UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH ZIMMERMAN, ANTHONY DEVITO, and SEAN DONNELLY, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

PARAMOUNT GLOBAL, COMEDY PARTNERS and DOES 1-10,

Defendants.

Case No. 1:23-cv-2409 (VSB)

Hon. Vernon S. Broderick

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

MICHAEL KAPLAN, an individual on behalf of himself and all others similarly situated,

Plaintiff,

v.

COMEDY PARTNERS, a New York general partnership,

Defendant.

Consolidated with;

Case No. 1:22-cv-09355-(VSB)

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I. INTRODUCTION

Final approval of the Settlement Agreement should be granted because it provides substantial monetary relief to the Class—representing an impressive 68% of Class Members' claimed actual damages—without requiring those Members to submit a claim.[1] The Class's response was unanimously positive, as not a single objection or opt-out was received. Upon final approval, the Settlement Agreement will be effectuated and distribution of the proceeds to the Class will commence promptly through a process designed to ensure that the proceeds reach the Class.

This class action lawsuit challenges the alleged failures of Defendants Paramount Global and Comedy Partners (together, "Defendants") to pay royalties owed to Class Members, whose works have been distributed via digital audio transmission on SiriusXM Radio ("SiriusXM") pursuant to licensing agreements or recording contracts (the "Recording Contracts"). Plaintiffs Michael Kaplan, Joseph Zimmerman, Anthony DeVito, and Sean Donnelly (collectively, "Plaintiffs") initially brought two separate class action lawsuits, which have since been consolidated for purposes of settlement, asserting various causes of action arising from Defendants' improper practices related to the payment of royalties.

On March 11, 2025, the Court granted preliminary approval and approved a plan for disseminating notice to the Class regarding the Settlement Agreement. *See Zimmerman v. Paramount Global*, No: 1:23-CV-02409, (S.D.N.Y. March 21, 2023), ECF Nos. 60-61, Opinion & Order Regarding Motion for Settlement and Order Regarding Preliminary Approval of Settlement Agreement, Certification of Settlement Class, Appointment of Class Counsel, and Appointment of Class Representatives. The Settlement provides Class Members with an $11 million common fund, with each Class Member receiving their *pro rata* share, which is a percentage of the Net Settlement Sum equal to the ratio of the total number of digitally transmitted

[1] Unless otherwise noted herein, all capitalized terms shall have the same meaning as in the Stipulation and Agreement of Settlement dated July 23, 2024 ("Settlement Agreement").

performances (hereinafter, "spins") of the individual Class Member's recordings compared to the total number of spins of all Class Member recordings (in the aggregate) on SiriusXM during the period of May 19, 2013 through December 31, 2022 (the "Settlement Period").

The notice plan has been executed and the response from Class Members has been unanimously positive. Most notably, none of the 163 artists included in the Class have filed an objection or opted out of the Settlement Agreement. The positive reaction from the Class Members in combination with numerous other factors demonstrating the fairness, reasonableness, and adequacy of the Settlement Agreement strongly support granting Plaintiffs' Motion for Final Approval of the Class Action Settlement Agreement ("Motion") and entering final judgment in this case.

II. RELEVANT LITIGATION BACKGROUND

A. Procedural History

On November 1, 2022, Plaintiff Kaplan filed a class action lawsuit on behalf of himself and a putative class against Comedy Partners in this District (the "*Kaplan* Action"), asserting claims for: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) money had and received; and (4) unjust enrichment. As discussed above, the claims were based on Comedy Partners' alleged failure to pay royalties owed to artists with whom it had Recording Contracts and whose works had been distributed via digital audio transmission on SiriusXM pursuant to such Recording Contracts.

