Docket #0077 Date Filed: 12/20/2016

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In re:	Chapter 11
TELEXFREE LLC., et al.,[1]	Case No. 14-40987
Debtors.	Jointly Administered
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.	

PIEC'S RESPONSE TO TRUSTEE'S
STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF HIS CROSS-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*

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

Securities Litigation, MDL No. 14-02566 (D. Mass.), submits this Response to Trustee's Statement of Undisputed Material Facts in Support of His Cross-Motion for Summary Judgment:

1. 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, determining TelexFree perpetrated a fraud upon the public, primarily targeting the immigrant community. TelexFree's fraud was premised upon the sale of membership plans to individuals and incorporated elements of both a Ponzi and pyramid scheme. Docket No. 668, annexed hereto as Exhibit A.

RESPONSE: Admitted.

2. The Ponzi aspect of the fraud involved the promise of astronomical returns to all Promoters who purchased a membership plan in TelexFree, merely for posting meaningless internet advertisements. By posting these advertisements, among other things, Promoters could "earn" credits with TelexFree that were redeemable for cash. The more membership plans that a Promoter acquired, the faster that Promoter could acquire credits. Each time a Promoter purchased a membership plan he/she was assigned a "User Account." Many Promoters had multiple User Accounts. Affidavit of Stephen B. Darr in Support of His Cross-Motion for Summary Judgment, ¶ 5 (hereinafter, "Darr ¶ _____"). See also Affidavit of Special Agent John S. Soares submitted in support of Search Warrant as annexed to Document 252 in Criminal Action 4:14-cv-40028-TSH and annexed hereto as Exhibit B ¶¶ 59-62 (hereinafter, "Soares ¶ _____").

RESPONSE: Admitted in part. The PIEC admits that TelexFree promised astronomical returns to Promoters who purchased membership plans in TelexFree merely for posting meaningless internet advertisements in exchange for credits. Promoters that purchased membership plans were assigned User Accounts, and many had multiple User Accounts. The

PIEC also states that Promoters received cash directly from later participants that they recruited into the scheme.

3. The pyramid aspect of the fraud was the promise to compensate Promoters for recruiting individuals into the TelexFree scheme. Although TelexFree was structured as a multi-level marketing company, there was no need for Promoters to buy or sell the internet telephone product it offered. As with most pyramid schemes, the more individuals that one recruited, the more money that the recruiting Promoter could make. For example, for each new recruit, a Promoter would receive a "fast start" bonus, either of $20 or $100, depending upon the type of membership plan that the new Promoter purchased. Further, once a Promoter was recruited into another Promoter's pyramid, the recruiting Promoter would earn credits as each of his/her 'downline' recruits purchased memberships or became Promoters themselves by bringing in their own new recruits. TelexFree encouraged this "team building" activity by offering "team builder bonus" compensation, which a Promoter could earn by, among other things, recruiting ten (10) additional Promoters into the scheme. Darr ¶ 6, Soares ¶¶ 59-62, and form of Contract annexed hereto as Exhibit C.

RESPONSE: Admitted in part. The PIEC further states that the "fast start" bonus was not a payment by a victim to Promoters in the TelexFree scheme.

4. The pyramid aspects of the TelexFree fraud was prominently featured in TelexFree's website content, PowerPoint presentations, internet videos, and in-person recruitment meetings. All of these materials extolled the virtues of developing a Promoter's pyramid in order to maximize compensation. Darr ¶ 7 and Exhibits to Soares Affidavit.

RESPONSE: Admitted.

5. A Promoter's activity in recruiting individuals into the scheme and accounting for

the membership fees collected and credits redeemed by Promoters was detailed in the Debtors' books and records (hereinafter referred to as "SIG") and reported on TelexFree's financial statements. Darr ¶ 8.

RESPONSE: Admitted.

6. One of the principal methods by which TelexFree encouraged and enabled the recruitment of new Promoters was by permitting existing Promoters to earn credits by recruiting individuals into the program and redeeming those credits, referred to by TelexFree as "commissions" or "agent commission," from the fees paid by new recruits. Darr ¶ 9.

RESPONSE: Denied. The "credits" accrued by Promoters were not "redeemed" for cash from TelexFree, were at all times an emolument of the fraud, had no intrinsic value, and were a mere artifice to provide the appearance of legitimacy where none existed. The funds paid by newly-recruited victims were never in the possession of TelexFree.

