IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ADAM STILES, individually and on behalf of all others similarly situated, Plaintiff, v. MOBILE FIDELITY SOUND LAB, INC., Defendant.	Case No. 1:22-cv-04405 **Hon. Manish S. Shah**

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT MOBILE FIDELITY SOUND LAB, INC.'S MOTION TO STAY ACTION IN FAVOR OF FIRST-FILED CASE

INTRODUCTION

Defendant, Mobile Fidelity Sound Lab, Inc. ("MoFi"), moves for an order staying this case pending judicial approval of a nationwide class action settlement reached in a substantially-identical and first-filed class action in the District Court for the Western District of Washington entitled: *Tuttle, et al. v. Audiophile Music Direct, Inc.*, *et al.,* Case No. 2:22-cv-01081-JLR ("*Tuttle*").

A stay of this case is warranted under the well-established first-to-file rule because it is duplicative of *Tuttle*, which involves substantially similar parties, allegations, and requests for relief. Alternatively, a stay is warranted under this Court's inherent power because it will not prejudice any party but, rather, will streamline the issues before this Court and prevent duplicative litigation. Indeed, because the proposed nationwide settlement in *Tuttle* (the "Nationwide Settlement") will resolve the class claims before this Court, staying this case will conserve judicial and party resources and avoid piecemeal litigation.

Because a stay of this case is in the interest of wise judicial administration, MoFi respectfully requests that this Court stay this action pending final approval of the Nationwide Settlement.

A. Plaintiff's Complaint BACKGROUND

The gravamen of Plaintiff's Complaint is that MoFi engaged in false and misleading practices in connection with its marketing and sale of vinyl records. Stiles Compl., Dkt. 1, ¶¶ 2-6. Plaintiff alleges that MoFi falsely marketed certain records as being "purely analog recordings . . . without any sort of digital mastering process." *Id.* at ¶ 2. Plaintiff further alleges that these purported misrepresentations were contained on the album covers for certain records, in promotional materials included in the records' product packaging, on MoFi's website, and also

expressly made by MoFi's representatives. *Id.* at ¶¶ 9, 21, 23-34.

On behalf of a nationwide class and North Carolina state sub-class, Plaintiff brings claims for breach of express and implied warranty, violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, common law fraud, unjust enrichment, and violation of the consumer fraud acts of every state in the nation, as well as the District of Columbia. *Id.* at ¶¶ 57-95, 105-110. Plaintiff also brings a claim for violation of North Carolina's Unfair and Deceptive Trade Practices Act, N.C.G.S. §§ 75-1.1, *et seq.*, on behalf of the North Carolina state sub-class. *Id.* at ¶¶ 96-104.

Plaintiff's putative nationwide class is defined as "all persons in the United States who purchased a Record prior to July 15, 2022." *Id.* at ¶ 48. The term "Records" is defined as "vinyl records labeled as 'Original Master Recording' or records sold as part of the 'Ultradisc One Step' series." *Id.* at ¶ 1.

B. Substantially Similar Nationwide Class Actions Pending in Other District Courts

This case was filed in the United States District Court for the Northern District of Illinois on August 18, 2022. *See* Stiles Compl., Dkt. No. 1; Declaration of Christine E. Skoczylas ("Skoczylas Decl."), ¶ 3; *id.* at Ex. 3. But both prior to, and after, this case was filed, four (4) separate nationwide class actions were filed in other federal district courts, each involving the same basic facts and issues alleged here. The four related proposed class actions are listed below:

State	**Case**	**Date Filed**
WA	*Tuttle, et al. v. Audiophile Music Direct Inc.*, *et al.*, Case No. 2:22-cv-01081-JLR (W.D. Wash.)	August 2, 2022
IL	*Bitterman v. Mobile Fidelity Sound Lab, Inc.*, *et al.*, Case No. 1:22-cv-04714 (N.D. Ill)	September 1, 2022
CA	*Mark Allen v. Audiophile Music Direct, et al.*, Case	September 22, 2022

	No. 2:22-cv-8146-GW-MRWx (C.D. Cal.)	
CA	*Molinari v. Audiophile Music Direct, et al.*, Case No. 4:22-cv-05444 (N.D. Cal.)	September 23, 2022

Of these cases, *Tuttle* is the first-filed action encompassing the same proposed nationwide class that Plaintiff purports to represent, as well as the same allegations against MoFi.

C. The First-Filed *Tuttle* Action

This case is materially identical to *Tuttle*, which was filed in the District Court for the Western District of Washington on August 2, 2022—over two weeks earlier than this case. Skoczylas Decl. ¶ 2; *id.* at Ex. 1. In their operative First Amended Complaint ("Tuttle FAC"), the *Tuttle* plaintiffs also allege that MoFi engaged in "deceptive and misleading" practices arising from its marketing and sale of vinyl records "produced under processes named by the MoFi as either 'Original Master Recording' (OMR) or 'UltraDisc One-Step (UD1S).'" *Id*. at ¶ 3; *id.* at Ex. 2, ¶¶ 2-3. The *Tuttle* plaintiffs assert that MoFi marketed these records as being "entirely reproduced in an analog format," without disclosing that the mastering process for the records included a digital step. *Id*. at Ex. 2, ¶ 22. The *Tuttle* plaintiffs further assert that these alleged misrepresentations were made directly on the records' product packaging, as well as by alleged company representatives. *Id.* at Ex. 2, ¶¶ 22-23.

Based on these allegations, among others, the *Tuttle* plaintiffs assert claims on behalf of a Washington state class for violation of the Washington Consumer Protection Act ("WCPA"), RCW 19.86 *et seq. Id.* at Ex. 2, ¶¶ 46-54 (Count I). The *Tuttle* plaintiffs also bring claims for common law breach of contract, unjust enrichment, and violation of the Illinois Consumer Fraud Act ("ICFA"), 815 ILCS § 505/1 *et seq.*, on behalf of a nationwide class. *Id*. at Ex. 2, ¶¶ 55-60 (Count II); ¶¶ 61-64 (Count III); and ¶¶ 65-69 (Count IV). The *Tuttle* nationwide class, which

subsumes Plaintiff's putative class, is defined as: "[a]ll persons and entities who, during the Class Period in the United States and its territories and possessions, [*sic*] Original Master Recording (OMR) and UltraDisc One-Step (UD1S)." *Id.* at Ex. 2, ¶ 36.

D. The Nationwide Settlement Reached in *Tuttle* Is Pending Judicial Approval.

Following protracted arm's length negotiations, a settlement was reached in *Tuttle*. Declaration of Joseph J. Madonia ("Madonia Decl."), ¶ 2. After the parties in *Tuttle*—Audiophile Music Direct, Inc. ("Music Direct"), MoFi, and plaintiffs Stephen J. Tuttle and Dustin Collman—finalized a long-form written settlement agreement, and, on January 15, 2023, the *Tuttle* plaintiffs filed an Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Program with the United States District Court for the Western District of Washington (the "Motion for Preliminary Approval"). *Id.* at Ex. 1. Shortly thereafter, on January 19, 2023, the parties in *Tuttle* filed a joint stipulation for an order to stay the case pending consideration of the Motion For Preliminary Approval ("Stipulation for Order To Stay"). *Id.* at ¶ 3; *id.* at Ex. 2.

On January 20, 2023, the *Tuttle* Court denied the Motion For Preliminary Approval, primarily on the grounds that the accompanying filings, including the initial proposed settlement agreement and proposed order, contained various technical errors and ambiguities ("Order on Motion For Preliminary Approval" or "Order"). *Id.* at ¶ 4; *id.* at Ex. 3. The Order requests the parties to, among other things, clarify certain provisions in the proposed settlement agreement, including the definition for the term "Settlement Claim Certification Form" and "[t]he process for a Class Member to return an Applicable Record for a refund." *Id.* at Ex. 3, ¶¶ 1, 4. Other corrections requested by the *Tuttle* Court include correcting the case number on the proposed order. *Id.* at Ex. 3, ¶¶ 5, 6. The *Tuttle* Court, however, invited the parties to resubmit an amended motion for preliminary approval correcting these issues. *Id.* at Ex. 3, ¶ 6. The Court further

granted the joint stipulation and stayed the case pending the Court's consideration of the renewed motion for preliminary approval. *Id.* at Ex. 3, 4:6-10.

On February 2, 2023, the *Tuttle* plaintiffs filed an amended unopposed motion for preliminary approval (the "Amended Motion For Preliminary Approval") and submitted a copy of the amended settlement agreement (the "Amended Settlement Agreement"). *See* Madonia Decl., ¶¶ 5-6; *id.* at Ex. 4; *id.* at ¶ 6; *id.* at Ex. 5 at Internal Ex. 1. The Amended Settlement Agreement corrects each of the ambiguities and errors identified in the Order on Motion For Preliminary Approval. *See generally id.* at Ex. 4, 6:15-12:9.

Moreover, the proposed settlement class in *Tuttle*, is defined as:

> All original retail consumers in the United States who, from March 19, 2007, to July 27, 2022, purchased, either directly from a Defendant or directly from a Defendant or other retail merchants, new and unused Mobile Fidelity Sound Lab, Inc. ("MoFi") vinyl recordings which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and provided that said purchasers still own said recordings (the "Applicable Records"). Excluded from the Class are persons who obtained subject Applicable Records from other sources.

Id. at Ex. 4, 6:20-7:3. This proposed settlement class subsumes Plaintiff's proposed nationwide class. *See* Stiles Compl., Dkt. 1, ¶ 48. On February 6, 2023, the *Tuttle* Court entered an order instructing the *Tuttle* parties that it accepted the filing of the Amended Motion For Preliminary Approval. Madonia Decl., ¶ 8; *id.* at Ex. 7.

ARGUMENT

I. LEGAL STANDARD

a. First-To-File Rule

Under the first-to-file rule, a district court may stay a later-filed case "whenever it is duplicative of a parallel action already pending in another federal court." *Aliano v. Quaker Oats*

Company, Nos. 16-cv-3087, 4293, 6215, 7395, 2017 WL 56638, at *2 (N.D. Ill. Jan. 4, 2017) (internal quotations omitted). Actions are sufficiently duplicative "if the parties, claims, and available relief substantially overlap, even if they are not identical." *Nicholson v. Nationstar Mortg. LLC of Delaware*, Nos. 17-cv-1373, 8737, 18-cv-3075, 2018 WL 3344408, at *5 (N.D. Ill. July 6, 2018) (internal quotations omitted). "When faced with duplicative actions, the forum where the action was first filed is generally favored." *Wagner v. Speedway LLC*, No. 20-cv-3014, 2021 WL 1192691, at *1 (N.D. Ill. Mar. 30, 2021) (citing *Nationwide Affordable Housing Fund 4, LLC v. Urb. 8 Danville Corp.*, No. 19-cv-07259, 2020 WL 2836795, at *2 (N.D. Ill. June 1, 2020)). Notably, the Seventh Circuit encourages "district courts [to] stay a second lawsuit pending the outcome of an earlier-filed lawsuit addressing the same issues" for purposes of "wise judicial administration." *Wallis v. Fifth Third Bank*, 443 F. App'x 202, 205 (7th Cir. 2011); *accord Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir. 1993). Thus, district courts routinely stay later-filed actions "where deference to the first-filed action is consistent with considerations of judicial and litigant economy, and the just and effective disposition of disputes." *Nicholson*, 2018 WL 3344408, at *4 (internal quotation omitted).

b. Court's Inherent Power To Stay Litigation

A court may also consider whether a stay is appropriate under its inherent power to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). In deciding whether to grant a stay under its inherent power, courts evaluate: "(i) whether a stay will unduly prejudice or tactically disadvantage the nonmoving party, (ii) whether a stay will simplify the issues in question and streamline the trial, and (iii) whether a stay will reduce the burden of litigation on the parties and on the court." *Askin v. Quaker Oats Co.*, No. 11-cv-0111, 2012 WL

517491, at *6 (N.D. Ill. Feb 15, 2012) (quoting *Markel Am. Ins. Co. v. Dolan*, 787 F. Supp. 2d 766, 799 (N.D. Ill. 2011)).

II. A STAY IS WARRANTED UNDER THE FIRST-TO-FILE RULE.

Because this case is sufficiently duplicative of *Tuttle*—the first-filed action—this Court should stay this case under the first-to-file rule. Parallel actions are "duplicative" when there are few significant differences between the claims, parties, and relief sought. *See Serlin*, 3 F.3d at 223; *Nicholson*, 2018 WL 3344408, at *5. Indeed, "so long as the underlying facts are the same," variations in the particular legal claim or class scope are "not enough to render them substantially dissimilar for purposes of the first-to-file rule analysis." *Askin,* 2012 WL 517491, at *6. Courts apply the first-to-file rule by examining: (1) the chronology of actions; (2) the similarity of the parties; and (3) the similarity of the issues. *See, e.g.*, *Nicholson*, 2018 WL 3344408, at *5. Here, each of these factors weigh in favor of a stay because *Tuttle* predates this case and the parties and issues in both cases are substantially similar.

a. *Tuttle* Predates This Case.

The first-to-file analysis begins by determining the chronology of actions. *Id.* Here, *Tuttle* was filed over two-weeks prior to this case. *See* Skoczylas Decl., ¶¶ 2, 4. Thus, this threshold inquiry weighs in favor of a stay.

b. The Parties and Putative Classes in *Tuttle* and This Case Are Substantially Similar.

The parties here are also substantially similar to parties in *Tuttle*. In the class action context, "the focus of the substantially similar inquiry is on the putative class members rather than the named plaintiffs themselves." *Nicholson*, 2018 WL 3344408, at *5 (citing *Askin*, 2012 WL 517491, at *4 (collecting cases)). Indeed, the relevant inquiry is "whether the class members would be the same in the two actions." *Humphrey v. United Healthcare Servs., Inc.*, No. 14-cv-

1157, 2014 WL 3511498, at *4 (N.D. Ill. July 16, 2014). Substantial similarity exists where defendants are identical in both actions and both named plaintiffs seek to represent overlapping nationwide classes. *See, e.g.*, *Askin*, 2012 WL 517491, at *4 (finding that the parties were substantially similar in parallel class actions where both plaintiffs sought to "certify a class of persons who purchased [the defendant's] products in the United States for their own use"). Additionally, where settlement of the first-filed action "may dispose of virtually all class claims" in the later-filed action, the parallel actions are deemed sufficiently duplicative. *Moore v. Morgan Stanley & Co., Inc.*, No. 07 C 5606, 2007 WL 4354987, *2 (N.D. Ill. Dec. 6, 2007).

Here, substantial similarity exists between the parties because MoFi is a defendant in both cases and there is substantial overlap between the respective putative nationwide classes.

Plaintiff's putative nationwide class is defined as: "all persons in the United States who purchased a Record prior to July 14, 2022 (the "Class")." Stiles Compl., Dkt. 1, ¶ 48. Further, the term "Records" is defined as "vinyl records labeled as "Original Master Recording" or records sold as part of the "Ultradisc One Step" series." *Id.* at ¶ 1. The nationwide class in *Tuttle*—which subsumes Plaintiff's putative nationwide class—is defined as: "All persons and entities who, during the Class Period in the United States and its territories and possessions, Original Master Recording (OMR) and UltraDisc One-Step (UD1S)." Tuttle FAC, Skoczylas Decl., Ex. 2, ¶ 36. The "Class Period" in *Tuttle* is further defined to be "from at least 2002 to the present." *Id.* at Ex. 2, ¶ 37.

Thus, any purchaser of a "Record" would fall into both of these putative nationwide classes. Notably, although Plaintiff does not identify a definite class period, instead utilizing a vague temporal limitation of all dates "prior to July 14, 2022," here, MoFi did not sell, or offer for sale, any UD1S or OMR records prior to March 19, 2007. Declaration of Jim Davis, ¶ 3.

Accordingly, because the *Tuttle* class covers a period that significantly pre-dates any potential claims regarding any UD1S or OMR records, the *Tuttle* putative nationwide class substantially, if not entirely, overlaps with Plaintiff's putative nationwide class. *See Nicholson*, 2018 WL 3344408, at *6 (explaining that it is "sufficient to consider the plaintiffs in each action substantially similar" where "class definitions themselves demonstrate that at least some of the same individuals would be included in both").

Moreover, the putative settlement class in the Amended Settlement Agreement also encompasses Plaintiff's putative nationwide class. The settlement class is broadly defined as:

> All original retail consumers in the United States who, from March 19, 2007, to July 27, 2022, purchased, either directly from a Defendant or directly from a Defendant or other retail merchants, new and unused Mobile Fidelity Sound Lab, Inc. ("MoFi") vinyl recordings which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and provided that said purchasers still own said recordings (the "Applicable Records"). Excluded from the Class are persons who obtained subject Applicable Records from other sources.

Madonia Decl., ¶ 5; *id.* at Ex. 4, 6:20-7:3. Covering all persons who purchased any UD1S or OMR records in the United States from 2007 to July 27, 2022, this putative settlement class also embraces Plaintiff's putative nationwide class. Consequently, the putative nationwide class members in this case will have their claims resolved in the settlement if, and when, the Nationwide Settlement is approved in *Tuttle*. *See, e.g.*, *In re RC2 Corp. Toy Lead Paint Prods. Liab. Litig.*, No. 07-cv-7184, 2008 WL 548772, at *5 (N.D. Ill. Feb. 20, 2008) ("*In re RC2 Corp.*") (staying litigation because settlement in related action "will have substantial effect on some or all of Plaintiffs' claims"). The parties are therefore sufficiently similar under the first-to-file rule. Thus, this factor also weighs in favor of a stay.

c. The Issues in *Tuttle* and This Case Are Substantially Similar.

The issues in this action and *Tuttle* are substantially similar because the gravamen of the allegations in both cases is identical. Substantial similarity between the issues in parallel actions exists when both cases are "based on the same core factual allegations." *Humphrey*, 2014 WL 351198, at *2; *Askin*, 2012 WL 517491, at *3-4 (noting that claims are "substantially the same" where based on the same underlying facts). Indeed, "as long as the underlying facts are the same . . . the fact that the two complaints allege violations of different state laws is not enough to render them substantially dissimilar for purposes of the first-to-file analysis." *Askin*, 2012 WL 517491, at *4. Claims "need not be identical to satisfy the 'same issues' requirement of the first-to-file doctrine." *Preci-Dip, SA v. Tri-Star Elect. Int'l, Inc.*, No. 08-cv-4192, 2008 WL 5142401, at *2 (N.D. Ill. Dec. 4, 2008) (citation omitted).

Here, the crux of both cases concern MoFi's alleged misrepresentations in connection with its marketing and sale of OMR and UD1S branded vinyl records. *Cf.* Stiles Compl., Dkt. 1, ¶¶ 1-7; 47, *with* Tuttle FAC, Skoczylas Decl., Ex. 2, ¶¶ 1-3; 21-30. Specifically, both the *Tuttle* plaintiffs and Plaintiff here allege that MoFi falsely represented that the UD1S vinyl records were produced using an "all-analog" mastering chain without any "digital" component involved in the records' mastering process. *See, e.g.*, Stiles Compl., Dkt. 1, ¶¶ 2-3, 6; Tuttle FAC, Skoczylas Decl., Ex. 2, ¶¶ 1-3, 22. Based on these core allegations, both actions purport to assert claims against MoFi for unjust enrichment and violations of similar state consumer laws. *Cf.* Stiles Compl., Dkt. 1, ¶¶ 90-95 (unjust enrichment); ¶¶ 105-110 (asserting violations of every consumer fraud act in the nation) *with* Tuttle FAC, Skoczylas Decl., Ex. 2, ¶¶ 46-54 (Washington Consumer Protection Act); ¶¶ 65-69 (Illinois Consumer Fraud Act). Moreover, these shared factual allegations give rise to substantially similar requests for relief in both cases,

including class certification, damages, pre- and post-judgment, and attorney's fees. *See, e.g.*, Stiles Compl., Dkt. 1, Prayer for Relief, ¶¶ (a)-(h); Tuttle FAC, Skoczylas Decl., Ex. 2, Prayer, ¶¶ (a)-(h). *See Nicholson*, 2018 WL 3344408, at *7-8 ("Because these claims and requested relief are all based on the same core factual allegations, they are sufficiently similar for purposes of the first-to-file rule.").

Because the core allegations, claims, and requested relief in this case and *Tuttle* substantially overlap, this Court should apply the first-filed rule to stay this case in favor of *Tuttle*.

d. No Exception to the First-To-File Rule Applies.

Although certain exceptions exist allowing a court to decline to apply the first-to-file rule, none of them apply here. Exceptions to the first-to-file rule arise where a lawsuit was filed as an anticipatory action or where a party is engaged in forum shopping. *Schwarz v. National Van Lines, Inc.*, 317 F. Supp. 2d 829, 833 (N.D. Ill. 2004) (citations omitted).

The anticipatory action exception applies if the plaintiff in a first-filed case filed suit "under threat of an imminent suit" and asserts "the mirror-image of that suit in another district." *Id*. The forum shopping exception applies where a plaintiff files an action in a particular forum to avoid litigation and adverse rulings in another forum. *See Pfizer Inc. v. Apotex Inc.*, 640 F. Supp. 2d 1006, 1010 (N.D. Ill. June 12, 2009); *Cardoza v. T-Mobile USA Inc.*, No. 08-cv-5120, 2009 WL 723843, at *3 (N.D. Cal. Mar. 18, 2009).

Here, there is no evidence that either of these exceptions apply. There is no evidence that *Tuttle* was filed under the imminent threat that this case would be filed. Indeed, *Tuttle* was filed over two-weeks before this case. *See* Skoczylas Decl., ¶¶ 2, 4. Therefore, the anticipatory exception is inapplicable. Moreover, there is no evidence that the *Tuttle* plaintiffs filed suit in the

Western District of Washington to avoid any adverse ruling in this forum or to gain a tactical advantage. Thus, the forum shopping exception is also inapplicable.

Because Plaintiff cannot establish that any of these exceptions apply, this Court should apply the first-to-file rule and stay this case.

III. A STAY IS WARRANTED UNDER THIS COURT'S INHERENT POWER.

Alternatively, this Court may stay this case under its inherent powers. District courts have the inherent power to control the disposition of the cases on their dockets, including the power to stay proceedings. *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Courts in this Circuit routinely stay actions where the stay is unlikely to prejudice the plaintiff, would simplify the issues in question and streamline the case, and would minimize the burden on the parties and court by avoiding duplicative litigation. *See, e.g.*, *Lynn Scott, LLC v. Grubhub, Inc.*, No. 1:20-cv-06334, 2021 WL 1088304, at * 5 (N.D. Ill. Mar. 22, 2021) (granting stay under court's inherent power despite finding that the first-to-file rule was not applicable); *Pfizer Inc.*, 640 F. Supp. at 1010-11 (staying second-filed action where first-to-file rule applied and allowing the second-filed action to proceed would be an "inevitable waste of judicial and party resources"). Here, each of these factors weigh in favor of granting a stay of this case.

First, no party will be prejudiced if a stay is granted. This case remains in its infancy. No party to this action has served written discovery, and no trial date has been set. Skoczylas Decl., ¶ 5; *see, e.g.*, *Card Activation Technologies, Inc. v. 7-Eleven, Inc.*, No. l:10-cv-4984, 2011 WL 663960, at *2 (N.D. Ill. 2011) (finding that where "neither side [began] discovery" and "[a] trial date has not been set]," "there is no apparent prejudice or tactical disadvantage that the Plaintiff would be forced to endure if a stay were granted"). Moreover, Plaintiff will not be prejudiced because his claims will be preserved in this Court. Thus, even if Plaintiff contends that any of his

claims would not be fully resolved by *Tuttle* (they would be), he will still be able to pursue any residual issues in this action. *See Trading Techs. Int'l, Inc. v. BCG Partners, Inc.*, 186 F. Supp. 3d 870, 877 (N.D. Ill. 2016) (observing that "the potential for delay 'does not, by itself, establish ***undue*** prejudice'") (emphasis in original); *Askin*, 2012 WL 517491, at *6 ("Although [Plaintiff] likely would prefer to move forward with the case with the goal of being the first to certify a nationwide class, as long as his individual claim is preserved in this court, there is no reason to think that allowing the California litigation to proceed will cause him undue harm."). Plaintiff also will not be prejudiced because, if he believes that the class benefit in the Nationwide Settlement is unfair or insufficient, he may object to it.

Second, a stay will simplify the issues because it "may eliminate entirely the need for any further proceedings whatsoever in this Court." *Pfizer Inc.*, 640 F. Supp. 2d at 1008. As discussed above, *see, supra*, § II.(c), there is substantial overlap between the parties, allegations, claims, and relief sought in this case and in *Tuttle*, and the proposed settlement class in *Tuttle* subsumes Plaintiff's putative class. Thus, if the Nationwide Settlement is approved, as anticipated, *Tuttle* may very well dispense of the issues in this case. *See, e.g.*, *Lynn Scott, LLC*, 2021 WL 1088304, at * 5 (finding that a stay would simplify the issues in parallel actions, even where the first-filed action "targets a narrower subset of conduct" because settlement was anticipated in the first-filed action) (citations omitted); *In re RC2 Corp.*, 2008 WL 548772, at *5 (staying litigation because settlement in related action "will have a substantial effect on some or all of Plaintiffs' claims").

Third, a stay will reduce the burden on this Court and the parties by avoiding duplicative and costly litigation. Allowing this case to proceed when a settlement potentially barring Plaintiff's class action is pending would cause the parties to expend significant time and resources on motion practice and discovery on a case that is unlikely to result in class

certification. *See, e.g.*, *Moore*, 2007 WL 4354987, at *2 (finding that "[s]imultaneous litigation in [parallel] venues would expend significant judicial and litigant resources" and staying case to "avoid expensive and duplicative litigation of virtually the same claims in two federal courts"). Allowing *Tuttle* to proceed will therefore save the parties and the Court significant time and effort expended on foreseeable duplicative briefing and discovery.

Because all three of these factors also weigh in favor of a stay, this Court should exercise its inherent authority to stay this case.

IV. CONCLUSION

For the reasons set forth above, MoFi respectfully requests that this motion be granted and that the Court enter an order staying this litigation until the *Tuttle* Court makes a final determination on the Amended Motion For Preliminary Approval.

Date: February 7, 2023

JOSEPH J. MADONIA & ASSOCIATES

By: /s/ *Joseph J. Madonia*
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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2023, a copy of the foregoing was filed electronically. Service of this filing will be made on all registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Christine E. Skoczylas

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ADAM STILES, individually and on behalf of all others similarly situated, Plaintiff, v. MOBILE FIDELITY SOUND LAB, INC., Defendant.	Case No.:1:22-cv-04405 **Hon. Manish S. Shah**

DECLARATION OF CHRISTINE E. SKOCZYLAS

I, Christine E. Skoczylas, declare as follows:

1. I am an attorney at law duly licensed to practice law before all courts of Illinois and the Northern District of Illinois, and an attorney at the law firm of Barnes & Thornburg LLP, attorneys of record for Defendant Mobile Fidelity Sound Lab, Inc., an Illinois corporation ("MoFi" or "Defendant") in the above-captioned matter. I have personal knowledge of the facts stated herein, and, if called as a witness, I could and would testify as to the facts below.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the initial Complaint filed on August 2, 2022, by Plaintiffs Stephen J. Tuttle and Dustin Collman in the action entitled *Tuttle, et al. v. Audiophile Music Direct Inc.*, *et al.*, Case No. 2:22-cv-01081-JLR, currently pending in the Western District of Washington ("*Tuttle*").

3. Attached hereto as **Exhibit 2** is a true and correct copy of the First Amended Complaint filed in *Tuttle* on December 20, 2022.

4. Attached hereto as **Exhibit 3** is a true and correct copy of the Complaint filed in this Action on August 18, 2022.

5. As of the filing of this declaration, no written discovery has been served by any

party to this action and no trial date has been set by the Court.

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

Executed the 6th day of February 2023, at Chicago, Illinois.

/s/ *Christine E. Skoczylas*
Christine E. Skoczylas

Exhibit 1

to Skoczylas Declaration

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINTON
AT SEATTLE

STEPHEN J. TUTTLE, an individual, and DUSTIN COLLMAN, an individual; on behalf of themselves and persons similarly situated; Plaintiffs, v. AUDIOPHILE MUSIC DIRECT, INC. d/b/a MUSIC DIRECT, MOBILE FIDELITY, MOBILE FIDELITY SOUND LAB and/or MOFI; Defendant.	No. 2:22-cv-01081 **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

OVERVIEW

1. Defendant Audiophile Music Direct, Inc. ("Music Direct") is a producer and seller of vinyl music recordings. One of its product lines consists of analog recordings that are made without the use of digital processing, i.e., by duplicating the original analog master recordings using only analog processes. Such recordings are referred to a "triple analog," and are highly valued by high-end audiophiles and collectors.

2. Music Direct advertised and otherwise represented that many of its recordings were "triple analog," when in fact they were not. Plaintiffs and members of the putative class reasonably relied upon these representations, purchased the products, and were damaged thereby. Alternatively, Music directs advertising and other statements about the analog characteristics of

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its products were deceptive and misleading and were the proximate cause of the Plaintiffs' and the Class's damages.

3. Plaintiffs seek certification of a nation-wide class action brought under the common law breach of contract, unjust enrichment, and the Illinois Consumer Fraud Act ("CFA"), and certification of a Washington Class under the Washington Consumer Protection/Unfair Business Practices Act, ("CPA") and the above-mentioned common law claims. Each putative class consists of all direct purchasers of the deceptively marketed triple analog recordings.

PARTIES

4. Plaintiff Stephen J. Tuttle is a resident of the State of Washington residing on Camano Island in Island County. At various times during the Class Period, as defined below, Mr. Tuttle purchased directly from Music Direct deceptively advertised triple analog recordings.

5. Plaintiff Dustin Collman is a resident of the State of Oregon. At various times during the Class Period, as defined below, Mr. Collman purchased directly from Music Direct deceptively advertised triple analog recordings.

6. Defendant Audiophile Music Direct, Inc. has its headquarters at 1811 Bryn Mawr Avenue, Chicago, Illinois 60660. It does business as "Music Direct," "Mobile Fidelity," "Mobile Fidelity Sound Lab," and "MoFi."

7. On its website in the "about us" section, Music Direct describes itself as follows: "The world's largest online retailer of high-end audio, audiophile music, and accessories. We specialize in vinyl records and turntables."

8. Music Direct purchased a company doing business as Mobile Fidelity and/or MoFi in 2001. Since then, Mobile Fidelity has been either a subsidiary of Music Direct and/or a tradename of Music Direct.

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9. Music Direct's President is James R. Davis.

10. According to www.referenceusa.com, Music Direct's sales volume has exceeded $40 million dollars from 2017 to the present.

JURISDICTION AND VENUE

11. Plaintiff Stephen J. Tuttle resides in Washington State within the Western District. While residing in the Western District, he received and reviewed communication and advertisements from Music Direct that the defendant purposefully directed into the State of Washington. Thus, Music Direct's wrongful conduct, at least in part, occurred within the jurisdiction of the Western District of Washington.

12. On information and belief, Music Direct has substantial ongoing business relationships in Washington with other consumers and with retailers who purchase and resell its products. Those retailers who purchased fraudulent triple analog vinyl records from Music Direct are within the putative class, and the wrongful conduct directed at them occurred, in whole or in part, within the Western District.

13. Music Direct's numerous and ongoing contacts with the State of Washington are sufficient to establish the court's general personal jurisdiction over Music Direct.

14. In the alternative, Music Direct's wrongful conduct is sufficient for the court to exercise specific jurisdiction over it.

15. There is complete diversity of citizenship between and among the plaintiffs on the one hand and the defendant on the other, and the amount in controversy in this case exceeds $75,000.

16. This Court has jurisdiction over this matter under 28 U.S.C § 1332(a)(1).

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17. Venue is proper under 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omission giving rise to the claims of the plaintiffs occurred within the Western District.

18. Alternatively, venue is proper under 28 U.S.C. § 1391(b)(3), as Music Direct, on information and belief, does business in virtually every district within the United States.

FACTS PERTAINING TO THE PLAINTIFFS AND THE CLASS

19. A certain subset of audiophiles favor analog recordings over the more modern digital records due to a wide range of objective and subjective criteria. In general, however, there is a belief that analog recordings preserve the entire dynamic range of the sound that has been recorded, whereas digital recording limits or compresses the signal in a way that limits the dynamic range. Also, there is a certain emotional and tactile response to the handling and playing of vinyl records.

20. Music Direct has made numerous representations to it target audience of audiophiles that tout its analog records as being entirely reproduced in an analog format. Whereas it is possible to produce an analog vinyl disc from a digital master or a digital reproduction, a triple analog recording is produced along a chain that begins with an analog original master recording and ends with a vinyl record without any intervening digital storage or reproduction. For example, a viewing of MoFi's website from 2019 offered a number of products such as the one illustrated here, with a top banner stating "Original Master Recording."

The Doobie Brothers - The Captain and Me
Hybrid SACD
Our Price: $29.99
Sale Price: $19.99
Savings: $10.00
In Stock

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21. Additionally, Music Direct's production staff made statements to the public guaranteeing that, where advertised, the purported analog recordings were completely analog. An example of this is found at https://www.youtube.com/watch?v=z-td3Uk5TIQ where Mobile Fidelity's technician Shawn R. Britton states: "People ask us, 'Is it an all-analog mastering chain?' It is." *Id*. at the one minute forty-one second mark.

22. Based on this representation of quality and exclusivity, Music Direct was able to charge a high premium for the vinyl recordings it was selling.

23. The Plaintiffs and the Class reasonably relied on Music Direct's representations when making decision to purchase the premium products.

24. The nature, methods, and impact of Music Direct's misrepresentations and omissions have been documented and explained by numerous persons with specialized knowledge in the field of all-analog reproduction and the specialized audiophile market. For example see the following:

- "Breaking News: All Mobile Fidelity titles since 2015 Are digital? My thoughts. https://www.youtube.com/watch?v=CtJRis-Ba1Q&t=27s
- "Did Mobile Fidelity Lie??" https://www.youtube.com/watch?v=S6kFRQ9NTDw&list=PLUbFPDBK0x5P3MJj2rVOlb2J6S3-RRa7-
- "MoFi is Digital!!!" https://www.youtube.com/watch?v=O69pxbUWAeg

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25. Music Direct's President on or about July 27, 2022, acknowledged that the representations that many of the recordings were all-analog were untrue and issued this statement:

> We at Mobile Fidelity Sound Lab are aware of customer complaints regarding use of digital technology in our mastering chain. We apologize for using vague language, allowing false narratives to propagate, and for taking for granted the goodwill and trust our customers place in the Mobile Fidelity Sound Lab brand.
> We recognize our conduct has resulted in both anger and confusion in the marketplace. Moving forward, we are adopting a policy of 100% transparency regarding the provenance of our audio products. We are immediately working on updating our websites, future printed materials, and packaging — as well as providing our sales and customer service representatives with these details. We will also provide clear, specific definitions when it comes to Mobile Fidelity Sound Lab marketing branding such as Original Master Recording (OMR) and UltraDisc One-Step (UD1S). We will backfill source information on previous releases so Mobile Fidelity Sound Lab customers can feel as confident in owning their products as we are in making them.
> We thank you for your past support and hope you allow us to continue to provide you the best-sounding records possible — an aim we've achieved and continue to pursue with pride.
>
> Jim Davis
> President, Mobile Fidelity Sound Lab

26. Prior to that announcement, the Plaintiffs and the Class had no reason to know that Music Direct's representations of triple analog or all-analog were untrue.

27. On information and belief, Music Direct has been materially misrepresenting the "all-analog" nature of some of its recordings since 2015.

28. The Plaintiffs and the Class have been induced to purchase vinyl recordings that were materially mislabeled and suffered damages as a proximate result.

FACTS PERTAINING TO THE PLAINTIFFS

29. Plaintiff Stephen J. Tuttle resides in Washington State. He is an avid audiophile who saw Music Direct's representations about the all-analog recordings and reasonably relied

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thereon. As a proximate result, he purchased a number of recordings from Music Direct at inflated prices and suffered damages thereby.

30. Plaintiff Dustin Collman resides in Oregon. He is an avid audiophile who saw Music Direct's representations about the all-analog recordings and reasonably relied thereon. As a proximate result, he purchased a number of recordings from Music Direct at inflated prices and suffered damages thereby.

CLASS ALLEGATIONS

31. Plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23 on behalf of themselves and all members of the proposed Class.

32. Plaintiffs are proposing two classes, one a Washington Class based on common law breach of contract, unjust enrichment, and the Washington Consumer Protection Act ("CPA"), RCW 19.86 *et seq*. and a national class based on common law breach of contract, unjust enrichment, and the Illinois Consumer Fraud Act ("CFA") 815 ILCS § 505/1 *et seq*.

33. The Washington Class is defined as follows:

> All persons and entities who, during the Class Period in the State of Washington, directly purchased from Music Direct (or its subsidiaries or d/b/a's) vinyl records which were not fully produced by and from analog sources but which were promoted or advertised as being completely produced by and from analog sources and/or which were not completely analog recordings and were labeled in a manner likely to cause deception or confusion among the buyers in the Class.

34. The National Class is defined as follows:

> All persons and entities who, during the Class Period in the United States and its territories and possessions, directly purchased from Music Direct (or its subsidiaries or d/b/a's) vinyl records which were not fully produced by and from analog sources but which were promoted or advertised as being completely produced by and from analog sources and/or which were not completely analog recordings and were labeled in a manner likely to cause deception or confusion among the buyers in the Class.

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35. The Class Period encompasses the time from 2015 (when Music Direct likely began misdescribing its all-analog products) to the present. Alternatively, the Class Period encompasses the time from six years prior to July 27, 2022, to the present.

36. Plaintiffs reserve the right to amend or modify this Complaint and/or the proposed Class definitions after receiving Defendant's Answer and responses to meaningful discovery and/or in the motion for class certification.

37. Based on the size of the Defendant's business and its position in the market for similar products, Plaintiffs believe and allege that the proposed classes consist of a sufficiently large number of members, and individual joinder would be impracticable. The precise number and identities of Class members are unknown to Plaintiffs but should be obtainable through notice and discovery of the Defendant's business records of orders from, payments from, and shipments to the direct purchasers. Notice can be provided through a variety of means including publication, the cost of which is properly imposed on Defendant.

38. Plaintiffs will fairly and adequately protect the interests of all Class members and has retained counsel competent and experienced in class and employment litigation and who have been repeatedly found to be adequate to represent the interests of class members in other complex class actions.

39. Plaintiffs' claims are typical of the claims of the Class whose members sustained similar types of injuries arising out of the conduct challenged in this action. The injuries flow from a common nucleus of policies and practices by the Defendants and are based on the same legal theories.

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40. There is a well-defined community of interest in the common questions of law and/or fact alleged herein since the rights of each Class member were infringed or violated in a similar fashion based upon Defendant's wrongdoing or arise out of similar legal obligations.

41. The common questions of law and fact detailed in this Complaint predominate over any questions solely affecting individual Class members. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs and the Class members. Individual questions, if any, pale by comparison to the numerous common questions that predominate.

42. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Class members is impracticable. Furthermore, the expense and burden of individual litigation make it impossible for the Class members to individually redress the wrongs done to them.

43. The claims in this action are manageable on a class-wide basis and can be the subject of a class-wide plan for litigating and resolving these issues.

CAUSES OF ACTION

Count 1 – Washington Consumer Protection Act – Washington Class

44. As described more fully above, the Defendant offered for sale products that it represented were triple analog, or all-analog, or were from an "all-analog mastering chain."

45. Washington's Consumer Protection/Unfair Business Practices Act ("CPA"), RCW 19.86.020 states that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

46. Under the CPA, "any person injured in their business or property by a violation of [the CPA] may bring a civil action in superior court to enjoin further violations, to recover the

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actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee."

47. Under the CPA, a plaintiff must prove by a preponderance of the evidence the following: an unfair or deceptive act or practice occurring in trade or commerce, public interest impact, injury to plaintiff's business or property, and causation.

48. To find public interest impact in a consumer transaction, five factors apply: whether the alleged act was committed in the course of the defendant's business, whether it was part of a pattern or generalized course of conduct, whether repeated acts were committed prior to the act involving the plaintiff, whether there is a real and substantial potential for repetition of the defendant's conduct following the act involving the plaintiff, and, if the act involved a single transaction, whether many consumers were affected or are likely to be affected by it. Based on the allegations stated above, the public interest element is fully met.

49. Under the CPA, a plaintiff need not show that the defendant intended to deceive, only that the representations had the capacity to deceive a substantial portion of the public. There is no requirement to show reasonable reliance of the deceptive representations.

50. The Defendant's statements and material omissions about the quality of characteristics of certain of its analog vinyl recordings were false and deceptive and/or had the capacity to deceive the buying public.

51. Plaintiffs and the Class suffered damages that were proximate results of the Defendant's wrongful conduct.

52. Plaintiffs and the Class are entitled to recover actual damages, treble damages up to $25,000 per violation, prejudgment interest, and attorneys' fees and costs.

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Counts 2 – Breach of Contract – National Class

53. As described more fully above, the Defendant offered for sale products that it represented were triple analog, or all-analog, or were from an "all-analog mastering chain."

54. Plaintiffs and the Class accepted the offer of the products as described by the Defendant.

55. The products offered by the Defendant were sold with a stated or implied warranty of fitness for a particular purpose, i.e., the reproduction of 100% analog sound by the purchaser. The Defendant breached this warranty.

56. The products offered by the Defendant were sold with an implied warranty of merchantability, i.e., that they products were as stated in the promotions. The Defendant breached this warranty.

57. All contracts contain a warranty of good faith and fair dealing. The Defendant breached this warranty.

58. As a proximate result of the Defendant's breaches of warranty, the Plaintiff and the Class suffered economic injury in the amount of the purchase prices paid and are entitled to recover these sums with prejudgment interest.

Count 3 - Unjust Enrichment – National Class

59. As described more fully above, the Defendant offered for sale products that it represented were triple analog, or all-analog, or were from an "all-analog mastering chain."

60. Plaintiffs and the Class accepted the offer of the products as described by the Defendant.

61. The Defendant's statements and material omissions about the quality of characteristics of certain of its analog vinyl recordings were false and deceptive.

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62. As a proximate result of its wrongful conduct, the Defendant has been unjustly enriched in the amount of the sale prices of the subject merchandise, and Plaintiffs and the Class are entitled to recover these sums.

Count 4 - Breach of the Illinois Consumer Fraud Act – National Class

63. To state a claim under the CFA, a complaint must set forth specific facts that show a deceptive act or practice by the defendant; the defendant's intent that the plaintiff rely on the deception; the deception occurred in the course of conduct involving a trade or commerce; and the consumer fraud proximately caused the plaintiff's injury.

64. The CFA at 815 ILCS 505/2 provides as follows:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act" [815 ILCS 510/2], approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act [15 U.S.C. § 45].

65. The referenced Uniform Deceptive Trade Practices Act, 815 ILCS 510/2 (7), specifically defines as a deceptive act or practice "represent[ing] that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another."

66. As stated more fully above, the Defendant's act of misrepresenting the nature of its purported all-analog vinyl recordings was a violation of 815 ILCS 505/2 and 815 ILCS 510/2 (7), that occurred in the course of trade or commerce. Defendants intended that the Plaintiffs and

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the Class rely on the misrepresentations and/or omissions, and the Plaintiffs and the Class reasonably did so, and thereby suffered compensable damages.

67. The Plaintiffs and the Class are entitled to recover actual damages, prejudgment interest, exemplary damages, attorney's fees, and costs to the extent provided by law.

