

**Before the
Copyright Royalty Board
United States Copyright Office
Washington, D.C. 20540**

In the Matter of)	
)	
Distribution of DART Sound Recordings Fund)	Docket No. 2011-6 CRB DD 2010
Featured Recording Artists and Copyright Owners)	
Subfunds Royalties for 2010)	

**SUPPORT OF SETTLING CLAIMANTS’ NOTICE OF SETTLEMENT AND REQUEST
FOR PARTIAL DISTRIBUTION OF THE 2010 DART SOUND RECORDINGS FUND
FEATURED RECORDING ARTISTS AND COPYRIGHT OWNERS SUBFUNDS
ROYALTIES¹**

The Alliance of Artists and Recording Companies (“AARC”), on behalf of itself and claimants listed in Exhibit A, *see* 2010 Settling Claimants, Ex. A, (collectively “Settling Claimants”), submit these comments to the Copyright Royalty Board Notice Soliciting Comments on the Motion for Partial Distribution. Distribution of 2010 DART Sound Recordings Fund Royalties, 76 Fed. Reg. 177, 56483 (Sept. 13, 2011). The Settling Claimants respectfully offer this filing in support of their Notice of Settlement and Request for Partial Distribution of the 2010 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties. Docket No. 2011-6 CRB DD 2010 (Aug. 23, 2011), <http://www.loc.gov/crb/motions/aarc-motion-partial-distribution-08232011.pdf>. (“Notice and Request”). AARC has settled with 433 of the 441² individual claimants for the 2010 DART

¹ On behalf of the Settling Claimants and in response to the Copyright Royalty Board’s Order Denying Request for Partial Distribution of DART Sound Recordings Funds, Docket No. 2011-6 CRB DD 2010 (Aug. 9, 2011), AARC re-filed a motion for partial distribution pursuant to 17 U.S.C. § 801(b)(3)(C) on August 23, 2011.

² On August 10, 2011, Asolo Chika Chuku withdrew his 2010 DART Sound Recordings Fund Copyright Owners

Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds (“2010 Sound Recordings Fund”). AARC was unable to obtain settlements with Eric N. Burns, Eugene “Lambchops” Curry, Herman Kelly, Afterschool Publishing (“ASP”), Eddie Rolling, Write 4 U Publishing/Treasa Fennie (“Write 4 U/Fennie”), and Ernest William Furrow (collectively the “Non-Settling Claimants”).

I. Given the Settling Claimants’ share of record sales for royalty year 2010, distribution of 98% of the 2010 Sound Recordings Fund is warranted.

The Audio Home Recording Act of 1992 (“DART”)³ requires allocation of the 2010 Sound Recordings Fund royalties to be based on distribution (record sales) of the claimants’ sound recordings during the royalty year, in this case 2010. 17 U.S.C. § 1006(c)(1) (2006). SoundScan has been recognized in every DART proceeding as credible evidence of distribution for allocation of royalties. *See e.g.* Distribution of the 1995, 1996, 1997 and 1998 Digital Audio Recording Technology Royalties, 66 Fed. Reg. 9360, 9362 (Copyright Office Feb. 7, 2001). Based on SoundScan data, the total record sales for all claimants of the 2010 DART Sound Recordings Fund Featured Recording Artists Subfund (“2010 Featured Recording Artists Subfund”) are 1,093,039,534 record sales, and the total record sales for all claimants of the 2010 DART Sound Recordings Fund Copyright Owners Subfund (“2010 Copyright Owners Subfund”) are 1,125,921,911 record sales. *See* Notice and Req. Ex. B ¶¶ 3-6 (Aug. 23, 2011) (the document titled “Seltzer Decl.”). As noted in the Notice and Request, the 2010 SoundScan data lists the following record sales for the Non-Settling Claimants: 2,163 record sales for featured recording artist Herman Kelly, 2,163 record sales for copyright owner ASP, 13 record sales for featured recording artist Write 4U/Fennie, 13 record sales for copyright owner Write 4U/Fennie,

Subfund claim. Then on September 1, 2011 Arpi Takacs withdrew his 2010 DART Sound Recordings Fund Copyright Owners Subfund claim. Therefore, they are no longer claimants to this proceeding.