7. Pursuant to this, an individual would purchase a membership plan from TelexFree through a Promoter. TelexFree would issue an invoice for the purchase of a membership plan being sold to that individual through a Promoter. The Promoter collected from the individual the amount of membership fee set forth on the invoice as agent for TelexFree. The Promoter could redeem his earned credits from the membership fee the Promoter collected from newly recruited individuals. The Triangular Transaction was reflected on SIG, the invoice marked satisfied, Promoter credits reduced, and the new recruit became a member of the TelexFree program and could begin recruiting others. Darr ¶ 10.

RESPONSE: Denied. The credits accrued by Promoters were not "redeemed" for cash from TelexFree and TelexFree never received or had possession of the money paid by the recruited individual to the existing Promoter.

8. The economic substance of the Triangular Transaction was, in fact, a payment of the membership fee to TelexFree and a payment by TelexFree to the Promoter in exchange for recruiting a new individual into the program. Darr ¶ 11.

RESPONSE: Denied. The payments made by victims to Promoters were not paid to TelexFree and were never in the possession of TelexFree.

9. The Triangular Transaction was the predominant method of entry into the TelexFree system. Invoices associated with the sale of membership plans or phone packages had a total value of $3,073,471,326. Of this amount, approximately $2,700,000, or nearly ninety percent (90%) of the membership fees sold by TelexFree were effected through a Triangular Transaction. Darr ¶ 12.

RESPONSE: Admitted that the predominant method of entry into the TelexFree scheme was the payment of funds by a recruited individual directly to a Promoter, accounting for nearly 90% of funds transferred in the scheme. Disputed that TelexFree sold the membership fees that were paid directly to Promoters.

10. The membership fee paid by an individual to a Promoter was income to TelexFree and so characterized by TelexFree on its financial statements and tax returns. Darr ¶ 13.

RESPONSE: Admitted in part and disputed in part. TelexFree's Profit and Loss Statement for 2013 characterized "payments through system" as income and "Agent Commissions" as expenses. In reality, TelexFree never possessed or distributed the funds paid directly by victims to Promoters.

11. Similarly, the credits redeemed by the Promoter from the collected memberships in a Triangular Transaction was an expense of TelexFree and characterized on TelexFree's financial records as such under the category of "Agent Commission." Darr ¶14.

RESPONSE: Admitted in part and disputed in part. TelexFree's Profit and Loss Statement for 2013 characterized "Agent Commissions" as expenses and "payments through system" as income. In reality, TelexFree never possessed or distributed the funds paid directly by victims to Promoters.

12. TelexFree's Profit and Loss Statement for 2013 expressly separated TelexFree's revenue into 2 categories: (1) "payments through bank," which is a direct payment from the individual purchasing a membership program from TelexFree, and (2) "payments through system," which is a payment of a membership fee received by TelexFree through Triangular Transactions. Darr ¶ 15.

RESPONSE: Admitted that TelexFree's Profit and Loss Statement for 2013 separated TelexFree's income into "payments through bank" and "payments through system."

13. The Profit and Loss Statement for TelexFree for calendar year 2013 reflects $119 million in income "paid through bank", reflecting membership fees paid by individuals directly to TelexFree to join the program. Scheduled on the Profit and Loss Statement is an additional $572 million in income "paid through system". That entry reflects membership fees collected by Promoter from individuals through a Triangular Transaction. Darr ¶ 16.

RESPONSE: Admitted that TelexFree's Profit and Loss Statement for 2013 reflects $119 million in income "paid through bank" and $572 million in income "paid through system." Disputed that TelexFree collected membership fees that were collected by Promoters.

14. The Profit and Loss Statement separately identifies expenses attributable to Triangular Transactions as commissions paid to Promoters in Triangular Transactions. The Income Statement reflects an expense of $572 million for "Agent Commission - paid through system", representing payments received by Promoters as part of a Triangular Transaction. Darr

¶ 17, and Profit and Loss Statement Exhibit D.

RESPONSE: Admitted in part and disputed in part. TelexFree's Profit and Loss Statement for 2013 identifies $572 million for "Agent Commission – paid through system." In reality, TelexFree did not possess the payments made by victims to Promoters and did not pay these funds as commissions to Promoters.

