Class

because his interests are not antagonistic to, but rather aligned with, the interests of the unnamed class members. The putative Defendant Class Representative shares common objectives and the same factual and legal positions and has the same interest in defending against liability as does each member of the putative Defendant Class.

1018. There are questions of law and fact that are common to the Defendant Class. These questions include, but are not limited to the common questions identified in Section IV., *supra*, as well as the question of the legal liability of Direct Victim Payment Recipients for their net winnings under unjust enrichment theories. Resolution of the identical primary legal and factual issues will prove dispositive for each member of the putative Defendant Class. The efficiency of one action in which all parties can argue their case and assert their rights will benefit the Plaintiff Class and all members of the Defendant Class and so satisfy the intent of Rules 23(b)(1)(A) and (b)(1)(B). Larger Direct Victim Payment Recipients may chose to opt out and defend themselves, and smaller Direct Victim Payment Recipients will realize the benefit of cost sharing.

1019. The claims against and anticipated defenses of the Defendant Class Representative are typical of the claims against and anticipated defenses of the unnamed members of the Defendant Class. Like the Defendant Class Representative, each of the Direct Victim Payment Recipients voluntarily participated in the TelexFree Scheme as affiliates and received more money in connection with the TelexFree Program than they paid in to TelexFree during the course of their participation. In addition, each Direct Victim Payment Recipient received their funds in the course of and in connection with

a common Scheme. The claims for return of Direct Victim Payments that constitute "net winnings" against all the Direct Victim Payment Recipients are the same and should be calculated the same way for all class members. The nature of the defenses that may be asserted by the Defendant Class Representative also would be the same, as liability for the wrongful funds received from the TelexFree Scheme does not depend on the personal circumstances of particular affiliates (other than in the mathematical calculation of the amount of their liability, which will be resolved independently of the determination of liability).

1020. The prosecution of separate actions against individual members of the Direct Victim Payment Defendant Class would create a risk of inconsistent or varying adjudications regarding individual members of the Direct Victim Payment Defendant Class, which would establish incompatible standards of conduct for Defendants and would lead to repetitive adjudication of common questions of law and fact.

1021. Further, as a practical matter, the cost and difficulty of defending against separate suits following the adjudication of the common questions of fact and law related toTelexFree and the liability of the members of the proposed Defendant Class for Direct Victim Payments that constitute "net winnings"would be dispositive of or substantially impair the interests of the unnamed members of the putative Defendant Class.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 93, SECTIONS 12 and 69
(Against All Operational Defendants)

1022. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1023. The Operational Defendants were engaged in acts in violation of Massachusetts General Laws Chapter 93, Section 69.

1024. Massachusetts General Laws Chapter 93, Section 12 provides for a private right of action for violations of Chapter 93, Section 69.

1025. In consequence of said Defendants' violative conduct, Plaintiffs and the Putative Class have suffered great financial losses, and have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged.

1026. In consequence of said Defendants' violative conduct or other unfair and deceptive acts and practices, Plaintiffs and the Putative Class have been similarly caused to suffer ascertainable economic loss, have incurred expense and have otherwise been similarly damaged. Because the Operational Defendants' violations of Massachusetts General Laws Chapter 93, Section 69 were engaged in with malicious intent to injure the members of the Putative Class, the Class is entitled to (up to) three times the amount of actual damages sustained, together with the costs of suit, including reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF
VIOLATIONS OF MASSACHUSETTS GENERAL LAWS,
CHAPTER 93A, SECTIONS 2 AND 11
(Against All Operational Defendants)

1027. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1028. All Operational Defendants were engaged in "trade" and "commerce" as defined by Massachusetts General Laws Chapter 93A, Section 1.

1029. Plaintiffs and the Putative Class were engaged in "trade" and "commerce" as defined by Massachusetts General Laws Chapter 93A, Section 1.

1030. The transactions, actions or inaction of the Operational Defendants constitute unfair and deceptive acts and practices as defined by, and in violation of, Massachusetts General Laws, Chapter 93A, Sections 2 and 11.

1031. In addition, said Defendants engaged in acts in violation of Massachusetts General Laws Chapter 93, Section 69. Pursuant to Chapter 93, Section 69(g) any violation of the provisions of M.G.L. c. 93, section 69 shall constitute an unlawful method, act or practice within the meaning of clause (a) of section two of chapter ninety-three A.

1032. As a result, the foregoing transactions, actions and inactions of said Defendants thereby constitute per se an unlawful method, act or practice within the meaning of Massachusetts General Laws, Chapter 93A, Section 2(a) by operation of Massachusetts General Laws, Chapter 93, Section 69(g).

1033. The foregoing transactions, actions and inactions of said Defendants

thereby constitute per se unfair and deceptive acts and practices as defined by, and in violation of, Massachusetts General Laws Chapter 93A, §§ 2 and 11.

1034. In consequence of said Defendants' violative acts, and unfair methods of competition or unfair or deceptive acts or practices, Plaintiffs and the Putative Class have been similarly caused to suffer ascertainable economic loss, have incurred expense and have otherwise been similarly damaged. The Operational Defendants' violations of Massachusetts General Laws Chapter 93A, Section 69 were willful or knowing, and the Class is otherwise entitled to (up to) three times the amount of actual damages sustained, together with the costs of suit, including reasonable attorneys' fees.

THIRD CLAIM FOR RELIEF

AIDING AND ABETTING VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 93, SECTIONS 12 and 69, AND MASSACHUSETTS GENERAL LAWS, CHAPTER 93A, SECTIONS 2(a) or 11

(Against TelexFree And All Defendants Except The Defendant Class)

1035. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1036. As described above, to comply with federal anti-money laundering and other banking laws, the Financial Services Provider Defendants, including Bank of America, TD Bank, Fidelity Bank, Wells Fargo, Citizens Bank, Synovus, GPG, IPS, ProPay, Base Commerce, Vantage Payments, Allied Wallet and individual defendants John F. Merrill, John Hughes and Dustin Sparman, must understand their customers' business model and must know their clients.

1037. Under the attendant facts, any application of the mandated Know-Your-

Customer Regulations by each of the Financial Services Providers obviously included evaluating whether TelexFree's business model and operations violated Massachusetts General Laws Chapter 93, Section 69.

1038. Violations of Massachusetts General Laws c. 93, § 69 are per se violations of Massachusetts General Laws Chapter 93A, Section 2(a).

1039. Under the attendant facts, that TelexFree violated Massachusetts General Laws Chapter 93, Section 69 during 2013 and 2014 was obvious or at a minimum apparent, to the sophisticated eye, as focused by the FFIEC, of the Financial Services Providers.

1040. As described herein, TelexFree and the Operational Defendants, except for Katia Wanzeler, otherwise violated MGL c. 93A.

1041. Massachusetts General Laws Chapter 93, Sections 12 and 69 and Massachusetts General Laws Chapter 93A created a duty carried by TelexFree and each of the Operational Defendants that inured to the benefit of the putative class.

1042. The Operational Defendants and the Financial Services Providers knew that TelexFree's conduct was suspicious, tortious, unlawful, and constituted a breach of duty owed to each member of the putative class.

1043. The Operational Defendants and the Financial Services Providers knew that TelexFree Program violated Massachusetts General Laws Chapter 93, Sections 12 and 69 and that TelexFree's conduct was unfair, deceptive, suspicious, tortious, and unlawful constituted a breach of duty owed to each member of the putative Class.

1044. During the TelexFree Pyramid Scheme, the Financial Services Providers provided essential financial services to TelexFree, the Operational Defendants, and each other, which substantially assisted and enabled them to carry on their unlawful, unfair, and deceptive Pyramid Scheme notwithstanding the presence of suspicious, tortious or illegal activity on TelexFree's part.

1045. As described herein, the assistance and encouragement given to TelexFree by the Financial Services Providers to conduct its business operations was essential because TelexFree's business operations were entirely dependent on them.

1046. For example, without the indispensible services provided by the Financial Services Providers, TelexFree would not have been able to accept, process or misappropriate the funds invested by the putative class.

1047. Without the indispensible services provided by the Financial Services Providers, TelexFree would not have been able to otherwise open shop in the United States , develop and maintain its unlawful business operations.

1048. As described herein, the assistance and encouragement given to TelexFree by the Financial Services Providers to conduct its business operations was substantial. According to an investigation by the SOC, in 2012 and 2013 TelexFree identified 4,845,576 VoIP Program transactions totaling $238,395,353.80. Over the same period, TelexFree received 783,771 package purchases of either $289 or $1,375 totaling $880,189,455.32.

1049. Each Defendant, while knowing that the other's conduct provided

essential and substantial encouragement to TelexFree, the Operational Defendants, and each other, substantially assisted and enabled them to carry on their unlawful, unfair, and deceptive Pyramid Scheme notwithstanding the presence of suspicious, tortious or illegal activity on TelexFree's part.

1050. Each Defendant provided substantial assistance and/or encouragement to the other Defendants in committing the violations of M.G.L. c. 93, § 69 and M.G.L. c. 93A alleged herein, and did so with unlawful intent and knowledge that such parties were perpetuating a fraudulent and illegal Pyramid Scheme, and yet continued to substantially assist or encourage said Scheme.

1051. Each Defendants rendered this substantial assistance despite their knowledge that TelexFree's operations constituted an unlawful, unfair, deceptive and unsustainable Pyramid Scheme and violated M.G.L. c. 93 § 69 and M.G.L. c. 93A.

1052. Such substantial assistance was rendered by Defendants despite their knowledge of the illegal nature of TelexFree's operations, is detailed within this complaint and includes, but is not limited to:

a. managing and controlling TelexFree and its affiliated entities;

b. providing accounting services to TelexFree;

c. providing legal services to TelexFree;

d. publicly certifying that TelexFree's business model and operations were legal, proper, and economically viable and sustainable;

e. providing banking, investment and asset management services for TelexFree and its management;

f. promoting TelexFree AdCentral packages;

g. continuing to provide financial services following the Brazilian Court's injunction to stop TelexFree's business in Brazil;

h. processing payments to, from, and on behalf of TelexFree and its affiliated entities;

i. processing payments for transfers of funds which deepened TelexFree's insolvency;

j. making transfers from TelexFree's corporate accounts to private accounts held in the names of Defendant Founders, despite knowledge of the fraudulent nature of TelexFree's business enterprise;

k. investing ill-gotten funds for the benefit of TelexFree's Founders, despite knowledge of the suspicious, tortious or illegal nature of TelexFree's business enterprise;

l. providing TelexFree's Founders with cashier's checks in amounts totaling millions of dollars and purchased using funds in TelexFree's corporate accounts;

m. providing credit to TelexFree;

n. participating in a cover-up by knowingly failing and/or refusing

to report the results of such financial services provider's own investigation of TelexFree to the proper authorities, despite the suspicious, tortious or illegal activity revealed by such investigation;

o. soliciting financial services for the benefit of TelexFree;

p. negotiating with financial services providers on TelexFree's behalf;

q. incorporating foreign "shell corporations" on TelexFree's behalf in order to expand TelexFree's suspicious, tortious or illegal business internationally;

r. providing financial advice to TelexFree designed to keep the violations of M.G.L. c. 93 § 69 and M.G.L. c. 93A and the unlawful MLM Pyramid Scheme alive and avoid detection by regulators;

s. "sneaking" payments out of bank accounts to TelexFree in order to avoid detection;

t. appearing in online videos with TelexFree Founders promoting TelexFree to the public;

u. publicly falsely stating that TelexFree's business operations had been assessed by the financial services provider and determined to be legal; or

v. otherwise becoming an integral part of TelexFree's Pyramid Scheme by, inter alia, enabling the TelexFree Pyramid Scheme to expand and continue by providing necessary financial services to TelexFree, despite actual knowledge of violations of M.G.L. c. 93 § 69 and M.G.L. c. 93A by TelexFree and other suspicious, tortious or illegal activities.

1053. By each Defendant's actions participating in the Pyramid Scheme as described herein, as alleged above, each Defendant aided and abetted the commission of the causes of action alleged herein.

1054. As a direct and proximate result of TelexFree's illegal Pyramid Scheme and all the activities performed in connection therewith, to which said Defendants provided substantial assistance, Plaintiffs and the Putative Class sustained ascertainable damages and losses and demand they be made whole.

FOURTH CLAIM FOR RELIEF
UNJUST ENRICHMENT
(Against All Defendants)

1055. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1056. Plaintiffs and the Putative Class conferred a benefit upon the Defendants by furnishing funds to Defendants, who accepted them without protest or defect and retained and benefitted from them.

1057. Defendants had an appreciation or knowledge of the benefit.

1058. Defendants knew of such funds received by them.

1059. Defendants have unlawfully and in bad faith denied Plaintiffs and the putative Class access to such funds, and have instead knowingly retained the benefit of such funds for themselves.

1060. Acceptance or retention by Defendants of the benefit under the circumstances set forth herein would otherwise be inequitable without payment for its value.

1061. As a direct and proximate result of Defendants' actions, as hereinabove set forth, Defendants are, and continue to be, unjustly enriched and Plaintiffs demand they and the Putative Class be made whole.

FIFTH CLAIM FOR RELIEF

CIVIL CONSPIRACY

(Against TelexFree, All Operational Defendants, John Merrill, John Hughes, Dustin Sparman, Fidelity Bank, Base Commerce, GPG, and IPS)

1062. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1063. TelexFree, the Operational Defendants, Katia Wanzeler, John Merrill, John Hughes, Dustin Sparman, Fidelity Bank, Base Commerce, GPG and IPS have combined by common design to enter into a civil conspiracy.

1064. Said Defendants conspired with each other to operate and maintain in operation a Pyramid Scheme in violation of Massachusetts General Laws Chapter 93, Section 69 and Chapter 93A.

1065. Said Defendants, by agreement or common design, engaged directly in the

operation of, or otherwise worked in concert to further the activities of, the unlawful Pyramid Scheme.

1066. As detailed above, each of said Defendants engaged in a tortious act in furtherance of the agreement or common design to engage in the lawful Pyramid Scheme.

1067. Said Defendants conspired with each other, making use of confidential information, and used this confidential information to misappropriate the funds of the Putative Class through the operation and maintenance of unlawful Pyramid Scheme.

1068. Said Defendants, for an unlawful purpose and using unlawful means, with the intent of so combining, unlawfully defrauded Plaintiffs and the Putative Class out of funds.

1069. Said Defendants' conduct constitutes a conspiracy to operate an unlawful enterprise, rendering all Defendants jointly and severally liable for the breaches of each other's obligations.

1070. As a direct and proximate cause of said Defendants' conspiracy, the Putative Class has and will continue to suffer substantial direct and consequential damages and Plaintiffs demand they and the Putative Class be made whole.

SIXTH CLAIM FOR RELIEF
PROFESSIONAL NEGLIGENCE
(Against All Licensed Professional Defendants)

1071. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1072. Craft, Craft Financial, Ann Genet, Nehra, Nehra Law Firm, Waak, Waak Law Firm, Nehra and Waak Law Firm, Opt3 Solutions, Inc., PricewaterhouseCoopers, Jason A. Borromei and each of the Licensed Professional Defendants owed a duty to Plaintiffs and the Putative Class to act with reasonable care to avoid negligently misstating, misrepresenting or being misleading about the true nature of TelexFree's operation and its financial information or its returns, and to comply with all laws. Each and everyone failed and similarly caused the Putative Class to suffer ascertainable economic loss.

1073. By negligently misstating and omitting relevant information, including the source of and sufficiency of funds for payments to Promoters, said Defendants breached the duty of care they owed to Plaintiffs and the Putative Class.

1074. Each of the Licensed Service Provider Defendants owed Plaintiffs and the Putative Class a duty to act with reasonable care and to exercise the ordinary skill and ability commonly exercised by such professionals.

1075. Plaintiffs and the Putative Class relied upon said Defendants' expertise and/or performance of their duties or was similarly affected and similarly caused to incur ascertainable economic loss.

1076. Plaintiffs and the Putative Class reposed faith, confidence and trust in said Defendants' representations and advice.

1077. As a direct and proximate result of said Defendants' negligence and carelessness, Plaintiffs and the Putative Class have been caused to suffer and sustain

damages and losses and demand they be made whole.

SEVENTH CLAIM FOR RELIEF
NEGLIGENT MISREPRESENTATION
(Against All Operational Defendants Except Katia Wanzeler)

1078. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1079. The Operational Defendants, except Katia Wanzeler, directly, and through their agents, servants, employees and/or representatives, negligently made false misrepresentations of material fact and omissions to Plaintiffs and the Putative Class in the course of their businesses for the purpose of obtaining and/or wrongfully appropriating and converting money from Plaintiffs and the Putative Class.

1080. The said Operational Defendants made negligent misrepresentations and omissions although said Defendants knew, or should have known, that such representations were false.

1081. Said representations, statements and omissions were material and were relied upon by Plaintiffs and the Putative Class, inducing them to furnish money to Defendants.

1082. Further, the Licensed Service Provider Defendants failed to exercise proper due diligence in the discharge of their investigatory duties as certified public accountants and attorneys of TelexFree, and knew or should have known Plaintiffs and the Putative Class would have relied upon their expertise and misrepresentations.

1083. Plaintiffs and the Putative Class reposed faith, confidence and trust in said

Operational Defendants' representations and advice.

1084. In consequence of the reliance on the negligent misrepresentations of said Defendants, Plaintiffs and the Putative Class have suffered great financial losses, have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged and demand they be made whole.

EIGHTH CLAIM FOR RELIEF
VIOLATIONS OF MASSACHUSETTS GENERAL LAWS, CHAPTER 110a, SECTION 410(b)
(Against All Operational Defendants Except PricewaterhouseCoopers)

1085. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1086. For the purposes of this cause of action alone, Defendant PricewaterhouseCoopers is not included within the definition of Licensed Professionals.

1087. At the time of the wrongs alleged, the Defendant Founders, Top Level Promoters and Licensed Professionals were each a controlling person, partner, officer, director, person occupying a similar status, agent or employee materially aiding in the sale of securities, of TelexFree within the meaning of Section 410(b) of the Massachusetts Uniform Securities Act, Massachusetts General Laws Chapter 110A.

1088. By their respective positions of authority, the Defendant Founders and Principals, Executive Office and Licensed Professional had the power and authority, to influence and control, and influenced and controlled, the decision-making and activities of TelexFree and the affiliated TelexFree entities and caused them to engage in the wrongful conduct described and in violations of Section 410(a) of the Massachusetts

Uniform Securities Act, M.G.L. c. 110A.

1089. The Defendant Founders and Principals, Executive Office and Licensed Professional actively participated in the leadership and decision-making process of the selling entity causing the dissemination of false and misleading statements and omissions of material facts.

1090. By their positions as controlling persons, partners and officers and directors of TelexFree, and because of the aforementioned conduct, said Defendants are liable under Section 410(b) of the Massachusetts Uniform Securities Act, Massachusetts General Laws Chapter 110A..

1091. In addition, the Defendant Top Level Promoters and Licensed Professionals were agents who materially aided in the sales of the fraudulent securities in violation of Sections 410 (b) of the Massachusetts Uniform Securities Act, Massachusetts General Laws Chapter 110A.

1092. Said Defendants made significant contributions toward making the sales to Plaintiffs and the Putative Class possible through their actions detailed above.

1093. Said Defendants prepared and provided information on, and endorsed and actively promoted the opportunity regarding the securities on websites and at TelexFree events and extravaganzas. Each of the said Defendants provided print materials, electronic materials, and made oral representations to the Putative Class

1094. The stated Defendants are liable under 410(b) as a primary violation by TelexFree was under 410(a) because Defendants materially aided in the sale of

unregistered securities, and knew, or by reasonable diligence should have known, of the primary violation.

1095. Said Defendants are jointly and severally liable for the primary violations under Section 410(a)(2) detailed above.

1096. Plaintiffs and the Putative Class seek the award of actual damages on behalf of the Class.

1097. The Putative Class has and will continue to suffer irreparable harm as a result of the Defendants' conduct that cannot adequately be redressed at law.

1098. Unless this Court grants injunctive relief, the Putative Class will be irreparably harmed in a manner not fully compensable by money damages.

NINTH CLAIM FOR RELIEF
FRAUD
(Against Operational Defendants)

1099. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1100. The Operational Defendants directly, and through their agents, servants, employees and/or representatives, did intentionally or recklessly make false representations and omissions of material fact to Plaintiffs and the Putative Class with these misrepresentations being made to obtain and/or wrongfully appropriate and convert money from Plaintiffs and the Putative Class.

1101. Said Defendants' fraudulent or reckless misrepresentations and omissions are detailed above and include, but are not limited to:

a. providing false and misleading information on the nature of TelexFree's business operation;

b. misrepresenting the financial statements;

c. providing false and misleading information on the value of the AdCentral package;

d. providing false and misleading information on the method and source from which income was derived;

e. providing false and misleading information on the legality of TelexFree's business model;

f. providing false and misleading information on the sustainability of the returns to Promoter;

g. providing false and misleading information regarding the investigation in Brazil and subsequent closure of TelexFree's Brazilian operations;

h. knowingly participating in false and deceptive information televised over the internet and other media;

i. failing to comply with federal and state laws;

j. employing legal and accountant counsel to mask their illegal and fraudulent activities to further and perpetuate such illegal fraudulent activities; and

k. setting up TelexFree's computer servers in a foreign

country with the intent to avoid prosecution, legal service on the benefits of United States legal process and otherwise with knowledge that TelexFree was an unlawful Pyramid Scheme.

1102. Said Defendants knew of the fraudulent or reckless deceptive misrepresentations and omissions of material facts set forth.

1103. Said Defendants made these intentional or reckless misrepresentations although Defendants knew that such representations were false for the purpose of inducing Plaintiffs and the Putative Class to purchase initially and to continue to purchase memberships and to recruit new members.

1104. Such misrepresentations and omissions were done knowingly or recklessly for the additional purpose and effect of concealing the true information about the TelexFree Program, including its financial condition and operations.

1105. Said Defendants received information reflecting the facts regarding TelexFree's business practices and exercised control over the materially misleading misstatements.

1106. Because of their control over and/or association with the TelexFree Program, said Defendants were active and culpable participants in the fraudulent Scheme.

1107. Said Defendants knew and recklessly disregarded the false and misleading nature of the information they caused to be disseminated to Promoters and potential

Promoters.

1108. The ongoing fraudulent Pyramid Scheme could not have been perpetrated over a substantial period without the knowledge and complicity of said Defendants.

1109. These misrepresentations and statements were material and were relied upon by Plaintiffs as true, inducing them to furnish money to said Defendants and recruit new members.

1110. In consequence of the reliance on the negligent, intentional or reckless misrepresentations, Plaintiffs and the Putative Class have paid artificially inflated prices for worthless membership interests, suffered great financial losses, and have also incurred considerable expenses and loss of income, and have otherwise been greatly damaged during the Class Period and demand to be made whole.

TENTH CLAIM FOR RELIEF
TORTIOUS AIDING AND ABETTING
(Against All Defendants Except The **Defendant Class**)

1111. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

1112. Each Defendant provided substantial assistance or encouragement to the other Defendants in committing the primary causes of action alleged herein, and did so with unlawful intent and knowledge that such parties were perpetuating an illegal Pyramid Scheme yet continuing to substantially assist or encourage.

1113. Defendants rendered this substantial assistance despite their knowledge that TelexFree's operations constituted an unlawful, unfair, deceptive and unsustainable

Pyramid Scheme and financial fraud.

1114. Such substantial assistance rendered by Defendants despite their knowledge of, or with reasonable diligence they should have known of, the illegal nature of TelexFree's operations, is detailed above and includes, but is not limited to:

a. managing and controlling TelexFree and its affiliated entities;

b. providing accounting services to TelexFree;

c. providing legal services to TelexFree;

d. publicly certifying that TelexFree's business model and operations were legal, proper, and economically viable and sustainable;

e. providing banking, investment and asset management services for TelexFree and its management;

f. promoting TelexFree AdCentral packages;

g. continuing to provide financial services following the Brazilian Court's injunction to stop TelexFree's business in Brazil;

h. processing payments to, from, and on behalf of TelexFree and its affiliated entities;

i. processing payments for transfers of funds which deepened TelexFree's insolvency; and

j. setting up TelexFree's computer servers in a foreign country with the intent to avoid prosecution, legal service on the benefits of United States legal process and otherwise with knowledge that

TelexFree was an unlawful Pyramid Scheme.

1115. By each Defendant's actions participating in the Pyramid Scheme, as alleged above, each said Defendant aided and abetted the commission of the causes of action alleged herein.

1116. As a direct and proximate result of TelexFree's illegal Pyramid Scheme and all the activities performed in connection therewith, to which Defendants provided substantial assistance, Plaintiffs and the Putative Class sustained damages and losses and demand to be made whole.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for judgment against Defendants as follows:

1. The Court determine that this action be maintained as a class action under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiffs as Class Representatives and their counsel of record as Class Counsel, and direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class;

2. The Court determine that this action be maintained as a defendant class action under Rule 23(a), 23(b)(1)(A) and (B) and 23(b)(3) of the Federal Rules of Civil Procedure, appoint Defendant Shoyfer as Defendant Class Representative and his counsel of record as Defendant Class Counsel, and direct that notice of this action, as

provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Defendant Class;

3. The unlawful conduct alleged herein be adjudged and decreed an unlawful Pyramid Scheme in violation of Massachusetts General Laws Chapter 93, § 69 and Chapter 93A, §§ 2 and 11;

4. Plaintiffs and the members of the Class recover damages, as provided by law, to the maximum extent allowed under the law, including, without limitations, multiple damages, against Defendants;

5. Plaintiffs and the members of the Class recover their costs of suit, including reasonable attorneys' fees, as provided by law;

6. Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining, or renewing the conduct alleged herein, or from entering into, adopting, or following any practice, plan, program, or device having a similar purpose or effect;

7. Plaintiffs and the members of the Class be awarded pre- and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of this complaint;

8. Plaintiffs and the members of the Class be granted such other and further relief as the case may require and the Court may deem just and proper.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs and the Putative Class demand a jury trial of their claims to the extent authorized by law.

Dated this 22nd day of September 2015

Respectfully submitted,

/s/ Steven J. German

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Sheri Sadler

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

RITA DOS SANTOS, PUTATIVE CLASS REPRESENTATIVES AND THOSE SIMILARLY SITUATED

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
STEVEN J. GERMAN, ADELMAN GERMAN, PLC
8245 N. 85TH WAY, SCOTTSDALE, AZ 85258 (480) 607-9166

DEFENDANTS

TELEXELECTRIC, LLLP; TELEX MOBILE, HOLDINGS, INC.; JAMES M. MERRILL; CARLOS N. WANZELER; (cont'd on attached

County of Residence of First Listed Defendant MARICOPA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☒ 1	Incorporated *ar* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Prineipal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Forcign Country	☐ 3	☐ 3	Forcign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Prodnct Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
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V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (speoify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to Distriet Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jnrisdictional statutes unless diversity**):
Class Action Fairness Act of 2005, 28 U.S.C. Sections 1332(d), 1453, and 1711-1715

Brief deseription of eause:
TelexFree wes an unlawful Pyramid scheme and the Plaintiffs seeks to recoup their lost funds

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ 500,000,000.00

GHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 09/22/2015

SIGNATURE OF ATTORNEY OF RECORD Steven J. German

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Dos Santos adv. TelexEleetrie, LLLP, et al.

DEFENDANTS (Cont'd):

CARLOS N. WANZELER; STEVEN M. LABRIOLA; JOSEPH H. CRAFT, a/k/a JOE H. CRAFT; CRAFT FINANCIAL SOLUTIONS, LLC; ANN GENET; CARLOS COSTA; KATIA WANZELER; SANDERLEY RODRIGUES DE VASCONCELOS; SANTIAGO DE LA ROSA; RANDY N. CROSBY; FAITH R. SLOAN; DANIIL SHOYFER; SCOTT MILLER; GERALD P. NEHRA, individually and doing business as LAW OFFICES OF NEHRA AND WAAK; GERALD P. NEHRA ATTORNEY AT LAW, PLLC; RICHARD W. WAAK, individually and doing business as LAW OFFICES OF NERHA AND WAAK; RICHARD W. WAAK, ATTORNEY AT LAW, PLLC; OPT3 SOLUTIONS, INC.; JASON A. BORROMEI; PRICEWATERHOUSECOOPERS, LLP; BANK OF AMERICA, NA; TD BANK, NA; RSB CITIZENS, N.A.; FIDELITY CO-OPERATIVE BANK, doing business as FIDELITY BANK; JOHN F. MERRILL; WELLS FARGO BANK, N.A.; SYNOVUS BANK; GLOBAL PAYROLL GATEWAY INC.; INTERNATIONAL PAYOUT SYSTEMS, INC.; PROPAY, INC., doing business as PROPAY.COM; BASE COMMERCE, LLC, doing businces as PHOENIX PAYMENTS; JOHN HUGHES; VANTAGE PAYMENTS, LLC; DUSTIN SPARMAN; ALLIED WALLET, LTD; COMMERCE, LLC, doing business as PHOENIX PAYMENTS; JOHN HUGHES; VANTAGE PAYMENTS, LLC; DUSTIN SPARMAN; ALLIED WALLET, LTD; DOE TOP LEVEL PROMOTERS; DOE LICENSED PROFESSIONALS; DOE BANKS; DOE PAYMENT PROCESSING SERVICES, PARALEGAL DOE, and a Defendant Class of Direct Victim Payment Recipients

EXHIBIT I

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: TELEXFREE SECURITIES LITIGATION MDL No. 2566

(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO −2)

On October 21, 2014, the Panel transferred 2 civil action(s) to the United States District Court for the District of Massachusetts for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* 54 F.Supp.3d 1353 (J.P.M.L. 2014). Since that time, 1 additional action(s) have been transferred to the District of Massachusetts. With the consent of that court, all such actions have been assigned to the Honorable Timothy S Hillman.

It appears that the action(s) on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the District of Massachusetts and assigned to Judge Hillman.

Pursuant to Rule 7.1 of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, the action(s) on the attached schedule are transferred under 28 U.S.C. § 1407 to the District of Massachusetts for the reasons stated in the order of October 21, 2014, and, with the consent of that court, assigned to the Honorable Timothy S Hillman.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the District of Massachusetts. The transmittal of this order to said Clerk shall be stayed 7 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 7−day period, the stay will be continued until further order of the Panel.

Inasmuch as no objection is pending at this time, the stay is lifted.

Oct 16, 2015

CLERK'S OFFICE
UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

FOR THE PANEL:



Jeffery N. Lüthi
Clerk of the Panel

IN RE: TELEXFREE SECURITIES LITIGATION MDL No. 2566

SCHEDULE CTO–2 – TAG–ALONG ACTIONS

DIST	DIV.	C.A.NO.	CASE CAPTION
ARIZONA			
AZ	2	15–01906	Dos Santos v. Telexelectric LLLP et al

I hereby certify on 10/20/15 that the foregoing document is true and correct copy of the
☐ electronic docket in the captioned case
☑ electronically filed original filed on 10/16/15
☐ original filed in my office on _____

Robert M. Farrell
Clerk, U.S. District Court
District of Massachusetts

By: _____
Deputy Clerk

EXHIBIT J

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

MARIA MURDOCH, ANGELA BATISTA JIMENEZ, ELISANGELA OLIVEIRA, and DIOGO DERAUGO, PLAINTIFFS, Putative Class Representatives, and Those Similarly Situated, Plaintiffs, v. TELEXELECTRIC, LLLP, TELEX MOBILE HOLDINGS, INC., DOUGLAS M. MACHADO, ALEXANDRO O. ROCHA, DAVID REIS, LEONARDO FRANCISCO, LINDA S. HACKETT, DAVID HACKETT, DL1 INC., BENJAMIN ARGUETA, JACQUELINE DA COSTA ZIEFF, JOSE CARLOS MACIEL, BRUNO GRAZIANI, RENATO RIBEIRO, ERASMO BARROSO, LAIR FERNANDES, LAYZA DUARTE, LYVIA M. WANZELER, RODRIGO MONTEMOR, RONI YASMINE, RUDNEI DA SILVA, VAGNER DANTAS SILVA, WAGNER WEIHRAUCH, JULIO SILVA, JOSE NETO, JULIO C. PAZ, EUZEBIO SUDRE NETO, HUGO ALVARADO, ANA R. RAMOS, RUDDY ABREAU, MARCO ALMEIDA, LAUREANO ARELLANO, AARON ATAIDE, ROSANE CRUZ, OMAR QUINONEZ, CARLO DEJESUS, BILKISH SUNESARA, ANDRES BOLIVAR ESTEVEZ, JOSE LOPEZ, ANA ROSA LOPEZ, FRANTZ BALAN, MARCELO DASILVA, BENERANDO CONTRERAS,GLADYS ALVARDO, STEVEN M. LABRIOLA, CARLOS COSTA, SANDERLEY RODRIGUES DE VASCONCELOS, SANTIAGO DE LA ROSA; RANDY N. CROSBY Defendants.	**CLASS ACTION COMPLAINT** **AND** **DEMAND FOR TRIAL BY JURY**

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VII. DEMAND FOR JURY TRIAL **41**

Plaintiffs and Putative Class Representatives Elisangela Oliveira, Maria Murdoch, Diogo Dearaugo, on behalf of themselves and all others similarly situated, ("Plaintiffs"), bring this action against the defendants named herein ("Defendants"). This complaint is based on information and belief, except those paragraphs that relate to Plaintiffs, which are based on personal knowledge. To preserve the resources of this Court and the parties, Plaintiffs[1] assert the following abbreviated allegations as follows:

1. TelexFree, Inc., TelexFree, LLC, and TelexFree Financial, Inc. (collectively, "TelexFree" or the "Debtors") and its related entities and individuals operated an illegal and fraudulent scheme whereby it sold "memberships," ostensibly paid its "promoters" for placing duplicative and meaningless advertisements for a "voice over internet protocol" ("VoIP") product, and in reality paid them to recruit other investors whose new membership fees kept the scheme afloat (the "TelexFree Program").

2. Until TelexFree, Inc. changed its compensation plan in March 2014, a month before it filed for bankruptcy, it did not require promoters to sell its VoIP product to be eligible for payments.

3. Only 11.7% of the face value of invoices for membership plans or VoIP packages was paid in cash to the Debtors, and the remainder was satisfied by the use of victims' credits. *See* Affidavit of Stephen B. Darr in Support of Motion by Chapter 11 Trustee for Entry of Order Finding That Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief at ¶ 35, *In re TelexFree, LLC*, No. 14-40987 (Bankr. D. Mass. Oct. 7, 2015), ECF No. 623-1 ("While invoices associated with the sale of membership plans or VoIP packages had a face value of $3,073,471,326, only $359,792,242, or approximately twelve percent (11.7%) of

[1] Plaintiffs suggest the Court consider a separate litigation track be created for their claims against the Top-Level Promoters.

that amount, was paid in cash to the Debtors. The balance of these invoices, totaling $2,713,679,084, was satisfied by the use of Participants' credits.").

4. TelexFree's business and operations constituted an illegal pyramid scheme (the "TelexFree Pyramid Scheme"); in fact, the United States Bankruptcy Court for the District of Massachusetts (Hoffman, J.) has made a finding of fact applicable to all proceedings that TelexFree's operations constituted a Ponzi Scheme (Chapter 11 Case No. 14-40987-MSH; EFC No. 668). A pyramid scheme is a form of a Ponzi scheme wherein a business enterprise persuades people to invest money into a seemingly legitimate business model and in exchange guarantees unrealistic and, ultimately, illusory profits. The actual sales or services provided, if any, are insufficient to pay the promised returns to investors. The operation of a pyramid scheme relies entirely on additional investment funding by newly recruited or existing investors. Once the influx of new cash from new investors becomes insufficient to satisfy the ever-growing number of participants/previous investors, or as in the case of TelexFree stops short following law enforcement raids, the pyramid scheme collapses because there are no new funds with which to pay previous investors.

5. TelexFree's founders and principals, executive office and top-level promoters controlled the activities and operations of TelexFree and knowingly, maliciously, and willfully conspired to perpetrate, and did perpetrate, the TelexFree Pyramid Scheme with full awareness of its unfair, deceptive, and unlawful nature.

6. A class action is pending in this district based upon the TelexFree Pyramid Scheme against, *inter alia*, TelexFree's founders and principals, executive office and top-level promoters, certain licensed professionals and certain financial services providers for the knowing role they each played in substantially assisting the Scheme.

7. Through the present action, Plaintiffs seek compensation for the ascertainable economic loss they were caused to suffer as a result of the participation of the below-described Defendants in the illegal Pyramid Scheme.

8. These individual Defendants (each a "Direct Victim Payment Recipient" or "Top-Level Promoter") profited from ascertainable payments Plaintiffs -- not TelexFree -- made to those Defendants.[2]

9. Plaintiffs seek compensation from the Defendant Top-Level Promoters solely for the payments made directly by Net Loser victims to them because the retention of such funds would be wrongful and unjust enrichment. Only the return of those funds will offset the net loss the Putative class suffered as a result of the unlawful Pyramid Scheme.

10. Each Defendant benefitted from the Scheme, possessed full knowledge of that benefit and accepted and retained such benefit, unjustly, at the expense of the named Plaintiffs and/or putative class members. The Defendants' retention of the monies paid by the victim/class members is patently unjust under the attendant circumstances. As such, the sole cause of action asserted against the Defendants here is for unjust enrichment.

I. JURISDICTION AND VENUE

11. This Court has subject-matter jurisdiction over the instant matter pursuant to 28 U.S.C. § 1332(d) and the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1711, *et seq*., which vest original jurisdiction in the district courts of the United States for any multi-state class action where the aggregate amount in controversy exceeds $5,000,000 and where the citizenship of any member of the class of plaintiffs is different from that of any defendant.

[2] To avoid doubt, Plaintiffs seek recompense ***solely*** for monies ***they*** paid to the Defendants. They do not seek recovery of any monies ***TelexFree*** paid to those Defendants.

The amount in controversy is over $5,000,000 and as evidenced below, the diverse citizenship requirement of CAFA are also satisfied.

12. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, a substantial portion of the affected interstate trade and commerce described herein was carried out in this District, and one or more of the Defendants reside, are licensed to do business in, are doing business in, had agents in, or are found or transact business in this District.

13. This Court has *in personam* jurisdiction over the Defendants because each, either directly or through the valueless ownership of the fraudulent TelexFree packages, *inter alia*: (a) transacted business and participated in the carrying out and perpetration of a fraud by engaging in substantial activities in Massachusetts; (b) solicited victims in Massachusetts; (c) attended meetings in Massachusetts; (d) regularly spoke with the founders of TelexFree and members of the home office in Massachusetts in furtherance of their obtaining funds from victims; (e) directly or indirectly sold or marketed in Massachusetts; (f) otherwise committed a tort within the Commonwealth of Massachusetts including making use of the resources offered by the Founders or others in Massachusetts; (g) committed a breach of contract within Massachusetts; (h) had substantial aggregate contacts with Massachusetts; (i) were engaged in an illegal pyramid scheme conspiracy that was directed at, and had a direct, substantial, reasonably foreseeable and intended effect of causing injury to, the business or property of persons and entities residing in, located in, or doing business throughout Massachusetts and through that activity were substantially involved in the Commonwealth of Massachusetts' stream of commerce; and (j) to the extent that participants of an unlawful enterprise purposefully take advantage of the laws of Commonwealth of Massachusetts – each

did.

14. Each Defendant Top-Level Promoter communicated regularly with TelexFree's founders, principals, executive officers, home office employees[3], including James Merrill, Carlos Wanzeler, Steven Labriola, Carlos Costa, and other Defendants and others identified as Does in Massachusetts during all material relevant times beginning on February 15, 2012 through approximately April 2014 in furtherance of their taking of funds from the putative class of victims. Each Defendant together with financial service providers, licensed professionals and others conducted business and carried out acts that were substantial and essential to the operation of the TelexFree Pyramid Scheme in Massachusetts, and they have purposefully availed themselves of the laws of the Commonwealth of Massachusetts. Moreover each Defendant was party to acts and transactions giving rise to this action that occurred in this District.

15. By reason of the unlawful activities hereinafter alleged, Defendants substantially affected commerce throughout Massachusetts and the United States, causing injury to the Plaintiffs and members of the putative class. Defendants, directly and through their agents, engaged in activities affecting Massachusetts and other states, to operate and profit from an unlawful Pyramid Scheme.

16. Defendants' conspiracy and unlawful conduct described herein adversely affected persons in Massachusetts and throughout the United States who purchased TelexFree packages, including Plaintiffs and the members of the class.

[3] The foregoing terms are meant to comport with their common usage. A further description may be found through a review of the individuals and entities named in the Second Consolidated Amended Complaint in MDL 2566.

II. THE PARTIES

A. PLAINTIFFS

17. Plaintiff Maria Murdoch ("Murdoch") is an individual who resides in Wakefield, Massachusetts. Murdoch, like many other victims of TelexFree's Pyramid Scheme, paid funds to one or more of the Defendants with the hope of earning a profit and instead, suffered a Net Loss because TelexFree was an unlawful Pyramid scheme and not a lawful business venture. "Net Loss" is defined throughout as the class member having invested more funds into the Pyramid Scheme than he or she withdrew.

18. Plaintiff Angela Batista Jimanenez ("Jamanenez") is an individual who resides in Las Vegas, Nevada. Jamanenez, like many other victims of TelexFree's Pyramid Scheme, paid funds to one or more of the Defendants with the hope of earning a profit and instead, suffered a Net Loss because TelexFree was an unlawful Pyramid scheme and not a lawful business venture. "Net Loss" is defined throughout as the class member having invested more funds into the Pyramid Scheme than he or she withdrew.

19. Plaintiff Elisangela Oliveira ("Oliveira") is an individual who resides in Medford, Massachusetts. Oliveira, like many other victims of TelexFree's Pyramid Scheme, paid funds to one or more of the Defendants with the hope of earning a profit and instead, suffered a Net Loss because TelexFree was an unlawful Pyramid scheme and not a lawful business venture.

20. Plaintiff Diogo Dearaugo ("Dearaugo") is an individual who resides in Saugus, Massachusetts. Dearaugo, like many other victims of TelexFree's Pyramid Scheme, paid funds to one or more of the Defendants with the hope of earning a profit and instead, suffered a Net Loss because TelexFree was an unlawful Pyramid scheme and not a lawful business venture.

B. DEFENDANTS

a. Electric and Mobile

21. TelexElectric, LLLP ("Electric") is a limited liability limited partnership organized and under the laws of the State of Nevada. Its registered agent is BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

22. Telex Mobile Holdings, Inc. ("Mobile") is a corporation organized and existing under the laws of the State of Nevada, and having its registered agent as BWFC Processing Center, LLC, 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169.

b. Top Level Promoters and Associated Individuals

23. Leonardo Francisco ("Francisco") is an individual with a last known usual place of abode of 30D Mount Avenue, Marlborough, Middlesex County, Massachusetts 01752. At all relevant times herein, Francisco served as a promoter for TelexFree, and received payment of funds directly from victims. Francisco was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

24. Francisco is the nephew of TelexFree founder and Vice President Carlos N. Wanzeler, and also served as a "straw" investor for Carlos N. Wanzeler, purchasing AdCentral packages in his own name but on Wanzeler's behalf, and transferring his profits to Wanzeler.

25. Lyvia M. Wanzeler is an individual with a last known usual place of abode of 41A Mount Avenue, Worcester, Worcester County, Massachusetts 01606. At all relevant times herein, Lyvia M. Wanzeler served as a promoter for TelexFree, and received payment of funds directly from victims. Wanzeler was a net winner in that she received funds from

victims that exceeded what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

26. Lyvia M. Wanzeler is also the daughter of TelexFree founder and Vice President Carlos N. Wanzeler, and is believed to have served as a "straw" investor for Carlos N. Wanzeler, purchasing AdCentral packages in her own name but on Carlos N. Wanzeler's behalf, and transferring her profits to Carlos N. Wanzeler.

27. Wagner Weihrauch ("Weihrauch") is an individual with a last known usual place of abode of Everett, Middlesex County, Massachusetts 01819. At all relevant times herein, Weihrauch served as a promoter for TelexFree, and received payment of funds directly from victims. Weihrauch was a net winner in that he received funds from victims that exceeded what invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

28. Linda S. Hackett is an individual with a last known usual place of abode of 97 Bellevue Avenue, Melrose, Middlesex County, Massachusetts 02176. At all relevant times herein, Linda S. Hackett served as a Promoter for TelexFree, and received payment of funds directly from victims. Hackett was a net winner in that she received funds from victims that exceeded what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

29. David Hackett is an individual with a last known usual place of abode of 97 Bellevue Avenue, Melrose, Middlesex County, Massachusetts 02176. At all relevant times

herein, David Hackett served as a promoter for TelexFree, and received payment of funds directly from victims. Hackett was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown. He partnered with his wife Linda in all their TelexFree activities.

30. DL1 Inc. ("DL1") is a Domestic Profit Corporation, organized and existing under the laws of the Commonwealth of Massachusetts, and having a principal place of business at 97 Bellevue Avenue, Melrose, Middlesex County, Massachusetts 02176. To the extent it can be pled, DL1 Inc. was a net winner in that it received funds from victims that exceeded what it invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This Defendant was previously unnamed because its identity was then unknown.

31. Defendant Linda S. Hackett, with the assistance of David Hackett, formed DL1 on February 1, 2013, solely for the purpose of marketing and selling TelexFree AdCentral packages.

32. At all material times, DL1 was and is a "shell" corporation holding no, or virtually no, assets and having no employees beyond its principals, Linda S. Hackett and David Hackett.

33. At all times material herein, DL1 was effectively an alter ego of Defendants Linda S. Hackett and David Hackett, and furthermore, had no legitimate business purpose, failed to maintain corporate formalities, had no independent board of directors and otherwise served as a "facade" for the sole benefit of said Defendants.

34. Benjamin Argueta ("Argueta") is an individual with a last known usual place of abode of 14 Illinois Avenue, Somerville, Middlesex County, Massachusetts 02145. At all relevant times herein, Argueta served as a promoter for TelexFree, and received payment of funds directly from victims. Argueta was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

35. Jacqueline Da Costa Zieff ("Zieff") is an individual with a last known usual place of abode of 50 Woodlawn Drive, Newton, Middlesex County, Massachusetts 02467. At all relevant times herein, Zieff served as a promoter for TelexFree, and received payment of funds directly from victims. Zieff was a net winner in that she received funds from victims that exceeded what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

36. Jose Carlos Maciel ("Maciel") is an individual with a last known usual place of abode of 18 Hayes Street, Apartment 2, Framingham, Middlesex County, Massachusetts 01702. At all relevant times herein, Maciel served as a promoter for TelexFree, and received payment of funds directly from victims. Maciel was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

37. Bruno Graziani ("Graziani") is an individual with a last known usual place of abode of 80 Lilac Circle, Marlborough, Middlesex County, Massachusetts 01752. At all

relevant times herein, Graziani served as a promoter for TelexFree, and received payment of funds directly from victims. Graziani was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

38. Renato Ribeiro ("Ribeiro") is an individual with a last known usual place of abode of 14 Washington Street, Medford, Middlesex County, Massachusetts 02155. At all relevant times herein, Ribeiro served as a promoter for TelexFree, and received payment of funds directly from victims. Ribeiro was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

39. Erasmo Barroso ("Barroso") is an individual with a last known usual place of abode of 78 Neil Street, Unit 1, Marlborough, Middlesex County, Massachusetts 01752. At all relevant times herein, Barroso served as a promoter for TelexFree, and received payment of funds directly from victims. Barroso was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

40. Lair Fernandes ("Fernandes") is an individual with a last known usual place of abode of 24 Hamilton Street, Apartment 15, Saugus, Essex County, Massachusetts 01906. At all relevant times herein, Fernandes served as a promoter for TelexFree, and received payment of funds directly from victims. Fernandes was a net winner in that he received funds from

victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

41. Layze Duarte ("Duarte") is an individual with a last known usual place of abode of 20 Terrence Avenue, Clinton, Worcester County, Massachusetts 01510. At all relevant times herein, Duarte served as a promoter for TelexFree, and received payment of funds directly from victims. Duarte was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

42. Rodrigo Montemor ("Montemor") is an individual with a last known usual place of abode of 8 Boxford Street, Lawrence, Essex County, Massachusetts 01843. At all relevant times herein, Montemor served as a promoter for TelexFree, and received payment of funds directly from victims. Montemor was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

43. Roni Yasmine ("Yasmine") is an individual with a last known usual place of abode 181 Massachusetts Avenue, Boston, Suffolk County, Massachusetts 02115. At all relevant times herein, Yasmine served as a promoter for TelexFree, and received payment of funds directly from victims. Yasmine was a net winner in that he received funds from victims that exceeded what was invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This

individual was previously unnamed because his identity was then unknown.

