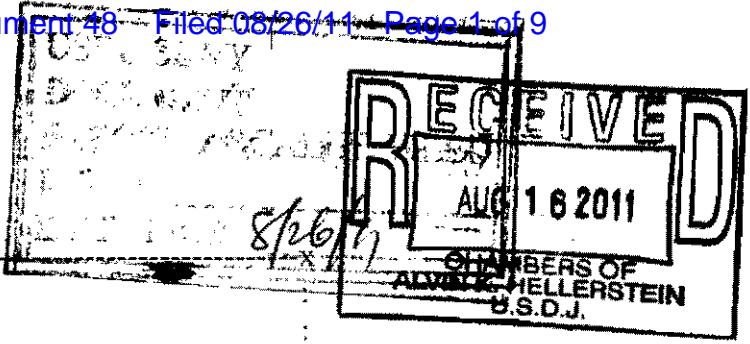


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



NOTA MUSIC PUBLISHING, INC., *et al.*

Plaintiffs,

-against-

07 CV 6307 (AKH)

SIRIUS SATELLITE RADIO INC.,

Defendant.

**~~PROPOSED~~ ORDER PRELIMINARILY APPROVING SETTLEMENT, CERTIFYING
THE SETTLEMENT CLASSES, APPROVING THE PROPOSED NOTICE TO THE
CLASS AND SCHEDULING HEARING FOR FINAL APPROVAL**

THIS CAUSE came before the Court on Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Motion”), filed on May 13, 2011. Plaintiffs (defined in Paragraph 5 below) have entered into a settlement agreement (“Settlement Agreement”) with Defendant Sirius XM Radio Inc. (formerly named Sirius Satellite Radio Inc.) (“Defendant”). The Court, having reviewed the Motion, its accompanying memorandum and the exhibits thereto, the Settlement Agreement, and the file, hereby:

ORDERS AND ADJUDGES:

Preliminary Approval of Settlement Agreement

1. The terms of the Settlement Agreement are hereby preliminarily approved.¹ The Court finds that the Settlement Agreement was entered into at arm’s-length by experienced counsel and is sufficiently within the range of reasonableness that notice of the Settlement Agreement should be given as provided in this Order.

¹ This Preliminary Order hereby incorporates by reference the definitions in the Settlement Agreement dated April 29, 2011 (the “Settlement Agreement”) and all terms used herein shall have the same meanings as set forth in the Settlement Agreement.

Class Certification

2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and in light of the proposed Settlement, the Court hereby finds that the prerequisites for a class action have been met and certifies the following Sound Recording Settlement Class and Musical Composition Settlement Class (collectively, the “Settlement Classes”) for settlement purposes:

(a) Sound Recording Settlement Class

All persons or entities who own or control (in whole or in part) exclusive rights in at least one sound recording protected under federal copyright law and/or state common law and/or unfair competition law that was transmitted by the Sirius Service at least once during the time period from November 1, 2005 to the date of entry of the Preliminary Order.²

(b) Musical Composition Settlement Class

All persons or entities who own or control (in whole or in part) exclusive rights in at least one musical composition protected under federal copyright law of which a sound recording embodying such musical composition was transmitted by the Sirius Service at least once during the time period from November 1, 2005 to the date of entry of the Preliminary Order.³

² The following persons and entities are specifically excluded from the Sound Recording Settlement Class: (a) Sirius, the subsidiaries and affiliates of Sirius, any person or entity who is a partner, officer, director, employee, or controlling person of Sirius, or any entity in which Sirius has a controlling interest; (b) the following music labels (collectively, the “Music Labels”): Atlantic Recording Corporation; BMG Music; Capitol Records, Inc.; Elektra Entertainment Group Inc.; EMI Music North America; Interscope Records; Motown Record Company, L.P.; Sony BMG Music Entertainment; UMG Recordings, Inc; Virgin Records America, Inc; and Warner Bros. Records, Inc.; and (c) any subsidiaries, affiliates, legal representatives, heirs, predecessors, successors and assigns of any of the above excluded parties.

