

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUSTIN VITETTA, individually and on behalf of other persons similarly situated who were employed,

Case No. 14 Civ. 2926 (VEC)

Plaintiffs,

- against -

SIRIUS XM RADIO, INC., and/or any other entities affiliated with or controlled by SIRIUS XM RADIO, INC.,

Defendant.

JOINT STIPULATION OF SETTLEMENT AND RELEASE

This Joint Stipulation of Settlement and Release, including all exhibits hereto (collectively, this “Agreement”), is entered into by and between Justin Vitetta (“Vitetta” or “Named Plaintiff”), individually and on behalf of the classes of individuals that he seeks to represent, and Sirius XM Radio Inc. (“Sirius XM” or “Defendant”).

RECITALS

WHEREAS, on April 23, 2014, former Plaintiff Melissa Tierney (“Tierney”) filed a class and collective action lawsuit in the United States District Court for the Southern District of New York, No. 14 Civ. 2926 (VEC), on behalf of herself and former unpaid interns at Sirius XM, in which Tierney claimed that Defendant owed her and others allegedly similarly situated wages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), and also asserted Rule 23 class claims alleging failure to pay wages under the New York Labor Law (the “Litigation”);

WHEREAS, on January 30, 2015, an Amended Complaint was filed in the Litigation, substituting Vitetta as the Named Plaintiff in place of Tierney. Vitetta sought to represent the same classes and alleged the same claims on behalf of former unpaid interns at Sirius XM;

WHEREAS, this Agreement is intended to effectuate the full, final, and complete resolution of all allegations and claims that were asserted, or could have been asserted, in the Litigation, including any appeals, by Named Plaintiff and the class members that he seeks to represent;

WHEREAS, Defendant denies all of the material allegations in the Litigation, and denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted in the Litigation;

WHEREAS, without admitting or conceding any liability or damages whatsoever, Defendant agrees to settle the Litigation on the terms and conditions set forth in this Agreement, solely to avoid the burden and expense of continuing the Litigation;

WHEREAS, Plaintiff's Counsel (as defined herein) evaluated the merits of the claims made against Defendant in the Litigation, which included conducting interviews with putative class and collective members, obtaining and reviewing documents relating to Defendant's policies and procedures, participating in the depositions of witnesses, and analyzing data produced in discovery during the Litigation, and concluded that there exists a risk that, if not settled now, the Litigation might not result in any recovery or might result in a recovery on terms less favorable than those set forth herein, that any such recovery may not occur for several years, and that no class claims would be certified or that the conditionally certified collective may be decertified; and

WHEREAS, the Parties (as defined herein) have taken into consideration the respective decisions of the United States Court of Appeals for the Second Circuit in *Glatt v. Fox Searchlight Pictures*, 13-4481-cv, and *Wang v. Hearst*, 13-4480-cv, and intend to be bound by the terms of this Agreement irrespective of the Second Circuit's decisions in those cases and/or the review/disposition of either case on rehearing and/or by the U.S. Supreme Court.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Litigation on the following terms and conditions:

1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1. **"Claim Form"** or **"Consent to Join Settlement Claim Form and Release"** means the form a Class Member must submit, along with a current IRS Form W-4 and a current IRS Form W-9, in order to become a Participating Claimant and recover a payment pursuant to Section 6.1, in the form attached as Exhibit I to this Agreement.
- 1.2. **"Claim Form Deadline"** means the date seventy-five (75) Days after Notice is mailed or emailed to the Class Members (whichever occurs first).
- 1.3. **"Class Counsel"** or **"Plaintiff's Counsel"** means the law firms Virginia & Ambinder, LLP and Leeds Brown Law, P.C. For purposes of providing notice under this Agreement, Class Counsel shall refer to LaDonna M. Lusher, Esq. of Virginia & Ambinder, LLP, and Jeffrey K. Brown, Esq. of Leeds Brown Law, P.C.
- 1.4. **"Class Members"** means, collectively, the FLSA Collective Members, the Rule 23 Class Members, and the Current FLSA Opt-Ins.
- 1.5. **"Court"** means the United States District Court for the Southern District of New York.
- 1.6. **"Current FLSA Opt-In"** means any individual who previously filed a consent to join the Litigation and did not have his or her claims dismissed or withdrawn before the execution date of this Agreement.
- 1.7. **"Days"** means calendar days.

- 1.8. **“Defendant’s Counsel”** means the law firm Jones Day. For purposes of providing notice under this Agreement, “Defendant’s Counsel” means Matthew W. Lampe and Emilie A. Hendee of Jones Day, 222 East 41st Street, New York, New York 10017.
- 1.9. **“Effective Date”** means the date that all of the following have occurred: (A) the Court has entered the Final Approval Order in the form attached as Exhibit A and the Final Judgment in the form attached as Exhibit J, and ruled on the motions for awards of service payments, and for attorneys’ fees and reasonable costs, and (B) the judgment and the rulings on such motions have become Final.
- 1.10. **“Final”** means the later of:
- (1) The governing time periods for seeking rehearing, reconsideration, appellate review and/or an extension of time for seeking appellate review have expired and there have been no such actions; or
 - (2) If rehearing, reconsideration, appellate review, and/or an extension of time for seeking appellate review is sought, thirty (30) Days after any and all avenues of rehearing, reconsideration, appellate review and/or extension of time have been exhausted and no further rehearing, reconsideration, appellate review, and/or extension of time is permitted, and the time for seeking such things has expired, and the judgment has not been modified, amended, or reversed in any way.
- 1.11. **“Fairness Hearing”** means the hearing before the Court relating to the Motion for Judgment and Final Approval.
- 1.12. **“Final Approval Order”** means the Order entered by the Court after the Fairness Hearing, in the form attached as Exhibit A, approving the terms and conditions of this Agreement.
- 1.13. **“Final Judgment”** means the judgment entered by the Court after the Fairness Hearing in the form attached as Exhibit J dismissing the Litigation with prejudice in accordance with this Agreement and the Final Approval Order.
- 1.14. **“FLSA Collective Members”** means individuals who were unpaid Interns for Sirius XM in the United States during the Sirius XM internship sessions from Spring 2012 through Spring 2015 according to Sirius XM’s written records, documents and data maintained in the ordinary course of business (hereinafter “Records”). FLSA Collective Members are hereinafter collectively referred to as the “FLSA Collective.” The FLSA Collective is an opt-in class under 29 U.S.C. § 216(b). Certain FLSA Collective Members are also Rule 23 Class Members.
- 1.15. **“Gross Settlement Amount”** means an aggregate amount not to exceed One Million Two Hundred Ninety-Seven Thousand Three Hundred Fifty Dollars (\$1,297,350), which Defendant has agreed to pay to settle the Litigation as set forth in this Agreement, subject to Defendant’s right to terminate this Agreement.