44. Rudnei Da Silva is an individual with a last known usual place of abode of 65 Johnson St., Leominster, Worcester County, Massachusetts 01453. At all relevant times herein, Rudnei Da Silva served as a promoter for TelexFree, and received payment of funds directly from victims. Rudnei DaSilva was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

45. Vagner Dantas Silva is an individual with a last known usual place of abode of 19 Cameron Avenue, Somerville, Middlesex County, Massachusetts 02144. At all relevant times herein, Vagner Dantas Silva served as a promoter for TelexFree, and received payment of funds directly from victims. Vagner Dantas Silva was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

46. David Reis ("Reis") is an individual with a last known usual place of abode in Somerville, Middlesex County, Massachusetts 02144. At all relevant times herein, Reis served as a promoter for TelexFree, and received payment of funds directly from victims. Reis was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

47. Julio Silva is an individual with a last known usual place of abode in Saugus,

Essex County, Massachusetts 01906. At all relevant times herein, Julio Silva served as a promoter for TelexFree, and received payment of funds directly from victims. Julio Silva was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

48. Jose Neto ("Neto") is an individual with a last known usual place of abode of 49 Rodney Street, Worcester, Worcester County, Massachusetts 01605. At all relevant times herein, Neto served as a promoter for TelexFree, and received payment of funds directly from victims. Neto was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

49. Julio C. Paz ("Paz") is an individual with a last known usual place of abode of 179 Water Street, Framingham, Middlesex County, Massachusetts 01701. At all relevant times herein, Paz served as a promoter for TelexFree, and received payment of funds directly from victims. Paz was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

50. Euzebio Sudre Neto ("Sudre Neto") is an individual with a last known usual place of abode of 334 Chestnut Farm Way, Raynham, Bristol County, Massachusetts 02767. At all relevant times herein, Sudre Neto served as a promoter for TelexFree, and received payment of

funds directly from victims. Sudre Neto was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

51. Hugo Alvarado ("Alvarado") is an individual with a last known usual place of abode of 18 Catherine Street, #1, Worcester, Worcester County, Massachusetts 01605. At all relevant times herein, Alvarado served as a promoter for TelexFree, and received payment of funds directly from victims. Alvarado was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

52. Ana R. Ramos ("Ramos") is an individual with a last known usual place of abode of 63 Fremont Ave., Apt. 2, Chelsea, Suffolk County, Massachusetts 02150. At all relevant times herein, Ramos served as a promoter for TelexFree, and received payment of funds directly from victims. Ramos was a net winner in that she received funds from victims that exceeded what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

53. Ruddy Abreau ("Abreau") is an individual with a last known usual place of abode of 9 Longwood Drive, Methuen, Essex County, Massachusetts 01844. At all relevant times herein, Abreau served as a promoter for TelexFree, and received payment of funds directly from victims. Abreau was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational

defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

54. Marco Almeida ("Almeida") is an individual with a last known usual place of abode of 420 Atlantic Ave., Long Branch, New Jersey 07740. At all relevant times herein, Almeida served as a promoter for TelexFree, and received payment of funds directly from victims. Almeida was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

55. Laureano Arellano ("Arellano") is an individual with a last known usual place of abode of 576N 800W, Provo, Utah 84601. At all relevant times herein, Arellano served as a promoter for TelexFree, and received payment of funds directly from victims. Arellano was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

56. Aaron Ataide ("Ataide") is an individual with a last known usual place of abode of 2900 W Porter Ave., Visalia, California 93291. At all relevant times herein, Ataide served as a promoter for TelexFree, and received payment of funds directly from victims. Ataide was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

57. Rosane Cruz ("Cruz") is an individual with a last known usual place of abode of 22 Northampton Street, Worcester, Massachusetts 01605. At all relevant times herein, Cruz served as a promoter for TelexFree, and received payment of funds directly from victims. Cruz was a net winner in that she received funds from victims that exceeded what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

58. Omar Quinonez ("Quinonez") is an individual with a last known usual place of abode of 3812 N. Oak Dr., Apt. M62, Tampa, Florida 33611. At all relevant times herein, Quinonez served as a promoter for TelexFree, and received payment of funds directly from victims. Quinonez was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

59. Carlos C. Dejesus ("Dejesus") is an individual with a last known usual place of abode of 72 Fremont Ave., Apt. 2, Chelsea, Suffolk County, Massachusetts 02150. At all relevant times herein, Dejesus served as a promoter for TelexFree, and received payment of funds directly from victims. Dejesus was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

60. Bilkish Sunesara ("Sunesara") is an individual with a last known usual place of abode of 1800 Austin Parkway, Sugar Land, Texas 77479. At all relevant times herein,

Sunesara served as a promoter for TelexFree, and received payment of funds directly from victims. Sunesara was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

61. Andres Bolivar Estevez ("Estevez") is an individual with a last known usual place of abode of 9510 90th Ave. 2, Woodhaven, New York 11421. At all relevant times herein, Estevez served as a promoter for TelexFree, and received payment of funds directly from victims. Estevez was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

62. Jose Lopez ("Lopez") is an individual with a last known usual place of abode of 164 Exchange Street, 2nd Floor, Lawrence, Essex County, Massachusetts 01841. At all relevant times herein, Lopez served as a promoter for TelexFree, and received payment of funds directly from victims. Lopez was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

63. Ana Rosa Lopez ("Rosa Lopez") is an individual with a last known usual place of abode of 5019 Redwing Brook Trail, Katy, Texas 77449. At all relevant times herein, Rosa Lopez served as a promoter for TelexFree, and received payment of funds directly from victims. Rosa Lopez was a net winner in that she received funds from victims that exceeded

what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

64. Frantz Balan ("Balan") is an individual with a last known usual place of abode of 51 Grover Street, Apt. 2, Everett, Middlesex County, Massachusetts 02149. At all relevant times herein, Balan served as a promoter for TelexFree, and received payment of funds directly from victims. Balan was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

65. Marcelo Dasilva ("Dasilva") is an individual with a last known usual place of abode of 38 Lyme St., #308, Malden, Middlesex County, Massachusetts 02148. At all relevant times herein, Dasilva served as a promoter for TelexFree, and received payment of funds directly from victims. Dasilva was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

66. Gladys Alvarado ("Alvarado") is an individual with a last known usual place of abode of 177 Lincoln St., #2, Worcester, Massachusetts 01605. At all relevant times herein, Alvarado served as a promoter for TelexFree, and received payment of funds directly from victims. Alvarado was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously

unnamed because his identity was then unknown.

67. Douglas M. Machado ("Machado") is an individual with a last known usual place of abode of 88 Farrwood Avenue, Apartment 8, North Andover, Essex County, Massachusetts 01845. At all relevant times herein, Machado served as a promoter for TelexFree, and received payment of funds directly from victims. Machado was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

68. Benerando Contreras ("Contreras") is an individual with a last known usual place of abode in Las Vegas, Clark County, Nevada. At all relevant times herein, Contreras served as a promoter for TelexFree, and received payment of funds directly from victims. Contreras was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

69. Alexandro O. Rocha ("Rocha") is an individual with a last known usual place of abode of 6 Nell Road, Revere, Suffolk County, Massachusetts 02151. At all relevant times herein, Rocha served as a promoter for TelexFree, and received payment of funds directly from victims. Rocha was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

70. Steven M. Labriola ("Labriola") is an individual now or formerly of 21 Kiwanis

Beach Road, in Upton, Worcester County, Massachusetts 01568. Labriola is identified as a Director of Common Cents Communications, Inc. in its filed Articles of Incorporations with the Massachusetts Secretary of State Office. Labriola also functioned as the International sales Director of TelexFree.

71. Carlos Costa, ("Costa") is an individual now or formerly of 44A McClintock Avenue, Unit A, in Worcester, Worcester County, Massachusetts 01604. Costa was listed as Manager of TelexFree, LLC with the Massachusetts Secretary of State Corporations Division.

72. Sanderley Rodrigues De Vasconcelos, ("Rodrigues"), is an individual now or formerly of, 100 Stockton Street, Apt. 49, in Chelsea, Suffolk County, Massachusetts 02150. At no time has Rodrigues been registered with the Commonwealth of Massachusetts as a broker or dealer of securities. Rodrigues had been charged by the United States Securities and Exchange Commission with operating a fraudulent Pyramid Scheme under the name of Universo FoneClub Corporation, another Massachusetts corporation formed by Rodrigues, in which he acted as Officer and Director. Rodrigues, settled these charges in 2007 and as condition of this settlement he was permanently enjoined from violating Section 10(b) of the Exchange Act and Rule 10b-5, and Sections 5(a), 5(c) and 17(a) of the Securities Act. He was further disgorged of about $1.8 Million in ill-gotten gains.

73. Rodrigues is the sole Officer, Director, and Registered Agent of WWW GLOBAL BUSINESS, INC. (sometimes referred to as “WWW Global Business”), is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, having a principal place of business at 189 Squire Road, Suite 40, in Revere, Suffolk County, Massachusetts. WWW Global Business was organized by Rodrigues on or about February 7, 2013, to market and sell TelexFree Investments.

74. Santiago De La Rosa ("De La Rosa"), is an individual now or formerly of 189 Beacon Hill Avenue, Unit 2, in Lynn, Essex County, Massachusetts 01902. De La Rosa appears in internet videos promoting TelexFree and is one of TelexFree’s most successful promoters, having recruited numerous other Promoters/Investors for TelexFree within the Dominican

Community in Massachusetts and elsewhere.

75. Randy N. Crosby ("Crosby"), is an individual now or formerly of 30 Club Court, in Alpharetta, Georgia 30005. Crosby appears in internet videos promoting TelexFree and is one of TelexFree's most successful promoters, having recruited numerous other Promoters/Investors for TelexFree – especially through a website known as "everybodygetspaidweekly.biz".

76. All Top-Level Promoters together with financial service providers, licensed professionals and others were substantial and essential cogs to TelexFree Pyramid scheme. Their indispensable assistance maintained the operation of the unfair and deceptive Pyramid Scheme.

77. Each of the Defendants listed herein within Paragraphs 23 - 75 are herein collectively referred to as "Top-Level Promoters". It is believed that additional Top-Level Promoters participated in TelexFree's Pyramid Scheme but their identities are as yet unknown.

B. THIRD-PARTY TELEXFREE BANKRUPT ENTITIES

78. TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. are not currently Defendants due to their Chapter 11 bankruptcy protections, but they are third-party participants in the unlawful activities described in this Complaint.

79. TelexFree, Inc. is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number 000832397), having a last known principal place of business at 225 Cedar Hill Street, Suite 200, in Marlborough, County of

Middlesex, Commonwealth of Massachusetts 01752 (the "TelexFree Marlborough Office").[4]

80. TelexFree, LLC is a limited liability company duly organized and existing under the laws of Nevada, having a purported place of business at 4705 S. Durango Drive, #100-J51 (a post office box), Las Vegas, Nevada 89147 (the "Nevada Post Office Box").[5] TelexFree, LLC also maintained offices in the Commonwealth of Massachusetts at the TelexFree Marlborough Office between 2012 and late April 2014. At all material times, TelexFree LLC was identified as a limited liability company as registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number 001105166). TelexFree, LLC registered with the Secretary of State for the Commonwealth of Massachusetts on April 18, 2013.

III. FACTS AND ALLEGATIONS

A. TelexFree's History

81. This litigation arises out of a Pyramid scheme through which the Defendants including Labriola, Electric and Mobile, defrauded hundreds of thousands of individuals out of hundreds of millions of dollars by falsely promising them a return on investment.

82. Each Defendant was a Top-Level Promoter was encouraged to and did recruit and "build" a network of new investor victims. They worked in conjunction with Pyramid scheme Founders and administrative personal including Merrill Wanzeler and Costa; Steven Labriola; and others whose role has not yet been determined.

83. Each Top-Level Promoter Defendant purported to sell Internet telephone services,

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[4] *See* Office of the Secretary of the Commonwealth of Mass., Corporations Div., Corporate Summary for TelexFree, Inc., attached hereto as Exhibit 1.

[5] *See* Office of the Secretary of the Commonwealth of Mass., Corporations Div., Corporate Summary for TelexFree, LLC, attached hereto as Exhibit 2.

when they sold nothing. Each Defendant was among the essential cogs, in addition to the banks, payment processors and licensed professionals and others that served TelexFree, in a wholly unlawful Pyramid Scheme.

84. A pyramid scheme is a fraudulent business operation whereby an individual or organization pays returns to its investors from new money paid into the operation by new victims, rather than from profit earned by the operator. Inevitably, every pyramid scheme fails.

85. Pyramid schemes follow a pattern and the Top-Level Promoter Defendants each served as an essential cog, in addition to the banks, payment processors and licensed professionals and others that served TelexFree, in the same overarching Pyramid scheme.

86. During the putative class period, the Top-Level Promoter Defendants made use of each of the identical stereotypical Pyramid scheme components and marketing program listed hereafter.

87. **The Hook**: In a pyramid scheme, potential investors are promised that an investment opportunity will achieve an above normal rate of return on investment that is often specified, or very easy to figure out. The "Hook" was included in the marketing plan each Defendant participated in or used, and it was an identical and essential component of the same overarching unlawful Pyramid scheme. Each Defendant Top-Level Promoter here made the identical related promise. The promised interest rate or return on investment here was an amount high enough to be worthwhile to the investor but not so high as to be unbelievable. This is called an "above normal rate of return on investment." Each Defendant Top-Level Promoter here also made the identical representations to promote the same illusory product including a VoIP technology that was purported to be cutting edge and proprietary. In fact the TelexFree product was a grade below what was available for free via Google Voice or Skype and was not related

what so ever to the identically set income promised. The marketing program of the over arching Pyramid scheme that each Defendant Top-Level Promoter relied on and participated in generated the funds that unjustly enriched each Top-Level Promoter including the "Hook".

88. **The Scheme is Showered with Credibility**: The victims of pyramid schemes are always given a believable explanation of how their investment will earn the "above normal rate of return on investment." The explanation must be good enough to convince people to invest and reinvest their money and importantly, to recruit others. The "Credibility Showers" were included in the marketing plan each Defendant participated in or used, and it was an identical and essential component of the same overarching unlawful Pyramid scheme. Here the Defendant Top-Level Promoters made use of the same marketing as put forward by the persons who founded or operated the Pyramid scheme. This included the false representation[6] that the Founder and Principal Merrill was a college graduate with specialty degrees in a field related to the product they touted as driving the profit. TelexFree also falsely represented that its Principals had been involved in telecommunications for many years. Moreover, the identical marketing program used by each Defendant Top-Level Promoter involved the identical lawyers, certified public accountants ("CPAs"),[7] and other credible professionals[8] who had blessed the instant Pyramid scheme as a legal and sound business opportunity. The identical marketing plan that the Top-Level Promoters made use of also involved the same "credible persons" touting the

[6] Among other places this appeared on an identical or commonly used web site.

[7] TelexFree first had Nehra, an attorney who also heavily promoted himself as having specialized MLM experience, guarantee that its business enterprise was legitimate. It later promoted the fact that Nehra had teamed up with another heavily promoted MLM attorney, Defendant Waak. TelexFree was also publicly tied to Bank of America and TD Bank.

[8] Well-known MLM "professionals" with great experience or success were used to state on TelexFree's behalf that the pyramid scheme was legal and a good investment. TelexFree made such use of Rodrigues, De La Rosa, Crosby, Sloan, Shoyfer, Smith and others.

investment as an incredibly great opportunity that worked for them and the same so-called "regular people" who had "gotten rich quick." They each attended or received follow-up updates from extravaganza's (for example, Newport Beach July 2012) and invite only meetings (for example, February and March 2014) held in Marlborough Massachusetts. The identical marketing plan the Defendant Top-Level Promoters participated in promoted meetings at hotels beyond the means of its victims and hyped the success of a few. The identical marketing campaign included the same high profile persons and others in rich and lavish settings and boasted about rags-to-riches earnings. The overarching Pyramid marketing program that each Defendant Top-Level Promoter relied on and participated in generated the funds that unjustly enriched each Defendant Top-Level Promoter including the "Credibility Showering"

89. **Initial Investors Paid Off**: In most pyramid schemes, some initial investors will receive the promised return. The "Bait Payoffs" were included in the marketing plan each Defendant participated in or used and were, an identical and essential component of the same overarching unlawful Pyramid scheme. This trick is used to convince victims that the investment is not risky and that a return will be received. The scammers use smaller payouts to bring in bigger ones. Payouts are also used to prompt victims to bring in the investment cash of their family, friends, co-workers and others. It is also used to turn the $100 dollar investor into a $1,000 or $10,000 investor. Participants also become more comfortable after learning of pay outs to the point they eventually recommend others close to them such as family, friends, and business associates to invest. The marketing program the Defendant Top-Level Promoters used and participated in here was identical. The marketing program of the overarching Pyramid scheme that each Defendant Top-Level Promoter relied on and participated in generated the funds that unjustly enriched each Top-Level Promoter including the "Bait Payouts".

90. **Communicated Successes**: Pyramid scheme principals and others at the top levels will uniformly and heavily promote success stories and build in a system that communicates motivating success stories. The marketing program the Defendant Top-Level Promoters used and participated in here was identical. The communicated alleged "historical" successes included in the marketing plan each Defendant participated in or used was an identical and essential component of the same overarching unlawful Pyramid scheme. In sum, they were just another ploy intended to deceptively lend credibility to the identical Pyramid scheme that generated the funds that unjustly enriched each Defendant Top-Level Promoter. The instant Pyramid scheme showered its investor victims and potential investor victims with stories and visuals evidencing the big payoffs. The instant Pyramid scheme positioned its owners and others at the top as "Rock Stars" and promoted the identical above normal rate of return on investment - often with great deal of flourish. The instant overarching Pyramid scheme's marketing plan also sponsored meetings and super weekends at hotels or exotic locations and promote success stories involving tales of great income, early retirement or other dreams come true. The marketing program of the overarching Pyramid that each Defendant Top-Level Promoter relied on and participated in generated the funds that unjustly enriched them including the "Communicated Successes".

91. In February 2012, founders and principals Carlos Wanzeler and James Merrill formed TelexFree, Inc. in the Commonwealth of Massachusetts.

92. TelexFree's U.S. memberships offered investors (the "Members," "Promoters" or "Participants") guaranteed high returns in exchange for promoting the company online and recruiting new investors.

93. TelexFree falsely advertised itself as a "multi-level marketing" company selling

local and international telephone service plans that used unique groundbreaking "voice over internet protocol" ("VoIP") technology.

94. The VoIP technology used by TelexFree was not unique or groundbreaking. In fact, it was substandard and offered nothing more than the free Google Voice and Skype.

95. TelexFree's business plan and operations were an unlawful Pyramid Scheme and not a lawful multi-level marketing ("MLM") enterprise. At all times relevant to this complaint, TelexFree violated the express terms of Massachusetts General Laws ("M.G.L.") c. 93, § 69.

96. United States authorities began to investigate TelexFree, and in January and February 2014, the Secretary of the Commonwealth of Massachusetts, Securities Division (the "SOC") issued subpoenas.

97. On April 14, 2014, TelexFree, Inc. along with two affiliated companies, TelexFree, LLC and TelexFree Financial, Inc. (together, the "Bankrupt Companies"), filed for Chapter 11 bankruptcy protection in Nevada claiming that TelexFree's revenues were insufficient to meet its obligations.

98. On or about April 15, 2014, the United States Department of Homeland Security (the "DHS"), the Federal Bureau of Investigation (the "FBI") and others raided the offices of TelexFree, shutting down its operation, seizing records and other evidentiary items.

99. On May 9, 2014, the DHS filed criminal proceedings against two of TelexFree's founders, Wanzeler and Merrill, for conspiracy to commit wire fraud.

100. Thereafter, the United States Department of Justice (the "DOJ") brought charges of wire fraud and conspiracy to commit wire fraud against TelexFree's owners Wanzeler and Merrill, and the same were indicted by grand jury on July 23, 2014.

101. TelexFree's other principals and operational defendants are currently under state

and federal investigation, and some are the subjects of lawsuits by the Securities and Exchange Commission (the "SEC") and the Massachusetts SOC for operating the Pyramid Scheme.

B. Defendants Electric and Mobile

102. Mobile is a Nevada corporation formed on November 26, 2013.

103. TelexFree, Inc. and TelexFree, LLC made a $500,870 "loan" to Mobile during the class period, as indicated by its financial statements. The loan was a sham.

104. TelexFree, Inc. and TelexFree, LLC made a $2,022,329 "loan" to Electric during the class period, as indicated by financial statements.

105. The loan was a sham designed to wrongfully, fraudulently, unfairly or deceptively convert, divert, launder or shelter funds invested by Plaintiffs and the putative class.

106. Electric and Mobile possess funds rightfully belonging to the putative class.

C. TelexFree Was An Unlawful, Unfair and Deceptive Pyramid Scheme

107. TelexFree purported to sell VoIP products, but it was not a viable business operation. Defendant Labriola was fully aware of this and the other unlawful aspects of TelexFree at all times, yet knowingly chose to unfairly and deceptively spearhead many aspects of the unlawful Pyramid scheme for sole motive of making money.

108. TelexFree's revenues from sales of its VoIP products were inconsequential compared to its overall operations.

109. The vast majority of TelexFree's revenue came from the purchase of membership plans by Participants.

110. Participants who purchased memberships could open user accounts and accumulate "credits" in these accounts. The "credits" represented money purportedly owed by TelexFree to the Participant, and could be theoretically redeemed for cash, transferred to another user account, or redeemed in satisfaction of an invoice for another user account.

111. The "credits" issued by TelexFree were part of an illegal scheme and were in fact worthless. There were no actual investments in TelexFree.

112. Many later Participants in TelexFree's Pyramid Scheme transferred money directly to earlier Participants in the Scheme. These payments were often made in cash.

113. A later Participant who transferred money to an earlier Participant would ostensibly receive a user account from TelexFree and the ability to accrue his or her own credits. However, there was no actual value to the credits, as they were merely part of an illegal scheme.

114. The amount theoretically owed to Participants on account of accumulated credits was more than $5 billion dollars, an amount more than seven hundred times the $6,600,000 in cash receipts from the sale of VoIP packages over the life of the TelexFree Pyramid Scheme.

115. Victims received nothing in exchange for money paid to the Defendants.

116. There were $3 billion in transactions in the TelexFree Pyramid Scheme, with more than $1 billion in losses.

D. The TelexFree Program Through Which The Defendants Received Payments From Plaintiffs Violated The Law

117. Massachusetts General Laws c. 93, § 69 makes pyramid schemes such as TelexFree, as well as many of their traditional features, unlawful. M.G.L. c. 93, § 69(g) expressly declares that a violation of M.G.L. c. 93, § 69 is a per se violation of M.G.L. c. 93A, § 2(a).

118. At all times material herein, TelexFree was a "multi-level distribution company" as defined by M.G.L., Chapter 93, Section 69(a).

119. M.G.L., Chapter 93, Section 69(d)(2) prohibits any multi-level distribution company from offering or paying any "finder's fee, bonus, refund, override, commission,

cross-commission, dividend or other consideration" to any participant therein "solely for the solicitation or recruitment of other participants."

120. The standard TelexFree contract ("TelexFree Contract"), on its face, contains numerous instances of promising payment to Promoters merely for recruitment of new Participants[9] as defined by M.G.L., Chapter 93, Section 69, including but not limited to Clauses 5.7, 5.7.1, 5.8, 6.1, 6.1.1, 6.1.2, and 8.1.

121. The above provisions of the standard TelexFree Contract are clear and direct violations of M.G.L. c. 93, § 69(d), as they promise payments, including cash payments, "bonuses," "gratuities," "royalties," and dividends, merely for the recruitment of new TelexFree Members/Participants (i.e. through the sale of AdCentral membership accounts).

122. Furthermore, M.G.L., Chapter 93, Section 69(d)(3)-(4) also prohibits any multi-level distribution company from offering or paying any "finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration" to any participant therein:

a. "[U]nless such participant performs a bona fide and essential supervisory, distributive, selling or soliciting function in the sale or delivery of such product or services," or,

b. "[W]here no amount of judgment or skill exercised by the participant has any appreciable effect" upon such payment," or

c. "[W]here the participant is without that degree of control over the operation of such plan as to enable him substantially to affect the amount" of such payment.

123. The TelexFree Contract, on its face, contains clear, obvious and direct violations of M.G.L. c. 93, § 69(d)(3)-(4), including, but not limited to, Clauses 5.4, 5.4.1, 5.4.2, 5.5, 5.5.1 and 5.5.2.

[9] For ease of reading, the terms "Member", "Promoter" or "Participant", regardless of capitalization, are at all times herein to be construed as "Participant" defined by Massachusetts General Laws Chapter 93, Section 69.

124. The Clauses make it clear that TelexFree Members were not required to engage in any "bona fide and essential supervisory, distributive, selling or soliciting" nor exercise any "judgment," "skill," or "control over the operation."

125. Rather, Members were only required to engage in the mindless activity of cutting-and-pasting spam advertisements, which were "prepared by TELEXFREE," onto "internet announcement sites," and would receive "remuneration for these announcements."

126. Furthermore, VoIP products distributed to Members as remuneration for this mindless spamming activity could be redeemed with TelexFree for cash, resulting in cash remuneration.

127. Not only does the TelexFree Contract explicitly violate M.G.L. Chapter 93, Section 69 – it also lays bare several classic hallmarks of pyramid schemes, including paying participants solely for recruitment of new members, not requiring any meaningful sales or distributive activity by participants, and using coercive measures to prevent participant withdrawal from the scheme.

128. Like the TelexFree Contract, TelexFree's own website set forth numerous clear violations of M.G.L. c. 93, § 69.

129. The TelexFree Contract, on its face, contains egregious, obvious violations of M.G.L. c. 93, § 69(b), including, but not limited to, Clauses 10.1.2, 10.1.3 and 10.1.4.

130. These terms of cancellation are clearly designed to entangle members in TelexFree's Pyramid Scheme and prevent members from withdrawing.

131. TelexFree's founders, Labriola, and Top-Level Promoters engaged in acts of civil conspiracy. The founders controlled the conduct of and colluded with the Top-Level Promoters through meetings, written materials, regular conference calls, and other means.

132. For example, during or about late February 2014 through early March 2014, TelexFree principals, executive office, Labriola, licensed professionals and Top-Level Promoters held an invitation-only meeting at TelexFree's Marlborough, Massachusetts headquarters with the intent of siphoning off funds and maximizing the exploitation of the rank and file TelexFree Promoters. This was one of several such meetings held by the management of TelexFree to coordinate how best to exploit lower-tier TelexFree Promoters.

133. TelexFree's Top-Level Promoters regularly met with each other and with TelexFree' founders and Labriola at other meetings as well, including an "Extravaganza" which was hosted in Newport Beach, California in July 2013, a large gathering at the LaGuardia Airport Marriott in New York on January 23, 2014, and various meetings at locations throughout the country, including numerous meetings in New York, Massachusetts, and Florida.

134. Top-Level Promoters from across the U.S. and internationally attended these meetings.

135. Steven Labriola, TelexFree's "International Marketing Director," also held regular conference calls for TelexFree Promoters, in which strategies for recruiting new members were discussed.

136. TelexFree's Top-Level Promoters at all times acted according to the directions of TelexFree.

137. This is made explicit by TelexFree's pre-March 9, 2014 standard membership contract, which states that TelexFree "provides virtual media, through the website www.telexfree.com to associates and to the PROMOTERS that YMPACTUS/TELEXFREE coordinates and controls, including the respective publicity channels."

138. TelexFree provided the Top-Level Promoters with many of the marketing materials that the Promoters, in turn, used to recruit Members.

139. These fraudulent marketing materials – including those found on TelexFree's website, online videos, cut-and-paste advertisements, social media postings, and statements of TelexFree's attorneys – were re-posted, re-stated, and re-iterated by the Top-Level Promoters in order to build their network of recruits.

E. Events Since TelexFree's Bankruptcy Filing

140. On April 15, 2014, the SOC filed an Administrative Complaint against TelexFree, Inc. and TelexFree, LLC, alleging violations of the Massachusetts Uniform Securities Act, M.G.L., c. 110A.

141. The SOC sought injunctions and orders requiring TelexFree, Inc. and TelexFree, LLC to cease and desist from further conduct violating Massachusetts securities laws and regulations, to provide an accounting of all proceeds received because of TelexFree's fraud, to provide restitution to Promoters for losses attributable to the fraud operations, and to disgorge all profits.

142. Also on April 15, 2014, the SEC filed a civil Complaint and Jury Demand against TelexFree, Inc. and TelexFree, LLC as well as Merrill, Wanzeler, Stephen Labriola, and certain top-level promoters, alleging violations of the Securities Act of 1933, the Securities Exchange Act of 1934, and SEC Regulations. The SEC requested and was granted a preliminary injunction and an order freezing the assets of TelexFree. The SEC is also seeking disgorgement of profits and additional civil penalties.

143. Additionally on April 15, 2014, the FBI and the DHS conducted a raid of TelexFree's Marlborough Office.

144. On or about May 1, 2014, the Montana Securities Commissioner filed a cease and

desist order against TelexFree.

145. The following day, the United States Bankruptcy Court for the District of Nevada, on motion by the SEC, transferred the matter to the federal district court in Massachusetts, Central Division.

146. During hearings conducted on May 2, 2014, William H. Runge, III, former Chief Restructuring Officer of TelexFree, estimated that as of TelexFree's bankruptcy filing TelexFree had assets of $31 million in its bank accounts, $28 million in brokerage accounts, and nearly $30 million held by payment processing companies.

147. The location of hundreds of millions of dollars received by TelexFree and by Direct Payment Recipients from victims remains unknown.

IV. CLASS ACTION ALLEGATIONS

148. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs sue on their own behalf, and on behalf of all other persons similarly situated (the "Class"). The Class that Plaintiffs seek to represent is:

> All persons residing in the United States who paid money to one or more of the Top-Level Promoters named herein and invested more funds in the TelexFree Pyramid Scheme than they withdrew and so suffered a net loss during the period from January 1, 2012 to April 16, 2014 (the "Class Period"). Excluded from the class are persons to the extent they seek to recover, directly or indirectly, any payments made by or to TelexFree itself or any other item that is property of TelexFree's bankruptcy estate.

149. Excluded from the Class are Defendants and any party who is a defendant in MDL 2566 (the "MDL Defendants") and their respective officers, directors, and employees; any entity in which any Defendant or MDL Defendant has a controlling interest; and the legal representatives, attorneys, heirs, and assigns of Defendants and the MDL Defendants.

150. Plaintiffs meet the requirements of Federal Rule of Civil Procedure 23(a) because

the members of the Class are so numerous that the joiner of all members is impractical. While the exact number of Class members is unknown to Plaintiffs, it is in the hundreds of thousands.

151. Plaintiffs meet the requirements of Federal Rule of Civil Procedure 23(a) because there is a well-defined community of interest among the members of the Class, common questions of law and fact predominate, Plaintiffs' claims are typical of the members of the Class, and Plaintiffs can fairly and adequately represent the interests of the Class.

152. This action satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3) because it involves questions of law and fact common to the members of the Class that predominate or questions affecting only individual members, including, but not limited to:

- whether TelexFree operated a lawful MLM program or an unlawful Pyramid Scheme or a legitimate business
- whether the Top-Level Promoters who received direct victim payment were unjustly enriched;
- whether the funds paid by the Plaintiff Class directly to the Defendants must be repaid, without regard to the individual circumstances of participation in the Scheme, because it constituted an unjust enrichment;
- whether the Form 1099's issued by the Defendants are valid or should be voided by this Court;
- whether TelexFree was a "multi-level distribution company" as defined by Massachusetts General Laws Chapter 93, Section 69(a);
- whether the standard TelexFree Contract contained promises to pay merely for the recruitment of new members in violation of Massachusetts General Laws Chapter 93, Section 69(a);
- whether the standard TelexFree Contract contained offers to pay a "finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration" to Participants in the TelexFree program in violation of Massachusetts General Laws Chapter 93, Section 69(a);
- whether the TelexFree program offered its Members payment without requiring them to engage in any "bona fide and essential supervisory, distributive, selling or soliciting," nor exercise any "judgment," "skill," or "control over the operation" in violation of Massachusetts General Laws

Chapter 93, Section 69(a); and

- whether Plaintiffs and the Class are entitled to damages, civil penalties, punitive damages, and/or injunctive relief;
- what information the Top-Level promoters were given that was not made available to the members of the Putative Class at the same time.

153. Plaintiffs' claims are typical of those of other Class members because Plaintiffs were defrauded by TelexFree's common Scheme.

154. Plaintiffs will fairly and accurately represent the interests of the Class.

155. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications regarding individual members of the Class, which would establish incompatible standards of conduct for Defendants and would lead to repetitive adjudication of common questions of law and fact.

156. Class treatment is superior to any other method for adjudicating the controversy. Plaintiffs know of no difficulty likely to be encountered in the management of this litigation that would preclude its maintenance as a class action under Rule 23(b)(3).

157. Damages for any individual class member likely cannot justify the cost of individual litigation, so that absent class treatment, the Defendants' violations of law inflicting substantial damages in the aggregate would go un-remedied without certification of the Class.

158. Defendants have acted or refused to act on grounds that apply to the Class, as alleged above, and certification is proper under Rule 23(b)(2).

V. CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF
UNJUST ENRICHMENT

159. Plaintiffs incorporate by reference all allegations in all previous paragraphs, as though fully set forth here.

160. Plaintiffs and the putative Class conferred a benefit upon Defendants by furnishing funds, directly or indirectly, to Defendants, who accepted them without protest or defect and retained and benefitted from them.

161. The overarching Pyramid marketing program that each Defendant Top-Level Promoter relied on and participated in generated the funds that unjustly enriched each Defendant

162. Only through the utilization of the TelexFree Pyramid Scheme's common modes of operation and marketing was the Scheme able to be established, thereafter perpetuated and ultimately expanded.

163. The success of the TelexFree Pyramid Scheme, and the unjust receipt of Direct Victim Payments by the Defendants, was dependent upon the common participation and wrongful acts of the Top-Level Promoters.

164. The Scheme could not have existed, expanded and thrived without the participation of the Top-Level Promoter in identifying, attracting and securing additional victims, including Plaintiffs and the putative class.[10]

165. In performing their common roles as Top-Level Promoters, Defendants utilized TelexFree's fraudulent marketing materials and implemented the uniform features of its program.

166. When obtaining an additional victim, and pocketing a Direct Victim Payment, each Defendant relied upon, utilized and implemented the common Scheme's standard modes of operation.

[10] Or the participation and services provided by banks, payment processors, licensed professionals and others to the Scheme.

167. Each Defendant benefitted from the efforts of all Top-Level Promoters to market and expand the Scheme.

168. The payments made by the Scheme's victims, including Plaintiffs and the putative class, directly to the Defendants were the direct result of the similar, combined efforts of all Top-Level Promoters.[11]

169. Each Defendant, as a Top-Level Promoter, performed a common, integral role in the commission, expansion and perpetuation of the TelexFree Pyramid Scheme.

170. These circumstances and means through which the Defendants obtained direct payments from the Plaintiffs and the putative class as part of the TelexFree Pyramid Scheme were common to all Defendants and make the retention of those payments unjust.

171. Defendants had an appreciation or knowledge of that they received a benefit when they took payment.

172. Defendants knew of such funds received by them.

173. Defendants have unlawfully and in bad faith denied Plaintiffs and the putative Class access to such funds, and have instead knowingly retained the benefit of such funds for themselves.

174. Acceptance or retention by Defendants of the benefit under the circumstances set forth herein would otherwise be inequitable without payment for its value.

175. Allowing IRS Form 1099's issued by the Defendants to have a lawful effect under the circumstances set forth herein would otherwise be inequitable.

176. As a direct and proximate result of Defendants' actions, as hereinabove set forth, Defendants are, and continue to be, unjustly enriched and Plaintiffs demand they and the

[11] As well as the banks, payment processors and licensed professionals that served the Scheme.

putative Class be made whole.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for judgment against Defendants as follows:

1. The Court determine that this action be maintained as a class action under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiffs as Class Representatives and their counsel of record as Class Counsel, and direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class;

2. Plaintiffs and the members of the Class recover damages, to the maximum extent allowed in law and equity against Defendants;

3. Plaintiffs and the members of the Class recover their costs of suit, including reasonable attorneys' fees, as provided by law;

4. Plaintiffs and the members of the Class be awarded pre- and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate;

5. Each Defendant be enjoined from participating in future Pyramid schemes;

6. To the extent that the Defendant Top-Level Promoters served any Class member with an IRS Form 1099, that this Court exercise its equitable power and declare them null and void;

7. Plaintiffs and the members of the Class be granted such other and further relief and equitable relief as the case may require and the Court may deem just and proper.

VII. DEMAND FOR JURY TRIAL

Plaintiffs and the putative Class demand a jury trial of their claims to the extent

authorized by law.

Respectfully submitted,

Dated this 24th day of February 2016

/s/ Robert J. Bonsignore

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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Maria Murdoch, Angela Batista Jamanenez, Elisangela Oliveira and Diogo Dearaugo

(b) County of Residence of First Listed Plaintiff Middlesex County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Robert J. Bonsignore / Bonsignore Trial Lawyers, PLLC
3771 Meadowcrest Drive, Las Vegas, NV 89121
781-856-7650

DEFENDANTS
TelexElectric, LLLP, et al

County of Residence of First Listed Defendant Clark County
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28:1332 Diversity: Securities Fraud
Brief description of cause:
illegal pyramid scheme

VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*
JUDGE Timothy S. Hillman DOCKET NUMBER 14-md-02566

DATE 02/24/2016
SIGNATURE OF ATTORNEY OF RECORD Robert J. Bonsignore

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked**.** (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. **Title of case (name of first party on each side only)** Maria Murdoch et al v. Telexelectric, LLLP et al

2. **Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).**

☐ **I.** **410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.**

☑ **II.** **110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.**

☐ **III.** **120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.**

***Also complete AO 120 or AO 121. for patent, trademark or copyright cases.**

3. **Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.**

In Re: TelexFree Securities Litigation 4:14-md-02566-TSH

4. **Has a prior action between the same parties and based on the same claim ever been filed in this court?**

YES ☐ **NO** ☑

5. **Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)**

YES ☐ **NO** ☑

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ **NO** ☑

6. **Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?**

YES ☐ **NO** ☑

7. **Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).**

YES ☐ **NO** ☑

A. **If yes, in which division do all of the non-governmental parties reside?**

Eastern Division ☐ **Central Division** ☐ **Western Division** ☐

B. **If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?**

Eastern Division ☑ **Central Division** ☐ **Western Division** ☐

8. **If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)**

YES ☐ **NO** ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Robert J. Bonsignore

ADDRESS 3771 Meadowcrest Drive, Las Vegas, NV 89121

TELEPHONE NO. 781-856-7650

EXHIBIT K

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

ELISANGELA OLIVEIRA, PLAINTIFF, Putative Class Representative, and Those Similarly Situated, Plaintiff, v. DOUGLAS M. MACHADO, ALEXANDRO O. ROCHA, DAVID REIS, LEONARDO FRANCISCO, LINDA S. HACKETT, DAVID HACKETT, DL1 INC., BENJAMIN ARGUETA, JACQUELINE DA COSTA ZIEFF, JOSE CARLOS MACIEL, BRUNO GRAZIANI, RENATO RIBEIRO, ERASMO BARROSO, LAIR FERNANDES, LAYZA DUARTE, LYVIA M. WANZELER, RODRIGO MONTEMOR, RONI YASMINE, RUDNEI DA SILVA, VAGNER DANTAS SILVA, WAGNER WEIHRAUCH, JULIO SILVA, JOSE NETO, JULIO C. PAZ, EUZEBIO SUDRE NETO, HUGO ALVARADO, ANA R. RAMOS, RUDDY ABREAU, MARCO ALMEIDA, LAUREANO ARELLANO, AARON ATAIDE, ROSANE CRUZ, OMAR QUINONEZ, CARLO DEJESUS, BILKISH SUNESARA, ANDRES BOLIVAR ESTEVEZ, JOSE LOPEZ, ANA ROSA LOPEZ, FRANTZ BALAN, MARCELO DASILVA, BENERANDO CONTRERAS,GLADYS ALVARDO, STEVEN M. LABRIOLA, CARLOS COSTA, SANDERLEY RODRIGUES DE VASCONCELOS, SANTIAGO DE LA ROSA; RANDY N. CROSBY Defendants.	**CIVIL ACTION NO. 16-40018** **AMENDED CLASS ACTION COMPLAINT** **AND** **DEMAND FOR TRIAL BY JURY**

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Plaintiff and Putative Class Representative Elisangela Oliveira, on behalf of herself and all others similarly situated, ("Plaintiff"), brings this action against the defendants named herein ("Defendants"). This complaint is based on information and belief, except those paragraphs that relate to Plaintiff, which are based on personal knowledge. To preserve the resources of this Court and the parties, Plaintiff[1] asserts the following abbreviated allegations as follows:

1. TelexFree, Inc., TelexFree, LLC, and TelexFree Financial, Inc. (collectively, "TelexFree" or the "Debtors") and its related entities and individuals operated an illegal and fraudulent scheme whereby it sold "memberships," ostensibly paid its "promoters" for placing duplicative and meaningless advertisements for a "voice over internet protocol" ("VoIP") product, and in reality paid them to recruit other investors whose new membership fees kept the scheme afloat (the "TelexFree Program").

2. Until TelexFree, Inc. changed its compensation plan in March 2014, a month before it filed for bankruptcy, it did not require promoters to sell its VoIP product to be eligible for payments.

3. Only 11.7% of the face value of invoices for membership plans or VoIP packages was paid in cash to the Debtors, and the remainder was satisfied by the use of victims' credits. *See* Affidavit of Stephen B. Darr in Support of Motion by Chapter 11 Trustee for Entry of Order Finding That Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief at ¶ 35, *In re TelexFree, LLC*, No. 14-40987 (Bankr. D. Mass. Oct. 7, 2015), ECF No. 623-1 ("While invoices associated with the sale of membership plans or VoIP packages had a face value of $3,073,471,326, only $359,792,242, or approximately twelve percent (11.7%) of

[1] Plaintiff suggests the Court consider a separate litigation track be created for their claims against the Top-Level Promoters.

that amount, was paid in cash to the Debtors. The balance of these invoices, totaling $2,713,679,084, was satisfied by the use of Participants' credits.").

4. TelexFree's business and operations constituted an illegal pyramid scheme (the "TelexFree Pyramid Scheme"); in fact, the United States Bankruptcy Court for the District of Massachusetts (Hoffman, J.) has made a finding of fact applicable to all proceedings that TelexFree's operations constituted a Ponzi Scheme (Chapter 11 Case No. 14-40987-MSH; EFC No. 668). A pyramid scheme is a form of a Ponzi scheme wherein a business enterprise persuades people to invest money into a seemingly legitimate business model and in exchange guarantees unrealistic and, ultimately, illusory profits. The actual sales or services provided, if any, are insufficient to pay the promised returns to investors. The operation of a pyramid scheme relies entirely on additional investment funding by newly recruited or existing investors. Once the influx of new cash from new investors becomes insufficient to satisfy the ever-growing number of participants/previous investors, or as in the case of TelexFree stops short following law enforcement raids, the pyramid scheme collapses because there are no new funds with which to pay previous investors.

5. TelexFree's founders and principals, executive office and top-level promoters controlled the activities and operations of TelexFree and knowingly, maliciously, and willfully conspired to perpetrate, and did perpetrate, the TelexFree Pyramid Scheme with full awareness of its unfair, deceptive, and unlawful nature.

6. A class action is pending in this district based upon the TelexFree Pyramid Scheme against, *inter alia*, TelexFree's founders and principals, executive office and top-level promoters, certain licensed professionals and certain financial services providers for the knowing role they each played in substantially assisting the Scheme.

7. Through the present action, Plaintiff seeks compensation for the ascertainable economic loss she was caused to suffer as a result of the participation of the below-described Defendants in the illegal Pyramid Scheme.

8. These individual Defendants (each a "Direct Victim Payment Recipient" or "Top-Level Promoter") profited from ascertainable payments Plaintiff and putative class members -- not TelexFree -- made to those Defendants.[2]

9. Plaintiff seeks compensation from the Defendant Top-Level Promoters solely for the payments made directly by Net Loser victims to Plaintiff and putative class members because the retention of such funds would be wrongful and unjust enrichment. Only the return of those funds will offset the net loss the Putative class suffered as a result of the unlawful Pyramid Scheme.

10. Each Defendant benefitted from the Scheme, possessed full knowledge of that benefit and accepted and retained such benefit, unjustly, at the expense of the named Plaintiff and/or putative class members. The Defendants' retention of the monies paid by the victim/class members is patently unjust under the attendant circumstances. As such, the sole cause of action asserted against the Defendants here is for unjust enrichment.

I. JURISDICTION AND VENUE

11. This Court has subject-matter jurisdiction over the instant matter pursuant to 28 U.S.C. § 1332(d) and the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1711, *et seq*., which vest original jurisdiction in the district courts of the United States for any multi-state class action where the aggregate amount in controversy exceeds $5,000,000 and where

[2] To avoid doubt, Plaintiffs seek recompense ***solely*** for monies ***they*** paid to the Defendants. They do not seek recovery of any monies ***TelexFree*** paid to those Defendants.

the citizenship of any member of the class of plaintiffs is different from that of any defendant. The amount in controversy is over $5,000,000 and as evidenced below, the diverse citizenship requirement of CAFA are also satisfied.

12. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiff's claims occurred in this District, a substantial portion of the affected interstate trade and commerce described herein was carried out in this District, and one or more of the Defendants reside, are licensed to do business in, are doing business in, had agents in, or are found or transact business in this District.

13. This Court has *in personam* jurisdiction over the Defendants because each, either directly or through the valueless ownership of the fraudulent TelexFree packages, *inter alia*: (a) transacted business and participated in the carrying out and perpetration of a fraud by engaging in substantial activities in Massachusetts; (b) solicited victims in Massachusetts; (c) attended meetings in Massachusetts; (d) regularly spoke with the founders of TelexFree and members of the home office in Massachusetts in furtherance of their obtaining funds from victims; (e) directly or indirectly sold or marketed in Massachusetts; (f) otherwise committed a tort within the Commonwealth of Massachusetts including making use of the resources offered by the Founders or others in Massachusetts; (g) committed a breach of contract within Massachusetts; (h) had substantial aggregate contacts with Massachusetts; (i) were engaged in an illegal pyramid scheme conspiracy that was directed at, and had a direct, substantial, reasonably foreseeable and intended effect of causing injury to, the business or property of persons and entities residing in, located in, or doing business throughout Massachusetts and through that activity were substantially involved in the Commonwealth of Massachusetts' stream of commerce; and (j) to the extent that participants of an unlawful

enterprise purposefully take advantage of the laws of Commonwealth of Massachusetts – each did.

14. Each Defendant Top-Level Promoter communicated regularly with TelexFree's founders, principals, executive officers, home office employees[3], including James Merrill, Carlos Wanzeler, Steven Labriola, Carlos Costa, and other Defendants and others identified as Does in Massachusetts during all material relevant times beginning on February 15, 2012 through approximately April 2014 in furtherance of their taking of funds from the putative class of victims. Each Defendant together with financial service providers, licensed professionals and others conducted business and carried out acts that were substantial and essential to the operation of the TelexFree Pyramid Scheme in Massachusetts, and they have purposefully availed themselves of the laws of the Commonwealth of Massachusetts. Moreover each Defendant was party to acts and transactions giving rise to this action that occurred in this District.

15. By reason of the unlawful activities hereinafter alleged, Defendants substantially affected commerce throughout Massachusetts and the United States, causing injury to the Plaintiffs and members of the putative class. Defendants, directly and through their agents, engaged in activities affecting Massachusetts and other states, to operate and profit from an unlawful Pyramid Scheme.

16. Defendants' conspiracy and unlawful conduct described herein adversely affected persons in Massachusetts and throughout the United States who purchased TelexFree packages, including Plaintiff and the members of the class.

[3] The foregoing terms are meant to comport with their common usage. A further description may be found through a review of the individuals and entities named in the Second Consolidated Amended Complaint in MDL 2566.

II. THE PARTIES

A. PLAINTIFFS

17. Plaintiff Elisangela Oliveira ("Oliveira") is an individual who resides in Medford, Massachusetts. Oliveira, like many other victims of TelexFree's Pyramid Scheme, paid funds to one or more of the Defendants with the hope of earning a profit and instead, suffered a Net Loss because TelexFree was an unlawful Pyramid scheme and not a lawful business venture. Ms. Oliveira received no cash or other item of value from any entity or person, at any time, on account of the money she remitted to one or more of the Defendants herein.

B. DEFENDANTS

18. Leonardo Francisco ("Francisco") is an individual with a last known usual place of abode of 30D Mount Avenue, Marlborough, Middlesex County, Massachusetts 01752. At all relevant times herein, Francisco served as a promoter for TelexFree, and received payment of funds directly from victims. Francisco was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

19. Francisco is the nephew of TelexFree founder and Vice President Carlos N. Wanzeler, and also served as a "straw" investor for Carlos N. Wanzeler, purchasing AdCentral packages in his own name but on Wanzeler's behalf, and transferring his profits to Wanzeler.

20. Lyvia M. Wanzeler is an individual with a last known usual place of abode of 41A Mount Avenue, Worcester, Worcester County, Massachusetts 01606. At all relevant times herein, Lyvia M. Wanzeler served as a promoter for TelexFree, and received payment of funds directly from victims. Wanzeler was a net winner in that she received funds from

victims that exceeded what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

21. Lyvia M. Wanzeler is also the daughter of TelexFree founder and Vice President Carlos N. Wanzeler, and is believed to have served as a "straw" investor for Carlos N. Wanzeler, purchasing AdCentral packages in her own name but on Carlos N. Wanzeler's behalf, and transferring her profits to Carlos N. Wanzeler.

