

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

**NOTICE OF PENDENCY OF CLASS ACTION**

*A federal court authorized this notice. This notice is not an endorsement of plaintiffs' claims. This notice is not an attorney solicitation. Distribution of this notice does not guarantee that you will recover damages.*

**If You Are An Owner Of A Sound Recording(s) Fixed Prior To February 15, 1972 (“pre-1972 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, A Class Action May Affect Your Rights.**

- On August 1, 2013, Plaintiff Flo & Eddie, Inc. (“Flo & Eddie”) 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 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: <http://www.pre1972soundrecordings.com>
- In the Lawsuit, Flo & Eddie alleges Sirius XM has violated California Civil Code Section 980(a)(2), has engaged in misappropriation and unfair competition, and is liable for conversion. Flo & Eddie seeks damages (including disgorgement and punitive damages), restitution, and injunctive relief on behalf of itself and the putative class.
- Sirius XM denied any wrongdoing and contended that California law does not provide pre-1972 recording owners a right to control performances of recordings that have been sold to the public.
- On September 22, 2014, the Court found Sirius XM liable for the unauthorized public performance of pre-1972 recordings in California. 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).
- On May 27, 2015, the Court certified a class of owners of pre-1972 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 (the “Class”).
- The Court has scheduled a trial for November 2016.

Your legal rights may be affected, and you have a choice to make now:

<b>YOUR LEGAL RIGHTS AND OPTIONS</b>	
<b>DO NOTHING</b>	<p><b>Stay in the Lawsuit. Await the outcome. Give up certain rights.</b></p> <p>By doing nothing, you will automatically be part of this Lawsuit if you qualify as a member of the Class. The Class Plaintiff—Flo &amp; Eddie—and the Court-approved Class attorneys can act as your representative and counsel in this Lawsuit. You also have a right to retain an individual attorney, though you may need to pay for that attorney.</p> <p>As a member of the Class, you will keep the possibility of getting money or benefits that may come from a trial or a settlement. But, you will give up any rights to sue Sirius XM separately about the same legal claims asserted in this Lawsuit. You will be legally bound by the judgment in this Lawsuit, whether favorable or not. You will not be personally responsible for any attorneys’ fees or costs, although the Court may award fees and costs to the Class attorneys out of any recovery achieved on behalf of the Class, which could reduce the amount of your individual recovery.</p>
<b>EXCLUDE YOURSELF</b>	<p><b>Get out of this Lawsuit. Get no benefits from this Lawsuit. Keep certain rights.</b></p> <p>If you ask to be excluded (by opting out of the Class), and money or benefits are later awarded to the Class, you won’t share in those. But, you keep any rights to sue Sirius XM separately about the same legal claims in this Lawsuit. If you retain an individual attorney, you may need to pay for that attorney.</p> <p>To ask to be excluded, you must act before August 30, 2016.</p>

- Your options—and the deadlines to exercise them—are explained in this notice.
- Before you may recover damages, you will need to identify the pre-1972 recordings that Sirius XM performed, distributed, reproduced, or otherwise exploited from Sirius’s playlist, which will be provided. It is possible that you may need to participate in proceedings to establish your ownership in the sound recordings that you identify.
- If money or benefits are obtained from Sirius XM, you will be notified about how to seek a share.

## BASIC INFORMATION

### 1. Why did I get this notice?

You received this Court-authorized notice because you may be an owner of pre-1972 recordings, which would make you a potential member of the Class in the Lawsuit.

This notice explains that the Court has allowed, or “certified,” a class action that may affect you. You have legal rights and options that you may exercise before the Court holds a trial. The trial is to determine the amount of damages, if any, to be assessed against Sirius XM for the conduct that occurred in California. Judge Philip S. Gutierrez is overseeing this Lawsuit.

### 2. What is this Lawsuit about?

The Lawsuit alleges that Sirius XM performed, distributed, reproduced, or otherwise exploited sound recordings that were fixed (*i.e.*, recorded) prior to February 15, 1972 (“pre-1972 recordings”) in California without a license or authorization to do so in violation of California Civil Code § 980(a)(2), and engaged in misappropriation, unfair competition, and conversion. The Lawsuit seeks damages, restitution, and injunctive relief on behalf of the Class. You can [read Flo & Eddie’s Class Action Complaint](#) at [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com).

Sirius XM answered Flo & Eddie’s Class Action Complaint by denying any wrongdoing and contending that California law does not provide pre-1972 recording owners a right to control performances of recordings that have been sold to the public. Sirius XM also asserted the following defenses: laches, waiver, estoppel, license, fair use, statute of limitations, lack of harm, and lack of ownership. Sirius XM also asserts that disgorgement and punitive damages are unavailable. You can read [Sirius XM’s Answer to the Complaint](#) at [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com).

On June 9, 2014, Flo & Eddie, on behalf of the Class, filed a motion for summary judgment claiming that owners of pre-1972 recordings had the right to exclude Sirius XM from using or exploiting that performance without a license, including by way of public performance (*i.e.*, broadcast or stream). Sirius XM contended that the ownership of the artistic performance in a pre-1972 recording did not include a right of public performance.

On September 22, 2014, Judge Gutierrez ruled that under California law, the ownership of the artistic performances in pre-1972 recordings includes the rights of public performance, distribution, and reproduction. He also found that Sirius XM’s unauthorized public performance of pre-1972 recordings violated California Civil Code §980(a)(2) and constituted misappropriation, conversion, and unfair competition under California Business & Professions Code § 17200. You can read the Court’s Order Granting Plaintiffs Motion for Summary Judgment, entered on September 22, 2014, at [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com).

The Court has not yet ruled on Sirius XM’s defenses. The Court has not yet determined an amount of damages (if any).

