IN THE 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

PLAINTIFFS' NOTICE OF UNOPPOSED MOTION TO GIVE NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

PLEASE TAKE NOTICE that Plaintiffs 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, through the undersigned counsel, move this Court for an Order (1) granting approval to give notice of the parties' class action settlement; (2) provisionally certifying the proposed class pursuant to Fed. R. Civ. P. 23(b)(1)(A); (3) appointing as class counsel Eric Zukoski of Quilling, Selander, Lownds, Winslett, & Moser, P.C. and Roger L. Mandel of Jeeves Mandel Law Group, P.C.; (4) appointing Plaintiffs Jon Blondell, Paul Harrington, Timothy Johnson, Stephanie Lowe f/k/a Stephanie Marie, Chastity Marie, and Clayton Pritchard as class representatives; (5) approving the proposed notice plan; (6) appointing KCC

Class Action Services, LLC to serve as the settlement administrator; and (7) scheduling the final approval hearing and related dates and deadlines.

A memorandum of law setting forth the cases and authorities relied on in support of Plaintiffs' Unopposed Motion to Give Notice of Proposed Class Action Settlement is attached hereto.

Respectfully submitted,

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

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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,	§	**C.A. No. 1:17-cv-00372-RRM-RML**
v.	§	
BRUCE BOUTON, DUNCAN CRABTREE-IRELAND, AUGUSTINO GAGLIARDI, RAYMOND M. HAIR, JR., JON JOYCE, AND STEFANIE TAUB,	§	
Defendants.	§	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION TO GIVE NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

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I. INTRODUCTION

The subject matter of this class action is the statutory Royalties[1] payable to session musicians and background vocalists (regardless of whether they are union members or not and regardless of whether they recorded pursuant to a union contract or not) ("Non-Featured Performers") pursuant to the Digital Millennium Copyright Act, Digital Performance Right in Sound Recordings Act, and Audio Home Recording Act, the pertinent provisions of which are codified at 17 U.S.C. § 114(g)(2)(B) & (C) and 17 U.S.C. § 1006(b)(1). Plaintiffs contend that Defendants, who are current and former trustees of the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund (" the Fund), a New York trust formed by the unions, that was selected to pay these Royalties to both union and non-union members, improperly failed to identify, locate, and pay the Non-Featured Performers entitled to these Royalties and to the extent that they did pay these Royalties they did so with a preference for union members over non-union members. Plaintiffs allege that such failures constitute a breach of Defendants' fiduciary duties as trustees and that they control Royalties which in equity and good conscience should be paid to Plaintiffs and the Class pursuant to the cause of action for money had and received. Defendants deny these allegations. Notwithstanding the positions of the Parties, in the interest of avoiding the burden, expense, risk, and uncertainty of continuing these proceedings to trial, and after extensive negotiations, they have entered into a "Settlement Agreement and Release" ("Settlement") (attached as Exhibit 1 to the concurrently filed Declaration of Eric Zukoski ("Zukoski Decl.").

The Settlement requires Defendants to distribute all Unclaimed Royalties received by the Fund from 2011 through 2016, which, as of November 30, 2019, amounted to approximately $45,848,799.99 in Royalties owed to 61,298 Class Members. The Settlement also requires

[1] Capitalized terms not defined in this Motion have the meaning set forth in the definitions section of the Settlement, which is attached as Exhibit 1 to the Zukoski Decl.

Defendants to undertake extensive affirmative steps[2] to locate and pay Class Members the Unclaimed Royalties, which steps it will continue for Royalties received in 2017-2019. Any remaining amounts will be distributed pro-rata to the Non-Featured Performers who the Fund previously successfully paid, such that the Settlement will result in a full distribution of the Unclaimed Royalties held in the Fund that are the subject of the Action. The pro rata distribution for the remaining Unclaimed Royalties will take place by April 30, 2022. For Royalties it received in 2017, 2018 and 2019, the Fund will distribute any Unclaimed Royalties on a pro rata basis to the Non-Featured Performers it previously paid successfully by April 30, 2024, April 30, 2025, and April 30, 2026, respectively. For Royalties collected by the Fund in 2020 and after, assuming no changes in the law and absent good cause, the Fund will endeavor to pay any Unclaimed Royalties on such a pro rata basis no later than the next regular distribution following six years after the year of receipt.

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 to make Non-Featured Performers aware of the Royalties and the Fund and to cause them to identify themselves to the Fund so they may be paid Royalties owed to them. The Fund will also work with SL Business Informatics/SingerLewak ("SL"), to redesign the Fund's business practices, processes, workflows, and internal controls to increase the effectiveness and/or efficiency by which the Fund identifies, locates, and pays Non-Featured Performers. The Fund will distribute Royalties received in 2020 and after based upon the plans it develops in consultation with the consultants.

The Parties have agreed that each of the Plaintiffs will be paid $1,500 out of the Unclaimed

[2] These steps are set forth in paragraphs 4.02A through 4.02E8 in pages 9-11 of the Settlement.

Royalties as class representative service awards and that the costs of notice and settlement administration will also be deducted from that fund. The Parties have agreed to submit to the Court the amount of the reasonable attorneys' fees and expenses to be paid to Plaintiffs' attorneys with the amount of any such award to be paid out of the Unclaimed Royalties.

As discussed below, the Settlement falls well within the likelihood of possible approval and therefore justifies the Court in authorizing the Parties to send notice of the Settlement to the Class.[3] It is based on a thorough review, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, it was the product of hard-fought litigation and arm's length settlement negotiations between experienced counsel, and it contains no facial deficiencies.

Plaintiffs' Counsel and Plaintiffs, as class representatives, have concluded, based upon their investigation, and taking into account the risks, uncertainties, burdens, and costs entailed by further prosecution of their claims, as well as the substantial benefits the Class will receive, that a resolution and compromise on the terms set forth in the proposed Settlement Agreement is fair, reasonable, adequate, and is in the best interests of the proposed Class. In addition, the proposed Class Notice advises Class Members of the key elements of the Settlement, and the proposed notice program is the best practicable under the circumstances and complies with the requirements of due process.

Plaintiffs respectfully request that the Court: (1) grant preliminary approval of the settlement; (2) provisionally certify the proposed Class pursuant to Fed. R. Civ. P. 23(b)(1)(A); (3) appoint as Class Counsel Eric Zukoski of Quilling, Selander, Lownds, Winslett, & Moser, P.C. and Roger L. Mandel of Jeeves Mandel Law Group, P.C.; (4) appoint Plaintiffs Jon Blondell, Paul

[3] As discussed below, because the Parties seek certification of a mandatory no opt-out Class pursuant to FRCP 23(b)(1)(A), FRCP 23(c)(2)(A) does not require notice of the Settlement be given to the Class. The Parties nevertheless recommend notice be given to the Settlement Class for the reasons set forth below.

Harrington, Timothy Johnson, Stephanie Lowe f/k/a Stephanie Marie, Chastity Marie, and Clayton Pritchard as Class Representatives; (5) approve the proposed Notice Plan; (6) appoint KCC Class Action Services, LLC to serve as the Settlement Administrator ("Administrator"); and (7) schedule the Final Approval Hearing and related dates and deadlines.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The significant procedural history is as follows. Plaintiffs Jon Blondell, Paul Harrington, Timothy Johnson, Stephanie Lowe, f/k/a Stephanie Marie, Chastity Marie, and Clayton Pritchard filed this Action on January 23, 2017. [4] *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 AND ECF 48. In the Second Amended Complaint, Plaintiffs brought two causes of action against Defendants: (1) breach of fiduciary duty and (2) money had and received. ECF 48, ¶¶ 132-149.

Defendants filed a Pre-Motion Letter on August 18, 2017 (ECF 38); Plaintiffs filed a Pre-Motion Letter on August 23, 2017 (ECF 39); the Court conducted a conference regarding Defendants' Pre-Motion Letter on January 24, 2018; and the Parties filed the Motion to Dismiss Plaintiffs' Second Amended Complaint, Plaintiffs' Response, and Defendants' Reply on April 11, 2018 (ECF 52-55). The Court denied the Motion to Dismiss Plaintiffs' Second Amended Complaint on March 29, 2019 (ECF 65).

In addition to the informal factual investigation and analysis conducted by Class Counsel, the Parties conducted extensive formal discovery commencing in August of 2017, which included:

[4] Prior to filing the Action and throughout the Action, Class Counsel conducted a thorough examination, investigation, and evaluation of the relevant law and facts to assess the merits of the claims and potential defenses. This included extensive legal and factual research and analysis, statistical analysis, expert analysis, document and evidence review, musician and singer interviews. Class Counsel retained and worked with a music royalty and technology expert and a marketing expert.

(1) disclosures, supplemental disclosures, numerous rounds of interrogatories and supplemental interrogatories and responses, numerous rounds of requests for production and supplemental requests for production and responses, (2) review by Plaintiffs of approximately 6,852 pages of documents produced by Defendants and review by Defendants of approximately 1,722 pages of documents produced by Plaintiffs, and (3) depositions of two of the defendant trustees in July of 2019. The scope of discovery between August 2017 and July 2019 was hotly disputed between the Parties and only resolved through months of negotiations. At the time the Parties agreed that settlement negotiations justified delaying further discovery, the Parties had scheduled the depositions of all of the remaining Defendants, key Fund employees and all of the Plaintiffs.

The significant background regarding the Settlement is as follows. In May 2019, the Parties commenced discussions regarding the possibility of resolving this matter. (Zukoski Decl. at ¶ 10.) During May through November of 2019 the Parties conducted extensive discussions regarding the possibility of and terms for settlement. (*Id.*) Before and during all settlement discussions, the Parties exchanged sufficient information to permit Plaintiffs and Class Counsel to evaluate the claims and potential defenses and to meaningfully conduct informed settlement discussions. (*Id.*)

On November 18, 2019, the Parties advised the Court that a settlement in principle had been reached. (11/18/19 Minute Entry.[5]) The Parties continued discussions with respect to Plaintiffs' attorneys' fees and expenses but were unable to reach agreement as to an amount. The Parties executed a Memorandum of Settlement on or about January 17, 2020. As to attorneys' fees and expenses, the Parties agreed that they will be determined by the Court pursuant to Federal Rules of Civil Procedure 54(d)(2) and 23(h), Local Rule 23.1, and any applicable Court policies

[5] There is no docket number associated with this minute entry.

and procedures. (ECF 74.)

III. SUMMARY OF PROPOSED SETTLEMENT

A. The Settlement Class, Proposed Class Representatives, and Class Counsel

Under the terms of the Settlement, the proposed Settlement Class is defined as:

> all NFPs[6] (or their beneficiaries, if deceased) entitled to receive Unclaimed Royalties for Distribution and NFPs (or their beneficiaries, if deceased) who performed on a Covered Recording and whom the Fund had previously not identified.

(SA ¶1.06.)

Plaintiffs Jon Blondell, Paul Harrington, Timothy Johnson, Stephanie Lowe f/k/a Stephanie Marie, Chastity Marie, and Clayton Pritchard, are the Proposed Class Representatives, and Eric Zukoski of Quilling, Selander, Lownds, Winslett, & Moser, P.C. and Roger L. Mandel of Jeeves Mandel Law Group, P.C. are designated as Class Counsel. (*Id.* ¶¶ 1.07.)

B. The Payments to Settlement Class Members and Injunctive Relief

The Settlement requires the Fund to undertake a number of extensive specified actions to pay the Class Members between now and December 31, 2021, the amount of the Unclaimed Royalties for Distribution from Source Years 2011 through 2016, which, as of November 30, 2019, amounted to approximately $45,822,620.71 in DPRA Royalties[7] and $26,179.28[8] in AHRA Royalties,[9] payable to approximately 59,023 currently-identified Class Members and 2,275 currently-identified Class Members, respectively. (SA ¶¶ 1.35, 4.01 and 4.02A-E8.) The Fund will continue to use these enhanced actions to pay entitled NFPs the over $150 million in Royalties

[6] "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). (SA ¶ 1.21).
[7] "DPRA Royalties" 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. (SA ¶ 1.16).
[8] The Distribution Amount does not include settlement amounts received by the Fund relating to US recordings created prior to February 15, 1972 or royalties paid to the Fund from non-U.S. collectives or neighboring rights societies.
[9] "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. (SA ¶ 1.04).

collected by the Fund in 2017 through 2019. The Parties believe these steps will result in payment of a significant portion of the Unclaimed Royalties and a significantly higher rate of payment of the 2017-2019 Royalties.

As set forth in greater detail in the Settlement Agreement, these steps include: (a) the Fund will email all Class Members for whom the Fund has email addresses and provide a participant information form as well as additional information to assist the Class members in claiming and receiving the Unclaimed Royalties; (b) for each Class Member owed $750 or more the Fund will undertake multiple agreed processes (these include Google searches, social media searches, exploiting professional and industry networks, etc.) targeted at locating the Class Member; (c) for Class Members owed between $100 and $750 the Fund will undertake Lexis or similar searches followed by undertaking multiple agreed processes including contact attempts through email; and (d) and the Fund will perform quarterly cross-checks between the Fund's Unclaimed Royalties lists and union records.

For Royalties that were distributed to the Fund from 2017 to 2019 by SoundExchange (DPRA Royalties) and by the U.S. Copyright Office (AHRA Royalties), the Fund will attempt to identify, obtain contact information for and pay NFPs using the methods and processes summarized above, and as informed by its work with the business consultant it has agreed to retain as part of the Settlement. The Fund will 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 and for whom it still has valid payment information. 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, the Fund agrees that, absent a change in the law or good cause, it shall endeavor to 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 valid payment information, 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.

The Fund will also 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. The purpose of the advertising/marketing plan is to enhance the awareness of NFPs to the existence of the Royalties and the Fund and to get them to provide the Fund with the necessary information to allow the Fund to pay them the Royalties they are owed. 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.

The Fund will also work with a business consultant (SL Business Informatics/SingerLewak or "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.

C. Releases

As set forth in greater detail in the Settlement Agreement, [10] upon Final Approval, Plaintiffs and Settlement Class Members will release the Defendants and the Defendants will release the Plaintiffs from all claims of any kind raised in the Action. The release does not cover 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

[10] Settlement at paragraph 4.07.

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*.

D. Notice

The Settlement Administrator (described below) will handle the publication notice, send out the notices required by Class Action Fairness Act ("CAFA"), receive and provide the initial response to communications from potential Class Members, process objections, and prepare a declaration for the Court reporting on its activities. The Settlement Administrator will set up and monitor a webpage and telephone number regarding the Settlement and the procedures for NFPs to identify themselves to the Fund. The Parties will cooperate with the Settlement Administrator as necessary, and the Fund shall pay the Settlement Administrator out of the Unclaimed Royalties. The Notice Plan is described in detail below.

E. Opt-Out Rights

For the reasons explained below (see topic 4 on p. 27), the Parties request the Court certify the Class as mandatory, non-opt out class pursuant to FRCP 23(b)(1)(A).

F. Objections to the Settlement

Any Settlement Class Member may object to any aspect of the Settlement and/or appear at the Final Approval Hearing. To do so, the Settlement Class Member must first file a written objection with the Court by the Objection Deadline that satisfies the requirements set forth in the Settlement Agreement and serve the objection on all Parties, postmarked no later than that deadline. (SA. ¶ 3.04.) Further, any objector who intends to appear at the Final Approval Hearing must state such in their written Objection. (*Id.*) Any Settlement Class Member who does not provide a timely, written, compliant objection shall be deemed to have waived any objection. (*Id.*)

G. Class Representative Service Awards

Within ten (10) days of the Court entering the Final Judgment and regardless of whether the Final Judgment is appealed, Defendants will pay $1,500 to each of the Plaintiffs out of the Unclaimed Royalties as awards for their services as class representatives. 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. (SA. ¶ 4.06.)

H. Attorneys' Fees and Expenses

The Parties have agreed to submit to the Court the amount of the reasonable attorneys' fees and expenses of Plaintiffs' attorneys, to be determined by the Court pursuant to Federal Rules of Civil Procedure 54(d)(2) and 23(h), Local Rule 23.1, and any applicable Court policies and procedures. Attorneys' fees and expenses shall be paid out of the Unclaimed Royalties in the amount awarded by the Court. 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 prior to the date the Fund pays the Court's award of attorneys' fees and expenses out of the Unclaimed Royalties, the Fund shall pay out of its expense fund to Plaintiffs' counsel 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 Undistributed Royalties to be redistributed pro rata, the Fund may reimburse its expense fund with such Undistributed Royalties before the pro rata redistribution. (SA ¶ 4.08.)

IV. THE COURT SHOULD APPROVE GIVING NOTICE OF THE PROPOSED SETTLEMENT AGREEMENT

A. Standard for Approval of Giving Notice

Courts generally favor settlement of class action lawsuits. *See Wal-Mart Stores v. Visa U.S.A.*, 396 F.3d 96, 116 (2d Cir. 2005) (affirming approval of class action settlement and emphasizing "strong judicial policy in favor of settlements, particularly in the class action context") (quotation omitted); *see also* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("Newberg"), § 11.41 (4th ed. 2002) ("The compromise of complex litigation is encouraged by the courts and favored by public policy."). "The central question raised by the proposed settlement of a class action is whether the compromise is fair, reasonable and adequate. There are weighty justifications, such as the reduction of litigation and related expenses, for the general policy favoring the settlement of litigation." *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) (affirming approval of class settlement) (citation omitted).

At the stage of deciding to give a class notice of settlement, the Court need only "make a preliminary determination of the fairness, reasonableness and adequacy of the settlement" so that notice may be given to the Class and a fairness hearing may be scheduled to make a final determination regarding the fairness of the settlement. Newberg § 11.25; Manual for Complex Litigation, Fourth § 21.632. The Court need only find that there is "'probable cause' to submit the [settlement] to class members and hold a full-scale hearing as to its fairness." *In re Traffic Executive Ass'n Eastern RRs*, 627 F.2d 631, 634 (2d Cir. 1980); Newberg § 11.25 (stating that "[i]f the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness . . . and [it] appears to fall within the range of possible approval," the court should permit notice of the settlement to be sent to class members).

"A proposed settlement of a class action should . . . be preliminarily approved where it 'appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments

of the class and falls within the range of possible approval.'" *Davis v. J.P. Morgan Chase & Co.*, 775 F. Supp. 2d 601, 607 (W.D.N.Y. 2011) (granting preliminary approval). To evaluate whether a class settlement is fair, courts must examine the settlement's procedural and substantive fairness. *Reed v. Continental Guest Svcs. Corp.*, No. 10 Civ. 5642 (DLC), 2011 WL 1311886, at *2 (S.D.N.Y. Apr. 4, 2011).

B. The Proposed Settlement Is Procedurally Fair

In assessing procedural fairness, courts examine the negotiating process leading to the settlement. *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). A strong initial presumption of fairness attaches to the proposed settlement if, as here, the settlement is reached after discovery by experienced counsel and after arm's length negotiations. *Wal-Mart Stores, Inc.,* 396 F.3d at 116. The Declarations of Eric Zukoski and Roger L. Mandel filed concurrently with this memorandum attest to the procedural fairness of the Settlement.

Here, the proposed Settlement was reached as a result of extensive arm's length negotiations between the Parties and their counsel who have considerable experience litigating class action matters. (*See e.g.* Zukoski Decl. ¶¶ 10 and 12-14; Mandel Declaration ¶¶ 4-6.) Class Counsel conducted discovery, investigated the facts and underlying events relating to the subject matter of the claims, and carefully analyzed the applicable legal principles. (Zukoski Decl. ¶¶ 5 and 8-10; Mandel Decl. ¶¶ 7-8.) Class Counsel conducted a thorough examination, investigation, and evaluation of the relevant law and facts to assess the merits of the claims and potential defenses. (*Id.*) This included extensive legal and factual research and analysis, statistical analysis, expert analysis, document and evidence review, and musician and singer interviews. (*Id.*) Class Counsel retained and worked with a music royalty and technology expert and a marketing expert. (Zukoski *Decl.* ¶ 9.) The negotiations leading to settlement occurred over the course of months and included numerous other telephonic and email discussions. (Zukoski Decl. ¶¶ 10-11.)

C. The Proposed Settlement Is Substantively Fair

The Second Circuit has identified nine factors (the *Grinnell* factors) that should be considered in determining the substantive fairness of a proposed settlement:

> (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; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974) *abrogated on other grounds by Goldberger v. Integrated Res., Inc.,* 209 F.3d 43 (2d Cir. 2000). While the *Grinnell* factors are routinely considered in connection with final approval of class action settlements, the *Grinnell* factors are considered a "useful guide" at the preliminary approval stage as well. *Am. Medical Ass'n v. United Healthcare Corp.*, No. 00-cv-2800-LMM, 2009 WL 1437819, at *3-4 (S.D.N.Y. May 19, 2009). "In finding that a settlement is fair, not every factor must weigh in favor of settlement, rather the court should consider the totality of these factors in light of the particular circumstances." *In re Global Crossing Sec. & ERISA Litig.,* 225 F.R.D. 436, 456 (S.D.N.Y. 2004) (citation omitted).

As applied here, the *Grinnell* factors weigh heavily in favor of preliminary approval. In particular, factors 8 and 9 compel approval, because the Settlement obtains virtually 100% of the injunctive relief which Plaintiffs sought in this case and payment of 100% of the monetary relief which Plaintiffs sought, making the Settlement extraordinary when compared to both the best possible recovery and a settlement that takes into consideration the risks of continued litigation.

The Declarations of Eric Zukoski and Roger L Mandel provide the necessary evidence in support of the fairness, reasonableness and adequacy of the Settlement. In particular, Mr. Mandel offers his expert opinion to that effect.

1. The Litigation Is Complex and Would Be Expensive and Lengthy

With regard to the first *Grinnell* factor, courts have consistently recognized the complexity, expense, and likely duration of litigation as critical factors in evaluating the reasonableness of a class action settlement. *Charron v. Weiner,* 731 F.3d 241, 247 (2d Cir. 2013). Indeed, "[m]ost class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000).

Here, approval of the Settlement will mean a present recovery for Class Members. While Plaintiffs believe that the Action has merit and that they ultimately would prevail at trial, continued litigation would likely last for years before any judgment might be entered in favor of the Class. If not for the Settlement, a trial could occupy significant attorney and Court time, and involve significant costs. Then, any judgment favorable to the Class likely would be the subject of post-trial motions and appeals, which would significantly prolong the Action. Delay, not just at the trial stage, but also through post-trial motions and the appellate process, could force Class Members to wait even longer for any recovery, further reducing its value. *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132, 2014 WL 1883494, at *5 (S.D.N.Y. May 9, 2014) (finding that "[e]ven if the Class could recover a judgment at trial, the additional delay through trial, post-trial motions, and the appellate process could prevent the Class from obtaining any recovery for years."); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("[E]ven if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation and trial, the passage of time would introduce yet more risks in terms of appeals and possible changes in the law and would, in light of the time value of money, make future recoveries less valuable than this current recovery."). Even a trial win does not guarantee a recovery to members of the Class, because there is always a risk of reversal on appeal.

Delay would be far more injurious to these Class Members than those in a typical class action for two reasons. First, many of the Covered Recordings for which payment from the Unclaimed Royalties will be made date back years and even decades in many cases, and many of the Class Members who performed on these recordings are already elderly, with many passing away every month. Payment of estates takes much longer and is much more complicated. And, of course, generally people would like to receive money to which they are entitled before they die.

Second, the key issue in this case is Plaintiffs' complaints about Defendants' failure to locate and pay enough Class Members. The more time passes, the more likely Class Members will have moved and will be more difficult to locate. Delay will increase the difficulty of getting Class Members paid, an already difficult task.

2. Sufficient Discovery Has Been Completed to Allow the Parties to Resolve the Case

In considering *Grinnell* factor three, [11] the question "is whether the parties had adequate information about their claims." *In re Glob. Crossing*, 225 F.R.D. at 458. This factor is "intended to assure the Court 'that counsel for plaintiffs have weighed their position based on a full consideration of the possibilities facing them.'" *Id.* (quoting *Klein ex rel. Ira v. PDG Remediation, Inc.*, No. 95-cv-4954-DAB, 1999 WL 38179, at *3 (S.D.N.Y. Jan. 28, 1999)); *In re Bear Stearns Co. Sec. Derivative and ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) ("[T]he question is whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiff's causes of action for purposes of settlement"); *see also In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 176 ("To approve a proposed settlement, the Court need not find that the parties have engaged in extensive discovery . . . it is

[11] The second factor, reaction of the Class, is inapplicable at this stage.

enough for the parties to have engaged in sufficient investigation of the facts to enable the Court to intelligently make . . . an appraisal of the Settlement.").

The significant discovery events are as follows. The Parties commenced written discovery on August 7, 2017, wherein the Parties exchanged initial disclosures; Plaintiffs served Supplemental Initial Disclosures on August 16, 2017; Plaintiffs served their first set of interrogatories and their first requests for production on Defendants on June 30, 2017 and Defendants served written objections and responses thereto on July 31, 2017; the Parties conferred multiple times via telephone and in writing regarding Plaintiffs' objections to Defendants' responses, and those objections were resolved; Plaintiffs served their second set of interrogatories and second requests for production on Defendants on August 10, 2017, and Defendants served objections and responses thereto on September 11, 2017; the Parties conferred multiple times via telephone and in writing regarding Plaintiffs' objections to Defendants' responses and those objections were resolved; Plaintiffs served their third requests for production on Defendants on August 18, 2017, and Defendants served objections and responses thereto on September 18, 2017; the Parties conferred multiple times via telephone and in writing regarding Plaintiffs' objections to Defendants' responses and those objections were resolved; Plaintiffs served their third set of interrogatories and their fourth requests for production on Defendants on September 5, 2017, and Defendants served objections and responses thereto on October 5, 2017; the Parties conferred multiple times via telephone and in writing regarding Plaintiffs' objections to Defendants' responses, and those objections were ultimately resolved. In total, Defendants produced, and Plaintiffs reviewed, approximately 6,852 pages of documents during the period July 2017 through July 2019; and Plaintiffs produced, and Defendants reviewed, approximately 1,722 pages of documents during the period August 2017 through July 2019.