- 1.16. **“Intern” or “Interns”** means any individual who performed an unpaid internship for Sirius XM as reflected in Defendant’s Records during the relevant periods.
- 1.17. **“Last Known Addresses”** means the most recently recorded physical mailing address and electronic mail address for a Class Member as such information is contained in Defendant’s Records. For Current FLSA Opt-Ins, the Last Known Address shall mean the physical mailing address and electronic mail address contained on his or her opt-in form, unless this information is missing in whole or in part, in which case the information contained in Defendant’s Records will be used.
- 1.18. **“Net Settlement Amount”** means the Gross Settlement Amount minus deductions for court-approved attorneys’ fees and costs/expenses, court-approved service payments, and reasonable costs of settlement administration.
- 1.19. **“Notice”** means the respective Court-approved notices regarding the settlement in the forms attached as Exhibits B to E.
- 1.20. **“Objector”** means a Rule 23 Class Member who timely and correctly files an objection to this Agreement, and does not include any individual who opts out of this Agreement.
- 1.21. **“Opt-Out Statement”** means a statement, in the forms attached as Exhibit F, indicating that an individual Rule 23 Class Member is seeking exclusion from a Rule 23 Class, is opting out, and is electing to not be included in this Agreement or the settlement.
- 1.22. **“Participating Claimant(s)”** means each (1) FLSA Collective Member (who is not a Rule 23 Class Member) who properly submits a Claim Form, a current IRS Form W-4, and a current IRS Form W-9 by the Claim Form Deadline; (2) Current FLSA Opt-In who properly submits a Claim Form, a current IRS W-4, and a current IRS Form W-9 by the Claim Form Deadline; and (3) Rule 23 Class Member who does not opt out of the settlement and who properly and timely submits a Claim Form, a current IRS Form W-4, and a current IRS Form W-9 by the Claim Form Deadline.
- 1.23. **“Participating Claim”** is a Claim Form filed in a proper and timely manner to claim entitlement to a Settlement Check in accordance with this Agreement.
- 1.24. **“Parties”** means Vitetta, individually and on behalf of the classes of individuals that he seeks to represent, and Sirius XM Radio Inc.
- 1.25. **“Postmark”** means the date stamped or otherwise indicated on an envelope by the United States Postal Service or other mail carrier. For any deadline under this Agreement that is based on a Postmark, in the event that there is no postmark date of the document being mailed by the Class Member, it shall be presumed the document was mailed three (3) Days prior to the date received by the Settlement Claims Administrator, excluding any Sunday or other day for which no postal service was provided.
- 1.26. **“Preliminary Approval Order”** means the Order entered by the Court, in the form attached as Exhibit G, preliminarily approving the terms and conditions of this Agreement, conditionally certifying the FLSA Collective and the Current FLSA Opt-Ins

for settlement purposes pursuant to 29 U.S.C. § 216(b), provisionally certifying the NY Class and the D.C. Class for settlement purposes pursuant to Fed. R. Civ. P. 23, and directing the manner and timing of providing Notice to Class Members.

- 1.27. **“Qualified Settlement Fund” or “QSF”** means the fund or account established by the Settlement Claims Administrator, within the meaning of Treasury Regulation § 1.468B-1, et seq.
- 1.28. **“Released Federal Law Claims”** means any and all federal law claims, obligations, demands, actions, rights, causes of action, and liabilities against Releasees of whatever kind and nature, character and description, whether known or unknown, asserted or unasserted, and whether anticipated or unanticipated, that are based upon or arise out of the facts, acts, transactions, occurrences, events, or omissions alleged in the Litigation and that occur, occurred, accrue or accrued on any date up through the date of the Preliminary Approval Order, including, without limitation: (i) claims for any type of relief under the FLSA, including, without limitation, claims for minimum wages, overtime, damages, unpaid costs, penalties (including late payment penalties), premium pay, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, or under any other legal theory for failure to pay minimum wage, failure to pay overtime, failure to pay for all hours worked, or to recover interest, liquidated damages, and/or penalties thereon; (ii) claims for any type of relief under the Employment Retirement Income Security Act of 1974, as amended (“ERISA”), including, without limitation, claims for vested and unvested employee benefits; (iii) claims arising out of or related to any contract, policy, practice, or employee handbook of Defendant concerning wages and hours and employee benefits; and (iv) and any claims related to, derivative of, or based upon the claims in (i)-(iii) above, including for unpaid costs, penalties (including late payment penalties), liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief.
- 1.29. **“Released State Law Claims”** means collectively any and all New York State, District of Columbia, and other state and local law claims, obligations, demands, actions, rights, causes of action and liabilities against Releasees, of whatever kind and nature, character and description, whether known or unknown, asserted or unasserted, and whether anticipated or unanticipated, that are based upon or arise out of the facts, acts, transactions, occurrences, events, or omissions alleged in the Litigation and that occur, occurred, accrue or accrued on any date up through the date of the Preliminary Approval Order, including, without limitation: (i) claims under the New York Labor Law and the District of Columbia Labor Law, and their regulations and rules, or under any other legal theory for failure to pay minimum wage, failure to pay overtime, failure to pay for all hours worked, failure to provide and/or to pay for meal and/or rest periods, failure to timely pay final wages, failure to pay “spread of hours,” failure to reimburse for business expenses, and/or failure to furnish accurate wage statements or other notices, any and all claims alleging unlawful imposition, deduction, or chargeback from compensation for expenses or costs under applicable state laws, any and all claims for recovery of compensation, overtime pay, minimum wage, premium pay, interest, and/or penalties; (ii) claims for employee benefits, including, without limitation, payments for accrued but unused vacation and paid sick leave, and (iii) claims arising out of or related to any

contract, policy, practice, or employee handbook of Defendant concerning wages and hours and employee benefits; and (iv) and any claims related to, derivative of, or based upon the claims in (i)-(iii) above, including for unpaid costs, penalties (including late payment penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief.

The District of Columbia labor law claims which are released include, without limitation: claims under D.C. Code Ann. §§ 32-1001 to 32-1015 and D.C. Code Ann. §§ 32-1301 to 32-1310.

The New York state law claims which are released include, without limitation: claims under N.Y. Lab. Law § 160 et seq.; N.Y. Lab. Law § 190 et seq. (including, but not limited to, §§ 191, 193, and 198); N.Y. Lab. Law §§ 215 and 218; New York Minimum Wage and Hour Law: NY. Lab. Law § 650 et seq.; and 12 N.Y. Comp. Codes R. & Regs. Pt. 142-2.1 et seq. (including, but not limited to, §§142-2.2, 142-2.4, and 142.-2.14).

- 1.30. **“Releasees”** means Sirius XM Radio Inc. and its stockholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, parent companies, divisions, subsidiaries, affiliates, benefit plans, plan fiduciaries and/or administrators, and all persons acting by, through, under or in concert with any of them, including any party that was or could have been named as a defendant in the Litigation.
- 1.31. **“Rule 23 Class Members”** means, collectively, the following:
- (A) Individuals who were unpaid Interns with Defendant in a location in New York according to Defendant's Records during the Sirius XM internship sessions Summer 2008 through Spring 2015 (“NY Class” and “NY Class Members”); and
 - (B) Individuals who were unpaid Interns with Defendant in a location in the District of Columbia according to Defendant's Records during the Sirius XM internship sessions Summer 2011 through Spring 2015 (“D.C. Class” and “D.C. Class Members”).

Certain Rule 23 Class Members are FLSA Collective Members and/or Current FLSA Opt-Ins.

- 1.32. **“Settlement Checks”** means checks issued to Participating Claimants for their share of the Net Settlement Amount.
- 1.33. **“Settlement Claims Administrator”** means the entity jointly selected by the Parties to provide claims administration services pursuant to this Agreement.
- 1.34. **“Updated Address”** means a mailing address that was updated via a skip trace or an updated mailing address or email address provided in writing by the United States Postal Service or a Class Member.
2. **NON-ADMISSION OF LIABILITY.** Nothing relating to this Agreement, or any communications, papers, or orders related to the settlement, shall be cited to as, construed

to be, admissible as, or deemed an admission by Defendant or Releasees of any liability, culpability, negligence, or wrongdoing toward the Named Plaintiff, the Class Members, or any other person, and Defendant and Releasees specifically disclaim any liability, culpability, negligence, or wrongdoing toward the Named Plaintiff, the Class Members, or any other person, or that class or collective action certification is appropriate in this or any other matter except for settlement purposes. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. This Agreement, and any communications, papers, or orders related to the settlement entered into pursuant to this Agreement, may not be cited to, used, or admitted as evidence of liability or that class or collective action certification is appropriate. There has been no determination by any court as to the merits of the claims asserted by Named Plaintiff against Defendant or as to whether a class should be certified or an FLSA collective finally certified, other than for settlement purposes only. The Parties understand and agree that this Agreement and all exhibits hereto are settlement documents and shall be inadmissible in evidence in any proceeding, except an action or proceeding (including appeals) to approve, interpret, or enforce the terms of this Agreement.

