UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCOTT ERNST, SEAN DENTON, and NEIL TROTTER, individually and as representatives of the classes,

Plaintiffs,

-against-

DISH NETWORK, LLC, DISH NETWORK SERVICE, LLC, AND STERLING INFOSYSTEMS, INC.

Defendants.

Case No.: 12 CIV 8794(LGS)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

INTRODUCTION

On September 16, 2016, the Court granted Scott Ernst, Sean Denton, and Neil Trotter's ("Plaintiffs") unopposed motion for preliminary approval of the class action settlement with Defendants DISH Network L.L.C. and DISH Network Service L.L.C. ("DISH" or "Defendants"). (ECF No. 283.) Notice has been sent out to over 36,000 Settlement class members, and the reaction has been overwhelmingly positive. There have been no class member objections to the settlement, only one class member opted out (0.002% of the total class members), and a notable 4,678 valid Claim Forms were received (12.9% of the Classes). In light of the positive reaction of the class members, the substantial monetary relief afforded to class members under the Settlement, and the delay, costs and substantial risks that would be associated with continuing the litigation, Plaintiffs respectfully request that the Court grant final approval of the Settlement. DISH does not oppose the relief sought in this motion.

BACKGROUND

I. SUMMARY OF CLAIMS AND PROCEDURAL HISTORY.

The history of this litigation is set forth in detail in Plaintiffs' preliminary approval papers and will be only briefly summarized here. (*See* ECF No. 279.) Prior to reaching the settlement in this matter, this case was aggressively litigated for almost three and a half years.[1] On December 4, 2012, Plaintiff Ernst filed his initial Complaint in this matter, alleging that DISH and Sterling failed to comply with certain provisions of the FCRA. With respect to DISH, the Complaint alleged that DISH did not provide proper disclosure and authorization prior to obtaining consumer reports on Contractor Technicians in violation of 15 U.S.C. §

[1] This procedural history focuses on the litigation between Plaintiffs and DISH. The litigation against Sterling Infosystems, Inc. ("Sterling") has been settled separately and is resolved in total. (ECF No. 237.)

1681b(b)(2)(A), and took adverse employment action based on consumer reports without first providing the Contractor Technicians with a copy of the pertinent report and a notice of their rights in violation of § 1681b(b)(3)(A). (*See* ECF No. 1.) On February 4, 2013, DISH answered the Complaint, denying all allegations. (ECF No. 17.)

From February to April 2014, the parties briefed cross-motions for partial summary judgment on the issue of whether the "summary report" DISH had received on Plaintiff Ernst was a consumer report. (ECF Nos. 72-85.) On September 22, 2014, the Court ruled on the motions, finding that the "summary report" was in fact a consumer report as defined by the FCRA. (ECF No. 104.)

On October 13, 2014, Plaintiff filed his First Amended Complaint, which reasserted the claims set forth in the Complaint, clarified, and further elaborated on, the allegations against DISH. (ECF No. 108.) On November 12, 2014, DISH answered the First Amended Complaint, again denying all allegations. (ECF No. 111.) On June 11, 2015, Plaintiffs filed the Second Amended Complaint, adding two additional proposed class representatives (ECF No. 190) and DISH answered on June 25, 2015 (ECF No. 196). Plaintiffs filed the Third Amended Complaint on July 15, 2015, which remains the operative complaint, substituting a class representative. (ECF No. 199.) DISH again answered, denying all allegations. (ECF No. 203.)

On September 14, 2015, Plaintiffs moved to certify three classes regarding claims against DISH. (ECF No. 215.) The parties fully briefed the motion (ECF Nos. 220, 229, 242), but before the Court issued a ruling, DISH moved to stay the Litigation pending the Supreme Court's decision in *Spokeo, Inc. v. Robins*, No. 13-1339 (S. Ct. Apr. 27, 2015). (ECF Nos. 243, 244, 245.) The Court granted the stay on January 28, 2016. (ECF No. 252.)