In addition to discovery propounded between the Parties, Class Counsel examined, investigated, and evaluated the relevant law and facts to assess the merits of the claims and potential defenses. This included extensive legal and factual research and analysis, statistical analysis, expert analysis, document and evidence review, and musician and singer interviews. Class Counsel also retained and worked with a music royalty and technology expert and a marketing expert. (Zukoski Decl. ¶¶ 5 and 8-10; Mandel Decl. ¶¶ 7-8.)

As noted above, Class Counsel conducted extensive investigation, analysis, and discovery; and they obtained all necessary information to consider their Plaintiffs' position and the full scope of the damages at issue. The accumulation of the information through Class Counsel's investigation and discovery efforts permitted Plaintiffs to be well informed and to engage in effective settlement negotiations with Defendants.

3. Risk of Establishing Liability

Pursuant to the fourth *Grinnell* factor, in assessing a settlement, a court should balance the benefits afforded the Class, including the immediacy and certainty of a recovery, against the continuing risks of litigation. *Grinnell*, 495 F.2d at 463. Courts routinely approve settlements where plaintiffs would have faced significant legal and factual obstacles to establishing liability. *Thompson v. Metropolitan Life Ins. Co.,* 216 F.R.D. 55, 63 (S.D.N.Y. 2003). Indeed, "[l]itigation inherently involves risks." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997) (approving settlement).

Here, in order to come to a judgment in this Action, the Parties would have to litigate extensively, through discovery, class certification, summary judgment, trial, and then appeals. Defendants articulated a number of defenses that could be accepted by the Court or jury. These defenses are outlined in the Motion to Dismiss (ECF 52) and in Defendants' Answer and Affirmative Defenses (ECF 68-3). Defendants maintain, *inter alia*, that the Plaintiffs have mis-

characterized the Fund's activities to carry out its duties and that its actions have been prudent and appropriate under the circumstances such that no breach of fiduciary duty has occurred. The Fund also maintained that the Unclaimed Royalties would be disbursed in accordance with the terms of the Fund even without Court intervention such that the Plaintiffs cannot maintain a claim for money had and received. Defendants further assert the defenses of laches, payment, accord and satisfaction, and statute of limitations (ECF 68-3).[12] Without a settlement, the Defendants would litigate the case vigorously, forcing Plaintiffs to overcome determinative motions and to demonstrate that the putative classes should be certified. *See In re Glob. Crossing,* 225 F.R.D. at 456.

While Plaintiffs believe that they would prevail, they also recognize there is no guarantee of success at a trial on the merits, or that judgment in their favor would be upheld on appeal. Accordingly, in the absence of a settlement, there is a real risk that the Class will recover relief significantly less valuable than that provided by the Settlement—or even nothing at all. The distribution of all of the Undistributed Royalties along with the location procedures provided in the Settlement Agreement and the future benefit from the injunctive relief, when viewed in the context of the risks of litigation, weigh heavily in favor of preliminary approval.

4. Risks of Establishing Damages

Similar to the fourth factor, "this inquiry [the fifth *Grinnell* factor] attempts to measure the expected value of litigating the action rather than settling it at the current time." *In re Warfarin Sodium Antitrust Litigation*, 212 F.R.D. 231, 256 (D.Del.,2002) (quoting *In re Cendant*, 264 F.3d

[12]Defendants also asserted that Defendants are vested with the discretion to solely determine the means and methods that they employ to identify NFPs and distribute royalties and that disagreement over the means and methods selected does not constitute a breach of fiduciary duty under NY law, that money acquired lawfully and rightfully cannot form the basis for a claim of money had and received under NY law, and that the Copyright Royalty Board is the exclusive forum for resolution of disputes regarding 17 U.S.C. § 114(g)(2)(B) & (C) and 17 U.S.C. § 1006(b)(1). (SA ¶ 1.21).

at 238 (citation omitted). More particularly, "the court looks at the potential damage award if the case were taken to trial against the benefits of immediate settlement." *Id*. (citing *In re Prudential*, 148 F.3d at 319.) As explained below, the settlement recovers nearly 100% of the injunctive relief sought, while Defendants challenged whether such injunctive relief could be awarded by the Court even if they were found liable. (ECF 52 at pp. 21-23[13]). Further, Plaintiffs sought to force Defendants to pay out 100% of the Unclaimed Royalties through, first, enhanced efforts to identify, locate and pay Class Members and, second, to pay out pro rata any amounts remaining after the enhanced efforts are exhausted. Accordingly, the Settlement recovers close to 100% of the injunctive relief that could have been recovered through a complete and total litigation victory. *See, e.g. Kaplan v. Chertoff*, 2008 WL 200108, at *11 (E.D. Pa. 2008) (Settlement approved where best outcome for plaintiffs at trial "would have similar results to the proposed settlement"). Accordingly, further litigation only would serve to increase the costs and risks to the Class while having no substantially positive effect on the outcome such that this factor strongly favors the Settlement.

5. Risk of Maintaining Class Status

The sixth *Grinnell* factor—the risk of maintaining the class action—is typically considered in the context of unopposed certification motions for settlement purposes. *Odom v. Hazen Transport, Inc.*, 275 F.R.D. 400, 411 (W.D.N.Y. 2011) ("Although class certification has been approved by this Court for the purpose of settlement, it is not certain that the case would be certified in the absence of settlement.").

Here, Plaintiffs are confident that they are adequate class representatives and more than

[13]Defendants asserted that the relief sought by Plaintiffs would constitute improper "continuous judicial supervision" over "highly technical issues" and such oversight if at all was vested in the Copyright Royalty Board. MTD at pp. 21-23.

capable of achieving and maintaining class status throughout trial. Nevertheless, Defendants would oppose any attempt made by Plaintiffs to certify this case. Even if the Plaintiffs received class certification, Defendants would have the right to seek a Rule 23(f) appeal and to attempt to decertify the class at each step of the litigation including before trial, during trial, or on appeal. *Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07-cv-2207-JGK, 2010 WL 3119374, at *4 (S.D.N.Y. Aug. 6, 2010) (noting that there "is no assurance of obtaining class certification through trial, because a court can reevaluate the appropriateness of certification at any time during the proceedings."); *In re NASDAQ Mkt–Makers Antitrust Litig.,* 187 F.R.D. 465, 476–77 (S.D.N.Y. 1998) (risk of class being decertified at trial or risk of class certification being reversed on appeal supported approval of settlement). The risk that Plaintiffs face in certifying and maintaining certification of the Action weighs heavily in favor the proposed Settlement.

6. The Ability of Defendants to Withstand a Greater Judgment

This seventh factor is not relevant in this case, as Plaintiffs sought to force Defendants to distribute accumulated funds in their possession.

7. The Settlement Constitutes an Incredible Result Given the Possible Recovery and the Risks of Litigation

Grinnell factors eight and nine require a court to analyze the "range of reasonableness" of the settlement fund in light of the case and in light of all the risks associated with litigation. *Grinnell*, 495 F.2d at 463. The adequacy of the amount offered in settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). The Court need only determine whether the Settlement falls within a "range of reasonableness" – a range that "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and

costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972); *see also In re Global Crossing*, 225 F.R.D. at 461 (noting that "the certainty of [a] settlement amount has to be judged in [the] context of the legal and practical obstacles to obtaining a large recovery"); *In re Indep. Energy Holdings PLC Sec. Litig.*, No. 00-cv-6689-SAS, 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29, 2003) (noting few cases tried before a jury result in full amount of damages claimed). In considering the reasonableness of the proposed Settlement, the Court should consider that the Settlement provides for payment to the Class now, rather than a speculative payment many years down the road. *In re AOL Time Warner Inc.*, No. 02-cv-5575-SWK, 2006 WL 903236, at *13 (S.D.N.Y. Apr. 6, 2006) ("[T]he benefit of the Settlement will . . . be realized far earlier than a hypothetical post-trial recovery").

In any event, a 100% recovery is not required for approval of a settlement because a "settlement is by nature a compromise between the maximum possible recovery and the inherent risks of litigation." *In re Warfarin Sodium Antitrust Litigation*, 212 F.R.D. 231, 258 (D. Del. 2002). Courts routinely approve settlements under the above reasoning where the recovery is far less than 100%. *See, e.g. Gordon v. Dadante*, 2008 WL 1805787, at *14 (N.D. Ohio 2008) (approving settlement with 100% recovery and collecting cases were settlement with far less recovery was approved) (citing *In re Cendant Corp. Litig.,* 264 F.3d 201, 241 (3d Cir.2001) (finding no abuse of discretion in a district court's approval of a settlement where, inter alia, "the total settlement amount of nearly $3.2 billion represents a 36–37% recovery rate by the plaintiff Class") (citing *In re Prudential Sec., Inc., L.P. Litig.,* MDL No. 1005, 1995 WL 798907 (S.D.N.Y. Nov. 20, 1995) (approving settlement of between 1.6% and 5% of claimed damages); *In re Crazy Eddie Sec. Litig.,* 824 F.Supp. 320 (E.D.N.Y. 1993) (settlement of between 6% and 10% of damages); *In re Suprema Specialties, Inc. Sec. Litig.,* No. 02–168, slip op., 2008 WL 906254 at

*6–*7 (D.N.J. Mar. 31, 2008) (approving a settlement that amounted to nearly 22% of plaintiffs' expert's damages estimate); ; *In re Datatec Sys., Inc. Sec. Litig.,* No. 04–CV525, slip op., 2007 WL 4225828, at *4 (10.87% of the possible damages was within the range of settlements approved in other securities cases).

Under this standard, the Settlement is nothing short of extraordinary. It achieves every significant request for injunctive relief that was sought in the Action and a 100% distribution of the monies that the Action sought to distribute. Plaintiffs sought to force the Fund to: (1) obtain a marketing consultant to assist the Fund in conducting a multi-media campaign designed to reach as many Non-Featured Performers as possible to make known to them the existence and availability of the Royalties and the procedures for them to obtain payment of the Royalties owed to them by the Fund [SAC at ¶¶ 12, 25, 44-49, and 138]; (2) undertake additional and revamped procedures for identifying, locating and paying Non-Featured Performers [SAC at ¶¶ 12, 29-33, 64-72, and 139]; (3) engage in a variety of enhanced efforts to pay the Class Members (overwhelmingly Non-Featured Performers on the Unclaimed Royalty List) the tens of millions of dollars being held indefinitely by the Fund [SAC at ¶¶ 12, and 38-43]; (4) pay out on a pro rata basis any Unclaimed Royalties after the enhanced efforts had been exhausted (resulting in payment of 100% of the Unclaimed Royalties) [SAC at ¶¶ 138-139]; and (5) to rescind and replace Fund Guidelines that Plaintiffs contended served to discourage Non-Featured Performers from making claims to or identifying themselves to the Fund [SAC at ¶¶ 73-80 and 138].

During the course of and as a result of the Action prior to Settlement, the Fund made the necessary changes to the Guidelines. The Settlement provides for all of the other relief just described sought by Plaintiffs. In fact, the Settlement achieves one result not even pled for in the Second Amended Complaint—hiring a business consultant 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 The only relief sought in the Second Amended Complaint and not achieved by the Settlement is an injunction forcing the Fund to seek aid from third party organizations in identifying and locating Non-Featured Performers (unnecessary in light of what the Settlement does require of the Fund) and pre-judgment interest on the Unclaimed Royalties. Simply put, the Settlement provides Plaintiffs and the Class virtually 100% recovery of the relief they sought and could have recovered via a litigation victory. As such, the Settlement not only easily falls within the range of reasonableness, it represents an exceptional result which should be approved.

V. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Parties request that the Court certify the Settlement Class for settlement purposes pursuant to Rules 23(a) and (b)(1)(A) of the Federal Rules of Civil Procedure. It is well settled that a court may certify a class for settlement purposes, provided that the court conducts an inquiry under Rules 23(a) and (b). [14] *Weinberger v. Kendrick*, 698 F.2d at 73; *Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006). While a class generally must meet all of the requirements of Rule 23, "[s]ettlement is relevant to a class certification" and is "a factor in the calculus." *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 619, 622 (1997). As discussed below, Plaintiffs respectfully submit that the Settlement Class satisfies all of the prerequisites of Rule 23(a) and Rule 23(b)(1)(A).

A. Numerosity Is Satisfied

[14] Newberg, §§ 11.27, *et. seq*. (4th ed. 2002) ("When the court has not yet entered a formal order … that the action may be maintained as a class action, the parties may stipulate that it be maintained as a class action for the purpose of settlement only."); *Cnty. of Suffolk v. Long Island Lighting Co.*, 710 F. Supp. 1422, 1424 (E.D.N.Y. 1989) ("It is appropriate for the parties to a class action .. to negotiate a proposed settlement of the action prior to certification of the class."), *aff'd*, 907 F.2d 1295 (2d Cir. 1990).

To qualify for certification, a class must be "so numerous that joinder of all members is impracticable." *In re AOL Time Warner, Inc.*, 2006 WL 903236, at *4 (quoting Fed. R. Civ. P. 23(a)(1)). "[A] plaintiff need not show that joinder is impossible. . . . Nor need the plaintiff know the exact number of class members." *Saddle Rock Partners Ltd. v. Hiatt*, No. 96-cv-9474-SHS, 2000 WL 1182793, at *2 (S.D.N.Y. Aug. 21, 2000) (citing *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993)). Rather, while "[t]here is no strict numerical test for determining impracticability of joinder[,] . . . [w]hen class size reaches substantial proportions . . . the impracticability requirement is usually satisfied by the numbers alone." *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996) (citing Newberg § 3.05, at 3-26). In this case there are 59,023 Class Members owed sound recording Royalties under the Digital Millennium Copyright and Digital Performance of Sound Recordings Act and 2,275 currently-identified Class Members owed Audio Home Recording Act Royalties and thus there are a total of 61,298 currently-identified Class Members spread across the United States. The numerosity requirement is more than satisfied.

B. Commonality Is Satisfied

Rule 23(a)(2) is satisfied where "there are questions of law or fact common to the class." *Cutler v. Perales*, 128 F.R.D. 39 (S.D.N.Y. 1989). This does not mean that all class members must make identical claims and arguments, or that the circumstances of their purchases must be the same, only that common issues of fact or law affect all class members. *See Dietrich v. Bauer*, 192 F.R.D. 119, 124 (S.D.N.Y. 2000). "Generally, courts have liberally construed the commonality requirement to mandate a minimum of one issue common to all class members." *Trief v. Dun & Bradstreet Corp.*, 144 F.R.D. 193, 198-99 (S.D.N.Y. 1992) (citations omitted).

Here, there are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual Settlement Class Members. The Class Members are all non-featured performers and vocalists that are owed Royalties by the

Fund. Other than the fact that some Class Members are background vocalists and some are session instrumentalists and that some are union and some are non-union, there are very few if any differences between the Class Members. And, what fiduciary duties Defendants owed and whether they breached those fiduciary duties by failing to take sufficient efforts to pay them is identical for all Class Members. Accordingly, there is sufficient commonality under Rule 23(a)(2).

C. Typicality Is Satisfied

Rule 23(a)(3) requires that the "claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). This requirement is readily met where "the claims of the named plaintiffs arise from the same practice or course of conduct that gives rise to the claims of the proposed class members." *In re Vivendi Universal, S.A.*, 242 F.R.D. 76, 85 (S.D.N.Y. 2007) (citation omitted). The requirements of commonality and typicality tend to merge. *Kindle v. Dejana,* 315 F.R.D. 7, 11 (E.D.N.Y. 2016).

In essence, "[t]he crux of both requirements is to ensure that 'maintenance of a class action is economical and [that] the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.'" *Id*. (quotation omitted). There is no requirement that the claims of all members of a purported class be identical. *D'Alauro v. GC Services Ltd. P'ship*, 168 F.R.D. 451, 456-57 (E.D.N.Y. 1996) ("When the same unlawful conduct was directed at both the named Plaintiffs and the class to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims.") (approving settlement and citing Newberg § 3.13 and *Dura–Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 99 (S.D.N.Y. 1981)); *In re Indus. Diamonds Antitrust Litig*., 167 F.R.D. 374, 379 (S.D.N.Y. 1996).

Here, the claims of Plaintiffs are typical of the claims of the Class in that Plaintiffs, like all potential Settlement Class Members, are non-featured musicians and vocalists (both union and

non-union) who are owed Royalties from the Fund and may be entitled to future Royalties as well, but who had not been paid because of what the Plaintiffs contend were insufficient efforts to properly identify, locate and pay Class Members. Thus, the factual and legal basis of Plaintiffs' allegations against Defendants are typical of those of all Class Members.

D. Adequate Representation

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interest of the class." The adequacy requirement "serves to uncover conflicts of interest between the named parties and the class they seek to represent." *Amchem Prods.,* 521 U.S. at 625 (citation omitted). The requirement is met if: (1) the named plaintiffs' interests are not antagonistic to the class' interests; and (2) the named plaintiffs' attorneys are qualified, experienced, and generally able to conduct the litigation. *Penn. Ave. Funds v. Inyx Inc.,* No. 08 Civ. 6857(PKC), 2011 WL 2732544, at *5 (S.D.N.Y. July 5, 2011).

Plaintiffs' interests are identical to those of the other Class Members, so no conflict exists. Further, Plaintiffs have done everything they needed to do to successfully pursue this Action, including hiring very capable and experienced counsel, making them adequate representatives who have so far and will through the conclusion of the Action fairly protect the interests of the Class. Moreover, Class Counsel have decades of experience and great success in the music industry, music law and the prosecution of class actions, and they have more than adequately represented Class so far and will continue to do so. (Zukoski Decl. ¶¶ 15-19 and Exhibit 2; Mandel Decl. ¶¶ 4-6 and Exhibit 1.)

E. The Class Satisfies Rule 23(b)(1)(A)

In addition to the four requirements of Rule 23(a), a class also must satisfy one of the three requirements of Rule 23(b). This Action satisfies Rule 23(b)(1)(A) because varying or inconsistent adjudications would establish incompatible standards of conduct for the Fund with which it would

be impossible for the Fund to comply. "Rule 23(b)(1)(A) takes in cases where the party is obliged by law to treat the members of the class alike (a utility acting toward customers; a government imposing a tax) or where the party must treat all alike as a matter of practical necessity (a riparian owner using water as against downriver owners)." *Amchem Prods. v. Windsor,* 521 U.S. 591, 614 (1997).

For example, and very analogous to this Action, numerous courts in actions against the trustees of ERISA plans have certified classes under Rule 23(b)(1)(A) because of the requirement for consistent treatment of plan members. *See, e.g.*, *Barnes v. AT & T Pension Benefit Plan–Nonbargained Program*, 270 F.R.D. 488, 496 (N.D. Cal. 2010) (holding that class could be certified in ERISA action for benefits under Rule 23(b)(1)(A) because there was a risk that individual litigation would result in different conclusions); *Alday v. Raytheon Co*., 619 F. Supp. 2d 726, 736 (D. Ariz.2008) (certifying class under Rule 23(b)(1)(A) in ERISA action, noting that "ERISA requires plan administrators to treat all similarly situated participants in a consistent manner" and that Rule 23(b)(1)(A) "comes into play when a party is obligated by law to treat the members of a class in like manner); *In re J.P. Morgan Chase Cash Balance Litigation*, 242 F.R.D. 265, 275–76 (S.D.N.Y. 2007) (certifying class under Rule 23(b)(1)(A) where failure to certify could result in incompatible standards of conduct for the administrator of the plan).

Such is the case here where Defendants are charged with collecting and distributing Royalties to a cohesive class of non-featured performers on covered recordings. The statutory provisions at issue in this action expressly provide that the Royalties are to be paid regardless of "whether or not members of the American Federation of Musicians" and regardless of "whether or not members of the American Federation of Television and Radio Artists." 17 U.S.C. §

114(g)(2)(B) & (C)).[15] Further, under New York trust law, applicable to the Fund, Defendants have the duty to treat all Non-Featured Performers impartially, which means treat them equally, since the trust agreement creating the Fund does not provide otherwise. *See Wells v. Hurlburt Road Co.*, 43 N.Y.S. 637, 638 (N.Y. Sup. Ct. App. Div. 2016).

Indeed, Defendants contended in their Motion to Dismiss that they are required by the Copyright Royalty Board, established and governed by the Copyright Act, a federal statute, to uniformly distribute Royalties to NFPs according to a predetermined formula. (ECF 52, p. 4.) Further, the sheer number of Class Members, more than 61,000, dictates the Fund utilize a standardized process in identifying and paying them. The injunctive relief crafted in this Settlement provides for such a process now and in the future.

If the Class is not certified, individual actions could result in the Fund being ordered to undertake significantly varying and incompatible activities to identify and pay Class Members and other Non-Featured Performers. As set forth above, courts have certified cases regulating the conduct of trustees in numerous other cases under Rule 23(b)(1)(A) for exactly this reason.

VI. THE PROPOSED FORM AND METHOD OF CLASS NOTICE IS APPROPRIATE

Because the Parties seek the certification of a mandatory non-opt out class under Rule 23(b)(1)(A), the Court has discretion as to whether to order the Parties to give notice of the settlement; notice is not mandatory. *Walsh v. Great Atl. & Pac. Tea Co.,* 726 F.2d 956, 962 (3d Cir.1983) ("in Rule 23(b)(1) and (b)(2) class actions, Rule 23(d) [now Rule 23(c)(2)(A)] provides that pre-settlement notice is entirely discretionary with the trial court"); *Wal-Mart Stores, Inc. v.*

[15] Similarly, the AHRA provides that the Royalties shall be paid regardless of "and "whether or not members of the American Federation of Musicians or any successor entity" and regardless of "whether or not members of the American Federation of Television and Radio Artists or any successor entity". 17 U.S.C. § 1006(b)(1)

Dukes, 564 U.S. 338, 362 (U.S. 2011) ("The Rule provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not even oblige the District Court to afford them notice of the action"); *see also*, Newberg on Class Actions § 8:3 (5th ed.).

Nevertheless, the Parties request the Court order that notice be given in this case for two reasons. First, the number of Class Members is so large, and the amounts of royalties owed in many cases will be so significant to those Class Members, that they ought to be able to voice their opinion of the Settlement to the Court via the objection process. Second, the giving of notice will advance one of the primary objectives of the Settlement, making Class Members aware that they may be owed Royalties and motivating them to identify themselves to the Fund so they can be paid.

Significantly, the Parties propose a plan that would pass muster under Rule 23(c)(2)(B) for cases where notice is mandatory.

A. The Scope of the Notice Program Satisfies Due Process and Rule 23

When measuring the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules, a court should look to the notice program's reasonableness. *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484(JFK), 2007 WL 313474, at *8 (S.D.N.Y. Feb. 1, 2007). "Notice need not be perfect, but … only the best notice practicable under the circumstances, and each and every class member need not receive actual notice, so long as class counsel acted reasonably in choosing the means likely to inform potential class members." *Id*. (citation omitted).

Here, the proposed administrator, KCC Class Action Services, LLC, was selected after a lengthy process that involved numerous phone interviews and extensive email correspondence with three potential class action claim administrators who each submitted multiple bids. Before

and after receiving the bids, Class Counsel and Defense Counsel conducted multiple discussions with each of the bidders aimed at assessing their suggested methods, mediums, and depth of notice for the purpose of ultimately being able to select a bidder with the optimal campaign in terms of effectiveness, as well as cost since the administrator would be paid out of the Unclaimed Royalties. The Parties ultimately engaged KCC Class Action Services LLC based on Class Counsel, Defense Counsel, and the Fund's assessment of the various proposals based on effectiveness and cost.

KCC Class Action Services, LLC's ("KCC") proposal includes both print and digital mediums. The print portion of the proposal includes insertions in up to eight print mediums likely to reach in excess of 1,000,000 impressions (viewing by a potential class member). (Peak Decl. ¶ 12-22.) KCC will implement a two-phase digital media effort consisting of 31.8 million impressions distributed via the Google Display Network, Facebook, Instagram, Twitter, and YouTube, as well as billboard.com, DigitalMusicNews.com, HITSDailyDouble.com, KeyBoardMag.com, MusicRadar.com, and SoundonSound.com. The impressions will be layered to optimize coverage by targeting a variety of relevant demographic, geographic, and behavioral targets, third-party and look-alike audiences, and relevant keywords.

Sometime after the completion of the Notice Plan, an additional digital media effort consisting of at least 185,000 impressions via the Google Display Network, Facebook, and Instagram will be implemented in an effort to locate additional Class Members and/or encourage Class Members to come forward and identify themselves to the Fund. The impressions will appear on desktop and mobile devices, including tablets and smartphones, where applicable. The digital media effort will also include digital articles/email blasts via DigitalMusicNews.com and HITSDailyDouble.com, insertions in the Google display network, Facebook, Instagram, and Twitter likely to reach a combined 9,850,000 impressions, and website insertions likely to reach

334,375 impressions. (Peak Decl. ¶ 22.) This is calculated to provide notice to as many Class members as possible in a reasonable period of time and at a reasonable cost. In the opinion of the notice expert from KCC, this satisfies Rule 23 and Due process. (Peak Decl. ¶¶ 29-31.)

