UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

GARY MARCHESE, ESTHER WEINSTEIN, and JOAN HOWARD Individually, and on Behalf of All Others Similarly Situated, Plaintiffs, vs. CABLEVISION SYSTEMS CORPORATION and CSC HOLDINGS, LLC, Defendants.	Civil Action No. 10-2190 (MCA) (MAH) *DOCUMENT FILED ELECTRONICALLY*

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF FINAL APPROVAL OF THE SETTLEMENT

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I. INTRODUCTION

This complex antitrust class action has been strongly contested and litigated since it was filed on April 30, 2010. On March 9, 2016, the Court certified the Settlement Class[1] and preliminarily approved the Settlement Agreement. (*See* Order Certifying a Settlement Class and Preliminarily Approving Class Action Settlement, ECF No. 203 ("Preliminary Approval Order" or "Order")). Pursuant to the Court's Order, Plaintiffs and Cablevision have notified the Settlement Class about the Settlement.

The Settlement provides for substantial and immediate economic relief. Cablevision's Current Subscribers[2] will receive access to a free four-month subscription to the Internet-delivered SundanceNow service from AMC ($27.96 value) without having to submit a claim form. In addition, Current Subscribers who file a Claim Form can choose either: (1) a one-time credit off their bill (ranging between $20 and $40); or (2) one of several Cablevision services (ranging between $50 and $140 in value), depending on their Tenure with Cablevision. Former Subscribers who file a Claim Form can receive a cash payment of $20 to $40 (depending on Tenure), plus access to a free four-month subscription to SundanceNow. The median value

[1] The Settlement Class is defined as follows:

> All persons in New Jersey, Connecticut, and New York who subscribed to Cablevision video services and paid a monthly fee to Cablevision to lease a Set-Top Box during the period April 30, 2004 to the [date of Preliminary Approval]. Excluded from the class are (i) commercial, bulk, and municipal accounts; (ii) Cablevision, its officers, directors, affiliates and subsidiaries, and counsel; and (iii) any judicial official to whom this case is or may be assigned and any members of those judicial official's immediate families, law clerk and their immediate families, and counsel for Plaintiffs.

[2] Certain capitalized terms used in this brief are defined in Section 2 of the Settlement Agreement.

range of settlement benefits made available to Class members who were sent individual Notice of the Settlement is between approximately $179 million and $341 million.[3] Additionally, and significantly, the Settlement obligates Cablevision to activate and support certain third-party Set-Top Boxes and to provide reasonable cooperation with interested manufacturers of Set-Top Boxes that seek to market Set-Top Boxes that operate on Cablevision's system. This injunctive relief addresses issues that are central to Plaintiffs' claims.

The Settlement was the result of arm's-length negotiations by experienced and fully informed counsel with a firm understanding of the strengths and weaknesses of the Plaintiffs' respective claims and defenses. Millions of pages of documents were reviewed by Class Counsel; 14 fact witnesses were deposed; the parties' experts submitted reports in support of class certification and were deposed; and the parties' respective positions were set forth in Plaintiffs' motion for Class Certification and Defendants' motion to exclude Plaintiffs' class certification expert. The Settlement takes into account the significant risks specific to this antitrust action. Plaintiffs and Class Counsel respectfully submit that this Settlement is an outstanding result for the Settlement Class, clearly satisfies the standards for approval set forth

[3] This range is minimally different than the range cited in Plaintiffs' Memorandum in Support of Plaintiffs' Memorandum Of Law In Support Of Motion For an Award of Attorneys' Fees, Expenses and Class Representative Service Awards (ECF No. 218-10 ("Fee Brief")) because it makes use of Class member data contained in the September 7, 2016 Declaration of Cameron Azari, Esq. on Implementation of Settlement Notices and Notice Plan ("Azari Dec") regarding the actual, instead of estimate, number of Current Subscribers and the number of Former Subscribers who were sent individual notice of the Settlement. There are 2,222,103 Current Subscribers and 703,947 Former Subscribers who were sent individual Notice of the Settlement. Azari Dec. at ¶¶ 27-29. Inclusive of attorneys' fees and expenses, the median value of benefits being made available to Current Subscribers is $138,293,090 for the credit option and $300,506,609 for the service option. The median value of benefits being made available to Former Subscribers is $40,800,768 ($30 median cash value plus $27.96 SundanceNow value). Totaling these values gives a range of $179,093,858 to $341,307,377. The range is conservative because it does not attempt to value the injunctive relief or benefits being made available to other Former Subscribers.

by the Third Circuit in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975), and *In re Prudential Ins. Co. Am.*, 148 F.3d 283, 323 (3d Cir. 1998), and is unquestionably fair, reasonable, and adequate, and in the best interests of the Class. For the reasons stated below, the Court should grant final approval of the Settlement.

II. FACTUAL BACKGROUND [4]

A. PLAINTIFFS ASSERTED ANTITRUST CLAIMS AGAINST CABLEVISION FOR ALLEGEDLY TYING THEIR SERVICES TO THE RENTAL OF A SET-TOP BOX FROM CABLEVISION.

Plaintiffs allege that Cablevision violated: (a) Section 1 of the Sherman Act, 15 U.S.C. § 1, by illegally tying Two Way Services ("TWS") (the tying product) to the rental of a Set-Top Box (the tied product) from Cablevision, thus denying Settlement Class Members access to competitively priced Set-Top Boxes and allowing Cablevision to charge inflated, supra-competitive rates for their Set-Top Boxes; and (b) Section 2 of the Sherman Act by monopolizing the distribution of Cablevision Set-Top Boxes. (ECF No. 59.)

On January 9, 2012, the Court denied in part Defendant's motion to dismiss Plaintiffs' Third Amended Complaint. (*See* Order, ECF No. 67 (finding that Plaintiffs adequately alleged a tying claim under Section 1, but dismissing Plaintiffs' Section 2 claim with prejudice).) Following denial of the motion to dismiss the Section 1 claim, Plaintiffs filed a Fourth Amended Complaint. (ECF No. 78.) [5]

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[4] A more detailed factual discussion of the procedural history and the Settlement's background is provided in the Fee Brief and the Declaration of Brett Cebulash in Support of Plaintiffs' Motion For an Award of Attorneys' Fees, Expenses and Class Representative Service Awards (ECF No. 218-1 ("Cebulash Decl.")), which are incorporated herein by reference.

