

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BOBBIE JAMES, et al.,

Plaintiffs,

VS.

GLOBAL TEL*LINK CORPORATION,
INMATE TELEPHONE SERVICE and
DSI-ITI LLC,

Defendants.

13 Civ. 4989 (WJM) (MF)

**DEFENDANTS GLOBAL TEL*LINK CORPORATION AND DSI-ITI
LLC'S REPLY BRIEF IN FURTHER SUPPORT OF MOTION TO
COMPEL ARBITRATION PURSUANT TO THE FEDERAL
ARBITRATION ACT AND TO STAY THIS MATTER PENDING
CONCLUSION OF THE INDIVIDUAL ARBITRATIONS**

Philip R. Sellinger, Esq.
Aaron Van Nostrand, Esq.
GREENBERG TRAURIG, LLP
200 Park Avenue
Florham Park, New Jersey 07932
Ph: (973) 360-7900

*Attorneys for Defendants
Global Tel*Link Corporation and
DSI-ITI LLC*

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PRELIMINARY STATEMENT

GTL demonstrated that five of the seven Plaintiffs in this case agreed to Terms of Use (“TOU”) containing a mandatory arbitration provision. One of the Plaintiffs signed up online for an Advance Pay account, and clicked a box expressly agreeing to the TOU. The other four Plaintiffs used GTL’s IVR system multiple times to set up or access their Advance Pay accounts and each time were notified of the TOU and that it governed their transactions. Plaintiffs do not dispute these facts, nor do they dispute that the TOU requires arbitration and covers their claims.

Unable to dispute these points, Plaintiffs make four arguments, each of which fails. First, the four Plaintiffs who signed up for or used an Advance Pay account through GTL’s IVR system (Bobbie James, Barbara Skaladny, Milan Skaladny, Betty King) argue that they never “explicitly” assented to the TOU because they signed up over the telephone.¹ Plaintiffs do not deny that GTL’s IVR system notified them repeatedly that their transactions were governed by the TOU and that the TOU were available on GTL’s website at www.offenderconnect.com. Upon hearing this notice, Plaintiffs could have accessed the TOU before completing their transactions or could have completed their transactions, reviewed the TOU and then opted out of arbitration. Plaintiffs did neither, and their apparent

¹ This argument is a tacit admission that Crystal Gibson, who signed up for her account on GTL’s website, did assent to the TOU and the arbitration provision.

failure to read the TOU is no defense to arbitration.

Second, Plaintiffs claim that they assented to the TOU under “duress” because they allegedly had no choice but to accept the TOU so they could communicate with inmates. However, Plaintiffs seriously misstate the nature of an Advance Pay account, which is simply one way to *pay* for calls from inmates and is not required to have contact with inmates. Plaintiffs could have communicated with inmates by letter or in person, with no involvement from GTL. Or Plaintiffs may have been able to accept collect calls from inmates billed through a local exchange carrier or could have funded the inmates’ commissary accounts at the prisons, which would have allowed the inmates to call direct, all without an Advance Pay account or the TOU. Plaintiffs elected to set up an Advance Pay account and were under no duress when they chose to do so.

Third, Plaintiffs attack GTL’s motive and timing in bringing this Motion, arguing on the one hand that GTL is seeking to stall the litigation, while at the same time arguing that GTL litigated the case so far and so quickly that it has waived the right to seek arbitration. As shown, however, GTL sought leave to file this Motion just twelve days after receiving the information needed to determine whether and how Plaintiffs signed up for Advance Pay accounts and agreed to the TOU. Plaintiffs’ delay in providing this information directly resulted in the timing of the Motion, and as such, they cannot claim that GTL has waived arbitration.

Fourth, Plaintiffs argue that certain paragraphs in the Baker declaration should be stricken because GTL did not produce the entire IVR script. That argument should be rejected, as discovery is still open, the entire IVR script is being provided with this Reply, and the IVR script confirms what is in the Baker declaration. Moreover, Plaintiffs do not dispute that GTL's IVR provided notice of the TOU. Instead, they have filed carefully crafted declarations stating that they never heard a notice that references "arbitration." But that assertion is a distraction, as GTL has never contended that the IVR notice referenced arbitration. The notice, which Plaintiffs received dozens of times, notifies them of the TOU and that it will govern the account and the transactions. By proceeding with the transactions, Plaintiffs agreed to the TOU, including the arbitration provision.

ARGUMENT

I. Plaintiffs' Lack-Of-Assent Argument Is Unsupported.

A. Plaintiffs Effectively Concede That Crystal Gibson Agreed To Arbitration When Opening Her Account Online.

Gibson admits that when she opened an Advance Pay account through GTL's website, she clicked the box to "accept" the TOU. Gibson Decl., ¶ 7. The Opposition does not dispute that Gibson's registration response constitutes a valid acceptance of the TOU.² Plaintiffs also do not dispute that Gibson's claims are

² Although Gibson states in her declaration that her acceptance of the TOU in 2014 should not require her to arbitrate her claims because the lawsuit was filed in

covered by the arbitration provision. Accordingly, at a minimum, Gibson must be compelled to arbitrate her claims on an individual basis, as Plaintiffs do not contest the enforceability of the class action waiver in the TOU.

