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Signature Page of Motion]

*Attorneys for Plaintiff FLO & EDDIE, INC.*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

FLO & EDDIE, INC., a California corporation, individually and on behalf of all others similarly situated,

Plaintiff.

v.

SIRIUS XM RADIO, INC., a Delaware corporation; and DOES 1 through 10.

## Defendants

Case No. CV13-05693 PSG (GJSx)

## **DECLARATION OF ERIC KIERKEGAARD REGARDING NOTICE ADMINISTRATION**

## **DECLARATION OF ERIC KIERKEGAARD**

I, Eric Kierkegaard, declare and state, as follows:

3       1. I am an Assistant Director of Operations at the Garden City Group,  
4 LLC (“GCG”). I submit this Declaration pursuant to the Order Granting  
5 Preliminary Approval of Class Action Settlement, Approving Form and Manner of  
6 Notice, and Setting Date for Hearing of Final Approval of Settlement dated January  
7 27, 2017 (the “Order”). The following statements are based on my personal  
8 knowledge and information provided by GCG employees working under my  
9 supervision, and if called on to do so, I could and would testify competently  
10 thereto.

11        2. On January 27, 2017, GCG received a copy of the Order and began  
12 immediate compliance with the directions of the Court set forth, *inter alia*, in  
13 paragraphs 12-14 and 18 of the Order, as further discussed herein.

## **MAILING OF THE NOTICE**

15       3. On February 6, 2017, GCG caused long form settlement notices  
16 consistent with Exhibit C to the parties' Stipulation of Class Action Settlement  
17 dated November 13, 2016 and approved by the Order ("Long Form Notice") to be  
18 mailed to 330 potential Class Members via first-class mail, postage prepaid. A copy  
19 of the Long Form Notice, as mailed, is attached hereto as **Exhibit A**.

20        4. Any Long Form Notices returned to GCG by the U.S. Postal Service with  
21 a forwarding address were re-mailed using the updated address information. As of the  
22 date of this Declaration, GCG had re-mailed 6 Long Form Notices to updated  
23 addresses. For Long Form Notices returned to GCG with no forwarding address, GCG  
24 conducted additional research to locate a valid mailing address. As of the date of this  
25 Declaration, 45 Long Form Notices have been returned as undeliverable, and an  
26 updated address was located for 3 of those records. GCG re-mailed the Long Form  
27 Notices to those potential Class Members for whom an updated address was found. In  
28 addition, 2 of the re-mailed Long Form Notices were also returned as undeliverable.

## **PUBLICATION OF THE NOTICE**

5. GCG caused short form settlement notices consistent with Exhibit C to the parties' Stipulation of Class Action Settlement dated November 13, 2016 and approved by the Order ("Short Form Notice") to be published in a manner generally consistent with the previous plan approved by the Court on June 16, 2016 (Doc. No. 317) and reapproved by the Court in the Order, as follows:

- a. twice in the *Nashville Tennessean*, once in the Business section on February 15, 2017, and once in the Main Local News section on February 19, 2017;
  - b. twice in *Billboard* magazine, once in the February 25, 2017 edition on sale on February 17, 2017, and once in the March 11, 2017 edition on sale on March 3, 2017;
  - c. twice in *Music Connection*, once in the March 2017 edition on sale on February 22, 2017, and once in the April 2017 edition on sale March 29, 2017.

Tear sheets featuring the Short Form Notices in the above publications are attached hereto as **Exhibit B**.

## PRESS RELEASE

6. GCG caused a Press Release to be distributed over PR Newswire's *US1 Newsline* and *National Hispanic Newsline* announcing the Notice in English and Spanish to media outlets across the country. *US1 Newsline* and *National Hispanic Newsline* are accessible to thousands of newspapers, magazines, national wire services and networks, online services, databases and websites. Copies and confirmations of the Press Release that was distributed by PR Newswire on February 13, 2017, at 9:00 AM PT in English and Spanish are attached hereto as **Exhibit C**.

## WEBSITE

7. GCG established a dedicated website with the URL [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com), which contains various materials about the

1 lawsuit, including the Long Form Notice, stipulated class action settlement, and  
2 original class notice, as well as all initial filing papers (e.g., complaints and answers),  
3 relevant moving papers, and resultant court orders from each of the three proceedings  
4 brought by Flo & Eddie in California, New York, and Florida. The website also  
5 provides additional information about the lawsuit including an overview of the  
6 settlement, important dates and deadlines, a list of answers to frequently asked  
7 questions, and contact information for Class Counsel and the Administrator. As  
8 requested by Class Counsel, additional pleadings and Orders in the New York and  
9 Florida actions were added to the website as they were filed or entered, and updates  
10 were made to the “Frequently Asked Questions” section of the website when  
11 additional information became available or events occurred that were pertinent to the  
12 case and Class members. Those updates were made on January 30, 2017, February 1,  
13 2017, February 3, 2017, February 6, 2017, February 14-17, 2017, February 27, 2017,  
14 March 3, 2017, March 20, 2017, April 10, 2017 and April 11, 2017.

15 **TOLL-FREE TELEPHONE NUMBER AND EMAIL ADDRESS**

16 8. On February 6, 2017, in order to accommodate inquiries regarding the  
17 Lawsuit, GCG made operational a telephone number, 1-855-720-2382, with an  
18 Interactive Voice Response (“IVR”) system. Callers have the ability to listen to  
19 important information about the lawsuit 24 hours a day, 7 days a week. The IVR  
20 system also provides callers with the ability to leave a message for Class Counsel.  
21 An email notification was automatically forwarded to Class Counsel to notify them  
22 of the message. GCG has and will continue to maintain and update the IVR  
23 throughout the administration of the Settlement.

24 9. GCG also established an email address,  
25 info@pre1972soundrecordings.com, to which Class Members could submit enquiries  
26 regarding the Lawsuit. All emails received at this address are automatically forwarded  
27 to Class Counsel for review, and all email queries were handled by Class Counsel  
28 directly.

## **EXCLUSIONS**

10. Class Members wishing to be excluded from the Lawsuit were required to submit a written request for exclusion. As of the date of this declaration, one member of the Class served a request for exclusion. The one request for exclusion received from a Class Member, Gusto Records, Inc., is attached hereto as **Exhibit D**<sup>1</sup>. Four other purported requests for exclusion were received from non-Class Members who are excluded from the class by virtue of being direct licensors of Sirius XM. In addition, as of the date of this declaration, GCG has received no exclusions after the exclusion deadline.

11. The one request for exclusion received by GCG from a Class Member, was initially determined to be deficient on the basis that it did not include all information required under paragraph 16 of the Order. On March 1, 2017, GCG mailed an exclusion deficiency notice to the Class Member advising them of the deficiencies identified in their submission and advising that the exclusion request may not be accepted if the deficiencies were not cured. An example exclusion deficiency notice is attached hereto as **Exhibit E**. GCG received a response to the exclusion deficiency notice, which resulted in the one request for exclusion from a Class Member, Gusto Records, Inc., referenced in paragraph 11 and attached hereto as **Exhibit D**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 21<sup>st</sup> day of April, 2017, at Seattle, Washington.

Eric N. Kierkegaard  
Eric Kierkegaard

<sup>1</sup> As the supporting documents identifying excluded sound recordings are extensive, this exhibit comprises only the exclusion requests received by the Administrator. Copies of the supporting documents submitted will be made available upon request.

**Exhibit A**

**UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT**

*A federal court authorized this notice. This notice is not an endorsement of plaintiff's claims or an attorney solicitation. Distribution of this notice does not guarantee that you will recover money. Please read this notice carefully; it affects your legal rights.*

**If You Are An Owner Of A Sound Recording(s) Fixed Prior To February 15, 1972 (“Pre-1972 Sound Recording”) Which Has Been Performed, Distributed, Reproduced, Or Otherwise Exploited By Sirius XM in the United States Without A License Or Authorization To Do So From August 1, 2009 Through November 14, 2016, You Could Get Benefits From a Class Action Settlement.**

If you are an owner of a Pre-1972 Sound Recording performed, distributed, reproduced, or otherwise exploited by Sirius XM in the United States without a license or authorization to do so from August 1, 2009 through November 14, 2016 (“Class Period”), you may be a member of a proposed nationwide Settlement Class and entitled to payments and future royalties.

- If the Court approves the proposed settlement, Sirius XM will pay the Settlement Class:
  - \$25 million for past performances,
  - if Sirius XM loses certain appeals, up to an additional \$15 million, for a total of \$40 million, for past performances, and
  - a royalty rate of up to 5.5% on future performances of Pre-1972 Sound Recordings owned by Settlement Class Members who make valid claims.

If Sirius XM wins certain appeals, the royalty rate on future performances will be reduced, possibly to zero, but at a minimum, the \$25 million payment for past performances will still be paid.

**Your legal rights are affected even if you do nothing. Please read this notice carefully.**

**1. THE LITIGATION**

On August 1, 2013, Plaintiff Flo & Eddie, Inc. (“Flo & Eddie” or “Plaintiff”) filed a lawsuit against Defendant Sirius XM Radio Inc. (“Sirius XM”), alleging on behalf of itself and a putative class of owners of Pre-1972 Sound Recordings that Sirius XM, without a license or authorization, was performing, distributing, and reproducing those Pre-1972 Sound Recordings as part of its satellite and internet radio services (the “Lawsuit”).

The Lawsuit is known as *Flo & Eddie, Inc. v. Sirius XM Radio Inc.*, Case No. CV13- 05693, and is pending in the United States District Court for the Central District of California before the Honorable Philip S. Gutierrez. Information and documents regarding the case can be found at: [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com).

In the Lawsuit, Flo & Eddie alleged that Sirius XM has violated California Civil Code Section 980(a)(2) and is liable for conversion, misappropriation, and unfair competition. Flo & Eddie sought damages, restitution, and injunctive relief on behalf of itself and the putative class.