II. DISCOVERY AND SETTLEMENT.

Discovery regarding Plaintiffs' claims against DISH was extensive. By the time Plaintiffs moved for class certification, DISH had produced almost 57,000 pages of documents, Plaintiffs had produced almost 8,000 pages, Plaintiffs had served DISH with four sets of Requests for Production, three sets of Requests for Admission, and three sets of Interrogatories, all three Named Plaintiffs had responded to Requests for Production and sat for their depositions, Plaintiffs took the depositions of two DISH corporate representatives pursuant to Fed. R. Civ. P. 30(b)(6), and both Plaintiffs and DISH had deposed Plaintiff Ernst's former supervisor at Superior Satellite. (ECF No. 280 ¶ 4.) In addition, Plaintiffs sought significant third-party discovery, serving approximately 200 subpoenas on DISH contractor companies. (*Id.*) Plaintiffs also took significant discovery from Defendant Sterling, which related to the DISH Contractor Technicians. (*Id.*) The substantial discovery in this case allowed both sides to have a full view of the facts of the case, and the strengths and weaknesses of their respective positions.

The parties first began discussing settlement potential for the claims against DISH in September 2014. From that point through July 2015, the parties exchanged settlement offers and demands, and explored ideas for how to structure a settlement, via arm's-length discussions and correspondence. (*Id.* ¶ 5.) On February 22, 2016, counsel for the parties met in person to discuss settlement further. (*Id.*) In April 2016, before the Supreme Court ruled in *Spokeo*, the parties came to an agreement on a settlement in principle, and have worked diligently since to formalize the instant settlement. (*Id.*)

At all times during the settlement discussions, negotiations were made at arm's length, through counsel. (*Id.*) The parties resolved the gross amount of relief that would be made available to the Settlement Classes before addressing the percentage that could be requested for

Class Counsel's fees or the amount of any Named Plaintiffs' service awards. (*Id.*) By the time the parties reached an agreement on settlement, both sides were well-informed on claims and defenses due to the substantial discovery exchanged and the parties' experience with engaging in dispositive motion practice. (*Id.*)

III. SUMMARY OF SETTLEMENT TERMS.

The Court certified, with its preliminary approval order, for settlement purposes, two Settlement Classes. (*See* ECF No. 283.) The "Authorization Class" is defined as:

> All DISH Network Contractor Technicians in the United States who were the subject of a consumer report that was procured (or caused to be procured) by DISH Network after November 30, 2010, who were provided with Forms 1, 2, or 3 prior to DISH Network procuring a summary consumer report, and who were not provided with any other relevant forms, with the exception of Digital Dish's form produced in the Lawsuit as "Exhibit G."

(ECF No. 280-1 ¶ 1.28(a).) The "Adverse Action Class" is defined as:

> All DISH Network Contractor Technicians or Contractor Technician applicants whose summary consumer reports were transmitted to DISH Network and who were adjudicated "high risk" at any time after November 30, 2010.

(*Id.* ¶ 1.28(b).)

In full and final settlement of this matter, Defendants have agreed to pay or cause to have paid $1,750,000 into a common settlement fund. (*Id.* ¶ 10.1.1.) In no circumstance will any portion of this fund revert to Defendants. (*Id.* ¶ 10.4.) After any Court-approved deductions for attorneys' fees, costs, and Named Plaintiff service awards, the remaining funds will be distributed *pro rata* to all Settlement class members who timely return properly completed Claim Forms. (*Id.* ¶ 10.1.2.) Adverse Action Class members will receive an allocation that is six (6) times that of Authorization Class members. (*Id.*) Should an individual be a member of both Settlement Classes, he or she will receive the higher Adverse Action Class member allocation, but not both. (*Id.*)

Should any funds remain after the close of the check negotiation period, the funds will be donated 50/50 to the parties' two designated *cy pres* recipients, Southern Coalition for Social Justice of Durham, North Carolina and the Legal Aid Foundation of Colorado. (*Id.* ¶ 10.5.)