³ 17 U.S.C. §§ 1001-10 (2006).

and 834 record sales for copyright owner Ernest William Furrow. *Id.* The 2010 record sales data does not list record sales for any copyright owners named Eric N. Burns, Eugene “Lambchops” Curry, or Eddie Rolling. *Id.*

Record sales of the Settling Claimants’ 2010 Featured Recording Artists Subfund claims total 1,093,037,358 of the 1,093,039,534 universe or 99.9998% of the record sales of the 2010 Featured Recording Artists Subfund claimants. The Non-Settling Claimants’ 2010 record sales of 2,176 amount to less than 0.0002% of the 1,093,039,534 universe of the 2010 Featured Recording Artists Subfund claimants, which translates to less than \$1 for Herman Kelly and Write 4 U/Fennie combined.

Record sales of the Settling Claimants’ 2010 Copyright Owners Subfund claims total 1,125,918,901 of the 1,125,921,911 universe or 99.9997% of the record sales of the 2010 Copyright Owners Subfund claimants. The Non-Settling Claimants’ 2010 record sales of 3,010 amount to less than 0.0003% of the 1,125,921,911 universe of the 2010 Copyright Owners Subfund claimants, which translate to less than \$1 for ASP, Ernest William Furrow, and Write 4 U/Fennie combined.

Given the SoundScan record sales data for the Non-Settling Claimants, the 2% of the 2010 Sound Recordings Fund that would remain after the 98% partial distribution would provide more than sufficient funds to cover any claims by the Non-Settling Claimants. The Settling Claimants do not believe that the Non-Settling Claimants could plausibly claim even 1% of the 2010 Sound Recordings Fund. Claims that are baseless and implausible are considered unreasonable. *See* Partial Distribution of 2008 DART Sound Recordings Fund, 2009-3 CRB DD 2008 (Copyright Royalty Board Aug. 19, 2009) (order granting) (rejecting an objection to a request for partial distribution because the objection was baseless and “facially implausible”).

Therefore, since there can be no reasonable objection to the 98% partial distribution of the 2010 Sound Recordings Fund, the partial distribution is warranted.

II. If the final 2010 royalty percentages for the Settling Claimants differ from the partial distributions made to them pursuant to Settling Claimants' Notice and Request, the Settling Claimants agree to return any excess amounts plus interest to the extent necessary to comply with the CRB's final determination on the distribution of fees.

As a condition to the partial distribution of the 2010 Sound Recordings Fund royalties, the Settling Claimants hereby agree to be bound by the condition uniformly imposed under section 801(b)(3)(C). Specifically, the Settling Claimants agree that in the event that the final 2010 royalty percentages for the Settling Claimants differ from the partial distributions made to them pursuant to their Notice and Request, any claimant who has received more than its share will "return any excess amounts to the extent necessary to comply with the final determination on the distribution of fees" plus interest. *See* 17 U.S.C. § 801(b)(3)(C)(ii); *see also* Order, In the Matter of Distribution of 2005-2008 DART Musical Works Funds Royalties, Docket No. 2010-8 CRB DD 2005-2008 (MW) (Apr. 14, 2011). By agreeing to this condition, the Settling Claimants ensure that the Non-Settling Claimants are protected from any risk that might result from the partial distribution, while also ensuring that the Settling Claimants, who represent the vast majority of entitled recipients, receive the royalties to which they are entitled in a timely fashion.

III. Conclusion

In view of the foregoing, the Settling Claimants believe that there can be no reasonable objection to the partial distribution of 98% of the 2010 Sound Recordings Fund to the Settling Claimants.

Accordingly, the Settling Claimants respectfully request that the CRB grant their Notice and Request, thereby distributing 98% of the 2010 Sound Recordings Fund to AARC as agent for the Settling Claimants.

Respectfully submitted,
On Behalf of the Settling Claimants

A handwritten signature in black ink, appearing to read "Linda R. Bocchi". The signature is written in a cursive style with a large initial "L".

Linda R. Bocchi, Esq.