B. The IVR Notice Fully Informed Plaintiffs That Their Accounts Were Governed by the TOU, How the TOU Could be Accessed, and That the TOU Had Been Amended.

Each of Plaintiffs' arguments in support of their contention that they did not agree to the TOU by creating or depositing funds in an Advance Pay account using GTL's IVR system should be rejected.

First, the Opposition asserts that these Plaintiffs "are not bound by GTL's arbitration clause because it was not available to them" since the IVR notice was on the phone and the TOU were on GTL's website. Opp. Br. at 12. The notice on the IVR system, however, specifically stated that Plaintiffs' account and transactions were governed by the TOU, directed Plaintiffs to the website to view the TOU, provided the URL address for the website, and stated that the TOU were amended as of July 3, 2013. Baker Decl., ¶ 2. Plaintiffs do not deny receiving this notice. They simply claim that they do not recall it and apparently did not view the TOU after being directed to it, which does not excuse them from the arbitration provision. *Schwartz v. Comcast Corp.*, 256 Fed Appx. 515 (3d Cir. 2007) (enforcing arbitration provision that plaintiff did not read); *Newark Bay Cogen*.

August 2013, Plaintiffs do not make that argument in their brief or cite any authority for that contention.

P'ship, LP v. ETS Power Grp., 2012 WL 4504475, at *10 (D.N.J. Sept. 28, 2012) (“failure to read or review the T & C does not render them invalid”).

Next, Plaintiffs assert that “[n]o reasonable consumer” would interrupt a phone call to view the TOU on the website. Opp. Br. at 12. But that is not the standard. As Plaintiffs concede, all that is necessary is that “the party to be bound must have had reasonable notice of and manifested assent to the additional terms.” Opp. Br. at 13. The IVR system provided the URL for the TOU and that Plaintiffs’ transactions and account were governed by the TOU. *Schwartz*, 256 F. App’x at 518 (finding the evidence showed that plaintiff “was aware that the services he accepted were being offered pursuant to a subscription agreement” and holding that plaintiff’s denial “that he received a copy of his subscription agreement . . . is not sufficient to create a material dispute of fact”); *Newark Bay*, 2012 WL 4504475, at *10 (because plaintiff was aware of the T&C, “despite the fact that [defendant] never provided their T & C to [plaintiff], [plaintiff] was bound to the terms contained in the March 30, 2007 proposal once he manifested assent”). By completing the transaction, Plaintiffs agreed to the TOU, including arbitration. *Schwartz*, 256 F. App’x at 518 (“Whether or not [plaintiff] received a copy of the subscription agreement, he could not accept services he knew were being tendered on the basis of a subscription agreement without becoming bound by that agreement.”); *Jayasundera v. Macy's Logistics & Ops.*, 2015 WL 4623508, at *4

(D.N.J. Aug. 3, 2015) (“Failure to opt out of an arbitration program after receiving notice is sufficient conduct to signify acceptance.”).

Plaintiffs’ reliance on *Guidotti v. Legal Helpers Debt Resolution, L.L.C.*, 74 F. Supp. 3d 699 (D.N.J. 2014) (Opp. Br. at 12), is misplaced because the issue in *Guidotti* was whether a second document that was not provided or available to plaintiff at the time she signed the parties’ agreement was “incorporated by reference.” *Id.* at 710.³ Here, the issue is whether Plaintiffs had reasonable notice of the TOU, which they plainly did. Baker Decl., ¶ 8-10. The IVR system directed Plaintiffs to the TOU, which were available on GTL’s website, stating that they governed the parties’ transactions. Baker Decl., ¶ 2. Courts have had no difficulty enforcing TOUs agreed to under similar circumstances. *See, e.g., Sacchi v. Verizon Online LLC*, 2015 WL 765940, at *7 (S.D.N.Y. Feb. 23, 2015) (enforcing online arbitration agreement under NJ law and holding “[w]hether or not amendments posted to Verizon’s website provided sufficient notice to Plaintiff, the fact remains that Plaintiff subsequently received other forms of notice that adequately informed him of the amendments and that clearly provided that continued use of Verizon’s services would be deemed acceptance,” citing additional authority).

³ *Guidotti* is on appeal, one of the issues being whether the court relied on a state law rule that is inconsistent with the decision in *AT & T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011). *Guidotti*, 74 F. Supp. 3d at 712.

Holdbrook Pediatric Dental, LLC v. Pro Computer Service, LLC, 2015 WL 4476017 (D.N.J. July 21, 2015), does not support Plaintiffs' position. In *Holdbrook*, a hyperlink to the defendant's terms was included in a broader agreement, and the plaintiff was not advised that signing the broader agreement constituted agreement to the terms. Here, by contrast, the TOU were not referenced in a broader agreement. Rather, Plaintiffs were specifically advised that their "account, and any transactions [they] complete, with GTL [or] DSI-ITI, are governed by the terms of use," and Plaintiffs were directed to the website where they could access the TOU.