On September 22, 2014, the Court found Sirius XM liable to Flo & Eddie for the unauthorized public performance of Pre-1972 Sound Recordings in California. On May 27, 2015, the Court certified a class of owners of Pre-1972 Sound Recordings which have been performed, distributed, reproduced, or otherwise exploited by Sirius XM in California without a license or authorization to do so from August 21, 2009 to August 24, 2016.

## 2. SIRIUS XM'S POSITION

Sirius XM denies any wrongdoing and contends that no state law, including California, New York, and Florida law, provides owners of Pre-1972 Sound Recordings a right to control performances of those recordings. Sirius XM continues to assert various affirmative defenses (including laches, waiver, estoppel, license, fair use, statute of limitations, lack of harm, and lack of ownership).

## 3. NOTICE

This Notice informs Class Members of the proposed settlement and describes their rights and options.

## 4. SETTLEMENT CLASS

The Court has conditionally certified the following nationwide "Settlement Class":

All entities and natural persons, wherever situated, who are owners of Pre-1972 Sound Recordings which have been reproduced, performed, distributed or otherwise exploited by Sirius XM in the United States without a license or authorization to do so from August 1, 2009 through November 14, 2016.

Excluded from the Settlement Class are: (1) all federal court judges who have presided over this case and any members of their immediate families; (2) Direct Licensors; (3) Major Record Labels; and (4) Sirius XM's employees, officers, directors, agents, and representatives, and their immediate family members.

For purposes of this Settlement Class definition:

- "Major Record Labels" means Capitol Records, LLC, Sony Music Entertainment, UMG Recordings, Inc., Warner Music Group Corp., and ABKCO Music & Records, Inc., and their respective subsidiaries and affiliates, which entered into a separate settlement agreement with Sirius XM and opted out of the California Class.
- "Direct Licensors" means the persons and/or entities, other than the Major Record Labels, that have entered into written licenses or other written agreements or instruments with Sirius XM to perform, reproduce, distribute, or otherwise exploit Pre-1972 Sound Recordings.

The Court has appointed the law firms of Gradstein & Marzano, P.C. and Susman Godfrey L.L.P., to serve as Class Counsel.

## 5. SETTLEMENT BENEFITS

If the Court approves the proposed Settlement at the Final Approval Hearing that is scheduled for May 8, 2017, Sirius XM will provide the following benefits to members of the Settlement Class:

**Payments from a Settlement Fund:** All members of the Settlement Class who have established their entitlement to participate in the Settlement will be entitled to a pro rata share of a \$25 million settlement fund based on the number of historical plays of the Settlement Class Members' Pre-1972 Sound Recordings. There will be no reversion to Sirius XM of any payments made to the Settlement Fund. If a substantial number of members of the Settlement Class or a substantial number of historical plays that members of the Settlement Class own opt out of the Settlement, both parties will have the option to terminate the Settlement no later than ten days after the close of the opt-out period.

**Royalty payments and license:** Members of the Settlement Class will license to Sirius XM the right to publicly perform, reproduce, distribute, or otherwise exploit their Pre-1972 Sound Recordings through January 1, 2028, and will be eligible to receive monthly royalty payments from January 1, 2018 through January 1, 2028, at a royalty rate as high as 5.5% depending on certain appellate outcomes described next.

**Additional payment terms contingent on appellate outcomes.** The Lawsuit, as well as related lawsuits in New York, *Flo & Eddie Inc. v. Sirius XM Radio Inc.*, filed on August 16, 2013 in the United States District Court for the Southern District of New York, Case No. 13-CV-5784 (CM), appealed to the United States Court of Appeals for the Second Circuit, Appeal No. 15-1164, and certified to the New York Court of Appeals on April 13, 2016, Appeal No. CTQ-2016-00001, and Florida, *Flo & Eddie Inc. v. Sirius XM Radio Inc.*, filed on September 3, 2013 in the United States District Court for the Southern District of Florida, Case No. 13-CV-23182, appealed to the United States Court of Appeals for the Eleventh Circuit, Appeal No. 15-13100, and certified to the Florida Supreme Court on June 29, 2016, Appeal No. SC16-1161, are predicated on the view that California, New York, and Florida law grant owners of Pre-1972 Sound Recordings a right to control performances of those recordings. However, this legal question remains unsettled and appellate courts are or will be considering that question and related questions. Absent this Settlement, depending on how the appellate courts rule, it is possible that Sirius XM would be required to pay members of the Settlement Class nothing (\$0) for the public performance of any Pre-1972 Sound Recordings. In light of this uncertainty, the parties have agreed to additional payment terms contingent on the outcomes of those appeals.

- For each of the three appellate courts in which Plaintiff prevails on the performance right issue, Sirius XM will pay the Settlement Class an additional \$5 million dollars. In other words, if Plaintiff prevails on this issue in all three appeals, Sirius XM will pay a total of \$40 million dollars (the original \$25 million plus an additional \$15 million). If Plaintiff prevails on this issue in two appeals, Sirius XM will pay a total of \$35 million dollars (the original \$25 million plus an additional \$10 million). If Plaintiff prevails on this issue in one appeal, Sirius XM will pay a total of \$30 million dollars (the original \$25 million plus an additional \$5 million). Even if Sirius XM prevails in all three appeals, the Settlement Class will still receive the original \$25 million.
- For each of the three appellate courts in which Sirius XM prevails on the performance right issue, the 5.5% royalty rate will be reduced going forward. If Sirius XM prevails in the California and New York appeals, the royalty rate will be reduced by 2% points each (e.g., from 5.5% to 3.5%); if Sirius XM prevails in the Florida appeal, the royalty rate will be reduced by 1.5% points (e.g., if not previously reduced, from 5.5% to 4%). If Sirius XM prevails in all three appellate courts, Sirius XM will not be required to make any prospective royalty payments to members of the Settlement Class, and the Settlement Class will keep all royalties previously paid.
- Sirius XM has also challenged these lawsuits based on the Commerce Clause of the United States Constitution. If Sirius XM prevails on this Commerce Clause issue in the U.S. Courts of Appeal for the Second, Ninth, or Eleventh Circuits, or in the United States Supreme Court, Sirius XM will not be required to make any prospective royalty payments to members of the Settlement Class, and the Settlement Class will keep all royalties previously paid.
- Sirius XM will pay for the reasonable costs of administering the Settlement Fund and this Notice up to \$500,000. Sirius XM will not be responsible for paying other costs, including the costs of ascertaining ownership of each Pre-1972 Sound Recording or administering and distributing any royalty payments.

**Participating in the Benefits of the Settlement:** To participate in the benefits of the Class Settlement as to the Settlement Fund, you will be required to identify all of the Pre-1972 Sound Recordings that you own. You will be able to visit a website to complete a form to identify any and all Pre-1972 Sound Recordings you represent and warrant that you own or control. You will be required to provide, among other information, the title, artist, album and/or label. To participate in the Royalty Program, you will be required to provide title, artist, album, label, ISRC (if known), and date first fixed, in each case for each applicable Pre-1972 Sound Recording and a representation and warranty that you own all right, title, and interest in such recording(s). Any unresolved disputes over ownership and control will be determined by a Special Master appointed by the Court, with a right to appeal the Special Master's ownership determination to the District Court.

\*\*\*\*\*

You will receive these benefits only if the Court approves the proposed Settlement following the Final Approval Hearing on May 8, 2017, and only if you remain a member of the Settlement Class. If you exclude yourself from the Settlement Class, you will not receive any benefits.

To monitor the status of the proposed Settlement, to learn if and when it is approved, and to obtain claims forms, you may visit [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com) or call 1 (855) 720-2382. (Claim forms may not be available unless and until the Settlement is approved.)

## **6. COURT APPROVAL OF ATTORNEYS' FEES AND EXPENSES**

The Court will determine how much Class Counsel will be paid for fees and expenses. Class Counsel has pursued the Lawsuit on a contingent basis, meaning Class Counsel has not been paid at all or recovered any of their expenses. As part of the proposed Settlement, Class Counsel will seek an award of attorney's fees of up to one-third from the Settlement Fund and royalty payments, reimbursement of expenses, and service award payments not to exceed \$25,000 for each for the two principals of the Plaintiff to be paid from the Settlement Fund for their services as representatives on behalf of the Class; their deadline to do so was December 30, 2016. The Court will decide the amount of the fee, expense, and service award at the Final Approval Hearing. These payments will reduce the benefits that you, as a member of the Settlement Class, will receive because they will be deducted from the Settlement Fund and, where applicable, the royalties you receive. If you wish to retain your own attorney for any reason, including to represent you at the final Fairness Hearing, then you will be individually responsible for that attorney's fees and costs.

## **7. RESULT IF COURT APPROVES SETTLEMENT**

Any relief to Settlement Class Members is contingent on the Court's final approval of the proposed Settlement. If the Court approves the proposed Settlement, Sirius XM will provide the benefits described above to the Settlement Class Members who have not properly excluded themselves from the Class. Settlement Class Members will be barred during the applicable term from pursuing their own lawsuits based on Sirius XM's performance, distribution, reproduction, or other exploitation of their Pre-1972 Sound Recordings in the United States. Therefore, if you want to bring your own lawsuit against Sirius XM, you must properly exclude yourself from this Settlement Class. Any judgment entered, whether favorable or unfavorable to the Settlement Class, shall include, and be binding on, all Settlement Class Members, even if they object to the proposed Settlement.

## **8. RESULT OF FAILURE TO OPT OUT**

Unless you exclude yourself from the Settlement, you will be covenanting not to sue Sirius XM and all related people as provided in Section III.D of the Settlement and will be bound by the terms of the performance license provided for in Section IV.C of the Settlement.

## **9. TAX CONSEQUENCES OF SETTLEMENT**

A Settlement Class Member should consult their own tax advisors regarding the tax consequences of the proposed Settlement, including but not limited to, any payments, credits, royalties, and payment periods provided hereunder, and any tax reporting obligations they may have with respect thereto.