[5] At the Court's suggestion, this complaint excluded from the proposed class any judicial official to whom this case is or may be assigned and any members of those judicial officials' immediate families, as well as law clerks and their immediate families. Plaintiffs filed the operative Fifth Amended Complaint (Docket No. 144) to amend class representatives.

B. Prior to settlement, the parties engaged in substantial motion practice and discovery.

The Court phased discovery, with class discovery proceeding first. (*See* ECF No. 87.) Since there was a substantial overlap between class and merits issues, class discovery was quite extensive. Plaintiffs produced documents, answered interrogatories, and were deposed. Plaintiffs' counsel reviewed over 1.4 million documents produced by Cablevision, as well as by a number of non-parties (including Set-Top Box manufacturers Cisco and Samsung, and Cablevision's competitors AT&T and Verizon), analyzed several terabytes of data, and deposed eleven of Cablevision's current or former employees.

On January 9, 2015, Plaintiffs moved for class certification and filed the expert reports of Dr. Justine S. Hastings in support thereof. (*See* Motion to Certify Class, ECF Nos. 172 and 196.) Dr. Hastings opined that economic issues, such as market power, coercion, harm to competition, and antitrust injury could be established through common evidence, and that she could calculate classwide overcharges based on accepted economic principles. (*Id*.) On January 30, 2015, Defendant moved to exclude Dr. Hastings' opinions and submitted the expert reports of Dr. Lauren J. Stiroh and Dr. Gerry W. Wall in support thereof, arguing, among other things, that: the tying-product market that Dr. Hastings posits does not exist; she applied the wrong standard when evaluating impact; the "but-for" world she posits absent the tie is speculative; and her damages model is unreliable and would yield damages figures that, in Defendant's experts' view, are extremely inflated. (See Motion to Exclude the Opinions of Dr. Justine S. Hastings, ECF Nos. 179 and 202.) Plaintiffs deposed Cablevision's experts and Cablevision deposed Dr. Hastings twice.

C. Settlement terms are reached after hard-fought, arms-length negotiations.

The parties first met to discuss settlement in May 2014. However, that meeting failed to produce a settlement because the parties were too far apart in their positions. Accordingly, the parties continued to litigate the case. In December 2014, after the parties had completed all phase-one fact depositions, exchanged class certification expert reports, and completed expert depositions regarding class certification, the parties resumed settlement discussions. On January 23, 2015, the Court ordered the parties to submit letters outlining, among other things, the status of the case and their respective positions on settlement. (*See* ECF No. 176.) On February 24, 2015, the parties agreed to extend deadlines for the remaining schedule previously entered by the Court to allow ample time to continue their settlement discussions. (*See* ECF No. 185.) The parties used that time to exchange multiple settlement demands and offers. The Court held settlement conferences on May 19, 2015, and again on June 25, 2015. (*See* Docket Minute Entries.)

With the Court's assistance at these conferences, the parties were able to close the gap between them, and ultimately reached an agreement on class relief. The parties then turned their efforts to discussing the form and manner of notice to the Settlement Class Members. The parties participated in numerous telephone calls with the Court regarding the status of those settlement-related discussions. It was not until after the substantive elements of the Settlement had been agreed upon that the parties turned their attention to negotiating attorneys' fees. (Settlement Agreement at ¶ 10.1.)

As described in more detail in Plaintiff's Fee Brief, the Settlement provides for substantial injunctive and compensatory relief for Settlement Class Members. As for injunctive relief, the Settlement obligates Cablevision to activate and support certain third-party Set-Top

Boxes and to cooperate with manufacturers that want to market their Set-Top Boxes as operating on Cablevision's system. (Settlement Agreement at ¶ 8.1.) This injunctive relief addresses issues that are central to Plaintiffs' claims.

The Settlement also provides for substantial and immediate economic relief. Cablevision's Current Subscribers will receive access to a free four-month subscription to the Internet-delivered SundanceNow service from AMC ($27.96 value) without having to submit a Claim Form.[6] In addition, Current Subscribers who file a Claim Form can choose either: (1) a one-time credit off their bill (ranging between $20 and $40); or (2) one of several Cablevision services (ranging between $50 and $140 in value), depending on their Tenure with Cablevision.[7] Former Subscribers who file a Claim Form can receive a cash payment of $20 to $40 (depending on Tenure), plus access to a free four-month subscription to SundanceNow.

D. The Court certified the Settlement Class, preliminarily approved the Settlement, and directed that notice be issued to the Settlement Class.

On March 9, 2016, the Court certified the Settlement Class and preliminarily approved the Settlement. (Preliminary Approval Order, Mar. 9, 2016, ECF No. 203.) The Court's

[6] Additionally, Epiq set up a Settlement website (www.CableBoxSettlement.com) to enable potential Settlement Class Members to obtain additional information and documents relating to the Settlement, including Claim Forms, the Settlement Agreement, notices, and answers to frequently asked questions. *Id*. at ¶ 34. As of September 2, 2016, there have been 194,965 sessions to the Settlement website and over 1,246,688 website pages displayed to visitors of the website. *Id*. at ¶ 36. Epiq also set up a toll-free number that provides Settlement Class Members with access to recorded information about the Settlement or a live operator and a post office box where Settlement Class Members could write to the Claims Administrator for further information. *Id*. at ¶ 45. As of September 2, 2016, the toll-free number has handled 27,507 calls representing 134,094 minutes of use, and live operators have handled 12,507 incoming calls (representing more than 66,138 minutes of use) and 3,243 outgoing calls (representing more than 6,761 minutes of use). *Id*.

[7] "Tenure" refers to the total period of time that a Current Subscriber has subscribed, or a Former Subscriber did subscribe, to Cablevision video services. (Settlement Agreement at ¶ 2.24.)

certification of the Settlement Class was conditioned only "upon the entry of this Order and an eventual Final Judgment approving the Settlement Agreement." (*Id*. at ¶ 1.) The Court further found that the Settlement had the indicia of fairness because the Settlement was the product of arm's length negotiations, was reached after extensive discovery, and is supported by Class Counsel, who are experienced in antitrust litigation. (*Id*. at ¶¶ 12–13.) Accordingly, the Court ordered notice to be disseminated to the Settlement Class. (*Id*. at ¶ 15.)

