

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

THOMAS KRAKAUER,)
)
Plaintiff,)
)
v.) 1:14-CV-333
)
DISH NETWORK L.L.C.,)
)
Defendant.)

ORDER

Pursuant to Rule 53 of the Federal Rules of Civil Procedure, and for reasons previously stated, *see* Doc. 590, the Court finds and concludes that appointment of a special master is necessary to address post-trial, non-jury matters that cannot be timely addressed by an available district judge or magistrate judge of the district and for exceptional conditions. Specifically, the Court needs the assistance of a special master in identifying, evaluating, and, if appropriate, recommending a *cy pres* recipient or recipients for unclaimed judgment funds. The Court gave notice of its intent to appoint a special master pursuant to Rule 53(a)(1)(C) and provided the parties with an opportunity to recommend individuals. *See* Doc. 590. Upon consideration of the entire record and the submissions, *see* Docs. 589, 591, the Court finds that Leslie Winner is a suitable person based on her training, experience, and temperament, to serve as special master.

The Court is familiar with Ms. Winner, who has practiced law in this state and served in other public policy and administrative positions for many years. She has extensive public interest trial experience and non-profit management, among other things,

and she is well-qualified to serve as special master. *See generally* Doc. 591-3. Ms. Winner has filed the affidavit required by Rule 53(b)(3), Doc. 593, and the record shows no grounds for disqualification.

Pursuant to Federal Rule of Civil Procedure 53, it is **ORDERED** that:

1. Leslie Winner is appointed as special master.
2. As special master, Ms. Winner shall:
 - a. Solicit, invite, and receive written proposals, and if appropriate amended or clarified proposals, from entities who might be appropriate *cy pres* recipients for the unclaimed judgment funds;
 - b. Investigate and evaluate the applicants based on their experience and record of curbing abusive telemarketing practices that threaten consumer privacy or otherwise most nearly align with interests of the class members, as set forth further in the Order at Doc. 590.
 - c. Write a report summarizing her investigation and evaluation, identifying all appropriate recipients, recommending one or more appropriate recipients to the court, and providing reasons for her recommendations. Copies of the written proposals from the recommended recipient(s) shall be attached.
3. The special master is authorized to use paralegal assistants as reasonably necessary to facilitate her work and to rely on class counsel for administrative and logistical assistance.

4. The special master shall file her final report and recommendations electronically on the Court's CM/ECF system no later than March 22, 2021. Any objections or motions to modify must be filed within the time frame set by Rule 53(f)(2).
5. The special master and her assistants may communicate *ex parte* with any potential recipient, any lawyer for a party, and any other person with helpful information or experience, as the special master deems appropriate, for the purposes of fulfilling her duties in a timely and efficient manner. As to the parties in particular, she may:
 - a. Solicit and receive recommendations of appropriate *cy pres* recipients;
 - b. Obtain access to the discovery documents and records of both parties, to the extent needed, if at all;
 - c. Discuss and clarify the class-member interests that will be served by potential *cy pres* recipients.
6. The special master may communicate *ex parte* with the Clerk of Court, the Clerk's staff, and the Court about housekeeping, scheduling, and logistical matters. If necessary, the special master may communicate *ex parte* with the Court to clarify or supplement the Court's instructions, but all recommendations and the basis for recommendations must be in the written report.

7. The special master shall maintain orderly files consisting of all documents submitted to her by the parties and any proposals from potential recipients and shall preserve her files until January 2, 2025, unless relieved of this obligation earlier by the Court.
8. The Court will review the special master's report and recommendations under the standards set forth in Rule 53(f).
9. The special master shall incur only such fees and expenses as may be reasonably necessary to fulfill her duties under this Court's orders. The special master shall be compensated at \$350 per hour. She may also bill for paralegal assistance at \$100 per hour.
10. The special master shall submit monthly bills to the Court for her time, paralegal time, and expenses. The bills shall be filed on the public docket. Any objections to the time or expenses shall be filed within three (3) business days. The Clerk shall pay approved amounts within ten (10) days of Court approval from the unclaimed judgment funds, as the special master's work benefits those persons.
11. The Court may modify this order pursuant to Rule 53(b)(4), upon appropriate motion or upon notice and an opportunity to be heard.

SO ORDERED, this the 6th day of November, 2020.


UNITED STATES DISTRICT JUDGE