Plaintiffs' attempt to distinguish *Coiro v. Wachovia Bank, N.A.*, 2012 WL 628514 (D.N.J. Feb. 27, 2012), on the basis that nothing "put them on notice that they were agreeing to give up their right to sue in court by using GTL's services, required them to affirmatively indicate their agreement or, if they did not agree, advise them they should close their accounts." Opp. Br. at 15. That statement is simply wrong. The TOU clearly advised that (i) "**absent this mandatory [arbitration] provision, they would have the right to sue in court and have a jury trial**" (emphasis in original); (ii) "[b]y using the Service, . . . you agree to be bound by the terms of these Terms of Use"; and (iii) "[i]f you create an account to use the Service other than through the Site, and if you do not agree with or consent to the terms of these Terms of Use, you will have thirty (30) days from the date

you create the account with us to cancel the account.” Baker Decl., ¶ 4 & Ex. A ¶

R. In addition, the TOU give Plaintiffs 30 days to opt-out of arbitration.

II. Plaintiffs’ Duress Argument Should Be Rejected.

Plaintiffs are mistaken that “[q]uestions of arbitrability, including the validity of an arbitration agreement, are questions for judicial determination.”

Opp. Br. at 10. Plaintiffs ignore that “parties can agree to arbitrate ‘gateway’ questions of ‘arbitrability,’ such as whether the parties have agreed to arbitrate.”

Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 70 (2010); *see also Kocjancic v. Bayview Asset Mgmt., LLC*, 2014 WL 5786900, at *5 (E.D. Pa. Nov. 6, 2014).

That is precisely what occurred here, with the parties agreeing to delegate all questions of arbitrability to the arbitrator:

The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of these Terms of Use, including, but not limited to any claim that all or any part of these Terms of Use is void or voidable.

Baker Decl., ¶ 4 & Ex. A ¶ R(1). Because Plaintiffs have not challenged this delegation clause, the Court should refer Plaintiffs’ duress argument to arbitration.

With regard to Plaintiffs’ baseless argument for duress, the case law is clear: “[A] party alleging economic duress must show that he or she has been the victim of a wrongful or unlawful act or threat, and the act or threat must be one which deprives the victim of his unfettered will.” *J & D Textile, Inc. v. Gabo Indus.*,

LLC, 2013 WL 6763016, at *5 (App. Div. Dec. 24, 2013) (citing *Cont'l Bank of Pa. v. Barclay Riding Acad.*, 93 N.J. 153, 176 (1983)). ““Where there is adequacy of consideration, there is generally no duress.... Merely taking advantage of another's financial difficulty is not duress. Rather, the person alleging financial difficulty must allege that it was contributed to or caused by the one accused of coercion.”” *Barclay*, 93 N.J. at 177 (quoting 13 *Williston on Contracts* § 1607 (3d ed. 1970)).

Plaintiffs cannot meet that standard here. First, there was adequate consideration for the TOU. GTL provided its Advance Pay services, which it would not have done without Plaintiffs’ agreement to the TOU. Second, Plaintiffs point to no threats or coercion by GTL forcing them to agree to the TOU or arbitration. To the contrary, GTL provided an opportunity to opt-out of arbitration. Third, Plaintiffs were not deprived of their “unfettered will.” They could choose to open or use an Advance Pay account or not. Plaintiffs could have communicated in person or by letter, had the option of accepting collect calls billed through a Local Exchange Carrier or could have funded an inmate’s commissary account, allowing him to call directly (Macdonald Decl., ¶ 2), as Plaintiff Mark Skladany apparently did. Mark Skladany Decl., ¶ 3-4.

III. Plaintiffs’ Waiver Argument is Baseless.

Waiver is appropriate *only* “when the party opposing the arbitration

demonstrates sufficient prejudice arising from the delay of the party seeking arbitration in making its demand.” *Gray Holdco, Inc. v. Cassidy*, 654 F.3d 444, 451 (3d Cir. 2011). Moreover, as the Third Circuit has held, “waiver will normally be found only where the demand for arbitration came long after the suit commenced and when both parties had engaged in extensive discovery.” *Nino v. Jewelry Exch., Inc.*, 609 F.3d 191, 208 (3d Cir. 2010). Here, the record demonstrates that GTL’s Motion was timely and that there has been no waiver. Plaintiffs’ agreements to arbitrate were not evident on the face of the complaint. As a result, GTL was required to litigate this case up to the point when Plaintiffs finally provided the account information needed to determine whether and when they signed up for an Advance Pay account and agreed to the TOU. Twelve days after receiving that information, GTL sought leave to move to compel arbitration, as required by Court practice. There was no delay. Furthermore, with regard to prejudice, Plaintiffs make the conclusory assertion that they would have litigated differently had they known sooner that GTL intended to move to compel arbitration, providing no concrete examples. None the factors in *Hoxworth v. Blinder, Robinson & Co.*, 980 F.2d 912, 926-27 (3d Cir. 1992), support waiver, and Plaintiffs’ attempt to avoid their agreement to arbitrate should be rejected.

A. GTL’s Motion Was Timely.

GTL sought leave to move to compel arbitration as soon as it received

information that at least five of the seven Plaintiffs agreed to arbitrate their claims. Plaintiffs served discovery responses (albeit incomplete and uncertified) for 4 of the 7 Plaintiffs on April 24, 2015, and GTL sought leave to file its motion to compel arbitration less than two weeks later, on May 6, 2015. Accordingly, Plaintiffs' contention that there was a 23-month delay (Opp. Br. at 22) is ludicrous, and the cases cited by Plaintiffs are inapposite.