³ The following persons and entities are specifically excluded from the Musical Composition Settlement Class: (a) Sirius, the subsidiaries and affiliates of Sirius, any person or entity who is a partner, officer, director, employee, or controlling person of Sirius, or any entity in which Sirius has a controlling interest; (b) the HFA Settlement Participants, including without limitation, Famous Music LLC; Beechwood Music Corp.; Colgems-EMI Music Inc.; EMI April Music Inc.; EMI Blackwood Music Inc; EMI Gold Horizon Music Corp.; EMI Golden Torch Music Corp.; EMI Intertrax Music Inc.; EMI Sosaha Music Inc; EMI Jemaxal Music Inc.; EMI U Catalog Inc.; EMI Unart Catalog Inc.; EMI Virgin Music, Inc.; EMI Virgin Songs, Inc.; Jobete Music Co. Inc.; Screen Gems-EMI Music Inc.; WB Music Corp.; Warner-Tamerlane Publishing Corp.; Unichappell Music, Inc.; Sony/ATV Tunes LLC; Sony/ATV Tree Publishing; Sony/ATV

3. The Court finds that the certification of the Settlement Classes is warranted in light of the Settlement Agreement because: (a) the members of the Settlement Classes are so numerous that joinder is impracticable; (b) Plaintiffs' claims present common issues and are typical of the Settlement Classes; (c) Plaintiffs and Class Counsel (defined in Paragraph 4 below) will fairly and adequately represent the Settlement Classes; and (d) common issues predominate over any individual issues affecting the members of the Settlement Classes. The Court further finds that Plaintiffs' interests are aligned with the interests of all other members of the Settlement Classes. The Court also finds settlement of this Action on a class basis superior to other means of resolving this matter.

4. The Court hereby appoints Lovell Stewart Halebian Jacobson LLP, Law Offices of Jeffrey L. Graubart, P.C., Law Offices of Joshua Graubart, P.C. and Steven J. D'Onofrio, Esq., as class counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

5. The following plaintiffs will serve as class representatives on behalf of the Settlement Classes: Cartagena Enterprises, Inc., also doing business as Cartagena Publishing; David Grisman and Craig Miller, individually and collectively, and doing business as Dawg Music, and also doing business as Acoustic Disc; HMS Distributors, Inc., also doing business as J & N Records and doing business as J & N Publishing; JVN Music, Inc., also doing business as JVN Records; The Music Force LLC, also doing business as Full Force Music; Musical Productions, Inc.; On Top Records Corp., also doing business as Still On Top Publishing and

Gross Keys Publishing; Sony/ATV Discos Music Publishing LLC; Sony/ATV Milene Music; and Sony/ATV Acuff Rose Music; and (c) any subsidiaries, affiliates legal representatives, heirs, predecessors, successors and assigns of any of the above excluded parties.

doing business as Real Smooth Publishing; Platano Records Corp.; and RICO Records Distributing, Inc. (collectively "Plaintiffs").

Notice to Potential Class Members

6. Within 60 days after the date of the entry of this Order, Class Counsel shall cause copies of (a) the Settlement Notice, substantially in the form attached as Exhibit G to the Settlement Agreement (the Settlement Agreement is attached as Exhibit 1 to The Declaration of Christopher M. McGrath, submitted to the Court on May 13, 2011); (b) the Plan of Allocation, substantially in the form of Exhibit H to the Settlement Agreement; and (c) the Proof of Claim, substantially in the form of Exhibit I to the Settlement Agreement (collectively "Notice"), to begin to be mailed by United States first class mail, postage prepaid, to potential member of the Sound Recording Settlement Class and Musical Composition Settlement Class whose address may be reasonably obtained from SoundExchange, The American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI"), SESAC Inc. and other sources.

7. Class Counsel shall cause to be published a Publication Notice (substantially in the form of Exhibit F to the Settlement Agreement) one time in the following music industry trade publications: *Billboard*, *Variety*, *Daily Variety*, and *Music Week* within 60 days after the entry of this Order.

8. Class Counsel shall also cause the Notice to be published on a website established for the purpose of this settlement, within 60 days after the entry of this Order. Both the Notice and the Publication Notice will direct members of the Settlement Classes to the website where they can access the Settlement Agreement, this Order, obtain answers to anticipated questions about class action settlements or the Proof of Claim, and find other information on the settlement process.

9. Members of the Settlement Classes will be instructed in the Publication Notice that to receive further communications regarding the allocation of the Settlement Fund and a Proof of Claim Form, they must register with the Administrator as a member of a Settlement Class. Any member of a Settlement Class who is mailed the Notice will automatically be registered to receive appropriate future mailings and will not be required to register.

10. Members of the Settlement Classes will also be advised in both the Notice and in the Publication Notice of their right to exclude themselves from the Settlement Class and instructed in the Notice and the Publication Notice as to the procedure for submitting a request for exclusion.

11. Prior to the Fairness Hearing, Class Counsel shall serve and file a sworn statement attesting to compliance with the provisions of Paragraphs 6 through 10 of this Order.