PRAYER FOR RELIEF

Based upon the above allegations, the Plaintiffs request the following relief as appropriate for each cause of action:

A. An Order certifying that this action be maintained as a class action for all claims and appointing Plaintiffs as Representatives of the Classes and their counsel as Class Counsel;

B. For all actual, incidental, consequential, exemplary and/or statutory damages as provided for by law under the above causes of action that permit such relief including exemplary damages under the common law, the CPA, the CFA, and any other applicable provision of law, and recovery of other monies expended by Plaintiffs and members of the Class;

C. For an award of attorneys' fees to the extent available under applicable law;

D. For costs of suit herein incurred;

E. For pre- and post-judgment interest; and/or

F. For such other and further relief as this Court deems appropriate or which is allowed for in law or equity.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims so triable as a matter of right, and for an advisory jury on all other causes of action.

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DATED: August 2, 2022.

BADGLEY MULLINS TURNER PLLC

/s/Duncan C. Turner
Duncan C. Turner, WSBA No. 20597
19929 Ballinger Way NE, #200
Seattle, WA 98155
Telephone: (206) 621-6566
Email: dturner@badgleymullins.com
Attorneys for Plaintiffs and Putative Class

Exhibit 2

to Skoczylas Declaration

Hon. James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN J. TUTTLE, an individual, and DUSTIN COLLMAN, an individual; on behalf of themselves and persons similarly situated; Plaintiffs, v. AUDIOPHILE MUSIC DIRECT, INC. d/b/a MUSIC DIRECT and MOBILE FIDELITY SOUND LAB, INC. d/b/a MOBILE FIDELITY and/or MOFI; Defendants.	No. 2:22-cv-1081-JLR **FIRST AMENDED CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

OVERVIEW

1. Defendant Audiophile Music Direct, Inc. ("Music Direct") and Mobile Fidelity Sound Lab, Inc. ("MoFi") (collectively "Defendants") are producers and sellers of vinyl music recordings. One of their product lines consists of analog recordings that are made without the use of digital processing, i.e., by duplicating the original analog master recordings using only analog processes. Such recordings are referred to a "triple analog," and are highly valued by high-end audiophiles and collectors.

2. Defendants advertised and otherwise represented that many of their recordings were "triple analog," when in fact they were not. Some of these recordings were purchased directly from Music Direct and MoFi or from retailers who had purchased from one or both of the Defendants. Plaintiffs and members of the putative class reasonably relied upon these

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representations, purchased the products, and were damaged thereby. Alternatively, Defendants' advertising and other statements about the analog characteristics of their products were deceptive and misleading and were the proximate cause of the Plaintiffs' and the Class's damages.

3. The recordings in question ("Subject Recordings") were produced under processes named by the Defendants as either "Original Master Recording" (OMR) or "UltraDisc One-Step" (UD1S).

4. Plaintiffs seek certification of a nation-wide class action brought under the common law breach of contract, unjust enrichment, and the Illinois Consumer Fraud Act ("CFA"), and certification of a Washington Class under the Washington Consumer Protection/Unfair Business Practices Act, ("CPA") and the above-mentioned common law claims. Each putative class consists of all direct purchasers of the Subject Recordings.

PARTIES

5. Plaintiff Stephen J. Tuttle is a resident of the State of Washington residing on Camano Island in Island County. At various times during the Class Period, as defined below, Mr. Tuttle purchased from the Defendants and/or their retailers Subject Recordings.

6. Plaintiff Dustin Collman is a resident of the State of Oregon. At various times during the Class Period, as defined below, Mr. Collman purchased from the Defendants and/or their retailers Subject Recordings.

7. Defendant Audiophile Music Direct, Inc. has its headquarters at 1811 Bryn Mawr Avenue, Chicago, Illinois 60660. It does business as "Music Direct."

8. Defendant Mobile Fidelity Sound Lab, Inc.," has its headquarters at 105 Morris Street, #145, Sebastopol, CA. It does business as "Mobile Fidelity" and "MoFi."

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9. On its website in the "about us" section, Music Direct describes itself as follows: "The world's largest online retailer of high-end audio, audiophile music, and accessories. We specialize in vinyl records and turntables."

10. Music Direct purchased MoFi in 2001. Since then, Mobile Fidelity Sound Lab, Inc. has been either a subsidiary of Music Direct and/or a tradename of Music Direct.

11. Music Direct's and MoFi's President is James R. Davis.

12. According to www.referenceusa.com, Music Direct's sales volume has exceeded $40 million dollars from 2017 to the present.

JURISDICTION AND VENUE

13. Plaintiff Stephen J. Tuttle resides in Washington State within the Western District. While residing in the Western District, he received and reviewed communication and advertisements from Defendants that the defendant purposefully directed into the State of Washington. Thus, Defendants' wrongful conduct, at least in part, occurred within the jurisdiction of the Western District of Washington.

14. On information and belief, Defendants have substantial ongoing business relationships in Washington with other consumers and with retailers who purchase and resell their products.

15. Defendants' numerous and ongoing contacts with the State of Washington are sufficient to establish the court's general personal jurisdiction over Defendants.

16. In the alternative, Defendants' wrongful conduct is sufficient for the court to exercise specific jurisdiction over it.

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17. There is complete diversity of citizenship between and among the plaintiffs on the one hand and the defendant on the other, and the amount in controversy in this case exceeds $75,000.

18. This Court has jurisdiction over this matter under 28 U.S.C § 1332(a)(1).

19. Venue is proper under 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omission giving rise to the claims of the plaintiffs occurred within the Western District.

20. Alternatively, venue is proper under 28 U.S.C. § 1391(b)(3), as Defendants, on information and belief, does business in virtually every district within the United States.

FACTS PERTAINING TO THE PLAINTIFFS AND THE CLASS

21. A certain subset of audiophiles favor analog recordings over the more modern digital records due to a wide range of objective and subjective criteria. In general, however, there is a belief that analog recordings preserve the entire dynamic range of the sound that has been recorded, whereas digital recording limits or compresses the signal in a way that limits the dynamic range. Also, there is a certain emotional and tactile response to the handling and playing of vinyl records.

22. Defendants have made numerous representations to it target audience of audiophiles that tout their analog records as being entirely reproduced in an analog format. Whereas it is possible to produce an analog vinyl disc from a digital master or a digital reproduction, a triple analog recording is produced along a chain that begins with an analog original master recording and ends with a vinyl record without any intervening digital storage or reproduction. For example, a viewing of MoFi's website from 2019 offered a number of products such as the one illustrated here, with a top banner stating "Original Master Recording."

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The Doobie Brothers - The Captain and Me
Hybrid SACD

Our Price: $29.99
Sale Price: $19.99
Savings: $10.00
In Stock

23. Additionally, Defendants' production staff made statements to the public guaranteeing that, where advertised, the purported analog recordings were completely analog. An example of this is found at https://www.youtube.com/watch?v=z-td3Uk5TIQ where Mobile Fidelity's technician Shawn R. Britton states: "People ask us, 'Is it an all-analog mastering chain?' It is." *Id*. at the one minute forty-one second mark.

24. Based on this representation of quality and exclusivity, Defendants were able to charge a high premium for the Subject Recordings.

25. The Plaintiffs and the Class reasonably relied on Defendants' representations when making decision to purchase the premium products.

26. The nature, methods, and impact of Defendants' misrepresentations and omissions have been documented and explained by numerous persons with specialized knowledge in the field of all-analog reproduction and the specialized audiophile market. For example, see the following:

- "Breaking News: All Mobile Fidelity titles since 2015 Are digital? My thoughts. https://www.youtube.com/watch?v=CtJRis-Ba1Q&t=27s

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- "Did Mobile Fidelity Lie??"

  https://www.youtube.com/watch?v=S6kFRQ9NTDw&list=PLUbFPDBK0x5P3MJj2rVOlb2J6S3-RRa7-

- "MoFi is Digital!!!"

  https://www.youtube.com/watch?v=O69pxbUWAeg

27. Defendants' President on or about July 27, 2022, acknowledged that the representations that many of the recordings were all-analog were untrue and issued this statement:

> We at Mobile Fidelity Sound Lab are aware of customer complaints regarding use of digital technology in our mastering chain. We apologize for using vague language, allowing false narratives to propagate, and for taking for granted the goodwill and trust our customers place in the Mobile Fidelity Sound Lab brand.
> We recognize our conduct has resulted in both anger and confusion in the marketplace. Moving forward, we are adopting a policy of 100% transparency regarding the provenance of our audio products. We are immediately working on updating our websites, future printed materials, and packaging — as well as providing our sales and customer service representatives with these details. We will also provide clear, specific definitions when it comes to Mobile Fidelity Sound Lab marketing branding such as Original Master Recording (OMR) and UltraDisc One-Step (UD1S). We will backfill source information on previous releases so Mobile Fidelity Sound Lab customers can feel as confident in owning their products as we are in making them.
> We thank you for your past support and hope you allow us to continue to provide you the best-sounding records possible — an aim we've achieved and continue to pursue with pride.
>
> Jim Davis
> President, Mobile Fidelity Sound Lab

28. Prior to that announcement, the Plaintiffs and the Class had no reason to know that Defendants' representations concerning the Subject Recordings were untrue.

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29. On information and belief, Defendants have been materially misrepresenting the "all-analog" nature of the Subject Recordings since 2002.

30. The Plaintiffs and the Class have been induced to purchase vinyl recordings that were materially mislabeled and suffered damages as a proximate result.

FACTS PERTAINING TO THE PLAINTIFFS

31. Plaintiff Stephen J. Tuttle resides in Washington State. He is an avid audiophile who saw Defendants' representations about the all-analog recordings and reasonably relied thereon. As a proximate result, he purchased a number of Subject Recordings from Defendants at inflated prices and suffered damages thereby.

32. Plaintiff Dustin Collman resides in Oregon. He is an avid audiophile who saw Defendants' representations about the all-analog recordings and reasonably relied thereon. As a proximate result, he purchased a number of Subject Recordings from Defendants at inflated prices and suffered damages thereby.

CLASS ALLEGATIONS

33. Plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23 on behalf of themselves and all members of the proposed Class.

34. Plaintiffs are proposing two classes, one a Washington Class based on common law breach of contract, unjust enrichment, and the Washington Consumer Protection Act ("CPA"), RCW 19.86 *et seq*. and a national class based on common law breach of contract, unjust enrichment, and the Illinois Consumer Fraud Act ("CFA") 815 ILCS § 505/1 *et seq*.

35. The Washington Class is defined as follows:

> All persons and entities who, during the Class Period in the State of Washington, directly purchased from Defendants or their retailer's vinyl records that were manufactured using processes known as Original Master Recording (OMR) and UltraDisc One-Step (UD1S).

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36. The National Class is defined as follows:

> All persons and entities who, during the Class Period in the United States and its territories and possessions, Original Master Recording (OMR) and UltraDisc One-Step (UD1S).

37. The Class Period encompasses the time from at least 2002 (when Defendants likely began misdescribing Subject Recordings as "all analog" or similar descriptions) to the present.

38. Plaintiffs reserve the right to amend or modify this Complaint and/or the proposed Class definitions after receiving Defendant's Answers and responses to meaningful discovery and/or in the motion for class certification.

39. Based on the size of the Defendant's business and their position in the market for similar products, Plaintiffs believe and allege that the proposed classes consist of a sufficiently large number of members, and individual joinder would be impracticable. The precise number and identities of Class members are unknown to Plaintiffs but should be obtainable through notice and discovery of the Defendant's business records of orders from, payments from, and shipments to the direct purchasers. Notice can be provided through a variety of means including publication, the cost of which is properly imposed on Defendants.

40. Plaintiffs will fairly and adequately protect the interests of all Class members and has retained counsel competent and experienced in class and employment litigation and who have been repeatedly found to be adequate to represent the interests of class members in other complex class actions.

41. Plaintiffs' claims are typical of the claims of the Class whose members sustained similar types of injuries arising out of the conduct challenged in this action. The injuries flow from a common nucleus of policies and practices by the Defendants and are based on the same legal theories.

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42. There is a well-defined community of interest in the common questions of law and/or fact alleged herein since the rights of each Class member were infringed or violated in a similar fashion based upon Defendant's wrongdoing or arise out of similar legal obligations.

43. The common questions of law and fact detailed in this Complaint predominate over any questions solely affecting individual Class members. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs and the Class members. Individual questions, if any, pale by comparison to the numerous common questions that predominate.

44. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Class members is impracticable. Furthermore, the expense and burden of individual litigation make it impossible for the Class members to individually redress the wrongs done to them.

45. The claims in this action are manageable on a class-wide basis and can be the subject of a class-wide plan for litigating and resolving these issues.

CAUSES OF ACTION

Count 1 – Washington Consumer Protection Act – Washington Class

46. As described more fully above, the Defendant offered for sale products that they represented were triple analog, or all-analog, or were from an "all-analog mastering chain."

47. Washington's Consumer Protection/Unfair Business Practices Act ("CPA"), RCW 19.86.020 states that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

48. Under the CPA, "any person injured in their business or property by a violation of [the CPA] may bring a civil action in superior court to enjoin further violations, to recover the

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actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee."

49. Under the CPA, a plaintiff must prove by a preponderance of the evidence the following: an unfair or deceptive act or practice occurring in trade or commerce, public interest impact, injury to plaintiff's business or property, and causation.

50. To find public interest impact in a consumer transaction, five factors apply: whether the alleged act was committed in the course of the defendant's business, whether it was part of a pattern or generalized course of conduct, whether repeated acts were committed prior to the act involving the plaintiff, whether there is a real and substantial potential for repetition of the defendant's conduct following the act involving the plaintiff, and, if the act involved a single transaction, whether many consumers were affected or are likely to be affected by it. Based on the allegations stated above, the public interest element is fully met.

51. Under the CPA, a plaintiff need not show that the defendant intended to deceive, only that the representations had the capacity to deceive a substantial portion of the public. There is no requirement to show reasonable reliance of the deceptive representations.

52. The Defendant's statements and material omissions about the quality of characteristics of Subject Recordings were false and deceptive and/or had the capacity to deceive the buying public.

53. Plaintiffs and the Class suffered damages that were proximate results of the Defendant's wrongful conduct.

54. Plaintiffs and the Class are entitled to recover actual damages, treble damages up to $25,000 per violation, prejudgment interest, and attorneys' fees and costs.

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Counts 2 – Breach of Contract – National Class

55. As described more fully above, the Defendant offered for sale products that they represented were triple analog, or all-analog, or were from an "all-analog mastering chain."

56. Plaintiffs and the Class accepted the offer of the Subject Recordings as described by the Defendants.

57. The products offered by the Defendants were sold with a stated or implied warranty of fitness for a particular purpose, i.e., the reproduction of 100% analog sound by the purchaser. The Defendants breached this warranty.

58. The Subject Recordings offered by the Defendants were sold with an implied warranty of merchantability, i.e., that they products were as stated in the promotions. The Defendants breached this warranty.

59. All contracts contain a warranty of good faith and fair dealing. The Defendants breached this warranty.

60. As a proximate result of the Defendant's breaches of warranty, the Plaintiff and the Class suffered economic injury in the amount of the purchase prices paid and are entitled to recover these sums with prejudgment interest.

Count 3 - Unjust Enrichment – National Class

61. As described more fully above, the Defendants offered for sale Subject Recordings that they represented were triple analog, or all-analog, or were from an "all-analog mastering chain."

62. Plaintiffs and the Class accepted the offer of the Subject Recordings as described by the Defendant.

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63. The Defendant's statements and material omissions about the quality of characteristics of Subject Recordings were false and deceptive.

64. As a proximate result of their wrongful conduct, the Defendant have been unjustly enriched in the amount of the sale prices of the subject merchandise, and Plaintiffs and the Class are entitled to recover these sums.

Count 4 - Breach of the Illinois Consumer Fraud Act – National Class

65. To state a claim under the CFA, a complaint must set forth specific facts that show a deceptive act or practice by the defendant; the defendant's intent that the plaintiff rely on the deception; the deception occurred in the course of conduct involving a trade or commerce; and the consumer fraud proximately caused the plaintiff's injury.

66. The CFA at 815 ILCS 505/2 provides as follows:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act" [815 ILCS 510/2], approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act [15 U.S.C. § 45].

67. The referenced Uniform Deceptive Trade Practices Act, 815 ILCS 510/2 (7), specifically defines as a deceptive act or practice "represent[ing] that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another."

68. As stated more fully above, the Defendant's acts of misrepresenting the nature of Subject Recordings was a violation of 815 ILCS 505/2 and 815 ILCS 510/2 (7), that occurred in

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the course of trade or commerce. Defendants intended that the Plaintiffs and the Class rely on the misrepresentations and/or omissions, and the Plaintiffs and the Class reasonably did so, and thereby suffered compensable damages.

69. The Plaintiffs and the Class are entitled to recover actual damages, prejudgment interest, exemplary damages, attorney's fees, and costs to the extent provided by law.

PRAYER FOR RELIEF

Based upon the above allegations, the Plaintiffs request the following relief as appropriate for each cause of action:

A. An Order certifying that this action be maintained as a class action for all claims and appointing Plaintiffs as Representatives of the Classes and their counsel as Class Counsel;

B. For all actual, incidental, consequential, exemplary and/or statutory damages as provided for by law under the above causes of action that permit such relief including exemplary damages under the common law, the CPA, the CFA, and any other applicable provision of law, and recovery of other monies expended by Plaintiffs and members of the Class;

C. For an award of attorneys' fees to the extent available under applicable law;

D. For costs of suit herein incurred;

E. For pre- and post-judgment interest; and/or

F. For such other and further relief as this Court deems appropriate or which is allowed for in law or equity.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims so triable as a matter of right, and for an advisory jury on all other causes of action.

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DATED: December 20, 2022.

BADGLEY MULLINS TURNER PLLC

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Attorneys for Plaintiffs and Putative Class

CERTIFICATE OF SERVICE

I hereby certify that on December 20th, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Yonten Dorjee
Yonten Dorjee, Paralegal
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Exhibit 3

to Skoczylas Declaration

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ADAM STILES, individually and on behalf of all others similarly situated, Plaintiff, v. MOBILE FIDELITY SOUND LAB, INC., Defendant.	Case No. **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff Adam Stiles ("Plaintiff") brings this action on behalf of himself, and all others similarly situated against Defendant Mobile Fidelity Sound Lab, Inc. ("MoFi" or "Defendant"). Plaintiff makes the following allegations based upon information and belief, except as to allegations specifically pertaining to himself, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action suit brought against Defendant for the production and sale of vinyl records labeled as "Original Master Recording" or records sold as part of the "Ultradisc One Step" series (the "Records").

2. As discussed throughout this Complaint, Defendant advertised the Records as being purely analog recordings—*i.e.*, directly from the master recording or original analog tapes—without any sort of digital mastering process. Defendant also charged a price premium for the Records based on the same. And indeed, these representations *used to* be true.

3. However, since 2011, Defendant has been using digital mastering or digital files—specifically, Direct Stream Digital ("DSD") technology—in its production chain. Worse still, Defendant continued to misrepresent to consumers that it did not use digital mastering, or

otherwise failed to disclose the use of digital mastering, while still charging the same price premium for the Records as if they were entirely analog recordings.

4. Analog records are coveted not only for their superior sound quality, but also for their collectability. Original recording tapes age, so only a limited number of analog recordings can be produced. Further, because analog tapes are those used to record songs in the studio, a record cut from original analog tapes is as close to the studio recording as one can get. Digital recordings, by contrast, do not carry as much value because they can be reproduced infinitely; once a digital recording is made, it can be copied as many times as a person desires.

5. Thus, when Defendant began using a digital mastering process in its Records as opposed to purely analog, it inherently produced less valuable records—because the records were no longer of limited quantity and were not as close to the studio recording—yet still charged the higher price it proscribed to the allegedly all-analog recording process.

6. Had Defendant not misrepresented that the Records were purely analog recordings, or otherwise disclosed that the Records included digital mastering in their production chain, Plaintiff and putative Class Members would not have purchased the Records or would have paid less for the Records than they did.

7. Plaintiff and Class Members were accordingly injured by the price premium they paid for inferior Records.

8. Plaintiff brings this action individually and on behalf of a class of all other similarly situated purchasers to recover damages and restitution for: (i) breach of express warranty; (ii) breach of implied warranty, (iii) violation of the Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. §§ 2301, *et seq.*, (iv) fraud, (v) unjust enrichment, (vi) violation of the North Carolina Unfair and Deceptive Trade Practices Act ("NCTPA"), N.C.G.S. §§ 75-1.1, *et seq.*, and (vii) violation of state consumer fraud acts.

PARTIES

9. Plaintiff Adam Stiles is a resident of Charlotte, North Carolina and has an intent to remain there, and is therefore a citizen of North Carolina. Mr. Stiles has purchased various records from MoFi over the years. Most recently, in or about February 2022, Mr. Stiles purchased The Pretenders' self-titled debut album for approximately $40, directly from MoFi via MoFi's website while Mr. Stiles was in North Carolina. Prior to and at the time of purchase, Mr. Stiles reviewed the representations on MoFi's website regarding the Record, including that the Record was an "original master recording," as well as representations on the Record itself that the Record was made using the "Gain 2 Ultra Analog System," which "only utilize[s] first generation original master recordings as source material," and that "any sonic artifacts present are a product of the original master tape." Nowhere on either the website or on the Record itself was there a representation that digital mastering or DSD was used as part of the recording or mastering process. Mr. Stiles relied on these representations and omissions in deciding to purchase the Record. Accordingly, these representations and omissions formed the basis of the bargain in that, had Mr. Stiles been aware that the Record used digital remastering or DSD technology, he would not have purchased the Record, or would have paid significantly less for it. In or about July 2022, Mr. Stiles discovered that his Record used DSD technology as part of the mastering chain.

10. Defendant Mobile Fidelity Sound Lab, Inc. is an Illinois corporation with a principal place of business at 1811 West Bryn Mawr Avenue, Chicago, Illinois 60660. Defendant produced and sold the Records to consumers throughout the United States, including in the state of North Carolina.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 1332(d)(2)(a) because this case is a class action where the aggregate claims of all members of the proposed

class are in excess of $5,000,000.00, exclusive of interest and costs, there are approximately 5,000 members of the putative class, and Plaintiff, as well as most members of the proposed Class, are citizens of states different from Defendant.

12. This Court has general personal jurisdiction over Defendant because Defendant is incorporated and maintains its principal place of business in Illinois.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant resides in this District.

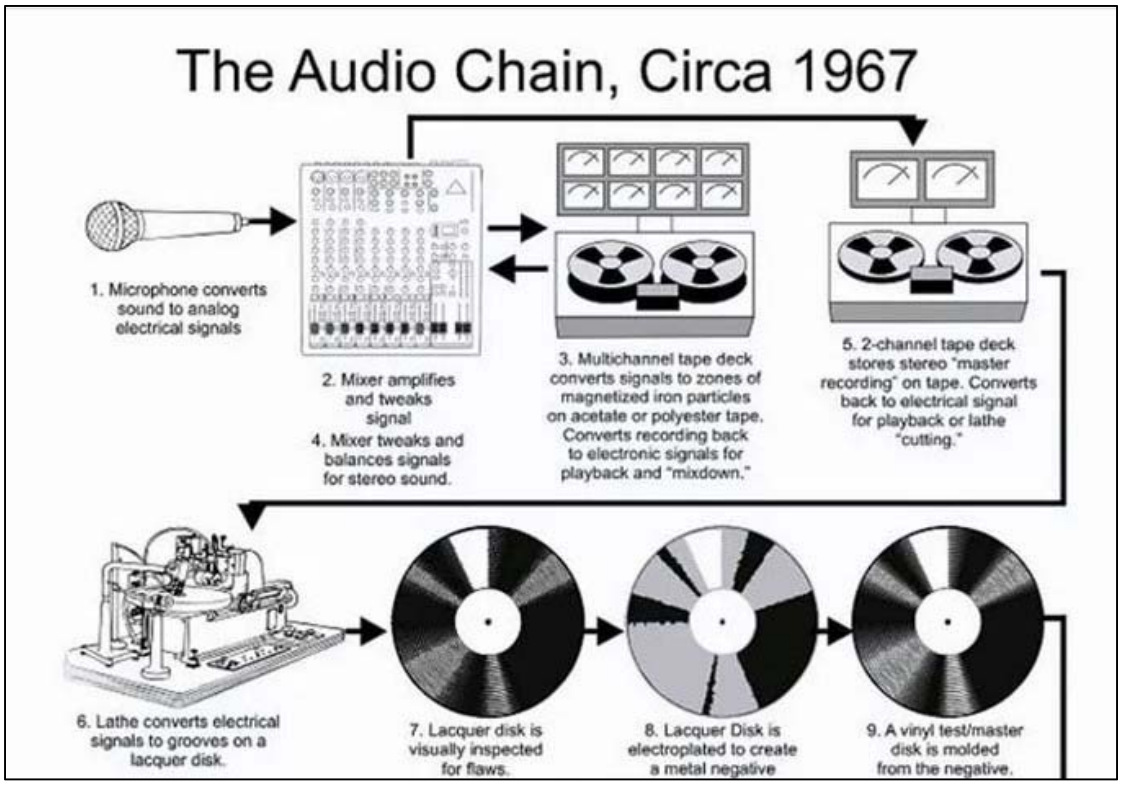
FACTUAL ALLEGATIONS

I. An Overview Of The Record Production Process And Analog Versus Digital Technologies

14. The production of a vinyl record begins with a studio recording. Specifically, a musician will record an album at a studio, and the songs on the album will be preserved and finalized on an analog tape. This tape is known as the "original master recording."

15. To make (or "cut") a vinyl record from an analog tape, a sound engineer uses a

console (called a "lathe") to cut grooves into a vinyl record that create the sounds on the tape.



16. Vinyl records made in this manner are considered "cut from the analog" or "all-analog recordings" because they are made directly from the analog (or studio) tapes. However, making a vinyl record this way is a time-intensive process. Further, making a vinyl record in this manner means constantly playing the analog tape, which can cause the tape to deteriorate over time.

17. To avoid the problem of deterioration, some vinyl records today are made from digital recordings. In this scenario, the analog tape is copied to a digital recording. That digital recording is then used to press the vinyl record, instead of the original analog tape.

18. The advantage of digital recording is that once a recording its digitized, it can be copied endlessly, allowing producers to save on costs and prevent the analog tape from deteriorating. That is, whereas an all-analog recording means playing the analog tape as many times as a producer would like to make a vinyl record, digital means playing the analog tape once to record it to digital, and then using the digital recording to press the vinyl record. However,

some of the sound quality is lost when an analog tape is converted to digital, and digital records are not as collectible or valuable as all-analog records because digital records can be infinitely produced.

19. One method of creating a digital recording is "direct stream digital" or "DSD." DSD captures audio from the analog tapes at a higher resolution than other digital formats, and the DSD recording can then be used to mass produce a vinyl record. DSD creates this higher resolution by sampling the analog tape audio at a higher rate per second than other digital formats. Whether DSD is superior to other digital formats, however, it is nonetheless a digital recording that diminishes the quality and collectability compared to all-analog recordings.

II. Defendant Misrepresents That Its Records Do Not Use Digital Technology, And Fails To Disclose The Use Of Digital Technology In Its Mastering Chain

20. Defendant MoFi is a record label that specializes in the production of high-fidelity vinyl records. MoFi has produced records for various artists, many of which are limited release.

21. MoFi also notes on its website that it "believes that mastering systems should be neutral and transparent. The essential idea is to unveil all the detailed musical information on the original master recording without adding deterioration, coloration or other sonic artifacts."[1]

22. MoFi produces and sells various types of vinyl records. Of note here are those Records that MoFi represents are "Original Master Recording" and/or part of the "Ultradisc One Step" series. Reasonable consumers purchasing the Records, including Plaintiff, understood MoFi's various representations and omissions regarding these records to mean that the Records were entirely analog recordings, with no digital mastering or DSD technology.

23. MoFi specifically designated the Records as "Original Master Recording[s]," including all Records produced as part of MoFi's "Ultradisc One Step" series. "In the music

[1] https://mofi.com/pages/about-us.

business, a master recording is the official original recording of a song, sound[,] or performance … Master recordings can be distinguished as tapes, discs, pro tools session files *and digital formats such as MP3s*."[2] Thus, any consumer seeing the designation "Original Master Recording" would understand such a Record to be the "original recording of a song"—*i.e.*, an all-analog recording—*without* any digital remastering.

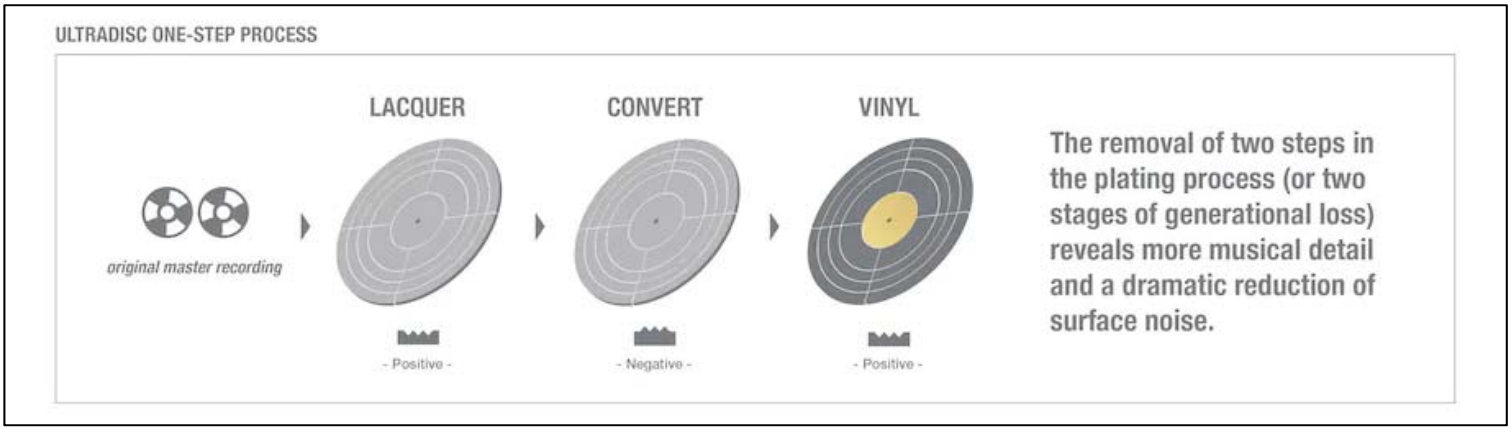
24. MoFi made it very clear which of its records were all analog and which were not via a banner on the front of each record. Specifically, the Records were labeled as "Original Master Recording"—such as the album Plaintiff purchased—connotating they were all-analog recordings, while those that were not all-analog were labeled as "Mobile Fidelity Sound Lab":

25. Of course, MoFi charged more for those records designated as "Original Master Recording" than those that were not.

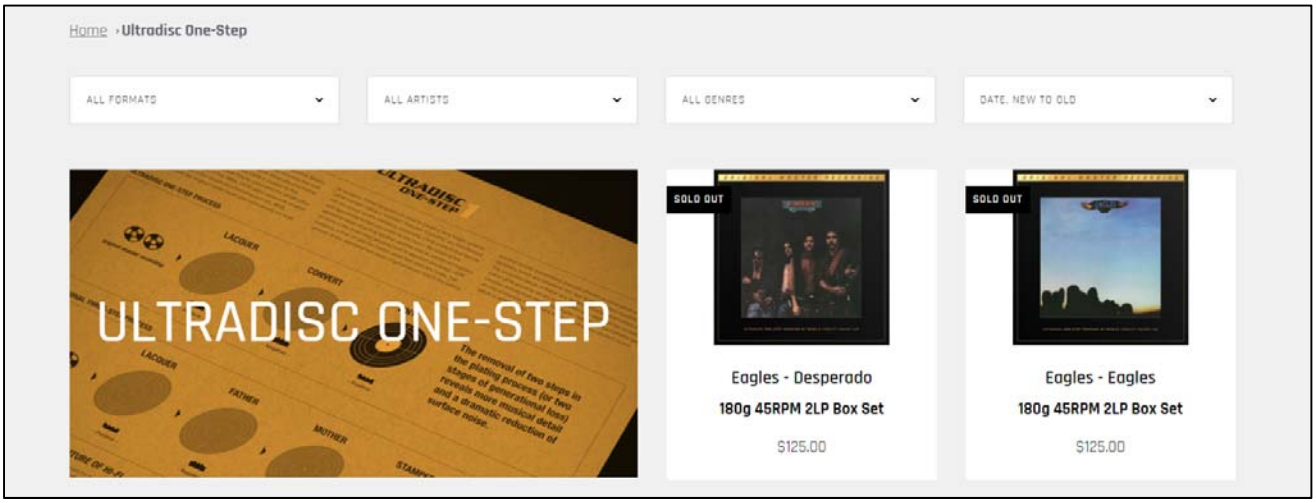
26. MoFi also represented to consumers on the Records themselves that the Records did not use digital remastering, or otherwise failed to disclose the same. For instance, prior to July

[2] https://mixbutton.com/mastering-articles/what-is-the-master-recording/ (emphasis added).

2022, each Record that was produced as part of the "Ultradisc One-Step" process included the following chart in the Record's sleeve describing the process:

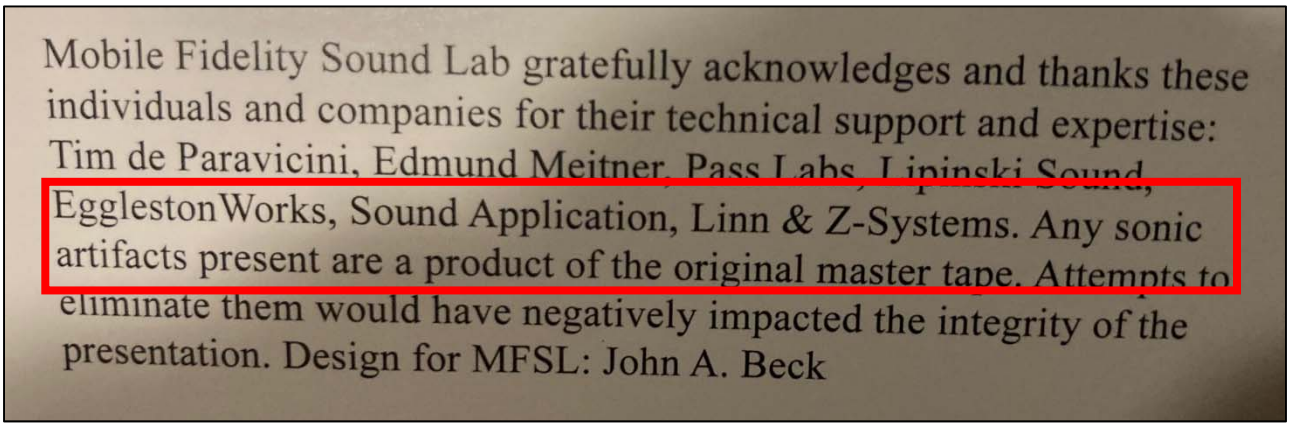


27. The chart shows the original master recording being transferred directly to the vinyl recording, without any intermediary step involving a digital remaster. The chart was also prominently displayed on the "Ultradisc One-Step" category of MoFi's website prior to July 2022[3]:



28. The Record purchased by Plaintiff contains similar representations. For instance, the Record specifically notes in the Record's sleeve that "any sonic artifacts present *are a product of the original master tape*":

[3] http://web.archive.org/web/20211021112037/https://mofi.com/collections/ultradisc-one-step.


Mobile Fidelity Sound Lab gratefully acknowledges and thanks these individuals and companies for their technical support and expertise: Tim de Paravicini, Edmund Meitner, Pass Labs, Lipinski Sound, EgglestonWorks, Sound Application, Linn & Z-Systems. Any sonic artifacts present are a product of the original master tape. Attempts to eliminate them would have negatively impacted the integrity of the presentation. Design for MFSL: John A. Beck

29. Plaintiff's Record also notes it was made using MoFi's "Gain 2 Ultra Analog System for Vinyl." Aside from having "analog" in the name of the process, at the time Plaintiff purchased his Record, MoFi described the Gain 2 process as "only utiliz[ing] *first generation original master recordings* as source material for our releases."[4]

30. Further, each Record is given its own page and description on MoFi's website. On none of these pages did MoFi indicate that any of its Records made use of digital mastering technologies such as DSD.

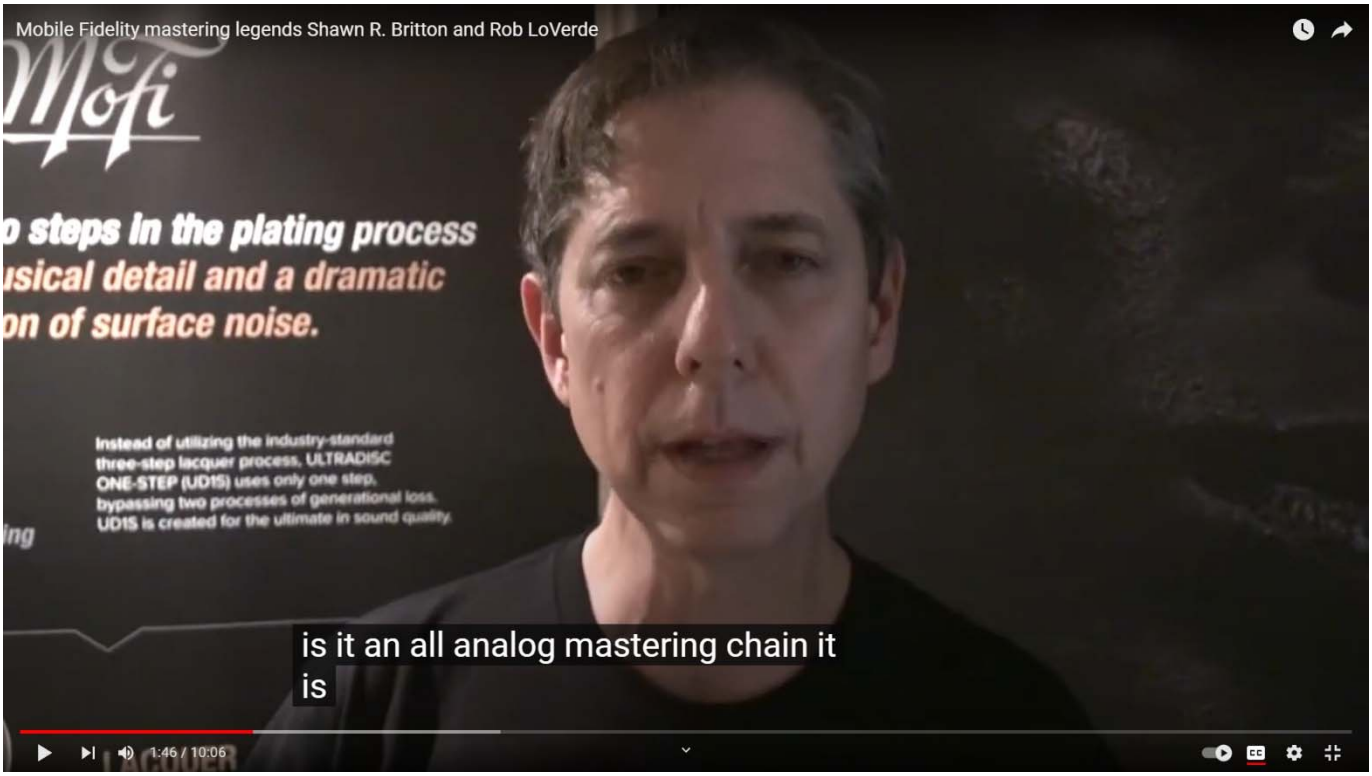
31. MoFi cemented these representations in various interviews it gave over the years. For instance, in 2010, one of MoFi's mastering engineers maintained that "every MoFi LP—which was originally recorded to analog—is cut from an analog master tape." This is in contrast to other companies, whose vinyl records "are now cut from digital masters." Thus, the interviewer noted MoFi records produced "pure analog … sound[]."[5]

32. Similarly, in 2017, two of MoFi's mastering engineers gave an interview regarding

[4] http://web.archive.org/web/20211018014348/https://mofi.com/pages/technologies#GAIN2_Analog (emphasis added).

[5] Steve Guttenberg, MoFi Remasters, Perfects LP Sound, CNET, Apr. 29, 2010, https://www.cnet.com/tech/home-entertainment/mofi-remasters-perfects-lp-sound/.

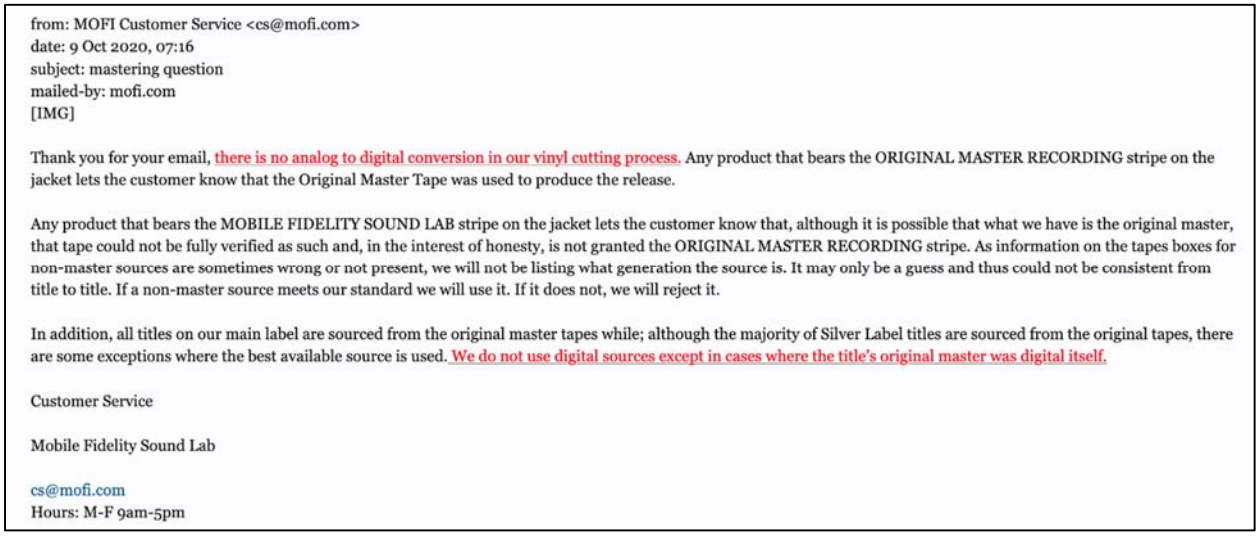
MoFi's production process. When asked about the "Gain 2 Ultra Analog System"—the system used to produce the Record Plaintiff purchased—the mastering engineers noted that "some people ask us questions like is it an all analog master chain? *It is*."[6]



33. Further, in 2020, MoFi sent customer service e-mails to consumers informing consumers "there is no analog to digital conversion in our vinyl cutting process. Any product that bears the ORIGINAL MASTER RECORDING stripe on the jacket lets the customer know that

[6] https://youtu.be/z-td3Uk5TIQ?t=100.

the Original Master Tape was used to produce the release":



from: MOFI Customer Service <cs@mofi.com>
date: 9 Oct 2020, 07:16
subject: mastering question
mailed-by: mofi.com
[IMG]

Thank you for your email, there is no analog to digital conversion in our vinyl cutting process. Any product that bears the ORIGINAL MASTER RECORDING stripe on the jacket lets the customer know that the Original Master Tape was used to produce the release.

Any product that bears the MOBILE FIDELITY SOUND LAB stripe on the jacket lets the customer know that, although it is possible that what we have is the original master, that tape could not be fully verified as such and, in the interest of honesty, is not granted the ORIGINAL MASTER RECORDING stripe. As information on the tapes boxes for non-master sources are sometimes wrong or not present, we will not be listing what generation the source is. It may only be a guess and thus could not be consistent from title to title. If a non-master source meets our standard we will use it. If it does not, we will reject it.