On March 21, 2023, Plaintiffs Zimmerman, DeVito, and Donnelly filed a separate action against Paramount Global and Comedy Partners in this District (the "*Zimmerman* Action"). The *Kaplan* Action and the *Zimmerman* Action share four causes of action: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) money had and received; and (4) unjust enrichment. The *Zimmerman* Action includes four additional causes of action for: (1) declaratory judgment regarding violations of 17 U.S.C. §§ 106(6), 114(g)(2)(D); (2) direct violation of 17

U.S.C. §§ 106(6), 114(g)(2)(D); (3) breach of fiduciary duty; and (4) accounting.[2]

Defendants agreed to participate in a mediation before the Hon. Louis Meisinger (Ret.) of Signature Resolution, an experienced mediator with a background in the entertainment industry. The mediation took place on September 19, 2023, and resulted in a settlement in principle on the key terms of the Settlement Agreement. The parties' negotiations on the specific terms of a written settlement agreement then continued over the next several months with the assistance of Judge Meisinger.

On May 20, 2024, the Court granted Plaintiffs' Joint Motion to Consolidate the *Kaplan* and *Zimmerman* Actions for the purpose of settlement. *See* ECF No. 37, Order Regarding Motion to Consolidate Actions. The written Settlement Agreement was subsequently finalized on July 23, 2024. *See* Declaration of Daniel L. Warshaw ("Warshaw Decl."), ¶ 4; *see also* ECF No. 49-1, Stipulation and Agreement of Settlement. Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement Agreement on August 29, 2024. *See* ECF Nos. 47-57, Motion for Preliminary Approval of Class Action Settlement Agreement. On March 11, 2025, the Court granted preliminary approval of the settlement agreement, certification of the settlement class, appointment of class counsel, and appointment of class representatives ("Preliminary Order"). *See* ECF Nos. 60-61, Opinion & Order Regarding Motion for Settlement and Order Regarding Preliminary Approval of Settlement Agreement, Certification of Settlement Class, Appointment of Class Counsel, and Appointment of Class Representatives. More recently, Plaintiffs filed their Motion for Approval of Attorneys' Fees, Costs and Service Awards on May 5, 2025, in advance of the deadline for Class Members to object or exclude themselves from the Class. *See* ECF Nos. 68-75, Motion for Reasonable Attorneys' Fees, Costs and Service Awards.

[2] Counsel for the *Kaplan* and *Zimmerman* Plaintiffs are hereinafter referred to collectively as "Class Counsel."

B. Dissemination of Class Action Notice

Pursuant to the Preliminary Order, the Settlement Administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq"), successfully provided direct notice to **100%** of the 163 Class Members, publicized notice on a settlement website, and set up a toll-free telephone number dedicated to providing Class Members with information about the Settlement. *See* Declaration of Cameron R. Azari, Esquire Regarding Implementation and Adequacy of Notice Program ("Azari Decl."), ¶¶ 7, 19, & 26. An Email Notice was sent to all identified Settlement Class Members for whom a valid email address was available and a Postcard Notice was sent via USPS first class mail to all identified Settlement Class Members with an associated physical address for whom the Email Notice was returned as undeliverable after several attempts. *Id*., ¶ 12.

Prior to disseminating Email Notices and Postcard Notices to the Settlement Class Members, Epiq established a dedicated website for the Settlement with an easy to remember domain name (www.ccrsettlement.com) on March 28, 2025. *Id*., ¶ 20. Relevant documents were posted on the Settlement Website, including the Long-Form Notice, Settlement Agreement, Preliminary Order, Plaintiffs' Motion for Reasonable Attorneys' Fees, Costs and Service Awards, and other case-related documents. *Id*. The Settlement Website also included relevant dates, answers to frequently asked questions ("FAQs"), instructions for how Settlement Class Members could opt-out (request exclusion) from or object to the Settlement prior to the deadlines, contact information for the Settlement Administrator, and how to obtain other case-related information. *Id*. On the same day, Epiq also established a toll-free telephone number (1-888-619-3844) to provide information about the Settlement that is available 24 hours per day, 7 days per week. *Id*., ¶ 21.