Plaintiffs also criticize GTL for not serving discovery earlier in the case. Opp. Br. at 22. That contention fails to acknowledge that the first 13 months of the case were spent on GTL's initial motion arguing that the case should be dismissed or stayed because the Federal Communication Commission has primary jurisdiction over Plaintiffs' claims. The Court agreed with GTL, and stayed the case. It was not until October 23, 2014, when Plaintiffs dismissed their Federal Communication Act claims that the stay was lifted. The Court issued its scheduling order on February 17, 2015, setting deadlines for the parties to serve discovery, and GTL served its discovery requests 3 days later – on the deadline set by the Court – seeking the information needed to identify Plaintiffs' accounts.

B. There Has Been No Litigation of the Merits.

Contrary to Plaintiffs' contention, there has not been extensive litigation of the merits. Opp. Br. at 23. GTL's primary jurisdiction motion was directed at which branch – the judiciary or the FCC – should determine the merits of

Plaintiffs' claims in the first instance. That motion did not address the merits of Plaintiffs' claims. GTL also argued on its initial motion that Plaintiffs had not adequately pled their claims, but that aspect of the motion was denied without analysis. Similarly, the Court deferred GTL's request to file an additional motion for judgment on the pleadings.

C. GTL Informed Plaintiffs of Its Intent to Seek Arbitration in its Amended Answer.

GTL filed an Amended Answer on March 9, 2015, asserting that certain Plaintiffs or putative class members agreed to arbitrate their claims. Plaintiffs were aware two months before GTL sought leave to move to compel arbitration that GTL intended to pursue arbitration. *Cole v. Jersey City Med. Ctr.*, 215 N.J. 265 (2013), does not, as Plaintiffs contend, hold that assertion of arbitration as an affirmative defense in an answer is "insufficient" to preserve that defense; rather, it held the opposite: that "*failure* to list arbitration as an affirmative defense is not dispositive." *Id.* at 281 (emphasis added). Here, GTL listed arbitration as an affirmative defense in its Amended Answer.

D. GTL's Engagement in Non-Merits Litigation Activity and Discovery Does Not Support Waiver.

Aside from its initial primary jurisdiction motion and the request to bifurcate discovery, Plaintiffs have instigated all non-merits motion practice in this case and virtually all of those motions were presented after May 6, 2015, when GTL sought

leave to file this Motion to Compel Arbitration. D.E. 69, 82, 87, 96. GTL should not be prejudiced by having to respond to Plaintiffs' repeated informal discovery letters (all of which have been rejected). *See Baker v. Conoco Pipeline Co.*, 280 F. Supp. 2d 1285, 1300 (N.D. Okla. 2003) (participation in litigation after filing of motion to compel arbitration and "[c]ompliance with court-imposed deadlines does not support a waiver"); *Maxum Founds., Inc. v. Salus Corp.*, 779 F.2d 974, 982 (4th Cir. 1985) ("We decline to create a rule that would require a party seeking arbitration to avoid a finding of default by ignoring court-ordered discovery deadlines and assuming the risk that its motion under the Federal Arbitration Act will be unsuccessful."). In addition, GTL's proposal of a discovery plan, which it needed to determine whether Plaintiffs had agreed to arbitrate, and seeking bifurcation of discovery are not sufficient to find waiver. *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 704 (4th Cir. 2012) (bifurcated discovery plan, among other activity, did not demonstrate waiver). Finally, as Plaintiffs concede, discovery in this case has not been extensive, and the discovery produced in this case would be available for use in the arbitrations. *Id.* at 704 (plaintiff not prejudiced by discovery because she failed to show that it would be "unavailable in arbitration").

IV. Plaintiffs' Request to Strike Certain Paragraphs of the Baker Declaration Should be Rejected.

Plaintiffs' demand to strike the references in the Baker Declaration to the

July 2013 IVR notice is unprecedented and unwarranted. Indeed, Plaintiffs' cite no case striking evidence on a motion made prior to the conclusion of discovery. Plaintiffs' reliance on Fed. R. Civ. P. 37(c)(1) is misplaced because that only applies when there has been a violation for Fed. R. Civ. P. 26(a) or (e). There has been no such violation here. Fact discovery is still open, and GTL has until September 11, 2015, to supplement its responses to Plaintiffs' document requests. D.E. 102. Nevertheless, the IVR script referenced in the Baker Declaration is submitted as Exhibit D to the Reply Baker Declaration filed herewith.

Even if that rule does apply, the factors cited by Plaintiffs (Opp. Br. at 4) do not support striking Paragraph 2 of the Baker Declaration. There is no "prejudice or surprise," as Plaintiffs who used GTL's IVR do not dispute they heard the notice about the TOU on multiple occasions, which informed them of the TOU and notified them that it will govern the account and the parties' transactions. Instead, Plaintiffs have filed carefully crafted declarations stating that they never heard a notice that references "arbitration."⁴ But that assertion is irrelevant, as GTL has never contended that the IVR notice referenced arbitration. Any contrived argument that GTL has engaged in an "ongoing plan to keep evidence away from

⁴ King Decl., ¶ 5-6 ("No arbitration clause was referenced . . . in the recorded messages on the Defendants' system. . . . I have used the Defendants' phone system after July 3, 2013, but was never informed of an arbitration clause nor was there any voice prompt telling me that new terms of service applied to my use of the system and that I was somehow agreeing to arbitration if I used the phone system."); James Decl., ¶ 6-7 (same); Barbara Skladany Decl., ¶ 6-7 (same).

