

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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

Plaintiff,

v.

COMEDY PARTNERS, a New York general partnership,

Defendant.

No. 22 Civ. 9355 (VSB)

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.

No. 23 Civ. 2409 (VSB)

**STIPULATION AND AGREEMENT OF SETTLEMENT**

## STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Settlement Agreement” or “Agreement”) is entered into on July 23, 2024, by and between (i) on the one hand, Plaintiffs Michael Kaplan, Joseph Zimmerman, Anthony DeVito, and Sean Donnelly (collectively, “Class Plaintiffs”), for themselves individually and, subject to Court approval, on behalf of all Settlement Class Members as defined herein, and (ii) on the other hand, Defendants Comedy Partners (“Comedy Partners”) and Paramount Global (collectively, “Defendants” or “Comedy Partners”). Class Plaintiffs and Defendants are collectively referred to herein as the “Parties.” This Agreement is entered into by the Parties to fully and finally resolve, discharge, and settle the Released Claims and effectuate the dismissal of the lawsuits captioned *Kaplan v. Comedy Partners*, No. 22 Civ. 9355 (VSB) (S.D.N.Y.) and *Zimmerman et al. v. Paramount Global et al.*, No. 23 Civ. 2409 (VSB) (S.D.N.Y.) (collectively, the “Actions”), on the terms set forth herein (the “Settlement”).

### RECITALS

**WHEREAS**, on November 1, 2022, Plaintiff Michael Kaplan, individually and on behalf of all others similarly situated, filed a class action complaint in the United States District Court for the Southern District of New York against Comedy Partners, captioned *Kaplan v. Comedy Partners*, No. 22 Civ. 9355 (VSB) (S.D.N.Y.), asserting causes of action alleging, *inter alia*, that Defendants have underpaid royalties to parties to licensing agreements or recording contracts (the “Recording Contracts”) with Comedy Partners whose works have been distributed by digital audio transmission via SiriusXM Radio pursuant to such Recording Contracts;

**WHEREAS**, on March 21, 2023, Plaintiffs Joseph Zimmerman, Anthony DeVito, and Sean Donnelly, each individually and on behalf of all others similarly situated, filed a class action complaint in the United States District Court for the Southern District of New York against

Paramount Global and Comedy Partners, captioned *Zimmerman, et al. v. Paramount Global et al.*, No. 23 Civ. 2409 (VSB) (S.D.N.Y.), asserting causes of action alleging, *inter alia*, that Defendants have underpaid royalties to parties to licensing agreements or Recording Contracts with Comedy Partners whose works have been distributed by digital audio transmission via SiriusXM Radio pursuant to such Recording Contracts;

**WHEREAS**, Defendants deny each and all of the claims and allegations of wrongdoing in the Actions, have not conceded or admitted any liability, disclaim any and all wrongdoing or liability whatsoever, and maintain that they have good and meritorious defenses to all of the claims of liability and damages made by Class Plaintiffs;

**WHEREAS**, on September 19, 2023, the Parties participated in a full-day mediation session with the Honorable Louis M. Meisinger (Ret.). As a result of those arm's-length settlement negotiations and pursuant to a mediator's proposal, the Parties agreed to settle the Actions;

**WHEREAS**, Plaintiffs' Counsel, having conducted an investigation of the facts and the law regarding the Actions, considers the Settlement set forth herein to be fair, reasonable, adequate, and in the best interests of Class Plaintiffs and the Settlement Class to enter into this Settlement Agreement to avoid the uncertainties of complex litigation and to assure a benefit to the Settlement Class;

**WHEREAS**, Defendants, while continuing to deny that they are liable for any of the claims asserted against them in the Actions and maintaining that they have good and meritorious defenses thereto, have nevertheless agreed to enter into this Settlement Agreement solely to avoid the continuing cost and burden, further expense, inconvenience, business interruption and distraction of burdensome and protracted litigation, thereby putting this controversy to rest and avoiding the

risks inherent in complex litigation and to obtain complete dismissal of the Actions and a release of claims as set forth herein;

**WHEREAS**, Class Plaintiffs, for themselves individually and on behalf of each settling Class Member, and Defendants agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any fault, liability or wrongdoing whatsoever by Defendants, the truth of any of the claims or allegations or any infirmity in the defenses that Defendants have, or could have, asserted in the Actions;

**WHEREAS**, pursuant to Federal Rule of Civil Procedure 42(a), the Parties have jointly moved for consolidation of the Actions for purposes of settling them in one consolidated proceeding;

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Settlement Agreement, and in consideration of the mutual promises contained herein and for good and valuable consideration, the sufficiency of which is acknowledged, the Parties hereto stipulate and agree as follows:

### **AGREEMENT**

1. **DEFINITIONS.** In addition to the definitions contained elsewhere in this Agreement, the following definitions shall apply for purposes of this Settlement Agreement:

- (a) “**Actions**” refers collectively to *Kaplan v. Comedy Partners*, No. 22 Civ. 9355 (VSB) (S.D.N.Y.), and *Zimmerman et al. v. Paramount Global et al.*, No. 23 Civ. 2409 (VSB) (S.D.N.Y.), which are each pending in the United States District Court for the Southern District of New York.

(b) “**Agreement**” or “**Settlement Agreement**” means this Stipulation and Agreement of Settlement, together with any exhibits attached hereto, which are incorporated herein by reference.

(c) “**Attorneys’ Fees and Expenses**” means the total recovery that may be awarded to Class Counsel to compensate them (and all other attorneys for Class Plaintiffs and/or the Settlement Class, whether or not disclosed) for all attorneys’ fees, costs, and adequately supported expenses of any kind (including, but not limited to, mediation fees, travel, filing fees, court reporter, and videographer expenses, expert fees and costs, and document review and production costs) incurred by Class Plaintiffs or Class Counsel in connection with the Actions.

(d) “**Class Counsel**” shall mean Laurie Rubinow of Miller Shah LLP; Neville L. Johnson, Douglas L. Johnson, and Melissa N. Eubanks of Johnson & Johnson LLP; Daniel L. Warshaw and Bobby Pouya of Pearson Warshaw, LLP; Scott A. Kamber of KamberLaw, LLC; Benjamin J. Sweet, Jonathan D. Miller, and Margaret A. Parker of Nye, Stirling, Hale, Miller & Sweet, LLP.

(e) “**Class Member**” or “**Settlement Class Member**” means any person who qualifies as a member of the Settlement Class that has not successfully submitted a Request for Exclusion.

(f) “**Class Member Recording**” means any recording subject to or covered by a Recording Contract between a Class Member and Comedy Partners.

(g) “**Class Member Pro Rata Share**” means the percentage of the Net Settlement Sum equal to the ratio of the total number of plays of the individual Class Member’s Recordings, compared to the total number of plays of all Class Member

Recordings (in the aggregate) via the SiriusXM Radio platform during the period May 19, 2013 through December 31, 2022 (the “Relevant Time Period”); by way of example, if (i) the total number of plays via the SiriusXM Radio platform during the Relevant Time Period of all Class Member Recordings, in the aggregate, was 100, and (ii) the total number of plays of Class Member “X” Recordings during the Relevant Time Period was 2, then the Class Member Pro Rata Share for Class Member “X” would be 2%.

(h) “**Class Plaintiffs**” means Michael Kaplan, Joseph Zimmerman, Anthony DeVito, and Sean Donnelly.

(i) “**Class Period**” shall mean the Relevant Time Period, i.e., May 19, 2013 through December 31, 2022.

(j) “**Class Settlement Payments**” shall mean the money to be paid by Defendants to the Settlement Class Members under the terms of this Agreement out of the Settlement Fund.

(k) “**Court**” shall mean the United States District Court for the Southern District of New York.

(l) “**Days**” means calendar days, except that, when computing any period of time under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time under this Agreement, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(m) “**Defendants’ Counsel**” shall mean Kenneth L. Steinthal, David P. Mattern, and Martha Banner Banks of King & Spalding LLP.

(n) “**Defendants**” means Comedy Partners and Paramount Global.

(o) “**Effective Date**” means the day on which the Court’s Final Approval Order becomes in all respects Final.

(p) “**Fairness Hearing**” means the hearing to be held by the Court to determine whether the Settlement set forth in this Agreement shall receive approval pursuant to Federal Rule of Civil Procedure 23, at which the Parties will ask the Court to enter the Final Approval Order.

(q) “**Fairness Hearing Date**” means the date on which the Court schedules the Fairness Hearing, which shall be set in the Preliminary Approval Order.

(r) “**Final**” when referring to this Agreement, a judgment, or order means that: (1) the judgment is a final appealable judgment, and (2) either (a) no appeal has been taken from the judgment relating to the approval of the Settlement (as opposed to any appeals relating solely to the Attorneys’ Fees and Expenses award, which will not affect finality as defined herein) as of the date on which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the judgment relating to the approval of the Settlement having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for *writ of certiorari*, the appeal is voluntarily withdrawn, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the Final Approval Order and judgment in all material respects.

(s) “**Final Approval Order**” shall mean the Final Judgment and Order of Dismissal approving this Agreement issued by the Court at or after the Fairness Hearing,



which the Parties will submit to the Court for approval in the form attached hereto as **Exhibit B**.

(t) “**Incentive Award**” means any award by the Court to Class Plaintiffs as described in Paragraph 13, which shall not exceed five thousand dollars and no cents (\$5,000.00) per Class Plaintiff.

(u) “**Motion for Final Approval**” shall mean the motion or motions filed by Class Counsel as referenced in Paragraph 18.

(v) “**Motion for Preliminary Approval**” shall mean the motion or motions filed by Class Counsel as referenced in Paragraph 5.

(w) “**Class Notice**” shall mean the Court-approved notice to the Settlement Class, which will, among other things, inform them of the Settlement provided for under the terms of this Agreement and notify them of entry of the Preliminary Approval Order, the scheduling of the Fairness Hearing Date, and the deadlines set as the Opt-Out Date and Objection Date. The Parties’ proposed Class Notice is attached hereto as **Exhibit C**.

(x) “**Notice and Administration Costs**” means the reasonable costs and expenses authorized by the Court and approved by Class Counsel and Defendants’ Counsel for disseminating the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including, but not limited to, costs and expenses associated with determining mail and/or e-mail addresses for Settlement Class Members, providing notice pursuant to the Class Action Fairness Act (“CAFA”), assisting Settlement Class Members, processing claims, and issuing and mailing Class Settlement Payments.

(y) “**Notice Date**” means the latest date on which Class Notice can be disseminated to the Settlement Class, which shall be set by the Court in the Preliminary Approval Order as approximately thirty (30) Days after the Preliminary Approval Date.

(z) “**Objection Date**” means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections, if any, to the Settlement to be able to object to the Settlement. The Objection Date shall be set at sixty (60) Days after the Notice Date, which shall be no later than forty-five (45) Days prior to the Fairness Hearing.

(aa) “**Opt-Out Date**” means the date identified in the Preliminary Approval Order and Class Notice by which a Request for Exclusion must be submitted in writing to Class Counsel (or the Settlement Administrator) for a Settlement Class Member to be excluded from the Settlement Class. The Opt-Out Date shall be set at sixty (60) Days after the Notice Date, which shall be no later than forty-five (45) Days prior to the Fairness Hearing.

(bb) “**Preliminary Approval Date**” shall mean the date on which the Preliminary Approval Order is entered by the Court.

(cc) “**Preliminary Approval Order**” shall mean the Order issued by the Court preliminarily approving this Agreement, which Order the Parties will submit to the Court for approval in the form attached hereto as **Exhibit A**.

(dd) “**Released Claims**” shall have the meaning specified in Paragraph 15, subject to the Retained Claims as defined in Paragraph 17.

(ee) “**Released Parties**” means Defendants, including each of their parents, subsidiaries, divisions, affiliates, officers, directors, employees, partners, shareholders,

members, consultants, distributors, licensees, independent contractors, agents, representatives, insurers, attorneys, owners, predecessors, successors and assigns (if any).

(ff) **“Releasing Parties”** means the Class Plaintiffs and each Settlement Class Member, each on behalf of themselves as well as their heirs, agents, privies, insurance carriers, executors, administrators, successors, assigns, and any of their respective affiliated entities, including without limitation corporate parents, subsidiaries, divisions and affiliates.

(gg) **“Relevant Time Period”** shall mean the Class Period, i.e., May 19, 2013 through December 31, 2022.

(hh) **“Remailed Notice”** means the re-sending or re-mailing of any Class Notice pursuant to Paragraph 7(d).

(ii) **“Request for Exclusion”** means a written request from a Settlement Class Member that seeks to exclude that Settlement Class Member from the Settlement Class (i.e., “Opt-Out”).

(jj) **“Settlement Administrator”** shall mean Epiq Class Action & Claims Solutions, Inc. (“Epiq”), an independent, reputable, and commercially reasonable class action settlement administrator selected by the Parties following the receipt of three (3) competing bids from a pool of reputable and experienced companies, that, subject to Court approval, will provide the Class Notice as set forth herein and otherwise administer the Settlement in accordance with the terms of this Agreement.

(kk) **“Settlement Amount”** means eleven million dollars (\$11,000,000.00), and is the total amount of money Defendants are required to pay under the terms of this Agreement and includes the (a) 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 herein.

(ll) “**Settlement Class**” or “**Class**” means all individuals or entities who fall within the definition of the class identified in Paragraph 2(a).

(mm) “**Net Settlement Sum**” means funds available for distribution to Class Members. The Net Settlement Sum shall be calculated by deducting Attorneys’ Fees and Expenses, Incentive Awards, and Notice and Administration Costs approved by the Court from the Settlement Amount.

2. **CLASS ACTION SETTLEMENT.** Within thirty (30) Days of this Agreement being executed by all Parties, Class Plaintiffs shall propose and recommend to the Court that a settlement class be certified pursuant to Federal Rule of Civil Procedure 23(b)(3). Defendants agree solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that the Actions shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendants shall retain all rights to object to maintaining the Actions as a class action.