In addition, all titles on our main label are sourced from the original master tapes while; although the majority of Silver Label titles are sourced from the original tapes, there are some exceptions where the best available source is used. We do not use digital sources except in cases where the title's original master was digital itself.

Customer Service

Mobile Fidelity Sound Lab

cs@mofi.com
Hours: M-F 9am-5pm

34. Based on these representations—on MoFi's website, on the Records themselves, in interviews, and in communications with consumers—Plaintiff and other purchasers of the Records were led to believe that all of the Records were entirely analog and mastered without the use of digital techniques like DSD. Simultaneously, MoFi did not disclose to consumers or otherwise state that the Records were mastered using digital techniques like DSD, and Plaintiff and other consumers believed the Records were all-analog based on these omissions.

III. Defendant's Use Of Digital Technology And DSD In Its Mastering Chain Are Uncovered

35. Prior to 2011, Defendant's representations were largely true. However, since 2011, Defendant has been making use of digital techniques such as DSD in its remastering chain. By the end of 2011, 60% of vinyl releases incorporated DSD, and MoFi's last non-DSD recording was in 2020.

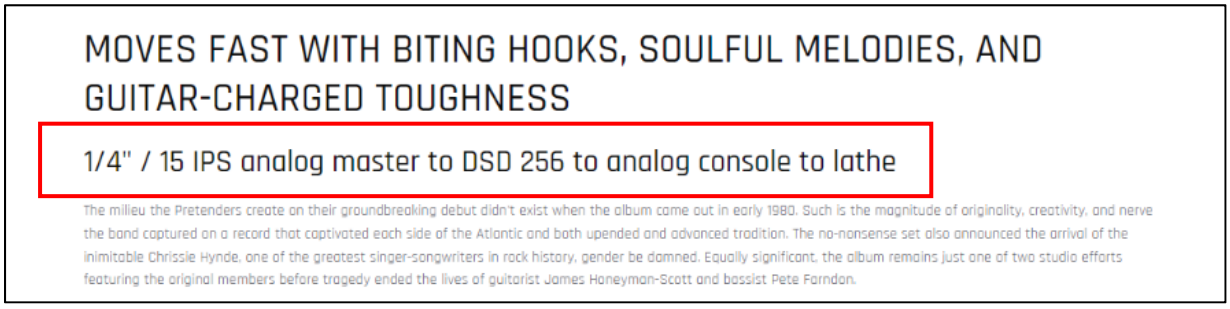
36. MoFi never disclosed this fact, nor did it change its representations to reflect the fact that its Records were using DSD. Instead, MoFi intentionally hid this fact from consumers until a July 2022 interview where MoFi's engineers revealed the truth:

> Q: A lot of people I feel are under the assumption that everything you guys have done and everything you've ever done has been from analog … Are you doing everything analog or do we have any digital in the process?
>
> …
>
> A: I think what you're getting at in the question … is there any digital in the chain? We do have [] 4x DSD.[7]

37. In other words, these engineers revealed that MoFi has been using digital remastering—specifically, DSD—in its production chain, and that the Records were not in fact "all-analog" as previously represented.

38. Although MoFi moved quickly to rectify its misleading advertising and disclose the use of digital remastering in the Records, MoFi's corrections demonstrated the breadth of MoFi's representations and omissions and the material information MoFi misrepresented or failed to disclose. For instance, the product page for the Record Plaintiff purchased previously made no mention of the use of DSD technology.[8]

39. Now, MoFi's use of DSD is front and center.[9]

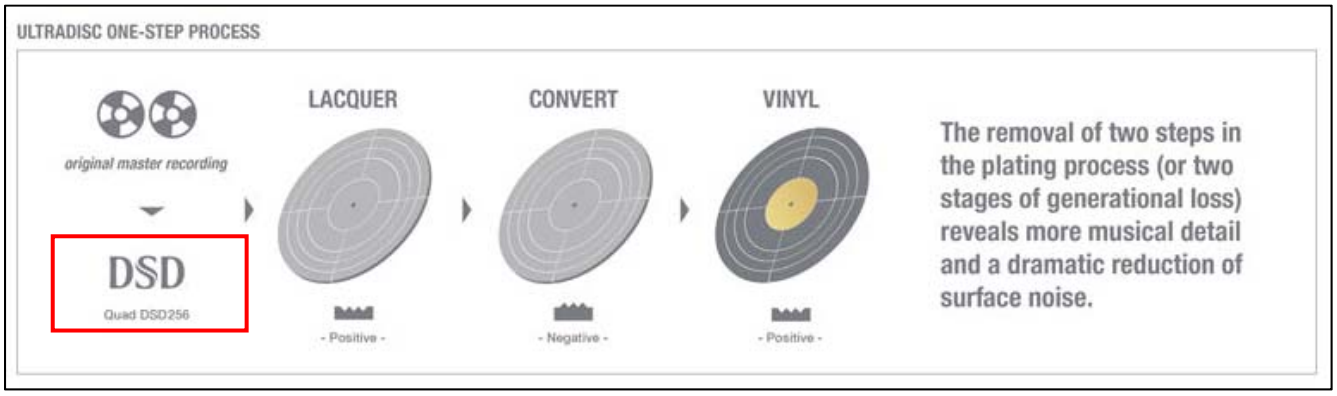


[7] https://youtu.be/shg0780YgAE?t=44

[8] http://web.archive.org/web/20211018015037/https://mofi.com/products/mfsl1-372_pretenders_pretenders_180g_lp.

[9] https://mofi.com/products/mfsl1-372_pretenders_pretenders_180g_lp.

40. Similarly, the chart MoFi included for its "Ultradisc One-Step" recordings made no mention of the use of DSD. Now, that chart has been amended to reflect the use of DSD in the production chain:



41. These "corrective" representations demonstrate that not only were MoFi's misrepresentations and omissions done knowingly, but that MoFi failed to disclose or otherwise misrepresented material information to consumers regarding MoFi's production process.

IV. Consumers Pay A Price Premium For All-Analog Recordings

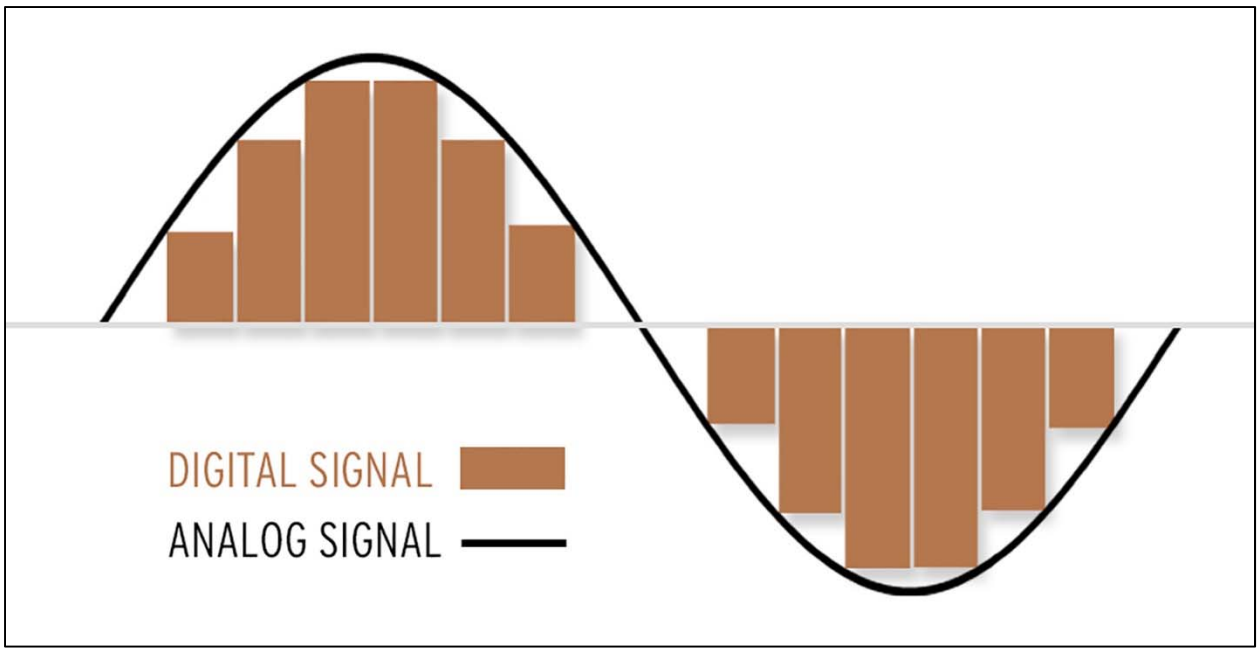
42. MoFi's misrepresentations and omissions were not just disingenuous, they also caused economic injury to Plaintiff and other consumers.

43. Consumers are willing to pay a premium for all-analog recordings for numerous reasons. *First*, an analog recording is as close to a studio recording as one can get, "like reading literature in the original language," whereas "converting analog recordings to digital inevitably changes the sound in ways the band never intended."[10] For that reason, many consumers maintain that analog recordings sound better than digital recordings.

44. Part of this is a result of the concept of "losslessness." When a recording is compressed so that it can be converted to digital, it loses frequencies "at the very highest and

[10] Steve Guttenberg, *Digital and Analog Audio's Curious Coexistence*, CNET, Apr. 28, 2018, https://www.cnet.com/tech/home-entertainment/digital-and-analog-audios-curious-coexistence/

lowest of a record." By contrast, an analog recording maintains the full spectrum of frequencies. Digital recordings that maintain most of but not the entirety of the range of frequencies are referred to as "near-lossless," but are not the same as an entirely "lossless" recording[11]:



45. *Second*, analog recordings are more collectible because only a limited quantity can be produced. Digital recordings are exact copies of one another that can duplicated indefinitely, theoretically without any loss in quality or degradation. So, once a digital recording is made, it can be copied infinite times and each copy will sound the same. However, this means digital recordings are not as collectible because there are an infinite number, and a vinyl record using digital remastering will sound the same as a digital record streamed on Spotify or Apple Music. By contrast, the original tapes degrade over time, meaning only a limited number of analog recordings can be made using the original master tapes until the tapes no longer function. Each analog recording may also sound different the further it is from the original (*i.e.*, the first analog recording may sound different from the one-hundredth). However, that also means that analog

[11] Devon Dean, *Analog vs Digital Media: Which Is Better?*, THE KLIPSCH JOINT, May 17, 2021, https://www.klipsch.com/blog/analog-vs-digital-media-which-is-better.

recordings are more collectible and more valuable because only a limited number can be produced before the original master tape deteriorates.

46. MoFi recognizes that analog recordings are more valuable than digital recordings, which is why it charges a premium for the same. Indeed, the Records are the most expensive vinyl records that MoFi sells, ranging from $40 (for the Record Plaintiff purchased) all the way up to $125 for some of the "Ultradisc One-Step" recordings. By contrast, MoFi sells its digital recordings for $30 or less.

47. Accordingly, MoFi charged Plaintiff and other Class Members a premium based on MoFi's representations that the Records were all-analog, and MoFi's failure to disclose that the Records made use of digital technologies like DSD in the production chain. Had MoFi disclosed that its Records used DSD, or otherwise not mispresented that its Records were all-analog, Plaintiff and other Class Members would not have purchased the Records, or would have paid less for them. Plaintiff and Class Members were thus injured by the price premium attributable to MoFi's representations regarding the all-analog nature of its Records, and MoFi's omissions regarding the use of DSD or other digital technologies in the Record's production.

CLASS ALLEGATIONS

48. **Class Definition:** Pursuant to Fed. R. Civ. P. 23(a) and (b)(3), Plaintiff seeks to represent a class defined as all persons in the United States who purchased a Record prior to July 15, 2022 (the "Class"). Specifically excluded from the Class are Defendant, Defendant's officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint ventures, or entities controlled by Defendant, and its heirs, successors, assigns, or other persons or entities related to or affiliated with Defendant and/or Defendant's officers and/or directors, the judge assigned to this action, any member of the judge's immediate family, and any person who purchased a Record used.

49. Plaintiff also seeks to represent a subclass consisting of Class Members who purchased the Records in North Carolina prior to July 15, 2022 (the "Subclass").

50. Collectively, the Class and the Subclass Class shall be known as the "Classes."

51. Subject to additional information obtained through further investigation and discovery, the above-described Classes may be modified or narrowed as appropriate, including through the use of multi-state subclasses.

52. **Numerosity:** The number of persons within the Classes is substantial, believed to amount to thousands of persons. It is, therefore, impractical to join each member of the Classes as a named plaintiff. Further, the size and relatively modest value of the claims of the individual members of the Classes renders joinder impractical. Accordingly, utilization of the class action mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation. Moreover, the Classes are ascertainable and identifiable from Defendant's records.

53. **Commonality and Predominance:** There are well-defined common questions of fact and law that exist as to all members of the Classes and that predominate over any questions affecting only individual members of the Classes. These common legal and factual questions, which do not vary between members of the Classes, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

(a) whether Defendant's labeling, marketing, and promotion of the Records was false and misleading;

(b) whether Defendant's conduct was unfair and/or deceptive; and

(c) whether Plaintiff and Class and Subclass Members have sustained damages with respect to the claims asserted, and if so, the proper measure of their damages.

54. **Typicality.** The claims of the named Plaintiff are typical of the claims of other members of the Classes in that the named Plaintiff was exposed to Defendant's false and

misleading misrepresentations and omissions, purchased a Record in reliance on the same misrepresentations and omissions, and suffered a loss as a result of that purchase.

55. **Adequacy of Representation:** Plaintiff has retained and is represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation. Plaintiff and his counsel are committed to vigorously prosecuting this class action. Moreover, Plaintiff is able to fairly and adequately represent and protect the interests of the Classes. Neither Plaintiff nor his counsel have any interest adverse to, or in conflict with, the interests of the absent members of the Classes. Plaintiff has raised viable statutory claims of the type reasonably expected to be raised by members of the Classes, and will vigorously pursue those claims. If necessary, Plaintiff may seek leave of this Court to amend this Class Action Complaint to include additional representatives to represent the Classes, to include additional claims as may be appropriate, or to amend the definition of the Classes to address any steps that Defendant took.

56. **Superiority:** A class action is an appropriate method for the fair and efficient adjudication of this controversy because individual litigation of the claims of all members of the Classes is impracticable. Even if every member of the Classes could afford to pursue individual litigation, the Court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents few management difficulties, conserves the resources of the parties and of the court system and protects the rights of each member of the Classes. Plaintiff anticipates no difficulty in the management of this action as a class action.

CAUSES OF ACTION

COUNT I
Breach of Express Warranty

57. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

58. Plaintiff brings this claim individually and on behalf of the members of the proposed Classes against Defendant.

59. Defendant, as the designer, manufacturer, marketer, distributor, producer, and/or seller, expressly warranted that the Records were "all-analog" recordings, as described throughout this Complaint.

60. In fact, these representations and warranties were false because the Records used digital technology in the recording chain and so were not "all-analog."

61. As a direct and proximate cause of Defendant's breach of express warranty, Plaintiff and members of the Classes have been injured and harmed because they would not have purchased the Records, or would have paid substantially less for them, if they had known that the Records were not "all-analog" recordings.

62. On August 17, 2022, prior to filing this action, Defendant was served via certified mail with a pre-suit notice letter on behalf of Plaintiff that complied in all respects with U.C.C. §§ 2-313 and 2-607. Plaintiff's counsel sent Defendant a letter advising that Defendant breached an express warranty and demanded that Defendant cease and desist from such breaches and make full restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff's counsel's letter is attached hereto as **Exhibit 1**.

COUNT II
Breach Of Implied Warranty

63. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

64. Plaintiff brings this claim individually and on behalf of the members of the proposed Classes against Defendant.

65. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller of the Records, impliedly warranted that the Records were "all-analog" recordings and did not make use of digital mastering technologies.

66. Defendant breached this warranty implied in the contract for the sale of the Records because the Records could not pass without objection in the trade under the contract description, the Records were not adequately contained, packaged, and labeled as per Defendant's contract with Plaintiff and members of the Classes, and the Records do not conform to the promise or affirmations of fact made on website and packaging of the Records that the Records were "all-analog" and did not make use of digital mastering technologies in the production chain. U.C.C. §§ 2-313(2)(a), (e), (f). As a result, Plaintiff and members of the Classes did not receive the goods as impliedly warranted by Defendant to be merchantable.

67. Plaintiff and members of the Classes purchased the Records in reliance upon Defendant's skill and judgment and the implied warranties of fitness for the purpose.

68. The Records were not altered by Plaintiff or members of the Classes.

69. The Records were defective when they left the exclusive control of Defendant.

70. Defendant knew that the Records would be purchased and used without additional testing by Plaintiff and members of the Classes.

71. Plaintiff and members of the Classes did not receive the goods as warranted.

72. As a direct and proximate cause of Defendant's breach of the implied warranty, Plaintiff and members of the Classes have been injured and harmed because: (a) they would not have purchased the Records on the same terms if they knew that the Records were not "all-analog" and made use of digital technologies in the production chain; and (b) the Records did not have the

characteristics, uses, or benefits as promised by Defendant.

73. On August 17, 2022, prior to filing this action, Defendant was served via certified mail with a pre-suit notice letter on behalf of Plaintiff that complied in all respects with U.C.C. §§ 2-313 and 2-607. Plaintiff's counsel sent Defendant a letter advising that Defendant breached an implied warranty and demanded that Defendant cease and desist from such breaches and make full restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff's counsel's letter is attached hereto as **Exhibit 1**.

COUNT III
Violation Of The Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*

74. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

75. Plaintiff brings this claim individually and on behalf of the members of the proposed Classes against Defendant.

76. The Records are consumer products as defined in 15 U.S.C. § 2301(1).

77. Plaintiff and members of the Classes are consumers as defined in 15 U.S.C. § 2301(3).

78. Defendant is a supplier and warrantor as defined in 15 U.S.C. §§ 2301(4) and (5).

79. In connection with the marketing and sale of the Records, Defendant expressly and impliedly warranted that the Records were "all-analog" recordings and did not make use of digital technologies in the mastering chain. These representations and warranties were false and described above.

80. By reason of Defendant's breach of warranties, Defendant violated the statutory rights due Plaintiff and members of the Classes pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby damaging Plaintiff and members of the Class and Subclass.

81. Plaintiff and members of the Classes were injured as a direct and proximate result of Defendant's breaches because they would not have purchased the Records or would have paid significantly less for them if they knew the Records were not "all-analog" and made use of digital technologies in the production chain, and such representations were therefore false and misleading.

COUNT IV
Fraud

82. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

83. Plaintiff brings this claim individually and on behalf of the members of the proposed Classes against Defendant.

84. As discussed above, Defendant provided Plaintiff and members of the Classes with false or misleading material information about the Records, namely that the Records were "all-analog" and did not make use of digital technologies in the production chain.

85. Similarly, as discussed above, Defendant failed to disclose material information to Plaintiff and members of the Classes, namely that the Records employed digital technologies in the production chain and were thus not "all-analog."

86. These misrepresentations and omissions were made with knowledge of their falsehood. Defendant manufacturers, produces, markets, and sells the Records. Further, Defendant has admitted in a statement by its president in August 2022 that it has been using digital technologies in the production chain of Records since as early as 2011.[12] Defendant therefore knew that it employed digital technologies in the mastering chain of the Records.

87. The misrepresentations and omissions made by Defendant, upon which Plaintiff

[12] https://mofi.com/blogs/news/mofi-president-jim-davis-addresses-the-digital-lp-mastering-controversy.

and members of the Classes reasonably and justifiably relied, was intended to induce, and actually induced Plaintiff and members of the Classes to purchase the Records.

88. Defendant had a duty to disclose the use of digital recording technologies in the production chain to Plaintiff and members of the Classes because (i) Defendant was in a fiduciary relationship with Plaintiff and members of the Classes, (ii) Defendant had superior and exclusive knowledge of the use of digital technologies in its production chain, and (iii) Defendant made partial representations regarding the Records as described above, while failing to disclose that Defendant employed digital technologies in the production chain.

89. The fraudulent actions of Defendant caused damage to Plaintiff and members of the Classes, who are entitled to damages and other legal and equitable relief as a result.

COUNT V
Unjust Enrichment

90. Plaintiff incorporates by reference the allegations contained in all proceeding paragraphs of this complaint.

91. Plaintiff brings this claim individually and on behalf of members of the Classes against Defendant.

92. Plaintiff and members of the Classes conferred benefits on Defendant by purchasing the Records.

93. Defendant has knowledge of such benefits.

94. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff's and members of the Classes' purchases of the Records. Retention of moneys under these circumstances is unjust and inequitable because Defendant misrepresented that the Records were "all-analog" when they were not, and failed to disclose that the Records employed digital technologies in their production chain.

95. Because Defendant's retention of the non-gratuitous benefits conferred on it by

Plaintiff and members of the Classes is unjust and inequitable, Defendant must pay restitution to Plaintiff and the members of the Classes for their unjust enrichment, as ordered by the Court.

COUNT VI
Violation Of The North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. §§ 75-1.1, *et seq.*

96. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

97. Plaintiff brings this claim individually and on behalf of the members of the Subclass against Defendant.

98. At all times mentioned herein, Defendant engaged in acts and practices "affecting commerce" in North Carolina, as that term is defined by N.C.G.S. § 75-1.1(b), because Defendant's sale of the Records were business activities.

99. Defendant has committed unfair and deceptive acts or practices affecting commerce in violation of the NCTPA, namely the sale of the Records to consumers in North Carolina while falsely representing that the Records were "all-analog," and failing to disclose that the Records used digital technologies in their production chain.

100. Defendant's misrepresentations and omissions, as described above, had the tendency to deceive the average consumer, including Plaintiff and Subclass Members.

101. Defendant's actions were unfair because they offended established public policy and were unscrupulous and substantially injurious to consumers.

102. Defendant's unfair and deceptive practices were material as they influenced purchasing and payment decisions by Plaintiff and Subclass Members.

103. Plaintiff and the Subclass have been damaged as a direct and proximate result of Defendant's deceptive and unfair practices.

104. Plaintiff and the Subclass are entitled to recover compensatory damages, treble

damages, and reasonable attorneys' fees and costs.

COUNT VII
Violation Of State Consumer Fraud Acts

105. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

106. Plaintiff brings this claim individually and on behalf of the members of the proposed Classes against Defendants.

107. The Consumer Fraud Acts of the fifty states and the District of Columbia, listed below, prohibit the use of unfair or deceptive business practices in the conduct of trade or commerce:

State	Statute
Arizona	Ariz. Rev. Stat. §§ 44-1521, *et seq.*
Arkansas	Ark. Code §§ 4-88-101, *et seq.*
California	Cal. Bus. & Prof. Code § 17200, *et seq.*; Cal. Bus. & Prof. Code §§ 17500, *et seq.*; Cal. Civ. Code §§ 1750 *et seq.*
Colorado	Colo. Rev. Stat. §§ 6-1-101, *et seq.*
Connecticut	Conn. Gen Stat. §§ 42- 110, *et seq.*
Delaware	6 Del. Code §§ 2513, *et seq.*
Washington, D.C.	D.C. Code §§ 28-3901, *et seq.*
Georgia	Ga. Code §§ 10-1-390, *et seq.*
Hawaii	Haw. Rev. Stat. §§ 480-2, *et seq.*
Idaho	Idaho Code. §§ 48-601, *et seq.*
Illinois	815 ILCS 501/1, *et seq.*

State	Statute
Kansas	Kan. Stat. Ann. §§ 50-623, *et seq.*
Louisiana	LSA-R.S. §§ 51:1401, *et seq.*
Maine	Me. Rev. Stat. Ann. Tit. 5, §§ 207, *et seq.*
Maryland	Md. Code Ann. Com. Law, §§ 13-301, *et seq.*
Massachusetts	Mass. Gen Laws Ann. Ch. 93A, §§ 1, *et seq.*
Michigan	Mich. Comp. Laws Ann. §§ 445.901, *et seq.*
Minnesota	Minn. Stat. §§ 325F, *et seq.*
Montana	Mont. Code §§ 30-14-101, *et seq.*
Missouri	Mo. Rev. Stat. §§ 407, *et seq.*
Nebraska	Neb. Rev. St. §§ 59-1601, *et seq.*
Nevada	Nev. Rev. Stat. §§ 41.600, *et seq.*
New Hampshire	N.H. Rev. Stat. §§ 358-A:1, *et seq.*
New Jersey	N.J. Stat. §§ 56:8, *et seq.*
New Mexico	N.M. Stat. §§ 57-12-1, *et seq.*
New York	N.Y. Gen. Bus. Law §§ 349 and 350
North Carolina	N.C. Gen Stat. §§ 75-1.1, *et seq.*
North Dakota	N.D. Cent. Code §§ 51-15, *et seq.*
Ohio	Ohio Rev. Code §§ 1345.01, *et seq.*
Oklahoma	Okla. Stat. Tit. 15 §§ 751, *et seq.*
Oregon	Or. Rev. Stat. §§ 646.605, *et seq.*
Pennsylvania	73 P.S. §§ 201-1, *et seq.*
Rhode Island	R.I. Gen. Laws §§ 6-13.1- 5.2(B), *et seq.*
South Carolina	S.C. Code Ann. §§ 39-5-10, *et seq.*

State	Statute
South Dakota	S.D. Codified Laws §§ 37-24-1, *et seq.*
Tennessee	Tenn. Code Ann. §§ 47-18-101, *et seq.*
Texas	Tex. Code., Bus. & Con. §§ 17.41, *et seq.*
Utah	Utah Code. §§ 13-11-175, *et seq.*
Vermont	9 V.S.A. §§ 2451, *et seq.*
Virginia	Va. Code Ann. §§ 59.1-199, *et seq.*
Washington	Wash. Rev. Code §§ 19.86.010, *et seq.*
West Virginia	W. Va. Code §§ 46A, *et seq.*
Wisconsin	Wis. Stat. §§ 100.18, *et seq.*
Wyoming	Wyo. Stat. §§ 40-12-101, *et seq.*

108. Defendant intended that Plaintiff and each of the other members of the Classes would rely upon its deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

109. As a result of the Defendant's use or employment of unfair or deceptive acts or business practices, Plaintiff and each of the other members of the Classes have sustained damages in an amount to be proven at trial.

110. In addition, Defendant's conduct showed malice, motive, and the reckless disregard of the truth such that an award of punitive damages is appropriate.

PRAYER FOR RELIEF

WHEREFORE Plaintiff, on behalf of himself and the proposed Classes, respectfully requests that this Court enter an Order:

(a) For an order certifying the Classes under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiff as representative of the Classes, and

naming Plaintiff's attorneys as Class Counsel to represent the members of the Classes;

(b) For an order declaring the Defendant's conduct violates the statutes referenced herein;

(c) For an order finding in favor of Plaintiff and the Classes on all counts asserted herein;

(d) For compensatory and punitive damages in amounts to be determined by the Court and/or jury;

(e) An award of statutory penalties to the extent available;

(f) For pre-judgment interest on all amounts awarded;

(g) For an order of restitution and all other forms of monetary relief; and

(h) For an order awarding Plaintiff and the Classes their reasonable attorneys' fees and expenses and costs of suit.

JURY TRIAL DEMANDED

Pursuant to Fed. R. Civ. P. 38(b)(1), Plaintiff demands a trial by jury on all claims so triable.

Dated: August 18, 2022

Respectfully submitted,

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLC

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ADAM STILES, individually and on behalf of all others similarly situated, Plaintiff, v. MOBILE FIDELITY SOUND LAB, INC., Defendant.	Case No.:1:22-cv-04405 **Hon. Manish S. Shah**

DECLARATION OF JOSEPH J. MADONIA

I, Joseph J. Madonia, declare as follows:

1. I am an attorney at law duly licensed to practice law before all courts of Illinois and the Northern District of Illinois, and an attorney at the law firm of Joseph J. Madonia & Associates, attorneys of record for Defendant Mobile Fidelity Sound Lab, Inc., an Illinois corporation ("MoFi" or "Defendant") in the above-captioned matter. I am also admitted *pro hac vice* to appear and serve as counsel for MoFi and Defendant Audiophile Music Direct, Inc., d/b/a Music Direct, a Nevada corporation ("Music Direct") in a parallel class action entitled *Tuttle, et al. v. Audiophile Music Direct, Inc.*, *et al.*, Case No. 2:22-cv-01081-JLR, currently pending in the Western District of Washington ("*Tuttle*"). I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify as to the facts below.

2. Following protracted arm's lengths negotiations, the parties in *Tuttle*—Music Direct, MoFi, and Plaintiffs Stephen J. Tuttle and Dustin Collman (the "*Tuttle* Plaintiffs")—finalized a long-form written settlement agreement. On January 15, 2023, the *Tuttle* Plaintiffs filed an Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Program with the United States District Court for the Western District of Washington (the

"Motion for Preliminary Approval"). A true and correct copy of the Motion for Preliminary Approval is attached hereto as **Exhibit 1**.

3. Further, on January 19, 2023, the parties in *Tuttle* filed a joint stipulation for an order to stay the case pending consideration of the Motion For Preliminary Approval (the "Joint Stipulation For Order to Stay *Tuttle*" or "Joint Stipulation"). A true and correct copy of the Joint Stipulation is attached hereto as **Exhibit 2**.

4. On January 20, 2023, the *Tuttle* Court denied the Motion For Preliminary Approval, primarily on the grounds that the accompanying filings, including the initial proposed settlement agreement and proposed order, contained various technical errors and ambiguities. A true and correct copy of the *Tuttle* Court's Order on the Motion For Preliminary Approval is attached hereto as **Exhibit 3** ("Order on Motion For Preliminary Approval" or "Order"). The Order requests the parties in *Tuttle* to, among other things, clarify certain provisions in the parties' proposed settlement agreement, including the definition for the term "Settlement Claim Certification Form"; and "[t]he process for a Class Member to return an Applicable Record for a refund". Other corrections requested by the *Tuttle* Court include correcting the case number on the proposed order for the Motion For Preliminary Approval. Notably, the Order invited the *Tuttle* parties to submit an amended motion for preliminary approval correcting these issues. The *Tuttle* Court further granted the Joint Stipulation and stayed the case pending its consideration of an amended motion for preliminary approval.

5. On February 2, 2023, the *Tuttle* Plaintiffs filed an amended unopposed motion for preliminary approval (the "Amended Motion For Preliminary Approval"). A true and correct copy of the Amended Motion For Preliminary Approval is attached hereto as **Exhibit 4**. Filed concurrently with the Amended Motion For Preliminary Approval was the declaration of Duncan

Turner, counsel for the *Tuttle* Plaintiffs ("Declaration of Duncan Turner"), and the declaration of Jeanne C. Finegan, the Settlement Administrator designated by the parties in *Tuttle* ("Declaration of Jeanne Finegan").

6. A true and correct copy of the declaration of Duncan Turner filed in support of the Amended Motion For Preliminary Approval is attached hereto as **Exhibit 5**. A true and correct copy of the amended settlement agreement submitted to the *Tuttle* Court (the "Amended Settlement Agreement") is attached to the Declaration of Duncan Turner as Exhibit 1.

7. A true and copy of the Declaration of Jeanne Finegan filed in support of the Amended Motion For Preliminary Approval is attached hereto as **Exhibit 6**.

8. On February 6, 2023, the *Tuttle* Court entered an order instructing the *Tuttle* parties that it accepted the filing of the Amended Motion For Preliminary Approval (the "*Tuttle* Court's February 6, 2023 Order"). A true and correct copy of the *Tuttle* Court's February 6, 2023 Order is attached hereto as **Exhibit 7.**

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

Executed the 6th day of February 2023, at Chicago, Illinois.

/s/ *Joseph J. Madonia*
Joseph J. Madonia

Exhibit 1

to Madonia Declaration

HONORABLE JAMES L. ROBART
NOTING DATE: January 15, 2023

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN J. TUTTLE, et al,

Plaintiffs,

v.

AUDIOPHILE MUSIC DIRECT INC. d/b/a MUSIC DIRECT and MOBILE FIDELITY, SOUND LAB, INC. d/b/a MOBILE FIDELITY and/or MOFI,

Defendants.

No. 22-cv-01081-JLR

UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND NOTICE PROGRAM

Plaintiffs Stephen Tuttle and Dustin Collman, on behalf of themselves and the putative class they seek to represent respectfully submit this Unopposed Motion for Certification of Settlement Class and for Preliminary Approval of Class Action Settlement.

I. INTRODUCTION.

Defendants Audiophile Music Direct, Inc. ("Music Direct") and Mobile Fidelity Sound Lab, Inc. ("MoFi") (collectively, "Defendants") are business entities which market and sell high-end vinyl record audio recordings. The records are mastered and manufactured by MoFi and sold to the retail and wholesale market by both MoFi and Music Direct. Music Direct is the primary retail and wholesale seller of MoFi's records. This is a putative class action lawsuit

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brought by Defendants' customers and purchasers of certain of MoFi's Original Master Recording ("OMR") and Ultradisc One-Step ("One-Step") series vinyl records which were sourced from original analog master recordings and contained a direct stream digital transfer step in the mastering chain (the "Applicable Records").

In the lawsuit, the Plaintiffs allege that Defendants represented that MoFi's collectable and limited-edition OMR and One-Step series vinyl records were produced with "analog-only" methods. Under these methods, a consumer record is produced using an analog master recording, without any intervening digital transfer, translation, or storage. Many vinyl records created using analog-only methods are highly prized by audiophiles, and often carry a higher price point in the primary and secondary markets. Plaintiffs allege that in reality, Defendants relied on production methods which involved digital storage and translation, the absence of which was a major selling point of their "analog-only" products. Plaintiffs allege that by misrepresenting the source and provenance of the Applicable Records, Defendants acted unfairly and deceptively, and breached their contractual obligations to original purchasers. Defendants deny all such allegations.

As result of these claims, the Parties have reached a proposed settlement which would allow all original purchasers to either: return their Applicable Records to Defendants in exchange for a full refund, plus any shipping and taxes, or alternatively, keep their Applicable Records and receive either a refund equal to five percent (5%) of the Applicable Records' purchase price, or a coupon for ten percent (10%) of the Applicable Records' purchase price towards other of Defendant Music Direct's or MoFi's products. Under the proposed settlement, Class Members are able to make this selection in respect to each Applicable Record purchased. Thus, for Applicable Records whose value on the secondary market is higher than the purchase price,

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Class Members can keep those Applicable Records and still receive other means of fair and reasonable consideration.

Because the Settlement Class is comprised of both individuals purchasing directly from Defendants and those who purchased from other retailers selling Applicable Records, the Parties propose a substantival and intensive notice program which has been designed with the assistance of notice expert, Kroll Settlement Administration, LLC ("KSA" and/or the "Notice Expert") and which will be administered by an agreed-upon class action administrator (the "Settlement Administrator"). Under that program, the Settlement Administrator will issue notice to all Class Members who purchased directly from Defendants by First Class U.S. Mail. To reach those who purchased Applicable Records from other retailers, the Settlement Administrator will advertise the settlement in industry and hobbyist print and online publications, a Facebook ad campaign, as well as on Defendants' own respective Music Direct and MoFi retail websites. This multi-front approach will ensure strong notice saturation among the proposed Settlement Class.

Finally, the proposed Settlement is the result of extensive and arm's-length negotiations among the Parties and their counsel and is a fair compromise in light of potential risks and uncertainties of continued litigation.

II. FACTUAL BACKGROUND.

A. Defendants' Marketing of the Applicable Records.

Defendant MoFi is a manufacturer of high-end audio recordings, including, without limitation, the Applicable Records, which it sells online to retail consumers and wholesale to other retailers. Defendant Music Direct is a primary retail and wholesale seller of MoFi recordings, including, without limitation, the Applicable Records. Between March 19, 2007, and approximately July 27, 2022, the Defendants marketed and sold vinyl records labeled

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"Original Master Recording" or "Ultra-Disc One-Step," including, without limitation, the Applicable Records.

In describing the Applicable Records, Defendants frequently represented that they were "Mastered from the Original Master Recordings…" Plaintiffs allege that among the audiophile community, this representation and many others were understood to mean that Defendant MoFi was using an all-analog "mastering chain" to produce its vinyl records.[1] Plaintiffs allege an all-analog mastering chain inherently limits the number of producible copies because each newly stamped record wears and degrades the source master lacquer. Plaintiffs further allege, for this reason, many of MoFi's products were sold in limited runs, which increased their collectability to audiophiles and earned a higher price point because of their respective scarcity on the primary and secondary markets. Defendants deny all such allegations.

B. Potential Class Members.

Prior to reaching this settlement, Defendants produced sales data to Plaintiffs' Counsel for approximately one-hundred and twenty-three (123) OMR and One-Step Applicable Records. *See* Declaration of Jim Davis, President of Music Direct.[2] This data showed that Defendants had sold over six-hundred thousand (630,000) OMR and one-step Applicable Records during the relevant period, of which approximately one-quarter were to retail customers. *See* Declaration of Duncan C. Turner, ¶2. The remaining three-quarters were sold wholesale by Defendants to distributors who sold wholesale to retailers, *e.g.* Best Buy, Walmart, and independent record stores, who then sold the Applicable Records at retail to consumers. *Id*. Because the proposed

[1] A "mastering chain" is the method used to produce vinyl records from an original audio master studio recording or tape.

[2] Although Defendants originally produced data for one-hundred and twenty-four (124) records, it later produced information showing that one-hundred and twenty-three (123) were relevant to Plaintiffs' allegations.

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Settlement Class is comprised of both direct and indirect retail purchasers of Applicable Records, it is difficult to estimate the potential class size. Nonetheless, Defendants estimate that the proposed Class is comprised of at least 20,000 direct purchasers and 20,000 indirect purchasers.

C. Procedural Posture.

This action was filed on August 2, 2022. Dkt. #1. On September 28, 2022, the Defendants appeared through counsel. Dkt. #5. On December 20, 2022, the Plaintiffs amended their complaint to describe the Defendant parties more accurately. Dkt. #14. To date, no formal discovery has occurred and Defendants have not answered.

Plaintiffs are aware of at least four other putative class actions against Defendants arising from substantially similar claims over its "all-analog" process:

- *Stiles v. Mobile Fidelity Sound Lab,* - #1:22-cv-04405 (N.D. Illinois)
- *Bitterman v. Mobile Fidelity Sound Lab, et al.,* - #1:22-cv-04714 (N.D. Illinois)
- *Allen v. Audiophile Music Direct, et al.,* - #2:22:cv-08146 (C.D. California)
- *Molinari v. Audiophile Music Direct, et al*., - #4:22-cv-05444 (N.D. California)

To Plaintiffs' knowledge, none of these cases have been consolidated or certified for class treatment, and no class counsel has been appointed.

D. Terms of the Proposed Settlement.

The terms of the Parties' proposed settlement are within the Settlement Agreement. See Turner Dec., Ex. 1. For purposes of preliminary approval, the following summarizes the Settlement Agreement's terms:

1. The Settlement Class.

The proposed Settlement Class is comprised of:

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> All persons in the United States who, from March 19, 2007, to July 27, 2022, purchased, either directly from a Defendant or directly from retail merchants, new and unused vinyl recordings that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," provided that said purchasers still own said recordings. Excluded from the Class are persons who obtained subject recordings from other sources.

To date, Defendants have identified approximately one-hundred and twenty-three (123) Applicable Records marketed in this fashion. Although investigation is ongoing and additional albums may be identified prior to notice publication, the Settlement is structured as to only effect the rights of purchasers of specific albums, not all Defendants customers generally. *See* Settlement Agreement, Exhibit A.

As previously described, based on available sales data for these albums, the Class is estimated to comprise over forty thousand (40,000) individual purchasers. Davis Declaration, ¶5.

2. Financial Consideration and Release.

Under the terms of the Settlement Agreement, the Defendants agree to provide Class Members with the following three (3) different approaches to relief: (i) For individuals who want to return their Applicable Records, Class Members will receive a full refund including associated taxes and shipping; For individuals who want to keep their Applicable Records, they may elect to either receive (i) a refund payment of five percent (5%) of the record's original purchase price and associated taxes and shipping in the form of a check or electronic payment, or (iii) a coupon in the amount of ten percent (10%) of the record's original purchase price for retail purchases at either of Defendant MoFi's or Music Direct's retail websites. The total gross value of available relief is over $25 million dollars.

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In consideration, the Settlement Class members shall release the Defendants and other released parties from:

> any and all Claims which arise out of or are in any way related to Defendants' marketing, promotion and sale of the Applicable Records during the Applicable Period (including, without limitation, Unknown Claims as defined herein), demands, rights, liabilities, and causes of action of every nature and description whatsoever including, without limitation, statutory, constitutional, contractual, or common law claims, whether known or unknown, whether or not concealed or hidden, whether contingent or vested, against Defendants, the Defendants' Releasees, or any of them, that accrued, had accrued, or could have accrued at any time on or prior to the Preliminary Approval Date for any type of relief whatsoever including, without limitation, compensatory damages, treble damages, unpaid costs, penalties, statutory damages, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, rescission, or equitable relief, based on any and all claims which are or could have been raised in the Litigation either individually or on a class-wide basis related to the Applicable Records

For purpose of Settlement, "Unknown Claims" are defined as:

> any Released Claims which the Class Representatives or any Class Member does not know or suspect to exist in his, her, or its favor at the time of the entry of the Judgment and which, if known by him, her, or it might have affected his, her, or its settlement with and release of Defendants and the Defendants' Releasees. The Class Representatives and each Class Member may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Class Representatives and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, regulation, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Each of the Class Representatives and each Class Member expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Section 1542 provides: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,

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> WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. The Class Representatives acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waivers were separately bargained for and key elements of the Settlement of which these releases are a part.

See Turner Dec., Ex. 1, ¶4.28 & 4.33.

The Defendants have retained KSA as Notice Expert and also contemplate retaining KSA as the Settlement Administrator, and will bear any costs associated with preparation and distribution of the Notice to the Class, reception and reporting of opt-outs and objectors, receipt of claim materials and distribution of the settlement funds.

3. Settlement Payments.

The election to receive a full/partial refund or coupon will be available to all Class Members who do not opt out of the Settlement and submit valid proof of purchase and payment. Class Members will one hundred and eighty (180) days from notice publication to submit a valid claim in order to receive compensation. Turner Dec., Ex. 1, ¶5.1. If the Settlement receives final approval, qualified Class Members will receive their payments from the Settlement Administrator within forty-five (45) days after: (1) expiration for the period to appeal or (2) any appeal affirming final approval of the Settlement becomes final. *Id*., ¶5.5.

4. Notice Program.

In conjunction with preliminary approval, Plaintiffs respectfully request the Court approve the notice and claims program in which the Settlement Administrator will (1) send individual notice by First Class U.S. Mail to Class Members who directly purchased from Defendants, and (2) in order to reach in-direct purchasers, will publish notice in print and online audiophile publications and media sources, internet notice and social media advertising, including a Facebook ad campaign, internet notice displayed on a website hosted by Class

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Counsel, and on both Defendants Music Direct's and MoFi's websites. Further, the Settlement Administrator will create a website for Class Members to electronically submit their proof of purchase and payment in order to claim compensation.

The Settlement is conditioned upon no more than ten percent (10%) of the Settlement Class opting out.

5. Plaintiff's Service Award.

Plaintiffs will ask the Court to approve a service award of $20,000 ($10,000 for each Class Representative) to be paid out directly by Defendants. These awards will compensate Plaintiffs for their time and effort serving as the named Plaintiffs and for the risks they undertook in prosecuting the case. The enforceability of the Settlement is not contingent on the Court's approval of the service award in the amount sought by the Plaintiffs.

6. Attorney's Fees and Litigation Expenses.

Plaintiffs' Counsel will ask for an award of attorney's fees of no more than $290,000, to be paid directly by Defendants. The purpose of this award would be to compensate and reimburse Plaintiffs' Counsel for work already performed on the case, and the work necessary to oversee and shepherd the proposed Settlement to completion. The enforceability of the settlement is not contingent on the Court's approval of an award of attorney's fees and costs in the amounts sought by Plaintiffs' counsel.

