

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)	
)	
Distribution of)	CONSOLIDATED DOCKET NO.
<u>Cable Royalty Funds</u>)	14-CRB-0010-CD/SD
)	(2010-2013)
In the Matter of)	
)	
Distribution of)	
<u>Satellite Royalty Funds</u>)	

**MULTIGROUP CLAIMANTS' REPLY IN SUPPORT OF
MOTION FOR FINAL DISTRIBUTION
OF 2010-2013 SATELLITE ROYALTY FUNDS**

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Multigroup Claimants filed the instant motion on Tuesday, January 14, 2020.

Notably, the Settling Devotional Claimants (“SDC”) had ten days to file its opposition, until January 29, 2020 (given a federal holiday). 37 C.F.R. Section 303.6(f). Nonetheless, the SDC filed its one-paragraph opposition the same day, within a matter of hours.

In fact, the SDC’s opposition provides no substantive response. Rather, it summarily opposes Multigroup Claimants’ motion, makes an unsubstantiated accusation, and without embellishment accuses that Multigroup Claimants “has committed a fraud on the Judges or other serious misconduct”. The SDC promise that “[t]hese issues will be more fully addressed in the SDC’s reply, due on January 21, 2020.” That is, the SDC acknowledge that no substantive response has occurred, but promises that one will be forthcoming.

The SDC effectively attempt to incorporate by reference arguments that *have not yet been made*, foreclosing Multigroup Claimants from substantively responding. While a party could logically incorporate by reference arguments set forth in pleadings *already* filed, to promise the delivery of other argument in the future is the equivalent of a non-response. Further to the point, Multigroup Claimants is incapable of even responding to the SDC in the reply brief that Multigroup Claimants is entitled to file if Multigroup Claimants has no idea of what arguments the SDC intend to make. In fact, Multigroup Claimants’ reply brief is now due on January 22, 2020, the day immediately after the deadline by which the SDC promises to make further argument.

ARGUMENT

A. The SDC has waived any opportunity to challenge Multigroup Claimants' motion.

In normal civil practice, failure to raise issues and arguments in an opposition to a motion waives the same. *See Fox v. American Airlines, Inc.*, 389 F. 3d 1291,1294 (DC Cir. 2004), *Ghazali v. Moran*, 46 F. 3d 52, 53 (9th Cir. 1995), *NEPSK, Inc. v. Town of Houlton*, 283 F. 3d 1, 7 (1st Cir. 2002), and *Jadin de las Catalinas Ltd. Partnership v. Joyner*, 861 F.Supp. 2d 12, 16 (Dist. Puerto Rico 2012). No reason exists to apply a different standard here. To do otherwise would encourage the sort of sandbagging that the Settling Devotional Claimants have engaged in before in these proceedings.

Presently, in its “opposition” the SDC has made no substantive response to any of arguments set forth by Multigroup Claimants, and in fairness must be held to have waived the same. No response was forthcoming to those facts that stood as the identical basis on which the *Settling Devotional Claimants' Motion for Final Distribution of 2010-2013 Satellite Royalty Funds* was granted (within two days). No response was forthcoming to the argument that “an order cannot rationally issue for distribution to only certain parties, and not others, when the predicate of the motion – and the resulting order – is an agreement between such parties for distribution to both parties.” No response was forthcoming to the argument that the SDC purposely delayed its motion to disqualify Multigroup Claimants until the eve of when royalties would be authorized by the Judges. No response was forthcoming to the argument that the distribution was based on an “agreed resolution” to which the SDC placed no conditions, including no condition that the owner of Multigroup Claimants or its interests, reported in discovery more than two years prior, remained the same. No response was forthcoming to the

argument that the SDC's *Motion for Final Distribution* was predicated on an agreement that the subject funds were "not subject to controversy" under 17 U.S.C. Section 801(b)(3)(A), and that the Judges' near-immediate order granting such motion expressly confirms the same.

The SDC must be now estopped from challenging those arguments.

CONCLUSION

For the reasons set forth above, Multigroup Claimants' motion must be granted as expeditiously as the *Settling Devotional Claimants' Motion for Final Distribution of 2010-2013 Satellite Royalty Funds*.

Respectfully submitted,

January 16, 2020

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2020, I caused the foregoing to be served on all parties by filing through the eCRB system.

_____/s/_____

Brian D. Boydston, Esq.

Proof of Delivery

I hereby certify that on Thursday, January 16, 2020, I provided a true and correct copy of the MULTIGROUP CLAIMANTS' REPLY IN SUPPORT OF MOTION FOR FINAL DISTRIBUTION OF 2010-2013 SATELLITE ROYALTY FUNDS to the following:

Joint Sports Claimants (JSC), represented by Daniel A. Cantor, served via Email

Canadian Claimants Group, represented by Lawrence K Satterfield, served via Electronic Service at lksatterfield@satterfield-pllc.com

National Association of Broadcasters (NAB) aka CTV, represented by David J Ervin, served via Electronic Service at dervin@crowell.com

SESAC Performing Rights, LLC, represented by John C. Beiter, served via Electronic Service at john@beiterlaw.com

MPAA-Represented Program Suppliers (MPAA), represented by Lucy H Plovnick, served via Electronic Service at lhp@msk.com

Settling Devotional Claimants (SDC), represented by Matthew J MacLean, served via Electronic Service at matthew.maclea@pillsburylaw.com

Public Television Claimants (PTC), represented by Dustin Cho, served via Electronic Service at dcho@cov.com

Signed: /s/ Brian D Boydston