In exchange for the monetary relief outlined above, the members of the Settlement Classes will release their claims in this case. The release is tailored to the claims asserted in this case, and only releases claims arising out of or relating to the facts alleged in the Litigation. (*Id.* ¶ 11.1.)

IV. CLASS NOTICE.

On November 7, 2016, the Settlement Administrator mailed 36,229 Notices to class members. (Declaration of Kelly Kratz ("Kratz Decl.") ¶ 7.) The Notice mailed to members of the Settlement Classes contained a Claim Form for class members to fill out and return. The Administrator also maintained a publicly available website that posted information related to the case and the Settlement, including the Settlement Agreement, the Long Form Notice, and the Court's Preliminary Approval Order, and sent a reminder notice to those who had not returned their Claim Form after a set period of time. (*Id.* ¶¶ 10, 16.) The Administrator also handled class member calls, and sent out 14 cure letters for incomplete claim forms. (*Id.* ¶¶ 12, 17.)

By the claim filing deadline, the Administrator had received 4,678 valid Claim Forms, 1,222 from members of the Adverse Action Class and 3,456 from members of the Authorization Class. (*Id.* ¶ 11.)

DISH also complied with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b), by providing notice of this proposed Settlement to the appropriate public officials.

V. CLASS MEMBER REACTION.

There has been only one opt-out, and 4,678 valid Claim Forms received. Notably, despite the size of the Settlement Classes, no objections have been filed.

VI. RELIEF TO BE PROVIDED AFTER THE SETTLEMENT BECOMES EFFECTIVE.

If the Settlement is granted final approval, DISH will deposit the settlement funds with the Settlement Administrator within 30 days after the Settlement's Effective Date. (ECF No. 280-1 ¶ 10.1.1.) The funds will then be apportioned between the two Settlement Classes. Should the Court award the requested administration expenses, attorneys' fees, costs, and Named Plaintiff Awards, the Settlement Administrator will mail checks of approximately $94 to each participating member of the Authorization Class and approximately $564 to each participating member of the Adverse Action Class within 45 days of the Effective Date. Class members will have 100 days to deposit or cash the checks, and if there are funds remaining after that deadline has passed, the Settlement Administrator will distribute the funds to the parties' *cy pres* recipients, subject to Court approval. The parties have proposed that 50% of any *cy pres* funds be provided to the Southern Coalition for Social Justice and the other 50% be provided to the Legal Aid Foundation of Colorado.

ARGUMENT

I. STANDARD OF REVIEW.

The law favors compromise and settlement of class action suits. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005). Courts may approve proposed settlements of class actions upon a determination that the settlement is "fair, adequate, and reasonable, and not a product of collusion." *Meredith Corp. v. SESAC, LLC*, No. 09 CIV. 9177 PAE, 2015 WL 728026, at *8 (S.D.N.Y. Feb. 19, 2015) (quoting *Joel V. v. Giuliani*, 218 F.3d 132, 138 (2d Cir.

2000)); *see also* Fed. R. Civ. P. 23(e).

For the reasons set forth below, the Court should (1) grant final approval of the parties' Settlement; (2) dismiss Plaintiffs and the Settlement Classes' claims against DISH with prejudice; and (3) approve the settlement payments for distribution to the Settlement Classes.

II. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.

Courts analyze the substantive fairness of a class action settlement by evaluating nine factors previously set forth by the Second Circuit. *See SESAC, LLC*, 2015 WL 728026, at *9 (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974)). The factors include: (1) the reaction of the class to the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Id.*.

"A 'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 184 (W.D.N.Y. 2005) (quoting *Wal-Mart Stores*, 396 F.3d at 116); *see SESAC, LLC*, 2015 WL 728026, at *8. "'[G]reat weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570 (S.D.N.Y. 2008) (quotation omitted). As noted in the parties' preliminary approval papers, this Settlement is clearly the product of well-informed, arm's length negotiations, so the

presumption of fairness should apply. (*See* ECF No. 279.) This presumption is further supported by the following analysis of the nine *Grinnell* factors.