Following the creation of the dedicated website and toll-free telephone number, on March 31, 2025, Epiq commenced sending 165 Email Notices to all identified Settlement Class Members for whom a valid email address was available (which is inclusive of two Settlement Class Members who were sent a second Email Notice after updating their respective email addresses). *Id*., ¶ 13. The Email Notices included an embedded link to the Settlement Website, where recipients were

able to easily access the Long-Form Notice and other information about the Settlement. *Id*. Shortly thereafter, on April 18, 2025, Epiq began sending 37 Postcard Notices to all identified Settlement Class Members with an associated physical address for whom the Email Notice was returned as undeliverable after several attempts. *Id*., ¶ 15. As with the Email Notices, recipients of the Postcard Notices were directed to the Settlement Website, where they could access the Long-Form Notice and additional information about the Settlement. *Id*. The Settlement Website address and the toll-free telephone number were prominently displayed in all notice documents. *Id*., ¶¶ 20-21. As of June 27, 2025, the Settlement Website received more than 450 visits and the toll-free number received more than ten calls. *Id*.

C. The Class Members' Response to the Settlement Agreement

The Class Members' response to the Settlement Agreement has been unanimously positive. The deadline to request exclusion from the Settlement or object to the Settlement was June 9, 2025. *Id*., ¶ 23. With individual notice efforts reaching 100% of the identified Class, Epiq has received no requests for exclusion and is aware of no objections to the Settlement as of June 27, 2025. *Id*.

III. SUMMARY OF SETTLEMENT TERMS

Pursuant to the Settlement Agreement, Defendants will make available a Settlement Fund of $11 million to the Settlement Class. *See* ECF No. 49-1, Stipulation and Agreement of Settlement. The Settlement Fund will compensate Class Members for their damages and will be distributed (following payment of costs, expenses, and attorneys' fees) on a *pro rata* basis in a manner that is equal to the ratio of the total number of spins of the individual Class Member's recordings compared to the total number of spins of all Class Member recordings (in the aggregate) on SiriusXM during the Settlement Period. There is no claim form or opt-in requirement—rather, all Class Members who do not affirmatively opt-out of the Settlement Agreement (and there were no opt-outs) will receive their *pro rata* share. The proceeds from the Settlement Fund will be "used to fully satisfy: (a) the Class Settlement Payments, (b) any award of Attorneys' Fees and Expenses, (c) any Incentive Award, and (d) all Notice and Administration Costs, as those terms are defined in the Settlement Agreement." *See* ECF No. 61, Order Regarding Preliminary Approval of

Settlement Agreement, Certification of Settlement Class, Appointment of Class Counsel, and Appointment of Class Representatives.

IV. THE SETTLEMENT AGREEMENT SATISFIES THE STANDARD FOR FINAL APPROVAL

Rule 23(e) of the Federal Rules of Civil Procedure ("Rule 23(e)") requires judicial approval for any compromise of claims on a class basis. Approval of a proposed settlement is a matter within the discretion of the district court. *See*, *e.g.*, *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995). This discretion should be exercised in the context of public policy, which strongly favors the pretrial settlement of class action lawsuits. *See Strougo v. Bassini*, 258 F.Supp.2d 254, 257 (S.D.N.Y. 2003); *see also In re Warner Chilcott Ltd. Sec. Litig.*, No. 06-cv-11515, 2008 WL 5110904, at *1 (S.D.N.Y. Nov. 20, 2008) ("The settlement of complex class action litigation is favored by the Courts.") (citations omitted).

Notwithstanding the codification of procedural factors in Rule 23(e)(2), "[t]he arm's-length quality of the negotiations remain a factor in favor of approving the settlement (one whose absence would count significantly against approval)." *Moses v. New York Times Co.*, 79 F.4th 235, 243 (2d Cir. 2023). To assess procedural fairness, courts examine plaintiffs' counsel's experience and ability, whether the settlement resulted from arm's-length negotiations, and whether the parties engaged in the necessary discovery to ensure effective representation. *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). The substantive fairness of a settlement is determined by applying the so-called *Grinnell* factors. *Moses*, 79 F.4th at 242-43. Here, the terms of the Settlement and the process by which it was reached satisfy each of these criteria.