B. The Content of the Proposed Class Notice Comports with Due Process and with Rule 23

The content of a notice is generally found to be reasonable if "the average class member understands the terms of the proposed settlement and the options provided to class members thereunder." *In re Stock Exchs. Options Trading Antitrust Litig.*, No. 99-cv-962-RCC, 2006 WL 3498590, at * 6 (S.D.N.Y. Dec. 4, 2006); *see also Weinberger*, 698 F.2d at 70 (the notice must "'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings'").

The summary and long form notices (Peak Decl. exhibits 3 & 4) in this case are designed, by presenting the information in plain language, to be easily understood by Class Members. The design of the long form notice follows the principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov. Many courts, and the FJC itself, have approved notices written and designed in a similar fashion. The long form notice contains substantial, albeit easy-to-read, summaries of all of the key information about Class Members' rights and options. The long form notice features a prominent headline and is clearly identified as a notice from the District Court. These design elements alert recipients and readers that the long form notice is an important document authorized by a court and that the content may affect them, thereby supplying reasons to read the long form notice. (Peak Decl. ¶¶ 28 and 29)

C. Proposed Schedule

Plaintiffs respectfully request that the Court enter the following schedule:

Event	Time for Compliance
Administrator will begin the CAFA notice and publication notice campaign	30 days after Court enters order approving the giving of notice
Administrator will complete the CAFA notice and publication notice campaign	75 days after Administrator begins notice campaign[16]
Objection Deadline	15 days after Administrator completes notice campaign
Deadline to File All Moving Papers and Briefs in Support of Entry of the Final Approval Order and Response to Any Objections	45 days after Objection Deadline
Final Approval Hearing	TBD

VII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court enter an order approving the giving of notice to the Class as set forth herein.

Dated: March 20, 2020

Respectfully submitted,

Eric Zukoski, Texas Bar No. 24010509
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James H. Birch, Texas Bar No. 00797991
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-and-

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12222 Merit Drive, Suite 1200

[16]Because of publication dates and ad content due dates, this deadline is contingent upon the Court entering the order approving notice no later than March 27, 2020.

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-and-

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ATTORNEYS FOR PLAINTIFFS
JON BLONDELL, PAUL HARRINGTON, TIMOTHY JOHNSON, STEPHANIE LOWE FKA STEPHANIE MARIE, CHASTITY MARIE, AND CLAYTON PRITCHARD, INDIVIDUALLY AND ON BEHALF OF A CLASS OF SIMILARLY SITUATED PERSONS

IN THE 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,	§	CIVIL ACTION NO. 1:17-cv-00372-RRM-RML
v.	§	
BRUCE BOUTON, DUNCAN CRABTREE-IRELAND, AUGUSTINO GAGLIARDI, RAYMOND M. HAIR, JR., JON JOYCE, AND STEFANIE TAUB,	§	
Defendants.	§	

DECLARATION OF ERIC ZUKOSKI IN SUPPORT OF UNOPPOSED MOTION FOR APPROVAL TO GIVE NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

I, Eric Zukoski, declare as follows:

1. I am an attorney licensed to practice in the State of Texas and a member in good standing of the bar of the State of Texas. I was admitted pro hac vice to this Court for the purposes of representing Plaintiffs and the Class in this case. I am a shareholder with the firm of Quilling, Selander, Lownds, Winslett & Moser, P.C. I respectfully submit this declaration in support of Plaintiffs' Unopposed Motion to Give Notice of Proposed Class Action Settlement.

2. I have personal knowledge of the facts set forth in this declaration and can testify to these facts if called upon to do so.

THE SETTLEMENT AGREEMENT

3. Attached hereto as Exhibit 1 is the detailed Settlement Agreement and Release (the "Settlement Agreement") entered into by the Parties in this Action.

LITIGATION AND SETTLEMENT EFFORTS

4. Quilling, Selander, Lownds, Winslett & Moser, P.C. ("QSLWM") began investigating the issues involved in this action during or prior to 2011, approximately five years before the initial complaint was filed. This investigation included, *inter alia*, interviews with multiple musicians likely to be included on covered recordings, reviews of the Fund's website, covered recordings lists, and unclaimed funds lists, analysis of statutory entitlement to royalties, monitoring for legal decisions related to the statutory provisions in issue, and monitoring for other actions against the Fund that relate to the statutory royalties at issue. QSLWM also interviewed the prior Executive Director of the Fund, as well as corresponded by telephone, email, and letter with one or more defendants regarding the issues ultimately involved in this action.

5. During the year immediately prior to filing the action, Class Counsel Roger Mandel and Jeeves Mandel Law Group ("Jeeves Mandel") joined QSLWM (collectively "Class Counsel") in examining, investigating, and evaluating the relevant law, facts, and allegations to assess the merits of the claims, liability, potential defenses, and potential remedies. The legal research and analysis included, *inter alia*, direct and tangential issues relating to jurisdiction, forum, statutes of limitation, trusts, statutory construction, statutory pre-emption, copyright law, existence or non-existence of individual rights of action, fiduciary duty, money had and received, and the applicability of the common fund doctrine. The authorities that Class Counsel reviewed included statutes, legislative history, federal regulations, administrative decisions, administrative guidance, treatises and legal journals, and state and federal case law relating to the issues and areas of law

described above, as well as in other areas of law that might be instructive due to similar objectives and legislative policies in that the statutory provisions involved in this action were not the subject of any reported decisions.

6. Class Counsel filed this action on behalf of Plaintiffs Jon Blondell, Paul Harrington, Timothy Johnson, Stephanie Lowe f/k/a Stephanie Marie, Chastity Marie, and Clayton Pritchard on January 23, 2017. *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 and ECF 48. In the Second Amended Complaint, Plaintiffs brought two causes of action against Defendants: (1) breach of fiduciary duty and (2) money had and received. ECF 48, ¶¶ 132-149.

7. Defendants then sought permission to file a 12(b) Motion to Dismiss asserting multiple grounds for dismissal. As there were no reported decisions relating to the statutory provisions at issue in this Action, the work involved in addressing the Defendants' Motion to Dismiss was extensive in itself. Defendants filed a Pre-Motion Letter on August 18, 2017 (ECF 38); Plaintiffs filed a Pre-Motion Letter on August 23, 2017 (ECF 39); the Court conducted a conference regarding Defendants' Pre-Motion Letter on January 24, 2018; and the Parties filed the Motion to Dismiss Plaintiffs' Second Amended Complaint, Plaintiffs' Response, and Defendants' Reply concurrently (pursuant to the Court's policies and procedures) on April 11, 2018 (ECF 52-55). In their Motion to Dismiss, Defendants maintained, *inter alia,* that the Plaintiffs had mis-characterized the Fund's activities to carry out its duties and that its actions had been prudent and appropriate under the circumstances such that no breach of fiduciary duty had occurred. Defendants also maintained that the Unclaimed Royalties would be disbursed in accordance with the terms of the Fund even without Court intervention such that Plaintiffs could not maintain a claim for money had and received. Defendants also maintained that Defendants were vested with

the discretion to solely determine the means and methods that they employ to identify non-featured performers ("NFPs") and distribute royalties, and that disagreement over the means and methods selected did not constitute a breach of fiduciary duty under New York law, that money acquired lawfully and rightfully could not form the basis for a claim of money had and received under New York law, and that the Copyright Royalty Board was the exclusive forum for resolution of disputes regarding the 17 U.S.C. § 114(g)(2)(B) & (C) and 17 U.S.C. § 1006(b)(1). (SA ¶ 1.21).

8. In addition to the pre- and post-filing factual investigation and legal analysis conducted by Class Counsel, the Parties conducted extensive formal discovery commencing in August of 2017. On August 7, 2017, the Parties exchanged initial disclosures; Plaintiffs served Supplemental Initial Disclosures on August 16, 2017; Plaintiffs served their first set of interrogatories and their first requests for production on Defendants on June 30, 2017 and Defendants served written objections and responses thereto on July 31, 2017; the Parties conferred multiple times via telephone and in writing regarding Plaintiffs' objections to Defendants' responses, and those objections were resolved; Plaintiffs served their second set of interrogatories and second requests for production on Defendants on August 10, 2017, and Defendants served objections and responses thereto on September 11, 2017; the Parties conferred multiple times via telephone and in writing regarding Plaintiffs' objections to Defendants' responses and those objections were resolved; Plaintiffs served their third requests for production on Defendants on August 18, 2017, and Defendants served objections and responses thereto on September 18, 2017; the Parties conferred multiple times via telephone and in writing regarding Plaintiffs' objections to Defendants' responses and those objections were resolved; Plaintiffs served their third set of interrogatories and their fourth requests for production on Defendants on September 5, 2017, and Defendants served objections and responses thereto on October 5, 2017; the Parties conferred

multiple times via telephone and in writing regarding Plaintiffs' objections to Defendants' responses, and those objections were ultimately resolved. In total, Defendants produced, and Plaintiffs reviewed, approximately 6,852 pages of documents during the period July 2017 through July 2019; and Plaintiffs produced, and Defendants reviewed, approximately 1,722 pages of documents during the period August 2017 through July 2019.

9. During the prosecution of this action described above, Class Counsel also interviewed numerous potential experts in the areas of marketing, advertising, awareness, royalty administration, fiduciary duty, and technology. Class Counsel ultimately engaged and worked with both a marketing/advertising/awareness expert and a technology/royalty expert. Class Counsel also conducted numerous quantitative and statistical analyses. These included: determining the number of unidentified NFPs in the Fund's Covered Recordings Lists for various years; determining the number of unlocated NFPs for various years; determining the number of NFPs with missing contact information for various years; determining the percentages of NFPs that were likely to be union vs. non-union; determining the percentage of NFPs that were session musicians and the percentage that are background vocalists; determining the percentage of unlocated NFPs that were likely to be union and likely to be non-union; determining the percentage of Covered Recordings that were likely to have been union sessions and that were likely to have been non-union sessions; identifying the percentage of NFPs that were likely to be deceased; determining the percentage of deceased NFPs that had been located through heirs and the percentage that had not had heirs identified and located through heirs; determining the number of located NFPs that had not been contacted; determining the percentage of NFPs for which SSN's were available; and others. All of these analyses would have been relevant to class certification

and the merits and helped give Class Counsel the information necessary to negotiate the Settlement.

10. The Court denied the Motion to Dismiss Plaintiffs' Second Amended Complaint on March 29, 2019 (ECF 65). While significant discovery took place after this as set forth above, starting in May 2019, the Parties commenced discussions regarding the possibility of resolving this matter, which lasted many months and involved numerous telephone calls and emails between Class Counsel and Defense Counsel. Throughout these settlement discussions, the Parties continued to exchange information to permit Plaintiffs and Class Counsel to evaluate the claims and potential defenses to meaningfully conduct informed settlement discussions. The Parties ultimately entered into the Settlement Memorandum of Understanding in November 2019. Thereafter, the Parties worked on preparing the Settlement Agreement attached hereto as Exhibit 1 and other settlement-related documents, which involved considerable additional negotiations, with the Settlement Agreement not being finally executed until March 20, 2020.

11. Prior to selecting the Settlement Administrator, Class Counsel and Defense Counsel conducted numerous telephone interviews and extensive email correspondence with three potential class action claim administrators, KCC Class Action Services LLC, Simpluris, Inc. and RG/2 Claims Administration LLC. Class Counsel had multiple discussions with each bidder aimed at giving each bidder as much information as possible regarding the Class, the Settlement Amount, the identity and location information that was available as to the Class Members, the demographics of the Class, and possible mediums and methods for reaching the Class, including both print and digital mediums. Class Counsel and Defense Counsel received multiple bids from all three administers and then conducted additional discussions with each of the bidders aimed at assessing their suggested methods, mediums, and depth of notice for the purpose of ultimately

being able to select a bidder with the optimal campaign in terms of effectiveness, as well as cost since the administrator would be paid out of the Settlement Amount. Class Counsel ultimately received three bids from KCC Class Action Services, LLC dated January 8, 2020, February 28, 2020, and March 13, 2020; two bids from RG/2 Claims Administration LLC dated January 14, 2020 and March 5, 2020; and two bids from Simpluris, Inc. dated September 18, 2019, and January 13, 2020. The Parties ultimately engaged KCC Class Action Services LLC ("KCC") as the Settlement Administrator based on Class Counsel, Defense Counsel, and the Fund's assessment of the various proposals based on effectiveness and cost.

OPINIONS

12. Based on my experience and knowledge regarding the factual and legal issues in this matter, it is my opinion that the proposed settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members. The injunctive relief portion of the settlement, which requires that the Defendants undertake specific steps to identify, locate, and pay non-featured performers, will impact over 60,000 session musicians and backup singers in the short term during the Distribution Period, and will help ensure that session musicians and backup singers in the years that follow are compensated for their work on records played on streaming platforms, satellite radio, and cable TV. The monetary component of the Settlement recognizes the significant artistic contribution that session musicians and back-up singers have made to nearly every popular American recording released since 1972, the year in which U.S. law first recognized a limited federal copyright in sound recordings, and will be the single largest recovery ever on behalf of session musicians and backup singers and one of the largest digital music royalty recoveries ever.

13. The Settlement achieves every significant request for relief that was sought in the Action and a 100% distribution of the monies that the Action sought to distribute. Plaintiffs sought to force the Fund to: (1) obtain a marketing consultant to direct the Fund in conducting a multi-media campaign designed to reach as many Non-Featured Performers as possible to make known to them the existence and availability of the Royalties and the procedures for them to obtain payment of the Royalties owed to them by the Fund [SAC at par. 12, 25, 44-49, and 138]; (2) undertake additional and revamped procedures for identifying, locating and paying Non-Featured Performers [SAC at par. 12, 29-33, 64-72, and 139]; (3) engage in a variety of enhanced efforts to pay the Class Members (overwhelmingly Non-Featured Performers on the Unclaimed Royalty List) the tens of millions of dollars being held indefinitely by the Fund [SAC at par. 12, 38-43]; (4) pay out on a pro rata basis any Unclaimed Royalties after the enhanced efforts had been exhausted (resulting in payment of 100% of the Unclaimed Royalties) [SAC at par. 138-139]; and (5) to rescind and replace Fund Guidelines that Plaintiffs contended served to discourage Non-Featured Performers from making claims to or identifying themselves to the Fund [SAC at par. 73-80 and 138]. During the course of and as a result of the Action prior to Settlement, the Fund made the necessary changes to the Guidelines. The Settlement provides for all of the other relief just described sought by Plaintiffs. In fact, the Settlement achieves one result not even pled for in the Second Amended Complaint—hiring SL Business Informatics/SingerLewak 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.

14. During the course of and as a result of the Action, prior to Settlement, the Fund made the necessary changes to the Guidelines. The Settlement provides for all of the other relief sought by Plaintiffs I just described. The only relief sought in the Second Amended Complaint and

not achieved by the Settlement is an injunction forcing the Fund to seek aid from third party organizations in identifying and locating Non-Featured Performers (unnecessary in light of what the Settlement does require of the Fund) and pre-judgment interest on the Unclaimed Royalties. Simply put, the Settlement provides Plaintiffs and the Class virtually 100% recovery of the relief they sought and could have recovered via a litigation victory. As such, the Settlement not only easily meets the range of reasonableness test, it represents an exceptional result which should be approved.

15. In short, the Settlement achieved in this litigation is the product of the initiative, investigation and hard work of skilled counsel on both sides. Because of Class Counsel's efforts, assuming the Court approves the Settlement, the Class Members will receive the benefits of significant monetary and injunctive relief. Given the significant obstacles posed by Defendants' legal and factual defenses and the skilled defense counsel from one of the county's largest and best known law firms, it is my opinion that the Settlement in this case, which achieves virtually 100% of the relief sought in the Second Amended Complaint and which possibly could have been obtained through litigation to the end, represents an extraordinary achievement which the Court should consider within the range of possible final approval and more than sufficient to justify sending notice to the Class.

EXPERIENCE

16. I am a shareholder with the law firm of Quilling, Selander, Lownds, Winslett & Moser, P.C. and represent and advise businesses of all sizes involved in all facets of the music industry, including music publishers, talent buyers, venues, record labels, managers, and performers. I also administer several music publishing catalogues containing frequently licensed compositions with numerous placements in TV, film, and other media. I am a publisher member

of ASCAP (American Society of Composers, Authors, and Publishers), a publisher member of CCLI (Christian Copyright Licensing International), a publisher member of the Harry Fox Agency, and a publisher and songwriter member of BMI (Broadcast Music Incorporated).

17. As a live and session bass player, I have upwards of 5,000+ plus professional performances spanning thirty-five years of professional experience in all genres, including two full length albums as the session bassist for a multi-*CMA* and *Grammy* winner, recordings with two Blues Foundation award winners, and dozens of radio and television credits. I am a member of Dallas-Fort Worth A.F.M. Local 72-147 (2001 through present).

18. I am a member of the Dallas Bar Association Entertainment, Arts, and Sports Law Council. I am the former President and member of the Board of Directors of The Texas Music Project (501c3), for which I also served as entertainment and intellectual property counsel and as record producer for *Don't Mess With Texas Music* (Volumes 1-3) and *Don't Mess With La Musica de Tejas* (resulting in a grant fund earmarked for music education in Texas public schools administered by the Texas Commission on the Arts). I am currently a member of the Board of Directors of the Bob Wills Heritage Foundation, Inc. (501c3).

19. I brought to the team the detailed knowledge of the music and royalty law and business necessary to prosecute this case and to craft the settlement. My co-counsel Roger Mandel brought the necessary experience litigating large, complex class actions. Together, in my opinion, we made a perfect team to prosecute this class action case involving federally mandated royalties owed to session musicians for the digital play of recordings on which they performed.

20. I have a Juris Doctor from Boston University School of Law, where I was an Edward F. Hennessy Scholar and an Editor, *Boston University International Law Journal*. I have a

Bachelor of Arts in Business Administration and Accounting from the University of Washington (with High Honors). A true and correct copy of my resume is attached hereto as Exhibit 2.

I declare under penalty of perjury that the foregoing is true and correct.

Executed March 20, 2020

Eric Zukoski

Exhibit 1

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

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

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

Date: March 20, 2020

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Date: March 19, 2020

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and

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

Date: March 19, 2020

Eric Zukoski, Texas Bar No. 24010509

Exhibit 2

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EDUCATION

BOSTON UNIVERSITY SCHOOL OF LAW **BOSTON, MA**
Juris Doctor
Honors: Member & Editor, *Boston University International Law Journal*
Recipient, William and Barbara Morse Scholarship in Labor Law
Recipient, Sidney S. Grant Scholarship in Juvenile Delinquency
Edward F. Hennessey Scholar

UNIVERSITY OF WASHINGTON **SEATTLE, WA**
Bachelor of Arts, Business Administration & Accounting
Honors: High Scholarship List (eight quarters)
Activities: Member, University of Washington Jazz Ensemble I (nine quarters)

EXPERIENCE

ATTORNEY - SHAREHOLDER **DALLAS, TX**
July 1999 – Present
Quilling, Selander, Lownds, Winslett & Moser, P.C.
Advises and represents clients in numerous industries and areas of law including contracts, tangible property, and intangible property negotiations and disputes; licensing of intellectual property; music publishing; royalty collection and disputes; copyright protection and disputes; and trademark protection and disputes.

ATTORNEY **SEATTLE, WA**
September 1994 – July 1999
Marston & Heffernan, PLLC
Advised and represented business clients of various sizes involved in a variety of commercial transactions and disputes including government contracting, bonding/suretyship, and construction.

ASSISTANT COUNSEL **WASHINGTON, DC**
September 1990 – September 1994
Department of Defense, Naval Sea Systems Command
Advised and represented government clients involved in all aspects of the federal contracting process regarding soliciting bids, evaluating bids, negotiating and awarding contracts, resolving performance disputes, litigating contract claims, and terminating contracts. Litigated cases before the Board of Contract Appeals.

OTHER

Member of the Dallas Bar Association Entertainment, Arts, and Sports Law Council. Former President and member of the Board of Directors of The Texas Music Project (501c3). Current member of the Board of Directors of the Bob Wills Heritage Foundation, Inc. (501c3). Publisher member of ASCAP, CCLI, HFA, and BMI.

IN THE 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,	§	CIVIL ACTION NO. 1:17-cv-00372-RRM-RML
v.	§	
BRUCE BOUTON, DUNCAN CRABTREE-IRELAND, AUGUSTINO GAGLIARDI, RAYMOND M. HAIR, JR., JON JOYCE, AND STEFANIE TAUB,	§	
Defendants.	§	

DECLARATION OF ROGER L. MANDEL IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION TO GIVE NOTICE OF CLASS ACTION SETTLEMENT

I, Roger L. Mandel, declare as follows:

1. I am an attorney licensed to practice in the State of Texas and a member in good standing of the bar of the State of Texas. I was admitted pro hac vice to this Court for the purposes of representing Plaintiffs and the Class in this case. I am a shareholder with the firm of Jeeves Mandel Law Group, P.C. I respectfully submit this declaration in support of Plaintiffs' Unopposed Motion to Give Notice of Class Action Settlement.

2. I have personal knowledge of the facts set forth in this declaration and can testify to these facts if called upon to do so.

3. I have reviewed, agree with and incorporate herein by reference the portions of the Declaration of Eric Zukoski in Support of Plaintiff's Unopposed Motion to Give Notice of Class

Action Settlement entitled "The Settlement Agreement" and "Litigation and Settlement Efforts." They provide in part the basis for my opinions set forth below.

EXPERIENCE AND QUALIFICATIONS

4. I have been practicing complex commercial litigation for 33 years, including 28 years bringing class actions on behalf of injured individuals and companies. During that time, I have worked on approximately 35 class actions cases which have settled, the highlights of which are listed in my C.V. attached hereto as Exhibit 1. In those cases, and many more, I have briefed and argued motions to dismiss, class certification motions and summary judgment motions, interlocutory appeals of class certification and appeals of decisions on the merits. I successfully tried one class action to the jury.

5. In the last 28 years, I have read literally thousands of decisions in class action cases addressing their merits, class certification and settlement. I have also written on and lectured on those topics numerous times. I have also read significant amounts of empirical research on class action outcomes and settlements.

6. Based upon the foregoing, I have very significant experience in evaluating the risks, duration, costs and likely outcomes of class action cases. I likewise have very significant experience in evaluating the merits of class action settlements. I believe based upon the foregoing, that I would qualify as an expert on the fairness, reasonableness and adequacy of class action settlements.

OPINIONS

7. In my opinion, this Settlement was the outcome of vigorous, lengthy hard-fought negotiation. The Parties negotiated the Settlement over multiple months involving scores of emails and telephone calls. Negotiation of the exact wording of the Memorandum of Understanding

memorializing the settlement terms alone took approximately a month. And further negotiations were required to turn the MOU into a Settlement Agreement. This strongly favors approval of the Settlement.

8. In my opinion, my co-counsel Eric Zukoski and I had more than sufficient information to assess the merits of the case and the Settlement. We conducted exhaustive legal research of every conceivable legal issue on the merits and related to class certification. We conducted extensive informal discovery, including interviewing the former director of the Fund. Through formal discovery, we obtained documents that gave us a complete picture of the Fund's performance during the Class period, its policies and practices for identifying and locating and paying NFPs and its marketing/advertising efforts. This included the minutes of all the Trustees' meetings, internal Fund documents and internal and external Fund emails. We also reviewed Fund financial statements, reports and analyses. We obtained a spreadsheet of the 60,000 plus Class members on the Unclaimed Royalties List and performed a variety of statistical and other analyses on it relevant to both class certification and the merits. We extensively consulted with a music industry business and technology expert and a music industry marketing expert/consultant, going so far as to create a preliminary plan as to what would constitute an adequate marketing campaign for the Fund. Between my experience with complex class actions and legal issues and Mr. Zukoski's great knowledge of music and royalty law and of the music industry, we had a great ability to analyze the voluminous data available to us. This factor strongly favors approval of the settlement.

9. The percentage of the damages or injunctive relief pled for by the plaintiffs or calculated by their experts typically recovered by approved settlements in class actions is very low. One study of securities class actions showed the settlements on average recovered less than 15%

of the potential damages. In my experience, large consumer and breach of contract class actions (involving potentially tens of millions of dollars in damages), typically recover less then 50% of the potential damages. Accordingly, a settlement of that type of case which recovers 50% to 80% of potential damages is considered exceptional.

10. Cases seeking injunctive relief are harder to judge. In many cases, the plaintiffs seek the change of just one policy, practice or rule of the defendant and obtain that in settlement, which would constitute a 100% victory. On the other hand, in my experience, where plaintiffs seek far reaching changes to the entire manner in which a defendant conducts its business, including core practices, settlement usually involve very significant compromise and the injunctive relief falls far short of the fundamental change originally requested.

11. Against this backdrop, in my opinion, the Settlement is well beyond exceptional. It is extraordinary. Plaintiffs sought to force the Defendants and the Fund to make great change to every aspect of their core operations in identifying, locating and paying NFPs. During the course of the litigation, Defendants did some of what Plaintiffs sought, significantly increasing their research and marketing efforts, but not nearly enough. In the very near term, under the terms of the Settlement, the Fund will engage in very specific enhanced research efforts. Within the next year, pursuant to the Settlement, the Fund will be consulting with business and marketing consultants to examine and develop plans to improve every single aspect of their core operations and then implement them. This represents virtually 100% of the injunctive relief sought by Plaintiffs and potentially achievable through continued litigation, and such sweeping change to core business practices are virtually unprecedented in my experience.

