

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 GEORGE CLINTON

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”) submitted informal objections on August 25, 2014, *id.* at 60186, and hereby submits through his undersigned counsel his formal comments objecting to the proposed settlement and distribution.

INTRODUCTION

George Clinton is the Godfather of Funk and a national treasure. A recording artist since 1959, Clinton is one of the most important musicians of the twentieth and twenty-first centuries. In Parliament and Funkadelic, musical groups he formed and led, he scored more than forty hit singles in the 1970s, including four R&B number ones: Parliament’s “Flash Light” and “Aqua Boogie (A Psychoalphadiscobetabioaquadoloop),” and Funkadelic’s million-selling “One Nation Under A Groove” and “(Not Just) Knee Deep.” Clinton, along with fifteen other members of Parliament and Funkadelic, was inducted into the Rock and Roll Hall of Fame in 1997. In 2011,

the Smithsonian Institution acquired the Mothership, the flying saucer from which Clinton's groups once embarked to begin concert performances, to anchor the National Museum of African American History's inaugural exhibition.¹ In 2012, Berklee College of Music awarded Clinton an honorary doctorate. Clinton's critically acclaimed memoir *Brothas Be, Yo Like George, Ain't That Funkin' Kinda Hard on You?* was published by Atria Books in October 2014.

Clinton's funk is part of the DNA of hip-hop, with his sound recordings sampled widely in hundreds of hit records.² For example, "One Nation Under A Groove" has been sampled by Ciara, Digital Underground, EPMD, Kirk Franklin, Ice Cube, Janet Jackson, LL Cool J, Queen Latifah, and dozens of others. "(Not Just) Knee Deep" has been interpolated in platinum records by Dr. Dre ("Dre Day") and Snoop Dogg ("What's My Name?"), and sampled by the Black Eyed Peas ("Shut Up (Knee Deep Remix)"), De La Soul (the gold record "Me, Myself, and I"), 2Pac ("Can't C Me," from the diamond-certified *All Eyez on Me*), Tone-Loc (the platinum "Funky Cold Medina"), and more than 100 other artists. Clinton's 1982 song "Atomic Dog," another R&B number-one record, has been sampled on more than 200 recordings; it is "one of the most frequently sampled compositions of the Funk era." *Bridgeport Music, Inc. v. UMG Recordings, Inc.*, 585 F.3d 267, 278 (6th Cir. 2009). As the Sixth Circuit described it:

According to expert testimony at trial, "Atomic Dog" "is an anthem of the funk era, one of the most famous pieces of music from that whole era ... one of the most famous songs of the whole repertoire of funk and R & B." In addition to the

¹ See Jeff Campagna, *Smithsonian Wants George Clinton's Funk*, Smithsonian.com (June 15, 2011), <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), <http://www.latimes.com/books/jacketcopy/la-ca-jc-george-clinton-20141102-story.html>. Only James Brown has been sampled more often.

song's continuing popularity on its own, "Atomic Dog" and other works by Clinton and Parliament-Funkadelic are said to have influenced many contemporary rap and hip hop artists, with the most notable being the style of rap popularized by West Coast rappers such as Dr. Dre, Ice Cube, Snoop Doggy Dogg, and Coolio. See Charles L. Hughes, *Clinton, George*, in AFRICAN AMERICAN NATIONAL BIOGRAPHY 331, 332 (Henry Louis Gates Jr. & Evelyn Brooks Higginbotham, eds., 2008). Testimony at trial confirmed that "Atomic Dog" and other works by Clinton are among the most popular works sampled by rap and hip hop artists.

