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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re XM SATELLITE RADIO COPYRIGHT
LITIGATION,

vs.

This Document Relates to: 07 Civ. 4682 (LAK)

MASTER DOCKET

06 Civ. 3733 (LAK)

**DECLARATION OF
ERIC N KIERKEGAARD
IN SUPPORT OF PLAINTIFFS'
MOTION FOR A CY PRES
DISTRIBUTION OF REMAINING
SETTLEMENT FUNDS**

I, ERIC N. KIERKEGAARD, declare and state as follows:

1. I am an Assistant Director of Operations at Garden City Group, LLC (“GCG”).¹

The following statements are based on my personal knowledge and information provided by other experienced GCG employees working under my supervision and, if called on to do so, I could and would be competent to testify thereto.

2. GCG was selected and engaged by the Parties and appointed by the Court in the above-captioned action (the “Action”) to serve as the Administrator as described in the Stipulation and

¹ The Garden City Group, Inc. is now Garden City Group, LLC.

1 Agreement of Settlement (the "Settlement Agreement"), and the December 6, 2010, Notice Order (the
2 "Order").

3 3. Pursuant to the Court's Order for a Second Distribution of the Net Settlement Funds
4 dated October 19, 2016 (the "Supplemental Distribution Order"), GCG issued settlement checks to
5 462 class members who cashed their checks as part of the initial distribution and whose pro rata
6 share(s) of the remaining Sound Recording Settlement Fund and/or Musical Composition Net
7 Settlement Fund was greater than or equal to \$25.

8 4. All 462 checks issued in connection with the supplemental distribution were cashed
9 or are now stale. The total value of the 68 payments that went unclaimed is \$5,311.29, of which
10 \$2,326.85 relates to awards issued to the Musical Composition Settlement Class and \$2,984.44
11 relates to awards issued to the Sound Recording Settlement Class. All checks issued in connection
12 with the second distribution stated that if they were not cashed within 45 days of the issue date the
13 funds would revert back to the settlement fund. If checks were returned undeliverable, GCG made
14 reasonable efforts to locate a forwarding address.

15 5. Since the date of GCG's Declaration of Jennifer M. Veitengruber in Support of
16 Plaintiffs' Motion for a Second Distribution of the Net Settlement Funds, six (6) Additional
17 Musical Composition Settlement Class Payments totaling \$1,534.64 have been deposited in the
18 escrow account, and the Settlement Funds have attracted interest totaling \$62.89.

19 6. Including all the amounts described above, the combined residual amount
20 remaining in the settlement funds is \$6,908.82.

21 7. GCG has also discussed a potential redistribution of residual settlement funds with
22 Class Counsel and determined that a further distribution of funds would not be cost effective.
23 GCG estimates that a third pro rata distribution to eligible Class members who cashed their checks
24 as part of the second distribution and whose pro rata share would be greater than or equal to \$25
25 would cost \$1,750 to \$2,750 at a minimum. Additionally, there is no guarantee that a third pro
26 rata distribution would result in a full and final distribution of the remaining settlement funds
27

1 thereby necessitating a further distribution. GCG recommends that the remaining settlement
2 funds, \$6,908.82, be directed to a *cy pres* recipient approved by the Court.

3 I declare, under penalty of perjury, that the forgoing is true and correct.

4 Executed in Seattle, Washington on December 28, 2017.

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7 Eric N. Kierkegaard

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