7. Administrative Costs.

Defendants shall bear any expenses and costs arising from administration of Settlement class claims. Subject to the Court's approval, Defendants are in the process of selecting a Settlement Administrator.

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E. Considerations In Reaching Settlement.

The proposed Settlement is the result of substantial arm's-length negotiations between the opposing parties. While the Plaintiffs are confident that Defendants' own marketing materials and admissions would allow them to demonstrate the presence of unfair and deceptive marketing of "all-analog" vinyl records, they also risk potential difficulties in demonstrating credible injury or harm. For example, many of the effected albums sell on the secondary market, even opened, and used, for far more than their original MSRP. Furthermore, Plaintiffs also believe that Class Members face potential difficulties in demonstrating that the DSD-master chain products they received were lower quality than the all-analog mastering chain Plaintiffs allege was promised by Defendants with MoFi's OMR and One-Step products. Turner Dec. ¶ 4.

To ascertain potential damages and class size, Plaintiffs' Counsel reviewed retail and wholesale sales data produced by Defendants for approximately one-hundred and twenty-three (123) OMR and One-Step Applicable Records. Turner Dec., ¶2; Davis Declaration, ¶3.

Here, the Plaintiffs alleged four distinct causes of action: (1) violation of the Washington State Consumer Protection Act (RCW 19.86), (2) breach of contract, (3) unjust enrichment, and (4) violation of the Illinois Consumer Fraud Act (815 ILCS 505/2). Dkt. #14, pg. 9-13. Plaintiffs originally raised the CPA on behalf of a sub-class of Washington residents, although the negotiated settlement does not make any distinction between Washington and non-Washington Class Members. For purposes of this Settlement, all Class Members are treated the same. In considering the proposed settlement, Plaintiffs' counsel assessed each claim and the likelihood of prevailing on that claim, as well as the various methods for establishing damages of limited-run or collectible merchandise. After analyzing data produced by Defendants and considering

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arguments raised by Defendants, Plaintiffs' Counsel believes the proposed settlement is fair and reasonable.

III. AUTHORITY AND ARGUMENT

A. The Settlement Approval Process.

As a matter of "express public policy," federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned"); *see also* William B. Rubenstein, *Newberg on Class Actions* ("Newberg") § 13.1 (5th ed. Updated 2015) (citing cases). Here, the proposed settlement is the best vehicle for the Settlement Class Members to receive the relief to which they may be entitled in a prompt and efficient manner.

The Manual for Complex Litigation describes a three-step procedure for approval of class action settlements: (1) preliminary approval of the proposed settlement; (2) dissemination of notice of the settlement to all affected settlement class members; and (3) a "fairness hearing" or "final approval hearing," at which settlement class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. *Manual for Complex Litigation (Fourth)* ("MCL 4th") §§ 21.632 – 21.634, at 432–34 (2014). This procedure safeguards settlement class members' due process rights and enables the court to fulfill its role as the guardian of class interests. *See* Newberg § 13.1.

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With this motion, the Parties request that the Court take the first step in the settlement approval process by granting preliminary approval of the proposed Settlement Agreement. The purpose of preliminary evaluation of proposed class action settlements is to determine whether the settlement "is within the range of possible approval" and thus whether notice to the settlement class of the settlement's terms and the scheduling of a formal fairness hearing is worthwhile. Newberg § 13.13. *See City of Seattle*, 955 F.2d at 1276 (in context of class action settlement, appellate court cannot "substitute [its] notions of fairness for those of the [trial] judge and the parties to the agreement," and will reverse only upon strong showing of abuse of discretion) (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 626 (9th Cir. 1982)). The Court's grant of preliminary approval will allow the Settlement Class to receive direct notice of the proposed Settlement Agreement's terms and the date and time of the Final Approval Hearing, at which Settlement Class Members may be heard regarding the Settlement Agreement, and at which time further evidence and argument concerning the settlement's fairness, adequacy, and reasonableness may be presented. *See* MCL 4th § 21.634.

B. The Criteria for Settlement Approval Are Satisfied.

The Ninth Circuit puts "a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). To assess a settlement proposal, courts must balance the strength of the Plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the state of the proceedings; the experience and views of counsel; and the reaction of the class members to the proposed settlement. *In re Online DVD-Rental Antitrust Litig.* ("*In re Online DVD*"), 779 F.3d 934, 944 (9th Cir. 2015); *McKinney-Drobnis v. Oreshack*, 16 F.4th

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594, 607 (9th Cir. 2021) (listing factors from the 2018 amendments to FRCP 23 as "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.")

1. The Settlement Agreement is the Product of Serious, Informed, and Non-Collusive Negotiations.

The Court's role is to ensure that "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (internal quotes and citations omitted); *see also In re Online DVD*, 779 F.3d at 944 (noting settlements in class actions "present unique due process concerns for absent class members," including the risk that class counsel "may collude with the defendants") (quoting *In re Bluetooth Headset Prods. Liab. Litig.* ("*In re Bluetooth*"), 654 F.3d 935, 946 (9th Cir. 2010)).

The Settlement Agreement is the result of extensive, arm's-length negotiations between experienced attorneys for both parties who are competent practitioners in class action litigation in general and with the legal and factual issues of this case. Turner Dec., ¶5.

2. The Settlement Agreement is Fair and Reasonable In Light of the Alleged Claims and Potential Defenses.

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The Amended Complaint asserts claims for violations of Washington and Illinois consumer-protection statutes, as well as breach of contract and unjust enrichment. Dkt. #14, pg. 9-13. The Amended Complaint also seeks prejudgment interest, exemplary damages, and attorney's fees and costs. *Id*.

Although this case was conditionally settled before the determination of key legal issues in dispute, the Defendants expressed their intention, if necessary, to contest the issue of class certification, and Plaintiffs' ability to demonstrate harm or injury resulting from the presence of DSD within the OMR and One-Step master chains. The recoverability of prejudgment interest is highly uncertain because extensive analysis was required to identify the full scope of Settlement Class Members' damages. Defendants would likely argue that such analysis precludes recoverability of prejudgment interest. Finally, the recoverability of exemplary damages is also uncertain because the Defendants would likely argue that the product Class Members received was auditorily indistinguishable from that promised.

3. The Settlement Provides Substantial Relief and Treats All Settlement Class Members Fairly.

As previously described, the Settlement provides that Class Members will have the opportunity to return their Applicable Records for a full refund, or alternatively, to keep their records and claim a five percent (5%) refund or ten percent (10%) coupon towards future purchases from Defendants. Turner Dec., Ex. 1, ¶5. Further, Class Members can elect which method of relief to receive for each individual Applicable Record they purchased and in their possession. Therefore, the settlement structure not only fairly distributes compensation each Class Member paid for each record, but it also allows Class Members to make this election while considering the resale value of each record on the secondary market.

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4. Plaintiff's Requested Fees Are Reasonable.

Plaintiffs' counsel will seek an award of up to $290,000 for reasonable fees and costs occurred in prosecuting this action. These fees will be borne and paid directly by Defendants and will not reduce the relief available to Class Members.

The Ninth Circuit has approved two methods for calculating attorneys' fees depending on the circumstances: the lodestar method and the percentage-of-recovery method. Under the lodestar method, the prevailing attorneys are awarded an amount calculated by multiplying the hours they reasonably expended on the litigation by their reasonable hourly rates. *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003). "Under the percentage-of-recovery method, the attorneys' fees equal some percentage of the common settlement fund…" *In re Online DVD*, 779 F.3d at 949. Regardless of the method, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable." *In re Bluetooth*, 654 F.3d at 941.

The benchmark award is 25% of the common fund or gross recovery. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Plaintiff Counsel's request is approximately 2.7% of the potential estimated non-exemplary relief available to direct purchase Class Members. *See* Turner Dec., ¶3. When in-direct purchaser Class Members are included, the fee request is closer to 1.1% of total non-exemplary relief.

Plaintiffs' Counsel were confident in their ability to succeed at class certification and at trial. Nevertheless, success was by no means guaranteed, especially considering the complexity of the issues involved. Because Plaintiffs' counsel agreed to prosecute this case on a contingency basis with no guarantee of ever being paid, they faced substantial risk if they proceeded to trial.

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Prior to final approval, Plaintiffs' counsel will file a separate motion for an award of attorney's fees and costs, addressing in greater detail the facts and law supporting their fee request in light of all of the relevant facts.

5. The Requested Service Award Is Reasonable.

"[I]ncentive awards that are intended to compensate class representatives for work undertaken on behalf of a class 'are fairly typical in class action cases.'" *In re Online DVD*, 779 F.3d at 943 (quoting *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009)). Incentive or service awards are generally approved so long as the awards are reasonable and do not undermine the adequacy of the class representatives. *See Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1164 (9th Cir. 2013) (finding service award must not "corrupt the settlement by undermining the adequacy of the class representatives and class counsel"). For example, if a settlement explicitly conditions a service award on the class representative's support for the settlement, the service award is improper. *See id.* By contrast, where a settlement "provide[s] no guarantee that the class representatives would receive incentive payments, leaving that decision to later discretion of the district court," a service award may be appropriate." *In re Online DVD*, 779 F.3d at 943.

Here, the Plaintiffs individually request service awards of $10,000.00, or an amount the Court deems appropriate. This value reflects the proposed Class Members' high degree of participation in the investigation of their claims, as well as those of their fellow members. It also reflects their active participation in negotiation of this settlement, and their substantial contribution to settlement terms which ultimately benefited the Class. Turner Dec. ¶6. Plaintiffs' support of the settlement is independent of any service award and not conditioned on the Court awarding any particular amount or any award at all, in stark contrast to *Radcliffe*. Thus,

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Plaintiffs' adequacy as class representatives is unaffected by an appropriate service award that recognizes their efforts and contributions to the case.

6. The Proposed Notice Program Is Constitutionally Sound.

Rule 23(e)(1) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement. Fed. R. Civ. P. 23(e)(1); *see also* MCL 4th § 21.312. The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). According to the Manual for Complex Litigation, a settlement notice should do the following:

- Define the class;
- Describe clearly the options open to the class members and the deadlines for taking action;
- Describe the essential terms of the proposed settlement;
- Disclose any special benefits provided to the class representative;
- Indicate the time and place of the hearing to consider approval of the settlement, and the method for objecting to or opting out of the settlement;
- Explain the procedures for allocating and distributing settlement funds, and, if the settlement provides different kinds of relief for different categories of class members, clearly set out those variations;
- Provide information that will enable class members to calculate or at least estimate their individual recoveries; and
- Prominently display the address and phone number of class counsel and the procedures for making inquiries.

The proposed form of notice, attached as Exhibit Two to the Turner Decl. ("Notice"), satisfies all of the above criteria. The Notice is clear, straightforward, and provides persons in the Settlement Class with enough information to evaluate whether to participate in the settlement. Thus, the Notice satisfies the requirements of Rule 23. *Phillips Petroleum Co. v.*

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Shutts, 472 U.S. 797, 808 (1985) (explaining a settlement notice must provide settlement class members with an opportunity to present their objections to the settlement).

The Settlement Administrator will send notice by First Class U.S. Mail and e-mail to all direct purchasers of Applicable Records from Defendants. For indirect purchasers who bought Applicable Records from other retailers, the Settlement Administrator will publish a media campaign to notify Settlement Class Members of their rights and applicable deadlines and invite them to submit timely claims. This Notice Program satisfies due process especially because Rule 23 does not require that each potential class member receive actual notice of the class action. Mullane, 339 U.S. at 316 (explaining that the Supreme Court "has not hesitated to approve of resort to publication as a customary substitute in [a] class of cases where it is not reasonably possible or practicable to give more adequate warning").

All in all, the Notice Program constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class, and fully satisfies the requirements of due process and Rule 23.

C. Provision Certification of the Class Is Appropriate.

For settlement purposes only the Parties have agreed to certify the Settlement Class and respectfully request that the Court provisionally certify the Settlement Class defined as:

> All persons in the United States who, from March 19, 2007, to July 27, 2022, purchased, either directly from a Defendant or directly from retail merchants, new and unused vinyl recordings that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," provided that said purchasers still own said recordings. Excluded from the Class are persons who obtained subject recordings from other sources.

As detailed below, the Settlement Class satisfies the applicable certification requirements.

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1. The Rule 23(a) Factors Are Met for Settlement Purposes.

a. Numerosity.

"The prerequisite of numerosity is discharged if 'the class is so large that joinder of all members is impracticable.'" *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) (quoting Fed. R. Civ. P. 23(a)(1)). "It is a long-standing rule that 'impractical' does not mean 'impossible' rather, impracticality means only 'the difficulty or inconvenience of joining all members of the class.'" *McClusky v. Trustees of Red Dot*, 268 F.R.D. 670, 673 (W.D. Wash. 2010). The Settlement Class herein includes approximately over 20,000 direct purchasers, rendering joinder impracticable. *See McCluskey v. Trs. of Red Dot Corp. Emp. Stock Ownership Plan & Trust*, 268 F.R.D. 670, 674 (W.D. Wash. 2010).

b. Commonality.

The commonality requirement of Rule 23(a)(2) is satisfied because the questions of law common to the Settlement Class are, in fact, identical, and the questions of fact address merely each individual customer's claim, and the answers to these questions can all be derived from a common database and associated sales data. Because persons in the Settlement Class here all allegedly suffered the same injury and are generally subject to the same defenses, commonality is satisfied for settlement purposes.

c. Typicality.

"Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." *Hanon v. Dataprods. Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). "[R]epresentative claims are typical if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. Here, the representatives were direct customers of Defendants during the

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relevant period, and purchased both OMR and Ultradisc One-Step products. They are not asserting claims different than those of the remaining Settlement Class Members. Because Plaintiffs' claims arise from the same course of conduct that affected all Settlement Class Members, typicality is satisfied for settlement purposes.

d. Adequacy of Representation.

Adequacy requires the representative of a class to provide fair and adequate representation of the class. Fed. R. Civ. P. 23(a)(4). "To determine whether named plaintiffs will adequately represent a class, courts must resolve two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (quoting *Hanlon*, 150 F.3d at 1020). In the context of a class settlement, examination of potential conflicts of interest "is especially critical." *In re Online DVD*, 779 F.3d at 942 (internal marks and quotation omitted). That said, courts will not deny class certification on the basis of "speculative" or "trivial" conflicts. *See id.* (finding settlement class representatives adequate and overruling objection that proposed $5,000 service award created a conflict of interest).

Plaintiffs have no interests that are antagonistic to or in conflict with persons in the Settlement Class they seek to represent. They suffered the same alleged deception and unfair business practices that all persons in the Settlement Class allegedly suffered. Class Counsel are active practitioners in consumer and class action litigation, including cases very similar to this one. *See* Turner Dec., ¶12. The requirements of Rule 23(a) are satisfied for settlement purposes.

2. The Rule 23(b)(3) Factors Are Satisfied for Settlement Purposes.

Rule 23(b)(3)'s predominance requirement tests whether proposed classes are "sufficiently cohesive to warrant adjudication by representation." *Hanlon*, 150 F.3d at 1022 (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). The predominance inquiry

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measures the relative weight of the common questions. *Amchem*, 521 U.S. at 624. Common issues predominate here for settlement purposes because the central liability question in this case, whether Defendants are liable for their alleged misrepresentation that OMR Ultradisc One-Step products were produced using an "all-analog" master chain, applies to all Settlement Class Members.

Because the claims are being certified for purposes of settlement, there are no issues with manageability. *Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there be no trial."). Additionally, resolution of thousands of claims in one action is far superior to individual lawsuits and promotes consistency and efficiency of adjudication. *See id.* at 617 (noting the "policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights"). Certification for purposes of settlement is appropriate.

E. Scheduling a Final Approval Hearing Is Appropriate.

The last step in the settlement approval process is a final approval hearing at which the Court may hear all evidence and argument necessary to make its settlement evaluation. Proponents of the settlement may explain the terms and conditions of the Settlement Agreement and offer argument in support of final approval. The Court will determine after the final approval hearing whether the settlement should be approved, and whether to enter a final order and judgment under Rule 23(e). Plaintiffs request that the Court set a date for a hearing on final approval at the Court's convenience, approximately 145-170 days after entry of an order preliminarily approving the settlement. If the Court preliminarily approves the settlement in

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January 2023, the final approval hearing should be scheduled for approximately June 20, 2023. The Parties also request that the Court schedule further settlement proceedings pursuant to the schedule set forth below:

ACTION	DATE
Preliminary Approval Order Entered	At the Court's Discretion
Notice Mailing Date	Within 45 days following entry of the Preliminary Approval Order
Exclusion/Objection Deadline	60 days after Notice Mailing Date
Claims Administrator's Filing of Exclusion Requests	7 days after Exclusion/Objection Deadline
Plaintiffs' Counsel's Fee Motion Submitted	30 days after Exclusion/Objection Deadline
Final Approval Brief and Response to Objections	30 days after Exclusion/Objection Deadline
Final Approval Hearing / Noting Date	Between 145-170 days of entry of the Preliminary Approval Order
Final Approval Order Entered	At the Court's Discretion

IV. CONCLUSION.

For the foregoing reasons, the Parties respectfully request that the Court: (1) grant preliminary approval of the settlement; (2) provisionally certify the proposed settlement class; (3) appoint Duncan Turner of Badgley Mullins Turner PLLC as Class Counsel; (4) appoint Stephen Tuttle and Dustin Collman as class representatives; (5) approve the proposed notice plan; (6) appoint Kroll Settlement Administration, LLC to serve as Notice Expert; and (7) schedule the final fairness hearing and related dates.

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Submitted this 15th day of January, 2023.

BADGLEY MULLINS TURNER PLLC

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Attorneys for Plaintiffs

Exhibit 2

to Madonia Declaration

THE HONORABLE JAMES L. ROBART
NOTING DATE: JANUARY 19, 2023

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINTON
AT SEATTLE

STEPHEN J. TUTTLE, an individual, and DUSTIN COLLMAN, an individual; on behalf of themselves and persons similarly situated;

Plaintiffs,

v.

AUDIOPHILE MUSIC DIRECT, INC. d/b/a MUSIC DIRECT, MOBILE FIDELITY, MOBILE FIDELITY SOUND LAB, and/or MOFI;

Defendant.

No. 22-cv-01081-JLR

STIPULATION FOR ORDER TO STAY CASE PENDING CONSIDERATION OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

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STIPULATION AND MOTION

WHEREAS the Plaintiffs have filed their Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Program (Dkt. #17), the Parties agree and stipulate that the Court should stay all actions on the case management calendar pending the Court's ruling on the Unopposed Motion and move the Court for such relief.

DATED this 19th day of January, 2023.

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Local Counsel for Defendants

ORDER

IT IS SO ORDERED this _____ day of _____, 2023.

_____
Hon. James L. Robart
United States District Court Judge

Presented by:

BADGLEY MULLINS TURNER PLLC

s/ Duncan C. Turner
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Local Counsel for Defendants

Exhibit 3

to Madonia Declaration

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN J. TUTTLE, et al., Plaintiffs, v. AUDIOPHILE MUSIC DIRECT INC., et al., Defendants.	CASE NO. C22-1081JLR ORDER

Before the court are (1) Plaintiffs' unopposed motion for preliminary approval of the class action settlement in this matter (PA Mot. (Dkt. # 17); *see also* Turner Decl. (Dkt. # 18), Ex. 1 ("Settlement Agreement")) and (2) the parties' stipulated motion for an order staying this case pending the court's consideration of Plaintiffs' motion for

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preliminary approval (Stay Mot. (Dkt. # 20)). The court has identified the following issues that must be corrected before it can preliminarily approve the settlement:[1]

1. Paragraph 4.26 of the Settlement Agreement defines a "Qualifying Settlement Claim Certification Form" as "a Settlement Claim Certification Form that is completed, properly executed, and timely returned to the Settlement Administrator within **one-hundred and twenty (180)** days from the date of publication of Class Notice." (Settlement Agreement ¶ 4.26 (emphasis added).) The parties shall clarify whether the deadline for returning the Settlement Claim Certification Form is 120 or 180 days from publication of notice.

2. The case number in the Proposed Order Granting Preliminary Approval of the Proposed Class Settlement is incorrect, and the deadlines highlighted on page 3 of that proposed order are not consistent with the dates proposed in Plaintiffs' motion. (*See* Settlement Agreement, Ex. B at 1; *compare id.* at 3 *with* PA Mot. at 23.)

3. The case number in the Full Notice attached to the Settlement Agreement is incorrect. (*See* Settlement Agreement, Ex. D, at 1 ("Full Notice").) The parties shall correct the case number in the Full Notice.

4. The process for a Class Member to return an Applicable Record for a refund is unclear. (*See* Full Notice ¶ 7.) For example, what happens after a Class Member submits a Settlement Claim Certification Form? Will the Class Member receive an acknowledgement from the Claims Administrator that his or her Settlement Claim

[1] Capitalized terms used in this order are defined in Section 4 of the Settlement Agreement. (*See* Settlement Agreement ¶¶ 4.1-4.32.)

Certification Form has been accepted as a Qualifying Settlement Claim Certification Form? Will Class Members who seek a full refund receive instructions for returning their Applicable Records, including a deadline for completing that return? Are Class Members expected to return their Applicable Records before final approval of the class action settlement to receive a refund? In addition, the instructions in the second paragraph of Paragraph 7 of the Full Notice are unreasonably dense and difficult to parse. The parties shall clarify in the Full Notice the process a Class Member must follow to receive settlement relief.

5. The Proposed Order Granting Final Approval of Settlement is inadequate for the court's purposes and includes an incorrect case number. (*See* Settlement Agreement, Ex. E ("Proposed Final Approval Order").) The parties shall provide a revised proposed order that includes the findings required by Federal Rule of Civil Procedure 23(e)(2).

6. The Proposed Judgment includes an incorrect case number. (*See* Settlement Agreement, Ex. F ("Proposed Judgment").) In addition, the attorneys' fees and class representative service awards included in the judgment are inconsistent with the amounts in the Settlement Agreement. (*Compare* Proposed Judgment ¶ 14 *with* Settlement Agreement ¶ 5.7.) The parties shall provide a revised proposed judgment that includes the correct case number, attorneys' fees, and service awards.

For the foregoing reasons, the court DENIES Plaintiffs' unopposed motion for preliminary approval of the class action settlement (Dkt. # 17) without prejudice. Plaintiffs may submit revised materials with a renewed motion for preliminary approval.

The court is concerned, however, that there may be further errors in the settlement materials that are not identified above. Accordingly, the court ADMONISHES the parties to review **all** of their materials carefully and thoroughly for consistency, clarity, accuracy, and conformity with the Federal Rules of Civil Procedure before resubmitting them to the court.

Finally, the court GRANTS the parties' stipulated motion to stay the case pending the court's consideration of the motion for preliminary approval (Dkt. # 20). The parties are ORDERED to file either revised preliminary approval materials or a joint statement regarding the status of their revisions to the preliminary approval materials by no later than **January 31, 2023**.

Dated this 20th day of January, 2023.

JAMES L. ROBART
United States District Judge

Exhibit 4

to Madonia Declaration

HONORABLE JAMES L. ROBART
NOTING DATE: February 17, 2023

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN J. TUTTLE, et al,

Plaintiffs,

v.

AUDIOPHILE MUSIC DIRECT INC. d/b/a MUSIC DIRECT and MOBILE FIDELITY, SOUND LAB, INC. d/b/a MOBILE FIDELITY and/or MOFI,

Defendants.

No. 22-cv-01081-JLR

REVISED UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND NOTICE PROGRAM

Plaintiffs Stephen Tuttle and Dustin Collman, on behalf of themselves and the putative class they seek to represent respectfully submit this Revised Unopposed Motion for Certification of Settlement Class and for Preliminary Approval of Class Action Settlement ("Revised Motion").[1]

Pursuant to the Court's Order of January 20, 2023 (Dkt. #21), the Plaintiffs' revisions primarily address the following topics:

[1] On January 27, 2023, third-parties Stiles, Flores, and Bitterman filed a Motion to Intervene and/or Stay the Settlement. Dkt. #23. That motion is noted for February 17, 2023. *Id.* Until and unless that motion is granted, the putative intervenors are not parties to this action. Nonetheless, Plaintiffs' Counsel has noted this motion for the same day.

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1. Additional information regarding the procedure and timeline for Class Members to submit claim forms, and elect which form of relief they wish to receive, i.e., coupon, partial refund, or return for full refund;
2. Additional information regarding the procedure and timeline for Class Members to return their records for a full refund following final approval, and the mechanism for curing any deficiencies with returned records;
3. Changes to the proposed notice program to increase saturation among both direct and indirect purchasers of records; and
4. Correction of various scrivener's errors, including captioned case numbers in supporting materials and exhibits.

I. INTRODUCTION.

Defendants Audiophile Music Direct, Inc. ("Music Direct") and Mobile Fidelity Sound Lab, Inc. ("MoFi") (collectively, "Defendants") are business entities which market and sell high-end vinyl record audio recordings. The records are mastered and manufactured by MoFi and sold to the retail and wholesale market by both MoFi and Music Direct. This is a putative class action lawsuit brought by Defendants' customers and purchasers of certain of Defendants' Original Master Recording ("OMR") and Ultradisc One-Step ("One-Step") series vinyl records which were sourced from original analog master recordings and contained a direct stream digital transfer step in the mastering chain (the "Applicable Records").

In the lawsuit, the Plaintiffs allege that Defendants represented that their collectable and limited-edition OMR and One-Step series vinyl records were produced with "analog-only" methods. Under these methods, a consumer record is produced using an analog master recording, without any intervening digital transfer, translation, or storage. Vinyl records created

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using analog-only methods are highly prized by audiophiles, and often carry a higher price point in the primary and secondary markets. Plaintiffs allege that in reality, Defendants relied on production methods which involved digital storage and translation, the absence of which was a major selling point of their "analog-only" products. Plaintiffs allege that by misrepresenting the source and provenance of the Applicable Records, Defendants acted unfairly and deceptively, and breached their contractual obligations to original purchasers. Defendants deny all such allegations.

As result of these claims, the Parties have reached a proposed Settlement which would allow all original purchasers to either: return their Applicable Records to Defendants in exchange for a full refund, plus any shipping and taxes, or alternatively, keep their Applicable Records and receive either a refund equal to five percent (5%) of the Applicable Records' purchase price, or a coupon for ten percent (10%) of the Applicable Records' purchase price towards other of Defendant Music Direct's or MoFi's products. Under the proposed Settlement, Class Members are able to make this selection in respect to each Applicable Record purchased from Defendants. Thus, for Applicable Records whose value on the secondary market is higher than the purchase price, Class Members can keep those Applicable Records and still receive other means of fair and reasonable consideration.

Because the Settlement Class is comprised of both individuals directly purchasing from Defendants and those who purchased from other retailers selling Applicable Records, the Parties propose a substantial and intensive Notice Program. Under that program, the Settlement Administrator will send Direct Mailed Full Notice by U.S. Mail and will distribute Emailed Summary Notice by e-mail to all Class Members who purchased directly from Defendants. To reach those who purchased Applicable Records from other retailers, the Settlement Administrator

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will advertise the Settlement in industry and hobbyist print and online publications, a Facebook ad campaign, as well as on Defendants' own Music Direct and MoFi retail websites. This multi-front approach will ensure strong notice saturation among the proposed Settlement Class.

Finally, the proposed Settlement is the result of extensive and arm's-length negotiations among the Parties and their counsel and is a fair compromise in light of potential risks of continued litigation.

II. FACTUAL BACKGROUND.

A. Defendants' Marketing of the Applicable Records.

Defendant MoFi is a manufacturer of high-end audio recordings, including, without limitation, the Applicable Records, which it sells at retail online to consumers and wholesale to other retailers. Defendant Music Direct is a primary retail and wholesale seller of MoFi recordings, including, without limitation, the Applicable Records. Between March 19, 2007, and approximately July 27, 2022, the Defendants marketed and sold vinyl records labeled "Original Master Recording" or "Ultra-Disc One-Step," including, without limitation, the Applicable Records.

In describing the Applicable Records, Defendants frequently represented that they were "Mastered from the Original Master Recordings…" Plaintiffs allege that among the audiophile community, this representation and many others were understood to mean that Defendant MoFi was using an all-analog "mastering chain" to produce its vinyl records.[2] Plaintiffs allege an all-analog mastering chain inherently limits the number of producible copies because each newly

[2] A "master chain" is the method used to produce vinyl records from an original audio master studio recording or tape.

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stamped record wears and degrades the source master lacquer. Plaintiffs further allege, for this reason, many of Music Direct's products were sold in limited runs, which increased their collectability to audiophiles and earned a higher price point because of their respective scarcity on the primary and secondary markets. Defendants deny all such allegations.

B. Potential Class Members.

Prior to reaching this Settlement, Music Direct produced sales data to Plaintiffs' Counsel for approximately one-hundred and twenty-three (123) OMR and One-Step vinyl record products. *See* Dkt. #19, Declaration of Jim Davis, President of Music Direct.[3] This data showed that Music Direct had sold over six-hundred thousand (600,000) OMR and One-Step vinyl records during the relevant period, of which approximately one-quarter were to retail customers. *See* First Declaration of Duncan C. Turner, Dkt. #18, ¶2. The remaining three-quarters were sold wholesale by Music Direct to other retailers, *e.g.* Target and Walmart, who then sold the product to consumers. *Id*. Because the proposed Settlement Class is comprised of both direct and indirect primary purchasers of Defendants' products, it is difficult to estimate the potential class size. Nonetheless, Defendants estimate that the proposed Class is comprised of at least 20,000 direct purchasers and 20,000 indirect purchasers.

C. Procedural Posture.

This action was filed on August 2, 2022. Dkt. #1. On September 28, 2022, the Defendants appeared through counsel. Dkt. #5. On December 20, 22, the Plaintiffs amended their

[3] Although Defendants produced data for one-hundred and twenty-four (124) records, it later produced information showing that one (1) was not relevant to Plaintiffs' allegations.

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complaint to describe the Defendant parties more accurately. Dkt. #18. To date, no formal discovery has occurred and Defendants have not answered.

Plaintiffs are aware of at least four other putative class actions against Defendants arising from substantially similar claims over its "all-analog" process:

- *Bitterman v. Mobile Fidelity Sound Lab, Inc.* – #1:22-cv-04714 (N.D. Illinois)[4]
- *Stiles v. Mobile Fidelity Sound Lab, Inc.* - #1:22-cv-04405 (N.D. Illinois)
- *Allen v. Audiophile Music Direct*, 22:cv-08146 (C.D. California)
- *Molinari v. Audiophile Music Direct et al*. – 22-cv-05444 (N.D. California)

To Plaintiffs' knowledge, none of these cases have been consolidated or certified for class treatment.

On January 27, 2023, the plaintiffs in *Bitterman* and *Stiles* filed their Motion to Intervene and/or Stay the Settlement. Dkt. #23.

D. Terms of the Proposed Settlement.

The terms of the Parties' proposed Settlement are within the Amended Settlement Agreement. *See* Second Declaration of Duncan C. Turner, Ex. 1. For purposes of this motion, the following discussion summarizes the Amended Settlement Agreement's terms.

1. The Settlement Class.

The proposed Settlement Class is comprised of:

> All original retail consumers in the United States who, from March 19, 2007, through July 27, 2022 purchased, either directly from a Defendant or other retail merchants, new and unused Mobile Fidelity Sound Lab, Inc. ("MoFi") vinyl recordings which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," that were sourced from original analog master tapes and which utilized a direct stream digital

[4] As described in fn. 1, the *Bitterman* and *Stiles* plaintiffs seek to intervene. Dkt. #23.

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> transfer step in the mastering chain, and provided that said purchasers still own said recordings (the "Applicable Records"). Excluded from the Class are persons who obtained subject Applicable Records from other sources.

Second Turner Dec., Ex. 1, ¶ 4.28. To date, Defendants have identified approximately one-hundred and twenty-three (123) Applicable Records marketed in this fashion. Dkt. #19. Although investigation is ongoing and additional Applicable Records may be identified prior to Notice publication, the Settlement is structured as to only effect the rights of purchasers of specific albums, not all of Defendants' customers generally. *See* Amended Settlement Agreement, Exhibit A.

As previously described, based on available sales data for these albums, the Settlement Class is estimated to comprise over forty fifty thousand (40,000) individual purchasers. Dkt. #19, ¶5.

2. Financial Consideration and Release.

Under the terms of the Amended Settlement Agreement, the Defendant agrees to provide Class Members with the two different approaches to relief. Second Turner Dec., Ex. 1, ¶5.1(a-d). For individuals who want to return their Applicable Records, Class Members will receive a full refund including associated taxes and shipping. *Id.*, ¶5.1(a). For individuals who want to keep their Applicable Records, they may elect to either receive a coupon of 10% off another Music Direct purchase or a refund of 5% of the record's original purchase price and associated taxes and shipping. *Id.*, ¶5.1(b-c). The total gross value of available relief is expected to be over $25 million dollars.

In consideration, the Settlement Class members shall release the Defendants and other released parties from:

> any and all claims which arise out of or are in any way related to Defendants' marketing, promotion and sale of the Applicable Records during the Applicable

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Period (including, without limitation, Unknown Claims as defined herein), demands, rights, liabilities, and causes of action of every nature and description whatsoever including, without limitation, statutory, constitutional, contractual, or common law claims, whether known or unknown, whether or not concealed or hidden, whether contingent or vested, against Defendants, the Defendants' Releasees, or any of them, that accrued, had accrued, or could have accrued at any time on or prior to the Effective Date for any type of relief whatsoever including, without limitation, compensatory damages, treble damages, unpaid costs, penalties, statutory damages, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, rescission, or equitable relief, based on any and all claims which are or could have been raised in the Litigation either individually or on a class-wide basis related to the Applicable Records.

For purpose of Settlement, "Unknown Claims" are defined as:

any Released Claims which the Class Representatives or any Class Member does not know or suspect to exist in his, her, or its favor at the time of the entry of the Order Granting Final Approval of Settlement and which, if known by him, her, or it might have affected his, her, or its settlement with and release of Defendants and the Defendants' Releasees. The Class Representatives and each Class Member may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Class Representatives and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Order Granting Final Approval of Settlement shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, regulation, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Each of the Class Representatives and each Class Member expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any similar provision under federal or state law that purports to limit the scope of a general release. Section 1542 provides: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. The Class Representatives acknowledge, and the Class Members shall be deemed by operation of the Order Granting Final Approval of Settlement to have acknowledged, that the foregoing waivers were

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separately bargained for and key elements of the Settlement of which these releases are a part.

See Second Turner Dec., Ex. 1, ¶4.26 & 4.32.

The Defendants have retained Kroll Settlement Administration, LLC ("Administrator") to act as notice, and claims administrator, and will bear any costs associated with preparation and distribution of the Notice to the Settlement Class, reception and reporting of opt-outs and objectors, receipt of claim materials, validation of claim forms and proofs, and distribution of the Settlement funds.

3. Settlement Payments.

The election to receive a full/partial refund or coupon will be available to all Class Members who do not opt out of the Settlement and who submit valid Proofs of Purchase and Ownership. Class Members will have ninety (90) days from Notice publication to submit a valid claim in order to receive compensation. Second Turner Dec., Ex. 1, ¶4.25. If the Settlement receives final approval, qualified Class Members who did not select the return option will receive their payments from the Administrator within thirty (30) days of: (1) expiration for the period to appeal or (2) any appeal affirming final approval of the Settlement becomes final. *Id.*, ¶5.5.1. Qualified Class Members who elected to return all or some of their records for a full refund will receive a pre-paid return shipping label with tracking number and return instructions at the same time. *Id.*, ¶5.5.2. Qualified Class Members will have ninety (90) days to return their Applicable Records from the date they receive their pre-paid label, and will receive their payments from the Administrator within thirty (30) days after receipt of their records. *Id.*

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4. Notice Program.

In conjunction with preliminary approval, Plaintiffs respectfully request the Court approve the Notice and claims program in which the Administrator will (1) send Full Notice and Claim Forms by U.S. Mail and will e-mail Summary Notices, with a link to the Settlement Website, to Class Members who directly purchased from Defendants. *See* Second Turner Dec., Ex. 1, Amended Settlement Agreement, ¶5.3.3; Ex. C & D; *see also* Declaration of Jeanne Finegan, generally. To reach indirect purchasers, the Administrator will publish notice on industry and audiophile online forums and media sources, and on Defendants' websites. *See* Second Turner Dec., Ex. 1, Amended Settlement Agreement, ¶5.3.2. Further, the Administrator will create a website for Class Members to electronically submit their Proofs of Purchase and Ownership in order to claim compensation. *Id.*, ¶5.3.4. The Settlement is conditioned upon no more than 10% of the Settlement Class opting out. *Id.*, ¶5.4.3.

5. Plaintiffs' Service Award.

Plaintiffs will ask the Court to approve a service award of $20,000 ($10,000 for each Class Representative) to be paid out directly by Defendants. *Id.*, ¶5.7.2. These awards will compensate Plaintiffs for their time and effort serving as the named plaintiffs and for the risks they undertook in prosecuting the case. The enforceability of the Settlement is not contingent on the Court's approval of the service award in the amount sought by the Plaintiffs.

6. Attorney's Fees and Litigation Expenses.

Plaintiffs' Counsel will ask for an award of attorney's fees of no more than $290,000, to be paid directly by Defendants. *Id.*, ¶5.7.1. The purpose of this award would be to compensate and reimburse Plaintiffs' Counsel for work already performed on the case, and the work necessary to oversee and shepherd the proposed Settlement to completion. The enforceability of

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the Settlement is not contingent on the Court's approval of an award of attorney's fees and costs in the amounts sought by Plaintiffs' Counsel.

7. Administrative Costs.

Defendants shall bear any expenses and costs arising from administration of Settlement class claims. *Id.*, ¶5.8. Subject to the Court's approval, Defendants have retained Kroll Settlement Administration, LLC as the Settlement Administrator.

8. Proposed Settlement Timeline.

In summary, the Parties propose the following timelines for issuing Notice, Claim Form submission, and briefing issues related to final approval: and subsequently distributing compensation to Qualified Class Members:

Event	Days From Preliminary Approval	Days From Triggering Event
Preliminary Approval Order	0	
Notice Deadline	45	45
Exclusion/Objection Deadline	105	60
Claim's Administrator's Filing of Exclusion Requests	112	7
Class Member Claim Form Submission Deadline	135	90
Plaintiffs' Counsels' Fee Motion Deadline	135	30
Parties' Final Approval Motion Deadline	135	30
Response to Objection Deadlines	135	30
Final Approval Hearing	145-170	

If final approval is granted, the Parties propose the following timeline for distributing compensation, and processing returned Applicable Records:

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Event	Days From Effective Date	Days From Triggering Event
Effective Date	0	
Distribution of Non-Return Class Member Proceeds	30	30
Distribution of Return Labels to Return Members	30	30
Deadline for Return of Elected Records	120	90
Period to Identify Deficiencies	140	20
Payment for Non-Deficient Returns	150	10
Deficiency Cure Period	195	45
Payment for Cured Deficient Returns	205	10

E. Considerations In Reaching Settlement.

The proposed Settlement is the result of substantial arm's-length negotiations between the opposing parties. While the Plaintiffs are confident that the Defendants' own marketing materials and admissions would allow them to demonstrate the presence of unfair and deceptive marketing of "all-analog" vinyl records, they also risk potential difficulties in demonstrating credible injury or harm. For example, many of the effected albums sell on the secondary market, even opened, and used, for more than their original MSLRP. Furthermore, Plaintiffs also believe that Class Members face potential difficulties in demonstrating that the DSD-master chain products they received were lower quality than the all-analog master chain promised by Defendants with its OMR and One-Step products. First Turner Dec., Dkt. #18, ¶4.

To ascertain potential damages and class size, Plaintiffs' Counsel reviewed retail and wholesale sales data produced by Defendants for approximately one-hundred and twenty-three (123) OMR and One-Step albums. *Id*., ¶2; Dkt. #19, ¶3.

Here, the Plaintiffs alleged four distinct causes of action: (1) violation of the Washington State Consumer Protection Act (RCW 19.86), (2) breach of contract, (3) unjust enrichment, and

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(4) violation of the Illinois Consumer Fraud Act (815 ILCS 505/2). Dkt. #14, pg. 9-13. Plaintiffs originally raised the CPA on behalf of a sub-class of Washington residents, although the negotiated settlement does not make any distinction between Washington and non-Washington Class Members. Second Turner Dec., Ex. 1, Amended Settlement Agreement, ¶4.28. For purposes of this Settlement, all Class Members are treated the same. *Id*. In considering the proposed Settlement, Plaintiffs' counsel assessed each claim and the likelihood of prevailing on that claim, as well as the various methods for establishing damages of limited-run or collectible merchandise. After analyzing data produced by Defendants and considering arguments raised by Defendants, Plaintiffs' Counsel believes the proposed Settlement is fair and reasonable.

III. AUTHORITY AND ARGUMENT

A. The Settlement Approval Process.

As a matter of "express public policy," federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned"); *see also* William B. Rubenstein, *Newberg on Class Actions* ("Newberg") § 13.1 (5th ed. Updated 2015) (citing cases). Here, the proposed Settlement is the best vehicle for the Settlement Class Members to receive the relief to which they may be entitled in a prompt and efficient manner.

The Manual for Complex Litigation describes a three-step procedure for approval of class action settlements: (1) preliminary approval of the proposed settlement; (2) dissemination of notice of the settlement to all affected settlement class members; and (3) a "fairness hearing"

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or "final approval hearing," at which settlement class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. *Manual for Complex Litigation (Fourth)* ("MCL 4th") §§ 21.632 – 21.634, at 432–34 (2014). This procedure safeguards settlement class members' due process rights and enables the court to fulfill its role as the guardian of class interests. *See* Newberg § 13.1.

With this motion, the Parties request that the Court take the first step in the settlement approval process by granting preliminary approval of the proposed Amended Settlement Agreement. The purpose of preliminary evaluation of proposed class action settlements is to determine whether the settlement "is within the range of possible approval" and thus whether notice to the settlement class of the settlement's terms and the scheduling of a formal fairness hearing is worthwhile. Newberg § 13.13. *See City of Seattle*, 955 F.2d at 1276 (in context of class action settlement, appellate court cannot "substitute [its] notions of fairness for those of the [trial] judge and the parties to the agreement," and will reverse only upon strong showing of abuse of discretion) (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 626 (9th Cir. 1982)). The Court's grant of preliminary approval will allow the Settlement Class to receive direct and publication notice of the proposed Amended Settlement Agreement's terms, and the date and time of the Final Approval Hearing, at which Settlement Class Members may be heard regarding the Amended Settlement Agreement, and at which time further evidence and argument concerning the settlement's fairness, adequacy, and reasonableness may be presented. *See* MCL 4th § 21.634.

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B. The Criteria for Settlement Approval Are Satisfied.

The Ninth Circuit puts "a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). To assess a settlement proposal, courts must balance the strength of the Plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the state of the proceedings; the experience and views of counsel; and the reaction of the class members to the proposed settlement. *In re Online DVD-Rental Antitrust Litig.* ("*In re Online DVD*"), 779 F.3d 934, 944 (9th Cir. 2015); *McKinney-Drobnis v. Oreshack*, 16 F.4th 594, 607 (9th Cir. 2021) (listing factors from the 2018 amendments to FRCP 23 as "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.").

1. The Settlement is the Product of Serious, Informed, and Non-Collusive Negotiations.

The Court's role is to ensure that "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (internal quotes and citations omitted); *see also In re Online DVD*, 779 F.3d at 944 (noting settlements in class actions "present unique due process concerns for

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absent class members," including the risk that class counsel "may collude with the defendants") (quoting *In re Bluetooth Headset Prods. Liab. Litig.* ("*In re Bluetooth*"), 654 F.3d 935, 946 (9th Cir. 2010)).