15. The treatment on the Profit and Loss Statement appropriately reflects the economic substance of the Triangular Transactions. The membership fees collected by a Promoter were revenue of TelexFree, e.g., property of TelexFree, and the corresponding distribution to Promoters was treated as an expense, e.g., payment by TelexFree of an "agent's commission". Darr ¶ 18.

RESPONSE: Disputed. The paragraph contains conclusions that are not supported by the facts. The funds paid by victims to Promoters were not revenue or property of TelexFree. The Trustee's conclusions are not an appropriate reflection of the economic substance of the payments by victims to Promoters.

16. TelexFree issued Forms 1099 to Promoters in calendar year 2013 for income earned by Promoters from their involvement in TelexFree for that year. Darr ¶ 19.

RESPONSE: Admitted in part. The 1099 forms issued to Promoters were part and parcel of TelexFree's fraud.

17. The 1099 forms reported as income to Promoters both credits redeemed directly with TelexFree and income earned by Promoters for recruiting individuals into the scheme through Triangular Transactions. Darr ¶ 20.

RESPONSE: Admitted in part. The 1099 forms issued to Promoters were part and parcel of TelexFree's fraud.

18. The 1099 forms provide further evidence of the economic substance of the Triangular Transaction, money paid by TelexFree to Promoters for recruiting an individual into the scheme is treated as income to TelexFree, and the payment retention by the Promoters of those membership fees is treated as income to the Promoter and an expense of TelexFree. Darr ¶ 21.

RESPONSE: Disputed. This paragraph contains conclusions that are not supported by the facts. The payments made by victims to Promoters were not income to TelexFree and were never in the possession of TelexFree, and the "commissions" paid to Promoters were not an expense of TelexFree or in fact ever distributed by TelexFree. The Trustee's conclusions are not an appropriate reflection of the economic substance of the payments made by victims to Promoters.

19. The Ponzi Motion describes the mechanics of the TelexFree system, including the integral nature of the Triangular Transactions. See Docket No. 623, 623-1, Ponzi Motion and supporting Affidavit annexed as Exhibit D.

RESPONSE: Admitted that the Ponzi Motion describes the mechanics of the TelexFree system, including the payment of funds by recruited individuals directly to existing Promoters.

20. A central premise of the Ponzi Motion as filed and approved by the Court was that claims should not be limited to payments made by individuals directly to TelexFree to join the program but needed to include fee collected from individuals and cash paid to promoters as part of the Triangular Transactions. Darr ¶ 23 and Exhibit D.

RESPONSE: Admitted in part. The Court approved that claims filed by creditors in the bankruptcy cases take into account funds paid by victims to Promoters.

21. The Order entered by the Court directed the use of the Net Equity formula for

determining allowance of claims would include both aspects of the Triangular Transactions. This formulation for allowance of claims expressly provided that fees collected by Promoters from individuals would be deemed paid to TelexFree and the amount retained by a Promoter deemed a payment by TelexFree to the Promoter. Docket entry no. 687 Order annexed as Exhibit E, and Darr ¶ 24.

RESPONSE: Admitted in part. The Order entered by the Court directed the use of the Net Equity formula for determining the allowance of claims, including the payments made by recruited individuals to existing Promoters. The Order does not expressly provide that fees collected by Promoters from individuals would be deemed paid to TelexFree and the amount retained by a Promoter deemed a payment by TelexFree to the Promoter.

22. The Net Equity formula recognized that individuals recruited into the TelexFree program through a Triangular Transaction transferred money to TelexFree in exchange for the right to participate in the TelexFree program and the right to earn credits, thereby creating an obligation between TelexFree and that recruited individual which should be treated on the same basis as an individual who had paid the membership fee directly to TelexFree. Darr ¶ 25, and Exhibit E.

RESPONSE: Admitted in part. Under the Net Equity formula, recruited individuals are treated on the same basis as an individual who had paid the membership fee directly to TelexFree *for purposes of claims allowance only*. The Net Equity formula does not recognize that recruited individuals transferred money to TelexFree to gain entry to the scheme. Payments by victims to Promoters did not create an obligation between TelexFree and the victims.

23. The "Net Losers" in the scheme would thereby be treated equally under the Net Equity determination regardless of how their investment was made. Darr ¶ 26, and Exhibit E.