Id. at 273 (discussing "Atomic Dog" sample in Public Announcement's "D.O.G. In Me").³

This extensive sampling also made Clinton's works part of the DNA of modern copyright law. In one notorious case, alleging 477 different counts of copyright infringement of Clinton compositions and sound recordings, Clinton's former publisher and record label filed suit against "over 770 named publishing companies, copyright administrators, record labels, entertainment companies, copyright clearance companies, and performance rights organizations"—in effect, most of the American recording industry. *Bridgeport Music, Inc. v. IIC Music*, 202 F.R.D. 229, 231 (M.D. Tenn. 2001).⁴ Clinton had not authorized the suit and did not reap any benefit from this wave of litigation over his works; rather, he was named among the defendants. *Id.*

Clinton has been ensnared in litigation over the ownership of the copyrights in his compositions and sound recordings for decades.⁵ In 2005, Clinton was judicially determined to

³ Further examples from the "Selected Sampleography" appendix to Clinton's memoir are attached as Exhibit A hereto. See George Clinton, *Brothas Be, Yo Like George, Ain't That Funkin' Kinda Hard on You?* pp. 373-78 (Atria Books 2014).

⁴ The court severed those claims into 476 separate actions, in part because the courtroom could not accommodate that many defendants and their lawyers. *Id.* at 232-33; see *Bridgeport Music, Inc. v. WB Music Corp.*, 520 F.3d 588, 590 (6th Cir. 2008).

⁵ See, e.g., *Priority Records, Inc. v. Bridgeport Music*, 907 F.Supp. 725, 729 (S.D.N.Y. 1995) ("In general, the dispute centers on the ownership of copyrights in musical compositions by one George Clinton ...").

be the sole owner of all rights in and to the master recordings for four Funkadelic albums.⁶ Those recordings (the “Funkadelic Masters”) are hit records in their own right that include “One Nation Under A Groove” and “(Not Just) Knee Deep,” among Clinton’s most-sampled recordings.⁷

A federal district court has ordered the Funkadelic Masters copyrights placed under receivership to satisfy a judgment obtained against Clinton by his former copyright attorneys.

Hendricks & Lewis, PLLC v. Clinton, No. C12-0841RSL, 2012 U.S. Dist. LEXIS 168989, *13-14 (W.D. Wash. Nov. 27, 2012), *aff’d*, 755 F.3d 1077 (9th Cir 2014), *substitute opinion at* 766 F.3d 991 (9th Cir. Aug. 26, 2014). The order authorized the receiver to sell the Funkadelic Masters as a last resort, while stating “the Court’s preference for returning the recordings and copyrights to defendant [Clinton] after his debts are satisfied.” *Id.* at *13.⁸ Nevertheless, Clinton remains the owner of the Funkadelic Masters copyrights; the Ninth Circuit has stayed its mandate pending Clinton filing a petition for a writ of certiorari to the Supreme Court. Order, *Hendricks & Lewis PLLC v. Clinton*, No. 13-35010 (9th Cir. filed Sept. 3, 2014).

⁶ Findings of Fact and Conclusions of Law, Doc. No. 122, *Montes v. Kaplan, Kenegos & Kadin*, Case No. 2:03-cv-08955-R-Mc (C.D. Cal. entered June 20, 2005) (Exhibit B hereto). *See also* Final Order and Judgment, Doc. No. 121, *id.* (C.D. Cal June 20, 2005); Order, Doc. No. 137, *id.* (C.D. Cal. docketed Feb. 22, 2006) (Ninth Circuit mandate dismissing appeal).

⁷ The Funkadelic Masters are: *Hardcore Jollies* (1976) (“Comin’ Round the Mountain,” “Smokey,” “If You Got Funk, You Got Style,” “Hardcore Jollies,” “Soul Mate,” “Cosmic Slop,” “You Scared the Lovin’ Outta Me,” and “Adolescent Funk”); *One Nation Under A Groove* (1978) (“One Nation Under A Groove,” “Groovallegiance,” “Who Says a Funk Band Can’t Play Rock?!” “Promentalshitbackwashpsychosis Enema Squad (The Doo Doo Chasers),” “Into You,” “Cholly (Funk Getting Ready To Roll!),” “Lunchmeataphobia (Think! It Ain’t Illegal Yet!),” “P.E. Squad/Doo Doo Chasers,” and “Maggot Brain Chant (Think! It Ain’t Illegal Yet!) (Live)”; *Uncle Jam Wants You* (1979) (“Uncle Jam Wants You,” “Freak of the Week,” “(Not Just) Knee Deep,” “Uncle Jam,” “Field Maneuvers,” “Holly Wants to Go to California,” and “Foot Soldiers (Star Spangled Funky); and *The Electric Spanking of War Babies* (1981) (“The Electric Spanking of War Babies,” “Electro-Cuties,” “Funk Gets Stronger, Part 1,” “Brettino’s Bounce,” “Funk Gets Stronger (Killer Millimeter Longer Version),” “Shockwaves,” and “Oh, I”).