22. Wagner Weihrauch ("Weihrauch") is an individual with a last known usual place of abode of Everett, Middlesex County, Massachusetts 01819. At all relevant times herein, Weihrauch served as a promoter for TelexFree, and received payment of funds directly from victims. Weihrauch was a net winner in that he received funds from victims that exceeded what invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

23. Linda S. Hackett is an individual with a last known usual place of abode of 97 Bellevue Avenue, Melrose, Middlesex County, Massachusetts 02176. At all relevant times herein, Linda S. Hackett served as a Promoter for TelexFree, and received payment of funds directly from victims. Hackett was a net winner in that she received funds from victims that exceeded what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

24. David Hackett is an individual with a last known usual place of abode of 97 Bellevue Avenue, Melrose, Middlesex County, Massachusetts 02176. At all relevant times

herein, David Hackett served as a promoter for TelexFree, and received payment of funds directly from victims. Hackett was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown. He partnered with his wife Linda in all their TelexFree activities.

25. DL1 Inc. ("DL1") is a Domestic Profit Corporation, organized and existing under the laws of the Commonwealth of Massachusetts, and having a principal place of business at 97 Bellevue Avenue, Melrose, Middlesex County, Massachusetts 02176. To the extent it can be pled, DL1 Inc. was a net winner in that it received funds from victims that exceeded what it invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This Defendant was previously unnamed because its identity was then unknown.

26. Defendant Linda S. Hackett, with the assistance of David Hackett, formed DL1 on February 1, 2013, solely for the purpose of marketing and selling TelexFree AdCentral packages.

27. At all material times, DL1 was and is a "shell" corporation holding no, or virtually no, assets and having no employees beyond its principals, Linda S. Hackett and David Hackett.

28. At all times material herein, DL1 was effectively an alter ego of Defendants Linda S. Hackett and David Hackett, and furthermore, had no legitimate business purpose, failed to maintain corporate formalities, had no independent board of directors and otherwise served as a "facade" for the sole benefit of said Defendants.

29. Benjamin Argueta ("Argueta") is an individual with a last known usual place of abode of 14 Illinois Avenue, Somerville, Middlesex County, Massachusetts 02145. At all relevant times herein, Argueta served as a promoter for TelexFree, and received payment of funds directly from victims. Argueta was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

30. Jacqueline Da Costa Zieff ("Zieff") is an individual with a last known usual place of abode of 50 Woodlawn Drive, Newton, Middlesex County, Massachusetts 02467. At all relevant times herein, Zieff served as a promoter for TelexFree, and received payment of funds directly from victims. Zieff was a net winner in that she received funds from victims that exceeded what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

31. Jose Carlos Maciel ("Maciel") is an individual with a last known usual place of abode of 18 Hayes Street, Apartment 2, Framingham, Middlesex County, Massachusetts 01702. At all relevant times herein, Maciel served as a promoter for TelexFree, and received payment of funds directly from victims. Maciel was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

32. Bruno Graziani ("Graziani") is an individual with a last known usual place of abode of 80 Lilac Circle, Marlborough, Middlesex County, Massachusetts 01752. At all

relevant times herein, Graziani served as a promoter for TelexFree, and received payment of funds directly from victims. Graziani was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

33. Renato Ribeiro ("Ribeiro") is an individual with a last known usual place of abode of 14 Washington Street, Medford, Middlesex County, Massachusetts 02155. At all relevant times herein, Ribeiro served as a promoter for TelexFree, and received payment of funds directly from victims. Ribeiro was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

34. Erasmo Barroso ("Barroso") is an individual with a last known usual place of abode of 78 Neil Street, Unit 1, Marlborough, Middlesex County, Massachusetts 01752. At all relevant times herein, Barroso served as a promoter for TelexFree, and received payment of funds directly from victims. Barroso was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

35. Lair Fernandes ("Fernandes") is an individual with a last known usual place of abode of 24 Hamilton Street, Apartment 15, Saugus, Essex County, Massachusetts 01906. At all relevant times herein, Fernandes served as a promoter for TelexFree, and received payment of funds directly from victims. Fernandes was a net winner in that he received funds from

victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

36. Layze Duarte ("Duarte") is an individual with a last known usual place of abode of 20 Terrence Avenue, Clinton, Worcester County, Massachusetts 01510. At all relevant times herein, Duarte served as a promoter for TelexFree, and received payment of funds directly from victims. Duarte was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

37. Rodrigo Montemor ("Montemor") is an individual with a last known usual place of abode of 8 Boxford Street, Lawrence, Essex County, Massachusetts 01843. At all relevant times herein, Montemor served as a promoter for TelexFree, and received payment of funds directly from victims. Montemor was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

38. Roni Yasmine ("Yasmine") is an individual with a last known usual place of abode 181 Massachusetts Avenue, Boston, Suffolk County, Massachusetts 02115. At all relevant times herein, Yasmine served as a promoter for TelexFree, and received payment of funds directly from victims. Yasmine was a net winner in that he received funds from victims that exceeded what was invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This

individual was previously unnamed because his identity was then unknown.

39. Rudnei Da Silva is an individual with a last known usual place of abode of 65 Johnson St., Leominster, Worcester County, Massachusetts 01453. At all relevant times herein, Rudnei Da Silva served as a promoter for TelexFree, and received payment of funds directly from victims. Rudnei DaSilva was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

40. Vagner Dantas Silva is an individual with a last known usual place of abode of 19 Cameron Avenue, Somerville, Middlesex County, Massachusetts 02144. At all relevant times herein, Vagner Dantas Silva served as a promoter for TelexFree, and received payment of funds directly from victims. Vagner Dantas Silva was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

41. David Reis ("Reis") is an individual with a last known usual place of abode in Somerville, Middlesex County, Massachusetts 02144. At all relevant times herein, Reis served as a promoter for TelexFree, and received payment of funds directly from victims. Reis was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

42. Julio Silva is an individual with a last known usual place of abode in Saugus,

Essex County, Massachusetts 01906. At all relevant times herein, Julio Silva served as a promoter for TelexFree, and received payment of funds directly from victims. Julio Silva was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

43. Jose Neto ("Neto") is an individual with a last known usual place of abode of 49 Rodney Street, Worcester, Worcester County, Massachusetts 01605. At all relevant times herein, Neto served as a promoter for TelexFree, and received payment of funds directly from victims. Neto was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

44. Julio C. Paz ("Paz") is an individual with a last known usual place of abode of 179 Water Street, Framingham, Middlesex County, Massachusetts 01701. At all relevant times herein, Paz served as a promoter for TelexFree, and received payment of funds directly from victims. Paz was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

45. Euzebio Sudre Neto ("Sudre Neto") is an individual with a last known usual place of abode of 334 Chestnut Farm Way, Raynham, Bristol County, Massachusetts 02767. At all relevant times herein, Sudre Neto served as a promoter for TelexFree, and received payment of

funds directly from victims. Sudre Neto was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

46. Hugo Alvarado ("Alvarado") is an individual with a last known usual place of abode of 18 Catherine Street, #1, Worcester, Worcester County, Massachusetts 01605. At all relevant times herein, Alvarado served as a promoter for TelexFree, and received payment of funds directly from victims. Alvarado was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

47. Ana R. Ramos ("Ramos") is an individual with a last known usual place of abode of 63 Fremont Ave., Apt. 2, Chelsea, Suffolk County, Massachusetts 02150. At all relevant times herein, Ramos served as a promoter for TelexFree, and received payment of funds directly from victims. Ramos was a net winner in that she received funds from victims that exceeded what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

48. Ruddy Abreau ("Abreau") is an individual with a last known usual place of abode of 9 Longwood Drive, Methuen, Essex County, Massachusetts 01844. At all relevant times herein, Abreau served as a promoter for TelexFree, and received payment of funds directly from victims. Abreau was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational

defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

49. Marco Almeida ("Almeida") is an individual with a last known usual place of abode of 420 Atlantic Ave., Long Branch, New Jersey 07740. At all relevant times herein, Almeida served as a promoter for TelexFree, and received payment of funds directly from victims. Almeida was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

50. Laureano Arellano ("Arellano") is an individual with a last known usual place of abode of 576N 800W, Provo, Utah 84601. At all relevant times herein, Arellano served as a promoter for TelexFree, and received payment of funds directly from victims. Arellano was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

51. Aaron Ataide ("Ataide") is an individual with a last known usual place of abode of 2900 W Porter Ave., Visalia, California 93291. At all relevant times herein, Ataide served as a promoter for TelexFree, and received payment of funds directly from victims. Ataide was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

52. Rosane Cruz ("Cruz") is an individual with a last known usual place of abode of 22 Northampton Street, Worcester, Massachusetts 01605. At all relevant times herein, Cruz served as a promoter for TelexFree, and received payment of funds directly from victims. Cruz was a net winner in that she received funds from victims that exceeded what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

53. Omar Quinonez ("Quinonez") is an individual with a last known usual place of abode of 3812 N. Oak Dr., Apt. M62, Tampa, Florida 33611. At all relevant times herein, Quinonez served as a promoter for TelexFree, and received payment of funds directly from victims. Quinonez was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

54. Carlos C. Dejesus ("Dejesus") is an individual with a last known usual place of abode of 72 Fremont Ave., Apt. 2, Chelsea, Suffolk County, Massachusetts 02150. At all relevant times herein, Dejesus served as a promoter for TelexFree, and received payment of funds directly from victims. Dejesus was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

55. Bilkish Sunesara ("Sunesara") is an individual with a last known usual place of abode of 1800 Austin Parkway, Sugar Land, Texas 77479. At all relevant times herein,

Sunesara served as a promoter for TelexFree, and received payment of funds directly from victims. Sunesara was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

56. Andres Bolivar Estevez ("Estevez") is an individual with a last known usual place of abode of 9510 90th Ave. 2, Woodhaven, New York 11421. At all relevant times herein, Estevez served as a promoter for TelexFree, and received payment of funds directly from victims. Estevez was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

57. Jose Lopez ("Lopez") is an individual with a last known usual place of abode of 164 Exchange Street, 2nd Floor, Lawrence, Essex County, Massachusetts 01841. At all relevant times herein, Lopez served as a promoter for TelexFree, and received payment of funds directly from victims. Lopez was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

58. Ana Rosa Lopez ("Rosa Lopez") is an individual with a last known usual place of abode of 5019 Redwing Brook Trail, Katy, Texas 77449. At all relevant times herein, Rosa Lopez served as a promoter for TelexFree, and received payment of funds directly from victims. Rosa Lopez was a net winner in that she received funds from victims that exceeded

what she invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because her identity was then unknown.

59. Frantz Balan ("Balan") is an individual with a last known usual place of abode of 51 Grover Street, Apt. 2, Everett, Middlesex County, Massachusetts 02149. At all relevant times herein, Balan served as a promoter for TelexFree, and received payment of funds directly from victims. Balan was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

60. Marcelo Dasilva ("Dasilva") is an individual with a last known usual place of abode of 38 Lyme St., #308, Malden, Middlesex County, Massachusetts 02148. At all relevant times herein, Dasilva served as a promoter for TelexFree, and received payment of funds directly from victims. Dasilva was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

61. Gladys Alvarado ("Alvarado") is an individual with a last known usual place of abode of 177 Lincoln St., #2, Worcester, Massachusetts 01605. At all relevant times herein, Alvarado served as a promoter for TelexFree, and received payment of funds directly from victims. Alvarado was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously

unnamed because his identity was then unknown.

62. Douglas M. Machado ("Machado") is an individual with a last known usual place of abode of 88 Farrwood Avenue, Apartment 8, North Andover, Essex County, Massachusetts 01845. At all relevant times herein, Machado served as a promoter for TelexFree, and received payment of funds directly from victims. Machado was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

63. Benerando Contreras ("Contreras") is an individual with a last known usual place of abode in Las Vegas, Clark County, Nevada. At all relevant times herein, Contreras served as a promoter for TelexFree, and received payment of funds directly from victims. Contreras was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

64. Alexandro O. Rocha ("Rocha") is an individual with a last known usual place of abode of 6 Nell Road, Revere, Suffolk County, Massachusetts 02151. At all relevant times herein, Rocha served as a promoter for TelexFree, and received payment of funds directly from victims. Rocha was a net winner in that he received funds from victims that exceeded what he invested in TelexFree. This Defendant was a previously unnamed operational defendant on the same level of involvement with the top-level promoters. This individual was previously unnamed because his identity was then unknown.

65. Steven M. Labriola ("Labriola") is an individual now or formerly of 21 Kiwanis

Beach Road, in Upton, Worcester County, Massachusetts 01568. Labriola is identified as a Director of Common Cents Communications, Inc. in its filed Articles of Incorporations with the Massachusetts Secretary of State Office. Labriola also functioned as the International sales Director of TelexFree.

66. Carlos Costa, ("Costa") is an individual now or formerly of 44A McClintock Avenue, Unit A, in Worcester, Worcester County, Massachusetts 01604. Costa was listed as Manager of TelexFree, LLC with the Massachusetts Secretary of State Corporations Division.

67. Sanderley Rodrigues De Vasconcelos, ("Rodrigues"), is an individual now or formerly of, 100 Stockton Street, Apt. 49, in Chelsea, Suffolk County, Massachusetts 02150. At no time has Rodrigues been registered with the Commonwealth of Massachusetts as a broker or dealer of securities. Rodrigues had been charged by the United States Securities and Exchange Commission with operating a fraudulent Pyramid Scheme under the name of Universo FoneClub Corporation, another Massachusetts corporation formed by Rodrigues, in which he acted as Officer and Director. Rodrigues, settled these charges in 2007 and as condition of this settlement he was permanently enjoined from violating Section 10(b) of the Exchange Act and Rule 10b-5, and Sections 5(a), 5(c) and 17(a) of the Securities Act. He was further disgorged of about $1.8 Million in ill-gotten gains.

68. Rodrigues is the sole Officer, Director, and Registered Agent of WWW GLOBAL BUSINESS, INC. (sometimes referred to as "WWW Global Business"), is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, having a principal place of business at 189 Squire Road, Suite 40, in Revere, Suffolk County, Massachusetts. WWW Global Business was organized by Rodrigues on or about February 7, 2013, to market and sell TelexFree Investments.

69. Santiago De La Rosa ("De La Rosa"), is an individual now or formerly of 189 Beacon Hill Avenue, Unit 2, in Lynn, Essex County, Massachusetts 01902. De La Rosa appears in internet videos promoting TelexFree and is one of TelexFree's most successful promoters, having recruited numerous other Promoters/Investors for TelexFree within the Dominican

Community in Massachusetts and elsewhere.

70. Randy N. Crosby ("Crosby"), is an individual now or formerly of 30 Club Court, in Alpharetta, Georgia 30005. Crosby appears in internet videos promoting TelexFree and is one of TelexFree's most successful promoters, having recruited numerous other Promoters/Investors for TelexFree – especially through a website known as "everybodygetspaidweekly.biz".

71. All Top-Level Promoters together with financial service providers, licensed professionals and others were substantial and essential cogs to TelexFree Pyramid scheme. Their indispensable assistance maintained the operation of the unfair and deceptive Pyramid Scheme.

72. Each of the Defendants listed herein within Paragraphs 18-70 are herein collectively referred to as "Top-Level Promoters". It is believed that additional Top-Level Promoters participated in TelexFree's Pyramid Scheme but their identities are as yet unknown.

C. THIRD-PARTY TELEXFREE BANKRUPT ENTITIES

73. TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. are not Defendants due to their Chapter 11 bankruptcy protections, but they were participants in the unlawful activities described in this Complaint. No relief is hereby sought against those entities or their bankruptcy estates.

74. TelexFree, Inc. is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number 000832397), having a last known principal place of business at 225 Cedar Hill Street, Suite 200, in Marlborough, County of

Middlesex, Commonwealth of Massachusetts 01752 (the "TelexFree Marlborough Office").[4]

75. TelexFree, LLC is a limited liability company duly organized and existing under the laws of Nevada, having a purported place of business at 4705 S. Durango Drive, #100-J51 (a post office box), Las Vegas, Nevada 89147 (the "Nevada Post Office Box").[5] TelexFree, LLC also maintained offices in the Commonwealth of Massachusetts at the TelexFree Marlborough Office between 2012 and late April 2014. At all material times, TelexFree LLC was identified as a limited liability company as registered with the Corporations Division of the Secretary to the Commonwealth of Massachusetts (Identification Number 001105166). TelexFree, LLC registered with the Secretary of State for the Commonwealth of Massachusetts on April 18, 2013.

III. FACTS AND ALLEGATIONS

A. TelexFree's History

76. This litigation arises out of a Pyramid scheme through which the Defendants including Labriola, defrauded hundreds of thousands of individuals out of hundreds of millions of dollars by falsely promising them a return on investment.

77. Each Defendant was a Top-Level Promoter was encouraged to and did recruit and "build" a network of new investor victims. They worked in conjunction with Pyramid scheme Founders and administrative personal including Merrill Wanzeler and Costa; Steven Labriola; and others whose role has not yet been determined.

78. Each Top-Level Promoter Defendant purported to sell Internet telephone services,

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[4] *See* Office of the Secretary of the Commonwealth of Mass., Corporations Div., Corporate Summary for TelexFree, Inc., attached hereto as Exhibit 1.

[5] *See* Office of the Secretary of the Commonwealth of Mass., Corporations Div., Corporate Summary for TelexFree, LLC, attached hereto as Exhibit 2.

when they sold nothing. Each Defendant was among the essential cogs, in addition to the banks, payment processors and licensed professionals and others that served TelexFree, in a wholly unlawful Pyramid Scheme.

79. A pyramid scheme is a fraudulent business operation whereby an individual or organization pays returns to its investors from new money paid into the operation by new victims, rather than from profit earned by the operator. Inevitably, every pyramid scheme fails.

80. Pyramid schemes follow a pattern and the Top-Level Promoter Defendants each served as an essential cog, in addition to the banks, payment processors and licensed professionals and others that served TelexFree, in the same overarching Pyramid scheme.

81. During the putative class period, the Top-Level Promoter Defendants made use of each of the identical stereotypical Pyramid scheme components and marketing program listed hereafter.

82. **The Hook**: In a pyramid scheme, potential investors are promised that an investment opportunity will achieve an above normal rate of return on investment that is often specified, or very easy to figure out. The "Hook" was included in the marketing plan each Defendant participated in or used, and it was an identical and essential component of the same overarching unlawful Pyramid scheme. Each Defendant Top-Level Promoter here made the identical related promise. The promised interest rate or return on investment here was an amount high enough to be worthwhile to the investor but not so high as to be unbelievable. This is called an "above normal rate of return on investment." Each Defendant Top-Level Promoter here also made the identical representations to promote the same illusory product including a VoIP technology that was purported to be cutting edge and proprietary. In fact the TelexFree product was a grade below what was available for free via Google Voice or Skype and was not related

what so ever to the identically set income promised. The marketing program of the over arching Pyramid scheme that each Defendant Top-Level Promoter relied on and participated in generated the funds that unjustly enriched each Top-Level Promoter including the "Hook".

83. **The Scheme is Showered with Credibility**: The victims of pyramid schemes are always given a believable explanation of how their investment will earn the "above normal rate of return on investment." The explanation must be good enough to convince people to invest and reinvest their money and importantly, to recruit others. The "Credibility Showers" were included in the marketing plan each Defendant participated in or used, and it was an identical and essential component of the same overarching unlawful Pyramid scheme. Here the Defendant Top-Level Promoters made use of the same marketing as put forward by the persons who founded or operated the Pyramid scheme. This included the false representation[6] that the Founder and Principal Merrill was a college graduate with specialty degrees in a field related to the product they touted as driving the profit. TelexFree also falsely represented that its Principals had been involved in telecommunications for many years. Moreover, the identical marketing program used by each Defendant Top-Level Promoter involved the identical lawyers, certified public accountants ("CPAs"),[7] and other credible professionals[8] who had blessed the instant Pyramid scheme as a legal and sound business opportunity. The identical marketing plan that the Top-Level Promoters made use of also involved the same "credible persons" touting the

[6] Among other places this appeared on an identical or commonly used web site.

[7] TelexFree first had Nehra, an attorney who also heavily promoted himself as having specialized MLM experience, guarantee that its business enterprise was legitimate. It later promoted the fact that Nehra had teamed up with another heavily promoted MLM attorney, Defendant Waak. TelexFree was also publicly tied to Bank of America and TD Bank.

[8] Well-known MLM "professionals" with great experience or success were used to state on TelexFree's behalf that the pyramid scheme was legal and a good investment. TelexFree made such use of Rodrigues, De La Rosa, Crosby, Sloan, Shoyfer, Smith and others.

investment as an incredibly great opportunity that worked for them and the same so-called "regular people" who had "gotten rich quick." They each attended or received follow-up updates from extravaganza's (for example, Newport Beach July 2012) and invite only meetings (for example, February and March 2014) held in Marlborough Massachusetts. The identical marketing plan the Defendant Top-Level Promoters participated in promoted meetings at hotels beyond the means of its victims and hyped the success of a few. The identical marketing campaign included the same high profile persons and others in rich and lavish settings and boasted about rags-to-riches earnings. The overarching Pyramid marketing program that each Defendant Top-Level Promoter relied on and participated in generated the funds that unjustly enriched each Defendant Top-Level Promoter including the "Credibility Showering"

84. **Initial Investors Paid Off**: In most pyramid schemes, some initial investors will receive the promised return. The "Bait Payoffs" were included in the marketing plan each Defendant participated in or used and were, an identical and essential component of the same overarching unlawful Pyramid scheme. This trick is used to convince victims that the investment is not risky and that a return will be received. The scammers use smaller payouts to bring in bigger ones. Payouts are also used to prompt victims to bring in the investment cash of their family, friends, co-workers and others. It is also used to turn the $100 dollar investor into a $1,000 or $10,000 investor. Participants also become more comfortable after learning of pay outs to the point they eventually recommend others close to them such as family, friends, and business associates to invest. The marketing program the Defendant Top-Level Promoters used and participated in here was identical. The marketing program of the overarching Pyramid scheme that each Defendant Top-Level Promoter relied on and participated in generated the funds that unjustly enriched each Top-Level Promoter including the "Bait Payouts".

85. **Communicated Successes**: Pyramid scheme principals and others at the top levels will uniformly and heavily promote success stories and build in a system that communicates motivating success stories. The marketing program the Defendant Top-Level Promoters used and participated in here was identical. The communicated alleged "historical" successes included in the marketing plan each Defendant participated in or used was an identical and essential component of the same overarching unlawful Pyramid scheme. In sum, they were just another ploy intended to deceptively lend credibility to the identical Pyramid scheme that generated the funds that unjustly enriched each Defendant Top-Level Promoter. The instant Pyramid scheme showered its investor victims and potential investor victims with stories and visuals evidencing the big payoffs. The instant Pyramid scheme positioned its owners and others at the top as "Rock Stars" and promoted the identical above normal rate of return on investment - often with great deal of flourish. The instant overarching Pyramid scheme's marketing plan also sponsored meetings and super weekends at hotels or exotic locations and promote success stories involving tales of great income, early retirement or other dreams come true. The marketing program of the overarching Pyramid that each Defendant Top-Level Promoter relied on and participated in generated the funds that unjustly enriched them including the "Communicated Successes".

86. In February 2012, founders and principals Carlos Wanzeler and James Merrill formed TelexFree, Inc. in the Commonwealth of Massachusetts.

87. TelexFree's U.S. memberships offered investors (the "Members," "Promoters" or "Participants") guaranteed high returns in exchange for promoting the company online and recruiting new investors.

88. TelexFree falsely advertised itself as a "multi-level marketing" company selling

local and international telephone service plans that used unique groundbreaking "voice over internet protocol" ("VoIP") technology.

89. The VoIP technology used by TelexFree was not unique or groundbreaking. In fact, it was substandard and offered nothing more than the free Google Voice and Skype.

90. TelexFree's business plan and operations were an unlawful Pyramid Scheme and not a lawful multi-level marketing ("MLM") enterprise. At all times relevant to this complaint, TelexFree violated the express terms of Massachusetts General Laws ("M.G.L.") c. 93, § 69.

91. United States authorities began to investigate TelexFree, and in January and February 2014, the Secretary of the Commonwealth of Massachusetts, Securities Division (the "SOC") issued subpoenas.

92. On April 14, 2014, TelexFree, Inc. along with two affiliated companies, TelexFree, LLC and TelexFree Financial, Inc. (together, the "Bankrupt Companies"), filed for Chapter 11 bankruptcy protection in Nevada claiming that TelexFree's revenues were insufficient to meet its obligations.

93. On or about April 15, 2014, the United States Department of Homeland Security (the "DHS"), the Federal Bureau of Investigation (the "FBI") and others raided the offices of TelexFree, shutting down its operation, seizing records and other evidentiary items.

94. On May 9, 2014, the DHS filed criminal proceedings against two of TelexFree's founders, Wanzeler and Merrill, for conspiracy to commit wire fraud.

95. Thereafter, the United States Department of Justice (the "DOJ") brought charges of wire fraud and conspiracy to commit wire fraud against TelexFree's owners Wanzeler and Merrill, and the same were indicted by grand jury on July 23, 2014.

96. TelexFree's other principals and operational defendants are currently under state

and federal investigation, and some are the subjects of lawsuits by the Securities and Exchange Commission (the "SEC") and the Massachusetts SOC for operating the Pyramid Scheme.

B. TelexFree Was An Unlawful, Unfair and Deceptive Pyramid Scheme

97. TelexFree purported to sell VoIP products, but it was not a viable business operation. Defendant Labriola was fully aware of this and the other unlawful aspects of TelexFree at all times, yet knowingly chose to unfairly and deceptively spearhead many aspects of the unlawful Pyramid scheme for sole motive of making money.

98. TelexFree's revenues from sales of its VoIP products were inconsequential compared to its overall operations.

99. The vast majority of TelexFree's revenue came from the purchase of membership plans by Participants.

100. Participants who purchased memberships could open user accounts and accumulate "credits" in these accounts. The "credits" represented money purportedly owed by TelexFree to the Participant, and could be theoretically redeemed for cash, transferred to another user account, or redeemed in satisfaction of an invoice for another user account.

101. The "credits" issued by TelexFree were part of an illegal scheme and were in fact worthless. There were no actual investments in TelexFree.

102. Many later Participants in TelexFree's Pyramid Scheme transferred money directly to earlier Participants in the Scheme. These payments were often made in cash.

103. A later Participant who transferred money to an earlier Participant would ostensibly receive a user account from TelexFree and the ability to accrue his or her own credits. However, there was no actual value to the credits, as they were merely part of an illegal scheme.

104. The amount theoretically owed to Participants on account of accumulated credits was more than $5 billion dollars, an amount more than seven hundred times the $6,600,000 in cash receipts from the sale of VoIP packages over the life of the TelexFree Pyramid Scheme.

105. Victims received nothing in exchange for money paid to the Defendants.

106. There were approximately $3 billion in reported transactions in the TelexFree Pyramid Scheme, with more than $1 billion in reported losses.

C. The TelexFree Program Through Which The Defendants Received Payments From Plaintiffs Violated The Law

107. Massachusetts General Laws c. 93, § 69 makes pyramid schemes such as TelexFree, as well as many of their traditional features, unlawful. M.G.L. c. 93, § 69(g) expressly declares that a violation of M.G.L. c. 93, § 69 is a per se violation of M.G.L. c. 93A, § 2(a).

108. At all times material herein, TelexFree was a "multi-level distribution company" as defined by M.G.L., Chapter 93, Section 69(a).

109. M.G.L., Chapter 93, Section 69(d)(2) prohibits any multi-level distribution company from offering or paying any "finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration" to any participant therein "solely for the solicitation or recruitment of other participants."

110. The standard TelexFree contract ("TelexFree Contract"), on its face, contains numerous instances of promising payment to Promoters merely for recruitment of new Participants[9] as defined by M.G.L., Chapter 93, Section 69, including but not limited to Clauses 5.7, 5.7.1, 5.8, 6.1, 6.1.1, 6.1.2, and 8.1.

[9] For ease of reading, the terms "Member", "Promoter" or "Participant", regardless of capitalization, are at all times herein to be construed as "Participant" defined by Massachusetts General Laws Chapter 93, Section 69.

111. The above provisions of the standard TelexFree Contract are clear and direct violations of M.G.L. c. 93, § 69(d), as they promise payments, including cash payments, "bonuses," "gratuities," "royalties," and dividends, merely for the recruitment of new TelexFree Members/Participants (i.e. through the sale of AdCentral membership accounts).

112. Furthermore, M.G.L., Chapter 93, Section 69(d)(3)-(4) also prohibits any multi-level distribution company from offering or paying any "finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration" to any participant therein:

a. "[U]nless such participant performs a bona fide and essential supervisory, distributive, selling or soliciting function in the sale or delivery of such product or services," or,

b. "[W]here no amount of judgment or skill exercised by the participant has any appreciable effect" upon such payment," or

c. "[W]here the participant is without that degree of control over the operation of such plan as to enable him substantially to affect the amount" of such payment.

113. The TelexFree Contract, on its face, contains clear, obvious and direct violations of M.G.L. c. 93, § 69(d)(3)-(4), including, but not limited to, Clauses 5.4, 5.4.1, 5.4.2, 5.5, 5.5.1 and 5.5.2.

114. The Clauses make it clear that TelexFree Members were not required to engage in any "bona fide and essential supervisory, distributive, selling or soliciting" nor exercise any "judgment," "skill," or "control over the operation."

115. Rather, Members were only required to engage in the mindless activity of cutting-and-pasting spam advertisements, which were "prepared by TELEXFREE," onto "internet announcement sites," and would receive "remuneration for these announcements."

116. Furthermore, VoIP products distributed to Members as remuneration for this mindless spamming activity could be redeemed with TelexFree for cash, resulting in cash

remuneration.

117. Not only does the TelexFree Contract explicitly violate M.G.L. Chapter 93, Section 69 – it also lays bare several classic hallmarks of pyramid schemes, including paying participants solely for recruitment of new members, not requiring any meaningful sales or distributive activity by participants, and using coercive measures to prevent participant withdrawal from the scheme.

118. Like the TelexFree Contract, TelexFree's own website set forth numerous clear violations of M.G.L. c. 93, § 69.

119. The TelexFree Contract, on its face, contains egregious, obvious violations of M.G.L. c. 93, § 69(b), including, but not limited to, Clauses 10.1.2, 10.1.3 and 10.1.4.

120. These terms of cancellation are clearly designed to entangle members in TelexFree's Pyramid Scheme and prevent members from withdrawing.

121. TelexFree's founders, Labriola, and Top-Level Promoters engaged in acts of civil conspiracy. The founders controlled the conduct of and colluded with the Top-Level Promoters through meetings, written materials, regular conference calls, and other means.

122. For example, during or about late February 2014 through early March 2014, TelexFree principals, executive office, Labriola, licensed professionals and Top-Level Promoters held an invitation-only meeting at TelexFree's Marlborough, Massachusetts headquarters with the intent of siphoning off funds and maximizing the exploitation of the rank and file TelexFree Promoters. This was one of several such meetings held by the management of TelexFree to coordinate how best to exploit lower-tier TelexFree Promoters.

123. TelexFree's Top-Level Promoters regularly met with each other and with TelexFree' founders and Labriola at other meetings as well, including an "Extravaganza"

which was hosted in Newport Beach, California in July 2013, a large gathering at the LaGuardia Airport Marriott in New York on January 23, 2014, and various meetings at locations throughout the country, including numerous meetings in New York, Massachusetts, and Florida.

124. Top-Level Promoters from across the U.S. and internationally attended these meetings.

125. Steven Labriola, TelexFree's "International Marketing Director," also held regular conference calls for TelexFree Promoters, in which strategies for recruiting new members were discussed.

126. TelexFree's Top-Level Promoters at all times acted according to the directions of TelexFree.

127. This is made explicit by TelexFree's pre-March 9, 2014 standard membership contract, which states that TelexFree "provides virtual media, through the website www.telexfree.com to associates and to the PROMOTERS that YMPACTUS/TELEXFREE coordinates and controls, including the respective publicity channels."

128. TelexFree provided the Top-Level Promoters with many of the marketing materials that the Promoters, in turn, used to recruit Members.

129. These fraudulent marketing materials – including those found on TelexFree's website, online videos, cut-and-paste advertisements, social media postings, and statements of TelexFree's attorneys – were re-posted, re-stated, and re-iterated by the Top-Level Promoters in order to build their network of recruits.

D. Events Since TelexFree's Bankruptcy Filing

130. On April 15, 2014, the SOC filed an Administrative Complaint against TelexFree, Inc. and TelexFree, LLC, alleging violations of the Massachusetts Uniform Securities Act,

M.G.L., c. 110A.

131. The SOC sought injunctions and orders requiring TelexFree, Inc. and TelexFree, LLC to cease and desist from further conduct violating Massachusetts securities laws and regulations, to provide an accounting of all proceeds received because of TelexFree's fraud, to provide restitution to Promoters for losses attributable to the fraud operations, and to disgorge all profits.

132. Also on April 15, 2014, the SEC filed a civil Complaint and Jury Demand against TelexFree, Inc. and TelexFree, LLC as well as Merrill, Wanzeler, Stephen Labriola, and certain top-level promoters, alleging violations of the Securities Act of 1933, the Securities Exchange Act of 1934, and SEC Regulations. The SEC requested and was granted a preliminary injunction and an order freezing the assets of TelexFree. The SEC is also seeking disgorgement of profits and additional civil penalties.

133. Additionally on April 15, 2014, the FBI and the DHS conducted a raid of TelexFree's Marlborough Office.

134. On or about May 1, 2014, the Montana Securities Commissioner filed a cease and desist order against TelexFree.

135. The following day, the United States Bankruptcy Court for the District of Nevada, on motion by the SEC, transferred the matter to the federal district court in Massachusetts, Central Division.

136. During hearings conducted on May 2, 2014, William H. Runge, III, former Chief Restructuring Officer of TelexFree, estimated that as of TelexFree's bankruptcy filing TelexFree had assets of $31 million in its bank accounts, $28 million in brokerage accounts, and nearly $30 million held by payment processing companies.

137. The location of hundreds of millions of dollars received by TelexFree and by Direct Payment Recipients from victims remains unknown.

IV. CLASS ACTION ALLEGATIONS

138. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiff sues on her own behalf, and on behalf of all other persons similarly situated (the "Class"). The Class that Plaintiff seeks to represent is:

> All persons residing in the United States who paid money to one or more of the Top-Level Promoters named herein and invested more funds in the TelexFree Pyramid Scheme than they withdrew and so suffered a net loss during the period from January 1, 2012 to April 16, 2014 (the "Class Period"), and who never received any money or other item of value from any entity or person on account of such payment. Excluded from the class are persons to the extent they seek to recover, directly or indirectly, any payments made by or to TelexFree itself or any other item that is property of TelexFree's bankruptcy estate.

139. Excluded from the Class are Defendants and any party who is a defendant in MDL 2566 (the "MDL Defendants") and their respective officers, directors, and employees; any entity in which any Defendant or MDL Defendant has a controlling interest; and the legal representatives, attorneys, heirs, and assigns of Defendants and the MDL Defendants.

140. Plaintiff meets the requirements of Federal Rule of Civil Procedure 23(a) because the members of the Class are so numerous that the joiner of all members is impractical. While the exact number of Class members is unknown to Plaintiff, it is in the hundreds of thousands.

141. Plaintiff meets the requirements of Federal Rule of Civil Procedure 23(a) because there is a well-defined community of interest among the members of the Class, common questions of law and fact predominate, Plaintiff's claims are typical of the members of the Class, and Plaintiff can fairly and adequately represent the interests of the Class.

142. This action satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3)

because it involves questions of law and fact common to the members of the Class that predominate or questions affecting only individual members, including, but not limited to:

- whether TelexFree operated a lawful MLM program or an unlawful Pyramid Scheme or a legitimate business
- whether the Top-Level Promoters who received direct victim payment were unjustly enriched;
- whether the funds paid by the Plaintiff Class directly to the Defendants must be repaid, without regard to the individual circumstances of participation in the Scheme, because it constituted an unjust enrichment;
- whether the Form 1099's issued by the Defendants are valid or should be voided by this Court;
- whether TelexFree was a "multi-level distribution company" as defined by Massachusetts General Laws Chapter 93, Section 69(a);
- whether the standard TelexFree Contract contained promises to pay merely for the recruitment of new members in violation of Massachusetts General Laws Chapter 93, Section 69(a);
- whether the standard TelexFree Contract contained offers to pay a "finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration" to Participants in the TelexFree program in violation of Massachusetts General Laws Chapter 93, Section 69(a);
- whether the TelexFree program offered its Members payment without requiring them to engage in any "bona fide and essential supervisory, distributive, selling or soliciting," nor exercise any "judgment," "skill," or "control over the operation" in violation of Massachusetts General Laws Chapter 93, Section 69(a); and
- whether Plaintiff and the Class are entitled to damages, civil penalties, punitive damages, and/or injunctive relief;
- what information the Top-Level promoters were given that was not made available to the members of the Putative Class at the same time.

143. Plaintiff's claims are typical of those of other Class members because Plaintiff was defrauded by TelexFree's common Scheme.

144. Plaintiff will fairly and accurately represent the interests of the Class.

145. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications regarding individual members of the Class, which would establish incompatible standards of conduct for Defendants and would lead to repetitive adjudication of common questions of law and fact.

146. Class treatment is superior to any other method for adjudicating the controversy. Plaintiff knows of no difficulty likely to be encountered in the management of this litigation that would preclude its maintenance as a class action under Rule 23(b)(3).

147. Damages for any individual class member likely cannot justify the cost of individual litigation, so that absent class treatment, the Defendants' violations of law inflicting substantial damages in the aggregate would go un-remedied without certification of the Class.

148. Defendants have acted or refused to act on grounds that apply to the Class, as alleged above, and certification is proper under Rule 23(b)(2).

V. CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF
UNJUST ENRICHMENT

149. Plaintiff incorporates by reference all allegations in all previous paragraphs, as though fully set forth here.

150. Plaintiff and the putative Class conferred a benefit upon Defendants by furnishing funds, directly or indirectly, to Defendants, who accepted them without protest or defect and retained and benefitted from them.

151. The overarching Pyramid marketing program that each Defendant Top-Level Promoter relied on and participated in generated the funds that unjustly enriched each Defendant

152. Only through the utilization of the TelexFree Pyramid Scheme's common modes

of operation and marketing was the Scheme able to be established, thereafter perpetuated and ultimately expanded.

153. The success of the TelexFree Pyramid Scheme, and the unjust receipt of Direct Victim Payments by the Defendants, was dependent upon the common participation and wrongful acts of the Top-Level Promoters.

154. The Scheme could not have existed, expanded and thrived without the participation of the Top-Level Promoter in identifying, attracting and securing additional victims, including Plaintiff and the putative class.[10]

155. In performing their common roles as Top-Level Promoters, Defendants utilized TelexFree's fraudulent marketing materials and implemented the uniform features of its program.

156. When obtaining an additional victim, and pocketing a Direct Victim Payment, each Defendant relied upon, utilized and implemented the common Scheme's standard modes of operation.

157. Each Defendant benefitted from the efforts of all Top-Level Promoters to market and expand the Scheme.

158. The payments made by the Scheme's victims, including Plaintiff and the putative class, directly to the Defendants were the direct result of the similar, combined efforts of all Top-Level Promoters.[11]

159. Each Defendant, as a Top-Level Promoter, performed a common, integral role in the commission, expansion and perpetuation of the TelexFree Pyramid Scheme.

[10] Or the participation and services provided by banks, payment processors, licensed professionals and others to the Scheme.

[11] As well as the banks, payment processors and licensed professionals that served the Scheme.

160. These circumstances and means through which the Defendants obtained direct payments from the Plaintiff and the putative class as part of the TelexFree Pyramid Scheme were common to all Defendants and make the retention of those payments unjust.

161. Defendants had an appreciation or knowledge of that they received a benefit when they took payment.

162. Defendants knew of such funds received by them.

163. Defendants have unlawfully and in bad faith denied Plaintiff and the putative Class access to such funds, and have instead knowingly retained the benefit of such funds for themselves.

164. Acceptance or retention by Defendants of the benefit under the circumstances set forth herein would otherwise be inequitable without payment for its value.

165. Allowing IRS Form 1099's issued by the Defendants to have a lawful effect under the circumstances set forth herein would otherwise be inequitable.

166. As a direct and proximate result of Defendants' actions, as hereinabove set forth, Defendants are, and continue to be, unjustly enriched and Plaintiff demands she and the putative Class be made whole.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, pray for judgment against Defendants as follows:

1. The Court determine that this action be maintained as a class action under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiff as Class Representative and her counsel of record as Class Counsel, and direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class;

2. Plaintiff and the members of the Class recover damages, to the maximum extent allowed in law and equity against Defendants;

3. Plaintiff and the members of the Class recover their costs of suit, including reasonable attorneys' fees, as provided by law;

4. Plaintiff and the members of the Class be awarded pre- and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate;

5. Each Defendant be enjoined from participating in future Pyramid schemes;

6. To the extent that the Defendant Top-Level Promoters served any Class member with an IRS Form 1099, that this Court exercise its equitable power and declare them null and void;

7. Plaintiff and the members of the Class be granted such other and further relief and equitable relief as the case may require and the Court may deem just and proper.

VII. DEMAND FOR JURY TRIAL

Plaintiff and the putative Class demand a jury trial of their claims to the extent authorized by law.

Respectfully submitted,

Dated this 27th day of June 2016

/s/ William R. Baldiga

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CERTIFICATE OF SERVICE

I, William R. Baldiga, hereby certify that on June 27, 2016, I caused a copy of the foregoing Amended Complaint to be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants, by first class mail, postage prepaid.

Dated: June 27, 2016
Boston, Massachusetts

/s/ William R. Baldiga
William R. Baldiga

EXHIBIT L

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)

PLAINTIFFS	DEFENDANTS
Stephen B. Darr as Trustee of the Estates of Telexfree, LLC, Telexfree, Inc. and Telexfree Financial, Inc.	Rita Dos Santos, Individually and as Putative Class Representative
ATTORNEYS (Firm Name, Address, and Telephone No.) Charles R. Bennett, Jr., Murphy & King, P.C., One Beacon Street, Boston, MA 02108 617-423-0400	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☑ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☑ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

For declaration that District Court action is void as a violation of the automatic stay (11 U.S.C. Section 362). For injunctive relief (11 U.S.C. Section 105).

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- 2 ☑ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- 1 ☑ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $

Other Relief Sought

1440987151202000000000001

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Telexfree, LLC, Telexfree, Inc., Telexfree Financial, Inc.	BANKRUPTCY CASE NO. 14-40987-MSH	
DISTRICT IN WHICH CASE IS PENDING Massachusetts	DIVISION OFFICE Central	NAME OF JUDGE Hoffman
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Charles R. Bennett, Jr., Esq.		
DATE October 7, 2015	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Charles R. Bennett, Jr., Esq.	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., TelexFree.	Chapter 11 Cases 14-40987-MSH 14-40988-MSH 14-40989-MSH Jointly Administered
STEPHEN B. DARR AS TRUSTEE OF THE ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Plaintiffs, v. RITA DOS SANTOS, INDIVIDUALLY AND AS PUTATIVE CLASS REPRESENTATIVE, Defendant.	Adversary Proceeding No.

VERIFIED COMPLAINT

Introduction

Stephen B. Darr, as he is the Trustee (the "Trustee") of the Chapter 11 estates of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. (collectively, the "Debtors), brings this action to enjoin Rita Dos Santos, individually and as putative plaintiff class representative, for the prosecution of certain claims against a class of individuals who are determined to be "Net Winners" on behalf of participants in the Debtors' scheme who are "Net Losers" and made payments to such Net Winners ("Unjust Enrichment Action"). Count I of this Complaint seeks a declaration that prosecution of the Unjust Enrichment Action against Net

Winners on a theory of unjust enrichment is violative of the automatic stay imposed by § 362 of the Bankruptcy Code in that the Unjust Enrichment Action is exercising control on or over property of the estates, being the estates' right to recover the same monies as fraudulent transfers and/or preferences. Court II of the Complaint seeks an injunction pursuant to Bankruptcy Code § 105(a) to enjoin and restrain Dos Santos from prosecuting so much of the class action that seeks to recover against Net Winners on a theory of unjust enrichment.

A necessary element of the Unjust Enrichment Action is the determination of who are "Net Winners." A determination of Net Winner is a fundamental determination to be made by the Bankruptcy Court. A determination of Net Winner is inextricably linked to the bankruptcy claims allowance process and, as such, the determination of the Net Winner is exclusively within the jurisdiction of the Bankruptcy Court. Whether one is a Net Winner or Net Loser will determine if the individual can share in bankruptcy distributions and on what basis. A determination of who are the Net Winners and Net Losers cannot be made without considering all of the transactions involved in the Debtors' pyramid scheme, including the transactions between the Debtors and the participants, along with the transactions between the participants. No aspect is more crucial to ensuring fairness of distribution than a complete analysis of all the financial transactions involved in the scheme to ensure an accurate determination of Net Winners and Net Losers. The Unjust Enrichment Action directly interferes with the Bankruptcy Court's jurisdiction to make a Net Winner determination because it seeks the same determination in another forum. To permit a parallel action that only accounts for some but not all of the transactions will result in confusion, duplication of effort, increased costs, interference with the administration of the bankruptcy case and create the potential for conflicting determination.

As detailed below, a participant in the Debtors' scheme could earn credits by, among other things, placing valueless advertisements on Internet sites, recruiting other participants, or selling VoIP plans. The credits could be redeemed for cash payment from the Debtors or to buy additional membership plans for the participant or on behalf of others. In those situations where the credits were used to buy a membership for another, the transaction typically consisted of (a) participant recruits new participant, (b) Debtor issues an invoice to recruited participant for the cost of the membership, (c) recruited participant pays recruiting participant cash in the amount of the invoice, and (d) the Debtors would redeem the recruiting participant's credits to satisfy the recruited participant's invoice (these transactions will hereinafter be referred to as "Triangular Transactions"). The Bankruptcy Court should determine who are the Net Winners and in doing so, whether the money received by recruiting participants from recruited participants in a Triangular Transaction, along with amounts paid by the Debtors, should be included in that determination. The Bankruptcy Court will determine whether the money paid by the recruited participant to a recruiting participant is recoverable by the Trustee as a fraudulent transfer or preferential transfer pursuant to §§ 547 and 548 of the Bankruptcy Code. Those payments made in connection with a Triangular Transaction are the same payments that the Unjust Enrichment Action seeks to recover.

Under Count II, the Trustee seeks to enjoin Dos Santos from prosecuting the class action claim pursuant to Bankruptcy Code § 105(a), because, for the reasons set forth above, the Unjust Enrichment Action would interfere with the Bankruptcy Court's determination of claims, which, with the Trustee's rights to pursuant avoidable transfers under Bankruptcy Code §§547 and 548, are the core matters. Accordingly, the continued prosecution of the Unjust Enrichment Action would directly impact a determination as to the allowance of claims in the bankruptcy estates and

the distributions thereon. Further, in order to ensure the efficient and consistent administration of the bankruptcy estates, the treatment of creditors, to preserve the Bankruptcy Court's jurisdiction, and to avoid potentially conflicting rulings, the Court should exercise its equitable powers and restrain Dos Santos from obtaining class certification of a class of Defendants consisting of Net Winners and prosecuting Count IV of the Unjust Enrichment Action against the Net Winners.

Parties

1. The Plaintiff is Stephen B. Darr, as he is the duly appointed and acting Trustee of the Chapter 11 estates of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. (collectively, the "Debtors"), who has a usual place of business within this District.

2. The Defendant, Rita Dos Santos ("Dos Santos") is an individual who resides in Massachusetts within this District. Dos Santos is alleged to be a creditor of the Debtors and a representative of those individuals who invested in the Debtors' scheme as part of a transaction whereby those participants paid money to a recruiting participant, were issued an invoice by the Debtors, and the recruiting participant used his/her accumulate credits to satisfy the invoice.

Jurisdiction

3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(b). This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

4. Venue in this district is proper pursuant to 28 U.S.C. § 1409.

Background

5. On April 13, 2014 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code with the Bankruptcy Court for the District of Nevada.

6. On April 15, 2014, the Securities and Exchange Commission ("SEC") commenced an action against the Debtors and others in the United States District Court for the District of Massachusetts ("SEC Action"). The SEC Action alleged, among other things, that the Debtors were engaged in an illegal Ponzi/pyramid scheme. Substantially contemporaneously with the commencement of the SEC Action, Homeland Security Investigations seized the Debtors' assets, books and records. The United States has also commenced criminal proceedings against Carlos Wanzeler and James Merrill, the principals of the Debtors. Mr. Wanzeler has fled the country, and Mr. Merrill was released from jail upon posting of an appropriate bond, and his movements are limited and activities monitored.

7. On May 6, 2014, the Nevada Bankruptcy Court, acting on a motion by the SEC, Ordered that the cases be transferred to the Bankruptcy Court for the District of Massachusetts. The cases were transferred to this District on May 9, 2014.

8. On May 30, 2014, this Court, on the motion of the United States Trustee to appoint a Chapter 11 Trustee, allowed the motion of the United States Trustee. The Trustee was appointed on June 6, 2014.

Ponzi/Pyramid Scheme

9. The Debtors ostensibly operated a multi-level marketing plan ("MLMP") engaged in the sale of voice over internet protocol ("VoIP ") services. Individuals who wished to participate in the Debtors' MLMP were required to pay a membership fee. Each plan provided

for a means by which the participant member could earn credits by, among other things, placing advertisements, recruiting other participants or selling VoIP plans.

10. Depending upon which plan a participant chose to purchase, the Debtors represented that a participant could earn credits which would translate to a guaranteed return on their initial investment of between 200% and 265% per annum.

11. A participant could redeem accumulated credits from the Debtors for cash or use the credits to purchase an additional membership plan either for the participant or on behalf of others.