The Settlement is the result of extensive, arm's-length negotiations between experienced attorneys for both parties who are competent practitioners in class action litigation in general and with the legal and factual issues of this case. First Turner Dec., Dkt. #18, ¶5.

2. The Settlement is Fair and Reasonable In Light of the Alleged Claims and Potential Defenses.

The Amended Complaint asserts claims for violations of Washington and Illinois consumer-protection statutes, as well as breach of contract and unjust enrichment. Dkt. #14, pg. 9-13. The Amended Complaint also seeks prejudgment interest, exemplary damages, and attorney's fees and costs. *Id*.

Although this case was conditionally settled before the determination of key legal issues in dispute, the Defendants expressed their intention, if necessary, to contest the issue of class certification, and Plaintiffs' ability to demonstrate harm or injury resulting from the presence of DSD within the OMR and One-Step master chains. The recoverability of prejudgment interest is highly uncertain because extensive analysis was required to identify the full scope of Settlement Class Members' damages. Defendants would likely argue that such analysis precludes recoverability of prejudgment interest. Finally, the recoverability of exemplary damages is also uncertain because the Defendants would likely argue that the product Class Members received was auditorily indistinguishable from that promised.

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3. The Settlement Provides Substantial Relief and Treats All Settlement Class Members Fairly.

As previously described, the Settlement provides that Class Members will have the opportunity to return their Applicable Records for a full refund, or alternatively, to keep their records and claim a 5% refund or 10% coupon towards future purchases from Defendants. Second Turner Dec., Ex. 1, ¶5.1(a-d). Further, Class Members can elect which method of relief to receive for each individual album they purchased and have in their possession. *Id*. Therefore, the Settlement structure not only fairly distributes compensation each Class Member paid for each Applicable Record, but it also allows Class Members to make this election while considering the resale value of each Applicable Record on the secondary market.

4. Plaintiffs' Requested Fees Are Reasonable.

Plaintiffs' Counsel will seek an award of up to $290,000 for reasonable fees and costs occurred in prosecuting this action. *Id.*, ¶5.7.1. These fees will be borne and paid directly by Defendants and will not reduce the relief available to Class Members. *Id*.

The Ninth Circuit has approved two methods for calculating attorneys' fees depending on the circumstances: the lodestar method and the percentage-of-recovery method. Under the lodestar method, the prevailing attorneys are awarded an amount calculated by multiplying the hours they reasonably expended on the litigation by their reasonable hourly rates. *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003). "Under the percentage-of-recovery method, the attorneys' fees equal some percentage of the common settlement fund…" *In re Online DVD*, 779 F.3d at 949. Regardless of the method, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable." *In re Bluetooth*, 654 F.3d at 941.

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The benchmark award is 25% of the common fund or gross recovery. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Plaintiffs' Counsel's request is approximately 2.7% of the potential estimated non-exemplary relief available to direct purchase Class Members. *See* First Turner Dec., Dkt. #18, ¶3. When indirect purchaser Class Members are included, the fee request is closer to 1.1% of total non-exemplary relief. *Id.*

Plaintiffs' Counsel were confident in their ability to succeed at class certification and at trial. Nevertheless, success was by no means guaranteed, especially considering the complexity of the issues involved. Because Plaintiffs' Counsel agreed to prosecute this case on a contingency basis with no guarantee of ever being paid, they faced substantial risk if they proceeded to trial.

Prior to final approval, Plaintiffs' Counsel will file a separate motion for an award of attorney's fees and costs, addressing in greater detail the facts and law supporting their fee request in light of all of the relevant facts.

5. The Requested Service Award Is Reasonable.

"[I]ncentive awards that are intended to compensate class representatives for work undertaken on behalf of a class 'are fairly typical in class action cases.'" *In re Online DVD*, 779 F.3d at 943 (quoting *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009)). Incentive or service awards are generally approved so long as the awards are reasonable and do not undermine the adequacy of the class representatives. *See Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1164 (9th Cir. 2013) (finding service award must not "corrupt the settlement by undermining the adequacy of the class representatives and class counsel"). For example, if a settlement explicitly conditions a service award on the class representative's support for the settlement, the service award is improper. *See id.* By contrast, where a

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settlement "provide[s] no guarantee that the class representatives would receive incentive payments, leaving that decision to later discretion of the district court," a service award may be appropriate." *In re Online DVD*, 779 F.3d at 943.

Here, the Plaintiffs individually request service awards of $10,000.00, or an amount the Court deems appropriate. This value reflects the proposed Class Members' high degree of participation in the investigation of their claims, as well as those of their fellow members. It also reflects their active participation in negotiation of this Settlement, and their substantial contribution to settlement terms which ultimately benefited the Class. First Turner Dec., Dkt. #18, ¶6. Plaintiffs' support of the Settlement is independent of any service award and not conditioned on the Court awarding any particular amount or any award at all, in stark contrast to *Radcliffe*. Thus, Plaintiffs' adequacy as class representatives is unaffected by an appropriate service award that recognizes their efforts and contributions to the case.

6. The Proposed Notice Program Is Constitutionally Sound.

Rule 23(e)(1) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement. Fed. R. Civ. P. 23(e)(1); *see also* MCL 4th § 21.312. The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). According to the Manual for Complex Litigation, a settlement notice should do the following:

- Define the class;
- Describe clearly the options open to the class members and the deadlines for taking action;
- Describe the essential terms of the proposed settlement;

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- Disclose any special benefits provided to the class representative;
- Indicate the time and place of the hearing to consider approval of the settlement, and the method for objecting to or opting out of the settlement;
- Explain the procedures for allocating and distributing settlement funds, and, if the settlement provides different kinds of relief for different categories of class members, clearly set out those variations;
- Provide information that will enable class members to calculate or at least estimate their individual recoveries; and
- Prominently display the address and phone number of class counsel and the procedures for making inquiries.

The proposed forms of notice, attached as Exhibits C & D to the Amended Settlement Agreement, satisfy all of the above criteria. The proposed Notices are clear, straightforward, and provides persons in the Settlement Class with enough information to evaluate whether to participate in the settlement. Thus, the Notices satisfy the requirements of Rule 23. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 808 (1985) (explaining a settlement notice must provide settlement class members with an opportunity to present their objections to the settlement).

The Administrator will send Full Notices and Claim Forms by U.S. Mail (Ex. D) and Summary Notices (Ex. C), with a hyperlink to the Settlement Website, by e-mail to all direct purchasers of effected albums from Defendants. Second Turner Dec., Ex. 1, ¶5.3.3. For indirect purchasers who bought Defendants' products from other retailers, the Administrator will publish a media campaign to notify Settlement Class Members of their rights and applicable deadlines and invite them to submit timely claims. *Id.*, ¶5.3.2. This Notice Program satisfies due process especially because Rule 23 does not require that each potential class member receive actual notice of the class action. *Mullane*, 339 U.S. at 316 (explaining that the Supreme Court "has not

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hesitated to approve of resort to publication as a customary substitute in [a] class of cases where it is not reasonably possible or practicable to give more adequate warning").

All in all, the Notice Program constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class, and fully satisfies the requirements of due process and Rule 23. *See* Declaration of Jeanne Finegan, ¶30.

C. Provision Certification of the Class Is Appropriate.

For settlement purposes only the Parties have agreed to certify the Settlement Class and respectfully request that the Court provisionally certify the Settlement Class defined as:

> All original retail consumers in the United States who, from March 19, 2007, through July 27, 2022 purchased, either directly from a Defendant or other retail merchants, new and unused Mobile Fidelity Sound Lab, Inc. ("MoFi") vinyl recordings which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and provided that said purchasers still own said recordings (the "Applicable Records"). Excluded from the Class are persons who obtained subject Applicable Records from other sources.

Second Turner Dec., Ex. 1, ¶4.28. As detailed below, the Settlement Class satisfies the applicable certification requirements.

1. The Rule 23(a) Factors Are Met for Settlement Purposes.

a. Numerosity.

"The prerequisite of numerosity is discharged if 'the class is so large that joinder of all members is impracticable.'" *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) (quoting Fed. R. Civ. P. 23(a)(1)). "It is a long-standing rule that 'impractical' does not mean 'impossible' rather, impracticality means only 'the difficulty or inconvenience of joining all members of the class.'" *McClusky v. Trustees of Red Dot*, 268 F.R.D. 670, 673 (W.D. Wash. 2010). The Settlement Class herein includes approximately over 20,000 direct purchasers,

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rendering joinder impracticable. *See McCluskey v. Trs. of Red Dot Corp. Emp. Stock Ownership Plan & Trust*, 268 F.R.D. 670, 674 (W.D. Wash. 2010).

b. Commonality.

The commonality requirement of Rule 23(a)(2) is satisfied because the questions of law common to the Settlement Class are, in fact, identical, and the questions of fact address merely each individual customer's claim, and the answers to these questions can all be derived from a common database and associated sales data. Because persons in the Settlement Class here all allegedly suffered the same injury and are generally subject to the same defenses, commonality is satisfied for settlement purposes.

c. Typicality.

"Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." *Hanon v. Dataprods. Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). "[R]epresentative claims are typical if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. Here, the representatives were direct customers of Defendants' during the relevant period, and purchased both OMR and Ultradisc One-Step products. They are not asserting claims different than those of the remaining Settlement Class Members. Because Plaintiffs' claims arise from the same course of conduct that affected all Settlement Class Members, typicality is satisfied for settlement purposes.

d. Adequacy of Representation.

Adequacy requires the representative of a class to provide fair and adequate representation of the class. Fed. R. Civ. P. 23(a)(4). "To determine whether named plaintiffs will adequately represent a class, courts must resolve two questions: '(1) do the named plaintiffs

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and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (quoting *Hanlon*, 150 F.3d at 1020). In the context of a class settlement, examination of potential conflicts of interest "is especially critical." *In re Online DVD*, 779 F.3d at 942 (internal marks and quotation omitted). That said, courts will not deny class certification on the basis of "speculative" or "trivial" conflicts. *See id.* (finding settlement class representatives adequate and overruling objection that proposed $5,000 service award created a conflict of interest).

Plaintiffs have no interests that are antagonistic to or in conflict with persons in the Settlement Class they seek to represent. They suffered the same alleged deception and unfair business practices that all persons in the Settlement Class allegedly suffered. Class Counsel are active practitioners in consumer and class action litigation, including cases very similar to this one. *See* First Turner Dec., Dkt. #18, ¶12. The requirements of Rule 23(a) are satisfied for settlement purposes.

2. The Rule 23(b)(3) Factors Are Satisfied for Settlement Purposes.

Rule 23(b)(3)'s predominance requirement tests whether proposed classes are "sufficiently cohesive to warrant adjudication by representation." *Hanlon*, 150 F.3d at 1022 (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). The predominance inquiry measures the relative weight of the common questions. *Amchem*, 521 U.S. at 624. Common issues predominate here for settlement purposes because the central liability question in this case, whether Defendants are liable for their alleged misrepresentation that OMR Ultradisc One-Step

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products were produced using an "all-analog" master chain, applies to all Settlement Class Members.

Because the claims are being certified for purposes of settlement, there are no issues with manageability. *Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there be no trial."). Additionally, resolution of thousands of claims in one action is far superior to individual lawsuits and promotes consistency and efficiency of adjudication. *See Id.* at 617 (noting the "policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights"). Certification for purposes of settlement is appropriate.

E. Scheduling a Final Approval Hearing Is Appropriate.

The last step in the settlement approval process is a final approval hearing at which the Court may hear all evidence and argument necessary to make its settlement evaluation. Proponents of the settlement may explain the terms and conditions of the Amended Settlement Agreement and offer argument in support of final approval. The Court will determine after the final approval hearing whether the settlement should be approved, and whether to enter a final order and judgment under Rule 23(e). Plaintiffs request that the Court set a date for a hearing on final approval at the Court's convenience, approximately 145-170 days after entry of an order preliminarily approving the settlement. The Parties also request that the Court schedule further settlement proceedings pursuant to the schedule set forth on the next page:

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Event	Days From Preliminary Approval
Preliminary Approval Order	0
Notice Deadline	45
Exclusion/Objection Deadline	105
Claim's Administrator's Filing of Exclusion Requests	112
Class Member Claim Form Submission Deadline	135
Plaintiffs' Counsels' Fee Motion Deadline	135
Parties' Final Approval Motion Deadline	135
Response to Objection Deadlines	135
Final Approval Hearing	145-170

If the Court preliminarily approves the settlement in late February 2023, the final approval hearing should be scheduled for approximately **August 7, 2023.**

IV. CONCLUSION.

For the foregoing reasons, the Parties respectfully request that the Court: (1) grant preliminary approval of the Settlement; (2) provisionally certify the proposed Settlement Class; (3) appoint Duncan Turner of Badgley Mullins Turner PLLC as Class Counsel; (4) appoint Stephen Tuttle and Dustin Collman as Class Representatives; (5) approve the proposed Notice Program; (6) appoint Kroll Settlement Administration, LLC to serve as Notice and Settlement Administrator; and (7) schedule the final fairness hearing and related dates.

Submitted this 2nd day of February, 2023.

BADGLEY MULLINS TURNER PLLC

/s/ Duncan C. Turner
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Exhibit 5

to Madonia Declaration

HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN J. TUTTLE, et al,

Plaintiffs,

v.

AUDIOPHILE MUSIC DIRECT INC. d/b/a MUSIC DIRECT and MOBILE FIDELITY, SOUND LAB, INC. d/b/a MOBILE FIDELITY and/or MOFI,

Defendants.

No. 22-cv-01081-JLR

SECOND DECLARATION OF DUNCAN TURNER

Duncan C. Turner declares and states:

1. I am lead counsel for the plaintiffs in this action. I am making this declaration in support of the Revised Unopposed Motion for Preliminary Approval of Class Action Settlement. I have personal knowledge of the matters stated herein and am competent to testify as to the same.

2. I have attached to this declaration as **Exhibit One** a true and correct copy of the executed Amended Settlement Agreement.

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I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 2nd day of February, 2023 at Seattle, Washington

/s/ Duncan C. Turner
Duncan C. Turner, WSBA # 20597

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EXHIBIT ONE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

STEPHEN J. TUTTLE, an individual, and DUSTIN COLLMAN, an individual, on behalf of themselves and persons similarly situated, Plaintiffs, v. AUDIOPHILE MUSIC DIRECT, INC. d/b/a MUSIC DIRECT and MOBILE FIDELITY SOUND LAB, INC. d/b/a MOBILE FIDELITY and/or MOFI, Defendants.	Case No. 2:22-cv-01081-JLR Judge James L. Robart

AMENDED CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Amended Class Action Settlement Agreement (the "Settlement Agreement") is entered into by and between Stephen J. Tuttle and Dustin Collman (individually and collectively, the "Class Representatives" or "Plaintiffs"), on behalf of themselves and the Class Members (as defined herein) (with the assistance and approval of Class Counsel) and Audiophile Music Direct, Inc., a Nevada corporation ("Music Direct"), and Mobile Fidelity Sound Lab, Inc., an Illinois corporation ("MoFi") (individually and collectively, the "Defendants"). By entering into this Settlement Agreement, the Settling Parties (as defined herein), including all Class Members, intend to fully, finally, and forever release, resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Settlement Agreement, and subject to the final approval of the Court.

WHEREAS, the Litigation (as defined herein) was commenced by Plaintiffs, individually and on behalf of an alleged nationwide class, and is currently pending;

WHEREAS, in the Litigation, Class Representatives allege that Defendants, *inter alia*, (i) violated the Washington Consumer Protection / Unfair Business Practices Act, RCW 19.86.020 against Washington state Class Members, (ii) committed acts in breach of contract against national Class Members, (iii) committed acts of unjust enrichment against national Class Members, and (iv) violated §§815 ILCS 505/2 and 510/2 of Illinois Consumer Fraud Act against national Class Members;

WHEREAS, Defendants deny Plaintiffs' claims, any liability to Class Representatives or any member of the alleged or proposed Settlement Class (as defined herein), and any wrongdoing of any kind;

WHEREAS, Class Representatives and Defendants agree that it is desirable that the Litigation be settled upon the terms and conditions set forth below to avoid further expense and uncertain, burdensome, and potentially protracted litigation and resolve all claims that have been or could have been asserted; and

WHEREAS, the Defendants have produced data to permit Class Counsel to evaluate the nature and fairness of any settlement terms, and Defendants represent that such data are accurate and reliable and were produced to enable Class Counsel to evaluate and enter into this Settlement Agreement;

WHEREAS, the Settling Parties have engaged in arms-length settlement negotiations and Class Counsel represents that they have otherwise conducted a thorough study and investigation of the law and facts relating to the claims that have been, or might have been asserted in the Litigation and have concluded - taking into account the benefits that the Class Representatives and the Class Members will receive as a result of this Settlement Agreement as well as the risks and delays of further litigation - that this Settlement Agreement is fair,

reasonable, adequate, and in the best interests of Class Representatives and the Class; and

WHEREAS, the Settling Parties executed a Settlement Agreement dated January 14, 2023 and Plaintiffs submitted an Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Program to the Court on January 15, 2023;

WHEREAS, the Court issued an Order dated January 20, 2023 denying the Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Program without prejudice, listing several issues that must be corrected before the Court could preliminarily approve the settlement;

WHEREAS, the Settling Parties have modified the January 14, 2023 Settlement Agreement to address the issues identified by the Court in its January 20, 2023 Order; and

NOW, THEREFORE, intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth in this Settlement Agreement, the Settling Parties agree, subject to the approval of the Court and provisions contained in this Settlement Agreement, that the Litigation and Released Claims against Defendants and any Defendants Releasees are fully and finally compromised, settled, and released, and that the Litigation shall be dismissed with prejudice as follows:

1. **Conditional Nature of Settlement Agreement.** This Settlement Agreement, including all associated exhibits and attachments, is made for the sole purpose of attempting to consummate settlement of this Litigation on a Class-wide basis. The Settlement Agreement is made in compromise of disputed claims. The Settlement Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions set forth in this Settlement Agreement. Because this Litigation was pled as a class action, this settlement must receive preliminary and final approval

by the Court. Accordingly, the Settling Parties enter into this Settlement Agreement and associated settlement (the "Settlement") on a conditional basis that is subject to the final approval of the Court.

2. **Effect of Disapproval.** In the event the Court does not execute and file an Order Granting Final Approval of the Settlement (as defined herein), or in the event that such Order does not become Final (as defined herein) for any reason, this Settlement Agreement shall be deemed null and void *ab initio:* it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and any negotiations, terms, and entry of the Settlement Agreement shall remain subject to the provisions of Federal Rule of Evidence 408 and any similar state laws.

3. **Denial of Liability; No Admissions.** Defendants deny all of Plaintiffs' claims as to liability, damages, penalties, interest, fees, restitution, and all other forms of relief as well as the allegations asserted in the Litigation. Neither this Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations connected with it, shall be construed as any admission or concession by Defendants of any legal violations, any legal requirement, or any failure to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be used, offered, or received as evidence in any action or proceeding to establish: any liability or admission on the part of Defendants or any Defendants' Releasees; any condition constituting a violation of, or non-compliance with, federal, state, local, or other applicable laws; or the propriety of class certification in any proceeding or action. The Settling Parties expressly agree and represent that in the event the Court does not approve the Settlement Agreement or any appellate court disapproves of the Settlement Agreement in any way that prevents the

Settlement from becoming Final, no Party will use or attempt to use any conduct or statement of any other Party in connection with this Settlement Agreement or any effort to seek approval of the Settlement to affect or prejudice any other Party's rights in any ensuing litigation. Defendants have agreed to resolve this Litigation through this Settlement Agreement, but to the extent this Settlement Agreement is deemed void or the Effective Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Litigation upon all procedural and factual grounds including, without limitation, the ability to challenge class action treatment on any grounds or assert any and all defenses or privileges. Defendants expressly reserve all rights and defenses as to any claims and do not waive any such rights or defenses in the event that the Settlement Agreement is not approved for any reason. The Class Representatives and Class Counsel agree that Defendants and the Defendants' Releasees retain and reserve these rights and agree not to take a position to the contrary. Specifically, the Class Representatives and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that Defendants could not contest class certification on any grounds if this Litigation were to proceed.

4. **Definitions.**

As used in all parts of this Settlement Agreement, the following terms have the meanings specified below:

4.1 "Applicable Period" means the period of time of any retail purchase of a new and unused Applicable Record (as defined herein) made by the original retail consumer purchaser from the date of the first purchase order for the same on March 19, 2007 until July 27, 2022.

4.2 "Applicable Record(s)" means all MoFi

(a) OMR (as defined herein) and One-Step (as defined herein) vinyl recordings sourced from original analog master tapes and which utilized a DSD (as defined herein) transfer step in the mastering chain (including those listed on **EXHIBIT A**, attached hereto and any others meeting the defined criteria), and

(b) which were purchased new and unused at retail in the United States by the original retail consumer purchaser during the Applicable Period, and provided that said purchaser still owns said recordings.

4.3 "Claims Period" means the period ninety (90) days from the Notice Deadline during which Class Members can submit their Settlement Claim Certification Form and Proof to the Settlement Administrator. Settlement Claim Certification Forms received after the Claims Period are untimely and will not be eligible for Settlement Payments.

4.4 "Class Counsel" means Duncan C. Turner, Esq., and the law firm of Badgley Mullins Turner, PLLC, of 19929 Ballinger Way NE, Suite 200, Seattle, Washington 98155.

4.5 "Class Member" means a person who is a member of the Settlement Class who does not submit a valid and timely request for exclusion or "opt-out" from the Settlement Class in accordance with the terms of this Settlement Agreement.

4.6 "Class Notice" or "Notice" means the publication summary notice ("Summary Notice"), full notice ("Full Notice"), direct postal mailed Full Notice ("Direct Mailed Full Notice"), and direct emailed Summary Notice ("Emailed Summary Notice") to be approved by the Court substantially in the form of **EXHIBITS C** and **D,** attached hereto.

4.7 "Court" means the United States District Court for the Western District of Washington at Seattle.

4.8 "Defendants' Releasees" means individually and collectively, MoFi and Music Direct, and each of or their current and former affiliates (including, but not limited to, any parents and subsidiaries); each of the foregoing's predecessors, successors, divisions, joint ventures, and assigns; and each of any of the foregoing's past or present directors, officers, employees, partners, members, principals, agents, underwriters, insurers, co-insurers, re-insurers, shareholders, attorneys, accountants or auditors, banks or investment banks, personal or legal representatives, or associates.

4.9 "DSD" means the high resolution direct stream digital encoding format.

4.10 "Effective Date" means the date on which the time to appeal from entry of the Order Granting Final Approval of the Settlement has lapsed with no notice of appeal having been filed, or if an appeal is filed, the date the Order Granting Final Approval of the Settlement is affirmed, all appeals are dismissed, and no further appeals to, or discretionary review in any court remains.

4.11 "Final" means the occurrence of the Effective Date.

4.12 "Litigation" or the "Lawsuit" means the lawsuit captioned *Stephen J. Tuttle, an individual, and Dustin Collman, an individual; on behalf of themselves and persons similarly situated v. Audiophile Music Direct, Inc. d/b/a Music Direct, and Mobile Fidelity Sound Lab, Inc. d/b/a Mobile Fidelity and/or Mofi,* Case No. 2:22-cv-01081-JLR (United States District Court for the Western District of Washington at Seattle).

4.13 "MoFi" means Defendant, Mobile Fidelity Sound Lab, Inc., an Illinois corporation, with its principal place of business at 1811 West Bryn Mawr Avenue, Chicago, Illinois 60660.

4.14 "Music Direct" means Defendant, Audiophile Music Direct, Inc., a Nevada

corporation, with its principal place of business at 1811 West Bryn Mawr Avenue, Chicago, Illinois 60660.

4.15 "Notice Deadline" means the deadline to commence the print and internet publication of Summary Notice, mailing of Direct Mailed Full Notice, and emailing of Emailed Summary Notice, which shall be no later than forty-five (45) days after the Preliminary Approval Date.

4.16 "Notice Response Deadline" means the date sixty (60) days after the Notice Deadline for purposes of opt out of the Settlement Class or serving an objection to the Settlement pursuant to Section 5.4 of the Settlement Agreement.

4.17 "OMR Records" means vinyl record albums produced by MoFi under its "Original Master Recording" series and bearing the Original Master Recording label.

4.18 "One-Step Records" means vinyl record albums produced by MoFi under its "Ultradisc One-Step" series and bearing the Ultradisc One-Step label.

4.19 "Order of Final Approval" or "Order Granting Final Approval of Settlement'' means an order to be entered and filed by the Court following the final approval hearing entitled "Order Granting Final Approval of Settlement" substantially in the form attached as **EXHIBIT F**, attached hereto.

4.20 "Participating Claimant(s)" means each member of the Settlement Class who properly and timely submits a Qualifying Settlement Claim Certification Form (as defined herein) in response to the Class Notice.

4.21 "Preliminary Approval Date" means the date on which the Court enters the Preliminary Approval Order.

4.22 "Preliminary Approval Order" means an order to be executed and filed by

the Court entitled "Order Granting Preliminary Approval" substantially in the form attached as **EXHIBIT B**, attached hereto.

4.23 "Proof of Purchase" means

(a) Documentary evidence of the amount paid by the Class Member for the retail purchase of an Applicable Record, the date of the purchase, and the entity to which the Class Member made the payment.

(b) Acceptable Proof of Purchase includes a receipt, credit card statement, or cancelled check referencing the purchase, or such other documentary evidence provided by the Class Member and deemed sufficient by the Settlement Administrator after consulting with Class Counsel and counsel for the Defendants.

(c) For Class Members who purchased an Applicable Record online directly from either (i) Defendant MoFi's "mofi.com" website, or (ii) Defendant Music Direct's "musicdirect.com" website (individually and collectively referred to as a "Direct Purchase") the provision of their name and order number shall suffice as Proof of Purchase.

(d) For Class Members who made a Direct Purchase and who do not have their order number, the provision of their name, email address used, and approximate date of purchase, for each listed Applicable Record shall suffice as Proof of Purchase.

(e) The adequacy of Proof of Purchase is to be evaluated under liberal terms to effect the intent and purpose of the Settlement.

4.24 "Proof of Ownership" means

(a) Documentary evidence that the Class Member submitting a claim under the Settlement purchased an Applicable Record within the Applicable Period and still owns and is still in possession of same.

(b) Acceptable Proof of Ownership, includes, for each Applicable Record: (i) the catalog number appearing on the spine of the record cover or box; and legible photos, photocopies, JPEGs, PDFs, or similar copies of both (ii) the individually stamped or hand-written number from the back cover, and (iii) the front cover of the Applicable Record, or such other documentary evidence deemed sufficient by the Settlement Administrator.

(c) The adequacy of Proof of Ownership is to be evaluated under liberal terms to effect the intent and purpose of the Settlement.

(d) Proof of Purchase and Proof of Ownership are hereinafter individually and collectively also referred to as "Proof."

4.25 "Qualifying Settlement Claim Certification Form" means a Settlement Claim Certification Form (as defined herein) that is completed, properly executed, and timely returned to the Settlement Administrator by uploading to the Settlement Website (as defined herein) orby email received or mail postmarked within ninety (90) days from Notice Deadline. Class Counsel shall be thereafter apprised of any claim that is challenged by Defendants; and, the Settling Parties, through their counsel, shall meet and confer in good faith in an attempt to resolve any challenged claim.

4.26 "Released Claims" means, individually and collectively, any and all claims which arise out of or are in any way related to Defendants' marketing, promotion and sale of the Applicable Records during the Applicable Period (including, without limitation, Unknown Claims as defined herein), demands, rights, liabilities, and causes of action of every nature and description whatsoever including, without limitation, statutory, constitutional, contractual, or common law claims, whether known or unknown, whether or not concealed or hidden, whether contingent or vested, against Defendants, the Defendants' Releasees, or any of them, that

accrued, had accrued, or could have accrued at any time on or prior to the Effective Date for any type of relief whatsoever including, without limitation, compensatory damages, treble damages, unpaid costs, penalties, statutory damages, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, rescission, or equitable relief, based on any and all claims which are or could have been raised in the Litigation either individually or on a class-wide basis related to the Applicable Records.

4.27 "Settlement Claim Certification Form" or "Claim Form" means a claim form substantially in the form attached as **EXHIBIT E**.

4.28 "Settlement Class" means the collective group of those retail consumers who purchased Applicable Records within the Applicable Period. Specifically, the Settlement Class definition, including for purposes of giving notice to the Settlement Class, shall read substantially as follows:

> All original retail consumers in the United States who, from March 19, 2007, through July 27, 2022 purchased, either directly from a Defendant or other retail merchants, new and unused Mobile Fidelity Sound Lab, Inc. ("MoFi") vinyl recordings which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and provided that said purchasers still own said recordings (the "Applicable Records"). Excluded from the Class are persons who obtained subject Applicable Records from other sources.

4.29 "Settlement Hearing" or "Fairness Hearing" means a hearing set by the Court to take place no earlier than ninety (90) days after entry of the Preliminary Approval Order for the purpose of: (i) determining the fairness, adequacy, and reasonableness of the Settlement Agreement and associated Settlement pursuant to class action procedures and requirements; and (ii) entering the Order Granting Final Approval of Settlement. Pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(d), an order giving final approval of a

proposed settlement may not be issued earlier than ninety (90) days after the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under 28 U.S.C. § 1715(b).

4.30 "Settlement Agreement" or "Agreement" means this Agreement and Release, and all of its attachments and exhibits, which the Settling Parties understand and agree sets forth all material terms and conditions of the Settlement between them and which is subject to Court approval. It is understood and agreed that Defendants' obligations for payment under this Settlement Agreement are conditioned on the preliminary approval of the Settlement and the distribution of any funds to any Class Member or Class Counsel is conditioned upon the occurrence of the Effective Date.

4.31 "Settlement Administrator" means Kroll Settlement Administration, LLC.

4.32 "Settling Parties" means Defendants and the Class Representatives on behalf of themselves and any and all Class Members.

4.33 "Unknown Claims" means any Released Claims which the Class Representatives or any Class Member do not know or suspect to exist in his, her, or its favor at the time of the entry of the Order Granting Final Approval of Settlement and which, if known by him, her, or it might have affected his, her, or its settlement with and release of Defendants and the Defendants' Releasees. The Class Representatives and each Class Member may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Class Representatives and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Order Granting Final Approval of Settlement shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent

or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, regulation, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Each of the Class Representatives and each Class Member expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any similar provision under federal or state law that purports to limit the scope of a general release. Section 1542 provides: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. The Class Representatives acknowledge, and the Class Members shall be deemed by operation of the Order Granting Final Approval of Settlement to have acknowledged, that the foregoing waivers were separately bargained for and key elements of the Settlement of which these releases are a part.

5. The Settlement.

5.1 *Settlement Payments.*

Members of the Settlement Class who submit timely and valid Qualifying Claim Certification Forms, Proof of Purchase, and Proof of Ownership shall be entitled to receive Settlement compensation as follows:

(a) Class Members who elect to return their Applicable Record(s) in their original covers and/or boxes, in complete and undamaged condition except for normal wear

and tear, shall receive a refund of their actual purchase price (not to exceed 110% of the manufacturer's suggested retail list price at the time of purchase ("MSRLP")), plus tax and shipping, in the form of a check or electronic payment (*e.g.*, PayPal, Venmo, etc.) (the "Return Refund). For each Applicable Record purchased online directly from either Defendant MoFi's "mofi.com" website, or Defendant Music Direct's "musicdirect.com" website, the Class Member's actual purchase price will be used in calculating the amount of their Return Refund. For each Applicable Record purchased from retail merchants other than Defendants, the Class Member's actual purchase price not to exceed 110% of the MSLRP at time of purchase will be used in calculating the amount of their Return Refund. A list of MSLRPs by date shall be posted on the Settlement Website.

(b) Class Members who elect to keep their Applicable Record(s), shall have the option of receiving, either (i) payment of five percent (5%) of the actual purchase price (not to exceed 110% of the MSRLP), in the form of a check or electronic payment (*e.g.*, PayPal, Venmo, etc.) (the "5% Payment"), or (ii) a coupon in the amount of ten percent (10%) of the actual purchase price (not to exceed 110% of the MSRLP), redeemable for retail purchase use at Defendant Music Direct's "musicdirect.com" retail website (the "10% Coupon" or "Coupon") (with the Return Refund, 5% Payment, and 10% Coupon being hereinafter individually and collectively referred to as the "Settlement Payment").

(c) Each Coupon will contain a code that may be used to redeem its full value for one or more retail purchases by the Class Member. Each coupon, including any unused amounts will expire one hundred and eighty (180) days after issuance (the "Redemption Period") and shall not be transferable. Coupons may be redeemed in combination on one or more purchases. Any unused amounts will be placed on account for use during the Redemption Period

by the Class Member. All MoFi products currently in stock and available for sale shall be available for Coupon redemption along with any and all other products offered for sale at "musicdirect.com."

(d) Class Members shall be entitled to designate their preference of a Return Refund, 5% Payment, or 10% Coupon Settlement Payment for each individual Applicable Record on their Claim Form.

(e) For purposes of payment security, all (i) Return Refunds and (ii) 5% Payments to Class Members will be paid by check mailed to the address designated on the Claim Form unless an election for an electronic Return Refund and/or 5% Payment, including the designation of form of electronic payment (*e.g.*, PayPal, Venmo, etc.), is timely made by the Class Member by filling out the Claim Form on the Settlement Website. Class Members can only make the electronic Return Refund or electronic 5% Payment election on the Settlement Website. Class Members must cash their Return Refund and/or 5% Payment checks within one hundred and eighty (180) days after issuance.

5.2 *Preliminary Approval and Court Approval of Notice to the Class.*

5.2.1 The Class Representatives and Defendants, through their counsel of record in the Litigation, shall file this Settlement Agreement with the Court, and Class Representatives shall move for (and Defendants shall not oppose) preliminary approval of this Settlement Agreement, conditional certification of the Class, and the form and manner of Class Notice. Through this submission and a supporting motion, the Class Representatives, through their counsel of record, will request (and Defendants shall not oppose) that the Court enter the Preliminary Approval Order thereby scheduling the Fairness Hearing for the purposes of determining the fairness, adequacy, and reasonableness of the Settlement; and entering the Order

Granting Final Approval of Settlement**.**

5.3 *Notice to Class Members.*

5.3.1. Following the Court's entry of the Preliminary Approval Order, the Settlement Administrator shall provide notice to the Class Members as set forth below. Copies of the proposed Class Notice Summary Notice and Full Notice documents are attached to this Settlement Agreement as **EXHIBITS C** and **D**.

5.3.2. The Notice Program shall commence by the Notice Deadline and shall include:

(a) Print and internet publication of the Summary Notice in industry niche magazines;

(b) Internet Summary Notice displayed on (i) Defendant MoFi's "mofi.com" retail website and (ii) Defendant Music Direct's "musicdirect.com" retail website (collectively, "Defendants' Websites");

(c) Internet social media advertising, with specific targeting to relevant platforms, sites, newsfeeds and stories; and

(d) Internet display banner advertising; specifically targeted to reach Class Members.

(e) The print and internet publication in industry niche magazines and on Defendants' Websites shall be substantially in the form of the Summary Notice in **EXHIBIT C**.

(f) The internet, Defendants' Websites, social media and display banner advertising notices referenced in this Section 5.3.2 shall also include a hyperlink to the Settlement Website which shall contain the Full Notice and Claim Form.

5.3.3 Both Direct Mailed Full Notice and Emailed Summary Notice shall

be made to approximately 23,000 Class Members who made a Direct Purchase of Applicable Records during the Applicable Period from Defendants and for whom address and email address information is available in Defendants' records or in Defendants' possession, (individually and collectively, "Direct Purchasers"). The Direct Mailed Full Notice shall be substantially in the form of **EXHIBIT D** and shall also include the **EXHIBIT E** Claim Form. The direct Emailed Summary Notice shall be substantially in the form of **EXHIBIT C** and shall include a hyperlink to the Settlement Website which shall contain the **EXHIBIT D** Full Notice and **EXHIBIT E** Claim Form. The Settlement Administrator will send the Direct Purchasers list through the United States Postal Service's ("USPS") National Change of Address ("NCOA") database to obtain updated addresses for Class Members who have submitted a change of address with the USPS in the last 48 months. Direct Mailed Full Notice to Direct Purchasers will be made by First Class Mail and Emailed Notice will be sent to Direct Purchasers on or before the Notice Deadline.

5.3.4 A dedicated Settlement website (the "Settlement Website") administered by the Settlement Administrator shall be established by the Notice Deadline. The Settlement Website will, among other things, provide links to the Settlement Agreement, the Class Notice, t he Claim Form, and other relevant documents. In addition, the Settlement Website will provide for online claim filing, allow Class Members to contact the Settlement Administrator with any questions or changes of address, and provide notice of important dates.

5.3.5 *CAFA Notice.* The Settlement Administrator shall send notice of the proposed class action Settlement to the appropriate Federal official and the appropriate State official, if any, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, no later than ten (10) days after the motion for preliminary approval is filed with the Court.

5.3.6 *Press Release*. The Settlement Administrator shall issue a press

release concerning the Settlement via PR Newswire's USA1 distribution network, which includes thousands of news outlets. The Settlement Administrator will monitor for news mentions and report the results to the Court upon completion of the Notice Program.

5.3.7 *Toll-Free Number*. The Settlement Administrator will establish and administer a toll-free number for the Settlement, which will allow Class Members to call and obtain information about the Settlement through an interactive voice response system and/or by being connected to a live agent. The toll-free number will be available twenty-four hours a day, seven days a week.

5.3.8 The costs of Notice to Class Members and Settlement Administrator shall be paid by Defendants.

5.4 *Claims Processing, Opt-out, Objections; and Motion for Final Approval.*

5.4.1 The Settlement Administrator shall process all Claim Forms, including Proof, submitted by or postmarked by the last day of the Claims Period. For any Claim Form that is deemed untimely or otherwise deficient, the Settlement Administrator shall issue a notice of deficiency to the Class Member setting out the reasons for the deficiency within thirty (30) days of receipt of the Claim Form and provide the Class Member thirty (30) days to cure the deficiency. Within fifteen (15) days of the close of the Claim Period, the Settlement Administrator will issue a report to the Settling Parties detailing the Claim Forms received, the Claim Form deficiencies and cures, as well as a summary of the Participating Claimants' elections for Settlement Payments. This report will be periodically updated for any cured claims received by the Settlement Administrator after the Claims Period. The Settling Parties will each have the right to inspect and verify the Claim Forms, and Proofs prior to the Settlement Administrator's approval of such claims, and before Defendants are obligated to make any

Settlement Payments to the Class Members.

5.4.2 Class Members have the option to participate in this Lawsuit at their own expense by obtaining their own attorney(s). Class Members who choose this option will be responsible for any attorneys' fees or costs incurred as a result of their decision. The Class Notice will advise Class Members of this option.

5.4.3 Class Members (other than Class Representatives) may elect to "opt-out" of the Settlement and, thus, exclude themselves from the Lawsuit and Settlement Class. No opt-out request may be made by a group of Class Members or signed by an actual or purported agent or attorney acting or purporting to act on behalf of a Class Member. Any opt-out request must be mailed to Class Counsel, be personally signed by the Class Member opting-out and include the following information: (i) the name of the Class Member, (ii) the current address of the Class Member, and (iii) the date signed. Any opt-out request must be mailed to Class Counsel and postmarked no later than the Notice Response Deadline. Those Class Members who do not opt out of the Settlement in a manner consistent with the conditions just described will be deemed to have forever waived their right to opt out of the Settlement Class and this Settlement. Class Members who do properly opt-out shall have no further role in the Litigation and, for all purposes, shall be regarded as if they never were a party to this Litigation; thus, they shall not be entitled to any benefit as a result of this Litigation including, without limitation, any tolling of any pertinent statute of limitations. If more than ten percent (10%) of eligible Class Members opt-out of the Settlement, Defendants shall have the option of terminating the Settlement Agreement at their sole discretion. If Defendants exercises this option, the Settlement Agreement shall be deemed null and void *ab initio.*

5.4.4 Class Members may also object to this Settlement Agreement by filing a written objection, together with any supporting papers (hereinafter collectively referred to as the "Notice of Objection") with the United States District Court for the Western District of Washington at Seattle no later than the Notice Response Deadline. Class Counsel must also be served with copies of the objections, postmarked no later than the Notice Response Deadline. The Class Notice shall advise Class Members of this option. Class Counsel shall immediately provide any such objections to Defendants and, subsequently, the Court in the final approval process. Any Class Member who does not object to the Settlement in the manner just described shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the proposed Settlement or any provision of this Settlement Agreement.

5.4.5 Prior to the Fairness Hearing and consistent with the rules established by the Court, the Class Representatives shall move (and Defendants shall not oppose) the Court for entry of the Order of Final Approval. Class Representatives and Defendants, through their counsel shall address any written objections from Class Members in their submission to the Court for the Fairness Hearing. Also prior to the Fairness Hearing, Class Counsel may file a Motion for Fees and Costs, consistent with this Settlement Agreement. The Class Representatives and Class Counsel shall be responsible for justifying the agreed upon payments set forth in this Settlement Agreement. The Settling Parties shall take all reasonable efforts to secure entry of the Order of Final Approval. If the Court rejects the Settlement, or fails to enter the Order of Final Approval, this Settlement Agreement shall be void *ab initio*.

5.5 *Returns and Payments to Participating Claimants.*

5.5.1 With respect to those Participating Claimants who have not elected to receive a Return Refund for any Applicable Record identified on their Qualifying Settlement Claim Certification Form, the Settlement Administrator shall issue the 5% Payments and 10% Coupons within thirty (30) days following the Effective Date.

5.5.2 With respect to Participating Claimants who have elected to receive a Return Refund for any Applicable Record identified on their Qualifying Settlement Claim Certification Form, the Settlement Administrator shall issue and send a pre-paid return shipping label with tracking number and return instructions to the physical or email address as designated by the Class Member on the Claim Form within thirty (30) days of and only after the Effective Date.

5.5.3 Participating Claimants who have elected to receive a Return Refund must return their Applicable Records identified on their Qualifying Settlement Claim Certification Form pursuant to the return instructions within ninety (90) days from the issuance of the pre-paid return shipping label with tracking number ("Return Period").

5.5.4 Within twenty (20) days of the end of the Return Period, the Defendants shall provide a report to the Class Counsel and Settlement Administrator detailing the Applicable Records received within the Return Period, as well as any Records received that are not Applicable Records or whose condition does not satisfy Section 5.1(a) above ("Return Refund Report").

5.5.5 For those Participating Claimants who have no deficiencies in their return of Applicable Records as set forth in the Return Refund Report, the Settlement Administrator shall no later than ten (10) days after receipt of the Return Refund Report issue

payments for Return Refunds, as well as any 5% Payments and 10% Coupons that those Participating Claimants may have elected for any other (i.e., non-returned) Applicable Record on their Qualifying Settlement Claim Certification Form.

5.5.6 The Settlement Administrator will review the Return Refund Report to identify any Participating Claimants who elected a Return Refund on their Qualifying Settlement Claim Certification Form and who either failed to make a return or whose return was deficient and shall no later than ten (10) days after receipt of the Return Refund Report issue cure notices to such Claimants. These Claimants shall have forty-five (45) days to cure or modify their election to receive a 5% Payment or 10% Coupon. Within ten (10) days after the expiration of the forty-five (45) day cure period, the Settlement Administrator shall issue payments for Return Refunds, as well as any 5% Payments and 10% Coupons for non-returned Records, to those Participant Claimants who cured or modified their election during the cure period.

5.6 *Release*.

Upon the Effective Date, Class Representatives and each of the Class Members (for themselves and their respective heirs, executors, administrators, affiliates, successors, and assigns) shall be deemed to have, and by operation of the Order Granting Final Approval shall have, fully, finally, and forever released, dismissed with prejudice, relinquished, and discharged all Released Claims.