12. Plaintiffs sought to force the Fund to make enhanced efforts to distribute the Unclaimed Royalties and then after exhausting those efforts to pay the remaining amount pro rata

to the Class members. As a result, the Fund will be paying 100% of those Unclaimed Royalties from 2011, to 2016, over $45 million, to over 60,00 Class members by April 30, 2022. In addition, the injunctive relief will ensure that a much higher percentage of over $150 million in royalties collected from 2017 to 2019 will be distributed to the NFPs to whom they are owed and will ultimately be paid out 100% rather than held indefinitely by the Fund as occurred in the past. This represents recovery of 100% of the monetary relief Plaintiffs sought and potentially could have recovered.

13. Of course, Defendants were vigorously defending this case and had multiple legal and factual defenses to both certification and the merits. They were defended by very able counsel from one of the country's largest and best-known firms, Jenner & Block. Between class certification practice, a certain attempt at an interlocutory appeal of certification summary judgment practice, trial, post-verdict motions and appeal, Plaintiffs faced a significant risk of recovering less than the Settlement recovers or nothing at all and taking 3 to 5 years to finalize whatever recovery they made.

14. In my opinion, for these reasons, the Settlement is undoubtedly fair, reasonable and adequate and should be approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed March 20, 2020.

/s/Roger L. Mandel
Roger L. Mandel

Exhibit 1

Education:

University of Texas School of Law, J.D. with honors, 1986
- Order of the Coif
- Board of Advocates
- Benton Moot Court Team, 1986
- ABA Moot Court Team, 1986
- Dean's Award of Distinction (highest grade in class) in Bankruptcy, Constitutional Law, Advanced Constitutional Law and Evidence

University of Texas at Austin, B.B.A. with high honors, 1984
- Phi Eta Sigma, Beta Gamma Sigma and Golden Key Honor Societies

Admissions:

State of Texas, 1987

Board Certified--Civil Appellate Law, Texas Board of Legal Specialization, 1998

United States District Courts

Northern District of Texas

Southern District of Texas

Eastern District of Texas

Western District of Texas

Eastern District of Wisconsin

United States Court of Appeals for the Second Circuit

United States Court of Appeals for the Fourth Circuit

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals for the Sixth Circuit

United States Court of Appeals for the Seventh Circuit

Roger L. Mandel

Jeeves Mandel Law Group, P.C.
12222 Merit Drive
Suite 1200
Dallas, Texas 75251
p: 214-253-8300
e: rmandel@jeevesmandellawgroup.com

Roger L. Mandel is a prominent Dallas business litigation and class-action lawyer. Mr. Mandel holds the distinction of successfully trying one of only two class-action cases in Texas state court history known to have been tried to a jury.

Mr. Mandel has been named as a *Texas Super Lawyer* in the Class Action/Mass Torts category by *Texas Monthly Magazine* since the inception of the ratings in 2003, as a Top 100 Trial Lawyer and Top 25 Class Action Trial Lawyer by The National Trial Lawyers since the inception of the honor in 2013, and as one of the Best Lawyers in Dallas in the Class Action category by *D Magazine* since the inception of the category in 2014. He also has earned Martindale-Hubble's coveted top AV® Preeminent rating.

Mr. Mandel currently sits on the Board of Directors of the Dallas Trial Lawyers Association and the Public Justice Foundation and is a past board member of the Texas Trial Lawyers Association. He is a past president of the Dallas Trial Lawyers Association and a fellow of both the Texas Bar Foundation (Top 1/3 of 1% of Texas lawyers) and the Dallas Bar Foundation. Additionally, Mr. Mandel was the co-chair of the AAJ Class Action Litigation Group.

A member of the Texas State Bar, Mr. Mandel is also admitted to practice in the Eastern, Northern, Southern and Western Federal Districts of Texas, the Eastern District of Wisconsin, the

United States Court of Appeals for the Eighth Circuit

United States Court of Appeals for the Ninth Circuit

United States Court of Appeals for the Eleventh Circuit

United States Supreme Court

Memberships and Affiliations:

Dallas Trial Lawyers Association
- Past president 2011-2012
- President 2010-2011
-- President elect 2009-2010
- Vice president 2008-2009
- Board of directors, 1997-2020

Texas Trial Lawyers Association
- Board of directors, 2002-2016

American Association of Justice
- Class Action Litigation Group
- Co-chair 2010-2011
- Vice-chair 2009-2010

Public Justice Foundation
- Board of Directors, 2001-2020
- Executive Committee, 2016-2017

National Association of Consumer Attorneys

State Bar of Texas

Fellow of the Texas Bar Foundation (Top 1/3 of1% of Texas lawyers)

Dallas Bar Association

Fellow of the Dallas Bar Foundation

American Bar Association
- Tort and Insurance Practice Section
- Commercial Torts Committee, Vice-chairman, 1994-2002

Section of Litigation
Class Action & Derivative Suits Committee

United States Courts of Appeals for the Second, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Eleventh Circuits, and the United States Supreme Court.

Philanthropic, caring and immersed in Dallas community social action, Mr. Mandel values the importance of improving the world. Mr. Mandel previously served on the board of directors of the Dallas-based Vogel Alcove, an organization whose mission is to provide free quality childcare development and social services to young homeless children. Mr. Mandel is also a strong supporter of the Jewish Federation of Dallas and Jewish Family Services, United Way agencies.

Verdicts and Settlements - Class-Action Accomplishments

Settlement of a nationwide class-action suit against American Airlines under ERISA related to pension benefits of its former AirCal pilots.

Settlement of a nationwide class-action suit against Wells Fargo Bank for violations of RESPA.

Settlement of statewide class-action suit against State Farm Insurance Cos., Allstate Insurance Cos., Farmers Insurance Cos. and GEICO Insurance Cos. for violations of the Texas Insurance Code relating to claims procedures for automobile policyholders.

Settlement (along with multiple cocounsel) of major nationwide class-action suit litigation involving General Motors pickup trucks.

Settlement following summary judgment of a statewide class action for breach of contract and deceptive trade practices against Southwestern Bell Mobile Systems.

Settlement of a statewide class-action suit on behalf of customers of Southwestern Bell Telephone Company for violations of the Texas Finance Code.

Settlement of a statewide class-action suit on behalf of persons who entered into lease agreements with UDR Western

Residential, Inc., and other of its affiliates, arising out of claims under the Texas Water Code, regulations of the Texas Natural Resources Conservation Commission, the Texas Utility Code, regulations of the Public Utility Commission and the Texas Debt Collection Practices Act.

Settlement of a nationwide class-action suit on behalf of customers of Ticketmaster Group, Inc., and certain of its affiliates, who purchased tickets with a credit card and were charged illegal surcharges.

Settlement of a nationwide class-action suit against First USA Bank for violations of the Truth in Lending Act.

Obtained judgment (following summary judgment and jury trial) against the Dallas County Community College District on behalf of a class of current and former students as a result of the District's charging of a technology fee that the trial court found was not authorized by state law. This is one of only two class-action cases known by Mr. Mandel to have been tried in the Texas state courts.

Settlement of a nationwide class-action suit against Sears Roebuck & Co. representing a landmark and virtually unprecedented settlement of a consumer class-action case. Under the settlement, Sears installed, free of charge, for a class of almost four million customers, anti-tip brackets to prevent tipping of its freestanding electric and gas ranges that frequently caused severe burns, crushing and death. Those customers who had already paid to have anti-tip brackets installed received reimbursement. Furthermore, Sears agreed to install anti-tip brackets on all sales of new ranges for at least three years, now believed by Mr. Mandel to be a permanent practice of Sears. By, in effect, obtaining a recall, this settlement actually obtained better relief than likely could have been obtained through trial and accomplished what the Consumer Product Safety Commission refused to do for more than twenty years.

Settlement against Nationwide Insurance Company on behalf of a national class related to overcharges on life insurance

premiums. Notably, the settlement was achieved after obtaining a contested certification of a nationwide class under the laws of all 50 states.

A settlement in a class-action suit over the purchase of TXU, one of the largest purchases of a publicly traded company in United States history.

A settlement in a derivative case against officers and directors of Affiliated Computer Systems related to options backdating.

A settlement in a securities class-action suit against officers and directors of the investment manager of the Cushing MLP Total Return Fund.

A settlement of a nationwide class action on behalf of a class of 401(k) plans against their investment provider, Nationwide Insurance, for paying the mutual funds it offered as investments, thought to be one of the three largest ERISA settlements in history.

A settlement of a nationwide class action against the insurers, brokers and promoters responsible for offering illegal group and blanket insurance policies.

Complex Business Litigation Accomplishments

Settlement with a medical malpractice insurer in an insurance coverage/bad faith case following a medical malpractice jury verdict and a coverage verdict.

Settlement of business tort litigation on behalf of the former owner of a major league sports franchise against a national bank relating to the sale of the franchise.

Settlement of tortious interference with business contract litigation on behalf of a large independent electrical supplier/contractor following a jury verdict.

Jury verdict and judgment against Henry S. Miller Commercial Company based upon fraud and negligent misrepresentation.

Professional Background

Jeeves Mandel Law Group, P.C., Dallas Texas
Partner, August 1, 2018 to present.

Lackey Hershman L.L.P., Dallas, Texas
Partner, July 1, 2011 - January 3, 2018.

Beckham & Mandel, Dallas, Texas
Founding Shareholder, January 1, 2010-June 30, 2011

Stanley, Mandel & Iola, L.L.P., Dallas, Texas
Founding Partner, 1997-2009

Stanley, Mandel & Kleinman, P.C., Dallas, Texas
Founding Shareholder, August 1992-1997

Hale, Spencer, Stanley, Pronske & Trust, P.C., Dallas, Texas
Associate, 1987-1992

Honors

Best Lawyers in America 2016 and 2017-Mass Tort Litigation/Class Actions-Plaintiffs
Best Lawyers in Dallas, Class Action, 2014-2020 *(D Magazine)*
Top 100 Trial Lawyers, 2013-2020 (The National Trial Lawyers)
Top 25 Class Action Trial Lawyers, 2013-2020 (The National Trial Lawyers)
Texas Super Lawyer, Class Action/Mass Torts, 2003-2020 *(Texas Monthly Magazine)*
AV Preeminent Rated, Martindale-Hubbell

Publications and Speeches

Speaker: "The Nexium Conundrum: Class Action Standing Under Article III, "National Consumer Law Center, 23rd Annual National Consumer Rights Conference, Class Action Symposium (November 2014)

Speaker and Author: "Post-Concepcion Enforcement of Arbitration Clauses Containing Class Bans," *American Association of Justice Tele-Seminar* (March 6, 2012)

Speaker and Author: "Certification of Multi-State Classes and Related Choice of Law Issues," *American Association of Justice* (Vancouver, July 2010)

Speaker: "Shady Grove and Naked Class Action Bans: The Emerging Conflicts Between Federal and State Laws on Class Certification, Multistate Classes and Choice of Law Issues," NCLC Class Action Symposium (Philadelphia, 2009)

Co-moderator: "New Developments in Class Actions," American Association of Justice (San Francisco, July 2009)

Coauthor: "Navigating the Rough Terrain: Class Actions in Texas after HB4 and CAFA," *The Advocate* (The State Bar Litigation Section Report) (Fall 2008)

Author: "Arbitration: Should It Be Sought Rather Than Fought," Consumer Law & Policy Blog (December 3, 2006)

Speaker: "Arbitration of Consumer Class-Action Cases," NCLC Consumer Class Action Symposium (Miami, 2006)

Speaker: "Credit Card Developments," 10th Annual Consumer Financial Services Litigation Institute (PLI, Dallas, TX, 2005)

Author: "The Class Action Unfairness Act of 2005," Dallas Bar Headnotes, April 1, 2005

Speaker: "Where Will the Big Cases Come From After H.B. 4," Conference on State and Federal Appeals, University of Texas Continuing Legal Education Department, June 2004

Speaker: "Class Action Update," Advanced Personal Injury Seminar, State Bar of Texas, Austin, 2003

Coauthor and Speaker: "Summaries of Significant Class Action Opinions in Texas State and Federal Courts: 2001-2002," Texas Trial Lawyers Association, July 2002

Author: High Court: "Class Action Standards Too Strict," *Texas Lawyer*, June 2002

Coauthor and Speaker: "Resolving Class Actions in the Plaintiffs Favor: Settlements and Contested Final Judgments," Federal Bar Association, April 2001

Coauthor: "Dealing With Attorney's Fees and Objections in Class Action Settlements," National Institute on Class Actions, American Bar Association, 1997

Author: "Abstracts of Recent State and Lower Federal Court Decisions on Consumer Class Actions," Consumer and Personal Rights Litigation Newsletter, American Bar Association, May 1995.

IN THE 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,	§	CIVIL ACTION NO. 1:17-cv-00372-RRM-RML
v.	§	
BRUCE BOUTON, DUNCAN CRABTREE-IRELAND, AUGUSTINO GAGLIARDI, RAYMOND M. HAIR, JR., JON JOYCE, AND STEFANIE TAUB,	§	
Defendants.	§	

DECLARATION OF CARLA PEAK

I, Carla Peak, declare as follows:

1. My name is Carla Peak. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice, and I have served as an expert in dozens of federal and state cases involving class action notice plans.

3. I am the Vice President of Legal Notification Services for KCC Class Action Services ("KCC"), a firm that specializes in comprehensive class action services, including legal notification, email and postal mailing campaign implementation, website design, call center support, class member data management, claims processing, check and voucher disbursements, tax reporting, settlement fund escrow and reporting, and other related services critical to the effective administration of class action settlements. With more than 30 years of industry

experience, KCC has developed efficient, secure and cost-effective methods to properly handle the voluminous data and mailings associated with the noticing, claims processing and disbursement requirements of these matters to ensure the orderly and fair treatment of class members and all parties in interest. Since 1984, KCC has been retained to administer more than 6,000 class actions and distributed settlement payments totaling well over $20 billion in assets.

EXPERIENCE RELEVANT TO THIS CASE

4. I have personally been involved in many large and significant cases, including *In re Experian Data Breach Litigation*, No. 8:15-cv-01592 (C.D. Cal.), a national data breach class action involving over 15 million T-Mobile consumers whose information was stored on an Experian server; *In re: The Home Depot, Inc., Customer Data Security Breach Litig*., No. 1:14-md-02583 (N.D. Ga.), a national data breach class action involving over 40 million consumers who made credit or debit card purchases in a Home Depot store; *In re: Skelaxin (Metaxalone) Antitrust Litigation*, No. 1:12-md-02343 (E.D. Tenn.), a multi-state antitrust settlement involving both third party payors and consumers that purchased or paid for the brand and generic version of the prescription drug metaxalone; *Chambers v. Whirlpool Corporation*, No. 8:11-cv-01733 (C.D. Cal.), a national product defect case involving class members who experienced or may experience the overheating of an automatic dishwasher control board; *In re Trans Union Corp. Privacy Litigation*, MDL No. 1350 (N.D. Ill.), perhaps the largest discretionary class action notice campaign involving virtually every adult in the United States and informing them about their rights in the $75 million data breach settlement; and *In re Residential Schools Litigation*, No. 00-CV-192059 (Ont. S.C.J.), the largest and most complex class action in Canadian history incorporating a groundbreaking notice program to disparate, remote aboriginal persons qualified to receive benefits in the multi-billion dollar settlement.

5. In forming my opinions, I draw from my in-depth class action case experience. I have worked in the class action notification field for over 15 years. During that time, I have been involved in all aspects in the design and implementation of class action notice planning, as well as the drafting of plain language notice documents that satisfy the requirements of Fed. R. Civ. P. 23(c)(2)(B) ("Rule 23") and adhere to the guidelines set forth in the *Manual for Complex Litigation, Fourth* and by the Federal Judicial Center ("FJC").

6. I have been involved with hundreds of cases, including the dissemination of notice around the globe in more than 35 languages. My c.v., attached as **Exhibit 1**, contains numerous judicial comments citing cases I have worked on, as well as articles I have written and speaking engagements where I have discussed the adequacy and design of legal notice efforts.

7. This declaration will describe the Settlement Notice Plan ("Notice Plan" or "Plan") proposed here for the Settlement in *Blondell, et al. v. Bouton, et al.*, Case No. 1:17cv-00372-RRM-RML in the United States District Court for the Eastern District of New York. The facts in this declaration are based on what I personally know, information provided to me in the ordinary course of my business by my colleagues at KCC, as well as information provided to me by the settling parties in this action.

8. I have reviewed the Settlement Agreement in this matter and, if preliminarily approved by the Court, KCC will abide by its terms as they relate to the Settlement Administrator. KCC estimates that the total Administration Costs for this Settlement will be approximately $85,347.[1]

[1] These Administration Costs are based upon the scope of work currently contemplated, and include tasks such as data intake and form set-up, publishing the notice in accordance with the notice plan described in this Declaration, case reporting, creating and maintaining the settlement website, including domain registration and server space rental, automated call support including script drafting and management, monthly maintenance fees, updates, listening to, transcribing and responding to voicemails, printing and mailing requests for long for notice packets, and staff hours.

NOTICE PLAN

9. The Notice Plan is designed to provide notice to the following settlement class (the "Class"): "all nonfeatured musicians and nonfeatured vocalists as defined in 17 U.S.C. § 114(g)(2)(B) & (C) and 17 U.S.C. § 1006(b)(1) (collectively, "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."

10. Class Members are professional and semi-professional session musicians who play in the background on songs that receive significant digital play. The Notice Plan has been designed to provide them with an opportunity to see the Notice by placing advertisements in both print and digital media that they are likely to frequent.

11. It is my understanding that the Class will be certified under Rule 23(b)(1)(A), and therefore notice is not required. However, this Notice Plan is designed to comply with Rule 23(c)(2)(B). Rule 23(c)(2)(B) directs that the best notice practicable under the circumstances must include "individual notice to all members who can be identified through reasonable effort."[2] However, I am informed that the Class consists largely of persons on the Fund's Unclaimed Royalties List for whom the Fund does not have information necessary to send individual notices (or they would already have been paid) and of some persons who are not even identified. Under these circumstances, individual notice is not possible and publication notice must be used. The proposed publication notice plan here accordingly is designed to satisfy the Due Process and Rule 23 requirement applicable to publication notice plans. In my opinion, the Notice Plan is the best notice practicable under the circumstances of this case and satisfies the

[2] FRCP 23(c)(2)(B).

requirements of due process, including its "desire to actually inform" requirement.[3]

Print Publications

12. KCC will cause the Summary Notice to appear as a third-page ad unit in *Symphony* magazine and as a quarter-page ad unit in *Bass Player*, *Guitar Player*, *Guitar World*, *International Musician*, *Modern Drummer*, *Music Connection*, and *SAG-AFTRA* magazines. The Notice will appear not only in the print publication but also in its online digital replica, where applicable.

13. *Symphony* is the quarterly magazine of the League of American Orchestras. Each issue reports on the critical issues, trends, personalities, and developments of the orchestra world. *Symphony* has a total readership of 54,000 per issue.

14. *Bass Player* is a monthly magazine designed for bassists. Each issue offers a variety of artist interviews, lessons, equipment reviews, and a complete transcribed bass line from a popular song. *Bass Player* has a readership of 57,600 per issue.

15. *Guitar Player* is an American magazine designed for guitarists. Each issue contains articles, interviews, reviews and lessons of an eclectic collection of artists, genres and products. *Guitar Player* has a readership of 192,000 per issue.

16. *Guitar World* is an American monthly music magazine for guitarists. Each issue contains original interviews, album and gear reviews, and guitar and bass tablature of approximately five songs each month. *Guitar World* has a readership of 320,000 per issue.

[3] "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . ." *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950).

17. *International Musician* is the Official Journal of the American Federation of Musicians of the United States and Canada. Each issue is written, edited, and published with the interests and concerns of professional musicians in mind. *International Musician* is read by approximately 80,000 working musicians.

18. *Modern Drummer* is a monthly publication targeting the interests of drummers and percussionists. Each issue features interviews, equipment reviews, and columns offering advice on technique, as well as information for the general public. *Modern Drummer* is delivered to more than 103,000 drummers and percussionists each month.

19. *Music Connection* is a monthly music-trade magazine that caters to career-minded musicians, songwriters, recording artists and assorted music-industry support personnel. Each issue provides inside information, expert advice and exclusive directories, reviews of new gear, unsigned artists, and exclusive interviews with superstars and behind-the-scenes talent. *Music Connection* has a readership of 85,000 per issue.

20. *SAG-AFTRA* is the official magazine of the Screen Actors Guild and the American Federation of Television and Radio Artists. Each quarterly issue features news, information and spotlights on television, film and music performers. *SAG-AFTRA* reaches 160,000 performers and entertainment executives per year.

21. A copy of the Summary Notice is attached as **Exhibit 2**.

Digital Advertising

22. KCC will implement a two-phase digital media effort consisting of at least 32 million impressions. At least 31.8 million of these impressions will be purchased and distributed via the Google Display Network, Facebook, Instagram, Twitter, and YouTube, as well as billboard.com, DigitalMusicNews.com, HITSDailyDouble.com, KeyBoardMag.com,

MusicRadar.com, and SoundonSound.com. The impressions will be layered to optimize coverage by targeting a variety of relevant demographic, geographic, and behavioral targets, third-party and look-alike audiences, and relevant keywords. Sometime after the completion of the Notice Plan, an additional digital media effort consisting of at least 185,000 impressions via the Google Display Network, Facebook, and Instagram will be implemented in an effort to locate additional Class Members and/or encourage Class Members to come forward and identify themselves to the Fund. The impressions will appear on desktop and mobile devices, including tablets and smartphones, where applicable. The digital media effort will also include digital articles/email blasts via DigitalMusicNews.com and HITSDailyDouble.com. Attached as **Exhibit 3** are drafts of the digital notice.

Press Release

23. To further extend coverage, a press release will be issued nationwide to a variety of media, as well as Reverb.com. The press release will consist of a summary of the settlement and include the toll-free number and settlement website address.

Case Website

24. KCC will establish and maintain a case specific website to allow Class Members the ability to obtain additional information and documents about the settlement. The case website will allow users to read, download, and print the Class Notice, Preliminary Approval Order, Settlement Agreement, Class Action Complaint, Participant Information Form, and any other materials agreed upon by the parties and/or required by the Court. Class Members will also be able to review a list of Frequently Asked Questions and Answers, obtain contact information for the Settlement Administrator, and review key deadlines. The website will direct Class Members to the Fund's website to (1) view the Unclaimed Royalty List to see if they are listed as being

owed royalties, (2) view the Covered Recordings List to see the songs for which royalties will be paid, and (3) determine if they have been left off the list of session musician and vocalists entitled to share in the royalties for that recording. In addition, the website will explain the importance of filling out and submitting a Participant Information Form to the Fund to enable the Fund to pay the royalties. The website will include hyperlinks to the Fund's website as well as directly to the Participation Information Form on the Fund's website. The website address will be displayed in all printed Notices, as well as be accessible through a hyperlink embedded in the email and digital notices.

Toll-Free Telephone Number

25. KCC will establish and host a case-specific toll-free number that will allow Class Members to learn more about the settlement in the form of frequently asked questions and answers. It will also allow Class Members to request to have a Class Notice mailed directly to them. The toll-free number will be displayed in all printed Notices, the email notices, and on the case website.

Case Email and Postal Mailbox

26. KCC will establish and monitor a case email address and postal mailbox where Class Members may submit specific requests or questions.

PLAIN LANGUAGE NOTICE DESIGN

27. The Notices in this case are designed—by presenting the information in plain language—to be easily understood by the potential Class Members. The design of the Notices follows the principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov. Many courts, and as previously cited, the FJC itself, have approved

notices written and designed in a similar fashion. The Long Form Notice and Summary Notice contain substantial, albeit easy-to-read, summaries of all of the key information about Class Members' rights and options. Consistent with our normal practice, all notice documents will undergo a final edit prior to actual mailing for grammatical errors and accuracy.

28. The Notices feature prominent headlines and are clearly identified as a notice from the District Court. These design elements alert recipients and readers that the Notices are important documents authorized by a court and that the content may affect them, thereby supplying reasons to read the Long Form Notice. Attached as **Exhibit 4** is a draft of the Long Form Notice.

CONCLUSION

29. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice program be designed to reach the greatest practicable number of potential Settlement Class Members and, in a settlement class action notice situation such as this, that the notice or notice program itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to Class Members in any way. All of these requirements will be met in this case.

30. The Notice Plan described above and in the Settlement Agreement and Release will provide the best notice practicable under the circumstances of this case, conform to all aspects of Rule 23, and comport with the guidance for effective notice articulated in the *Manual for Complex Litigation, Fourth*.

31. In addition to the Notice Plan described above, the Fund will be undertaking extensive efforts to locate and pay Settlement Class Members pursuant to the Settlement. While

the Fund will not provide Settlement Class Members with a Notice, it will be effectuating the overall goal of the settlement which is to compensate the affected persons.

I declare under penalty of perjury under the foregoing is true and correct.

Executed this 20th day of March, 2020, at Sellersville, Pennsylvania.

Carla Peak

Exhibit 1

KCC Legal Notification Services

KCC's Legal Notification Services team provides expert legal notice services in class action, mass tort and bankruptcy settings. We specialize in the design and implementation of notice programs with plain language notices; and expert opinions and testimony on the adequacy of notice.

With over fifteen years of experience, our legal notice expert, Carla A. Peak, has been involved in hundreds of effective and efficient notice programs reaching class members and claimants in both U.S. and international markets and providing notice in over 35 languages.