A. The Settlement Agreement is the Result of Informed, Non-Collusive Negotiations

"[G]reat weight is accorded to the recommendation of counsel, who are acquainted with the facts of the underlying litigation." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997). Therefore, the opinion of experienced counsel supporting a settlement is entitled to considerable weight in a court's evaluation of a proposed

settlement. *See In re Michael Milken & Assoc. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993); *see also Reed v. Gen. Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) ("[T]he value of the assessment of able counsel negotiating at arm's length cannot be gainsaid. Lawyers know their strengths and they know where the bones are buried."). Courts generally presume that settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion, absent evidence to the contrary. *See* Alba Conte & Herbert Newberg, *Newberg on Class Actions*, § 11.28, at 11-59 (3d ed. 1992) (counsel are "not expected to prove the negative proposition of a noncollusive agreement.").

In this case, the negotiations involved with the Settlement Agreement were extensive and adversarial in nature. *See* Warshaw Decl., ¶ 5. As a result, the parties negotiated the Settlement for approximately 18-months, during which time the parties attended one full-day mediation with the Hon. Louis Meisinger (Ret.) and engaged Judge Meisinger in several follow up communications to resolve other Settlement-related issues. *Id*. There plainly was no collusion with respect to the Settlement Agreement. During these protracted negotiations, Plaintiffs received detailed information regarding the number of spins of Plaintiffs' and the Class Members' recordings on SiriusXM during the Settlement Period, as well as revenues received by Defendants from SiriusXM during the Settlement Period and Defendants' accounting practices for the royalties at issue in the litigation. *Id*., ¶ 6. The parties also exchanged their views of the strengths and weaknesses of their claims and defenses, which allowed Plaintiffs and Class Counsel to assess the substantial benefits against the risks and expense of continuing to litigate this case without a settlement. *Id*., ¶ 7. Class Counsel also retained professional auditors and a litigation consultant to assist in the evaluation of the case and the Settlement Agreement before it was finalized. *Id*., ¶ 8. After evaluating these factors, Class Counsel relied on their considerable experience in complex class action lawsuits to recommend the proposed Settlement Agreement to Plaintiffs. *Id*., ¶ 9. Accordingly, the proposed Settlement Agreement is entitled to a "strong initial presumption of fairness." *PaineWebber*, 171 F.R.D. at 125; *see also In re Namenda Direct Purchaser Antitrust Litig.*, 462 F.Supp.3d 307, 311 (S.D.N.Y. 2020) (approving settlement where parties engaged in

substantive mediation and experienced counsel reached an agreement after arm's-length negotiations.).

B. The Settlement Agreement is Fair, Reasonable, and Adequate

In examining the fairness, reasonableness, and adequacy of a settlement, the Second Circuit looks to the following nine *Grinnell* factors when evaluating whether to grant final approval of a class action settlement in tandem with the factors set forth in Rule 23(e):

> (1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974) (citations omitted), *abrogated on other grounds by Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000); *Namenda*, 462 F.Supp.3d at 310-311 (citing *Christine Asia Co. v. Jack Yun Ma*, No.: 1:15-md-02631, 2019 WL 5257534, at *9 (S.D.N.Y. Oct. 16, 2019) ["The factors set forth in Rule 23(e)(2) have been applied in tandem with the Second Circuit's *Grinnell* factors and 'focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.'"]). "Rule 23 now explicitly directs a court at the preliminary approval stage to assess whether it is 'likely' it will be able to finally approve the settlement after notice, an objection period, and a fairness hearing." *See* § 13:10. Preliminary approval—Generally, *Newberg and Rubenstein on Class Actions* (6th ed. 2022). Here, the Court previously applied and analyzed these factors in its Preliminary Order approving the Settlement Agreement. *See* ECF Nos. 60-61, Opinion & Order Regarding Motion for Settlement and Order Regarding Preliminary Approval of Settlement Agreement, Certification of Settlement Class, Appointment of Class Counsel, and Appointment of Class Representatives. The only factor the Court could not consider at the preliminary approval stage was the reaction of the Class to the Settlement Agreement because

notice had not yet been provided to the Class Members. Now that notice has been provided, Plaintiffs can confirm that the unanimously-positive reaction of the Class Members, as well as the other relevant factors previously analyzed, support final approval of the Settlement Agreement.