5.7 *Payment of Costs and Attorneys' Fees and to the Class Representatives.*

5.7.1 Subject to Court approval, Class Counsel shall receive $290,000 from Defendants for all attorneys' fees and allowable Litigation costs and expenses. This amount shall be payable within thirty (30) days of the Effective Date and will be

paid in its entirety by Defendants and will not reduce funds available to pay the Class Members. Payments made pursuant to this Paragraph shall constitute full satisfaction of any claim for fees and/or costs and the Class Representatives and Class Counsel, on behalf of themselves and all Class Members, agree that they shall not seek nor be entitled to any additional attorneys' fees or costs under any theory. The Class Representatives and Class Counsel agree that they shall be responsible for justifying the amount of this cost and fee payment to the Court and submitting the necessary materials to justify this payment along with the motion for final approval of the Settlement Agreement. Class Counsel shall provide counsel for Defendants with the pertinent taxpayer identification number and a Form W-9 for reporting purposes. Other than any reporting of this fee payment as required by this Settlement Agreement or law, which Defendants shall make, Class Counsel and the Class Representatives shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made pursuant to this Paragraph.

5.7.2 On behalf of Plaintiff Stephen J. Tuttle, in his personal capacity only, Class Counsel shall request an incentive payment in the gross amount of $10,000 for Mr. Tuttle to be paid by Defendants. On behalf of Plaintiff Dustin Collman, in his personal capacity only, Class Counsel shall request an incentive payment in the gross amount of $10,000 for Mr. Collman to be paid by Defendants. These amounts shall be payable within thirty (30) days of the Effective Date and will be paid in their entirety by Defendants and will not reduce funds available to pay the Class Members. This payment shall be compensation and consideration for Plaintiff Tuttle's and Plaintiff Collman's efforts as the Class Representatives in the Litigation.

5.8 *Claims Administration.*

This Settlement shall be administered by the Settlement Administrator. All fees and costs in payment to the Settlement Administrator shall be borne by the Defendants.

5.9 *Termination of Settlement.*

In the event that the Settlement Agreement is not approved by the Court; the Settlement set forth in the Settlement Agreement is terminated, cancelled, declared void, or fails to become effective in accordance with its terms; the Order Granting Final Approval of Settlement does not become final; or termination, cancellation, or voiding of the Settlement Agreement is otherwise provided, no payments shall be made or distributed to anyone in accordance with the terms of this Settlement Agreement; the Settling Parties will bear their own costs and fees with regard to the efforts to obtain Court approval; and this Settlement Agreement shall be deemed null and void with no effect on the Litigation whatsoever. In such event, the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and any Order Granting Final Approval of Settlement or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc.*

5.10 *Miscellaneous Provisions.*

5.10.1 The Settling Parties: (i) acknowledge that it is their intent to consummate this Settlement Agreement and (ii) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Settlement Agreement and exercise their best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement.

5.10.2 The Settlement Agreement compromises claims which are

contested in good faith and it shall not be deemed an admission by any of the Settling Parties as to the merits of any claim or defense. The Settling Parties agree that the amounts paid in settlement and the other terms of the Settlement were negotiated in good faith by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

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

5.10.4 All of the exhibits to the Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

5.10.5 Except as otherwise provided in this Settlement Agreement, each party shall bear its own attorneys' fees and costs. All Class Members will be responsible for paying any and all income taxes that may be due as a result of their participation in the Settlement described in this Settlement Agreement.

5.10.6 The Settlement Agreement constitutes the entire agreement among the Settling Parties hereto and no representations, warranties, or inducements have been made to any party concerning the Settlement Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. This Settlement Agreement supersedes any and all prior oral or written understandings, agreements,

and arrangements between the Parties with respect to the settlement of the Litigation and the Released Claims. Except those set forth expressly in this Settlement Agreement, there are no other agreements, covenants, promises, representations, or arrangements between the Parties with respect to the settlement of the Litigation and Released Claims. This Settlement Agreement may be altered, amended, modified, or waived, in whole or in part, only by a writing signed by all Parties to this Settlement Agreement, and may not be altered, amended, modified, or waived, in whole or in-part, orally or by an unsigned writing of any kind.

5.10.7 Class Counsel, on behalf of the Class, are expressly authorized by the Class Representatives to take all appropriate action required or permitted to be taken by the Class pursuant to the Settlement Agreement to effect its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Class which they deem appropriate. Each Party to this Settlement Agreement warrants that he, she, or it is acting upon his, her, or its independent judgment and/or upon the advice of his, her, or its own counsel, and is not acting in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in writing in this Settlement Agreement.

5.10.8 Each counsel or other person executing the Settlement Agreement or any of its exhibits on behalf of any party hereto hereby warrants that such person has the full authority to do so.

5.10.9 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

5.10.10 This Settlement Agreement shall be binding upon, and inure to

the benefit of, the heirs, administrators, executors, successors, and assigns of the Parties hereto; but otherwise this Settlement Agreement is not designed to and does not create any type of third party beneficiaries.

5.10.11 The Court shall retain jurisdiction with respect to implementing and enforcing the terms of the Settlement Agreement and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Settlement Agreement.

5.10.12 The Settlement Agreement and the exhibits hereto shall be considered to have been negotiated, executed, delivered, and wholly performed in the State of Washington at Seattle, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal substantive laws of the State of Washington at Seattle without giving effect to that State's choice of law principles.

5.10.13 The language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party. No party shall be deemed the drafter of this Settlement Agreement. The parties acknowledge that the terms of the Settlement Agreement are contractual and are the product of negotiations between the parties and their counsel. Each party and their counsel cooperated in drafting and preparing the Settlement Agreement. In any construction to be made of the Settlement Agreement, the Settlement Agreement shall not be construed against any party. Any canon of contract interpretation to the contrary, under the law of any state, shall not be applied.

5.10.14 The Class Representatives and Class Counsel shall not directly

or indirectly cause any aspect of this Lawsuit or the terms of this Settlement Agreement to be reported to the media or news reporting services, except as may otherwise be agreed to by Defendants in writing in the form of an agreed-upon written press release. Notwithstanding the foregoing, Class Counsel shall not be restricted in the use of media in communication with Class Members whether online, via a website or otherwise, provided that such communication accurately describe the terms and provisions of this Settlement Agreement applicable to notice and payment of claims and Defendants' non-admission of liability**.**

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused the Settlement Agreement to be executed.

Date: February 2, 2023

BADGLEY MULLINS TURNER PLL

By: /s/ *Duncan C. Turner*

Duncan C. Turner, WSBA No. 20597
Mark A. Trivett, WSBA No. 46375
19929 Ballinger Way NE, Suite 200
Seattle, WA 98155
Telephone: (206) 621-6566
Email: dturner@badgleymullins.com
Attorneys For Plaintiffs

Date: February 2, 2023

JOSEPH J. MADONIA & ASSOCIATES

By: /s/ *Joseph J. Madonia*

Joseph J. Madonia, *(pro hac vice)*
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Email: josephmadonia@gmail.com
Attorney For Defendants

Date: February 2, 2023

CORR CRONIN LLP

By: /s/ *Emily J. Harris*

Emily J. Harris, WSBA No. 35763
Steven W. Fogg, WSBA No. 23528
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Email: sfogg@corrcronin.com
Email: eharris@corrcronin.com
Local Counsel for Defendants

Exhibit A

(To Settlement Agreement)

Stephen J. Tuttle, et al., v. Audiophile Music Direct, Inc., et al.,
Case No.: 2:22-cv-01081-JLR

EXHIBIT A

APPLICABLE RECORDS

MoFi "Original Master Recording" Applicable Records

	CATALOG #	ARTIST	TITLE
1 -	MFSL2-500	Alan Parsons Project	Eye In The Sky
2 -	MFSL2-455	Alan Parsons Project	I Robot
3 -	MFSL2-479	Aretha Franklin	Aretha's Gold
4 -	MFSL1-445	Bill Withers	Greatest Hits
5 -	MFSL2-446	Bill Withers	Live At Carnegie Hall
6 -	MFSL2-384	Billy Joel	52nd Street
7 -	MFSL2-388	Billy Joel	An Innocent Man
8 -	MFSL2-385	Billy Joel	Glass Houses
9 -	MFSL3-418	Billy Joel	Greatest Hits Volume 1 & 2
10 -	MFSL1-349	Billy Joel	Piano Man
11 -	MFSL2-386	Billy Joel	Songs In The Attic
12 -	MFSL2-387	Billy Joel	The Nylon Curtain
13 -	MFSL2-383	Billy Joel	The Stranger
14 -	MFSL1-350	Billy Joel	Turnstiles
15 -	MFSL2-379	Bob Dylan	Another Side Of Bob Dylan (Stereo)
16 -	MFSL2-461	Bob Dylan	Another Side Of Bob Dylan (Mono)
17 -	MFSL3-45009	Bob Dylan	Blonde On Blonde
18 -	MFSL1-381	Bob Dylan	Blood On The Tracks
19 -	MFSL2-420	Bob Dylan	Bob Dylan
20 -	MFSL2-380	Bob Dylan	Bringing It All Back Home
21 -	MFSL2-416	Bob Dylan	Desire
22 -	MFSL2-416SV	Bob Dylan	Desire (SuperVinyl)
23 -	MFSL2-417	Bob Dylan	Greatest Hits
24 -	MFSL2-464	Bob Dylan	John Wesley Harding
25 -	MFSL2-489	Bob Dylan	"Love And Theft"
26 -	MFSL1-487	Bob Dylan	Pat Garrett And Billy The Kid
27 -	MFSL1-443	Bob Dylan	Planet Waves
28 -	MFSL 2-378	Bob Dylan	The Freewheelin' Bob Dylan (Stereo)
29 -	MFSL 2-459	Bob Dylan	The Freewheelin' Bob Dylan (Mono)
30 -	MFSL2-421	Bob Dylan	The Times They Are A Changin' (Stereo)
31 -	MFSL2-460	Bob Dylan	The Times They Are A Changin' (Mono)
32 -	MFSL2-382	Bob Dylan and The Band	The Basement Tapes

33 -	MFSL1-352	Carole King	Music
34 -	MFSL1-414	Carole King	Tapestry
35 -	MFSL2-351	Carole King	The Carnegie Hall Concert
36 -	MFSL1-413	Daryl Hall John Oates	H2O
37 -	MFSL1-412	Daryl Hall John Oates	Private Eyes
38 -	MFSL1-447	Daryl Hall John Oates	Rock 'n Soul Part 1
39 -	MFSL1-411	Daryl Hall John Oates	Voices
40 -	MFSL2-470	Derek And The Dominos	Layla
41 -	MFSL2-467	Dire Straits	Communique
42 -	MFSL2-466	Dire Straits	Dire Straits
43 -	MFSL2-469	Dire Straits	Love Over Gold
44 -	MFSL2-468	Dire Straits	Making Movies
45 -	MFSV 1-514	Electric Light Orchestra	Eldorado (SuperVinyl™)
46 -	MFSL1-475	Elvis Costello with Burt Bacharach	Painted from Memory
47 -	MFSL1-475SV	Elvis Costello with Burt Bacharach	Painted from Memory (SuperVinyl™)
48 -	MFSL1-343	Foreigner	4
49 -	MFSL1-338	Foreigner	Foreigner
50 -	MFSL2-483	Grateful Dead	Blues For Allah
51 -	MFSL2-498	Harry Nilsson	Nilsson Schmilsson
52 -	MFSL2-499	Harry Nilsson	Son OF Schmilsson
53 -	MFSL1-368	Iron Butterfly	In-A-Gadda-Da-Vida
54 -	MFSL1-368SV	Iron Butterfly	In-A-Gadda-Da-Vida (SuperVinyl™)
55 -	MFSL1-477	James Gang	James Gang Rides Again
56 -	MFSL1-356	James Taylor	Dad Loves His Work
57 -	MFSL1-355	James Taylor	Flag
58 -	MFSL1-354	James Taylor	JT
59 -	MFSL2-454	Janis Joplin	Pearl
60 -	MFSL2-502	Jeff Beck	Truth
61 -	MFSL2-456	Jefferson Airplane	Surrealistic Pillow
62 -	MFSL2-457	Jefferson Airplane	Volunteers
63 -	MFSL2-495	Johnny Cash	I Walk The Line
64 -	MFSL1-357	Keb' Mo'	Keb Mo
65 -	MFSL2-402	Love	Forever Changes
66 -	MFSL1-400	Lynyrd Skynyrd	Pronounced Lynyrd Skynyrd
67 -	MFSL1-315	Marvin Gaye	Let's Get It On
68 -	MFSL2-439	Miles Davis	Bitches Brew
69 -	MFSL2-438	Miles Davis	Filles De Killmanjaro
70 -	MFSL1-376	Miles Davis	Four And More
71 -	MFSL1-377	Miles Davis	In A Silent Way
72 -	MFSL2-45011	Miles Davis	Kind Of Blue
73 -	MFSL2-437	Miles Davis	Miles In The Sky
74 -	MFSL2-486	Miles Davis	Miles Smiles
75 -	MFSL1-374	Miles Davis	Milestones

76 - MFSL2-436	Miles Davis	Nefertiti
77 - MFSL1-452	Miles Davis	On The Corner
78 - MFSL2-485	Miles Davis	Porgy And Bess
79 - MFSL1-373	Miles Davis	Round About Midnight
80 - MFSL1-375	Miles Davis	Sketches Of Spain
81 - MFSL2-435	Miles Davis	Sorcerer
82 - MFSL1-440	Miles Davis	Jack Johnson
83 - MFSL 2-45008	Natalie Merchant	Tigerlily
84 - MFSL2-318	Patricia Barber	Mythologies
85 - MFSL2-327	Patricia Barber	The Cole Porter Mix
86 - MFSL1-474	Procol Harum	A Salty Dog
87 - MFSL2-476	Richard Thompson	Rumor And Sigh
88 - MFSL2-494	Run D.M.C.	Raising Hell
89 - MFSL 2-45012	Santana	Santana
90 - MFSL1-471	Supertramp	Breakfast In America
91 - MFSL1-399	The Allman Brothers Band	Brothers And Sisters
92 - MFSL 2-398	The Allman Brothers Band	Eat A Peach
93 - MFSL1-397	The Allman Brothers Band	The Allman Brothers Band
94 - MFSL1-347	The Band	Stage Fright
95 - MFSL1-473	The Knack	Get The Knack
96 - MFSL1-311	The Pixies	Bossanova
97 - MFSL1-372	The Pretenders	Pretenders
98 - MFSL 2-503	The Young Rascals	Groovin'
99 - MFSL1-448	Tom Waits and Crystal Gayle	One From The Heart
100 - MFSL1-358	Tony Bennett	I Left My Heart In San Francisco
101 - MFSL1-359	Tony Bennett	I Wanna Be Around
102 - MFSL1-444	Train	Drops Of Jupiter
103 - MFSL1-492	Twisted Sister	Stay Hungry
104 - MFSL 2-491	Vanilla Fudge	Vanilla Fudge
105 - MFSL1-390	Weezer	The Blue Album
106 - MFSL1-480	Weezer	The Blue Album (blue vinyl)

MoFi "Ultradisc One-Step" Applicable Records

CATALOG #	ARTIST	TITLE
107 - MFSL45UD1S-009	Bill Evans Trio	Portrait In Jazz
108 - MFSL45UD1S-016	Blood, Sweat & Tears	Blood, Sweat & Tears
109 - MFSL45UD1S-006	Bob Dylan	Blood On The Tracks
110 - MFSL45UD1S-030	Carole King	Tapestry
111 - MFSL45UD1S-010	Charles Mingus	Ah Um
112 - MFSL45UD1S-013	Janis Joplin	Pearl

113 - MFSL45UD1S-008	Marvin Gaye	What's Going On
114 - MFSL45UD1S-023	Muddy Waters	Folk Singer
115 - MFSL45UD1S-014	Paul Simon	Still Crazy After All These Years
116 - MFSL45UD1S-001	Santana	Abraxas
117 - MFSL45UD1S-004	Simon And Garfunkel	Bridge Over Troubled Water
118 - MFSL45UD1S-007	Stevie Ray Vaughan	Couldn’t Stand The Weather
119 - MFSL45UD1S-005	Stevie Ray Vaughan	Texas Flood
120 - MFSL45UD1S-025	The Eagles	Desperado
121 - MFSL45UD1S-024	The Eagles	The Eagles
122 - MFSL45UD1S-011	Thelonious Monk	Monk's Dream
123 - MFSL45UD1S-012	Yes	Fragile

Exhibit B

(To Settlement Agreement)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
WASHINGTON AT SEATTLE

STEPHEN J. TUTTLE, an individual, and DUSTIN COLLMAN, an individual, on behalf of themselves and persons similarly situated, Plaintiffs, v. AUDIOPHILE MUSIC DIRECT, INC. d/b/a MUSIC DIRECT and MOBILE FIDELITY SOUND LAB, INC. d/b/a MOBILE FIDELITY and/or MOFI. Defendants.	Case No. 2:22-cv-01081-JLR Judge James L. Robart

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT, DIRECTING THE DISSEMINATION OF NOTICE, AND SCHEDULING A FINAL SETTLEMENT HEARING (Exhibit B)

The Court has considered the Amended Class Action Settlement Agreement and Release ("Amended Settlement Agreement"), and its Exhibits; Plaintiffs' Revised Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Program ; and all other papers filed in this action. The matter having been submitted and good cause appearing therefore:

The Court FINDS as follows:

1. All defined terms contained herein shall have the same meanings as set forth in the Amended Settlement Agreement executed by the Settling Parties and filed with this Court;

2. The Class Representatives, on behalf of themselves and the nationwide Class, and the Defendants' Releasees, through their counsel of record in the Litigation, have reached an agreement to settle all claims in the Litigation;

3. The Court preliminarily concludes that, for the purposes of approving this Settlement only and for no other purpose, and with no other effect on the Litigation should the proposed Amended Settlement Agreement not ultimately be approved, or should the Effective

Date not occur, the proposed Settlement Class likely meets the requirements for certification under Rule 23 of the Federal Rules of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that joinder of all members of the Class is impracticable; (b) there are questions of law or fact common to the proposed Class and there is a well-defined community of interest among members of the proposed Class with respect to the subject matter of the Litigation; (c) the claims of the Class Representatives are typical of the claims of the members of the proposed Class; (d) the Class Representatives will fairly and adequately protect the interests of the Members of the Class; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; (f) the counsel of record for the Class Representatives are qualified to serve as counsel for the Class Representatives in their own capacities as well as their representative capacities and for the Class; and (g) common issues will likely predominate over individual issues;

4. Plaintiffs also have presented to the Court, for review, an Amended Settlement Agreement. The Amended Settlement Agreement proposes a Settlement that is within the range of reasonableness and meets the requirements for preliminary approval; and

5. Plaintiffs have presented to the Court, for review, a plan to provide Notice to the proposed Class of the terms of the Settlement and the various options that the Class has including, among other things, the option for Class Members to opt-out of the class action; to be represented by counsel of their choosing and object to the proposed settlement; and/or to become a Participating Claimant. The Notice(s) will be published consistent with the Settlement Agreement. The Notice(s) and Notice Program proposed by the Settling Parties is the best practicable under the circumstances, consistent with Fed. R. Civ. P. 23(c)(2)(B).

Good cause appearing, therefore, IT IS HEREBY ORDERED that:

1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies the Settlement Class, as defined below:

> All original retail consumers in the United States who, from March 19, 2007, through July 27, 2022 purchased, either directly from a Defendant or other retail merchants, new and unused Mobile Fidelity Sound Lab, Inc. ("MoFi") vinyl recordings which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and provided that said purchasers still own said recordings (the "Applicable Records"). Excluded from the Class are persons who obtained subject Applicable Records from other sources.

2. The proposed Settlement satisfies the requirements for preliminary approval.

3. Notice of the proposed Settlement and the rights of Class Members to opt in and/or out of the Settlement and/or become Participating Claimants shall be given by issuance of Notice consistent with the terms of the Settlement Agreement within forty-five (45) days of this Order.

4. A hearing shall be held before this Court on **[INSERT DATE AND TIME AT LEAST 145 DAYS FROM DATE OF PRELIMINARY APPROVAL ORDER]** to consider whether the Settlement should be given final approval by the Court:

(a) Written objections by Class Members to the proposed Settlement will be considered if received by the Court and Class Counsel on or before the Notice Response Deadline;

(b) At the Settlement Hearing, Class Members may be heard (orally or if they have timely submitted written objections) in opposition to the Settlement; and

(c) Class Counsel and counsel for Defendants should be prepared at the hearing to respond to objections filed by Class Members and provide other information as appropriate bearing on whether the Settlement should be approved.

5. In the event that the Effective Date occurs, all Class Members (including all known and unknown Members) will be deemed to have forever released and discharged the Released Claims. In the event that the Effective Date does not occur for any reason whatsoever, the Settlement Agreement shall be deemed null and void and shall have no effect whatsoever.

DATED: _____

_____
James L. Robart
United States District Judge

Exhibit C

(To Settlement Agreement)

NOTICE OF CLASS ACTION SETTLEMENT

This is a Court-authorized legal notice. This is not a solicitation from a lawyer. This notice affects your rights. Please read carefully.

If you purchased a Mobile Fidelity Sound Lab "Original Master Recording" or "Ultradisc One-Step" vinyl record (the "MoFi Records"), you could get a payment from a class action settlement.

A settlement has been proposed in a class action lawsuit, *Stephen J. Tuttle, et al., v. Audiophile Music Direct, Inc., et al.,* Case No. 2:22-cv-01081-JLR (the "Case"), involving the marketing and selling of certain of the MoFi Records between March 19, 2007 and July 27, 2022 containing a direct stream digital ("DSD") step in the mastering chain (the "Settlement").

WHAT IS THIS LAWSUIT ABOUT?

This case arises from allegations that Defendants Audiophile Music Direct, Inc. ("Music Direct") and Mobile Fidelity Sound Lab, Inc. ("MoFi") falsely marketed and promoted certain MoFi Records as produced with "analog-only" methods, without the use of any intervening digital step, when in fact they were allegedly produced using an undisclosed DSD transfer step in the mastering chain. The Plaintiffs allege that by misrepresenting the source and provenance of the MoFi Records, Defendants acted unfairly and deceptively, and breached their contractual obligations to the original retail purchasers. Music Direct and MoFi vigorously deny all allegations of wrongdoing and liability.

The United States District Court for the Western District of Washington authorized this notice. Before any compensation is paid, the Court must decide whether to approve the Settlement.

AM I A CLASS MEMBER?

If you meet this definition, you are a Class Member:

> All original retail consumers in the United States who, from March 19, 2007, through July 27, 2022 purchased, either directly from a Defendant or other retail merchants, new and unused Mobile Fidelity Sound Lab, Inc. ("MoFi") vinyl recordings which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and provided that said purchasers still own said recordings (the "Applicable Records"). Excluded from the Class are persons who obtained subject Applicable Records from other sources.

WHAT DOES THE SETTLEMENT PROVIDE?

If you qualify as a Class Member, you must submit a Claim Form and select one of three forms of relief for each Applicable Record: (i) return the Applicable Record in its original cover or box, in complete and undamaged condition except for normal wear and tear and receive a "Return Refund" of the purchase price plus tax and shipping; (ii) keep your Applicable Records and receive either a 5% refund payment of the purchase price; or (iii) a Music Direct coupon for 10% of the purchase price. All three options will be based on the purchase price, not to exceed 110% of the manufacturer's suggested retail price at the time of purchase. You may elect to receive payment by check or by electronic transfer, such as PayPal or Venmo.

The Defendants have also agreed to bear the costs of Settlement Administration, Class Representatives' incentive awards and Class Counsels' attorneys' fees and costs.

HOW DO I POTENTIALLY RECEIVE A PAYMENT?

To submit your Claim Form and Proof of Purchase and Ownership ("Proof"), you should visit the Settlement Website at: [insert website]. There, you will also find copies of relevant pleadings, a more detailed Settlement Notice, and you may contact the Settlement Administrator with questions. You may also contact the Settlement Administrator directly at: [insert phone and email contact information], or the Class Counsel at: [insert phone and email contact information]. You must submit your Claim Form and Proof no later than [insert date]. If you elect to keep your Applicable Records, you will receive your Settlement Payment after validation of your claim and after the Settlement has received final approval by the Court. If you choose to return an Applicable Record, a prepaid shipping label will be sent to you for the return of your Applicable Records after the Settlement has received final approval by the Court. You must return your Applicable Records within ninety (90) days of receiving the return label. The Settlement Administrator will then issue your payment for return of the Applicable Records.

WHAT ARE MY OTHER OPTIONS?

If you don't want to be legally bound by the Settlement, you must exclude yourself and "opt out" by [insert date] or you won't be able to sue, or continue to sue Defendants about the legal claims in this Case. If you opt out, you can't get a Settlement Payment from this Settlement. If you stay in the Case, you may object to this Settlement by filing an objection with the Court by [insert date].

All objections should state the reason for your complaint about the Settlement, all proof or evidence and whether you intend to appear at the final approval hearing. The more detailed Notice on the Settlement Website explains how to exclude yourself or object and contains important information regarding the rights, obligations, requirements, and deadlines for Class Members to participate in, exclude themselves from, or object to the Settlement.

The Court will hold a hearing in this Case on [insert date], to consider whether to approve the Settlement, including attorney's fees and costs, and incentive awards for Class Representatives. For more information, call toll-free at [insert number], visit the Settlement Website at [insert address], or write to the Settlement Administrator at: [insert mailing address].

If you wish to communicate with Class Counsel, you mail e-mail Badgley Mullins Turner, PLLC at [Email] or call [Number].

IF YOU HAVE ANY QUESTIONS OR CONCERNS, PLEASE VISIT THE SETTLEMENT WEBSITE AT [INSERT ADDRESS].

Exhibit D

(To Settlement Agreement)

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

STEPHEN J. TUTTLE, ET AL., V. AUDIOPHILE MUSIC DIRECT, INC., ET AL.,
CASE NO: 2:22-CV-01081-JLR (the "Case").

NOTICE OF CLASS ACTION SETTLEMENT (the "Notice")

A settlement (the "Settlement") has been proposed in a class action lawsuit alleging that Mobile Fidelity Sound Lab, Inc. ("MoFi") and Audiophile Music Direct, Inc. ("Music Direct") (individually and collectively, "Defendants") marketed and promoted certain of MoFi's vinyl records from March 19, 2007 to July 27, 2022 using false and misleading claims that the records were "all-analog." Defendants deny the allegations and any wrongdoing or liability. If the Settlement is approved by the Court, original retail consumer purchasers may be entitled to certain refunds or payments.

The United States District Court for the Western District of Washington authorized this Notice and will hold a hearing to decide whether to approve the Settlement before any money or other compensation is paid. Your legal rights are affected whether you act or do not act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

SUBMIT A CLAIM FORM	The only way to get Settlement a Payment (as defined in Paragraph 6 below).
EXCLUDE YOURSELF	Get no Settlement Payment. This is the only option that allows you to ever be part of any other lawsuit against Defendants about the legal claims in this Case.
OBJECT	Write to the Court about why you do not like the Settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.
DO NOTHING	Get no payment. Give up rights.

- This Notice explains your rights and options and the deadlines to exercise them.
- The Court still has to decide whether to approve the Settlement and Settlement Payments will only be made if it is approved, and after any appeals are resolved. Please be patient.

1. What is this Case about?

Stephen J. Tuttle and Dustin Collman (individually and collectively, "Plaintiffs"), on behalf of all members of the Class (known and unknown), have asserted that Defendants violated various laws, including state consumer protection laws. Specifically, Plaintiffs allege that Defendants' marketing and promotion of MoFi's Original Master Recording ("OMR") and Ultradisc One-Step ("One-Step") series of vinyl records relied on false and misleading claims that the records were produced with "analog-only" methods, without the use of any intervening digital step. Plaintiffs allege that in reality, certain of the MoFi records, namely, the Applicable Records, used a direct stream digital ("DSD") transfer step in the mastering chain (the "Applicable Records"), the absence of which was a material selling point of "analog-only" records. Plaintiffs allege that by misrepresenting the source and provenance of the Applicable Records, Defendants acted unfairly and deceptively, and breached their contractual obligations to original purchasers. Defendants deny all such allegations and any liability or wrongdoing.

2. Why is this a class action?

In a class action, one or more people, called Class Representatives (in this Case, Stephen J. Tuttle and Dustin Collman), sue on behalf of people who are similarly situated and have similar claims (the "Class"). All these people (known and unknown) are Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

3. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Plaintiffs and Defendants both think they could have prevailed at trial. But there was no trial. Instead, both sides agreed to a Settlement. That way, both sides avoid the costs of a trial and the people affected will get compensation. The Class Representatives and the attorneys think that the Settlement is best for all Class Members.

4. How do I know if I am part of the Settlement?

The Court decided that everyone who fits this description is a Class Member:

> All original retail consumers in the United States who, from March 19, 2007, through July 27, 2022 purchased, either directly from a Defendant or other retail merchants, new and unused Mobile Fidelity Sound Lab, Inc. ("MoFi") vinyl recordings which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and provided that said purchasers still own said recordings (the "Applicable Records"). Excluded from the Class are persons who obtained subject Applicable Recordings from other sources.

A list of the Applicable Records is attached to this Notice as Exhibit 1 and included on the settlement website (the "Settlement Website") at: [insert website].

5. I'm still not sure if I am included.

If you still aren't sure whether you're a Class Member, you can ask for free help by contacting the Case settlement administrator (the "Settlement Administrator") either by email at: [insert email], telephone at: [insert phone number], or by visiting the Settlement Website at: [insert website].

6. What does the Settlement provide?

There are three options. Class Members who submit a timely and valid Settlement Claim Certification Form (the "Claim Form"), Proof of Purchase and Proof of Ownership (as defined in Paragraph 7 below) shall be entitled to receive compensation as follows:

- (i) Class Members who choose to return their Applicable Record(s) in their original covers and/or boxes, in complete and undamaged condition except for normal wear and tear shall receive a refund of their actual purchase price (not to exceed 110% of the manufacturer's suggested retail list price at the time of purchase ("MSRLP")) plus tax and shipping, in the form of a check or electronic payment (*e.g.*, PayPal, Venmo, etc.) (the "Return Refund).

  Class Members who want to keep their Applicable Record(s) shall have the option of receiving, either:

- (ii) payment of five percent (5%) of the actual purchase price (not to exceed 110% of the MSRLP) in the form of a check or electronic payment (*e.g.*, PayPal, Venmo, etc.) (the "5% Payment"), or

- (iii) a coupon in the amount of ten percent (10%) of the actual purchase price (not to exceed 110% of the MSRLP), redeemable for retail purchase use at Defendant Music Direct's "musicdirect.com" retail website (the "10% Coupon" or "Coupon"). The Coupon will contain a code that may be used to redeem its full value for one or more retail purchases by the Class Member. Each Coupon, including any unused amounts will expire one hundred and eighty (180) days after issuance (the "Redemption Period") and shall not be transferable. Coupons may be redeemed in combination on one or more purchases. Any unused amounts will be placed on account for use during the Redemption Period by the Class Member. All MoFi products currently in stock and available for sale shall be available for Coupon redemption along with any and all other products offered for sale at "musicdirect.com."

Class Members are entitled to designate their preference of a Return Refund, 5% Payment, or 10% Coupon (individually and collectively, a "Settlement Payment") for each individual Applicable Record on their Claim Form. For purposes of payment security, Class Members can only make the election to receive an (i) electronic Return Refund and/or (ii) electronic 5% Payment, including the designation of form of electronic payment, by filling out the Claim Form on the Settlement Website. All Return Refunds and/or 5% Payments to Class Members will be paid by check mailed to the address designated on the Claim Form unless an election for an electronic payment is timely made by the Class Member on the Settlement Website with designation of form of electronic payment.

Class Members must cash their Return Refund and/or 5% Payment checks within one hundred and eighty (180) days after issuance.

For each Applicable Record purchased online directly from either (i) Defendant MoFi's "mofi.com" website, or (i) Defendant Music Direct's "musicdirect.com" website, the Class Member's actual purchase price will be used in calculating the amount of their Return Refund, 5% Payment, or 10% Coupon, as applicable.

For each Applicable Record purchased from retail merchants other than Defendants, the Class Member's actual purchase price not to exceed 110% of the MSLRP at time of purchase will be used in calculating the amount of their Return Refund, 5% Payment, or 10% Coupon, as applicable. A list of the MSLRPs by date is included on the Settlement Website at: [insert website].

7. How can I get a Settlement Payment?

A. Claim Form Submission and Review by the Settlement Administrator.

A copy of the Claim Form is attached as Exhibit 2 to this Notice. Claim Forms can also be obtained from and filled out online on the Settlement Website, or by calling [insert phone number].

If you want to ask for a Settlement Payment, you must completely fill out the Claim Form, which allows Class Members to select (i) a Return Refund, 5% Payment, or 10% Coupon for each Applicable Record, (ii) a check or electronic payment (e.g., Paypal, Venmo, etc.) for Return Refunds or 5% Payments, and (iii) to receive the 10% Coupons by mail or email. The Claim Form can be filled out online, and uploaded, along with your Proofs of Purchase and Ownership to the Settlement Website, or emailed, or postal mailed to the Settlement Administrator at:

[insert Settlement Website address]; [insert Settlement Administrator email address]; and [insert Settlement Administrator mailing address].

Do not mail or return Applicable Records to the Settlement Administrator with your Claim Form.

You must submit legible copies of Proof of Purchase and Proof of Ownership with your Claim Form to receive a Settlement Payment.

- "Proof of Purchase" means a document showing the amount you paid for your retail purchase of the Applicable Record, the purchase date, and who you purchased it from. Acceptable Proof of Purchase, includes, a receipt, credit card statement, or cancelled check referencing the purchase. However, if you purchased an Applicable Record online directly from either (i) Defendant MoFi's "mofi.com" website, or (ii) Defendant Music Direct's "musicdirect.com" website (individually and collectively, a "Direct Purchase") you just need to provide your name and order number as Proof of Purchase. If you do not have your order number, you will need to provide your name, email address used, and approximate purchase date, for each Applicable Record as Proof of Purchase.

- "Proof of Ownership" means proof that you still own and are in possession of the Applicable Record. Acceptable Proof of Ownership, includes, for each Applicable Record:

(i) the catalog number appearing on the spine of the record cover or box; and legible photos, photocopies, JPEGs, PDFs, or similar copies of both (ii) the individually stamped or hand-written number from the back cover, and (iii) the front cover of the Applicable Record.

If you fail to follow these procedures, you will receive no Settlement Payment, but will be nonetheless bound by any judgments, orders, and releases in this Case. It is very important that you follow these procedures. If you have questions, please contact the Claim Administrator.

Completed Claim Forms and Proof must be uploaded to the Settlement Website, emailed, or postmarked by [insert date].

Timely-submitted Claim Forms and Proofs will be reviewed by the Settlement Administrator, and all that are properly completed, executed, and timely received will be deemed a "Qualifying Claim Certification Form" entitling the Class Member to a Settlement Payment as elected for each Applicable Record, with the respective amounts calculated by the Settlement Administrator. If a Class Member submits a Claim Form that is incomplete or fails to satisfy the criteria for receiving a Settlement Payment, the Settlement Administrator will notify the Class Member that their Claim Form has been rejected and provide the reasons for rejection, and an opportunity for the Class Member to correct the Claim Form or provide additional Proof.

B. Returns and Settlement Payments.

Class Members who do not seek Return Refunds will be issued their 5% Payment(s) or 10% Coupon(s) for all of the Applicable Records on their validated Claim Form by the Settlement Administrator within thirty (30) days after the Settlement receives final approval and any appeals taken have been resolved.

Class Members who request Return Refunds will be mailed or emailed (based on the election on their Claim Form) a pre-paid return shipping label with tracking number and instructions for the return of Applicable Records within thirty (30) days after the Settlement receives final approval and any appeals taken have been resolved. Applicable Records must be returned in their original covers and/or boxes, in complete and undamaged condition except for normal wear and tear. Class Members will have ninety (90) days from when they receive the pre-paid return shipping label to return their Applicable Records. The Settlement Administrator will issue Return Refunds along with any 5% Payment(s) or 10% Coupon(s) also elected on the Claim Form within ten (10) days of the deadline to return Applicable Record(s).

8. When would I get a Settlement Payment?

The Court will decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved and resolving them can take time, perhaps more than a year. Settlement Payments to Qualifying Class Members will be issued only after Settlement approval by the Court and the resolution of any appeals. Please be patient.

9. What am I giving up to get a Settlement Payment or stay in the Class?

Unless you exclude yourself, you are staying in the Class, and that means you can't sue, continue

to sue, or be part of any other lawsuit against Defendants or other entities released in the Settlement Agreement regarding any of the legal issues in this Case. It also means that all of the Court's orders will apply to you and legally bind you.

10. Can I exclude myself from the Class?

If you do not wish to participate in this Settlement, you must notify Class Counsel in writing of your intent to be excluded. Your election to opt-out must contain the following information and be signed by the Class Member opting-out: (i) the name of the Class Member, (ii) the current address of the Class Member, and (iii) the date signed. You must mail your signed exclusion request, postmarked no later than [insert date] to Class Counsel: Duncan C. Turner, Esq., Badgley Mullins Turner, PLLC, 19929 Ballinger Way NE, Suite 200, Seattle, WA 98155.

If you ask to be excluded, you will not get a Settlement Payment and you cannot object to the Settlement. You will not be legally bound by anything that happens in this Case. You may be able to sue Defendants or the other entities released in the Settlement Agreement in the future regarding the legal issues in this Case.

11. If I don't exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendants and the other entities released in the Settlement Agreement for the claims that this Settlement resolves. If you have a pending lawsuit involving the same claims that this Settlement resolves, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit. If you have a pending lawsuit on matters not addressed in this Settlement, you may continue that lawsuit against Defendants.

12. If I exclude myself, can I get Settlement relief from this Settlement?

No. If you exclude yourself, do not send in a Claim Form to ask for a Settlement Payment.

13. Do I have a lawyer in this Case?

The law firm of Badgley Mullins Turner, PLLC, 19929 Ballinger Way NE, Suite 200, Seattle, WA 98155, represents you and other Class Members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will these lawyers be paid?

Class Counsel will ask the Court to approve payment of attorneys' fees and expenses of $290,000. The fees would pay Class Counsel for investigating the facts, litigating the Case, and negotiating the Settlement. In addition, Class Counsel will ask for payments of $10,000 each to Stephen J. Tuttle and Dustin Collman for their services as Class Representatives. These payments are coming directly from the Defendants and will not reduce the funds available to the Class.

15. How can I object to the Settlement?

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must prepare a letter stating your reasons for objecting to the Settlement, and include your name, address, telephone number, and signature, and the case caption "*Stephen J. Tuttle, et al., v. Audiophile Music Direct, Inc., et al.,* Case No. 2:22-cv-01081-JLR." You must mail copies of this letter to the Clerk of the Court and the Class Counsel, at the following addresses:

Court	**Class Counsel**
Clerk of the Court U.S. District Court 700 Stewart St., Suite 2310, Seattle, WA 98101	Badgley Mullins Turner, 19929 Ballinger Way NE, Ste. 200, Seattle, WA 98155

The objection must be mailed by [Insert Date].

Objectors who fail to properly or timely file their objections with the Court, or mail them as provided above, shall not be heard during the Fairness Hearing, nor shall their objections be considered by the Court.

16. What's the difference between objecting and excluding?

Objecting is telling the Court that you do not agree with the Settlement, in whole or in part. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the Case no longer affects you.

17. When and where will the Court decide whether to approve the Settlement?

The District Court will hold a hearing to decide whether to approve the Settlement. The Fairness Hearing will be held on [insert date and time] at the Court, 700 Stewart Street, Court Room #14106, Seattle, WA 98101. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections or requests to be heard, the Court may consider them at the hearing. The Court may also decide the amount of attorneys' fees and costs to be paid to Plaintiffs' Class Counsel.

18. Do I have to come to the Hearing?

No. Class Counsel will answer questions that the Court may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

19. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear" in *Stephen J. Tuttle, et al., v. Audiophile Music Direct, Inc., et al.,* Case No. 22-cv-01081. Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than [insert date] and sent to the Clerk of the Court and the Class Counsel, at the addresses in Paragraph 15. You cannot speak at the hearing if you have excluded yourself.

20. What happens if I do nothing at all?

If you do nothing, you will not get a Settlement Payment from this Settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about the legal issues in this Case, ever again.

21. How do I get more information?

This is only a summary of the Case, the claims asserted, the Class, the Settlement, and process for getting a Settlement Payment. You may seek the advice and guidance of your own private attorney, at your own expense, if you desire. For more detailed information, you may review the Settlement Agreement, pleadings, records, and other papers on file in this Litigation on the Settlement Website: [insert website]. If you wish to communicate with Class Counsel identified above, you may do so by writing to Duncan C. Turner, Esq., at Badgley Mullins Turner, PLLC, 19929 Ballinger Way NE, Suite 200, Seattle, WA 98155. Alternatively, you may call the offices of the firm at [insert phone number], or email the firm at [insert email].

Exhibit 1

(To Full Notice)

Placeholder

(Please See Exhibit A To Settlement Agreement)

Exhibit 2

(To Full Notice)

Placeholder

(Please See Exhibit E To Settlement Agreement)

Exhibit E

(To Settlement Agreement)

MUST BE SUBMITTED NO LATER THAN **[INSERT DATE].**	MOFI RECORD SETTLEMENT **SETTLEMENT CLAIM CERTIFICATION FORM**	For Office Use Only

If you are a Class Member and wish to seek a Settlement Payment as part of the ***Stephen J. Tuttle, et al., v. Audiophile Music Direct, Inc., et al.***, Case Settlement, please fill out the following Claim Form and submit it, along with your Proof of Purchase and Proof of Ownership, either online at: [insert Settlement Website], by email to: [insert email addresses], or by postal mail to:

MoFi Settlement Administrator
c/o Kroll Settlement Administrator
P.O. Box XXXX
New York, NY 10150-XXXX

To be eligible for any Settlement Payment (Return Refund, 5% Payment, or 10% Coupon), this Claim Form must be submitted, emailed, or postmarked by: [insert Date].

1. <u>TYPE OF SETTLEMENT PAYMENT:</u>

Please list the Applicable Records you purchased and still possess and elect which form of Settlement Payment you wish to receive for each by placing an "X" in the boxes below.

Applicable Record (Artist and Title)			
	☐ Return Refund	☐ 5% Payment	☐ 10% Coupon
	☐ Return Refund	☐ 5% Payment	☐ 10% Coupon
	☐ Return Refund	☐ 5% Payment	☐ 10% Coupon
	☐ Return Refund	☐ 5% Payment	☐ 10% Coupon
	☐ Return Refund	☐ 5% Payment	☐ 10% Coupon
	☐ Return Refund	☐ 5% Payment	☐ 10% Coupon
	☐ Return Refund	☐ 5% Payment	☐ 10% Coupon
	☐ Return Refund	☐ 5% Payment	☐ 10% Coupon
	☐ Return Refund	☐ 5% Payment	☐ 10% Coupon
	☐ Return Refund	☐ 5% Payment	☐ 10% Coupon

<u>Please Note:</u> For all Applicable Records for which you would like to return for a Return Refund, please designate how you would like to receive your pre-paid shipping label and return instructions:

I elect to receive my pre-paid shipping label and return instructions by:

☐ email of a downloadable and printable label to my email address below;

☐ postal mail of a pre-printed label to my postal address below.

Please Note: If you need additional pages to catalogue your Applicable Records, please print and attach additional copies of this Claim Form.

2. METHOD OF RETURN REFUND AND/OR 5% PAYMENT SETTLEMENT PAYMENT:

I elect to receive my Return Refund or 5% Payment by:

☐ check mailed to my address below;

☐ electronic payment made to me via PayPal or Venmo at: _____.