3. PROCEDURAL STIPULATIONS

- 3.1. To effectuate the full release of claims contemplated by this Agreement, Class Counsel will file with the Court a Second Amended Complaint, attached hereto as Exhibit H, that amends the First Amended Complaint to add Daniel Miller (“Miller” or “D.C. Plaintiff”) as a named plaintiff and adds class claims under District of Columbia law pursuant to Fed. R. Civ. P. 23 for alleged unpaid wages. The Second Amended Complaint shall be filed concurrently with the Preliminary Approval Motion (as defined herein). The Parties hereby stipulate and agree that Defendant shall not be required to serve or file a responsive pleading in response to the Second Amended Complaint.
- 3.2. The Parties stipulate, for settlement purposes only, to the class certification by the Court of all District of Columbia and New York state law claims and final collective action certification of all FLSA claims. The Parties agree that the stipulated class and collective action certifications cannot be cited in any other cases or for any other purpose or even in this Litigation in the event that final approval is not granted or the Final Judgment does not become Final or this Agreement is terminated, cancelled, declared void, or otherwise fails to become effective in accordance with its terms.

4. SETTLEMENT CLAIMS ADMINISTRATION

- 4.1. Within seven (7) Days of the entry by the Court of a Preliminary Approval Order, the Parties shall retain a Settlement Claims Administrator who shall be responsible for claims administration and other various duties described in this Agreement. The Settlement Claims Administrator shall be required to agree in writing to treat information it receives or generates as part of the claims administration process as confidential and to use such information solely for purposes of claims administration.

4.2. All fees and expenses of the Settlement Claims Administrator shall be paid out of the Gross Settlement Amount. The Settlement Claims Administrator shall be required to agree to a reasonable not-to-exceed cap for all fees and expenses for claims administration work. If the settlement is not given final approval by the Court or the Final Judgment does not become Final, the Parties shall bear settlement administration fees and costs equally.

4.3. Without limiting any duties set forth elsewhere in this Agreement:

(A) The Settlement Claims Administrator shall be responsible for mailing Notice and tax forms to Class Members; responding to Class Member inquiries; calculating settlement allocations; collecting and evaluating Claim Forms and any tax forms submitted therewith; sending the Parties copies of submitted Claim Forms with the redactions specified in Section 6.1(A); communicating with and advising Class Members of defective or incomplete Claim Forms; establishing and administering the QSF; distributing settlement payments; calculating and withholding Class Members' share of applicable payroll taxes (including, without limitation, federal, state, and local income tax withholding and the employee portion of FICA, Medicare and any applicable state or local employment taxes) ("Income Withholding and Employee Portion Payroll Taxes"); remitting such withheld Income Withholding and Employee Portion Payroll Taxes to the appropriate Taxing Authorities and fulfilling all tax reporting requirements with respect thereto; calculating the employer share of applicable payroll taxes (including, without limitation, FUTA, SUTA and the employer portion of FICA, Medicare and any applicable state or local employment taxes) ("Employer Portion Payroll Taxes"); remitting such Employer Portion Payroll Taxes to the appropriate Taxing Authorities and fulfilling all tax reporting requirements thereto; preparing and filing all tax returns necessary for the settlement and the QSF; preparing one or more declarations regarding the claims administration process; and performing such other duties as the Parties may jointly direct or as are specified herein, including, without limitation, such duties as are specifically set forth in Section 4 hereof.

(B) The Settlement Claims Administrator shall mail and email Notice to Class Members in accordance with Section 5.2.

(C) The Settlement Claims Administrator shall provide weekly reports to the Defendant and counsel for the Parties providing: (1) the status of the mailing of the Notice to Class Members; (2) the names of Class Members who submit Claim Forms, Opt-Out Statements, or objections; (3) the names of Class Members who submit incomplete or defective Claim Forms with a written description of steps taken to notify the Class Members to cure the defect; (4) and the status of the claims administration process, distribution of the Settlement Checks, tax withholding and reporting, and other matters relating to the settlement.

(D) The Settlement Claims Administrator shall take reasonable steps to obtain the Updated Address of any Class Members for whom a Notice is returned by the Post Office as undeliverable and shall attempt re-mailings as described in Sections 5.2(D) and (E) of this Agreement. The Settlement Claims Administrator shall notify Class Counsel,

Defendant's Counsel, and Defendant of any Notice sent to a Class Member that is returned as undeliverable after the first mailing, as well as any such Notice returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement.

(E) The Settlement Claims Administrator shall keep accurate records of the dates on which it sends Notice to Class Members.

(F) The Settlement Claims Administrator shall promptly provide a current IRS Form W-9 of the QSF to Defendant so as not to delay the deposit of the Gross Settlement Amount into the QSF, as set forth more fully in Section 9.1(B).

(G) The Settlement Claims Administrator shall keep accurate records of all Opt-Out Statements in accordance with Section 6.2.

(H) The Settlement Claims Administrator shall keep accurate records of all objections in accordance with Section 6.3.

(I) The Settlement Claims Administrator shall calculate and handle tax withholding, payment and reporting in accordance with Section 9.6 and, in furtherance of this responsibility, may request, as necessary, tax forms or other information from Class Members (such as applicable state tax forms) in addition to those IRS forms required to be completed by Class Members as provided in this Agreement.

(J) The Settlement Claims Administrator shall notify counsel for the Parties of any Non-Wage Portion of any settlement payment that it determines is subject to backup withholding or other applicable tax withholding pursuant to Section 9.6(B)(2).

(K) The Settlement Claims Administrator shall return to Defendant any remaining amounts in the QSF within thirty (30) Days following the Check Cashing Period, in accordance with Section 9.1(C).

5. PRELIMINARY APPROVAL AND CLASS NOTICE

5.1. Preliminary Approval Motion.

(A) The Parties will submit this Agreement to the Court, and will jointly file a Motion for an Order Preliminarily Approving the Class and Collective Action Settlement (the "Preliminary Approval Motion"). In connection with the Preliminary Approval Motion, the Parties shall also submit the proposed Preliminary Approval Order attached hereto as Exhibit G.

(B) In the Preliminary Approval Motion, among other things, (i) the Parties shall seek preliminary approval of this Agreement, including settlement of the claims of the NY Class, the D.C. Class, the FLSA Collective, and Current FLSA Opt-Ins, and preliminary approval of the form of releases that are part of the settlement of the Litigation, and (ii) Vitetta and Miller shall seek (and Defendant will not oppose), for settlement purposes only, provisional certification of the NY Class and the

D.C. Class under Fed. R. Civ. P. 23, and conditional certification of the FLSA Collective and the Current FLSA Opt-Ins under 29 U.S.C. § 216(b).

- (C) Additionally, in the Preliminary Approval Motion, and consistent with this Agreement, the Parties shall move the Court to set deadlines for Class Members to submit Claim Forms, and for Rule 23 Class Member to submit Opt-Out Statements and objections to this Agreement. The Preliminary Approval Motion shall also ask the Court to schedule a Fairness Hearing for final approval of the settlement no earlier than one hundred thirty-five (135) Days after the Court's entry of a Preliminary Approval Order.

5.2. Notice to Class Members.

- (A) Within twenty-one (21) Days after the Court's entry of a Preliminary Approval Order, Defendant shall provide the name, Last Known Addresses, internship state(s), and internship session(s) of all Class Members to the Settlement Claims Administrator and Class Counsel, in electronic form, to the extent such information is maintained in Defendant's Records ("Class List"). The Class List shall be structured in a way that allows the Settlement Claims Administrator to identify the members of each of the four (4) Class Member groups set forth in section (B) below. Within twenty-one (21) Days after the Court's entry of a Preliminary Approval Order, Class Counsel shall provide un-redacted versions of all opt-in forms by Current FLSA Opt-ins to the Settlement Claims Administrator. Absent the written consent of Defendant, the Class List and the data contained therein shall not be disclosed to anyone other than counsel for the Parties and the Settlement Claims Administrator.
- (B) Promptly following the Court's entry of the Preliminary Approval Order, the Settlement Claims Administrator shall prepare final versions of the following documents, incorporating into each document the relevant dates set forth in the Court's order:
- (1) Rule 23 Class Member Documents: For Rule 23 Class Members who are not Current FLSA Opt-Ins, (1) a Notice Of Proposed Settlement Of Class Action Lawsuit And Fairness Hearing, in the form attached as Exhibit B, (2) an Opt-Out Statement in the form attached as Exhibit F, (3) a Claim Form in the form attached as Exhibit I, and (4) a current IRS Form W-4 and a current IRS Form W-9 (the "Rule 23 Class Member Documents");
 - (2) FLSA Collective Member Only Documents: For FLSA Collective Members who are not Rule 23 Class Members and, further, who are not Current FLSA Opt-Ins, (1) a Notice Of Proposed Settlement Of Class Action Lawsuit and Fairness Hearing, in the form attached as Exhibit C, (2) a Claim Form in the form attached as Exhibit I, and (3) a current IRS Form W-4 and a current IRS Form W-9 (the "FLSA Collective Member Only Documents");

