Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In re	:	
Distribution of Digital Audio Recording Technology Musical Works Royalty Funds	:	**Docket No. 2010-8 CRB DD 2005-2008 (MW)**

REPLY TO RESPONSE BY DAVID POWELL TO THE WRITTEN DIRECT STATEMENT OF THE SETTLING PARTIES

I. INTRODUCTION

Broadcast Music, Inc. ("BMI"), the American Society of Composers, Authors and Publishers ("ASCAP"), SESAC, Inc. ("SESAC") and The Harry Fox Agency, Inc. ("HFA") (collectively, the "Settling Parties") hereby reply to the "Written Rebuttal Counteraffidavit" filed by David Powell in response to the Settling Parties' written direct case (the "Powell Response"). The Powell Response provides no evidence to substantiate Mr. Powell's claim to the 2006 Digital Audio Recording Technology Musical Works Fund, Writers and Publishers Subfunds royalties (the "Funds at Issue"), and his arguments against the Settling Parties' claim to entitlement are meritless. Since Mr. Powell has failed to prove that he is entitled to any of the Funds at Issue, the Settling Parties respectfully request that the Copyright Royalty Judges (the "Judges") promptly distribute the Funds at Issue to the Settling Parties.

II. THE POWELL RESPONSE PROVIDES NO EVIDENCE SUPPORTING HIS CLAIMS, NOR DOES IT REBUT THE SETTLING PARTIES' ARGUMENT THAT THE CLAIMED WORK IS APPARENTLY NOT A "MUSICAL" WORK.

The Powell Response provides no evidence that Mr. Powell is the author or the legal or beneficial owner of, or a person who controls, any musical composition transmitted or sold in digital

format in 2006. He is therefore not an "interested copyright party" in this proceeding as defined under 17 U.S.C. § 1001(7). The Powell Response contains numerous unsupported allegations, many of which reiterate Mr. Powell's previous statements, and is unaccompanied by any supporting testimony or exhibits. Although the Powell Response refers briefly to a "survey conducted by Mr. Powell" that he suggests would undermine the Settling Parties' claim to entitlement, no such survey was provided with the filing. Powell Response at 10.

Furthermore, the Powell Response does not address the Settling Parties' assertions in their written direct statement that all available evidence suggests that Mr. Powell's claimed work, "Liberation Movement," is not "musical" in nature, and is therefore not eligible for royalties under the Audio Home Recording Act ("AHRA"). See 17 U.S.C. § 1001(1). The Powell Response additionally appears to claim authorship of "untitled rap songs words sung and performed daily at home thru unauthorized [sic] transmission of exclusive Mr. Powell license." Powell Response at 10. However, no evidence has been provided that such works are in digital format or were sold or transmitted in 2006, nor is any such work identified in Mr. Powell's 2006 claims submitted to the Copyright Office. Mr. Powell has not proven any entitlement to any royalties under the AHRA.

Accordingly, Mr. Powell is not entitled to any Funds at Issue because he has failed to establish that his claimed work is "musical" in nature and was sold or transmitted in 2006.

III. MR. POWELL'S ARGUMENTS AGAINST THE SETTLING PARTIES' CLAIMS ARE WITHOUT MERIT.

The Powell Response asserts that the Settling Parties (1) have provided no "physical evidence" (Powell Response at, e.g., 5, 8); (2) submitted "inadmissable heresay" (sic) to the Judges (id. at 8); and (3) are engaged in a criminal conspiracy with the Judges to deny royalties to Mr. Powell (id. at, e.g., 6). Each of these arguments is without merit.

First, the Settling Parties have provided evidence to the Judges in the form of witness testimony by Ellen Melzter-Zahn and Lisa Robinson appended to the Settling Parties' Written Direct Statement. The Settling Parties' Written Direct Statement also provided numerous legal precedents that must serve to guide the Judges in this controversy. See footnote 5 of the Settling Parties' Written Direct Statement and the associated Appendixes. The Powell Response does not provide a coherent basis to question these enduring legal precedents. Second, hearsay, to the extent that any statements of the Settling Parties' witnesses could be interpreted to fit that description, is admissible at the Judges' discretion. See 17 U.S.C. § 803(b)(6)(C)(iii). Finally, the Settling Parties deny Mr. Powell's allegations of criminal conduct. These unfortunate accusations are utterly without foundation.[1]

V. CONCLUSION

The Powell Response provides no evidence supporting Mr. Powell's claim that he is an interested party in this proceeding, and his arguments against the Settling Parties' claim to entitlement do not have merit. Accordingly, the Settling Parties respectfully request that the Judges promptly distribute the Funds at Issue to the Settling Parties.

Date: January 6, 2014

[1] The Powell Response inappropriately discusses Mr. Powell's confidential settlement negotiations with the Settling Parties and inaccurately portrays the substance of those discussions (Powell Response at 4). The Settling Parties strived in good faith, during the voluntary negotiation period and thereafter, to reach a settlement of Mr. Powell's claims, relative to the rights of the many tens of thousands of songwriters, composers and music publishers represented by the Settling Parties who had digital record sales or transmissions in 2006. The talks were ultimately unsuccessful, and the Settling Parties believe that settlement offers are not admissible evidence and should not be considered by the Judges in any case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jennifer T. Criss, hereby certify that on this 6th day of January, 2014, a copy of the foregoing Reply to Response by David Powell to the Written Direct Statement of the Settling Parties was served by overnight delivery to the following:

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Jennifer T. Criss