Plaintiffs” (Opp. Br. at 6) is a distraction and an attempt to seek a denial of the Motion for perceived discovery issues as opposed its merits.⁵

V. The Claims of the Other Plaintiffs Should be Stayed.

Finally, Plaintiffs present no basis for the Court to move forward with the claims of Plaintiffs Mark Skladany and John Crow while individual arbitrations proceed as to the other five Plaintiffs. The issues relevant to all seven Plaintiffs’ claims not only are overlapping; they are *identical*. *Mendez v. Puerto Rican Int’l Cos*, 553 F.3d 709 (3d Cir. 2009), does not compel a different result and indeed recognizes that a District Court has *discretion* to stay. *Id.* at 713 (affirming stay even though 41 of 49 plaintiffs did not agree to arbitrate).

CONCLUSION

For the reasons set forth herein, above, GTL respectfully requests this court grant this motion to compel arbitration and stay this matter pending the completion of the individual arbitrations.

⁵ Plaintiffs also object to Baker stating in his declaration that certain Plaintiffs agreed to arbitrate, contending that those statements are “legal conclusions and/or argument.” Opp. Br. at 7. That contention is baseless and hypocritical. It is Mr. Baker’s view, based on his review of GTL’s records, that Ms. James and Ms. King “agreed” to GTL’s TOU when they used GTL’s IVR system, which is not a legal conclusion, but is a conclusion based on his review of the evidence. Nevertheless, Plaintiffs also state in their declarations that they did not agree to arbitrate. Gibson Decl., ¶ 7-8; King Decl., ¶ 5-6; James Decl., ¶ 6-7; Barbara Skladany Decl., ¶ 6-7. To the extent the Court strikes the references to an agreement to arbitrate in Mr. Baker’s declaration, it likewise should strike them from Plaintiffs’ declarations.

Respectfully submitted,

/s/ Philip R. Sellinger

Philip R. Sellinger

Aaron Van Nostrand

GREENBERG TRAURIG, LLP

200 Park Avenue

Florham Park, New Jersey 07932

Telephone: (973) 360-7900

Facsimile: (973) 301-8410

Attorneys for Defendants

*Global Tel*Link Corporation and*

DSI-ITI LLC

Dated: September 8, 2015

GREENBERG TRAURIG, LLP
200 Park Avenue
Florham Park, New Jersey 07932
Philip R. Sellinger
Aaron Van Nostrand
Ph: (973) 360-7900
Attorneys for Defendants
Global Tel*Link Corporation
and DSI-ITI LLC

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GLOBAL TEL*LINK CORPORATION,
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Defendants.

13 Civ. 4989 (WJM) (MF)

REPLY DECLARATION OF JOHN W. BAKER, II

I, John W. Baker, II, pursuant to 28 U.S.C. § 1746, make the following declaration:

1. I am Global Tel*Link Corporation's ("GTL") Senior Vice President-Payment Services and Consumer Channels. In that capacity, I have become familiar with GTL's automated telephonic systems and the general process and procedure for setting up an account to access GTL's Inmate Calling Services ("ICS"). I am also familiar with GTL's records relating to the Plaintiffs in this matter, which were provided to me by another GTL employee.

2. As set forth in Paragraph 2 of my August 4, 2015 declaration in this matter, since approximately July 2, 2013, a customer who signed up for an account through GTL's IVR system was notified, before completing the transaction, that:

Please note that your account, and any transactions you complete, with GTL, PCS, DSI-ITI, or VAC are governed by the terms of use and the privacy statement posted at www.offenderconnect.com. The terms of use and the privacy statement were most recently revised on July 3, 2013.

3. A copy of the IVR script in place as of approximately July 2, 2013 is attached hereto as Exhibit D.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed September 8, 2015 .


JOHN W. BAKER, II

EXHIBIT D

Master Prompt list

AdvPay_1000Eng.wav:

We see that you are calling from...

AdvPay_1000Span.wav:

In Spanish: Vemos que nos está marcando desde...

AdvPay_1001Eng.wav:

If this is the number you are calling about, press 1. To enter a different number, press 2.

AdvPay_1001Span.wav:

In Spanish: Sí éste es el numero desde el cual nos está marcando, marque 1. Para ingresar otro numero, marque 2.

AdvPay_1002Eng.wav:

Please enter the 10 digit telephone number you are calling about, starting with the area code.

AdvPay_1002Span.wav:

In Spanish: Ingrese el número telefónico a diez dígitos del que nos está marcando, empezando con la clave lada.

AdvPay_1003Eng.wav:

I'm sorry that was an invalid entry. Please try again.

AdvPay_1003Span.wav:

In Spanish: Lo sentimos, el número que marcó no es valido, vuelva a ingresar el número.

AdvPay_1004Eng.wav:

Please listen as our menu options have changed. To create a new prepaid account or to make a credit card deposit on your Advance Pay account, press one. To hear your account balance, press two. To hear deposit instructions via western union or US Mail, press three. To repeat this menu, press nine. To exit, please hang up now.