1. The Positive Reaction of the Settlement Classes Supports Final Approval.

"It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Tiro v. Pub. House Investments, LLC*, No. 11 CIV. 7679 CM, 2013 WL 4830949, at *7 (S.D.N.Y. Sept. 10, 2013) (quoting *Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002)). The presence of "relatively few" requests for exclusion supports a settlement. *Id.* at *7.

Of the over 36,000 Settlement class members, only one opted out and *none* objected. (Kratz Decl. ¶¶ 14, 15.) These very small numbers weigh in favor of final approval. *See Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 212 (E.D. Pa. 2011) ("Seven opt outs and two objectors in a class of nearly forty thousand represents a small number that weighs in favor of this [FCRA] settlement."); *Wright v. Stern*, 553 F. Supp. 2d 337, 344-45 (S.D.N.Y. 2008) (approving settlement where 13 out of 3,500 class members objected and 3 opted out); *Tiro*, 2013 WL 4830949, at *7 (approving settlement where less than 1% of the class requested exclusion); *Henry v. Little Mint, Inc.*, No. 12 CIV 3996 CM, 2014 WL 2199427, at *2-4 (S.D.N.Y. May 23, 2014) (same); *Chavarria v. New York Airport Serv., LLC*, 875 F. Supp. 2d 164, 173 (E.D.N.Y. 2012) (approving settlement where less than 2% of class requested exclusion).

The Settlement class members were required to return a Claim Form to receive a settlement payment. The Administrator received 4,678 properly completed Claim Forms, representing approximately 12.9% of the eligible class members. This number compares favorably with other claims-made settlements, and is higher than the claims rates achieved in the prior settlement with Sterling in this matter, which only achieved an approximate 7% claims rate.

See ECF No. 223 at 10; *Sylvester v. CIGNA Corp.*, 369 F. Supp. 2d 34, 44 (D. Me. 2005) (quoting a claims administrator opining that "claim return rates are 10% or less in the vast majority of settlements that require filing a notice of claim."); 2 McLaughlin on Class Actions § 6:24 (11th ed.) ("Claims-made settlements typically have a participation rate in the 10-15 percent range.") (citing cases). The claims rate here was no doubt bolstered by the addition of a reminder postcard notice to class members, something Class Counsel negotiated in an effort to improve the claims rate.

All in all, only a single class member has voiced any disapproval regarding the Settlement (and that only by requesting exclusion, not by objecting), and a substantial 4,678 class members returned a valid Claim Form. Thus, it is fair to say that class members have reacted favorably to the Settlement and that the Settlement should therefore be approved.

2. The Complexity, Expense, and Likely Duration of Litigation Supports Settlement Approval.

"The greater the 'complexity, expense and likely duration of the litigation,' *Grinnell*, 495 F.2d at 463, the stronger the basis for approving a settlement." *SESAC, LLC*, 2015 WL 728026, at *9. Continuing the litigation against DISH would have resulted in complex, costly, and lengthy proceedings before this Court and likely the Second Circuit, which would have significantly delayed (at best) any relief to class members, and might have resulted in no relief to class members. This factor weighs in favor of final approval here, especially when viewed in light of the risks and time involved with continuing to litigate the claims against DISH. Although Plaintiffs believe that their claims are strong, "[l]itigation inherently involves risks." *In re Painewebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997).

Even though this case had been litigated for years, with substantial discovery undertaken, and class certification fully briefed, the end was not yet in sight. In addition to receiving a ruling

on class certification, absent settlement, the parties would still have needed to bring dispositive motions, and conduct a trial and any appeals. It is uncertain what the outcome of these proceedings would have been, but would undoubtedly have been time consuming and costly.