As a leading notice expert, Ms. Peak is responsible for the design and implementation of evidence-based legal notification programs, including the design of plain language legal notice documents. Her programs satisfy due process requirements, as well as all applicable state and federal laws, and her notices satisfy the plain language requirements of Rule 23 and adhere to the guidelines set forth in the Manual for Complex Litigation, Fourth and by the Federal Judicial Center (FJC), as well as applicable state laws.

Ms. Peak has presented on and written numerous articles about class notification programs, the design of effective notice documents as well as industry trends and innovations. She is also a certified professional in Social Media Marketing, Digital Fundamentals, Digital Sales, and Google Ads Fundamentals. The information provided represents Ms. Peak's experience and cases in which she has been involved. She holds a Bachelor of Arts in Sociology from Temple University, graduating cum laude. Ms. Peak can be reached at cpeak@kccllc.com.

Case Examples

- *In re: The Home Depot, Inc., Customer Data Security Breach Litig.*, No. 1:14-md-02583 (N.D. Ga.)
  A national data breach class action involving over 40 million consumers who made credit or debit card purchases in a Home Depot store.

- *In re: Skelaxin (Metaxalone) Antitrust Litigation*, No. 1:12-md-02343 (E.D. Tenn.)
  A multi-state antitrust settlement involving both third party payors and consumers that purchased or paid for the brand and generic version of the prescription drug metaxalone.

- *Chambers v. Whirlpool Corporation*, No. 8:11-cv-01733 (C.D. Cal.)
  A national product defect case involving class members who experienced or may experience the overheating of an automatic dishwasher control board.

- *In re Trans Union Corp. Privacy Litigation*, MDL No. 1350 (N.D. Ill.)
  Perhaps the largest discretionary class action notice campaign involving virtually every adult in the United States and informing them about their rights in the $75 million data breach settlement.

- *In re Residential Schools Litigation*, No. 00-CV-192059 (Ont. S.C.J.)
  The largest and most complex class action in Canadian history incorporating a groundbreaking notice program to disparate, remote aboriginal persons qualified to receive benefits in the multi-billion dollar settlement.

Judicial Recognition

Judge Edmond E. Chang, *Smith v. Complyright, Inc.*, (October 7, 2019) No. 1:18-cv-04990 (E.D.N.Y.):

> *The Court finds that such Notice: (i) was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the terms of the Settlement, their right to exclude themselves from the Settlement Class or object to all or any part of the Settlement, their right to appear at the Final Fairness Hearing (either on their own or through*

counsel hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Settlement Class; (iii) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

Judge George H. Wu, *Elkies v. Johnson & Johnson Services, Inc.*, (December 6, 2019) No. 2:17-cv-07320 (C.D. Cal.):

The Court finds that the distribution of Notice substantially in the manner and form set forth in the Stipulation meets the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

Judge Madeline Cox Arleo, *In re Thalomid and Revlimid Antitrust Litigation*, (August 22, 2019) No. 2:14-cv-06997 (D. N.J.):

The Court finds that the form, content, and method of giving notice to the Settlement Class as described in the Motion and exhibits: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class members of the pendency of the action, the terms of the proposed Settlement, and their right under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Fed. R. Civ. P. 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class members.

Judge Yvonne Gonzalez Rogers, *Abante Rooter and Plumbing, Inc. v. Alarm.com*, (August 15, 2019) No. 4:15-cv-06314 (N.D. Cal.):

The Court finds that the notice given to members of the Settlement Class pursuant to the terms of the Settlement Agreement fully and accurately informed Settlement Class members of all material elements of the Settlement and constituted valid, sufficient, and due notice to all such members. The notice fully complied with due process, Rule 23 of the Federal Rules of Civil Procedure, and with all other applicable law.

Judge John A. Houston, *In re Morning Song Bird Food Litigation*, (June 3, 2019) No. 3:12-cv-01592 (S.D. Cal.):

The Court finds and determines that dissemination and publication of the Notices as set forth in the Notice Plan in the Agreement constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the Settlement and the matters set forth in the Notices to all persons entitled to receive notice, and fully satisfied the requirements of due process and of Federal Rule of Civil Procedure 23.

Judge Steven M. Gold, *Worth v. CVS Pharmacy, Inc.*, (May 28, 2019) No. 2:16-cv-0200498 (E.D.N.Y.):

This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Stipulation of Settlement and Plaintiffs' motion for preliminary approval. The Court has reviewed the notice, and the notice procedures, and finds that the Members of the Settlement Class will receive the best notice practicable under the circumstances…The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process.

Judge Edmond E. Chang, *Smith v. Complyright, Inc.*, (May 24, 2019) No. 1:18-cv-04990 (E.D.N.Y.):

The Court has considered the Notice provisions in the Settlement, the Class Notice methodology set forth in the Declaration of Carla A. Peak attached as Exhibit A to the Settlement (the "Notice Program"), and the Email Notice, Postcard Notice, and Detailed Notice, attached as Exhibits C–E of the Settlement, respectively. The Court finds that the direct emailing and mailing of Notice in the manner set forth in the Notice Program is the best notice practicable under the

circumstances, constitutes due and sufficient notice of the Settlement and this Order to all persons entitled thereto, and is in full compliance with the requirements of Fed. R. Civ. P. 23(c), applicable law, and due process.

Honorable Beth Labson Freeman, *In re Nexus 6P Products Liability Litigation*, (May 2, 2019) No. 5:17-cv-02185 (N.D. Cal.):

The proposed notice plan, which includes direct notice via email, publication notice, and supplemental postcard notice via U.S. Mail, will provide the best notice practicable under the circumstances. This plan, and the Notice, are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the effect of the proposed Settlement (including the Released Claims), the anticipated motion for attorneys' fees, costs, and expenses and for service awards, and their rights to participate in, opt out of, or object to any aspect of the proposed Settlement; constitute due, adequate and sufficient notice to Settlement Class Members; and satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable law and rules.

Honorable Ann I. Jones, *Lavinsky v. City of Los Angeles*, (April 12, 2019) No. BC542245 (Sup. Ct. Cal.):

The form, manner, and content of the Class Notice, attached to the Settlement Agreement as Exhibits C, E, F, G, and H will provide the best notice practicable to the Class under the circumstances, constitutes valid, due, and sufficient notice to all Class Members, and fully complies with California Code of Civil Procedure section 382, California Code of Civil Procedure section 1781, the Constitution of the State of California, the Constitution of the United States, and other applicable law.

Judge Robert N. Chatigny, *Lecenat v. Douglas Perlitz*, (February 11, 2019) No. 3:13-cv-01132 (D. Conn.):

The Court finds that service of the Class Notice, Radio Publication Notice and Poster Notice in this manner, including newspaper publication as provided in III.E.3 of the Settlement Agreement, constitutes the best notice practicable under the circumstances to Settlement Class Members, and complies fully with the provisions set forth in Federal Rules of Civil Procedure, Rule 23, and any and all substantive and procedural due process rights guaranteed by the United States Constitution and any other applicable law. The Court further finds that the Class Notice, Radio Publication Notice and Poster Notice clearly and concisely inform the Settlement Class Members of their rights and options with respect to the proposed settlement, in plain, easily understood language, in conformance with the requirements of Rule 23.

Judge George H. Wu, *Elkies v. Johnson & Johnson Services, Inc.*, (January 15, 2019), No. 2:17-cv-07320 (C.D. Cal.:

The Court finds Plaintiffs' proposed form of notice satisfies Fed. R. Civ. P. 23(c)(2)(B). Plaintiffs' form of notice provides the best notice practicable under the circumstances and satisfies due process requirements.

Judge Timothy D. DeGiusti, *In re: Samsung Top-Load Washing Machine Marketing, Sales Practices and Product Liability Litigation*, (January 8, 2019) No. 5:17-ml-02792 (W.D. Okla.):

The Court finds that the proposed notice plan is reasonably calculated, under the circumstances, to apprise Settlement Class Members of: the pendency of this Litigation; the effects of the proposed Settlement on their rights (including the Released Claims contained therein); Class Counsel's upcoming motion for attorneys' fees, expenses, and service awards; their right to submit a claim form; and their right to object to any aspect of the proposed Settlement…The Settlement Notice provides due, adequate, and sufficient notice to Settlement Class Members, and satisfies the requirements of Rule 23, due process, and all other applicable law and rules.

Judge James S. Gwin, *In re: Sonic Corp. Customer Data Breach Litigation*, (December 20, 2018) No. 1:17-md-02807 (N.D. Ill.):

The Court finds that the Notices collectively provide a sufficiently clear and concise description of the Litigation, the Settlement terms, and the rights and responsibilities of the Settlement Class Members. The Court further finds that the plan for dissemination of the Notices…is the best means practicable, and is reasonably calculated to apprise the Settlement Class Members of the

Litigation and their right to participate in, object to, or exclude themselves from the Settlement.

Judge James Donato, *Brickman v. Fitbit, Inc.*, (December 17, 2018) No. 3:15-cv-02077 (N.D. Cal.):

The Court finds that the proposed Class Notice methodology, contained in Section IV of the Agreement and outlined in Plaintiffs' Unopposed Amended Motion for Preliminary Approval (Dkt. No. 263) will provide the best notice reasonably practicable to the Class Members, and will fairly advise them of their right to object, to opt out of the settlement, and of what they may receive if they remain in the Settlement Sub-Classes and to otherwise satisfy the requirements of Fed. R. Civ. P. 23 and due process requirements of the United States Constitution.

Honorable Edmond E. Chang, *Smith v. Complyright, Inc.*, (November 29, 2018) No. 1:18-cv-04990 (N.D. Ill.):

The Court has considered the Notice provisions in the Settlement, the Class Notice methodology set forth in the Declaration of Carla A. Peak attached as Exhibit A to the Settlement (the "Notice Program"), and the Email Notice, Postcard Notice, and Detailed Notice, attached as Exhibits C–E of the Settlement, respectively. The Court finds that the direct emailing and mailing of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances, constitutes due and sufficient notice of the Settlement and this Order to all persons entitled thereto, and is in full compliance with the requirements of Fed. R. Civ. P. 23(c), applicable law, and due process. The Court approves as to form and content the Email Notice, Postcard Notice, and Detailed Notice in the forms attached as Exhibits C, D, and E, respectively, to the Settlement. The Court orders the Settlement Administrator to commence the Notice Program as soon as practicable following entry of this Order.

Honorable Amy Totenberg, *Barrow v. JPMorgan Chase Bank, N.A.*, (November 8, 2018) No. 1:16-cv-03577 (N.D. Ga.):

The Court further finds and concludes that the Class Notice and claims submission procedures set forth in the Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, provided due and sufficient individual notice to all persons in the Settlement Class who could be identified through reasonable effort and support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Agreement and this Final Approval Order.

Judge Virginia K. Demarchi, *Hickcox-Huffman v. US Airways, Inc.*, (October 22, 2018) No. 5:10-cv-05193 (N.D. Cal.):

The Court finds that the form, content and method of disseminating notice to the Class as described in Paragraphs 10 and 15 of this Order: (i) complies with Rule 23(c)(2) of the Federal Rules of Civil Procedure as it is the best practicable notice under the circumstances, and is reasonably calculated, under all the circumstances, to apprise the members of the Class of the pendency of the Action, the terms of the Settlement, and their right to object to the Settlement or exclude themselves from the Settlement Class; (ii) complies with Rule 23(e) as it is reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed settlement, including, but not limited to, their right to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (iii) constitutes due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (iv) meets all applicable requirements of law, including, but not limited to, 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices.

Honorable Lucy H. Koh, *In re Anthem, Inc. Data Breach Litigation*, (August 15, 2018) No. 5:15-md-02617 (N.D. Cal.):

The Court finds that the Notice Plan has been fully implemented in compliance with this Court's Order, ECF No. 903, and complies with Federal Rule of Civil Procedure 23(c)(2)(B). Notice was sent by mail and email, published in two magazines, and advertised online. The various forms of

Notice, which were reviewed and approved by this Court, provided clear descriptions of who is a member of the Class and Settlement Class Members' rights and options under the Settlement. The Notices explained the conduct at issue in the litigation, how to receive money from the Settlement, how to opt out of the Settlement, how to object to the Settlement, how to obtain copies of relevant papers filed in the case, and how to contact Class Counsel and the Settlement Administrator.

Judge John Bailey, *In re: Monitronics International, Inc., Telephone Consumer Protection Act Litigation*, (June 12, 2018) No. 1:13-md-02493 (N.D. W.Va.)(overruling objections and ruling in favor of the notice plan):

The Court finds that the notices disseminated pursuant to the Notice Plan fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of due process, Federal Rule of Civil Procedure 23, and all applicable law. Ms. Smith objected that the notice was inadequate because it did not inform Settlement Class members of the amount of statutory damages available under the TCP A. Dkt. No. 57 at 14. This objection is overruled. Courts require that notice of a settlement "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d 96, 113-14 (2d Cir. 2005). The Notice Plan here complies with the court approved plan and fully apprised the Settlement Class of all material terms and their rights. In addition, the notices provided three telephone numbers for Settlement Class members to call if they had questions about the settlement. The Notice Plan thus complies with Rule 23 and due process and Ms. Smith's objection is overruled.

Judge Timothy S. Black, *Rikos v. The Procter & Gamble Company*, (April 30, 2018) No. 1:11-cv-00226 (S.D. Ohio):

The Court directed that Class Notice be given to Settlement Class Members pursuant to the notice program proposed by the parties and approved by the Court. In accordance with the Court's Preliminary Approval Order and the Court-appointed notice program, the Settlement Administrator caused the Class Notice to be disseminated as ordered. The Class Notice advised Settlement Class Members of the terms of the Settlement Agreement; the Final Approval Hearing, and their right to appear at such hearing; their rights to remain in, or opt out of, the Settlement Class and to object to the Settlement Agreement; procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Settlement Class. The distribution of the Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. § 1715, and any other applicable law.

Honorable Amy Totenberg, *Barrow v. JPMorgan Chase Bank, N.A.*, (March 16, 2018) No. 1:16-cv-03577 (N.D. Ga.):

The Notice Plan, in form, method and content, complies with the requirements of Rule 23 and the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances.

Honorable Ann I. Jones, *Eck v. City of Los Angeles*, (February 21, 2018) No. BC577028 (Super. Ct. Cal.):

Class Notice to the Settlement Class was provided in accordance with the Preliminary Approval Order and satisfied the requirements of due process, California Code of Civil Procedure section 382 and Rule 3.766 of the California Rules of Court and (a) provided the best notice practicable, and (b) was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Action, the terms of the Settlement, their right to appear at the Fairness Hearing, their right to object to the Settlement, and their right to exclude themselves from the Settlement. The Court finds that the Notice Plan set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the

requirements of California law and federal due process of law.

Honorable Sharon Johnson Coleman, *Eubank v. Pella Corporation*, (February 16, 2018) No. 1:06-cv-04481 (N.D. Ill.):

> *The Court approves, as to form and content, the Notice Plan and Class Notice attached to the Settlement Agreement as Exhibit 2 and finds that the Class Notice and the Notice Plan to be implemented pursuant to the Settlement Agreement are reasonable, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the settlement and the matters set forth in said notice to all persons entitled to receive notice, and fully satisfy the requirements of due process and of Fed. R. Civ. P. 23.*

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprises Insurance Co.*, (Direct Purchaser– Jui Li Enterprise Settlement), (February 16, 2018) No. 2:09-CV-00852 (E.D. Wis.):

> *The Court further finds that the Notice Plan, previously approved by the Court (See ECF No. 1110) and as executed by the Court-appointed Settlement Administrator, KCC, as set forth in the Declaration of Carla A. Peak on Implementation and Overall Adequacy of Settlement Notice Plan ("Peak Declaration") is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class Members; and complied fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice (Peak Declaration Exhibits 1 and 2) are written in plain language, use simple terminology, and are designed to be readily understandable and noticeable by Settlement Class Members.*

Judge Yvonne Gonzales Rogers, *Abante Rooter and Plumbing Inc. v. Alarm.com Inc.,* (February 8, 2018) No. 4:15-cv-06314 (N.D. Cal.) (overruling objections and ruling in favor of the notice plan):

> *The Court finds that the form and content of Plaintiffs' proposed notice program, and the methods of disseminating notice to the Classes, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled to receive notice. The Court approves the form and content of the Email Notice, Postcard Notice, Banner Notices, and Website Notice, and finds that they clearly and concisely state in plain, easily understood language, the following required information: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B); see also Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985) (stating that's due process requires notice to apprise party of pendency of action, afford party opportunity to appear, describe party's rights, and provide party opportunity to opt out of action). The Court approves the methods of disseminating the notice, which class action administrator Kurtzman Carson Consultants, Inc. has designed to reach approximately 90% of Class members. The combination of email notice, postal mail notice, and internet banner ads constitutes the best notice practicable under the circumstances.*

Honorable Yvonne Gonzalez Rogers, *Abante Rooter v. Alarm.com Inc.* (February 2, 2018) No. 4:15-cv-06314 (N.D. Cal.):

> *The Court finds that the form and content of Plaintiffs' proposed notice program, and the methods of disseminating notice to the Classes, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled to receive notice.*
>
> *The Court approves the form and content of the Email Notice, Postcard Notice, Banner Notices, and Website Notice, and finds that they clearly and concisely state in plain, easily understood language, the following required information: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion;*

and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B)…

Judge Fernando M. Olguin, *Dodge v. PHH Corporation,* (January 29, 2018) No. 8:15-cv-01973 (C.D. Cal):

Based on the foregoing, the court finds that there is no alternative method of distribution that would be more practicable here, or any more reasonably likely to notify the class members. The court further finds that the procedure for providing notice and the content of the class notice constitute the best practicable notice to class members.

Judge Timothy S. Black, *Rikos v. The Procter & Gamble Company*, (December 20, 2017) No. 1:11-cv-00226 (S.D. Ohio):

The Court approves, as to form and content, the proposed Notice of Class Action Settlement (the “Class Notice”), which forms are attached as Exhibits 4 and 5 to the Settlement Agreement. The Court finds that the distribution of Class Notice substantially in the manner and form set forth in this Order and the Settlement Agreement meet the requirements of Federal Rules of Civil Procedure Rule 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

Honorable Kenneth R. Freeman, *Elias v. Synchrony Bank, f/k/a GE Capital Retail Bank*, (December 8, 2017) No. BC555883 (Sup. Ct. Cal.):

The Court finds that the form, manner and content of the Class Notice specified in Section 5 of the Settlement Agreement and Exhibits B and D thereto provided a means of notice reasonably calculated to apprise the Class Members of the pendency of the action and the proposed settlement, and thereby met the requirements of California Rules of Court Rule 3.769 and California Code of Civil Procedure § 382, as well as due process under the United States Constitution, the California Constitution, and any other applicable laws, constituted the best practicable notice under the circumstances, and constituted due and sufficient notice to all Class Members entitled thereto.

Judge Denise J. Casper, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, (Direct Purchasers), (November 27, 2017) No. 1:14-md-02503 (D. Mass.):

Members of the End-Payor Classes for the Sandoz and Lupin Settlements were provided with due and adequate notice of the Settlements, including their right to object to the Settlements and End-Payor Class Counsel's intent to seek from the Settlement Funds reimbursement of costs and expenses. Notice was distributed via both direct mail and publication notice. Such notice fully complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law. A full and fair opportunity to be heard was afforded to all members of the Settlement Classes with respect to the foregoing matters. Accordingly, the Court hereby determines that all members of the End-Payor Classes for the Sandoz and Lupin Settlements are bound by this Order and Final Judgment.

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprises Insurance Co.*, (Direct Purchaser– Jui Li Enterprise Settlement), (November 21, 2017) No. 2:09-CV-00852 (E.D. Wis.):

The Court approves the forms of the Notice of proposed class action settlement attached to the Declaration of Carla A. Peak (“Peak Decl.”) at Exhibit 2 (Long-Form Notice and Summary/Publication Notice). The Court further finds that the mailing and publication of the Notice in the manner set forth below and in the Peak Declaration is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class Members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class Members.

Honorable James H. Ashford, *Nishimura v. Gentry Homes, Ltd.*, (October 27, 2017) No. 11-1-1522 (Cir. Ct., Hawai’i):

The Court finds that the Notice Plan and Class Notices fully and accurately informed the potential Class Members of all material elements of the proposed Settlement and of each Class Member's

right and opportunity to object to the proposed Settlement. The Court further finds that the Administrator's mailing and distribution of the Class Notice and the publication of the Class Notices substantially in the manner and form set forth in the Notice Plan and Settlement Agreement met the requirements of the laws of the State of Hawai'i (including Hawai'i Rule of Civil Procedure 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential Class Members.

Judge Celia Gamrath, *Truong v. Peak Campus Management LLC*, (October 16, 2017) No. 2016-CH-09735 (Cir. Ct. Cook Cnty., Ill.):

The Court finds that the Notice Plan as set forth in the Settlement Agreement and the Declaration of Carla A. Peak meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and constitutes the best notice practicable under the circumstances, including direct individual notice by U.S. Mail or, in some cases by email, to Settlement Class Members, and satisfies fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Order and Judgment will be binding on all Settlement Class Members.

Judge John Bailey, *In re Monitronics International, Inc., Telephone Consumer Protection Act Litigation*, (September 28, 2017) No. 5:11-cv-00090 (N.D. W.Va.):

The Court carefully considered the Notice Plan set forth in the Settlement Agreement and plaintiffs' motion for preliminary approval. The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances, and satisfies fully the requirements of Rule 23, the requirements of due process and any other applicable law, such that the terms of the Settlement Agreement, the releases provided therein, and this Court's final judgment will be binding on all Settlement Class Members.

Judge Douglas L. Rayes, *Brill v. Bank of America, N.A.*, (September 15, 2017) No. 2:16-cv-03817 (D. Ariz.):

The record shows, and the Court finds, that the Class Notice has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice (i) constituted the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency and nature of this Action, the definition of the Settlement Class, the terms of the Settlement Agreement, the rights of the Settlement Class to exclude themselves from the settlement or to object to any part of the settlement, the rights of the Settlement Class to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Settlement Agreement on all persons who do not exclude themselves from the Settlement Class, (iii) provided due, adequate, and sufficient notice to the Settlement Class; and (iv) fully satisfied the due process requirements of the United States Constitution, Fed. R. Civ. P. 23, and any other applicable law or rule.

Honorable Ann I. Jones, *Eck v. City of Los Angeles*, (September 15, 2017) No. BC577028 (Sup. Ct. Cal.):

The form, manner, and content of the Class Notice, attached to the Settlement Agreement as Exhibits B, E, F and G, will provide the best notice practicable to the Class under the circumstances, constitutes valid, due, and sufficient notice to all Class Members, and fully complies with California Code of Civil Procedure section 382, California Code of Civil Procedure section 1781, the Constitution of the State of California, the Constitution of the United States, and other applicable law.

Honorable James Ashford, *Nishimura v Gentry Homes, LTD.*, (September 14, 2017) No. 11-11-1-1522-07-RAN (Cir. Ct. Hawai'i):

The Court finds that the Notice Plan and Class Notices will fully and accurately inform the potential Class Members of all material elements of the proposed Settlement and of each Class Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the Class Notice and the publication of the Class Notices substantially in the manner and form set forth in the Notice Plan and Settlement Agreement meets the requirements of the laws of the State of Hawai'i (including Hawai'i Rule of Civil

Procedure 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice to all potential Class Members.

Honorable André Birotte Jr., *Rafofsky v. Nissan North America, Inc.*, (September 12, 2017) No. 2:15-cv-01848 (C.D. Cal.):

The Court finds that the Class Notice has been given to the Class in the manner approved by the Court in the Preliminary Approval Order (ECF No. 126). The Court finds that such Class Notice: (i) was reasonable and constituted the best practicable notice under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Litigation, the terms of the Settlement Agreement, their right to exclude themselves from the Class or object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of final approval of the Settlement on all persons who do not exclude themselves from the Class; (iii) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

Honorable Charles R. Norgle, *Mullins v. Direct Digital, LLC*, (September 7, 2017) No. 1:13-cv-01829 (N.D. Ill.):

The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement..

Honorable Steve C. Jones, *Prather v. Wells Fargo Bank, N.A.,* (August 31, 2017) No. 1:15-cv-04231 (N.D. Ga.):

The Court further finds and concludes that the Class Notice and claims submission procedures set forth in the Settlement Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, and support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Settlement and this Order.

Judge Lucy H. Koh, *In re Anthem, Inc. Data Breach Litigation,* (August 25, 2017) No. 5:15-md-02617 (N.D. Cal.):

The Court finds that the Notice and Notice Plan set forth in the Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances. The Notice and Notice Plan are reasonably calculated to apprise Settlement Class Members of the nature of this litigation, the scope of the Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing.

Honorable Jeffrey S. White, *In re Yapstone Data Breach,* (August 16, 2017) No. 4:15-cv-04429 (C.D. Cal.):

The Notices and the Notice Program provided the best notice practicable under the circumstances to the Settlement Class Members and fully satisfied the requirements of due process under the United States Constitution and Federal Rule of Civil Procedure 23. Based on the evidence and information supplied to the Court in connection with the Final Approval Hearing held on August 4, 2017, the Court finds that the Notices were adequate and reasonable. The Court further finds that through the Notices, the Settlement Class Members have been apprised of the nature and pendency of the Consumer Action, the terms of the Settlement Agreement, as well as their rights to request exclusion, object, and/or appear at the final approval hearing.