⁸ The *Hendricks* district court further ordered, “Receiver shall, to the greatest extent possible, maximize the income stream from the Funkadelic master sound recordings without selling or otherwise permanently disposing of the copyrights. Ideally, the Receiver will utilize the copyright and sound recordings over a one or two year period to satisfy the judgments and pay the expenses of the receivership before returning the copyrights and master sound recordings to defendant [Clinton].” *Id.*

OBJECTIONS

AARC requests a distribution of royalties from the 2013 DART Sound Recordings Fund's Featured Recording Artists Subfund and Copyright Owners Subfund. Notice of Settlement and Request for Partial Distribution of the 2013 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties ("AARC Request"); 79 Fed. Reg. 60185, 60186. 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 AARC Request 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.

Clinton is an "interested copyright party" as defined in 17 U.S.C. § 1001(7) because he: (A) owns the reproduction right in the Funkadelic Masters under 17 U.S.C. § 106(1), (B) is the legal or beneficial owner of, or controls, the reproduction right in the Funkadelic Masters and hundreds of other recordings, and (C) is a featured recording artist on the Funkadelic Masters and hundreds of other recordings. Clinton is entitled to royalty payments under 17 U.S.C. § 1006 (a) because his musical works and sound recordings, embodied in musical sound recordings, were distributed and disseminated to the public in transmissions during 2013, and Clinton filed timely claims for payment under 17 U.S.C. § 1007(a)(1), identifying himself as the copyright owner of the Funkadelic Masters and as a featured recording artist on "Not Just (Knee Deep)."

AARC represented that based on Soundscan record sales data, Clinton 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 is entitled to a significantly higher share of the Subfunds' distribution than AARC claims.

First, AARC's calculations are facially 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. 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. It is facially 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 conclusively determined by

the *Montes* court in 2005,⁹ reaffirmed by a second federal district court in 2012,¹⁰ and again affirmed on appeal to the Ninth Circuit in 2014.¹¹ Soundscan’s persistent misattribution of the recording’s ownership casts doubt on the AARC’s basis for considering its information reliable.

Third, Clinton’s rights are not limited to the works identified in the AARC Request, or in his claims for payment under 17 U.S.C. § 1007(a)(1). For each subfund, to establish a basis for his claims, Clinton duly identified “at least one musical work or sound recording” pursuant to 37 C.F.R. § 360.22(b)(6). Yet for the Copyright Owners Subfund, Clinton claims ownership in not just “One Nation Under A Groove” and the other Funkadelic Masters listed in his filed claims, but also other recordings, including all recordings on *George Clinton and His Gangsters of Love* (2008) and on the George Clinton and the P-Funk All-Stars’ albums *Go For Yer Funk* (1992), *Plush Funk* (1992), *P Is the Funk* (1993), *Testing Positive 4 the Funk* (1993), *A Fifth of Funk* (1993), *Dope Dogs* (1994), and *How Late Do U Have 2BB4 U R Absent?* (2005). Clinton claims rights related to the Featured Recording Artist Subfund not only on “(Not Just) Knee Deep,” but on each of the Funkadelic Masters and hundreds of other recordings in his own name and by Parliament, the Parliaments, Funkadelic, Parliament-Funkadelic, the P-Funk All-Stars, Parlet,

⁹ See Exhibit B hereto at pp. 7 & 8 (“Clinton acquired ownership of the [Funkadelic Master Recordings] in 1993.”); (“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.”).

¹⁰ 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.”).

¹¹ *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).

and Brides of Funkenstein. Though AARC identified his performances with those groups, it neglected to reflect them in its calculations. *See* AARC Request p. 4 n.5; *id.* Ex. A. ¶ 3(a).

