

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN DIVISION**

JON BLONDELL, PAUL HARRINGTON, TIMOTHY
JOHNSON, STEPHANIE LOWE, F/K/A/ STEPHANIE
MARIE, CHASTITY MARIE, AND CLAYTON
PRITCHARD, INDIVIDUALLY AND ON BEHALF
OF A CLASS OF SIMILARLY SITUATED PERSONS,

Plaintiffs,

v.

BRUCE BOUTON, DUNCAN CRABTREE-IRELAND,
AUGUSTINO GAGLIARDI, RAYMOND M. HAIR, JR.,
JON JOYCE, AND STEFANIE TAUB,

Defendants.

Civil Action No.
1:17-CV-00372-RRM-RML

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

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THIS SETTLEMENT AGREEMENT AND RELEASE is entered into by and between Plaintiffs Jon Blondell, Paul Harrington, Timothy Johnson, Stephanie Lowe f/k/a Stephanie Marie, Chastity Marie, and Clayton Pritchard, individually and on behalf of the settlement Class defined below, and Defendants Bruce Bouton, Duncan Crabtree-Ireland, Augustino Gagliardi, Raymond M. Hair, Jr., Jon Joyce, and Stefanie Taub, individually and as current and/or former trustees of the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund. This Agreement is made and entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure and subject to the Court's approval. This Agreement is intended to forever settle and compromise any and all claims, disputes and controversies, of any kind or nature whatsoever, whether known or unknown, which were raised or could have been raised, between or among the Parties, which in any way arise out of or relate to the allegations and claims or the facts underlying the allegations and claims stated in Civil Action No. 1:17-cv-00372 in the United States District Court for the Eastern District of New York, Brooklyn Division, except those expressly excluded from the release. This Agreement, including the limitations set forth in this Agreement, settles the claims asserted in the above-captioned case between the Parties.

I. DEFINITIONS

The following are certain definitions applicable to this Agreement. Any definitions contained elsewhere in the body of this Agreement shall also be effective.

1.01 Advertising/Marketing Report. "Advertising/Marketing Report" means the sworn certification identified in Paragraph 4.04 of this Agreement.

1.02 AFM. "AFM" means the American Federation of Musicians.

1.03 Agreement. "Agreement" means this document, the Class Action Settlement Agreement and Release, evidencing a mutual settlement and release of disputed claims.

1.04 AHRA Royalties. "AHRA Royalties" means the royalties identified in the Audio Home Recording Act of 1992 collected by the Fund and attributed to sound recordings which the Fund has designated as Covered Recordings.

1.05 Business Management Report. "Business Management Report" means the sworn certification identified in Paragraph 4.05 of this Agreement.

1.06 Class. "Class" means all NFPs (or their beneficiaries, if deceased) determined by the Fund as entitled to receive a portion of the Unclaimed Royalties for Distribution and all NFPs (or their beneficiaries, if deceased) who performed on a Covered Recording but whom the Fund had previously not identified.

1.07 Class Counsel. "Class Counsel" means Eric Zukoski, Quilling, Selander, Lownds, Winslett & Moser, P.C., 2001 Bryan Street, Ste. 1800, Dallas, TX 75201 (ezukoski@qslwm.com),

and Roger L. Mandel, Jeeves Mandel Law Group, P.C., 12222 Merit Drive, Suite 1200, Dallas, TX 75251 (rmandel@jeevesmandellawgroup.com).

1.08 Class Member. “Class member” means all persons (or their beneficiaries, if deceased) who are members of the Class.

1.09 Class Period. “Class Period” means from September 16, 1998, to the date the Court certifies the Class.

1.10 Court. “Court” means the court before which the Litigation is pending, the United States District Court for the Eastern District of New York, Brooklyn Division, Hon. Roslyn R. Mauskopf, presiding district court judge, and Hon. Robert M. Levy, presiding magistrate judge.

1.11 Covered Recordings. “Covered Recordings” means sound recordings that have been selected by the Fund for distribution of AHRA and/or DPRA Royalties to non-featured performers that performed thereon pursuant to sections II.B.1 (AHRA) or II.B.2 (DPRA) or any successor provisions of the Fund’s guidelines and other governing documents.

1.12 Defendants. “Defendants” means Bruce Bouton, Duncan Crabtree-Ireland, Augustino Gagliardi, Raymond M. Hair, Jr., Jon Joyce, and Stefanie Taub, individually and in their capacities as current and/or former trustees of the AFM and SAG-AFTRA Intellectual Property Rights Distribution Fund.