- (3) Current FLSA Opt-In (Rule 23 Class Member) Documents: For Current FLSA Opt-Ins who are also Rule 23 Class Members, (1) a Notice Of Proposed Settlement Of Class Action Lawsuit And Fairness Hearing, in the form attached as Exhibit D, (2) an Opt-Out Statement in the form attached as Exhibit F, (3) a Claim Form in the form attached as Exhibit I, and (4) a current IRS Form W-4 and a current IRS Form W-9 (the “Current FLSA Opt-In (Rule 23 Class Member) Documents”); and
- (4) Current FLSA Opt-In (Non-Rule 23 Class Member) Documents: For Current FLSA Opt-Ins who are not Rule 23 Class Members, (1) a Notice Of Proposed Settlement Of Class Action Lawsuit, in the form attached as Exhibit E, (2) a Claim Form in the form attached as Exhibit I, and (3) a current IRS Form W-4 and a current IRS Form W-9 (the “Current FLSA Opt-In (Non-Rule 23 Class Member) Documents”).
- (C) Within fourteen (14) Days of receipt of the Class List from Defendant, the Settlement Claims Administrator shall mail, via United States First Class Mail, postage prepaid, and electronic mail, the final versions of the documents referred to in Sections 5.2(B)(1)-(4).
- (D) In the event that, subsequent to the first mailing of Notice and prior to the Claim Form Deadline, a Class Member’s Notice is returned to the Settlement Claims Administrator by the United States Postal Service with an Updated Address, the Settlement Claims Administrator shall re-mail the Notice and the applicable accompanying documents to that address within seven (7) Days. However, should the Class Member become a Participating Claimant prior to the (seven) 7-Day deadline (because, for example, the Class Member timely and properly returned a Claim Form after receiving Notice by email but the mailing by First Class Mail was not successful), there should be no re-mailing of Notice and the applicable accompanying documents.
- (E) In the event that, subsequent to the first mailing of Notice, a Class Member’s Notice is returned to the Settlement Claims Administrator by the United States Postal Service with no forwarding address, the Settlement Claims Administrator shall perform a standard skip trace in an effort to ascertain the Updated Address for the Class Member in question. If such address is ascertained, the Settlement Claims Administrator shall re-send the Notice and the applicable accompanying documents within seven (7) Days after receiving the information. However, should the Class Member become a Participating Claimant prior to the (seven) 7-Day deadline (because, for example, the Class Member timely and properly returned a Claim Form after receiving Notice by email but the mailing by First Class Mail was not successful), there should be no re-mailing of Notice and the applicable accompanying documents.
- (F) If the Settlement Claims Administrator re-mails Notice to any Class Member pursuant to Section 5.2(D) or (E) of this Agreement, the Claim Form Deadline for such Class Member shall not be extended.

6. CLASS MEMBER RESPONSES TO NOTICE

6.1. Participating Claimants

- (A) Class Members who wish to become Participating Claimants must fully and timely complete, execute and mail, per the instructions therein, the Claim Form, the current IRS Form W-4, and the current IRS Form W-9 enclosed with the Notice. The Claim Form will include (i) an oath that, during the applicable period, the signatory was an unpaid Intern for three (3) or more weeks in a Sirius XM unpaid internship session; and (ii) a release of claims consistent with that set forth in Sections 1.28, 1.29, and 10 of this Agreement. Pursuant to 29 U.S.C. § 216(b), the Claim Forms of Participating Claimants (with email address, home street address, and home telephone number fields redacted) shall be filed with the Court. Defendant shall be responsible for such filing of Claim Forms.
- (B) The Claim Form must be postmarked or transmitted by email or facsimile on or before the Claim Form Deadline to be timely. If the Claim Form is not timely submitted, then that Class Member will be deemed to have forever waived his or her right to be a Participating Claimant and receive payment under this Agreement. However, unless they properly and timely submit an Opt-Out Statement, Rule 23 Class Members shall be subject to the Final Judgment even if they do not submit the Claim Form in a timely and proper fashion (and thus shall have waived and released all Released State Law Claims that they may have had standing to assert). Moreover, unless they properly withdraw from the case, Current FLSA Opt-ins shall be subject to the Final Judgment even if they do not submit the Claim Form in a timely and proper fashion (and thus shall have waived and released all Released Federal Law Claims that they may have had standing to assert). Only Participating Claimants shall be entitled to payment pursuant to this Agreement.
- (C) A Class Member who files a timely but incomplete Claim Form, and/or an incomplete IRS Form W-4, and/or an incomplete IRS Form W-9, shall be notified by the Settlement Claims Administrator of the nature of the defect with instructions to cure the defect no later than seven (7) Days before the deadline for the Motion for Judgment and Final Approval. Any Class Member who fails to cure the defect on or before seven (7) Days before the deadline for the Motion for Judgment and Final Approval shall not receive a Settlement Check. Rule 23 Class Members who do not opt out shall be subject to the Final Judgment, and shall release all Released State Law Claims, regardless of whether they timely cure the defect. Current FLSA Opt-Ins who do not withdraw their consents to join the Litigation shall be subject to the Final Judgment, and shall release all Released Federal Law Claims, regardless of whether they timely cure the defect.
- (D) A Rule 23 Class Member who submits an Opt-Out Statement and also submits a Claim Form, and/or a current IRS Form W-4, and/or a current IRS Form W-9, shall be sent a cure letter by the Settlement Claims Administrator seeking clarification as to whether the Rule 23 Class Member intends to opt out of the

settlement or become a Participating Claimant with instructions to cure the defect on or before seven (7) Days before the deadline for the Motion for Judgment and Final Approval. Absent a response to the contrary, such Rule 23 Class Member shall be deemed to have opted out of the settlement pursuant to Section 6.2.

6.2. Rule 23 Class Member Opt-Outs

- (A) Any Rule 23 Class Member may request exclusion by “opting out.” To do so, a Rule 23 Class Member must submit a written and signed request for exclusion to the Claims Administrator, in the form of the Opt-Out Statement attached as Exhibit F.
- (B) To be effective, an Opt-Out Statement must be postmarked, faxed or emailed within seventy-five (75) Days from the mailing of the Notice to the Class Member (“Opt-Out Period”). It is the responsibility of the individual seeking to opt out to retain a copy of the Opt-Out Statement and proof of timely mailing, emailing or faxing.
- (C) The Settlement Claims Administrator shall stamp the receipt date on the original of each Opt-Out Statement that it receives and shall serve copies of each Opt-Out Statement on the Defendant, Class Counsel, and Defendant’s Counsel not later than three (3) Days after receipt thereof. Class Counsel shall promptly file with the Clerk of Court stamped copies of any Opt-Out Statements. The Settlement Claims Administrator will, within twenty-four (24) hours of the end of the Opt-Out Period, send a final list of all Opt-Out Statements to the Defendant, Class Counsel, and Defendant’s Counsel by email. The Settlement Claims Administrator shall retain the stamped originals of all Opt-Out Statements and originals of all envelopes accompanying Opt-Out Statements in its files until such time as the Settlement Claims Administrator is relieved of its duties and responsibilities under this Agreement.
- (D) Any Rule 23 Class Member who does not properly and timely submit an Opt-Out Statement pursuant to this Agreement shall be bound by the Final Judgment, and shall have released the Released State Law Claims set forth in this Agreement (as applicable to the state(s) in which they were unpaid Interns). All Participating Claimants shall be bound by the Final Judgment and deemed to have released both the Released State Law Claims and the Released FLSA Claims.
- (E) Neither the Named Plaintiff, nor the D.C. Plaintiff, shall opt out of the settlement, and the Named Plaintiff’s and the D.C. Plaintiff’s execution of this Agreement shall signify their agreement to all of the terms of the settlement.
- (F) In the event that a Current FLSA Opt-In fails to timely submit a fully completed and properly executed Claim Form, a current IRS Form W-4, and a current IRS Form W-9, and does not withdraw his or her consent to join the Litigation before the Claim Form Deadline, he or she shall nevertheless release all Released Federal Law Claims.