(a) The Parties hereto agree to certification, for settlement purposes only, of the following Settlement Class:

All persons and entities, their agents, successors in interest, affiliates, assigns, heirs, executors, trustees, and administrators who are or were parties to Recording Contracts with Comedy Partners whose works have been distributed by digital audio transmission via SiriusXM Radio pursuant to such Recording Contracts between May 19, 2013, up to and including December 31, 2022.

(b) Solely for the purpose of implementing this Agreement and effectuating the Settlement, the Parties stipulate to the Court entering an order preliminarily

certifying the Settlement Class, appointing Class Plaintiffs as representatives of the Settlement Class, and appointing Class Counsel as counsel for the Settlement Class.

- (c) Solely for the purpose of implementing this Agreement and effectuating the Settlement, the Parties stipulate to the Court entering an order preliminarily finding that Class Plaintiffs and Class Counsel are adequate representatives of the Settlement Class.
- (d) Upon final approval of the Settlement reflected in this Agreement, and as part of the entry of the Final Approval Order, the Actions shall be dismissed with prejudice.
- (e) In the event that the Agreement is terminated pursuant to its terms or is not approved in any material respect by the Court, or such approval is reversed, vacated, or modified in any material respect by the Court or by any other court of competent jurisdiction, the certification of the Settlement Class shall be deemed vacated, the Actions shall proceed as if the Settlement Class had never been certified, and Defendants retain the right to challenge the appropriateness and suitability of class treatment in this event.

**3. COMMITMENT TO COOPERATE.** The Parties agree that it is in their respective interests to (i) consummate this Agreement and all the terms and conditions contained herein; (ii) cooperate with each other; (iii) take all actions reasonably necessary to recommend and obtain Court approval of this Agreement and entry of the orders of the Court that are required to implement its provisions; and (iv) support this Agreement in accordance with, and subject to, the provisions of this Agreement. Class Plaintiffs, Defendants, and their respective counsel shall

cooperate in presenting papers, declarations, affidavits, and testimony to the Court as may be necessary to effectuate the purpose and intent of this Agreement.

4. **THE CLASS RELIEF.** In full Settlement of the Actions, within thirty (30) Days after entry of the Final Approval Order, Defendants shall pay into a fund to be distributed for the benefit of the Class the Settlement Amount of eleven million dollars (\$11,000,000.00), which is the total amount of money Defendants are required to pay under the terms of this Agreement and includes: (1) the Class Settlement Payments, (2) any amounts needed to satisfy (a) any award of Attorneys' Fees and Expenses, (b) any Incentive Award, and (c) all Notice and Administration Costs. The Settlement Amount, together with any interest earned thereon from the date it is wired to the Settlement Administrator, shall constitute the Settlement Fund.

**(a) Class Settlement Payment Procedure.**

(i) Each Settlement Class Member will receive their Class Member Pro Rata Share of the Net Settlement Sum.

(ii) Within thirty (30) Days after the Effective Date, the Settlement Administrator shall send, by first-class mail or by electronic payment (to the extent feasible) such as PayPal, Venmo or ACH, a check or payment to each Settlement Class Member with their respective Class Member Pro Rata Share of the Net Settlement Sum as calculated above.

(iii) Defendants need not segregate funds or otherwise create special accounts to hold funds comprising the Settlement Amount and will not relinquish control of any money until the Settlement Amount is due to be paid by Defendants as set forth in this Agreement.

**(b) Defendants' Total Payments.** Except as provided in this Paragraph, Defendants shall have no obligation to make any other or further payments under this Agreement to Class Plaintiffs, Class Counsel, the Settlement Administrator, or any Settlement Class Member.

(i) For avoidance of doubt, in no case shall Defendants' financial responsibility under this Agreement exceed the total amount of the Settlement Amount, and all amounts Defendants have agreed to pay in connection with the Settlement shall be paid from the Settlement Fund, including without limitation: (1) the Class Settlement Payments to each Settlement Class Member; (2) any award by the Court of Attorneys' Fees and Expenses; (3) any Incentive Award the Court may approve (which in no case will exceed \$5,000.00 for each Class Plaintiff), and (4) all Notice and Administration Costs.

(ii) Class Counsel will apply to the Court for the total amount of Attorneys' Fees and Expenses and Incentive Award concurrently with the submission of their motion in support of the Final Approval Order.

(iii) The Attorneys' Fees and Expenses, and Incentive Award, will be paid from the Settlement Fund within fourteen (14) Days after the later of (1) the Effective Date; and (2) the date that the order(s) awarding the Attorneys' Fees and Expenses and/or Incentive Award become(s) Final, and provided Class Counsel has provided the Settlement Administrator with the requisite W-9s and completed wire transfer forms. The Settlement Administrator shall pay from the Settlement Fund, by wire transfer to the accounts of Class Counsel, the Attorneys' Fees and

Expenses. The Incentive Awards will be paid by the Settlement Administrator in a manner designated by Class Counsel.

(iv) Any order or proceedings relating to the Attorneys' Fees and Expenses and/or Incentive Award, or any appeal from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Settlement Agreement, or effect or delay the Effective Date of this Settlement Agreement as it relates to benefits due and owing to the Settlement Class Members, provided that the Settlement Agreement is otherwise in all respects Final.

(v) Class Counsel agree that upon payment of the Attorneys' Fees and Expenses and Incentive Award, as approved by the Court, pursuant to wire transfer information provided by Class Counsel, Defendants' obligations to Class Counsel and Class Plaintiffs for Attorneys' Fees and Expenses and any Incentive Award shall be fully satisfied and discharged.

**5. PRELIMINARY APPROVAL OF SETTLEMENT.** Within thirty (30) Days of the date this Agreement is fully executed, Class Counsel shall use reasonable efforts to file a Motion for Preliminary Approval of the Settlement provided for in this Agreement and request the entry of the Preliminary Approval Order in the form of **Exhibit A**, which, among other things, will:

- (a) Preliminarily approve this Settlement.
- (b) Provisionally certify the Settlement Class for settlement purposes.
- (c) Appoint Class Counsel as counsel for the provisionally certified Settlement Class.



- (d) Preliminarily find that the proposed Settlement is fair, reasonable, and adequate, and order that the Class Notice be provided to the Settlement Class as set forth in Paragraph 7 (or as otherwise determined by the Court), which Class Notice will: (i) describe the essential terms of the Settlement; (ii) disclose Class Counsel's intention to file an application with the Court requesting an Incentive Award to each of the Class Plaintiffs; (iii) provide information regarding Class Counsel's intention to file an application with the Court requesting the award of Attorneys' Fees and Expenses; (iv) identify the time and place of the Fairness Hearing; (v) set forth the procedures for objecting to the Settlement; (vi) set forth the procedures for opting out of the Settlement; (vii) explain the process for payment of the Class Settlement Payments; and (viii) prominently display the contact information for Class Counsel.
- (e) Schedule the Fairness Hearing.
- (f) Appoint the Settlement Administrator.
- (g) Find that the Class Notice: (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Actions and of their right to object to or to exclude themselves from the proposed Settlement; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all providers entitled to receive notice; and (iv) meets all requirements of applicable law.

- (h) Require the Settlement Administrator to file proof of compliance with the Class Notice provisions of this Agreement no later than seven (7) Days before the Fairness Hearing Date.
- (i) Require any member of the Settlement Class who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely Request for Exclusion to the Settlement Administrator, postmarked no later than the Opt-Out Date and in compliance with the provisions of this Agreement and as set forth in the Class Notice.
- (j) Order that any member of the Settlement Class who does not timely and validly file a Request for Exclusion from the Settlement Class will be bound by all proceedings, orders, and judgments in the Actions.
- (k) Require any Settlement Class Member who does not Opt-Out and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement or the requested Class Counsel Attorneys' Fees and Expenses or Incentive Award to submit an appropriate, timely Objection to the Settlement Administrator, postmarked no later than the Objection Date and in compliance with the provisions of this Agreement and as set forth in the Class Notice.
- (l) Direct the Settlement Administrator to establish a post office box in the name of the Settlement Administrator to be used for receiving requests for exclusion and any other communications.

- (m) Directing that Class Counsel shall file any applications for Attorneys' Fees and Expenses and an Incentive Award no later than at least thirty-five (35) Days prior to the Opt-Out Date and Objection Date.
- (n) Order the Settlement Administrator to provide the Opt-Out List and list of Objections in accordance with Paragraphs 9(b) and 10(b), and then file with the Court the Opt-Out List with an affidavit attesting to the completeness and accuracy thereof no later than seven (7) Days before the Fairness Hearing Date.

6. **CAFA NOTICE.** Pursuant to CAFA, no later than ten (10) Days after this Agreement is filed with the Court in conjunction with the Motion for Preliminary Approval, Defendants shall work with the Settlement Administrator to serve proper notice of the proposed Settlement upon those who are entitled to such notice pursuant to CAFA, if any (the "CAFA Notice"). The cost of providing CAFA Notice shall be included as an item of the Notice and Administration Costs. Any of Defendants' own costs to cooperate or work with the Settlement Administrator to provide the CAFA Notice shall be the responsibility of Defendants and shall not be included in the Notice and Administration Costs paid for out of the Settlement Amount. The Settlement Administrator shall provide a declaration certifying completion of such CAFA Notice.

7. **NOTICE TO THE SETTLEMENT CLASS.** Each Class Member will be sent Class Notice of this Settlement Agreement, in the form substantially similar to that in **Exhibit C**.

- (a) Defendants shall provide to the Settlement Administrator a list of Settlement Class Members (the "Settlement Class List"), along with (to the extent known) their addresses, e-mail addresses, and last known contact information for the purpose of sending the Class Notice. Additionally,

Defendants shall provide to Plaintiffs' counsel and the Settlement Administrator for each Settlement Class Member the number of plays of each Class Member's Recordings transmitted via the SiriusXM Radio platform during the Relevant Time Period. Defendants shall provide the Settlement Class List and play information for each member of the Settlement Class from its own records, at its own expense, not later than fifteen (15) Days after the Preliminary Approval Date.

- (b) The Settlement Administrator shall send the Class Notice to the Settlement Class (or their authorized representatives) via email (if available) for each member in the Settlement Class. If no email address is available or if email notice is unsuccessful, then the Class Notices shall be sent via first-class United States mail to the last-known mailing address for each remaining member in the Settlement Class. The Settlement Administrator may use alternative or additional methods to contact members of the Settlement Class, based on any alternative or additional contact information in Defendants' possession, or as otherwise specified by the Court in the Preliminary Approval Order, and is not otherwise required to update the Settlement Class List.
- (c) The Class Notice shall be sent as soon as practicable after the Court has entered the Preliminary Approval Order, but not later than thirty (30) Days after the Preliminary Approval Date.
- (d) If a mailed Class Notice is returned with forwarding address information, the Settlement Administrator shall promptly re-send the Class Notice to the

forwarding address. For all other mailed Class Notices that are returned as, or otherwise determined to be, undeliverable, the Settlement Administrator shall ensure that the Class Notice was first sent by first-class United States mail, and then use standard skip tracing procedures to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the Settlement Administrator shall re-mail the Class Notice to the address identified in the skip trace as soon as reasonably practicable after the receipt of the returned mail.

- (e) The Settlement Administrator shall also establish a Settlement Website as a means for Settlement Class Members to obtain notice of, and information about, the Settlement.
- (f) The Settlement Administrator shall maintain a database showing mailing addresses, and email addresses to the extent used, to which each Class Notice was sent and any Class Notices that were not delivered. A summary report of the results of sending the Class Notice shall be provided to the Parties upon request and not later than ten (10) Days prior to the deadline to file the Motion for Final Approval. The database maintained by the Settlement Administrator regarding the recipients of the Class Notice shall be available to the Parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third-party.
- (g) The Settlement Administrator shall file proof of compliance with the Class Notice provisions of this Agreement no later than seven (7) Days before the Fairness Hearing Date.

8. **SETTLEMENT OPTIONS.** All members of the Settlement Class shall have the following options upon receipt of the Class Notice, which options shall be set forth in the terms of the Class Notice itself:<sup>1</sup>

- (a) Do nothing and, thus, accept the terms of the Settlement, including the amount of their Class Settlement Payment;
- (b) Object to the Settlement in its entirety, but agree to receive only the amount of their Class Settlement Payment if the Settlement is approved by the Court; or
- (c) Opt-Out of the Settlement.

9. **OBJECTION RIGHTS AND TIMING.** Each Settlement Class Member may object to the Settlement by providing written notice, in the manner specified in the Class Notice, of his/her objection to the Settlement (“Objection”) by the deadline set by the Court as the Objection Date. When seeking Preliminary Approval of the Settlement, the Parties agree to request that the Court set the Objection Date for the date that is sixty (60) Days after the Notice Date (the “Objection Date”), except that any Settlement Class Member who receives a Rемаiled Notice shall have fourteen (14) Days after the date the Rемаiled Notice was sent to mail a valid Objection (the “Extended Objection Date”).

- (a) To be valid and considered by the Court, the Objection must be in writing, signed by the Objector, and sent by first-class mail, postage pre-paid, as set forth in the Notice, to the Settlement Administrator and the Court. The Objection must be received by the Court on or before the Objection Date

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<sup>1</sup> All members of the Settlement Class who do not Opt-Out by successfully submitting a Request for Exclusion, will have the right to select their method of payment.

and copies of the Objection must be sent to the Settlement Administrator postmarked on or before the Objection Date, or where appropriate, the Extended Objection Date, and must include the following information: (i) the Objector's name, address, email address, telephone, number, signature, and the contact information for any attorney retained by the Objector in connection with the Objection or otherwise in connection with the Actions; (ii) a statement of the factual and legal basis for each Objection and any exhibits the Objector wishes the Court to consider in connection with the Objection; (iii) a statement as to whether the Objector intends to appear at the Fairness Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address and telephone number; and (iv) indicate all other objections to class settlements submitted by the Class Member or Class Member's counsel to any Court within the United States within the last 5 years, if any, including the total number of such objections and the case and court information in which each such objection was asserted. Any objector, consents to the jurisdiction of the Court for the purposes of any proceeding relating to their objection, including any appropriate discovery or other orders issued by the Court relating to the objection.