1.13 Defendants’ Counsel. “Defendants’ Counsel” means Andrew H. Bart, Jenner & Block LLP, 919 Third Avenue, New York, NY 10022, and Devi M. Rao, Jenner & Block LLP, 1099 New York Avenue, N.W., Suite 900, Washington, DC 20001.

1.14 Distribution Period. “Distribution Period” means the time period between the Court ordering notice be sent to the Class and December 31, 2021.

1.15 Distribution Report. “Distribution Report” means the sworn certification described in Paragraph 4.01 of this Agreement.

1.16 DPRA Royalties. “DPRA Royalties” as used herein refers to the royalties provided for in the Digital Performance Right in Sound Recordings Act of 1995 and/or the Digital Millennium Copyright Act of 1998 collected by the Fund and attributed to sound recordings which the Fund has designated as Covered Recordings.

1.17 Fairness Hearing. The “Fairness Hearing” will be a hearing at such time, place, and date as set by the Court where, among other things, the Court will consider the fairness, reasonableness and adequacy of the Agreement and certification of the Class for settlement purposes and provide an opportunity for any Class Member who wishes to object to the fairness, reasonableness, or adequacy of this Agreement to be heard, provided that the Class Member complies with the requirements for objecting to this Agreement.

1.18 Final Judgment. “Final Judgment” means the order(s) from the Court certifying the Class, approving and incorporating the Parties’ settlement of the Litigation and dismissing the Litigation. As Plaintiffs’ attorneys’ fees and expenses will be handled as set forth below in paragraph 4.08 of this Agreement, the Final Judgment will not address the amounts of the reasonable attorneys’ fees and expenses which will be awarded to Plaintiffs’ counsel, and the Final Judgment’s omission of same shall not affect its finality.

1.19 Fund. “Fund” means the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund.

1.20 Litigation. “Litigation” means Civil Action No. 1:17-cv-00372 in the United States District Court for the Eastern District of New York, Brooklyn Division.

1.21 NFP. “NFP” means collectively nonfeatured musicians and nonfeatured vocalists as these terms are referenced in 17 U.S.C. § 114(g)(2)(B) & (C) and 17 U.S.C. § 1006(b)(1).

1.22 Order Granting Approval to Give Notice to the Class. “Order Granting Approval to Give Notice to the Class” shall mean and refer to the order entered by the Court finding it sufficiently likely it will approve the terms and conditions of this Agreement, including among other things, the conditional certification of the proposed class, to justify giving notice to the Class and approving the manner and timing of providing Notice to the Class, the time period for opting out (only in the event the Court does not certify the Class as a non-opt out class) and/or filing objections, and the date of the Final Fairness Hearing. The Parties will submit to the Court a proposed Order Granting Approval to Give Notice to the Class.

1.23 Order Granting Final Approval. “Order Granting Final Approval” means an order entered by the Court approving, among other things, the terms and conditions of this Agreement, including the manner and timing of providing Notice to the Class, and certifying the Class. The Order Granting Final Approval shall not address attorneys’ fees and expenses, which shall be handled as set forth below in paragraph 4.08 of this Agreement, and the omission of a ruling on attorneys’ fees shall not affect the finality of the Order Granting Final Approval. The Parties will submit to the Court a proposed Order Granting Final Approval.

1.24 Participant. “Participant” as used herein means a non-featured musician or non-featured vocalist as referenced in 17 U.S.C. § 114(g)(2)(B), (C) and/or 17 U.S.C. § 1006(b)(1) who has received Royalties in the past from the Fund.

1.25 Parties. “Parties” means Plaintiffs and Defendants collectively.

1.26 PIF. “PIF” means the Fund’s Participant Information Form.

1.27 Plaintiffs. “Plaintiffs” means Jon Blondell, Paul Harrington, Timothy Johnson, Stephanie Lowe, f/k/a Stephanie Marie, Chastity Marie, and Clayton Pritchard, individually and on behalf of the Class defined above.

1.28 Royalties. “Royalties” as used herein refers collectively to AHRA Royalties and DPRA Royalties and does not include moneys received from any other sources, including but not limited to (1) amounts collected by the Fund as the result of a settlement agreement relating to U.S. recordings created prior to February 15, 1972; and (2) amounts collected by the Fund from non-U.S. collectives or neighboring rights societies.

1.29 SAG-AFTRA. “SAG-AFTRA” means the Screen Actors Guild – American Federation of Television and Radio Artists.

1.30 Settlement Administrator. “Settlement Administrator” means a settlement administrator, who the Parties shall jointly solicit bids for and jointly select, as further set forth in paragraph 3.02 of this Agreement.