RESPONSE: Admitted that under the Order, "Net Losers" in the scheme would be treated the same under the Net Equity determination regardless of how their investment was made *for purposes of claims allowance only*.

24. Similarly, it was important that the claims of Promoters who recruited the individuals into the program and collected a "commission" for doing so should be reduced to reflect amounts paid to, and retained by, them through Triangular Transactions in order to avoid a windfall. Darr ¶ 27.

RESPONSE: Disputed. This paragraph contains conclusions, not material statements of fact. The PIEC also states that TelexFree did not pay "commissions" to Promoters.

25. The Ponzi Motion set forth the inequities that would result if Triangular Transactions were not included in the calculation of the amount of a Promoter's claim. Darr ¶ 28, and Exhibit D.

RESPONSE: Disputed. This paragraph contains conclusions, not material statements of fact.

26. First, the individual recruited by the Promoter would be denied a claim for amounts paid to the Promoter to purchase a membership plan from the Debtors. Darr ¶ 29.

RESPONSE: Disputed. This paragraph contains conclusions, not material statements of fact.

27. This would have created an inequitable result since a substantial portion of Net Losers would be denied compensation because they were recruited into the scheme through a Triangular Transaction as opposed to having been recruited directly by TelexFree. Darr ¶ 30.

RESPONSE: Disputed. This paragraph contains conclusions, not material statements of fact.

28. Second, the Promoter who recruited the individual into the scheme would profit by having redeemed credits through retaining the recruited individual's membership fee without a corresponding reduction in the Promoter's claim amount to reflect this payment. Darr ¶ 31.

RESPONSE: Disputed. This paragraph contains conclusions, not material statements of fact.

29. This inequity is rectified by including the Triangular Transactions in the calculation of Net Winners and Net Losers. Darr ¶ 32 and Exhibits D and E.

RESPONSE: Disputed. This paragraph contains conclusions, not material statements of fact.

30. The approval of the Net Equity formula for determining claims in the case appropriately addresses the equities of the case by recognizing the economic realities of the Triangular Transaction. Darr ¶ 33, and Exhibit E.

RESPONSE: Disputed. This paragraph contains conclusions, not material statements of fact. The PIEC also states that the Net Equity formula does not recognize that victims paid money directly to TelexFree and that, under the Net Equity formula, a victim could have claims against the estate for its role in aiding and abetting the Promoters.

31. The PIEC recognized the inherent fairness of the application of the Net Equity determination to include the Triangular Transactions and, therefore, did not object to the allowance of claims using the Net Equity determination. Rather, the Defendants reserved their rights to argue the inconsistent position that the fees paid by individuals recruited into the scheme through Triangular Transactions constituted a claim against the Debtors, but the corresponding payment to a Promoter by TelexFree is not a transfer of property of the Debtors. *Opposition to Certain Aspects of the Relief Sought in the Motion by Chapter 11 Trustee for Entry*

of Order Finding that Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief, Docket No. 649; *see also excerpts of Transcript of Hearing before the United States District Court on the Trustee's Motion to Intervene,* annexed as Exhibit F.

RESPONSE: Admitted in part. The PIEC did not object to the use of the Net Equity determination for *purposes of claims allowance only*, which is not inconsistent with the PIEC's position that only the victims have standing to recover the money they paid directly to Promoters.

32. The Trustee has commenced two class actions seeking to recover from Net Winners, under theories of both fraudulent transfer and preferential transfer, amounts they received through direct and Triangular Transactions in excess of amounts they contributed into the TelexFree program. Adversary Proceeding 16-4006 and Adversary Proceeding 16-4007, Darr ¶ 34.

RESPONSE: Admitted.

33. The first class action adversary proceeding, Adv. Proc. No. 16-4006, was commenced against all Net Winners who are alleged to reside within the United States. There are approximately 14,818 Net Winners falling within this category. 105 participants have been named as individual Defendants and proposed class representatives in the domestic class action, who are believed to be Net Winners in the aggregate amount of approximately $109 million. A substantial portion of the $109 million is attributable to the Triangular Transactions. Complaint, Adversary Proceeding No. 16-4006, and Darr ¶ 35.

RESPONSE: Admitted in part. A substantial portion of the $109 million is attributable to payments made by recruited individuals directly to existing Promoters.