E. Notice was disseminated through first-class mail, e-mail, publication in national periodicals, and a website.

The Court appointed Claims Administrator Epiq Systems Class Action and Claims Solutions ("Epiq") and Cablevision implemented the Court ordered Notice plan. Current Subscribers who receives paper bills received the Current Subscriber Claim Form and Paper Bill Notices via bill insert by May 23, 2016. *See* Azari Dec at ¶ 27. Email Notice and Claim Forms were sent to: (1) Current Subscribers who receive their bills via email or use ACH or automatic bill pay and (2) Former Subscribers for whom Cablevision has email information. *Id*. at ¶¶ 28-29. Combined, over 3.1 million individual notices of the Settlement were sent to Settlement Class Members. *Id*. at ¶¶ 27, 30.

The publication and media portion of the Notice plan was also implemented and reached an estimated 84% of adults aged 18 or older an estimated 5.6 times in the Designated Market Areas ("DMA") in which Cablevision operates (the New York DMA and the Hartford/New Haven DMA). *Id*. at ¶ 15. This portion of the Notice plan included: publication of the Publication Notice in each of 27 selected local newspapers (with a combined circulation of 3,670,527) in the areas where Cablevision provided service during the Class Period, *Id*. at ¶¶ 32-33; banner notices on the 16 local newspaper websites, *Id*. at ¶ 37; internet banner notices on Facebook and Yahoo! Ad Network, *Id*. at ¶ 39; sponsored search listings on Google, Yahoo!

and Bing, *Id*. at ¶ 41; and informational release issued to more than 1,500 print and broadcast entities throughout the Northeast and 4,400 websites nationally. ¶ 43.

Additionally, Epiq set up a Settlement website (www.CableBoxSettlement.com) to enable potential Settlement Class Members to obtain additional information and documents relating to the Settlement, including Claim Forms, the Settlement Agreement, notices, and answers to frequently asked questions. *Id*. at ¶ 34. As of September 2, 2016, there have been 194,965 sessions to the Settlement website and over 1,246,688 website pages displayed to visitors of the website. *Id*. at ¶ 36. Epiq also set up a toll-free number that provides Settlement Class Members with access to recorded information about the Settlement or a live operator and a post office box where Settlement Class Members could write to the Claims Administrator for further information. *Id*. at ¶ 45. As of September 2, 2016, the toll-free number has handled 27,507 calls representing 134,094 minutes of use, and live operators have handled 12,507 incoming calls (representing more than 66,138 minutes of use) and 3,243 outgoing calls (representing more than 6,761 minutes of use). *Id*.

The deadline for Settlement Class Members to object or opt out of the Settlement was August 24, 2016. Epiq has received 24 opt out requests. *Id*. at ¶ 49. There have been 11 objections postmarked as of that date.

Class members have until September 23, 2016 to submit timely claims. As of September 2, 2016, ECA has received a total of 177,142 claims, 160,968 of which are from Current Subscribers and 16,174 of which are from Former Subscribers. Thousands of Current Subscribers who have submitted claims have selected each of the four available benefit options: a one-time bill credit, an additional free Set-Top Box, free Multi-Room DVR service, and access to certain premium channels for a limited time. *Id*. at ¶ 50.

III. ARGUMENT

A. The Court should finally approve the Settlement, which is fair, reasonable, adequate, and in the best interest of the Settlement Class.

Under Federal Rule of Civil Procedure 23(e), a settlement must be "fair, reasonable and adequate" to be approved. There is an "overriding public interest in settling class action litigation." *In re Pet Food Prods. Lib. Litig.*, 629 F.3d 333, 351 (3d Cir. 2010) (internal quotation marks omitted). The Third Circuit thus applies a "'strong presumption in favor of voluntary settlement agreements,'" which is "'especially strong in class actions and other complex litigation . . . because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts.'" *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 311 (3d Cir. 2011) (en banc) (quoting *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2009)).

Here, the Settlement is entitled to an initial presumption of fairness. The Court has already found that (1) "[t]he Settlement resulted from extensive arm's-length negotiations over a number of months," (2) "[t]he parties engaged in extensive discovery, including Cablevision's production and Plaintiffs' review of over 1.4 million documents and several terabytes of data, fourteen fact depositions, and expert depositions of both Plaintiffs' and Cablevision's experts," and (3) Class counsel are "experienced and skilled attorneys" and "strongly recommend the proposed Settlement as falling within the range of reasonableness." (Preliminary Approval Order ¶¶ at 10, 12-13.) Additionally, of the millions of Settlement Class Members, only 11 have objected to the Settlement and only 24 have opted out. Based on the Court's findings and the minimal number of objections, the Settlement is presumed to be fair. *See Sullivan*, 667 F.3d at 320 n.54 (noting that "initial presumption of fairness" may apply where "(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement

are experienced in similar litigation; and (4) only a small fraction of the class objected" (internal quotation marks omitted)); *See also In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) ("A presumption of correctness is said to attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery.").

This presumption of fairness is confirmed by the analysis that courts must apply in evaluating class-action settlements. Courts in the Third Circuit must consider the nine so-called *Girsh* factors:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (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 the trial; (7) the ability of the defendants to withstand a 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.

Pet Food, 629 F.3d at 350 (quoting *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)); *See also Sullivan*, 667 F.3d at 319–20 (same). While the Court "must make findings as to each of" these factors, *Id*. at 350, no one factor by itself is dispositive, *Hall v. Best Buy Co., Inc.*, 274 F.R.D. 154, 169 (E.D. Pa. 2011).

In addition to the *Girsh* factors, courts may also consider a second set of factors, known as the *Prudential* factors, insofar as they apply: (1) the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; (2) the existence and probable outcome of claims by other classes and subclasses; (3) the comparison between the results achieved by the settlement for individual class or subclass

members and the results achieved, or likely to be achieved, for other claimants; (4) whether class or subclass members are accorded the right to opt out of the settlement; (5) whether any provision for attorneys' fees are reasonable; and (6) whether the procedure for processing individual claims under the settlement is fair and reasonable. *See In re Prudential Ins. Co. Am.*, 148 F.3d 283, 323 (3d Cir. 1998); *See also In re Processed Egg Prods. Antitrust Litig.*, 284 FRD 278, 297 (E.D. Pa. 2012) (explaining that "[w]hile the Court must make findings as to the *Girsh* factors to approve a settlement as fair, reasonable, and adequate, the *Prudential* factors are illustrative of additional factors that may be useful even though they are not essential or inexorable depending upon the specific circumstances").