1.31 Singular/Plural. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

1.32 Source Year. “Source Year” means the particular year in which DPRA Royalties are distributed by SoundExchange to the Fund and AHRA Royalties are distributed by the U.S. Copyright Office to the Fund.

1.33 Trustees. “Trustees” means Defendants in their official capacities as trustees of the Fund.

1.34 Unclaimed Royalties. “Unclaimed Royalties” means Royalties payable to an NFP who has been identified on a sound recording for which a distribution of Royalties has been made, but for whom the Fund has insufficient contact or other information to process a royalty payment, or from whom a check has been returned due to, for example, an incorrect address, or who left a check uncashed.

1.35 Unclaimed Royalties for Distribution. “Unclaimed Royalties for Distribution” means the Unclaimed Royalties from Source Years 2011 through 2016, which, as of November 30, 2019, amount to approximately \$45,822,620.71 in DPRA royalties and \$26,179.28 in AHRA royalties, payable to approximately 59,023 currently-identified Class Members and 2,275 currently-identified Class Members, respectively.

1.36 Unclaimed Royalties List. “Unclaimed Royalties List” means the list of NFPs who the Fund has identified as having performed on a sound recording for which a distribution of Royalties has been made, but for whom the Fund has insufficient contact or other information to process a royalty payment, or from whom a check has been returned due to, for example, an incorrect address, or to whom the Fund issued a check that remains uncashed, which list the Fund has published at <https://www.afmsagaftrafund.org/unclaimed-royalties.php>.

II. FACTUAL BACKGROUND

2.01. On February 23, 2017, Plaintiffs commenced this Litigation by filing a Class Action Complaint. *See* ECF 1. Plaintiffs subsequently filed a First Amended Complaint and a Second Amended Complaint on April 24, 2017 and February 7, 2018, respectively. *See* ECF 23 & ECF 48. As more fully set forth in the Second Amended Complaint, Plaintiffs alleged that the Trustees breached their fiduciary duties by “failing to properly identify and pay [Class Members] royalties which the Trustees collected for their benefit and are legally obligated to pay over to them.” ECF 48, ¶ 11. In the Second Amended Complaint, Plaintiffs brought two causes of action against Defendants: (1) breach of fiduciary duty, and (2) money had and received. Defendants deny that they are liable to Plaintiffs or the Class and deny that certification of a class would be proper absent a settlement.

2.02. On November 18, 2019, the Parties informed the Court that they had reached a settlement in principle of the substantive issues in the case, and the Court stayed discovery at that time. *See* Nov. 18, 2019 Minute Entry. Subsequently, the Parties executed a memorandum of understanding regarding settlement, and so informed the court on January 17, 2020. *See* ECF 73. The Court then stayed the entire case pending completion of settlement. *See* Jan. 27, 2020 Minute Entry. On January 30, 2020, the Parties jointly consented to the jurisdiction of Magistrate Judge Levy to oversee the settlement process, except as to Plaintiffs’ attorneys’ fees and expenses, which the Parties agreed will be decided pursuant to otherwise applicable Court rules, policies, and procedures.

2.03. Class Counsel and Defendants’ Counsel have investigated the facts and law as applied to the facts discovered regarding the alleged claims of Plaintiffs and potential defenses thereto, and the damages claimed by Plaintiffs.

2.04. The Parties believe this is a fair, reasonable and adequate Agreement and have arrived at this Agreement through adversarial, non-collusive, arm’s-length negotiations, taking into account all relevant factors, both present and potential.

2.05. Defendants have denied, and continue to vigorously deny, any and all liability and money owed to anyone with respect to the alleged facts or causes of action asserted in the Litigation. Nevertheless, without admitting or conceding any liability or money owed whatsoever, Defendants have agreed to settle the Litigation, on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing this Litigation; to avoid the diversion of resources and personnel required by continuing the Litigation; and to put to rest any and all claims that are, or could have been, brought or asserted in this, or any similar, litigation in this Court or any other court or jurisdiction, administrative or governmental body or agency, tribunal, or arbitration panel, which are based upon or arising out of or related in any way, in whole or in part, to any of the facts, circumstances or conduct alleged in this Litigation concerning each Class Member, except as expressly excluded from the release. Defendants have, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Agreement.

2.06. Class Counsel have analyzed and evaluated the merits of the claims made against Defendants in the Litigation, and the impact of this Agreement on Plaintiffs and the Class. Based upon their analysis and evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery whatsoever for the Plaintiffs and the Class, and/or might result in a recovery which is not as good as the settlement for Plaintiffs and the Class, and/or might not occur for several years, Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable and adequate and that this Settlement is in the best interests of Plaintiffs and the Class.