34. The second class action adversary proceeding, Adv. Proc. No. 16-4007, was

commenced against all Net Winners who are alleged to reside outside of the United States. I estimate that there are 78,487 Net Winners falling within this category. I have named 96 participants as individual Defendants and proposed class representatives in the foreign class action, who are believed to be Net Winners in the aggregate amount of approximately $76 million. A substantial portion of the $76 million is attributable to the Triangular Transactions. Complaint, Adversary Proceeding No. 16-4007, and Darr ¶ 36.

RESPONSE: Admitted in part. A substantial portion of the $76 million is attributable to payments made by recruited individuals directly to existing Promoters.

35. In these Adversary Proceedings the Trustee seeks recoveries on behalf of all Net Losers, including those who lost money through direct transactions, Triangular Transactions, or any combination thereof. A predicate to the Trustee's pursuit of recoveries from Net Winners arising from Triangular Transactions is a finding that the membership fees paid to and retained by recruiting Promoters in Triangular Transactions comprised property of TelexFree. Darr ¶ 37.

RESPONSE: Admitted that a finding that the funds paid by victims to Promoters comprised property of TelexFree estate is a predicate to the Trustee's pursuit of these funds. The PIEC further states that these funds were not paid to, or in the possession of, TelexFree, and were not property of TelexFree.

36. When the economic substance of the Triangular Transactions is considered, the payments received by the Promoters in Triangular Transactions constitutes property of the TelexFree Estate and are recoverable by the Trustee as fraudulent transfers or preferential transfers. Darr ¶ 37.

RESPONSE: Disputed. This paragraph contains conclusions, not material statements of fact.

37. Each of the Defendants named in this Adversary Proceeding were plaintiffs in actions pending before the United States District Court for the District of Massachusetts or United States District Court for the District of Arizona. Each represented in their pleadings that they were Net Losers. Each further represented they were representative of Net Losers who suffered losses as a result of Triangular Transactions. Second Amended Complaint (Docket No. 144) in Civil Action Nos. 14-MD-02566-TSH and Complaint in Civil Action No. 16-CV-40018-TSH, Darr ¶ 38.

RESPONSE: Admitted in part. The PIEC also states that Maria Murdoch, Angela Batista Jiminez, and Celio Da Silva are no longer plaintiffs in Civil Action No. 16-40018 pending before the United States District Court in the District of Massachusetts and are therefore no longer parties to this adversary proceeding, because they were sued only in their capacity as plaintiffs in Civil Action No. 16-40018 and not in their individual capacity.

38. An examination of the Defendants' activity reveals, however, that these representations are in some instances inaccurate. Darr ¶ 39.

RESPONSE: Admitted in part. The PIEC also states that Maria Murdoch, Angela Batista Jiminez, and Celio Da Silva are no longer plaintiffs in Civil Action No. 16-40018 pending before the United States District Court in the District of Massachusetts and are therefore no longer parties to this adversary proceeding, because they were sued only in their capacity as plaintiffs in Civil Action No. 16-40018 and not in their individual capacity.

39. In advancing these claims, the Defendants have also alleged at various times to have had no involvement or affiliation with the TelexFree operations. Darr ¶ 40.

RESPONSE: Admitted in part. The Defendants were participants in TelexFree. The PIEC also states that Maria Murdoch, Angela Batista Jiminez, and Celio Da Silva are no longer

plaintiffs in Civil Action No. 16-40018 pending before the United States District Court in the District of Massachusetts and are therefore no longer parties to this adversary proceeding, because they were sued only in their capacity as plaintiffs in Civil Action No. 16-40018 and not in their individual capacity.

40. A review of the facts, however, indicates that the Defendants have in each instance been intimately involved in the TelexFree scheme. Darr ¶ 41.

RESPONSE: Disputed. This paragraph contains conclusions, not material statements of facts.

41. Maria Murdoch testified in Court at an evidentiary hearing in October 2015 that she had invested approximately $25,000 in the TelexFree scheme but that she had no contact with the Debtors, never became a member of TelexFree, and never received an invoice. Darr ¶ 42, Transcript of Ms. Murdock Testimony annexed hereto as Exhibit G.

RESPONSE: Admitted in part. Ms. Murdoch testified that she had paid approximately $25,000 directly to Promoters and never received a User Account.