AdvPay_1004Span.wav:

In Spanish: Nuestramenú de opciones ha cambiado. Para crear una nueva cuenta de pre-pago o para hacer un depósito con tarjeta de crédito a su cuenta "Advance Pay", marque uno. Para escuchar el saldo de su cuenta, marque dos. Para escuchar instrucciones de depósito por medio de Western Union o El Servicio Postal De Estados Unidos, marque tres. Para repetir éste menú, marque nueve. Para salir, cuelgue ahora.

AdvPay_1005Eng.wav:

Sorry there is no Advanced Pay account for this telephone number. Please check the number and try again.

AdvPay_1005Span.wav:

In Spanish: Le pedimos una disculpa pero no se encontró una cuenta "Advanced Pay" de pago por adelantado registrada a éste número. Revise el número y vuelva a intentar de nuevo.

AdvPay_1006Eng.wav:

You do not have sufficient funds in your Advance Pay account.

AdvPay_1006Span.wav:

In Spanish: No tiene suficientes fondos en su cuenta "Advanced Pay" de pago por adelantado.

AdvPay_1007Eng.wav:

Your account balance is...

AdvPay_1007Span.wav:

In Spanish: El saldo de su cuenta es de...

AdvPay_1008Eng.wav:

...as of...

AdvPay_1008Span.wav:

In Spanish: ...desde...

AdvPay_1009Eng.wav:

To make a credit card payment on your Prepaid account, please press one. To go to back to the main menu, press two. To exit, please hang up now.

AdvPay_1009Span.wav:

In Spanish: Para realizar un pago con su tarjeta de crédito a su cuenta de pre-pago, marque uno. Para regresar al menú principal, marque dos. Para salir, cuelgue ahora.

AdvPay_1010Eng.wav:

Please have your Visa or Master Card ready. We accept deposits of \$25 or \$50. Your deposit may include a transaction fee. Transaction fees and balances below \$6 are non-refundable. Advance Pay balances that remain unused may expire after 90 days. To make a deposit of \$25, which may include a transaction fee, please press one. To make a deposit of \$50, which may include a transaction fee, please press two. To cancel and return to the main menu, please press three.

AdvPay_1010Span.wav:

In Spanish: Por favor tenga su Visa o Master Card a la mano. Aceptamos depósitos por \$20 o \$50 dólares. Su depósito puede incluir una comisión por transacción. Comisiones por transacción y saldos menores a \$6 dólares no son reembolsables. Saldos "Advanced Pay" de pago por adelantado que no sean utilizados expirarán después de noventa días. Para realizar un depósito por la cantidad de \$25 dólares, la cual puede incluir una comisión por transacción, marque uno. Para realizar un depósito por la cantidad de \$50 dólares, la cual puede incluir una comisión por transacción, marque dos. Para cancelar y regresar al menú principal, marque tres.

AdvPay_1011Eng.wav:

To hear the applicable fee for this transaction, press one. To continue without hearing the applicable fee, press two.

AdvPay_1011Span.wav:

In Spanish: Para escuchar la tarifa aplicable a esta transacción, marque uno. Para continuar sin escuchar la tarifa aplicable, marque dos.

AdvPay_1012Eng.wav:

Please enter your 16 digit credit card number

AdvPay_1012Span.wav:

In Spanish: Ingrese su número de tarjeta a dieciséis números.

AdvPay_1013Eng.wav:

Please enter your credit card expiration date by pressing two digits month followed by two digit year. Foreexample, if the expiration date is June 2014, press 0614.

AdvPay_1013Span.wav:

In Spanish: Por favor ingrese la fecha de vencimiento de su tarjeta de crédito marcando los dos dígitos del mes seguido de los dos dígitos del año. Ejemplo, si su tarjeta vence en Junio del año dos mil catorce, marque 0614, cero seis catorce.

AdvPay_1014Eng.wav:

Please enter the 3 digit security code from your credit card. The code is located on the signature line on the back of your credit card.

AdvPay_1014Span.wav:

In Spanish: Por favor ingrese el código de seguridad de tres dígitos de su tarjeta de crédito. El código se encuentra en la parte de atrás de su tarjeta en la franja donde lleva la firma su tarjeta.

AdvPay_1015Eng.wav:

Please enter the 5 digit zip code associated with the billing address of the credit card.

AdvPay_1015Span.wav:

In Spanish: Por favor ingrese el código postal a cinco dígitos de la dirección donde recibe mensualmente su estado de cuenta.

AdvPay_1017Eng.wav:

You have chosen to make a \$25 deposit. If this is correct, press 1. To choose another selection, press 2.

AdvPay_1017Span.wav:

In Spanish: Usted a elegido hacer un deposito por \$25 dólares. Si la cantidad es correcta, marque uno. Para seleccionar otra opción, marque dos.

AdvPay_1018Eng.wav:

You have chosen to make a \$50 deposit. If this is correct, press 1. To choose another selection, press 2.

AdvPay_1018Span.wav:

In Spanish: Usted a elegido hacer un deposito por \$50 dólares. Si la cantidad es correcta, marque uno. Para seleccionar otra opción, marque dos.

AdvPay_1019Eng.wav:

Thank you. Please hold while we validate this transaction.

