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6 Attorneys for Plaintiffs

Octave Music Publishing Corp et al v. Seafood Peddler of San Rafael, Inc. et al

Doc. 34

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10

11 OCTAVE MUSIC PUBLISHING CORP.;  
BOURNE CO.; MUSIC SALES CORP.;  
12 HAMPSHIRE HOUSE PUBLISHING CORP.;  
SONY/ATV HARMONY; OLDE CLOVER  
13 LEAF MUSIC; RAY HENDERSON MUSIC  
CO., INC.; WB MUSIC CORP.; ARTHUR  
14 HAMILTON d/b/a HARMONY GRACE  
PUBLISHING and EDWIN H. MORRIS &  
15 CO., INC.,

16 Plaintiffs,

17 v.

18 SEAFOOD PEDDLER OF SAN RAFAEL,  
INC. and ALPHONSE SILVESTRI,

19 Defendants.  
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Case No. CV-095846-HRL

**STIPULATION OF SETTLEMENT  
AND REQUEST FOR DISMISSAL  
WITH RETENTION OF  
JURISDICTION AND ORDER  
THEREON**

STIPULATION OF SETTLEMENT AND REQUEST FOR DISMISSAL WITH RETENTION OF JURISDICTION AND  
ORDER THEREON – CASE NO. CV-095846-HRL

1 Plaintiffs Octave Music Publishing Corp.; Bourne Co.; Music Sales Corp.; Hampshire  
2 House Publishing Corp.; Sony/ATV Harmony; Olde Clover Leaf Music; Ray Henderson Music  
3 Co., Inc.; WB Music Corp.; Arthur Hamilton d/b/a Harmony Grace Publishing and Edwin H.  
4 Morris & Co., Inc. ("Plaintiffs"), and Defendants Seafood Peddler of San Rafael, Inc. ("Seafood  
5 Peddler") and Alphonse Silvestri ("Silvestri"), hereby stipulate:

6 1. Plaintiffs were, on the dates set forth in Schedule A to the Complaint, the  
7 respective owners of valid copyrights in the eight (8) songs listed in Schedule A to the  
8 Complaint. The Complaint alleges that Plaintiffs' songs were publicly performed by  
9 Defendants' agents at the establishment known as Seafood Peddler, located at 100 Yacht Club  
10 Drive in San Rafael, in the State of California on August 21, 2009, without permission from  
11 Plaintiffs or their performing rights licensing organization, the American Society of Composers,  
12 Authors, and Publishers ("ASCAP").

13 2. Plaintiffs, Seafood Peddler, and Silvestri now wish to settle the copyright  
14 infringement claims asserted in this action as well as any other potential copyright claims that  
15 Plaintiffs or other ASCAP members may have against Seafood Peddler and Silvestri as of the  
16 date of this Stipulation.

17 3. Seafood Peddler and Silvestri hereby agree to pay Plaintiffs the amount of Fifty  
18 Thousand Dollars (\$50,000.00) in full satisfaction of all claims arising out of Plaintiffs'  
19 Complaint and all other potential copyright infringement claims that Plaintiffs or other ASCAP  
20 members could assert against Seafood Peddler and/or Silvestri arising from the unauthorized  
21 performance of their copyrighted music at the Seafood Peddler establishment.

22 4. Plaintiffs Seafood Peddler and Silvestri agree that the \$50,000.00 settlement  
23 amount shall be paid as follows: (a) \$10,000.00 shall be paid on or before June 10, 2010;  
24 (b) \$8,666.66 shall be paid six months thereafter on December 10, 2010; (c) \$8,666.67 shall be  
25 paid six months thereafter on June 10, 2011; (d) \$8,666.67 shall be paid six months thereafter on  
26 December 10, 2011; and (d) a balloon payment of \$14,000.00 shall be paid on or before  
27 February 10, 2012.

1           5.       Each payment provided for above shall be made in the form of a certified, cashier's  
2 or bank check drawn on a California bank, made payable to ASCAP and delivered to Gay  
3 Crosthwait Grunfeld, Esq. at Rosen, Bien & Galvan LLP, 315 Montgomery Street, 10th Floor,  
4 San Francisco, California 94104-1823, or to anyone else designated by ASCAP, on or before the  
5 respective dates specified above. Twenty-one days prior to the due date for the installment  
6 payment, Plaintiffs' representative shall send a reminder notice to Defendant Alphonse Silvestri,  
7 100 Yacht Club Drive, San Rafael CA 94901-4051.