DC BAR # 338012

VA BAR # 77599

Executive Director

Alliance of Artists and Recording Companies

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October 13, 2011

EXHIBIT A

2010 SETTLING CLAIMANTS

October 13, 2011

Featured Recording Artists

Ernst Andre**

James Cannings

Claimants represented by Jeffrey E. Jacobson, Esq.:

J RAD Music

Daniel Greenwald

Kosmic Daydream

Kim Angelis

Bill Gravel

John Kaizan Neptune

The Process

Aaron Shragge**

Beatrice Thomas

Vaneese Thomas

Claimants represented by Lawrence E. Feldman:

4:00 PM

AD LIBS

ANDREWS*LEE & THE HEARTS

BAKER*LAVERN

BAKER*RON

BALLARD*HANK

BARBARIANS

BELL*TONY

BELLAMY BROTHERS

BELMONTS

BENNO*MARC

BLACKFOOT

BOBBETTES

BRASS CONSTRUCTION

BRODIE*HUGH

BROWN*ALEX

BROWN*MAXINE

BROWN*SHARON

CAPITOLS

CARLEBACH*SHLOMO

CATHY JEAN & ROOMATES

CHAD & JEREMY

CHAKA DEMUS

CHAKA DEMUS & PLIERS

CHANTELS

CHIFFONS

CLANTON*JIMMY
CLASSICS IV
COLD CRUSH BROTHERS
COLLINS*LYN
COOKIES
CRASH CREW
CREED*LINDA
CRUDUP BROTHERS
DALE & GRACE
DAYVINA
DEE*LENNY
DEL-VIKINGS
DICK & DEEDEE
DIMUCCI*DION
DION
DION & BELMONT
DREAM STREET
DRY KILL LOGIC
DUBS
ELEGANTS
E-TYPE
FAUST*WAYNE
FEARING*CHARLES
FLIPMODE SQUAD
FUNKY FOUR PLUS ONE
GARDNER*TAANA
GEORGE*BARBARA
GQ
GRANDMASTER FLASH & FURIOS FIVE AKA FURIOUS FIVE
GRAVEDIGGAZ
GROOVE THEORY
GUILBEAU*GIB
HAGGARD*MERLE
HAMILTON*ROY
HARPTONES
HARRIS*NORMAN
HARRIS*THURSTON
HARRISON*WILBERT
HEARTBEATS
HOLMES*RICHARD "GROOVE"
HORNE*LENA
HORSTMAN*CINDY
JACKSON CHUCK
JIVE FIVE
KENNER*CHRIS
KERSEY*RON

LARRIEUX*AMEL
LEADERS OF THE NEW SCHOOL
LEWIS*JERRY LEE
LITTLE EVA
LYMON*FRANKIE
LYMON*FRANKIE & TEENAGERS
MEL*MELLE AKA GRANDMASTER MELLE MEL
MOONGLOWS
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PARRISH*DEAN
PASSIONS
PENGUINS
PITTMAN*WAYNE AKA O'KAYSIONS
PRETTY BOY FLOYD
QUIET ELEGANCE
RAE*FONDA
ROSIE & ORIGINALS
RUNAWAYS
RUSH*TOM
SAM THE SHAM & THE PHAROAHS
SANDS*TOMMY
SEVAG*OYSTEIN
SEXUAL HARRASSMENT
SHEP & THE LIMELITES
SHIRELLES
SILHOUETTES
SMITH*PRESTON
SMITH*VERDELLE
SOUL SONIC FORCE
STANDELLS
TEMPOS
TERRY*JOHNNY
VANILLA ICE
VINCELLI*JOSEPH
VINCENT*GENE & BLUE CAPS
WALLS*HARRY VANN
WESLEY*FRED
WHITNEY*MARVA
WILLIAMS*CAROL
WILLIAMS*OTIS & CHARMS
WILLOWS
WORL-A-GIRL