Please Note: for purposes of Settlement Payment security, Class Members can only make the election to receive a Return Refund and/or 5% Payment in the form of an electronic payment by filling out and submitting this Claim Form on the Settlement Website at: [insert Settlement Website], otherwise all Return Refunds and 5% Payments will be paid by check and mailed to the Class Member at address designated below. All Return Refund checks and 5% Payment checks must be cashed within one hundred and eighty (180) days after issuance.

3. METHOD OF DELIVERY OF 10% COUPON:

I elect to receive my 10% Coupon by:

☐ email to my email address below;

☐ postal mail to my postal address below.

Please Note: All 10% Coupons must be redeemed on "musicdirect.com" within one hundred and eighty (180) days after issuance.

4. PROOF OF PURCHASE:

For Each Applicable Record for which you are seeking a Settlement Payment, you must provide Proof of Purchase. Check the box(es) below that apply and provide the required information.

☐ I purchased the following Applicable Record(s) online directly from either Mobile Fidelity Sound Lab, Inc. ("MoFi") at "mofi.com" or Audiophile Music Direct, Inc. ("Music Direct") at "musicdirect.com" and provide the following information to satisfy my Proof of Purchase:

Applicable Record (Artist and Title)	**Order Number (If known)**	**Purchase Date**	**E-mail Used For Purchase**

Please Note: If you provide your "mofi.com" or "musicdirect.com" Order Number for an Applicable Record above, you do not have to additionally provide your Date of Purchase or Email Used For Purchase for your Proof of Purchase for that Applicable Record.

☐ I purchased the following Applicable Record(s) from a retail merchant other than MoFi or Music Direct and attach to this Claim Form legible Proof of Purchase such as a receipt, credit card statement, cancelled check referencing the Applicable Record, or other reliable documentation showing my purchase, along with the following itemized information:

Applicable Record (Artist and Title)	**Retail Merchant (Name and Address)**	**Purchase Date**	**Amount Paid**

5. PROOF OF OWNERSHIP:

For Each Applicable Record for which you are seeking a Settlement Payment, you must provide Proof of Ownership.

☐ I still own and am in possession of the following Applicable Record(s) for which I seek a Settlement Payment and attach to this Claim Form legible Proof of Ownership such as photocopies, JPEGs, PDFs, or similar copies of both (i) the individually stamped or hand-written number from the back cover, and (ii) the front cover of each Applicable Record, or other reliable documentation showing my ownership and possession of the same.

Applicable Record (Artist and Title)	Catalog Number on Cover or Box Spine	Stamped or Handwritten Number on Back Cover

6. CONTACT INFORMATION:

Please provide your updated contact information. This will allow us to follow-up and to distribute your Settlement Payment if your claim is valid.

CERTIFICATION

I declare under the penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Dated: ___ ___ / ___ ___ / ___ ___ ___ ___

_____ _____

Signature E-mail

_____ _____

Printed Name Telephone Number

_____

_____

_____

Mailing Address

Exhibit F

(To Settlement Agreement)

HONORABLE JAMES L. ROBART
NOTING DATE: [Filing Date]

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN J. TUTTLE, et al,

Plaintiffs,

v.

AUDIOPHILE MUSIC DIRECT INC. d/b/a MUSIC DIRECT and MOBILE FIDELITY, SOUND LAB, INC. d/b/a MOBILE FIDELITY and/or MOFI,

Defendants.

No. 22-cv-01081-JLR

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

THIS MATTER came before the Court on the Parties' Stipulated Motion for Final Approval. The Court has considered all materials submitted in support of the proposed Settlement Agreement, including the Parties' preliminary and final approval motions, all documents and exhibits filed in support thereof, and the record in this case.[1]

Having considered these materials and the statements of counsel at the Final Approval Hearing on [Date], the Court, being fully advised, has determined that the proposed Settlement

[1] The definitions set forth in the parties' Settlement Agreement, and the Court's Order Granting Preliminary Approval of Proposed Class Action Settlement ("Preliminary Approval Order") are hereby incorporated herein as though fully set forth herein.

BADGLEY MULLINS TURNER PLLC
19929 Ballinger Way NE, Suite 200
Seattle, WA 98155
TEL 206.621.6566
FAX 206.621.9686

Agreement should be approved as fair, adequate, and reasonable. To reach this determination, the Court **FINDS** the following:

1. The Court has jurisdiction over the subject matter of this action and all parties, including members of the Settlement Class previously certified by the Court, which consists of:

> All original retail consumers in the United States who, from March 19, 2007, through July 27, 2022 purchased, either directly from a Defendant or other retail merchants, new and unused Mobile Fidelity Sound Lab, Inc. ("MoFi") vinyl recordings which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and provided that said purchasers still own said recordings (the "Applicable Records"). Excluded from the Class are persons who obtained subject Applicable Records from other sources.

2. On or about [Date], the Notice Administrator began distributing the Court-approved Notice(s) to Settlement Class Members, both by direct mail and email and by indirect publication on the Defendants' websites and in print, and via targeted social media advertising. For direct purchasers, the Court finds that individual mailing of the Full Notice and emailing of the Summary Notice to Class Members' last-known address provided the best practicable notice under the circumstances. For indirect purchasers, the Court finds that publication of Summary Notices on Defendants' website and in industry publications, as well as directed social media advertising, and publication of the Notice on the settlement website, was the best practicable method of distributing notice given the unknown identity of these potential Class Members. The Notices provided detailed information regarding this Litigation, including the Class definition, the parties' respective claims and defenses, relief available to Settlement Class Members, and the procedures for appearing, objecting, or opting out prior to final approval.

3. The Notice Administrator's declaration confirms that the Court's Notice -Program was timely completed in accordance with the terms of the Settlement Agreement and

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Preliminary-Approval Order. The Court finds and concludes that the Notice and Notice Program fully satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and Fed. R. Civ. P. 23(e) and the requirements of due process.

4. No objections or exclusion requests were received.

5. The Agreement was the result of arm's length negotiations between Settlement Class Counsel and counsel for the Defendants. Further, Settlement Class Counsel and the Class Representatives have adequately represented the interests of the Settlement Class.

6. The Agreement provides adequate relief to the Settlement Class. To reach this determination, Court considered the likelihood of success in respect to the claims of the Settlement Class, and Defendants' available defenses. The Court has also considered the status and extent of the Parties' investigation, research, discovery, and negotiation. Finally, the Court considered the costs and risks associated with further litigation, and the potential delays presented by trial and subsequent appeals.

7. The Agreement also provides effective method of distributing relief to Settlement Class Members based on the number and value of Applicable Records purchased from the Defendants, and the Claims Administrator is well-positioned to receive and process claims from Class Members who elected to return Applicable Records for a full refund. By distributing relief based on each Class Members' individual purchases and elections, the Agreement treats each Class Member equally and equitably.

8. The Court also finds that the proposed awards and manner of payment for attorney's fees and costs, as well as the Class Representatives' incentive awards, are fair and reasonable.

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Good cause appearing therefore, it is hereby **ORDERED, ADJUDGED, AND DECREED** THAT:

9. The Settlement is fair, reasonable, and adequate.

10. The proposed awards and manner of payment for attorney's fees, costs, and incentive awards are fair, reasonable, and adequate.

11. The Parties are directed to proceed with the Settlement Payment procedures specified in the Settlement Agreement and the Court's Order Granting Attorney's Fees and Costs, and Incentive Awards.

12. The Parties are also authorized, without further approval from the Court, to mutually agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and all exhibits thereto as are consistent in all material respects with this Final Approval Order and the Court's Order Granting Plaintiffs' Motion for Award of Attorney's Fees.

13. Without affecting the finality of this Order for purposes of appeal, the Court reserves jurisdiction over the Parties as to all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Approval Order, the Court's Order Granting Attorney's Fees and Costs, and Incentive Awards, and for any other necessary purposes.

14. The Settlement Agreement is given full force and effect, and Class Representatives and individual Settlement Class Members' Released Claims, as articulated in Amended Settlement Agreement, ¶4.26, are released and forever discharged.

15. This action is hereby dismissed in its entirety with prejudice.

16. This Order shall constitute the final judgment in this matter for purposes of Fed. R. Civ. P. 58.

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IT IS SO ORDERED.

DATED: _____

_____
James L. Robart
United States District Judge

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Exhibit 6

to Madonia Declaration

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

STEPHEN J. TUTTLE, et al,

Plaintiffs,

v.

AUDIOPHILE MUSIC DIRECT, INC., et al.,

Defendants.

Case No. 2:22-cv-01081-JLR

DECLARATION OF JEANNE C. FINEGAN, APR OF KROLL SETTLEMENT ADMINISTRATION, LLC IN CONECTION WITH PRELIMINARY APPROVAL

I, JEANNE C. FINEGAN, hereby declare:

1. I am the Managing Director and Head of Kroll Notice Media Solutions ("Kroll Media"),[1] a business unit of Kroll Settlement Administration, LLC ("Kroll"), the Settlement Administrator in the above-captioned case. This declaration (the "Declaration") is based upon my personal knowledge as well as information provided to me by my associates and staff, including information reasonably relied upon in the fields of advertising media and communications.

2. Kroll has been designated by the Parties as the Settlement Administrator to, among other tasks, provide administrative services and to develop and implement the proposed Notice Program related to that certain Class Action Settlement and Release Agreement (the "Settlement Agreement") entered into in connection with the above captioned case (the "Settlement").

3. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities, labor and employment, consumer and government enforcement matters. This Declaration describes my experience in designing and

[1] Capitalized terms used but not defined herein have the meanings given to them in the Settlement Agreement (as defined below).

implementing notices and notice programs, as well as my credentials to opine on the overall adequacy of noticing efforts. It will also describe the Notice Program and address how this comprehensive program is consistent with other reasonably calculated,[2] court-approved notice programs and the requirements of Fed. Civ. P. 23(c)(2)(B).

4. I have been informed by Defendants that there are approximately 50,000 to 60,000 potential Class Members. I have also been informed that the Defendants have name and address records for approximately 23,000 of such individuals who made purchases directly from Defendants ("Direct Purchasers"). In view of the limited records of Class Members readily available for noticing of the Settlement, the Settlement Agreement contemplates that the Settlement Administrator implement a multi-faceted Notice Program.

5. Specifically, notice to Class Members for whom Defendants have reasonably ascertainable records shall be provided both via (i) U.S. First Class direct mailed Full Notice ("Direct Mailed Full Notice"), and (ii) direct emailed Summary Notice ("Emailed Summary Notice"). To reach additional Class Members, Kroll will employ supplemental publication notice ("Publication Notice") via various methods including highly targeted audiophile[3] niche magazines, online display ads placed on niche audiophile websites, key word searches, and social media advertising on Facebook, Instagram and YouTube, specifically targeting niche groups who have liked, followed or interacted with relevant audiophile pages and groups. In total, these publication outlets have a combined circulation of over 107,000 and will deliver more than 400,000 digital impressions.[4]

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[2] See: *Duncan Roy, et al., County of Los Angeles,* Case No. CV 12-01012 C D Ca.; *Authors Guild et al, v. Google Inc.,* Case No., 05 CV 8136-DC, SDNY and *Andrews v Plains All American Pipeline, L.P.,* Case No. 2:15-cv-04113- PSG-JEMx CD Cal.

[3] An audiophile is a person who is enthusiastic about high-fidelity sound reproduction and evaluate all stages of music reproduction: initial audio recording, production and playback. *See:* https://www.pcmag.com/encyclopedia/term/audiophile

[4] An impression is an occurrence of an advertisement, *i.e.,* an opportunity to see a message. When a user visits a website, an IP connection between the user's device and the publisher's webserver is established. The website then flags available ad tags so that the ad server can analyze data about the user such as demographic attributes or location. This information is shared with advertising exchanges where ad buyers can bid on the ad unit, relevant to the campaign. If

6. The highly niched media channels included in the Publication Notice are not measured by nationally syndicated data sources. As a result, Kroll cannot quantify net Class Member reach. Instead, Kroll is applying a best notice practice approach to combine Direct Mailed Full Notice, direct Emailed Summary Notice, and Publication Notice to reach as many Class Members as possible using media that they are likely to rely on for topical news, conversation and product information. While it is likely that there is Class Member overlap across the digital media and niche publishers for this Notice Program, in my opinion, that only increases the number of opportunities that Class Members may have to see the Publication Notice.

QUALIFICATIONS

7. My credentials, expertise, and experience that qualify me to provide an expert opinion and advice regarding notice class action cases include more than thirty years of communications and advertising experience, specifically in class action and bankruptcy notice context. My Curriculum Vitae delineating my experience is attached hereto as **Exhibit A.**

8. In summary, I have served as an expert and have been directly responsible for the design and implementation of numerous notice programs, including some of the largest and most complex programs ever implemented in the United States as well as globally in over 140 countries and thirty-seven languages. I have been recognized by numerous courts in the United States as an expert on notification and outreach.

9. During my career, I have planned and implemented over one thousand complex notice programs for a wide range of class action, bankruptcy, regulatory, and consumer matters. The subject matters of which have included product liability, data breach, construction defect, antitrust, asbestos,

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the ad unit is user-relevant, a bid is offered. Upon winning the bid for the ad unit, the ad is downloaded on a webpage for a user to see and this counts as an impression.

medical, pharmaceutical, human rights, civil rights, telecommunications, media, environmental, securities, banking, insurance, and bankruptcy.

10. I have provided testimony before the United States Congress on issues of notice.[5] I have lectured, published, and been cited extensively on various aspects of legal noticing, product recall, and crisis communications. I have served the Consumer Product Safety Commission ("CPSC") as an expert to determine ways in which the CPSC can increase the effectiveness of its product recall campaigns. Additionally, I have published and lectured extensively on various aspects of legal noticing and taught continuing education courses for Jurists and lawyers alike on best practice methods for providing notice in various contexts.

11. I worked with the Special Settlement Administrator's team to assist with the outreach strategy for the historic Auto Airbag Settlement. In re Takata Airbag Prods. Liab. Litig., No. 15-MD-2599-FAM (S.D. Fla.). I was the notice section lead contributing author for "Guidelines and Best Practices Implementing 2018 Amendments to Rule 23 Class Action Settlement Provisions" published by Duke University School of Law.

PROPOSED NOTICE PROGRAM

12. The Notice Program is designed to inform Class Members of the Settlement between Plaintiffs and Defendants, as memorialized in the Settlement Agreement. Pursuant to Section 4.28 of the Settlement Agreement, the Settlement Class is defined as:

[5] *See*, *e.g.*, Report on the Activities of the Committee on the Judiciary of the House of Representatives: "Notice" Provision in the *Pigford v. Glickman* Consent Decree: Hearing Before Subcommittee on the Constitution, 108th Cong. 2nd Sess. 805 (2004) (statement of Jeanne C. Finegan); *Pigford v. Glickman & U.S. Dep't of Agric.*, 185 F.R.D. 82, 102 (D.D.C. Apr. 14, 1999) (J. Finegan provided live testimony and was cross-examined before Congress in connection with a proposed consent decree settling a class action suit against the U.S. Department of Agriculture. In the court opinion that followed, the Honorable Paul L. Friedman approved the consent decree and commended the notice program, stating, "The [c]ourt concludes that class members have received more than adequate notice . . . the timing and breadth of notice of the class settlement was sufficient . . . The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television stations.")

All original retail consumers in the United States who, from March 19, 2007, through July 27, 2022 purchased, either directly from a Defendant or other retail merchants, new and unused Mobile Fidelity Sound Lab, Inc. ("MoFi") vinyl recordings which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and provided that said purchasers still own said recordings (the "Applicable Records"). Excluded from the Class are purchasers who obtained subject Applicable Records from other sources.

13. Rule 23 of the Federal Rules of Civil Procedure requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means." Fed. R. Civ. P. 23(c)(2)(B).

SUMMARY OF NOTICE PROGRAM

14. The proposed Notice Program includes the following components, which are uniquely designed to provide notice to Class Members:

- Direct notice via both (i) United States First Class Direct Mailed Full Notice, and (ii) direct Emailed Summary Notice to all identified Class Members;
- CAFA Notice to appropriate state and federal government officials;
- Print publication of Summary Notice in industry niche magazines targeted to reach Class Members;
- Online display banner advertising specifically targeted to reach Class Members;
- Social media advertising through Facebook, Instagram and YouTube specifically targeted to reach Class Members;
- Settlement Website (as defined and described below); and
- Toll-free information line.

ACTUAL NOTICE TO CLASS MEMBERS

15. It is Kroll's understanding that it will be provided with a list of names and last known addresses for approximately 23,000 potential Class Members covered under the Settlement Agreement (the "Direct Purchasers List").

16. In preparation for disseminating (i) Direct Mailed Full Notice by First-Class Mail, and (ii) Emailed Summary Notice by email, Kroll will work with Class Counsel and Defendants' Counsel (collectively, "Counsel") to format the notice for mailing and emailing. Upon approval, Kroll will coordinate the preparation of proofs of the notice for Counsel to review and approve.

17. Direct Mailed Full Notice and Emailed Summary Notice will be provided by First-Class Mail and email to all last known physical addresses and email addresses of Class Members. In preparation for the Direct Mailed Full Notice mailing, Kroll will send the Direct Purchasers List through the United States Postal Service's ("USPS") National Change of Address ("NCOA") database. The NCOA process will provide updated addresses for Class Members who have submitted a change of address with the USPS in the last 48 months, and the process will also standardize the addresses for mailing. Kroll will then prepare a mail file of Class Members that are to receive notice via First-Class Mail.

18. Mailed notice returned by the USPS with a forwarding address will be automatically re-mailed to the updated address provided by the USPS or, if returned to Kroll, will be forwarded by Kroll to the updated address provided by the USPS.

19. If mailed notices are returned to Kroll by the USPS undeliverable as addressed without a forwarding address, Kroll will be send such address records through an advanced address search process in an effort to find a more current address for the record. If an updated address is obtained through the advanced search process, Kroll will re-mail the notice to the updated address. If email notices are rejected/bounced back to Kroll as undeliverable, Kroll will then mail standard USPS notices to those who have valid mailing addresses.

PUBLICATION NOTICE PLAN

20. As mentioned above, the proposed Publication Notice component of the Notice Program will employ a mix of niche (audiophile) magazines, online display, social media advertising, and a press release targeted to Class Members.

21. The Summary Notice will be published once (1x) in the following niche magazines:

Publication	Circulation	Unit Size	Publication Frequency
Goldmine Magazine	5,000	½ page	Monthly
Stereophile Magazine	70,000	½ page	Monthly
The Absolute Sound Magazine	32,000	½ page	11X Year

22. Combined, these niche magazines have a total circulation of over 107,000.

ONLINE DISPLAY ADS

23. Online display ads will be targeted to the following publisher websites: goldminemag.com, stereophile.com, and theabsolutesound.com. These websites feature audiophile and music collector related content. Actual placements are subject to inventory and site approval at time of buy.

SOCIAL MEDIA

24. Social media ads will be served on Facebook, Instagram, and YouTube. On Facebook and Instagram, ads will appear in specifically targeted users' Newsfeeds[6] and Stories.[7] These ads will employ multiple layers of targeting and will focus on people who have *liked, followed,* or *interacted* with relevant pages, accounts, videos or posts and tags, including *Goldmine* Facebook page (64K likes), *Stereophile* Facebook page (77K likes), (3.1K followers Instagram), *The Absolute Sound*

[6] Newsfeeds are a primary means for users to consume information on Facebook.

[7] "Facebook Stories" is a feature that lets users share content i.e., photos, videos, or animation. Stories are considered a second news feed.

Facebook page (56K likes), (5.8K followers Instagram), *Mobile Fidelity Sound Lab* Facebook page (23K likes), (24.8K followers Instagram) and *Music Direct* Facebook page (15K likes), (10.1K followers Instagram). Such social ads will target members and followers of public groups including *Audiophiles On A Budget* (59K members), Buy Sell Trade (62K members) *The Other Vinyl Record Collectors Club* (37K members), and *The Vinyl Guide* (22K followers). Further, specific employees of Defendants are members of private groups which can't be targeted using conventional advertising means. Information on the Settlement similar in content to the social media ads and pre-approved by Counsel will be posted on such private group sites, where allowed, directing their members to the Settlement Website, including Mobile Fidelity Sound Lab Fan Group Facebook page (8.4K members) *Vinyl Addiction* (27K members), *Vinyl Record Collector* (23K members), *Vinyl Record Collectors Club* (12K members), and *MOFI and Audiophile Vinyl Buy and Sell Club* (8.6K members). The engagement of such private group members will be included in Kroll's final report to the Court.

25. Social ads will also target users that have interacted with or posted comments using hashtags[8] that include: *#mofi, #mfsl, #audiophilevinyl, #vinylcommunity, #collectablevinylrecords, #analogrecord, #mofivinyl, #ultradisc,* and *#originalmasterrecording*.

26. On YouTube, display ads will be placed on channels and/or content relevant to vinyl record collectors, original master recordings, audiophiles, Stereophile, MoFi, and more.

PRESS RELEASE

27. Kroll Media intends to issue a press release concerning the Settlement via PR Newswire's USA1 distribution network. This network includes thousands of news outlets. Kroll Media will monitor for news mentions and report the results to the court upon completion of the Notice Program.

[8] Hashtags (i.e. "#") are used on social media sites and applications to identify digital content related to specific topics that people are interested in.

SETTLEMENT WEBSITE

28. Kroll will work with Counsel to create a dedicated Settlement website (the "Settlement Website"). The Settlement Website URL will be determined and approved by Counsel. The Settlement Website will, among other things, contain a summary of the Settlement, enable online claim filing, allow Class Members to contact the Settlement Administrator with any questions or changes of address, provide notice of important dates, such as the Settlement Hearing, the deadline to submit a Claim Form, and the Notice Response Deadline, and provide Class Members who file Claim Forms online the opportunity to select an electronic payment method, as well as payment by check. The Settlement Website will also contain relevant case documents, including, but not limited to, the Publication Notice, the Full Notice, the Settlement Agreement, Plaintiffs' motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs' Fee Application, and the operative pleadings in the Litigation. Lastly, the Settlement Website will contain the Kroll privacy policy, including the policy for California Consumer Privacy Act.

TOLL-FREE NUMBER

29. Kroll will establish and administer a toll-free number for the Settlement, which will allow Class Members to call and obtain information about the Settlement through an interactive voice response system and/or by being connected to a live agent. The toll-free number (TBD) will be available twenty-four hours a day, seven days a week.

CONCLUSION

30. In my opinion, the Notice Program reflects a particularly appropriate, reasonably calculated, highly targeted, and contemporary way to reach as many Class Members as possible and inform them of their rights and options under the Settlement. Importantly, I believe that it satisfies the requirements of Federal Rule of Civil Procedure 23 and the guidance set forth by the Federal Judicial Center and the Manual for Complex Litigation 4th Ed.

31. At the conclusion of the Notice Program, and in conjunction with consideration of final approval of the Settlement, Kroll will submit a final report and declaration to the Court confirming that it has implemented the Notice Program and will provide any other information requested by the Court.

I declare under penalty of perjury under the laws of the United Sates that the above is true and correct to the best of my knowledge.

Executed on February 2, 2023, in Tigard, Oregon.

Jeanne C. Finegan

Exhibit A

KROLL
NOTICE MEDIA

JEANNE C. FINEGAN, APR

Jeanne Finegan, APR, is the Managing Director and Head of Kroll Notice Media. She is a member of the Board of Directors for the prestigious Alliance for Audited Media (AAM) and was named by *Diversity Journal* as one of the "Top 100 Women Worth Watching." She is a distinguished legal notice and communications expert with more than 30 years of communications and advertising experience.

She was a lead contributing author for Duke University's School of Law, *"Guidelines and Best Practices Implementing Amendments to Rule 23 Class Action Settlement Provisions."* And more recently, she has been involved with New York School of Law and The Center on Civil Justice (CCJ) assisting with a class action settlement data analysis and comparative visualization tool called the *Aggregate Litigation Project*, designed to help judges make decisions in aggregate cases on the basis of data as opposed to anecdotal information. Moreover, her experience also includes working with the Special Settlement Administrator's team to assist with the outreach strategy for the historic Auto Airbag Settlement, In re: *Takata Airbag Products Liability Litigation* MDL 2599.

During her tenure, she has planned and implemented over 1,000 high-profile, complex legal notice communication programs. She is a recognized notice expert in both the United States and in Canada, with extensive international notice experience spanning more than 170 countries and over 40 languages.

Ms. Finegan has lectured, published and has been cited extensively on various aspects of legal noticing, product recall and crisis communications. She has served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the Commission can increase the effectiveness of its product recall campaigns. Further, she has planned and implemented large-scale government enforcement notice programs for the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC).

Ms. Finegan is accredited in Public Relations (APR) by the Universal Accreditation Board, which is a program administered by the Public Relations Society of America (PRSA),and is also a recognized member of the Canadian Public Relations Society (CPRS). She has served on examination panels for APR candidates and worked *pro bono* as a judge for prestigious PRSA awards.

Ms. Finegan has provided expert testimony before Congress on issues of notice, and expert testimony in both state and federal courts regarding notification campaigns. She has conducted numerous media audits of proposed notice programs to assess the adequacy of those programs under Fed R. Civ. P. 23(c)(2) and similar state class action statutes.

She was an early pioneer of plain language in notice (as noted in a RAND study,[1]) and continues to set the standard for modern outreach as the first notice expert to integrate social and mobile media into court approved legal notice programs.

In the course of her class action experience, courts have recognized the merits of, and admitted expert testimony based on, her scientific evaluation of the effectiveness of notice plans. She has designed legal notices for a wide range of class actions and consumer matters that include product liability, construction defect, antitrust, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, government enforcement actions, securities, banking, insurance, mass tort, restructuring and product recall.

1 Deborah R. Hensler et al., CLASS ACTION DILEMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).

KROLL NOTICE MEDIA

JUDICIAL COMMENTS AND LEGAL NOTICE CASES

In evaluating the adequacy and effectiveness of Ms. Finegan's notice campaigns, courts have repeatedly recognized her excellent work. The following excerpts provide some examples of such judicial approval.

***In re Purdue Pharma L.P.*,** No. 19-23649 (Bankr. S.D.N.Y. 2019). Omnibus Hearing, Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R. Bankr. P. 2002 and 3003(c)(3) for Entry of an Order (I)Extending the General Bar Date for a Limited Period and (II) Approving the Form and Manner of Notice Thereof, June 3, 2020, transcript p. 88:10, the Honorable Robert Drain stated:

> *"The notice here is indeed extraordinary, as was detailed on page 8 of Ms. Finegan's declaration in support of the original bar date motion and then in her supplemental declaration from May 20th in support of the current motion, the notice is not only in print media, but extensive television and radio notice, community outreach, -- and I think this is perhaps going to be more of a trend, but it's a major element of the notice here -- online, social media, out of home, i.e. billboards, and earned media, including bloggers and creative messaging. That with a combined with a simplified proof of claims form and the ability to file a claim or first, get more information about filing a claim online -- there was a specific claims website -- and to file a claim either online or by mail. Based on Ms. Finegan's supplemental declaration, it appears clear to me that that process of providing notice has been quite successful in its goal in ultimately reaching roughly 95 percent of all adults in the United States over the age of 18 with an average frequency of message exposure of six times, as well as over 80 percent of all adults in Canada with an average message exposure of over three times."*

In Re: PG&E Corporation Case No . 19-30088 Bankr. (N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. *June 26, 2019, Transcript of Hearing p. 21:1, the Honorable Dennis Montali stated:*

> *…the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 … Ms. Finegan has really impressed me today…*

Yahoo! Inc. Customer Data Security Breach Litigation, Case No. 5:16-MD-02752 (ND Cal 2016). In the Order Preliminary Approval, dated July 20, 2019, the Honorable Lucy Kho stated, para 21,

> *"The Court finds that the Approved Notices and Notice Plan set forth in the Amended Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances."*

Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation, Case No. 19-MD-2887 (U.S. District Court, District Kansas 2021). *In the Preliminary Approval Transcript, February 2, 2021 p. 28-29, the Honorable Julie A. Robinson stated:*

> *"I was very impressed in reading the notice plan and very educational, frankly to me, understanding the communication, media platforms, technology, all of that continues to evolve rapidly and the ability to not only target consumers, but to target people that could rightfully receive notice continues to improve all the time."*

In re: The Bank of New York Mellon ADR FX Litigation, 16-CV-00212-JPO-JLC (S.D.N.Y. 2019). In the Final Order and Judgement, dated June 17, 2019, para 5, the Honorable J. Paul Oetkin stated:

> *"The dissemination of notice constituted the best notice practicable under the circumstances."*

Simerlein et al., v. Toyota Motor Corporation, Case No. 3:17-cv-01091-VAB (District of CT 2019). In the Ruling and Order on Motion for Preliminarily Approval, dated January 14, 2019, p. 30, the Honorable Victor Bolden stated:

> *"In finding that notice is sufficient to meet both the requirements of Rule 23(c) and due process, the Court has reviewed and appreciated the high-quality submission of proposed Settlement Notice Administrator Jeanne C. Finegan. See Declaration of Jeanne C. Finegan, APR, Ex. G to Agrmt., ECF No. 85-8."*

KROLL NOTICE MEDIA

Fitzhenry- Russell et al., v. Keurig Dr. Pepper Inc., Case No. :17-cv-00564-NC, (ND Cal). In the Order Granting Final Approval of Class Action Settlement, Dated April 10, 2019, the Honorable Nathanael Cousins stated:

> *"…the reaction of class members to the proposed Settlement is positive. The parties anticipated that 100,000 claims would be filed under the Settlement (see Dkt. No. 327-5 ¶ 36)—91,254 claims were actually filed (see Finegan Decl ¶ 4). The 4% claim rate was reasonable in light of Heffler's efforts to ensure that notice was adequately provided to the Class."*

Pettit et al., v. Procter & Gamble Co., Case No. 15-cv-02150-RS ND Cal**.** In the Order Granting Final Approval of the Class Action Settlement and Judgement, Dated March 28, 2019, p. 6, the Honorable Richard Seeborg stated:

> *"The Court finds that the Notice Plan set forth in the Settlement Agreement, and effectuated pursuant to the Preliminary Approval Order, constituted the best notice practicable under the circumstances and constituted due and sufficient notice to the Settlement Class. …the number of claims received equates to a claims rate of 4.6%, which exceeds the rate in comparable settlements."*

Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc., Case No. 1:13-CV-24583 PAS (S.D. Fl. 2016). In her Final Order and Judgment Granting Plaintiffs Motion for Final Approval of Class Action Settlement, the Honorable Patricia Seitz stated:

> *"The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. …There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers… Thus the form and method used for notifying Class Members of the terms of the Settlement was the best notice practicable. …The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members."*
>
> Additionally, in January 20, 2016, Transcript of Class Notice Hearing, p. 5 Judge Seitz, noted:
>
> *"I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class."*

Cook et. al., v. Rockwell International Corp. and the Dow Chemical Co., *No. 90-cv-00181- KLK (D.Colo. 2017)., aka, Rocky Flats Nuclear Weapons Plant Contamination***.** In the Order Granting Final Approval, dated April 28, 2017, p.3, the Honorable John L. Kane said:

> *The Court-approved Notice Plan, which was successfully implemented by [HF Media- emphasis added] (see Doc. 2432), constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice Plan that was implemented, as set forth in Declaration of Jeanne C. Finegan, APR Concerning Implementation and Adequacy of Class Member Notification (Doc. 2432), provided for individual notice to all members of the Class whose identities and addresses were identified through reasonable efforts, … and a comprehensive national publication notice program that included, inter alia, print, television, radio and internet banner advertisements. …Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Notice Plan provided the best notice practicable to the Class.*

In re: Domestic Drywall Antitrust Litigation, MDL. No. 2437, in the U.S. District Court for the Eastern District of Pennsylvania. For each of the four settlements, Finegan implemented and extensive outreach effort including traditional, online, social, mobile and advanced television and online video. In the Order Granting Preliminary Approval to the IPP Settlement, Judge Michael M. Baylson stated:

> *"The Court finds that the dissemination of the Notice and summary Notice constitutes the best notice practicable under the circumstances; is valid, due, and sufficient notice to all persons… and complies fully with the requirements of the Federal rule of Civil Procedure."*

KROLL NOTICE MEDIA

Warner v. Toyota Motor Sales, U.S.A. Inc., Case No 2:15-cv-02171-FMO FFMx (C.D. Cal. 2017). In the Order Re: Final Approval of Class Action Settlement; Approval of Attorney's Fees, Costs & Service Awards, dated May 21, 2017, the Honorable Fernando M. Olguin stated:

> *Finegan, the court-appointed settlement notice administrator, has implemented the multiprong notice program. …the court finds that the class notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude themselves from the action, and their right to object to the proposed settlement. (See Dkt. 98, PAO at 25-28).*

Michael Allagas, et al., v. BP Solar International, Inc., et al., BP Solar Panel Settlement, Case No. 3:14-cv-00560- SI (N.D. Cal., San Francisco Div. 2016). In the Order Granting Final Approval, Dated December 22, 2016, The Honorable Susan Illston stated:

> *Class Notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and d. fully satisfied the requirements of the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law.*

Foster v. L-3 Communications *EOTech*, Inc. et al (6:15-cv-03519), Missouri Western District Court.

> *In the Court's Final Order, dated July 7, 2017, The Honorable Judge Brian Wimes stated: "The Court has determined that the Notice given to the Settlement Class fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable."*

In re: Skechers Toning Shoes Products Liability Litigation, No. 3:11-MD-2308-TBR (W.D. Ky. 2012). In his Final Order and Judgment granting the Motion for Preliminary Approval of Settlement, the Honorable Thomas B. Russell stated:

> … *The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.*

Brody v. Merck & Co., Inc., et al, No. 3:12-cv-04774-PGS-DEA (N.J.) (Jt Hearing for Prelim App, Sept. 27, 2012, transcript page 34). During the Hearing on Joint Application for Preliminary Approval of Class Action, the Honorable Peter G. Sheridan acknowledged Ms. Finegan's work, noting:

> *Ms. Finegan did a great job in testifying as to what the class administrator will do. So, I'm certain that all the class members or as many that can be found, will be given some very adequate notice in which they can perfect their claim.*

Quinn v. Walgreen Co., Wal-Mart Stores Inc., 7:12 CV-8187-VB (NYSD) (Jt Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti stated:

> *"The notice plan was the best practicable under the circumstances. … [and] "the proof is in the pudding. This settlement has resulted in more than 45,000 claims which is 10,000 more than the Pearson case and more than 40,000 more than in a glucosamine case pending in the Southern District of California I've been advised about. So the notice has reached a lot of people and a lot of people have made claims."*

In Re: TracFone Unlimited Service Plan Litigation, *No. C-13-3440 EMC (ND Ca).* In the Final Order and Judgment Granting Class Settlement, July 2, 2015, the Honorable Edward M. Chen noted:

> *"…[D]epending on the extent of the overlap between those class members who will automatically receive a payment and those who filed claims, the total claims rate is estimated to be approximately 25-30%. This is an excellent result...*

KROLL NOTICE MEDIA

In Re: Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation, Case No. 4:14-MD-2562 RWS (E.D. Mo. 2015), (Hearing for Final Approval, May 19, 2016 transcript p. 49). During the Hearing for Final Approval, the Honorable Rodney Sippel said:

> *It is my finding that notice was sufficiently provided to class members in the manner directed in my preliminary approval order and that notice met all applicable requirements of due process and any other applicable law and considerations.*

DeHoyos, et al., v. Allstate Ins. Co., No. SA-01-CA-1010 (W.D.Tx. 2001). In the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

> *[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. … This program was vigorous and specifically structured to reach the African American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts. Specifically, in order to reach the identified targets directly and efficiently, the notice program utilized a multi-layered approach which included national magazines; magazines specifically appropriate to the targeted audiences; and newspapers in both English and Spanish.*

In Re: Reebok Easytone Litigation, No. 10-CV-11977 (D. MA. 2011). The Honorable F. Dennis Saylor IV stated in the Final Approval Order:

> *The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other notice methods set forth in the Settlement Agreement and [Ms. Finegan's] Declaration and the notice dissemination methodology implemented pursuant to the Settlement Agreement and this Court's Preliminary Approval Order… constituted the best practicable notice to Class Members under the circumstances of the Actions.*

Bezdek v. Vibram USA and Vibram FiveFingers LLC, No 12-10513 (D. MA) The Honorable Douglas P. Woodlock stated in the Final Memorandum and Order:

> *…[O]n independent review I find that the notice program was robust, particularly in its online presence, and implemented as directed in my Order authorizing notice. …I find that notice was given to the Settlement class members by the best means "practicable under the circumstances." Fed.R.Civ.P. 23(c)(2).*

Gemelas v. The Dannon Company Inc., No. 08-cv-00236-DAP (N.D. Ohio). In granting final approval for the settlement, the Honorable Dan A. Polster stated:

> *In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, [Ms. Finegan] caused the Class Notice to be distributed on a nationwide basis in magazines and newspapers (with circulation numbers exceeding 81 million) specifically chosen to reach Class Members. … The distribution of Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. 1715, and any other applicable law.*

Pashmova v. New Balance Athletic Shoes, Inc., 1:11-cv-10001-LTS (D. Mass.). The Honorable Leo T. Sorokin stated in the Final Approval Order:

> *The Class Notice, the Summary Settlement Notice, the web site, and all other notices in the Settlement Agreement and the Declaration of [Ms Finegan], and the notice methodology implemented pursuant to the Settlement Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Actions, the terms of the Settlement and their rights under the settlement … met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.*

KROLL NOTICE MEDIA

Hartless v. Clorox Company, No. 06-CV-2705 (CAB) (S.D.Cal.). In the Final Order Approving Settlement, the Honorable Cathy N. Bencivengo found:

> *The Class Notice advised Class members of the terms of the settlement; the Final Approval Hearing and their right to appear at such hearing; their rights to remain in or opt out of the Class and to object to the settlement; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class. The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.*

McDonough et al., v. Toys 'R' Us et al, No. 09:-cv-06151-AB (E.D. Pa.). In the Final Order and Judgment Approving Settlement, the Honorable Anita Brody stated:

> *The Court finds that the Notice provided constituted the best notice practicable under the circumstances and constituted valid, due and sufficient notice to all persons entitled thereto.*

In re: Pre-Filled Propane Tank Marketing & Sales Practices Litigation, No. 4:09-md-02086-GAF (W.D. Mo.) In granting final approval to the settlement, the Honorable Gary A. Fenner stated:

> *The notice program included individual notice to class members who could be identified by Ferrellgas, publication notices, and notices affixed to Blue Rhino propane tank cylinders sold by Ferrellgas through various retailers. ... The Court finds the notice program fully complied with Federal Rule of Civil Procedure 23 and the requirements of due process and provided to the Class the best notice practicable under the circumstances.*

Stern v. AT&T Mobility Wireless, No. 09-cv-1112 CAS-AGR (C.D.Cal. 2009). In the Final Approval Order, the Honorable Christina A. Snyder stated:

> *[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.*

In re: Processed Egg Prods. Antitrust Litig., MDL No. 08-md-02002 (E.D.P.A.). In the Order Granting Final Approval of Settlement, Judge Gene E.K. Pratter stated:

> *The Notice appropriately detailed the nature of the action, the Class claims, the definition of the Class and Subclasses, the terms of the proposed settlement agreement, and the class members' right to object or request exclusion from the settlement and the timing and manner for doing so.… Accordingly, the Court determines that the notice provided to the putative Class Members constitutes adequate notice in satisfaction of the demands of Rule 23.*

In re Polyurethane Foam Antitrust Litigation, 10- MD-2196 (N.D. OH). In the Order Granting Final Approval of Voluntary Dismissal and Settlement of Defendant Domfoam and Others, the Honorable Jack Zouhary stated:

> *The notice program included individual notice to members of the Class who could be identified through reasonable effort, as well as extensive publication of a summary notice. The Notice constituted the most effective and best notice practicable under the circumstances of the Settlement Agreements, and constituted due and sufficient notice for all other purposes to all persons and entities entitled to receive notice.*

Rojas v Career Education Corporation, No. 10-cv-05260 (N.D.E.D. IL) In the Final Approval Order dated October 25, 2012, the Honorable Virgina M. Kendall stated:

> *The Court Approved notice to the Settlement Class as the best notice practicable under the circumstance including individual notice via U.S. Mail and by email to the class members whose addresses were obtained from each Class Member's wireless carrier or from a commercially reasonable reverse cell phone number look-up service, nationwide magazine publication, website publication, targeted on-line advertising, and a press release. Notice has been successfully implemented and satisfies the requirements of the Federal Rule of Civil Procedure 23 and Due Process.*

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Golloher v Todd Christopher International, Inc. DBA Vogue International (Organix), *No. C 1206002 N.D CA*. In the Final Order and Judgment Approving Settlement, the Honorable Richard Seeborg stated:

> *The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.*

Stefanyshyn v. Consolidated Industries, No. 79 D 01-9712-CT-59 (Tippecanoe County Sup. Ct., Ind.). In the Order Granting Final Approval of Settlement, Judge Randy Williams stated:

> *The long and short form notices provided a neutral, informative, and clear explanation of the Settlement. … The proposed notice program was properly designed, recommended, and implemented … and constitutes the "best practicable" notice of the proposed Settlement. The form and content of the notice program satisfied all applicable legal requirements. … The comprehensive class notice educated Settlement Class members about the defects in Consolidated furnaces and warned them that the continued use of their furnaces created a risk of fire and/or carbon monoxide. This alone provided substantial value.*

McGee v. Continental Tire North America, Inc. et al, No. 06-6234-(GEB) (D.N.J.).

> *The Class Notice, the Summary Settlement Notice, the web site, the toll-free telephone number, and all other notices in the Agreement, and the notice methodology implemented pursuant to the Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notification; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 20 U.S.C. Sec. 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.*

Varacallo, et al. v. Massachusetts Mutual Life Insurance Company, et al., No. 04-2702 (JLL) (D.N.J.). The Court stated that:

> [A]*ll of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices. … By working with a nationally syndicated media research firm, [Finegan's firm] was able to define a target audience for the MassMutual Class Members, which provided a valid basis for determining the magazine and newspaper preferences of the Class Members. (Preliminary Approval Order at p. 9). . . . The Court agrees with Class Counsel that this was more than adequate. (Id. at § 5.2).*

In Re: Nortel Network Corp., Sec. Litig., No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (S.D.N.Y.). Ms. Finegan designed and implemented the extensive United States and Canadian notice programs in this case. The Canadian program was published in both French and English, and targeted virtually all investors of stock in Canada. *See* www.nortelsecuritieslitigation.com. Of the U.S. notice program, the Honorable Loretta A. Preska stated:

> *The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement … constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.*

Regarding the B.C. Canadian Notice effort: *Jeffrey v. Nortel Networks*, [2007] BCSC 69 at para. 50, the Honourable Mr. Justice Groberman said:

> *The efforts to give notice to potential class members in this case have been thorough. There has been a broad media campaign to publicize the proposed settlement and the court processes. There has also been a direct mail campaign directed at probable investors. I am advised that over 1.2 million claim packages were mailed to persons around the world. In addition, packages*

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have been available through the worldwide web site nortelsecuritieslitigation.com on the Internet. Toll-free telephone lines have been set up, and it appears that class counsel and the Claims Administrator have received innumerable calls from potential class members. In short, all reasonable efforts have been made to ensure that potential members of the class have had notice of the proposal and a reasonable opportunity was provided for class members to register their objections, or seek exclusion from the settlement.