2.07. As a result of these and other considerations, the Parties have agreed to settle the Litigation as provided for herein.

III. APPROVAL BY THE COURT TO GIVE CLASS NOTICE

3.01. Approval by the Court to Give Notice. The Parties will file this Agreement with the Court and supporting documentation to seek an Order Granting Approval to Give Notice to the Class.

3.02. Class Notice; Settlement Administrator. The Parties shall request the Court to approve a publication notice plan developed in cooperation with the Settlement Administrator they have hired. The Settlement Administrator shall handle the publication notice, set up and monitor a website, process objections, receive and respond to class member communications, send out the notices required by Class Action Fairness Act (“CAFA”) and prepare a declaration for the Court reporting on its activities. The Settlement Administrator shall issue notices to Class Members and those required by CAFA no later than 45 days after entry of the Order Granting Preliminary Approval. The Parties shall jointly solicit bids for the Settlement Administrator position and jointly select the winner. The Parties shall cooperate with the Settlement Administrator as necessary. The Fund shall pay the Settlement Administrator out of the Unclaimed Royalties for Distribution.

3.03. Class Certification. The Parties will request the Court to certify the Class as a mandatory, non-opt out class pursuant to FRCP 23(b)(1) in the Final Judgment.

3.04. Objections to Settlement. Any Class Member who wishes to object to the Settlement must send to Class Counsel and Defendants’ Counsel, or the designated Settlement Administrator, by a date ordered by the Court, a written and signed statement entitled “Objection.” To state a valid objection to the Settlement, a Class Member must provide the following information in the written objection: (i) his or her full name, address, telephone number, and e-mail address (if available); (ii) a statement of the objection(s), including all factual and legal grounds for the position; (iii) copies of any documents he or she wishes to submit in support; (iv) the name, address, and telephone number of his or her separate counsel in this matter, if any; and (v) his or her dated signature. In addition, the objection must list any other objections submitted by the Class Member, or his or her counsel, to any class action settlements in any court in the United States in the previous five years, or else affirmatively state that no other such objections have been made. If an objecting Class Member intends to appear, in person or by

counsel, at the Fairness Hearing, he or she must so state in the written objection. In all instances, the date appearing on the postmark shall be controlling for determining when an Objection was mailed.

Any Class Member who fails to comply with the provisions of this paragraph and the preceding paragraphs shall be deemed to have waived and forfeited any and all objections to the Agreement, can be barred from speaking or otherwise presenting views at the Fairness Hearing, and shall be bound by all the terms of the Agreement and by all proceedings, orders and judgments in the Litigation.

The Parties will request that the Court enter an order providing that the filing of an objection allows Class Counsel or Defendants' Counsel to notice the objecting person for and to take his or her deposition consistent with the Federal Rules of Civil Procedure at an agreed-upon location within thirty (30) days of the date the objection is filed, and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by an objector to make him or herself available for a deposition or to comply with expedited discovery requests may result in the Court striking the objection and otherwise denying that person opportunity to be heard. The Court may tax the costs of any such discovery to the objector or the objector's counsel should the Court determine that the objection is frivolous or made for any improper purpose. These procedures and requirements for objecting are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement, in accordance with the due process rights of all Class Members.

3.05. Entry of Order Granting Final Approval. At the time the Court considers the Order Granting Preliminary Approval, the Parties will request that the Court set the Fairness Hearing for a date which is more than ninety (90) days after the Settlement Administrator's last day to issue CAFA Notice pursuant to paragraph 3.02 above and more than 45 days after the deadline for Class Members to file objections, whichever is later. At the Fairness Hearing, the Parties will request that the Court, among other things: (a) enter an Order Granting Final Approval in accordance with this Agreement; (b) certify the Class; (c) approve the Agreement as final, fair, reasonable, adequate and binding on all Class Members; and (d) enjoin any Class Member from bringing any proceeding pursuing released claims in any other court.

3.06. Effect of Failure to Enter Order Granting Final Approval of Settlement. In the event the Court fails to enter an Order Granting Final Approval in accordance with all of the terms of this Agreement, or the Order Granting Final Approval does not for any reason become final as defined herein, the Parties shall proceed as follows:

- A. If the Court declines to enter the Order Granting Final Approval as provided for in this Agreement, the Litigation will resume unless the Parties mutually agree within thirty (30) days to: (1) seek reconsideration or appellate review of the decision denying entry of the Order Granting Final Approval; or (2) attempt to renegotiate the settlement and seek Court approval of the renegotiated settlement.
- B. In the event the Parties seek reconsideration and/or appellate review of the decision denying entry of the Order Granting Final Approval and such reconsideration and/or

appellate review is denied, the Parties shall have no further rights or obligations under this Agreement.