While the Court is required to consider *Girsh* factors and, where applicable, the *Prudential* factors, "the professional judgment of counsel involved in the litigation" is "entitled to significant weight." *Fisher Bros. v. Phelps Dodge Indus., Inc*., 604 F. Supp. 446, 452 (E.D. Pa. 1985). Counsel should not be held to "an impossible standard, as a settlement is virtually always a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re Ikon Office Solutions, Inc., Sec. Litig*., 194 F.R.D. 166, 179 (E.D. Pa. 2000) (internal quotation marks omitted). Here, the *Girsh* factors, the relevant *Prudential* factors, and the judgment of Class Counsel all favor final approval.

1. The *Girsh* factors weigh heavily and uniformly in favor of approval.

a. The complexity, expense, and likely duration of the litigation:

This first factor considers "the probable costs, in both time and money, of continued litigation." *In re Cendant Corp. Litig*., 264 F.3d 201, 233 (3d Cir. 2001) (internal quotation marks omitted). With respect to this factor, courts have recognized that antitrust class actions are "'arguably the most complex action[s] to prosecute'" as "'[t]he legal and factual issues involved are always numerous and uncertain in outcome.'" *In re Auto. Refinishing Paint Antitrust Litig.,*

617 F. Supp. 2d 336, 341 (E.D. Pa. 2007) (quoting *In re Linerboard Antitrust Litig*., 296 F. Supp. 2d 568, 577 (E.D. Pa. 2003)); *Bredbenner v. Liberty Travel, Inc., Civ. Nos*. 09-905 (MF), 09 1248 (MF), 09-4587 (MF), 2011 WL 1344745, at *11 (D.N.J. Apr. 8, 2011) ("Where the complexity, expense, and duration of litigation are significant, the Court will view this factor as favoring settlement.").

This case was no exception. This litigation, which extended over six years, has required extensive briefing of complex legal and factual issues and exhaustive discovery efforts.

The extensive discovery efforts and motion practice in this case has included: several rounds of briefing on motions to dismiss; the review, analysis, summary, and organization of over 3.6 million pages of documents produced by parties and third-parties during the course of this litigation, along with terabytes of transaction data; the deposition of 14 fact witnesses; consultation with industry and technical consultants; Plaintiffs' preparation and submission of two expert reports in support of class certification and defense of their expert who sat for two depositions; the taking of depositions of Defendants' two experts and analysis of the reports they submitted in opposition to the expert reports Plaintiffs submitted in support of class certification; Plaintiffs' class certification briefing; and, the review and analysis of Defendants' motion to exclude the opinions of Plaintiffs' experts offered in support of class certification. Cebulash Decl. at ¶¶ 13-29.

Had the parties not settled, the case could have continued on for several more years, with the expenditure of substantial additional resources by the parties and the Court. Briefing on Plaintiffs' class certification motion and Defendants' motion to exclude would have continued. Assuming Plaintiffs ultimately prevailed on those class certification issues, there would have been continued merits discovery, leading to the preparation of various merits expert reports by

the parties. Thereafter, Cablevision would have likely moved for summary judgment. To the extent that Plaintiffs' then overcame Cablevision's likely summary judgment motion, the case would have proceeded to trial, which would have entailed extensive pretrial briefing and preparation, including the marshaling and presentation of a voluminous evidentiary record. Moreover, even after trial was concluded, there would likely be one or more lengthy appeals. The prospect of a lengthy, complicated trial and subsequent appeals makes the Settlement all the more appropriate. *See In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249, 269 (E.D. Pa. 2012) (finding settlement favorable where "considerable expenditures of financial resources and hours of attorney time relating to discovery for liability and damages" would be required for trial); *In re Ikon Office Solutions, Inc., Secs. Litig.*, 194 F.R.D. 166, 179 (E.D. Pa. 2000) ("Finally, the extremely large sums of money at issue almost guarantee that any outcome, whether by summary judgment or trial, would be appealed. This factor thus weighs in favor of the proposed settlement.").

This case has already spanned more than six years and, had the parties not settled, could have gone on for several more, and entailed extensive pretrial motion practice, a complicated trial, and numerous post-trial motions and appeals. The parties' Settlement grants Settlement Class Members relief immediately. The first *Girsh* factor thus "weighs strongly in favor of the Settlement." *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 145 (D.N.J. 2013) (citing *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535–36 (3d Cir. 2004)).

b. The reaction of the Class to the Settlement:

The second *Girsh* factor "attempts to gauge whether members of the class support the Settlement." *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 318 (3d Cir. 1998). In order to properly evaluate it, "the number and vociferousness of the objectors" must be examined." *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir.

1995). Generally, "silence constitutes tacit consent to the agreement." *Id*. (quotation marks omitted).

There have been only 11 objections to the Settlement out of millions of Settlement Class Members. Under *Girsh*, the paucity of objection strongly favors approval. "The Third Circuit has looked to the number of objectors from the class as an indication of the reaction of the class." *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 485 (E.D. Pa. 2010) (citing Cendant II, 264 F.3d at 234-35). A "paucity of protestors . . . militates in favor of the settlement." Bell Atl., 2 F.3d at 1314; *See also Stoetzner v. U. S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (objections by 29 members of a class comprised of 281 "strongly favors settlement"); *Prudential* I, 962 F. Supp. at 537 (small number of negative responses to settlement favors approval); *Weiss*, 899 F. Supp. at 1301 (100 objections out of 30,000 class members weighs in favor of settlement). The percentage of Settlement Class Members that object to the Settlement is an appropriate gauge of the reaction of the class as a whole. *See Bell Atl.*, 2 F.3d at 1313–14 (factor favors settlement where less than 30 of approximately 1.1 million shareholders objected); *McGee v. Cont'l Tire N. Am., Inc*., Civ. No. 06-6234 (GEB), 2009 WL 539893, at *4 (D.N.J. Mar. 4, 2009); *Weiss*, 899 F. Supp. at 1301). Here, the dearth of negative responses to the Settlement reflects overwhelming support from the Class and evinces the quality and value of the Settlement.

