

Before the
COPYRIGHT ROYALTY BOARD
Washington, D.C.

| | | |
|---|---|---------------------------------------|
| |) | |
| In the Matter of |) | |
| |) | |
| Distribution of DART Sound Recordings Fund, |) | Docket No. 14-CRB-0006 DART SR (2013) |
| Featured Recording Artists and Copyright |) | |
| Owners Subfund Royalties for 2013 |) | |
| |) | |

COMMENTS OF RONALD FORD

By notice posted in the Federal Register dated September 30, 2014, the Copyright Royalty Board (“CRB”) solicited comment on the August 19, 2014 Notice of Settlement and Request for Partial Distribution of Royalties in the 2013 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds filed by the Alliance of Artists and Recording Companies (“AARC”). 79 Fed. Reg. 60185. George Clinton (“Clinton”) on behalf of himself and featured performers in Parliament-Funkadelic, including Ronald Ford, submitted informal objections on August 25, 2014, *id.* at 60186, and Ronald Ford hereby submits through his undersigned counsel his formal comments objecting to the proposed settlement and distribution.

INTRODUCTION

Ronald Ford (“Ford”) is a songwriter and featured performer who was a member of one of the most iconic bands of the twentieth and twenty-first centuries, Parliament-Funkadelic. Ford’s contributions to the Funkadelic lexicon included more than 50 songs during the 1970s, 80s and 90s (see **Exhibit A** attached hereto) including “Pumping It Up” which has been sampled by numerous artists in the hip-hop genre. In 2011, the Smithsonian Institution acquired the Mothership, the flying saucer from which Parliament-Funkadelic once embarked to begin

concert performances, to anchor the National Museum of African American History's inaugural exhibition.¹

Parliament-Funkadelic is part of the DNA of hip-hop, with their sound recordings, some of which included songs composed by Ronald Ford, sampled widely in hundreds of hit records.² For example, "Pumping It Up" has been sampled by Trouble Funk ("Pump Me Up" 1982), Marris ("Pump Up The Volume" 1987), Mo Money (Curb Records 1992), Beastie Boys ("Hey Ladies"), Girl Talk ("Pump It Up" 2003), Beyonce ("Crazy In Love"), Joe Budden ("Pump It Up"), Geto Boys ("Homie Don't Play That"), DJ Quik ("Loked Out Hood" 1991), Nubian Nuts, Ice Cube, Urban Dance Floor Guerillas, Slum Village ("Raise It Up" special club mix), X-clan ("Funky Lesson" 1990), Kam ("In Traffic" 1995), First Degree ("Bust One" 1992), 2Pac ("Don't Call Me Bitch" 1998), Marvelous JC & The Unique Force ("Get Real" 1989), Underground Rebellion ("Theory of the Pumparosous" 1993), Treasure Line, N.O.T.S. ("Intro: Front Door" 1994) and others, as well as Ring tones by Beastie Boys, Trouble Funk, Marris, Girl Talk, Beyonce, Joe Buddens, Geto Boys, Danzel, DJ Quik, and DJ Sanket.

OBJECTIONS

On August 19, 2014, the Alliance of Artists and Recording Companies ("AARC"), on behalf of itself and claimants with which it has reached settlements (the "Settling Claimants") filed with the Copyright Royalty Judges ("Judges") a Notice of Settlement and Request for

¹ See Jeff Campagna, *Smithsonian Wants George Clinton's Funk*, Smithsonian.com (June 15, 2011), available at <http://www.smithsonianmag.com/smithsonian-institution/smithsonian-wants-george-clintons-funk-16015061/>.

² Or, as Marc Weingarten put it last week, Parliament and Funkadelic's songs "entered the bloodstream of American dance music in the '70s and stayed there. ... Clinton should have been basking in his role as funk's *eminence grise*: In the '90s he had been discovered by young hip-hop artists, who made P-Funk the most sampled band of the genre." Marc Weingarten, *Review: George Clinton's funk chronicle, 'Brothas Be, Yo Like George'*, Los Angeles Times (Oct. 31, 2014), available at <http://www.latimes.com/books/jacketcopy/la-ca-jc-george-clinton-20141102-story.html>. Only James Brown has been sampled more often.

Partial Distribution of the 2013 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties (“Notice and Request”). In the Notice and Request, AARC states that the Settling Claimants have reached a settlement among themselves concerning distribution of the 2013 DART Sound Recordings Fund Royalties. With respect to the Featured Recording Artists Subfund, AARC represents that it has reached settlements with all but three claimants for that subfund and that the nonsettling claimants have unit sales totaling 76,269.86 [1] in a universe of over one billion claimants' sound recordings sold in 2013. Notice and Request at 2. With respect to the Copyright Owners Subfund, AARC represents that it has reached settlements with all but five claimants. AARC represents that the nonsettling claimants have combined unit sales of 16,693 in a universe of over one billion claimants' record sales in 2013. Id.

The CRB may only authorize the distribution of royalties collected in the Sound Recordings Fund to the extent that they “have found that the distribution of such fees is not subject to controversy.” 17 U.S.C. § 801(b)(3)(A). No such finding could be proper at this point because the proposed distribution is so thoroughly controverted that even a partial distribution at this stage would be improper. Likewise, pursuant to 17 U.S.C. § 801(b)(7)(A)(ii), the CRB should decline to adopt the settlement proposed by AARC. The agreement does not provide a reasonable basis for setting statutory rates or terms, insofar as it does not provide a reasonable basis for the CRB to determine that its terms are adequate or equitable.

