

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NOTA MUSIC PUBLISHING, INC., *et al.* :
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 Plaintiffs, :
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 :
 -against- : 07 CV 6307 (AKH)
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 :
 SIRIUS SATELLITE RADIO INC., :
 :
 :
 Defendant. :
-----X

**STIPULATION GOVERNING REIMBURSEMENT OF EXPENSES AND
COMPENSATION OF SERVICES FOR MERLIN**

WHEREAS, a class action, captioned *Nota Music Publishing, Inc., et al v. Sirius Satellite Radio Inc.*, 07 Civ. 6307 (AKH) (the “Action”), has been pending in the United States District Court for the Southern District of New York (the “Court”) since July 10, 2007 alleging that Defendant Sirius Satellite Radio, Inc. (“Sirius”), from on or around November 1, 2005 forward, caused to be manufactured and caused to be sold numerous Sirius Recording Devices;

WHEREAS, this stipulation incorporates by reference the definitions in the Settlement Agreement and all terms used herein shall have the same meaning as set forth in the Settlement Agreement;

WHEREAS, the Plaintiffs in this Action contend that Sirius has violated rights under federal and New York State law of the Plaintiffs and the members of a proposed Sound Recording Settlement Class and a proposed Musical Composition Settlement Class;

WHEREAS, Sirius XM Radio Inc., has been incurring losses, and has made public disclosures that certain events might have caused it to have to seek bankruptcy protection;

WHEREAS, Plaintiffs then engaged in extensive negotiations to settle the claims against Sirius of the Plaintiffs and the Settlement Classes;

WHEREAS, Music and Entertainment Rights Licensing Independent Network B.V. (“Merlin”) is a non-profit organization which, among other things, represents the interests of independent music companies who own and/or control the rights of sound recordings;

WHEREAS, Merlin has represented to Plaintiffs and Sirius that (a) Merlin has the authority to act on behalf of numerous independent music companies, which are either (i) direct members (“Members”) or (ii) indirect licensors, *i.e.*, non-members for which Merlin represents it has or will have the right to settle claims hereunder for those licensors for whom an express written agreement by and between Merlin and each such licensor has been obtained (collectively, with Members, hereinafter called “Affiliates”); (b) Merlin Affiliates own interests in sound recordings; and (c) Merlin Affiliates are members of the proposed Sound Recording Settlement Class in the Action;

WHEREAS, Merlin has been negotiating with Sirius since in or around April 2008, outside of the Action, to obtain payments for Merlin Affiliates in consideration for a release by those Merlin Affiliates that was similar to the release that would be granted by members of the proposed Sound Recording Settlement Class in the Action;

WHEREAS, Merlin has agreed to participate and assist in the settlement of the Action;

WHEREAS, Charlie Lexton is a solicitor and general counsel for Merlin and Eric German is a partner (through his professional corporation) of Mitchell Silberberg & Knupp LLP (“Mitchell Silberberg”) who has acted on behalf of and negotiated for Merlin in its negotiations with Sirius directly and, more recently, through Class Counsel who are the signatories to this agreement;

WHEREAS, Merlin has represented that the fair value of the time that its counsel, executives and staff have expended (between February 2008 and the present) in its negotiations

with Sirius and in helping to procure the proposed Settlement with the proposed Sound Recording Settlement Class exceed \$67,000 for Mr. Lexton, Mr. Charles Caldas (Merlin CEO) and Merlin staff and \$34,000 for Mitchell Silberberg;

WHEREAS, subject to Court approval, Plaintiffs and Class Counsel have agreed to share up to \$100,000 of any attorneys' fee award with Merlin for its work to date;

WHEREAS, subject to Court approval, Merlin has agreed to aid in the settlement administration of the Sound Recording Settlement Class Fund by providing the names and addresses of Merlin Affiliates, encouraging Merlin Affiliates to participate in the Settlement, assisting in communicating with the Merlin Affiliates and otherwise assisting the Administrator including in the sending of the Settlement Notice and payments to Merlin Affiliates;

WHEREAS, Class Counsel, subject to Court approval, has agreed to move or petition the Court to pay Merlin from the Sound Recording Settlement Fund for the reasonable value of such settlement administration work by Merlin undertaken after the date of the Settlement Agreement;

NOW THEREFORE, it is hereby agreed by and between the undersigned:

1. **Sound Recordings Only:** This agreement relates only to sound recordings. Merlin does not purport to represent any entities with respect to musical compositions nor will it share in any proceeds from the Musical Composition Settlement Fund.

2. Subject to Court approval and to the extent that any award by the Court of attorneys' fees is at least 33 1/3% of the Sound Recording Settlement Fund, Class Counsel agrees to share with Merlin up to \$100,000 of such attorneys' fee award as reimbursement for Merlin's time and expenses and in compensation for its services. If the amount of attorneys' fees awarded to Class Counsel from the Sound Recording Settlement Fund is less than 33 1/3% of such Fund, then the amount that Class Counsel agrees to share with Merlin shall be reduced as

follows. The amount of such deduction shall be the amount by which the attorneys' fees award is less than 33 1/3% multiplied by a fraction, the denominator of which is Class Counsel's lodestar attributable to sound recordings plus Merlin's lodestar and the numerator of which is Class Counsel's lodestar attributable to Sound Recordings.¹ PROVIDED that, Class Counsel agrees, subject to Court approval, that the minimum amount of any attorneys' fee award that they shall share with Merlin is \$32,895.