Honorable Consuelo B. Marshall, *Couser v. Dish One Satellite, LLC*, (May 16, 2017) No. 5:15-cv-02218 (C.D. Cal.):

The Court approves the proposed plan for giving notice to the Settlement Class directly (by post card) and through an appropriate media program and establishment of a Settlement Website, as

more fully described in Plaintiffs Motion and the Agreement (the "Notice Plan"). The Notice Plan, in form, method and content, complies with the requirements of Rule 23 of the Federal Rules constitutes the best notice practicable under the circumstances.

Honorable André Birotte Jr., *Rafofsky v. Nissan North America, Inc.*, (May 1, 2017) No. 2:15-cv-01848 (C.D. Cal.):

The Court has considered the Notice in the Settlement and finds that the Notice and methodology as described in the Settlement and in the Declaration of Carla Peak attached as Exhibit B to Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement, including the exhibits attached thereto: (a) meets the requirements of due process and Fed. R. Civ. P. 23(c) and (e); (b) constitutes the best notice practicable under the circumstances to all persons entitled to notice; and (c) satisfies the constitutional requirements regarding notice. In addition, the forms of notice: (a) apprise Class Members of the pendency of the Litigation, the terms of the proposed Settlement, their rights, and deadlines under the Settlement; (b) are written in simple terminology; (c) are readily understandable by Class Members; and (d) comply with the Federal Judicial Center's illustrative class action notices. The Court approves the Notice and methodology as described in the Settlement and in the Declaration of Carla Peak in all respects.

Judge Douglas L. Rayes, *Brill v. Bank of America, N.A.*, (April 18, 2017) No. 2:16-cv-03817 (D. Ariz.):

The Court finds that the Class Notice described above is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure. Specifically, the Court finds that the Class Notice complies with Rule 23(e) of the Federal Rules of Civil Procedure as it is a reasonable manner of providing notice to those Settlement Class Members who would be bound by the settlement. The Court also finds that the Class Notice complies with Rule 23(c)(2), as it is also the best form and manner of notice practicable under the circumstances, provides individual notice to members of the Settlement Class who can be identified through a reasonable effort, and is reasonably calculated, under all the circumstances, to apprise members of the Settlement Class of the pendency of the Action, the terms of the settlement, and their right to object to the settlement or exclude themselves from the Settlement Class.

Judge Denise J. Casper, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, (Direct Purchasers), (April 14, 2017) No. 1:14-md-02503 (D. Mass.):

The proposed form of Notice to Direct Purchaser Settlement Class members of the pendency and proposed Settlements of this action as against Sandoz and Lupin only ("Settlement Notice") and the proposed method of dissemination of the Settlement Notice by first class mail satisfy the requirements of Rule 23(e) of the Federal Rules of Civil Procedure and due process, are otherwise fair and reasonable, and therefore are approved.

Judge Cecilia M. Altonaga, *Flaum v. Doctor's Associates, Inc.*, (March 22, 2017) No. 16-cv-61198 (S.D. Fla.):

The Court has considered the proposed forms of notice including the Summary Notice; Full Notice for the Settlement Website; Publication Notice; Press Release (attached as Exhibit 2, 3, 4 and 8 to the Settlement Agreement); and Settlement Claim Forms (attached as Exhibits 6 and 7 to the Settlement Agreement); and finds the forms, content, and manner of notice proposed by the Parties and approved herein meet the requirements of due process and FED. R. CIV. P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice. The Court approves the notice program in all respects (including the proposed forms of notice, Summary Notice, Full Notice for the Settlement Website, Publication Notice, Press Release and Settlement Claim Forms, and orders that notice be given in substantial conformity therewith.

Honorable Amy J. St. Eve, *In Re: Rust-Oleum Restore Marketing, Sales Practices and Products Liability Litig.*, (March 6, 2017) No. 1:15-cv-01364 (N.D. Ill.):

The Class Notice (as described in the Settlement Agreement and previously approved by the

Court) fully complied with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and due process, constituted the best notice practicable under the circumstances, and was due and sufficient notice to all persons entitled to notice of the Settlement of the Action.

Honorable Jeffrey S. White, *In re Yapstone Data Breach,* (March 2, 2017) No. 4:15-cv-04429 (C.D. Cal.):

The Court finds that the notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits E and G thereto (the "Notice Program") is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

Judge Manish S. Shah, *Johnson v. Yahoo! Inc.*, (December 12, 2016) No. 1:14-cv-02028 (N.D. Ill.):

The Court approves the notice plan set forth in Plaintiff's Amended Motion to Approve Class Notice (Doc. 252) (the "Notice Plan"). The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances.

Judge Joan A. Leonard, *Barba v. Shire U.S., Inc.*, (December 2, 2016) No. 1:13-cv-21158 (S.D. Fla.):

The notice of settlement (in the form presented to this Court as Exhibits E, F, and G, attached to the Settlement Agreement [D.E. 423-1] (collectively, "the Notice") directed to the Settlement Class members, constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice was given to potential Settlement Class members who were identified through reasonable efforts, published using several publication dates in Better Homes and Gardens, National Geographic, and People magazines; placed on targeted website and portal banner advertisements on general Run of Network sites; included in e-newsletter placements with ADDitude, a magazine dedicated to helping children and adults with attention deficit disorder and learning disabilities lead successful lives, and posted on the Settlement Website which included additional access to Settlement information and a toll-free number. Pursuant to, and in accordance with, Federal Rule of Civil Procedure 23, the Court hereby finds that the Notice provided Settlement Class members with due and adequate notice of the Settlement, the Settlement Agreement, these proceedings, and the rights of Settlement Class members to make a claim, object to the Settlement or exclude themselves from the Settlement.

Justice Robert Stack, *Anderson v. Canada (Attorney General)*, (November 7, 2016) No. 200701T4955CCP (Supreme Ct. Newfoundland and Labrador):

The Plaintiffs intend to provide significant notice of the Settlement to class members, which will include, among other things, direct mailings to class members, direct mailings to third parties, dissemination of a short form notice in various media, and direct community outreach and meetings. The proposed notice materials are intended to be simple and easy to read and understand.

Judge William H. Pauley III, *The Dial Corporation v. News Corporation*, (November 3, 2016) No. 1:13-cv-06802 (S.D. N.Y..):

The notification provided for and given to the Class: (i) was provided and made in full compliance with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated to apprise the Class of the terms of Settlement, of the proposed Plan of Allocation, of Plaintiffs Counsel's application for an award of attorney's fees, costs, and expenses incurred in connection with the Action, of Class Members' right to object to the Settlement, the Plan of Allocation, or Plaintiffs' Counsel's application for an award of attorney's fees, costs and expenses, and of the right of Class Members to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) fully satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause of the Fifth Amendment to the Constitution), and all other applicable law and rules.

Honorable Amy J. St. Eve, *In Re: Rust-Oleum Restore Marketing, Sales Practices and Products Liability Litig.*, (October 20, 2016) No. 1:15-cv-01364 (N.D. Ill.):

> *The Notices of Class Action and Proposed Settlement (Exhibits A and B to the Settlement Agreement) and the method of providing such Notices to the proposed Settlement Class (as described in Settlement Agreement ¶6 and in the Declaration of Carla A. Peak on Settlement Notice Plan, filed on October 19, 2016), comply with Fed. R. Civ. P. 23(e) and due process, constitute the best notice practicable under the circumstances, and provide due and sufficient notice to all persons entitled to notice of the settlement of this Action.*

Honorable R. Gary Klausner, *Russell v. Kohl's Department Stores, Inc.*, (October 20, 2016) No. 5:15-cv-01143 (C.D. Cal.):

> *Notice of the settlement was provided to the Settlement Class in a reasonable manner, and was the best notice practicable under the circumstances, including through individual notice to all members who could be reasonably identified through reasonable effort.*

Judge Fernando M. Olguin, *Chambers v. Whirlpool Corporation*, (October 11, 2016) No. 8:11-cv-01733 (C.D. Cal.):

> *Accordingly, based on its prior findings and the record before it, the court finds that the Class Notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, their right to exclude themselves from the action, and their right to object to the proposed settlement.*

Honourable Justice Stack, *Anderson v. The Attorney General of Canada*, (September 28, 2016) No. 2007 01T4955CP (Supreme Ct. Newfound and Labrador):

> *The Phase 2 Notice Plan satisfies the requirements of the Class Actions Act and shall constitute good and sufficient service upon class members of the notice of this Order, approval of the Settlement and discontinuance of these actions.*

Judge Mary M. Rowland, *In re: The Home Depot, In., Customer Data Security Breach Litig.*, (August 23, 2016) No. 1:14-md-02583 (N.D. Ga.):

> *The Court finds that the Notice Program has been implemented by the Settlement Administrator and the parties in accordance with the requirements of the Settlement Agreement, and that such Notice Program, including the utilized forms of Notice, constitutes the best notice practicable under the circumstances and satisfies due process and the requirements of Rule 23 of the Federal Rules of Civil Procedure.*

Honorable Manish S. Shah, *Campos v. Calumet Transload Railroad, LLC*, (August 3, 2016) No. 1:13-cv-08376 (S.D. NY.):

> *The form, content, and method of dissemination of the notice given to the Settlement Class were adequate, reasonable, and constitute the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the Settlements, the terms and conditions set forth therein, and these proceedings to all Persons entitled to such notice. The notice satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure ("Rule 23") and due process.*

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Company, Ltd.*, (Indirect Purchaser–Jui Li Settlement), (July 7, 2016) No. 2:09-cv-00852 (E.D. Wis.):

> *The Court approves the Notice Program set forth in the Declaration of Carla A. Peak. The Court approves as to form and content the Postcard Notice, Summary Publication Notice, and Detailed Notice in the forms attached as Exhibits 1–3, respectively, to the Declaration of Carla A. Peak. The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple*

terminology, and are designed to be readily understandable by Settlement Class members.

Judge William H. Pauley III, *The Dial Corporation v. News Corporation*, (June 2, 2016) No. 1:13-cv-06802 (S.D. NY.):

> *The form and content of the notice program described herein, and the methods set forth herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and constitutional due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.*

Honorable R. Gary Klausner, *Russell v. Kohl's Department Stores, Inc.*, (April 11, 2016) No. 5:15-cv-01143 (C.D. Cal.):

> *Here, the Notice Plan includes several ways to reach proposed Class Members, including an information website, direct mailing, direct emails, and a toll-free help line. Furthermore, the proposed Notice provides details sufficient to explain the terms of the Settlement Agreement and provide information to Class Members about their rights, releases, and application deadlines. The Notice informs Class Members of how funds will be allocated, and how Residual Funds will be handled. Class Members are also put on notice of Attorneys' Fees and Expenses awarded and an Incentive Award to the Class Representative. Finally, the Notice plainly indicates the time and place of the hearing to consider approval of the settlement and the method of objecting to or opting out of the settlement. Based on the above facts, the Court approves the proposed Notice Plan.*

Judge Joan A. Leonard, *Barba v. Shire U.S., Inc.*, (April 11, 2016) No. 1:13-cv-21158 (S.D. Fla.):

> *The Court finds that the proposed methods for giving notice of the Settlement to members of the Settlement Class, as set forth in this Order and in the Settlement Agreement, meet the requirements of Federal Rule of Civil Procedure Rule 23 and requirements of state and federal due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.*

Honorable Manish S. Shah, *Campos v. Calumet Transload Railroad, LLC*, (March 10, 2016 and April 18, 2016) No. 1:13-cv-08376 (S.D. NY.):

> *The Court approves the Notice Program set forth in the Declaration of Carla A. Peak, attached as Exhibit A to the Settlement. The Court approves as to form and content the Postcard Notice, Summary Notice, and Detailed Notice in the forms attached as Exhibits B, C, and D, respectively, to the Settlement. The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances, constitutes due and sufficient notice of the Settlement and this Order to all persons entitled thereto, and is in full compliance with the requirements of Fed. R. Civ. P. 23, applicable law, and due process.*

Judge Mary M. Rowland, *In re: The Home Depot, In., Customer Data Security Breach Litig.*, (March 8, 2016) No. 1:14-md-02583 (N.D. Ga.):

> *The Court finds that the form, content and method of giving notice to the Class as described in Paragraph 7 of this Order and the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement, including but not limited to their rights to object to or exclude themselves from the proposed settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.*

Judge Mary M. Rowland, *In re: Sears, Roebuck and Co. Front-Loader Washer Products Liability Litig.*, (February 29, 2016) No. 1:06-cv-07023 (N.D. Ill.):

The Court concludes that, under the circumstances of this case, the Settlement Administrator's notice program was the "best notice that is practicable," Fed. R. Civ. P. 23(c)(2)(B), and was "reasonably calculated to reach interested parties," Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 318 (1950).

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprises Insurance Co.*, (Indirect Purchaser–Tong Yang & Gordon Settlements), (January 14, 2016) No. 2:09-CV-00852 (E.D. Wis.):

The form, content, and methods of dissemination of Notice of the Settlements to the Settlement Class were reasonable, adequate, and constitute the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the Settlements, the terms and conditions set forth in the Settlements, and these proceedings to all persons and entities entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process requirements.

Judge Curtis L. Collier, *In re: Skelaxin (Metaxalone) Antitrust Litigation*, (December 22, 2015) No. 1:12-md-2343 (E.D. Tenn.):

The Class Notice met statutory requirements of notice under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirement process.

Honorable Mitchell D. Dembin, *Lerma v. Schiff Nutrition International, Inc.*, (November 3, 2015) No. 3:11-CV-01056 (S.D. Cal.):

The Court finds this notice (i) constituted the best notice practicable under the circumstances, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise the putative Class Members of the pendency of the action, and of their right to object and to appear at the Final Approval Hearing or to exclude themselves from the Settlement, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) fully complied with due process principles and Federal Rule of Civil Procedure 23.

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprises Insurance Co.*, (Direct Purchaser–Tong Yang & Gordon Settlements), (August 13, 2015) No. 2:09-CV-00852 (E.D. Wis.):

The Court further finds that the Notice Plan, previously approved by the Court (See ECF Nos. 619 & 641) and as executed by the Court-appointed Claims Administrator, KCC, as set forth in the Declaration of Carla A. Peak on Implementation and Overall Adequacy of Combined Settlement Notice Plan ("Peak Declaration") is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class Members; and complied fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice (Peak Declaration Exhibits 1 and 2) are written in plain language, use simple terminology, and are designed to be readily understandable and noticeable by Settlement Class Members.

Honorable Lynn Adelman, *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprises Insurance Co.*, (Indirect Purchaser–Gordon Settlement), (August 4, 2015) No. 2:09-CV-00852 (E.D. Wis.):

The Court approves the Notice Program set forth in the Declaration of Carla A. Peak. The Court approves as to form and content the Postcard Notice, Summary Publication Notice, and Detailed Notice in the forms attached as Exhibits 2–4, respectively, to the Declaration of Carla A. Peak. The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class members.

Honorable Lynn Adelman, *Fond du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd*. (Indirect Purchaser–Tong Yang Settlement), (May 29, 2015) No. 2:09-CV-00852 (E.D. Wis.):

The Court approves the Notice Program set forth in the Declaration of Carla A. Peak. The Court approves as to form and content the Postcard Notice, Summary Publication Notice, and Detailed

Notice in the forms attached as Exhibits 2–4, respectively, to the Declaration of Carla A. Peak. The Court further finds that the mailing and publication of Notice in the manner set forth in the Notice Program is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class members.

Honorable Lynn Adelman, *Fond du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd*. (Direct Purchaser–Gordon Settlement), (May 5, 2015) No. 2:09-CV-00852 (E.D. Wis.):

The Court approves the forms of the Notice of proposed class action settlement attached to the Declaration of Carla Peak ("Peak Decl.") at Exhibit 1 (Long-Form Notice and Summary/Publication Notice). The Court further finds that the mailing and publication of the Notice in the manner set forth below and in the Peak Decl. is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class Members. The Notice Program set forth herein is substantially similar to the one set forth in the Court's April 24, 2015 Order regarding notice of the Tong Yang Settlement (ECF. No. 619) and combines the Notice for the Tong Yang Settlement with that of the Gordon Settlement into a comprehensive Notice Program. To the extent differences exist between the two, the Notice Program set forth and approved herein shall prevail over that found in the April 24, 2015 Order.

Honorable José L. Linares, *Demmick v. Cellco Partnership*, (May 1, 2015) No. 2:06-CV-2163 (D. N.J.):

The Notice Plan, which this Court has already approved, was timely and properly executed and that it provided the best notice practicable, as required by Federal Rule of Civil Procedure 23, and met the "desire to actually inform" due process communications standard of Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)… The Court thus affirms its finding and conclusion in the November 19, 2014 Preliminary Approval Order that the notice in this case meets the requirements of the Federal Rules of Civil Procedure and the Due Process Clause of the United States and/or any other applicable law. All objections submitted which make mention of notice have been considered and, in light of the above, overruled.

Honorable Lynn Adelman, *Fond du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd*. (Direct Purchaser–Tong Yang Settlement), (April 4, 2015) No. 2:09-CV-00852 (E.D. Wis.):

The Court approves the forms of the Notice of proposed class action settlement attached to the Declaration of Carla A. Peak ("Peak Decl.") as Exhibit 2 (Long-Form Notice and Summary/Publication Notice). The Court further finds that the mailing and publication of the Notice in the manner set forth below and in the Peak Decl. is the best notice practicable under the circumstances; is valid, due and sufficient notice to all Settlement Class Members; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. The Court further finds that the forms of Notice are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class Members.

Honorable Rhonda A. Isiran Nishimura, *Charles v. Haseko Homes, Inc.*, (February 24, 2015) No. 09-1-1932-08 (Cir. Ct. Hawai'i):

The Court approves, as to form and content, the Hurricane Straps Class Notice and the Hurricane Straps Repose Subclass Notice, and the Notice Plan that are attached as Exhibits 8-9 to the Declaration of Graham B. LippSmith ("LippSmith Dec.") and in the Declaration of Carla Peak…The Court finds that the Hurricane Straps Class Notice, the Hurricane Straps Repose Subclass Notice, and the Notice Plan will fully and accurately inform the potential Hurricane Straps Class Members and Hurricane Straps Repose Subclass Members of all material elements of the proposed Settlement, of their right to be excluded from the Hurricane Straps Class or Hurricane Straps Repose Subclass, and of each Hurricane Straps Class Member's or Hurricane

Straps Repose Subclass Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the Hurricane Straps Class Notice and the Hurricane Straps Repose Subclass Notice will (i) meet the requirements of the laws of the State of Hawai'i (including Haw. R. Civ. P. 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, (ii) constitute the best notice practicable under the circumstances, and (iii) constitute due and sufficient notice to all potential Hurricane Straps Class Members and Hurricane Straps Repose Subclass Members.

Honorable Gary W.B. Chang, *Kai v. Haseko Homes, Inc.*, (February 15, 2015) No. 09-1-2834-12 (Cir. Ct. Hawai'i):

The Court approves, as to form and content, the PEX Class Notice and Notice Plan attached as Exhibit 10 to the Declaration of Graham B. LippSmith ("LippSmith Dec.") and in the Declaration of Carla Peak. The Court finds that the PEX Class Notice and the Notice Plan will fully and accurately inform the potential PEX Class Members of all material elements of the proposed Settlement, of their right to be excluded from the PEX Class, and of each PEX Class Member's right and opportunity to object to the proposed Settlement. The Court further finds that the mailing and distribution of the PEX Class Notice substantially in the manner and form set forth in this Order will (i) meet the requirements of the laws of the State of Hawai'i (including Haw. R. Civ. P. 23), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, (ii) constitute the best notice practicable under the circumstances, and (iii) constitute due and sufficient notice to all potential Class Members.

Honorable David O. Carter, *Cobb v. BSH Home Appliances Corp.*, (December 29, 2014) No. 8:10-CV-0711 (C.D. Cal.):

The Notice Program complies with Rule 23(c)(2)(B) because it constitutes the best notice practicable under the circumstances, provides individual notice to all Class Members who can be identified through reasonable effort, and is reasonably calculated under the circumstances to apprise the Class Members of the nature of the action, the claims it asserts, the Class definition, the Settlement terms, the right to appear through an attorney, the right to opt out of the Class or to comment on or object to the Settlement (and how to do so), and the binding effect of a final judgment upon Class Members who do not opt out.

Honorable Christina A. Snyder, *Roberts v. Electrolux Home Products, Inc.*, (September 11, 2014) No. 8:12-CV-01644 (C.D. Cal.):

The Court considered the Settlement Notice Plan submitted by the parties, and the Declaration of Carla A. Peak of KCC describing the Notice Plan…The Court finds that the Notice itself is appropriate, and complies with Fed. R. Civ. P. 23(b)(3), 23(c)(2)(B), and 23(e), because the Settlement Notice, FAQ, and Publication Notice fairly, accurately, and reasonably informed members of the Settlement Class, in plain language, of (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about, and means for obtaining, additional information regarding this litigation and the Settlement Agreement; (3) appropriate information about, and means for obtaining and submitting, a Claim Form; (4) appropriate information about the right of members of the Settlement Class to exclude themselves from the Settlement, object to the terms of the Settlement Agreement, including Class Counsel's request for an award of attorneys' fees and costs, and the procedures to do so; and (5) appropriate information about the consequences of failing to submit a Claim Form or failing to comply with the procedures and the deadline for opting out of, or objecting to, the Settlement…Accordingly, the Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of federal and California laws and due process. The Court finally approves the Notice Plan in all respects…Any objections to the notice provided to the Class are hereby overruled.

Honorable David O. Carter, *Cobb v. BSH Home Appliances Corp.*, (August 25, 2014) No. 8:10-CV-0711 (C.D. Cal.):

…the Court also finding that the proposed notice plan and forms of notice are the best notice practicable under the circumstances and satisfy all requirements of the Federal Rules of Civil

Procedure, including Fed. R. Civ. P. 23(c)(b)(2); and for good cause shown, IT IS HEREBY ORDERED that Plaintiffs' Motion to Amend the Illinois Class Definition is GRANTED; and it is further ORDERED that Plaintiffs' Motion for Approval of Notice Plan and Proposed Forms of Notice is GRANTED.

Judge Gregory A. Presnell, *Poertner v. The Gillette Co. and The Procter & Gamble Co.*, (August 21, 2014) No. 6:12-CV-00803 (M.D. Fla.):

This Court has again reviewed the Notice and the accompanying documents and finds that the "best practicable" notice was given to the Class and that the Notice was "reasonably calculated" to (a) describe the Action and the Plaintiff's and Class Members' rights in it; and (b) apprise interested parties of the pendency of the Action and of their right to have their objections to the Settlement heard. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 810 (1985). This Court further finds that Class Members were given a reasonable opportunity to opt out of the Action and that they were adequately represented by Plaintiff Joshua D. Poertner. See Id. The Court thus reaffirms its findings that the Notice given to the Class satisfies the requirements of due process and holds that it has personal jurisdiction over all Class Members.

Honorable Curtis L. Collier, *In re: Skelaxin (Metaxalone) Antitrust Litigation*, (August 5, 2014) No. 1:12-md-02343 (E.D. Tenn.):

The proposed form of Notice to End-Payor Settlement Class Members of the pendency and proposed settlement of this action ("Settlement Notice") set forth in the Notice Plan and Declaration of Carla Peak and the proposed method of dissemination of the Settlement Notice ("Notice Plan")—first to Third-Party Payors and then to Consumers—satisfy the requirements of Rule 23(e) of the Federal Rules of Civil Procedure and due process, are otherwise fair and reasonable, and therefore are approved.

Honorable Christina A. Snyder, *Roberts v. Electrolux Home Products, Inc.*, (May 5, 2014) No. 8:12-CV-01644 (C.D. Cal.):

The Court finds that the Notice Plan set forth in the Settlement Agreement (§ V. of that Agreement)…is the best notice practicable under the circumstances, and constitutes sufficient notice to all persons entitled to notice. The Court further preliminarily finds that the Notice itself IS appropriate, and complies with Rules 23(b)(3), 23(c)(2)(B), and 23(e) because it describes in plain language (1) the nature of the action, (2) the definition of the Settlement Class and Subclasses, (3) the class claims, issues or defenses, (4) that a class member may enter an appearance through an attorney if the member so desires, (5) that the Court will exclude from the class any member who requests exclusion, (6) the time and manner for requesting exclusion, and (7) the binding effect of a judgment on Settlement Class Members under Rule 23(c)(3) and the terms of the releases. Accordingly, the Court approves the Notice Plan in all respects…

Honorable Jose L. Linares, *In re Hypodermic Products Antitrust Litigation*, (March 17, 2014) MDL No. 1730, No. 2:05-CV-01602 (D. N.J.):

The Class Notice provides a description of the Indirect Purchaser Class, the procedural status of the litigation, a brief description of the plan of allocation, the court approval process for the proposed Settlement, and the significant terms of the Settlement. The Class Notice also fully informed members of the Indirect Purchaser Class of their rights with respect to the Settlement, including the right to opt out of, object to the Settlement, or otherwise be heard as to the reasonableness and fairness of the Settlement. The Class Notice also informed members of the Indirect Purchaser Class of their right to object to Indirect Purchaser Plaintiffs' Lead Counsel's application for an award of attorneys' fees, an award of incentive fees, and reimbursement of expenses from the Settlement Fund.…The Class Notice met the statutory requirements of notice under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process.

Honorable William E. Smith, *Cappalli v. BJ's Wholesale Club, Inc.*, (December 12, 2013) No. 1:10-CV-00407 (D. R.I.):

The Court finds that the form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable

under the circumstances. The notice, as given, provided valid, due, and sufficient notice of these proceedings of the proposed Settlement, and of the terms set forth in the Stipulation and first Joint Addendum, and the notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, Constitutional due process, and all other applicable laws.