8           6.       Upon written notice from Plaintiffs' representative or their undersigned attorneys  
9 that any payment due pursuant to paragraphs 4 & 5 above is delinquent, Seafood Peddler and  
10 Silvestri shall have (10) calendar days in which to cure such delinquency. If the delinquency is  
11 not cured within (10) days of the written notice, Plaintiffs may immediately and without further  
12 notice enter judgment providing, *inter alia*, that Seafood Peddler and Silvestri willfully infringed  
13 Plaintiffs' copyrights and for payment to Plaintiffs of \$55,000.00, less any payments previously  
14 made by Seafood Peddler and Silvestri pursuant to paragraph 5 above.

15           7.       Contemporaneously with the execution of this Stipulation, Seafood Peddler and  
16 Silvestri agree to execute a current 2010 ASCAP license agreement commencing June 1, 2010  
17 for his business known as Seafood Peddler. ASCAP license fees pursuant to such license  
18 agreement for the twelve month term of the license are included in the stipulated settlement  
19 amount provided for in paragraph 3 above. Seafood Peddler and/or Silvestri agree to abide by all  
20 of the terms and conditions of the ASCAP license. In accordance with the terms of the license  
21 agreement, Seafood Peddler and/or Silvestri may exercise the termination clause of the license  
22 agreement, subject to ASCAP's confirmation that Defendants are no longer performing or using  
23 music requiring an ASCAP license.

24           8.       Plaintiffs hereby agree that, if the payments are made as specified in paragraphs 4  
25 & 5 above, they will file a Dismissal With Prejudice of Defendant Seafood Peddler and Silvestri  
26 with this Court, all parties to bear their own costs, including attorneys' fees, and serve a copy of  
27 said Dismissal With Prejudice on Defendants within ten (10) business days of clearance of the  
28 final installment payment.

1           9.     The undersigned acknowledge that they have been advised of and are familiar with  
2 the provisions of California Civil Code section 1542, which provides:

3           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME  
5 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
6 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

7           11.    The foregoing constitutes the entire Stipulation of Plaintiffs, Seafood Peddler, and  
8 Silvestri. No changes or modifications to this Stipulation shall be effective unless made in  
9 writing and signed by Plaintiffs, Seafood Peddler, and Silvestri.

10          Wherefore, Plaintiffs, Seafood Peddler, and Silvestri request that the Court:

11          a.     Dismiss this action against Seafood Peddler and Silvestri and retain complete  
12 jurisdiction over this action until March 10, 2012 (thirty (30) days after the last settlement  
13 installment payment is due pursuant to paragraph 4, *supra*), and reopen this action upon a  
14 showing by Plaintiffs that the settlement has not been completed and that further litigation is  
15 necessary; or, in the alternative,

16          b.     Dismiss this action against Seafood Peddler and Silvestri with prejudice on  
17 March 10, 2012, if Plaintiffs have not made a showing that the settlement has not been  
18 completed; such dismissal to be without costs or attorneys' fees to any party.

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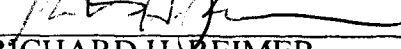
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1  
2 Dated: June 2, 2010

OCTAVE MUSIC PUBLISHING CORP.; BOURNE  
CO.; MUSIC SALES CORP.; HAMPSHIRE HOUSE  
3 PUBLISHING CORP.; SONY/ATV HARMONY;  
4 OLDE CLOVER LEAF MUSIC; RAY HENDERSON  
MUSIC CO., INC.; WB MUSIC CORP.; ARTHUR  
5 HAMILTON d/b/a HARMONY GRACE  
PUBLISHING and EDWIN H. MORRIS & CO., INC.

6  
7 By:   
8 RICHARD H. REIMER  
9 Senior Vice President—Legal Services  
American Society of Composers, Authors and  
Publishers, attorney-in-fact for Plaintiffs Octave  
Music Publishing Corp., et al.

10 Dated: June 4, 2010

SEAFOOD PEDDLER OF SAN RAFAEL, INC.

11  
12 By:   
13 ALPHONSE SILVESTRI

14 **APPROVED AS TO FORM AND CONTENT:**


15 Dated: June 4, 2010

ROSEN, BIEN & GALVAN, LLP

16  
17 By:   
18 GAY CROSTHWAIT GRUNFELD  
Attorneys for Plaintiffs

19 Dated: June 4, 2010

LAW OFFICES OF MATTANIAH EYTAN

20  
21 By:   
22 MATTANIAH EYTAN  
23 Attorneys for Defendants SEAFOOD PEDDLER  
OF SAN RAFAEL, INC. and ALPHONSE  
SILVESTRI

24 **PURSUANT TO STIPULATION,**

**ORDER**

25 IT IS SO ORDERED. The case is dismissed. The court will retain jurisdiction until  
26 March 10, 2012 to enforce the settlement.

27 Dated: June 9, 2010

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HOWARD R. LLOYD  
United States Magistrate Judge