Example: The Sound Recording fee award is \$25,000 less than 33 1/3% of the Sound Recording Settlement fund. Assume that Class Counsel's lodestar is \$500,000 attributable to the Sound Recording Settlement Fund and Merlin's lodestar is \$150,000. The sum of \$500,000 and \$150,000 is \$650,000. Dividing \$500,000 by \$650,000 equals approximately 0.769. Multiplying \$25,000 (the amount by which the fee is less than 33 1/3% of the Sound Recording Settlement Fund) by 0.769 produces \$19,225. In this example, Class Counsel agrees to share with Merlin \$100,000 (see ¶2 above) minus \$19,225 or \$80,775.

3. Class Counsel shall pay Merlin its fee—the amount determined pursuant to ¶2 and in accordance with the other terms of this agreement—within seven (7) business days of the receipt by Class Counsel of any attorneys' fee award in the Action.

4. **Merlin's Administration Fees:** Separately, also subject to Court approval, Class Counsel further agrees to petition the Court for reimbursement Merlin's reasonable fees incurred in connection with its assistance with the notice and claims administration process. Merlin will not object to the Plan of Allocation, will not purport to exclude its Affiliates from the Settlement and will, instead, submit on behalf of its Affiliates a Proof of Claim or Proofs of

¹ Class Counsel's lodestar attributable to sound recordings shall be determined by Class Counsel based on their judgment of how and why their professional services were performed. Without limiting Class Counsel's discretion, Class Counsel presently expects to determine their lodestar attributable to sound recordings by multiplying their total lodestar by a fraction the denominator of which is \$2,224,133 and the numerator of which is \$1,600,000.

Claim permitting its members to participate in the Settlement in the Action based upon the Plan of Allocation.

For any Merlin Affiliate for whom Merlin purports to submit a Proof of Claim, Merlin agrees to provide Class Counsel with written proof directly executed (including by electronic confirmation) by such Affiliate that Merlin has authority to act on its behalf.

5. **Right of Merlin Affiliates to Exclude Themselves From The Settlement, Object To The Settlement, or Submit Their Own Proof of Claim:** Notwithstanding anything else herein, the parties agree that any Merlin Affiliate shall have the right to Opt Out of the Settlement, to object to the Settlement, to submit its own Proof of Claim or otherwise object to anything herein or in the Settlement. Subject to Court approval, the Settlement Notice shall inform applicable members of the Sound Recording Settlement Class of all the foregoing, including that Merlin will file a Proof of Claim or Proofs of Claim on behalf of Merlin Affiliates. Any individual action (including filing a Proof of Claim) by a Merlin Affiliate shall constitute that Sound Recording Settlement Class member's operative conduct and shall supersede any action by Merlin on behalf of its Affiliates, including any Proof of Claim Merlin may file on behalf of such Affiliate.

6. **Class Notice and Administration of Merlin Affiliate Claims:** Merlin agrees to supply addresses to the Administrator for the sending of the Settlement Notice to the portion of the Sound Recording Settlement Class who are Merlin Affiliates. Subject to Court approval, the Settlement Notice sent to Merlin Affiliates may be in a Merlin envelope.

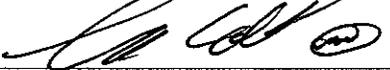
7. **SoundExchange:** Contingent upon SoundExchange² agreeing to provide its services for what Class Counsel determines is a reasonable fee, Class Counsel agrees to utilize SoundExchange's data in order to compute the monies owned to members of the Sound Recording Settlement Class, including Merlin Affiliates, as set forth in the Plan of Allocation.

8. **Sound Recording Class Administration Costs:** Merlin is aware of and has read the Stipulation and Agreement of Settlement in this Action. Consistent with such agreement and subject to Court approval, Class Counsel and Merlin agree that the Sound Recording Settlement Class administration expenses will be paid solely from the Sound Recording Settlement Fund.

9. **Agreed Press Release:** After such time as the Court has granted Final Approval, Class Counsel agrees that Merlin may issue a mutually agreed upon press release detailing Merlin's role in facilitating the sound recording settlement in the Action.

Dated: New York, New York
April 29, 2011

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² SoundExchange is a non-profit performance rights organization that collects royalties on behalf of sound recording rights owners.

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² SoundExchange is a non-profit performance rights organization that collects royalties on behalf of sound recording rights owners.

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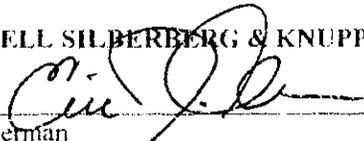
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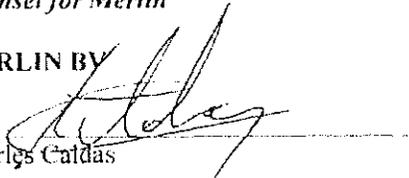
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