Judge Gregory A. Presnell, *Poertner v. The Gillette Co. and The Procter & Gamble Co.*, (November 5, 2013) No. 6:12-CV-00803 (M.D. Fla.):

The proposed Class Notice and Claim Form are approved as to form and content. The Court finds that the content of the Class Notice and the Claim Form satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process and accordingly approves them…The Court finds that compliance with the Notice Plan is the best practicable notice under the circumstances and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of Rule 23, applicable law, and due process.

Honorable Jose L. Linares, *In re Hypodermic Products Antitrust Litigation*, (November 4, 2013) No. 2:05-CV-01602 (D. N.J.):

Upon reviewing Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Conditional Class Certification and Approval of Notice Plan and the Declarations of Karin E. Fisch, Esq. and Carla A. Peak and the documents attached thereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:…Proposed forms of Notice are attached hereto as Exhibit A. The Court finds that the form fairly and adequately: (i) describes the terms and effect of the Settlement Agreement and of the Settlement; (ii) notifies the Indirect Purchaser Class concerning the proposed plan of allocation and distribution; (iii) notifies the Indirect Purchaser Plaintiffs' Lead Counsel will seek attorneys' fees not to exceed one-third of the Settlement Fund, reimbursement of expenses and incentive fees; (iv) gives notice to the Indirect Purchaser Class of the time and place of the Fairness Hearing; and (v) describes how the recipients of the Notice may submit a claim, exclude themselves from the Settlement or object to any of the relief requested.

Judge Marilyn L. Huff, *Beck-Ellman v. Kaz USA, Inc.*, (June 11, 2013) No. 3:10-cv-02134 (S. D. Cal.):

The Notice Plan has now been implemented in accordance with the Court's Preliminary Approval Order. The Publication Notice was designed to provide potential class members with information about the Settlement and their rights, in easy-to-comprehend language… The Notice Plan was specially developed to cause class members to see the Publication Notice or see an advertisement that directed them to the Settlement Website. KCC identified that the class members belong to a demographic group known as "Pain Relief Users." The Heating Pads are considered a Pain Relief product. The publications that KCC's Notice Plan used are publications and websites whose viewers and readers include a high percentage of Pain Relief product users…The Court concludes that the Class Notice fully satisfied the requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure and all due process requirements.

Judge Tom A. Lucas, *Stroud v. eMachines, Inc.*, (March 27, 2013) No. CJ-2003-968 L (D. Ct. Cleveland Cnty, Okla.):

The Notices met the requirements of Okla. Stat. tit. 12 section 2023(C), due process, and any other applicable law; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto. All objections are stricken. Alternatively, considered on their merits, all objections are overruled.

Judge Marilyn L. Huff, *Beck-Ellman v. Kaz USA, Inc.* (January 7, 2013) No. 3:10-cv-02134 (S. D. Cal.):

The proposed Class Notice, Publication Notice, and Settlement Website are reasonably calculated to inform potential Class members of the Settlement, and are the best practicable methods under the circumstances… Notice is written in easy and clear language, and provides all needed information, including: (I) basic information about the lawsuit; (2) a description of the benefits provided by the settlement; (3) an explanation of how Class members can obtain Settlement benefits; (4) an explanation of how Class members can exercise their rights to opt-out or object; (5) an explanation that any claims against Kaz that could have been litigated in this action will be released if the Class member does not opt out; (6) the names of Class Counsel and

information regarding attorneys' fees; (7) the fairness hearing date and procedure for appearing; and (8) the Settlement Website and a toll free number where additional information, including Spanish translations of all forms, can be obtained. After review of the proposed notice and Settlement Agreement, the Court concludes that the Publication Notice and Settlement Website are adequate and sufficient to inform the class members of their rights. Accordingly, the Court approves the form and manner of giving notice of the proposed settlement.

Judge Tom A. Lucas, *Stroud v. eMachines, Inc.*, (December 21, 2012) No. CJ-2003-968 L (D. Ct. Cleveland Cnty, Okla.):

The Plan of Notice in the Settlement Agreement as well as the content of the Claim Form, Class Notice, Post-Card Notice, and Summary Notice of Settlement is hereby approved in all respects. The Court finds that the Plan of Notice and the contents of the Class Notice, Post-Card Notice and Summary Notice of Settlement and the manner of their dissemination described in the Settlement Agreement is the best practicable notice under the circumstances and is reasonably calculated, under the circumstances, to apprise Putative Class Members of the pendency of this action, the terms of the Settlement Agreement, and their right to object to the Settlement Agreement or exclude themselves from the Certified Settlement Class and, therefore, the Plan of Notice, the Class Notice, Post-Card Notice and Summary Notice of Settlement are approved in all respects. The Court further finds that the Class Notice, Post-Card Notice and Summary Notice of Settlement are reasonable, that they constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and that they meet the requirements of due process.

Honorable Michael M. Anello, *Shames v. The Hertz Corporation*, (November 5, 2012) No. 3:07-cv-02174 (S.D. Cal.):

…the Court is satisfied that the parties and the class administrator made reasonable efforts to reach class members. Class members who did not receive individualized notice still had opportunity for notice by publication, email, or both…The Court is satisfied that the redundancies in the parties' class notice procedure—mailing, e-mailing, and publication—reasonably ensured the widest possible dissemination of the notice…The Court OVERRULES all objections to the class settlement…

Judge Ann D. Montgomery, *In Re: Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation*, (July 9, 2012) No. 11-MD-2247 (D. Minn.):

The objections filed by class members are overruled; The notice provided to the class was reasonably calculated under the circumstances to apprise class members of the pendency of this action, the terms of the Settlement Agreement, and their right to object, opt out, and appear at the final fairness hearing;…

Judge Ann D. Montgomery, *In Re: Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation*, (June 29, 2012) No. 11-MD-2247 (D. Minn.):

After the preliminary approval of the Settlement, the parties carried out the notice program, hiring an experienced consulting firm to design and implement the plan. The plan consisted of direct mail notices to known owners and warranty claimants of the RTI F1807 system, direct mail notices to potential holders of subrogation interests through insurance company mailings, notice publications in leading consumer magazines which target home and property owners, and earned media efforts through national press releases and the Settlement website. The plan was intended to, and did in fact, reach a minimum of 70% of potential class members, on average more than two notices each…The California Objectors also take umbrage with the notice provided the class. Specifically, they argue that the class notice fails to advise class members of the true nature of the aforementioned release. This argument does not float, given that the release is clearly set forth in the Settlement and the published notices satisfy the requirements of Rule 23(c)(2)(B) by providing information regarding: (1) the nature of the action class membership; (2) class claims, issues, and defenses; (3) the ability to enter an appearance through an attorney; (4) the procedure and ability to opt-out or object; (5) the process and instructions to make a claim; (6) the binding effect of the class judgment; and (7) the specifics of the final fairness hearing.

Honorable Michael M. Anello, *Shames v. The Hertz Corporation*, (May 22, 2012) No. 3:07-cv-02174 (S.D.

Cal.):

> *The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action, substantially in the forms of Exhibits A-1 through A-6, as appropriate, (individually or collectively, the "Notice"), and finds that the e-mailing or mailing and distribution of the Notice and publishing of the Notice substantially in the manner and form set forth in ¶ 7 of this Order meet the requirements of Federal Rule of Civil Procedure 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.*

Judge Anthony Powell, *Molina v. Intrust Bank, N.A.*, (May 21, 2012) No. 10-CV-3686 (18th J.D. Ct., Kan.):

> *The form, content, and method of dissemination of Class Notice given to the Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceeding to all persons entitled to such notice, and said notice fully satisfied the requirements of K.S.A. § 60-223 and due process.*

Judge Ronald L. Bauer, *Blue Cross of California Website Securities Litigation*, (April 5, 2012) No. JCCP 4647 (Super. Ct. Cal.):

> *The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Person entitled to such notice, and said notice satisfied the requirements of California Rules of Court, Rule 3,766(e) and (f), and due process.*

Judge Ann D. Montgomery, *In Re: Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation*, (January 18, 2012) No. 11-MD-2247 (D. Minn.):

> *Notice to Class members must clearly and concisely state the nature of the lawsuit and its claims and defenses, the Class certified, the Class member's right to appear through an attorney or opt out of the Class, the time and manner for opting out, and the binding effect of a class judgment on members of the Class. Fed. R. Civ. P. 23(c)(2)(B). Compliance with Rule 23's notice requirements also complies with Due Process requirements. 'The combination of reasonable notice, the opportunity to be heard, and the opportunity to withdraw from the class satisfy due process requirements of the Fifth Amendment.' Prudential, 148 F.3d at 306. The proposed notices in the present case meet those requirements.*

Judge Jeffrey Goering, *Molina v. Intrust Bank, N.A.*, (January 17, 2012) No. 10-CV-3686 (18th J.D. Ct. Ks.):

> *The Court approved the form and content of the Class Notice, and finds that transmission of the Notice as proposed by the Parties meets the requirements of due process and Kansas law, is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled thereto.*

Judge Charles E. Atwell, *Allen v. UMB Bank, N.A.*, (October 31, 2011) No. 1016-CV34791 (Cir. Ct. Mo.):

> *The form, content, and method of dissemination of Class Notice given to the Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 52.08 of the Missouri Rules of Civil Procedure and due process.*

Judge Charles E. Atwell, *Allen v. UMB Bank, N.A.*, (June 27, 2011) No. 1016-CV34791 (Cir. Ct. Mo.):

> *The Court approves the form and content of the Class Notice, and finds that transmission of the Notice as proposed by the Parties meets the requirements of due process and Missouri law, is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled thereto.*

Judge Jeremy Fogel, *Ko v. Natura Pet Products, Inc.*, (June 24, 2011) No. 5:09cv2619 (N.D. Cal.):

> *The Court approves, as to form and content, the Long Form Notice of Pendency and Settlement of Class Action ("Long Form Notice"), and the Summary Notice attached as Exhibits to the Settlement Agreement, and finds that the e-mailing of the Summary Notice, and posting on the dedicated internet website of the Long Form Notice, mailing of the Summary Notice post-card, and newspaper and magazine publication of the Summary Notice substantially in the manner as set forth in this Order meets the requirements of Rule 23 of the Federal Rules of Civil Procedure, and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled to notice.*

Judge M. Joseph Tiemann, *Billieson v. City of New Orleans*, (May 27, 2011) No. 94-19231 (Civ. D. Ct. La.):

> *The plan to disseminate notice for the Insurance Settlements (the "Insurance Settlements Notice Plan") which was designed at the request of Class Counsel by experienced Notice Professionals Gina Intrepido-Bowden and Carla A. Peak… IT IS ORDERED as follows: 1. The Insurance Settlements Notice Plan is hereby approved and shall be executed by the Notice Administrator; 2. The Insurance Settlements Notice Documents, substantially in the form included in the Insurance Settlements Notice Plan, are hereby approved.*

Judge James Robertson, *In re Department of Veterans Affairs (VA) Data Theft Litig.*, (February 11, 2009) MDL No. 1796 (D.C.):

> *The Court approves the proposed method of dissemination of notice set forth in the Notice Plan, Exhibit 1 to the Settlement Agreement. The Notice Plan meets the requirements of due process and is the best notice practicable under the circumstances. This method of Class Action Settlement notice dissemination is hereby approved by the Court.*

Judge Louis J. Farina, *Soders v. General Motors Corp*., (December 19, 2008) No. CI-00-04255 (C.P. Pa.):

> *The Court has considered the proposed forms of Notice to Class members of the settlement and the plan for disseminating Notice, and finds that the form and manner of notice proposed by the parties and approved herein meet the requirements of due process, are the best notice practicable under the circumstances, and constitute sufficient notice to all persons entitled to notice.*

Judge Robert W. Gettleman, *In Re Trans Union Corp.*, (September 17, 2008) MDL No. 1350 (N.D. Ill.):

> *The Court finds that the dissemination of the Class Notice under the terms and in the format provided for in its Preliminary Approval Order constitutes the best notice practicable under the circumstances, is due and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the Constitution of the United States, and any other applicable law…Accordingly, all objections are hereby OVERRULED.*

Judge William G. Young, *In re TJX Companies*, (September 2, 2008) MDL No. 1838 (D. Mass.):

> *The form, content, and method of dissemination of notice provided to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said Notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.*

Judge David De Alba, *Ford Explorer Cases*, (May 29, 2008) JCCP Nos. 4226 & 4270 (Cal. Super. Ct.):

> *[T]he Court is satisfied that the notice plan, design, implementation, costs, reach, were all reasonable, and has no reservations about the notice to those in this state and those in other states as well, including Texas, Connecticut, and Illinois; that the plan that was approved -- submitted and approved, comports with the fundamentals of due process as described in the case law that was offered by counsel.*

Judge Kirk D. Johnson, *Hunsucker v. American Standard Ins. Co. of Wisconsin*, (August 10, 2007) No. CV-2007-155-3 (Cir. Ct. Ark.):

> *Having admitted and reviewed the Affidavits of Carla Peak and Christine Danielson concerning the success of the notice campaign, including the fact that written notice reached approximately 86% of the potential Class Members, the Court finds that it is unnecessary to afford a new opportunity* to *request exclusion to individual class members who had an earlier opportunity to request exclusion but failed to do so…Specifically, the Court received and admitted affidavits from Carla Peak and Christine Danielson, setting forth the scope and results of the notice campaign. Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice and settlement website as disseminated to members of the Settlement Class in accordance with provisions of the Preliminarily Approval Order was the best notice practicable under the circumstances to all members of the Settlement Class.*

Presentations and Articles

- *"Rule 23: Recent Rule Revisions." Class Action Litigation in 2020: What You Need to Know*, NEW JERSEY BAR ASSOCIATION BAR ASSOCIATION, Carla Peak (February 2020).
- *"Marching to Their Own Drumbeat." What Lawyers Don't Understand About Notice and Claims Administration*, AMERICAN BAR ASSOCIATION 23rd Annual National Institute on Class Actions, Carla Peak (October 2019).
- *Class Action Notice and Settlement Administration*, Columbia Law School Complex Litigation Challenges and Strategies in Multijurisdictional and Aggregate Litigation (L9225), Carla Peak (March 2018).
- *"A Winning Hand or a Flop?" After 50 Years, Are Class Actions Still Legit?*, AMERICAN BAR ASSOCIATION 20th Annual National Institute on Class Actions, Carla Peak (October 2016).
- *Class Action Notice Requirements: Leveraging Traditional and Emerging Media to Reach Class Members*, STRAFFORD, Carla Peak (April 2016).
- *The Ethics of Class Action Settlements,* CHICAGO BAR ASSOCIATION, Class Litigation Committee, Carla Peak (June 2014).
- *Innovations in Notification*, CHICAGO BAR ASSOCIATION, Class Litigation Committee Spring Seminar, Carla Peak, presenter (May 2012).
- *Ethics in Legal Notification* accredited CLE Program (December 2012-November 2014).
- *Pitfalls of Class Action Notice and Settlement Administration* accredited CLE Program (March 2014).
- *The Fundamentals of Settlement Administration* accredited CLE Program (October 2012-August 2013).
- Carla Peak and Steven Weisbrot. *How to Design Your Notice to Minimize Professional Objectors*, Class Action Lawsuit Defense: Class Action Defense News, Developments and Commentary provided by BakerHostetler (www.classactionlawsuitdefense.com) (July 20, 2012).
- *Class Action Settlement Administration Tips & Pitfalls on the Path to Approval* accredited CLE Program (October 2012).
- *Legal Notice Ethics* accredited CLE Program (May 2010-January 2011).

- Carla Peak, *Is your legal notice designed to be noticed?* WESTLAW JOURNAL CLASS ACTION Vol.18 Issue 10 (2011).

- John B. Isbister, Todd B. Hilsee & Carla A. Peak, *Seven Steps to a Successful Class Action Settlement*, AMERICAN BAR ASSOCIATION, SECTION OF LITIGATION, CLASS ACTIONS TODAY 16 (2008).

Case Examples

Case	Court
In re Columbia/HCA Healthcare Corp. (Billing Practices Litig.)	M.D. Tenn., MDL No. 1227
Soders v. General Motors Corp. (Marketing Initiative)	C.P. Pa., No. CI-00-04255
Nature Guard Cement Roofing Shingles Cases	Cal. Super. Ct., J.C.C.P. No. 4215
Defrates v. Hollywood Entertainment Corp. (Extended Viewing Fees)	Cir. Ct. Ill., St. Clair. Co., No. 02L707
West v. G&H Seed Co. (Crawfish Farmers)	27th Jud. D. Ct. La., No. 99-C-4984-A
Baiz v. Mountain View Cemetery (Burial Practices)	Cal. Super. Ct., No. 809869-2
Richison v. American Cemwood Corp. (Roofing Durability)	Cal. Super. Ct., No. 005532
Friedman v. Microsoft Corp. (Antitrust)	Ariz. Super. Ct., No. CV 2000-000722
Davis v. Am. Home Prods. Corp. (Norplant Contraceptive)	Civ. D. Ct. La., Div. K, No. 94-11684
Gordon v. Microsoft Corp. (Antitrust)	D. Minn., No. 00-5994
Fisher v. Virginia Electric & Power Co.	E.D. Va., No 3:02-CV-431
Bardessono v. Ford Motor Co. (15 Passenger Vans Outreach)	Wash. Super. Ct., No. 32494
Gardner v. Stimson Lumber Co. (Forestex Siding)	Wash. Super. Ct., No. 00-2-17633-3SEA
Nichols v. SmithKline Beecham Corp. (Paxil)	E.D. Pa., No. 00-6222
In re Educ. Testing Serv. PLT 7-12 Test Scoring	E.D. La., 2:04md1643
In re Serzone Products Liability	S.D. W. Va., 02-md-1477
Ford Explorer Cases	Cal. Super. Ct., JCCP Nos. 4226 & 4270
In re Lupron Marketing & Sales Practices	D. Mass., MDL No.1430
Morris v. Liberty Mutual Fire Ins. Co.	D. Okla., NO. CJ-03-714
Thibodeaux v. Conoco Philips Co.	D. La., No. 2003-481
Morrow v. Conoco Inc.	D. La., No. 2002-3860
Tobacco Farmer Transition Program	U.S. Dept. of Agric.
Froeber v. Liberty Mutual Fire Ins. Co.	Cir. Ct. Ore., No. 00C15234
Carnegie v. Household Int'l, Inc.	N.D. Ill., No. 98-C-2178
In re Royal Ahold Securities and "ERISA"	D. Md., 1:03-md-01539
First State Orthopaedics et al. v. Concentra, Inc., et al.	E.D. Pa., No. 2:05-CV-04951-AB
Meckstroth v. Toyota Motor Sales, U.S.A., Inc.	24th Jud. D. Ct. La., No. 583-318
In re High Sulfur Content Gasoline Products Liability	E.D. La., MDL No. 1632
Desportes v. American General Assurance Co.	Ga. Super. Ct., No. SU-04-CV-3637

In re Residential Schools Litigation	Ont. Super. Ct., 00-CV-192059 CPA
Turner v. Murphy Oil USA, Inc.	E.D. La., No. 2:05-CV-04206-EEF-JCW
Carter v. North Central Life Ins. Co.	Ga. Super. Ct., No. SU-2006-CV-3764-6
Friedman v. Microsoft Corp. (Antitrust)	Ariz. Super. Ct., No. CV 2000-000722
Ciabattari v. Toyota Motor Sales, U.S.A., Inc.	N.D. Cal., No. C-05-04289-BZ
Peek v. Microsoft Corporation	Cir. Ct. Ark., No. CV-2006-2612
Reynolds v. The Hartford Financial Services Group, Inc.	D. Ore., No. CV-01-1529 BR
Zarebski v. Hartford Insurance Co. of the Midwest	Cir. Ct. Ark., No. CV-2006-409-3
In re Parmalat Securities	S.D.N.Y., 1:04-md-01653 (LAK)
Beasley v. The Reliable Life Insurance Co.	Cir. Ct. Ark., No. CV-2005-58-1
Sweeten v. American Empire Insurance Company	Cir. Ct. Ark., No. 2007-154-3
Gunderson v. F.A. Richard & Associates, Inc. (FARA)	14th Jud. D. Ct. La., No. 2004-2417-D
Gunderson v. F.A. Richard & Associates, Inc. (Focus)	14th Jud. D. Ct. La., No. 2004-2417-D
Hunsucker v. American Standard Ins. Co. of Wisconsin	Cir. Ct. Ark., No., CV-2007-155-3
Burgess v. Farmers Insurance Co., Inc.	D. Okla., No. CJ-2001-292
Grays Harbor v. Carrier Corporation	W.D. Wash., No. 05-05437-RBL
Donnelly v. United Technologies Corp.	Ont. S.C.J., 06-CV-320045CP
Wener v. United Technologies Corp.	QC. Super. Ct., 500-06-000425-088
Brookshire Bros. v. Chiquita (Antitrust)	S.D. Fla., No. 05-CIV-21962
Johnson v. Progressive	Cir. Ct. Ark., No. CV-2003-513
Bond v. American Family Insurance Co.	D. Ariz., CV06-01249-PXH-DGC
Angel v. U.S. Tire Recovery (Tire Fire)	Cir. Ct. W. Va., No. 06-C-855
In re TJX Companies Retail Security Breach	D. Mass., MDL No. 1838
Webb v. Liberty Mutual Insurance Co.	Cir. Ct. Ark., No. CV-2007-418-3
Shaffer v. Continental Casualty Co. (Long Term Care Insurance)	C.D. Cal., SACV06-2235-PSG (PJWx)
Palace v. DaimlerChrysler (Neon Head Gaskets)	Cir. Ct. Ill., Cook Co., No. 01-CH-13168
Beringer v. Certegy Check Services, Inc. (Data Breach)	M.D. Fla., No. 8:07-cv-1657-T-23TGW
Lockwood v. Certegy Check Services, Inc. (Data Breach)	M.D. Fla., No. 2:07-CV-587-FtM-29-DNF
Sherrill v. Progressive Northwestern Ins. Co.	18th D. Ct. Mont., No. DV-03-220
Gunderson v. F.A. Richard & Associates, Inc. (AIG)	14th Jud. D. Ct. La., No. 2004-2417-D
Jones v. Dominion Transmission, Inc.	S.D. W. Va., No. 2:06-cv-00671
Gunderson v. F.A. Richard & Associates, Inc. (Wal-Mart)	14th Jud. D. Ct. La., No. 2004-2417-D
In re Trans Union Corp. Privacy (Data Breach)	N.D. Ill., MDL No. 1350
Gunderson v. F.A. Richard & Associates., Inc. (Amerisafe)	14th Jud. D. Ct. La., No. 2004-002417
Bibb v. Monsanto Co. (Nitro)	Cir. Ct. W.Va., No. 041465

Carter v. Monsanto Co. (Nitro)	Cir. Ct. W.Va., No. 00-C-300
In re U.S. Department of Veterans Affairs (VA) Data Breach	D. D.C., MDL 1796
In re Countrywide Financial Corp. Customer Data Security Breach	W.D. Ky., MDL No. 3:08-md-1998
Dolen v. ABN AMRO Bank N.V. (Callable CDs)	Ill. Cir. Ct., Nos. 01-L-454 & 01-L-493
Griffin v. Dell Canada Inc.	Ont. Super. Ct., No. 07-CV-325223D2
Plubell v. Merck & Co., Inc.	Cir. Ct. Mo., No. 04CV235817-01
Billieson v. City of New Orleans	D. Ct. La., No. 94-19231
Anderson v. Government of Canada	Sup. Ct. NL, No. 2008NLTD166
Ko v. Natura Pet Products, Inc.	N.D. Cal., No. 5:09cv02619
Allen v. UMB Bank, N.A.	Cir. Ct. Mo., No. 1016-CV34791
Blue Cross of California Website Security Cases	Sup. Ct. Cal., No. JCCP 4647
Alvarez v. Haseko Homes, Inc.	Cir. Ct. HI., No. 09-1-2691-11
LaRocque v. TRS Recovery Services, Inc.	D. Maine, No. 2:11cv00091
In re: Zurn Pex Plumbing Products Liability Litig.	D. Minn., MDL No. 08-1958
Molina v. Intrust Bank, N.A.	18th Jud. D. Ct., 10-cv-3686
In Re: Uponor, Inc., F1807 Products Liability Litigation	D. Minn., MDL No. 2247
Shames v. The Hertz Corporation	S.D. Cal., No. 07cv2174-MMA
Stroud v. eMachines, Inc.	D. Ct. Cleveland Cnty, Okla., No. CJ-2003-968-L
Holman v. Experian Information Solutions, Inc.	N.D. Cal., No. 4:11cv00180
Beck-Ellman v. Kaz USA Inc.	S.D. Cal., No. 10-cv-2134
Lee v. Stonebridge Life Insurance Company	N.D. Cal., No. 3:11-cv-00043
Steinfeld v. Discover Financial Services	N.D. Cal., No. 3:12-cv-01118
Cappalli v. BJ's Wholesale Club, Inc.	D. R.I., No. 1:10-cv-00407
Poertner v. The Gillette Co. and The Procter & Gamble Co.	M.D. Fla., No. 6:12-cv-00803
In re Hypodermic Products Antitrust Litigation	D. N.J., No. 2:05-cv-01602
McCrary v. The Elations Company, LLC (Certification Notice)	C.D. Cal., No. 13-cv-00242
Lerma v. Schiff Nutrition International, Inc.	S.D. Cal., No. 3:11-cv-01056
Charles v. Haseko Homes, Inc.	Cir. Ct. HI., No. 09-1-2697-11
Kai v. Haseko Homes, Inc.	Cir. Ct. HI., No. 09-1-2834-12
Roberts v. Electrolux Home Products, Inc.	C.D. Cal., No. 8:12-cv-01644
Demereckis v. BSH Home Appliances Corp. (Certification Notice)	C.D. Cal., No. 8:10-cv-00711
In re Skelaxin (Metaxalone) Antitrust Litigation	E.D. Ten., MDL 2343, No. 1:12-cv-194
Demmick v. Cellco Partnership d/b/a Verizon Wireless	D. Ct. N.J., No. 06-cv-2163
Cobb v. BSH Home Appliances Corporation	C.D. Cal., No. 8:10-cv-00711
Fond du Lac Bumper Exchange Inc. v. Jui Li Enterprise Co. Ltd. (Direct & Indirect Purchasers Classes)	E.D. Wis., No. 2:09-cv-00852