Moreover, consideration of the individual concerns raised in the objections demonstrates that not one of the objections states a ground for finding the Settlement deficient. Accordingly, each objection should be overruled. The letters submitted by Robert Palmer, May 4, 2016, (ECF No. 204), Myrna & Stuart Wollman, June 2, 2016, (ECF No. 208), Herbert S. Skovronek, (ECF No. 209), Donna J. Austin, James L. Barnes, (ECF No, 211), Arnold Frankel, (ECF No. 212),

John J. Bedosky, (ECF No. 215, Michelle D. Brower, (ECF. No. 219), and Francis Vitale, August 22, 2016, ECF No. 220, object to the individual amounts to be received by Current Subscribers who opt for the credit option instead of the service-benefit option. They believe that the credit option should be for a greater dollar value, (i.e., the same value as the service benefit) and that the credit option of up to $40 is inadequate. Barbara Hogan, (ECF No. 213) objects because she believes Cablevision should make full reimbursement of all set-top box fees paid. [8]

Essentially, the above objections challenge the Settlement for not obtaining a better recovery. However, the objectors' position is in direct contrast to the essence of compromise, which is that the "best possible" recovery must be tempered by the risks of further litigation. *See* Lazy Oil, 95 F. Supp. 2d at 339 (noting "inherent in compromise is a yielding of absolutes and an abandoning of highest hopes"). *Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 241 (D.N.J. 2005) ("This Court's role is to determine whether the proposed relief is fair, reasonable and adequate, not whether some other relief would be more lucrative to the Class. A settlement is, after all, not full relief but an acceptable compromise." (internal quotation marks and citation omitted); *Careccio v. BMW of N. Am. LLC*, No. 08–2619(KSH), 2010 WL 1752347(D.N.J. Apr. 29, 2010) "[F]ull compensation is not a prerequisite for a fair settlement." *Dewey v. Volkswagen of Am.*, 728 F.Supp.2d 546, 579 (D.N.J.2010). "Moreover, complaining that the settlement should be 'better' . . . is not a valid objection." (internal quotation marks and citation omitted).

Likewise, courts routinely approve settlements that offer class members a choice of cash or service benefits with different dollar values. *See, e.g., In re Philips/Magnavox Television*

[8] The letter submitted by Andre Green, (ECF No. 216), can also be read as an objection to the cash benefit, but focuses on issues unrelated to the Settlement. Respectfully, it should be overruled.

Litig., No. 09–3072, 2012 WL 1677244 (D.N.J. May 14, 2012) (approving settlement where service benefit offered was approximately 2.5 times the amount of the cash benefit*); O'Brien v. Brain Research Labs, LLC*, No. CIV.A. 12-204, 2012 WL 3242365 (D.N.J. Aug. 9, 2012) (approving settlement where service benefit offered was roughly 1.5 times the amount of the cash benefit); *Glaberson v. Comcast Corp*., No. CV 03-6604, 2015 WL 5582251 (E.D. Pa. Sept. 22, 2015) (approving settlement where service benefit offered was approximately 3 times the cash benefit); *Shames v. Hertz Corp*., 2012 WL 5392159 (S.D. Cal. 2012) (approving settlement where service benefit offered was 8 times the amount of cash benefit).[9] As such, these objections contend that the Settlement should have been different or had a higher recovery and do not state a ground for finding the Settlement, which embodies a compromise negotiated at arms' length, deficient. [10]

[9] Some of these objections also take issue with the fact that they cannot or do not wish to take advantage of the service benefits. These objections should be overruled, because all Settlement Class Members have the option to take advantage of the cash benefits. *See Varacallo*, 226 F.R.D. at 241 ("Any objection that [a particular settlement benefit] is unsatisfactory is defeated by the fact that Class Members with Permanent Policies have the choice of a second remedy that is available."); *Duhaime v. John Hancock Mut. Life Ins. Co*., 177 F.R.D. 54, 71 (D. Mass. 1997) ("Many of the objectors argue that GPR offered is inadequate. The simple answer to these objections is that GPR is not the only relief available."). Moreover, thousands of Current Subscriber claimants do value the service option, as revealed by the fact that thousands of Current Subscriber claimants have selected benefits from each of the service benefit options. *See* Azari Dec. at ¶ 50.

[10] Francis Vitale also objects because he believes that "additional measures should be taken to notify the public that customers can use third-party set-top boxes. This could include using the same notification practices that had been used to notify the public of the settlement. As of now, Cablevision will only make disclosures on its website and only in its annual customer notices." *See* ECF No. 220 at p.2. Christopher Vitale filed a nearly identical objection. (ECF No. 221). Messrs. Vitales' objections should be denied because they lack merit. Significantly, they do not object to the substance of the injunctive relief; rather, they object to the manner in which the Settlement requires Cablevision to inform Settlement Class Members of it. But in addition to the website and annual customer notices Messrs. Vitale point to, other Class Members can learn of the injunctive benefits from the Settlement Agreement itself (just as Messrs. Vitalles did), where Class members were directed to through the Publication Notice and long-form notice. While Messrs. Vitale believe that Settlement Class Members should be informed in a different

c. The stage of the proceedings and the amount of discovery completed:

The third *Girsh* factor likewise weighs in favor of final approval. Courts use the procedural stage of a case at the time of settlement as a lens through which to assess whether counsel adequately appreciated the merits of the case before negotiating that settlement. *Warfarin*, 391 F.3d at 537 (citations omitted). "[C]ourts generally recognize that a proposed class action settlement is presumptively valid where . . . the parties engaged in arm's length negotiations after meaningful discovery." *Cullen v. Whitman Med Corp*., 197 F.R.D. 136, 144-45 (E.D. Pa. 2000). Settlements reached after discovery "are more likely to reflect the true value of the claim." *Boone v. City of Phila*., 668 F. Supp. 2d 693, 712 (E.D. Pa. 2009) (citing *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1314 (3d Cir. 1993)).

Here, the parties agreed to settle six years into the case, following extensive discovery and motion practice. As noted above, the parties took 14 fact witness depositions and reviewed millions of pages of party and third-party documents and analyzed terabytes of data. Plaintiffs and Defendants retained experts, who issued detailed reports in support of class certification and

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way (i.e, by a Cablevision technician or another notice like the Court-ordered Class Settlement Notice) the question is not whether the settlement "could be prettier, smarter, or snazzier," but solely "whether it is fair, adequate, and free from collusion." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1027 (9th Cir. 1998).