- (b) The Settlement Administrator shall deliver to both Class Counsel and Defendants' Counsel complete copies of any and all Objections received within one (1) business day after receipt of the Objection.

- (c) The Court will hear from any Class Members who attend the Fairness Hearing and ask to speak regarding their objections to the Settlement, provided that they have submitted a valid and timely written objection.
- (d) If the Objector is represented by counsel, then counsel shall file a notice of appearance by the Objection Date.

**10. OPT-OUT RIGHTS AND TIMING.** Any member of the Settlement Class may request exclusion from the Settlement Class as set forth in Paragraph 8(c) by providing written notice to the Settlement Administrator, in the manner specified in the Notice, postmarked on or before the date set by the Court as the Opt-Out Date. When seeking Preliminary Approval of the Settlement, the Parties agree to request that the Court set the Opt-Out Date for the date that is sixty (60) Days after the Notice Date (the “Opt-Out Deadline”), except that any Settlement Class Member who receives a Rемаiled Notice shall have fourteen (14) Days after the date the Rемаiled Notice was sent to Opt-Out (the “Extended Opt-Out Date”).

- (a) To be valid, a Request for Exclusion must clearly state the name and address of the member of the Settlement Class wishing to Opt-Out, be personally signed by the individual requesting exclusions, and clearly express an intent to be excluded from the Settlement. Any member of the Settlement Class who timely and validly requests to Opt-Out shall be excluded from the Settlement and from the Settlement Class and shall no longer be a Settlement Class Member and shall be deemed to have “Opted-Out” of the Settlement. Any Settlement Class Member who does not submit a request to Opt-Out by the Opt-Out Date, or where appropriate the Extended Opt-Out Date, or who does not otherwise comply with the agreed-upon Opt-Out



procedure approved by the Court, shall be deemed a Settlement Class Member and shall be bound by the terms of this Agreement and the Final Approval Order. Any member of the Settlement Class who files both an Objection and a Request for Exclusion shall be deemed to have opted-out, will not be considered a Settlement Class Member, and their Objection should not be considered by the Court.

- (b) The Settlement Administrator shall maintain a list of Opt-Outs (the “Opt-Out List”) and shall provide such list to Class Counsel and Defendant’s Counsel within fifteen (15) Days after the Opt-Out Date, or where appropriate the Extended Opt-Out Date, and shall also provide Class Counsel and Defendants’ Counsel the Opt-Out List with an affidavit attesting to the completeness and accuracy thereof no later than seven (7) Days before the deadline for filing the Motion for Final Approval of the Settlement so that it can be filed in conjunction with the filing of the Motion for Final Approval, unless another date is set by the Court.
- (c) The Settlement Administrator shall retain the originals of all documentation received from the Opt-Outs (including the envelopes with postmarks). Such documentation shall be made available to Class Counsel, Defendants’ Counsel, or the Court upon three (3) business days’ written notice.
- (d) Any Settlement Class Member who timely and validly submitted a request to Opt-Out shall have until the Fairness Hearing to deliver to Class Counsel and the Settlement Administrator a written revocation of such request to

Opt-Out. Class Counsel shall timely apprise the Court of such revocations, if any.

**11. THE SETTLEMENT ADMINISTRATOR.**

- (a) The Settlement Administrator shall execute a retainer agreement that shall provide, among other things, that the Settlement Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement.
- (b) The Settlement Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Settlement.
- (c) The Settlement Administrator, among other things, shall be responsible for providing the Class Notice and CAFA Notice set forth in Paragraphs 6 and 7, and otherwise administering the Settlement according to the terms of this Agreement.
- (d) The Parties agree that the Settlement Administrator may communicate with the Settlement Class regarding the provisions of this Agreement, so long as such communications are not inconsistent with the Notice or other terms of this Agreement. The Parties agree that from the Notice Date until the Effective Date, Defendants shall make reasonable efforts to refer all inquiries from the Settlement Class concerning the Settlement or this Agreement to the Settlement Administrator. Nothing contained herein, however, shall prevent Defendants from communicating with the Settlement Class in the ordinary course of Defendants' business.

- (e) The Settlement Administrator shall be responsible for timely and properly preparing and filing all tax returns necessary or advisable, if any, with respect to the Settlement Fund. Except as provided herein, Settlement Class Members shall be responsible for their own tax reporting of payments received under the terms of this Agreement.
- (f) The Settlement Administrator shall provide the data in its claims administration database relating to the administration of the Settlement to Class Counsel and/or Defendants' Counsel in response to any written request, including an email request, for such information. The written request shall be copied to the other Party's counsel when made.
- (g) Within two hundred (200) Days after the Effective Date, the Settlement Administrator shall prepare a declaration for Class Counsel's Final Report setting forth: the total amounts paid to the Settlement Class Members by the Settlement Administrator; a listing of all checks not cashed and/or returned; the total amount of all checks that were not cashed and/or returned; the efforts undertaken to follow up on uncashed and/or returned checks; and the total amount of money being held by the Settlement Administrator (which shall be returned to Defendants to be credited to the accounts of the respective Class Members in the ordinary course of accounting to them). In the event any such crediting occurs, Defendants shall prepare and file a report with the Court within one hundred (100) Days of the filing of the Settlement Administrator's declaration under this

Paragraph accounting for the credits made to Class Members through this process.

**12. SETTLEMENT ADMINISTRATOR FEES.** Defendants agree to pay all reasonable fees, costs, and expenses related to the administration of this Settlement or otherwise incurred by the Settlement Administrator. The payment of such fees, costs, and expenses shall be made from the Settlement Fund; however, Defendants may make arrangements with the Settlement Administrator to pay the Settlement Administrator's fees, costs, and expenses directly in advance of paying the balance of the Settlement Amount.

**13. INCENTIVE AWARD(S) TO CLASS PLAINTIFFS.** The Parties agree that an Incentive Award to Class Plaintiffs may be appropriate and that the payment of any such award shall be made by Defendants from the Settlement Fund. Class Plaintiffs will make an application to the Court for any Incentive Award no later than thirty-five (35) Days prior to the Opt-Out Date and Objection Date. Defendants agree that they will not object to an application for an Incentive Award for each Class Plaintiff up to an amount of five thousand dollars (\$5,000.00). The total amount of any Incentive Award approved by the Court shall be paid by the Settlement Administrator from the Settlement Fund within fourteen (14) Days after the later of (1) the Effective Date; and (2) the date that the order(s) awarding the Attorneys' Fees and Expenses and/or Incentive Award become(s) Final, and provided Class Counsel has provided Defendants with the requisite W-9s and completed wire transfer forms.

**14. ATTORNEYS' FEES AND EXPENSES.** Class Counsel shall apply to the Court for approval of a request for their fees and costs no later than thirty-five (35) Days prior to the Opt-Out Date and Objection Date. The Parties agree that the payment of any such fees and costs awarded by the Court shall be paid by Defendants from the Settlement Fund. The total amount of

any fees and costs awarded to Class Counsel by the Court (the “Attorneys’ Fees and Expenses”) shall be paid by the Settlement Administrator from the Settlement Fund within fourteen (14) Days after the later of (1) the Effective Date; and (2) the date that the order(s) awarding the Attorneys’ Fees and Expenses and/or Incentive Award become(s) Final, and provided Class Counsel has provided the Settlement Administrator with the requisite W-9s and completed wire transfer forms.

**15. RELEASE.** Class Plaintiffs and each Settlement Class Member, each on behalf of themselves as well as their heirs, agents, privies, insurance carriers, executors, administrators, successors, assigns, and any of their respective affiliated entities, including without limitation corporate parents, subsidiaries, divisions and affiliates (the “Releasing Parties”), hereby release and forever discharge Defendants, including each of their parents, subsidiaries, divisions, affiliates, officers, directors, employees, partners, shareholders, members, consultants, distributors, licensees, independent contractors, agents, representatives, insurers, attorneys, owners, predecessors, successors and assigns (if any) (collectively, the “Released Parties”), from any and all causes of action, suits, allegations, debts, costs, fees, interest, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, liabilities, extents, executions, claims and demands whatsoever, known or unknown, asserted or unasserted, in law or equity, which the Releasing Parties ever had and/or now have, based upon, arising out of, relating to, concerning or involving, in whole or in part, any matter or cause asserted or encompassed or that could have been asserted or encompassed in the Actions (collectively the “Released Claims”), subject to the Retained Claims set forth in paragraph 17 hereof which are not within the scope of the Released Claims, including specifically: (i) any Released Claims arising at any time from the beginning of time through and including December 31, 2022, based upon, arising out of, relating to, concerning or

involving any and all contracts entered into by any Settlement Class Member with Defendants relating to the production, distribution, and exploitation of Class Member Recordings pertaining to royalties or other payments due arising from the distribution of such Recordings via the SiriusXM platform during the Class Period, and (ii) any claims arising at any time from the beginning of time for copyright infringement of any kind arising from or relating to the distribution and exploitation by the Released Parties of the Class Member Recordings, via any and all platforms or media now known or hereafter devised. For the avoidance of doubt, nothing in this Settlement Agreement shall be deemed to release any claims or defenses identified in Paragraph 17; and nothing herein shall bar the Releasing Parties from enforcing the terms of this Settlement Agreement.

- (a) **Settlement Class Members Bound to Release.** Subject to Court approval, all Settlement Class Members shall be bound by this Agreement and the release set forth in this Paragraph 15, irrespective of whether they received actual notice of the Actions or this Settlement.
- (b) **Attorneys' Fees and Costs Covered.** Without in any way limiting the scope of the release contained in this Paragraph 15, except as otherwise provided for herein, the release covers any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Class Plaintiffs, or any of them, in connection with or related in any manner to the Actions, the Settlement, the administration of the Settlement, and the Released Claims.

16. **WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542.** With respect to all Released Claims, the Class Plaintiffs agree that, upon the Effective Date, they are waiving any

and all provisions, rights, and benefits conferred by California Civil Code § 1542, or by any other statutes, common law principles, laws, or rules of similar effect to California Civil Code § 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Class Plaintiffs acknowledge that they are aware that they may later discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement and which, if known or suspected at the time of executing this Settlement Agreement, may have materially affected the settlement embodied in this Settlement Agreement. Nevertheless, it is the intention of the Parties to fully, finally, and forever settle and release all Released Claims, including those that are presently unknown or unanticipated, and Class Plaintiffs hereby expressly waive any right, claim or cause of action that might arise as a result of such different or additional claims or facts. Class Plaintiffs acknowledge that they understand the significance and consequences of such release and such specific waiver of Section 1542, which has been explained to each Class Plaintiff by his/her/its counsel.

**17. RETAINED CLAIMS.**

(a) The Releasing Parties, if and only to the extent applicable, retain any claims they may have for royalties due under the Class Members' Recording Contracts arising from the distribution of Class Member Recordings (i) on platforms other than SiriusXM, and (ii) via the SiriusXM

platform for any time period after December 31, 2022. The Released Parties nonetheless retain any and all rights and defenses they may have to any such claims; and nothing in this Agreement may be used to suggest or argue otherwise.

(b) Notwithstanding the release of claims for copyright infringement in Paragraph 15, the Releasing Parties nevertheless retain any rights that they may have under 17 U.S.C. § 201 in the literary works that may be embodied in the Class Member Recordings for purposes of any exploitation of such rights (unrelated to the Class Member Recordings) not prohibited by their respective Recording Contracts.

**18. FINAL APPROVAL OF SETTLEMENT.** No later than twenty-one (21) Days prior to the date set by the Court for the Fairness Hearing, Class Counsel shall file a Motion for Final Approval of this Settlement. The Parties agree to work together to identify and submit any evidence that may be required by the Court to satisfy the burden of proof for obtaining final approval of this Settlement and the orders of the Court that are necessary to effectuate the provisions of this Agreement. At the Fairness Hearing, the Parties shall present evidence necessary and appropriate to obtain the Court's approval of this Settlement and the entry of the Final Approval Order in the form of **Exhibit B** that, among other things:

- (a) Finds that the Court has jurisdiction over Class Plaintiffs, Defendants, and all Settlement Class Members, and that the Court has jurisdiction to approve this Settlement and Agreement and all exhibits thereto;
- (b) Certifies the Settlement Class for purposes of this Settlement;
- (c) Grants final approval of this Settlement as being fair, reasonable, and adequate as to all Parties and the Settlement Class and consistent and in compliance with all requirements of due process and applicable law, as to



and in the best interests of all Parties and the Settlement Class, and directs the Parties and their counsel to implement and consummate this Agreement in accordance with its terms and provisions;

- (d) Declares this Agreement and the Final Approval Order to be binding on and have res judicata and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the release set forth in Paragraph 15;
- (e) Finds that the provision of the Class Notice: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Actions, of their right to object to or to exclude themselves from the proposed Settlement, of their right to appear at the Fairness Hearing, and of their right to seek monetary and other relief; (iii) constituted reasonable, due, adequate, and sufficient notice to all Settlement Class Members entitled to receive notice; and (iv) met all requirements of due process and any other applicable law;
- (f) Finds that Class Counsel and Class Plaintiffs adequately represented the Settlement Class for purposes of entering into and implementing the Settlement and this Agreement;
- (g) Without affecting the finality of the Final Approval Order for purposes of appeal, reserves jurisdiction over the Settlement Administrator, Defendants, Class Plaintiffs, and the Settlement Class Members as to all matters relating to the administration, consummation, enforcement, and interpretation of the terms of the Settlement, the Agreement, the Final Approval Order, and for

any other necessary purpose;

- (h) Provides that upon entry of the Final Approval Order, the Releasing Parties shall be barred from asserting any Released Claims against the Released Parties, and the Releasing Parties shall have released the Released Claims as against the Released Parties;
- (i) Approves the Opt-Out List and determines that the Opt-Out List is a conclusive and complete list of all members of the Settlement Class who have timely and effectively requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Approval Order; and
- (j) Authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Agreement as (i) shall be consistent in all material respects with the Final Approval Order; and (ii) do not limit the rights of the Parties or Settlement Class Members.