1. *The Reaction of the Class Members Is Unanimously Positive and Strongly Supports Granting Final Approval of the Settlement Agreement*

In evaluating class action settlements, courts in the Second Circuit have recognized that, "[t]he fact that the vast majority of Class Members neither objected nor opted out is a strong indication of fairness." *Silverstein v. AllianceBernstein, L.P.*, No. 09-cv-5904, 2013 WL 7122612, at *5 (S.D.N.Y. Dec. 20, 2013); *see also Yuzary v. HSBC Bank USA, N.A.*, No. 12-cv-3693, 2013 WL 5492998, at *6 (S.D.N.Y. Oct. 2, 2013); *Willix v. Healthfirst, Inc.*, No. 07-cv-1143, 2011 WL 754862, at *4 (E.D.N.Y. Feb. 18, 2011); *Khait v. Whirlpool Corp.*, No. 06-cv-6381, 2010 WL 2025106, at *5 (E.D.N.Y. Jan. 20, 2010); *Wright v. Stern*, 553 F.Supp.2d 337, 344-45 (S.D.N.Y. 2008).

The reaction of the Class Members undoubtedly supports final approval in this case. Class Members will receive their benefit on a *pro rata* basis in a manner that is equal to the ratio of the total number of spins of the individual Class Member's recordings compared to the total number of spins of all Class Member recordings (in the aggregate) on SiriusXM during the Settlement Period. As set forth herein, and the supporting declarations, out of 163 Class Members, **none** have objected to the Settlement. *See* Azari Decl., ¶ 23. Furthermore, there are **zero** opt-outs. *Id*. This tremendous reaction from the Class Members thus strongly supports granting Plaintiffs' Motion.

2. *The Complexity, Expense, and Likely Duration of the Litigation*

"The first *Grinnell* factor evaluates whether the continuation of the litigation would be complex, expensive, and lengthy." *Namenda*, 462 F.Supp.3d at 311-12; *see also Milstein v. Huck*, 600 F.Supp. 254, 267 (E.D.N.Y. 1984). Had this case not settled, it would have been all three, as it involves many intricate legal issues relating to complex recording contracts, the interpretation thereof, and the assignment, licensing, and payment of public performance copyright royalties to

comedians for spoken word performances—an area of the law that, to date, has not been highly litigated and for which there is not significant precedent. The costs and risks associated with litigating this lawsuit to a verdict, not to mention through any related appeals, would have been high, and the process would require extensive time and resources from all parties. This is especially true in this case, which was at the pleading stage and would have thus required Plaintiffs to survive motions to dismiss, obtain class certification, defeat any motion for summary judgment, and then prevail at trial before possibly obtaining a favorable judgment. Even if the Class recovered a larger judgment after a trial, the additional litigation costs, delay through trial, post-trial motions, and the appellate process could deny the Class any recovery for years, further reducing the value of any recovery. Since this sprawling and complex litigation would have placed significant burdens on the parties and the Court, this factor supports final approval of the Settlement Agreement. *Hicks v. Morgan Stanley & Co.*, No. 01-CV-10071, 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) ("Further litigation would necessarily involve further costs [and] justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action."); *see also Strougo*, 258 F.Supp.2d at 261 ("even if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation … the passage of time would introduce yet more risks … and would, in light of the time value of money, make future recoveries less valuable than this current recovery.").