Finally, Messrs. Vitale both object to Plaintiffs' Counsel's Fees, suggesting that money that should have gone to Settlement Class Members may have been "misappropriated to potentially inflated legal fees" (ECF No. 220 at p. 2), and that the maximum limit may "encourage possible inflation of legal fees" (ECF No. 221 at 2). These objections are without merit and contrary to the facts. There were no discussions or negotiations related to attorneys' fees between the parties until after the substantive elements of the Settlement had been agreed upon and any award of fees and costs will not reduce the benefits being made available to the Class under the Settlement. Moreover, the fees and costs incurred by Class Counsel were the necessary and direct result of engaging in hard-fought, complex and extensive litigation over the course of six years on a contingent basis against an aggressive and determined adversary. (See Settlement Agreement at 10.1; Fee Br. at 11-12; Cebulash Decl. at ¶ 39.)

were deposed. Plaintiffs also retained technical and industry consultants. Plaintiffs moved for class certification and Defendants moved to exclude Plaintiffs' expert's opinions in support of class certification. This briefing detailed Plaintiffs' theories of the case and Defendant's defenses. Thus, when the Settlement was reached, Plaintiffs had "a full appreciation of the merits of the case as well as the legal theories and risks." *Pet Food*, 629 F.3d at 351. The third *Girsh* factor thus weighs heavily in favor of final approval.

d. The risks of establishing liability and damages:

The fourth and fifth *Girsh* factors also favor finding that the Settlement was fair, reasonable, and adequate. The fourth factor "examine[s] what the potential rewards (or downside) of litigation might have been had class counsel elected to litigate the claims rather than settle them." *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 814 (3d Cir. 1995). The fifth factor, like the fourth, "'attempts to measure the expected value of litigating the action rather than settling it at the current time.'" *Cendant*, 264 F.3d at 238–39 (quoting GMC, 55 F.3d at 816). In considering these factors, "the Court need not delve into the intricacies of the merits of each side's arguments, but rather may 'give credence to the estimation of the probability of success proffered by [Appointed Counsel], who are experienced with the underlying case, and the possible defenses which may be raised to their causes of action.'" *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 115 (E.D. Pa. 2004) (quoting *Lachance v. Harrington*, 965 F. Supp. 630, 638 (E.D. Pa. 1997)).

Class Counsel believe that they could prevail at trial based on the extensive evidentiary record they have developed to date. However, they also recognize that antitrust trials against large companies with teams of highly talented defense counsel, who would present their own evidence to counter Plaintiffs' proof of, *inter alia*, market power and causation, pose substantial risks. Thus, Third Circuit district courts have granted final approval to antitrust class action

settlements where,"[a]s in any antitrust case, [there are] substantial risks of non-recovery, even after preliminary victories were achieved." *In re Elec. Carbon Prods. Antitrust Litig.*, 447 F. Supp. 2d 389, 400 (D.N.J. 2006); *See also In re Remeron End-Payor Antitrust Litig.*, No. 02-2007 (FSH), 2005 WL 2230314, at *24 (D.N.J. Sept. 13, 2005) (stating that, in light of risks of no recovery, antitrust class action settlement "may be approved even if the settlement amounts to a small percentage of the single damages sought"). Thus, antitrust cases pose risks in addition to the risks inherent in every trial, which are always considerable. *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 337 (W.D. Pa. 1997) ("Here, as in every case, Plaintiffs face the general risk that they may lose at trial, since no one can predict the way in which a jury will resolve disputed issues."); *Weiss*, 899 F. Supp. at 1301 ("[T]he risks surrounding a trial on the merits are always considerable.").

Not only does this case pose the heightened risks inherent in antitrust cases, but it poses the additional risks present in set-top box antitrust cases. As detailed in the Cebulash Declaration at ¶ 44, many other set-top box cases have been brought, but none have garnered results approaching the value of the Settlement here. In fact, most of these cases have resulted in no recovery at all for proposed class members, either because the cases were dismissed (on Rule 12(b)(6) motions[11] or summary-judgment motions[12]), because class certification was denied,[13] or because the plaintiffs lost at trial.[14]

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[11] *In re Set-Top Cable Television Box Antitrust Litig.* No. 08 MD 1995, 08 Civ. 7616-PKC, 2011 WL 1432036 (S.D.N.Y. April 8, 2011) (dismissing case against Time Warner because plaintiffs failed to plausibly allege coercion), aff'd, No. 11-2512-cv (2d Cir. Sept. 2, 2016).

[12] *Jarrett v. Insight Commc'ns Co.*, No. 09 Civ. 00093-JHM, 2014 WL 3735193 (W.D.Ky. July 29, 2014) (dismissing case against Insight on summary judgment because plaintiffs failed to establish coercion and noting that consumers' set-top box choices were limited by box-manufacturers' business decision not to sell directly to Insight customers and not by Insight's alleged tying policy).

The lack of success of these other set-top-box cases on the merits highlights the substantial challenges associated with successfully establishing liability in this case. Indeed, Cablevision has raised many of the factual and legal defenses that have been employed in these other cases, including: the lack of a cognizable relevant market for Two Way Services; the lack of evidence that a competitive set-top box market would have existed absent Cablevision's tie; the "filed rate doctrine"; and the arbitration clauses/class-action waivers in certain subscribers' contracts with Cablevision. While Class Counsel believe that Plaintiffs have valid responses to these defenses, there is, of course, no guarantee that Plaintiffs would succeed in defeating them. As the lack of success in the other set-top box cases shows, the Settlement here is a remarkable result in light of these risks and defenses.

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[13] *In re Cox Enters., Inc. Set-Top Cable Television Box Antitrust Litig.*, No 09-ML-2048-C, 2011 WL 6826813 (W.D. Okla. Dec. 28, 2011), and, *Gelder, et al v. CoxCom Inc.*, et al, 696 F.3d 966 (10th Cir. 2012) (class certification denied in nationwide case because competitive conditions varied between regions in which Cox operated making issues of market power not amendable to proof on a classwide basis); Ex parte/Consent Motion to Dismiss Case Voluntarily, *Bodet v. Charter Commc'ns*, No. 09 Civ. 3068-JTM (E.D. La. Sept. 6, 2012) (voluntarily dismissing case against Charter the day after Charter submitted to the court as supplemental authority the Tenth Circuit's denial of 23(f) review of the nationwide class certification denial in Cox), ECF No.118.