YARBROUGH*GLENN
AKENS*JEWEL
AYERS*ROY
BAD BRAINS
BELL*ARCHIE
BERRY*RICHARD
BLACK UHURU
BLOSSOMS
BOB B. SOXX & BLUE JEANS
BROWN*RUTH
BUSTA RHYMES
BYRD*BOBBY
CAKE
CASCADES
CHAMBERS BROTHERS
CHANGE
COASTERS
CORBIN-HANNER BAND
CRESCO*RICKY
CRESTS
CRUDUP*ARTHUR "BIG BOY"
CRYSTALS
DANNY & THE JUNIORS
DELLS, THE
DIAMONDS
DIXIE CUPS
DOUGLAS*CAROL
FABULOUS THUNDERBIRDS
FLAMINGOS
FLYING BURRITO BROTHERS
GILLESPIE*DIZZY
HAPPENINGS
HELM*LEVON
INXS
JAY & THE AMERICANS
JAYNETTES
JB'S
JUNGLE BROTHERS
KLEINOW*PETER
KNACK
LEWIS*BARBARA
LITTLE ANTHONY & THE IMPERIALS
LITTLE TEXAS
LOBO
LOVE*DARLENE
MANGIONE*CHUCK

MANHATTANS
MANN*BARRY
MANN*HERBIE
MARCELS
MARLEY*RITA
MARTINO*AL
MARVELETES
MCPHATTER*CLYDE
MELVIN*HAROLD & BLUE NOTES
MFSB
MONOTONES
NEWTON*JUICE
NICK CAVE & BAD SEEDS
PARIS SISTERS
PATRA
PAUL*BILLY
PEACHES & HERB
PENN*DAWN
PITNEY*GENE
PLATTERS
RANDY & THE RAINBOWS
REEVES*MARTHA & VANDELLAS
RONETTES
ROSE*MICHAEL
SCOTT*FREDDIE
SEALS*DAN
SHA NA NA
SHANGRI-LAS
SIMONE*NINA
SMITH*FRANKIE
SOUL SURVIVORS
TAMS
TESH*JOHN
TRAMMPS
TROY*DORIS
WEIDER*JIM
WELK*LAWRENCE
WHEELER*CHERYL
YAKI-DA

**These claimants have signed on with AARC. Therefore, AARC will represent them in all current and future AHRA Sound Recording Fund proceedings.

All other claimants have settled with AARC only with regard to the 2010 proceeding.

Copyright Owners

Reginald C. Woodward, Jr.**

Ernst Andre**

James Cannings

Claimants Represented by Dayna D. Staggs:

Dayna D. Staggs**

Songwriters Guild of America

National Music Publishers Association

Dayna Staggs Music Publishing**

Dayna Paryss Entertainment, LLC

Doin Peeps Music Publishing, LLC

Claimants Represented by Jeffrey E. Jacobson, Esq.:

ROIR

Norton Records, Inc.

J Rad Music

Daniel Greenwald

Kosmic Daydream

Reachout International Records, Inc.

Skysong Record

CQK

Bill Gravel

John Kaizan Neptune

VP Record Distributers, Inc.

Claimants Represented by Lawrence E. Feldman:

ANDREWS*LEE & THE HEARTS

BAKER*RON

BARBARIANS

BELL*TONY

BLOSSOMS

BRODIE*HUGH

BROWN*ALEX

CATHY JEAN & ROOMATES

COLD CRUSH BROTHERS

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RAE*FONDA
SHEP & THE LIMELITES
SMITH*VERDELLE
TEMPOS
TERRY*JOHNNY
VINCELLI*JOSEPH
WALLS*HARRY VANN
WEIDER*JIM
WHITNEY*MARVA
YAKI-DA
4:00 PM
AD LIBS
AKENS*JEWEL
AYERS*ROY
BAD BRAINS
BAKER*LAVERN
BALLARD*HANK
BELL*ARCHIE
BELLAMY BROTHERS
BELMONT'S
BENNO*MARC
BERRY*RICHARD
BLACK UHURU
BLACKFOOT
BOB B. SOXX & BLUE JEANS
BOBBETTES
BRASS CONSTRUCTION
BROWN*MAXINE
BROWN*RUTH
BROWN*SHARON
BUSTA RHYMES
BYRD*BOBBY
CAKE
CAPITOLS
CARLEBACH*SHLOMO
CASCADES
CHAD & JEREMY
CHAKA DEMUS
CHAKA DEMUS & PLIERS

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CLANTON*JIMMY
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CRASH CREW
CRESPO*RICKY
CRESTS
CRUDUP*ARTHUR "BIG BOY"
CRYSTALS
DANNY & THE JUNIORS
DEE*LENNY
DEL-VIKINGS
DELLS, THE
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DIMUCCI*DION
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DOUGLAS*CAROL
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