3. *The Stage of the Proceedings and the Amount of Discovery Completed*

In evaluating a settlement, "[t]here is no precise formula for what constitutes sufficient evidence to enable the court to analyze intelligently the contested questions of fact. It is clear that the court need not possess evidence to decide the merits of the issues, because the compromise is proposed in order to avoid further litigation." *See* Alba Conte & Herbert Newberg, *Newberg on Class Actions*, § 11.45, (4th ed. 2002). By the time the Settlement Agreement was reached here, Class Counsel had extensive knowledge of the merits of the claims alleged in the litigation and the defenses that would be asserted. Class Counsel are intimately familiar with the factual and legal

issues in this case. *See* Warshaw Decl., ¶ 11.

While the case was settled at an early junction, a substantial portion of the parties' early settlement efforts focused on an exchange and developing an understanding of: (1) the strength of their claims and defenses, (2) information regarding Defendants' accounting practices for paying royalties as it relates to the Recording Contracts, (3) information related to the licensing agreements entered into by Defendants for rights it claimed were assigned under the Recording Contracts, and (4) the amount of damages at issue in the litigation. *Id*., ¶ 12. Class Counsel also retained professional auditors and a litigation consultant to assist in the evaluation of the case and the Settlement Agreement before it was finalized. *Id*., ¶ 8.

As a result of these efforts, Class Counsel were well-informed of the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses, which permitted them to fully consider and evaluate the fairness of the Settlement Agreement to the Class. *See Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01-CV-11814, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) (citation omitted) (finding action had advanced to stage where the parties "'have a clear view of the strengths and weaknesses of their cases.'"); *McKenzie Constr., Inc. v. Maynard*, 758 F.2d 97, 101-02 (3d Cir. 1985) ("[A] prompt and efficient attorney who achieves a fair settlement without litigation serves both his client and the interests of justice."). In the context of a complex class action case like this one, early settlement has far-reaching benefits in the judicial system. *Maley v. Del Global Techs. Corp.*, 186 F.Supp.2d 358, 373 (S.D.N.Y. 2002).

4. *The Risks of Establishing Liability and Damages, and Maintaining Class Status Through Trial*

In assessing a proposed settlement, the Court should balance the benefits afforded to the Class, including the immediacy and certainty of a recovery against the continuing risks of litigation. While Class Counsel think that Plaintiffs' claims are meritorious, there are substantial risks to achieving a better result for the Class through continued litigation, especially where the claims would be as strongly contested as Defendants made clear to Class Counsel they would be here. "Regardless of the perceived strength of a plaintiff's case, liability is no sure thing, and

litigation inherently involves risks." *Namenda*, 462 F.Supp.3d at 313 (citation omitted). Moreover, while Class Counsel believes that a class would be certified even over Defendants' objections, there is always a risk that Defendants would successfully block class certification. *See Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) ("While plaintiffs might indeed prevail [on a motion for class certification], the risk that the case might not be certified is not illusory."); *see also Chatelain v. Prudential-Bache Sec.*, 805 F.Supp. 209, 214 (S.D.N.Y. 1992) ("Even if certified, the class would face the risk of decertification.").

The substantial risks of having a class certified, establishing liability and damages, and prevailing at trial, strongly support approval of the Settlement Agreement. Protracted litigation carries inherent risks that would necessarily delay and potentially endanger Class Members' recovery. The Settlement Agreement provides substantial relief to Class Members without such delay or risk. "Indeed, the primary purpose of settlement is to avoid the uncertainty of a trial on the merits." *Tiro v. Pub. House Invs., LLC*, No. 11-CV-7679, 2013 WL 4830949, at *8 (S.D.N.Y. Sept. 10, 2013) (citation omitted). Despite the confidence of Class Counsel as to the merits of Plaintiffs' claims against Defendants, the value of the Settlement Agreement constitutes a substantial recovery under all the circumstances and in consideration of these risk factors.