If the Court fails to enter an Order Granting Final Approval in accordance with all of the terms of this Agreement, or the Order Granting Final Approval does not for any reason become final, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall not be used or admissible in any manner for any purpose, shall not be deemed or construed to be an admission or confession by the Parties of any fact, matter, or proposition of law, and all Parties shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court. In such event, the parties to the Litigation shall move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Agreement.

IV. RELIEF

4.01. Unclaimed Royalties for Distribution and Distribution Report. Before and/or during the Distribution Period, the Fund agrees to undertake the applicable steps set forth in paragraph 4.02 of this Agreement to pay Class Members. On or before April 30, 2022, any portion of the Unclaimed Royalties for Distribution for a given Source Year that the Fund was unable to pay out will be distributed pro rata to Participants (including newly paid Class Members) to whom the Fund has previously successfully paid Royalties for that Source Year and for whom the Fund still has contact and payment information sufficient to make such payment. This pro rata payment may be combined with payments for other Source Years. Within sixty (60) days of the completion of the pro rata distribution (June 29, 2022) a Fund employee will file a sworn certification with the Court stating that the Fund has distributed the entirety of the Unclaimed Royalties for Distribution and stating the total amounts that were paid and the number of Participants that were paid broken down on a Source Year basis.

4.02. Efforts to Pay Class Members. The Fund will undertake the following actions to pay Class Members before and/or during the Distribution Period:

- A. Regardless of the amount owed to a particular Class Member, the Fund will send an email to each email address in the Fund's records associated with that Class Member which will include, at a minimum, the following information and attachment and any other information and attachments the Fund deems pertinent: an explanation of the reason for the email, the possible sources of Royalties to which the Class Member is entitled, a link to the Fund's website, a link to the Unclaimed Royalties List, attach a PIF, provide instructions on how to fill out and submit the PIF, and provide a phone number and email address through which the Class Members can pose questions to and receive answers from a Fund employee.
- B. For each living or potentially living NFP who is owed \$750 or more in Royalties, the Fund agrees to undertake the location and payment procedures set forth in subparagraphs 4.02(E)(1)-(8) below, as applicable, that have not previously been undertaken. Additionally, any email notifications that the Fund sends to these individuals will state the fact that their royalty amounts are at least \$750.

- C. For each living or potentially living NFP who is owed between \$100 and \$749.99 for whom the Fund has a valid social security or tax identification number, the Fund will conduct a Lexis or similar search for the NFP's contact information and, if contact information is found, undertake the procedures set forth in subparagraphs 4.02(E)(1)-(8) below, as applicable, that have not previously been undertaken. Additionally, any email notifications that the Fund sends to these individuals will state the fact that their royalty amounts are at least \$100.
- D. On a no less than a quarterly basis, the Fund will cross-check the Unclaimed Royalties List against the updated contact information received by the Fund from the AFM and SAG-AFTRA regarding their respective Members. The Fund agrees to send letters and PIFs to any new addresses (see subparagraph 4.02(E)(3) below) found in such cross-check.
- E. Agreed Location Procedures. The following procedures are cumulative such that the Fund shall attempt to contact the Class Member using all the methods set forth below, as applicable, that have not previously been undertaken.
1. If a Class Member has an existing email address in the Fund's database or a new email address is located:
 - a. The Fund will send an email as described in paragraph 4.02(A) above.
 - b. The Fund will add a notation to the NFP's record in a form determined by the Fund.
 2. If a new, potentially valid phone number for a Class Member is added to the Fund's database:
 - a. The Fund will call the new phone number and will explain the reason for the call and obtain the Class Member's email address and send the Class Member an email as described in paragraph 4.02(A) above.
 - b. The Fund will add a notation to the NFP's record in a form determined by the Fund.
 3. If a potentially good mailing address is obtained for a Class Member:
 - a. The Fund will send to the Class Member's address the Fund's registration packet in a form determined by the Fund (such as a letter with a PIF) that will, at a minimum, provide the information and attachment as set forth above in paragraph 4.02(A).
 - b. The Fund will add a notation to the NFP's record in a form determined by the Fund.
 - c. If mail is returned due to the address being incorrect or no longer current and the Fund has a valid social security or tax identification number for the Class Member, the Fund will perform a Lexis or similar search (see subparagraph 4.02(E)(4)).
 4. If the Class Member has a valid social security or tax identification number, the Fund will use Lexis or a similar service to search for a phone number, email address and/or mailing address. If a phone number, email address and/or mailing address

is found, the Fund will undertake the steps set forth in subparagraph 4.02(E)(1)-(3) above.