## 10. YOUR OPTIONS

If you are a member of the Settlement Class, you have the following three options (you may only choose one option):

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:	
DO NOTHING NOW	<p><b>Stay in the Lawsuit. Await the outcome. Receive the benefits of this Settlement if it is approved.</b></p> <p>By doing nothing, you will remain part of the Settlement, and do not need to take any immediate action. If the Settlement is approved, you may receive the benefits of the Settlement if you submit a claim to the Administrator and it is valid, complete, and timely submitted. In exchange for the benefits you receive, you will give up your rights during the applicable term to sue Sirius XM separately based on its performance, distribution, reproduction, or other exploitation of Pre-1972 Sound Recordings that you own or control.</p> <p>You may, if you wish, comment in favor of the Settlement by sending your comment to Class Counsel: Henry Gradstein, Gradstein &amp; Marzano P.C., 6310 San Vicente Blvd., Suite 510, Los Angeles, CA 90048, hgradstein@gradstein.com; or Steven Sklaver, Susman Godfrey L.L.P., 1901 Avenue of the Stars, Suite 950, Los Angeles, CA 90067-6029, ssklaver@susmangodfrey.com.</p>
EXCLUDE YOURSELF	<p><b>Get out of this Lawsuit. Get no benefits from this Settlement Class. Keep certain rights. To exclude yourself, the Administrator must receive a completed opt out request by mail to the Administrator by March 8, 2017.</b></p> <p>Settlement Class Members who wish to opt out of the Settlement Class will be required to identify all of the Pre-1972 Sound Recordings they represent and warrant that they own or control. That request will require, at a minimum, the following fields: title; artist; album; ISRC (if known); and date first fixed.</p> <p>You may exclude yourself with a written request sent that is received no later than March 8, 2017, <i>i.e.</i>, 30 days from the beginning of the Notice period, that is sent to:</p> <p style="text-align: center;">Flo &amp; Eddie v. Sirius XM c/o GCG PO Box 35131 Seattle, WA 98124-5131</p> <p>Your written request for exclusion must contain: (1) the name of this Lawsuit, "Flo &amp; Eddie, Inc. v. Sirius XM Radio Inc., Case No. CV13-05693"; (2) your full name and current address; (3) a clear statement of intention to exclude yourself such as: "I wish to be excluded from the Class"; (4) your signature to the address above, and (5) a fully and properly completed exclusion request that identifies all of the Pre-1972 Sound Recording(s) that you own and other related information. That request will require, at a minimum, the following fields: title; artist; album; ISRC (if known); and date first fixed for all of the Pre-1972 Sound Recording(s) you own.</p> <p>If your exclusion request is properly submitted and received before the deadline, you will not be bound by the terms of the Settlement, and you will be free, if you choose, to pursue your own lawsuit against Sirius XM based on its performance, distribution, reproduction, or other exploitation of Pre-1972 Sound Recordings that you own or control. If you do not submit a clear and timely request for exclusion to the Administrator, you will be bound by the Settlement, entitled to receive the benefits of the Settlement, and covenant not to sue Sirius XM during the applicable term for any claims based on its performance, distribution, reproduction, or other exploitation of Pre-1972 Sound Recordings that you own or control.</p>
OBJECT	<p><b>If you are a member of the Settlement Class, you may object to the Settlement.</b></p> <p>You may, but need not, select an attorney to appear at the Final Approval Hearing on your behalf. If you do, you will be responsible for your own attorney's fees and costs.</p> <ul style="list-style-type: none"><li>• If you object to the proposed Settlement, you must do so in writing on or before March 24, 2017, <i>i.e.</i>, 45 days before the Final Approval Hearing. If you object to Class Counsel's application for</li></ul>

attorneys' fees and expense reimbursement, you must do so in writing on or before March 24, 2017, *i.e.*, 45 days before the Final Approval Hearing. Class Counsel's application was filed on December 30, 2016 and is posted on the settlement website.

Your written objection must include: (a) your full name, address, and telephone number; (b) identification of the Pre-1972 Sound Recordings performed by Sirius XM without your permission, and a representation that you are the legal owner of those Sound Recordings; (c) a written statement of all reasons for your objection accompanied by any legal support; (d) copies of any papers, briefs, or other documents on which your objection is based; (e) a list of other cases in which you or your counsel have filed or in any way participated in—financially or otherwise—objections to a class settlement in the preceding five years; (f) the name, address, email address, and telephone number of all attorneys representing you; (g) a statement indicating whether you and/or your counsel intend to appear at the Fairness Hearing, and if so, a list of any persons you will call to testify in support of the objection; and (h) your signature (and your lawyer's signature if you are represented by counsel).

Your written objection must also be filed with the Clerk of the U.S. District Court for the Central District of California, and served upon all three of: (1) Henry Gradstein, Esq. of Gradstein & Marzano, P.C. (Class Counsel), 6310 San Vicente Blvd., Suite 510, Los Angeles, CA 90048; (2) Steven G. Sklaver, Esq., of Susman Godfrey L.L.P. (Class Counsel), 1901 Avenue of the Stars, Suite 950, Los Angeles, CA 90067-6029 ; and (3) Daniel M. Petrocelli, Esq. of O'Melveny & Myers, LLP (Sirius XM Counsel), 1999 Avenue of the Stars, 8th Floor, Los Angeles, CA 90067-6035.

Class Members who do not make their objections in a timely manner will waive all objections, their right to comment at the Fairness Hearing, and their right to appeal approval of the Settlement.

## **11. FINAL APPROVAL HEARING**

A hearing will be held before Judge Philip Gutierrez of the U.S. District Court for the Central District of California, 1st Street Courthouse, 350 W. 1st Street, Los Angeles, CA 90012, Courtroom 6A, 6th Floor, on May 8, 2017 at 1:30p.m. At the hearing, the Court will hear argument about whether the proposed Settlement is fair, reasonable, and adequate, and whether it should be approved and, if so, what fees and expenses should be awarded to Class Counsel, and what service award, if any, should be awarded to the Plaintiff in this case, Flo & Eddie, and the planned allocation of the Settlement Fund. The time, date, and location of the hearing may change without further notice to you. If you plan to attend the hearing, you should confirm its time, date, and location before making any plans.

## **12. ADDITIONAL INFORMATION**

For additional information and/or for a copy of the full Settlement; the request for attorneys' fees, costs, and the service award; and other key Court documents, you may visit [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com) or call the Administrator at 1 (855) 720-2382 or Class Counsel at : Henry Gradstein, Gradstein & Marzano P.C., 323-776-3100 or [hgradstein@gradstein.com](mailto:hgradstein@gradstein.com); or Steven Sklaver, Susman Godfrey L.L.P., 310-789-3100 or [ssklaver@susmgangodfrey.com](mailto:ssklaver@susmgangodfrey.com).

**PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.**

**DATED: January 27, 2017**

**BY ORDER OF THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**Exhibit B**

# Dow 20,000: What's in a number?



**personal finance**  
Phoebe Venable

On Jan. 25, the Dow Jones Industrial Average (Dow) pushed above 20,000 and held until trading ended. It was a historic first, a major symbolic and psychological milestone that captured headlines and the attention of market watchers. Practically speaking, however, it's almost a non-event. There's very little difference between Dow 19,999 and Dow 20,001 for any individual's portfolio.

Moreover, though the Dow is famous partly because it's been around since 1896, it only represents 30 stocks. Professional market watchers prefer the S&P 500, whose 500-stock index (S&P, actually) better represents the U.S. stock market and provides a more accurate bellwether of the economy.

So which is it — a major milestone or a non-event? Before answering that, let's look at how we got here.

#### Unexpected impact

Since the election in November, investors have been expressing confidence in our economy by pouring money into stocks, especially shares of

banks and other cyclical companies. Investors are optimistic that the Trump administration will ignite economic growth through a combination of infrastructure spending, regulation repeal and tax cuts. President Trump himself acknowledged the Dow's milestone with a tweet: "Great! #Dow20k."

Interestingly, the reigning wisdom before Election Day was that a Trump victory would hurt stocks. Many even predicted a crash.

#### Power, slow and steady

On Jan. 25, 2017, it had been about 18 years since the Dow closed above 10,000 for the first time on March 29, 1999. The growth rate from 10,000 to 20,000 over 18 years is about 4 percent a year. Do you know the "Rule of 72"? To estimate how long it will take your money to double at a given fixed annual interest rate, just divide the interest rate into 72. Or in this case, we know it took 18 years for the Dow index to double, so we divide 72 by 18 to get an interest rate of 4 percent.

Why is that interesting? Because it demonstrates the power of compounding interest, the slow-and-steady engine behind all of our investment portfolios. (Hopefully your average rate is north of 4 percent.)

What was going on when the Dow

crossed the symbolic 10,000 mark for the first time? Bill Clinton was president and Donald Trump was divorcing Marla Maples. We were at the height of the dot-com stock bubble. iPhones didn't exist. The Atlanta Falcons lost Super Bowl XXXIII to the Denver Broncos. Computer technology was changing everything, the internet was taking off and interest rates were falling. U.S. companies were innovating at an incredible pace.

#### Dips, detours and seeming derailments

By the end of 1999, the country was worried about the Y2K problem. Would there be havoc in computer networks around the world because programmers had represented the four-digit year with only two digits? What would happen when the year changed from 99 to 00?

Computers and networks didn't shut down and there was no apocalypse at 12:00 a.m. on Jan. 1, 2000. However, the dot-com bubble would burst in 2000 and the Dow would retreat, not to retake the 10,000 mark again until late 2003. By October 2007, it had reached 14,000. Then came the financial crisis, at the bottom of which the Dow index fell below 6,500, eight years after closing above 10,000 for the first time.

#### Practicing patience and the long view

This isn't merely interesting, it's instructional, even essential, to understanding investing. The ups and downs of the stock market teach the wise investor to be patient. As legendary investor Warren Buffett once said, "The stock market is a device for transferring money from the impatient to the patient." Over time, the stock market has risen. More specifically, there is always opportunity if you know where to look. That is, somewhere a stock is trading at a lower value than it should be for a temporary reason or even apparently no reason. And listening to popular opinion or all the background noise can steer you astray.