6.3. **Rule 23 Class Member Objections to Settlement**

- (A) Any Rule 23 Class Member who does not submit an Opt-Out Statement and who wishes to become an Objector (i.e., object to the proposed settlement) must do so in writing. To be considered, a written objection must be postmarked, faxed or emailed within thirty-five (35) Days from the mailing of the Notice to the Class Member. The written objection must include words to the effect of, “I object to the settlement in the Sirius XM unpaid intern case,” as well as all reasons for the objection. Any reasons not included in the written objection shall not be considered. The written objection must also include the name, address, and telephone number for the Objector. The Settlement Claims Administrator shall stamp the date received on the original and send copies of each objection to Class Counsel, Defendant’s Counsel, and Defendant by email, and shall send Class Counsel the date-stamped original of each objection by overnight delivery, no later than three (3) Days after receipt thereof. Class Counsel shall promptly file the date-stamped originals of any and all objections with the Court. It is the responsibility of any Objector to retain a copy of the objection and proof of timely mailing hereunder.
- (B) A valid Objector also has the right to appear at the Fairness Hearing either in person or through counsel retained by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing at the time he or she submits his or her written objections by including words to the effect of, “I intend to appear at the Fairness Hearing” in his or her written objection. An Objector may withdraw his or her objections only with the Court’s approval. A Rule 23 Class Member who has submitted an Opt-Out Statement may not submit objections to the settlement, and any such objections shall not be filed with or considered by the Court.
- (C) The Parties may file with the Court written responses to any filed objections no later than seven (7) Days before the Fairness Hearing.

7. **FAIRNESS HEARING AND FINAL JUDGMENT**

- 7.1. **Motion for Judgment and Final Approval.** No later than seven (7) Days before the Fairness Hearing, the Parties shall jointly file with the Court a Motion for Judgment and Final Approval. At the Fairness Hearing, and in their Motion for Judgment and Final Approval, the Parties shall request that the Court enter judgment in accordance with this Agreement in the form attached as Exhibit J, and enter an order, in the form of Exhibit A, (a) approving the settlement and this Agreement as final, fair, reasonable, adequate, and binding on all Rule 23 Class Members who have not timely opted out pursuant to Section 6.2, (b) dismissing the Litigation with prejudice, subject to the Court’s retention of jurisdiction to oversee enforcement of this Agreement, and (c) permanently enjoining Named Plaintiff and Miller, all Participating Claimants, all Rule 23 Class Members who do not opt out, and all Current FLSA Opt-Ins from pursuing and/or seeking to reopen claims that have been released by this Agreement. Further, at the Fairness Hearing and in the Motion for Judgment and Final Approval, Named Plaintiff and Miller shall seek (and

Sirius XM will not oppose) final certification, for purposes of settlement, of the Rule 23 Classes and final certification, for purposes of settlement, of the opt-in class of Participating Claimants and Current FLSA Opt-Ins as a collective action under 29 U.S.C. § 216(b). In addition, at the Fairness Hearing, Class Counsel will seek an award of attorneys' fees and costs and Named Plaintiff, Miller, and Current FLSA Opt-In Matthew Goldberg ("Goldberg") will seek an award of service payments.

8. TERMINATION AND ITS EFFECTS

- 8.1. **No Right to Terminate Based on Intervening Court Decisions.** The Parties shall not, and shall not have any right to, terminate this Agreement based in whole or in part on the decisions issued by the United States Court of Appeals for the Second Circuit in *Glatt v. Fox Searchlight Pictures*, 13-4481-cv, and *Wang v. Hearst*, 13-4480-cv, or by any rehearing and/or U.S. Supreme Court review or disposition of these cases.
- 8.2. **Defendant's Right to Terminate Based On Excessive Opt-Outs.** Defendant shall have the absolute discretionary right to terminate this Agreement at any time prior to the entry of the Final Approval Order in the event that 100 or more Rule 23 Class Members timely submit Opt-Out Statements.
- 8.3. **Effect of Termination or Failure to Obtain Preliminary or Final Approval.** In the event that this Agreement is not approved in its entirety by the Court; or in the event that this Agreement is terminated, cancelled, declared void, or fails to become effective in accordance with its terms; or if the Final Judgment does not Final; or if the Effective Date does not occur, the Parties shall proceed as follows:
- (A) Defendant shall have no obligation to make any payments provided for by this Agreement.
 - (B) The Memorandum of Understanding (previously agreed to by the Parties) and this Agreement (other than the non-admission provisions in Section 2, the stipulation provisions in Section 3.2, this Section 8.3, and the non-disclosure provisions in Section 11.12) shall be deemed null and void, and their terms and provisions shall have no further force or effect.
 - (C) Neither this Agreement, nor any other related papers or orders, nor the negotiations leading to the Agreement shall be cited to, used, or deemed admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.
 - (D) The Litigation shall proceed without prejudice as if this Agreement had not been executed, and as if the Second Amended Complaint had not been filed, unless the Parties jointly agree to: (1) seek reconsideration or appellate review of the decision denying entry of Final Judgment, or (2) attempt to renegotiate the settlement and seek Court approval of the renegotiated settlement.
 - (E) The Parties shall not be deemed to have waived any claims, objections, defenses, or arguments with respect to the issue of class or collective action certification or

the merits of Named Plaintiff's claims in the Litigation or any other issue, but rather shall retain the right to assert or dispute all claims and allegations, to assert or dispute all applicable defenses, and to assert or dispute the propriety of class/collective action certification or decertification on all applicable grounds.

- (F) Any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.
- (G) None of the information provided by Defendant to Class Counsel for purposes of settlement negotiations only or obtained by Class Counsel about Class Members as a result of the settlement approval process shall be used by Class Counsel in the Litigation, unless the information is obtained later through the litigation process.
- (H) Named Plaintiff shall withdraw the Second Amended Complaint without prejudice. In the event that the Second Amended Complaint is withdrawn pursuant to this Agreement, no party may argue that Defendant's consent to the filing of the Second Amended Complaint or the withdrawal of the Second Amended Complaint has any bearing on the merits of any subsequent litigation matters alleged in the Litigation.
- (I) Notwithstanding any other provision of this Agreement, no order of the Court, or modification or reversal on appeal of any order of the Court, reducing the amount of any attorneys' fees or costs to be paid to Class Counsel, or reducing the amount of any service payment, shall constitute grounds for cancellation or termination of this Agreement or grounds for limiting any other provision of the Final Judgment. Class Counsel retains and reserves all rights to appeal or seek reconsideration of any order of the Court reducing the amount of attorneys' fees or costs to be paid to Class Counsel and/or any order of the Court reducing the amount of any service payment. Defendant shall not oppose the appeal or motion for reconsideration other than in accordance with Section 9.5.
- (J) If this Agreement is terminated after Notice is sent, or if for any other reason the Effective Date does not occur after Notice is sent, the Settlement Claims Administrator shall provide notice to all Class Members informing them that the settlement did not become effective, that as a result, no payments will be made to Participating Claimants under this Agreement, and that the Litigation will continue, along with any additional information jointly agreed to by Class Counsel and Defendant. Such notice shall be mailed by the Settlement Claims Administrator via United States First Class Mail, postage prepaid, and by email, to the addresses to which Notice was sent and/or any Updated Address. The costs of such mailing shall be split equally between the Parties.
- (K) If the classes have already been certified for settlement purposes, the classes that were certified as part of this Agreement shall be decertified and the Parties shall jointly move as soon as practicable to obtain an order granting decertification, and the fact of certification shall not be cited to, used, or admissible in any judicial,

administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural. The collective certification order granted by the Court on November 7, 2014, shall remain intact, and can be cited to, used, or admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

- (L) In the event that Defendant terminates this Agreement pursuant to Section 8.2, Defendant shall incur the costs of mailing notice as set forth in Section 8.3(J).