5. The Fund will conduct an internet search for a Class Member's contact information (such as, for example, the Class Member's website, Facebook page or other social media presence, artist fan forums/groups, message boards, news articles, Wikipedia, etc.). The Fund will cross-reference known information about the Class Member such as location, age, instrument, prior addresses and phone numbers, etc., to determine whether the individual located is the Class Member in question. If valid contact information is obtained:
 - a. The Fund will contact the Class Member as set forth in subparagraphs 4.02(E)(1)-(3) above, as applicable.
 - b. The Fund will add a notation in a form determined by the Fund to the Class Member's record.
6. The Fund will conduct internet research to search for a Class Member's address, phone number or email using sites such as FastPeopleSearch.com and Whitepages.com.
 - a. The Fund will use the information obtained as a cross-reference against old addresses and phone numbers and AFM and/or SAG-AFTRA information to verify it is the correct Class Member.
 - b. The Fund will follow the steps set for above in 4.02(E)(1)-(3) to contact the Class Member using the new contact information obtained.
7. The Fund will conduct outreach to featured artists, producer, managers, record labels and/or co-performers via email, phone call or through social media accounts to locate Class Members.
 - a. The Fund will provide the reason for inquiry and the Fund's contact information and website.
 - b. The Fund will ask for Class Members' contact information.
 - c. The Fund will follow the steps above in subparagraph 4.02(E)(1)-(3) using the obtained contact information.
8. The Fund will utilize the Fund staff's acquired network of music industry connections to, for example, obtain contact information for Class Members, have connections contact Class Members themselves, and spread awareness of the Fund and the Unclaimed Royalties List. When Class Member contact information or other information that could lead to same is obtained, the Fund will follow the relevant steps above with any information obtained.

4.03. Identification and Payment of NFPs for Source Years 2017 through 2019. The Fund shall attempt to identify, obtain contact information for and pay NFPs using the methods and processes outlined in Paragraph 4.03, above, and as informed by its work with the business consultant provided for in paragraph 4.05 of this Agreement. The Fund shall have three (3) years after the end of the Source Year to identify the NFPs entitled to receive Royalties for that Source

Year, and for those NFPs it identifies, it shall attempt to obtain contact information for those NFPs for whom it does not already have such information and shall send payments to those it identifies and for whom it has sufficient contact information. At the end of three (3) years, it shall cease further identification efforts and concentrate solely on obtaining contact information and achieving payment for those that remain on the Unclaimed List for another three (3) years. At the end of six (6) years after the Source Year, the Fund shall cease further efforts and pay any Unclaimed Royalties for that Source Year on a pro rata basis to all Participants to whom it previously successfully made payment for that Source Year. The pro rata payments can be combined with payments for other Source Years and shall be sent no later than April 30 of the year following the end of the sixth year. For example, for Source Year 2018 Royalties, the Fund shall have until December 31, 2021, to identify (and attempt to pay) all NFPs entitled to payment of those Royalties, until December 31, 2024, to complete payment of as many identified NFPs as possible, and until April 30, 2025, to make the pro rata payment of the Unclaimed Royalties from that year. For Source Years 2020 and after, to the extent consistent with applicable law, the Fund agrees that absent good cause it shall distribute any remaining Unclaimed Royalties for a Source Year on a pro rata basis to all Participants to whom it previously successfully made payment for that Source Year, and for whom it still has the necessary payment information, and that it will endeavor to do so no later than the April 30th following six years after the Source Year. To the extent necessary to do this, the Defendants shall amend the Fund's Distribution Guidelines.

4.04. Advertising/Marketing Consultant and Advertising/Marketing Report. The Fund will retain an advertising/marketing consultant with specialized expertise in the music industry and will work with that consultant to develop a comprehensive advertising/marketing plan for the Fund, which the Fund will adopt within nine (9) months after the Court's entry of an order approving the sending of notice to the Class. Within nine (9) months after adoption of the plan, an employee of the Fund will file with the Court under seal (and serve on Plaintiffs' attorneys) a sworn certification attesting that the Fund hired an advertising/marketing consultant with specialized expertise in the music industry; that the Fund worked with the consultant to develop a comprehensive advertising/marketing plan; that the Fund adopted the plan; and that the Fund has implemented the plan, is in the process of doing so, or has a good faith basis for not having done so. The certification will include an executive summary of the advertising/marketing plan.

