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 17 SIRIUS XM RADIO INC.

18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA

20 FLO & EDDIE, INC., individually and
 on behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 SIRIUS XM RADIO INC., and DOES
 24 1 through 100,

25 Defendants.
 26

Case No. 13-CV-5693 PSG (RZx)
CLASS ACTION

DEFENDANT’S:

(1) ANSWER AND AFFIRMATIVE DEFENSES; AND

(2) DEMAND FOR JURY TRIAL

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

4 1. The allegations contained in paragraph 1 of the Complaint call for legal
5 conclusions to which no responsive pleading is required. To the extent a response is
6 required, Sirius XM denies the allegations.

7 2. Sirius XM denies knowledge or information sufficient to respond to the
8 allegations of the first two sentences of paragraph 2 of the Complaint, and denies the
9 remaining allegations of paragraph 2.

10 3. Sirius XM denies the allegations of paragraph 3 of the Complaint,
11 except it admits (a) that Sirius XM has over 24 million subscribers to its satellite
12 radio service; (b) that Sirius XM’s nationwide broadcasts can be received: (i) via
13 satellite radio by subscribers who receive the satellite broadcast on authorized Sirius
14 XM receivers; (ii) via the Internet by subscribers who may receive the transmission
15 on computers (at www.siriusxm.com), smart phones and tablets (via the Sirius XM
16 mobile applications), and/or home audio devices/systems such as Roku and Sonos;
17 and (iii) via satellite television channels on Dish Network; (c) that Sirius XM’s
18 central servers contain copies of certain recordings by the Turtles; and (d) that
19 recordings by the Turtles are among the thousands of recordings transmitted as part
20 of Sirius XM’s nationwide broadcasts through the above-described outlets.

21 4. The allegations contained in paragraph 4 of the Complaint call for legal
22 conclusions to which no responsive pleading is required. To the extent a response is
23 required, Sirius XM denies the allegations.

24 5. Sirius XM denies knowledge or information sufficient to respond to the
25 allegations of paragraph 5 of the Complaint.

26 6. Sirius XM denies knowledge or information sufficient to respond to the
27 allegations in the first sentence of paragraph 6 of the Complaint. The remaining
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1 allegations of paragraph 6 of the Complaint call for legal conclusions to which no
2 responsive pleading is required. To the extent a response is required, Sirius XM
3 denies the allegations.

4 7. Sirius XM denies the allegations of paragraph 7 of the Complaint,
5 except admits that Sirius XM is a Delaware corporation with its principal place of
6 business in New York, New York, that Sirius XM has facilities in Glendale and
7 Long Beach, California, and in Los Angeles County, and that this Court has
8 personal jurisdiction over Sirius XM.

9 8. Sirius XM does not respond to paragraph 8 of the Complaint, which
10 contains no factual allegations about Sirius XM.

11 9. The allegations contained in paragraph 9 of the Complaint are not
12 factual in nature; they merely characterize the basis on which Plaintiff purports to
13 bring this action and purport to reserve certain rights to the Plaintiff. Accordingly,
14 no responsive pleading is required. To the extent a response is required, Sirius XM
15 denies the allegations.

16 10. The allegations contained in paragraph 10 of the Complaint call for
17 legal conclusions to which no responsive pleading is required. To the extent a
18 response is required, Sirius XM denies the allegations.

19 11. The allegations contained in paragraph 11 of the Complaint call for
20 legal conclusions to which no responsive pleading is required. To the extent a
21 response is required, Sirius XM denies the allegations.

22 12. The allegations contained in paragraph 12 of the Complaint call for
23 legal conclusions to which no responsive pleading is required. To the extent a
24 response is required, Sirius XM denies the allegations.

25 13. The allegations contained in paragraph 13 of the Complaint call for
26 legal conclusions to which no responsive pleading is required. To the extent a
27 response is required, Sirius XM denies the allegations.

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Third Affirmative Defense

(Waiver)

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

Fourth Affirmative Defense

(Estoppel)

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

Fifth Affirmative Defense

(License)

40. Plaintiff's claims are barred, in whole or in part, by an implied license conveyed by Plaintiff to Sirius XM or because Plaintiff otherwise licensed, authorized, or consented to Sirius XM's alleged conduct.

Sixth Affirmative Defense

(Fair Use)

41. Plaintiff's claims are barred, in whole or in part, by the doctrine of fair use.

Seventh Affirmative Defense

(Statute of Limitations)

42. Plaintiff's claims are barred, in whole or in part, by applicable statutes of limitations, including Cal. Code Civ. Proc. § 338 and Cal. Bus. & Profs. Code § 17208.

Eighth Affirmative Defense

(Lack of Harm)

43. Plaintiff's claims are barred, in whole or in part, because Plaintiff has not suffered any harm from Sirius XM's alleged conduct.

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Ninth Affirmative Defense
(Failure to Mitigate Damages)

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.

Tenth Affirmative Defense
(Lack of Ownership)

45. Plaintiff’s claims are barred, in whole or in part, because Plaintiff does not own the purported rights at issue.

Eleventh Affirmative Defense
(Adequate Remedy At Law)

46. The injunctive relief sought by Plaintiff is barred, in whole or in part, because Plaintiff has available an adequate remedy at law.

PRAYER FOR RELIEF

For the reasons set forth above, Sirius XM respectfully requests that the Court:

1. Dismiss Plaintiff’s Complaint in its entirety with prejudice;
2. Enter judgment in favor of Defendant Sirius XM and against Plaintiff on each and every cause of action set forth in the Complaint;
3. Award attorneys’ fees and costs in favor of Defendant Sirius XM against Plaintiff as permitted by applicable law; and
4. Award such other and further relief as the Court deems just and proper