3. The Stage of Proceedings and Discovery Supports Settlement Approval.

"This *Grinnell* factor inquires whether the parties had adequate information about their claims, such that counsel possessed a record sufficient to permit evaluation of the merits of Plaintiffs' claims, the strengths of the defenses asserted by Defendants, and the value of Plaintiffs' causes of action for purposes of settlement." *SESAC, LLC*, 2015 WL 728026, at *10 (internal quotations and citations omitted).

The timing of the Settlement here supports a finding of fairness. The Settlement was reached after the exchange of very significant discovery, through arm's length negotiations between experienced counsel. "There is thus a 'presumption that the settlement achieved meets the requirements of due process.'" *Casey v. Citibank, N.A.*, 2014 WL 3468188 (N.D.N.Y. March 21, 2014) (citing *In re Penthouse Exec. Club Comp. Litig.*, 2013 WL 1828598, at *2 (S.D.N.Y. April 30, 2013)). The parties here engaged in sufficient discovery to determine the merits of Plaintiffs' claims and the likelihood of success. At the time this Settlement was reached, the parties had litigated this action for over three years, had exchanged discovery requests, responses and reviewed tens of thousands of pages of documents, and conducted multiple depositions. (ECF No. 280 ¶ 4.) By the time the Settlement was formalized, both sides had attained a very thorough understanding of the factual and legal issues.

4. The Risks of Litigation Support Settlement Approval.

In addition to the generalized uncertainty surrounding all litigation, the Plaintiffs here faced specific risks, most importantly DISH's opposition to class certification and its defenses to

willfulness. DISH strenuously opposed Plaintiffs' class certification motion, highlighting various differences between class members, which it contended defeat predominance. (ECF No. 220 at 13-21.) Even if Plaintiffs had prevailed on certification, they would not necessarily have prevailed on the merits. The FCRA is not a strict liability statute. *Dalton v. Capital Assoc. Indus.*, 257 F.3d 409, 417 (4th Cir. 2001). A FCRA plaintiff can recover only where the defendant has acted negligently or willfully, and where the defendant's violation was at most negligent, recovery is limited to actual damages. 15 U.S.C. §§ 1681n(a)(1), o(a)(1). Because Plaintiffs did not allege any actual damages, in order to recover anything in this case, they would have to prove not only that Defendants violated the FCRA, but that they did so willfully. Plaintiffs expect that if litigation had continued, Defendants would have contested the question of willfulness vigorously and, while Plaintiffs believe those arguments could have been overcome, they also acknowledge that the law on this issue is not clear, which weighs in favor of settlement approval. *Chakejian*, 275 F.R.D. at 212 (proving willfulness in FCRA case is "a high hurdle to clear," and is a factor weighing in favor of approval); *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 253 (E.D. Pa. 2011) (willfulness presented "considerable—albeit not insurmountable—risks" and weighs in favor of approval).

Moreover, the Settlement in this case was negotiated in the shadow of the Supreme Court's consideration of *Spokeo*, and a stay was imposed in this case pending the result. (ECF No. 252.) A defendant-friendly result in *Spokeo* could have impacted this case, and Defendants would have undoubtedly argued that the Supreme Court's decision deprives this Court of subject-matter jurisdiction. While Plaintiffs believe the Court would have maintained subject-matter jurisdiction, litigation on that issue would have doubtlessly further delayed a resolution, and the Settlement insulates Settlement class members from the risks posed by *Spokeo*, ensuring

that they have the opportunity to obtain benefits for their claims. Viewed in the context of all these risks, these factors weigh heavily in favor of final approval.

5. The Ability of DISH to Withstand a Greater Judgment Does Not Render the Settlement Inadequate.

DISH, a Fortune 500 corporation, could potentially have withstood a higher judgment. However, "this factor alone does not suggest that the settlement is unfair." *Elliot v. Leatherstocking Corp.*, 2012 WL 6024572, *4 (N.D.N.Y. Dec. 4, 2012); *Bezio v. General Electric Co.*, 655 F. Supp. 2d 162, 166 (N.D.N.Y. Aug. 6, 2009). As discussed herein, the Settlement provides significant and immediate relief to Settlement class members, and this relief is fair and reasonable in light of the risks and delay associated with continued litigation.

