

**COPYRIGHT ROYALTY JUDGES**  
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<i>In re</i>  <b>DISTRIBUTION OF CABLE ROYALTY FUNDS</b>	<b>DOCKET NO. 16-CRB-0009 CD</b> <b>(2014-17)</b>
<b>DISTRIBUTION OF SATELLITE ROYALTY FUNDS</b>	<b>DOCKET NO. 16-CRB-0010 SD</b> <b>(2014-17)</b>

**ORDER DISMISSING DAVID POWELL AS A PARTICIPANT**

On May 12, 2020, certain claimant category representatives (Allocation Phase Parties) filed a joint motion in each of the captioned proceedings requesting that the Copyright Royalty Judges (Judges) issue an order to show cause why the claims of David Powell should not be dismissed. [Joint Motion for Order to Show Cause why the Claims of David Powell should not be Dismissed](#), Docket No. 16-CRB-009 CD (2014-17) (May 12, 2020); [Joint Motion for Order to Show Cause why the Claims of David Powell should not be Dismissed](#), Docket No. 16-CRB-0010 SD (2014-17) (May 12, 2020) (collectively, Joint Motions). The movants contend that Mr. Powell, a *pro se* participant in each of the captioned proceedings, has failed to demonstrate that he has any legitimate interest, let alone a “significant interest,” in the proceedings to allocate royalties. As such, the movants assert that Section 803(b)(2)(C) of the Copyright Act and the efficient administration of justice require dismissal of Mr. Powell’s claims.

On May 26, 2020, the day before responses to the Joint Motions were due, Mr. Powell notified the Judges that he was having technical difficulties and needed additional time to respond to the Joint Motions. The Judges extended the deadline for responses from May 27, 2020, to June 8, 2020. [Order Granting David Powell Extension of Deadline For Filing Responses in Opposition](#) (Jun. 2, 2020).

On June 9, 2020, having received no responses to the Joint Motions from Powell, the Judges granted the Joint Motions. In doing so, the Judges stated that “Mr. Powell did not state facts in his petition[s] to participate sufficient for the Judges to conclude that he has a sufficient interest in [the captioned proceedings].” The Judges ordered Mr. Powell to show cause why the Judges should not dismiss Mr. Powell as a participant in the proceedings. Specifically, the Judges ordered Mr. Powell to provide what he claims to be sufficient evidence to substantiate the basis of his interest in the royalties that are the subject of the captioned proceedings so that the Judges are able to determine whether Mr. Powell has the significant interest required by 17 U.S.C. § 803(b)(2)(C) (a person may participate in a proceeding under Section 803 of the Copyright Act only if, among other things, the Judges have not determined that the participant lacks a “significant interest” in the proceeding) and 37 C.F.R. § 351.1(b)(2)(i)(C) (“Each petition to participate filed in a distribution proceeding must include: ... [a] description of the petitioner’s significant interest in the subject matter of the proceeding.”). The Judges cautioned that if Mr. Powell were unable to provide such sufficient evidence or if he failed to respond to the show cause order within the allotted ten days he would be dismissed as a participant in the

proceedings. *Order to Show Cause Why David Powell Should Not Be Dismissed*, Docket No. 16-CRB-009 CD (2014-17) (Jun. 9, 2020); *Order to Show Cause Why David Powell Should Not Be Dismissed*, Docket No. 16-CRB-0010 SD (2014-17) (Jun. 9, 2020) (collectively, *Orders to Show Cause*).

On June 10, 2020, Mr. Powell notified the Judges that he continued to experience the technical difficulties that caused the Judges to extend the deadline for responding to the Joint Motions. In response, the Judges issued an *Order Denying David Powell Additional Extension of Deadline for Filing Response in Opposition* (Jun. 11, 2020) (*Order Denying Additional Extension*).

In the *Order Denying Additional Extension*, the Judges stated that “[t]o the extent that Mr. Powell’s June 10<sup>th</sup> emails can be construed as a motion for an additional extension of time to respond to the Joint Motions, the motion is DENIED as MOOT. If Mr. Powell wishes to continue his participation in the captioned proceeding he must file his responses to the [*Orders to Show Cause*] within ten days from the date of those orders (*i.e.*, **no later than June 23, 2020**).” *Id.*

On June 19, 2020, Mr. Powell filed a “Reply to Judges order to show cause not to dismiss Participants [sic]” (*Powell Reply*). The response was the same for each of the captioned proceedings.