The most interesting thing about 20,000 isn't the number itself. 20,000 doesn't tell us where we're going. But it does tell a story about where we've been and how we got here: through patience and taking a long-term view. For most investors on a long journey, it's a story we need to hear again and again.

Phoebe Venable, chartered financial analyst, is president and COO of CapWealth Advisors, LLC. Her column on women, families and building wealth appears every other Saturday in The Tennessean.

## The Commercial Appeal to be printed in Jackson

USA TODAY NETWORK - TENNESSEE

MEMPHIS — Beginning in April, The Commercial Appeal will be printed at a more modern facility at its sister paper in Jackson, Tenn., company officials announced Monday night.

The shift to the Jackson Sun printing facility will take place beginning with the April 18 edition and will result in elimination of 19 full-time employees in Memphis, said Laura Hollingsworth, president of the USA Today Network - Tennessee.

"While this decision creates operational efficiencies for The Commercial Appeal, the real benefit is the significant improvement in our product quality for our readers," said Hollingsworth. "The Commercial Appeal print edition will be produced on state-of-the-art equipment. It's a win for our readers, and it will give our advertisers more options, as well."

The daily print edition will be trucked back to Memphis, approxi-

mately 80 miles, in time for normal delivery.

Newspapers around the U.S. are increasingly consolidating production facilities to cut costs, and this move will result in substantial efficiencies, according to representatives of Gannett Co. Inc., owner of The Commercial Appeal and Sun. But it will also dramatically improve the newspaper's appearance because of Jackson's state-of-the-art presses, replacing 43-year-old units located at the newspaper's plant at 495 Union.

Gannett also owns The Tennessean. Jackson's modern presses offer more color capabilities for advertisers and superior print reproduction, which will result in a more vibrant, readable product.

"We've used these same presses my entire career," said Louis Graham, executive editor, in his 38th year at the newspaper. "Readers will instantly notice the difference."



SUBMITTED

Mazfresco Market opened Sunday at the renovated former Elysian Fields Kroger store.

## Mazfresco Market to offer Latin brands

GETAHN WARD

USA TODAY NETWORK - TENNESSEE

A specialty grocery store opened Sunday at Plaza Mariachi Music City, marking the unofficial debut of the Latin cultural center in a renovated former Kroger at 3955 Nolensville Pike in south Nashville.

The 8,600-square-foot Mazfresco Market is owned by Nashville businessman Mark Janbakhsh. He also created Plaza Mariachi, which will officially debut next month, offering a blend of culture, art, music, food and retail in one location.

Mazfresco Market has a Latin-themed décor and offer authentic Latin brands such as Goya, LaCostena and Jarritos. Mexican breads and pastries and house-made corn tortillas; fresh meat and seafood; hot prepared food; fruits and vegetables; daily, house-made salsas and creams and Latin American meats and cheeses will be available.

"Mazfresco has already created 50 new jobs," said Plaza Mariachi's Chief Marketing Officer Cristina O. Allen, who expects a positive economic impact on the Nolensville Pike community.

K&S World Market and Patel Brothers are among ethnic grocery stores already operating in that area, which is considered the heart of Nashville's Hispanic community.

Jeff Weaver is store manager for Mazfresco Market, which will operate from 7 a.m. to 10 p.m. seven days a week. The store will have its own exterior entrance to the former Kroger.

Under the Plaza Mariachi concept, that roughly 85,000-square-foot building will also house radio stations Activa 1240 and La Ranchera 880 plus businesses including Dia & Luna clothing boutique, Mediterranean cafe Kouzina Cafe and walk-up eatery El Ceviche Loco.

In addition to the former Kroger building, Plaza Mariachi includes 22,000 square feet of outside retail space.

## Metals

Continued from Page 1D

makes the Mayfield Heights, Ohio-based scrap metal recycling company reluctant to sell its property.

In its lawsuit, PSC Metals said it was being overcharged \$1.2 million a year after a reappraisal real estate firm CBRE performed for the landlords valued the industrial site as if zoned for a mix of uses.

Before 2014 PSC Metals paid \$98,000 a year in rent to owners of the four tracts, but based on CBRE's valuation of the leased premises at \$12.4 million that annual rent was increased to \$1.74 million a year. PSC Metals' own appraisal from appraiser Philip R. Russ, which considered industrial the highest and best use, valued the leased premises at \$3.65 million and calculated the annual rent due at \$51,000.

Several attempts at mediation failed before this week's ruling on dueling mo-

"We remain focused on this litigation and are diligently working on next steps."

BILL HARBISON

NASHVILLE ATTORNEY OF SHERRARD ROE VOIGT & HARBISON PLC

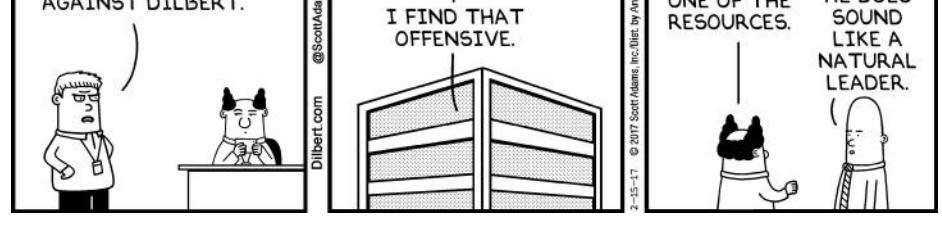
tions for summary judgment. In determining highest and best use, PSC Metals wanted how the land is used taken into account, but the defendants wanted to also factor in potential for residential, commercial, office and/or retail uses.

Under Trauger's ruling, the assessment of the property's value must be performed based on the value on Aug. 1, 2014, when PSC Metals' current 10-year lease term with the landlords began.

The scrapyard is bounded by the Cumberland River, Korean Veterans Boulevard and Shelby Avenue.

Reach Getahn Ward at gward@tennessean.com or 615-726-5968 and on Twitter @getahn.

## Dilbert



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## At Clemmons funeral, personal loss in public spotlight

**ADAM TAMBURIN**

USA TODAY NETWORK - TENNESSEE

For two hours Saturday a death of great public interest was reframed as a profoundly personal tragedy.

In songs, tears and prayer, family and friends paid tribute to Jocques Clemmons, who died Feb. 10 after he was shot by a police officer in East Nashville. Clemmons' death has become a flashpoint for the community: It prompted demonstrations, drew interest from federal authorities and changed the shape of investigations into local police and the use of deadly force.

A woman standing outside Mt. Bethel Baptist Church before the funeral held a Black Lives Matter sign. But loved ones mourning inside did not linger on the politics surrounding Clemmons' death.

Instead, it was their loss — of a son, father, brother and friend — that was palpable. Close family members wrapped their arms around one another in the front row as mourners stepped up to Clemmons' casket to say goodbye, sometimes breaking into overpowering sobs.

"Regardless of what transpired, we came to celebrate his life and the memories that you have," Pastor Diamond E. Bragg, who officiated, said as the funeral began.

Speakers told stories about a young man with a beaming smile, deep-rooted faith and fierce loyalty to the Dallas Cowboys — a point that was illustrated by his casket, which was emblazoned with the image of the Cowboys gridiron, complete with a bright blue star in the middle.

One speaker prayed for healing — for the family and the city. Clemmons' brother, Joemac Perkins III, said he was almost overcome by emotion while offering an extemporaneous tribute.

"I love him way more than I love my-



LARRY MCCORMACK / THE TENNESSEAN

Family and friends follow the casket Saturday as it leaves after a Celebration of Life Service at Mt. Bethel Baptist Church for Jocques Clemmons, the man killed by a police officer in a case that is reshaping the way Nashville police shootings are handled.

self," Perkins said. "There's no words that can tell how I feel."

### An ongoing investigation

Authorities are still investigating the circumstances surrounding Clemmons' death. Metro police Officer Joshua Lippert shot and killed Clemmons, 31, in a James A. Cayce Homes parking lot after an on-foot pursuit that stemmed from a traffic stop. Clemmons had run a stop sign, according to police and surveillance video.

At one point during his pursuit, police



LARRY MCCORMACK / THE TENNESSEAN

Pallbearers break down after loading the casket of Jocques Clemmons into the hearse after a Celebration of Life Service at Mt. Bethel Baptist Church on Saturday in Nashville.

said, Clemmons had a gun in his hand and refused to drop it, causing Lippert to fear for his safety. But advocates have criticized Lippert's record, which includes past punishments for excessive use of force.

Early details in the case have attracted attention from the FBI, the NAACP, activist groups and the Tennessee Bureau of Investigation. Davidson County District Attorney Glenn Funk announced last week that the TBI would take over the police department's investigation into Clemmons' death, as well as all future investigations that involve a Nashville officer shooting and killing someone.

In a statement printed on the back of the funeral program, Clemmons' family acknowledged the overlapping personal and public nature of his death.

"The family of the late Mr. Jocques Scott Clemmons would like to thank each and everyone for everything you have done, whether it was a phone call, visit (or) flowers. But most of all your prayers," the family said in the statement printed on the program. "We extend a special thanks to the NAACP and the community for seeking justice."

"We will forever be grateful."

Reach Adam Tamburin at [atamburin@tennessean.com](mailto:atamburin@tennessean.com) and 615-726-5986 or on Twitter @tamburintweets.

## Bill would change A-F school ranking

**MELANIE BALAKIT**

USA TODAY NETWORK - TENNESSEE

A state bill will propose a significant change to a new school accountability system, according to a lobbyist who represents a state superintendent organization.

Instead of assigning schools an A-F letter grade, the bill will propose the following ranks: significantly above expectations, above expectations, meets expectations, below expectations and significantly below expectations.

The proposal addresses concerns about the perception of a school's overall letter grade, said Catie Lane Bailey, a lobbyist for the Tennessee Organization of School Superintendents. She also represents Williamson County Schools.

"I think if you look at a school that has a 'C' on the state report card or if you look at a school that's meeting expectations, I think those have different connotations," Bailey said at a recent Williamson County school board meeting.

She added: "We think it has a very good chance at passing."

