

**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 STEVEN G. SKLAVER IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT**

I, Steven G. Sklaver, declare as follows:

1. I submit this declaration in support of preliminary approval of the proposed class action settlement between the Plaintiffs Melissa Ferrick individually and doing business as Nine Two One Music and Right on Records/Publishing (“Ferrick”), Jaco Pastorius, Inc. (“Pastorius”), and Gerencia 360 Publishing, Inc. (“G360”) (collectively “Class Plaintiffs” or “Plaintiffs”), for themselves and on behalf of the proposed Settlement Class, and Defendant Spotify USA Inc. (“Spotify” or “Defendant”).

2. I am a partner in the law firm of Susman Godfrey L.L.P., which, along with Gradstein & Marzano, P.C., is interim co-lead counsel (“Class Counsel”) for Class Plaintiffs in Civil Action No. 1:16-cv-08412 (AJN). I have been admitted *pro hac vice* by this Court in this action and am a member of good standing of the California bar. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

3. Susman Godfrey has significant experience with copyright litigation and class actions, including settlements thereof. A copy of the firm’s class action profile and my profile is attached hereto as Exhibit A.

4. Gradstein & Marzano P.C. has significant experience with copyright litigation and class actions, including settlements thereof. A copy of the firm’s profile is attached hereto as Exhibit B.

5. I was among the principal negotiators of the proposed class action settlement with Defendants. The parties signed a memorandum of understanding on January 11, 2017, and the final Settlement Agreement was signed on May 26, 2017. I attach a true and correct copy of the Settlement Agreement as Exhibit C. It is the opinion of Class Counsel that this settlement with

Spotify is fair, adequate, and reasonable. There are no conflicts between the Class Plaintiffs and other Class Members.

6. The Settlement Agreement is the result of extensive and protracted negotiations between the parties with the assistance of an experienced mediator, Hon. Layn R. Phillips, United States District Judge (Retired). The mediation process began in November 2016 and did not conclude until the Settlement Agreement was signed.

7. The parties conducted two in-person mediation sessions with Judge Phillips that I or one of my partners at Susman Godfrey personally attended and actively participated in. These in-person mediations took place on November 7, 2016, and January 11, 2017, in Judge Phillips' offices in Newport Beach, California, and lasted all day. Both mediation sessions were attended by counsel for Spotify, counsel for Plaintiffs, and a corporate representative from Spotify. The parties also participated in extensive teleconference and email discussions with Judge Phillips.

8. The memorandum of understanding was negotiated in-person at Judge Phillips's offices in Newport Beach, California on January 11, 2017, during the second in-person mediation referenced above.

9. A long-form settlement agreement was heavily negotiated thereafter, with the parties participating in telephonic mediation sessions with and submitting mediation briefs to Judge Phillips.

10. Throughout the process, the settlement negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length. The terms of the settlement were negotiated through extensive mediation briefing, teleconference and email discussions, and in-person meetings. Spotify informally provided extensive information to Class Counsel as part of the settlement negotiations, including as to the compositions at issue and data related to Spotify's streaming of those compositions. Class Counsel was well informed of material facts,

and retained knowledgeable and experienced experts to develop a thorough understanding of the data and information provided by Spotify. The settlement negotiations were conducted by highly qualified and experienced counsel on both sides at arm's length beginning in November 2016. The settlement negotiations lasted over six months. Class Counsel was well informed of material facts, and the negotiations were hard-fought and non-collusive.

11. Class Counsel took steps to ensure that we had all the necessary information to advocate for a fair, adequate, and reasonable settlement that serves the best interests of the Settlement Class.

12. Class Counsel analyzed extensive documents produced by Spotify in accordance with the mediation and prepared substantial other discovery, including requests for production, interrogatories, and third party subpoenas to Harry Fox Agency and the National Music Publishers Association.

13. Class Counsel also analyzed all of the contested legal and factual issues posed by the litigation, as required to accurately evaluate Defendant's positions, advocate for a fair settlement that serves the best interests of the class, and make accurate demands of Defendant. Class Counsel briefed multiple substantive issues, including a motion to strike class action allegations and a motion to dismiss for lack of personal jurisdiction, or in the alternative, to transfer venue to the Southern District of New York.

14. In my opinion, the \$43.45 million in cash payments to the Class plus the non-monetary relief reasonably, fairly, and adequately compensates the members of the proposed Settlement Class for their damages in view of the risks of litigation. According to one report, Spotify agreed to pay between \$16 million and \$25 million in a prior agreement with members of the National Music Publishers' Association ("NMPA"). And NMPA President David Israelite stated publicly that "over 96% of the music publishing community" are participating in that

agreement. The \$43.45 million recovery represents a greater recovery than the NMPA settlement. Further, this settlement represents an especially good result for the proposed Class because none of the cash in the settlement fund will be returned to Spotify.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 26th day of June, 2017.

/s/ Steven G. Sklaver _____

Steven G. Sklaver

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2017 I caused the foregoing DECLARATION OF STEVEN G. SKLAVER IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT to be served via the Electronic Case Filing (ECF) system in the United States District Court for the Southern District of New York, on all parties registered for CM/ECF in the above-captioned matters.

Dated: June 26, 2017

/s/ Steven G. Sklaver

Steven G. Sklaver