AdvPay_1019Span.wav:

In Spanish: Gracias. Por favor espere mientras validamos esta transacción.

AdvPay_1027Eng.wav:

To hear these instructions again, press one. To go back to the main menu, press two. To exit, please hang up now.

AdvPay_1027Span.wav:

In Spanish: Para volver a escuchar estas instrucciones, marque uno. Para regresar al menú principal, marque dos. Para salir cuelgue ahora.

AdvPay_1029Eng.wav:

You have entered...

AdvPay_1029Span.wav:

Usted ha ingresado...

AdvPay_1030Eng.wav:

If this is correct press 1. To try again press 2.

AdvPay_1030Span.wav:

In Spanish: Si esto es correcto, marque uno. Para intentar de nuevo, marque dos.

AdvPay_1031Eng.wav:

Your payment is approved. The amount of...

AdvPay_1031Span.wav:

In Spanish: Su pago ha sido aprobado. Por la cantidad de ...

AdvPay_1032Eng.wav:

...will be charged to your credit card and appear as GTL INMATE TEL SVC. This amount minus any applicable fees will be applied towards your Adv Pay account. Tired of paying fees and maintaining minimum balance requirements on your checking account? **Don't have a checking account? Through our partnership with a national provider, we now offer a prepaid debit card that can replace your checking account, your current prepaid debit card and take the place of a credit card. Our card has no monthly maintenance fees, no overdraft fees, and no credit checks – just get your money, whenever and wherever you need it. Signing up is fast and our card can be used anywhere credit or debit cards are accepted. Visit www.connectnetwork.com today to find out more!**

AdvPay_1032Span.wav:

In Spanish: ...será cargado a su tarjeta de crédito y aparecerá como GTL INMATE TEL SVC. Esta cantidad menos cargos aplicables serán aplicados hacia su cuenta "Advanced Pay" de pago por adelantado. Está cansado de pagar cargos y de requisitos de mantener un saldo mínimo en su cuenta corriente? **No tiene una cuenta corriente? Mediante una sociedad con un proveedor nacional, ahora le ofrecemos una tarjeta de debito pre-pagada para sustituir su cuenta corriente, su actual tarjeta de debito pre-pagada y podrá sustituir una tarjeta de crédito. Nuestra tarjeta no incluye cuotas de mantenimiento, cargos por sobregiro, ni verificación de solvencia – disponga de su dinero cuando y en donde lo necesite. Solicitarla es muy fácil y rápido además de que nuestra tarjeta puede ser usada en cualquier parte donde se acepten tarjetas de crédito y/o debito. Visite nuestra página www.connectnetwork.com ahora para más información.**

AdvPay_1033Eng.wav:

To go back to the main menu, press one. To exit, please hang up now.

AdvPay_1033Span.wav:

In Spanish: Para regresar al menú principal, marque uno. Para salir, cuelgue ahora.

AdvPay_1035Eng.wav:

To hear western union payment instructions, press one. To hear mail payment instructions, press two. To repeat this menu, press three. To go back to the main menu, press nine. To exit, please hang up now.

AdvPay_1035Span.wav:

In Spanish: Para escuchar las instrucciones de pago de Western Union, marque uno. Para escuchar instrucciones de pago por correo, marque dos. Para repetir este menú, marque tres. Para regresar al menú principal, marque nueve. Para salir, cuelgue ahora.

AdvPay_1036Eng.wav:

You can call Western Union at 800-325-6000 or go to any western union location and complete a blue quick collect form. Make the wire transfer payable to Global Tel*Link. Our code city is Advancepay and state AL for Alabama. Include your name, area code and telephone number, zip code and the corrections facility name for faster payment posting. Please Note: Western Union payments received will be posted within 24 hours during the normal business week.

AdvPay_1036Span.wav:

In Spanish: Puede contactar a Western Union marcando 800-325-6000 (ochocientos tres veinticinco seis mil) o puede acudir a cualquier agencia de Western Union y llenar una forma "blue quick collect form". Haga su transferencia electrónica a nombre de Global Tel*Link, nuestro código de ciudad es Advancepay y del estado es AL para Alabama. Incluya su nombre, clave lada y número telefónico, código postal y el nombre del establecimiento penitenciario para agilizar el pago. Nota: Los pagos recibidos de Western Union serán contabilizados dentro de un lapso de veinticuatro horas de días hábiles.

AdvPay_1037Eng.wav:

Please mail payments made payable to Global Tel*Link, Dept 1722, Denver, CO 80291-1722. Please provide your area code, telephone number, zip code and the corrections facility name on your payment for faster posting.

AdvPay_1037Span.wav:

In Spanish: Favor de enviar pagos por correo a Global Tel*Link, Dept 1722, Denver, CO 80291-1722. Por favor incluya su clave lada, número de teléfono, código postal y el nombre del establecimiento penitenciario para agilizar el envío.

AdvPay_1038Eng.wav:

Thank you for calling Global Tel Link's Advance Pay Automated Payment System for prepaid customers.

Attention Global Tel Link AdvancePay customers – you can now manage your account online at www.offenderconnect.com. It's the fastest and easiest way to process your payments so you can continue to receive calls www.offenderconnect.com has many more convenience features than paying by phone. Visit www.offenderconnect.com and sign-up today. It's fast, easy and convenient!