Fourth, most significantly, AARC also failed to take into account the voluminous sales of recordings that sampled Clinton's sound recordings, and in which he therefore also holds a copyright ownership interest. *See* 17 U.S.C. § 106(2); *Bridgeport Music, Inc. v. Dimension Films*, 401 F.3d 647, 657 (6th Cir. 2004). Hundreds of hip hop artists have paid tribute to Clinton's profound influence by mining his recordings as a source for samples in songs that, like those in his own back catalog, continue to yield new sales and new public transmissions. AARC may not unilaterally deny Clinton his share of the resulting revenues.

The proposed settlement would leave insufficient funds available to satisfy Clinton's legitimate interests. Clinton's proper share of the distribution could well exceed the 2% set-aside AARC proposes. AARC has the audacity to ask the CRB to find equitable a distribution that would send all but \$16 of Clinton's due share to other AARC members. Its insulting position betrays a fundamental disdain for the rights of the creative artists AARC ostensibly represents.

To avoid losing the Funkadelic Masters and their copyrights in receivership, Clinton must be able to identify enough revenue to satisfy the *Hendricks & Lewis PLLC* judgment, including from any distribution of Sound Recordings Fund royalties. But the valuable revenue from his masters has never properly made its way to Clinton. Clinton's songs are among the most popular in funk and among the most frequently sampled in any genre, and Clinton's former publishing companies and record labels have made those samples among the most heavily litigated. Clinton has reaped little to no benefits from these third-party uses of (and third-party litigation over) his creative works. After the *Montes* finding that Clinton owns the Funkadelic Masters, his former

lawyers rerouted revenue streams derived from the masters to themselves. Clinton has been kept in the dark about which of the songs that sample his works are generating revenues for third parties through royalty licenses or settlements cut behind his back, and about how much money has changed hands without his knowledge or approval.

Meanwhile, Clinton's hit records, and the hit records that sample them (from which Clinton has received nothing), have been massively undervalued by AARC. For years, AARC and its members have systematically denied Clinton a full accounting and distribution of his due royalties. Incredibly, on March 22, 2011, in response to a subpoena, AARC declared that it had collected *no* royalties for Clinton or any related entities since before 2009, and that the amounts paid previously had been no more than \$372.34. Again, AARC's tallies plainly neglect Clinton's right to revenues as a share of works that sample his recordings. AARC has withheld financial information sufficient to allow Clinton to determine the true sum he is entitled to receive, which substantially outweighs the crumbs AARC proposes to set aside from the distribution for him.

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 Clinton's works and recordings sampling Clinton's works, as well as who has received royalties from those works and recordings (when Clinton has not), and how much. The proposed AARC royalty distribution should be denied and stayed until Clinton 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 his other recordings, and from the many works that sample them, and to ensure that any distribution fully provides Clinton his share.

CONCLUSION

As George Clinton is entitled to a greater share of the 2013 Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds royalties than AARC claims, Clinton requests that its 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,



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Counsel for George Clinton

November 5, 2014

CERTIFICATE OF SERVICE

I, Dan Booth, counsel for interested copyright party George Clinton, certify that on this November 5, 2014, a copy of the foregoing “Comments of George Clinton” was submitted to the Copyright Royalty Board via email to crb@loc.gov, as provided in the notice soliciting comments, 79 Fed. Reg. 60185, 60186 (Sept. 30, 2014).



EXHIBIT A

SELECTED SAMPLEOGRAPHY

P-Funk's music has been sampled in thousands of songs in the hip-hop and modern pop era. Here are a few examples.

