

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re XM SATELLITE RADIO COPYRIGHT LITIGATION

MASTER DOCKET
06 Civ. 3733 (LAK)

This Document Relates to: 07 Civ. 4682 (LAK)
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**PLAINTIFFS' MOTION FOR A SECOND DISTRIBUTION
OF THE NET SETTLEMENT FUNDS**

Plaintiffs respectfully submit this motion—pursuant to the Stipulation and Agreement of Settlement [ECF No. 109, Ex. 1] (“Settlement”)¹ between the parties herein—for a **second** distribution of the monies remaining in (a) the Sound Recording Net Settlement Fund (totaling approximately \$65,853.06); and (b) the Musical Composition Net Settlement Fund (totaling approximately \$36,187.92). Enclosed herewith as Exhibit A is a [Proposed] Order for a Second Distribution of the Net Settlement Funds.

Counsel for Defendant XM Satellite Radio, Inc. (“XM”) has informed Plaintiffs that XM takes no position on this motion.² In support of their motion, Plaintiffs respectfully state as follows.

I. BACKGROUND

1. On March 22, 2011, the Court granted final approval of the Settlement of this putative class action. ECF No. 123. Pursuant to the terms of the Settlement, XM paid \$5,377,177 for the benefit of the Settlement Classes, made certain additional payments for the benefit of the Musical Composition Settlement Class and agreed to other relief, including discontinuing certain functions of certain of its Recording Devices. ECF No. 109; ECF No. 127-2, ¶32.

2. On April 9, 2014, this Court ordered an initial distribution of the Sound Recording Net Settlement Fund and Musical Composition Net Settlement Fund and the creation of reserve funds in the amount of \$25,000 for each fund. ECF No. 128, ¶3. The initial distribution provided members of the Classes who submitted the 4,151 proofs of claim determined by the Administrator, Garden City Group, LLC (“GCG”), to be eligible to share in

¹ Capitalized terms used herein are defined in the Settlement Agreement.

² On January 12, 2011, XM Satellite Radio Inc., a Delaware corporation and wholly-owned subsidiary of Sirius XM Radio Inc., merged with and into Sirius XM Radio Inc.

the Net Settlement Funds with their respective shares of the Settlement proceeds.

3. On or about June 13, 2014, GCG commenced distribution of the Net Settlement Funds pursuant to the Court's March 6, 2014 Order for Distribution of The Net Settlement Funds referenced in ¶2 above. *See* Declaration of Jennifer M. Veitengruber dated May 12, 2016 ("Veitengruber Declaration") at ¶4 submitted herewith. As part of this process, GCG issued 4,148 checks to eligible Class members. *Id.*, ¶¶4-5.

4. Despite GCG's best efforts, 454 of the checks issued as part of the initial distribution remain un-cashed or were returned undeliverable with no forwarding address found. *Id.* ¶14. The total amount of these un-cashed and undeliverable checks is approximately \$14,586.46. *Id.*

5. The current balance of the Sound Recording Net Settlement Fund, including the previously established reserve fund of \$25,000, is approximately \$65,853.06. *Id.*, ¶17. The current balance of the Musical Composition Net Settlement Fund, including the previously established reserve fund of \$25,000, is approximately \$36,187.92. *Id.*

II. THE PROPOSED SECOND DISTRIBUTION

6. Plaintiffs respectfully request that the remaining monies in the Net Settlement Funds (less the requested administrative payment discussed in ¶8 below) be distributed to eligible Class members (a) who cashed their check as part of the initial distribution and (b) whose *pro rata* share(s) of the remaining Sound Recording Settlement Fund and/or Musical Composition Net Settlement Fund is greater than or equal to \$25. *See* [Proposed] Order for Second Distribution of Net Settlement Funds ("Proposed Order") at ¶1 submitted herewith. The foregoing proposed distribution would result in checks being issued to approximately 458 eligible Class members. Veitengruber Declaration, ¶18.

7. Plaintiffs propose that all checks issued in connection with the second distribution include language to the effect that if the check is not cashed within forty-five (45) days, the uncashed funds will revert back to the Net Settlement Funds. Proposed Order, ¶2.

8. GCG respectfully requests payment of its professional fees and expenses in an amount of up to \$12,816.56, which it estimates it will require in order to complete a second distribution to eligible Class members and to finalize the administration of the Settlement. Veitengruber Declaration, ¶19; Proposed Order, ¶3.

9. To the extent that the second distribution does not result in a full and final distribution of all the remaining funds in the Net Settlement Funds, Plaintiffs respectfully request that there be a further distribution of any remaining monies in the Net Settlement Funds to those eligible Class members who cashed their checks issued in connection with the second distribution and whose *pro rata* share(s) of the remaining Sound Recording Settlement Fund and/or Musical Composition Net Settlement Fund is greater than or equal to \$25. Proposed Order, ¶4. To the extent that such further *pro rata* distribution would not be cost effective, Plaintiffs will report to the Court and recommend an alternative final distribution of any remaining funds in the Net Settlement Funds. *Id.*

10. No earlier than sixty (60) days after there has been a final distribution of all the remaining funds in the Net Settlement Funds, Plaintiffs request that the Court authorize GCG (a) to discard/destroy all copies of the claim forms and any supporting documents and other correspondence, in whatever form or media they are maintained and (b) to close the post office box, disconnect the telephone number and remove the Settlement website and e-mail address from the internet, which were all specifically designed and created for the Settlement. *Id.*, ¶5.

11. Class Counsel has instructed GCG to post this motion and its supporting

documentation on the Settlement website so that it may be viewed by Class members.

CONCLUSION

Plaintiffs respectfully request that the Court grant their motion for a second distribution and enter the [Proposed] Order for a Second Distribution of the Net Settlement Funds attached as Exhibit A hereto.

Dated: New York, New York
May 12, 2016

Respectfully submitted,
/s/ Christopher McGrath
Christopher Lovell
Christopher M. McGrath
LOVELL STEWART HALEBIAN JACOBSON LLP
61 Broadway, Suite 501
New York, New York 10006
Telephone: (212) 608-1900
Facsimile: (212) 719-4775

/s/ Jeffrey L. Graubart
Jeffrey L. Graubart
LAW OFFICES OF JEFFREY L. GRAUBART, P.C.
100 Corson Street, Third Floor
Pasadena, California 91103
Telephone: (626) 304-2800
Facsimile: (626) 304-2807

/s/ Joshua Graubart
Joshua Graubart
LAW OFFICES OF JOSHUA GRAUBART, P.C.
6 East 39th Street, 6th Floor
New York, New York 10016
Telephone: (646) 781-9321
Facsimile: (646) 224-8088

/s/ Steven J. D'Onofrio
Steven J. D'Onofrio, Esq.
5335 Wisconsin Avenue, N.W. Suite 440
Washington, D.C. 20015
Telephone: (202) 686-2872
Facsimile: (202) 686-2875

Counsel for Plaintiffs & the Settlement Classes