AdvPay_1038Span.wav:

This prompt will not exist as 1038Eng accounts for both.

AdvPay_1039Eng.wav: *Note: This will not be used but recorded for later.*

We're sorry but we are unable to assist you at this time. Please try your call again later, or call our customer service center at 866.230.7761.

AdvPay_1039Span.wav: *Note: This will not be used but recorded for later.*

In Spanish: Lo sentimos pero no podemos atenderlo por el momento. Por favor intente llamar de nuevo mas tarde o llame a nuestro centro de atención a clientes al 866.230.7761 (ocho seis seis dos treinta siete siete seis uno)

AdvPay_1041Eng.wav:

Thank you. The system will now hang up. Goodbye.

AdvPay_1041Span.wav:

In Spanish: Gracias, el sistema colgara ahora. Hasta Luego.

AdvPay_1042Eng.wav:

The applicable transaction fee is...

AdvPay_1042Span.wav:

In Spanish: La cuota de transacción aplicable es de ...

AdvPay_1043Eng.wav:

...for this deposit.To accept the fee for this deposit press 1.To cancel thistransactionpress 2.

AdvPay_1043Span.wav:

In Spanish: ...para éste depósito. Para aceptar el cargo por este deposito, marque uno . Para cancelar esta transacción marque dos.

AdvPay_1044Eng.wav:

We are unable to process the credit card information you entered. To re-enter the information or to try another credit card, press 1. **If you are interested in obtaining our new prepaid debit card with no monthly maintenance fees, please visit www.connectnetwork.com to apply.** There are no credit checks and no overdraft fees. Signing up is fast and easy. Our prepaid debit card can be used anywhere credit or debit cards are accepted.Toendthiscall, pleasehang up now..

AdvPay_1044Span.wav:

In Spanish: No nos fue posible procesar la información de la tarjeta de crédito que ingresó. Para volver a ingresar la información o para intentar con otra tarjeta de crédito, marque uno. **Si está interesado en obtener nuestra nueva tarjeta de debito de pre-pago sin cargos mensuales de mantenimiento, por favor visite nuestra pagina web www.connectnetwork.com para solicitarla.** No hay verificación de solvencia ni cuotas por sobregiro. Solicitarla es fácil y muy rápido. Nuestra tarjeta de debito de pre-pago puede ser usada en cualquier lugar donde se acepten pagos de tarjeta de crédito o debito. Para terminar esta llamada, cuelgue ahora.

AdvPay_1045a.wav:

Press 1 for English.

AdvPay_1045b.wav:

Marque dos para ser atendido en español.

AdvPay_1045c.wav:

Press 3 for Caribbean Creole.

AdvPay_1045d.wav:

Press 4 for Tagalog.

AdvPay_1045e.wav:

Press 5 for Cantonese.

AdvPay_1045f.wav:

Press 6 for Armenian.

AdvPay_1045g.wav:

Press 7 for French.

AdvPay_1045h.wav:

Press 8 for Portuguese.

AdvPay_1045i.wav:

Press 9 for Mandarin.

AdvPay_1045j.wav:

Press 10 for Vietnamese.

AdvPay_1045k.wav:

Press 11 for Somali.

AdvPay_1046Eng.wav:

We are unable to process this transaction, please hold for the next available customer service representative.

AdvPay_1046Span.wav:

In Spanish: No podemos procesar su transacción, por favor espere a ser atendido por el un representante de servicio a clientes .

AdvPay_1047Eng.wav:

Please hold while your call is being connected

AdvPay_1047Span.wav:

In Spanish: Por favor espere mientras su llamada es transferida.

Disclaimer.wav

Please note that your account, and any transactions you complete, with GTL, PCS, DSI-ITI, or VAC are governed by the terms of use and the privacy statement posted at www.offenderconnect.com. The terms of use and the privacy statement were most recently revised on July 3, 2013.

GREENBERG TRAURIG, LLP
200 Park Avenue
Florham Park, New Jersey 07932
Philip R. Sellinger
Aaron Van Nostrand
Ph: (973) 360-7900
Attorneys for Defendants
Global Tel*Link Corporation
and DSI-ITI LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BOBBIE JAMES, et al.,

Plaintiffs,

vs.

GLOBAL TEL*LINK CORPORATION,
INMATE TELEPHONE SERVICE and DSI-ITI
LLC,

Defendants.

13 Civ. 4989 (WJM) (MF)

DECLARATION OF VANCE MACDONALD

I, Vance Macdonald, pursuant to 28 U.S.C. § 1746, make the following declaration:

1. I am Global Tel Link Corporation's ("GTL") Executive Director, Call Center Operations. In that position I am responsible for overseeing the company's Customer Service organization, which includes the call centers, and the training and quality assurance team.

2. An Advance Pay account is simply a payment channel - a way for friends or family to set up a pre-funded account that allows them to conveniently pay for collect calls from inmates. The account is not a requirement for a person to receive calls from inmates. A person can receive collect calls from inmates where they can be billed through the call recipient's Local

Exchange Carrier. In some correctional facilities, friends and family members may have been able to fund an inmate's commissary account, allowing the inmate to call directly.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed September 8, 2015 .


VANCE MACDONALD