6. The Range of Reasonableness of the Settlement Fund in Light of Best Possible Recovery and the Attendant Risks of Litigation Support Final Approval.

The Settlement in this case represents an excellent result for the class members. "The adequacy of the amount achieved in settlement is not to be judged 'in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case.'" *SESAC, LLC*, 2015 WL 728026, at *12 (quoting *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987)). The ultimate question is whether a settlement falls within a "range of reasonableness" in light of "the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent" in litigation. *SESAC, LLC*, 2015 WL 728026, at *12 (quoting *Wal-Mart Stores*, 396 F.3d at 119). The instant Settlement clearly does.

The Settlement here not only offers class members substantial monetary relief that is comparable to recoveries approved in similar cases, it also provides meaningful prospective relief. With respect to monetary relief, Plaintiffs sought statutory damages under the FCRA,

which provides for $100 - $1000 for each willful violation. 15 U.S.C. §§ 1681n(a)(1). Due to the difficulties in establishing willfulness, it is common in FCRA class actions for settlement recoveries to be lower than $100. *See, e.g., In re Toys R Us-Delaware, Inc. – Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453-54 (C.D. Cal. 2014) ("A $5 or $30 award, therefore, represents 5% to 30% of the recovery that might have been obtained. This is not a *de minimis* amount. Given the likelihood that plaintiffs would have been unable to prove actual damages and the risk that they would have been unable to prove willfulness and recover any damages at all, the court finds that the amount of the settlement weighs in favor of approval."); *see also Reibstein*, 761 F. Supp. 2d at 258-59 (noting that the FCRA "contemplates relatively low recovery").

The expected settlement payouts for each Settlement class member are substantial here. Assuming the Court grants in full the pending motion for fees, costs and named plaintiff awards, over one million dollars will be made available to the members of the Classes who filed valid Claim Forms. The 3,456 claiming members of the Authorization Class will receive $94.12 a person, for a total of. $325,264.77. The 1,222 claiming members of the Adverse Action Class would receive $564.70 per person, for a total of $690,058.25. These amounts are significantly higher than those which have been distributed in other FCRA cases, including other FCRA cases which required the submission of a claim form. *See e.g., Domonske v. Bank of America, N.A.*, No. 5:08-cv-00066, ECF No. 155 (W.D. Va. June 14, 2011) (settling for about $17 per class member who files a claim); *Phillips v. Accredited Home Lenders Holding Co.*, No. 2:06-cv-00057, ECF No. 35-2 (C.D. Cal. July 17, 2008) (settling for $10 per class member on claims-made basis, with fees and costs paid separately); *King v. General Info. Servs.*, No. 10-cv-6850, ECF No. 124 (E.D. Pa. Nov. 4, 2014) (approving settlement that provides class members $50);

Haley v. TalentWise, Inc., No. 2:3-cv-01915-MJP, ECF No. 88 (final approval of settlement which paid class members approximately $50 for claims based on reporting outdated charges).[2]

In light of the risks discussed *supra* §§ II.2, 4, and compared to other recoveries in FCRA cases, the substantial monetary relief here is well within a "range of reasonableness." *SESAC, LLC*, 2015 WL 728026, at *12 (quoting *Wal-Mart Stores*, 396 F.3d at 119).

CONCLUSION

In sum, the Settlement is fair, reasonable, and adequate, and the Court should (1) grant final approval of the parties' Settlement; (2) dismiss Plaintiffs' and the Settlement Classes' claims against DISH with prejudice; and (3) approve the settlement payments for distribution to the Settlement Classes.

Dated: January 23, 2017

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[2] The appropriateness of the use of a claims process in this case was discussed in the preliminary approval papers, ECF No. 279 at 13-14.