Schools will receive an overall letter

grade in fall 2018 based on academic achievement, academic growth, chronic absenteeism, student readiness for college or the workforce and progress towards English language proficiency.

Schools will also receive letter grades for each of these categories.

House Bill 0449 has not been amended yet to include the proposal, Bailey said. The amendment mirrors language from a state board policy on teacher evaluations, she said.

The bill would not remove letter grades for the separate categories.

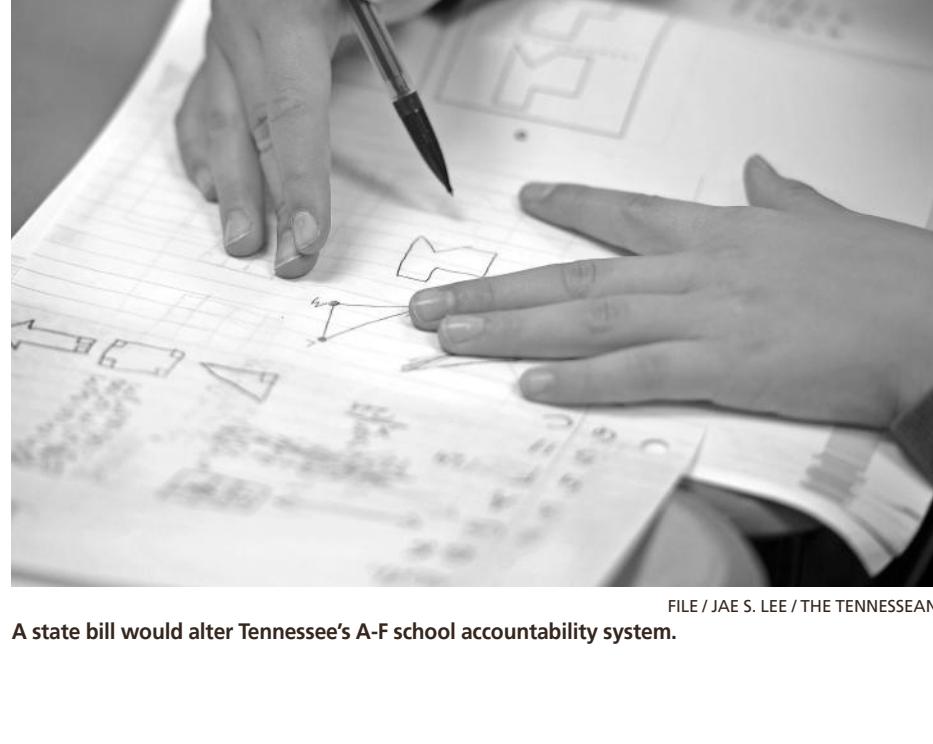
Annual report cards from the state department of education will include the letter grades.

The state legislature approved the school accountability system last year.

The state department of education will include the A-F system in their plan for the Every Student Succeeds Act, a federal education law.

Proponents of the A-F school accountability system say the letter grades can help simplify understanding of a school's performance.

Reach Melanie Balakit at 615-926-1638 and on Twitter @MelanieBalakit.



FILE / JAE S. LEE / THE TENNESSEAN

A state bill would alter Tennessee's A-F school accountability system.

[www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com)

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## Future Is Now No. 1

**Future Is Now No. 1**  
Eminem's new album, "Revival," has sold 1 million units since its release on April 14. It's the 40th straight week that the Detroit rapper has been at No. 1 on the Billboard 200 as well as the 10th consecutive week that he's been the top seller in the weekly Nielsen SoundScan chart, according to Nielsen Music.

**Artist**

WEEK	LAST WEEK	NEW	ARTIST	RECORDED BY	RECORD LABEL	PEAK	WEEKS	LAST WEEK	ARTIST	RECORDED BY	RECORD LABEL	PEAK	WEEKS
10	34	26	EMINEM	WEAREBETTERTHANBETTER	EMI RECORDS	21	128	11	M. RAY	RE-ENTRY	17	102	1
47	41	27	LITTLE BIG TOWN	CANTAL	MCA RECORDS	17	12	RE-ENTRY	72	RE-ENTRY	72	49	1
49	50	28	SELENA GOMEZ	INTERLUDE	INTERLUDE	2	35	RE-ENTRY	72	RE-ENTRY	72	49	12
17	1	29	JUSTIN TIMBERLAKE	IN A DIZZY	INTERScope	10	92	RE-ENTRY	72	RE-ENTRY	72	49	1
28	47	30	LANA DEL REY	POSTHUMOUSLY	REDCAT	3	44	14	14	RE-ENTRY	72	44	1
29	34	31	JON BELLION	WORLDSIDE	SONY MUSIC	25	28	RE-ENTRY	72	RE-ENTRY	72	48	1
49	50	32	LIL UZI VERT	DEPARTMENT	INTERSCOPE	18	34	RE-ENTRY	72	RE-ENTRY	72	49	1
11	11	33	FLORIDA GEORGIA LINE	RAVE	RAVE	3	128	71	ERIC CHURCH	THE PREACHER	SONY MUSIC	8	322
31	41	34	BRANTLEY GILBERT	HALLOWEEN	SONY MUSIC	3	45	RE-ENTRY	72	KELSEA BALLERINI	BACKSTAGE	44	41
61	41	35	JAMES ARTHUR	COLUMBIA	COLUMBIA	45	8	RE-ENTRY	72	KYLE	SOUL ASYLUM	80	5
11	41	36	MICHAEL JACKSON	MICHAEL JACKSON	EMI RECORDS	25	127	RE-ENTRY	72	RE-ENTRY	72	48	1
45	51	37	GUCCI MANE	COMPLICATED	SONY MUSIC	8	28	RE-ENTRY	72	CARRIE UNDERWOOD	LOVING MEMORY	1	128
31	42	38	JOHN LEGEND	CRIMINAL	SONY MUSIC	15	93	RE-ENTRY	72	CHRIS STAPLETON	HEAVY RAIN	3	20
43	54	39	LUKE BRYAN	CANTAL	MCA RECORDS	3	128	RE-ENTRY	72	COLDPLAY	PARADE	4	91
58	41	40	JON PARDI	CANTAL	MCA RECORDS	28	15	RE-ENTRY	72	MEGHAN TRAINOR	DIRTY	1	125
47	41	41	THOMAS RHETT	THOMAS RHETT	SONY MUSIC	3	128	RE-ENTRY	72	PRINCE	1	11	1
42	54	42	POST MALONE	HUMBLE	SONY MUSIC	28	33	RE-ENTRY	72	NICKI MINAJ	72	28	1
41	47	43	TRAIN	TRAIN	SONY MUSIC	14	19	RE-ENTRY	72	DIERKS BENTLEY	CANTAL	1	11
40	51	44	AMINE	HUMBLE	SONY MUSIC	27	15	RE-ENTRY	72	LIL YACHTY	COULDNT STOP MYSELF	50	27
NEW	50	45	JESSIE JAMES DECKER	UP	SONY MUSIC	52	5	RE-ENTRY	72	PINK	1	58	1
11	41	46	IMAGINE DRAGONS	SMASH HIT	SONY MUSIC	2	127	RE-ENTRY	72	CHANCE THE RAPPER	CHANCE THE RAPPER	26	12
51	51	47	JASON ALDEAN	NEIGHBORHOOD	SONY MUSIC	3	128	RE-ENTRY	72	THE LUMINEERS	THE LUMINEERS	1	42
44	45	48	CAMILO CABELO	UBER	SONY MUSIC	28	32	RE-ENTRY	72	MAREN MORRIS	HEART	15	11
50	51	49	JULIA MICHAELS	HUMBLE	SONY MUSIC	58	1	RE-ENTRY	72	DICE	22	47	1
50	51	50	DJ KHALED	RE HIGHLIGHT	SONY MUSIC	3	35	RE-ENTRY	72	KEHOLANI	YOUNG BLOOD	11	9
50	51	51	PANIC! AT THE DISCO	DISCOGRAPHY	SONY MUSIC	3	66	RE-ENTRY	72	NICKY JAM	LA REVOLUCION	11	6
45	70	52	TRAVIS SCOTT	GUARDIAN	SONY MUSIC	5	58	RE-ENTRY	72	CHRIS YOUNG	REVIVAL	11	49
54	65	53	HALSEY	HEARTBEATS	SONY MUSIC	4	66	RE-ENTRY	72	CHARLIE PUTH	JUST FOR YOU	18	91
48	71	54	MIAHL HORAI	17	SONY MUSIC	3	32	RE-ENTRY	72	LUKAS GRAHAM	HUMBLE	1	43
51	49	55	KENDRICK LAMAR	TOP DAWG ENTERTAINMENT	SONY MUSIC	3	123	RE-ENTRY	72	MICHAEL RAY	RE-ENTRY	37	4
RE-ENTRY	50	56	DUSTIN LYNCH	HUMBLE	SONY MUSIC	22	97	RE-ENTRY	72	PARTYNEXTDOOR	RE-ENTRY	80	54
55	47	57	DJ SNAKE	EDM	SONY MUSIC	18	13	RE-ENTRY	72	www.pre1972soundrecordings.com	11	8	
59	55	58	BRETT YOUNG	HUMBLE	SONY MUSIC	78	12	RE-ENTRY	72	162911	MUSIC		
50	71	59	CLEAN BANDIT	CLAPCLAP	SONY MUSIC	35	25	RE-ENTRY	72				
8	21	60	REBA MCENTIRE	REBA MCENTIRE	SONY MUSIC	8	8	RE-ENTRY	72				

42 Go to BILLBOARD.COM/BIZ for complete chart data

Data for week of 03.11.2017

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If You Are An Owner Of A Sound Recording(s)  
Fixed Prior To February 15, 1972 Which Have  
Been Performed, Distributed, Reproduced,  
Or Otherwise Exploited By Sirius XM In The  
United States Without A License Or  
Authorization To Do So From August 1, 2009  
through November 14, 2016, You Could Get  
Benefits From A Class Action Settlement.