There is no guarantee that money or benefits will be obtained through trial or settlement. If they are, you will be notified about how to seek a share.

### 3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” (in this case, Flo & Eddie, which is a corporation that owns the rights to certain sound recordings of “The Turtles”) sue on behalf of other people or entities who have similar claims. Those people and entities together are a “Class” or “Class Members.” The named Plaintiff who sued, Flo & Eddie, and all of the Class Members like them, are called the “Plaintiffs”. The company they sued (in this case, Sirius XM) is called the Defendant. One court resolves the issues for everyone in the Class—except for those who choose to exclude themselves from the Class.

### 4. Am I a part of the certified Class?

On May 27, 2015, the Court granted Flo & Eddie’s motion for class certification, certifying a class of “owners of sound recordings fixed prior to February 15, 1972 (“pre-1972 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 the

present” (the “Class”). If you own a pre-1972 recording(s) that was performed, distributed, reproduced, or otherwise exploited by Sirius XM in California without a license or authorization to do so during the period from August 21, 2009 to August 24, 2016, then you are part of the Class.

**5. Why is this Lawsuit a class action?**

The Court has decided that this Lawsuit can proceed as a class action and move towards a trial because it meets the requirements of Federal Rules of Civil Procedure, Rule 23, which governs class actions in federal court.

More information about why the Court is allowing this Lawsuit to be a class action is contained in the Court’s Order certifying the Class and appointing Class Counsel, which is available at [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com).

**YOUR RIGHTS AND OPTIONS**

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

**6. What happens if I do nothing at all and remain in the Class?**

By doing nothing, you are staying in the Class.

If you remain in the Class and the Class receives a recovery through judgment or settlement, you may be entitled to a share of the recovery. In that event, you will be notified about how to apply for a share (or how to ask to be excluded from any settlement). If the Lawsuit is not resolved in favor of the Class, you will receive nothing. Regardless of whether the Class Representatives win or lose, you will not be able to separately sue, or continue to sue Sirius XM—as part of any other lawsuit—for the same legal claims that are the subject of the Lawsuit.

You will also be legally bound by all of the Orders the Court issues and judgments the Court makes in the Lawsuit, whether favorable or not.

**7. What happens if I ask to be excluded from the Class?**

If you exclude yourself from the Class—which is sometimes called “opting-out” of the Class—and the Class receives a recovery through judgment or settlement, you won’t be entitled to a share of the recovery. However, you will be able to separately sue or continue to sue Sirius XM, though if you retain an individual attorney, you may need to pay for that attorney. If you exclude yourself, you will not be legally bound by the Court’s Orders and judgments in this Lawsuit.

If you do exclude yourself so you can start or continue your own lawsuit against Sirius XM, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

**8. How do I exclude myself from the Class?**

To exclude yourself from the Class, you must send a written request for exclusion *that is received no later than August 30, 2016*, to:

**Flo & Eddie v. Sirius XM  
c/o GCG  
PO Box 35131  
Seattle, WA 98124-5131**

**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 completed Exclusion Request Form and Attachment that identifies the pre-1972 recording(s) that you own and other related information. You can access the necessary Exclusion Request Form and Attachment A at [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com).**

## THE LAWYERS REPRESENTING YOU

### 9. Do I have a lawyer in this case?

The Court has appointed the law firms of Gradstein & Marzano, P.C. and Susman Godfrey L.L.P. to represent the Plaintiff and all Class Members as “Class Counsel.” More information about these law firms and their experience is available at [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com). You have the right to retain an individual attorney, though you may need to pay for that attorney.

### 10. Should I get my own lawyer?

If you choose to remain in the Class, you do not need to hire your own lawyer because Class Counsel is working on your behalf. But, you have the right to retain an individual attorney, though you may need to pay for that attorney.

### 11. How will the lawyers be paid?

If Class Counsel obtains money or benefits for the Class, they may ask the Court for fees and expenses. You will not be personally responsible for the payment of these fees and expenses. If the Court grants Class Counsel’s request, the fees and expenses may be deducted from any money obtained for the Class, which could reduce the amount of your individual recovery.

## THE TRIAL

### 12. How and when will the Court decide?

The Court has set November 15, 2016 as the date for trial. Testimony and evidence will be presented at trial.

### 13. Do I have to come to the trial?

While Class Members are not typically required to participate at trial, you may be required to do so if you receive a subpoena or other notification authorized by the court which requires you to appear. Class Counsel will present the case for the Class members, and Sirius XM will present its defense. You are welcome to come at your own expense. If you are not required to participate at trial but wish to do so, you should contact Class Counsel.

### 14. Will I get money, after the trial?

If the Class obtains money or benefits as a result of the trial or a settlement, you will be notified about how to participate in any recovery. We do not know how long this will take. You will need to identify from Sirius XM’s playlist (which will be provided) the pre-1972 recordings that Sirius XM performed, distributed, reproduced, or otherwise exploited without a license to do so between August 21, 2009 and August 24, 2016. It is possible that you may need to participate in proceedings to establish your ownership in the sound recordings that you identify.

## GETTING MORE INFORMATION

### 15. Are more details available?

Yes, visit the website, [www.pre1972soundrecordings.com](http://www.pre1972soundrecordings.com), where you will find pertinent information and documents, including pleadings and orders of the Court.

You may also call 1 (855) 720-2382 for additional information, or contact Class Counsel by e-mail at: [info@pre1972soundrecordings.com](mailto:info@pre1972soundrecordings.com) or by writing to: Flo & Eddie v. Sirius XM, c/o GCG, P.O. Box 35131, Seattle, WA 98124-5131.

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

**DATED: JUNE 16, 2016**

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