12. During the period of the Debtors' operation, invoices associated with the sale of membership plans (and VoIP packages) had a face value of over $3 billion. However, of that amount, $360 million (or approximately 12%) was paid in cash to the Debtors. The balance of these invoices were satisfied either by intra-participant transactions or transactions by which a recruiting participant would (a) recruit a new participant into the scheme; (b) the Debtors would issue an invoice to the recruited participant reflecting the membership fee and contract fee for the plan being acquired by the recruited participant; (c) the recruited participant, instead of paying cash to the Debtors in satisfaction of the invoice, would pay the cash to the recruiting participant; and (d) the recruiting participant would satisfy the invoice issued to the recruited participant by the Debtors redeeming accumulated credits (as previously defined, "Triangular Transactions").

13. While the Debtors asserted that they were operating a multi-level marketing plan, the Debtors were in fact engaged in a Ponzi/pyramid scheme.

14. The continuation of the Debtors' business relied exclusively upon their ability to continue the recruiting of later participants as opposed to the sale of a VoIP product, however,

given the Debtors' virtual total reliance on the sale of memberships as opposed to a sale of the VoIP products, the collapse of the Debtors' business was inevitable.

15. The unsustainability of the Debtors' business is highlighted when considered in light of a calculation of the Debtors' twelve-month trailing liability; that is, the amount due participants over the following year on account of guaranteed returns for placing valueless advertisements on Internet sites.

16. This liability to participants based upon the guaranteed return grew exponentially in the year prior to the petition, eventually rising to more than $5 billion as of the Petition Date.

17. Further indicia of a Ponzi/pyramid scheme, is acceleration of trailing liability as the scheme approaches saturation. In the Debtors' cases trailing liability more than tripled in the five months leading up to the Chapter 11, far outpacing any cash generated from the sale of VoIP packages.

18. The $5 billion of trailing liability that existed is more than 700 times the $6,600,000 cash receipts generated from the sale of the VoIP packages since the inception of the Debtors' business.

Determination of Claims

19. The Debtors' books and records recorded participant transactions not by the name of the individual participant but by "User Accounts." User Accounts were linked to email accounts, but a participant could have multiple User Accounts and many email accounts were associated with numerous (hundreds and sometimes thousands) of User Accounts. The User Accounts reflect (1) the plan purchased, (2) any amounts paid to the owner of the User Account, (3) credits earned by the owner of the User Account, and (4) credits redeemed by the owner of the User Account. The Trustee has sought a determination from this Court that a claim or

portion of a claim of a participant for accumulated credits in a participant's User Account as of the Petition Date should be disallowed.

20. The participant would accumulate credits based upon the posting of advertisements, recruiting of new participants, or sale of VoIP programs.

21. Participants were promised astronomical returns on their initial investment merely by the repetitive posting of Internet advertisements, which served no legitimate purpose, because anyone who used TelexFree as an Internet search term would be led to the Debtors' own Web site, and the repetitive posting or similar advertising had no discernable value.

22. As an example, one Web site, adpost.com, contained more than 33,000 postings submitted by participants of TelexFree, while another, classifiedsgiant.com, contained more than 25,000 postings.

23. The credits issued to the participants for placing advertisements were not reasonable compensation for the performance of legitimate services.

24. Participants did not draft the advertisements or perform any design services for the configuration, and the placing of the ads could be, and often was, outsourced to a third party for a nominal fee.

25. Additionally, credits accumulated for the sale of VoIP packages generated insignificant value to the Debtors and the requirements were easily circumvented by the participants.

26. Accordingly, claims premised upon accumulated credits in the participant's User Account on the Petition Date are analogous to claims based upon fictitious profits and, as such, should be disallowed in calculating a claimant's claim.

27. The Trustee will seek a determination that claims should be allowed only on a net equity basis, meaning that claims should be determined by (a) the amount paid by the participant to the Debtors or to another participant in accordance with a Triangular Transaction, and less (1) any money received by the participant from the Debtors in the form of bonuses, commissions or cash payments for redemption of credits, and (2) less any money received by the participant pursuant to the Triangular Transactions described in paragraph 12, above.

28. To the extent the Net Equity determination results in a participant receiving more money than they invested, the Trustee will seek to recover from these Net Winners. The Trustee will seek to recover these amounts as a fraudulent conveyance pursuant to § 548 and/or preferential payments pursuant to § 547 of the Bankruptcy Code.

Trustee's Avoidance Actions

29. In substance, a Triangular Transaction was a transaction among the Debtors, a recruiting participant and a recruited participant pursuant to which the Debtors authorized monies due the Debtors from the recruited participants for payments of invoices to be paid to the recruiting participants in exchange for the reduction of the recruiting participants' accumulated credits.

30. A Triangular Transaction should be viewed as a single transaction, resulting in a transfer of money from the Debtors to the existing participants in exchange for redemption of valueless accumulated credits.

31. Triangular Transactions, pursuant to which the accumulated credits were being redeemed and the recruiting participants obtained money from a recruited participant, are fraudulent transfers of the Debtors' property, to wit, money due from the recruited participants, and, as such, claims to recover these sums constitute property of the estates.

32. In addition to being fraudulent transfers, to the extent that these Triangular Transactions were consummated within ninety days of the bankruptcy proceeding, the transfers to recruiting participants constitute a preference to the participant who was able to redeem credits in exchange for the cash payments. As such, the transfers are recoverable by the estates and represent property of the estates.

Dos Santos Claim

33. On October 22, 2014, Dos Santos and others commenced an action in the United States District Court for the District of Massachusetts asserting various claims against, among others, the principals of the Debtors, major promoters and various financial institutions, asserting claims for violation of M.G.L. c. 93A, and aiding and abetting violation of M.G.L. c. 93A (the "Consolidated Complaint")

34. The Consolidated Complaint was amended twice. On September 23, 2015, Dos Santos moved to file a Third Consolidated Amended Complaint. The proposed Third Consolidated Amended Complaint adds a count which asserts a claim by Dos Santos on her behalf and on behalf of all similarly situated individuals who made a payment to an individual Defendant who was a Net Winner, e.g., an individual who received more money from his/her participation in the TelexFree scheme than he/she paid into TelexFree, regardless of whether the payment was from the Debtors or another participant, and who received at least one payment from another participant.

35. The Unjust Enrichment Action characterizes the new claim as one of unjust enrichment.

36. The payments the Unjust Enrichment Action seeks to recover, in a defendant class action, are the same payments made in connection with the Triangular Transactions against

which the Trustee will also be seeking to recover on behalf of all creditors of the Debtors' bankruptcy estates.

37. While the Unjust Enrichment Action purportedly limits the claim to seeking recompense solely for monies paid by Dos Santos and similarly situated individuals to members of the defendant class, which class is defined as Net Winners, who received at least one payment from a participant in connection with the Triangular Transactions, the Unjust Enrichment Action is pursuing individuals who are included in the broad class of individuals to be pursued by the Trustee. Further, the Trustee's recovery will benefit a larger class of Net Losers then found with the Dos Santos plaintiff class. As such, the Unjust Enrichment Action seeks to exercise domain and control over property of the Debtors' estates; e.g., transfer of the Debtors' property to a class of Net Winners.

38. The Unjust Enrichment Action seeks to make such recoveries on behalf of Dos Santos and all similarly situated individuals. As such, she seeks class certification asserting a generalized claim as opposed to a particularized claim relating solely to her injuries.

COUNT I
(Declaratory Relief)

39. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 38 above and by reference incorporates them herein.

40. The Trustee seeks a declaration that the Unjust Enrichment Action violates the automatic stay under 11 U.S.C. § 362(a) and, therefore, the Unjust Enrichment Action is *void ab initio*. This declaratory relief is warranted for, but not limited to, the following reasons:

a. By seeking to recover damages from Net Winners who received payments from participants, the Unjust Enrichment Action improperly contravenes the claims administration process;

b. By seeking to recover damages from Net Winners who received payments from participants, the Unjust Enrichment Action interferes with the Trustee's exclusive right to seek recovery of fraudulently transferred property in direct violation of 11 U.S.C. § 362(a)(1) and (6).

41. The Unjust Enrichment Action further improperly seeks to obtain possession of the Debtors' property in direct violation of 11 U.S.C. § 362(a)(3).

42. To the extent that Dos Santos contests the Trustee's assertion that her action interferes with property of the estates, an actual controversy exists pursuant to which the Trustee is entitled to a declaration with respect to his property interest in the claims, and that the actions by Dos Santos are in contravention of 11 U.S.C. § 362(a).

43. To the extent that Dos Santos does not contest that the Unjust Enrichment Action interferes with and seeks to exercise control over property of the Debtors' bankruptcy estates, the Trustee is entitled to a judgment declaring her Third Consolidated Amended Complaint void *ab initio*.

44. Even if the transfer between an earlier participant and a new participant is not property of the estates, the Trustee is further entitled to a declaratory judgment that the Unjust Enrichment Action interferes with the efficient and orderly claims administration process and the effective and equitable administration of the Debtors' estates.

COUNT II
(Preliminary Injunction)

45. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 44 above and by reference incorporates them herein.

46. The Trustee requests that this Court enter an order enjoining Dos Santos, pursuant to 11 U.S.C. § 105(a), restraining and enjoining Dos Santos from further prosecution of the Unjust Enrichment Action.

47. The Trustee requests that the Court enjoin the prosecution of the Unjust Enrichment Action for, without limitation, the following reasons:

a. The Unjust Enrichment Action improperly infringes on the jurisdiction of this Court;

b. The issues in the Unjust Enrichment Action arise out of the bankruptcy proceedings, and any funds recovered in those actions have a strong likelihood of consisting of property of the estates recoverable by the Trustee pursuant to 11 U.S.C. §§ 547 and 548. As such, the proper forum for litigation of those issues raised in the Unjust Enrichment Action is in this Court and by the Trustee;

c. The prosecution of the Unjust Enrichment Action interferes with the efficient and effective administration of the estates, determination of claims and distributions inasmuch as the calculation of claims is inextricably linked to a determination of Net Winners and Net Losers, which should be determined by considering the transfers made within the context of the Triangular Transactions as part of the claim allowance process conducted by the Bankruptcy Court;

d. The continued prosecution of the Unjust Enrichment Action would interfere with the Trustee's efforts both to prosecute fraudulent conveyance and

preference actions and to obtain resolution of those actions on behalf of all of the creditors of the Debtors;

e. There is an inadequate remedy at law to protect and preserve the assets of the estates, and the injunction will serve to preserve and protect the property of the estates and the Trustee's efforts to effectively collect property of the estates for the benefit of all victims who have filed claims.;

f. An injunction will maximize judicial economy, will avoid the possibility of inconsistent decisions, and will ensure the preservation of uniformity of decision; and

g. The injunction will not harm the public interest and is, in fact, in the best interests of the Debtors' creditors and orderly administration of the claims administration process.

48. The Trustee believes the injunction requested herein is necessary and appropriate to carry out his duties in accordance with the provisions of the Bankruptcy Code and that further prosecution of the Unjust Enrichment Action prior to completion of the Trustee's actions would seriously impair and potentially defeat the Court's ability to administer the estates.

WHEREFORE, the Trustee respectfully prays that this Court enter a judgment in favor of the Trustee against Rita Dos Santos, individually and as a putative class representative, as follows:

1. After notice and hearing, issue a temporary restraining order to halt the further prosecution of the Unjust Enrichment Action until such time as this Court has ruled on the Trustee's request for a declaratory judgment and any preliminary injunction;

2. After notice and hearing, enjoining and restraining Dos Santos and those acting in concert or participation with her or on her behalf and any of the other parties, in accordance with § 105(a) of the Bankruptcy Code, from further prosecuting the Unjust Enrichment Action or any other action against the "Net Winners" pending a completion of the Trustee's review and prosecution of claims;
3. Declaring that the Unjust Enrichment Action violates the automatic stay under 11 U.S.C. § 362(a) and, therefore, *void ab initio*; and

4. Granting the Trustee such other and further relief as the Court deems just and proper.

Signed under the pains and penalties of perjury this 7th day of October, 2015.

Stephen B. Darr, Trustee of the Estates
of TelexFree, LLC, TelexFree, Inc.
and TelexFree Financial, Inc.

STEPHEN B. DARR AS TRUSTEE
OF THE ESTATES OF TELEXFREE,
LLC, TELEXFREE, INC. and
TELEXFREE FINANCIAL, INC.

By his attorneys,

Dated: October 7, 2015

/s/ Charles R. Bennett, Jr.
Harold B. Murphy (BBO #326610
Charles R. Bennett, Jr. (BBO #037380)
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695687

EXHIBIT M

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., TelexFree.	Chapter 11 Cases 14-40987-MSH 14-40988-MSH 14-40989-MSH Jointly Administered
STEPHEN B. DARR AS TRUSTEE OF THE ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Plaintiffs, v. RITA DOS SANTOS, INDIVIDUALLY AND AS PUTATIVE CLASS REPRESENTATIVE, AND MARIA MURDOCH, ANGELA BATISTA JIMENEZ, ELISANGELA OLIVEIRA AND DIOGO DE ARAUGO, AS PUTATIVE CLASS REPRESENTATIVES, Defendants.	Adversary Proceeding No. 15-04055

AMENDED COMPLAINT

Introdnction

Stephen B. Darr, as he is the Trustee (the "Trustee") of the Chapter 11 estates ("Estates") of TelexFree, LLC, TelexFree, Inc. and TelexFrce Financial, Inc. (collectively, the "Debtors), brings this action against the Defendant, Rita Dos Santos, individually and as putative plaintiff class representative ("Dos Santos"), and Defendants, Maria Murdoch, Angela Batista Jimenez,

Elisangela Oliveira and Diogo DeAraugo, as Putative Class Representative ("Murdoch") (hereinafter, Dos Santos and Murdoch collectively "Defendants"), for violating the automatic stay on the basis of their prosecution of certain claims characterized as Unjust Enrichment Claims against certain individuals and a class of individuals. The Trustee also seeks to enjoin the Defendants from prosecuting unjust enrichment claims against certain named individuals who they characterize as "Net Winners" or "Top-Level Promoters" (collectively, "Unjust Enrichment Claims").

The Trustee asserts that the Unjust Enrichment Claims assert substantially the same claims and seek to recover the same property that the Trustee seeks to recover in the class actions he has commenced. Accordingly, Count 1 of this Complaint seeks a declaration that prosecution of the Unjust Enrichment Claims is a violation of the automatic stay imposed by § 362 of the Bankruptcy Code such that prosecution of the claims constitutes an exercise of control over property of the Debtors' Estates, being the Estates' right to recover the same monies as fraudulent transfers and/or preferences made as part of Triangular Transactions (as hereinafter defined). Court II of the Complaint seeks an injunction pursuant to Bankruptcy Code § 105(a) to enjoin and restrain the Defendants from prosecuting the Unjust Enrichment Claims.

The Trustee has commenced two Defendant Class Actions seeking to recover transfers made to Participants in the Debtors' scheme who are "Net Winners" (as that term is defined by Order of this Court dated January 26, 2016 [Document # 687]) on the basis that the transfers, including those made in a Triangular Transaction, are fraudulent transfers and/or preferential payments pursuant to §§ 547, 548 of the Bankruptcy Code. The payments made in connection with a Triangular Transaction that the Trustee seeks to recover are the same payments that the Unjust Enrichment Claims of the Defendants seek to recover.

Necessary elements to allowance of the Trustee's request for injunctive relief are (1) a determination that inter-participant transfers of property pursuant to a Triangular Transaction constitute transfers of property of the Debtors' Estates, and (2) prosecution of the Unjust Enrichment Claims is an exercise of control over property of the Debtors' Estates.

Partics

1. The Plaintiff is Stephen B. Darr, as he is the duly appointed and acting Trustee of the Chapter 11 Estates of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc., who has a usual place of businces within this District.

2. The Defendants, Rita Dos Santos, Maria Murdoch, Elisangela Oliveira and Diogo DeAraugo, are individuals who reside in Massachusetts within this District; the Defendant Angela Batista Jimenez is an individual who resides in Las Vegas, Nevada (collectively "Defendants").

3. The Defendants assert to be representative of Participants who lost money as a result of paying money as part of a Triangular Transaction to another Participant who they generally characterize as "Net Winner" or "Top–Level Promoters."

Jurisdictiou

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(b). This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

5. Venue in this district is proper pursuant to 28 U.S.C. § 1409.

Backgronnd

6. On April 13, 2014 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code with the Bankruptcy Court for the District of Nevada.

7. On May 6, 2014, the Nevada Bankruptcy Court, acting on a motion by the Securities and Exchange Commission, Ordered that the cases be transferred to the Bankruptcy Court for the District of Massachusetts. The cases were transferred to this District on May 9, 2014.

8. On May 30, 2014, this Court allowed the motion of the United States Trustee to appoint a Chapter 11 Trustee. The Trustee was appointed on June 6, 2014.

Ponzi/Pyramid Schcme

9. The Debtors operated a massive Ponzi and pyramid scheme, which involved as many as 1,900,000 participants ("Participants") from multiple countries, under the guise of a "multi-lcvel marketing" company with its headquarters in Marlborough, Massachusetts. The Debtors represented themselves as being in the business of selling telephone service plans that use "voice over Internet" ("VoIP") technology. However, the sale of VoIP constituted only a minor portion of their business; the Debtors' actual business was the recruitment of Participants.

10. From April 2012 to April 2014, individuals throughout the world, including many Participants of the Hispanic, Brazilian and Dominican immigrant communities in the United Statcs, purchased membership plans with a transaction value of approximately $3,000,000,000. The membcrships promised substantial rcturns – 200% per year or more – for becoming "promotcrs" of the business. The Debtors promiscd to pay Participants for placing ads on obscure classified ad sites on the internet and recruiting other Participants to do the same.

11. The basic features of the Debtors' membership program had all the hallmarks of a Ponzi and pyramid scheme: (1) Participants were promised unusually high returns – over 200% per year – for doing virtually nothing except posting meaningless internet ads; (2) Participants were promised bonuses if they recruited new Participants, who would do virtually nothing except post ads and recruit new Participants (and so on and so on); and (3) while there were some VoIP plans sold, Participants did not have to sell the plans in order to receive redeemable credits. Because Participants were strongly encouraged to recruit new Participants and were not required to sell the VoIP plans, the Debtors were using funds from later Participants to pay earlier Participants.

12. On November 25, 2015, the Court, on motion by the Trustee and after notice and hearing, entered an Order, as amended on December 21, 2015, finding that the Debtors were engaged in a Ponzi scheme and that this ruling was the law of the case in each of the jointly administered cases.

13. On January 26, 2016, the Bankruptcy Court entered an Order finding, in part:

(i) In determining the amount of claims of Participants, any claim or portion of claim based upon accumulated credits in a Participants' User Accounts as of the Petition Date shall be disallowed;

(ii) The claim amounts of Participants shall be determined on a Net Equity basis, which shall be defined as follows: the amount invested by the Participant into the Debtors' scheme, including amounts paid pursuant to Triangular Transactions, less amounts received by the Participant from the Debtors' scheme, including amounts received pursuant to Triangular Transactions.

(vi) The foregoing findings and conclusions shall be applicable for all purposes in these proceedings.

Trustee's Avoidanee Actions

14. Each time that a Participant purchased a membership plan or VoIP Package, the Participant established an account with the Debtors (the "User Account") which recorded the Participant's transactions with the Debtors, including payments of invoices, accumulation of credits, bonuses, and commissions, use of credits to satisfy invoices, and cash receipts.

15. Invoices issued by the Debtors to Participants for the purchase of a membership plan could be satisfied in one of two ways. Participants could satisfy the invoice by payment in cash to the Debtors, or Participants could use their accumulated credits in one User Account to satisfy an invoice for a membership plan sold to a new User Account, either for him/herself or for another Participant.

16. In the case of a Participant satisfying his/her own invoice by payment in cash to the Debtors, the process worked generally as follows:

(i) The Participant established an online account;

(ii) The Debtors' database recorded the data entered for the new Participant and the identity of the recruiting Participant, and assigned an identification number to the new User Account;

(iii) The Debtors recorded the purchase, issued a numbered invoice, and marked the invoice as 'pending';

(iv) The new Participant could pay the invoice by cash, check, cashier's check, wire transfer, or through a third-party online payment processing account. When the invoice was paid, the Debtors would update the invoice;

(v) The new Participant could then start building a pyramid underneath the newly created User Account by recruiting other members (or by purchasing new User Accounts themselves) and generating bonuses and commissions.

17. A Participant could monetize accumulated credits by recruiting a new Participant using his/her accumulated credits to satisfy the invoice issued by the Debtors to the new

Participant for the purchase of a membership plan, and the new Participant paid the membership fee to the recruiting member, rather than to the Debtors (hereinafter a "Triangular Transaction").

18. In the case of a new User Account being opened with the use of accumulated credits in another User Account, the process worked, generally, as follows:

(i) A Participant created his/her online account, or used his/her existing account information, to establish a new User Account;

(ii) The Debtors' database recorded the details entered by the new Participant and assigned an identification number to the Participant's new User Account;

(iii) The Debtors recorded the purchase, issued an invoice to the Participant's new User Account, and marked the invoice as 'pending';

(iv) The new Participant forwarded the invoice to the recruiting Participant, who satisfied the invoice with accumulated credits in the existing User Account;

(v) The new Participant paid the invoice amount to the recruiting Participant (in those cases where there were two separate Participants involved).

19. A Triangular Transaction is a single transaction which is completed at the conclusion of a series of interdependent steps.

20. The substantive result of the Triangular Transaction is that funds otherwise payable to the Debtors from Participants for the purchase of membership plans were paid to the recruiting Participants, who in turn satisfied the invoice issued by the Debtors to the new Participant by reducing the recruiting Participant's accumulated credits.

21. The money paid by a new Participant to an existing Participant constitutes property of the Debtors, and the consummation of the Triangular Transaction results in a fraudulent transfer of the Debtors' property (e.g., cash from a new Participant) to an existing Participant in exchange for the Debtors' redemption of valueless credits.

22. In addition to being fraudulent transfers, to the extent that these Triangular Transactions were consummated within ninety days of the bankruptcy proceeding, the transfers

to recruiting participants constitute a preference to the Participant who was able to redeem credits in exchange for the cash payments. As such, the transfers are recoverable by the Estates and represent property of the Estates.

Defendants' Claim

23. On October 22, 2014, Dos Santos and others commenced an action in the United States District Court for the District of Massachusetts asserting various claims against, among others, the principals of the Debtors, five individuals alleged to be major promoters and conspirators with the principals, promoters, and a group of banks and payment processors, asserting claims for violation of M.G.L. c. 93A, and aiding and abetting violation of M.G.L. c. 93A (the "Consolidated Complaint"). The Consolidated Complaint was subsequently amended twice.

24. Among the elaims asserted in the Consolidated Complaint and in the Amended Consolidated Complaints are claims for unjust enrichment against the named individuals.

25. On September 23, 2015, Dos Santos commenced an action in the United States District Court for the District of Arizona against the same defendants as named in the Second Amended Consolidated Complaint ("Arizona Action"). On October 21, 2015, the Arizona Action was transferred to the United States District Court for the District of Massachusetts.

26. The Arizona Action largely parallels the Second Amended Consolidated Complaint, except it was expanded to include request for certification of a class of Defendants who are Net Winners and rceeived payments from other Participants, alleging that the "Direct Victim Payments to that class of Net Winners may be recovered on the basis that the New Winners were unjustly enriehed by the Direct Victim Payments."

27. On February 24, 2016, Maria Murdoch, Angela Batista Jimenez, Elisangela Oliveira and Diogo DeAraugo, as Putative Class Representative commenced a civil action in the United States District Court for the District of Massachusetts (4:14-cv-40018) asserting claims against various individuals, asserting among its claims a claim for unjust enrichment (the "Murdoch Action"). (The Murdoch Action, the Consolidated Complaint and the Arizona Action shall be collectively referred to as the "Unjust Enrichment Claims.")

28. The payments subject to the Unjust Enrichment Claims are the same payments made in connection with Triangular Transactions which the Trustee is seeking to recover on behalf of all creditors of the Debtors' bankruptcy Estates in the Trustee's class action Adversary Proceedings.

29. The Unjust Enrichment Claims are not limited to a claim seeking recompense solely for damages suffered by an Individual Plaintiff for a particular harm suffered by that individual, but seek recovery on behalf of the Defendants and all similarly situated individuals against a class of defendants, which class is defined as Net Winners, who received at least one payment from a Participant in connection with the Triangular Transactions. The Unjust Enrichment Claims are general claims against the same individuals who are included in the broad class of individuals being pursued by the Trustee; as such, the Trustee is the proper party to pursue those claims.

30. Further, the Trustee's recovery will benefit a larger elass of Net Losers than found within the Defendants' plaintiff classes because the Trustee's class action will benefit all Participants who are Net Losers and include those individuals who lost money as a result of direct transactions with the Debtors as well as those individuals who lost money in Triangular Transactions, whereas the Defendants' class consists only of those Participants who lost money

as a result of Triangular Transactions and excludes those who lost money as a result of direct transactions with the Debtors.

31. The Unjust Enrichment Claims seek to exercise domain and control over property of the Debtors' Estates, e.g., transfer of the Debtors' property to a class of Net Winners.

32. The Unjust Enrichment Claims brought by the Defendants or on their behalf and those similarly situated individuals assert a general claim, and the Trustee is the proper party to assert and prosecute such claims for the benefit of all creditors.

COUNT I
(Declaratory Relief)

33. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 32 above and by reference incorporates them herein.

34. The property transferred as part of Triangular Transactions constitute property of the estate and are recoverable by the Trustee pursuant to §§ 547 and 548 of the Bankruptcy Code.

35. The Unjust Enrichment Claims violate the automatic stay under 11 U.S.C. § 362(a) and, therefore, the Unjust Enrichment Claims are *void ab initio*, because by seeking to recover damages from Net Winners who received payments from Participants, the Unjust Enrichment Claims interfere with the Trustee's exclusive right to seek recovery of fraudulently transferred property in direct violation of 11 U.S.C. § 362(a)(1) and (6).

36. The Unjust Enrichment Claims further improperly seek to obtain possession of the Debtors' property in direct violation of 11 U.S.C. § 362(a)(3).

37. To the extent that the Defendants contest the Trustee's assertion that the Unjust Enrichment Claims exercise control over property of the Estates, an actual controversy exists pursuant to which the Trustee is entitled to a Judgment declaring his property interest in the

money transferred pursuant to Triangular Transactions and that the Unjust Enrichment Claims are in contravention of 11 U.S.C. § 362(a).

COUNT II
(Damages)

38. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 37 above and by reference incorporates them herein.

39. Upon a finding that the Defendants' actions are violations of the automatic stay imposed pursuant to 11 U.S.C. § 362(a), award the Trustee damages in the amount of his costs and expenses, including reasonable attorney fees incurred in eonnection with this litigation.

COUNT III
(Preliminary Injnnction)

40. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 39 above and by reference incorporates them herein.

41. The Trustee requests that this Court enter an order, pursuant to 11 U.S.C. § 105(a), restraining and enjoining the Defendants from further prosecution of the Unjust Enrichment Claims.

42. The Trustee requests that the Court enjoin the prosecution of the Unjust Enrichment Claims for, without limitation, the following reasons:

a. The factual bases for the Unjust Enrichment Claims arise out of the same set of facts, and the funds sought to be recovered in the Unjust Enriehment Claims are the same facts and the same funds the Trustee seeks to recover pursuant to 11 U.S.C. §§ 547 and 548. As such, the proper forum to seek to recover those funds is in this Court in the class action commenced by the Trustee;

b. The continued prosecution of the Unjust Enrichment Claims would interfere with the Trustee's efforts both to prosecute fraudulent conveyance and preference actions and to obtain resolution of those actions on behalf of all of the creditors of the Debtors;

c. There is an inadequate remedy at law to protect and preserve the assets of the Estates, and the injunction will serve to preserve and protect the property of the Estates and the Trustee's efforts to effectively collect property of the Estates for the benefit of all victims who have filed claims;

d. An injunction will maximize judicial economy, will avoid the possibility of inconsistent decisions, and will ensure the preservation of uniformity of decision; and

e. The injunction will not harm the public interest and is, in fact, in the best interests of the Debtors' ereditors and orderly administration of the claims administration process.

43. The Trustee believes the injunction requested herein is necessary and appropriate to carry out his duties in accordance with the provisions of the Bankruptcy Code and that further prosecution of the Unjust Enrichment Claims prior to completion of the Trustee's actions would seriously impair and potentially defeat the Court's ability to administer the Estates.

WHEREFORE, the Trustee respeetfully prays that this Court enter a judgment in favor of the Trustee against Rita Dos Santos, individually and as putative plaintiff elass representative, Maria Murdoch, Angela Batista Jimenez, Elisangela Oliveira and Diogo DeAraugo, as Putative Class Representative, as follows:

1. Declaring that the funds transferred between Participants in Triangular Transactions constitute property of the Debtors' Estates;
2. Declaring that the Defendants' prosecution of the Unjust Enrichment Claims violates the automatic stay under 11 U.S.C. § 362(a) and, therefore, is *void ab initio*;
3. After trial, entering an order, pursuant to § 105(a) of the Bankruptcy Code, permanently enjoining and restraining Rita Dos Santos, individually and as putative plaintiff class representative, Maria Murdoch, Angela Batista Jimenez, Elisangela Oliveira and Diogo DeAraugo, as Putative Class Representative and those acting in concert or participation with them or on their behalf and any of the other parties from further prosecuting the Unjust Enrichment Claims or any other action against the "Net Winners";
4. Awarding the Trustee his Judgment against the Defendants, individually and collectively, in an amount reasonable to compensate the Debtors' Estates for the costs and expenses of bringing this action, including awarding of reasonable attorney fees; and
5. Granting the Trustee such other and further relief as the Court deems just and proper.

STEPHEN B. DARR AS TRUSTEE
OF THE ESTATES OF TELEXFREE,
LLC, TELEXFREE, INC. and
TELEXFREE FINANCIAL, INC.

By his attorneys,

Dated: February 26, 2016

/s/ Charles R. Bennett, Jr.

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703325

EXHIBIT N

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS - WORCESTER

IN THE MATTER OF:	:	Case No. 14-40987 14-40988, 14-40989
TELEXFREE, LLC, TELEXFREE INC., and TELEXFREE	:	(Jointly Administered)
FINANCIAL, INC.,	:	Boston, Massachusetts **November 24, 2015**
Debtors.	:	2:05:52 p.m.

: :

TRANSCRIPT OF HEARING ON:
[#623] MOTION OF CHAPTER 11 TRUSTEE FOR
FOR ENTRY OF ORDER FINDING THAT DEBTORS
ENGAGED IN PONZI AND PYRAMID SCHEME AND
RELATED RELIEF AND [#625] MOTION OF CHAPTER 11
TRUSTEE TO SET BAR DATE; AND [#635] RESPONSE
OF PLAINTIFFS' INTERIM EXECUTIVE COMMITTEE
BEFORE THE HONORABLE MELVIN S. HOFFMAN, J.U.S.B.C.

APPEARANCES:

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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For Stephen Darr, Chapter 11 Trustee:	Murphy & King, P.C. BY: ANDREW G. LIZOTTE, ESQ. HAROLD B. MURPHY, ESQ. CHARLES BENNETT, JR., ESQ. One Beacon Street, 21st Floor Boston, MA 02108
For Carlos N. Wanzeler and James Merrill:	Partridge Snow & Hahn LLP BY: WILLIAM MOORMAN, JR., ESQ. 30 Federal Street Boston, MA 02110
ALSO PRESENT:	STEPHEN DARR Chapter 11 Trustee 265 Franklin Street Boston, MA 02210

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P R O C E E D I N G S

THE COURT: Good afternoon, everyone. Be seated, please.

THE COURTROOM DEPUTY: Calling case 14-40987, TelexFree, LLC.

Could the parties please identify themselves for the record?

MR. MURPHY: Good afternoon, Your Honor. Harry Murphy for Stephen Darr, the Chapter 11 trustee.

MR. LIZOTTE: Andrew Lizotte for Stephen Darr, trustee, Your Honor.

MR. BENNETT: Charles Bennett for Stephen Darr, trustee.

MR. BALDIGA: Good afternoon, Your Honor. William Baldiga, Brown Rudnick, for the plaintiffs in the MDL proceeding and certain victims in this case.

MS. TAYLOR: Afternoon, Your Honor. Kiersten Taylor also for the plaintiffs in the MDL proceeding.

MR. MOORMAN: Good afternoon, Your Honor. William Moorman from Partridge Snow & Hahn on behalf of Carlos Wanzeler and James Merrill. I'm making a limited appearance today, Your Honor, for purposes of this opposition.

THE COURT: Okay.

I think we have two matters on for today. One is the trustee's motion for a finding that the TelexFree debtors

engaged in a Ponzi and pyramid scheme and the other is the Chapter 11 trustee's motion to establish a bar date.

Mr. Murphy, unless you have a preference, I think we should do the Ponzi scheme motion, first.

MR. MURPHY: Thank you, Your Honor. We'll proceed on that basis.

Both these motions, Your Honor, taken together, and particularly the Ponzi motion, seek to establish procedures and methodology to be utilized in connection with the claims of what now the trustee estimates to be approximately 1.9 participants and who purchased membership plans in the debtors during the two-plus years of operation of the, what was ostensibly a multi-level marketing business but, in fact, which we believe and have alleged is a Ponzi and pyramid scheme.

Those participants established approximately 11 million user accounts with the debtor by which they tracked their activity, their initial investments, amounts that were received by them, amounts that were paid by them, invoices that they satisfied for other participants. And again, you have participants who may have had hundreds, and in some cases, thousands of user accounts and others that might have just one or two user accounts and the complexity associated with determining claims in this case is compounded by the fact that the identity of those participants is not readily ascertainable by the information provided by the participants when they

opened those user accounts with the debtors.

The trustee has developed, as I said in his papers and you've heard this before, Your Honor, but for the benefit of others who haven't, the trustee has endeavored to reconstruct the debtors' computer records, is able to get it working, has been able to do a number of analysis, and has employed a number of different algorithms, if you will, by which he now feels confident that he'll be able to establish an electric, electronic proof of claim process that will provide participants with the opportunity to submit their claims electronically, answer certain questions regarding payments made and received, provide certain information that they provided the debtor when they opened the user accounts such that the electronic claim portal that will be established by the trustee will enable the participant, actually, to get access to the user accounts that are associated with the information they have provided for the debtor such as passwords, that they, and the like. And through that, heretofore, they haven't had that access, access that shut down since the records were seized by the Federal Government in conjunction with the shutdown and seizures of the debtors' assets. Claimants will be able to identify and register their claims or take issue with the information that's established in the books and records.

As far as the trustee's been able to determine, the

transactions referenced in the SIG, the database, appear to have integrity. He's been able to tie out on a --- on a -- not each and every one of them, but on a selective basis cash receipts and disbursements, the debtors' case records. In many cases, the debtors' used independent payment processes for the receipt and disbursements of funds.

The key here, Your Honor, is, obviously, when you're deal with a case that potentially involve upwards of 1.9 million proofs of claim, is to develop a mechanism by which we can test those claims against the database and do it in a fashion so that we don't consume all available assets in the estate and go into the process. In order to do so, we think, practically, we need some requisite pre-findings that are associated with the proof of claim process and the claim allowance process, generally, so that we can move the case forward.

One of those is that the credits that have accumulated in user accounts, which was, if you will, the currency that was created by the debtors' Ponzi scheme, really are going to play no role in the allowance of claims or just pursuit of any recovery actions. What's at issue here is going to be how much was, did a particular participant put into the, the debtors' into purchasing a plan and how much did they receive from the plan.

The Ponzi motion and affidavit of trustee -- and

Mr. Darr is in the courtroom, Your Honor, and is prepared to testify at today's evidentiary hearing -- will be that the debtors' business was, in fact, a Ponzi and pyramid scheme. It promised and paid exorbitant returns to participants for merely posting Internet ads unassociated with the sale of any product. Mr. Darr has put evidence in in his examination that there were *de minimis* product sales and that payments to participants were primarily funded by membership paid by new participants, that there was no independent business here, that the business was unsustainable, that the more memberships they sold, the greater liability, and, and the business, in fact, was destined to collapse, which it did shortly before the filing because they had an overwhelming, they tried to change the rules and, if you will, there was a run on the bank. Those findings that the debtor operated a pyramid and Ponzi scheme, we don't think, can be seriously challenged here. And I don't think that either of the objectors, per se, have challenged that finding but if they do, it's the trustee's feeling that if we're going to move forward with this case, we need to get that issue determined now. This is not an issue that should not be unaddressed. There's a fundamental issue in all of these cases as to whether or not there's a legitimate business and if we're going to design a claim process and if we're going to go forward and pursue avoidance actions, we have to find what the fundamental basis for which people's claims or entitlements are in these

cases and this determination is essential.

THE COURT: How do you respond to the point raised by one or both of the objectors that the procedure is inappropriate, that to get to a determination that there was a Ponzi scheme you can't do it like this with a motion. Have to file an adversary proceeding or some other process. What do you say about that?

MR. MURPHY: I say, Your Honor, that's elevating form over substance. Your Honor approved a order of notice -- and I'm not suggesting that this is binding -- but what we're suggesting here that the process that we're trying to do to bring this forward to the Court is to put the world on notice of the requested relief that we're making and afford every party that has a potential interest in the case to come forward and to request, to object to the requested findings.

That, that notice involved over a million separate e-mails, regular or by e-mail, electronic mail to every known participant or known e-mail address we had. It also involved posting on the website maintained for the case in both English, Portuguese, and Spanish the motions. It involved giving notice, as I said, detailed -- the motion is quite detailed as to the relief that we're requesting, the grounds for the relief, the affidavit attached. It -- the notice gave the objection deadline and this Court established this hearing for all creditors, or any creditor that took issue with the

requested findings to come forward. That, that process started well over 30 days ago. We received two responses, Your Honor. Those parties are here in the courtroom and they can examine the trustee and hear whether or not there's a basis for these findings.

Your Honor, the notion that we have to name an adversary, bring an adversary proceeding and name 1.9 million people to achieve the same result is the substance of a fall. The objections, Mr. Baldiga has requested an opportunity to take the deposition of Mr. Darr. We produced Mr. Darr earlier this week. He was examined by Mr., earlier this week or late last week. I forget which. He was examined by Mr. Baldiga. He was afforded the time. The principals, if they wanted to examine Mr. Darr, they had an opportunity to do so. And if they want to examine him today, obviously that's what we're here for today or tomorrow, or however long it takes, Your Honor.

But the notion that we have to bring an adversary proceeding to obtain a fact, a Ponzi finding is just, I think it's just -- there's no basis for it.

THE COURT: Let me, let me be clear, that the -- I'm looking at the Certificate of Service. The Ponzi motion itself, not just the notice of this hearing, but the Ponzi motion itself was served by electronic mail on all the participants for whom you had e-mail addresses, is that

correct?

MR. MURPHY: That is correct, Your Honor.

THE COURT: And then a copy of the motion itself, the entire motion in English, Spanish, and Portuguese was posted on the KCC website?

MR. MURPHY: That is correct, Your Honor.

And for every creditor who filed a proof of claim, they also got the -- I think it was 50 odd thousand proofs of claim --

MR. LIZOTTE: Either electronic or hard copy.

MR. MURPHY: -- they either got electronic or hard copy as well, Your Honor.

So we not only took the debtors' data, database as to e-mail addresses, we also reviewed and obtained all the proofs of claims from the Court and KCC notified them as well and not only the substantive motion as well as the notice of a hearing and the procedural and the deadline and the like, not just the notice of hearing and call, if you want a copy. They got copies of the pleadings, Your Honor.

THE COURT: All right.

So -- and turning to the motion itself, there are four prayers for relief. One is the, is the finding that, that this was a Ponzi scheme. Another is an order that disallows preemptively accumulated credits from participants' proofs of claim --

MR. MURPHY: Yes. We've --

THE COURT: -- requiring this net equity approach to determining the claims.

MR. MURPHY: WE think that falls, Your Honor, from a Ponzi finding that, on the well-established case law that so-called fictitious profits should not form a basis for a claim. It should be done on net equity and the so-called accumulated credits should not play a part in that. And again, that was front and center in the requested relief.

THE COURT: We'll come back to that. Because that seems to be a point of contention.

The third prayer is that the Ponzi finding apply jointly and severally -- I'm sorry -- that the debtors jointly and severally be liable to all the participants.

MR. MURPHY: Yes, Your Honor. In terms of designing a proof of claim, one of the things we wanted to ensure is I can assure you that every participant we've spoken to -- and the trustee has spoken to many participants directly. Our office has appeared at meetings, community meetings, and the like -- participants didn't know which debtor they were doing. They were dealing with TelexFree. We've -- based upon the trustee's affidavit and the information set forth therein, the debtors were all commonly owned. They were all engaged in this particular enterprise together. We allege that it's a fraudulent enterprise and under established law participants in

a fraud are all jointly and severally liable for that.

The purpose of that for the proof of claim will be, as you know, an individual investor participant will not have to say, "I had a claim against this or this or this." We're going to end up with duplicate claims. For the participants as opposed to any contract creditors, they would only have to file one proof of claim. It would be a claim deemed against all the estates. It may well be we may ultimately go to a substantive consolidation here. There's certainly grounds for that, but we're not seeking that right now.

But what right now we're saying is that participant only has to register a claim. It will be deemed a separate claim in each estate without the necessity of filing three different claims.

THE COURT: Okay.

And the fourth request in your motion is for an order that the Ponzi finding be applicable throughout the bankruptcy proceedings.

MR. MURPHY: Yes. And I might suggest, Your Honor, the -- I might say fourth would, might be that net equity, a net equity calculation of how claims should be determined includes what we call the so-called directly amounts in and out as well as the triangular transactions.

So the so-called net equity determination, we've asked for that determination as part of this Ponzi motion, credits be

disallowed, and claims be determined on a net equity basis.

THE COURT: Right.

MR. MURPHY: And lastly, we've asked, as Your Honor pointed out, that these findings, that this is a, this is a Ponzi scheme, which I think is -- again, if there's an issue, let's get at it today -- but this is a Ponzi scheme. The credits were fictitious profits. They play no role in trying to determine the losses of victims in this case, which are many. We're going to look at it like every other court has looked at how to address the claims of victims in a case like this, that we're not going to have to relitigate these issues and every single time someone comes forward we're going to have to re-prove that this is a Ponzi scheme. We're not going to have to re-prove that the -- that -- that the credits have any bearing on this process and that as a matter of law, Your Honor, when you look at this the cases well establish that -- and these, I think, fall as a matter of law -- but we wanted to put the world on notice that it's the trustee position that findings in this motion will be collateral estoppel issue preclusion to any party who, who's going to challenge this. Because if we end up having to litigate this separately for 1.9 million people, there's not going to be any money for anyone here and we're trying to do something full and fair notice to the world. Everyone come forward. If they have an issue, come forward and prove their case. If Your Honor thinks there's not

enough notice, we'll give more notice.

But the idea that we have to individualize this process for each individual claimant is just inconsistent with any rational approach to how to deal with this problem.

THE COURT: All right. Unless you have another suggestion, what I would say is we start with your first prayer for relief, which is a determination that the debtors operated a Ponzi and pyramid scheme and focus on whether you can establish that.

MR. MURPHY: Sure, Your Honor.

THE COURT: Make an offer of proof as to what you would put on. Because you have Mr. Darr in the courtroom, yes?

MR. MURPHY: Yes, Your Honor. Mr. Darr is here. His affidavit is on file with the Court and I would offer Mr. Darr's testimony on this point, on these points or all, all the matters before the Court this morning, or this afternoon. And his affidavit details --

THE COURT: I only want to deal with No. 1, finding that the debtor operated a Ponzi and pyramid scheme.

MR. MURPHY: Yes.

THE COURT: I want to break this down, please.

MR. MURPHY: And, Your Honor, we've alleged two things. This is a hybrid and we've looked at, I'd like to think we've considered every reported Ponzi scheme that we've been able to come across of, that have been reported. There's

obviously some that are not, but at least that's been a subject of case law in the last 20, 30, 40 years. And this is ingenious, if you would like to describe it that, and it was two parts. And our pleadings talk about the fact that it is a Ponzi scheme because participants who were lured into this scheme were given, were sold the idea that for your initial investment, whether you buy -- whatever -- depending on what membership plan you would apply, you would receive a guarantee return by posting Internet advertisements, which the company supplied you.

THE COURT: What you're telling me now is what Mr. Darr would testify to?

MR. MURPHY: This is what -- this is exactly what Mr. Darr would testify.

-- and it was a guaranteed return and his affidavit speaks to that to the 3 to 400 percent annual return you would get merely by posting Internet ads.

Mr. Dar would also testify that the, the percentage of product sales, of actual products sold here unassociated with -- to the -- with the sale of membership plan, i.e., to third parties, is there a legitimate product here, the so-called VOIP service by which you would pay 49.95 and have the opportunity to make unlimited phone calls. The revenues associated to that were *de minimis*, inconsequential, that they couldn't in any way generate enough revenue to service the

obligations created by the, by the guaranteed return on the membership plan, that the only way that the obligations could be satisfied by an ever-increasing sale of new family plans or new membership plans and which is a hallmark of every Ponzi scheme that there is, that you can't pay the existing investors without new investors, that there's no legitimate business generating revenues on a standalone basis sufficient to cover the liabilities created to your existing members.

Your Honor, it's not proof, but this was, this has been the manner of the similar, same scheme was done in Brazil. The Brazilian authorities found the same thing. Mr. Darr will testify about his involvement, his review of the E&Y report which was retained in the Brazilian proceeding. He will testify that to his discussions with the Brazilian authorities, again that this is the same thing that was done there and that the scheme was unsustainable. It was destined to fail and that by the spring of '14 it was, in fact, failing. And the debtors recognized that.

Mr. Darr will also testify that his review of the books and records indicate as early as the spring of, summer of '13 the debtors recognized that the scheme was unsustainable, that it received advice from third parties, including professionals who were retained by it, that the scheme was unsustainable. And notwithstanding that, the debtor continued to operate the scheme until the bitter end, until it blew up.

Your Honor, I, I, again, would offer the affidavit of Mr. Darr. I'll point specifically to the numbered paragraphs in his affidavit. Let me pull that out. If Your Honor has any questions or any other party in interest, Your Honor, I think your suggestion that we deal with these one by one. I think it starts at Paragraph 60, in particular, and it goes through Paragraph 69 about the facts that support the finding and existence of a Ponzi scheme.

THE COURT: All right. Thank you, Mr. Murphy.

I'd like now to offer any of the other parties in the courtroom an opportunity to be heard and cross-examine on the first prayer for relief, the existence of a Ponzi and pyramid scheme.

MR. BALDIGA: Thank you, Your Honor. For the record, again, William Baldiga for the Plaintiff Committee in the MDL and the representative of victims in this case.

Your Honor, we do not oppose -- there, there is no proposed order which makes this a challenge. I know there was a proposed order filed this morning on a different motion.

THE COURT: Uh-huh (indicating an affirmative response).

MR. BALDIGA: There is no proposed order here. So, as Mr. Murphy said, there's -- it's -- some of these things are combination-type things. So that makes, without a proposed order, somewhat of a challenge. But I think it's helpful if

you understand what we are opposing and what we're not opposing just to help frame, frame the hearing. I won't go for long because I think argument should follow the evidence and not, not the other way around.

THE COURT: I agree.

MR. BALDIGA: We do not oppose a finding today that this is a Ponzi scheme. We do not oppose the prayer asking that the debtors be jointly and severally liable for the victims' claims in this case. We do not oppose the setting of a bar date.

The trustee urges that the claims be solicited on the basis of the difference between the amount invested -- I think throughout we'll use that term in quotes -- and the amounts withdrawn. And so there would be no claim for fictitious profits. We do not oppose that.

And we do not oppose that the trustee uses a electronic or other type of claim solicitation process that elicits that information so that claims can be allowed without undue burden on anyone in this case. We all agree that administrative expense, unfortunately, as in every case, reduces victim recovery.

We're also, Your Honor, not, even though the papers go on, the trustee's papers go on at length about this, that we're not here today because the, as victim representative we want to sue net losers. In fact, we do not and our papers are specific

in that regard. And we have not. And we do not want to interfere with the trustee's definition of net winners and net losers in this case subject to the Court's findings.

We're not here because we are suing to recover anything paid by TelexFree to anyone and we're not doing that under any theory.

THE COURT: Let me stop you there. Are you saying that you are not opposed to the second prayer for relief in the trustee's motion ordering that any claim of participants that is based on accumulated credits be disallowed and the claims be determined on a net equity basis?

MR. BALDIGA: We oppose it to the extent, as follows, Your Honor, and I, and I think, again, argument on that point should follow the evidence because I think the specific evidence on that point is important.

We do not oppose the solicitation of information on the trustee's present bar date motion to obtain the information to allow claims to be allowed or disallowed on that basis. We do believe that because no one knows how many of these 1.9 million people actually got notice of anything. I mean, we don't even know -- the trustee doesn't even know their names, never mind real addresses. He has a lot, hundreds of thousands of e-mail addresses that may or may not have reached people.

But we don't think that claims should actually be allowed or disallowed until, like in every other case,

including every other Ponzi scheme case, claims are filed and there's an objection. This is not the first Ponzi scheme case. It is the first Ponzi scheme case, we would suggest, that there has been asked an advisory opinion of you as to once people get around months from now to filing proofs of clam, whether they have already lost their rights prior to, maybe, knowing of the bankruptcy case or knowing of the bar date or having filed a claim or even deciding whether to file a claim, whether they then have already lost their rights as to the resolution of their claim.