5. *The Range of Reasonableness of the Settlement Agreement in Light of the Best Possible Recovery and the Attendant Risks of Litigation*

The adequacy of a settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F.Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). Moreover, the Court need only determine whether the settlement falls within a "range of reasonableness" (*PaineWebber*, 171 F.R.D. at 130) "recogniz[ing] the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion" (*Guippone v. BH S&B Holdings LLC*, No. 09-CV-01029, 2016 WL 5811888, at *7 (S.D.N.Y. Sept. 23, 2016)). When evaluating "the terms of the compromise in relation to the likely benefits of a successful trial … the trial court is entitled to rely

upon the judgment of experienced counsel for the parties." *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). "Indeed, the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel." *Id*.

Here, the relief that the Settlement Agreement provides to Class Members is outstanding. Defendants have agreed to create a Settlement Fund of $11 million to reimburse Class Members for Defendants' alleged failure to pay all royalties due to the Class under their Recording Contracts during the Settlement Period. The Settlement Fund constitutes *more than 68%* of the total claimed unpaid royalties (*i.e.*, damages) that Plaintiffs and their consultant auditors calculated were owed to the Class, which approximates $16 million. *See* Warshaw Decl., ¶ 13. The recovery of individual Class Members will be equitably calculated based on the percentage of the total number of spins of the individual Class Member's recordings compared to the total number of spins of all Class Member recordings (in the aggregate) on SiriusXM during the Settlement Period.

Courts in this Circuit routinely approve settlements containing recoveries with far less favorable terms. *See*, *e.g.*, *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02-MDL-1484, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (approving $40.3 million settlement with a recovery of approximately 6.25% of estimated damages); *see also In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510, 2007 WL 2743675, at *11-12 (E.D.N.Y. Sept. 18, 2007) (approving $20 million settlement representing 10.6% of maximum damages); *Cagan v. Anchor Sav. Bank FSB*, No. CV-88-3024, 1990 WL 73423, at *12-13 (E.D.N.Y. May 22, 1990) (approving $2.3 million settlement over objections that "best possible recovery would be approximately $121 million."); *In Re AmBase Corp.*, No. 90-CV-2011, 1995 WL 619856, at *2 (S.D.N.Y. Oct. 23, 1995) (approving a settlement where class members received from 3% to 20% of their losses, calculated as if all damage issues were resolved in the class members' favor); *Weinberger v. Kendrick*, 698 F.2d 61, 65 (2d Cir. 1982) (class action settlement approved as fair, reasonable, and adequate even where "it is not disputed that the recovery will be only a negligible percentage of the losses suffered by the class."); *Grinnell*, 495 F.2d at 455 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement

is grossly inadequate and should be disapproved.").

As this Court explained in *In re Sturm, Ruger, & Company, Inc. Securities Litigation*, in approving a settlement accounting for 3.5% of the potentially recoverable damages: "In light of the legal and factual complexity, the unpredictability of a lengthy trial and the appellate process as discussed above, the settlement amount is well within the range of reasonableness for similar … cases." No. 3:09-cv-1293, 2012 WL 3589610, at *7 (Aug. 20, 2012) (citing *In re China Sunergy Sec. Litig.*, No. 07-CV-7895, 2011 WL 1899715, at *5 (S.D.N.Y. May 13, 2011) [noting that "average settlement amount in securities fraud class actions where investors sustained losses over the past decade … have ranged from 3% to 7% of the class members' estimated losses."]); *In re Union Carbide*, 718 F.Supp. 1099, 1103 (S.D.N.Y. 1989) (acknowledging that "a settlement can be approved even though the benefits amount to a small percentage of the recovery sought" and that the "essence of settlement is compromise.").

Here, considering the factual issues and legal complexity entailed in the prosecution and defense of this case, as well as the unpredictability associated with class certification proceedings and any lengthy trial and/or appellate proceedings (both under Rule 23(f) and on the merits), the result achieved by the Settlement Agreement is excellent under all of the circumstances.

V. CONCLUSION

For the aforementioned reasons, Plaintiffs respectfully submit that the Settlement Agreement is fair, reasonable, and adequate, and thereby request that the Court grant this Motion and enter an order for final judgment in this case.

Dated July 1, 2025

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