### What is this case about?

On August 1, 2013, Plaintiff Flo & Eddie, Inc. ("Flo & Eddie") filed a lawsuit in California against Defendant Sirius XM Radio Inc. on behalf of itself and a putative class of owners of sound recordings fixed prior to February 15, 1972 ("pre-1972 recordings"), alleging that Sirius XM, without a license or authorization, was performing, distributing, reproducing, and otherwise exploiting these pre-1972 recordings in California and other states via satellite and other radio services (the "Lawsuit"). The Lawsuit is known as Flo & Eddie, Inc. v. Sirius XM Radio Inc., Case No. CV13-05693. The parties have entered into a settlement to resolve the Lawsuit, and any and all actual and potential claims by members of the Settlement Class.

### Am I in the Settlement Class?

You qualify as a member of the Settlement Class if you are an owner of a pre-1972 recording which has been performed, distributed, reproduced, or otherwise exploited by Sirius XM in the United States without a license or authorization to do so from August 1, 2009 through November 14, 2016.

### What are the Settlement Benefits?

If the Court approves the proposed Settlement, you will be eligible to receive a share of a \$25 million Settlement Fund, and a royalty rate of 5.5% on future revenues from Sirius XM's performance of your pre-1972 recordings. Sirius XM will pay more money into the Settlement Fund (up to \$35 million more) to be distributed to Settlement Class Members; if Sirius XM wins appeal, the royalty rate on future performances will be reduced, possibly to zero. All Settlement Class Members who do not expressly exclude themselves from the Settlement Class will receive a fixed percentage of future Sirius XM fee claiming arising from its performance, reproduction, distribution, or other exploitation of their pre-1972 recordings during the Class Period.

### What are my Options?

You have to decide now whether to stay in the Settlement Class or ask to be excluded:

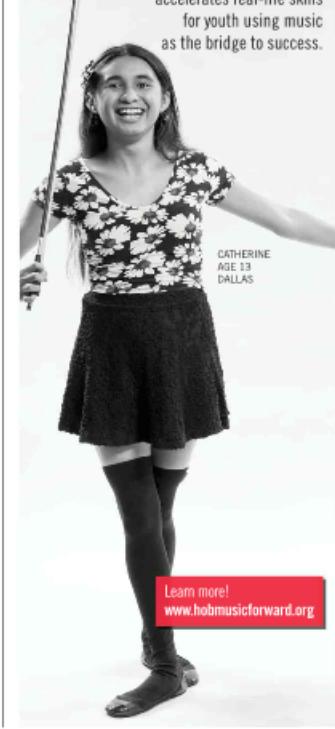
- If you do nothing, you are staying in the Settlement Class. As a member of the Settlement Class, you will keep any rights to money or benefits that may come from the settlement. But, you will give up any rights to sue Sirius XM separately over its performance, reproduction, distribution, or other exploitation of your pre-1972 recordings.
- If you ask to be excluded, you won't share in the money and benefits of the Class Settlement. But you keep any rights to sue Sirius XM separately over your pre-1972 recordings. If you retain an individual attorney, you may need to pay for that attorney. For more information on how to exclude yourself, visit [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com).
- If you wish to object to the settlement, you must do so in writing before March 24, 2017. If you wish to object to Class Counsel's request for attorneys' fees and expenses, you must do so in writing before March 24, 2017.

### Where Can I Get More Information?

This is only a summary. For more information about the Settlement, visit [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com). PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.



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**What are the Settlement Benefits?**

If the Court approves the proposed Settlement, you will be eligible to receive a share of a \$25 million settlement fund, and a royalty rate of 5.5% on future performances for a period of 10 years. If Sirius XM loses certain appeals, Sirius XM will pay more money into the settlement fund (up to \$15 million more to be distributed to Settlement Class Members); if Sirius XM wins those appeals, the royalty rate on future performances will be reduced, possibly to zero. All Settlement Class Members who do not properly exclude themselves from the Settlement Class will be barred from pursuing lawsuits against Sirius XM for claims arising from its performance, reproduction, distribution, or other exploitation of their pre-1972 recordings during the Class Period.

**What are my Options?**

You have to decide now whether to stay in the Settlement Class or ask to be excluded.

- If you do nothing, you are staying in the Settlement Class. As a member of the Settlement Class, you will keep the possibility of getting money or benefits that may come from the settlement. But, you will give up any rights to sue Sirius XM separately over its performance, reproduction, distribution, or other exploitation of your pre-1972 recordings.
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[www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com)

# The Womack Sisters

*Ascending Artists with a Legendary Lineage*

**W**ith their shimmering harmonies, towering hair and classic soul songs, the Womack Sisters might appear to have traveled in time from the early '60s. But a conversation with the trio immediately dispels this impression. As modern independent artists, sisters BG, Zeimani and Kucha are in control of all aspects of their ascending career.

The Womack Sisters are heirs apparent to a remarkable legacy. They were born to songwriters and performers Cecil and Linda Womack (who recorded as Womack & Womack), their late uncle was Bobby Womack and their grandfather was the illustrious icon of American Music—the great Sam Cooke.

The Womack Sisters take this stellar ancestry to the next level, with a modern bent. "We can't help but be true to our generation, but we're old souls and we love the classics," says Zeimani. The sisters say their forthcoming EP spotlights this essential style. "It's going to be in the same vein," says BG. "We want to reintroduce this generation to the wealth of music that existed, with a little bit of now."

Their debut single, "Darlin'," was co-written by the sisters. "We get together and discuss topics that are personal to us," says Zeimani. "We were inspired by older songs, but we flipped it." The corresponding video featuring the trio in resplendent costumes amid saucy choreography is now on YouTube.

The harmonies of the trio reflect not just their shared bloodlines, but also the amount of time spent perfecting their fusion. Notes Kucha, "We've been singing together since we were little. We've been inspired by harmony groups like the Marvelettes and our dad used to have us harmonize to 'My Girl' by the Temptations. We're songwriters as well, so we start with that. Usually the heart leads the way and the words just come—especially when we're dealing with so much in life."

In addition to penning songs for their own forthcoming EP, the sisters have additional writing credits with artists including B.o.B, Mya and the Game. "We were working and a couple of writers invited a few of us to another session. We're going to pursue more songwriting," says Zeimani.

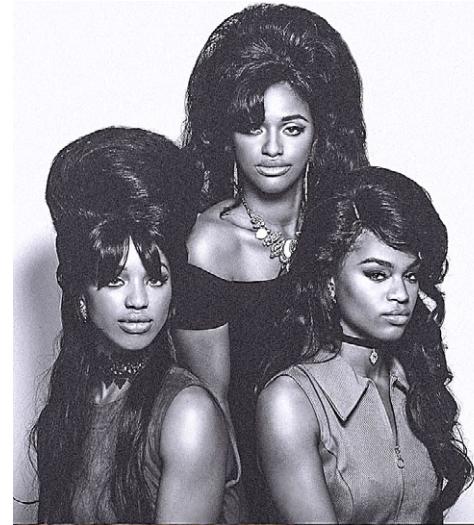
The sisters were also well schooled in the business of songwriting and publishing. "Our parents made sure of it," says BG. "We had to understand the legal part. They had us reading books about the music industry on a daily basis. I guess that explains why we stood back and took our time with this. We were offered a lot of things in the beginning that were just not right on any level."

This knowledge, too, is a family tradition. Very famously, Sam Cooke was the first African-American entertainer to own his own recording, music publishing and management enterprises. "The music industry started off very similar to the slave trade. You worked and worked, and you never got anything. These days they haven't really liberated too far from the original, but it's changing now because we have options and we are exercising them. We're proudly independent," says BG.

"It's really about the creative aspects," adds Zeimani. "As an artist and a creator you're stifled by someone telling you to only create one type of music. To be in charge of your music is the inspiration behind being independent."

Sending out support to other independent artists is vital to the trio's message. "I'm hoping that we inspire a lot of other independent artists," says Kucha. "So many of us are pressured to change everything that's good about us. We said 'No!' many times."

Contact Ian Imhof, LaFamos PR, [ian@lafamos.com](mailto:ian@lafamos.com),  
323-668-9383



**If You Are An Owner Of A Sound Recording(s) Fixed Prior To February 15, 1972 Which Have Been Performed, Distributed, Reproduced, Or Otherwise Exploited By Sirius XM in the United States Without A License Or Authorization To Do So From August 1, 2009 through November 14, 2016, You Could Get Benefits From a Class Action Settlement.**

**What is this case about?**

On August 1, 2013, Plaintiff Flo & Eddie, Inc. ("Flo & Eddie") filed a lawsuit in California against Defendant Sirius XM Radio Inc. on behalf of itself and a putative class of owners of sound recordings fixed prior to February 15, 1972 ("pre-1972 recordings"), alleging that Sirius XM, without a license or authorization, was performing, distributing, reproducing, and otherwise exploiting those pre-1972 recordings in California as part of its satellite and Internet radio services (the "Lawsuit"). The Lawsuit is known as *Flo & Eddie, Inc. v. Sirius XM Radio Inc.*, Case No. CV13-05693. The parties have entered into a settlement to resolve the Lawsuit, and any and all actual and potential claims by members of the Settlement Class.

**Am I in the Settlement Class?**

You qualify as a member of the Settlement Class if you are an owner of a pre-1972 recording which has been performed, distributed, reproduced, or otherwise exploited by Sirius XM in the United States without a license or authorization to do so from August 1, 2009 through November 14, 2016.

**What are the Settlement Benefits?**

If the Court approves the proposed Settlement, you will be eligible to receive a share of a \$25 million settlement fund, and a royalty rate of 5.5% on future performances for a period of 10 years. If Sirius XM loses certain appeals, Sirius XM will pay more money into the settlement fund (up to \$15 million more to be distributed to Settlement Class Members); if Sirius XM wins those appeals, the royalty rate on future performances will be reduced, possibly to zero. All Settlement Class Members who do not properly exclude themselves from the Settlement Class will be barred from pursuing lawsuits against Sirius XM for claims arising from its performance, reproduction, distribution, or other exploitation of their pre-1972 recordings during the Class Period.