**19. COURT'S CONTINUING JURISDICTION.** Upon entry of the Final Approval Order, the Court shall retain exclusive jurisdiction to enforce its terms. The Parties consent to this Court's jurisdiction and waive any objection based on jurisdiction or venue to resolve such dispute. The Final Approval Order will be posted on the online portal established by the Settlement Administrator.

**20. CONDITIONS TO SETTLEMENT.**

- (a) This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events: (i) the Court has entered the

Preliminary Approval Order as required by Paragraph 5; (ii) the Court has entered the Final Approval Order as required by Paragraph 18, and all objections, if any, to such Final Approval Order are overruled, and all appeals taken from such Final Approval Order are resolved in favor of approval; and (iii) the Effective Date has occurred.

- (b) In the event this Agreement is terminated, pursuant to Paragraph 22 or fails to become effective in accordance with Paragraph 20(a), then the Parties shall be restored to their respective positions in the Actions as they existed as of the date of the execution of this Agreement.

**21. TOTAL SETTLEMENT FUND.**

- (a) Within thirty (30) Days after entry of the Final Approval Order, Defendants shall transfer to the Settlement Administrator the Settlement Amount to make payment of all of the following: (a) Class Settlement Payments, (b) any award of Attorneys' Fees and Expenses, (c) any Incentive Award to Class Plaintiffs, and (d) all Notice and Administration Costs as those terms are defined herein.
- (b) All funds held by the Settlement Administrator shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until distributed pursuant to this Agreement.
- (c) All funds held by the Settlement Administrator at any time shall be deemed to be a Qualified Settlement Fund as described in Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1.

- (d) The payment of any award of Attorneys' Fees and Expenses shall be made in accordance with Paragraph 14.
- (e) The payment of any approved Incentive Award to Class Plaintiffs shall be paid in accordance with Paragraph 13.
- (f) The payment of amounts due from Defendants to individual Settlement Class Members (collectively, the "Class Settlement Payments") shall be paid by the Settlement Administrator from the Settlement Fund within thirty (30) Days after the Effective Date. Such payment shall be accomplished whenever possible by wire or other electronic transfer, and if not so possible, by check sent from the Settlement Administrator to the Settlement Class Member at the address used to provide the Class Notice, or at such other address as designated by the Settlement Class Member. The Settlement Class Members shall have one hundred eighty (180) Days to negotiate the check. Any checks uncashed after one hundred eighty (180) Days shall be returned to Defendants and with the amount of the check to be credited to the account of the Settlement Class Member associated with the respective uncashed check per Paragraph 11(g).

**22. WITHDRAWAL FROM OR TERMINATION OF AGREEMENT.**

- (a) Within ten (10) Days after the occurrence of any of the following events and upon written notice to counsel for all Parties, either Party shall have the right, but not the obligation, to withdraw from the Settlement and terminate this Agreement:

- (i) If the Court materially alters any of the terms of the Agreement, except that any award of the Attorneys' Fees and Expenses or the Incentive Award shall not be deemed to be a material alteration; or
  - (ii) If the Preliminary Approval Order or the Final Approval Order is not entered by the Court or is reversed and modified in a material way on appeal.
- (b) Notwithstanding any other provisions in this Agreement, if (1) the number of Opt-Outs under Paragraph 10 exceeds ten percent (10%) of the number of total Settlement Class Members, or (2) the total percentage of the Class Member Pro Rata Share attributable to the Class Members who have timely and validly submitted a Request for Exclusion exceeds ten percent (10%) of the Settlement Amount, Defendants may elect to terminate this Agreement. In the event Defendants elect to Terminate this Agreement, Defendants shall notify Class Counsel and the Court of their intent to terminate this Agreement pursuant to this Paragraph 22(b) within seven (7) Days after receiving the Opt-Out List from the Settlement Administrator, or this option to terminate shall be considered waived. In the event that Defendants exercise their right to terminate pursuant to this Paragraph 22(b), Class Counsel shall have thirty (30) Days or such longer period as agreed to by the Parties to address the concerns of the Opt-Outs. If through such efforts the total number of Opt-Outs subsequently becomes and remains fewer than ten percent (10%) of the number of total Settlement Class Members or the Opt-Outs Class Member Pro Rata Share decreases

below ten percent (10%) of the Settlement Amount, then Defendants shall cancel their election to withdraw from and terminate this Agreement. In no event, however, shall Defendants have any further obligation under this Agreement to any Opt-Out unless that Opt-Out is withdrawn.

- (c) In the event of a withdrawal or termination pursuant to Paragraphs 22(a) or 22(b), any certification of a Settlement Class will be vacated, without prejudice to any Party's position on the issue of class certification and the amenability of the claims asserted in the Actions to class treatment, and the Parties shall be restored to their litigation position existing immediately before the execution of this Agreement.

**23. REPRESENTATIONS.**

- (a) The Parties to this Agreement represent that they have read this Agreement and are fully aware of and understand all of its terms and the legal consequences thereof. The Parties represent that they have consulted or have had the opportunity to consult with and have received or have had the opportunity to receive advice from legal counsel in connection with their review and execution of this Agreement.
- (b) The Parties have not relied on any representations, promises or agreements other than those expressly set forth in this Agreement.
- (c) The Class Plaintiffs, on behalf of the Settlement Class Members, each represent that they have made such inquiry into the terms and conditions of this Agreement as they each deem appropriate, and that by executing this Agreement, they each believe the Agreement and all the terms and

conditions set forth herein, are fair and reasonable to all Settlement Class Members.

- (d) The Class Plaintiffs each represent that they have no conflicts or other personal interests that would in any way impact their representation of the Settlement Class Members in connection with the execution of this Agreement.

**24. NO ADMISSION OF LIABILITY.** This Agreement is not and may not be deemed to be an admission by any Party of any liability to any allegation, claim or defense asserted by any other Party, and shall not be offered or received in evidence, or subject to discovery, in this or any other action or proceeding except in an action brought to enforce its terms or except as may be required by law or Court order. Rather, this Agreement is being entered into solely as a compromise of claims relating to the subject matter of the Actions and for the purpose of avoiding the inconvenience, risk, and expense of further litigation of this matter.

**25. AUTHORIZATION.** Each of the Parties represents and warrants that it has taken all necessary actions and has secured the consents of all persons necessary to authorize its execution of this Settlement Agreement and performance of all its obligations thereunder. Each Party represents that the person executing this Settlement Agreement on its behalf is duly authorized to do so and that this Settlement Agreement is and shall be during its term a binding obligation of the Party on behalf of which it is executed. Each Party represents that the execution and performance of this Settlement Agreement is not barred, prohibited or impaired by any existing law, rule, regulation, court or administrative order, decree, contract or agreement to which it is now bound, and specifically represents that it has not heretofore assigned or transferred, or

purported to assign or transfer, to any person or entity, any claims of any Class Plaintiffs which are being released pursuant to Paragraph 15 of this Settlement Agreement.

**26. GOVERNING LAW.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New York pertaining to contracts made and fully performed therein, without regard to choice-of-law rules; provided, however, that the Parties' inclusion of California Civil Code § 1542 in this Settlement Agreement, and its interpretation and effect, shall be governed by the laws of the State of California.

**27. ENTIRE AGREEMENT.** This Settlement Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the Parties as to the subject matter of this Settlement Agreement. Modification of the terms of this Agreement is prohibited, whether orally or by course of conduct, unless confirmed in a writing signed by the Parties or authorized representatives of each of the Parties and approved by the Court pursuant to Paragraph 30.

**28. HEADINGS AND RULES OF CONSTRUCTION.** The headings in this Settlement Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of this Settlement Agreement or the scope or content of any of its provisions. No Party, nor any of the Parties' respective attorneys, shall be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between them.

**29. NO RESCISSION ON GROUNDS OF MISTAKE.** The Parties acknowledge that they have made their own investigations of the matters covered by this Agreement to the extent they have deemed it necessary to do so. Therefore, the Parties agree that they will not seek to set



aside any part of the Agreement on the grounds of mistake. Moreover, the Parties understand, agree and expressly assume the risk that any fact not recited, contained, or embodied in the Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that the Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

**30. AMENDMENT.** This Settlement Agreement may be amended or modified only by a written instrument signed by the Parties or their respective counsel and with the Court's approval. Amendments and modifications may be made without notice to the Settlement Class Members unless notice is required by law or by the Court.

**31. WAIVER.** The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, to this Agreement.

**32. BINDING EFFECT.** This Agreement and each provision hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, agents, administrators, successors, and assigns.

**33. NO MEDIA STATEMENTS.** Class Plaintiffs and Class Counsel agree not to issue any press releases or otherwise affirmatively seek media coverage regarding this Settlement, without Defendants' consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, nothing in this Agreement shall preclude Class Plaintiffs or Class Counsel from making a public statement in support of the Settlement in response to a bona fide third-party inquiry. For example, Class Plaintiffs or Class Counsel may state that the Settlement is a good result for the

Settlement Class. In addition, nothing in this Agreement shall preclude Class Plaintiffs or Class Counsel from making a public statement in response to a bona fide third-party inquiry that is consistent with the language of the Agreement or any motions submitted for approval of the Settlement. Further, Class Counsel and Class Plaintiffs shall be allowed to discuss the Settlement with the Settlement Class. Lastly, Class Counsel shall be allowed to include this case on their resumes and firm websites including a summary of the claims and the settlement terms.

**34. SUCCESSORS AND ASSIGNS.** This Settlement Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, but no assignment shall relieve the Parties of their respective obligations hereunder as to performances transmitted, acts done and obligations incurred prior to the effective date of the assignment. This Settlement Agreement shall not be assignable except by operation of law or by mutual consent of all Parties. Any assignment in derogation of this provision shall be null and void.

**35. SEVERABILITY.** The Parties have attempted to create an Agreement that is lawful and enforceable in all respects. Except for the withdrawal and termination rights set forth in Paragraph 22 and the release provisions in Paragraphs 15 through 17, in the event that any other provision of this Agreement is found or deemed to be illegal or otherwise invalid or unenforceable, whether in whole or in part, such invalidity shall not affect the enforceability of the remaining terms hereof.

**36. NOTICE.** All notices and other communications required or permitted to be given to the Parties hereto shall be effective if given in writing by email,

in the case of notice to CLASS PLAINTIFFS:

c/o Daniel L. Warshaw  
Pearson Warshaw, LLP  
15165 Ventura Blvd., Suite 400

Sherman Oaks, CA 91403  
dwarshaw@pwfirm.com

c/o Jonathan D. Miller  
Nye, Stirling, Hale, Miller & Sweet, LLP  
33 West Mission Street, Suite 201  
Santa Barbara, CA 93101  
jonathan@nshmlaw.com

in the case of notice to DEFENDANTS:

c/o Kenneth L. Steinthal, Esq.  
King & Spalding LLP  
50 California Street  
Suite 3300  
San Francisco, CA 94111  
KSteinthal@KSLAW.com

**37. COUNTERPARTS AND SIGNATURES.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and which shall become effective when one or more counterparts have been executed by each Party and delivered to the other Parties hereto. In executing this Settlement Agreement, facsimile or electronic signatures shall be deemed originals, with such execution and delivery having the same legal force and effect as if the original hereto had been executed and delivered.

IN WITNESS WHEREOF, the Parties have entered this Settlement Agreement as of the dates set forth below.

Dated: \_\_\_\_\_  
July 15, 2024

  
\_\_\_\_\_  
Michael Kaplan

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joseph Zimmerman

Sherman Oaks, CA 91403  
dwarshaw@pwfirm.com

c/o Jonathan D. Miller  
Nye, Stirling, Hale, Miller & Sweet, LLP  
33 West Mission Street, Suite 201  
Santa Barbara, CA 93101  
jonathan@nshmlaw.com

in the case of notice to DEFENDANTS:

c/o Kenneth L. Steinthal, Esq.  
King & Spalding LLP  
50 California Street  
Suite 3300  
San Francisco, CA 94111  
KSteinthal@KSLAW.com

37. **COUNTERPARTS AND SIGNATURES.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and which shall become effective when one or more counterparts have been executed by each Party and delivered to the other Parties hereto. In executing this Settlement Agreement, facsimile or electronic signatures shall be deemed originals, with such execution and delivery having the same legal force and effect as if the original hereto had been executed and delivered.

IN WITNESS WHEREOF, the Parties have entered this Settlement Agreement as of the dates set forth below.


Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael Kaplan

Dated: 7/12/2024

\_\_\_\_\_  
Joseph Zimmerman

Dated: 07/23/24

  
\_\_\_\_\_  
Anthony DeVito

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sean Donnelly  
Paramount Global

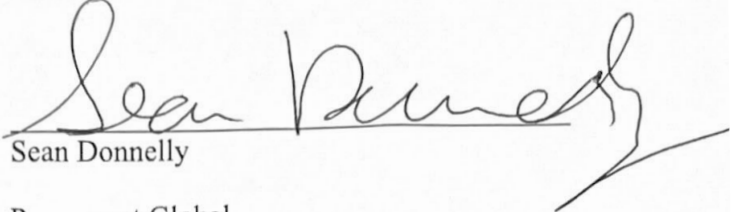
Dated: \_\_\_\_\_

\_\_\_\_\_  
Naomi Waltman  
Executive Vice President & Deputy General  
Counsel

Dated: \_\_\_\_\_

\_\_\_\_\_  
Anthony DeVito

Dated: 7/23/2024

  
Sean Donnelly  
Paramount Global

Dated: \_\_\_\_\_

\_\_\_\_\_  
Naomi Waltman  
Executive Vice President & Deputy General  
Counsel

Dated: \_\_\_\_\_

\_\_\_\_\_  
Anthony DeVito

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sean Donnelly

Paramount Global

Dated: 7/20/2024

Naomi Waltman  
\_\_\_\_\_  
Naomi Waltman  
Executive Vice President & Deputy General  
Counsel

# EXHIBIT A



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

v.

COMEDY PARTNERS, a New York general partnership,

Defendant.

No. 22 Civ. 9355 (VSB)

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.

No. 23 Civ. 2409 (VSB)

**[PROPOSED] ORDER RE PRELIMINARY APPROVAL OF SETTLEMENT  
AGREEMENT, CERTIFICATION OF SETTLEMENT CLASS, APPOINTMENT OF  
CLASS COUNSEL, AND APPOINTMENT OF CLASS REPRESENTATIVES**

Having considered Class Plaintiffs'<sup>1</sup> unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion for Preliminary Approval"), and all supporting documents, which seeks an Order that: (1) grants preliminary approval of the Stipulation and Agreement of Settlement (the "Settlement Agreement"); (2) certifies the class for settlement purposes; (3) appoints Class Counsel<sup>2</sup> as counsel for the provisionally certified settlement class; (4) approves the proposed plan of notice and notice to the Settlement Class; (5) appoints Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator; (6) sets a schedule for disseminating notice to the Settlement Class as well as other deadlines related to the administration of the settlement, including deadlines to object to or opt-out of the settlement; and (7) schedules a final approval hearing; the Court hereby finds as follows:

- A. The Actions<sup>3</sup> are pending before this Court;
- B. Class Plaintiffs have entered into and executed the Settlement Agreement with Defendants,<sup>4</sup> which if finally approved by the Court, will result in the settlement of all claims in the Actions;

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<sup>1</sup> As defined in the Settlement Agreement, "Class Plaintiffs" refers collectively to Michael Kaplan, Joseph Zimmerman, Anthony DeVito, and Sean Donnelly.

<sup>2</sup> As defined in the Settlement Agreement, "Class Counsel" refers collectively to Laurie Rubinow of Miller Shah LLP; Neville L. Johnson, Douglas L. Johnson, and Melissa N. Eubanks of Johnson & Johnson LLP; Daniel L. Warshaw and Bobby Pouya of Pearson Warshaw, LLP; Scott A. Kamber of KamberLaw, LLC; Benjamin J. Sweet, Jonathan D. Miller, and Margaret A. Parker of Nye, Stirling, Hale, Miller & Sweet, LLP.

<sup>3</sup> As defined in the Settlement Agreement, "Actions" refers collectively to *Kaplan v. Comedy Partners*, No. 22 Civ. 9355 (VSB) (S.D.N.Y.), and *Zimmerman et al. v. Paramount Global et al.*, No. 23 Civ. 2409 (VSB) (S.D.N.Y.), which are each pending in the United States District Court for the Southern District of New York.

<sup>4</sup> As defined in the Settlement Agreement, "Defendants" refers collectively to Paramount Global and Comedy Partners.

- C. In full and final settlement of the claims asserted against them in the Actions, Defendants have agreed to pay \$11,000,000.00 (the “Settlement Amount”);
- D. Class Plaintiffs, having made an application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement Agreement, which sets forth the terms and conditions of the settlement of the Actions against Defendants and for dismissal of the Actions against Defendants with prejudice upon the terms and conditions set forth in the Settlement Agreement;
- E. Class Plaintiffs have sought, and Defendants have agreed not to object to, the certification of the Settlement Class (as defined below) solely for settlement purposes;
- F. Class Plaintiffs have requested that Class Counsel be appointed as counsel for the Settlement Class pursuant to Federal Rule of Civil Procedure 23(g);
- G. Class Plaintiffs have requested that they be appointed class representatives of the Settlement Class;
- H. The Parties have agreed to the entry of this [Proposed] Order re Preliminary Approval of Settlement Agreement, Certification of the Settlement Class, Appointment of Class Counsel, and Appointment of Class Plaintiffs (the “Order”); and
- I. The Court has read and considered the Settlement Agreement and the exhibits annexed thereto and other documents submitted in connection with Class Plaintiffs’ Motion for Preliminary Approval of the Settlement Agreement, and good cause appearing;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:<sup>5</sup>

## **I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

Upon review of the record, the Court preliminarily finds that the Settlement Agreement resulted from arm's-length negotiations between highly experienced counsel, with the aid of an experienced mediator, Hon. Louis M. Meisinger (Ret.), and falls within the range of reasonableness and should be preliminarily approved. The Court hereby preliminarily approves the Settlement Agreement, subject to further consideration at the Fairness Hearing described below. The Court preliminarily finds that the settlement encompassed by the Settlement Agreement raises no obvious reasons to doubt its fairness and provides a reasonable basis for presuming that the Settlement Agreement satisfies the requirements of Federal Rules of Civil Procedure 23(c)(2) and 23(e) and due process so that an appropriate notice of the Settlement Agreement should be given, subject to the Court's approval of a notice plan as provided in this Order.

## **II. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS**

1. For purposes of settlement only, the Court has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties and the members of the Settlement Class described below.

2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, solely for settlement purposes, a Settlement Class defined as follows:

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<sup>5</sup> All capitalized terms used in this Order shall have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein.

All persons and entities, their agents, successors in interest, affiliates, assigns, heirs, executors, trustees, and administrators who are or were parties to Recording Contracts (as that term is defined in the Settlement Agreement) with Comedy Partners whose works have been distributed by digital audio transmission via SiriusXM Radio pursuant to such Recording Contracts between May 19, 2013, up to and including December 31, 2022.

3. Solely for purposes of the settlement, the Court preliminarily finds that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) have been satisfied, as follows: (a) the members of the Settlement Class are so numerous that joinder of all members of the Settlement Class is impracticable; (b) questions of law and fact common to the Settlement Class predominate over any individual questions; (c) the claims of Class Plaintiffs are typical of the claims of the Settlement Class; (d) Class Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering (i) the interests of members of the Settlement Class in individually controlling the prosecution of separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by members of the Settlement Class; (iii) the desirability or undesirability of concentrating the litigation of these claims in this particular forum; and (iv) the likely difficulties in managing the Actions as a class action.

4. If the Effective Date does not occur because of the failure of a condition that affects the Settlement Agreement, this conditional certification of the Settlement Class shall be deemed null and void without the need for further action by the Court or the Parties. In such circumstances, the Parties shall retain their rights to seek or to object to certification of this litigation as a class action under Federal Rule of Civil Procedure 23, or under any other state or federal rule, statute,

law, or provision thereof, and to contest and appeal any grant or denial of certification in this litigation or in any other litigation on any other grounds.

### **III. CLASS COUNSEL, CLASS REPRESENTATIVES, AND SETTLEMENT ADMINISTRATOR**

1. The law firms of Johnson & Johnson LLP, Pearson Warshaw, LLP, and Nye, Stirling, Hale, Miller & Sweet, LLP are preliminarily appointed, solely for settlement purposes, as Class Counsel for the Settlement Class.

2. Class Plaintiffs are preliminarily appointed, solely for settlement purposes, as class representatives for the Settlement Class.

3. The Court preliminarily finds that the Class Counsel and Class Plaintiffs are appropriate representatives on behalf of the Settlement Class.

4. Epiq Class Action & Claims Solutions, Inc. is appointed as the Settlement Administrator and is tasked with providing the Notice to the Settlement Class as set forth in this Order and otherwise administering the Settlement in accordance with the terms of the Settlement Agreement.

### **IV. THE SETTLEMENT FUND**

1. Pursuant to the Settlement Agreement, Defendants shall pay eleven million dollars (\$11,000,000.00) (the “Settlement Amount”) to fully resolve all claims in the Actions and as consideration for the releases set forth in the Settlement Agreement and the dismissal of the Actions. The Settlement Amount, together with any interest earned thereon from the date it is wired to the Settlement Administrator, shall constitute the “Settlement Fund.”

2. The Settlement Fund shall be used to provide the exclusive recovery and relief for the Settlement Class, and shall 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.

3. Class Settlement Payments: Within thirty (30) Days after the Effective Date of the Settlement Agreement, the Settlement Administrator shall send to each Settlement Class Member their Class Member Pro Rata Share (as that term is defined in the Settlement Agreement) of the total Settlement Fund, after the deduction from the Settlement Fund of (1) any award of Attorneys' Fees and Expenses, (2) any Incentive Award, and (3) any Notice and Administration Costs.

4. Attorneys' Fees and Expenses and Incentive Award: Any award of Attorneys' Fees and Expenses and/or an Incentive Award will be paid from the Settlement Fund within fourteen (14) Days after the later of (1) the Effective Date; and (2) the date that the order(s) awarding the Attorneys' Fees and Expenses and/or Incentive Award become(s) Final, and provided Class Counsel has provided Defendants with the requisite W-9s and completed wire transfer forms.

## **V. CLASS NOTICE, PLAN OF DISTRIBUTION, AND FAIRNESS HEARING**

1. The Court hereby approves the form of the Class Notice of Proposed Settlement of Class Action<sup>6</sup>. The Court further finds that the Class Notice program described in the Settlement Agreement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the Actions, certification of a Settlement Class, the terms of the Settlement, Class Counsel's application for Attorneys' Fees and Expenses and the request for an Incentive Award for Class Plaintiffs, and their rights to elect to Opt-Out of the Settlement Class or submit an Objection to the Settlement. The Class Notice and Notice program constitute sufficient notice to all persons entitled to notice. The Class Notice and Notice program satisfy all applicable requirements of law, including, but not limited to Federal Rule of Civil Procedure 23 and constitutional due

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<sup>6</sup> The Parties may make non-substantive edits to form of the Class Notice of Proposed Settlement of Class Action without further order from the Court.

process requirements.

2. The Class Notice shall be sent to the Settlement Class by email and/or first-class United States mail according to the terms set forth in the Settlement Agreement and the schedule set forth below. Defendants shall provide the Settlement Administrator with the information necessary to conduct this notice plan in accordance with the terms set forth in the Settlement Agreement.

3. The Settlement Administrator shall file proof of compliance with the Notice provisions of the Settlement Agreement no later than seven (7) Days prior to the Fairness Hearing.

4. Any member of the Settlement Class who wishes to be excluded from the Settlement Class shall submit an appropriate, timely request for exclusion to the Settlement Administrator, postmarked no later than the Opt-Out Date (60 days after the date on which the Notice is sent to the Settlement Class) or, in the case of a Rемаiled Notice, the Extended Opt-Out Date (fourteen (14) days after the Rемаiled Notice is sent).

5. Any member of the Settlement Class who does not timely and validly Opt-Out of the Settlement Class will be bound by all proceedings and orders in the Actions.

6. Any Settlement Class Member who does not Opt-Out and who wishes to object to (a) the fairness, reasonableness or adequacy of the Settlement, or (b) the requested award of Attorneys' Fees and Expenses, or (c) the Incentive Award, shall submit an appropriate, timely Objection to the Court, received no later than the Objection Date (60 days after the date on which the Notice is sent) and provide a copy to the Settlement Administrator, to the addresses set forth in the Notice, postmarked on or before the Objection Date or, in the case of a Rемаiled Notice, the Extended Objection Date (fourteen (14) days after the Rемаiled Notice is sent) in compliance with the provisions of the Settlement Agreement and as set forth in the Notice. If an objector is



represented by an attorney for the purposes of making an objection, a notice of appearance by the objector's attorney must be filed with the Court no later than the Objection Date. The address for filing objections with the Court is as follows:

Clerk of Court  
U.S. District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Court House  
500 Pearl Street  
New York, NY 10007-1312  
Re: *Kaplan v. Comedy Partners*, Case No. 22 Civ. 9355

7. Any responses to any Objection shall be filed with the Court and considered in conjunction with the Motion for Final Approval.

8. The Settlement Administrator shall establish a post office box in the name of the Settlement Administrator to be used for receiving requests for exclusion and any other communication relating to the Settlement. The Settlement Administrator shall also establish a Settlement Website as a means for Settlement Class Members to obtain notice of, and information about, the Settlement.

9. Class Counsel shall file any applications for an award of Attorneys' Fees and Expenses, and an Incentive Award, at least thirty-five (35) days prior to the Opt-Out Date and Objection Date.

10. The Settlement Administrator shall provide the Opt-Out List to Class Counsel and Defendants' Counsel within fifteen (15) days after the Opt-Out Date or, where appropriate, the Extended Opt-Out Date. The Settlement Administrator shall also provide Class Counsel and Defendants' Counsel the Opt-Out List with an affidavit attesting to the completeness and accuracy thereof no later than seven (7) days before the deadline for filing the Motion for Final Approval of the Settlement so that it can be filed in conjunction with the filing of the Motion for Final Approval.

11. A hearing (the "Fairness Hearing") shall be held before this Court on \_\_\_\_\_

\_\_, 202\_\_, at 10:00 a.m. to consider whether the Settlement should be given final approval by the Court. At the hearing, the Court will also consider any application for an award of Attorneys' Fees and Expenses and/or an Incentive Award. This hearing may be postponed by the Court without additional notice to members of the Settlement Class.