Mayo v. Walmart Stores and Sam's Club, No. 5:06 CV-93-R (W.D.Ky.). In the Order Granting Final Approval of Settlement, Judge Thomas B. Russell stated:

According to defendants' database, the Notice was estimated to have reached over 90% of the Settlement Class Members through direct mail. The Settlement Administrator … has classified the parties' database as 'one of the most reliable and comprehensive databases [she] has worked with for the purposes of legal notice.'… The Court thus reaffirms its findings and conclusions in the Preliminary Approval Order that the form of the Notice and manner of giving notice satisfy the requirements of Fed. R. Civ. P. 23 and affords due process to the Settlement Class Members.

Fishbein v. All Market Inc., (d/b/a **Vita Coco**) No. 11-cv-05580 (S.D.N.Y.). In granting final approval of the settlement, the Honorable J. Paul Oetken stated:

"The Court finds that the dissemination of Class Notice pursuant to the Notice Program…constituted the best practicable notice to Settlement Class Members under the circumstances of this Litigation … and was reasonable and constituted due, adequate and sufficient notice to all persons entitled to such notice, and fully satisfied the requirements of the Federal Rules of Civil Procedure, including Rules 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable laws."

Lucas, et al. v. Kmart Corp., No. 99-cv-01923 (D.Colo.), wherein the Court recognized Jeanne Finegan as an expert in the design of notice programs, and stated:

The Court finds that the efforts of the parties and the proposed Claims Administrator in this respect go above and beyond the "reasonable efforts" required for identifying individual class members under F.R.C.P. 23(c)(2)(B).

In Re: Johns-Manville Corp. **(Statutory Direct Action Settlement, Common Law Direct Action and Hawaii Settlement)**, No 82-11656, 57, 660, 661, 665-73, 75 and 76 (BRL) (Bankr. S.D.N.Y.). The nearly half-billion dollar settlement incorporated three separate notification programs, which targeted all persons who had asbestos claims whether asserted or unasserted, against the Travelers Indemnity Company. In the Findings of Fact and Conclusions of a Clarifying Order Approving the Settlements, slip op. at 47-48 (Aug. 17, 2004), the Honorable Burton R. Lifland, Chief Justice, stated:

As demonstrated by Findings of Fact (citation omitted), the Statutory Direct Action Settlement notice program was reasonably calculated under all circumstances to apprise the affected individuals of the proceedings and actions taken involving their interests, Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), such program did apprise the overwhelming majority of potentially affected claimants and far exceeded the minimum notice required. . . The results simply speak for themselves.

Pigford v. Glickman and U.S. Department of Agriculture**,** No. 97-1978. 98-1693 (PLF) (D.D.C.). This matter was the largest civil rights case to settle in the United States in over 40 years. The highly publicized, nationwide paid media program was designed to alert all present and past African-American farmers of the opportunity to recover monetary damages against the U.S. Department of Agriculture for alleged loan discrimination. In his Opinion, the Honorable Paul L. Friedman commended the parties with respect to the notice program, stating;

The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television

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stations. . . The Court concludes that class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree.

In Re: Louisiana-Pacific Inner-Seal Siding Litig., Nos. 879-JE, and 1453-JE (D.Or.). Under the terms of the Settlement, three separate notice programs were to be implemented at three-year intervals over a period of six years. In the first notice campaign, Ms. Finegan implemented the print advertising and Internet components of the Notice program. In approving the legal notice communication plan, the Honorable Robert E. Jones stated:

The notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement…[through] a broad and extensive multi-media notice campaign.

Additionally, with regard to the third-year notice program for Louisiana-Pacific, the Honorable Richard Unis, Special Master, commented that the notice was:

…well formulated to conform to the definition set by the court as adequate and reasonable notice. Indeed, I believe the record should also reflect the Court's appreciation to Ms. Finegan for all the work she's done, ensuring that noticing was done correctly and professionally, while paying careful attention to overall costs. Her understanding of various notice requirements under Fed. R. Civ. P. 23, helped to insure that the notice given in this case was consistent with the highest standards of compliance with Rule 23(d)(2).

In Re: Expedia Hotel Taxes and Fees Litigation, No. 05-2-02060-1 (SEA) (Sup. Ct. of Wash. in and for King County). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

The Notice of the Settlement given to the Class … was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceeding and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of CR 23 and due process.

Thomas A. Foster and Linda E. Foster v. ABTco Siding Litigation, No. 95-151-M (Cir. Ct., Choctaw County, Ala.). This litigation focused on past and present owners of structures sided with Abitibi-Price siding. The notice program that Ms. Finegan designed and implemented was national in scope and received the following praise from the Honorable J. Lee McPhearson:

The Court finds that the Notice Program conducted by the Parties provided individual notice to all known Class Members and all Class Members who could be identified through reasonable efforts and constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program. … The media campaign involved broad national notice through television and print media, regional and local newspapers, and the Internet (see id. ¶¶9-11) The result: over 90 percent of Abitibi and ABTco owners are estimated to have been reached by the direct media and direct mail campaign.

Wilson v. Massachusetts Mut. Life Ins. Co., No. D-101-CV 98-02814 (First Judicial Dist. Ct., County of Santa Fe, N.M.). This was a nationwide notification program that included all persons in the United States who owned, or had owned, a life or disability insurance policy with Massachusetts Mutual Life Insurance Company and had paid additional charges when paying their premium on an installment basis. The class was estimated to exceed 1.6 million individuals. www.insuranceclassclaims.com. In granting preliminary approval to the settlement, the Honorable Art Encinias found:

[*T]he Notice Plan [is] the best practicable notice that is reasonably calculated, under the circumstances of the action. …[and] meets or exceeds all applicable requirements of the law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.*

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Sparks v. AT&T Corp., No. 96-LM-983 (Third Judicial Cir., Madison County, Ill.). The litigation concerned all persons in the United States who leased certain AT&T telephones during the 1980's. Ms. Finegan designed and implemented a nationwide media program designed to target all persons who may have leased telephones during this time period, a class that included a large percentage of the entire population of the United States. In granting final approval to the settlement, the Court found:

> *The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out of the proposed settlement. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements.*

In Re: Georgia-Pacific Toxic Explosion Litig., No. 98 CVC05-3535 (Ct. of Common Pleas, Franklin County, Ohio). Ms. Finegan designed and implemented a regional notice program that included network affiliate television, radio and newspaper. The notice was designed to alert adults living near a Georgia-Pacific plant that they had been exposed to an air-born toxic plume and their rights under the terms of the class action settlement. In the Order and Judgment finally approving the settlement, the Honorable Jennifer L. Bunner stated:

> *[N]otice of the settlement to the Class was the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The Court finds that such effort exceeded even reasonable effort and that the Notice complies with the requirements of Civ. R. 23(C).*

In Re: American Cyanamid, No. CV-97-0581-BH-M (S.D.Al.). The media program targeted Farmers who had purchased crop protection chemicals manufactured by American Cyanamid. In the Final Order and Judgment, the Honorable Charles R. Butler Jr. wrote:

> *The Court finds that the form and method of notice used to notify the Temporary Settlement Class of the Settlement satisfied the requirements of Fed. R. Civ. P. 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Temporary Class Settlement.*

In Re: First Alert Smoke Alarm Litig., No. CV-98-C-1546-W (UWC) (N.D.Al.). Ms. Finegan designed and implemented a nationwide legal notice and public information program. The public information program ran over a two-year period to inform those with smoke alarms of the performance characteristics between photoelectric and ionization detection. The media program included network and cable television, magazine and specialty trade publications. In the Findings and Order Preliminarily Certifying the Class for Settlement Purposes, Preliminarily Approving Class Settlement, Appointing Class Counsel, Directing Issuance of Notice to the Class, and Scheduling a Fairness Hearing, the Honorable C.W. Clemon wrote that the notice plan:

> *…constitutes due, adequate and sufficient notice to all Class Members; and (v) meets or exceeds all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Alabama State Constitution, the Rules of the Court, and any other applicable law.*

In Re: James Hardie Roofing Litig., No. 00-2-17945-65SEA (Sup. Ct. of Wash., King County). The nationwide legal notice program included advertising on television, in print and on the Internet. The program was designed to reach all persons who own any structure with JHBP roofing products. In the Final Order and Judgment, the Honorable Steven Scott stated:

> *The notice program required by the Preliminary Order has been fully carried out… [and was] extensive. The notice provided fully and accurately informed the Class Members of all material elements of the proposed Settlement and their opportunity to participate in or be excluded from it; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with Civ. R. 23, the United States Constitution, due process, and other applicable law.*

Barden v. Hurd Millwork Co. Inc., et al, No. 2:6-cv-00046 (LA) (E.D.Wis.)

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"The Court approves, as to form and content, the notice plan and finds that such notice is the best practicable under the circumstances under Federal Rule of Civil Procedure 23(c)(2)(B) and constitutes notice in a reasonable manner under Rule 23(e)(1).")

Altieri v. Reebok, No. 4:10-cv-11977 (FDS) (D.C.Mass.)

"The Court finds that the notices … constitute the best practicable notice...The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices."

Marenco v. Visa Inc., No. CV 10-08022 (DMG) (C.D.Cal.)

"[T]he Court finds that the notice plan…meets the requirements of due process, California law, and other applicable precedent. The Court finds that the proposed notice program is designed to provide the Class with the best notice practicable, under the circumstances of this action, of the pendency of this litigation and of the proposed Settlement's terms, conditions, and procedures, and shall constitute due and sufficient notice to all persons entitled thereto under California law, the United States Constitution, and any other applicable law."

Palmer v. Sprint Solutions, Inc., No. 09-cv-01211 (JLR) (W.D.Wa.)

"The means of notice were reasonable and constitute due, adequate, and sufficient notice to all persons entitled to be provide3d with notice."

In Re: Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation, No. 1:08-md-01982 RDB (D. Md. N. Div.)

"The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement."

Sager v. Inamed Corp. and McGhan Medical Breast Implant Litigation, No. 01043771 (Sup. Ct. Cal., County of Santa Barbara)

"Notice provided was the best practicable under the circumstances."

Deke, et al. v. Cardservice Internat'l, Case No. BC 271679, slip op. at 3 (Sup. Ct. Cal., County of Los Angeles)

"The Class Notice satisfied the requirements of California Rules of Court 1856 and 1859 and due process and constituted the best notice practicable under the circumstances."

Levine, et al. v. Dr. Philip C. McGraw, et al., Case No. BC 312830 (Los Angeles County Super. Ct., Cal.)

"[T]he plan for notice to the Settlement Class … constitutes the best notice practicable under the circumstances and constituted due and sufficient notice to the members of the Settlement Class … and satisfies the requirements of California law and federal due process of law."

In re: Canadian Air Cargo Shipping Class Actions, Court File No. 50389CP, Ontario Superior Court of Justice, Supreme Court of British Columbia, Quebec Superior Court

"I am satisfied the proposed form of notice meets the requirements of s. 17(6) of the CPA and the proposed method of notice is appropriate."

Fischer et al v. IG Investment Management, Ltd. et al, Court File No. 06-CV-307599CP, Ontario Superior Court of Justice.

In re: Vivendi Universal, S.A. Securities Litigation, No. 02-cv-5571 (RJH)(HBP) (S.D.N.Y.).

In re: Air Cargo Shipping Services Antitrust Litigation, No. 06-MD-1775 (JG) (VV) (E.D.N.Y.).

Berger, et al., v. Property ID Corporation, et al., No. CV 05-5373-GHK (CWx) (C.D.Cal.).

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Lozano v. AT&T Mobility Wireless, No. 02-cv-0090 CAS (AJWx) (C.D.Cal.).

Howard A. Engle, M.D., et al., v. R.J. Reynolds Tobacco Co., Philip Morris, Inc., Brown & Williamson Tobacco Corp., No. 94-08273 CA (22) (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Royal Dutch/Shell Transport Securities Litigation, No. 04 Civ. 374 (JAP) (Consolidated Cases) (D. N.J.).

In re: Epson Cartridge Cases, Judicial Council Coordination Proceeding, No. 4347 (Sup. Ct. of Cal., County of Los Angeles).

UAW v. General Motors Corporation, No: 05-73991 (E.D.MI).

Wicon, Inc. v. Cardservice Intern'l, Inc., BC 320215 (Sup. Ct. of Cal., County of Los Angeles).

In re: SmithKline Beecham Clinical Billing Litig., No. CV. No. 97-L-1230 (Third Judicial Cir., Madison County, Ill.).

Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning billings for clinical laboratory testing services.

MacGregor v. Schering-Plough Corp., No. EC248041 (Sup. Ct. Cal., County of Los Angeles).

This nationwide notification program was designed to reach all persons who had purchased or used an aerosol inhaler manufactured by Schering-Plough. Because no mailing list was available, notice was accomplished entirely through the media program.

In re: Swiss Banks Holocaust Victim Asset Litig., No. CV-96-4849 (E.D.N.Y.).

Ms. Finegan managed the design and implementation of the Internet site on this historic case. The site was developed in 21 native languages. It is a highly secure data gathering tool and information hub, central to the global outreach program of Holocaust survivors. www.swissbankclaims.com.

In re: Exxon Valdez Oil Spill Litig., No. A89-095-CV (HRH) (Consolidated) (D. Alaska).

Ms. Finegan designed and implemented two media campaigns to notify native Alaskan residents, trade workers, fisherman, and others impacted by the oil spill of the litigation and their rights under the settlement terms.

In re: Johns-Manville Phenolic Foam Litig., No. CV 96-10069 (D. Mass).

The nationwide multi-media legal notice program was designed to reach all Persons who owned any structure, including an industrial building, commercial building, school, condominium, apartment house, home, garage or other type of structure located in the United States or its territories, in which Johns-Manville PFRI was installed, in whole or in part, on top of a metal roof deck.

Bristow v Fleetwood Enters Litig., No Civ 00-0082-S-EJL (D. Id).

Ms. Finegan designed and implemented a legal notice campaign targeting present and former employees of Fleetwood Enterprises, Inc., or its subsidiaries who worked as hourly production workers at Fleetwood's housing, travel trailer, or motor home manufacturing plants. The comprehensive notice campaign included print, radio and television advertising.

In re: New Orleans Tank Car Leakage Fire Litig., No 87-16374 (Civil Dist. Ct., Parish of Orleans, LA) (2000).

This case resulted in one of the largest settlements in U.S. history. This campaign consisted of a media relations and paid advertising program to notify individuals of their rights under the terms of the settlement.

Garria Spencer v. Shell Oil Co., No. CV 94-074(Dist. Ct., Harris County, Tex.).
The nationwide notification program was designed to reach individuals who owned real property or structures in the United States, which contained polybutylene plumbing with acetyl insert or metal insert fittings.

In re: Hurd Millwork Heat Mirror™ Litig., No. CV-772488 (Sup. Ct. of Cal., County of Santa Clara).
This nationwide multi-media notice program was designed to reach class members with failed heat mirror seals on windows and doors, and alert them as to the actions that they needed to take to receive enhanced warranties or window and door replacement.

Laborers Dist. Counsel of Alabama Health and Welfare Fund v. Clinical Lab. Servs., Inc, No. CV–97-C-629-W (N.D. Ala.)
Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning alleged billing discrepancies for clinical laboratory testing services.

In re: StarLink Corn Prods. Liab. Litig., No. 01-C-1181 (N.D. Ill)
Ms. Finegan designed and implemented a nationwide notification program designed to alert potential class members of the terms of the settlement.

In re: MCI Non-Subscriber Rate Payers Litig., MDL Docket No. 1275, 3:99-cv-01275 (S.D.Ill.).
The advertising and media notice program, found to be “more than adequate” by the Court, was designed with the understanding that the litigation affected all persons or entities who were customers of record for telephone lines presubscribed to MCI/World Com, and were charged the higher non-subscriber rates and surcharges for direct-dialed long distance calls placed on those lines. www.rateclaims.com.

In re: Albertson’s Back Pay Litig., No. 97-0159-S-BLW (D.Id.).
Ms. Finegan designed and developed a secure Internet site, where claimants could seek case information confidentially.

In re: Georgia Pacific Hardboard Siding Recovering Program, No. CV-95-3330-RG (Cir. Ct., Mobile County, Ala.)
Ms. Finegan designed and implemented a multi-media legal notice program, which was designed to reach class members with failed G-P siding and alert them of the pending matter. Notice was provided through advertisements, which aired on national cable networks, magazines of nationwide distribution, local newspaper, press releases and trade magazines.

***In re: Diet Drugs* (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig**., Nos. 1203, 99-20593.
Ms. Finegan worked as a consultant to the National Diet Drug Settlement Committee on notification issues. The resulting notice program was described and complimented at length in the Court’s Memorandum and Pretrial Order 1415, approving the settlement.

Ms. Finegan designed the Notice programs for multiple state antitrust cases filed against the Microsoft Corporation. In those cases, it was generally alleged that Microsoft unlawfully used anticompetitive means to maintain a monopoly in markets for certain software, and that as a result, it overcharged consumers who licensed its MS-DOS, Windows, Word, Excel and Office software. The multiple legal notice programs designed by Jeanne Finegan and listed below targeted both individual users and business users of this software. The scientifically designed notice programs took into consideration both media usage habits and demographic characteristics of the targeted class members.

In re: Florida Microsoft Antitrust Litig. Settlement, No. 99-27340 CA 11 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Montana Microsoft Antitrust Litig. Settlement, No. DCV 2000 219 (First Judicial Dist. Ct., Lewis & Clark Co., Mt.).

In re: South Dakota Microsoft Antitrust Litig. Settlement, No. 00-235(Sixth Judicial Cir., County of Hughes, S.D.).

In re: Kansas Microsoft Antitrust Litig. Settlement, No. 99C17089 Division No. 15 Consolidated Cases (Dist. Ct., Johnson County, Kan.)

> *"The Class Notice provided was the best notice practicable under the circumstances and fully complied in all respects with the requirements of due process and of the Kansas State. Annot. §60-22.3."*

In re: North Carolina Microsoft Antitrust Litig. Settlement, No. 00-CvS-4073 (Wake) 00-CvS-1246 (Lincoln) (General Court of Justice Sup. Ct., Wake and Lincoln Counties, N.C.).

In re: ABS II Pipes Litig., No. 3126 (Sup. Ct. of Cal., Contra Costa County).

> The Court approved regional notification program designed to alert those individuals who owned structures with the pipe that they were eligible to recover the cost of replacing the pipe.

In re: Avenue A Inc. Internet Privacy Litig., No: C00-1964C (W.D. Wash.).

In re: Lorazepam and Clorazepate Antitrust Litig., No. 1290 (TFH) (D.C.C.).

In re: Providian Fin. Corp. ERISA Litig., No C-01-5027 (N.D. Cal.).

In re: H & R Block., et al Tax Refund Litig., No. 97195023/CC4111 (MD Cir. Ct., Baltimore City).

In re: American Premier Underwriters, Inc, U.S. Railroad Vest Corp., No. 06C01-9912 (Cir. Ct., Boone County, Ind.).

In re: Sprint Corp. Optical Fiber Litig., No: 9907 CV 284 (Dist. Ct., Leavenworth County, Kan).

In re: Shelter Mutual Ins. Co. Litig., No. CJ-2002-263 (Dist.Ct., Canadian County. Ok).

In re: Conseco, Inc. Sec. Litig., No: IP-00-0585-C Y/S CA (S.D. Ind.).

In re: Nat'l Treasury Employees Union, et al., 54 Fed. Cl. 791 (2002).

In re: City of Miami Parking Litig., Nos. 99-21456 CA-10, 99-23765 – CA-10 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Prime Co. Incorporated D/B/A/ Prime Co. Personal Comm., No. L 1:01CV658 (E.D. Tx.).

Alsea Veneer v. State of Oregon A.A., No. 88C-11289-88C-11300.

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In re Purdue Pharma L.P., No. 19-23649 (Bankr. S.D.N.Y. 2019).

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 20201

Bell v. Canadian Imperial Bank of Commerce*, et al, Court File No.: CV-08-359335 (Ontario Superior Court of Justice); (2016).*

In re: Canadian Air Cargo Shipping Class Actions *(Ontario Superior Court of Justice, Court File No. 50389CP, Supreme Court of British Columbia.*

In re: Canadian Air Cargo Shipping Class Actions (*Québec Superior Court).*

Fischer v. IG Investment Management LTD*., No. 06-CV-307599CP (Ontario Superior Court of Justice).*

In Re Nortel I & II Securities Litigation*, Civil Action No. 01-CV-1855 (RMB), Master File No. 05 MD 1659 (LAP) (S.D.N.Y. 2006).*

Frohlinger v. Nortel Networks Corporation *et al., Court File No.: 02-CL-4605 (Ontario Superior Court of Justice).*

Association de Protection des Épargnants et Investissuers du Québec v. Corporation Nortel Networks*, No.: 500-06-0002316-017 (Superior Court of Québec).*

Jeffery v. Nortel Networks Corporation *et al., Court File No.: S015159 (Supreme Court of British Columbia).*

Gallardi v. Nortel Networks Corporation*, No. 05-CV-285606CP (Ontario Superior Court).*

Skarstedt v. Corporation Nortel Networks*, No. 500-06-000277-059 (Superior Court of Québec).*

SEC ENFORCEMENT NOTICE PROGRAM EXPERIENCE

SEC v. Vivendi Universal, S.A., et al., Case No. 02 Civ. 5571 (RJH) (HBP) (S.D.N.Y.).
The Notice program included publication in 11 different countries and eight different languages.

SEC v. Royal Dutch Petroleum Company, No.04-3359 (S.D. Tex.)

FEDERAL TRADE COMMISSION NOTICE PROGRAM EXPERIENCE

FTC v. TracFone Wireless, Inc*.,* Case No. 15-cv-00392-EMC.

FTC v. Skechers U.S.A., Inc., No. 1:12-cv-01214-JG (N.D. Ohio).

FTC v. Reebok International Ltd., No. 11-cv-02046 (N.D. Ohio)

FTC v. Chanery and RTC Research and Development LLC [Nutraquest], No :05-cv-03460 (D.N.J.)

BANKRUPTCY EXPERIENCE

KROLL NOTICE MEDIA

Ms. Finegan has designed and implemented hundreds of domestic and international bankruptcy notice programs. A sample case list includes the following:

In Re: PG&E Corporation Case No . 19-30088 Bankr. N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures fr Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. *June 26, 2019, Transcript of Hearing p. 21:1,* the Honorable Dennis Montali stated:

> *…the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 … Ms. Finegan has really impressed me today…*

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 20201.

In re AMR Corporation [American Airlines], et al., No. 11-15463 (SHL) (Bankr. S.D.N.Y.)

> ***"****due and proper notice [was] provided, and … no other or further notice need be provided."*

In re Jackson Hewitt Tax Service Inc., et al., No 11-11587 (Bankr. D.Del.) (2011).

> The debtors sought to provide notice of their filing as well as the hearing to approve their disclosure statement and confirm their plan to a large group of current and former customers, many of whom current and viable addresses promised to be a difficult (if not impossible) and costly undertaking. The court approved a publication notice program designed and implemented by Finegan and the administrator, that included more than 350 local newspaper and television websites, two national online networks (24/7 Real Media, Inc. and Microsoft Media Network), a website notice linked to a press release and notice on eight major websites, including CNN and Yahoo. These online efforts supplemented the print publication and direct-mail notice provided to known claimants and their attorneys, as well as to the state attorneys general of all 50 states. The *Jackson Hewitt* notice program constituted one of the first large chapter 11 cases to incorporate online advertising.

In re: Nutraquest Inc., No. 03-44147 (Bankr. D.N.J.)

In re: General Motors Corp. et al, No. 09-50026 (Bankr. S.D.N.Y.)

> This case is the 4th largest bankruptcy in U.S. history. Ms. Finegan and her team worked with General Motors restructuring attorneys to design and implement the legal notice program.

In re: ACandS, Inc., No. 0212687 (Bankr. D.Del.) (2007)

> *"Adequate notice of the Motion and of the hearing on the Motion was given."*

In re: United Airlines, No. 02-B-48191 (Bankr. N.D Ill.)

> Ms. Finegan worked with United and its restructuring attorneys to design and implement global legal notice programs. The notice was published in 11 countries and translated into 6 languages. Ms. Finegan worked closely with legal counsel and UAL's advertising team to select the appropriate media and to negotiate the most favorable advertising rates. www.pd-ual.com.

In re: Enron, No. 01-16034 (Bankr. S.D.N.Y.)

> Ms. Finegan worked with Enron and its restructuring attorneys to publish various legal notices.

In re: Dow Corning, No. 95-20512 (Bankr. E.D. Mich.)

> Ms. Finegan originally designed the information website. This Internet site is a major information hub that has various forms in 15 languages.

In re: Harnischfeger Inds., No. 99-2171 (RJW) Jointly Administered (Bankr. D. Del.)

> Ms. Finegan designed and implemented 6 domestic and international notice programs for this case. The notice was translated into 14 different languages and published in 16 countries.

In re: Keene Corp., No. 93B 46090 (SMB), (Bankr. E.D. MO.)

KROLL NOTICE MEDIA

Ms. Finegan designed and implemented multiple domestic bankruptcy notice programs including notice on the plan of reorganization directed to all creditors and all Class 4 asbestos-related claimants and counsel.

In re: Lamonts, No. 00-00045 (Bankr. W.D. Wash.)
Ms. Finegan designed an implemented multiple bankruptcy notice programs.

In re: Monet Group Holdings, Nos. 00-1936 (MFW) (Bankr. D. Del.)
Ms. Finegan designed and implemented a bar date notice.

In re: Laclede Steel Co., No. 98-53121-399 (Bankr. E.D. MO.)
Ms. Finegan designed and implemented multiple bankruptcy notice programs.

In re: Columbia Gas Transmission Corp., No. 91-804 (Bankr. S.D.N.Y.)
Ms. Finegan developed multiple nationwide legal notice notification programs for this case.

In re: U.S.H. Corp. of New York, et al. (Bankr. S.D.N.Y)
Ms. Finegan designed and implemented a bar date advertising notification campaign.

In re: Best Prods. Co., Inc., No. 96-35267-T, (Bankr. E.D. Va.)
Ms. Finegan implemented a national legal notice program that included multiple advertising campaigns for notice of sale, bar date, disclosure and plan confirmation.

In re: Lodgian, Inc., et al., No. 16345 (BRL) Factory Card Outlet – 99-685 (JCA), 99-686 (JCA) (Bankr. S.D.N.Y).

In re: Internat'l Total Servs, Inc., et al., Nos. 01-21812, 01-21818, 01-21820, 01-21882, 01-21824, 01-21826, 01-21827 (CD) Under Case No: 01-21812 (Bankr. E.D.N.Y).

In re: Decora Inds., Inc. and Decora, Incorp., Nos. 00-4459 and 00-4460 (JJF) (Bankr. D. Del.).

In re: Genesis Health Ventures, Inc., et al, No. 002692 (PJW) (Bankr. D. Del.).

In re: Tel. Warehouse, Inc., et al, No. 00-2105 through 00-2110 (MFW) (Bankr. D. Del.).

In re: United Cos. Fin. Corp., et al, No. 99-450 (MFW) through 99-461 (MFW) (Bankr. D. Del.).

In re: Caldor, Inc. New York, The Caldor Corp., Caldor, Inc. CT, et al., No. 95-B44080 (JLG) (Bankr. S.D.N.Y).

In re: Physicians Health Corp., et al., No. 00-4482 (MFW) (Bankr. D. Del.).

In re: GC Cos., et al., Nos. 00-3897 through 00-3927 (MFW) (Bankr. D. Del.).

In re: Heilig-Meyers Co., et al., Nos. 00-34533 through 00-34538 (Bankr. E.D. Va.).

MASS TORT EXPERIENCE AND PRODUCT RECALL

In Re: PG&E Corporation Case No . 19-30088 Bankr. N.D. Cal. 2019).

In re Purdue Pharma L.P.**,** No. 19-23649 (Bankr. S.D.N.Y. 2019).

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 2021.

KROLL NOTICE MEDIA

Reser's Fine Foods. Reser's is a nationally distributed brand and manufacturer of food products through giants such as Albertsons, Costco, Food Lion, WinnDixie, Ingles, Safeway and Walmart. Ms. Finegan designed an enterprise-wide crisis communication plan that included communications objectives, crisis team roles and responsibilities, crisis response procedures, regulatory protocols, definitions of incidents that require various levels of notice, target audiences, and threat assessment protocols. Ms. Finegan worked with the company through two nationwide, high profile recalls, conducting extensive media relations efforts.

***Gulf Coast Claims Facility Notice Campaign*.** Finegan coordinated a massive outreach effort throughout the Gulf Coast region to notify those who have claims as a result of damages caused by the Deep Water Horizon Oil spill. The notice campaign included extensive advertising in newspapers throughout the region, Internet notice through local newspaper, television and radio websites and media relations. The Gulf Coast Claims Facility (GCCF) was an independent claims facility, funded by BP, for the resolution of claims by individuals and businesses for damages incurred as a result of the oil discharges due to the Deepwater Horizon incident on April 20, 2010.

City of New Orleans Tax Revisions, Post-Hurricane Katrina. In 2007, the City of New Orleans revised property tax assessments for property owners. As part of this process, it received numerous appeals to the assessments. An administration firm served as liaison between the city and property owners, coordinating the hearing schedule and providing important information to property owners on the status of their appeal. Central to this effort was the comprehensive outreach program designed by Ms. Finegan, which included a website and a heavy schedule of television, radio and newspaper advertising, along with the coordination of key news interviews about the project picked up by local media.

ARTICLES/ SOCIAL MEDIA

Interview, "How Marketers Achieve Greater ROI Through Digital Assurance," Alliance for Audited Media ("AAM"), white paper, January 2021.

Tweet Chat: Contributing Panelist *#Law360SocialChat*, A live Tweet workshop concerning the benefits and pit-falls of social media, Lexttalk.com, November 7, 2019.

Author, "Top Class Settlement Admin Factors to Consider in 2020" Law360, New York, (October 31, 2019, 5:44 PM ET).

Author, "Creating a Class Notice Program that Satisfies Due Process" Law360, New York, (February 13, 2018 12:58 PM ET).

Author, "3 Considerations for Class Action Notice Brand Safety" Law360, New York, (October 2, 2017 12:24 PM ET).

Author, "What Would Class Action Reform Mean for Notice?" Law360, New York, (April 13, 2017 11:50 AM ET).

Author, "Bots Can Silently Steal your Due Process Notice." Wisconsin Law Journal, April 2017.

Author, "*Don't Turn a Blind Eye to Bots*. Ad Fraud and Bots are a Reality of the Digital Environment." LinkedIn article March 6, 2107.

Co-Author, "Modern Notice Requirements Through the Lens of *Eisen* and *Mullane"* – Bloomberg - BNA Class Action Litigation Report, 17 CLASS 1077, (October 14, 2016).

KROLL NOTICE MEDIA

Author, “Think All Internet Impressions Are The Same? Think Again” – Law360.com, New York (March 16, 2016, 3:39 ET).

Author, “Why Class Members Should See an Online Ad More Than Once” – Law360.com, New York, (December 3, 2015, 2:52 PM ET).

Author, ‘Being 'Media-Relevant' — What It Means and Why It Matters - Law360.com, New York (September 11, 2013, 2:50 PM ET).

Co-Author, “New Media Creates New Expectations for Bankruptcy Notice Programs,” ABI Journal, Vol. XXX, No 9, (November 2011).

Quoted Expert, “Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist,” Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).

Co-Author, with Hon. Dickran Tevrizian – “Expert Opinion: It’s More Than Just a Report…Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape,” BNA Class Action Litigation Report, 12 CLASS 464, May 27, 2011.

Co-Author, with Hon. Dickran Tevrizian, Your Insight, "Expert Opinion: It's More Than Just a Report -Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," TXLR, Vol. 26, No. 21, May 26, 2011.

Quoted Expert, “Analysis of the FJC’s 2010 Judges’ Class Action Notice and Claims Process Checklist and Guide: A New Roadmap to Adequate Notice and Beyond,” BNA Class Action Litigation Report, 12 CLASS 165, February 25, 2011.

Author, Five Key Considerations for a Successful International Notice Program, BNA Class Action Litigation Report, April, 9, 2010 Vol. 11, No. 7 p. 343.

Quoted Expert, “Communication Technology Trends Pose Novel Notification Issues for Class Litigators,” BNA Electronic Commerce and Law, 15 ECLR 109 January 27, 2010.

Author, “Legal Notice: R U ready 2 adapt?” BNA Class Action Report, Vol. 10 Class 702, July 24, 2009.

Author, “On Demand Media Could Change the Future of Best Practicable Notice,” BNA Class Action Litigation Report, Vol. 9, No. 7, April 11, 2008, pp. 307-310.

Quoted Expert, “Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty,” Warranty Week, warrantyweek.com/archive/ww20070228.html/ February 28, 2007.

Co-Author, “Approaches to Notice in State Court Class Actions,” For The Defense, Vol. 45, No. 11, November, 2003.

Citation, “Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior,” U.S. Consumer Product Safety Commission, CPSC-F-02-1391, p.10, Heiden Associates, July 2003.

Author, “The Web Offers Near, Real-Time Cost Efficient Notice,” American Bankruptcy Institute, ABI Journal, Vol. XXII, No. 5., 2003.

Author, “Determining Adequate Notice in Rule 23 Actions,” For The Defense, Vol. 44, No. 9 September, 2002.

Author, “Legal Notice, What You Need to Know and Why,” Monograph, July 2002.

KROLL NOTICE MEDIA

Co-Author, “The Electronic Nature of Legal Noticing,” The American Bankruptcy Institute Journal, Vol. XXI, No. 3, April 2002.

Author, “Three Important Mantras for CEO’s and Risk Managers,” - International Risk Management Institute, irmi.com, January 2002.

Co-Author, “Used the Bat Signal Lately,” The National Law Journal, Special Litigation Section, February 19, 2001.

Author, “How Much is Enough Notice,” Dispute Resolution Alert, Vol. 1, No. 6. March 2001.

Author, “Monitoring the Internet Buzz,” The Risk Report, Vol. XXIII, No. 5, Jan. 2001.

Author, “High-Profile Product Recalls Need More Than the Bat Signal,” - International Risk Management Institute, irmi.com, July 2001.

Co-Author, “Do You Know What 100 Million People are Buzzing About Today?” Risk and Insurance Management, March 2001.

Quoted Article, “Keep Up with Class Action,” Kentucky Courier Journal, March 13, 2000.

Author, “The Great Debate - How Much is Enough Legal Notice?” American Bar Association – Class Actions and Derivatives Suits Newsletter, winter edition 1999.

SPEAKER/EXPERT PANELIST/PRESENTER

Chief Litigation Counsel Association (CLCA)	Speaker, “Four Factors Impacting the Cost of Your Class Action Settlement and Notice,” Houston TX, May 1, 2019
CLE Webinar	“Rule 23 Changes to Notice, Are You Ready for the Digital Wild, Wild West?” October 23, 2018, https://bit.ly/2RIRvZq
American Bar Assn.	Faculty Panelist, 4th Annual Western Regional CLE Class Actions, “Big Brother, Information Privacy, and Class Actions: How Big Data and Social Media are Changing the Class Action Landscape” San Francisco, CA June, 2018.
Miami Law Class Action Faculty & Complex Litigation Forum	Panelist, “ Settlement and Resolution of Class Actions,” Miami, FL December 2, 2016.
The Knowledge Group	Faculty Panelist, “Class Action Settlements: Hot Topics 2016 and Beyond,” Live Webcast, www.theknowledgegroup.org, October 2016.
ABA National Symposium	Faculty Panelist, “Ethical Considerations in Settling Class Actions,” New Orleans, LA, March 2016.
S.F. Banking Attorney Assn.	Speaker, “How a Class Action Notice can Make or Break your Client’s Settlement,” San Francisco, CA, May 2015.
Perrin Class Action Conf.	Faculty Panelist, “Being Media Relevant, What It Means and Why It Matters – The Social Media Evolution: Trends, Challenges and Opportunities,” Chicago, IL May 2015.
Bridgeport Continuing Ed.	Speaker, Webinar “Media Relevant in the Class Notice Context.” July, 2014.

KROLL NOTICE MEDIA

Bridgeport Continuing Ed.	Faculty Panelist, "Media Relevant in the Class Notice Context." Los Angeles, California, April 2014.
CASD 5th Annual	Speaker, "The Impact of Social Media on Class Action Notice." Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, September 2012.
Law Seminars International	Speaker, "Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable… What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media." Chicago, IL, October 2011. ***Voted by attendees as one of the best presentations given.***
CASD 4th Annual	Faculty Panelist, "Reasonable Notice - Insight for practitioners on the FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*. Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, October 2011.
CLE International	Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California May, 2011.
CASD	Faculty Panelist, "21st Century Class Notice and Outreach." 3nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.
CASD	Faculty Panelist, "The Future of Notice." 2nd Annual Class Action Symposium CASD Symposium, San Diego California, October 2009.
American Bar Association	Speaker, 2008 Annual Meeting, "Practical Advice for Class Action Settlements: The Future of Notice In the United States and Internationally – Meeting the Best Practicable Standard." Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.
Women Lawyers Assn.	Faculty Panelist, Women Lawyers Association of Los Angeles "The Anatomy of a Class Action." Los Angeles, CA, February, 2008.
Warranty Chain Mgmt.	Faculty Panelist, Presentation Product Recall Simulation. Tampa, Florida, March 2007.
Practicing Law Institute.	Faculty Panelist, CLE Presentation, 11th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures – Evolving Notice Standards in the Internet Age. New York/Boston (simulcast), NY March 2006; Chicago, IL April 2006 and San Francisco, CA, May 2006.
U.S. Consumer Product Safety Commission	Ms. Finegan participated as an invited expert panelist to the CPSC to discuss ways in which the CPSC could enhance and measure the recall process. As a panelist, Ms Finegan discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.

KROLL NOTICE MEDIA

Weil, Gotshal & Manges	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." New York, June 2003.
Sidley & Austin	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." Los Angeles, May 2003.
Kirkland & Ellis	Speaker to restructuring group addressing "The Best Practicable Methods to Give Notice in a Tort Bankruptcy." Chicago, April 2002.
Georgetown University Law	Faculty, CLE White Paper: "What are the best practicable methods to Center Mass Tort Litigation give notice? Dispelling the communications myth – A notice Institute disseminated is a notice communicated," Mass Tort Litigation Institute. Washington D.C.
American Bar Association	Presenter, "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits. Chicago, IL, August 6, 2001.
McCutchin, Doyle, Brown	Speaker to litigation group in San Francisco and simulcast to four other McCutchin locations, addressing the definition of effective notice and barriers to communication that affect due process in legal notice. San Francisco, CA, June 2001.
Marylhurst University	Guest lecturer on public relations research methods. Portland, OR, February 2001.
University of Oregon	Guest speaker to MBA candidates on quantitative and qualitative research for marketing and communications programs. Portland, OR, May 2001.
Judicial Arbitration & Mediation Services (JAMS)	Speaker on the definition of effective notice. San Francisco and Los Angeles, CA, June 2000.
International Risk Management Institute	Past Expert Commentator on Crisis and Litigation Communications. www.irmi.com.
The American Bankruptcy Institute Journal (ABI)	Past Contributing Editor – Beyond the Quill. www.abi.org.

BACKGROUND

Ms. Finegan's past experience includes working in senior management for leading Class Action Administration firms including The Garden City Group (GCG) and Poorman-Douglas Corp., (EPIQ). Ms. Finegan co-founded Huntington Advertising, a nationally recognized leader in legal notice communications. After Fleet Bank purchased her firm in 1997, she grew the company into one of the nation's leading legal notice communication agencies.

Prior to that, Ms. Finegan spearheaded Huntington Communications, (an Internet development company) and The Huntington Group, Inc., (a public relations firm). As a partner and consultant, she has worked on a wide variety of client marketing, research, advertising, public relations and Internet programs. During her tenure at the Huntington Group, client projects included advertising (media planning and buying), shareholder meetings, direct mail, public relations (planning, financial communications) and community outreach programs. Her past client list includes large public and privately held companies: Code-A-Phone Corp., Thrifty-Payless Drug Stores, Hyster-Yale, The Portland Winter Hawks Hockey Team, U.S. National Bank, U.S. Trust Company, Morley Capital Management, and Durametal Corporation.

KROLL
NOTICE MEDIA

Prior to Huntington Advertising, Ms. Finegan worked as a consultant and public relations specialist for a West Coast-based Management and Public Relations Consulting firm.

Additionally, Ms. Finegan has experience in news and public affairs. Her professional background includes being a reporter, anchor and public affairs director for KWJJ/KJIB radio in Portland, Oregon, as well as reporter covering state government for KBZY radio in Salem, Oregon. Ms. Finegan worked as an assistant television program/promotion manager for KPDX directing $50 million in programming. She was also the program/promotion manager at KECH-22 television.

Ms. Finegan's multi-level communication background gives her a thorough, hands-on understanding of media, the communication process, and how it relates to creating effective and efficient legal notice campaigns.

MEMBERSHIPS, PROFESSIONAL CREDENTIALS

APR Accredited. Universal Board of Accreditation Public Relations Society of America

- **Member of the Public Relations Society of America**
- **Member Canadian Public Relations Society**

Board of Directors - Alliance for Audited Media
Alliance for Audited Media (“AAM”) is the recognized leader in cross-media verification. It was founded in 1914 as the Audit Bureau of Circulations (ABC) to bring order and transparency to the media industry. Today, more than 4,000 publishers, advertisers, agencies and technology vendors depend on its data-driven insights, technology certification audits and information services to transact with trust.

SOCIAL MEDIA

LinkedIn: *www.linkedin.com/in/jeanne-finegan-apr-7112341b*

Exhibit 7

to Madonia Declaration

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN J. TUTTLE, et al., Plaintiffs, v. AUDIOPHILE MUSIC DIRECT INC., et al., Defendants.	CASE NO. C22-1081JLR MINUTE ORDER

The following minute order is made by the direction of the court, the Honorable James L. Robart:

On February 1, 2023, the court issued a revision to its Local Civil Rules that replaces page count limits for motions and briefs with word count limits. *See* Local Rules W.D. Wash. LCR 7 (Feb. 1, 2023). Each motion or brief must "include the certification of the signer as to the number of words, substantially as follows: 'I certify

that this memorandum contains ____ words, in compliance with the Local Civil Rules.'" *Id.* LCR 7(e)(6).

Plaintiffs' motion for preliminary approval of the parties' class action settlement (Dkt. # 26) does not include the certification required by Local Civil Rule 7(e)(6). Nevertheless, the court will accept the filing. The court DIRECTS the parties to carefully review the current version of the Local Civil Rules on the court's website at https://www.wawd.uscourts.gov/local-rules-and-orders. Failure to follow the Local Civil Rules in the future may result in the motion or brief being stricken from the docket.

Filed and entered this 6th day of February, 2023.

RAVI SUBRAMANIAN
Clerk of Court

s/ Ashleigh Drecktrah
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ADAM STILES, individually and on behalf of all others similarly situated, Plaintiff, v. MOBILE FIDELITY SOUND LAB, INC., Defendant.	Case No.:1:22-cv-04405 **Hon. Manish S. Shah**

DECLARATION OF JAMES R. DAVIS

I, James R. Davis, declare as follows:

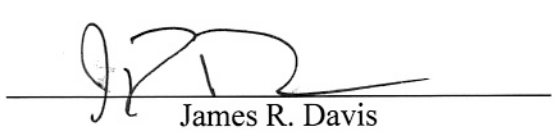
1. I am, and at all relevant times have been, the President of Defendant Mobile Fidelity Sound Lab, Inc., an Illinois corporation ("MoFi"). I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify as to the facts below.

2. I have first-hand knowledge of MoFi's efforts to investigate Original Master Recording ("OMR") and Ultra-Disc One Step ("One-Step") products, which may be potentially relevant to the factual allegations set forth in Plaintiff Adam Stiles's Complaint in this Action.

3. No OMR or One-Step products were offered for sale, or sold, by MoFi prior to March 19, 2007.

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

Executed the 6th day of February 2023, at Chicago, Illinois.



James R. Davis