

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	]	
	]	No. 14-CR-40028-TSH
v.	]	
	]	
JAMES MERRILL and	]	
CARLOS WANZELER	]	

**MOTION FOR AUTHORIZATION TO USE ALTERNATIVE  
PROCEDURES TO NOTIFY POTENTIAL VICTIMS**

The government, pursuant to 18 U.S.C. § 3771(d)(2), hereby moves for authorization to use alternative victim notification procedures, in light of the large number of possible victims in this case who cannot be readily identified at this juncture.<sup>1</sup> In support of this motion the government states the following:

1. Under 18 U.S.C. § 3771, crime victims have various rights, among them the right to “reasonable, accurate, and timely notice” of public court proceedings. 18 U.S.C. § 3771(a). The statute defines a crime victim as “a person directly and proximately harmed as a result of the commission of a Federal offense,” 18 U.S.C. § 3771(e), and recognizes that, for crimes involving multiple victims, the Court has discretion to adopt procedures that will not unduly interfere with ongoing criminal proceedings:

In a case where the Court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the Court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

18 U.S.C. § 3771(d)(2).

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<sup>1</sup> The government conferred with James Merrill’s counsel about this motion. Counsel stated that he is considering the motion and so at this point reserves the right to oppose.

2. This case involves alleged wrongdoing by the owners of TelexFree, Inc., and related entities (“TelexFree”). The indictment alleges, *inter alia*, that, between approximately February 2012 and April 2014, TelexFree operated as a pyramid scheme, essentially by inducing new participants to buy into TelexFree’s compensation and sales program and then using that revenue to cover its obligations to existing participants. During the period charged in the indictment, it appears that TelexFree accumulated approximately 785,000 participants worldwide, the majority of whom appear to have joined the company later in that period.
3. At this stage, the government does not know precisely how many of these participants would qualify as victims if the government prevailed at trial and, even if the government could calculate a figure at this point, it would be impossible to give them all individual notice under 18 U.S.C. § 3771.
4. The alternative victim notification methods suggested by the government are the following:
  - a. **Department of Justice Victim Notification System**: To date, the government has ascertained the identities of some individual potential victims who bought into the TelexFree program. Typically, the government uses its Victim Notification System (“VNS”) to give individualized notice to such people and it will do so in this case, to the extent it is able, as a supplement to the notification methods discussed below. The VNS enables the government to inform victims entered in the system of scheduled court dates and the outcomes of significant court events.
  - b. **TelexFree Information Web Site**: Using a portal on the web site operated by the Federal Bureau of Investigation (“FBI”), the government has set up a web

page for those who claim to be victims of the scheme alleged in the indictment. The site page<sup>2</sup> posts publicly available information about the case and invites alleged victims to enter basic information about their experience with TelexFree. The site was included in the government's press release in this case dated July 23, 2014, and it is the first unpaid site to come up on a Google search using the terms "TelexFree victim." Undersigned counsel is informed that the Massachusetts Securities Division ("MSD") maintains a similar site;<sup>3</sup> the government will request victim information provided to the MSD and reconcile it with data entered on the FBI's site. Similarly, the U.S. Securities & Exchange Commission ("SEC") has filed a civil enforcement action against James Merrill, Carlos Wanzeler and others. The government will seek from the SEC whatever information it has received on its tip line or otherwise from alleged victims.

- c. **Toll-Free Telephone Number and Victim Assistance Email Address:** The U.S. Attorney's Office has a toll free phone number potential victims can call to listen to a recorded message providing the status of the case and instructions on how to contact the U.S. Attorney's Office by email. That information is also included on the U.S. Attorney's Office website. Similarly, there is an email address for victim inquiries ([USAMA.victimassistance@usdoj.gov](mailto:USAMA.victimassistance@usdoj.gov)), which was included in the government's press release dated May 9, 2014. Alleged victims who contact that address are directed to the site hosted by the FBI.

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<sup>2</sup> [http://www.fbi.gov/stats-services/victim\\_assistance/seeking-victim-information/telexfree-inc.-case](http://www.fbi.gov/stats-services/victim_assistance/seeking-victim-information/telexfree-inc.-case)

<sup>3</sup> <http://www.sec.state.ma.us/InvestorComplaint/telexfree.aspx>

- d. **Press Releases and Newspaper Notices:** As noted above, the U.S. Attorney's Office has issued two press releases so far in this case, both of which have noted resources available to alleged victims. The government will also post notice in certain newspapers or other periodicals, alerting readers to the case and providing contact information if any reader believes he or she is a victim.
  - e. **Outreach Efforts:** The alleged victims in this case are concentrated in certain immigrant communities, primarily Brazilians and other Latin American immigrants. At least on a local level, the government will coordinate with organized groups in these communities to host informational meetings for people who are concerned about the case. During these efforts, the government will encourage concerned people to make use of the resources summarized above.
  - f. Depending on the case event for which the government is trying to give notice, the government may try to develop a system in which it can send "blast emails" to those alleged victims for whom it has email addresses.
5. As noted above, at this stage it is impossible to identify each potential victim in this case and give him or her individualized notice of court proceedings and related events. The government submits that the procedures outlined above are a reasonable alternative to the standard requirements of 18 U.S.C. § 3771, and will give effect to the victim protection act without unduly complicating or prolonging the criminal proceedings.

WHEREFORE, the United States respectfully requests that the Court (a) find that the procedures itemized in ¶ 4 above are a reasonable means of satisfying the government's obligations under 18 U.S.C. § 3771, and (b) authorize the government to implement those procedures alternative methods for notifying potential victims in this case.

Respectfully submitted,

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United States Attorney

By:

/s/ Andrew E. Lelling  
CORY S. FLASHNER  
ANDREW E. LELLING  
Assistant U.S. Attorneys

Date: August 18, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants, on August 18, 2014.

/s/ Andrew E. Lelling  
ANDREW E. LELLING  
Assistant U.S. Attorney