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16	Attorneys for Defendant	
17	SIRIUS XM RADIO INC.	
18	UNITED STATES DISTRICT COURT	
19	CENTRAL DISTRIC	CT OF CALIFORNIA
20	FLO & EDDIE, INC., individually and on behalf of all others similarly situated,	Case No. 13-CV-5693 PSG (RZx) CLASS ACTION
21	Plaintiff,	DEFENDANT'S:
22	v.	(1) ANSWER AND AFFIRMATIVE
23		DEFENSES; AND
24	SIRIUS XM RADIO INC., and DOES 1 through 100,	(2) DEMAND FOR JURY TRIAL
25	Defendants.	
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27		
28	GMPM 412220000 2	

SIRIUS XM'S ANSWER

SMRH:413328098.2

Defendant Sirius XM Radio Inc. ("Sirius XM" or "Defendant"), by its attorneys, Weil, Gotshal & Manges LLP, for its Answer to the Complaint ("Complaint") of plaintiff Flo & Eddie, Inc. ("Plaintiff") states as follows:

- 1. The allegations contained in paragraph 1 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 2. Sirius XM denies knowledge or information sufficient to respond to the allegations of the first two sentences of paragraph 2 of the Complaint, and denies the remaining allegations of paragraph 2.
- 3. Sirius XM denies the allegations of paragraph 3 of the Complaint, except it admits (a) that Sirius XM has over 24 million subscribers to its satellite radio service; (b) that Sirius XM's nationwide broadcasts can be received: (i) via satellite radio by subscribers who receive the satellite broadcast on authorized Sirius XM receivers; (ii) via the Internet by subscribers who may receive the transmission on computers (at www.siriusxm.com), smart phones and tablets (via the Sirius XM mobile applications), and/or home audio devices/systems such as Roku and Sonos; and (iii) via satellite television channels on Dish Network; (c) that Sirius XM's central servers contain copies of certain recordings by the Turtles; and (d) that recordings by the Turtles are among the thousands of recordings transmitted as part of Sirius XM's nationwide broadcasts through the above-described outlets.
- 4. The allegations contained in paragraph 4 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 5. Sirius XM denies knowledge or information sufficient to respond to the allegations of paragraph 5 of the Complaint.
- 6. Sirius XM denies knowledge or information sufficient to respond to the allegations in the first sentence of paragraph 6 of the Complaint. The remaining

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allegations of paragraph 6 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.

- 7. Sirius XM denies the allegations of paragraph 7 of the Complaint, except admits that Sirius XM is a Delaware corporation with its principal place of business in New York, New York, that Sirius XM has facilities in Glendale and Long Beach, California, and in Los Angeles County, and that this Court has personal jurisdiction over Sirius XM.
- 8. Sirius XM does not respond to paragraph 8 of the Complaint, which contains no factual allegations about Sirius XM.
- 9. The allegations contained in paragraph 9 of the Complaint are not factual in nature; they merely characterize the basis on which Plaintiff purports to bring this action and purport to reserve certain rights to the Plaintiff. Accordingly, no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 10. The allegations contained in paragraph 10 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 11. The allegations contained in paragraph 11 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 12. The allegations contained in paragraph 12 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 13. The allegations contained in paragraph 13 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.

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- 14. The allegations contained in paragraph 14 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 15. The allegations contained in paragraph 15 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 16. The allegations contained in paragraph 16 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 17. The allegations contained in paragraph 17 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.

With Respect to the First Cause of Action

- Sirius XM repeats and incorporates by reference its responses to 18. paragraph 1-17 of the Complaint.
- 19. The allegations contained in the first two sentences of paragraph 19 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations. Sirius XM denies knowledge or information sufficient to respond to the allegations in the third sentence of paragraph 19 of the Complaint.
- 20. The allegations contained in paragraph 20 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 21. The allegations contained in paragraph 21 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.

- 22. The allegations contained in paragraph 22 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 23. The allegations contained in paragraph 23 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.

With Respect to the Second Cause of Action

- 24. Sirius XM repeats and incorporates by reference its responses to paragraphs 1-23 of the Complaint.
- 25. The allegations contained in paragraph 25 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 26. The allegations contained in paragraph 26 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 27. The allegations contained in paragraph 27 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 28. The allegations contained in paragraph 28 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.

With Respect to the Third Cause of Action

- 29. Sirius XM repeats and incorporates by reference its responses to paragraphs 1-28 of the Complaint.
- 30. Sirius XM denies knowledge or information sufficient to respond to the allegations in paragraph 30 of the Complaint.