42. The Debtors' books and records reflect, however, that Ms. Murdock maintained *seventy-five* (75) accounts ("User Accounts") with the Debtors, with each User Account representing the purchase of a plan. Darr ¶ 43.

RESPONSE: Admitted that according to the Trustee's records Ms. Murdoch maintained multiple User Accounts with TelexFree.

43. In fact, all of the Defendants had multiple User Accounts with TelexFree as follows: Rita Dos Santos: 12; Angela Batista Jiminez: 55; Elisangela Oliveira: 3; Diogio De Araugo: 65; and Celio Da Silva: 142. Each of the Defendants had the opportunity to earn credits and to recruit other individuals into the scheme. Darr ¶ 44.

RESPONSE: Admitted in part. The PIEC also states that Maria Murdoch, Angela Batista Jiminez, and Celio Da Silva are no longer plaintiffs in Civil Action No. 16-40018 pending before the United States District Court in the District of Massachusetts and are therefore no longer parties to this adversary proceeding, because they were sued only in their capacity as plaintiffs in Civil Action No. 16-40018 and not in their individual capacity.

44. In the case of Dos Santos, not only did she open multiple User Accounts with TelexFree but she received $8,035.91 in payments directly from TelexFree. Darr ¶ 45.

RESPONSE: Admitted that according to the Trustee's records Dos Santos opened multiple User Accounts and received money from TelexFree.

45. The evidence of these payments directly contradicts representations made by the Defendants in the multi-district litigation that Dos Santos never received any money from TelexFree. *In re TelexFree Securities Litigation,* MDL No. 4:14-md-2566 (D. Mass.) (hereinafter, the "MDL Action"), Docket No. 253-1, ¶ 38, and Darr ¶ 46.

RESPONSE: Admitted that according to the Trustee's records Dos Santos received money from TelexFree.

46. Indeed, some of the Defendants are actually Net Winners in the TelexFree scheme. The Debtors' records indicate that Da Silva was a Net Winner in the amount of $15,343 and Jiminez was a Net Winner in the amount of $347.80. Darr ¶ 47.

RESPONSE: Admitted in part. The PIEC also states that Da Silva is no longer a plaintiff in Civil Action No. 16-40018 pending before the United States District Court in the District of Massachusetts and is therefore no longer a party to this adversary proceeding, because he was sued only in his capacity as plaintiff in Civil Action No. 16-40018 and not in his individual capacity.

47. The Defendants have made attempts to bring class actions against Net Winners in Triangular Transactions on behalf of all Net Losers in Triangular Transactions and on each occasion, their efforts fail. Docket Entry 367 in the MDL Action annexed as Exhibit H, and *Elisangela Oliveira et al. v. TelexElectric LLLP et al.,* Case No. 4:16-cv-40018 (the "Oliveira Action"), Docket No. 6 annexed as Exhibit I.

RESPONSE: Admitted in part. The District Court denied the PIEC's motion to amend the MDL Complaint to sue a defendant class of Net Winners and stayed a separate complaint filed against individual Net Winners.

48. The Defendants' attempts, on at least two occasions, to bring Unjust Enrichment Claims in District Court, on a class action basis, against Promoters who became Net Winners based upon the receipt of membership fees from other Promoters in Triangular Transactions, have appropriately been denied. MDL Action, Docket No. 367, Exhibit H; Oliveira Action, Docket No. 6, Exhibit I.

RESPONSE: Admitted in part. The District Court denied the PIEC's motion to amend the MDL Complaint to sue a defendant class of Net Winners and stayed a separate complaint filed against individual Net Winners.

49. In one instance, the District Court denied the PIEC's motion to amend the MDL Complaint to sue the Net Winners in Triangular Transactions as a class. Docket No. 367 in the MDL Action, Exhibit H.

RESPONSE: Admitted that the District Court denied the PIEC's motion to amend the MDL Complaint to sue a defendant class of Net Winners.

50. In the second instance, the Defendants' action was stayed because it was found to be an improper attempt to circumvent the order in the first case. Oliveira Action, Docket No. 6,

Exhibit I.

RESPONSE: Admitted.

Dated: December 20, 2016

Boston, Massachusetts

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CERTIFICATE OF SERVICE

The undersigned certifies that on December 20, 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 20th day of December, 2016.

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