12. The Court issues the following schedule for further proceedings:

| <b>EVENT</b>   | <b>DATE</b> | <b>TIMELINE</b>   |
|--|-------------|---|
| Class Notice Date  |             | Thirty (30) Days after entry of the Preliminary Approval Order.     |
| Deadline for applications for Attorneys' Fees and Expenses, and an Incentive Award                                   |             | Thirty-five (35) days prior to the Opt-Out Date and Objection Date. |
| Deadline for opting-out of the Settlement and for submission of Objections (the "Opt-Out Date" and "Objection Date") |             | Sixty (60) Days after the Notice Date.                              |
| Extended Opt-Out Date and Extended Objection Date  |             | Fourteen (14) Days after Rемаiled Notice is sent.                   |
| Deadline for filing Motion for Final Approval of the Settlement (including responses to objections)                  |             | Twenty-one (21) days before the Fairness Hearing                    |
| Fairness Hearing   |             |   |

## VI. OTHER PROVISIONS

1. The notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, have been met.

2. The Court approves the establishment of an escrow account under the Settlement Agreement as Qualified Settlement Funds ("QSFs") pursuant to Internal Revenue Code § 468B and the Treasury Regulations promulgated thereunder, and retains continuing jurisdiction as to any issue that may arise in connection with the formulation or administration of the QSFs. All

funds held by the Settlement Administrator shall be deemed and considered to be in *custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and further order(s) of the Court.

3. All reasonable expenses incurred in identifying and notifying potential Settlement Class Members as well as administering the Settlement Fund shall be paid, as set forth herein and the Settlement Agreement. In the event the Court does not approve the Settlement Agreement, or if the Settlement Agreement otherwise fails to become effective, neither Class Plaintiffs nor any of their counsel shall have any obligation to repay any amounts incurred or disbursed pursuant to the Settlement Agreement, and all remaining amounts shall be returned to Defendants.

4. In the event that the Settlement Agreement is terminated, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Parties shall be deemed to have reverted to their respective status in the Actions as of the Execution Date, and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if such Settlement Agreement and any related orders had not been entered, and such Settlement Agreement (including any amendment(s) thereto) and this Order shall be null and void, of no further force or effect, and without prejudice to the Parties, and may not be introduced as evidence or referred to in any actions or proceedings.

5. All proceedings in the Actions are stayed until further order of the Court. Such stay does not apply, however, to the extent proceedings are necessary to implement the terms of the Settlement Agreement or comply with their terms.

6. All Class Members shall be bound by all determinations and judgments in the Actions concerning the settlement set forth in the Settlement Agreement, whether favorable or unfavorable to the Settlement Class.

7. Any member of the Settlement Class may enter an appearance in the Actions, at their own expense, individually or through counsel of their own choice. Any member of the Settlement Class who does not enter an appearance will be represented by Class Counsel.

**SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. VERNON S. BRODERICK  
UNITED STATES DISTRICT JUDGE

# EXHIBIT B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

v.

COMEDY PARTNERS, a New York general partnership,

Defendant.

No. 22 Civ. 9355 (VSB)

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.

No. 23 Civ. 2409 (VSB)

**[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL**

This matter came before the Court for hearing pursuant to Class Plaintiffs'<sup>1</sup> application for final approval of the settlement set forth in the Stipulation and Agreement of Settlement, dated June \_\_\_, 2024 (the "Settlement Agreement"), and to consider: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate; (2) whether a judgment should be entered dismissing the Actions on the merits and with prejudice in favor of Defendants

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<sup>1</sup> This Final Judgment and Order of Dismissal (the "Final Approval Order") incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used, but not defined, herein shall have the same meanings as in the Settlement Agreement. As defined in the Settlement Agreement, "Class Plaintiffs" refers collectively to Michael Kaplan, Joseph Zimmerman, Anthony DeVito, and Sean Donnelly.

and against all persons or entities who are Settlement Class Members herein who have not requested exclusion from the Settlement Class; and (3) whether and in what amount to award Class Counsel as Attorneys' Fees and Expenses; and (4) whether and in what amount to award an Incentive Award to Class Plaintiffs. The Court has considered all papers filed and proceedings held herein and is fully informed of these matters. For good cause shown, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

**I. JURISDICTION OF THE COURT**

1. This Court has jurisdiction over the subject matter of the Actions and over all Parties to the Actions, including all Settlement Class Members. Without in any way affecting the finality of this Final Approval Order, the Court hereby retains jurisdiction as to all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Approval Order, and for any other necessary purposes.

2. The notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, have been satisfied.

3. The Settlement Agreement was negotiated with the assistance of an experienced mediator, Hon. Louis M. Meisinger (Ret.), at arm's length by experienced counsel, who were fully informed of the facts and circumstances, and the strengths and weaknesses of, the Actions. The Settlement Agreement was reached after the Parties had engaged in mediation and extensive settlement discussions, and after the exchange of information, including information about the size and scope of the Settlement Class. Counsel for the Parties were therefore well positioned to evaluate the benefits of the Settlement Agreement, taking into account the expense, risk, and uncertainty of protracted litigation.

## II. CERTIFICATION OF THE SETTLEMENT CLASS

1. Based on the record before the Court, including the Preliminary Approval Order, the submissions in support of the settlement between Class Plaintiffs, for themselves individually and on behalf of each Settlement Class Member in the Actions, and Comedy Partners and Paramount Global, and any objections and responses thereto, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) the Court hereby certifies solely for settlement purposes the following Settlement Class:

All persons and entities, their agents, successors in interest, affiliates, assigns, heirs, executors, trustees, and administrators who are or were parties to Recording Contracts (as that term is defined in the Settlement Agreement) with Comedy Partners whose works have been distributed by digital audio transmission via SiriusXM Radio pursuant to such Recording Contracts between May 19, 2013, up to and including December 31, 2022.

2. The Court finds that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) have been satisfied, as follows: (a) the members of the Settlement Class are so numerous that joinder of all members of the Settlement Class in the Actions is impracticable; (b) questions of law and fact common to the Settlement Class predominate over any individual questions; (c) the claims of Class Plaintiffs are typical of the claims of the Settlement Class; (d) Class Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering (i) the interests of Settlement Class Members in individually controlling the prosecution of separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by Settlement Class Members; (iii) the desirability or undesirability of concentrating the litigation of the Actions in this particular forum; and (iv) the likely difficulties in managing the Actions as a class action.



### **III. APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**

1. The law firms of Johnson & Johnson LLP, Pearson Warshaw, LLP, and Nye, Stirling, Hale, Miller & Sweet, LLP are appointed, solely for settlement purposes, as Class Counsel for the Settlement Class.

2. Class Plaintiffs are appointed, solely for settlement purposes, as class representatives for the Settlement Class.

### **IV. NOTICE AND CLAIMS PROCESS**

1. The Court makes the following findings regarding notice to the Settlement Class:

a. The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement: (i) constituted the best practicable notice under the circumstances to Settlement Class Members; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Actions, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and (iv) complied fully with the requirements of Federal Rule of Civil Procedure 23, due process, and any other applicable law.

b. The Court finds that the Class Notice and process set forth in the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order: (i) constitute the most effective and practicable notice of the Final Approval Order, the relief available to Settlement Class Members pursuant to the Final Approval Order, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of Federal Rule of Civil Procedure 23, due process, and any other applicable law.

## V. FINAL APPROVAL OF CLASS ACTION SETTLEMENT

1. Pursuant to Federal Rule of Civil Procedure 23(e), the Court grants final approval of the Settlement set forth in the Settlement Agreement on the basis that the settlement is fair, reasonable, and adequate as to, and in the best interests of, all Settlement Class Members, and is in compliance with all applicable requirements of the Federal Rules of Civil Procedure. In reaching this conclusion, the Court considered the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000).<sup>2</sup> Moreover, the Court concludes that:

a. The Settlement set forth in the Settlement Agreement was fairly and honestly negotiated by counsel with significant experience litigating class actions, copyright and licensing-related actions in the media and entertainment industries, and other complex litigation, and is the result of vigorous arm's-length negotiations undertaken in good faith;

b. The Actions are likely to involve contested and serious questions of law and fact, such that the value of an immediate monetary recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and

c. Success in cases such as the Actions is inherently uncertain, and there is no guarantee that continued litigation would yield a superior result.

2. Except as to any individual claim of those persons (identified in Exhibit 1 hereto) who have validly and timely requested exclusion from the Settlement Class ("Opt-Outs"), the Actions and all claims contained therein, as well as all of the Released Claims, against Defendants by Class Plaintiffs and Releasing Parties are dismissed with prejudice. Class Plaintiffs, all

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<sup>2</sup> *Accord Hyland v. Navient Corp.*, 48 F.4th 110, 121 (2d Cir. 2022) ("To evaluate the fairness, reasonableness, and adequacy of a class settlement, courts employ the nine factors set out in *City of Detroit v. Grinnell Corp.*").

Settlement Class Members, and Defendants (together, the “Settling Parties”) are to bear their own costs, except as otherwise provided in the Settlement Agreement and the orders of this Court.

3. The Opt-Outs identified in Exhibit 1 hereto have timely and validly filed a Request for Exclusion from the Settlement Class and are excluded from the Settlement Class for all purposes, are not bound by this Final Approval Order, and may not make any claim or receive any benefit from the Settlement Agreement or any other settlement from which members of the Settlement Class are entitled to recover.

## **VI. ADMINISTRATION OF THE SETTLEMENT**

1. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions, which the Court approves as fair, reasonable, and adequate. The Settlement Administrator is directed to provide Class Settlement Payments to Settlement Class Members pursuant to the terms of the Settlement Agreement.

2. The Court hereby approves Class Counsel’s request for Attorneys’ Fees and Expenses, and awards Class Counsel \$\_\_\_\_\_ as reasonable Attorneys’ Fees and Expenses, inclusive of the award of reasonable costs incurred in the Actions. The Court finds that the requested Attorneys’ Fees and Expenses are reasonable under the percentage of the Settlement Amount for the reasons set forth herein. The award of Attorneys’ Fees and Expenses to Class Counsel shall be paid from the Settlement Fund within the time period and manner set forth in the Settlement Agreement.

3. The Court hereby awards Class Counsel for their time incurred and expenses advanced. The Court has concluded that: (a) Class Counsel achieved a favorable result for the Settlement Class by obtaining Defendants’ agreement to make significant funds available to Settlement Class Members, without the need for the submission of any claim form; (b) Class Counsel devoted substantial effort to pre- and post-filing investigation, legal analysis, and

litigation; (c) Class Counsel prosecuted the Settlement Class's claims on a contingent fee basis, investing significant time and accumulating costs with no guarantee that they would receive compensation for their services or recover their expenses; (d) Class Counsel employed their knowledge of and experience with class action litigation in achieving a valuable settlement for the Settlement Class, in spite of Defendants' possible legal defenses and its experienced and capable counsel; (e) Class Counsel have standard contingent fee agreements with Class Plaintiffs, who have reviewed the Settlement Agreement and been informed of Class Counsel's request for Attorneys' Fees and Expenses and has approved it; and (f) the Class Notice informed Settlement Class Members of the amount and nature of Class Counsel's request for Attorneys' Fees and Expenses under the Settlement Agreement, Class Counsel filed and posted their application in time for Settlement Class Members to make a meaningful decision whether to object to Class Counsel's request, and \_\_\_\_ Settlement Class Member(s) objected.

4. The Court awards an Incentive Award in the amount of five thousand dollars (\$5,000.00) to each Class Plaintiff, payable from the Settlement Fund pursuant to the terms of the Settlement Agreement.

5. The Court finds that any Class Settlement Payments that are uncashed after one hundred and eighty (180) Days of mailing shall be returned to Defendants to be credited by Defendants to the respective Settlement Class Members' accounts with Defendants. For the avoidance of any doubt, the above-described return of uncashed Class Settlement Payments is not a reversion, but rather an alternative way of delivering each Settlement Class Member's Class Member Pro Rata Share of the Settlement Fund.

## **VII. RELEASE OF CLAIMS**

1. Upon the Effective Date: (a) Class Plaintiffs, each of the Settlement Class Members, and all Releasing Parties shall be deemed to have, and by the terms of the Settlement

Agreement and operation of the Final Approval Order shall have, fully, finally, and forever released, relinquished, and discharged against Defendants and the Released Parties any and all Released Claims; and (b) Class Plaintiffs, each of the Settlement Class Members, and all Releasing Parties, as well as anyone bringing claims through or on behalf of them, shall be permanently barred and enjoined from the commencement, assertion, institution, maintenance or prosecution of any of the Released Claims against Defendants or any Released Party in any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or forum of any kind. This Final Approval Order shall not affect in any way the right of Class Plaintiffs or Releasing Parties to pursue claims, if any, outside the scope of the Released Claims. Claims to enforce the terms of the Settlement Agreement are not released.

2. The terms of the Settlement Agreement and of this Final Approval Order, including all Exhibits thereto, shall be forever binding on, and shall have *res judicata* and preclusive effect in, any and all pending and future lawsuits related to the Released Claims maintained by Class Plaintiffs and all other Settlement Class Members, as well as their heirs, executors and administrators, successors, and assigns.

(a) The Settlement Agreement and releases described therein do not affect the rights of Settlement Class Members who timely and properly submitted Requests for Exclusion from the Settlement in accordance with the requirements of the Settlement Agreement.

(b) The administration and consummation of the Settlement as embodied in the Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, enforcement of the releases described therein. The Court expressly retains jurisdiction to enter

such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

(c) The Settlement Agreement shall be the exclusive remedy for any and all Settlement Class Members for any Released Claims, except those who have properly submitted Requests for Exclusion. The Released Parties shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Member(s).