4.05. Business Management Consultant and Business Management Report. The Fund will hire and/or continue to work with SL Business Informatics/SingerLewak ("SL"), to redesign the Fund's business practices, processes, workflows, and internal controls to increase the efficiency by which the Fund identifies, locates, and pays NFPs. Within nine (9) months after the Court's entry of an order approving the sending of notice to the Class, an employee of the Fund will file under seal (and serve on Plaintiffs' attorneys) a sworn certification with the Court attesting that the Fund has hired and/or continued to work with SL to redesign the Fund's business practices, processes, workflows, and internal controls; that the Fund has adopted a business management plan incorporating SL's recommendations, along with an executive summary of that plan; and that the Fund has implemented the business management plan, is in the process of doing so, or has a good faith basis for not having done so.

4.06. Class Representative Incentive Awards. Within ten (10) days of the Court entering the Final Judgment and regardless of whether the Final Judgment is appealed, Defendants

shall cause \$1,500 to be paid to each of the Plaintiffs out of the Unclaimed Royalties for Distribution. If either the settlement as a whole or these awards in particular (in whole or in part) are reversed on appeal, Plaintiffs shall pay Defendants back in whole or in part within ten (10) days of the reversal becoming final.

4.07. Releases. Upon the Final Judgment becoming final and no longer appealable, Defendants will release Plaintiffs, and Plaintiffs and the Class will release Defendants, as well as their respective agents, employees, representatives, attorneys, officers, directors, shareholders, managers, insurers, subsidiaries and/or affiliates, and their successors and assigns, of and from any and all claims, defenses, demands, causes of action, controversies, liabilities, obligations, and damages of any kind raised in the Litigation, excluding only claims arising from breach of the Agreement and/or the Final Judgment, claims related to amounts received by the Fund relating to a settlement agreement with regard to U.S. recordings created prior to February 15, 1972, royalties paid to the Fund from non-U.S. collectives or neighboring rights societies, and the claims asserted against Defendants and the Fund in Civil Action 2:18-cv-07241 in the United States District Court for the Central District of California, *Kevin Risto v. Screen Actors Guild-American Federation of Television and Radio Artists, et al.*

4.08. Attorneys' Fees and Expenses. Plaintiffs' attorneys' fees and expenses shall be determined by the Court pursuant to Federal Rules of Civil Procedure 54(d)(2) and 23(h) and Local Rule 23.1 and any applicable Court policies and procedures.¹ In order not to delay payments to Class Members during the Distribution Period or the pro rata final payment thereafter, the Parties will request a briefing schedule and a date certain by which the Court will rule on final approval of the settlement no later than December 31, 2021. To the extent that some Class Members are paid by the Fund out of the Unclaimed Royalties for Distribution prior to the date the Fund pays the Court's award of attorneys' fees and expenses out of the Unclaimed Royalties for Distribution, the Fund shall pay to Plaintiffs' counsel out of its expense fund the amounts, if any, of the payments to the Class Members that would have been deducted for the attorneys' fees and expenses had those Class Members not been paid before the payment of the attorneys' fees and expenses. In such a situation, to the extent there are later Unclaimed Royalties to be distributed pro rata, the Fund may reimburse its expense fund with such Unclaimed Royalties before the pro rata distribution.

V. MISCELLANEOUS PROVISIONS

5.01. Cooperation Between the Parties. The Parties shall cooperate fully with each other and shall use their best efforts to obtain Court approval of this Agreement and all of its terms.

5.02. Entire Agreement. No representations, warranties, or inducements have been made to any of the Parties, other than those representations, warranties, and covenants referenced in this Agreement. This Agreement constitutes the entire agreement between the Parties with

¹ For the avoidance of doubt, Defendants do not waive their rights to have the fees issue adjudicated by Judge Mauskopf.

regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.

5.03. Modification of Agreement. No waiver, modification or amendment of the terms of this Agreement, made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by Class Counsel and Defendants' Counsel, and then only to the extent set forth in such written waiver, modification or amendment, and subject to any required Court approval.

5.04. Construction of Agreement. The Parties acknowledge as part of the execution hereof that this Agreement was reviewed and negotiated by their counsel and agree that the language of this Agreement shall not be presumptively construed against any of the Parties hereto. This Agreement shall be construed as having been drafted by all the Parties to it, so that any rule of construction by which ambiguities are interpreted against the drafter shall have no force and effect.

5.05. Arms' Length Transaction; Materiality of Terms. The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth herein are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.

5.06. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties, the Settlement Class and their respective heirs, successors and assigns.