Notwithstanding the foregoing, to the extent the Court disapproves of any of the terms of this Agreement, or any of the exhibits that are part of this Agreement, the Parties agree to meet and confer in good faith regarding modifications to any such terms and/or exhibits and to submit any agreed modification to the Court to seek approval.

9. CONSIDERATION

9.1. Gross Settlement Amount.

- (A) In settlement of all claims addressed by this Agreement, Defendant agrees to pay into the QSF up to the Gross Settlement Amount, which includes all payments to Participating Claimants, Class Counsel's Court-approved attorneys' fees, costs, and expenses related to the Litigation, including all attorneys' fees, costs, and expenses related to the effort to secure Final Judgment (including litigation of any potential objections to the terms of this Agreement); reasonable costs of settlement administration; and any Court-approved service payments. Under no circumstance shall Defendant be required to pay or contribute any monies in excess of the Gross Settlement Amount, except as required to fund Employer Portion Payroll Taxes pursuant to Section 9.6(B)(1) below. No payments shall be made to Rule 23 Class Members who timely submitted Opt-Out Statements or to those Class Members who fail to become Participating Claimants, and those portions of the Gross Settlement Amount allocated to payment to those individuals shall not be paid into the QSF and shall be retained by Defendant or shall be returned to Defendant if paid into the QSF.
- (B) Provided Defendant has timely received a current IRS Form W-9 of the QSF from the Settlement Claims Administrator and any other tax forms or information needed, by no later than twenty-one (21) Days after the Effective Date, Defendant shall deposit the Gross Settlement Amount into the QSF subject to the limitations and provisions of this Section 9.1(B). Any portion of the Gross Settlement Amount attributable to attorneys' fees and costs and/or service payments sought by Class Counsel, but not awarded by the Court, shall be included in the Gross Settlement Amount deposited into the QSF.
- (C) Within thirty-five (35) Days after the payment by Defendant of the Gross Settlement Amount into the QSF, in accordance with Section 9.1(B), the Settlement Claims Administrator shall mail the Settlement Checks. Participating Claimants will have one hundred eighty (180) Days from the date of mailing to

cash their Settlement Checks (“Check Cashing Period”). The Settlement Claims Administrator shall notify the Parties in writing of the date the Settlement Checks will be sent at least two (2) business days before transmission. Settlement Checks not cashed within one hundred eighty (180) Days will be void. The amounts in the QSF attributable to the void and uncashed Settlement Checks shall revert to Defendant, and shall be returned to Defendant within thirty (30) Days following the end of the Check Cashing Period. Participating Claimants who do not redeem their settlement checks shall remain bound by the Final Judgment, and shall have released the Released State Law Claims (as applicable to the state(s) in which they were unpaid Interns) and Released Federal Law Claims as provided in this Agreement. This Agreement and the Final Judgment do not and shall not create any unpaid residue or unpaid residual with respect to the amounts of uncashed checks, and no distribution of such shall be required. The provisions of any unclaimed property statute or law do not apply to this Agreement.

- (D) All payments to Participating Claimants made by the QSF pursuant to this Agreement shall be deemed to be paid to such Participating Claimants by the QSF solely in the year in which such payments actually are received by the Participating Claimant. It is expressly understood and agreed that Participating Claimants and Class Members are not, and never have been, eligible to participate in any Benefit Plans by virtue of their status as Interns, and that any amount paid to any Participating Claimant shall not create any credit or otherwise affect the calculation of benefits provided under any pension, retirement, retirement savings, excess or supplemental retirement or retirement savings, deferred compensation, bonus, equity, incentive, severance, displacement, supplemental unemployment, health, life, or disability plan, policy, program, or arrangement (collectively, the “Benefit Plans”) provided by Defendant or any Releasee, and no payment made pursuant to this settlement shall be considered “Compensation,” “Earnings,” “Salary,” or any similar definition under any of the Benefit Plans, and are not considered eligible compensation for any of the Benefit Plans, or for any other benefit purposes, or otherwise require any contribution or award under any Benefit Plan, or otherwise modify benefits, entitlements, contributions or coverage under any Sirius XM Benefit Plan. Participating Claimants and Class Members acknowledge and agree that they never were eligible to participate in any Benefit Plans by virtue of their status as Interns.

9.2. Settlement Payments

- (A) The Settlement Claims Administrator shall calculate “Settlement Payments” for Named Plaintiff and all Class Members as follows:
- (1) The Settlement Claims Administrator shall determine the “Net Settlement Amount.”
 - (2) The Settlement Claims Administrator shall determine an “Individual Numerator” for each Class Member using data that Defendant will provide under Section 5.2(a). An individual’s Individual Numerator shall equal the number of Sirius

XM internship sessions, during the relevant time period applicable to that individual, that such individual was an unpaid Intern according to Defendant's Records. For FLSA Collective Members, NY Class Members, and D.C. Class Members, the relevant time period for an individual is the longest period of time of those set forth in Sections 1.14 and 1.31, applicable to that individual according to Defendant's Records. For Current FLSA Opt-Ins who are not FLSA Collective Members, NY Class Members, or D.C. Class Members, such individuals shall be deemed to have been an Intern for one (1) Sirius XM unpaid internship session for purposes of this Section 9.2.

(3) The Settlement Claims Administrator shall determine a "Total Denominator" by adding together each Class Member's Individual Numerator.

(4) The Settlement Claims Administrator shall determine a "Distribution Percentage" for each Class Member by dividing each such person's Individual Numerator by the Total Denominator.

(5) The Settlement Claims Administrator shall determine a Settlement Payment for each Class Member by multiplying each such person's Distribution Percentage by the Net Settlement Amount.

(B) For purposes of determining the eligibility of individuals to participate in this settlement, and for purposes of calculating Settlement Payments pursuant to this section, Sirius XM's Records are conclusively presumed to be correct. The Parties agree to cooperate in good faith to resolve any disputes that arise with respect to eligibility and for purposes of calculating Settlement Payments.

9.3. Settlement Checks to Participating Claimants.

(A) Each Participating Claimant shall be issued a Settlement Check by the Settlement Claims Administrator from the QSF in accordance with this Agreement and the Final Approval Order.

(B) The Settlement Checks shall be mailed to Participating Claimants by the Settlement Claims Administrator within thirty-five (35) Days after the Effective Date. The Settlement Check mailing shall include a notice to Participating Claimants that their checks shall be void if not cashed within one hundred eighty (180) Days of the mailing.

(C) Defendant, to the extent it possesses and can readily access such information, and the Settlement Claims Administrator shall exchange such information as is necessary and reasonably available for the Settlement Claims Administrator to make proper tax withholdings and comply with tax reporting obligations as described in Section 9.6.

9.4. Service Payments.

- (A) At the Fairness Hearing, and in recognition of services rendered to the Class Members, Class Counsel shall move the Court for awards of the following service payments from the QSF:
 - (i) To Vitetta: \$10,000;
 - (ii) To Miller: \$5,000; and
 - (iii) To Goldberg: \$5,000.
- (B) Defendant shall not oppose this application.
- (C) The application for service payments is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of the Court's ruling on the application for the service payments will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Judgment and Final Approval. The amount of service payments sought but not awarded shall remain part of the Gross Settlement Amount to be distributed to Participating Claimants.
- (D) Any service payment approved by the Court shall be paid from the Gross Settlement Amount.
- (E) The Settlement Claims Administrator shall mail the Court-approved service payments for Named Plaintiff and Miller within thirty-five (35) Days of the Effective Date. The Settlement Claims Administrator shall mail the Court-approved service payment for Goldberg within thirty-five (35) Days of the Effective Date, provided that Goldberg has executed and provided to Defendant's Counsel an individual release in the form attached as Exhibit K.