(d) Class Plaintiffs and all Settlement Class Members who did not validly and timely submit Requests for Exclusion to Opt-Out of the Settlement in the manner provided in the Settlement Agreement are, from this day forward, hereby permanently barred and enjoined from directly or indirectly: (i) asserting any Released Claims in any action or proceeding; or (ii) filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise), any lawsuit based on or relating to any the Released Claims or the facts and circumstances relating thereto;.

### **VIII. NO ADMISSION OF LIABILITY**

1. Neither the Settlement Agreement nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission or evidence of the validity of any Released Claim, or of any wrongdoing or liability of Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

## **IX. OTHER PROVISIONS**

1. This Final Approval Order and the Settlement Agreement (including the Exhibits thereto) may be filed in any action to enforce or interpret the terms of the Settlement Agreement, the Settlement contained therein, and any other documents executed in connection with the performance of the Settlement embodied therein. In addition, any Released Party (as that term is defined herein and in the Settlement Agreement) may file the Settlement Agreement and/or this Final Approval Order in any action to support a defense of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

2. In the event that the Settlement does not become effective in accordance with the terms of the Settlement Agreement, then this Final Order and Judgment of Dismissal shall be rendered null and void and shall be vacated. In such event, all orders entered and releases delivered in connection herewith shall be null and void, and the Settling Parties shall be deemed to have reverted to their respective status in the Actions as of the Execution Date, and, except as otherwise expressly provided herein, the Settling Parties shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered.

3. The Settling Parties are directed to consummate the Settlement according to the terms of the Settlement Agreement. Without further Court order, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

4. The Actions, including all individual claims and class claims presented herein, are hereby dismissed on the merits and with prejudice against Class Plaintiffs and all other Settlement Class Members that have not submitted timely and valid Requests for Exclusion, without fees or costs to any party except as otherwise provided herein.

5. The Clerk of the Court is directed to enter this Final Judgment and Order of Dismissal.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. VERNON S. BRODERICK  
UNITED STATES DISTRICT JUDGE



# EXHIBIT C

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

v.

**COMEDY PARTNERS, a New York general partnership  
United States District Court for the Southern District of New York  
Case No. 22 Civ 9355 (VSB)**

—and—

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

v.

**PARAMOUNT GLOBAL, COMEDY PARTNERS, and DOES 1-10  
United States District Court for the Southern District of New York  
Case No. 23 Civ 2409 (VSB)**

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUITS**

*The United States District Court for the Southern District of New York authorized this Notice.*

*This is not a solicitation from a lawyer. You are not being sued.*

*However, your legal rights are affected by the information contained in this Notice.*

**Please be advised that your rights may be affected, and you may be eligible to receive a financial payment as the result of a proposed class action settlement (“Settlement”).** You have been identified as a Class Member of the Settlement Class<sup>1</sup>. The purpose of this Notice is to provide information about this Settlement and explain your rights and options.

- A Settlement has been reached in two class action lawsuits, *Kaplan v. Comedy Partners*, No. 22 Civ. 9355 (VSB) (S.D.N.Y.) and *Zimmerman et al. v. Paramount Global et al.*, No. 23 Civ. 2409 (VSB) (S.D.N.Y.) (collectively, the “Actions”), which affects your rights. The Actions allege that Defendants Comedy Partners and Paramount Global (collectively, “Defendants” or “Comedy Partners”) have underpaid royalties to parties to licensing agreements or recording contracts with Comedy Partners (the “Recording Contracts”) whose works have been distributed by digital audio transmission via SiriusXM Radio pursuant to such Recording Contracts.
- The Court has not yet decided whether to grant final approval of the Settlement; however, the Court has preliminarily approved the Settlement as fair, adequate, and reasonable. No payments will be made unless and until the Court finally approves the Settlement and any appeals are resolved.
- As explained in further detail below, you need to decide by [DATE] whether to: (1) receive a payment to be paid under the Settlement – you do not need to do anything for this option; (2) object to the Settlement; or (3) opt-out of the Settlement entirely (you will not receive any money to be paid under the Settlement) to retain the right to pursue your legal claims on your own. *If you wish to remain a*

---

<sup>1</sup> You are Class Member if you fall within the meet the Settlement Class definition, “All persons and entities, their agents, successors in interest, affiliates, assigns, heirs, executors, trustees, and administrators who are or were parties to Recording Contracts with Comedy Partners whose works have been distributed by digital audio transmission via SiriusXM Radio pursuant to such Recording Contracts between May 19, 2013, up to and including December 31, 2022.”

***Class Member for purposes of this Settlement and receive a payment pursuant to the Settlement, you do not have to do anything in response to this Notice.***

**PLEASE READ THIS NOTICE CAREFULLY. It describes your rights and how to receive money from the Settlement or exclude yourself from the Settlement.**

| <b>YOUR RIGHTS AND OPTIONS</b>                                   |   |
|--|---|
| <b>DO NOTHING AND RECEIVE YOUR INDIVIDUAL SETTLEMENT PAYMENT</b> | <u>You do not have to do anything to participate in the Settlement.</u> If you do nothing, and if the Settlement is finally approved by the Court, you will receive a payment in the amount of your <i>pro rata</i> share (a legal term meaning proportional share) of the Net Settlement Fund, after the deduction of certain expenses. <i>See</i> Section 18 below. All members of the Settlement Class who do <u>not</u> Opt-Out by successfully submitting a Request for Exclusion will have the right to select their method of payment of their pro rata share of the Net Settlement Fund.  |
| <b>REQUEST TO BE EXCLUDED FROM THE SETTLEMENT (“OPT-OUT”)</b>    | You can choose to exclude yourself from the Settlement. If you do not want to receive a payment under the Settlement, and you want to keep any rights you may have to individually sue Comedy Partners over the legal claims resolved by this Settlement, then you must send a letter to the Settlement Administrator by [DATE] stating that you wish to be excluded from the Settlement. <i>See</i> Section 19 below.  |
| <b>OBJECT TO THE TERMS OF THE SETTLEMENT</b>                     | You can object to the Settlement in its entirety by filing an objection—in the form of a letter—with the Court and sending it to the Settlement Administrator by [DATE] explaining why you believe the Settlement should be rejected by the Court. If your objection is overruled by the Court, you will receive a payment in the amount of your <i>pro rata</i> (or proportional) share of the Net Settlement Fund, and you will not be able to sue Comedy Partners for the legal claims being released as part of the Settlement of the Actions. If the Court agrees with your objection, then the Settlement may not be approved. <i>See</i> Section 20 below. |

These rights and options—***and the deadlines to exercise them***—along with the significant terms of the Settlement are explained in this Notice.

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## **BASIC INFORMATION**

### **1. Why did I receive this Notice?**

Comedy Partners' records show that you are or were a party to a Recording Contract with Comedy Partners whose works have been distributed by digital audio transmission via SiriusXM Radio pursuant to such Recording Contracts between May 19, 2013, up to and including December 31, 2022. A Settlement has been reached in the Actions against Comedy Partners that affects your legal rights.

Judge Vernon S. Broderick of the United States District Court for the Southern District of New York, who is overseeing the settlement of the Actions, ordered that members of the Settlement Class whose works have been distributed by digital audio transmission via SiriusXM Radio pursuant to such Recording Contracts (the "Settlement Class"), be sent Notice because each member of the Settlement Class has a right to know about the proposed Settlement and their legal rights and options available before the Court decides whether to finally approve the Settlement.

### **2. What is a class action?**

In a class action lawsuit, one or more people, called class representatives, assert claims on behalf of themselves and other people. All of these people together are called a class or class members. In a class action, one court resolves the issues for all class members, except those who specifically ask to be excluded from the class, thus providing the class members with both consistency and efficiency. When class representatives reach a proposed settlement with defendants in a class action, the proposed settlement must be approved by the court. After court-approved notice is provided to the potential class members, the court holds a hearing, which class members can attend, to determine, among other things, that the settlement is fair, reasonable, adequate and in the best interests of the class.

### **3. What is this Lawsuit about?**

On November 1, 2022, Plaintiff Michael Kaplan, individually and on behalf of all others similarly situated, filed a class action complaint in the United States District Court for the Southern District of New York against Comedy Partners, captioned *Kaplan v. Comedy Partners*, No. 22 Civ. 9355 (VSB) (S.D.N.Y.), alleging that Defendants have underpaid royalties to parties to licensing agreements or recording contracts (the "Recording Contracts") with Comedy Partners whose works have been distributed by digital audio transmission via SiriusXM Radio between May 19, 2013 and December 31, 2022, pursuant to such Recording Contracts.

Similarly, on March 21, 2023, Plaintiffs Joseph Zimmerman, Anthony DeVito, and Sean Donnelly, each individually and on behalf of all others similarly situated, filed a class action complaint in the United States District Court for the Southern District of New York against Paramount Global and Comedy Partners, captioned *Zimmerman, et al. v. Paramount Global et al.*, No. 23 Civ. 2409 (VSB) (S.D.N.Y.), alleging that Defendants have underpaid royalties to parties to licensing agreements or Recording Contracts with Comedy Partners whose works have been distributed by digital audio transmission via SiriusXM Radio between May 19, 2013 and December 31, 2022, pursuant to such Recording Contracts.

There was no trial to determine the truth of the allegations in the Actions. Instead, the parties agreed to a Settlement of all legal claims in the Actions. Comedy Partners denies any fault, wrongdoing or liability and has agreed to the Settlement to avoid the expense, risk, delay, and uncertainty of further litigation.

### **4. Has the Court decided who is right?**

No. The Court has only decided that members of the Settlement Class should receive Notice so they can review the proposed Settlement and determine whether to participate, object, or exclude themselves from the Settlement.

**5. Am I a member of the Settlement Class?**

If you have received this Notice, then Comedy Partners' records indicate that you are a member of the Settlement Class and are, therefore, affected by this proposed Settlement. You are a member of the Settlement Class if you are included in the below definition of the Settlement Class:

All persons and entities, their agents, successors in interest, affiliates, assigns, heirs, executors, trustees, and administrators who are or were parties to Recording Contracts with Comedy Partners whose works have been distributed by digital audio transmission via SiriusXM Radio pursuant to such Recording Contracts between May 19, 2013, up to and including December 31, 2022.

**6. Why is this Lawsuit being settled?**

Rather than engage in prolonged and risky litigation, the parties, with the help of a retired Judge serving as a mediator, were successful in reaching the Settlement. The Settlement requires the Defendants to create an \$11 million Settlement Fund for the benefit of the Class in exchange for a release of the Class Members' claims related to the allegations in the Actions. By resolving the case, the parties avoid the expense, risk, delay, and uncertainty of further litigation, and members of the Settlement Class receive the settlement payments described herein. By entering into the Settlement, Comedy Partners is not admitting liability. Further, the Class Plaintiffs and their counsel believe that the Settlement is in the best interest of the Class.

**7. What are the general payment and release terms of the proposed Settlement?**

Comedy Partners has agreed to pay eleven million dollars (\$11,000,000.00) to settle the Actions. Members of the Settlement Class who do not request to be excluded from the Settlement will (a) receive their Class Member Pro Rata Share (a legal term meaning proportional share) of the Net Settlement Fund (the "Class Member Pro Rata Share" is defined in Section 11, below), and (b) release all legal claims they may have against Comedy Partners that were or could have been raised in the Actions, other than certain "Retained Claims" defined in Section 17 below.

For more information about the Class Settlement Payments, *see* Section 11 below. For more information about the legal claims you will release if you do not exclude yourself from the Settlement, *see* Section 17 below. For more information about the options you have regarding the Settlement, *see* Sections 18 through 22 below. For information on how to obtain additional information about the Settlement or the Actions, *see* Section 24 below.

**8. Who represents the Settlement Class Members in the Lawsuit?**

The Court has appointed the following attorneys as Class Counsel for settlement purposes to represent you and other members of the Settlement Class: Laurie Rubinow of Miller Shah LLP; Neville L. Johnson, Douglas L. Johnson, and Melissa N. Eubanks of Johnson & Johnson LLP; Daniel L. Warshaw and Bobby Pouya of Pearson Warshaw, LLP; Scott A. Kamber of Kamber Law, LLC; Benjamin J. Sweet, Jonathan D. Miller, and Margaret A. Parker of Nye, Stirling, Hale, Miller & Sweet, LLP.

You may contact Class Counsel at:

**Daniel L. Warshaw**  
**Pearson Warshaw, LLP**  
**15165 Ventura Boulevard, Suite 400**  
**Sherman Oaks, CA 91403**  
**dwarshaw@pwfirm.com**  
**Phone: (818) 788-8300**  
**Fax: (818) 788-8104**

- And -

**Jonathan D. Miller**  
**Nye, Stirling, Hale, Miller & Sweet, LLP**  
**33 West Mission Street, Suite 201**  
**Santa Barbara, CA 93101**  
**jonathan@nshmlaw.com**  
**Phone: (805) 963-2345**  
**Fax: (805) 284-9590**

You do not have to pay Class Counsel. Subject to Court approval, Class Counsel will be paid for their fees and costs from the Settlement Fund (see Section 16 below).

You do not need to hire your own lawyer because Class Counsel are working on your behalf, unless you exclude yourself from participation in the Settlement by opting out by the deadline, as described in Section 19 below. Nonetheless, you may hire your own lawyer if you wish. If you hire your own lawyer, you are responsible for paying that lawyer.

**9. Who is the Settlement Administrator?**

The Settlement Administrator is a third party appointed by the Court to send this Notice, facilitate the payments to members of the Settlement Class, and otherwise administer the Settlement according to the terms agreed to by the parties and approved by the Court. **You should contact the Settlement Administrator if you have updated contact information.** You may also contact the Settlement Administrator to object to the Settlement or request exclusion from the Settlement Class. You may contact the Settlement Administrator at:

**Comedy Partners Class Action Settlement**  
**P.O. Box \_\_\_\_\_**  
**City, State Zip**

**Toll-Free 1-xxx-xxx-xxxx or by Email at: xxxx@xxxxxxxxxxx.com**

**MONETARY TERMS OF THE SETTLEMENT**

**10. What has Comedy Partners agreed to do?**

Comedy Partners has agreed to pay eleven million dollars (\$11,000,000.00) to settle the Actions, which is the total amount of money Comedy Partners is required to pay under the terms of the Settlement Agreement. That amount, together with any interest earned thereon from the date it is wired to the Settlement Administrator, will constitute the Settlement Fund.