5.07. Waiver. Any failure by any of the Parties to insist upon the strict performance by any of the other Parties of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

5.08. When Agreement Becomes Effective; Counterparts. This Agreement shall become effective upon its execution by Defendants' Counsel and Class Counsel who represent that they have the authority to execute this Agreement on behalf of the Parties. The Parties may execute this Agreement in counterparts, and execution in one or more counterparts shall have the same force and effect as if all Parties had signed the same instrument. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement shall remain enforceable. However, Plaintiffs and Defendants shall each retain the right to seek from the Court, under its continuing jurisdiction as set forth below in paragraph 5.11, an appropriate order to address the ramifications of any order of a court of competent jurisdiction holding a provision of this Agreement to be unenforceable.

5.09. No Third-Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party as a beneficiary to this Agreement.

5.10. Captions. The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

5.11. Continuing Jurisdiction. The Court's jurisdiction over the Litigation (other than Plaintiffs' attorneys' fees and expenses claim) and the Parties will continue after the Final Judgment in order for the Court to assure itself of Defendants' compliance with the Agreement and the Final Judgment and will end ninety (90) days after the last of the Distribution Report, Advertising/Marketing Report, and Business Management Report has been filed with the Court if the Court has not asked for additional information or found the reports unsatisfactory. The Court shall retain jurisdiction over Plaintiffs' attorneys' claim for reasonable attorneys' fees and expenses to be paid out of the Unclaimed Royalties for Distribution until that claim is finally resolved.

5.12. Electronic Signatures. Any party may execute this Agreement by signing their name on the designated signature block below and transmitting that signature page electronically to all counsel. Any signature made and transmitted electronically for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party transmitting their signature electronically.

5.13. Commitment to Support by Parties. Plaintiffs, Class Counsel, Defendants and Defendants' Counsel agree to recommend approval of and to support this Agreement to the Court and to undertake their best efforts, including all reasonable steps contemplated by this Agreement, to give force and effect to its terms and conditions. Defendants shall have no obligation to affirmatively support an award of attorneys' fees and reserve the right to oppose the amount of attorneys' fees requested by Class Counsel. Neither Plaintiffs, Class Counsel, Defendants, nor Defendants' Counsel shall in any way encourage any objections to this Agreement (or any of its terms or provisions) or encourage any Class Members to elect to opt out (if opt-outs are allowed).

5.14. Stay; Cessation of Litigation Activity. The Parties agree to commit to and support a stay all proceedings in the Litigation pending the Fairness Hearing, except as to Class Counsel's attorneys' fees and expenses, and except as to any proceedings as may be necessary to implement and complete the Agreement. Pending the Fairness Hearing, Plaintiffs and Class Counsel agree not to initiate any additional litigation against Defendants which would be released pursuant to Paragraph 4.07 above.

5.15. Confidential Discovery Materials. Within 30 days of Final Judgment, Class Counsel shall return to Defendants' Counsel or shall provide to counsel a declaration of the destruction of: (1) all matter produced in discovery in the Litigation that was designated as "Highly Confidential," "Confidential," or "Subject to Protective Order"; and (2) all deposition videotapes and/or transcripts.

5.16. Class Certification. If, for any reason, the settlement provided for herein is not approved by the Court in complete accordance with the terms of the Agreement (unless the only modification is a reduction in the fees or costs awarded to Class Counsel) or does not become subject to an Order Granting Final Approval, then no class will be deemed certified by or as a

result of this Agreement, and the Litigation for all purposes will revert to its status as of January 27, 2020. In such event, Defendants will not be deemed to have consented to certification of any class, and will retain all rights to oppose, appeal, or otherwise challenge, legally or procedurally, class certification or any other issue in this case, including, but not limited to, contesting certification of the identical Class provided for herein.

5.17. Dismissal. As part of the Final Judgment, the Court shall dismiss the Litigation with prejudice.

[SIGNATURE BLOCK ON FOLLOWING PAGE.]

JENNER & BLOCK LLP



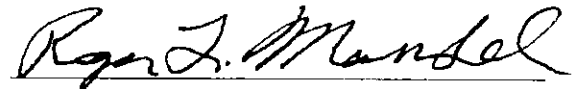
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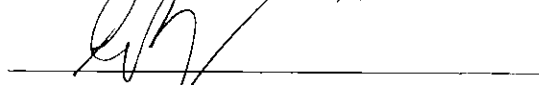
Date: March 19, 2020

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**QUILLING, SELANDER, LOWNDS,
WINSLETT & MOSER, P.C.**



Date: March 19, 2020

Eric Zukoski, Texas Bar No. 24010509