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13
 14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

17 PONDEROSA TWINS PLUS ONE, RICKY)
 18 SPICER, individually and on behalf of all)
 19 others similarly situated,)

20 Plaintiff,

21 vs.

22 IHEARTMEDIA, INC., SPOTIFY USA INC.,)
 23 GOOGLE INC., APPLE INC., PANDORA)
 24 MEDIA, INC., SONY INTERACTIVE)
 ENTERTAINMENT, LLC (f/k/a SONY)
 25 COMPUTER ENTERTAINMENT INC.),)
 DEEZER, INC. AND SOUNDCLOUD, INC.,)

26 Defendants.)
 27)
 28)

CASE NO.: 3:16-cv-05648-MEJ

STIPULATION AND ~~PROPOSED~~
ORDER RE STAY OF FURTHER
PROCEEDINGS

1 WHEREAS, Plaintiffs Ponderosa Twins Plus One and Ricky Spicer (collectively,
2 “Plaintiffs”) initiated the above-captioned matter in the Southern District of California on September
3 7, 2016;

4 WHEREAS, on October 5, 2016 the above-captioned matter was transferred to the Northern
5 District of California at Plaintiff’s request¹;

6 WHEREAS, on October 5, 2016, the Parties entered a stipulation extending the time for
7 Defendants iHEARTMEDIA, INC., Spotify USA Inc., Google Inc., Apple Inc., Pandora Media, Inc.,
8 Deezer, Inc. and SoundCloud, Inc. (together with Sony Interactive Entertainment, LLC (f/k/a/ Sony
9 Computer Entertainment Inc.²) (collectively, the “Defendants,” and collectively, the Defendants and
10 Plaintiffs, the “Parties”) to answer, move, or otherwise respond to Plaintiff’s Complaint to October
11 28, 2016 (Dkt. No. 19);

12 WHEREAS, Plaintiffs allege various claims against Defendants in their Complaint under
13 California common and statutory law, including that Defendants violate common law and California
14 Civil Code § 980(a)(2) by engaging in the unauthorized public performance, reproduction, and
15 distribution of sound recordings allegedly owned by Plaintiffs that were fixed (i.e., recorded) prior to
16 February 15, 1972 (“Pre-1972 Sound Recordings”), which Defendants deny; and

17 WHEREAS, numerous parallel cases are pending in other federal district courts involving
18 substantially similar questions under California and other state laws, *see, e.g., In re iHeartMedia*
19 *Pre-1972 Sound Recording Litigation*, No. 2:15-cv-04067-PSG-GJSx (C.D. Cal.); *Sheridan v. Sirius*
20 *XM Radio, Inc.*, No. 3:15-cv-04081-VC (N.D. Cal.); *Ponderosa Twins Plus One v. iHeartMedia,*
21 *Inc.*, No. 1:16-cv-00953-PAE (S.D.N.Y.); *Sheridan v. Sirius XM Radio, Inc.*, No. 15-cv-07576-
22 WHW-CLW (D.N.J.); *ABS Entm’t, Inc. v. CBS Corp.*, No. 1:15-cv-06801-JGK (S.D.N.Y.);
23 *Sheridan v. iHeartMedia, Inc.*, No. 15-cv-07574-WHW-CLW (D.N.J.); *Sheridan v. Sirius XM*
24

25 ¹ In entering this stipulation, Defendants do not consent to personal jurisdiction or agree that venue
26 is proper in this District.

27 ² In entering this stipulation, Defendant Sony Interactive Entertainment, LLC (f/k/a/ Sony Computer
28 Entertainment Inc.) reserves its position that it was neither properly named nor served in this this
case, but, if it had been properly named and served, would have until and including October 28,
2016, to respond to Plaintiffs’ complaint.