Thomas v. Lennox Industries Inc.	N.D. Ill., No. 1:13-cv-07747
In re Sears, Roebuck and Co. Front-Loading Washer Products Liability Litigation	N.D. Ill., No. 1:06-cv-07023
Chambers v. Whirlpool Corporation	C.D. Cal., No. 8:11-cv-01733
The Dial Corp. v. News Corp.	S.D.N.Y., No. 1:13-cv-06802
Cole v. Asurion Corporation	C.D. Cal., 2:06-cv-6649
Stender v. Archstone-Smith Operating Trust	D. Colo., 1:07-cv-02503
Campos v. Calumet Transload Railroad, LLC	N.D. Ill., 1:13-cv-08376
In re: The Home Depot, Inc., Customer Data Security Breach Litig.	N.D. Ga., 1:14-md-02583
Russell v. Kohl's Department Stores, Inc.	C.D. Cal., No 5:15-cv-01143
Barba v. Shire U.S., Inc.	S.D. Fla., No. 1:13-cv-21158
Giuliano v. SanDisk Corporation	N.D. Cal., No. 4:10-cv-2787
Anderson v. The Attorney General of Canada	Sup. Ct. NL, No. 2007 01T4955CP
Kearney v. Equilon Enterprises LLC	D. Ore., No. 3:14-cv-00254
Jammal v. American Family Ins. Grp.	N.D. Ohio, No. 1:13-cv-00437
Q+ Food, LLC v. Mitsubishi Fuso Truck of America, Inc.	D. N.J., No 3:14-cv-06046
In Re: Rust-Oleum Restore Marketing , Sales Practices and Products Liability Litigation	N.D. Ill., No. 1:15-cv01364
Johnson v. Yahoo! Inc.	N.D. Ill., No. 1:14-cv02028
Wells v. Abbott Laboratories, Inc.	Sup. Ct. Cal., No. BC389753
Rafofsky v. Nissan North America, Inc.	C.D. Cal., No. 2:15-cv-01848
In re Yapstone Data Breach	N.D. Cal., No. 4:15-cv-04429
Lavinsky v. City of Los Angeles	Sup. Ct. Cal., No. BC542245
Mullins v. Direct Digital LLC.	N.D. Ill., No. 1:13-cv-01829
In re: Solodyn (Minocycline Hydrochloride) Antitrust Litigation (Direct Purchaser Class)	D. Mass., No. 1:14-md-2503
Flaum v. Doctor's Associates, Inc. (d/b/a Subway)	S.D. Fla., No. 16-cv-61198
Eck v. City of Los Angeles	Sup. Ct. Cal., No. BC577028
Brill v. Bank of America, N.A.	D. Ariz., No. 2:16-cv-03817
In re Lidoderm Antitrust Litigation (Indirect Purchaser Class)	N.D. Cal., 3:14-md-02521
Luster v. Wells Fargo Dealer Services, Inc.	N.D. Ga., 1:15-cv-01058
Prather v. Wells Fargo Bank, N.A.	N.D. Ga., 1:15-cv-04231
Technology Training Associates v. Buccaneers Limited Partnership	M.D. Fla., 8:16-cv-01622
In re Asacol Antitrust Litigation (Direct Purchaser)	D. Mass., No. 1:15-cv-12730
In re Anthem, Inc. Data Breach Litigation	N.D. Cal., No. 15-md-02617
Nishimura v Gentry Homes, LTD.	Cir. Ct. Hawai'i, 11-11-1-1522-07-RAN
In re Monitronics International, Inc., TCPA Litigation	N.D. W.Va., No. 5:11-cv-00090
Truong v. Peak Campus Management, LLC	Sup. Ct. Ill., No. 2016 CH 9735

Rikos v. The Procter & Gamble Co. (Align Probiotics)	S.D. Ohio, No. 11-cv-00226
Abante Rooter and Plumbing, Inc. v. Alarm.com Inc. (Certification)	N.D. Cal., No. 4:15-cv-06314
In Re: Asacol Antitrust Litig. (Direct)	D. Mass., No. 1:15-cv-12730
In Re: Asacol Antitrust Litig. (Indirect-Certification)	D. Mass., No. 1:15-cv-12730
Houze v. Brasscraft Manufacturing Co. (EZ-FLO)	Sup. Ct. Ca., No. BC493276
Brown v. The Attorney General of Canada and *Riddle v. Her Majesty the Queen (Sixties Scoop)*	O.S.C.J., No. cv-09-00372025
Barrow v. JPMorgan Chase Bank, N.A.	N.D. Ga., No. 1:16-cv-03577
Dodge v. PHH Corporation	C.D. Ca., No. 8:15-cv-01973
Eubank v. Pella Corporation	N.D. Ill., No. 1:06-cv-04481
Ross v. Her Majesty the Queen; Ross v. Attorney General of Canada; Roy v. Attorney General of Canada and *Satalic v. Attorney General of Canada (LGBT Purge)*	F.C., No. T-370-17; O.S.C.J., No. CV-16-5653275; Q.C.S.C., No. 500-06-000819-165; and F.C., No. T-2110-16
In re Arby's Restaurant Group, Inc. Data Security Litigation	N.D. Ga., No. 1:17-cv-1035
In re Experian Data Breach Litigation	C.D. Cal., No. 15-cv-1592
Holt v. Foodstate, Inc.	D. N.H., No. 1:17-cv-00637
In re IKO Roofing Shingles Products Liability Litigation	C.D. Ill., No. 2:09-md-02104
Woodward v. Lee Labrada (weight-loss supplement)	C.D. Cal. No. 5:16-cv-00189
In re Samsung Top-Load Washing Machine Marketing, Sales Practices and Product Liability Litigation	W.D. Okla., No. 5:17-ml-02792
In re Trader Joe's Tuna Litigation	C.D. Cal., No. 2:16-cv-01371
Hickcox-Huffman v. US Airways, Inc.	N.D. Cal, No. 5:10-cv-05193
Abante Rooter and Plumbing, Inc. v. Alarm.com Inc. (Settlement)	N.D. Cal., No. 4:15-cv-06314
Smith v. Complyright, Inc.	N.D. Ill., No. 1:18-cv-4990
Schneider v. Chipotle Mexican Grill, Inc.	N.D. Cal., No. 3:16-cv-02200
Holt v. Foodstate, Inc.	D. N.H., No. 1:17-cv-00637
Lecenat v. Douglas Perlitz	D. Conn., No. 3:13-cv-01132
Elkies v. Johnson & Johnson Services, Inc.	C.D. Cal., No. 2:17-cv-07320
In re Morning Song Bird Food Litigation	S.D. Cal., No. 3:12-cv-01592
In re Nexus 6P Products Liability Litigation	N.D. Cal., No 5:17-cv-02185
Worth v. CVS Pharmacy, Inc.	E.D.N.Y., No. 2:16-cv-0200498
Abante Rooter and Plumbing, Inc. v. OH Insurance Agencylarm.com Inc. (Settlement)	N.D. Ill., No. 1:15-cv-09025
Soukhaphonh v. Hot Topic, Inc.	C.D. Cal., No. 2:16-cv-05124
Weeks v. Google LLC	N.D. Cal., No. 5:18-cv-00801
In re: Sonic Corp. Customer Data Breach Litigation	N.D. Ohio, No. 1:17-md-02807
Brickman v. Fitbit, Inc.	N.D. Cal., No. 3:15-cv-02077
Cicciarella v. Califia Farms, LLC	S.D.N.Y, No. 7:19-cv-08785
Gann v. Nissan North America, Inc.	M.D. Tenn., No. 3:18-cv-00966

Weckworth v. Nissan North America, Inc.	M.D. Tenn., No. 3:18-cv-00588
Norman v. Nissan North America, Inc.	M.D. Tenn., No. 3:18-cv-00534
Suchanek v. Sturm Foods, Inc.	S.D. Ill., No. 3:11-cv-00565

Exhibit 2

LEGAL NOTICE

If you were a session musician or background vocalist on a covered sound recording that was performed digitally on non-interactive webcasting, satellite radio, or digital cable prior to December 31, 2016, and have not received all royalty payments to which you may be entitled from the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund, you could receive a payment from a class action Settlement.

A proposed Settlement has been reached in a class action lawsuit concerning undistributed royalties currently held by the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund (or the "Fund") which are owed to session musicians and background vocalists ("Nonfeatured Performers") on certain sound recordings that were performed on non-interactive webcasting, satellite radio, and/or digital cable.

Who Is Included? You are included in the Settlement Class as a "Settlement Class Member" if you were a Nonfeatured Performer (i.e., a session musician or background vocalist) on a recording that received sufficient play on one or more of the digital mediums at issue (non-interactive webcasting, satellite radio, or digital cable) to be considered a "Covered Recording" prior to December 31, 2016, and you have not already received from the Fund the royalties that are due to you for such performances.

What Does the Settlement Provide? Defendants have agreed to undertake extensive efforts to locate and pay Settlement Class Members who are entitled to receive royalties from 2011 through 2016. As of November 30, 2019, approximately 61,298 Settlement Class Members were owed royalties totaling approximately $45,848,799.99 (the "Settlement Amount").

After deducting Settlement and administration costs, attorneys' fees and costs up to $____, and $1,500 Service Award payments to the Settlement Class Representatives, the Settlement Fund will be used to make payments to Settlement Class Members located by the Fund or who have submitted a Participation Information Form.

The Fund will also follow the agreed-upon steps in distributing the royalties received from 2017 to 2019 and hire business and marketing consultants to help it better and/or more efficiently identify and pay Non-Featured Performers the royalties owed to them received in 2020 and afterwards.

How Much Will My Payment Be? Your share of the Settlement Amount will depend on the amount of unpaid royalties that are owed to you (this is a function of the number of digital performances of the recording and the number of session musicians and background vocalists that performed on the recording). The amount could range from $10 to thousands of dollars.

How Do I Get My Payment? To ensure you receive any royalties owed to you, you should complete and submit a Participation Information Form. Participation Information Forms are available at www._____.com or by calling 1-___-___-____.

What Are My Other Rights? If you are a Settlement Class Member, you can (1) object to the Settlement by **Month __, 2020**; (2) hire your own lawyer at your own cost if you want someone other than Settlement Class Counsel to represent you; and (3) you or your attorney may attend the Court's Final Approval Hearing.

Final Approval Hearing. The Court will hold a hearing in this case (*Blondell v. Bouton*, No. 1:17cv-00372-RRM-RML) on _____ at [location] to determine whether the Settlement is fair, reasonable, and adequate and should be approved.

Want More Information? Go to www._____.com, call 1-___-___-____, email _____ or write to Eric Zukoski & Roger Mandel, Settlement Class Counsel, c/o *Blondell v. Bouton* Settlement Administrator, PO Box _____, City, ST _____-____.

Exhibit 3


If you were a session musician or background vocalist on a covered sound recording and have not received royalty payments from the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund, you could receive a payment from a class action Settlement.
Learn More
www.example.com

Settlement News @SettlementNews · 4s

If you were a session musician or background vocalist on a covered sound recording and have not received royalty payments from the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund, you could receive a payment from a class action Settlement. Learn More.

Digital Session Royalty Settlement

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If you were a session musician or background vocalist on a covered sound recording and have not received royalty ...See More

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Digital Session Royalty Settlement

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Exhibit 4

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

If you were a session musician or background vocalist on a covered sound recording that was performed digitally on non-interactive webcasting, satellite radio, or digital cable prior to December 31, 2016 and have not received all royalty payments to which you may be entitled from the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund, you could receive a payment from a class action Settlement.

A federal court has authorized this notice. This is not a solicitation from a lawyer.
Please read this notice carefully and completely.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

- A proposed Settlement has been reached in a class action lawsuit concerning undistributed royalties currently held by the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund (or the "Fund") which are owed to session musicians and background vocalists ("Non-Featured Performers") on certain sound recordings that were performed on non-interactive webcasting, satellite radio, and/or digital cable.
- If any such undistributed royalties are owed to you, then your legal rights will be affected whether you act or do not act. Therefore, you should read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Identify Yourself to the Fund	Complete and return a Participant Information Form to make sure you receive any royalties owed to you. The Form is available at www.____.
Do Nothing	If you do nothing and the Court approves the settlement, you will not receive any royalties owed to you unless the Fund has identified you. To ensure you receive any royalties owed to you, complete and return a Participant Information Form available at www.____.
Object to the Settlement	You may object to the settlement if you do not think it is fair and reasonable. To do so, you must send your written, signed objection to the Court, Class Counsel and Defendants' Counsel by [date]. For your objection to be considered by the Court, it must satisfy the requirements explained further below. If your objection meets these requirements and you indicate in the objection that you intend to do so, you or your attorney may present to the Court your objection to the settlement at the hearing at which the Court will decide if the settlement is fair and reasonable set for [date] at [location].

BASIC INFORMATION

1. Why did I get this notice?

A federal court authorized the mailing of this notice to inform you about the proposed Settlement and your rights and options prior to the time when the Court decides whether to grant final approval of the Settlement. This notice explains the lawsuit, the Settlement, your legal rights, the benefits that are available, who is eligible for those benefits, and how to acquire them.

The case is known as *Blondell, et al. v. Bouton, et al.*, Case No. 1:17cv-00372-RRM-RML (the "Action"). The Hon. Roslynn R. Mauskopf of the United States District Court for the Eastern

District of New York is overseeing this class action. The persons who filed this lawsuit, Jon Blondell, Paul Harrington, Timothy Johnson, Stephanie Lowe f/k/a Stephanie Marie, Chastity Marie, and Clayton Pritchard, are called the "Plaintiffs" and the persons they sued, Bruce Bouton, Duncan Crabtree-Ireland, Augustino Gagliardi, Raymond M. Hair, Jr., Jon Joyce, and Stefanie Taub, are called the "Defendants."

2. What is this lawsuit about?

The Plaintiffs claim that the Defendants, who are current and/or former Trustees of the Fund, breached their duties as Trustees by failing to properly identify and pay royalties out of the Fund to a number of Non-Featured Performers, which royalties the Defendants collected for the Non-Featured Performers' benefit and are legally obligated to pay over to them. The Defendants deny this claim and the other claims made in the Action. By entering into the Settlement, the Defendants are not admitting that they did anything wrong.

3. Why is this a class action?

In a class action, one or more people, called the Settlement Class Representative(s), sue on behalf of all people who have similar claims. Together, all of these people are called a Settlement Class or Settlement Class Members. One court resolves all of the issues for all Settlement Class Members. If this notice is addressed to you, then you are a Settlement Class Member.

4. Why is there a Settlement?

The Plaintiffs (also referred to as the Settlement Class Representatives) and the Defendants do not agree about the claims made in this Action. The Action has not gone to trial, and the Court has not decided in favor of either the Settlement Class Representatives or the Defendants. Instead, the Settlement Class Representatives and the Defendants have agreed to settle the Action. The Settlement Class Representatives and their lawyers believe the Settlement is in the best interest of all Settlement Class Members because of the significant benefits it provides, the risk the Settlement Class would receive nothing by continuing this litigation, and the many years it might take to recover benefits for the Settlement Class if they successfully litigated this Action to the end.. The Defendants deny that they did anything wrong and believe that their defenses to the claims would succeed, but Defendants nevertheless have agreed to settle this Action to avoid the burden, expense, risk, and uncertainty of continuing the litigation.

WHO IS INCLUDED IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

You are included in the Settlement Class as a "Settlement Class Member" if you were a Nonfeatured Performer (i.e., a session musician or background vocalist) on a recording that received sufficient play on one or more of the digital mediums at issue (non-interactive webcasting, satellite radio, or digital cable) to be considered a "Covered Recording" prior to December 31,

2016, and you have not already received from the Fund the royalties that are due to you for such performances.

6. What does the Settlement provide?

As part of the Settlement, the Defendants have agreed to undertake extensive efforts to locate and pay Settlement Class Members who are entitled to receive royalties obtained by the Fund from 2011 through 2016. As of November 30, 2019, approximately 61,298 Settlement Class Members were owed royalties totaling approximately $45,848,799.99 (the "Settlement Amount").

After deducting Settlement notice and administration costs, attorneys' fees and costs, and Service Award payments to the Settlement Class Representatives, the Settlement Amount will be used to make payments to Settlement Class Members located by the Fund or who have submitted a Participation Information Form.

If, after making the payment described above, money remains in the Settlement Amount by [date], the balance of the Settlement Amount will be distributed on a pro rata basis (proportionately) to those Settlement Class Members who previously received payment until nothing remains in the Settlement Amount.

In addition, the Fund will follow the agreed-upon steps in distributing the royalties received in 2017, 2018 and 2019. The Fund will also hire a business consultant and marketing consultant and adopt plans in consultation with these consultants to better and/or more efficiently identify and pay Non-Featured Performers the royalties owed to them received by the Fund in 2020 and afterwards. The Fund will certify its implementation of the business and marketing plans to the Court and provide it with executive summaries of the plans.

THE SETTLEMENT BENEFITS

7. What can I obtain from the Settlement?

Your share of the Settlement Amount will depend on, among other things: (1) the amount of unpaid royalties that are owed to you (this is a function of the number of digital performances of the recording and the number of session musicians and background vocalists that performed on the recording); and (2) the amounts deducted from the Settlement Amount for: (a) settlement administration costs, including the costs of notice; (b) the amount awarded by the Court for attorneys' fees and costs, and (c) the amount awarded by the Court for Service Awards to the Settlement Class Representatives. The amount could range from $10 to thousands of dollars.

8. How and when will I receive a Settlement payment?

If the Settlement is approved and becomes effective and money is owed to you, and if you identify yourself to the Fund or the Fund identifies you on or before March 1, 2021, you will receive royalties at the latest as part of the Fund's annual distribution at the end of April 2021. If you come forward between March 2, 2021, and March 1, 2022, you will receive royalties at the latest as part of the Fund's annual distribution at the end of April 2022. On or before April 30, 2022, any portion of the Settlement Amount that the Fund is unable to pay out to identified performers will be distributed pro rata by Source Year (the year the royalties were received by the

Fund) to the Settlement Class Members to whom it previously successfully paid royalties for that Source Year and for whom the Fund still has contact and payment information sufficient to make such payment. To make sure you receive any royalties to which you are entitled, please fill out the Participant Information Form available at www.____and submit it to the Fund as instructed on the Form.

9. Am I required to do anything at this time?

If you want to ensure you receive any royalties owed to you, you should complete and submit a Participation Information Form. If do not do anything or if you submit a Participation Information Form and the Settlement is approved and becomes effective, all of the Court's orders will apply to you and legally bind you. You won't be able to sue, continue to sue, or be part of any other lawsuit against Defendants and the Released Parties about the legal issues released by the Settlement. The specific rights that will be resolved are called Released Claims (*see* Question 11).

10. Who are the Released Parties?

The Released Parties are: the Plaintiffs; and the Defendants; and each of their respective agents, employees, representatives, attorneys, officers, directors, shareholders, managers, insurers, subsidiaries and/or affiliates, and their successors and assigns.

11. What are the Released Claims?

The Released Claims are any and all claims, defenses, demands, causes of action, controversies, liabilities, obligations, and damages of any kind raised in the Action, excluding only claims arising from breach of the Settlement 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.* Further detail and information is included in the Settlement Agreement, which is available at www._____.com.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

Yes. The Court has appointed Eric Zukoski of the law firm Quilling, Selander, Lownds, Winslett and Moser, P.C., and Roger L. Mandel of Jeeves Mandel Law Group, P.C. as Settlement Class Counsel to represent Settlement Class Members for the purposes of this Settlement. You may hire your own lawyer at your own cost and expense if you want someone other than Settlement Class Counsel to represent you.

13. How will the lawyers be paid?

Settlement Class Counsel will file a motion asking the Court to award them attorneys' fees and for reimbursement of costs to be determined by the Court on or before December 31, 2021. The amounts of attorneys' fees awarded and costs to reimbursed will be deducted from the Settlement Amount. The maximum amount of attorneys' fees that Settlement Class Counsel will ask the Court to award them is $[amount]. The maximum amount of costs Settlement Class Counsel will ask the Court to award them is $[amount].

THE SETTLEMENT CLASS REPRESENTATIVES

14. How will the Settlement Class Representatives be paid?

Settlement Class Counsel will file a motion asking the Court to approve a $1,500 Service Award to each of the Settlement Class Representatives. Any amounts awarded by the Court will be deducted from the Settlement Amount. Defendants do not oppose such awards.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I do not like the Settlement, the request for an award of attorneys' fees and costs to Settlement Class Counsel, and/or the request for Service Awards to the Settlement Class Representatives?

If you are a Settlement Class Member, you can tell the Court that you do not agree with all or any part of the Settlement, the request for an award of attorneys' fees and costs and/or the request for Service Awards to the Settlement Class Representatives. To state a valid objection to the Settlement, you must provide the following information in the written objection: (i) your full name, address, telephone number, and e-mail address (if available); (ii) a statement of the basis for the objection, including all factual and legal grounds for it; (iii) copies of any documents you wish to submit in support; (iv) the name, address, and telephone number of your separate counsel in this matter, if any; and (v) your dated signature. In addition, the objection must list any other objections submitted by you, or your 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 you intend to appear, in person or by counsel, at the Fairness Hearing, you 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. You must mail copies of the objection to **ALL** the addresses listed below, postmarked on or before ___ _____:

Clerk of the Court United States District Court Eastern District of New York 225 Cadman Plaza E, Brooklyn, NY 11201	Eric Zukoski, and Roger L. Mandel, c/o *Blondell et al. v. Bouton et al.* Settlement Administrator: [SETTLEMENT ADMINISTRATOR NAME AND ADDRESS]	Andrew H. Bart Jenner & Block LLP 919 Third Avenue New York, NY 10022

THE COURT'S FINAL APPROVAL HEARING

16. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on _____ before The Honorable Robert M. Levy, United States Magistrate Judge for the Eastern District of New York, United States Courthouse, 225 Cadman Plaza E, Courtroom _____, Brooklyn, NY 11201. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and whether to approve the Settlement. If there are objections, the Court will consider them, and the Court will listen to people who have asked to speak at the hearing. The Court also may decide how much to award Settlement Class Counsel for attorneys' fees and costs and whether to make Service Awards to the Settlement Class Representatives.

17. Do I have to come to the Final Approval Hearing?

No. Settlement Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. Provided you mail your written objection on time, the Court will consider it.

18. May I speak at the Final Approval Hearing?

Yes. If you wish to, you may attend and speak at the Final Approval Hearing. If you intend to object, then you must indicate your intention to speak at the Final Approval Hearing in your written objection (*see* Question 15). Your objection must state that it is your intention to appear at the Final Approval Hearing, and you must identify any witnesses you may call to testify or exhibits you intend to introduce into evidence at the Final Approval Hearing. If you plan to have your attorney speak for you at the Final Approval Hearing, your objection must also include your attorney's name, address, and phone number.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing, and if you are a Settlement Class member, and if you have identified yourself to the Fund or the Fund has identified you, you will receive a payment out of the Settlement Amount. You also will give up your right to object to the Settlement, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants and the Released Parties about the legal issues in this Action released by the Settlement.). Again, to make sure you receive any royalties to which you are entitled, please fill out the Participant Information Form available at www.____and submit it to the Fund as instructed on the Form.

GETTING MORE INFORMATION

For more information, call _____ or visit www._____.com

20. How do I get more information?

This notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at www._____.com, by calling _____, or by writing to the Settlement Administrator at the address below. Publicly filed documents also can be obtained by visiting the office of the Clerk of the United States District Court for the Eastern District of New York, or by reviewing the Court's online docket.

If you have questions, you may contact Settlement Class Counsel by U.S. Mail or email at:
Eric Zukoski & Roger Mandel,
c/o *Blondell et al. v. Bouton et al.* Settlement Administrator
[Administrator name, address, and email]
Please do not contact the Court regarding this notice. The Court cannot answer any questions.

IN THE 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

CERTIFICATE OF SERVICE AND CONFERENCE

I certify that on March 20, 2020 the following documents were served electronically via ECF and e-mail on counsel for Defendants, Devi Rao, Esq. and Andrew Bart., Esq., of Jenner & Block LLP:

1. Plaintiffs' Notice of Unopposed Motion to Give Notice of Proposed Class Action Settlement;

2. Memorandum of Law in Support of Plaintiffs' Notice of Unopposed Motion to Give Notice of Proposed Class Action Settlement;

3. Declaration of Eric Zukoski in Support of Motion to Give Notice of Proposed Class Action Settlement;

4. Declaration of Roger L. Mandel in Support of Motion to Give Notice of Proposed Class Action Settlement; and

5. Declaration of Carla Peak.

I certify that counsel for Plaintiffs discussed the relief requested in Plaintiffs' Unopposed Motion to Give Notice of Proposed Class Action Settlement with counsel for Defendants and the relief requested is unopposed.

Respectfully submitted,

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