We, we think that's premature and we don't think that is necessary. We understand why there's some efficiencies which must be imposed on this case, which is why we think the information should be gained that doesn't require a whole new solicitation of information. We fully support that.

I think -- I hope that's responsive to your question, but we do think, for the reasons set out in our papers, we think that the trustee goes too far with the advisory opinion, which is sought here.

But I, I wanted on the presentation, Your Honor, just this initial opening to stress how much we do not oppose here. We do not oppose two of the three specific requests in the motion.

We do think that the second one, as you just mentioned, is, in large part, just fine and we support that as

long as it doesn't cut off the rights of specific victims later on in their specific claims. And we would support the trustee at the appropriate time to give notice in an efficient way and so forth. We don't think that, you know, claims objections do not need to be by adversary proceeding or in-hand service and so forth.

So there's, there's a right time and a place to do it and, frankly, in every other case, including Ponzi scheme cases, people follow those rules and the case goes in good order.

The, the fourth prayer for relief is the one we are most troubled by because it's ill defined. There's no proposed order. We don't know what that means. I don't think anyone has articulated.

THE COURT: For all purposes?

MR. BALDIGA: For all purposes, what, whatever that means, although Mr. Murphy, I think, was helpful in clarifying or confirming that the trustee would like however much res judicata and collateral estoppel can be gained from that, whatever that means, as the case goes forward and issues come to this Court. We, we certainly oppose that and I think much of today's hearing would be going to that.

THE COURT: Well, let me stop you there. Because what if the order finding that there is a Ponzi scheme simply said the words, "These findings are applicable in all, for all

purposes in these proceedings," period, end quote. What would you take that to mean? And why would that be a problem for you?

MR. BALDIGA: Because there would -- it doesn't mean that the trustee wouldn't later argue that there was some collateral estoppel effect, given that the order was silent.

We do have an order, Your Honor, a proposed order, that we -- may I approach, Your Honor?

THE COURT: Just tell me what it says about --

MR. BALDIGA: Sure. It's -- it's -- it's an order that would allow the trustee's motion -- actually, all parties should have a chance to look at it, including Mr. Moorman -- that would have the motion before the Court granted in part, denied in part; have a order, decredal paragraph that the debtors operated a Ponzi and pyramid scheme, exactly the words used by the trustee; that the debtors shall be jointly and severally liable for the allowed claims of participants; that the trustee is authorized -- this is a longer paragraph -- but authorized to do in connection with the bar date solicitation and so forth, exactly what he's proposed to do; and that -- and this is really the paragraph that is most important to us -- that the entry of the order and any preliminary determination made by the trustee pursuant hereto as to any participant's claim because that's what the trustee wants to do shall not impair or otherwise affect any participant's right to commence

or continue any action to recover funds he or she directly paid to any other person or entity, including in connection with -- and I'm paraphrasing. I'm not reading the exact words -- including with respect to the Ponzi scheme, not determine today whether funds paid by any one participant to any other participant in connection with the Ponzi scheme constitute property of the estate; not determine today the validity of any interest in those funds enjoyed by the trustee, the debtors, or any participant; not determine today any participant's right to bring an action to recover those funds from the participant to which such funds were paid; not determine today the trustee's request in his two things that he has brought, to determine those issues, which as long as we are not affected by collateral estoppel, res judicata, or any of the other things that Mr. Murphy would like -- we're happy to litigate in due time whether that's today or at another time -- and shall not affect in any way the multi-district litigation proceedings in Worcester before Judge Hillman or any request made in those proceedings.

So we think this is an order that gives the trustee everything to which he's entitled today, would allow this hearing to be completed, I think, in good order and allow the trustee to proceed with the Chapter 11 case efficiently, give the relief that is necessary now without unduly cutting off anyone's rights, including important rights as to what

constitutes property of the estate, which we do think is very much one that needs to be made after a different type of procedure and not just as an afterthought to a Ponzi scheme motion.

THE COURT: Your order doesn't make any reference to the scope of the finding. It doesn't address applicability throughout these proceedings, which is what the trustee wants.

MR. BALDIGA: Well, that's right. We say it does --

THE COURT: Silent on that point.

MR. BALDIGA: No, it doesn't, Your Honor. It's -- and again, I'm happy to hand one up, if you'd like.

In connection with Paragraph 4, it says that it would be used to preliminarily determine the claims of participants on an net equity basis. It's, it's the exact same thing that flows from a Ponzi scheme. That's the essence of a Ponzi scheme.

So we're saying that the trustee is authorized to get the proofs of claim done exactly on that basis, as articulated in what is the bulk of the paper.

THE COURT: Is it your, is it your intention to limit the Ponzi scheme finding to simply that? Is that what you're telling me?

MR. BALDIGA: Yes. Well, more specifically, Your Honor, we, we go on to say the, these several ways --

THE COURT: What it doesn't do.

MR. BALDIGA: I'm sorry?

THE COURT: You have a list of what it doesn't --

MR. BALDIGA: That's right.

THE COURT: -- authorize. I understand that. You've carved out a bunch of stuff.

MR. BALDIGA: So we say it does apply to what the trustee deals with in the bulk of his motion. Does not deal with these other things. We can't think of anything that's left out, but certainly, to the extent that the trustee does, we could deal with that. But --

THE COURT: The classic purpose of a Ponzi scheme finding is it creates a presumption under the law in connection with a lot of different things, fraudulent transfer claims and so forth. According to your version of the order, is that not going to happen if there's a finding of a Ponzi scheme? Is the presumption --

MR. BALDIGA: No. I think --

THE COURT: -- not going to be triggered?

MR. BALDIGA: I think that could.

THE COURT: I mean, that would be -- that's the sense I get as why we're going through this exercise, is to get beyond that point so that the trustee can now proceed with the benefit of the presumption. And I'm not hearing from you anything about that. That was what I understand that fourth prayer to be about.

MR. BALDIGA: I have to say I didn't order that, but that would not bother us. Because, as I said in my opening, we don't oppose at all -- and our papers, I hope, made that clear -- the trustee's recovery of ay funds distributed by the debtor on any theory, whether it's fraudulent conveyance or preference theory or any other theory and we, we'd like to see the trustee do that. And if, if there are presumptions that are helpful in that regard --

THE COURT: What, what I'm really hearing, Mr. Baldiga, is that, that your constituency wants the Ponzi scheme finding to have a series of exceptions you identified in your proposed order --

MR. BALDIGA: Yes.

THE COURT: -- right? And one of those exceptions is, what, that it shouldn't be applicable in the multi-district litigation that's before the U. S. District Court?

MR. BALDIGA: That's right.

THE COURT: Right.

MR. BALDIGA: In connection with our recoveries of monies paid by one victim to a promoter. That finding is not necessary to it and the trustee's not a party to it and I suppose if we want a presumption, we'll ask Judge Hillman for a presumption in that regard, but it's not necessary.

THE COURT: Well, why -- give me a good argument as to why this court should put that kind of a boundary around a

final order of the court. Why should I do that? What would be the justification, legally, principally, equitably, for me to make a finding of a Ponzi scheme and say, "But wait a minute. It shouldn't apply to any proceeding outside this court"? Courts don't do that.

MR. BALDIGA: Well, the trustee is using, trying to use -- and I think it's, it's pretty obvious from the papers that you've read and have been filed here -- that the trustee, the trustee's primary purpose in the fourth prayer for relief is to use the Ponzi scheme finding to implicitly create a finding that none of the victims here have the right to sue to get their money back in the manner that they wish, but they -- they've lost -- there's a property right in the trustee that would preclude that.

And to the extent that a Ponzi scheme motion or a Ponzi scheme finding leaps over to explicitly or implicitly into a determination of a property right, we would object.

To the extent --

THE COURT: See, I had trouble --

MR. BALDIGA: -- that it doesn't do that, we don't object.

THE COURT: I had trouble connecting the dots on, on that point. I -- I -- I didn't see how the trustee was asking, raise the concern that you are talking about here. There was not one word in this motion about trying, about the ability of

the individual participants to proceed against other participants. That my come later. That may be part of an adversary proceeding.

But how, how do you make the leap from a Ponzi scheme finding to, "We have a problem proceeding in the multi-district litigation"? I'm not -- I don't get that connection, Mr. Baldiga.

MR. BALDIGA: Because they told us that.

Your Honor, this, this hearing is --

THE COURT: Where -- who's told you what?

MR. BALDIGA: They told us exactly that.

THE COURT: But does this motion tell you that? Does an order finding it's a Ponzi scheme tell you that? I, I don't --

MR. BALDIGA: Not the order that we've submitted. It, it would not. But --

THE COURT: Let's assume I just, I just endorse this as allowed and I -- there's a general finding that there was a Ponzi scheme for all purposes in this bankruptcy, in these bankruptcy proceedings. How does that translate into creating a problem for you in the multi-district litigation?

MR. BALDIGA: As long as that's not a determination of an interest in property of the estate, we have no problem.

THE COURT: Okay. We'll come back to that.

MR. BALDIGA: And so, obviously, Your Honor, I have

much more argument after the facts are in.

And so with respect to your question as to -- we don't have any objection to the introduction of Mr. Darr's affidavit as his testimony in chief. We do have cross-examination.

Your question as to whether we have cross-examination as to the finding of a Ponzi scheme, I went into this opening for the purpose of saying it's, it's a little bit unclear, in our mind -- again, because the trustee elected not to file a proposed order so we're, we're all guessing a little bit about this -- but I, I don't think the cross-examination goes specifically to those points because we don't oppose a finding of a Ponzi scheme. But I suppose once you hear the cross-examination altogether, which is not long, you may, you may say, "Well, some of that really was as to Paragraph 60 to 69." I, I don't think so because I didn't know how this, how the hearing was going to be done exactly like that.

So with the caveat that I think our questions are all as to other matters, we would be happy to have those paragraphs of the affidavit come in as Mr. Darr's testimony subject to cross-examination later when we get to the other points.

THE COURT: What is it that you want to cross-examine him about?

MR. BALDIGA: Several points, Your Honor.

Excuse me.

(Pause)

MR. BALDIGA: Generally speaking, Your Honor, some questions regarding the breadth of the scheme here; exactly what is meant by Mr. Darr as to what he means by a Ponzi scheme and a pyramid scheme because those are words that have a lot of different meanings and a lot of different cases. I don't think we necessarily disagree, but we think the record should be absolutely clear in that regard, given the importance. Some things about how notice have been given as to today's proceedings. The -- we'd like -- well, we have several questions regarding how the MDL proceedings and the Chapter 11 work together and Mr. Darr's intentions in that regard, which, again, go to the very things that we've just been talking about, how do these things work together, how do today's findings deal with that. Those are the topics.

THE COURT: Okay. Thank you. We'll come back to that in a few minutes.

Is there anyone else who --

MR. BALDIGA: Thank you, Your Honor.

THE COURT: You're welcome.

Does anyone else want to be heard on the first prayer for relief in the motion?

Mr. Moorman?

MR. MOORMAN: Good afternoon, Your Honor. Again, William Moorman from Partridge Snow & Hahn on behalf of Mr. Wanzeler and Mr. Merrill.

Your Honor, with respect to this particular finding, our objection is primarily to the process, the fact that it is being done by motion. So that does tie some of the issues together. Our concern is that any finding should be limited to this proceeding. We think it should be limited to the claims allowance process which is what this is really about and it should not be extended to any other proceeding. It's certainly not applicable to any criminal proceeding.

THE COURT: You mean -- you mean -- let's, let's make sure we have the same, the same definitions here.

When you say "this proceeding," you're talking about the Chapter 11 cases?

MR. MOORMAN: Correct. It should be --

THE COURT: Okay.

MR. MOORMAN: It should be limited to this Chapter 11 case and should be limited to the, the claims allowance process. I haven't, frankly, thought about fraudulent conveyance adversary proceedings, but I believe that an adversary proceeding is to be brought. There's due process concerns. There's procedural concerns and everyone should have the right to due process and appropriate notice in connection with those types of proceedings.

Certainly, we would object to any finding being binding in any other civil proceeding and any proceeding that the trustee might bring against Mr. Merrill or Mr. Wanzeler

other than in the claims allowance process.

THE COURT: Well, I ask you the same question I asked Mr. Baldiga. What is the principal reason why a court should restrict findings that it makes and rulings that it makes that are final the way you're requesting? Why would I do that?

MR. MOORMAN: Well, this was not an action brought against Mr. Wanzeler or Mr. Merrill. If the trustee desires some relief to be binding upon them, applicable to them in this area, it should have been done by adversary proceeding.

There are other issues such as whether or not it would be a core proceeding as it relates to seeking a finding that would be binding on them and as --

THE COURT: Well, not binding on them, specifically. They're not mentioned at all in any of this. Just binding for all purposes in this case and to the extent that they want to come into this case, why shouldn't they be bound with, with notice?

MR. MOORMAN: Only to them coming into this case, that's, that's one thing, but if -- what we're questioning is extending it beyond this case and to some other case.

THE COURT: How, how altogether do these individuals have standing in this case in any way? Can you explain that to me, please?

MR. MOORMAN: As to whether or not they have standing, Your Honor?

THE COURT: Yes.

MR. MOORMAN: It appears to us that the debtor is seeking to have a, a finding that is binding upon them. If he's seeking to do that, then I think they have standing to come in and oppose that type of a finding. I think it, it comes about from --

THE COURT: Well, you have -- I think you have -- you have the cart before the horse. He's seeking a finding that is for all purposes in this case. If -- if a -- if they don't want to be bound by that finding, they can stay out of the case.

MR. MOORMAN: In terms of coming in and filing a claim or something like that.

THE COURT: Right.

MR. MOORMAN: But they might be brought involuntarily into the case by way an adversary proceeding being filed against them. If that occurs, then they should be able to litigate this issue through a proper adversary proceeding.

THE COURT: And how was this, apart from -- I'm looking at 7001, which lists ten, ten different proceedings that are called adversary proceedings. I don't see this particular one here, or anything like it. But apart from the formalities, how is this any different than an adversary proceeding in terms of your clients? They had ample notice of this. They're here opposing it. What else do they need?

MR. MOORMAN: I think the formalities are important in terms of service of service, the applicable Rules of procedure. Judge, this was done in a very quick time frame.

THE COURT: When was your motion filed, Mr. Murphy?

MR. MURPHY: October 7th, Your Honor.

THE COURT: Yeah.

MR. MOORMAN: The, the other proceedings that they are subjected to are going to take months and months of trial.

THE COURT: Not here, not with me. You know, bankruptcy moves quickly.

MR. MOORMAN: Right, but they're not, they're not parties to this proceeding. We filed this as a protective measure, Your Honor, to the extent that the trustee seeks to have them bound in some other proceeding.

THE COURT: One of the things I think you, that came up in your opposition was a comment about needing to do discovery. Can you elaborate on that? What kind of discovery would your clients need here?

MR. MOORMAN: Your Honor, I'm not sure exactly what discovery they would want to engage in here.

THE COURT: Okay. Thank you.

MR. MOORMAN: I imagine it would be extensive discovery, though, that I'm not -- I'm here for the procedural mechanism of this proceeding, the fact this was done by motion, and the fact that I --

THE COURT: Well, one of the reasons that they objected to the, to the procedure was because they said they, that an adversary proceeding, they couldn't engage in discovery.

So I'm asking you to give me some insight into what kind of discovery they could possibly want to engage in.

MR. MOORMAN: May I, Your Honor?

(Pause)

THE COURT: Go ahead.

MR. MOORMAN: Your Honor, I don't have the detail on the discovery that we would want to engage in.

THE COURT: All right. Thank you.

Anything else on the first prayer?

MR. MOORMAN: I guess the only other issue that's part of our argument, Your Honor, is that to the extent that there is an intent to have the individuals somehow bound by this, we contend that they would have a jury trial right and would have made such a demand.

MR. MOORMAN: Thank you.

THE COURT: Thank you.

Mr. Murphy, can you give me any enlightenment on the trustee's intentions with regard to Messrs. Wanzeler and, and Merrill, please, if you, if you're at liberty to do so? Is it the trustee's intention to go after them?

MR. MURPHY: Your Honor, my understanding is is that

they are already subject to certain orders in the criminal and the SEC action and that the trustee is restrained from going after those defendants 'cause it's already been restrained. All their assets have been forfeited, that they can be located in the United States. Mr. Wanzeler is a fugitive. He's not been in the United States. He's left. And Mr. Merrill is under indictment, as I understand the last report. The criminal trial is scheduled April of this, April of next year with the potential that might have to be extended.

But the trustee has no present intentions of, given -- if the, if the criminal case goes as expected, there won't be any reason to pursue either Mr. Merrill or Mr. Wanzeler. If for some reason it should go against the Government, then it is quite possible that we would pursue them for any of their assets for the typical bankruptcy causes of action. But that remains to be seen.

We may have to bring those actions prior to the expiration of the two-year avoidance period to have them pending, but we do that -- we'd have to do that in cooperation with the Government, get some sort of relief from the Government to just bring, bring the claim and put it on hold pending the outcome of the criminal case if it's not resolved by April of '16. That's the two-year statute, Your Honor.

So the short answer is, that's not our focus, Your Honor. Our focus is is on, again, having determinations here.

We don't -- Your Honor, we think that Your Honor's rulings is what it is, as Coach Belichick would say. Your Honor, to the extent we obviously have pointed out in our papers that we don't think it has any applicability to the criminal procedures. There's a different burden of proof. Mr. Merrill and Mr. Wanzeler, should he decide to show up, will, will have their day in court on that. This Court's findings that it is a Ponzi scheme is -- and it's out on notice to everyone here to give everyone an opportunity. We do see any point of trying to parse it out of it's good for this, but not for that and maybe not for this, we just can't have it.

This particular case is not going to be conducive to that and, frankly, it's, there's no basis to say it's a Ponzi scheme for this purpose, but not for another purpose. I just don't understand that thinking. It either is or isn't and if there's a question of if it isn't, let's get at it today rather than have these exceptions to the Rule or unproven issues that just requires us to continually revisit this issue as, as new things come out. And if it can't be done today, let's, let's do it as soon as possible.

And I appreciate, Your Honor. This has been out there for six weeks now. People have had it. I can tell you, Your Honor, I haven't received anyone's calls other than Mr. Baldiga's office who's been very active, obviously. We've had multiple discussions before and after this about where the

trustee's going. There's been no mystery. We've met with community groups. We've met with the SEC. We met with the U. S. Attorney. We've met with the U. S. Trustee, all in conjunction with bringing this motion. We met with the Chelsea Collaborative, Greater Boston Legal Services, everyone we could possibly tell about. There's no mystery here. We're not trying to do this by sleight of hand. We're trying to be straightforward and direct as possible.

Our intentions here are to try to get the victims compensated as efficiently as possible with the least amount of overlap, without the least amount of proceedings in two different courts. We don't want to involve the bankruptcy court in the Middle District litigation, MDL litigation involving the aiding and abetting claims of the banks. We've long told Mr. Baldiga's office that that's, because of the notion of *in pari delicto* the estate does not believe it's in a good position to pursue aiding and abetting claims and that to the extent we can be cooperative in that effort, we will cooperate.

But to the extent that there is a pursuit of recovery of the estate or assets of the estate or claims against net winners and net losers and how that matter is to be determined, we think Your Honor should make those determinations. It should be done in one court one time and for the benefit of all. 'Cause that's the only way we're going to get this done.

THE COURT: Well, you've raised that, the trustee has raised that in an adversary proceeding that is pending here.

Putting that aside, how does an order granting this motion advance the trustee's claims in the, in that adversary proceeding, if at all --

MR. MURPHY: Your Honor --

THE COURT: -- in your opinion?

MR. MURPHY: -- we think that the determination of what comprises the claims -- and again, we think that the participants should have a claim whether they paid the debtor or they paid someone who was an existing participant and lured them into the scheme. We think -- the trustee's thought long and hard about that, that the people at the bottom of the pyramid who got in last were put in -- were -- were, if you will, solicited by friends, neighbors, and families and who, I think, unwillingly and said, "Hey, you should get in this deal. Give me the money. I'll, I'll cover your invoice and you're all set. You'll be able to make a lot of money like I'm making." And that person who got, who recruited, the recruiter put $1425 in his pocket. His neighbor is out $1425. We think that neighbor should have a claim in this bankruptcy, even though the money didn't come in directly to TelexFree.

THE COURT: But how does that have anything to do with what's going on in the multi-district litigation? That's my question. How, how can your opinion --

MR. MURPHY: It's a separate issue. It is a separate issue.

THE COURT: What, what is it about this motion and order granting it that would in any way impair the rights of the parties in the multi-district litigation, in your opinion? Mr. Baldiga's very worried about this.

MR. MURPHY: Well, he should be, Your Honor. We think --

THE COURT: Well, tell me why 'cause I'm not getting it.

MR. MURPHY: We think that that payment is, that payment of the membership fee is, was payment of property of the estate. We think that that payment should be calculated as part of the claim and the recovery since we are recognizing --

THE COURT: I know you think all that and you've --

MR. MURPHY: Right.

THE COURT: -- addressed that in the adversary proceeding, but what -- what -- how would an order granting the motion impact that thinking or advance your ability to prevail in the adversary proceeding? That's what Mr. Baldiga is worried about.

MR. MURPHY: Right.

THE COURT: And I don't understand the connection between this motion and that, and that claim of the trustee --

MR. MURPHY: Only --

THE COURT: -- brought in the other case.

MR. MURPHY: Only that the -- Your Honor, I think it's -- one would take it's implicit in the net equity determination, if you include the triangular transactions. The only basis to do that is that that, that's property of the estate. And if it is property of the estate, the question is is whether or not it's appropriate that property of the estate be pursued by anyone other than the trustee.

THE COURT: So the -- your definition of "net equity" is, includes the triangular transactions? Where do I -- where do I find that in your motion?

MR. MURPHY: Couple of places, Your Honor. Let me point out specifically.

(Pause)

MR. MURPHY: Your Honor, if I point you, Your Honor, to Page 31 and it's Paragraph 94. And I'll read it for the record:

"Based upon the foregoing the net equity claim of participants should be determined, as follows: The amount invested by the participants into the debtors' scheme, including amounts paid by the participant pursuant to a triangular transaction less amounts received by the participant from the debtors' scheme and including amounts received by a participant pursuant to the triangular transaction."

We think that that -- that is -- without doing so, you're going to end up with a curious result. Because you have people -- if you just look at one side of the balance sheet, if you will, how much they put in directly and how much they received, you get one result. But if you look, then, at amounts that they have paid or received from participants -- and this is with respect to buying membership plans of the debtor -- you're going to get a different result.

And the idea that you cut off half the equation and just look at part of the equation, which is this notion that, "Well, we'll, we'll deal with this part up in the Middle District and we'll leave this part down here in the bankruptcy," just doesn't work as a practical matter and you end up with inequitable results.

For example, Your Honor, I could be a net winner in the same if I put a hundred dollars into TelexFree and I got $200 back from TelexFree. I'm a winner of that scenario. If, however, I had to pay Mr. Lazar $500, I am a net, overall net loser.

So if I just look at one side -- and this is what happens. People -- the way this works is you're always going to be saying, all right. And we can tell exactly whether you sent us, when you look at your user account, whether you satisfied someone else's invoice or whether you paid someone else. And, and we're saying is the calculation of the net

equity, when you design this thing, you can determine on an overall basis whether you should have a claim in the case or whether you shouldn't have a claim in the case. And if you don't do it, indeed, and when you look at the definition of "net equity" employed by Mr. Baldiga's people -- and I'll refer to Page 17 of 205 of the third amended proposed complaint in Note 5 -- they employ the same definition of "net winner" as the trustee's proposing, which is "a net winner is simply a participant who received more money from their participation in the scheme (whether in the form of earnings, commission, bonuses, or otherwise) than he or she paid to participate in the scheme," taking it, looking at this holistically, globally.

THE COURT: What are you reading from?

MR. MURPHY: This is the third amended complaint that was filed in the Middle District.

THE COURT: Oh, oh. The one you're trying to enjoin?

MR. MURPHY: That's correct.

So they're using the same definition as we are, which is you got to look at the whole pie here. You can't slice it in half. And we say that's the case. If you say that these -- if you say these transactions, participants don't belong in here, that they're not involving property of the estate, then the net equity calculation we're talking about really doesn't work. If you are saying that we should only compensate victims who put money in and got money out and leave out the indirect

transactions, that's one result, but you're going to end up leaving about 80 percent of the people out of the recovery. And we don't think that's right.

But that's the, that's a logical extension of the argument that this does not involve property of the estate. They don't have a claim here. And, and be careful for what you ask for, is, is the point that we've made.

THE COURT: So what I'm hearing, though, is that it's not the finding that there was a Ponzi scheme that should be troubling the plaintiffs in the multi-district litigation. It's your, your request for a determination about claims allowances, net losers, and accumulated credits and so forth in your second prayer that is the problem area.

MR. MURPHY: That's what I understand.

THE COURT: Mr. Baldiga, am I right about that?

MR. BALDIGA: Yes, Your Honor.

THE COURT: Okay.

MR. MURPHY: I think that's, that's right. And we've, we've had debates with Mr. Baldiga from the -- from the -- almost the inception of these cases whether this is part and parcel. And we try to be creative. There's no in the middle. It's either here or it's not. And, and it was brought to a head. We were going down the same road to bring it to the Court. Well, we like to think there was an end run by the initiation of the third amended complaint on the eve of our

filing this motion, but we're here.

But we got to -- I think that in order to advance the matter, again, we can, we can work around it. We can do a workaround. We can do the Baldiga, Mr. Baldiga's order, which I have never heard of, not seen except for today. But the idea of having an order that kind of does it, but kind of doesn't doesn't seem to make a lot of sense to me and I just as soon get at.

And, and just so we're not, we're not holding up victims' payments, Your Honor, and --

THE COURT: Say again.

MR. MURPHY: We're not holding up victims' payments. Nothing is going to be -- the Government has indicated that they're going to, if they prevail in litigation, they think that the trust, they have confidence that the trustee's going to be able to determine the claims and make distributions. That's why we vetted the proposed claim process with the Government to get them comfortable with hit. The Government is in the courtroom. The SEC's in the courtroom. They understand that, what we're trying to accomplish, but we don't have any money to distribute, at least until sometime next year.

We don't -- we're -- we have -- again, the two points is we want to get a bar date and then we have the six months left in the statute before we, five months left in the statute before we have to commence avoidance actions. There could be

thousands avoidance actions, Your Honor. The best estimate right now of the trustee is that we have 1.9 million participants that, 95 percent of those are losers. About 5 percent --

About 80,000, Mr. Darr?

MR. DARR: 81,000.

MR. MURPHY: -- are winners.

THE COURT: Do you have any sense of the magnitude of these winners? 'Cause my impression is that no individual winner won that much.

MR. MURPHY: Mr. Darr can -- we have charts and Mr. Darr can tell us right now, if you like, Your Honor.

THE COURT: Well, we're going to have Mr. Darr take the stand in a minute so we can --

MR. MURPHY: We have done that stratification. I can assure you we're going to act, try to act practically here. We're not chasing small -- doesn't make sense, Your Honor. We're going to be very realistic about this. We hope to do it -- we don't -- we think many people -- again, we're not suggesting -- and Your Honor raised this earlier in the proceeding -- that, to use the participants in the scheme. We think 90, 90 percent of the people thought this, didn't think there was anything wrong with this. We're -- they had no evil intent. They were not engaged in anything fraudulent. They thought it was a great opportunity, but it was one of those

things that was, frankly, too good to be true. And, and we're going to try to be thoughtful and not hurt anyone, but there is substantial inequities and there's people who've got six-figure and seven-figure money recoveries out of this.

But when you determine those amounts, you're not only looking at how much they got directly, but it's also looking at the credits they earned from the company. They utilized and they got Andy and others to buy into it and paid their membership and they put money in their pockets. And we have to, and we have to take those payments into account to determine what they're entitled to get, if anything, out of this bankruptcy estate, or if they have to put money back in to compensate these victims.

So that's -- it is complicated, Your Honor. It is the only -- again, going, looking at these cases and the world of Ponzi is not a pretty place -- but this is the only cases -- and Mr. Baldiga will agree 'cause he's looked as well -- that has this two-fold aspect in and out, but sideways. Madoff didn't have this and all these cases didn't have this trafficking, paying, I'm going to pay your membership fee in the Madoff scheme. This -- it didn't work like that.

THE COURT: Uh-huh (indicating an affirmative response).

MR. MURPHY: There was the feeder funds. I became a creditor of a feeder fund and the feeder money's put in.

That's different. We're talking about the triangle here. That's a lineal relationship as opposed to a triangular relationship.

Thank you, Your Honor.

THE COURT: All right.

I want to have Mr. Darr take the stand and allow Mr. Baldiga to ask him some questions.

But before I do, is there anyone else who is going to oppose the motion to establish the Ponzi scheme who would want to cross-examine Mr. Darr who's in the courtroom here?

(No response)

THE COURT: All right, Mr. Darr. Please take the stand.

MR. DARR: Thank you, Your Honor.

THE COURTROOM DEPUTY: Good afternoon.

MR. DARR: Good afternoon.

MR. MURPHY: Your Honor, if I may --

THE COURTROOM DEPUTY: Can you raise your right hand?

STEPHEN DARR, TRUSTEE'S WITNESS, SWORN

THE COURTROOM DEPUTY: Please be seated.

THE WITNESS: Thank you.

MR. MURPHY: If I may, Mr., Mr. Bennett's going to examine Mr. Darr.

THE COURT: You're not going over the same offer of proof.

MR. BENNETT: No, Your Honor. I understood that we would use his affidavit as direct and to the extent I need to redirect, I would.

THE COURT: Okay.

Okay, Mr. Baldiga. You're on.

MR. BALDIGA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BALDIGA:

Q Good afternoon, again, Mr. Darr.

A Good afternoon.

MR. BALDIGA: I just need to grab.

(Pause)

MR. BALDIGA: Your Honor, again for the record, William Baldiga for the PIEC in the, in the MDL and the victims in this case.

BY MR. BALDIGA:

Q Mr. Darr, I'll try not to go over too much of the same ground that I deposed you on.

But you remember you were in my office last week and we deposed you for about three hours?

A Yes.

Q You believe that, your best guess today, there are about 1.9 million victims of this Ponzi scheme?

A Yes.

Q And in your database --

A I'm sorry. One -- 1.9 million participants.
Q Participants.
A Not all of them were victims.
Q Thank you.
Some, some won, some lost, but --
A Yes.
Q And the overwhelming majority of the participants are losers, in your belief, correct?
A Yes.
Q You maintain a database of the information that TelexFree was using to manage its participants, correct?
A Yes.
Q And, and you have an acronym or something that you use to refer to --
A It's called the SIG system, which is, S-I-G, which is the acronym for the system, which I can't remember because it's a Portuguese, a Portuguese name.
Q Okay. Well, we can just refer to it as the SIG system?
A Yes.
Q The SIG system, one of the data points is country codes, correct?
A Yes.
Q And you don't know for sure where any victim was -- I'm sorry -- where any participant was physically located as they accessed the system, isn't that right?

A That's correct.
Q But in your database that you are using there are participants that have indicated a, a country code and in fact there are 240 or so country codes reflected in your database, correct?
A Yes.
Q So sitting here today you don't know that there are participants in 240 countries, or even that there are, in fact, 240 countries in the world?
A I'm pretty sure there are not 240 countries in the world. There's about 170, but many countries have more than one country code.
Q Okay.
A For example, Puerto Rico has a different code than the United States.
Q So you just don't know how many countries are represented by the physical location of participants as you sit here today?
A No, I do not.
Q You do know that many of the participants and the victims here, the losers, seem not to have English as their primary language, correct?
A I met many of the victims. Many of them are perfectly fluent in English and many are not. I, I don't know what the exact breakout is.
Q Okay.

You believe that there were at least $3 billion of transactions in the TelexFree scheme?
A Yes.
Q And that losses appear to be more than $1 billion?
A Yes. That seems like a fair, fair estimate.
Q And you just don't know sitting here today for how many of the victims the losses were most or all of their life savings, isn't that correct?
A No. I have no information on, on each individual victim's personal loss.
Q I'm going to ask you a number of questions regarding the, what you mean by Ponzi scheme or, or pyramid scheme.
A Sure.
Q We, we did all this before, but I think the record's important to reflect.
You refer in some of the papers that were filed on your behalf to investors, but you don't mean to imply by that there was some true investment, correct?
A No, I was more describing them as to their, to their intentions, not that there was an actual investment.
Q And TelexFree's revenues were actually inconsequential to its overall operations, isn't that correct?
A When you say -- I'm not sure what you're referring to when you say "revenue." You mean revenue from VOIP?
Q Yes.

A Yes, very inconsequential.
Q And TelexFree ostensibly sold a product, isn't that correct?
A Yes.
Q The VO, VOIP product?
A Yes.
Q And it's your belief today that these products gave TelexFree the story by which TelexFree could perpetuate or perpetrate the Ponzi scheme, isn't that correct?
A I'm sorry. Could you repeat the question?
Q Sure.
You, you believe today that these so-called products were simply the story by which TelexFree could perpetuate or perpetrate the Ponzi scheme, isn't that correct?
A They might have been able to come up with some other product, but that's the product that they ostensibly were selling.
Q To perpetrate the Ponzi scheme, correct?
A Yes.
Q And TelexFree was not, in your words, a viable business, but an illegal operation, correct?
A I know it wasn't a viable operation. The question of legality or illegality is really a, a question that is a legal question and I may have described it as an illegal operation, but I'm not really qualified to characterize it as legal or

illegal.
Q Okay. Well, Mr. Darr, I think we established at the beginning of this on Thursday I deposed you?
A Yes.
Q You, you remember that and --
A Yep.
Q -- and you were under oath?
A Uh-huh (indicating an affirmative response).
Q And do you remember that I asked you the question, "You also made the decision not to attempt to sell the business, correct?"
And you said, "Yes."
And I asked, "Why was that?"
And do you remember the answer that you gave?
A Not offhand.
MR. BENNETT: Could I have what page you're on, Mr. Baldiga, please?
MR. BALDIGA: Page 17.
MR. BENNETT: Thank you.
MR. BALDIGA: May I approach, Your Honor?
THE COURT: Yes.
BY Mr. BALDIGA:
Q I ask you to read on Page 17 the answer that you gave.
A Sure. My answer was:
"A Because I believed at the time that there was -- it was not

a viable business, that there was nothing to sell, and that it was an illegal operation and it's tough to sell an illegal operation."

Q That was your testimony last week, correct, Mr. Darr?

A Yes.

Q You also believe that at least most of these victims got nothing at all for the money they put in, correct?

A I think I was talking there in terms of the VOIP product. I, I don't know -- we haven't done any analysis to say that most of the victims did not receive anything back. I just, I don't know that answer.

Q Well, let me ask that differently. And I may have misspoke, myself.

You believe that at least some of these victims got nothing at all for their money, correct?

A Yes.

Q And TelexFree had no right that you can think of with all the work that you've done over the last year and a half to take for itself any of the money that was lost, isn't that correct?

A Again, you know, the right to take it is a legal question that I'm not -- I'd have to rely on my counsel for, for that answer.

Q Okay.

And again, do you remember me asking you that question at Thursday's deposition?

A No.

MR. BALDIGA: May I approach again --

THE WITNESS: I don't remember.

MR. BALDIGA: -- Your Honor?

THE COURT: Yes.

MR. BENNETT: What, what page?

MR. BENNETT: I'm sorry, Mr. Bennett. Page 77.

MR. BALDIGA: And, Your Honor, I'll read the question.

BY MR. BALDIGA:

Q (Reading):

"Q Do you believe" -- "And do you believe that TelexFree ever had a legal right to extract the money from the victims?"

Mr. Bennett objected. Well, there was a debate with Mr. Bennett.

MR. BALDIGA: So, Your Honor, Mr. Bennett objected, the witness said that, "Again, you're asking about a legal right which cause, which is a legal conclusion and not being a lawyer, I would have to seek advice of counsel on that question."

BY MR. BALDIGA:

Q I asked another question:

"Q Can you sitting here today with all the work you've done over a year and a half, did TelexFree have any right that you can think of of any type to take for itself any of the money that was lost by any of the victims?"

Do you remember answering that question?
A No, but I'm sure you'll point it out to me.
Q Page 78.
A Thank you.
"A No. Based on my opinion that is a pyramid -- I'm sorry -- a Ponzi or pyramid scheme."
Q Thank you.
And, Mr. Darr, you also believe sitting here today that the memberships ostensibly sold by TelexFree had no true value because they were just part of a fraudulent enterprise, correct?
A Did I say that? Are you asking did I say that, or do I agree with that?
Q Do you agree -- is that your testimony today?
A Could you repeat the question?
Q Sure.
Do you believe that the memberships ostensibly sold by TelexFree had no true value because they were just part of a fraudulent enterprise?
A Well, I believe it was a fraudulent enterprise.
So I think it would logically flow from that that there was no true value.
Q Thank you.
Mr. Darr, you've had, I believe, two town meetings or so-called town meetings at which some victim groups were invited

to?
A Yes.
Q And you attended those?
A I did.
Q And you never said at either of those that you were asking any court to deny victims the right to sue in their own name for monies that they paid directly to other participants, is that correct?
A Other than one question that came from the audience who asked -- and I'm paraphrasing 'cause I don't, I don't think we took minutes and I certainly don't have the minutes here before me if they do exist -- one participant, or one attendee said, "What are you doing about the," I want to say he used the word "'fat cats' or the, or the guys who were the people who made a lot of money on this and who, who are now sitting on their yachts in Florida?"

And I said, if I can recall -- I can't recall my exact words -- but I said it was my job to identify those people and to sue to recover the, their ill-gotten gains, or whatever money they took and redistribute it to the victims and I got a standing ovation from the 6 or 700 people in the crowd.

So although many of them were having questions and answers translated, all of them seemed to recognize what that statement said because they all stood up at once and gave me a, a round of applause.

Q Okay.

MR. BALDIGA: Your Honor, I move to strike that. I've asked -- the question I asked was did Mr. Darr tell the victims as part of his presentation that he sought to prohibit victims from recovering monies themselves. And the response was something I'm sure Mr. Darr wanted to say, but it had nothing to do with my question.

THE COURT: Well, the response was, "I did not tell them that, but I told them this," which was relevant to, to your question.

So I'm not going to strike it.

MR. BALDIGA: Okay.

BY MR. BALDIGA:

Q Did you tell --

MR. BALDIGA: I'm sorry, Your Honor.

THE COURT: Go ahead.

MR. BALDIGA: I didn't mean to cut you off.

BY MR. BALDIGA:

Q Did you tell victims at any of these presentations that you intended to prohibit them from suing in their own names to get back the money that they had paid to other participants?

A No.

Q You sent a notice to participants of today's hearing, correct?

A Yes.

MR. BALDIGA: Could I have Exhibit 4, please?

Your Honor, may I approach the witness?

THE COURT: Yes.

(Counsel hands exhibit to the witness)

THE WITNESS: Thank you.

MR. BALDIGA: Your Honor, for ease, I premarked exhibits, prenumbered. This one is premarked Exhibit 4.

So I'll -- I'll --

BY MR. BALDIGA:

Q Mr. Darr, the, in the lower right-hand corner what you have --

THE COURT: Are there going to be Exhibits 1 through 3?

MR. BALDIGA: I don't know how many I'll use, Your Honor, because I'm not sure exactly what's being contested here, but I don’t think so. I think this will be the first numbered one.

THE COURT: Okay.

BY MR. BALDIGA:

Q Mr. Darr, do you recognize this piece of paper?

A Yes.

Q Is this the notice that you caused, or you asked to be sent to participants regarding today's hearing?

A Yes.

MR. BALDIGA: Your Honor, I'd ask that this be

admitted and I, I'm happy to change these to Exhibits 1 or to Exhibit 4, whatever the Court would prefer.

THE COURT: Well --

MR. BENNETT: Your Honor, my understanding from at least the offer of proof this would be an incomplete exhibit because what was served on everybody was this notice plus the motion itself.

So if we're going to offer this to what was served upon the various individuals by way of notice of this hearing, then we should make it complete and it should be noticed that it was this notice plus the motion itself, Your Honor.

MR. BALDIGA: I, I don't, in fact, know whether what Mr. Bennett just said was, is correct or not, but I'm sure he can take care of that at redirect.

THE COURT: In any case, Gentlemen, we're talking about pleadings that are a matter of record in this case of which I can take judicial notice. I'm not sure that it's necessary to mark them as exhibits, but if you want to take, submit it as an exhibit, Mr. Baldiga, I'll take it.

MR. BALDIGA: I think the record should be complete, Your Honor, so I, I would.

THE COURT: Sure.

And I think, just to keep our record straight, we'll start with No. 1 for this exhibit.

MR. BALDIGA: Okay.

BY MR. BALDIGA:

Q Mr. Darr, you also asked your attorneys to file in the MDL matter pending in Worcester a motion to intervene in that MDL proceeding, do you remember that?

A Yes.

Q Okay.

MR. BALDIGA: Your Honor, may I approach?

THE COURT: Yes.

(Counsel hands document to the witness)

BY MR. BALDIGA:

Q Mr. Darr, do you recognize that document?

A I'm sorry. Do I remember --

Q Well, do -- do -- do you know what -- is this document, in fact, your motion to intervene in the MDL proceeding?

A It was filed on my behalf by my attorneys.

MR. BALDIGA: Your Honor, this is not part of the bankruptcy court record. I would ask that this be admitted, please, as Exhibit 2.

THE COURT: Mr. Bennett?

MR. BENNETT: No objection.

THE COURT: Fine.

THE COURTROOM DEPUTY: Do you want me to take the witness copy, Mr. Baldiga?

MR. BALDIGA: I'm sorry. No.

BY MR. BALDIGA:

Q Mr. Darr, you also had filed on your behalf a complaint in this court, I think it was mentioned a little bit ago by Mr. Murphy, a complaint by which you seek to -- you've sued the victims to keep them from suing in their own name to recover money that they paid to other participants.

Do you remember that, asking that that complaint be filed?

A I remember the adversary proceeding, yes.

MR. BALDIGA: May I approach, Your Honor?

THE COURT: Yes.

(Counsel hands document to the witness)

BY MR. BALDIGA:

Q And is that it?

A Yes.

MR. BALDIGA: Your Honor, may I have this admitted as Exhibit 3?

THE COURT: Any problem, Mr. Bennett?

MR. BENNETT: No, Your Honor.

THE COURT: You may.

BY MR. BALDIGA:

Q We're not going to mark it, Mr. Darr, because it is something that we've all spent some time on.

But you also asked to be filed in this court the Ponzi scheme motion that we're here today on, correct?

A Yes.

Q And, and you read the Ponzi scheme motion before it was

filed, correct?
A I did.
Q And we spent some time with it in your deposition and with your 30 odd years of bankruptcy expertise are you sure as you sit here today whether the Ponzi scheme motion is asking this court by that motion itself to stop victims from suing to recover monies they paid directly?
MR. BENNETT: Objection.
THE COURT: Basis?
MR. BENNETT: Basis, I think it's improper to ask the witness to interpret and/or discuss legal principles contained within the pleading. Ultimately, it's the Court's determination as to the relief being sought in the pleading.
THE COURT: Can you rephrase the question --
MR. BALDIGA: Certainly, Your Honor.
THE COURT: -- so it's not --
MR. BALDIGA: I'll -- I'll -- and I'll, I'll establish some foundation.
BY MR. BALDIGA:
Q Mr. Darr, how long have you worked as a professional in the bankruptcy world?
A More than 35 years.
Q Okay. And so you have a great deal of experience in, not in Ponzi scheme cases, but you've been involved in some Ponzi scheme cases, in bankruptcy cases, hundreds of cases, probably,

over 35 plus years?

A Probably, yes.

Q And as you authorized the Ponzi scheme motion to be filed and as you read it yourself sitting here today you're not sure whether that is asking in the prayers for relief for orders of this court to stop victims from suing to recover themselves the money that they paid to participants, correct?

MR. BENNETT: Objection, Your Honor. Same basis. The pleadings are prepared by counsel. There's legal arguments that flow from the pleadings. What Mr. Darr does or does not believe in the pleadings is not relevant, Your Honor.

THE COURT: Well, I'll take it for what it's worth.

MR. BALDIGA: I -- and, Your Honor, be happy to respond. There is an argument made that, by the trustee, that he gave sufficient notice with this Ponzi scheme motion that victims should be aware today that their rights are being affected. My point, where Mr. Darr answers this question, is that, well, if Mr. Darr, with his experience has a hard time knowing exactly what to expect of the Court on this motion today, then the victims, including those here today, like the one million or so who are not, couldn't possibly know more than Mr. Darr, himself.

That was the purpose of the question. I think that deserves an answer.

MR. BENNETT: Your Honor, that's pure legal argument

and I'm willing to address the legal argument, but we shouldn't be engaging in those legal arguments with Mr. Darr.

THE COURT: All right. I'll take it for what it's worth. Mr. Darr is the client.

THE WITNESS: I'm sorry, Your Honor. I didn't hear what you said.

THE COURT: I'll take the -- I'll take the -- I'll overrule the objection -- testimony for what it's worth. As the client, you are entitled to have, you should have an opinion about what you understand your, your attorneys' motion to be.

Go ahead, Mr. Darr.

THE WITNESS: My understanding is the motion we're here on today seeks a Ponzi scheme motion, order from the Court or a finding that, and from that files, follows, rather, the idea that claimants in the bankruptcy estate will be determined, or claims in the bankruptcy estate will be determined on a net winner or net loser basis on a combined basis. And by "combined" I mean, both arising from transactions directly between participants and TelexFree and the so-called triangular transactions, which involved TelexFree, a recruiting promoter, and a paying participant. Those -- the claims have to be assessed or evaluated or calculated on a combined basis because failing to do so comes up with some inappropriate answers. If -- by the same token --

and that's clearly laid out in, in the documents, in my opinion.

If the participants are going to have a claim for the, arising from the triangular transactions, I think it's clear that the recipient -- if the claim is a part of the bankruptcy estate, then the transferee who received the money is, is part of the bankruptcy estate. And even more importantly, I think it's abundantly clear from the adversary proceeding that you just placed before me. And I'm sorry. I don't know the exhibit. I guess it's not marked as an exhibit.

BY MR. BALDIGA:

Q So you think if, if the Ponzi scheme motion might not be clear, you think the complaint certainly tells victims that you are trying to stop them from suing directly, correct?

MR. BENNETT: Objection, Your Honor. Again, I think we're drawing legal conclusions here. He -- Mr. Darr has testified to what he believes the Ponzi scheme, Ponzi motion and the Ponzi scheme finding will result in with respect to the determination of net claims. How that flows down to the next step is, to whether or not victims' claims for unjust enrichment should or should not be restrained is a separate matter which is not before the Court at the present time, which is the subject matter of the adversary proceeding. And Mr. Darr shouldn't be expressing opinions with respect to what the legal conclusions are from that motion. He's testified to

his understanding.

He set forth the factual basis for determination of net claims and why the triangular transaction should be included as part of the net claim determination. Whether or not that does or doesn't affect the MDL's rights will be determined by this Court in the adversary proceeding.

THE COURT: All right. I'm going to overrule it and allow Mr. Darr to answer the question about the adversary proceeding, if you still remember what it is.

THE WITNESS: I'm sorry, Your Honor.

THE COURT: You may answer the question about the adversary proceeding, if you still remember what it is.

THE WITNESS: Could you repeat the question?

Thank you, Your Honor.

BY MR. BALDIGA:

Q I'll try to.

MR. BALDIGA: Thank you.

BY MR. BALDIGA:

Q I think you just said that the complaint makes abundantly clear what the trustee is seeking in that regard, correct?

A Yes.

Q Okay. And you have a website that is operated by KCC under your direction?

A Yes.

Q Okay. And the purpose of that website, among other things,

is to tell participants, victims, what's going on, correct?
A Yes.
Q And you decide what gets posted on that website and what does not, correct?
A No. Everything on the docket gets posted on the website.
Q Okay. You posted, for example, the Ponzi scheme motion, correct?
A Yes.
Q Okay. And you chose not to post the complaint that you just referred to, correct?
A Again, it's -- the entire docket is posted. There's a -- there's a button on the website that you can go and find every, every document that's filed in the case.
For the Ponzi scheme motion, I believe it was at the direction of the Court, but I'm not sure. We had the Ponzi scheme motion translated into both Spanish and Portuguese and had the Spanish and Portuguese versions posted on the website as well as the English version and the English version was also posted on the docket piece.
Q Right. I -- the Ponzi scheme motion is there. And we just talked about --
A The Ponzi scheme motion is also in the docket piece.
And I'm sorry for interrupting.
Q Okay. That's okay.
And we just had a very long answer and a very long

question, some arguments of counsel about what the Ponzi scheme means and what it doesn't mean. At your deposition it was even longer. I don't think anybody's too clear right now what it means.

But you said in your testimony that the complaint makes it abundantly clear, correct?

A Yes.

Q Okay. And my question is, why did you not put the complaint, if the complaint is the document that makes that clear, why did you choose not to put the complaint on your website?

A Again, it is on my website. It's not posted in Portuguese or Spanish, but it is on the website through the link with, with PACER.

Q All right.

Mr. Darr, does your website have a cover page or a home page that you open into?

A Yes.

Q Okay.

MR. BALDIGA: Your Honor --

THE WITNESS: Well, there's, there's a front page.

BY MR. BALDIGA:

Q Okay.

A I don't know. You can characterize it any way you want.