**What are my Options?**

You have to decide now whether to stay in the Settlement Class or ask to be excluded.

- If you do nothing, you are staying in the Settlement Class. As a member of the Settlement Class, you will keep the possibility of getting money or benefits that may come from the settlement. But, you will give up any rights to sue Sirius XM separately over its performance, reproduction, distribution, or other exploitation of your pre-1972 recordings.
- If you ask to be excluded, you won't share in the money and benefits of the Class Settlement. But you keep any rights to sue Sirius XM separately over its performance, reproduction, distribution, or other exploitation of your pre-1972 recordings. If you retain an individual attorney, you may need to pay for that attorney. For more information on how to exclude yourself, visit [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com).
- If you wish to object to the settlement, you must do so in writing before March 24, 2017. If you wish to object to Class Counsel's request for attorneys' fees and expenses, you must do so in writing before March 24, 2017.

**Where Can I get More Information?**

**This is only a summary.** For more information about the Settlement, visit [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com). PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.

[www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com)

# Alex Heiche

*Advancing the Income with Sound Royalties*

A timely editorial in the Nashville newspaper, The Tennessean, praised the recent YouTube and National Music Publishers Association (NMPA) settlement. YouTube's massive music user base, over 800 million listeners, alongside Spotify's 50 million paid subscribers, adds significantly to global recorded music sales of \$15 billion dollars in the United States.

The article's author, Alex Heiche, is a dedicated believer in both the immense influence of music and the need for creators to subsist in challenging times. The founder and CEO of Sound Royalties, he has devised a method for songwriters, publishers and producers to receive advances and funding. Sound Royalties offers noncredit based advances—from \$5K to \$10M dollars—while allowing clients to retain all rights to music.

"Songwriters shouldn't sell their copyrights," says Heiche. "In 99.9 percent of their work, they are writing about the pain and joy of their lives, and they'll never get paid for it. It's that lightning in the bottle that strikes. They don't know which one of their stories will pay. And they should be fairly compensated."

Sound Royalties has close to 100 employees working in the West Palm Beach, FL complex. "We can predict what's coming down the pipeline," says Heiche. "We analyze the history. Or sometimes we have someone with a brand new hit and no history, and based on how the song has charted so far, we can figure out what it's going to pay over the next year."

The dilemma that many songwriters face is the lengthy period of time it takes to be paid. "A song that is charting right now is going to take about a year for revenue to flow through," says Heiche. "So if you can just calculate the estimated plays and compare other streams that have similar success and see what they paid out in that time period, you can correlate it."

Heiche says that his own path to working with creative people was circuitous. "I started as a child concentrating on the piano. My first love is music, but it didn't take me long to realize that it wasn't my first language. I could mechanically learn anything, but it bothered me, because it wasn't speaking to the soul that was coming out of me."

He found that the computer world was a place where his skills were compatible. "The computer industry was recruiting people with musical backgrounds. The way a musician's brain is wired, their creativity, their knack for math, it works with the way that software is created. I ended up going to the computer world and worked with some software companies. I worked with a small one that exploded, then to another one. I wanted to find my way back to music. In 2003 I started working in entertainment funding, and that evolved to where we are today which is music and songwriters and the beauty of it all."

In addition to advancing money that is in the pipeline, Royalty Advance Funding also discovers uncollected revenue. "Our job is to look at income streams. Last year alone we found around \$8.5 million in undistributed income for 400 artists."

Educating the public about the value of songs, Heiche says, is a complex undertaking. "They think that their favorite artist wrote that song. They have no clue that maybe a songwriter sat in the room and wrote it, or songwriters wrote a song, sent it to the artist's management who then went back to the songwriter and said, 'We're going to cut it but we want co-writing credit.' This sells records, downloads and streams—this concept that the artist created it and is singing about his or her own life."

And legislation, Heiche notes, is behind the curve. "There are laws that are 50 years old that dictate how a songwriter or artist is going to get paid. Now tech companies can move much faster. Consumption of music is at an all time high, but that isn't represented in each individual check that we see. I'd like to see the copyright laws evolve as quickly as the technology evolves, so it's a fair game."



Contact 844-4All-Music, Ext. 121, SoundRoyalties.com

**Exhibit C**

## Co-Lead Counsel Susman Godfrey L.L.P. and Gradstein & Marzano, P.C. Notify Class Members of Rights in Pending Class Action Regarding Pre-1972 Sound Recordings

English ▾

### NEWS PROVIDED BY

Susman Godfrey L.L.P., and Gradstein & Marzano, P.C. →

Feb 13, 2017, 09:00 ET

LOS ANGELES, Feb. 13, 2017 /PRNewswire/ -- The following statement is being issued by Susman Godfrey L.L.P. and Gradstein & Marzano, P.C. regarding the Lawsuit between Flo & Eddie, Inc. and Sirius XM Radio, Inc.

**If You Are An Owner Of A Sound Recording(s) Fixed Prior To February 15, 1972 Which Have Been Performed, Distributed, Reproduced, Or Otherwise Exploited By Sirius XM in the United States Without A License Or Authorization To Do So From August 1, 2009 through November 14, 2016, You Could Get Benefits From A Class Action Settlement.**

### What is this case about?

On August 1, 2013, Plaintiff Flo & Eddie, Inc. ("Flo & Eddie") filed a lawsuit in California against Defendant Sirius XM Radio Inc. on behalf of itself and a putative class of owners of sound recordings fixed prior to February 15, 1972 ("pre-1972 recordings"), alleging that Sirius XM, without a license or authorization, was performing, distributing, reproducing, and otherwise exploiting those pre-1972 recordings in California as part of its satellite and Internet radio services (the "Lawsuit"). The Lawsuit is known as *Flo & Eddie, Inc. v. Sirius XM Radio Inc.*, Case No. CV13-05693. The parties have entered into a settlement to resolve the Lawsuit, and any and all actual and potential claims by members of the Settlement Class.

### Am I in the Settlement Class?

You qualify as a member of the Settlement Class if you are an owner of a pre-1972 recording which has been performed, distributed, reproduced, or otherwise exploited by Sirius XM in the United States without a license or authorization to do so from August 1, 2009 through November 14, 2016.

### What are the Settlement Benefits?

If the Court approves the proposed Settlement, you will be eligible to receive a share of a \$25 million settlement fund, and a royalty rate of 5.5% on future performances for a period of 10 years. If Sirius XM loses certain appeals, Sirius XM will pay more money into the settlement fund (up to \$15 million more to be distributed to Settlement Class Members); if Sirius XM wins those appeals, the royalty rate on future performances will be reduced, possibly to zero. All Settlement Class Members who do not properly exclude themselves from the Settlement Class will be barred from pursuing lawsuits against Sirius XM for claims arising from its performance, reproduction, distribution, or other exploitation of their pre-1972 recordings during the Class Period.

### What are my Options?

You have to decide now whether to stay in the Settlement Class or ask to be excluded.

If you do nothing, you are staying in the Settlement Class as a member of the Settlement. If you choose to exclude yourself from the Settlement Class, you will lose the possibility of getting money or benefits that may come from the settlement. But, you will give up any rights to sue Sirius XM separately over its performance, reproduction, distribution, or other exploitation of your pre-1972 recordings.

If you ask to be excluded, you won't share in the money and benefits of the Class Settlement. But you keep any rights to sue Sirius XM separately over its performance, reproduction, distribution, or other exploitation of your pre-1972 recordings. If you retain an individual attorney, you may need to pay for that attorney. For more information on how to exclude yourself, visit [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com).

If you wish to object to the settlement, you must do so in writing before March 24, 2017. If you wish to object to Class Counsel's request for attorneys' fees and expenses, you must do so in writing before March 24, 2017.

#### **Where Can I get More Information?**

**This is only a summary.** For more information about the Settlement, visit [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com). PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.

SOURCE Susman Godfrey L.L.P., and Gradstein & Marzano, P.C.

SOURCE Susman Godfrey L.L.P., and Gradstein & Marzano, P.C.

#### **Related Links**

<http://www.pre1972soundrecordings.com>

Los estudios de abogados Susman Godfrey L.L.P. y Gradstein & Marzano, P.C., en calidad de abogados principales, notifican a los miembros del grupo de sus derechos en una demanda colectiva pendiente referente a grabaciones de sonido anteriores a 1972

Español ▾

NEWS PROVIDED BY

**Susman Godfrey L.L.P., and Gradstein & Marzano, P.C. →**

Feb 13, 2017, 09:00 ET

LOS ÁNGELES, 13 de febrero de 2017 /PRNewswire-HISPANIC PR WIRE/ -- Los estudios de abogados Susman Godfrey L.L.P. y Gradstein & Marzano, P.C. dan a conocer la siguiente declaración en referencia a la demanda entre Flo & Eddie, Inc. y Sirius XM Radio, Inc.

**Si usted es propietario de grabaciones de sonido fijadas antes del 15 de febrero de 1972 que han sido presentadas, distribuidas, reproducidas o explotadas de cualquier otra manera por Sirius XM en Estados Unidos sin ninguna licencia ni autorización para hacerlo desde el 1 de agosto de 2009 hasta el 14 de noviembre de 2016, usted podría recibir beneficios de un acuerdo de conciliación de demanda colectiva.**

**¿De qué trata este caso?**

El 1 de agosto de 2013, el demandante Flo & Eddie, Inc. ("Flo & Eddie") presentó una demanda en California contra el demandado Sirius XM Radio Inc. a nombre de sí mismo y de un presunto grupo de propietarios de grabaciones de sonido fijadas antes del 15 de febrero de 1972 ("grabaciones anteriores a 1972"), y alegó que Sirius XM, sin ninguna licencia ni autorización, había presentado, distribuido, reproducido y explotado de cualquier otra manera dichas grabaciones anteriores a 1972 en California como parte de sus servicios de radio satelitales y por Internet (la "demanda"). La demanda se conoce como *Flo & Eddie, Inc. v. Sirius XM Radio Inc.*, Caso No. CV13-05693. Las partes han suscrito un acuerdo de conciliación para resolver la demanda, y cualquier y toda reclamación real y potencial por parte de los miembros del grupo del acuerdo del acuerdo de conciliación.