Mr. Powell’s 59 page response includes four numbered paragraphs and numerous attachments. As discussed below, the Judges find that the Powell Reply does not provide any evidence that would support a finding that Mr. Powell has the required significant interest necessary to sustain his participation in the captioned proceedings. *See generally Order Granting SoundExchange Motion to Deny the Petition to Participate of National Music Publishers’ Association*, Docket No. 14-CRB-0001-WR (2016-20) at 3 n.6 (Apr. 30, 2014) (The test for the presence of a significant interest “is analogous to the general principle in federal judicial actions that a putative plaintiff cannot establish standing unless it demonstrates that it falls within the groups of persons or entities (a ‘zone of interests’) the law was intended to protect.”).

The first paragraph of the Powell Reply states: “Exclusion stop and added to Voluntary negotiations to Joint agreeing settling parties settlement List 2014-2017 Cable and Satellite Royalty payments Allocation and Distribution Phases as a matter of record. Any list missing is deemed unfavorable to Settling Parties as Missing Evidence Rule 2014-2017.” The Judges are unable to discern what is argued in this paragraph. To the extent that this paragraph asserts that Mr. Powell has, thus far, been included in settlement negotiations, the Judges find this argument to be circular. Mr. Powell’s prior participation in these proceedings does not constitute a finding by the Judges that he has the required significant interest. The Judges find nothing in this paragraph to support a finding that Mr. Powell has a significant interest in the captioned proceedings.

The second paragraph of the Powell Reply states: “Insert Claimants Pro Se Description of significant interest now in Appendix A Program Category Definitions (see attachment). Proved Up Judges order to show cause to participate. Works performed during programs and programs produced, copyright ownership in each six categories definitions thru Digital

Interactive Communication as a Pro Se claimants CGN Inc. (members).”<sup>1</sup> The Judges interpret this reference to Appendix A as proffered evidence of Mr. Powell’s significant interest in the proceedings. As best as the Judges are able to determine, Appendix A, which is entitled “Program Category Definitions” seeks to describe program or claimant categories used in past proceedings or to be used in the present proceedings (*e.g.*, “Members works performed by copyright owners, host, E-commerce, music works preform [sic] during programs, news, video, apps, webcasting live streaming, public television, PTV category, Non Commercial TV stations, Pay Per View TV and videos Category...”). The Judges find that neither the second paragraph of the Powell Reply, nor Appendix A, contains any evidence that Mr. Powell has a significant interest in the captioned proceedings.

The third paragraph of the Powell Reply states: “Pro Se added to both Cable and Satellite Settling Parties Repayment Agreement list and EFT forms request signed and return by Pro Se.” This paragraph also refers to the Office of the Commissioner of Baseball acting as an agent for Phase I and Phase II royalty distribution payments. As in Paragraph 1, this paragraph appears to argue that since Mr. Powell has been participating in the captioned proceedings (*i.e.*, by submitting forms related to repayment of overpaid royalties) he has the required interest to participate in the proceedings. The Judges reject that reasoning and find no other information in Paragraph 3 that would support a conclusion that Mr. Powell has a significant interest in the captioned proceedings.

The fourth paragraph of the Powell Reply states: “Removing the exception of Music Claimants joint claims Part 360 ss. 360.4(i) forms and content of claims filed by performing rights society on behalf of its members copyright owners.” This paragraph also recites what appears to be a list of requirements for filing claims (*e.g.*, “Claims must include an Excel spreadsheet containing the information if the number of joint claimants is in excess of ten.”). Finally, Paragraph 4 makes an allegation about inflated claims, which apparently is directed toward certain music claimants (“Statement of vast universe of million members or more worldwide is a ruse that leads to inflated members claims for royalty fees which is theft by deception fraudulent misrepresentation of the truth.”). None of the information in Paragraph 4 addresses the issue of Mr. Powell’s interest in the captioned proceedings.

After carefully reviewing Mr. Powell’s response, including the various attachments, the Judges find that the Powell Reply provides no evidence that would support a finding that Mr. Powell has a significant interest in the captioned proceedings. Therefore, the Judges hereby **DISMISS** Mr. Powell as a participant in the captioned proceedings.

**SO ORDERED.**

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Jesse M. Feder  
Chief Copyright Royalty Judge

DATED: June 25, 2020

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<sup>1</sup> Mr. Powell states that he operates under the d/b/a Circle God Network Inc. The Judges presume that CGN Inc. in Paragraph 2 of his response refers to that d/b/a. Mr. Powell included, as an attachment to his response, a certificate of incorporation for Circle God Network Inc., which was incorporated in Florida in 2014.