1 *Radio, Inc.*, No. 1:15-cv-07056-GHW (S.D.N.Y.); *Sheridan v. iHeartMedia, Inc.*, No. 1:15-cv-
2 06747-GBD (S.D.N.Y.); *ABS Entm't, Inc. v. iHeartMedia, Inc.*, No. 1:15-cv-06807-ALC
3 (S.D.N.Y.); *ABS Entm't, Inc. v. Cumulus Media Inc.*, No. 1:15-cv-06806-PKC (S.D.N.Y.);

4 WHEREAS, a case involving, *inter alia*, the question of whether broadcasting published Pre-
5 1972 Sound Recordings requires royalty payments under the California Civil Code § 980 and
6 California common law currently is on appeal before the United States Court of Appeals for the
7 Ninth Circuit in *Flo & Eddie, Inc. v. Pandora Media, Inc.*, Case, No. 15-55287 (9th Cir., filed Feb.
8 24, 2015) (“*Flo & Eddie*”);

9 WHEREAS, other cases pending in federal district courts involving these and substantially
10 similar questions under California and other state laws have been stayed pending the resolution of
11 *Flo & Eddie* in the Ninth Circuit and/or similar issues concerning New York law, *Flo & Eddie, Inc.*
12 *v. Sirius XM Radio, Inc.*, No. 15-1164 (2d Cir.), and Florida law, *Flo & Eddie, Inc. v. Sirius XM*
13 *Radio, Inc.*, No. 15-13100 (11th Cir.), *see, e.g., Sheridan v. Sirius XM Radio, Inc. et al.*, No. 3:15-
14 cv-04081, Dkt. No. 32 (N.D. Cal. Oct. 28, 2015) (stayed pending outcome of *Flo & Eddie*);
15 *Ponderosa Twins Plus One et al. v. iHeartMedia Inc. et al.*, No. 16-cv-00953, Dkt. No. 57 (S.D.N.Y.
16 May 3, 2016) (stayed pending outcome of Case No. 15-1164); *Sheridan v. iHeartMedia, Inc.*, No.
17 15-cv-07574, Dkt. No. 26 (D.N.J. March 15, 2016) (stayed pending outcome of *Flo & Eddie*, Case
18 No. 15-1164, and Case No. No. 15-13100);

19 WHEREAS, the Parties believe that a stay is appropriate because the Ninth Circuit’s decision
20 in *Flo & Eddie* regarding whether California Civil Code § 980 requires royalty payments for
21 broadcasting published Pre-1972 Sound Recordings is likely to be dispositive of many, if not all, of
22 the issues presented in the above-captioned matter, *see Stark v. Wickard*, 321 U.S. 288, 310–11
23 (1944) (“If numerous parallel cases are filed, the courts have . . . authority to stay . . . until the
24 determination of a test case.”); *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th
25 Cir. 1979) (district courts “may, with propriety, find it is efficient for its own docket and the fairest
26 course for the parties to enter a stay of an action before it, pending resolution of independent
27 proceedings which bear upon the case”);

1 WHEREAS, the Parties have not requested or stipulated to any stays or extensions other than
2 the stipulation described above extending the time to answer, move or respond to Plaintiff's
3 Complaint;

4 WHEREAS, a stay would toll all deadlines in the above-captioned matter; and

5 WHEREAS, pursuant to Local Rule 5-1(i), the filer of this document attests that concurrence
6 in the filing of this document has been obtained from each of the other signatories.

7 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties, subject
8 to the Order of the Court:

9 1. All proceedings in the above-captioned matter shall be stayed pending the issuance of
10 a final order in *Flo & Eddie*.

11 2. Within thirty days of the issuance of a final order in *Flo & Eddie*, the Parties shall file
12 a joint status report apprising the Court of how the Parties wish to proceed.


13
14 Dated: October 20, 2016

Respectfully submitted,

KIRKLAND & ELLIS LLP

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16
17 /s/ Diana M. Torres
18 Attorney for Defendant Apple Inc.
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21 (SIGNATURE BLOCKS ON FOLLOWING PAGES)
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Network America LLC (wrongly sued herein as
Sony Interactive Entertainment, LLC (f/k/a Sony
Computer Entertainment Inc.))*


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10 *Counsel for Defendants iHeartMedia, Inc.*
11 *and Pandora Media, Inc.*

12 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

13 Dated: October 21, 2016

14 
15 _____
16 Honorable Maria-Elena James
17 United States District Court Magistrate Judge

