

1 GRADSTEIN & MARZANO, P.C.
HENRY GRADSTEIN (State Bar No. 89747)
2 hgradstein@gradstein.com
3 MARYANN R. MARZANO (State Bar No. 96867)
mmarzano@gradstein.com
4 6310 San Vicente Blvd., Suite 510
Los Angeles, California 90048
5 T: 323-776-3100

6 SUSMAN GODFREY L.L.P.
7 STEPHEN E. MORRISSEY (187865)
smorrissey@susmangodfrey.com
8 STEVEN G. SKLAVER (237612)
ssklaver@susmangodfrey.com
9 KALPANA SRINIVASAN (237460)
ksrinivasan@susmangodfrey.com
10 1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067-6029
11 T: 310-789-3100 F: 310-789-3150

12 [Additional Counsel for Plaintiff on Signature Page]
13 *Attorneys for Plaintiff FLO & EDDIE, INC. and the Class*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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)

**SUPPLEMENTAL DECLARATION
OF HENRY GRADSTEIN IN
SUPPORT OF MOTION BY
PLAINTIFF FOR AN AWARD OF
ATTORNEYS' FEES AND COSTS**

Date: May 8, 2017
Time: 1:30 p.m.
Place: Courtroom 6A

1 I, Henry Gradstein, hereby declare and state as follows:

2 1. I am an attorney duly licensed to practice law in the State of California
3 and admitted to practice before the United States District Court for the Central
4 District of California since 1979. I am a partner in the law firm of Gradstein &
5 Marzano, P.C. (“G&M”), which has been appointed as Co-Lead Class Counsel in
6 the above-entitled action. I have personal knowledge of the facts set forth herein,
7 and if called upon to testify as a witness, I could and would do so competently. I
8 make this supplemental declaration in support of Plaintiff Flo & Eddie Inc.’s (“Flo
9 & Eddie” or “Plaintiff”) Motion for an Award of Attorneys’ Fees and Costs (“Fee
10 Motion”) Dkt. 669.

11 2. Since the filing of the Fee Motion and the declarations of Steven
12 Sklaver and myself dated December 30, 2016 (Dkts. 671, 672), the legal work in
13 support of the settlement and pending appeals has continued apace. Without
14 limitation, Class Counsel has prepared and filed motions with this Court for
15 preliminary and final approval of the class settlement, as well as a response to Sirius
16 XM’s statement regarding preliminary approval and an Opposition to the motion by
17 non-class members to file an amicus brief. In the New York proceedings, Class
18 Counsel prepared and filed the letter brief as requested by the Second Circuit
19 regarding the ruling by the New York Court of Appeals, as well as a supplemental
20 letter brief. In the Florida proceedings, Class Counsel prepared and filed the reply
21 brief with the Florida Supreme Court and prepared for and argued the appeal before
22 the Florida Supreme Court on April 6, 2017. The dates of those filings and argument
23 were as follows:

<u>Case</u>	<u>Date</u>	<u>Activity</u>
CA	11/28/16	Motion for Preliminary Approval of Settlement
NY	1/18/17	Letter Brief requested by 2 nd Circuit
FL	1/23/17	Reply Brief in Florida Supreme Court
NY	1/26/17	Motion to file Supplemental letter brief in 2 nd Circuit

<u>Case</u>	<u>Date</u>	<u>Activity</u>
CA	1/27/17	Response to Sirius XM’s Statement re preliminary approval
FL	4/6/17	Florida Supreme Court argument
CA	4/10/17	Motion for Final Approval of Settlement
CA	4/10/17	Opposition to motion by non-class members to file amicus

3. In addition to the foregoing, Class Counsel has worked extensively with Music Reports Inc. (“MRI”) – the royalty administrator – to develop the database and website for Class members to claim their pro-rata share of the Settlement Fund. Class Counsel has also worked extensively with Garden City Group (“GCG”), the class action administrator, to develop the class action website, provide notice to Class members and to update them with information as the case has progressed. Class Counsel has also had numerous communications with Class members regarding the status of the settlement.

4. Given the complexities of the settlement and its appellate contingencies, Class Counsel’s work will continue for quite some time following the Court’s determination of whether to grant final approval of the settlement. Administration of the Settlement Fund will require Class Counsel to continue to work with GCG and MRI and field questions from Class members. Class Counsel will be involved in implementing the future royalty program envisioned by the Settlement Agreement. Additionally, Class Counsel will remain available to address issues arising from the forthcoming ruling by the Florida Supreme Court and to litigate any further proceedings in the Eleventh Circuit. Finally, as envisioned by the Settlement Agreement, Class Counsel will need to prepare, brief and argue Sirius XM’s appeal from this Court’s summary judgment ruling, both in the Ninth Circuit and likely in the California Supreme Court.

5. I have asked staff at my firm to prepare a summary of the additional G&M time and expenses invested since November 30, 2016 (the prior cut-off date) exclusive of time spent related to the Fee Motion. The law firms of Heller Waldman,

1 P.L., local counsel to G&M in Florida, and Evan S. Cohen, Flo & Eddie’s litigation
 2 and business attorney, did not expend additional time on the cases.

3 6. The charts below reflect the additional time on each of the three
 4 matters incurred by G&M at the rates specified in my prior declaration. The
 5 additional lodestar value of G&M attorney time since November 30, 2016 is
 6 \$161,950.00 for the California action, \$38,500.00 for the New York action and
 7 \$49,350.00 for the Florida action, for a total additional lodestar value of
 8 \$249,800.00.

9 **G&M Attorney Time Since November 30, 2016 By Matter**

10 **California Action**

11 Attorney	Total Hours Billed	Total Fees Billed
12 Henry D. Gradstein 13 (Partner)	50.9	\$35,630.00
14 Maryann R. 15 Marzano (Partner)	99.3	\$69,510.00
16 Matthew A. Slater 17 (Associate)	2.5	\$1,125.00
18 Daniel B. Lifschitz 19 (Associate)	159.1	\$55,685.00
20 Total	311.8	\$161,950.00

21
 22 **New York Action**

23 Attorney	Total Hours Billed	Total Fees Billed
24 Henry D. Gradstein 25 (Partner)	24.8	\$17,360.00
26 Maryann R. 27 Marzano (Partner)	14.4	\$10,080.00

Daniel B. Lifschitz (Associate)	31.6	\$11,060.00
Total	70.8	\$38,500.00

Florida Action

Attorney	Total Hours Billed	Total Fees Billed
Henry Gradstein (Partner)	55.0	\$38,500.00
Maryann R. Marzano (Partner)	11.6	\$8,120.00
Daniel Lifschitz (Associate)	7.8	\$2,730.00
Total	74.4	\$49,350.00

Cumulative Total	457	\$249,800.00	
-------------------------	-----	--------------	--

7. Additional out-of-pocket expenses advanced or reimbursed by G&M since November 30, 2016 were \$3,467.89 (\$678.40 for California and \$2,789.49 for Florida). Again, these out-of-pocket expenses were necessarily incurred and ordinarily billable to clients. They consisted primarily of filing-related expenses and travel and associated expenses in connection with the Supreme Court hearing in Florida.

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

Executed this 24th day of April, 2017, at Los Angeles, California.

/s/ Henry Gradstein
Henry Gradstein