

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

THOMAS H. KRAKAUER,
on behalf of a class of persons,

Plaintiff,

v.

Civil Action No. 1:14-cv-00333-CCE-JEP

DISH NETWORK, L.L.C.,

Defendant.

**Plaintiff's Motion for Order Transferring
Funds to Claims Administrator**

Now that the Court of Appeals has dismissed Dish's appeal of the Final Disbursement Order to Class Members ("Final Disbursement Order"), the Court's stay of that order has expired. Plaintiff now moves the Court to direct the Clerk to disburse to the Claims Administrator, KCC, the sum of \$30,799,312.20, within fourteen days of the Court's order granting this motion. KCC's receipt of these funds will then trigger all remaining duties of KCC and Class Counsel to disburse funds to class members, as set forth in the Final Disbursement Order.

In support, Plaintiff states:

1. On February 13, 2020, the Court entered the Final Disbursement Order. Doc. 560. The order calculated the allocation of judgment funds for each class call, listed the class members entitled to payment, and directed the clerk to disburse, "[n]o earlier than forty-five days after this order, and so long as no stay has been entered," to KCC, the

sum of \$30,799,312.20 from the judgment funds deposited with the Court. *Id.* at 4. KCC's obligations to collect class member tax forms and disburse funds would begin on the date of its receipt of judgment funds from the clerk.

2. On the parties' agreement, the Court on March 4, 2020 entered an order staying the case that would "terminate once [Dish's] appeal [of the Final Disbursement Order] concludes, or upon further order of the Court." Doc. 568.

3. DISH noticed its appeal on February 21, 2020. Doc. 562; No. 20-1077 (4th Cir.). On Plaintiff's motion, the Court of Appeals on December 1, 2020 dismissed the appeal, finding that "Dish's interest in the ongoing claims administration process is contingent upon the issue—not yet resolved in the district court—of whether any unclaimed class funds revert to Dish. If not, then the errors that Dish assigns to the claims administration process will not have caused any injury to Dish. For this reason, we conclude that Dish presently lacks standing to bring these appeals and, moreover, the issues on appeal are not ripe for our review." *Id.*, Doc. 50 at 2.

4. This dismissal terminated the stay of the Final Disbursement Order.

5. By the time the Court of Appeals dismissed the case, this Court had issued a pair of orders addressing the dispositive reverter issue. First, on August 18, 2020, the Court "decided that reversion is not appropriate, for reasons to be explained in a later opinion." Doc. 588, at 1. The Court also found that "Dish has no interest in the judgment funds it has already paid and which the Court has decided will not revert to it[,]" and, because of Dish's "post-verdict record of obstruction and filing briefs that attempt to re-litigate already-decided issues and do not advance the ball[,]" Dish would not be

permitted to brief whether and how unclaimed funds should be disbursed as *cy pres*.

Id. at 2.

6. Second, on October 27, 2020, the Court explained the basis for its non-reversion ruling, and set in motion a process for appointing a special master to help the Court evaluate potential *cy pres* recipients. Doc. 590 at 1.

7. Dish has appealed neither order, and the appeal period has passed. And as stated above, the stay of the Final Disbursement Order has terminated.

For these reasons, Plaintiff requests the Court enter an order directing the Clerk to disburse to KCC, from the judgment fund deposited with the Court, \$30,799,312.20, within fourteen days of the Court's order granting this motion.

THOMAS H. KRAKAUER

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that the foregoing was filed through this Court's CM/ECF system, and that all attorneys of record will be sent a copy of the same electronically through that system.

/s/ John W. Barrett
John W. Barrett

Dated: December 16, 2020

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DISH NETWORK, L.L.C.,

Defendant.

ORDER

The Court of Appeals has dismissed Dish’s appeal of the Final Disbursement Order to Class Members (“Final Disbursement Order”), and the Court’s stay of that order has expired. Plaintiff has moved the Court to direct the Clerk to disburse to the Claims Administrator, KCC, the sum of \$30,799,312.20, within fourteen days of the Court’s order granting this motion. The Court grants the motion, and finds as follows:

1. On February 13, 2020, the Court entered the Final Disbursement Order. Doc. 560. The order calculated the allocation of judgment funds for each class call, listed the class members entitled to payment, and directed the clerk to disburse, “[n]o earlier than forty-five days after this order, and so long as no stay has been entered,” to KCC, the sum of \$30,799,312.20 from the judgment funds deposited with the Court. *Id.* at 4. KCC’s obligations to collect class member tax forms and disburse funds would begin on the date of its receipt of judgment funds from the clerk.

2. On the parties' agreement, the Court on March 4, 2020 entered an order staying the case that would "terminate once [Dish's] appeal [of the Final Disbursement Order] concludes, or upon further order of the Court." Doc. 568.

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Id. at 2.

6. Second, on October 27, 2020, the Court explained the basis for its no-reversion ruling, and set in motion a process for appointing a special master to help the Court evaluate potential *cy pres* recipients. Doc. 590 at 1.

7. Dish has appealed neither order. And as stated above, the stay of the Final Disbursement Order has terminated.

For these reasons, the Court directs the Clerk to disburse to KCC, from the judgment fund deposited with the Court, \$30,799,312.20, within fourteen days.

This the ____ day of December, 2020.

JUDGE CATHERINE C. EAGLES