

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

MELISSA FERRICK, et al.,

Plaintiff,

vs.

SPOTIFY USA INC., et al.,

Defendants.

No. 1:16-cv-08412 (AJN)

**DECLARATION OF HON. LAYN R. PHILLIPS (RET.). IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

I, LAYN R. PHILLIPS, declare as follows:

1. I am over 18 years of age and am legally competent to make this Declaration. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.
2. I served as mediator for settlement discussions with respect to the class action of *Melissa Ferrick, et al. v. Spotify USA Inc.*, et al., Civil No. 1:16-cv-08412 (AJN) (S.D.N.Y.). I submit this declaration in support of the Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement with Spotify USA Inc. ("Spotify").
3. I have over 32 years of experience as a judicial officer and trial attorney. I served over ten years in the public sector, working first as a federal prosecutor in the U.S. Attorney's Office in Los Angeles. I was later nominated by former President Ronald Reagan to serve as the United States Attorney for the Northern District of Oklahoma, and President Reagan again nominated me to serve as a federal judge for the Western District of Oklahoma, where I presided over 140 federal trials from 1987-1991 in Oklahoma, New Mexico, and Colorado. I also sat by designation for the United States Court of Appeals for the Tenth Circuit, where I participated in numerous panel decisions and published several opinions in the fields of criminal law, business litigation, and civil rights. In 1991, I resigned from the federal bench and joined the law firm of Irell & Manella, based in Los Angeles and Orange County, California, where I specialized in complex civil litigation, internal investigations, and alternative dispute resolution, dedicating my calendar to only alternative dispute resolution matters for the final several years. I have over 20 years of dispute resolution experience, having conducted thousands of mediations and settlement conferences in all types of litigation, including complex class actions, securities fraud actions and shareholder derivative actions. I have served as an independent mediator in a variety of other class action matters.

4. As the independent mediator in this case, I presided over the settlement discussions and negotiations between the parties. In that role, I reviewed several mediation briefs and related submissions and certain Court rulings on matters of contention between the parties.

5. I assisted the parties with settlement discussions and negotiations over a period of time, including two in-person, all-day mediation sessions on November 7, 2016, and January 11, 2017, with Plaintiffs' Class Counsel, counsel for Spotify, and a corporate representative from Spotify. I also assisted the parties with ongoing settlement discussions via telephone, and via email correspondence, as recently as the past few weeks. The parties executed a memorandum of understanding at the January 11, 2017 mediation session with my participation and supervision.

6. The mediation process involved extensive analysis of the parties' positions including, for instance, the value of Plaintiffs' claims regarding Spotify's alleged copyright violations.

7. Settlement discussions and negotiations continued under my supervision until the parties reached agreement on the long-form settlement agreement. That included supplemental mediation briefing on disputed issues, multiple telephone conferences with me and my staff, and review of key positions by the parties.

8. The negotiations were hard-fought and ultimately led to the settlement agreement currently being considered by the Court for approval.

9. Based on the materials provided to me by the settling parties and my extensive participation in the process, I am familiar with the factual and legal issues involved in the Action, including the allegations asserted by plaintiffs in the Action and the defenses to liability and damages asserted by Spotify. I also am familiar with the process by which the parties negotiated

the settlement, and, I believe that the settlement was reached by the parties acting at arm's-length, carefully and in good faith.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 24th day of May, 2017, at Newport Beach, California.

A handwritten signature in black ink, appearing to read 'Layn R. Phillips', written over a horizontal line.

LAYN R. PHILLIPS
Former U.S. District Court Judge