9.5. Attorneys' Fees and Costs.

- (A) At the Fairness Hearing, Class Counsel shall petition the Court for an award of attorneys' fees and costs to be paid from the Gross Settlement Amount in the QSF. Defendant reserves the right to oppose such application if the requested amount of attorneys' fees and costs sought by Class Counsel, together with any service payments awarded or any unresolved request for service payments, exceeds 20% of the Gross Settlement Amount. After depositing the Gross Settlement Amount with the Settlement Claims Administrator for the QSF, Defendant shall have no additional liability for Class Counsel's attorneys' fees and costs. Any Court-approved attorneys' fees and costs shall be paid from the Gross Settlement Amount in the QSF.
- (B) The substance of Class Counsel's application for attorneys' fees and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Class Counsel's application for attorneys'

fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval. The amount of any attorneys' fees or costs sought but not awarded shall remain part of the Gross Settlement Amount to be distributed to Participating Claimants. Class Counsel shall have the right to appeal the Court's determination with respect to their application for attorneys' fees and costs. Defendant reserves the right to oppose such application if the amount of attorneys' fees and costs sought by Class Counsel, together with service payments, exceeds 20% of the Gross Settlement Amount. Upon the determination of any such appeal, fees and costs sought by Class Counsel but not awarded shall be returned to the Gross Settlement Fund to be distributed to Participating Claimants.

- (C) Within thirty-five (35) Days of the Effective Date, the Settlement Claims Administrator shall wire the Court-approved attorneys' fees to Class Counsel.

9.6. Tax Characterization.

- (A) In connection with Defendant's transfer of funds into a QSF within the meaning of Treasury Regulation § 1.468B-1, et seq., the following definitions shall apply:

- (1) Defendant shall be a "transferor" within the meaning of Treasury Regulation § 1.468B-1(d)(1) to the QSF(s) with respect to the amounts transferred;
- (2) The Settlement Claims Administrator shall be the "administrator" of the QSF within the meaning of Treasury Regulation § 1.468B-2(k)(3), responsible for causing the filing of all tax returns required to be filed by or with respect to the QSF, paying from the QSF any taxes owed by or with respect to the QSF, and complying with any applicable information reporting or tax withholding requirements imposed by Treasury Regulation § 1.468B-2(1)(2) or any other applicable law on or with respect to the QSF, and in accordance with this Agreement; and
- (3) The Defendant and the Settlement Claims Administrator shall reasonably cooperate in providing any statements or making any elections or filings necessary or required by applicable law for satisfying the requirements for qualification as a QSF, including the relation-back election within the meaning of Treasury Regulation § 1.468B-1(j).

- (B) For tax purposes, with respect to the payments to Participating Claimants, including the payment to Named Plaintiff (the "Settlement Payments"):

- (1) The Settlement Claims Administrator, as the administrator of the QSF making such payments, shall report 50% of the respective Settlement Payments made to the respective payees to the United States Internal Revenue Service and to other appropriate taxing authorities ("Taxing Authority" or "Taxing Authorities") on an IRS Form W-2. This portion of the Settlement Payments (the "Wage Portion") shall be subject to applicable employment taxes and withholding taxes, as determined by the Settlement Claims Administrator as administrator of

the QSF making such payments. The Settlement Claims Administrator shall provide to Defendant a calculation (in reasonable detail) of the Employer Portion Payroll Taxes due with respect to the Wage Portions of the Settlement Payments no later than fifteen (15) Days prior to the date such Employer Portion Payroll Taxes are due to be remitted to the applicable Taxing Authorities under applicable law. No later than 5 Days prior to such date, the Settlement Claims Administrator shall revise such calculation to take into account any reasonable comments to such calculation timely delivered by the Defendant. The Defendant shall pay an amount equal to the Employer Portion Payroll Taxes determined pursuant to this Section 9.6(B)(1) into the QSF no later than two (2) Days prior to such due date for remittance by the Settlement Claims Administrator to the applicable Taxing Authorities.

(2) The other half of the respective Settlement Payments is compensation for alleged liquidated damages and interest, and the Settlement Claims Administrator, as the administrator of the QSF making such payments, shall report such amounts as such to the respective payees and to the Taxing Authorities on an IRS Form 1099. This portion of the settlement (the “Non-Wage Portion”) shall not be subject to backup withholding or other applicable tax withholding unless required by law, as determined by the Settlement Claims Administrator as administrator of the QSF making such payments.

(3) In the event that it is subsequently determined by any Taxing Authority that any payee owes any additional taxes with respect to any money distributed under this Agreement, it is expressly agreed that liability for such taxes rests exclusively with that payee and that Defendant will not be responsible for the payment of such taxes, including any interest and penalties.

(C) The Settlement Claims Administrator, as the administrator of the QSF making such payments, shall report to the respective payees and to the Taxing Authorities on an IRS Form 1099 any service payments made pursuant to Section 9.4, and such payments will not be subject to backup or other tax withholding unless required by law, as determined by the Settlement Claims Administrator as administrator of the QSF making such payments.

(D) The Settlement Claims Administrator, as the administrator of the QSF making such payments, shall report to Virginia & Ambinder LLP, Leeds Brown Law, P.C., and to the Taxing Authorities on an IRS Form 1099, under Virginia & Ambinder LLP’s and Leeds Brown Law, P.C.’s respective federal taxpayer identification numbers, the fees and costs paid to Class Counsel pursuant to Section 9.5, and such payments will not be subject to backup or other tax withholding unless required by law, as determined by the Settlement Claims Administrator as administrator of the QSF making such payments, and provided that Virginia & Ambinder LLP and Leeds Brown Law, P.C. have provided a validly completed current IRS Form W-9 to the Settlement Claims Administrator.

(E) Defendant shall have no liability or responsibility whatsoever for taxes of the QSFs, any Class Member, Class Counsel, or any other person or the filing of any tax returns, information reports or other documents with the Internal Revenue Service or any other taxing authority with respect thereto. Recipients of any payments made pursuant to this Agreement will be solely responsible for all taxes, interest and penalties owed by such recipients with respect thereto, and will indemnify, defend, and hold Defendant and the Settlement Claims

Administrator harmless from and against any and all taxes and interest as a result of such recipient's failure to timely pay such taxes.

(F) Named Plaintiff, on behalf of Class Members, acknowledges and agrees that Defendant has provided no advice as to the taxability of the payments received pursuant to this Agreement.

10. RELEASE OF CLAIMS

By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement:

- 10.1. **Rule 23 Class Members.** Each Rule 23 Class Member who does not timely and properly submit an Opt-Out Statement pursuant to this Agreement, on behalf of himself/herself, his/her heirs, representatives, successors, assigns and attorneys fully, finally and forever releases, and dismisses with prejudice, relinquishes and discharges the Released State Law Claims (applicable to the state(s) in which the Rule 23 Class Member was an unpaid Intern), regardless of whether such individual files a Claim Form.
- 10.2. **Participating Claimants.** Each Participating Claimant, on behalf of himself/herself, his/her heirs, representatives, successors, assigns and attorneys fully, finally and forever releases both the Released State Law Claims (applicable to the state in which they were an unpaid Intern) and the Released Federal Law Claims.
- 10.3. **Current FLSA Opt-Ins.** Each Current FLSA Opt-In who does not withdraw his/her consent to join the Litigation by the Claim Form Deadline, on behalf of himself/herself, his/her heirs, representatives, successors, assigns and attorneys fully, finally and forever releases, and dismisses with prejudice, relinquishes and discharges the Released Federal Law Claims, regardless of whether such individual files a Claim Form.
- 10.4. **Named Plaintiff and Daniel Miller.** Named Plaintiff and Miller forever and fully release Defendant and the Releasees from the following:
 - (A) The Released Federal Law Claims;
 - (B) The Released State Law Claims (applicable to the state(s) in which he or she was an unpaid Intern); and
 - (C) Any and all past and present matters, claims, demands, and causes of action of any kind, whatsoever, whether at common law, pursuant to statute, ordinance, or regulation, in equity or otherwise, and whether arising under federal, state, local, or other applicable law, which Named Plaintiff and Miller have or might have, known or unknown, of any kind whatsoever, asserted or unasserted, that are based upon or arise out of any facts, acts, transactions, occurrences, events or omissions occurring prior to their respective dates of execution of this Agreement. This release includes, without limitation, claims asserted in the Litigation and any other claims based on state or federal law governing minimum wage, overtime pay, failure to pay wages, denial of meal periods and rest breaks, failure to pay

