

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

<i>In re</i> DISTRIBUTION OF CABLE ROYALTY FUNDS	CONSOLIDATED DOCKET NO. 14-CRB-0010-CD/SD (2010-13)
<i>In re</i> DISTRIBUTION OF SATELLITE ROYALTY FUNDS	
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**MPA-REPRESENTED PROGRAM SUPPLIERS' REPLY IN SUPPORT OF MOTION
TO LIFT STAY OF FINAL DISTRIBUTION ORDER**

On February 7, 2020, the Copyright Royalty Judges (“Judges”) issued an *Order For Accelerated Briefing*, which required Multigroup Claimants (“MGC”) to submit its response, if any, to MPA’s Motion To Lift Stay Of Final Distribution Order (“Motion”), no later than 5:00 pm (EST) on February 11, 2020, and for MPA to file its reply in support of the Motion, if any, by 5:00 pm (EST) on February 14, 2020. MGC submitted its Opposition to the Motion (“Opposition”) on February 10, 2020. In compliance with the Judges’ *Order For Accelerated Briefing*, MPA hereby submits its Reply.

The Judges’ stated rationale for imposing their January 16, 2020 *Order Staying Order Of Final Distribution Of 2010-13 Satellite Royalty Funds To MPA* (“Stay Order”) was MGC’s pending petitions for rehearing and *en banc* review before the D.C. Circuit. *See* Stay Order at 1.

The D.C. Circuit issued orders denying both MGC’s petitions for rehearing and *en banc* review in Case No. 18-1338 on February 5, 2020. *See* Motion at 1-2 and Exhibit A; *see also* Opposition at 2. Accordingly, the Judges’ rationale for imposing the Stay Order no longer exists, and good cause exists for the stay to be lifted and for the royalty distribution to MPA to proceed as the Judges ordered on January 13, 2020. *See Order Granting MPA’s Motion For Final Distribution Of 2010-13 Satellite Royalty Funds* at 1-2 (January 13, 2020) (“January 13 Order”).

MGC’s Opposition does not dispute these key facts, but inexplicably seeks to derail MPA’s ordered distribution. MGC asserts a series of vague, unsupported arguments in its Opposition that essentially seek to impose additional conditions beyond the Stay Order and simply protract distribution of funds to MPA. However, as explained below, none of these arguments hold water.

First, MGC’s unspecified threats of future litigation are not a reasonable basis for the Judges to continue the stay of the June 13 Order. MGC claims that it is “consulting with legal counsel...in order to determine *whether it desires to pursue* the merits of its objections before a court that has jurisdiction to review such objections,” and that MGC expects that it *may* come to a decision as to how it will proceed by March 27, 2020. Opposition at 1 (emphasis added). However, MGC’s vague contemplated actions — that it *may*, on an *unspecified* future date, in an *unspecified* venue, sue an *unspecified* party, for an *unspecified* claim — do not (and cannot) disturb the resolution of MGC’s D.C. Circuit appeal, or the finality of the Judges’ Final Distribution Determination in this matter. *See* 83 Fed. Reg. 61683, 61684 (November 30, 2019).

Second, MGC has not even met the most basic condition for receiving a final distribution in the Program Suppliers category – filing a motion seeking such a distribution. MGC argues that if the Judges lift the stay and direct the Licensing Division to comply with their January 13

Order, they must also issue an order authorizing distribution of royalties to MGC for the Program Suppliers category at the same time. *See* Opposition at 3. However, unlike MPA, MGC has not filed a motion with the Judges seeking a final distribution of its 2010-13 satellite royalties in the Program Suppliers category. “[E]mbedded” or “defensive” requests for relief presented within another pleading “do[] not present the issue for full consideration to the Judges” in the absence of a motion. *See* 78 Fed. Reg. 64984, 64988 n.18 (October 30, 2013). Accordingly, MGC’s embedded request for a final distribution of 2010-13 satellite royalties in the Program Suppliers category is not properly before the Judges, and should not be considered. Moreover, if and when MGC files a motion for final distribution, it must contend with the cloud that hangs over all of its claims regarding whether it has representative authority to receive royalties.¹

Finally, it is redundant and therefore unnecessary for the Judges to impose a repayment condition on MPA’s final distribution. MGC argues that if the Judges lift the stay, they should revisit their January 13 Order and impose a condition on MPA’s final distribution requiring MPA to “return any distributed royalties that are later deemed to have been inappropriately distributed to them.” Opposition at 3. But the Judges have already ruled that the repayment agreements that Allocation Phase Parties (like MPA) executed in connection with their receipt of previous partial distributions continue to bind the parties and obligate them to repay an overpayment of royalties, even in the context of a final distribution of royalties that the Judges have determined are no longer in controversy. *See Order Granting Final Distribution Of 2008 Satellite Royalties For The Devotional Category*, Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB

¹ MGC did file a motion seeking final distribution of its 2010-13 satellite royalties in the Devotional category on January 14, 2020, and that motion remains pending before the Judges. The Settling Devotional Claimants (“SDC”) filed an opposition to MGC’s motion the same day, and MGC filed its reply on January 16, 2020. SDC also filed a *Motion For Order To Show Cause Why Multigroup Claimants Should Not Be Disqualified As An Agent To Receive Funds On Behalf Of Claimants* on December 26, 2019, which was fully briefed on January 21, 2020, and remains pending before the Judges.

SD 1999-2009 (Phase II) at 2, n.3 (December 22, 2015). MPA, as the category representative of the Program Suppliers category, executed agreements as to each of the 2010-13 satellite royalty funds promising to remit any distribution amounts received exceeding a final award in connection with their previous partial distributions. Accordingly, MGC's final argument is without merit.

CONCLUSION

For all of the foregoing reasons, MPA's Motion should be granted. The Judges should issue an order (1) lifting the stay imposed in the Stay Order, and (2) directing the Licensing Division to make a final distribution of 2010-13 satellite royalties to MPA on or after March 5, 2020, as required by the January 13 Order.

Respectfully submitted,

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Dated: February 13, 2020

Proof of Delivery

I hereby certify that on Thursday, February 13, 2020, I provided a true and correct copy of the MPA-Represented Program Suppliers' Reply In Support Of Motion To Lift Stay Of Final Distribution Order to the following:

Settling Devotional Claimants, represented by Arnold P Lutzker, served via Electronic Service at arnie@lutzker.com

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Major League Soccer, LLC, represented by Edward S. Hammerman, served via Electronic Service at ted@copyrightroyalties.com

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Signed: /s/ Lucy H Plovnick