MR. BALDIGA: Your Honor, I have downloaded that front

page. May I approach the witness?

THE COURT: Okay.

(Counsel hands document to the witness)

BY MR. BALDIGA:

Q Is that a printout of the home page?

A It appears to be, yes.

Q Okay.

MR. BALDIGA: Your Honor, I'd like to admit that as the next, I think it's No. 4.

THE COURT: Mr. Bennett?

MR. BENNETT: No objection.

MR. BALDIGA: Okay.

BY MR. BALDIGA:

Q And, Mr. Darr, if you click on the right part of the home page -- we're not doing that live here -- you come to an index of all the court documents that are posted, correct?

A Yes.

MR. BALDIGA: May I approach, Your Honor?

THE COURT: Yes.

(Counsel hands document to the witness)

MR. BENNETT: I'm sorry, what did you hand Mr. Darr?

BY MR. BALDIGA:

Q Mr. Darr, I see the Ponzi scheme motion.

A Yes.

Q I don't see the complaint. Where is that?

A I don't know.
Q Okay. Well, let me ask you --
A I don't --
Q -- then, I see the Ponzi scheme motion. There's also a motion to intervene in the MDL and that's a separate place that you've asked that the victims not be able to sue in their own name. Where is that on the website?
THE COURT: Hold on.
THE WITNESS: I don't see it.
THE COURT: Are we dealing with Exhibit 5 here?
MR. BALDIGA: Yes, Your Honor. May I?
THE COURT: I don't think I have one.
THE COURTROOM DEPUTY: Oh. Well, I just didn't mark it yet.
MR. BALDIGA: Okay. I'm sorry.
THE COURTROOM DEPUTY: 'Cause it hasn't been admitted.
MR. BALDIGA: It hasn't been admitted?
Your clerk has it, Your Honor --
THE COURT: Okay.
MR. BALDIGA: -- but --
THE COURT: And, Mr. Bennett, any objection to Exhibit 5, which is, looks like a docket?
MR. BENNETT: There's no objection -- well, the objection is it's obviously not the complete docket and it is, it stops on October 7th and I don't know whether there are

other entries for October 7th that hasn't been picked up on here. It's my understanding that the adversary proceeding was filed on or about October 7th, also, Your Honor. So it would have been filed as part of the court docket.

So this docket doesn't seem to be complete.

MR. BALDIGA: Okay. Well, I'll ask a couple of questions for foundation.

BY MR. BALDIGA:

Q Mr. Darr, take a look at the second, the court documents, document.

A (Witness complies.)

Q Look at the bottom right-hand corner.

A (Witness complies.)

Q I'd like to address Mr. Bennett's comment.

Can you read what it says on the bottom right-hand corner the date of the printout and then --

A KC --

Q Go ahead.

A KCC Excel. Download all court documents on website as of 11/23/15.

Q Okay. Was the complaint filed before yesterday?

A Yes.

Q And was the motion to intervene to seek the same relief in the MDL filed before yesterday?

A Yes.

Q And those seem to be the only two things that I can think of that you did not put on the website. Can you think of anything else that you chose not to put on the website?
A Not offhand, no.
Q Mr. Darr, you and I have known each other for quite a long time, haven't we?
A Yes.
Q Before when I was trying to decide whether or not to join the MDL leadership team you and I had a, a few conversations, correct?
A We did.
Q At least one or two at your club for lunch?
A We did.
Q And I told you during those conversations that cooperation between the trustee and the MDL PIEC -- that is my client here -- was critical to work hand and hand, correct?
MR. BENNETT: Objection, Your Honor. If Mr. Baldiga's going to become a witness, I think he should step down from the podium and his associate should step forward on the podium.
THE COURT: Where are you going with this, Mr. Baldiga?
MR. BALDIGA: To have the trustee -- well, I -- Your Honor, I, I can make an offer of proof, if you'd like, but the trustee has worked with us until very recently doing exactly the things that he's now saying are inappropriate and, in fact,

those cooperation --

THE COURT: Why don't you just ask him questions along those lines rather than making it personal.

MR. BALDIGA: Okay. I could do that.

BY MR. BALDIGA:

Q Mr. Darr, do you know that we filed in the MDL a second amended complaint on, on or about March 31, 2015?

A Yes.

Q You've read that complaint?

A Truthfully, it's, it's a quite lengthy complaint. I, I can't say that I remember everything that's in it.

Q Okay. But we sent you a copy, in any event?

A Yes.

Q You have to answer verbally. I'm sorry.

A I'm sorry?

Q Oh. Did --

THE COURT: He did.

MR. BALDIGA: Okay.

THE WITNESS: I said yes.

MR. BALDIGA: I'm sorry. Then I just missed it.

BY MR. BALDIGA:

Q You know that part of the complaint, it's a class action on behalf of all victims, correct?

A Yes.

Q And do you know one of the defendants that we sued is a

Mr. Daniel Schrieffer (phonetic)?

A I don't -- I know that you have sued Mr. Schrieffer, but I don't think -- I may be incorrect in my memory -- but I thought Mr. Schrieffer was -- was -- became a defendant -- I'm sorry. I just don't remember when he became a defendant.

And you've also got a third, third class, third amended complaint --

Q Okay.

A -- that you filed in September.

Q But you know that we sued Mr. Schrieffer and several other promoters here on account of theories, including unjust enrichment on account of monies paid to them by victims, correct?

A Yes.

Q And we did that many months ago?

A Again, I think I just testified I don't remember exactly the timing of -- I don't remember whether it was in your second amended complaint or your third amended complaint.

Q Okay. And in connection with that we asked you for data as to Mr. Schrieffer's activity, correct?

A Yes.

Q As well as several other promoters?

A As I recall, it was one other, one woman. I don't remember her name.

Q And we gave you a list of other promoters, senior promoters

that we wanted information about, correct?
A I don't recall, but I remember at least two.
Q Okay. And you did share at least some data with us?
A Yes.
Q And you never voiced any objection to us bringing those lawsuits, correct?
A Which lawsuits?
Q The ones against Schrieffer and the other upper-level promoters on a class action basis to recover from them the monies paid directly to them by other victims?
A No, we -- I did not object at that time.
Q Okay. And we've had much additional discussion as to other promoters as well, correct?
A We have.
Q Including regularly scheduled Tuesday afternoon cooperation calls?
A Yes.
Q And do you remember an e-mail from May 25th in which we were asking you additional information regarding other promoters and to talk about cooperation getting the information about those?
A I, I don't remember a May 25th e-mail, but if you show it to me I'm sure I, it may jog my memory.
MR. BALDIGA: May I approach, Your Honor?
THE COURT: Yes.

(Counsel hands document to the witness)

MR. BALDIGA: May I talk to Mr. Bennett for one minute, Your Honor?

THE COURT: Okay.

(Pause)

MR. BALDIGA: Your Honor, and, and the point that Mr. Bennett and I were talking about, there, there is a joint interest agreement between the trustee and the MDL plaintiffs and we're just trying to be careful that we don't do anything here, nothing is intended to waive any privilege. And, and also not to put into public evidence anything that the trustee or we think should be kept confidential as to within that privilege.

So we just need to confer once and a while just to make sure we don't do anything here that violates that.

BY MR. BALDIGA:

Q Mr. Darr, do you recognize that document?

A Yes.

Q And is that, in fact, an e-mail to several people, but including you and from you to me and several other people?

A Well, it's an e-mail from you to me and, and my counsel and people in your office and a response from me to the same people on the distribution, in your original e-mail distribution list.

Q Okay. And in it we are asking you to please get us information as to, to allow us to chase the people to whom

they, to whom victims handed cash and checks, correct?

MR. BENNETT: Objection, Your Honor.

THE WITNESS: Well --

THE COURT: Hold on. Hold on.

MR. BENNETT: We have two sets of objections. First of all, it's hearsay, Your Honor.

And then, secondly, Your Honor, is the question of relevance and how this relates at all to the matters before the Court.

THE COURT: Well, in terms of hearsay, the primary participants in the e-mail conversation are right here in the courtroom.

So are we really worried about, about that? I don't think, I don't think I have a problem with that.

But what's the relevance, Mr. Baldiga, of this e-mail?

MR. BALDIGA: The -- well, to the extent that there is a request today for findings that would carry over, which you asked Mr. Murphy that question. I lost track of the answer, but it, it was a definite maybe -- that there is a request by the trustee that the train that's already well down the tracks with the trustee's cooperation now be stopped. And this -- this is the last of the exhibits and, frankly, the last of my questions as to the fact that the trustee and the victims' representative have been attempting to cooperate on these things for almost a year now and that this new effort by the

trustee is a, is a great change in course which would surprise victims and to which they would not have a reasonable sense coming into court, that the trustee is coming into court today to stop something that they've been pursuing for some time.

MR. BENNETT: May I address that, Your Honor? Because Mr. Baldiga has a tendency to mix the 1.9 million victims and his own personal representation.

To the extent that there's an exchange of discussions and information regarding the, the potential claims, it was between the trustee and the MDL class action parties. For Mr. Baldiga to stand up now on behalf of the MDL and say that somehow he is surprised by the Ponzi scheme motion and didn't understand it, I find somewhat difficult to follow, given that he's filed an extensive objection and is here objecting to it.

So to the extent that he is representing a class of people, those class of people have able representation. Mr. Baldiga fully understood the, apparently fully understood the input of all the, the Ponzi scheme motion, raised an objection, and is at a hearing on it. So for him to now try to argue that somebody has been misled I think is inappropriate. The question is who he represents and whether or not they had appropriate notice and it's clear that they did.

THE COURT: All right. Well, I'll, I'll overrule the objection and take it for what it's worth. I don't think it's worth very much.

But go ahead, Mr. Baldiga.

MR. BALDIGA: Well, I move to admit it, Your Honor. I think that was the final point on that document, whether it just --

THE COURT: I'll take it.

MR. BALDIGA: -- it would be admitted.

THE COURT: Okay.

BY MR. BALDIGA:

Q Just a couple final questions, Mr. Darr.

You tried hard over the last year or more to find some sort of precedent for what you're trying to do now, which is to have a bankruptcy trustee stop victims from recovering payments made directly to other promoters, correct?

MR. BENNETT: Objection.

THE COURT: Basis?

MR. BENNETT: Basis that Mr. Darr sought for precedent? I think that's an inappropriate question for him to ask.

THE COURT: Sustained. He's, he's a layperson. You may want to rephrase your question, Mr. Baldiga. I'm not sure where you're going with it, but --

MR. BALDIGA: Sure.

THE COURT: -- but try again.

BY MR. BALDIGA:

Q Mr. Darr, you tried very hard over the last year and a half

or so to find examples of other bankruptcy trustees, receivers, or other fiduciaries to do what you're trying to do now, correct?

A I, I don't think I tried to find examples of other fiduciaries trying to do what is at issue here. I think on Thursday I testified that I tried to find other cases or other incidents or companies that were similar to TelexFree and truthfully, the only -- I, I testified that I could not, but as I sit here today I can, the only example that I can point out is the TelexFree sister operation in Brazil. It operated pretty much the same way, but that, that doesn't impact these proceedings. I, I testified on Thursday, as I said, I could not find another case similar to TelexFree.

Q Okay. And by, by that the critical point you found other Ponzi schemes, of course?

A Oh, yeah.

Q There's plenty of them, unfortunately, out there. What you can't find are other cases or other instances in which a, there were a large number of payments made by lower-level victims directly to promoters without having the money go in or out of the wrongdoer, correct?

A Yes, that's correct.

Q Okay. And you -- this wasn't something you, you just did on your own one night on the computer, but you asked your team to try to go out and try to find other examples, correct?

A Yes.
Q And you did a Lexis-Nexis search. You talked to other trustees or receivers. You asked your team at Mesirow or Huron or counsel to go out and find what they could, correct?
A Yes.
Q And you found none, correct?
A Correct.
Q And so you also found no examples of a trustee stopping a Ponzi scheme, a set of Ponzi scheme victims from suing to recover monies that he paid directly to upper=level promoters, correct?
A I didn't look.
Q Okay.
MR. BALDIGA: Your Honor, no other questions. Thank you.
THE COURT: Thank you.
Mr. Bennett?

REDIRECT EXAMINATION

BY MR. BENNETT:
Q Good afternoon, Mr. Darr.
MR. BENNETT: Thank you, Your Honor.
THE WITNESS: Good afternoon.
MR. BENNETT: Charles Bennett on behalf of the trustee.
BY MR. BENNETT:

Q Mr. Darr, let's back up for a second. Let's talk about, just very briefly, the SIG system.

Have you and your team made any efforts in order to be able to ascertain individual identification under the user accounts?

A Yes.

Q And what have you done to do that?

A Well, initially, when we initially got access to the, to the SIG system we discovered there was, as, as previously mentioned, 11 million user accounts and there was approximately 900,000 e-mail accounts and an inspection, you know, there was more information in the system than just that. There was all the ins and the outs. There was names and addresses and Social Security numbers or taxpayer I.D. numbers for people outside the United States. There was mobile phone numbers, home addresses, home phone numbers, etc. And we found that a particular e-mail account would have lots and lots and lots of different people assigned to it.

So people were -- participants were using, were using a, a particular user account that may or may not have been the owner of the, of the e-mail account.

So then we decided we needed to do -- and, and that would have given anomalous results because if you, if you allowed claims based on the e-mail accounts, you would have winners and loser combined and there's no telling who would get the money because you only had contact through the e-mail account.

Because in many instances the information that was -- the additional information that was in the user record was clearly not reliable. For example, some people, name, address, etc., they would just have a period in there. There'd be no letters or numbers, just a period. There was one address I know that said they were on a Spanish name street in Rio de Janeiro, Ohio. I, I assure you there's no city or town in Ohio named Rio de Janeiro.

Q And having ascertained those deficiencies --

A So, so what we did was we came up with an algorithm that takes certain -- it runs through the SIG system ten times and it starts to identify people based on last name, e-mail address, home address, taxpayer I.D., etc., ten different things, and it allocates them to a particular account. It, it groups them into an account and it's in two groups.

The first group is the things that are clearly part of that particular participant's activity and then there may or may not be, but there usually is a group that could be, that requires manual review to determine whether or not. We've done that.

We've also segregated those between the claims that arise from direct transactions between the participant and TelexFree and between a participant, another participant, and TelexFree. Because in these transactions between participants cash may have gone from Participant A to Participant B, but then Participant B would redeem some of his credits to pay

Participant A's invoice. And by that Participant A got a claim -- I'm sorry -- got an account.

So that's how -- that's why it's a triangular transaction. Money went from "A" to "B". "B" kept the money. TelexFree redeemed some of "B's" credits, okay? So he, he made out. TelexFree records it and establishes "A" with a user account. That's why, that's why it's a triangular transaction. It's not something that just went from "A" to "B."

Q And having established a user account for, as you said, "A," that would allow user, that user to then start accruing its own -- his own -- his or her own credits, which he or she could then redeem and/or engage in a similar transaction?

A Yes.

Q Okay. Now you identified user accounts.

Were you able, then, to take any -- did you then take any steps to be able to take the identification of the user accounts and identify the individuals themselves that were attached to those user accounts?

A In many instances, but not in all.

Q And how did you go about doing that?

A Again, through that ten-step algorithm. We haven't verified the accounts or the names and addresses as part of the claims process. We anticipate that the first thing that will happen is someone will sign in and we'll have to give us current name and current address and current contact

information and we will verify that either through an e-mail directly or through a telephone message to their, their cell phones so that they can short message service text back a, a message to thereby establish that, first of all, that they're a real person or a real -- yeah -- a real person. And secondly, we know how to get in touch with them. And once they get access to that, then they can, they'll be allowed, if you will, entry into the website where they can request using their former usernames, their former passwords, or their former contact information. It's not necessary that they have every bit of information, but there'll be certain indicia or certain requirements to supply information at which point they will be given, first, a listing of all of their accounts.

Now, certainly, most or many of the participants only have one account, but many of the participants have hundreds and in some cases thousands of accounts. They'll all be listed and that will start their claim, the claims process.

Q And have you also attempted through the various pay processors to try to trace back payments to the individuals to further identify --

A The company --

Q -- or confirm the identification of the individuals?

A The company didn't make payments to participants directly. It used a series of payment processors that can be compared to PayPal. The -- the last -- they used five different payment

processors. The last payment processor they used was a company called I-Payout. They used them for some time in October of 2013 through the close of business with the bankruptcy in April of 2014. We have downloaded all of that information from -- I-Payout has given us a download of all of that information and we have loaded that into the SIG system and found that 100 percent of the disbursements made by I-Payout were accurately reflected in the SIG system.

Q Thus --

A Similarly --

THE COURT: Excuse me. I --

THE WITNESS: You started it.

Similarly, there's about $20 million worth of credit card receipts that have been processed postpetition by a, by a bank in London. We're in the process of, of comparing that information or loading that information into the claim system.

MR. BENNETT: Go ahead.

THE COURT: I need to take a short recess.

Court will stand in recess for a few minutes.

THE COURTROOM DEPUTY: All rise.

(Recess from 4:01 p.m., until 4:13 p.m.)

AFTER RECESS

THE COURT: Be seated, please.

THE COURTROOM DEPUTY: Back on the record in TelexFree.

THE COURT: Mr. Darr?

MR. DARR: Sorry, Your Honor.

STEPHEN DARR, TRUSTEE'S WITNESS, ON THE STAND

THE COURT: Okay, Mr. Bennett.

MR. BENNETT: Thank you, Your Honor.

BY MR. BENNETT:

Q Mr. Darr, are you trying to deny the victims the right to compensation?

A No. I'm trying to come up with a fair and equitable manner to compensate everybody in the case, especially the, the smaller claimants who, who lost significant amounts of money.

Q And why do you believe that including triangular transactions in the net equity determination is the appropriate way to assure that victims will receive compensation?

A Well, if you include the triangular and the direct transactions in the calculation, you're faced with two answers. Either a participant is a winner, or he's a loser. And by "he," I obviously include women and corporations, if there are any. And there are some.

If, on the other hand, they're separated it doesn't go to four. It goes to six. Because you've got the -- if you can think of it as a winner on direct, winner on triangular for a net winner. Loser on direct, loser on triangular for a net loser. But then when you get in -- you could have a direct winner and an indirect loser. And when you add those two

together, depending on the magnitude of each of those two factors, you could have a net winner or a net loser. So there's four.

And similarly, you could have a, a direct loser and an indirect winner and you've got another two. And to try and figure out what those claims are and, you know, try to administer them would be a nightmare and it would result in -- you could, you could be rewarding a claimant who is over, who had a direct loss, but was overall a winner. That doesn't seem fair.

Q And are you and your team developing a protocol so that you'd be able to accomplish this goal by accounting for all of the transactions between all of the various participants so that you can determine an overall net winner and overall net loser?

MR. BALDIGA: Objection, Your Honor.

THE COURT: Basis?

MR. BALDIGA: Only because no one's objected to this and it's all in the affidavit.

So I'm not sure where it's going, but this -- we have so little time and a few things that are disputed, but this isn't one of them.

THE COURT: So your, your point is that you didn't cross-examine Mr. Darr on this issue and this is not relevant because of that?

MR. BALDIGA: Well, it's not relevant to anything disputed and he covered in his affidavit a number of things that were undisputed.

So this isn't going to anything that we're talking about.

MR. BENNETT: Well, actually, Your Honor, if I could, what Mr. Baldiga was arguing here rather strenuously that somehow we're trying to deprive the victims of their rights to compensation and of their rights to proceed. And what we are establishing here is, first, that Mr. Darr is not intending to do that, that he's developing a system which will maximize the recoveries for the victims.

This question here was to ascertain the fact that they're developing a protocol so they can determine the net winners and then the next step would be where does he believe is the appropriate forum and how, how is he going to maximize the recoveries to show that, in fact, we're taking the exact opposite -- we're doing the exact opposite of what Mr. Baldiga is claiming we're trying to do.

MR. BALDIGA: Well, that's argument, Your Honor. The disputed issue is whether victims have the right to sue in their own name. That's the --

THE COURT: Right.

MR. BALDIGA: That's the only issue.

THE COURT: Right. Yeah.

MR. BENNETT: And that's a legal issue, Your Honor. I'm willing to argue that at any point.

THE COURT: All right. I, I understand where you're going with this, Mr. Bennett, so speed it up.

But I don't think that, that there's any serious dispute that the trustee is trying to maximize the recovery for the universe of people who got hurt here, that -- I don't -- and I don't think that the, the plaintiffs are disputing that. There's just a -- the fight is over whether they can proceed on their own and that's a different issue.

MR. BENNETT: That's fine, Your Honor.

THE COURT: I get that.

MR. BENNETT: I have no further questions.

THE COURT: All right. Thank you.

Anything else, Mr. Baldiga?

MR. BALDIGA: No. Thank you, Your Honor.

THE COURT: Does anybody else want to examine the trustee on the issue of the Ponzi scheme finding?

(No response)

THE COURT: Mr. Darr, you may step down. Thank you.

THE WITNESS: Thank you, Your Honor.

MR. BALDIGA: Your Honor, the witness' copy of the exhibits, the clerk doesn't need those at all. Okay.

THE COURTROOM DEPUTY: I do not. Thank you.

THE COURT: We're all set.

MR. BALDIGA: Thank you.

THE COURT: We have a set of exhibits here.

MR. MURPHY: Your Honor, if I may? We, we kind of bled over into the net equity calculation and what should or shouldn't be included. We -- we -- we did discuss as well in his affidavit -- I don't know if anyone wants to cross-examine him further on the net equity or, or the joint and several liability, whether anyone contests that the debtors, to the extent there are net claims against the estate, losses against the estate, whether each of the debtors should be liable for those claims along the lines what I previously articulated.

I'd move, again, that Mr. -- I, I think there was some confusion on the record whether the entire affidavit of Mr. Darr has been submitted as his direct testimony on these points. He's here to testify on any of those points, Your Honor, but I think while we're here we should just make sure that there's not, that everything's clear in that regard.

I'd ask the Court to take judicial notice of the, of the pleadings, the Certificate of Service, Certificates of Services that have been filed in the case that indicate so there's no controversy. I know we only have a notice of hearing as part of the record, but the Certificates of Services are clear as to what was transmitted to the thousand plus, million plus, rather, participants and creditors in this case.

And other than that, I don't think we have anything

further to offer today, Your Honor, in support of the motion.

THE COURT: Thank you.

Does anyone want to cross-examine Mr. Darr on the motion's prayer for an order that the debtors will be jointly and severally liable for the claims?

MR. BALDIGA: No, Your Honor.

Again, William Baldiga.

We -- I have asked Mr. Darr all the questions I had for him today on, on everything that's before the Court today and I don't, to respond to Mr. Murphy. I don't have any objection, now that we've had an opportunity to cross, to the admission of his affidavit as part of the primary case.

And I'm going to reserve argument to everything else until evidence is closed.

THE COURT: Thank you.

MR. BALDIGA: Thank you.

THE COURT: Well, I think evidence is closed.

MR. BALDIGA: No, Your Honor. We, we have two witnesses.

THE COURT: Oh. On what, on what issue?

MR. BALDIGA: Your Honor, we have in the courtroom today -- and this would be very short testimony -- one of the victims, Maria Murdoch. She would have a few minutes of testimony as to -- you, you asked earlier in terms of the relevance, you asked Mr. Murphy about, you know, should

Mr. Baldiga be worried about the effect of this leaking over to the adversary proceeding. We asked Ms. Murdoch those same things. We had an opportunity a few minutes ago during Mr. Murphy's answer for him to say, "No worry. That's for another day." That was -- it was a much longer answer and it was not to that effect. In fact, he said Mr. Baldiga should be worried.

So Ms. Murdoch would be worried and she would testify as to her country transactions so that the Court would have in front of the Court and we would have in the record what an actual transaction is with a real person and not just what a trustee can derive from the system. Not criticizing any of the examples that Mr. Darr used, but the SIG system by his own testimony is in the affidavit and today's testimony at great length, that there are many failures in the system in terms of the ability to know whether there's accurate information or not and her right to sue directly and what she wants to do with that right as opposed to what all of us people in suits and hired professionals would like to do with those.

So that's Maria Murdoch. She is here today, Your Honor. It's a burden for her come to court. We've had to hire a translator who's here with us today through the court system for that.

So we would like to get that testimony on.

And then I have a proffer of lead counsel in the MDL,

Robert Bonsignore, as to what has been done in the MDL court. Because it's hard for this Court to take judicial notice of the proceedings in the MDL. That would be a very brief proffer as to things which I don't think is disputed. Mr. Bonsignore is here, if he were to be crossed.

But I think all of this together would be just a few minutes.

THE COURT: Any -- is there anyone else who's going to be looking to put any evidence on at this hearing?

(No response)

THE COURT: Do you have a preference for the order? 'Cause I prefer to do Mr. Bonsignore's proffer first, if that's okay with you.

MR. BALDIGA: It is as long as -- and it's early enough.

So that could be very short.

THE COURT: Okay.

Go ahead, Mr. Baldiga.

MR. BALDIGA: Your Honor, Mr. Bonsignore is in the courtroom today. He is lead counsel in, for the plaintiffs in the MDL and he would, if he took the stand here today under oath, swear and state as follows:

That he is the managing partner in the law firm of Bonsignore PLLC. He's in good standing and an active member of the state -- this -- the bar of this state and of New

Hampshire. He has personal knowledge of the facts that I will state:

That he's been involved in the TelexFree matter since April of 2014 when, through Nevada counsel that he hired, there was a, actions filed in the District of Nevada on account of class representative, Waldemara Martin, as early as May 3, 2014. The complaint included claims against a class category of defendants referred to as Doe Insider Promoters and further investigation led that class defending group to be renamed as top-level promoters and the scope of those to be considered as top-level promoters expanded to include all TelexFree participants who are net winners.

In addition to this class of Doe Inside Promoters, the top-level promoters were named in the original 2014 complaint filed in the MDL, which has been consolidated -- I'm sorry -- in the MDL -- and those include, for example, Messrs. Rodriguez, De La Rosa, Crosby, and Sloane. Additional class action complaints were filed throughout the country thereafter. Most, if not all, advanced class claims against top-level promoters, generally, and against some named specific top-level promoters.

On October 22, 2014, Mr. Bonsignore would continue as sworn, the Judicial Panel on Multi-District Litigation, or generally referred to as the JPML, JPMDL, transferred all of these related proceedings to the District of Massachusetts

pursuant to 28 U.S.C. 1407 for pre-trial matters and which is generally held. And MDL is started. They were centralized before Judge Hillman. The JPMDL specifically found that centralization will eliminate duplicative discovery, prevent inconsistent pre-trial rulings, especially with respect to class certification, and conserve the resources of parties, their counsel, and the judiciary.

On July 15, or thereabouts, 2015, there is a request made -- I'm sorry, Your Honor. Strike that.

On -- as far back as December 1, 2014, in the MDL the plaintiffs have filed under seal and obtained orders attaching millions of dollars of assets of the top, of certain top-level promoters, including real properties in the Commonwealth of Massachusetts and many of the locations across the country. Judge Hillman has heard those proceedings under seal for obvious reasons, given that they involve very sensitive matters. I'm not going into the details of that. Since that time the plaintiffs have placed many additional motions to attach property of top-level promoters and have obtained injunctions against the dissipation of their assets.

In March of 2015, discovery in the MDL was stayed at the request of the Department of Justice, given the pendency of criminal proceedings. We've, obviously, honored that request and there have been orders to that effect.

On April 13, 2015, at the request of the defendants in

the MDL, there was a further second amended complaint filed. That advanced class claims against top-level promoters again, generally, and named additional top-level promoters. You heard earlier that that's one of the complaints. As far back as March and April of 2015, that was provided to Mr. Darr. In addition, Mr. Schrieffer and, and Miller were added as defendants.

On September 23, 2015, in the MDL the plaintiffs filed a motion with Judge Hillman to further amend the complaint to add a defendant class of promoters who earned a, who were net winners, that is, who earned a net profit from the TelexFree scheme as, to be defined, hopefully, in this court as -- we've not asked the District Court to define that. We're happy to go with the, the determination of what that is by this court on the motion of the trustee as part of the cooperative efforts. There is -- that motion is pending.

And then, finally, Your Honor, on September 23, 2015, a complaint was filed in the United States District Court for the District of Arizona with that defending class. The JPMDL recently transferred and consolidated that into MDL, into the MDL pending in Worcester.

In the MDL and, in part, relying on information that has been kindly shared with us by the trustee, the -- well, I'm not going to go into that, Your Honor. I'm trying to stay away from some things.

But -- and the -- some of the lawyers in the lead counsel position and the PIEC themselves represent in excess of 500 individual clients who, we believe, are net losers and lost amounts ranging from $1500 to over $350,000. Many or most tendered cash to top promoters and do not know where that cash went. There are 500 individual stories with 500 individual clients. We don't intend to present them all.

That would be the extent of Mr. Bonsignore's testimony, Your Honor, and it's offered here today.

THE COURT: Okay. Thank you.

Mr. Bennett?

MR. BENNETT: My objection to the proffer, Your Honor, is that it's not relevant to anything before you. I do have one -- I would have a question for Mr. Bonsignore on this matter, if he would take the stand.

THE COURT: Okay.

Mr. Bonsignore, would you mind stepping forward, please.

MR. BONSIGNORE: Yes, Your Honor.

THE COURTROOM DEPUTY: Good afternoon.

MR. BONSIGNORE: Good afternoon.

THE COURTROOM DEPUTY: Would you raise your right hand?

ROBERT BONSIGNORE, PIEC'S WITNESS, SWORN

THE COURTROOM DEPUTY: Please be seated.

CROSS-EXAMINATION

BY MR. BENNETT:

Q Good afternoon, Mr. Bonsignore.

A Good afternoon, Mr. Bennett.

Q Mr. Bonsignore, do I understand that you on behalf of various claimants have brought a motion to amend the class action that's currently pending in the United States District Court for the District of Massachusetts?

A Yes.

Q And that you intend to bring what would be known as a reverse class action?

A Yes.

Q And in that reverse class action do you intend to name as defendants those individuals that you identify as net winners?

A With your cooperation, it would run smoother, but that's the present definition.

Q Okay. And your definition --

THE COURT: Pull that microphone to your --

(Witness complies)

THE COURT: Yeah.

Thank you.

BY MR. BENNETT:

Q Your definition of net winners is, is determined by taking all the money an individual paid to the debtor, all the money that an individual paid to other participants, less the money

received by that individual from the debtor, less the money you received by that individual from other participants?

A The definition is stated in the complaint, so I would rather rely on that writing and not talk off the top of my head --

Q Did I --

A -- and make a mistake.

Q -- misstate something? Well, did I misstate something as to the definition?

A If you could put the complaint in front of me, I could be specific and precise.

MR. BENNETT: May I approach, Your Honor?

THE COURT: Yes.

BY MR. BENNETT:

Q I'm going to show you --

AUDIO OPERATOR: Mr. Bennett, questions from the microphone. It can't pick you up while you're walking. Sorry.

(Pause)

THE COURTROOM DEPUTY: Mr. Baldiga, do you mind spelling the witness' name while we're on this break?

MR. BALDIGA: Sure, Your Honor. Bonsignore, B-O-N-S-I-G-N-O-R-E. And it's Robert J.

THE COURTROOM DEPUTY: Thank you.

MR. BALDIGA: Thank you.

(Counsel hands document to the witness)

THE WITNESS: As I understand, the document put before me is the document taken from the docket and the precise language appears in here. I will say that in the class action setting typically you define a class initially following the receipt of initial disclosures, discovery, and the exercise of experience and discussion with others that you're prosecuting. You come up with a more refined definition.

So in context and by way of a summary, this is what's presently in the complaint and after we get discovery, cooperate, and work together, it'll be further refined as a rule.

BY MR. BENNETT:

Q What is missing from these definitions, Mr. Bonsignore?

A Discovery, further information, and cooperation with the trustee.

Q Now you include -- do you intend, Mr. Bonsignore, to sue in this class action individuals who, net losers on direct payments but direct winners into participant things?

A I can't understand that question. I'm sorry. Could you rephrase it?

Q Do you intend to sue -- do you intend the class to include participants who, defendants who are net losers with respect to payments from other participants?

A Yes.

Q Do you intend to take into consideration the tri, what we

define as the triangular transactions in order to define a net winner?

A From the very beginning of this case, we were very --

Q I think that's a yes or no question, Mr. Bonsignore. If you could try to answer it that way.

Q I, I can't answer that yes or no.

Q You can't answer whether you intend to include the triangular transactions in your definition of net winners?

A No.

Q Why not?

A Because we haven't finished try -- we have not finished to try to cooperate with you and your input is necessary and absent your input and cooperation, I can't answer that question.

Q So you're telling me that you don't have enough information, even though you brought this class action to tell us what you meant by net winners?

A That's not what I just said at all.

Q Does your definition that you're -- is the definition that you're currently using in the matter before the United States District Court include triangular transactions?

A You'll have to define triangular class actions.

Q As used in the various pleadings, which I'm sure you've read, sir?

A Your version of the triangular?

Q Yes, sir.
A I had a hard time following that.
Q Your understanding?
A Why don't you explain it to me and we'll be precise rather than me guess what's in your mind?
Q Why don't you explain to me what you meant by "net winners," then, sir?
A A net winner is someone who received more than they invested.
Q More from the debtor?
A That's a bankruptcy issue, as I understand it. What we've made clear and what we've struggled and worked with you to do is to not invade your province and what we've tried to do is to cooperate with you and to work efficiently and to divide things up and when things make sense to prosecute together, we've invited you to prosecute with us.
Q Okay. Now you want to answer my question? Does it include the payments from, direct payments from the debtor in part of your calculation of net winner?
A I don't believe that it does.
Q Does it include payments from one participant to another in order to determine a net winner?
A I believe that it does.
Q Okay. So your net winners is inter-participant transactions? It's a yes or no question.

A I think at this point in time that that would require an analysis of the interplay between -- that's why we're trying to cooperate with you.

Q Well, I understand --

A That's basically it.

Q -- you're trying to cooperate, Mr. Bonsignore. You said that.

What I'm asking you is you filed the pleading, you've used the word "net winner," you put a definition in the, in that pleading. You're the drafter of the pleading.

I'm simply asking you, sir, in drafting the pleading and using the term "net winner" did you intend to include the triangular transactions?

A No.

Q Thank you, sir.

A As I understand what you meant.

Q Thank you, sir.

THE COURT: Mr. Baldiga?

MR. BALDIGA: Yes. Very brief cross, or redirect, Your Honor.

REDIRECT EXAMINATION

BY MR. BALDIGA:

Q Mr. Bonsignore, did you, as part of your leadership team, engage bankruptcy counsel to deal with some of the issues that Mr. Bennett was asking you about?

A I engaged bankruptcy counsel to address all of those issues as I'm not competent in bankruptcy and have no clue other than through what my lawyer advises me as to bankruptcy. I have no experience in bankruptcy, none.

Q And who's the bankruptcy part of your leadership team on the MDL plaintiffs' side?

A Brown Rudnick, who I rely on entirely. I defer to them entirely.

Q I want to go to Mr. Bennett's question, just one part of it, "net winner."

And you said that you, your understanding as not as a bankruptcy person that, is that a net winner is someone who took more out of the scheme than put in, correct?

A Yes. The bankruptcy terms, as I have often said, it's a language in and of itself that three-quarters of the time I do not understand. That's why --

Q Yeah, but I want to go, I want to stick to this on the net winner.

And you said somebody who's a net winner is someone who took more money out than they put in, correct?

A Yes.

Q And you understand from TelexFree that there were at least a couple ways that people could put money in. They could give it to a higher-level promoter, or they could possibly send it up to TelexFree directly, correct?

A Yes.
Q Either way, they were putting money in, right?
A Yes.
Q And there were at least a couple ways they could get money out. They could possibly get money from TelexFree itself, correct?
A Yes.
Q And they could possibly get money handed to them by a promoter as a return on their investment, correct?
A Yes. That often happened.
Q Either way, they're getting money out, right?
A Yes.
Q So all of those things would go into the equation as to who's a net winner and who's a net loser, correct?
A Yes.

MR. BALDIGA: Nothing else, Your Honor.

THE COURT: Anything else, Mr. Bennett?

MR. BENNETT: No, Your Honor. I'm fine.

THE COURT: Thank you, Mr. Bonsignore. You may step down.

Now, Mr. Baldiga, you had one more person you wanted to call as a witness?

MR. BALDIGA: Yes, Your Honor, and with your permission, Ms. Taylor, my colleague, would do, would put on that witness.

MR. BENNETT: Your Honor, I would actually take a proffer so we don't have to go through the translation. I seriously doubt I'm going to have any questions for person.

But if you want to make a proffer, I'd be happy to let you make the proffer and it's unlikely I'm going to cross-examine. We can move it right along.

THE COURT: Can you do that, Mr. Baldiga?

MR. BALDIGA: Could I confer for one second?

THE COURT: Sure.

(Pause)

MR. BALDIGA: All right, Your Honor. Including, because of the language issues, it's a very brief direct. We think that would be the most efficient, including because we have a translator here for a reason. We'll do it exact --

THE COURT: That's fine. I would actually like to hear from a human being who was involved in this case and get a little bit of, of perspective.

t So why don't you call your witness?

MR. BALDIGA: And I'll defer to Ms. Taylor.

THE COURT: Thank you.

MS. TAYLOR: Thank you, Your Honor.

(Interpreter, Claudia Azoff, sworn)

THE INTERPRETER: Good afternoon, Your Honor. Claudia Azoff.

THE COURTROOM DEPUTY: If you could, please, just sit

next to the witness. I just want to make sure that we pick you up.

THE INTERPRETER: Okay. You will. Thank you.

THE COURTROOM DEPUTY: Would you raise your right hand?

MARIA MURDOCH, PIEC'S WITNESS, SWORN

THE COURTROOM DEPUTY: Could you spell her name, please?

MS. TAYLOR: It's Maria, M-A-R-I-A --

THE COURTROOM DEPUTY: Yeah.

MS. TAYLOR: -- Murdoch, M-U-R-D-O-C-H.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. TAYLOR:

Q Afternoon, Ms. Murdoch. Thank you for joining us.

A Good afternoon.

Q Realizing that we're short on time, I will try to keep this brief.

Do you speak -- do you speak English?

A Little bit.

Q But Portuguese is your primary language and you primarily communicate in Portuguese, correct?

A Yes.

Q Have you ever testified in court before?

A No.

Q What is your occupation?
A I'm a house cleaning.
Q And where were you born?
A Brazil.
Q Are you a permanent resident now of the United States?
A Yes. I'm an LPR.
Q And how long have you lived here?
A Sixteen years.
Q And why did you move here?
A Because Brazil was very difficult at that time and I brought my, my daughter here so she can study.
Q I'm going to ask a couple questions about your participation in TelexFree.
When did you first hear about TelexFree?
A It was about August of 2013.
Q And how were you convinced to get involved?
A It was through some friends of mine.
Q And did you pay anyone any money to get involved in TelexFree?
A Yes, I did.
Q Who?
A His name is Wagner.
Q How did you meet Mr. Wagner?
A It's through this group. They're doing some, having some meetings.

Sam, Sam Rodriguez, that's the name of the person.
Q How many times did you attend a meeting with Mr. Rodriguez, Sam Rodriguez?
A About three times.
Q Three times.
And how much money did you pay Mr. Wagner or Mr. Rodriguez to get involved in TelexFree?
A $25,000.
Q And that money was a large part or all of your savings, correct?
A Yes. Everything I had.
Q And how did you pay that money?
A Cash.
Q Cash.
And you handed that cash directly to Mr. Wagner?
A To Wagner, yes.
Q Did you ever get any money back from TelexFree?
A No.
Q And have you filed a claim in the bankruptcy case?
A No. No.
Q Do you intend to file a claim?
A Yes.
Q I'm going to ask a couple questions about the motion that's the subject of today's hearing.
Are you familiar with this motion?

A If I have the knowledge, you mean?
Q Do you know, generally, what it's about?
A Yeah, it's about TelexFree.
Q Okay. Did you receive by e-mail or by mail or by any other means a copy of the motion?
A No.
Q And did you receive any notice of today's hearing in the mail or by e-mail or by any other motion, or way?
A It was, yes.
Q It -- excuse me. I don't understand. It was.
A My daughter is the one who told me that I have to come here today.
Q Okay. But prior to your daughter telling you, you didn't -- did you get anything in the mail, you, saying that there is a hearing today?
A No.
Q Okay.
So not having had a copy of the motion, did you know that the motion, if it's granted today, would stop you or your chosen lawyer from suing to get the money back that you gave to Mr. Wagner?
A I didn't understand the question.
Q Okay. Let me try to rephrase.
Do you want to sue Mr. Wagner to get your money back?
A Yes, I do.

Q Did you know before today or yesterday that if the motion is granted you won't be able to do that?
A No, I didn't.
Q Thank you.
MS. TAYLOR: I have nothing further.
THE COURT: Just a minute, please.
Mr. Bennett, anything?
MR. BENNETT: Very briefly, Your Honor.
THE COURT: Okay.

CROSS-EXAMINATION

BY MR. BENNETT:
Q When you paid the money to this individual did you get a membership in TelexFree?
A No.
Q Did you get a user account with TelexFree?
A No.
Q Did -- does your daughter have a user account at TelexFree?
A No, she did not.
Q And how did your daughter find out about this hearing, if you know?
A Through some friends that they were supposed to be here. They told her that I, I was supposed to be here, too.
Q Thank you.
MR. BENNETT: No further questions on my part.
MS. TAYLOR: No further questions. Thank you.

THE COURT: I have a question for Ms. Murdoch.

BY THE COURT:

Q Ma'am, when you gave Mr. Wagner $25,000 what were you thinking you were getting in return?

A Well, through all the friends, that the are making a lot of money. I was told that if I gave this $25,000 was some kind of bonus. I was going to get like double. That's what he told me.

Q Did the name, TelexFree, ever come up in your discussions?

A Yeah. Well -- yes, and I thought it was something legal.

Q All right. Thank you.

THE COURT: You may step down.

All right. Let me make sure I, I understand where we, where we are at this point.

That concludes the evidentiary portion of the hearing as it relates to the first prayer of the motion, the request that there be a finding that the debtor engaged in a Ponzi and pyramid scheme, is that correct, everyone?

MR. MURPHY: Yes, Your Honor --

THE COURT: Okay.

MR. MURPHY: -- at least from the trustee's perspective.

THE COURT: Now in terms of the other prayers for relief, apart from allowing argument to proceed on, on any of those that the parties want to continue to fight about, is

there any evidence that would need to be presented on any of the other prayers? Does anyone have anything?

(No response)

THE COURT: Okay.

MR. MURPHY: Nothing, nothing further from the trustee.

THE COURT: All right.

Mr. Baldiga?

MR. BALDIGA: Same with us, Your Honor.

THE COURT: Okay. All right.

So based on the evidence that has been presented thus far, I'm prepared to find that the debtors did engage in a Ponzi and pyramid scheme. Based on the affidavit of Mr. Darr and the testimony that was presented today I find that the -- and based on the legal principles that have been presented by the trustee in his papers as to the factors that determine the existence of a Ponzi scheme and a pyramid scheme -- the investment by consumers; the fact that the company conducted little or no legitimate business; produced little or no profit; that the source of, the predominant source of income from the business was from these, call them investments by the consumers, these payments by the consumers; that that was a whole structure of, a top-down structure whereby individuals were selling or recruiting other participants to go out and find participants and receive awards that really were unrelated

to the product that the company was purporting to sell, all of those factors -- and I don't think there's really anybody who disputes that -- clearly militate in favor of such a finding.

And that finding that there is a Ponzi, there was a Ponzi and pyramid scheme being perpetrated by the debtors in this case is the law of this case. It applies to this case.

And what that means in terms of the collateral estoppel effect, the preclusive effect of that finding, I leave it to the parties and any other court out there that wants to take that matter up.

But that's my finding for purposes of this case.

Now that covers two out of the four prayers that the trustee has requested.

The other prayer that I don't believe is in dispute and, and I'm prepared to rule on here is that the liability of the debtors to the participants or to the claimants that are filed in this case and allowed will be joint and several.

And that's as far as I'm prepared to go today.

That leaves us with this request as to a determination of the parameters of claims that can be filed in the bankruptcy case. And my problem with that -- and I'm not going to rule on this today. We'll have to have a separate hearing on it because I want, I want better notice on that.

The only notice that the potential universe of claim holders received was a copy of this Ponzi scheme motion and a

notice of the evidentiary hearing on the motion and we're dealing with lay people and people who -- and granted, the motion was translated into other languages, but they were, nevertheless, they're lay people and I don't believe that there was an adequate understanding or an adequate highlighting to those people about the prayer in which the trustee was requesting a finding that would, the result of which would have a substantive impact on the claims that they are entitled to file.

And so what I'm -- what I'm -- what I'd like to have the trustee do is to re-notice to the parties in interest, including the participants a further hearing in which I am going to make a determination, or I'm being asked to make a determination as to the second prayer of the Ponzi scheme motion.

And I don't believe that needs to be an evidentiary hearing unless somebody tells me that they have some evidence on that point. I don't think there is because they would have brought it up today. And I'm prepared to hear arguments at that hearing as to why I shouldn't find for the trustee on that prayer.

My primary concern, I have to tell you, is the issue of notice, is that the creditors are entitled to know what the, how the trustee is proposing to funnel their claims into the case. And, and then we'll see what kind of objections are

elicited from that notice.

And then, Mr. Baldiga, you can try to convince me how a finding of these, along these lines, as you put it, leaks over into the multi-district litigation and if it does, why that should matter to me.

Is that -- anybody have any questions on where we're going with this?

MR. MURPHY: No, Your Honor, other than I -- I -- obviously, Your Honor, we did send a motion. Would you like me to try to summarize the motion in plain English and Portuguese as well?

THE COURT: That portion -- what's left of the motion is that prayer. Yes.

MR. MURPHY: Okay. Kind of a plain language explanation of, as if I was doing a plain language disclosure statement for a reasonable person to try to lay it out in spades exactly what we're, how the net equity calculation would be determined.

THE COURT: How they will be affected by, by a ruling accepting the trustee's request on that issue, yes.

MR. MURPHY: And just for the record, Your Honor, the -- I think it's -- to be correct, again from the trustee's perspective, it's, it's both pointing out to participants that under this formula they would get claims in the bankruptcy case for amounts that, for example, the last witness -- she

transmitted - she would have a claim in this bankruptcy case for that $25,000 under that determination. That, that would be part of it.

And that -- those -- if you will, payments into (indiscernible) would be included in part of their claim and it would not just include direct, but it would also include what we call the triangular transactions. I'll use, probably, a different term for purposes of explaining that to people.

Is that what you want me to explain in the notice, Your Honor?

THE COURT: Yes. Thank you.

MR. MURPHY: Thank you.

THE COURT: So now let's talk about the next hearing and how much time we need for this.

MR. BALDIGA: And, Your Honor --

THE COURT: Yes.

MR. BALDIGA: -- you've addressed the first three prayers for relief. Prayer 4, is that also to be argued further at that next hearing?

THE COURT: I -- I -- Prayer 4 is the -- I, I addressed that. That's -- I -- I -- I'm finding that the Ponzi scheme, pyramid scheme finding is the law of this case. That's Prayer 4.

MR. BALDIGA: And, and the Ponzi scheme finding, yes. And -- and -- I guess I should have been more specific.

If there is to then be a ruling on the triangular aspect of it, which is not the Ponzi scheme, the only thing that people really are fighting about today is whether a finding on the triangular aspect of the proof of claim form that you're reserving on, whether that because a law of the case for purposes other than the allowance of claims.

THE COURT: Oh, okay.

MR. BALDIGA: That is, I think, the entire core of the dispute here. And I just want to be sure that's not lost in the shuffle of today's proceedings.

THE COURT: What I've done today does not affect that one was or the other.

MR. BALDIGA: That's what I understood.

THE COURT: So you still have the opportunity to address that at the next hearing.

MR. BALDIGA: Very good. Thank you.

THE COURT: And lastly, Your Honor, have you determined that the credits, the disallowance of credits for claim purposes is, is okay for today?

THE COURT: Disallowance of credits.

MR. MURPHY: That was, I think, one of the --

THE COURT: That's --

MR. MURPHY: -- one of the prongs we had, that the credits that were in the --

THE COURT: No. That, that's part of Prayer 2. That

would be part of the notice that --

MR. MURPHY: Okay.

THE COURT: -- they -- the ---

MR. MURPHY: The disallowance of credits in the calculations of claims based upon the trustee's version of the net equity?

THE COURT: Right.

MR. MURPHY: Okay. Understood.

THE COURT: Thank you.

MR. MURPHY: Thank you, Your Honor.

THE COURT: So if we --

Yes, Mr. Baldiga.

MR. BALDIGA: Well, just -- you -- we're going to talk about schedule. What I would --

THE COURT: Yes.

MR. BALDIGA: -- ask, Your Honor, as part of any scheduling that at least the trustee and the MDL plaintiffs as well as anyone else who wishes to do so, we have a date certain by which we file proposed orders. I think it will help the hearing to know exactly what people are doing and I think will help make, streamline the next hearing as well so that there's actual words in front of everybody well in advance of the hearing.

THE COURT: On that, on the remaining issue of Prayer 2, is that what you're asking?

MR. BALDIGA: 2 and 4, the part of 4 that -- yes.

THE COURT: Okay.

So let's talk about timing. We're in a holiday week here.

What's a reasonable time by which you can get a notice out, Mr. Murphy?

MR. MURPHY: Well, we probably -- I don't want to -- I want to make it -- get it -- do it right and we have to then deal with the transmittal.

