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Plaintiffs respectfully submit this motion—pursuant to the Stipulation and Agreement of Settlement [ECF No. 43, Ex. 1] (“Settlement”)¹ between the parties herein—for a **second** distribution of the monies remaining in (a) the Sound Recording Net Settlement Fund (totaling approximately \$28,206.20); and (b) the Musical Composition Net Settlement Fund (totaling approximately \$35,031.68). Enclosed herewith as Exhibit 1 is a [Proposed] Order for a Second Distribution of the Net Settlement Funds.

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

I. BACKGROUND

1. On January 9, 2012, the Court granted final approval of the Settlement of this putative class action. ECF No. 57. Pursuant to the terms of the Settlement, Sirius paid \$2,224,133 for the benefit of the Settlement Classes and agreed to other relief, including discontinuing certain functions of its Recording Devices. ECF No. 43, Ex. 1.

2. On May 13, 2015, this Court ordered an initial distribution of the Sound Recording Net Settlement Fund and Musical Composition Net Settlement Fund and the creation of reserve funds in the amount of \$25,000 for each fund. ECF No. 64, ¶3. The initial distribution sought to provide members of the Classes who submitted the 1,943 proofs of claims determined by the Settlement Administrator (*i.e.*, The Garden City Group) to be eligible to share in the Net Settlement Funds with their respective shares of the Settlement proceeds.

3. On or about July 22, 2015, Garden City commenced a distribution of the Net

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

² On August 5, 2008, Sirius Satellite Radio Inc. changed its name to Sirius XM Radio Inc.

Settlement Funds pursuant to the Court's May 13, 2015 Order for Distribution of The Net Settlement Funds referenced in ¶2 above. *See* Declaration of Jennifer M. Veitengruber dated May 12, 2016 ("Veitengruber Declaration") at ¶4 submitted herewith. As part of this process, Garden City issued checks to approximately 1,943 eligible Class members. *Id.* These checks included a statement to the effect that they would be void if not cashed within ninety (90) days. *Id.*

4. Despite Garden City's best efforts, 303 of the checks issued as part of the initial distribution remain un-cashed or were returned undeliverable with no forwarding address found. *Id.* ¶11. The total amount of these un-cashed and undeliverable checks is approximately \$13,284. *Id.*

5. The current balance of the Sound Recoding Net Settlement Fund, including the previously established reserve fund of \$25,000, is approximately \$28,206.20. *Id.*, ¶16. The current balance of the Musical Composition Net Settlement Fund, including the previously established reserve fund of \$25,000, is approximately \$35,031.68. *Id.*

II. THE PROPOSED SECOND DISTRIBUTION

6. Plaintiffs respectfully request that the remaining monies in the Net Settlement Funds (less the requested administrative payments discussed in ¶8 below) be distributed to eligible Class members (a) who cashed their check as part of the initial distribution and (b) whose *pro rata* share(s) of the remaining Sound Recording Settlement Fund and/or Musical Composition Net Settlement Fund is greater than or equal to \$25. *See* [Proposed] Order for Second Distribution of Net Settlement Fund ("Proposed Order") at ¶1 submitted herewith. The foregoing proposed distribution would result in checks being issued to approximately 298 eligible Class members. Veitengruber Declaration, ¶17.

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

8. Garden City respectfully requests payment of its professional fees and expenses in the amount of up to \$7,854.97, which it estimates it will require in order to complete a second distribution to eligible Class members and to finalize the administration of the Settlement. Veitengruber Declaration, ¶18; Proposed Order, ¶3.

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

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

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

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

CONCLUSION

Plaintiffs respectfully request that the Court grant their motion for a second distribution and enter the [Proposed] Order for a Second Distribution of the Net Settlement Funds attached as Exhibit 1 hereto.

Dated: New York, New York
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Respectfully submitted,
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