[14] After the request for a nationwide class in Cox was denied, plaintiffs brought a regional case on behalf of Cox subscribers in the Oklahoma City market. That case went to trial. After the jury reduced plaintiff's damages by nearly 90%, the court overturned the jury verdict in its entirety and entered judgment in Cox's favor because plaintiffs "failed to offer evidence from which a jury could determine that any other manufacturer wished to sell set-top boxes at retail or that Cox had acted in a manner to prevent any other manufacturer from selling set-top boxes at retail," *In re Cox Enters., Inc. Set-Top Cable Television Box Antitrust Litig.*, No 12-ML-2048-C, 2015 WL 7076418, at *1 (W.D. Okla. Nov. 12, 2015), resulting in no recovery for any class of Cox subscribers. A number of the regional cases filed against Cox after the nationwide case was dismissed were ordered to individual arbitration when class action waivers were enforced, effectively dismissing those cases and eliminating the possibility of class-wide relief. *In re Cox Enters., Inc. Set-Top Cable Television Box Antitrust Litig.*, No 12-ML-2048-C, 2014 WL 7338914 (W.D. Okla. Dec. 22, 2014), *aff'd sub nom. In re Cox Enterprises, Inc. Set-top Cable Television Box Antitrust Litig.*, No. 15-6076, 2016 WL 4492393 (10th Cir. Aug. 26, 2016).

With respect to proving damages, although similarly confident, Class Counsel recognize the genuine risk of no recovery or only a limited recovery. *See, e.g., In re Elec. Carbon Prods.*, 447 F. Supp. 2d at 401 (noting risks in proving antitrust damages at trial, which depends on "a battle of experts addressing the measurement of . . . overcharges, which can become an esoteric exercise with unpredictable results"); *Sutton v. Medical Serv. Ass'n*, No. 92- 4787, 1994 U.S. Dist. LEXIS 7512, at *18 (E.D. Pa. June 8, 1994) (granting final approval, noting that "even assuming that plaintiffs ultimately would have prevailed on liability, they faced the risk that they could not establish damages or obtain the other prospective relief that is achieved by this Settlement Agreement"). These risks are particularly prevalent in set-top box cases, where the risks of being unable to establish all (or any) of the elements of the overcharges allegedly caused by Cablevision's tie—in addition to the risks that the entire proposed class may not be certified, or large portions of the class's damages could be lost to the "filed rate doctrine" defense, the arbitration defense or a jury discounting Plaintiffs' experts' damage theory—mean that, even if Plaintiffs can establish liability, they may nevertheless be unable to recover all or a large portion of their claimed damages.[15] The Settlement, on the other hand, provides Settlement Class Members with substantial, certain, and immediate benefits.

e. The risks of maintaining the class action through trial:

The sixth *Girsh* factor also favors the Settlement. Plaintiffs' Motion for Class Certification was pending at the time the Settlement was reached. Plaintiffs believe that, based on the strong evidentiary record they presented to the Court, class certification was and is

[15] Indeed, as mentioned above, the jury reduced the regional class of Oklahoma City Cox subscribers' damages by nearly 90% (to $6 million from approximately $50 million) before the court then entered judgment notwithstanding the verdict in Cox's favor. *In re Cox Enters., Inc. Set-Top Cable Television Box Antitrust Litig.*, No 12-ML-2048-C, 2015 WL 7076418 (W.D. Okla. Nov. 12, 2015) (currently on appeal).

warranted. However, there is always a risk that a Court would not find this action manageable as a litigated class. Even if class certification were granted in a litigated context, a court may decertify or modify a class action at any time if it proves to be unmanageable. *See Prudential* , 148 F.3d at 321 (noting that "a district court may decertify or modify a class at any time during the litigation if it proves to be unmanageable"). Because of this ever-present risk, courts have generally found the sixth *Girsh* factor to favor final approval of settlements. *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 585 (D.N.J. 2010) ("[T]he specter of decertification makes settlement an appealing alternative."); *Egg. Prods*., 284 F.R.D. at 273 ("The Court of Appeals for the Third Circuit has recognized: There will always be a risk or possibility of decertification, and consequently the court can always claim this factor weighs in favor of settlement." (internal quotation marks omitted)).

f. The ability of Defendant to withstand a greater judgment:

The seventh *Girsh* factor is neutral here. The ability of a defendant to withstand a greater judgment is most relevant in cases where the amount of the settlement is less than might ordinarily be agreed upon by the plaintiffs because the defendant's financial circumstances cannot accommodate a higher payment. *Reibstein v. Rite Aid Corp*., 761 F. Supp. 2d 241, 254 (E.D. Pa. 2011). Such circumstances do not exist here because there is no evidence in the record that Defendants are financially unstable. *Id*. at 254 (finding factor neutral where there was no reason to believe that "Defendants face any financial instability").

Moreover, courts have recognized that whether the defendant would have had the resources to pay more in settlement is not relevant where considered only in a vacuum, divorced from considerations of whether the settlement is fair in light of the legal issues and circumstances involved in the case. *See Warfarin*, 391 F.3d at 538. This case involved many difficult legal issues and presented substantial risks, and Plaintiffs would be required to spend

substantial additional time and expenses pursuing the case to its ultimate end. The Settlement that Plaintiffs obtained is an excellent benefit on its face, and an even better result when these considerations are taken into account. The theoretical ability of Defendants to pay more, considered absent this context, is not relevant to determining the reasonableness of this Settlement. *See Id.; See also Lazy Oil*, 95 F. Supp. 2d at 318 ("The Court presumes that Defendants have the financial resources to pay a larger judgment. However, in light of the risks that Plaintiffs would not be able to achieve any greater recovery at trial, the Court accords this factor little weight in deciding whether to approve the proposed Settlement."); *Perry*, 229 F.R.D. at 116 ("[Defendant] could certainly withstand a much larger judgment as it has considerable assets. While that fact weighs against approving the settlement, this factor's importance is lessened by the obstacles the class would face in establishing liability and damages.").

g. The range of reasonableness of the Settlement Fund in light of the best possible recovery and all the attendant risks of this litigation.

In combination, the final two *Girsh* factors assess "whether the settlement represents a good value for a weak case or a poor value for a strong case." *Warfarin*, 391 F.3d at 538. They "test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial." *Id*. (citing *Prudential* , 148 F. 3d at 322). Assessment of a settlement, however, need not be tied to an exact formula. *See Prudential* , 148 F.3d at 322. The Third Circuit has cautioned against demands that a settlement approach the maximum possible recovery, noting that a settlement is, after all, a compromise. *Id*. at 316-17. Accordingly, a settlement may still be within a reasonable range, even though it represents only a fraction of the potential recovery. *Cullen*, 197 F.R.D. at 144; *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001) (noting that since 1995, class-action settlements have typically "recovered between 5.5% and 6.2% of the class members'

estimated losses"); *Bennett v.Behring Corp*., 737 F.2d 982, 986 (11th Cir. 1984) (monetary relief of 6% of potential total recovery adequate in antitrust case where injunctive relief also part of settlement (citing cases)); *Behrens v. Wometco Enters., Inc*., 118 F.R.D. 534, 542 (S.D. Fla. 1988) ("A settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery."); *See also Fisher Bros*., 604 F. Supp. at 451 ("The court must review a settlement to determine whether it falls within a 'range of reasonableness,' not whether it is the most favorable possible result of litigation." (internal citations omitted)).