Ronald Ford is an “interested copyright party” as defined in 17 U.S.C. § 1001(7) because he: (A) is the legal or beneficial owner of, or controls, the reproduction right in the underlying songs on many Funkadelic Masters and hundreds of other recordings, and (B) is a featured recording artist on the Funkadelic Masters and hundreds of other recordings. Ford is entitled to

distribution of royalties under 17 U.S.C. § 1006(a) because his musical works and sound recordings have been embodied in musical sound recordings distributed and disseminated to the public in transmissions during 2013, and Ford is a featured performer on the Funkadelic masters for which George Clinton filed timely claims for payment under 17 U.S.C. § 1007(a)(1).

AARC represented that based on Soundscan record sales data, Clinton, Ford and Clinton-related entities had sales totaling 74,243.86 units for the Featured Recording Artists Subfund and 9,253 units for the Copyright Owners Subfund in 2013. AARC Request p. 4. AARC represented that these figures translated to about \$12 from the Featured Recording Artists Subfund and less than \$4 from the Copyright Owners Subfund for Clinton. *Id.* pp. 4-5.

AARC's figures are erroneous. Clinton and Ford are entitled to receive a significantly higher share of the distribution than AARC claims.

First, AARC's calculations are inaccurate. AARC rests on the declaration of Professor Richard Seltzer, who declares that his search of SoundScan data somehow yielded only one sound recording (“(Not Just) Knee Deep”) in the Featured Recording Artists Subfund he attributed to Clinton, and only one more (“One Nation Under A Groove”) in the Copyright Owners Subfund. AARC Request Ex. A ¶¶ 3(a) & 4(a); Attachment thereto. Furthermore, Seltzer claims that Clinton and Ford have de minimis sales totaling 76,269.86 record sales in 2013. As noted in Clinton's informal objections on August 25, 2014, Clinton submitted claims to the CRB identifying his copyright ownership interest not just in “One Nation Under A Groove” but in each of the Funkadelic Masters, many of which included songs composed by Ronald Ford. It is fundamentally inaccurate and insufficient for AARC's calculations to exclude recordings that Clinton expressly identified in his CRB claim filings.

Second, the results of AARC’s SoundScan searches undermine any basis for its blind reliance thereon. Professor Seltzer’s “testimony is based upon” Nielsen Soundscan’s sales data. AARC Request Ex. A ¶ 1. “Soundscan data identified Warner Music Group not George Clinton as the sound recording copyright owner [of ‘One Nation Under A Groove’].” *Id.* ¶ 4(a); *accord* AARC Request p. 4 n.6. The falsity of that information has been a matter of public record for at least nine years. Clinton’s ownership of the Funkadelic Masters was determined by one federal district court in 2005,³ reaffirmed by a second federal district court in 2012,⁴ and again affirmed on appeal to the Ninth Circuit in 2014.⁵ Again, many of these master recordings include songs composed by Ronald Ford.

Third, most significantly, AARC also failed to take into account the voluminous sales of *recordings that sampled* Funkadelic’s sound recordings, many of which included songs composed by Ronald Ford, and in which Ford therefore also holds a copyright ownership interest. Hundreds of hip hop artists have paid tribute to Funkadelic’s profound influence by mining their recordings as a source for samples. Both the Funkadelic back catalog and the many hits that sample their recordings continue to generate new sales and new performances. AARC may not unilaterally deny Ford his share.

³ See Findings of Fact and Conclusions of Law, Doc. No. 122, *Montes v. Kaplan, Kenegos & Kadin*, Case No. 2:03-cv-08955-R-Mc, p. 7 (C.D. Cal. entered June 20, 2005) (“Clinton acquired ownership of the [Funkadelic Master Recordings] in 1993.”); *id.* p. 8 (“Clinton is the sole owner of all rights in and to the [Funkadelic Master Recordings], and the masters of live performances of said albums, and has been the sole owner of said rights since 1993.”).

⁴ See *Hendricks & Lewis, PLLC v. Clinton*, No. C12-0841RSL, 2012 U.S. Dist. LEXIS 168989, *10 (W.D. Wash. Nov. 27, 2012) (“Clinton ... obtained ownership of the [Funkadelic Master Recordings] in 1993 pursuant to a settlement agreement with Warner Bros.”).

⁵ *Hendricks & Lewis PLLC v. Clinton*, 755 F.3d 1077, 1080 (9th Cir 2014) (“Clinton’s ownership of the Masters was eventually confirmed through litigation in 2005 when the Central District of California issued an order that Clinton ‘is the sole owner of [the Masters] and has been the sole owner of the Masters since 1993.’”), *substituted opinion at* 766 F.3d 991, 2014 U.S. App. LEXIS 16863, *6 (9th Cir. Aug. 26, 2014) (same statement of facts).

The proposed settlement would leave insufficient funds available to satisfy Ford's legitimate interests. AARC's position portrays a fundamental disdain for the rights of the creative artists AARC ostensibly represents.

AARC's members include record labels that are in the best position to disclose and account for any and all licenses issued and settlements generated with respect to Ford's works and recordings sampling Ford's works, as well as who has received royalties from those works and recordings (when Ford has not), and how much. The proposed AARC royalty distribution should be denied and stayed until Ford can obtain sufficient discovery from AARC and its members to ascertain the share of the distributions that he is rightly due, from the Funkadelic Master Recordings, and from the many works that sample them, and to ensure that any distribution fully provides Ford his share.

CONCLUSION

As Ronald Ford is entitled to a greater share of the Sound Recordings Fund royalties than AARC claims, Ford requests that the proposed settlement and distribution be denied and further proceedings be initiated to resolve the dispute pursuant to 17 U.S.C. § 1007(c).

Respectfully submitted on behalf of Ronald Ford by:



Loren E. Mulraine, Esq.
Bone McAllester Norton, PLLC
511 Union Street, Suite 1600
Nashville, Tennessee 37219
lmulraine@bonelaw.com
615.238.6300 (phone)
615.238.6301 (fax)