**¿Estoy en el grupo del acuerdo de conciliación?**

Usted cumple con los requisitos para ser miembro del grupo del acuerdo de conciliación si usted es propietario de una grabación anterior a 1972 que ha sido presentada, distribuida, reproducida o explotada de cualquier otra manera por Sirius XM en Estados Unidos sin ninguna licencia ni autorización para hacerlo desde el 1 de agosto de 2009 hasta el 14 de noviembre de 2016.

**¿Cuáles son los beneficios del acuerdo de conciliación?**

Si el tribunal aprueba la propuesta de acuerdo de conciliación, usted tendrá derecho a recibir una parte del fondo del acuerdo de conciliación de \$25 millones, y una tasa de regalía de 5.5 % sobre las presentaciones futuras por un período de 10 años. Si Sirius XM pierde ciertas apelaciones, Sirius XM pagará un monto de dinero mayor al fondo del acuerdo de conciliación (hasta \$15 millones más que serán distribuidos a los miembros del grupo del acuerdo de conciliación); si Sirius XM gana esas apelaciones, la tasa de regalía sobre las presentaciones futuras se reducirá, posiblemente hasta cero. A todos los miembros del grupo del acuerdo de conciliación que no se excluyan debidamente del grupo del acuerdo de conciliación, se les prohibirá iniciar demandas contra Sirius XM por reclamaciones que surjan de la presentación, reproducción, distribución o demás explotación por parte de Sirius XM de las grabaciones anteriores a 1972 durante el período del grupo.

**¿Cuáles son mis opciones?**

Si usted no hace nada, usted permanece en el grupo del acuerdo de conciliación. Como miembro del grupo del acuerdo de conciliación, usted mantendrá la posibilidad de recibir dinero o beneficios que puedan derivarse del acuerdo de conciliación. Sin embargo, renunciará a todo derecho de demandar por separado a Sirius XM por la presentación, reproducción, distribución o demás explotación por parte de Sirius XM de las grabaciones anteriores a 1972 de usted.

Si solicita que se le excluya, no recibirá ninguna parte del dinero ni de los beneficios del acuerdo de conciliación del grupo. Sin embargo, mantiene todo derecho de demandar por separado a Sirius XM por la presentación, reproducción, distribución o demás explotación por parte de Sirius XM de las grabaciones anteriores a 1972 de usted. Si usted contrata a un abogado particular, puede que tenga que pagar por los servicios de ese abogado. Para mayor información sobre cómo excluirse, visite [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com).

Si desea objecar el acuerdo de conciliación, debe hacerlo por escrito antes del 24 de marzo de 2017. Si desea objecar la solicitud de los abogados del grupo para que se les otorgue honorarios de abogado y el reembolso de las costas procesales, debe hacerlo por escrito antes del 24 de marzo de 2017.

**¿Dónde puedo obtener mayor información?**

**El presente se trata solamente de un resumen.** Para mayor información sobre el acuerdo de conciliación, visite [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com). LE ROGAMOS QUE NO LLAME NI ESCRIBA AL TRIBUNAL PARA SOLICITAR INFORMACIÓN O ASESORÍA.

FUENTE Susman Godfrey L.L.P., y Gradstein & Marzano, P.C.

\$(thisP) Susman Godfrey L.L.P., and Gradstein & Marzano, P.C.

Related Links

<http://www.pre1972soundrecordings.com>

## **Brandon Schwartz**

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Release headline: Co-Lead Counsel Susman Godfrey L.L.P. and Gradstein & Marzano, P.C. Notify Class Members of Rights in Pending Class Action Regarding Pre-1972 Sound Recordings

Word Count: 664

Product Summary:

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Complimentary Press Release Optimization

National Targeted Hispanic Newsline, US1

PR Newswire's Editorial Order Number: 1777358-1-1

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**Exhibit D**

**LAW OFFICES OF ROBERT S. BESSER**  
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March 6, 2017

VIA U.S. Mail; FEDEX  
AND EMAIL



Flo & Eddie v. Sirius XM  
C/O GCG  
P.O. Box 35131  
Seattle, WA 98124-5131

To the Administrator and Class Counsel:

This is in reply to the Administrator's email and letter of March 1, 2017.

All Class Counsel are copied on this reply in a request that one or more of you meet and confer with me pursuant to Local Rules. Unless Gusto is allowed to withdraw from the Class immediately, we will seek Court approval of the withdrawal and opt-out of the proposed settlement.

Gusto provides the attached list (the "Gusto List") showing approximately 8,800 pre-1972 sound recordings. Gusto represents and warrants that it owns and/or controls all recordings on the Gusto List. The Gusto List shows the Artist, Recording Title, Label and ISRC Code for each sound recording. This list should be sufficient to satisfy the opt-out requirements.

With respect to this list, be advised as follows:

1. The Gusto List is proprietary information and it must be treated as confidential and not distributed or filed with the Court unless there is a protective order requiring it to be filed under seal in place.
2. The Gusto List does not, and cannot for reasons explained below, include every pre-1972 sound recording owned by Gusto. It is not the entirety of the Gusto Catalog and should not be regarded as such.

Flo & Eddie v. Sirius XM  
C/O GCG  
March 6, 2017  
Page Two

3. The Gusto List includes the vast majority of Gusto's pre-1972 sound recordings that have been digitalized and therefore almost certainly includes all but a very few of the Gusto recordings played by Sirius during the operable period.
4. The purpose for requiring a listing of "album" for each song is not clear. Many of the recordings on the Gusto List have appeared on multiple albums over the years, either on Gusto released product, on albums released by one of Gusto's many licensees or by inclusion on unauthorized albums sold by bootleggers. Others have not appeared on any album.
5. The Gusto List does not include a date on which the recording was "fixed." This was not something that was relevant to the record business prior to 1972 and the documentation maintained by the original record labels regarding recording dates is often non-existent, incomplete or incorrect. Despite these inherent problems in tracking down original recording dates, which occurred up to 70 years ago, Gusto is confident that the Gusto List includes only sound recordings that were made prior to February 1, 1972.
6. Gusto started issuing IRSC codes in 2005 and to the best of Gusto's knowledge an IRSC code has not been allocated to any Gusto owned pre-1972 recording that is not on the Gusto List.

Gusto is unable to provide some of the information specified by the opt-out requirements because:

1. The Gusto Catalog consists of over 100,000 individual sound recordings, the majority of which were recorded prior to 1972.
2. The Gusto Catalog was built by the acquisition of record labels as well as by a significant amount of in house recording. The labels acquired include King Records, Federal Records, Deluxe Records, Starday Records, Scepter Records, Wand Records, Musicor Records, Dynamo Records, Chart Records and Stop Records, among many others, all of which encompass a significant number of pre-1972 recordings.
3. Gusto does not maintain a single comprehensive list of every sound recording it owns.

Flo & Eddie v. Sirius XM  
C/O GCG  
March 6, 2017  
Page Two

The insistence by Class Counsel that Gusto can be drafted into the Class over its objections creates an irreconcilable conflict of interest between Gusto and Class Counsel.

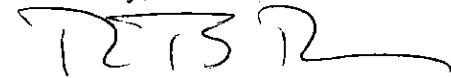
Gusto does not want to be part of the Class or the proposed settlement. Class Counsel has refused to acknowledge the conflict, instead taking actions to benefit the Class at the expense of Gusto. Class Counsel did not inform Gusto in a timely manner that the Class had rejected its earlier opt-out notice because according to the Administrator and/or Class Counsel it was received one day late. Gusto reserves the right to dispute that this was in fact the case.

Class Counsel brought a motion without notice to Gusto that asked the Court to reject Gusto's attempts to opt out. These actions were designed to enlarge the Class recovery to the detriment of Gusto.

Gusto has now provided all reasonable information and made it abundantly clear that there are no circumstances under which it will agree to be part of the Class or a participant in the settlement. To avoid further costs and claims against the Class and/or its counsel, please acknowledge the validity of Gusto's opt-out immediately.

This communication is made without waiver of any of my client's rights or remedies, all of which are hereby reserved.

Sincerely,



ROBERT S. BESSER  
encl.

cc: Client

WARRANTY

In support of the request of Gusto Records, Inc. ("Gusto") to be excluded from the Class and the pending settlement in the case of *Flo & Eddie v. Sirius XM, Case No. CV13-05693* and for the purpose of complying with the Notice Of Pendency Of Class Action Settlement, Gusto hereby represents and warrants that it owns and/or controls all of the sound recordings on the enclosed Gusto List of Pre 1972 Recordings With ISRC'S.

Gusto further warrants that Robert S. Besser has been duly retained and appointed to serve the opt out notice on behalf of Gusto and make the representations stated therein.

GUSTO RECORDS, INC.

By Stephen Hawkins  
STEPHEN HAWKINS  
Vice President

**Exhibit E**



**RETURN SERVICE REQUESTED**

FLO0200011188



Control No: 5752207811  
Claim No: FLO01000116

Date: March 1, 2017

GUSTO RECORDS, INC.  
C/O LAW OFFICES OF ROBERT S BESSER  
17383 SUNSET BLVD  
SUITE A-350  
PACIFIC PALISADES, CA 90272

**EXCLUSION DEFICIENCY NOTICE**

Dear Sir:

We confirm receipt of your request for exclusion in the above matter. However, we note that your request was incomplete, as it did not include the following required document(s):

- A fully completed list identifying all of the Pre-1972 Sound Recording(s) that you own and other related information, which at a minimum requires the following fields: title; artist; album; ISRC (if known); and date first fixed for all of the Pre-1972 Sound Recording(s) you own.

In order to resolve the deficiency(ies) identified, please submit the remaining documentation so that it is received no later than **March 8, 2017**, to the address listed above. Please note that if you do not submit all of the required documentation, your exclusion may not be accepted by the Court.

Sincerely,

Garden City Group, LLC  
Administrator