12. The foregoing notice provisions are hereby found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law.

Claims Administration

13. To effectuate the Settlement Agreement and the Notice provisions, the Court hereby approves The Garden City Group (the "Administrator") to be responsible for: (a) establishing a P.O. Box, information telephone line and website (to be included in the Notice and Publication Notice) for the purpose of communicating with members of the Settlement Classes; (b) disseminating Notice to the Settlement Classes; (c) accepting and maintaining documents sent from the Settlement Class Members including Proofs of Claim, exclusion requests, and

other documents relating to claims administration; (d) administering claims for allocation of funds among members of the Settlement Classes; and (e) acting as Escrow Agent for the Settlement Funds.

14. As described in the Notice, a member of either Settlement Class may opt out of the Settlement by notifying the Administrator at the address provided in the Notice. A member of either Settlement Class wishing to request exclusion shall mail the request in written form by first-class mail, postmarked no later than 45 days prior to the Fairness Hearing, to the address of the Administrator designated in the Notice. The exclusion request must clearly state: (a) the Settlement Class member's name, address, and phone number; (b) all trade names or business names and addresses that the Settlement Class member has used, as well as any parents, subsidiaries or affiliates that owned rights in sound recordings or musical composition at any time during the dates November 1, 2005 through the date of entry of this Order who are also requesting exclusion; (c) the name of the Action "*Nota Music Publishing, Inc., et al. v. Sirius Satellite Radio Inc., 07-cv-6307 (AKH) (S.D.N.Y.)*"; and (d) a signed statement that "I/we hereby request that I/we be excluded from the Sound Recording Settlement Class / Musical Composition Settlement Class in *Nota Music Publishing, Inc., et al. v. Sirius Satellite Radio Inc., 07-cv-6307 (AKH) (S.D.N.Y.)*." The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above or if the exclusion is otherwise accepted by the Court. Persons or entities that request exclusion from either Settlement Class shall not be entitled to share the benefits of the Settlement Agreement, nor be bound by any judgment, whether favorable or adverse.

15. Any potential member of either Settlement Class that does not properly and timely provide notification of its intent to opt out of the Settlement Class as set forth in

Paragraph 14 hereto shall be included in the Settlement Classes and shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such potential member of the Settlement Class has objected to the Settlement Agreement and whether or not such potential member of the Settlement Class makes a claim upon or participates in the Settlement Agreement.

16. All Proofs of Claim shall be submitted by members of the Settlement Classes to the Administrator not later than 90 days after the Fairness Hearing.

The Fairness Hearing

17. A Fairness Hearing is hereby scheduled to be held on January 9, 2012 at 10:00 a.m. before the undersigned at Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York, Courtroom 14D, to consider the fairness, reasonableness, and adequacy of the Settlement Agreement.

18. Class Counsel's and Merlin's request for the payment of fees and reimbursement of expenses shall be filed no later than twenty-eight days prior to the Fairness Hearing. Any petition for incentive awards shall also be filed no later than twenty-eight days prior to the Fairness Hearing.

19. Any member of a Settlement Class that has not provided notification of its intent to opt out of the Settlement Class in the manner set forth in Paragraph 14 may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness, and adequacy of the Settlement Agreement, provided, however, that no person shall be heard in opposition to the Settlement Agreement, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless, twenty days or more before the Fairness Hearing, such person: (a) files with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to the

Settlement Agreement, and any documentation in support of such opposition; and (b) serves copies of such notice, statement, and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon Class Counsel and counsel of record for Defendant.

20. The date of the Fairness Hearing shall be set forth in the Notice and Publication Notice, but shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted at the Court and on the Court's website.

Other Provisions

21. Terms used in this Order that are defined in the Settlement Agreement are, unless otherwise defined herein, used in this Order as defined in the Settlement Agreement.

22. As of the date of entry of this Order, Plaintiffs and all members of the Settlement Classes shall be preliminarily enjoined from commencing or prosecuting any action against Defendant based upon or relating to the Released Claims (see ¶49 of the Settlement Agreement) pending Final Approval of the Settlement Agreement or until such time as this Court lifts such injunction by subsequent order.

23. In the event that the Settlement Agreement is terminated in accordance with its provisions, the Settlement Agreement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the *status quo ante* rights of Plaintiffs, Defendant, and the members of the Settlement Classes.

24. If the Settlement Agreement is terminated or is ultimately not approved, the Court will modify any existing scheduling order to ensure that the Parties will have sufficient time to prepare for the resumption of litigation, including but not limited to the completion of fact

discovery (including depositions), preparation of expert reports, the filing of any summary judgment motion or motions, and preparation for trial.

IT IS SO ORDERED.

DATED: 8/26, 2011



Alvin K. Hellerstein
United States District Court Judge