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- 31. The allegations contained in paragraph 31 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 32. The allegations contained in paragraph 32 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 33. The allegations contained in paragraph 33 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.
- 34. The allegations contained in paragraph 34 of the Complaint call for legal conclusions to which no responsive pleading is required. To the extent a response is required, Sirius XM denies the allegations.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof where such burden properly 35. rests with Plaintiff, and expressly reserving and not waiving the right to assert any and all such defenses at such time and to such extent as discovery and factual developments establish a basis therefor, Sirius XM hereby asserts the following defenses to the claims asserted in the Complaint.

First Affirmative Defense (Failure to State A Claim)

36. The Complaint fails to state any claim upon which relief can be granted.

Second Affirmative Defense

(Laches)

Plaintiff's claims are barred, in whole or in part, by the doctrine of 37. laches.

1	Third Affirmative Defense	
2	(Waiver)	
3	38. Plaintiff's claims are barred, in whole or in part, by the doctrine of	
4	waiver.	
5	Fourth Affirmative Defense	
6	(Estoppel)	
7	39. Plaintiff's claims are barred, in whole or in part, by the doctrine of	
8	estoppel.	
9	Fifth Affirmative Defense	
10	(License)	
11	40. Plaintiff's claims are barred, in whole or in part, by an implied license	
12	conveyed by Plaintiff to Sirius XM or because Plaintiff otherwise licensed,	
13	authorized, or consented to Sirius XM's alleged conduct.	
14	Sixth Affirmative Defense	
15	(Fair Use)	
16	41. Plaintiff's claims are barred, in whole or in part, by the doctrine of fair	
17	use.	
18	Seventh Affirmative Defense	
19	(Statute of Limitations)	
20	42. Plaintiff's claims are barred, in whole or in part, by applicable statutes	
21	of limitations, including Cal. Code Civ. Proc. § 338 and Cal. Bus. & Profs. Code §	
22	17208.	
23	Eighth Affirmative Defense	
24	(Lack of Harm)	
25	43. Plaintiff's claims are barred, in whole or in part, because Plaintiff has	
26	not suffered any harm from Sirius XM's alleged conduct.	
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28	-6-	
	SMRH:413328098.2 SIRIUS XM'S ANSWER	

Ninth Affirmative Defense 1 2 (Failure to Mitigate Damages) 3 44. Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to take appropriate and necessary steps to mitigate its alleged damages, if any. 4 5 **Tenth Affirmative Defense** (Lack of Ownership) 6 7 45. Plaintiff's claims are barred, in whole or in part, because Plaintiff does 8 not own the purported rights at issue. 9 **Eleventh Affirmative Defense** 10 (Adequate Remedy At Law) The injunctive relief sought by Plaintiff is barred, in whole or in part, 11 46. because Plaintiff has available an adequate remedy at law. 12 13 PRAYER FOR RELIEF For the reasons set forth above, Sirius XM respectfully requests that the Court: 14 Dismiss Plaintiff's Complaint in its entirety with prejudice; 15 1. 2. Enter judgment in favor of Defendant Sirius XM and against Plaintiff 16 17 on each and every cause of action set forth in the Complaint; 18 3. Award attorneys' fees and costs in favor of Defendant Sirius XM 19 against Plaintiff as permitted by applicable law; and Award such other and further relief as the Court deems just and proper 20 4. 21 22 23 24 25 26 27 28 -7-

1	Dated: November 18, 2013	
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28	-8- SMRH:413328098.2 SIRIUS XM'S ANSWER	
	SMRH:413328098.2 SIRIUS XM'S ANSWER	

DEMAND FOR JURY TRIAL 1 Defendant Sirius XM Radio Inc. hereby demands a jury trial on all issues 2 triable as of right to a jury. FED. R. CIV. P. 38(b). 3 4 Dated: November 18, 2013 5 6 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP 7 8 By /s/ Fred R. Puglisi FRED R. PUGLISI 9 10 WEIL, GOTSHAL & MANGES LLP 11 R. BRUCE RICH (admitted pro hac vice) BRUCE S. MEYER (admitted *pro hac vice*) BENJAMIN E. MARKS (admitted *pro hac vice*) 12 TODD LARSON (admitted pro hac vice) 13 14 KRAMER LEVIN NAFTALIS & FRANKEL LLP 15 MICHAEL S. OBERMAN 16 Attorneys for Defendant 17 SIRIUS XM RADIO INC. 18 19 20 21 22 23 24 25 26 27 28 -9-

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