wages upon termination, failure to provide itemized wage statements, retaliation due to the filing of or participation in the Litigation, unfair competition, failure to make payments due, failure to provide benefits or benefit credits, failure to keep records of hours worked or compensation due, failure to post a summary and/or notice of wage-hour laws, and penalties for any of the foregoing, including without limitation claims under the Fair Labor Standards Act (“FLSA”), the Employee Retirement Income Security Act (“ERISA”), the New York Minimum Wage Act, New York Labor Law §§ 650 et seq., New York Wage Payment Act, New York Labor Law § 190 et seq., the New York State Department of Labor Regulations, 12 N.Y.C.R.R. part 142, D.C. Code Ann. §§ 32-1001 to 32-1015 and D.C. Code Ann. §§ 32-1301 to 32-1310., and the statutes, regulations, and common laws of all other states relating to the foregoing.

Named Plaintiff and Miller agree not to seek employment or rehire with Sirius XM. Violation of this provision will be sufficient grounds to deny or terminate employment with Sirius XM or any of its affiliates, related entities, or successors.

11. INTERPRETATION AND ENFORCEMENT

- 11.1. **Cooperation Between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable efforts to obtain the Court’s approval of this Agreement. The Parties shall work together, diligently and in good faith, to facilitate the expeditious entry of a Preliminary Approval Order, Final Approval Order, and Final Judgment. Each party, upon the written request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 11.2. **Non-Interference With Settlement.** Pending the Court’s decision on final approval of the settlement and entry of the Final Approval Order, Named Plaintiff, Miller, Current FLSA Opt-Ins and anyone acting on their behalf are barred and enjoined from: (a) further litigation in this Litigation; (b) filing, or taking any action, directly or indirectly, to commence, prosecute, pursue or participate, individually or on a class or collective action basis, any action, claim or proceeding against Defendant in which any of the claims released by this Agreement are asserted, or which in any way would prevent any such claims from being extinguished; or (c) seeking, whether on a conditional basis or not, certification of a class or collective action that involves any such claims.
- 11.3. **No Assignment.** Class Counsel, Named Plaintiff, Miller, and Current FLSA Opt-Ins represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any related action.
- 11.4. **Entire Agreement.** This Agreement contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the

Parties (including the parties' settlement Memorandum of Understanding) shall be deemed merged into this Agreement.

- 11.5. **Binding Effect.** This Agreement shall be binding upon the Parties and Miller, and, with respect to the Named Plaintiff and Miller, their parents, spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns.
- 11.6. **Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement.
- 11.7. **Captions.** The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 11.8. **Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.
- 11.9. **Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New York.
- 11.10. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement.
- 11.11. **Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 11.12. **Non-Disclosure.** Named Plaintiff and Miller agree not to disclose to individuals other than immediate family, tax preparers, and attorneys the terms of this settlement or the negotiations leading thereto except in court papers or if required by legal process or protected by law. The maximum confidentiality allowed by law applies to the terms of the settlement described in this Agreement and the negotiations leading thereto. After the filing of the Preliminary Approval Motion, Named Plaintiff, Miller, and Class Counsel shall not directly or indirectly, issue or cause to be issued any statements to the media or engage in any other publicity regarding this Agreement or the settlement. Named

Plaintiff, Miller, and Class Counsel shall also not issue notice of the settlement to Class Members (other than communications with the Named Plaintiff or Miller, Current FLSA Opt-Ins, or in response to any inquiry by a Class Member) except for the Notices issued through the Settlement Claims Administrator as set forth in this Agreement. Named Plaintiff, Miller, and Class Counsel shall not, directly or indirectly, issue a press release, hold a press conference, publish information about the settlement negotiations on any website, or otherwise publicize the settlement or negotiations. Named Plaintiff, Miller, and Class Counsel agree not to respond to any press inquiries concerning the settlement except to refer reporters to the papers filed with the Court.

- 11.13. **CAFA.** Defendant shall provide copies to Class Counsel of notice(s) required by the Class Action Fairness Act (“CAFA”).
- 11.14. **Counterparts.** The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 11.15. **Facsimile and Scanned Signatures.** Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or email.

WE AGREE TO THESE TERMS,

DATED: _____, 2015

JUSTIN VITETTA

DATED: _____, 2015

DANIEL MILLER

DATED: _____, 2015

SIRIUS XM RADIO INC.

By: Patrick L. Donnelly

Its: Executive Vice President, General Counsel and
Secretary

CLASS COUNSEL

VIRGINIA & AMBINDER, LLP

DATED: July 31, 2015

_____/s/_____
By: LaDonna M. Lusher
Kara S. Miller
40 Broad Street, 7th Floor
New York, New York 10004
Telephone: (212) 943-9080
Fax: (212) 943-9082

DATED: July 31, 2015

LEEDS BROWN LAW, P.C.

_____/s/_____
By: Jeffrey K. Brown

Michael Tompkins
One Old Country Road, Suite 347
Carle Place, NY 11514
Telephone: (212) 309-6960

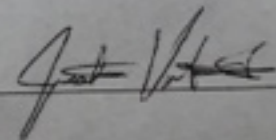
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WE AGREE TO THESE TERMS,

DATED: 8/2, 2015

JUSTIN VITETTA

Justin Vitetta 

DATED: _____, 2015

DANIEL MILLER

DATED: _____, 2015

SIRIUS XM RADIO INC.

By: Patrick L. Donnelly

Its: Executive Vice President, General Counsel and Secretary

Plaintiff, Miller, and Class Counsel shall also not issue notice of the settlement to Class Members (other than communications with the Named Plaintiff or Miller, Current FLSA Opt-Ins, or in response to any inquiry by a Class Member) except for the Notices issued through the Settlement Claims Administrator as set forth in this Agreement. Named Plaintiff, Miller, and Class Counsel shall not, directly or indirectly, issue a press release, hold a press conference, publish information about the settlement negotiations on any website, or otherwise publicize the settlement or negotiations. Named Plaintiff, Miller, and Class Counsel agree not to respond to any press inquiries concerning the settlement except to refer reporters to the papers filed with the Court.

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WE AGREE TO THESE TERMS,

DATED: _____, 2015

JUSTIN VITETTA

DATED: 07/23, 2015

DANIEL MILLER

Daniel Miller

DATED: _____, 2015

SIRIUS XM RADIO INC.

By: Patrick L. Donnelly

Its: Executive Vice President, General Counsel and Secretary

Plaintiff, Miller, and Class Counsel shall also not issue notice of the settlement to Class Members (other than communications with the Named Plaintiff or Miller, Current FLSA Opt-Ins, or in response to any inquiry by a Class Member) except for the Notices issued through the Settlement Claims Administrator as set forth in this Agreement. Named Plaintiff, Miller, and Class Counsel shall not, directly or indirectly, issue a press release, hold a press conference, publish information about the settlement negotiations on any website, or otherwise publicize the settlement or negotiations. Named Plaintiff, Miller, and Class Counsel agree not to respond to any press inquiries concerning the settlement except to refer reporters to the papers filed with the Court.

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WE AGREE TO THESE TERMS,

DATED: _____, 2015

JUSTIN VITETTA

DATED: _____, 2015

DANIEL MILLER

DATED: *July 22*, 2015

SIRIUS XM RADIO INC.

Patrick L. Donnelly
By: Patrick L. Donnelly

Its: Executive Vice President, General Counsel and Secretary