If you do nothing, and if the Settlement is finally approved by the Court, you will receive a payment in the amount of your Class Member Pro Rata Share of the Net Settlement Fund (as defined in Section 11 below). Prior to any payments made to members of the Settlement Class, Comedy Partners has agreed to pay from the Settlement Fund the cost of the Settlement Administrator, the amount of any incentive award approved by the Court, and the amount of any attorneys' fees and costs awarded to Class Counsel (see Sections 14, 15, and 16 below).

**11. How much will I be paid?**

Each Settlement Class Member will receive their Class Member Pro Rata Share of the Net Settlement Fund (i.e., ratio of the total number of plays of the individual Class Member's Recordings, compared to the total number of plays of all Class Member Recordings (in the aggregate) via the SiriusXM Radio platform during the period May 19, 2013 through December 31, 2022), after the deduction from the Settlement Fund of (1) any award of Attorneys' Fees and Expenses, (2) any Incentive Award, and (3) any Notice and Administration Costs. For the avoidance of any doubt, the Class Settlement Payments will be calculated based on the following formula:

[A] (\$11,000,000.00 *minus* Attorneys' Fees and Expenses *minus* Incentive Award(s) *minus* Notice and Administration Costs)

X

[B] (the # of Plays of Each Individual Class Member's Recordings transmitted via SiriusXM Radio between May 19, 2013 and December 31, 2022) *divided by* (the total # of plays of all Class Member Recordings)

**12. When will I receive my payment?**

The Court will hold a Fairness Hearing on \_\_\_\_\_ (see Section 23 below) to consider whether the Settlement should be approved. If the Court approves the Settlement, after entry of the Final Approval Order, Comedy Partners will need to transfer to the Settlement Administrator the funds necessary to make the payments called for by the Settlement. The Settlement Administrator will then make payment to members of the Settlement Class after the Final Approval Order becomes effective.

**13. How will I be paid?**

You will have the right to elect to be paid by check sent via first-class mail or by electronic payment (if feasible) such as PayPal, Venmo, or ACH. If you make no election, you will be paid by check.

Any checks not cashed after **one hundred eighty (180) days** from the date of the class-wide distribution shall be void. After the deadline to cash checks has passed, the funds from all uncashed payments will be returned to Comedy Partners and credited for the same amount to those members of the Settlement Class with an uncashed payment into the respective Settlement Class Member's account with Comedy Partners. For the avoidance of any doubt, the above-described return of uncashed Class Settlement Payments is not a reversion (meaning the money will not belong to Comedy Partners), but rather an alternative way of delivering to each Settlement Class Member their *pro rata* share of the Net Settlement Fund.

In the event you fail to timely cash your check, the Settlement will remain binding on you, and the release of legal claims described in Section 17 below will remain in effect.

**14. How will the Settlement Administrator be paid?**

Comedy Partners has agreed to pay all reasonable fees, costs, and expenses related to the administration of the Settlement or otherwise incurred by the Settlement Administrator in an amount not to exceed \$28,000.00. The payment of such fees, costs, and expenses will be paid from the Settlement Fund and deducted *prior to* the calculation of each Settlement Class Member's *pro rata* share of the Net Settlement Fund.



**15. What is an incentive award and how will it be paid?**

In class action lawsuits, the court may provide class representatives an incentive award in recognition of the time and effort they expended and the risks they took in litigating the case on behalf of the class. In the Actions, Comedy Partners has agreed not to object to a request for an incentive award in an amount not to exceed \$5,000 to each of the class representatives: Michael Kaplan, Joseph Zimmerman, Anthony DeVito, and Sean Donnelly. The total amount of any incentive award(s) approved by the Court will be paid from the Settlement Fund and deducted *prior to* the calculation of each Settlement Class Member's *pro rata* share of the Net Settlement Fund.

**16. How will Class Counsel be paid?**

To date, Class Counsel have not received any payment for their services for handling the Actions and have not been reimbursed for any of their out-of-pocket expenses. Any fees and expenses awarded to Class Counsel by the Court will be paid by from the Settlement Fund and deducted *prior to* the calculation of each Settlement Class Member's *pro rata* share of the Net Settlement Fund.

Class Counsel will ask the Court to approve payment of their attorneys' fees of up to \$3,666,666.66 and reimbursement for costs and expenses incurred in the prosecution of the lawsuit not to exceed [XXXX]. Class Counsel will file a motion for attorneys' fees and costs by [DATE] and a copy of the motion will be made available at [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com).

**RELEASE OF CLAIMS****17. What claims are being released as part of the Settlement?**

Upon final approval of the Settlement by the Court, members of the Settlement Class who do not request to be excluded from the Settlement by timely opting out as described in Section 19 below will fully release all legal claims that were or could have been alleged in the Actions, except for specified "Retained Claims," defined below. Claims released specifically include any claims based upon, arising out of, relating to, concerning or involving (i) any and all contracts entered into by any Settlement Class Member with Defendants relating to the production, distribution, and exploitation of recordings covered by said contracts (the "Class Member Recordings") pertaining to royalties or other payments due arising from the distribution of such Recordings via the SiriusXM platform from May 19, 2013 through December 31, 2022, and (ii) any claims for copyright infringement of any kind arising from or relating to the distribution and exploitation by Defendants of the Class Member Recordings, via any and all platforms or media now known or hereafter devised. When these claims are "released," it means that a person covered by the release cannot sue Comedy Partners or the other released parties for these legal claims.

The release does not include the following Retained Claims: (A) any claims Class Members may have for royalties due under the Class Members' Recording Contracts arising from the distribution of Class Member Recordings (i) on platforms other than SiriusXM, and (ii) via the SiriusXM platform for any time period after December 31, 2022, and (B) any claims Class Members may have under 17 U.S.C. § 201 in the literary works that may be embodied in the Class Member Recordings for purposes of any exploitation of such rights (unrelated to the Class Member Recordings) not prohibited by their respective Recording Contract.

The full terms of the release are provided in Section 15 of the Settlement Agreement in necessary legal terminology. Please see Section 24 below for instructions on how to obtain a copy of the Settlement Agreement and further information about the Actions.

## YOUR RIGHTS AND OPTIONS

### **18. How do I participate in the Settlement?**

**You do not need to do anything to participate in the Settlement.** If you received this Notice, Comedy Partners' records indicate you are a member of the Settlement Class and, so long as you do not request to be excluded from the Settlement, you will automatically receive your *pro rata* share of the Net Settlement Fund and will release claims as set forth in Section 17 above without any further action on your part, if the Settlement is finally approved by the Court.

### **19. How do I request to be excluded from the Settlement?**

If you do not want to receive a payment under the Settlement, or if you want to keep any right you may have to sue Comedy Partners for the claims alleged in the Actions, then you must exclude yourself or "opt-out" of the Settlement.

If you wish to be excluded from the Settlement, you must opt-out by sending a letter to the Settlement Administrator (at the address set forth in Section 9, and copied for convenience in the following paragraph) stating that you wish to be excluded from or opt-out of the Settlement. This opt-out request must be sent by first-class mail, postage prepaid, and postmarked by **Month DD, 20YY**. The opt-out request must clearly state your name and address and be personally signed by you. It must also clearly express your intent to be excluded from the Settlement of the Actions.

The Settlement Administrator's address is:

Comedy Partners Class Action Settlement  
c/o Epiq Class Action & Claims Solutions, Inc.  
P.O. Box \_\_\_\_\_  
City, State Zip

If you opt-out of the Settlement, you will keep your rights to sue Comedy Partners for the legal claims alleged in the Lawsuit. However, you will not be entitled to receive your *pro rata* share of the Net Settlement Fund or any other payment from the Settlement.

If you do not timely mail a valid opt-out request to the Settlement Administrator, you will be bound by all terms and conditions of the Settlement or judgment, including its release of legal claims.

### **20. How do I object to the Settlement?**

If you do not opt-out of the Settlement, you may object to the Settlement by filing a letter with the Court (and copying the Settlement Administrator) noting your objection to the Settlement by **Month DD, 20YY**. The objection letter must include the following information and be personally signed by you:

- (i) your name, address, email address, telephone number, and the contact information for any attorney retained by you in connection with your objection or otherwise in connection with the Actions;
- (ii) a statement of the factual and legal basis for your objection and any exhibits you wish the Court to consider in connection with your objection;

- (iii) a statement as to whether you intend to appear at the Fairness Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number; and
- (iv) all other objections to class settlements submitted by you or your counsel to any Court within the United States within the last 5 years, if any, including the total number of such objections and the case and court information in which each such objection was asserted.

The address for filing an objection with the Court is as follows:

**Clerk of Court  
U.S. District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Court House  
500 Pearl Street  
New York, NY 10007-1312  
Re: *Zimmerman v. Paramount Global*, No. 23 Civ. 2409 (VSB)**

The Settlement Administrator's address is:

Comedy Partners Class Action Settlement  
c/o Epiq Class Action & Claims Solutions, Inc.  
P.O. Box \_\_\_\_\_  
City, State Zip

The objector or their counsel (if any) must file the objection(s) and supporting materials with the Court and provide a postmarked copy of the objection(s) and supporting materials to the Settlement Administrator at the above address no later than **Month DD, 20YY**. If an objector is represented by an attorney for the purposes of making an objection, a notice of appearance by the objector's attorney must be filed with the Court no later than **Month DD, 20YY**.

For more information about the Fairness Hearing, *see* Section 23 below. If you do not comply with the foregoing procedures and deadlines for submitting your objection to the Settlement, you may lose your right to contest approval of the proposed Settlement as well as your right to appear and be heard at the Fairness Hearing. Any objector consents to the jurisdiction of the Court for the purposes of any proceeding relating to their objection, including any appropriate discovery or other orders issued by the Court relating to the objection.

If the Court agrees with your objection, or the objection of any other member of the Settlement Class, then there is no settlement. If you object, but the Court denies your objection and any other objection(s), then you will be bound by all terms and conditions of the Settlement, including its release of claims or a judgment.

**21. What is the difference between objecting and opting out?**

Objecting is telling the Court that you do not believe the Settlement is fair, reasonable, and adequate for the class, and asking the Court to reject it. You cannot object to the Settlement unless you are a member of the Settlement Class, which means that you can object only if you do not opt-out of the Settlement. If you object to the Settlement and do not opt-out, then you are entitled to a payment if the Settlement is finally approved by the Court, but you will release the legal claims you might have against Comedy Partners regarding the legal issues released by the Settlement.

Excluding yourself from or opting out of the Settlement is telling the Court that you do not want to be part of the Settlement and that you do not want to receive a payment or release any legal claims you might have against Comedy Partners for the legal claims released by the Settlement.

Anyone who submits both an objection and a request to opt-out shall be deemed to have opted out of the Settlement.

**22. What if I do nothing at all?**

If you do nothing, and if the Settlement is approved, then you will receive your *pro rata* share of the Net Settlement Fund. You will give up the right to sue Comedy Partners regarding the legal claims you might have against Comedy Partners for the legal claims alleged in the Actions.

**THE FAIRNESS HEARING**

**23. When will the Court consider whether to grant final approval of the Settlement?**

The Court will hold a Fairness Hearing in Courtroom 518 of the United States District Court for the Southern District of New York located at 40 Foley Square, New York, NY 10007 on [REDACTED], 2024 at [REDACTED] .m. to decide whether to grant final approval of the Settlement. This hearing may be postponed or rescheduled by the Court without additional notice to members of the Settlement Class. Members of the Settlement Class may appear at the Fairness Hearing in person, by audio, or by video. General information about the Court is available at <https://www.nysd.uscourts.gov>.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate for the Settlement Class. If there are objections, the Court will consider them, provided that a valid and timely objection was submitted. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses and how much each class representative should receive as an incentive award.

Members of the Settlement Class do not need to appear at the hearing or take any other action to indicate their approval of the Settlement. Class Counsel will answer any questions the Court may have. However, you may attend if you desire to do so at your own expense or by hiring an attorney to appear on your behalf if you would like. If you submit a written objection to the Settlement, you do not have to attend the hearing to discuss it; as long as you timely submitted the objection with the requisite information, the Court will consider it. However, you also may attend if you desire to do so at your own expense.

**FURTHER INFORMATION**

**24. How do I receive more information?**

This Notice provides a summary of the basic terms of the Settlement. For the Settlement's complete terms and conditions, consult the Settlement Agreement and other documents in the Actions. More information about the Actions can be obtained through several methods:

- (i) You can contact the Settlement Administrator by mail, telephone, or email (contact information in Section 9 above);
- (ii) You can contact Class Counsel by mail, telephone, or email (contact information in Section 8 above);
- (iii) You can visit the website, [www.xxxx.com](http://www.xxxx.com), to obtain certain key documents in the Actions free of charge; or

- (iv) For a small fee, all of the pleadings and other records in this litigation, including the Settlement Agreement, may be examined online through a service of the United States Judiciary called PACER, which is an acronym for Public Access to Court Electronic Records, which can be accessed at [nysd.uscourts.gov/programs/records/pacer](https://nysd.uscourts.gov/programs/records/pacer).

PLEASE DO NOT CALL OR OTHERWISE CONTACT THE COURT, THE CLERK OF COURT, REPRESENTATIVES OF COMEDY PARTNERS, OR COUNSEL FOR COMEDY PARTNERS FOR INFORMATION REGARDING THIS NOTICE OR SETTLEMENT.

1016812.1