I would say a week from this Friday, Your Honor, which would be December --

THE COURT: 4th.

MR. MURPHY: -- 4th.

THE COURT: Then I would say we would give parties 45 days to digest this and file any opposition, which would get us to, is that January 5th, or no?

January 12th, let's say for -- I mean, February. No, no, no. December 4th for service. January 4th.

So January 18th for responses, objections. And you'll put that in your notice, obviously.

MR. MURPHY: Mr. Lizotte tells me just service of this is not the easiest thing. If we could have until Monday, Your Honor, to make service. I don't think it makes a difference of the great scheme of things, but that -- it just --

THE COURT: Monday, December 7th.

MR. MURPHY: For service.

THE COURT: Sure.

MR. MURPHY: Just to --

And that January 18th --

THE COURT: Is that --

MR. MURPHY: -- is fine, Your Honor, for the response deadline.

THE COURT: Is that a holiday? Is that Martin Luther King's --

MR. BALDIGA: It is. It is Martin Luther King.

THE COURT: Yeah.

So I'll make the 19th, that Tuesday.

(Court confers with staff)

THE COURT: Then we will reconvene on January 26th at 10:00 a.m.

MR. MURPHY: That's fine with the trustee, Your Honor. Thank you very much.

THE COURT: And you can circulate proposed orders or anything else that you have that you'd like to file by the objection deadline of January 19th.

MR. BALDIGA: Including proposed orders?

THE COURT: Yes. And this will not -- this will be a non-evidentiary hearing.

MR. MURPHY: Understood, Your Honor.

MR. BALDIGA: At what time, Your Honor? I'm sorry.

THE COURT: 10:00 a.m.

MR. MURPHY: So responses to the notice would be on the 19th, including proposed orders, and the hearing on 26th?

THE COURT: Correct.

MR. MURPHY: Thank you, Your Honor.

THE COURT: All right.

That leaves us with the other matter that was scheduled for today, which is the bar date motion.

MR. MURPHY: Your Honor, for the same reason we talked about last time that, Mr. Lizotte points out to me, determination of the design of the website and the claims portal and the E-proof of claim will be affected dramatically whether or not we include or don't include the triangular. It's a -- it's a much simpler process, frankly, from the estate's perspective just to include the directs. Again, it's not a result, I don't think, people appreciate. It's not going to be good for them, but we don't want to design -- there's no point in designing an E-proof of claim asking all about the indirects if they're not going to affect into the calculation of allowed claims and the credits. And also, the determination whether the credits -- we ask people, are these credits correct or not and we start counting credits, keeping track of credits. It just doesn't make any sense, Your Honor. That's -- with the 1.9 million potential claims, 50,000 already, we've looked at the claims that are filed to date, or not all of them, but

enough sample to know it's, it's completely, frankly, useless information, Your Honor, unless we have some parameters about what the rules of the game are going to be.

So I, I'd respectfully ask that that motion, again, be put over until the hearing on the 26th. And as I said, we'll move as much of the case as possible, but we haven't seen a way that we can work around these fundamental issues in designing a process.

THE COURT: That probably makes sense.

Mr. Baldiga, remind me of what the MDL plaintiffs have raised in response to the bar date motion? What's the issue there?

MR. BALDIGA: We have no objection.

THE COURT: Okay.

I have -- so there have been no formal objections to the, to your motion, Mr. Murphy?

MR. MURPHY: No, there haven't been. We -- actually, we received an informal objection from counsel for TD Bank, who's in the courtroom. He wanted to conform the order to the Local Rule proposed form and we have done that for his benefit. I believe we submitted to the Court a blackline.

We also -- the Court had raised concerns about we, a couple of the words, "participants in the scheme," as being a pejorative coupling and we've tried to eliminate that and make it much more neutral.

But again, I think it's -- because it's going to be a monumental and tremendously expensive task to, to design a claim process, we need to do it -- we should only do it once.

THE COURT: That makes sense. I have a couple of other points, though, that I want to bring up on the bar date stuff.

As I read the Certificate of Service, the bar date motion itself has not been served on the participants, is that correct?

MR. MURPHY: No, Your Honor, just to all appearances in the case. We did no serve it like we did the Ponzi motion. That's correct.

THE COURT: And in the bar date motion you are asking for a disqualification of all claims made by the participants previously by filing proofs here, filing proofs with KCC, filing claims with the federal or state authorities, and I think that that request is fine, but I think, again, people need to know that those rights are being taken away from them. And they don't know that now and they're going to find out under your rubric when they get the bar date notice by which point it will be too late.

So while you're noticing out your Ponzi scheme motion I would ask you to serve notice of your bar date motion on the same universe of recipients and highlight -- I think that's the only part of the bar date motion that would impact their --

their -- that would preempt rights that they may think they already have and let's see if anybody has a problem with that.

MR. MURPHY: Understood, Your Honor.

So you would like to -- maybe I can include a plain language summary on that, or make that part of the summary?

THE COURT: Sure. A notice of motion for bar date and a hearing thereon and highlighting that particular --

MR. MURPHY: That participants will have to re-register their claims electronically --

THE COURT: Right.

MR. MURPHY: -- if this motion's allowed.

THE COURT: Right.

MR. MURPHY: The motion seeks to acquire that right. I understand.

THE COURT: And that they will -- they will not be able to -- that their previous claims are not going to be considered. This language you have in the bar date order and in your notice of bar date, you need to make them aware of that.

MR. MURPHY: Fair enough, Your Honor.

THE COURT: And I would -- the other thing that I wanted to explore with you before I would approve this is an opportunity to be able to see what this looks like, this electronic proof of claim process. I take it -- is there a way to do a demonstration? Is there a way to have a, create a

form? I understand that it would be unofficial because it hasn't yet been approved, but to show us what this is going to look like, if it gets approved?

MR. MURPHY: Perfect timing because Mr. Darr -- I think, now that we have this on the 26th, Your Honor, I think we can actually talk about a live demonstration.

But let me have Mr. Darr speak to that directly.

MR. DARR: Again, Your Honor, Stephen Darr, trustee.

Last -- in anticipation of today's hearing a couple of weeks ago, once we really triangulated on what the information was and what we needed to do for the claims process, we sent out an RFP, request for proposal, to seven different technology firms asking them to propose on a, devising a web portal for the, for the proofs of claim.

Five of the seven responded with formal proposals and last Friday we heard four of them. And we heard one of them yesterday. And the one -- I hope this doesn't leak out 'cause we haven't told the winners or the losers yet -- but one of the participants has a operative. It's a prototype. It's got to be changed. It's got to be adapted a little bit. But they have a working prototype and, and that's the firm that we intend to select.

So we'll be able to get that resolved and, of course, we'll -- before we -- as part of employing them, we'll seek court authorization for their employment. But we'll be able to

come up with a fairly robust example of, of the data.

The firm that we selected, or we're going to select has a similar, not exactly the same, but a similar application and an SEC receivership in the southeast.

THE COURT: So you'll be -- the -- on January 26th you'll be able to present a demonstration of how --

MR. DARR: Yes.

THE COURT: -- how a hypothetical participant would be able to work through the process of e-filing a participant's claim?

MR. DARR: Yes, Your Honor.

THE COURT: Very good.

And then the, the non-participant proofs of claim, those are just the official forms, right? So there's no --

MR. MURPHY: Correct.

THE COURT: -- magic in that.

MR. MURPHY: Correct, Your Honor.

MR. DARR: Your Honor should know that many of the forms, many of the claims that have been received are not on the official forms. Many of them came from outside the United States and some of the problems associated with that, they came in on A4-size paper, which won't feed through the U. S. document feeders. They had to be Xeroxed onto 8-1/2 by 11 paper and then put through and processed.

So it's been -- it's -- it's a difficult process when,

when you're considering so many claims are outside the United States.

THE COURT: Right, but all those are going to be wiped out assuming that --

MR. DARR: Yes.

THE COURT: -- this procedure is approved. And that's the reason why the creditors --

MR. DARR: Yes, Your Honor.

THE COURT: -- to know about that. Okay.

All right, good. So we'll, we'll take that back up again on the 26th.

And anything else I can do for you today?

MR. BALDIGA: Yes.

THE COURT: Mr. Baldiga?

MR. BALDIGA: One thing, Your Honor. Thank you for your time today. It's really just 30 seconds.

An unusual case, unusual proceeding today. Difficult case and, and difficult issues. Obviously, the -- we're going to get through these mechanical things, but the issue of the victims' right to sue is one that is a very significant issue, both in dollars, the number of people involved, and the outcome on this case. We've had some good discussions about that. I don't want to get into what those are, but they've been unsuccessful, obviously, or we wouldn't be here. It's not for lack of trying on either party's part.

For our part, we, we're a fiduciary. They're a fiduciary. It's not a great situation when you have two fiduciaries having proceedings like this. We'd be willing on our part to submit to mediation in that regard. We think it makes sense. At the end of the day, this is all victim money and the less spent on this type of proceeding, the better. We feel very strongly about that. We answer not to this court. We answer to a different court, but I think both courts would feel the same way as well. It's all victim money at the end.

And I suggest it and I suggest it openly and I just didn't want a proceeding like this to end in the context of a case like this without that being said.

THE COURT: Right. Well, it's on the record. I've heard it. I'm always one to support consensual resolution of these disputes.

I think that to the extent that it's possible between now and January 19th when objections are due, there's plenty of time for you to explore that and if you are able to, both sides are able to agree on, on that, then let me know and we can reschedule, if that's what it's going to take, if you need more time.

So I'll leave that to the parties to, to consider.

MR. BALDIGA: Thank you.

THE COURT: All right. Thank you all for coming in.

MR. BALDIGA: Thank you.

THE COURT: Have a nice evening and a good holiday.

MR. MURPHY: Thank you. Happy Thanksgiving, Your Honor.

THE COURTROOM DEPUTY: Court is in recess. All rise.

MS. TAYLOR: Thank you, Your Honor.

(Proceedings concluded at 5:18:26 p.m.)

CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Janice Russell December 4, 2015

Janice Russell, Transcriber Date

EXHIBIT O

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In Re:	)	
	)	**Chapter 11**
TELEXFREE, LLC ,	)	**Case No. 14-40987-MSH**
TELEXFREE, INC.,	)	**Case No. 14-40988-MSH**
TELEXFREE FINANCIAL, INC.,	)	**Case No. 14-40989-MSH**
Debtors.	)	**Jointly Administered**

MOTION BY CHAPTER 11 TRUSTEE FOR ENTRY OF ORDER FINDING THAT DEBTORS ENGAGED IN PONZI AND PYRAMID SCHEME AND RELATED RELIEF

To the Honorable Melvin S. Hoffman, Chief United States Bankruptcy Judge:

Stephen B. Darr, the duly appointed Chapter 11 trustee (the "Trustee") of the bankruptcy estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors"), respectfully requests entry of an order finding that the Debtors were engaged in a Ponzi/pyramid scheme and that such finding be applicable to all matters in these proceedings. The Trustee has filed simultaneously herewith the *Motion by Chapter 11 Trustee for Approval of Method of Service of Motion by Chapter 11 Trustee for Entry of Order Finding that Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief* (the "Notice Motion") and the *Affidavit of Stephen B. Darr in Support of Motion by Chapter 11 Trustee for Entry of Order Finding that Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief* ("Darr Affidavit").

In support of this motion (the "Motion"), the Trustee states as follows:

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INTRODUCTION

The Debtors ostensibly operated a multi-level marketing company engaged in the sale of voice over internet service but, as detailed herein, the Debtors' operations actually were a massive Ponzi/pyramid scheme that ensnared as many as a million or more participants from multiple countries (hereinafter, parties who became members of the Debtors' scheme shall be referred to as "Participants"). Participants opened approximately 11,000,000 User Accounts (as hereafter defined) and purchased membership plans and/or Voice over Internet Protocol ("VoIP") service with a transaction value of approximately $3,070,000,000 during the approximately two years of the Debtors' operation of their scheme. An affiliate of the Debtors, Ympactus Comercial Ltda. ("Ympactus"), reportedly operated a substantially similar scheme in Brazil which was seized and shut down by the Brazilian authorities in June 2013.[1] Shortly after the Debtors' Chapter 11 filings in April 2014, the Securities and Exchange Commission and the Massachusetts Securities Division commenced litigation against the Debtors and others alleging, among other things, that the Debtors were engaged in the fraudulent sale of securities in violation of numerous securities laws. Contemporaneously therewith, substantially all of the Debtors' assets and records were seized by the federal authorities. Approximately two months later, on June 6, 2014, the Trustee was appointed.

The Trustee has conducted an extensive investigation into the operations of the Debtors' scheme and Participant involvement therein. As a result of the investigation, the Trustee has concluded that and requests a finding from the Court that the Debtors were engaged in a Ponzi/pyramid scheme, that any claim or portion of claim of Participants based upon accumulated credits arising from fictitious profits or commissions in Participants' User Accounts

[1] Reportedly, Ympactus was recently found by a Brazilian court to have been a Ponzi scheme.

as of the Petition Date should be disallowed, and that Participant claims should be determined on a "net equity" basis.

Simultaneously herewith, the Trustee has filed his *Motion by Chapter 11 Trustee for Entry of Order Fixing Bar Date for Filing Proofs of Claim, Approving Form and Manner of Notice, Directing that Claims be Filed Electronically, and Approving Content of Electronic Proofs of Claim (the "Bar Date Motion").* Pursuant thereto, the Trustee seeks, among other things, approval for the electronic noticing of a Bar Date and approval of the content of electronic proofs of claim to be filed by Participants (the "Participant ePOC") and non-Participants (the "Standard ePOC" and together, the "ePOCs").

I. CASE BACKGROUND AND PROCEDURAL POSTURE

1. On April 13, 2014 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code") with the United States Bankruptcy Court for the District of Nevada ("the Nevada Bankruptcy Court").

2. The Debtors initially operated as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. On the Petition Date, the Debtors filed a motion for joint administration of the cases, with TelexFree, LLC designated as the lead case. By order dated April 24, 2014, the order for joint administration was approved.

4. Prior to the filings, the Commonwealth of Massachusetts, Office of Secretary of State, Securities Division (the "MSD") commenced an investigation into the Debtors' business practices.

5. On or about April 15, 2014, the MSD commenced an administrative proceeding against the Debtors. Also on April 15, 2014, the Securities and Exchange Commission (the "SEC") commenced an action against the Debtors and others in the United States District Court for the District of Massachusetts. The foregoing actions alleged, among other things, that the Debtors were engaged in an illegal Ponzi/pyramid scheme and the fraudulent unregistered offering of securities. Substantially contemporaneously with the commencement of the SEC action, Homeland Securities Investigation ("HSI") seized the Debtors' assets, books, and records. In connection therewith, the federal government seized more than $107,000,000 in cash, including funds on deposit and checks payable to the Debtors, their principals, or their affiliates. Federal authorities have also made forfeiture claims against approximately forty (40) other items of real and personal property standing in the name of the Debtors' principals and their affiliates, including automobiles, real properties, and notes secured by mortgages on real properties.

6. On or about April 22, 2014, the Office of the United States Trustee filed a motion for the appointment of a Chapter 11 Trustee based upon the allegations of illegal activity.

7. On April 23, 2014, the SEC filed a motion to transfer venue of the cases to the United States Bankruptcy Court for the District of Massachusetts (the "Court"). By order dated May 6, 2014, the motion to change venue was approved. The cases were transferred to the Court on May 9, 2014.

8. On May 30, 2014, this Court allowed the United States Trustee's motion to appoint a Chapter 11 trustee, and the Trustee was appointed on June 6, 2014.

9. The Debtors filed only a list of the alleged thirty (30) largest creditors in the cases and did not file schedules or statements of financial affairs, nor a matrix of creditors.

10. On February 27, 2015, the Trustee filed schedules of assets and liabilities and statements of financial affairs for each of the Debtors, using information obtained from documents produced pursuant to Rule 2004 examinations and Debtor records obtained from the Federal Authorities (as defined below).

11. Carlos Wanzeler and James Merrill were the Debtors' principals along with Carlos Costa, at least through Costa's alleged separation from the Debtors in the fall of 2013. Shortly after the Trustee was appointed, the United States Department of Justice ("DOJ" and, together with the SEC and HSI, the "Federal Authorities") indicted Wanzeler and Merrill based upon their involvement in the Debtors' scheme. Wanzeler has fled the country and is believed to be in Brazil. Merrill was initially detained and has been released pending trial.

12. On February 3, 2015, the Trustee submitted a comprehensive Status Report on outstanding matters in the cases. The Status Report set forth, among other things, the background of the Debtors and their affiliates, the breadth and scope of the scheme, assets recovered to date and potential additional sources of recovery, as well as efforts at coordination with governmental authorities, both in the United States and in Brazil.

13. Prior to the Trustee's appointment, the Federal Authorities shut down, disconnected, and seized the Debtors' computer system, which consisted of forty-six (46) computers and servers containing more than twenty (20) terabytes of data. Accordingly, at the time of his appointment, the Trustee did not have access to any of the Debtors' records. Neither of the Debtors' principals has been available because Wanzeler fled the country and Merrill had been indicted and detained. The Trustee has only had limited access to the Debtors' former employees.

14. Initially without access to the Debtors' books and records, the Trustee has utilized a variety of resources to obtain information regarding the Debtors' activities and the mechanics of their scheme. The Trustee filed motions for authority to obtain documents from, and conduct examinations of, twenty-nine (29) separate entities pursuant to Federal Rule of Bankruptcy Procedure 2004 (the "2004 Motions").[2] The deponents of the 2004 Motions included prepetition and postpetition professionals retained by the Debtors, financial institutions who had prepetition and/or postpetition relationships with the Debtors, multiple firms who provided payment processing services to facilitate payments between the Debtors and Participants, and firms who provided consulting services to the Debtors or who otherwise were believed to have had business relationships with the Debtors. The Trustee also conducted informal interviews of certain former employees and consultants of the Debtors as well as several Participants.

A. Mechanics of Scheme and Methods of Compensation

15. The Debtors purported to be in the business of selling VoIP that cost $49.90 per month to conduct international phone calls. The sale of VoIP on a monthly basis is hereinafter referred to as a "VoIP Package". Customers who purchased the VoIP Package registered their phone numbers with the Debtors and received software that enabled their computers to place phone calls through the Debtors' computer servers in Marlborough, Massachusetts to approximately 40 countries.

16. The Debtors ostensibly used a multi-level marketing plan, or "MLMP", to sell the VoIP Packages. An MLMP, also referred to as network marketing or referral marketing, is a direct sales strategy in which the sales force is compensated not only for sales they generate, but also for the sales generated by other sales persons that they recruit. *Whole Living, Inc. v. Tolman*, 344 F. Supp. 2d 739 (D. Utah 2004). MLMP businesses can be legitimate, and notable

[2] To date, the Trustee has deferred conducting depositions of the 2004 Motion deponents.

examples of MLMP's include Herbalife International (selling nutritional supplements, weight management, sports nutrition, and personal care products), Mary Kay, Inc. (selling cosmetics products), and Amway (selling, among other things, health, beauty, and home care products).

17. Each new distributor in an MLMP recruited by a participant, along with the recruited distributor's recruits (down to six levels in the Debtors' case), becomes part of the first participant's "network", sometimes referred to as the participant's "downline." Eventually one or more pyramid type structures is established underneath the recruiting participant. In addition to earning commission and profits on the products the participant sells, he or she is entitled to receive a commission based on the volume of products or memberships sold by his or her network.

18. Until the Debtors purported to change their MLMP contracts in an unsuccessful attempt to address the existing contract's illegality in March 2014, the Debtors provided Participants with two options (in addition to purchasing VoIP Packages) to become members and to thereby open User Accounts:

a. "AdCentral Plan": $339 for a one-year contract ($50 membership fee plus $289 contract fee). This contract entitled the User Account holder with the right to sell ten VoIP Packages, for which a Participant could receive a commission if the packages were sold, although there was no sale requirement. Participants were required to place one internet ad per day and, for each week in which the Participant placed the required ads, he/she was entitled to one additional VoIP Package, which could be sold or exchanged for $20 in credits with the Debtors. Thus, Participants who posted the required ads were eligible to receive $20 per week for 52 weeks, for a total return of $1,040 (a return of 207% on the investment of $339).

b. "AdCentral Family Plan": $1,425 for a one-year contract ($50 membership fee plus $1,375 contract fee). This contract entitled the User Account holder with the right to sell fifty VoIP Packages, for which a Participant could receive a commission if the packages were sold, although there was no sale requirement. Participants were required to place five internet ads per day and, for each week in which the Participant

placed the required ads, he/she was entitled to five additional VoIP Packages, which could be sold or exchanged for $100 in credits with the Debtors. Thus, the Participants who posted the required ads were eligible to receive $100 per week for 52 weeks, for a total return of $5,200 (a return of 265% on the investment of $1,425).

19. In addition to credits for posting these advertisements, the Debtors issued credits to Participants for the sale of membership plans and the establishment of new User Accounts as follows:

a. $20 in credits for each new AdCentral Plan and $100 in credits for each new AdCentral Family Plan in a Participant's network.

b. $20 in credits for each User Account in one's "network," up to a maximum of $440, as long as there were two subsidiary User Accounts.

c. 2% of all payments to each User Account within one's network, down to six "levels" of the network, provided that each User Account had a registered VoIP customer.

d. 2% of the Debtors' net monthly billing, up to a maximum of $39,600 in credits, for an AdCentral Family Plan that had ten new AdCentral Family Plans in its network, so long as each plan had five registered VoIP customers.

20. The Debtors also issued credits to Participants for the sale of VoIP Packages as follows:

a. 90% (or $44.90 in credits) for the initial sale of a VoIP Package at $49.90.

b. 10% (or $4.99 in credits) per month for the renewal of a VOIP Package by a User Account holder directly in one's network[3] and 2% (or $0.99 in credits) per month for the renewal of a VOIP Package by a User Account holder indirectly in one's network, down to six levels of the network.

c. 2% from all VoIP Package sales in one's network, down to six levels of the network.

[3] In practice, the Debtors appear to have provided Participants with credits equal to ninety percent (90%) of the renewal fees.

21. The credits issued to Participants for placing advertisements and selling membership plans and VoIP Packages could be redeemed for cash, transferred to another User Account, or applied in satisfaction of an invoice for another User Account.

22. Invoices for the purchase of a membership plan could be satisfied in one of two ways. Participants could pay the invoice in cash directly to the Debtors or Participants could pay a recruiting Participant for the purchase of a membership plan through the recruiting Participant's redemption of credits from the Debtors.

23. In the case of a Participant satisfying his/her own invoice by payment in cash to the Debtors, the process worked, generally, as follows:

a. The Participant joined the Debtors' organization and created an online account with the assistance of a recruiting Participant, who needed to be identified;

b. The Debtors' database recorded the information entered by the recruited Participant and assigned an identification number to the new User Account;

c. The Debtors recorded the purchase, issued an invoice number, and marked the invoice as 'pending';

d. A Participant would pay money directly to the Debtors in the form of cash, check, cashier's check, or wire transfer, or through a third-party online payment processing account. Once the Participant paid the invoice, the Debtors updated the invoice as 'paid', and the account setup would be complete;

e. The recruited Participant could then start building a pyramid underneath the newly created User Account by recruiting other Participants (or by purchasing new User Accounts themselves) and generating bonuses and commissions in accordance with the scheme.

24. Alternatively, a Participant could satisfy his/her own invoice directly by payment in cash to another Participant, who would, in turn, satisfy the invoice by a redemption of

accumulated credits. Thus, the recruited Participant's membership fee for TelexFree plan was paid to the recruiting Participant, rather than to the Debtors.

25. As set forth above, there are approximately 11,000,000 User Accounts associated with the Debtors' MLMP. A new User Account was generally established each time that a membership plan was purchased, with either cash or accumulated credits.

26. Although some versions of Participant contracts contained prohibitions against Participants opening multiple User Accounts for themselves, other plan descriptions did not. In any case, any such restriction was not enforced and could not be enforced since the Debtors did not verify the Participants' identities. The Debtors' MLMP structure created incentives for Participants to open multiple User Accounts to generate credits for themselves.

27. As noted above, a Participant could monetize accumulated credits by recruiting a Participant to join the Debtors' scheme and using his/her accumulated credits to satisfy the invoice for the later Participant's membership plan in exchange for payment of the membership fee from the new Participant (a "Triangular Transaction"). In a Triangular Transaction, the Debtors issued the membership invoice to the recruited Participant, the recruited Participant paid the membership invoice that was due to the Debtors to the recruiting Participant, and the Debtors redeemed the credits of the recruiting Participant in satisfaction of the invoice.

28. In fact, it was a regular practice of the Debtors' scheme that membership fees were paid by the use of accumulated credits rather than by cash. While invoices associated with the sale of membership plans or VoIP Packages had a face value of approximately $3,070,000,000, only $360,000,000, or approximately twelve percent (12%) of that amount, was paid in cash to the Debtors. The balance of these invoices was satisfied by the use of Participants' credits.

29. The Debtors also issued "manual credits" to certain User Accounts. Manual credits were credits issued to User Accounts unrelated to the purchase of a membership plan and not resulting from the placement of advertisements or other components of the compensation scheme. Although some manual credits may have been issued to User Accounts in exchange for cash payment to the Debtors, the Trustee is unable to identify any payment to the Debtors for a significant amount of manual credits that were issued to certain User Accounts. These credits issued without consideration appear to be a fraud within the larger fraud of the Ponzi/pyramid scheme. There also were exchanges of credits between User Accounts unassociated with the issuance and satisfaction of Debtor invoices.

B. SIG/Back Office

30. The Debtors maintained two computer applications for accessing and processing information from the Debtors' database relating to User Account activity, referred to as "SIG" and the "Back Office".[4]

31. SIG stands for Sistemas de Informacoes Gerenciais, which is Portuguese and translates roughly to "Information Management System." SIG tracked the activity for Participants by User Account, and the User Accounts are the only records available to the Trustee to confirm Participant activity.

32. The Trustee's access to SIG was the culmination of a painstaking data recovery and analysis project implemented by the Trustee and his team of professionals with the assistance of investigators from HIS and the SEC.

33. Following the Trustee's appointment and beginning in August 2014, HSI provided copies of electronic information contained in the Debtors' computers and servers to the

[4] The Back Office was the program used by Participants to obtain information on their User Account activity.

Trustee. Once all of the data from the Debtors' computers and servers were obtained, the Trustee and his team "virtualized" (i.e., created a computer environment replicating the original configuration) the system following a multi-step process, since the Federal Authorities were in possession of the original servers.

34. Extensive testing was performed to determine that the appropriate configurations of the data were achieved. Data from additional servers were later identified that were necessary to operate the network. Once the key components of the system were identified and operating, passwords were obtained through research into document productions received by the Trustee, communications with Federal Authorities, and a variety of investigative tools. Finally, an intensive analysis was performed to better understand the database structure, table relationships, data fields, and process flow.

35. The result was a working version of SIG, which enabled the Trustee and his professionals to conduct search queries and sort data. Because SIG was complicated, written in more than one language, and poorly maintained, and system documentation was unavailable, substantial additional hurdles remained to achieving an understanding of the system and extracting usable data.

36. The Debtors' database was developed by programmers in Brazil and all field references are in Portuguese. The developers apparently lacked the expertise to create and manage a system of this magnitude. As a result, system modifications appear to have been done in a haphazard and disorganized fashion. In addition, the Debtors' system is permeated with unreliable data because of limited efforts at data validation of information provided by Participants in establishing User Accounts.

37. Despite all of these obstacles, as a result of the forensic efforts identified above, the Trustee and his team have been able to reconstruct the Debtors' computer system in a virtual environment and obtain a working understanding of SIG and how it was used to track User Account activity.

38. Each time that a Participant purchased a membership plan or VoIP Package, an account was established with SIG (the "User Account").

39. Each User Account with the Debtors was registered with an electronic mail address (an "Email Address"). There are approximately 900,000 unique Email Addresses in SIG associated with approximately 11,000,000 Debtor User Accounts. The number of User Accounts associated with an Email Address varies widely. A particular Email Address may be associated with only a single User Account or may be associated with hundreds or thousands of User Accounts. Because each User Account may represent a separate Participant and some Participants entered the scheme using the Email Address of another Participant, the number of Participants is unknown but is likely in excess of 1,000,000.

40. After a User Account was established, SIG tracked the activity of the Participant in that User Account, including the accumulation of credits for bonuses and commissions "earned", the use or transfer of credits between User Accounts, and payments made to or from the Participant directly with the Debtors.

41. The Trustee and his team have taken a series of steps to confirm the accuracy and reliability of the transaction data reflected in SIG. The Trustee interviewed the Debtors' bookkeeper to understand the mechanics of SIG and how it was employed on a day to day basis. Testing was performed to reconcile balances and activity using available data, which is somewhat limited. This testing included cross-referencing data in related transactions and

conducting interviews with several Participants to confirm the accuracy of the SIG data as to their User Accounts. Based on the testing performed to date, SIG transaction data appears to have integrity and provides accurate information regarding membership plan sales, issuance of invoices, accumulation and use of credits, and amounts received from and disbursed to the User Accounts.

C. Relationship with Ympactus, and Segregation of Ympactus Information and Debtor Information

42. In February 2012, Ympactus reportedly commenced operations in Brazil to operate a scheme substantially identical to the scheme that is described above. Ympactus initially grew much more rapidly than the Debtors, with growth accelerating in the fall of 2012 through the early summer of 2013. By the spring of 2013, Ympactus had cash receipts of more than $100,000,000 per month. *See Darr Affidavit, Exhibit "A"*, at ¶51. On the other hand, the Debtors' cash receipts were initially much more modest. In the spring of 2013, the Debtors' cash receipts averaged approximately $6,400,000 per month. *See Darr Affidavit, Exhibit "A"*, at ¶51.

43. On June 28, 2013, the Public Prosecutor's Office of the State of Acre, Brazil filed claims against Ympactus, Carlos Wanzeler, Lyvia Mara Campista Wanzeler, and James Merrill, alleging that the VoIP Packages marketed in Brazil were violating consumer rights, since the MLMP constituted a Ponzi/pyramid scheme. The Brazilian authorities suspended the operations of Ympactus and froze its assets. Upon information and belief, the Brazilian authorities seized as much as $300,000,000 from Ympactus in connection with the shutdown, and civil and criminal proceedings are pending in Brazil.[5]

[5]The Trustee is exchanging information with Brazilian authorities and is trying to develop a common protocol for administering claims and pursuing recoveries in the respective cases of Ympactus and the Debtors.

44. Upon information and belief, on or about September 21, 2015, the Brazilian court entered a decision finding that Ympactus operated a pyramid scheme.

45. Following the shutdown of Ympactus, the Debtors' cash receipts increased dramatically. The Debtors' cash receipts totaled approximately $200,000,000 in the last three full months of operation, with more than $96,000,000 in cash receipts in February 2014 alone. *See Darr Affidavit, Exhibit "A"*, at ¶53.[6]

46. The SIG system maintained by the Debtors and Ympactus operated with a single database reflecting User Account activity for both operations. After reconstructing the computer network and developing a working understanding of SIG, one of the Trustee's first tasks was to determine how to segregate the Debtors' activity from that of Ympactus, since SIG did not clearly differentiate the User Accounts between Ympactus and the Debtors' Participants.

47. SIG includes more than 17,000,000 distinct User Accounts associated with approximately 2,000,000 Email Addresses for both the US-based and the Brazilian-based operations.

48. In creating a new User Account, each Participant was directed to identify whether such Participant would pay the initial invoices in Brazilian Reais ("Reais") or United States Dollars. Through a review of the currency field data, the Trustee determined the following:

a. Prior to the shutdown of Ympactus in June 2013, invoices in User Accounts with Brazilian contact information were denominated in Reais and invoices in User Accounts with non-Brazilian contact information were denominated in Dollars;

[6] Attached as Exhibit 1 to the Darr Affidavit is a summary of cash receipts of the Debtors, by month, for the two years of operation of the scheme.

b. Fewer than 700 Reais-denominated User Accounts were associated with non-Brazilian addresses. Similarly, fewer than 150 Dollar-denominated User Accounts were associated with Brazilian addresses; and

c. There was relatively little activity after the shutdown of Ympactus for Reais-denominated User Accounts that were created prior to the shutdown, and all cash activity for Reais-denominated accounts ceased shortly after the shutdown.

49. The Trustee believes that the Debtors' User Accounts can be separated from Ympactus' User Accounts by the currency designation in the data fields as described above.

50. Utilizing the currency designation, it appears that approximately 11,000,000 User Accounts are associated with the Debtors' operations and approximately 4,000,000 User Accounts are associated with Ympactus operations and the remaining 2,000,000 User Accounts had no activity.

II. FINDING OF EXISTENCE OF PONZI AND PYRAMID SCHEME

51. The Debtors conducted a Ponzi/pyramid scheme, not a legitimate MLMP.

52. Pyramid schemes and Ponzi schemes share many similar characteristics and typically involve unsuspecting participants who are duped into paying money to join the scheme by unscrupulous operators promising extraordinary returns. In contrast to a legitimate investment, however, these types of schemes can only provide the promised returns if the number of participants continues to increase exponentially, as the money from later participants is the sole or primary source available to make payments to existing participants. *Webster v. Omnitrition Int'l, Inc.*, 79 F.3d 776, 781 (9th Cir. 1996); *United States v. Gold Unlimited, Inc.*, 177 F.3d 472, 479 (6th Cir. 1999); *In re First Commercial Mgmt. Grp., Inc.*, 279 B.R. 230, 232

(Bankr. N.D. Ill. 2002); *Rieser v. Hayslip (In re Canyon Sys. Corp.)*, 343 B.R. 615, 630 (Bankr. S.D. Ohio 2006); *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 531 B.R. 439, 470 (Bankr. S.D.N.Y. 2015).

53. A Ponzi scheme is generally based upon a fraudulent investment opportunity. Typically, investors contribute funds to the organizer who promises a high return. Existing investors are paid their returns almost exclusively from the funds contributed by new investors and not from the legitimate profits of the business. *Bear, Stearns Secs. Corp. v. Gredd (In re Manhattan Inv. Fund Ltd.)*, 397 B.R. 1, 8 (S.D.N.Y. 2007); *Eberhard v. Marcu*, 530 F.3d 122, 132 n.7 (2d Cir. 2008); *accord In re Bernard L. Madoff Inv. Secs. LLC*, 654 F.3d 229, 232 (2d Cir. 2011), *cert. denied*, 133 S. Ct. 25 (2012); *see United States v. Moloney*, 287 F.3d 236, 242 (2d Cir. 2002) ("A Ponzi scheme by definition uses the purportedly legitimate but actually fraudulently obtained money to perpetuate the scheme, thus attracting both further investments and, in many cases, new investors to defraud."), *cert. denied*, 537 U.S. 951 (2002).

54. Some courts have discussed a four factor test to determine whether a Ponzi scheme exists: 1) deposits were made by investors; 2) the debtor conducted little or no legitimate business operations as represented to investors; 3) the purported business operation of the debtor produced little or no profits or earnings; and 4) the source of payments to investors was from cash infused by new investors. *Armstrong v. Collins*, 2010 WL 1141158, at *22 (S.D.N.Y. Mar. 24, 2010)(quoting *Forman v. Salzano (In re Norvergence, Inc.)*, 405 B.R. 709, 730 (Bankr. D.N.J. 2009)(quoting *In re Canyon Sys. Corp.*, 343 B.R. at 630); *accord Carney v. Lopez*, 933 F. Supp. 2d 365, 379 (D. Conn. 2013); *Wiand v. Waxenberg*, 611 F. Supp. 2d 1299, 1312 (M.D. Fla. 2009); *Kapila v. TD Bank, N.A. (In re Pearlman)*, 440 B.R. 900, 904 (Bankr. M.D. Fla. 2010); *Floyd v. Dunson (In re Ramirez Rodriguez)*, 209 B.R. 424, 431 (Bankr. S.D. Tex. 1997).

55. Other courts have identified badges that weigh in favor of finding a Ponzi scheme, including the absence of any legitimate business connected to the investment program, the unrealistic promises of low risk and high returns, commingling of investor money, the use of agents and brokers that are paid high commissions to perpetuate the scheme, misuse of investor funds, the "payment" of excessively large fees to the perpetrator and the use of false financial statements. *See In re Dreier LLP,* 2014 WL 47774, at p. 9 (Bankr. S.D.N.Y. 2014). These badges are, however, merely characteristics of many Ponzi schemes but a Ponzi scheme can exist without all of them. *Id.* At bottom, the label Ponzi scheme applies "to any sort of inherently fraudulent arrangement under which the debtor-transferor must utilize after-acquired investment funds to pay off previous investors in order to forestall disclosure of the fraud." *In re Manhattan Inv. Fund*, 397 B.R. at 12 (quoting *Bayou Superfund v. WAM Long/Short Fund II, L.P. (In re Bayou Group, LLC)*, 362 B.R. 624, 633 (Bankr. S.D.N.Y. 2007) ("Bayou I")); *see Armstrong*, 2010 WL 1141158 at * 23 ("[E]ven assuming Yagalla did not promise or represent high rates of return, this does not mean that he was not running a Ponzi scheme. 'Case law has revealed that a clever twist on the Ponzi concept will not remove a fraudulent scheme from the definition of Ponzi.'") (quoting *In re Norvergence*, 405 B.R. at 730).

56. A pyramid scheme is generally characterized by a participant's payment to an MLMP operator in return for which participants receive the right to sell a product and the right to receive rewards for recruiting other participants substantially unrelated to the sale of product to ultimate users. *Webster,* 79 F.3d at 781(*quoting In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106 (1975)).

57. A pyramid scheme is a type of Ponzi scheme in that, in both instances, the scheme can only be sustained by the continued influx of new investors/participants to fund amounts

needed to be paid to earlier investors/participants. A Ponzi scheme generally involves only a direct, linear relationship between the owner of the scheme and the investors. The pyramid scheme, however, has two additional elements: the ostensible right to sell a product, and the payment to participants for the recruitment of new participants, thereby creating the pyramid structure.

58. An MLMP is a direct sales strategy in which members are compensated not only for sales the members generates, but also for the sales generated by other members that they recruit. Whether an MLMP operates as a pyramid scheme is determined by how it functions in practice. *Whole Living*, 344 F. Supp. 2d at 745. A lawful MLMP is distinguishable from a pyramid scheme in that the primary purpose of the enterprise and its associated individuals is to sell or market an end-product to end-consumers, and not to reward associated individuals for the recruitment of more participants. *Federal Trade Commission v. SkyBiz.com, Inc.*, 2001 WL 1673645, at *28 (N.D. Okla. Aug. 31, 2001).

59. The Debtors' compensation scheme had elements of both a Ponzi and pyramid scheme.

60. Participants who purchased an Ad Central or Ad Central Family Plan received the right to generate commissions for the sale of certain VoIP Packages but also were able to receive exceedingly high returns on their investments merely by placing meaningless, pre-drafted advertisements on selected websites without the requirement of selling any product. This guaranteed return on initial investment is a hallmark of a Ponzi scheme.

61. Participants who purchased the AdCentral Plan became entitled to receive a VoIP Package each week by placing one internet advertisement per day. These VoIP Packages could be, and routinely were, converted into credits with TelexFree for $20 weekly for 52 weeks, for a

207% return on the initial investment of $339. Participants who purchased the more expensive AdCentral Family Plan for $1,425 were entitled to receive five additional VoIP Packages each week by placing five internet advertisements per day. These VoIP Packages could be, and routinely were, converted into credits with TelexFree for $100 weekly for 52 weeks, for a return of 265% on the initial investment.

62. The repetitive posting of internet advertisements (which were reportedly supplied by the Debtors) served no legitimate purpose, because anyone who used "telexfree" as an internet search term would be led to the Debtors' own website; the repetitive posting of similar advertisements had no discernable value. For example, one website, Adpost.com, contained more than 33,000 postings submitted by Participants for TelexFree, while another, ClassifiedsGiant.com, contained more than 25,000 postings

63. The credits issued to Participants for placing advertisements were not reasonable compensation for performance of legitimate services. Participants did not draft the advertisements or perform any design services for their configuration, and the placing of the ads could be, and often was, outsourced to third parties for a nominal fee. The requirement of posting advertisements to receive weekly payments was intended to obfuscate the true nature of the scheme – that the credits were a disguised, "guaranteed" return on the Participant's initial investment.

64. The guarantee of an astronomical return on the initial investment without the requirement to sell any product created perverse incentives for Participants. Participants opened multiple User Accounts for the sole purpose of leveraging their fictitious profits, without the need to sell any product or recruit any individuals. Some Participants appear to have invested a substantial portion of their life savings into the scheme seeking to quickly triple or quadruple

their investment. Participants opened hundreds of User Accounts, ultimately resulting in an exponential rise in the number of User Accounts.

65. Participants who opened multiple User Accounts on their own behalf could generate credits by essentially recruiting themselves. Participants could receive (1) $20 worth of credits for recruitment of an AdCentral Plan member and $100 in credits for recruitment of an AdCentral Family Plan member, and (2) $20 in credits for each membership plan in one's downline, up to a maximum of $440 in credits, so long as that Participant recruited two new User Accounts in his/her downline by either opening User Accounts in his/her own name or by recruiting new Participants.

66. While there were certain provisions of the Debtors' MLMP that ostensibly required the sale of VoIP Packages as a requirement for receiving credits with TelexFree, the credits that could be generated for those activities were relatively insignificant and the requirements were easily circumvented by Participants.[7]

67. The Debtors had $360,000,000 in actual cash sales during the two year operation of the scheme. Of this amount, approximately $353,000,000 was from the sale of membership plans and $6,600,000 was from the sale of VoIP Packages. Even more remarkably, seventy-seven percent (77%) of these sales occurred in the six weeks before the filing in a belated attempt by the Debtors to fix their fatally flawed plan by ostensibly requiring the sale of VoIP Packages to receive bonuses and commissions in the future.

68. By and large, the few VoIP Packages that were sold were not used. Of the $6,600,000 in VoIP Package cash sales, less than one percent (1%) of available minutes

[7] While certain commissions required activation of VoIP Packages in a Participant's downline, this requirement was circumvented by the purchase of VoIP Packages with accumulated credits. Credits were also issued for the sale of standalone VoIP Packages but, as discussed above, VoIP Packages were rarely sold to third parties.

contained in these packages were actually utilized, further demonstrating that the Debtors were not operating a bona fide MLMP and the VoIP Packages were not a legitimate product.[8]

69. A pyramid scheme exists where payments to participants are based upon recruitment of additional participants, largely or wholly unrelated to product sales. *See Webster*, 79 F.3d at 782 (MLMP which is based principally on recruitment of new participants, as opposed to sale of the end product or service, and where product sales are an insignificant portion of the enterprise's total revenues, constitutes a pyramid scheme); *Gold Unlimited, Inc.*, 177 F.3d at 481 (company grossed $552,620 from sales of products yet took in $43,000,000); *Stull v. YTB Int'l, Inc.*, 2011 WL 4476419, at *5 (S.D. Ill. Sept. 26, 2011) (approximately 73% of cash receipts were from membership fees and not from the sales of product); *Federal Trade Commission v. Burnlounge, Inc.*, 753 F.3d 878, 888 (9th Cir. 2014)(existence of negligible amount of sales unrelated to commission opportunity does not negate evidence that commissions were the primary draw of the scheme); *In re Holiday Magic, Inc.*, 84 F.T.C. 748, 1028-30 (1974)(pyramid scheme existed where rewards were paid to participants when they recruited others, and recruits also had to purchase product).

70. The total reliance on the sale of membership plans, as opposed to the sale of a legitimate product, made the collapse of the Debtors' scheme inevitable, which is perhaps the chief hallmark of a Ponzi/pyramid scheme. *Webster*, 79 F.3d at 781; *United States v. Grasso*, 173 F. Supp. 2d 353, 357 (E.D. Pa. 2001)(all Ponzi and pyramid schemes are destined to collapse

[8] This estimate is based upon joint usage of the Debtors' and Ympactus' VoIP service for the period July 2012 through June 2013 as well as usage of only the Debtors' VoIP service from July 2013 to April 2014. Ernst & Young ("E&Y"), the consultants retained by the court in the Brazilian action, made similar findings as to use of the VoIP Packages. As part of its 220 page report issued in February 2015, E&Y also found that for the period July 2012 to June 2013, less than one percent of total VoIP Package minutes sold were actually used.

because of saturation which is the point at which investments by later participants are inadequate to sustain the scheme).

71. A calculation of the Debtors' twelve month trailing liability, that is, the amount that would be owed to Participants in the following year on account of the guaranteed return, further evidences the unsustainability of the scheme. This liability grew exponentially in the year prior to the Petition Date, eventually rising to more than $5,000,000,000 as of the Petition Date. Attached as Exhibit 2 to the *Darr Affidavit* is a computation of the 12 month trailing liability as of the Petition Date. This trailing liability more than tripled in the five (5) months leading up to the Chapter 11 filings, far outpacing any cash generated from the sale of VoIP Packages.[9] The $5,000,000,000 trailing liability is more than seven hundred times the $6,600,000 in cash receipts from the sale of VoIP Packages since inception of the Debtors' MLMP. The sale of additional membership plans only deepened the insufficiency.[10] The unsustainability of the Debtors' MLMP is another hallmark of a Ponzi and pyramid scheme. *See Kerrigan v. ViSalus, Inc.*, 2015 WL 3679266, at *8 (E.D. Mich. June 12, 2015); *Webster*, 79 F.3d at 782; *People v. Sweeney*, 228 Cal. App. 4th 142, 152 (Oct. 15, 2014); *see also Wiand v. Lee*, 753 F.3d 1194, 1201 (11th Cir. 2014)(fact that compensation under an MLMP is almost completely dependent upon membership fees paid by new participants, and not from product sales, is a hallmark of a Ponzi/pyramid scheme).

[9] While one provision of one version of the Participant contracts ostensibly did not require the Debtors to redeem VoIP Packages issued to Participants, this contractual provision is completely undermined by the unequivocal statements in marketing materials and the Debtors' actual practice of paying the guaranteed return on investment without the need to sell any product.

[10] In its report, E&Y similarly found that the TelexFree MLMP was unsustainable. E&Y prepared income and loss projections for TelexFree over a thirty-six (36) month period using various assumptions. The projections reflect that under each set of assumptions, the projected payouts exceed projected revenue from the sale of product, in many instances by $4,000,000,000 to $5,000,000,000 over the 36 month term.

III. BECAUSE THE DEBTORS OPERATED A PONZI/PYRAMID SCHEME, CLAIMS FOR ACCUMULATED CREDITS SHOULD BE DISALLOWED.

72. The accumulated credits held by Participants in their User Accounts as of the Petition Date should not form the basis of allowed claims in these cases.

73. Claims based on the accumulated credits should be disallowed because, in a Ponzi/pyramid scheme, investors who had no knowledge that the scheme was fraudulent are generally entitled to a claim only for the net amounts invested in the scheme and not for fictitious profits.[11] *See In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d at 242; *Donell v. Kowell*, 533 F.3d 762, 772 (9th Cir. 2008); *SIPC v. BLMIS*, 499 B.R. 416, 424-29 (S.D.N.Y. 2013); c*ompare In re Churchill Mortgage Inv. Corp.*, 256 B.R. 664, 682 (Bankr. S.D.N.Y. 2000); *In re First Commercial Mgmt Grp.*, 279 B.R. at 232; *with Bayou I* at 637-38; *In re Randy*, 189 B.R. 425, 441 (Bankr. N.D. Ill. 1995); *In re Int'l Loan Network, Inc.*, 160 B.R. 1, 12 (Bankr. D.D.C. 1993); *see also Janvey v. Golf Channel, Inc.* 780 F.3d 641 (5th Cir. 2015) (vacated and certified to the Supreme Court of Texas on this issue, *Janvey v. Golf Channel, Inc.*, 792 F.3d 539 (5th Cir. 2015), *certified question accepted* (July 17, 2015)); *Janvey v. Alguire*, 2013 WL 2451738 at *9 (N.D. Tex. 2013); *SEC v. Bernard L. Madoff Investment Securities, LLC (In re Madoff)*, 522 B.R. 41, 47 (Bankr. S.D.N.Y. 2014) ("*BLMIS II*"); *In re Taubman*, 160 B.R. 964, 980 (Bankr. S.D. Ohio 1993); *In re Bayou Grp., LLC*, 439 B.R. 284, 309 (S.D.N.Y. 2010) ("*Bayou II*").

74. Innocent investors have claims against Ponzi/pyramid schemes based in tort under the theories of rescission and restitution for the amounts they were fraudulently induced to invest. *Scholes v. Lehmann*, 56 F.3d 750, 757 (7th Cir. 1995); *Bayou II* at 309; *see also In re Int'l Mgmt. Assoc., LLC, et al.*, 2009 WL 6506657 at *9 (Bankr. N.D. Ga., Dec. 1, 2009). These

[11] This motion seeks a determination that accumulated credits as of the Petition Date should not be considered in calculating allowed claims. Aside from the disallowance of credits, the transactions that should be included in the calculation of Participants' allowed claims in these cases will be subject to separate determination of the Court.

tort claims should be reduced by amounts the Participants received from the scheme. *See In re M & L Bus. Mach. Co.*, 84 F.3d 1330, 1341 (10th Cir. 1996); *In re United Energy Corp.*, 944 F.2d 589, 595 (9th Cir. 1991); *In re Bernard L. Madoff Inv. Sec. LLC*, 424 B.R. 122 (Bankr. S.D.N.Y. 2010).

