

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.

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 "SettlementClass":

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 SettlementClass:

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 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 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>Stay in the Lawsuit. Await the outcome. Receive the benefits of this Settlement if it is approved.</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 & 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@susgmangodfrey.com.</p>
EXCLUDE YOURSELF	<p>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.</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 & 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 & 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>If you are a member of the Settlement Class, you may object to the Settlement.</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"> • 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

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 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; or Steven Sklaver, Susman Godfrey L.L.P., 310-789-3100 or ssklaver@susmangodfrey.com.

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

DATED: January 27, 2017

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