Here, the Settlement falls well within the range of settlements that are worthy of final approval as fair, reasonable, and adequate. The median value range of settlement benefits available to Currents Subscribers and Former Subscribers who were sent individual Notice is between $179 million for the account credit option and $341 million for the account services option[16] which alone amounts to at least 8–16% of plaintiffs' estimated maximum possible class damages.[17] This comparison—and the comparison to the unsuccessful actions brought by subscribers against other cable companies challenging alleged tying practices (including the regional *Cox* case where the jury largely rejected the plaintiffs' damage theory before the court

[16] This figure does not account for the value provided through the injunctive relief and benefits available to Former Subscribers who were not sent individual Notice.

[17] In *Cendant*, the Third Circuit reasoned that there was no compelling reason to think that "a jury confronted with competing expert opinions" would accept the plaintiff's damages theory rather than that of the defendant, and thus the risk in establishing damages weighed in favor of approval of the settlement. 264 F.3d at 239. The same is true here. Settlement Class Members could have difficulty at trial establishing that they were damaged and to what extent they were damaged, particularly in light of the pending motion to strike the opinions of Plaintiffs' expert offered in support of class certification. Moreover, to the extent the class was certified, after completion of the merits phase and resulting merits expert reports, the anticipated testimony of both Plaintiffs' and Defendants' merits experts would present starkly contrasting testimony with regard to the issues on the merits, including damages.

entered judgment notwithstanding the verdict in Cox's favor[18]),—further confirms that the Settlement constitutes a "good value" for this case considering the substantial risk of no recovery at all.

In sum, it is the considered and informed judgment of Class Counsel, based on all the proceedings to date and their experience, that the Settlement is an excellent result for the Class.

2. The relevant *Prudential* factors likewise favor final approval.

a. Factors that bear on the maturity of the underlying substantive issues:

As discussed above, this case was settled after the completion of several rounds of motion to dismiss briefing, substantial fact discovery, the filing of Plaintiffs' class certification motion and detailed class expert reports, the filing of Defendant's motion to exclude Plaintiffs' expert and voluminous reports by Defendant's experts, multiple class expert depositions, and hard-fought settlement negotiations. That the underlying substantive issues were well-developed further supports approval of this settlement. *See Chakejian v. Equifax Info. Servs.*, 275 F.R.D. 201, 215 (E.D. Pa. 2011) (finding that where the underlying substantive issues were "mature in light of the experience of the attorneys, extent of discovery, posture of the case, and mediation efforts undertaken," this factor supported approval of the settlement); *In re Fasteners Antitrust Litig.*, CIV.A. 08-MD-1912, 2014 WL 285076, at *11 (ED Pa Jan. 24, 2014) ("A substantial amount of information has been provided to Settlement Class Counsel such that counsel are

[18] See the discussion of other set-top box cases discussed above at pages 18–20 and the Cebulash Declaration at ¶ 44. The one case that was not a complete loss for subscribers resulted in a settlement that recovered less for subscribers than is available here. In a case brought by subscribers against Brighthouse Network, LLC, current subscribers who put in claims were only entitled to choose $30 worth of services (there was no credit option) and former subscribers who put in claims were only entitled to $20 cash. Here, by contrast, current subscribers can receive over five times the recovery made available to Brighthouse current subscribers. Moreover, Former Subscribers can receive up to over three times the recovery made available in Brighthouse. (Cebulash Decl. ¶ 44.)

capable of making an informed decision about the merits of the case if it were to proceed to trial, and about the fairness of the settlement terms.").

b. Whether Class or Subclass Members are accorded the right to opt out of the Settlement:

As discussed above, members of the Settlement Class were given the opportunity to opt out of the Settlement Class, and despite a class comprised of millions, only 24 have requested exclusion. The fact that so few Opt-Out Requests were filed also heavily favors final approval. *Fasteners*, 2014 WL 285076, at *11 (finding it "significant" that, despite being given the opportunity to opt out, only one class member did so).

c. The existence and probable outcome of claims by other classes and subclasses:

As noted above, antitrust class actions brought by subscribers against their respective cable providers for alleged set-top-box tying practices have either failed entirely or resulted in much smaller awards to class members when compared to the benefits available under the Settlement. (Cebulash Decl. 44.) This *Prudential* factor favors approval.

d. Whether any provisions for attorneys' fees are reasonable:

Plaintiffs seek fees of $8,370,830 and expenses of approximately $1,129,169. The fee was negotiated at arm's length with Defendant, only after an agreement as to the substantive elements of the Settlement had been reached. (Settlement Agreement at 10.1; Cebulash Decl. ¶¶ 33, 39.) Moreover, the fee is being paid entirely by Cablevision, and does not reduce the consideration available to Settlement Class Members under the Settlement. (Cebulash Decl. ¶ 4.) The proposed fee is fair and reasonable under Third Circuit standards as demonstrated in Plaintiffs' Fee Brief.

e. Whether the procedure for processing individual claims under the settlement is fair and reasonable.

The procedure for processing individual Claim Forms under the Settlement is fair and reasonable. Settlement Class Members may submit a Claim Form either on-line on the Settlement website or submit a hard-copy to the Claims Administrator. It is an easy and straightforward claim form and does not require Settlement Class Members to search for and attach records in order to submit a valid claim. *In re Nat. Football League Players' Concussion Injury Litig.*, 307 F.R.D. 351, 396 (E.D. Pa. 2015), *aff'd sub nom. In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410 (3d Cir. 2016), as amended (May 2, 2016) ("The claims process is reasonable in light of the substantial monetary awards available to Settlement Class Members, and imposes no more requirements than necessary."). As of September 2, 2016 177,142 claims have been submitted to the Claims Administrator. *See* Azari Dec. at ¶ 50. Of course, Current Subscribers do not even have to submit a Claim Form in order to receive the SundanceNow benefit. This *Prudential* factor supports approval.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter the proposed Order and proposed Final Judgment, which, among other things, grants final approval to the Settlement pursuant to Federal Rule of Civil Procedure 23(e).

Respectfully submitted,

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