75. Innocent investors in a Ponzi/pyramid scheme should not have a claim for interest or profits beyond their initial investment because such claims are based on the fictitious profits of the scheme. *BLMIS I* at 427-29; *BLMIS II* at 47; *Scholes* 56 F.3d at 757.

76. The accumulated credits based on the posting of meaningless advertisements are equivalent to the fictitious profits promised in Ponzi schemes. The Participants were guaranteed an astronomical return by merely purchasing a membership plan and posting internet advertisements reportedly supplied by the Debtors. Participants were not required to sell a product to receive payment. Accordingly, claims based on the accumulated credits for the posting of advertisements should be disallowed. *See BLMIS I* at 427-29; *BLMIS II* at 47; *Scholes* 56 F.3d at 757; *M & L Bus. Mach. Co.*, 84 F.3d at 1341.

77. The accumulated credits based on the recruitment of later Participants should also be disallowed because the recruitment activity only contributed to and perpetuated the Debtors' scheme and provided no value to the Debtors' estates. 11 U.S.C. § 502(b)(1); *See In re Vaughan Co. Realtors*, 500 B.R. 778, 794 (Bankr. D.N.M. 2013); *Warfield v. Byron*, 436 F.3d 551, 560 (5th Cir. 2006); *In re Taubman*, 160 B.R. at 980; *Janvey*, 2013 WL 2451738 at *9; *Randy*, 189 B.R. at 441; *In re Independent Clearing House Co.*, 77 B.R. 843, 857 (Bankr. D. Utah 1987).

78. While value arguably may be provided by an innocent third party providing legitimate services to a Ponzi/pyramid operator for a reasonable fee, such is not the case here. Rather, credits that were issued to Participants for recruiting others into the scheme only

perpetuated it and deepened the pool of defrauded investors. *Compare In re Churchill Mortgage Inv. Corp.*, 256 B.R. at 682; *First Commercial Mgmt Grp.*, 279 B.R. at 232; *with Bayou I* at 637-38; *Randy*, 189 B.R. at 438-39; *In re Int'l Loan Network, Inc.*, 160 B.R. at 12; *see also* Janvey, 780 F.3d at 641.

79. Because the Debtors received no value for the accumulated credits, claims based on such credits should be disallowed. *See 11 U.S.C. §502(b)(1); Independent Clearing House*, 77 B.R. at 857; *Warfield*, 436 F.3d at 560; *Johnson v. Home State Bank*, 501 U.S. 78, 86, 11 S.Ct. 2150, 2155 (1991); *In re Muller*, 479 B.R. 508, 515 (Bankr. W.D. Ark. 2012).

80. Claims based on the accumulated credits should also be disallowed on equitable grounds, which are applicable in resolving claims allowance and distribution issues in Ponzi and pyramid scheme cases. *See Cunningham v. Brown*. 265 U.S. 1(1924); *Abrams v. Eby (In re Young)*, 294 F. 1, 4 (4th Cir. 1923); *In re Taubman*, 160 B.R. at 980; *Int'l Loan Network*, 160 B.R. at 14; *BLMIS II* at 47.

81. Equity requires the disallowance of claims for accumulated credits because these credits could only be satisfied from amounts paid by later Participants and not from earnings of the enterprise or from the sale of product. *See In re Taubman*, 160 B.R. at 980; *BLMIS I* at 427-29.

82. In reality, there are no profits to be paid out of such a scheme. *In re Young*, 294 F. at 4. As one court put it, "if a person invests money with the understanding that he will share in the profits produced by his investment, and it turns out that there are no profits, it is difficult to see how that person can make a claim to receive any more than the return of his principal investment." *Lustig v. Weisz & Assoc., Inc.*, 2002 WL 32500567 at *8 (June 21, 2002 W.D.N.Y.).

83. When a Ponzi or pyramid scheme collapses, insufficient funds remain to make distributions to later investors equal to the principal amounts they invested, such that recognition of claims for false profits would be inequitable to investors who have not and will not recover their principal investment. *In re Taubman*, 160 B.R. at 980.

84. Recognizing claims based on the accumulated credits would result in favoring Participants who were involved early in the scheme over those that invested later, since the earlier Participants had more time to accumulate the credits. *See In re Young*, 294 F. at 4 (recognizing that allowing a claim for both false profits and the original investment would not be equitable as profits had come at the expense of innocent investors). The Court should therefore disallow the claims based on the accumulated credits under its equitable powers. *Id.*; *see also Official Cattle Contract Holders Comm. v. Commons (In re Tedlock Cattle Co.)*, 552 F.2d 1351, 1353 (9th Cir. 1977).

85. Accordingly, any claim or portion of claim of Participants based upon the accumulated credits in Participants' User Accounts as of the Petition Date should be disallowed.

IV. COMPUTATION OF NET ALLOWED CLAIM OF PARTICIPANTS

86. In resolving claims and distribution issues in Ponzi and pyramid scheme cases, equitable considerations need to be taken into account to properly address the harms suffered by participants in the scheme. *See Cunningham*, 265 U.S. at 13 (all investors in a Ponzi scheme must be treated equally and that "equality is equity and this is the spirit of the bankrupt law"); *In re Young*, 294 F. at 4; *In re Taubman*, 160 B.R. at 980; *Int'l Loan Network*, 160 B.R. at 14; *BLMIS II* at 47. In order to fashion an equitable result, claims in such cases are determined based upon a "Net Equity" analysis, that is, the allowed claim is equal to amounts that a participant paid into the scheme, reduced by amounts a participant received from the scheme.

See, e.g., CFTC v. Topworth Int'l Ltd., 205 F.3d 1107, 1115-16 (9th Cir. 2000); *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d at 242; *Donell*, 533 F.3d at 772; *In re Tedlock Cattle Co.*, 552 F.2d at 1353; *In re Young*, 294 F. at 4; *BLMIS I* at 427-29; *Janvey*, 2013 WL 2451738 at *9; *Bayou II at* 309; *BLMIS II* at 47; *In re Old Naples Sec., Inc*., 311 B.R. 607, 616-17 (M.D. Fla. 2002). The transfers between a Participant and the Debtors must therefore comprise one component of the Net Equity determination.

87. The Debtor's scheme has elements of both a Ponzi scheme and a pyramid scheme. It is a Ponzi scheme in that Participants were guaranteed an exorbitant return on their initial investment, without the need to sell any product, which was funded from the fees paid by later Participants (since the Debtors had no legitimate business operations or earnings). *See e.g. In re Manhattan Investment Fund Ltd*., 397 B.R. at 8; *Eberhard* 530 F.3d at 132 n.7; *accord In re Bernard L. Madoff Inv. Secs. LLC*, 654 F.3d at 232. It is a pyramid scheme in that Participants had the right to receive commissions for recruiting Participants and to retain membership fees paid by those Participants. *See e.g. Whole Living*, 344 F. Supp. at 745. The Debtors created an artificial currency in the form of the VoIP Packages and credits. The principal vehicle for monetizing those credits was through the recruitment of Participants and the implementation of Triangular Transactions. Accordingly, the Triangular Transactions need to be taken into account in determining Net Equity.

88. In determining Net Equity, the recruited Participant should have a claim recognized in the bankruptcy cases for the amounts advanced to a recruiting Participant in a Triangular Transaction. Recognition of this claim is necessary to achieve an equitable result. A substantial number of those who joined the Debtors' scheme did so through participation in Triangular Transactions. The claims of these Participants should be treated the same as the

claims of Participants who paid their membership fees to the Debtors. Those later Participants who invested in the Debtors through Triangular Transactions were often at the bottom of the pyramid and were the least likely to know of the suspect nature of the Debtors' scheme. Equitable considerations require recognition of those claims to achieve a just result. *Cunningham*, 265 U.S. at 13.

89. Recognition of the claim of the later Participant in a Triangular Transaction necessitates that the claim of the earlier Participant be reduced for amounts paid to him/her by the later Participant. Otherwise, the Triangular Transaction would result in an increase in aggregate claims against the Debtors' estates even though the membership fees were retained by the recruiting Participant. If the recruiting Participant's claim is not so reduced, the calculation of the recruiting Participant's Net Equity will be overstated, thereby diminishing the recovery for other Participants. This obviously results in an inequitable outcome, perverts the distribution process, and disregards the mechanics of the scheme.

90. Recognizing the Triangular Transactions in the calculation of Net Equity of a Participant who used accumulated credits to purchase new membership plans for himself/herself through multiple User Accounts achieves a fair result as well. No cash was exchanged through these intra-Participant transactions, and there should be no claim in the bankruptcy estate on account of them. The Participant's claim for the purchase of a membership plan in one User Account will be offset by the reduced claim in the other User Account.

91. Recognizing the claim of later Participants and reducing the claim of earlier Participants reflects the economic realities of the Triangular Transactions. The substance of a transaction should prevail over its form when determining how the transaction relates to the rights of parties in a bankruptcy case. *See, e.g., In re PCH Assocs*., 949 F.2d 585, 597 (2d Cir.

1991) (*citing Pepper v. Litton*, 308 U.S. 295, 304 (1939)); *In re Adelphia Communications Corp.*, 512 B.R. 447 (Bankr. S.D.N.Y. 2014)(series of transactions may be treated as single transaction when it appears that, despite formal structure erected and labels attached, the segments comprise a single integrated scheme when considering knowledge and intent of parties involved in transaction).

92. The collapsing of transactions into an integrated transaction has been employed in varying contexts. In the case of leveraged buyouts, payments made by an acquirer to selling shareholders are considered to be transfers of estate property even though the funds were not paid directly by the debtors. *See, e.g, In re Chas P. Young Company*, 145 B.R. 131 (Bankr. S.D.N.Y. 1992); *In re OODC, LLC*, 321 B.R. 128 (Bankr. D. Del. 2005); *United States v. Tabor Court*, 803 F.2d 1288 (3rd Cir. 1986) (*cert. den. McClellan Realty Co. v. United States*, 483 U.S. 1005, 107 S. Ct. 3229 (1987)); *Wieboldt Stores v. Schottenstein*, 94 B.R. 488 (N.D. Ill. 1988); *In re O'Day Corporation*, 126 B.R. 370 (Bankr. D. Mass. 1991); *In re Jevic Holding Corp.*, 2011 WL 4345204 (Bankr. D. Del. 2011). Similarly, payments made by a purchaser of a debtor's assets to certain of the debtor's creditors are considered to have been made from property of the estate when the payment would have otherwise been part of the purchase price for the assets. *See, e.g., Warsco v. Preferred Technical Group*, 258 F.3d 557, 568-69 (7th Cir. 2001); *In re Food Catering & Housing, Inc.*, 971 F.2d 396 (9th Cir. 1992). The same rationale applies for collapsing the components of the Triangular Transaction to reflect the economic realities of the Debtors' scheme.

93. Collapsing the Triangular Transactions into one justifies the inclusion of the Triangular Transactions in the determination of Net Equity because the membership fees exchanged between Participants constituted property of the estate. The definition of property of

the bankruptcy estate is broad, encompassing all legal or equitable interests of the Debtors in property as of the commencement of the case. *See 11 U.S.C. §541; United States v. Whiting Pools Inc.*, 462 U.S. 198, 205 n. 9 (1983); H.R. Rep. No. 95-595 p. 367 (1977); S. Rep. No. 95-989, P. 82 (1978), U.S. Code Cong. & Admin. News 1978, pp. 5869, 6323. In the Triangular Transaction, the later Participant effectively paid the membership fee to the Debtors and the Debtors became liable to the later Participant for the guaranteed return. For the reasons set forth, the later Participant should have a claim in the bankruptcy cases for the amount of the membership fee. The Debtors, in turn, effectively paid the membership fee to the recruiting Participant in exchange for the redemption of credits. This payment by the Debtors to the recruiting Participant requires the reduction of the recruiting Participant's claim. To the extent recruiting Participants received more from the scheme than they invested, the Bankruptcy Code's avoidance actions provide the method to ensure equality of distribution among Participants.

94. Based upon the foregoing, the Net Equity claim of Participants should be determined as follows: the amount invested by the Participant into the Debtors' scheme, including amounts paid by the Participant pursuant to the Triangular Transactions, less amounts received by the Participant from the Debtors' scheme, including amounts received by the Participant pursuant to the Triangular Transactions.

95. The Net Equity determination will be made on a User Account basis. Many Participants appear to have maintained multiple User Accounts. In these circumstances, determination of the Net Equity for a Participant will require an aggregation of the transactions for such Participant in all of his/her User Accounts to ensure that all activity associated with that Participant has been accounted for.

V. THE DEBTORS ARE JOINTLY LIABLE FOR PARTICIPANT CLAIMS

96. The Debtors worked in concert with one another to develop, market, and operate their Ponzi and pyramid scheme. The Debtors had common ownership and each was controlled by Wanzeler and Merrill, as well as Carlos Costa at least through his alleged separation from the Debtors in the fall of 2013.

97. Each of the Debtors was intimately involved in the scheme. Common Cents Communications, Inc., which was owned and controlled by Wanzeler, Merrill, and Steven Labriola, changed its name to TelexFree, Inc. in early 2012 in conjunction with the marketing and selling of VoIP Packages through the Debtors' MLMP. Shortly thereafter, in July 2012, TelexFree, LLC was formed, to conduct TelexFree's operations outside of Massachusetts.

98. TelexFree, Inc. and TelexFree, LLC worked collaboratively in furtherance of the scheme throughout 2012 and 2013, including joint marketing efforts, promotional materials, and Participant recruitment events. TelexFree, Inc. and TelexFree, LLC alternated responsibility for maintaining bank accounts, because on multiple occasions TelexFree was asked to close accounts with banks because of suspicious account activity.

99. The concerted actions of the Debtors in developing, marketing, and operating the Ponzi and pyramid scheme renders them jointly and severally liable for the claims of Participants. *See Aetna Cas. Sur. Co. v. P&B Autobody*, 43 F.3d 1546, 1564 (1st Cir. 1994)(joint tortfeasors can be vicariously liable for the acts of one another if there exists concerted action to commit the torts; liability requires first, "a common design or an agreement between two or more persons to do a wrongful act and, second, proof of some tortious act in furtherance of the agreement." *Id.; Restatement (Second) of Torts §876 cmt. b (1977).*

100. After the seizure and shutdown of Ympactus by the Brazilian authorities, TelexFree, LLC and TelexFree, Inc. saw a substantial increase in activity, which further exacerbated difficulties with banking facilities needed to conduct the TelexFree scheme. TelexFree Financial, Inc. was formed in Florida in December 2013 and opened bank accounts and paid expenses of TelexFree, Inc. and TelexFree, LLC. In late 2013, TelexFree, Inc. and TelexFree, LLC transferred more than $4,000,000 to an account at TelexFree Financial. TelexFree Financial deposited an additional $10,000,000 in membership fees and VoIP Package sales in February 2014. The only Debtor with employees was TelexFree, Inc. and these employees were being paid by TelexFree Financial.

101. TelexFree Financial rendered substantial assistance to TelexFree, LLC and TelexFree, Inc. in furtherance of the Ponzi and pyramid scheme and is therefore also jointly liable to Participants as a joint tortfeasor. *See Kurker v. Hill*, 44 Mass. App. Ct. 184, 189 (Mass. App. 1998)(joint tortfeasor liability, also referred to as civil conspiracy, arises when a party knows that the "conduct [of another person] constitutes a breach of duty and gives substantial assistance or encouragement to the other to so conduct himself." TelexFree Financial, being under common ownership with TelexFree, LLC and TelexFree, Inc. had full knowledge of the actions being perpetrated by the other Debtors. *Kurker*, 44 Mass. App. Ct. at 189*; Kyte v. Philip Morris Inc.*, 408 Mass. 162 (1990); *Stock v. Fife*, 13 Mass. App. Ct. 75, 82 (Mass. App. 1982)(key to joint tortfeasor liability is the rendering of substantial assistance, with the knowledge that such assistance is contributing to a common tortious plan.)

102. The Debtors had a common design or agreement to commit a wrongful act, which was the establishment and implementation of the Ponzi and pyramid scheme. Because the

Debtors engaged in a common enterprise to further their tortious plan, the Debtors are jointly and severally liable for the allowed claims of Participants.

103. Inasmuch as the Debtors are jointly and severally liable for the claims of Participants, the Bar Date Motion proposes that Participants submit only one Participant ePOC, which shall constitute a claim against all three of the Debtors' estates. The Bar Date Motion does propose that non-Participants file a separate Standard ePOC for each Debtor against whom a claim is asserted.

104. A finding of joint and several liability for the claims of Participants does not effect a substantive consolidation of the Debtors' estates. Grounds may exist for the Trustee to seek substantive consolidation of the Debtors' estates and the Trustee reserves the right to seek same. In the event of substantive consolidation, Participants having submitted a Participant ePOC will have a single claim against the consolidated estate.

V. NOTICE

105. The Trustee has filed simultaneously herewith the Notice Motion to prescribe the form and manner for providing notice of the Ponzi Motion to interested parties.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order:

(i) Finding that the Debtors operated a Ponzi and pyramid scheme;

(ii) Ordering that any claim or portion of claim of Participants based upon accumulated credits in Participants' User Accounts as of the Petition Date shall be disallowed, and that claims should be determined on a "Net Equity" basis as described herein;

(iii) Ordering that the Debtors shall be jointly and severally liable for the claims of Participants;

(iv) Ordering that the findings made pursuant to this Motion shall be applicable throughout these proceedings, for all purposes; and

(v) Granting such other and further relief as this Court finds just and proper.

STEPHEN B. DARR,
CHAPTER 11 TRUSTEE,

By his attorneys,

/s/ Andrew G. Lizotte

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Dated: October 7, 2015
696114

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In Re:	)	
	)	**Chapter 11**
TELEXFREE, LLC ,	)	**Case No. 14-40987-MSH**
TELEXFREE, INC.,	)	**Case No. 14-40988-MSH**
TELEXFREE FINANCIAL, INC.,	)	**Case No. 14-40989-MSH**
Debtors.	)	**Jointly Administered**

AFFIDAVIT OF STEPHEN B. DARR IN SUPPORT OF MOTION BY CHAPTER 11 TRUSTEE FOR ENTRY OF ORDER FINDING THAT DEBTORS ENGAGED IN PONZI AND PYRAMID SCHEME AND RELATED RELIEF

I, Stephen B. Darr, hereby submit the following affidavit in support of the *Motion by Chapter 11 Trustee for Entry of Order Finding that Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief* (the "Ponzi Motion").

Introduction

1. I am the duly appointed Chapter 11 trustee (the "Trustee") in these cases, having been appointed by order of the Court dated June 6, 2014.

2. I am a Managing Director with the Business Advisory Practice of Huron Consulting Group. I have more than 35 years of experience providing accounting, auditing and financial consulting services to business organizations many of which are experiencing significant financial and operating difficulties. I am a Certified Public Accountant in Massachusetts and New Hampshire, a Certified Insolvency and Restructuring Advisor and hold certifications in both Financial Forensics and Distressed Business Valuation, as well as other professional qualifications.

3. The statements provided herein are based upon information and knowledge I have derived through my involvement in these Chapter 11 cases, as further set forth herein.

4. During the course of my investigative duties in these cases, my colleagues and I have examined the Debtors' books and records that were seized from the Debtors by federal authorities, electronic copies of which were provided to me, as well as documents produced by third parties in response to numerous motions for Federal Rule of Bankruptcy Procedure 2004 examinations. I and my professionals have conducted interviews of the Debtors' former employees and consultants, as well as professionals retained by the Debtors during the Chapter 11 cases. I have also reviewed the docket in these cases.

I. CASE BACKGROUND AND PROCEDURAL POSTURE

5. On April 13, 2014 (the "Petition Date"), each of TelexFree, Inc., TelexFree, LLC, and TelexFree Financial, Inc. (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code") with the United States Bankruptcy Court for the District of Nevada ("the Nevada Bankruptcy Court").

6. The Debtors initially operated as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

7. On the Petition Date, the Debtors filed a motion for joint administration of the cases, with TelexFree, LLC designated as the lead case. By order dated April 24, 2014, the order for joint administration was approved.

8. Prior to the filings, the Commonwealth of Massachusetts, Office of Secretary of State, Securities Division ("MSD") commenced an investigation into the Debtors' business practices.

9. On or about April 15, 2014, the MSD commenced an administrative proceeding against the Debtors. Also on April 15, 2014, the Securities and Exchange Commission ("SEC") commenced an action against the Debtors and others in the United States District Court for the District of Massachusetts. The foregoing actions alleged, among other things, that the Debtors were engaged in an illegal Ponzi/pyramid scheme and the fraudulent and unregistered offering of securities. Substantially contemporaneously with the commencement of the SEC action, Homeland Securities Investigation ("HSI") seized the Debtors' assets, books, and records. In connection therewith, the federal government seized more than $107,000,000 in cash, including checks payable to the Debtors, their principals, or their affiliates. Federal authorities have also made forfeiture claims against approximately forty (40) other items of real and personal property standing in the name of the Debtors' principals and their affiliates, including automobiles, real properties, and notes secured by mortgages on real properties.

10. On or about April 22, 2014, the Office of the United States Trustee filed a motion for the appointment of a Chapter 11 Trustee based upon the allegations of illegal activity.

11. On April 23, 2014, the SEC filed a motion to transfer venue of the cases to the United States Bankruptcy Court for the District of Massachusetts (the "Court"). By order dated May 6, 2014, the motion to change venue was approved. The cases were transferred to the Court on May 9, 2014.

12. On May 30, 2014, this Court allowed the United States Trustee's motion to appoint a Chapter 11 trustee, and I was appointed on June 6, 2014.

13. The Debtors filed only a list of the alleged thirty (30) largest creditors in the cases and did not file schedules or statements of financial affairs, nor a matrix of creditors.

14. On February 27, 2015, I filed schedules of assets and liabilities and statements of financial affairs for each of the Debtors, using information obtained from documents produced pursuant to Rule 2004 examinations and Debtor records provided by the Federal Authorities (as defined below).

15. Carlos Wanzeler and James Merrill were the Debtors' principals along with Carlos Costa, at least through his alleged separation with the Debtors in the fall of 2013. Shortly after the Trustee was appointed, the United States Department of Justice ("DOJ" and, together with the SEC and HSI, the "Federal Authorities") indicted Wanzeler and Merrill based upon their involvement in the Debtors' scheme. Wanzeler has fled the country and, upon information and belief, is in Brazil. Merrill was initially detained and has been released pending trial.

16. On February 3, 2015, I submitted a comprehensive Status Report on outstanding matters in the cases. The Status Report set forth, among other things, the background of the Debtors and their affiliates, the breadth and scope of the scheme, assets recovered to date and potential additional sources of recovery, as well as efforts at coordination with governmental authorities, both in the United States and in Brazil.

17. Prior to my appointment, the Federal Authorities shut down, disconnected, and seized the Debtors' computer system, which consisted of forty-six (46) computers and servers containing more than twenty (20) terabytes of data. Accordingly, at the time of my appointment, I did not have access to any of the Debtors' records. Neither of the Debtors' principals has been available because Wanzeler fled the country and Merrill had been indicted and detained. I have had only had limited access to the Debtors' former employees.

18. Initially without access to the Debtors' books and records, I have utilized a variety of resources to acquire information regarding the Debtors' activities and the mechanics of their scheme.

19. I directed counsel to file motions for authority to obtain documents from, and conduct examinations of, twenty-nine (29) separate entities pursuant to Federal Rule of Bankruptcy Procedure 2004 (the "2004 Motions").[1] The deponents of the 2004 Motions included prepetition and postpetition professionals retained by the Debtors, financial institutions who had prepetition and/or postpetition relationships with the Debtors, multiple firms who provided payment processing services to facilitate payments between the Debtors and Participants, and firms who provided consulting services to the Debtors or who otherwise were believed to have had business relationships with the Debtors.

20. I have also conducted or supervised informal interviews of certain former employees and consultants of the Debtors as well as several Participants.

A. Mechanics of Scheme and Methods of Compensation

21. The Debtors purported to be in the business of selling a voice over internet service, or "VoIP" that cost $49.90 per month to conduct international phone calls. The sale of VoIP on a monthly basis is hereinafter referred to as a "VoIP Package". Customers who purchased the VoIP Package registered their phone numbers with the Debtors and received software that enabled their computers to place phone calls through the Debtors' computer servers in Marlborough, Massachusetts to approximately 40 countries.

22. The Debtors ostensibly used a multi-level marketing plan, or "MLMP", to sell the VoIP Packages.

[1] To date, I have deferred conducting depositions of the 2004 Motion deponents, as the focus has been on retrieving and examining documents and conducting informal interviews.

23. Until they purported to change their MLMP in March 2014, the Debtors provided Participants with two options to become members and to thereby open User Accounts:

a. "AdCentral Plan": $339 for a one-year contract ($50 membership fee plus $289 contract fee). This contract entitled the User Account holder with the right to sell ten VoIP Packages, as to which a Participant could receive a commission if the packages were sold, although there was no sale requirement. Participants were required to place one internet ad per day and, for each week in which the Participant placed the required ads, he/she was entitled to one additional VoIP Package, which could be sold or exchanged for $20 in credits with the Debtors. Thus, Participants who posted the required ads were eligible to receive $20 per week for 52 weeks, for a total return of $1,040 (a return of 207% on the investment of $339).

b. "AdCentral Family Plan": $1,425 for a one-year contract ($50 membership fee plus $1,375 contract fee). This contract entitled the User Account holder with the right to sell fifty VoIP Packages, as to which a Participant could receive a commission if the packages were sold, although there was no sale requirement. Participants were required to place five internet ads per day and, for each week in which the Participant placed the required ads, he/she was entitled to five additional VoIP Packages, which could be sold or exchanged for $100 in credits with the Debtors. Thus, the Participants who posted the required ads were eligible to receive $100 per week for 52 weeks, for a total return of $5,200 (a return of 265% on the investment of $1,425).

24. In addition to credits for posting these advertisements, the Debtors issued credits to Participants for the sale of membership plans and the establishment of new User Accounts as follows:

a. $20 in credits for each new Ad Central Plan and $100 in credits for each new AdCentral Family Plan in a Participant's network.

b. $20 in credits for each User Account in one's "network," up to a maximum of $440, as long as there were two subsidiary User Accounts.

c. 2% of all payments to each User Account within one's network, down to six "levels" of the network, provided that each User Account had a registered VoIP customer.

d. 2% of the Debtors' net monthly billing, up to a maximum of $39,600 in credits, for an AdCentral Family Plan that had ten new AdCentral Family

Plans in its network, so long as each plan had five registered VoIP customers.

25. The Debtors also issued credits to Participants for the sale of VoIP Packages as follows:

a. 90% (or $44.90 in credits) for the initial sale of a VoIP Package at $49.90.

b. 10% (or $4.99 in credits) per month for the renewal of a VOIP Package by a User Account holder directly in one's network[2] and 2% (or $0.99 in credits) per month for the renewal of a VOIP Package by a User Account holder indirectly in one's network, down to six levels of the network.

c. 2% from all VoIP Package sales in one's network, down to six levels of the network.

26. The credits issued to Participants for placing advertisements and selling membership plans and VoIP Packages could be redeemed for cash, transferred to another User Account, or applied in satisfaction of an invoice for another User Account.

27. Invoices for the purchase of a membership plan could be satisfied in one of two ways. Participants could pay the invoice in cash directly to the Debtors or Participants could pay a recruiting Participant for the purchase of a membership plan through the recruiting Participant's redemption of credits in an existing User Account.

28. In the case of a Participant satisfying his/her own invoice directly by payment in cash to the Debtors, the process worked, generally, as follows:

a. The Participant joined the Debtors' organization and created an online account with the assistance of a recruiting Participant, who needed to be identified;

b. The Debtors' database recorded the details entered by the new Participant and assigned an identification number to the new User Account;

c. The Debtors recorded the purchase, issued an invoice number, and marked the invoice as 'pending';

[2] In practice, the Debtors appear to have provided Participants with credits equal to ninety percent (90%) of the renewal fees.

d. A Participant could pay money directly to the Debtors in the form of cash, check, cashier's check, or wire transfer, or through a third-party online payment processing account. Once the Participant paid the invoice, the Debtors updated the invoice as 'paid', and the account setup would be complete;

e. The new Participant could then start building a pyramid underneath the newly created User Account by recruiting other Participants (or by purchasing new User Accounts themselves) and generating bonuses and commissions in accordance with the scheme.

29. Alternatively, as described below, a Participant could satisfy his/her own invoice directly by payment in cash to another Participant, who would satisfy the invoice by a redemption of accumulated credits. Thus, the new Participant's membership fee was paid directly to the recruiting Participant, rather than to the Debtors.

30. There are 10,987,617 User Accounts associated with the Debtors' MLMP. A new User Account was generally established each time that a membership plan was purchased, with either cash or accumulated credits.

31. Although some versions of Participant contracts contained prohibitions against Participants opening multiple User Accounts, other plan descriptions did not. In any case, any such restriction was not enforced and could not be enforced since the Debtors did not verify the Participants' identities. The Debtors' MLMP structure created incentives for Participants to open multiple User Accounts to generate commissions for themselves.

32. As noted above, a Participant could monetize accumulated credits by recruiting a new Participant to join the Debtors' scheme and using his/her accumulated credits to satisfy the invoice for the new Participant's membership plan in exchange for payment of the membership fee from the new Participant (a "Triangular Transaction"). In a Triangular Transaction, the Debtors issued the membership invoice to the recruited Participant, the recruited Participant paid

the membership invoice that was due to the Debtors instead to the recruiting Participant, and the Debtors redeemed the credits of the recruiting Participant in satisfaction of the invoice.

33. In a Triangular Transaction, the process generally worked in the same manner outlined above except that:

a. The new Participant paid the invoice amount to the recruiting Participant (in those cases where there were two separate Participants involved, that is, not an intra-Participant transaction) and forwarded the initial invoice to the recruiting Participant; and

b. The recruiting Participant, in turn, satisfied the initial invoice with accumulated credits in his/her existing User Account.

34. In fact, it was a regular practice of the Debtors' scheme for membership fees to be paid by the use of accumulated credits rather than by cash.

35. While invoices associated with the sale of membership plans or VoIP Packages had a face value of $3,073,471,326, only $359,792,242, or approximately twelve percent (11.7%) of that amount, was paid in cash to the Debtors. The balance of these invoices, totaling $2,713,679,084, was satisfied by the use of Participants' credits.

36. The Debtors also issued "manual credits" to certain User Accounts in some instances. Manual credits were credits issued to User Accounts unrelated to the purchase of a membership plan and not resulting from the placement of advertisements or other components of the compensation scheme. Although some manual credits may have been issued to User Accounts in exchange for cash payment to the Debtors, a significant amount of manual credits appear to have been issued to certain User Accounts without any payment to the Debtors. There also were exchanges of credits between User Accounts unassociated with the issuance and satisfaction of Debtor invoices.

B. SIG/Back Office

37. The Debtors maintained two computer applications for accessing and processing information from the Debtors' database relating to User Account activity, referred to as "SIG" and the "Back Office".[3]

38. SIG stands for Sistemas de Informacoes Gerenciais, which is Portuguese and translates roughly to "Information Management System." SIG tracked the activity for Participants by User Account, and the User Accounts are the only records available to confirm Participant activity.

39. Access to SIG was the culmination of a painstaking data recovery and analysis project implemented with the assistance of my professionals and investigators from HSI.

40. Following my appointment and beginning in August 2014, HSI provided copies of electronic information contained in the Debtors' computers and servers. Once all of the data from the Debtors' computers and servers were obtained, I and my team reassembled the system following a multiple step process.

41. The first step involved identification of a key server that appeared to contain much of the Debtors' 'big data'. Extensive testing was then performed to determine the appropriate configurations of the data and to restore the data in a virtual machine environment. Once the physical configuration of the hard drives was determined, the servers were 'virtualized', which was necessary because the Federal Authorities were in possession of the original servers. Additional servers were later identified that were necessary to operate the network. Once the key components of the system were identified and operating, passwords were obtained through research into document productions received, communications with Federal

[3] The Back Office was the program used by Participants to obtain information on their User Account activity.

Authorities, and a variety of investigative tools. Finally, an intensive analysis was performed to better understand the database structure, table relationships, data fields, and process flow.

42. Once access to a working version of SIG was obtained, I and my professionals were able to conduct search queries and sort data. Because SIG was complicated, written in more than one language, and poorly maintained, and system documentation was unavailable, substantial additional hurdles remained to achieving an understanding of the system and extracting usable data.

43. The Debtors' database was developed by programmers in Brazil and all field references are in Portuguese. System modifications appear to have been done in a haphazard and disorganized fashion. The Debtors' system is permeated with unreliable data because of limited efforts at data validation in establishing User Accounts.

44. Despite all of these obstacles, as a result of the forensic efforts identified above, I and my team have been able to reconstruct the Debtors' computer system in a virtual environment and obtain a working understanding of SIG and how it was used to track User Account activity.

45. Each time that a Participant purchased a membership plan or VoIP Package, an account was established with SIG (the "User Account").

46. Each User Account with the Debtors was registered with an electronic mail address ("Email Address"). There are approximately 900,000 unique Participant Email Addresses in SIG associated with 10,987,617 User Accounts. The number of User Accounts associated with an Email Address varies widely. A particular Email Address may be associated with a single User Account or may be associated with hundreds or thousands of User Accounts. Because each User Account may represent a separate Participant and some Participants entered

the scheme using the Email Address of another Participant, the number of Participants is unknown but is likely to be well in excess of 1,000,000.

47. After a User Account was established, SIG tracked the activity of the Participant in that User Account, including the accumulation of credits for bonuses and commissions 'earned', the use or transfer of credits between User Accounts, and payments made to or from the Participant directly with the Debtors.

48. SIG contains more than 100 tables of data. These tables include an Account Table (which contains a unique record for each User Account), an Invoice Table (which contains a unique record of each invoice generated by the Debtors), a Transfer Table (which contains information about each transfer of credits within the TelexFree system, including withdrawals of funds), and a Bonus Table (which contains information about each increase in credits into a User Account).

49. I and my advisors have taken a series of steps to confirm the accuracy and reliability of the transaction data reflected in SIG. My advisors interviewed the Debtors' bookkeeper, Andrea Cabral, to understand the mechanics of SIG and how it was employed on a day to day basis. Limited testing was performed to reconcile balances and activity using available data, including cross-referencing data in related transactions, conducting interviews with several Participants to confirm the accuracy of the SIG data as to their User Accounts, and reconciling payment data with third party processor records. Based on the testing performed to date, SIG provides accurate information regarding membership plan sales, issuance of invoices, accumulation and use of credits, and amounts received from and disbursed to the User Accounts.

C. Relationship with Ympactus, and Segregation of Ympactus Information and Debtor Information

50. In February 2012, Ympactus commenced operations in Brazil and reportedly operated a scheme substantially identical to the scheme that is described above. The Debtors commenced operations in April 2012. Ympactus initially grew much more rapidly than the Debtors, with growth accelerating in the fall of 2012 through the early summer of 2013. By the spring of 2013, Ympactus had cash receipts of more than $100,000,000 per month. *See Exhibit "1"*. On the other hand, the Debtors' cash receipts were initially much more modest. In the spring of 2013, the Debtors' cash receipts averaged approximately $6,400,000 per month. *See Exhibit "1"*.

51. On June 28, 2013, the Public Prosecutor's Office of the State of Acre, Brazil filed claims against Ympactus, Carlos Wanzeler, Lyvia Mara Campista Wanzeler, and James Merrill, alleging that the VoIP Packages marketed in Brazil were violating consumer rights, since the MLMP constituted a Ponzi/pyramid scheme. The Brazilian authorities suspended the operations of Ympactus and froze its assets in Brazil. Upon information and belief, the Brazilian authorities seized as much as $300,000,000 from Ympactus in connection with the shutdown, and civil and criminal proceedings are pending in Brazil. On or about September 21, 2015, the Brazilian court entered a decision finding that Ympactus operated a pyramid scheme.

52. Following the shutdown of Ympactus, the Debtors' cash receipts increased dramatically. The Debtors' cash receipts totaled approximately $198,500,000 in the last three full months of operation, with more than $96,600,000 in cash receipts in February 2014 alone. *See Exhibit "1"*.

53. The SIG system maintained by the Debtors and Ympactus ran off a single database reflecting User Account activity for both operations. After reconstructing the computer

network and developing a working understanding of SIG, one of the first tasks was to determine how to segregate the Debtors' activity from that of Ympactus, since SIG did not clearly differentiate the User Accounts between the two.

54. SIG includes 17,016,780 distinct User Accounts associated with 2,166,955 Email Addresses for both the US-based and the Brazilian-based operations.

55. I believe that a valid basis exists to separate the Debtors' User Account data based upon the currency designation in the data fields.

56. The Debtors' system assigned a currency to be used to pay invoices based on the Participant's country of residence. Participants entering Brazil as their home address paid invoices denominated in Brazilian Reais ("Reais") and all others paid invoices denominated in United States Dollars, although for accounting purposes, all transactions in the database were recorded in United States Dollars. The Invoice Table distinguishes between invoices paid in United States Dollars and invoices converted to United States Dollars from Reais.

57. The Invoice Table contains a "cambio" or "exchange rate" field. In 99.7% of transactions, by amount, where the currency field is denominated as "D" or United States Dollars, the cambio field is populated with a "0". In 99.8% of the transactions where the currency field is denominated as "R" or Brazilian Reais, the cambio field is populated with a range of values from 1.98 to 2.37 (that is, 1.98 to 2.37 Reais for each 1 Dollar). I have confirmed that the two currencies traded in this conversion range during the time that the Debtors and Ympactus were simultaneously in operation.

58. Through a review of the currency field data, I have further determined the following:

a. Prior to the shutdown of Ympactus in June 2013, invoices in User Accounts with Brazilian contact information were denominated in Reais and invoices in User Accounts with non-Brazilian contact information were denominated in Dollars;

b. Fewer than 700 Reais-denominated User Accounts were associated with non-Brazilian addresses. Similarly, fewer than 150 Dollar-denominated User Accounts were associated with Brazilian addresses; and

c. There was relatively little activity after the shutdown of Ympactus for Reais-denominated User Accounts that were created prior to the shutdown, and all cash activity for Reais-denominated accounts ceased shortly after the shutdown.

59. Utilizing the currency designation, 10,987,617 User Accounts are associated with the Debtors' operations and 4,006,422 User Accounts are associated with Ympactus operations. The remaining User Accounts have no activity.

II. FINDING OF EXISTENCE OF PONZI AND PYRAMID SCHEME

60. Participants who purchased the AdCentral Plan became entitled to receive a VoIP Package each week by placing one internet advertisement per day. These VoIP Packages could be, and routinely were, converted into credits for $20 weekly for 52 weeks, for a 207% return on the initial investment of $339. Participants who purchased the more expensive AdCentral Family Plan were entitled to receive five additional VoIP Packages each week by placing five internet advertisements per day. These VoIP Packages could be, and routinely were, converted into credits for $100 weekly for 52 weeks, for a return of 265% on the initial investment of $1,425.

61. The repetitive posting of internet advertisements (which were reportedly supplied by the Debtors) served no legitimate purpose, because anyone who used "telexfree" as an internet search term would be led to the Debtors' own website, and the repetitive posting of similar advertisements had no discernable value. For example, one website, Adpost.com, contained more than 33,000 postings submitted by Participants for TelexFree, while another, ClassifiedsGiant.com, contained more than 25,000 postings

62. Participants did not draft the advertisements or perform any design services for their configuration, and the placing the ads could be, and often was, outsourced to third parties for a nominal fee. The requirement of posting advertisements to receive weekly payments obfuscated the true nature of the scheme – that the credits were a disguised, "guaranteed" return on the Participant's initial investment.

63. The guarantee of an astronomical return on the initial investment without the requirement to sell any product created perverse incentives for Participants. Participants opened multiple User Accounts for the sole purpose of leveraging their fictitious profits, without the need to sell any product or recruit any individuals. Some Participants appear to have invested a substantial portion of their life savings into the scheme seeking to quickly triple or quadruple their investment. Participants opened hundreds of User Accounts, ultimately resulting in an exponential rise in the number of User Accounts.

64. Participants who opened multiple User Accounts on their own behalf could generate credits by essentially recruiting themselves. Participants could receive (1) $20 worth of credits for recruitment of an AdCentral Plan member and $100 in credits for recruitment of an AdCentral Family Plan member, and (2) $20 in credits for each membership plan in one's downline, up to a maximum of $440 in credits, so long as that Participant recruited two new User

Accounts in his/her downline by either opening User Accounts in his/her own name or by recruiting new Participants.

65. While there were certain provisions of the Debtors' MLMP that ostensibly required the sale of VoIP Packages as a requirement for receiving credits, the credits that could be generated for those activities were relatively insignificant and the requirements were easily circumvented by Participants.[4]

66. The Debtors had $359,792,242 in actual cash sales during the two year operation of the scheme. Of this amount, approximately $353,000,000 was from the sale of membership plans and $6,600,000 was from the sale of VoIP Packages. Even more remarkably, seventy-seven percent (77%) of sales occurred in the six weeks before the filing in a belated attempt by the Debtors to fix their fatally flawed plan by ostensibly requiring the sale of VoIP Packages to receive bonuses and commissions in the future.

67. By and large, the few VoIP Packages that were sold were not used. Of the $6,600,000 in VoIP Package cash sales, less than one percent (1%) of available minutes contained in these packages were actually utilized, further demonstrating that the Debtors were not operating a bona fide MLMP and the VoIP Packages were not a legitimate product.[5] Approximately $477,888,000 in VoIP Packages were sold through the use of accumulated credits. Approximately eighty percent (80%) of these sales occurred in the six weeks leading up to the Petition Date in connection with implementation of the new compensation scheme.

[4] While the generation of certain commissions required activation of VoIP Packages in a Participant's downline, this requirement was circumvented by the purchase of VoIP Packages with accumulated credits. Credits were also issued for the sale of standalone VoIP Packages but VoIP Packages were rarely sold to third parties.

[5] This estimate is based upon information contained in the Disk A Vantage database (which includes VoIP service for both the Debtors and Ympactus) for the period July 2012 through June 2013, as well as usage of only the Debtors' VoIP service for the period July 2013 to April 2014.

68. The total reliance on the sale of membership plans, as opposed to the sale of a legitimate product, made the collapse of the Debtors' scheme inevitable.

69. A calculation of the Debtors' twelve month trailing liability, that is, the amount due to Participants over the following year on account of the guaranteed return, further evidences the unsustainability of the scheme. This liability grew exponentially in the year prior to the Petition Date, eventually rising to more than $5,000,000,000 as of the Petition Date. Attached as *Exhibit "2"* hereto is a computation of the 12 month trailing liability as of the Petition Date. This trailing liability more than tripled in the five (5) months leading up to the Chapter 11 filings, far outpacing any cash generated from the sale of VoIP Packages.[6] The $5,000,000,000 trailing liability is more than seven hundred times the $6,600,000 in cash receipts from the sale of VoIP Packages since inception of the Debtors' MLMP. The sale of additional membership plans only deepened the insufficiency.

IV. THE DEBTORS ARE JOINTLY LIABLE FOR PARTICIPANT CLAIMS

70. The Debtors worked in concert with one another to develop, market, and operate their Ponzi and pyramid scheme. The Debtors had common ownership and each was controlled by Wanzeler and Merrill, as well as Carlos Costa at least through his alleged separation from the Debtors in the fall of 2013.

71. Each of the Debtors was intimately involved in the scheme. Common Cents Communications, Inc., which was owned and controlled by Wanzeler, Merrill, and Steven Labriola, changed its name to TelexFree, Inc. in early 2012 in conjunction with the marketing

[6] While certain provisions of Participant contracts did not require the payment to Participants for VoIP Packages issued to them, this contractual provision is completely undermined by the unmistakable statements in marketing materials and some of the Participant contracts promising Participants the right to a guaranteed return on investment without the need to sell any product.

and selling of VoIP Packages through the Debtors' MLMP. Shortly thereafter, in July 2012, TelexFree, LLC was formed, to conduct TelexFree's operations outside of Massachusetts.

72. TelexFree, Inc. and TelexFree, LLC worked collaboratively in furtherance of the scheme throughout 2012 and 2013, including joint marketing efforts, promotional materials, and Participant recruitment events. TelexFree, Inc. and TelexFree, LLC alternated responsibility for maintaining bank accounts, because on multiple occasions TelexFree was asked to close accounts with banks because of suspicious account activity.

73. After the seizure and shutdown of Ympactus by Brazilian authorities, TelexFree, LLC and TelexFree, Inc. saw a substantial increase in activity, which further exacerbated difficulties with banking facilities needed to conduct the TelexFree scheme. TelexFree Financial, Inc. was formed in Florida in December 2013 and opened bank accounts and paid expenses of TelexFree, Inc. and TelexFree, LLC. In late 2013, TelexFree, Inc. and TelexFree, LLC transferred more than $4,000,000 to an account at TelexFree Financial. TelexFree Financial deposited an additional $10,000,000 in membership fees and VoIP Package sales in February 2014. The only Debtor with employees was TelexFree, Inc. and these employees were being paid by TelexFree Financial.

74. TelexFree Financial rendered substantial assistance to TelexFree, LLC and TelexFree, Inc. in furtherance of the Ponzi and pyramid scheme.

75. The Debtors had a common design or agreement to establish and implement the Ponzi and pyramid scheme. The Debtors engaged in a common enterprise to further their plan.

I attest that, to the best of my knowledge, the foregoing is true and accurate.

Dated: October 7, 2015

Stephen B. Darr
Chapter 11 Trustee

695349

Exhibit 1

In re: TelexFree, LLC, *et al.*
Cash Receipts by Month - TelexFree and Ympactus

Month	TelexFree	Ympactus
February 2012	$ 150	$ 22,942
March 2012	1,884	84,503
April 2012	14,709	336,350
May 2012	43,983	1,847,443
June 2012	53,606	4,764,547
July 2012	84,986	8,948,617
August 2012	375,556	15,030,324
September 2012	768,207	34,346,283
October 2012	290,450	12,987,841
November 2012	693,672	34,128,986
December 2012	616,314	55,083,742
January 2013	1,764,966	143,425,971
February 2013	4,972,733	257,513,534
March 2013	3,800,994	121,512,314
April 2013	5,983,150	149,372,999
May 2013	9,467,356	284,144,633
June 2013	13,949,543	184,497,992
July 2013	12,180,176	-
August 2013	18,850,084	-
September 2013	9,279,178	-
October 2013	14,929,643	-
November 2013	27,738,566	-
December 2013	33,310,766	-
January 2014	48,483,827	-
February 2014	96,630,356	-
March 2014	53,385,849	-
April 2014	2,121,537	-
	$ 359,792,242	$ 1,308,049,021

Note: Determination of TelexFree vs. Ympactus based on Invoice Table data as described in Darr Affidavit.
Source: Debtors' Participant database.

Exhibit 2

In re: TelexFree, LLC, *et al.*

Trailing Liability Calculation - Advertising Bonus[1,2,3]

Trailing Liability	Outstanding ADCentral Payments	Outstanding ADCentral Family Payments	ADCentral Liability ($20 per week)	ADCentral Family Liability ($100 per Week)	Total Liability
February 2012	$ -	$ -	$ -	$ -	$ -
March 2012	-	-	-	-	-
April 2012	-	-	-	-	-
May 2012	-	102	-	10,200	10,200
June 2012	-	1,871	-	187,100	187,100
July 2012	-	2,881	-	288,100	288,100
August 2012	-	5,659	-	565,900	565,900
September 2012	1,237	5,735	24,740	573,500	598,240
October 2012	5,640	20,526	112,800	2,052,600	2,165,400
November 2012	9,989	39,832	199,780	3,983,200	4,182,980
December 2012	19,484	94,394	389,680	9,439,400	9,829,080
January 2013	31,697	182,875	633,940	18,287,500	18,921,440
February 2013	78,520	356,527	1,570,400	35,652,700	37,223,100
March 2013	164,655	506,542	3,293,100	50,654,200	53,947,300
April 2013	283,453	761,101	5,669,060	76,110,100	81,779,160
May 2013	494,359	1,261,216	9,887,180	126,121,600	136,008,780
June 2013	739,166	1,798,677	14,783,320	179,867,700	194,651,020
July 2013	1,096,143	2,411,703	21,922,860	241,170,300	263,093,160
August 2013	1,684,888	3,656,684	33,697,760	365,668,400	399,366,160
September 2013	2,559,676	5,852,955	51,193,520	585,295,500	636,489,020
October 2013	3,583,231	9,169,675	71,664,620	916,967,500	988,632,120
November 2013	4,826,215	13,775,043	96,524,300	1,377,504,300	1,474,028,600
December 2013	6,357,701	20,343,202	127,154,020	2,034,320,200	2,161,474,220
January 2014	8,284,248	31,105,685	165,684,960	3,110,568,500	3,276,253,460
February 2014	10,409,821	45,926,764	208,196,420	4,592,676,400	4,800,872,820
March 2014	10,611,602	50,826,455	212,232,040	5,082,645,500	5,294,877,540
April 13, 2014	10,021,920	48,251,878	200,438,400	4,825,187,800	5,025,626,200
April 2014	9,432,888	45,682,130	188,657,760	4,568,213,000	4,756,870,760

Notes

1. Trailing liability calculated as of the last day of each month based on the weekly Advertising Bonus as described in TelexFree Participant contracts
2. Includes purchases of AdCentral and AdCentral Family plans and excludes commission other than weekly Advertising Bonus
3. Assumes Participants purchasing AdCentral or AdCentral Family plans would place required advertisements and receive Advertising Bonus each week.

Source: Debtors' Participant database.