Above the Law, "Black Triangle" samples "Eulogy and Light"
Ant Banks, "Pimp Style Gangastas" samples "No Rump To Bump"

Beastie Boys, "Car Thief" samples "I Bet You"

Beastie Boys, "Hey Ladies" samples "Pumpin' It Up"

Bell Biv Devoe, "Ghetto Booty" samples "I Got a Thing, You Got a Thing"

Big Daddy Kane, "Get Down" samples "Atomic Dog"

Black Sheep, "Butt in the Meantime" samples "Four Play"

Bone Thugs-N-Harmony, "Mo Murda" samples "I'd Rather Be With You"

Common, "Cold Blooded" samples "Funkin' For Fun"

The Coup, "Busterismology" samples "Mommy, What's a Funkadelic"

The Coup, "Me and Jesus The Pimp In a '79 Grenada Last Night" samples "Swing Down Sweet Chariot"

Cypress Hill, "Psychobetabuckdown" samples "Aquaboogie (A psychoalphadiscobetabioaquadolooop),"

Da Lench Mob, "Guerillas in tha Mist" samples "Flashlight"

Da Lench Mob, "Mellow Madness" samples "Hollywood Squares"

De La Soul, "Millie Pulled a Pistol On Santa" samples "Mommy, What's a Funkadelic," "I'll Stay"

De La Soul, "Me Myself and I" samples "(Not Just) Knee Deep"

De La Soul, "Potholes In My Lawn" samples "Little Old Country Boy"

Del Tha Funkee Homosapien, "Dr. Bombay" samples "Rumpofsteelskin"

Del Tha Funkee Homosapien, "Mistadobalina" samples
“(Gloryhallastoopid) Pin the Tale On the Funky”
Dell The Funkee Homoesapien, “What Is a Booty” samples
“Pumpin’ It Up”
Digable Planets, “Black Ego” samples “Generator Pop”
Digable Planets, “Escapism (Gettin’ Free)” samples
“Mothership Connection (Star Child)”
Digital Underground, “Doowutchyalylike” samples
“Flashlight”
Digital Underground, “Heartbeat Props” samples “Freak of the
Week”
Digital Underground, “Hip Hop Doll” samples “Funkin’ For
Fun,” “Funkentelechy”
Digital Underground, “Humpty Dance” samples “Let’s Play
House”
Digital Underground, “Kiss You Back” samples “(Not Just)
Knee Deep”
Digital Underground, “Rhymin’ On the Funk” samples
“Bootzilla,” “Flashlight”
Digital Underground, “Same Song” samples “Theme From the
Black Hole”
Digital Underground, “Sex Packets” samples “The Motor-
Booty Affair”
Digital Underground, “Underwater Rhymes” samples
“Aquaboogie (A psychoalphadiscobetabioaquadoloop)”
DJ Jazzy Jeff and the Fresh Prince, “A Dog Is A Dog” samples
“Man’s Best Friend”
D.O.C., “Beautiful But Deadly” samples “Cosmic Slop”
Dr. Dre, “Bitches Ain’t Shit” samples “Adolescent Funk”
Dr. Dre, “The Chronic” samples “Colour Me Funky”
Dr. Dre, “Dre Day” samples “Aquaboogie (A
psychoalphadiscobetabioaquadoloop),” “The Big Bang Theory,”
“(Not Just) Knee Deep”
Dr. Dre, “Let Me Ride” samples “Mothership Connection”

Dr. Dre, “The Roach” samples “P-Funk (Wants To Get Funked Up)”

Easy-E, “Eazy-Duz-It” samples “Bootzilla,” “A Joyful Process”

EPMD, “I’m Mad” samples “Let’s Take It To The Stage”

EPMD, “Play The Next Man” samples “Sir Nose D’Voidoffunk”

EPMD, “Whose Booty” samples “Loose Booty”

EPMD, “You Gots To Chill” samples “More Bounce To The Ounce”

Eric B. and Rakim, “Lyrics of Fury” samples “No Head, No Backstage Pass”

Erick Sermon, “Hittin’ Switches” samples “Last Dance”

Everlast, “Never Missin’ A Beat” samples “(Not Just) Knee Deep”

Fat Joe, “Say Word” samples “Munchies For Your Love”

Fu-Schnickens, “Back Off” samples “Atomic Dog”

Gang Starr, “Step in the Arena”: “A Blow For Me, a Toot For You”

Gerardo, “We Want The Funk” samples “Give Up The Funk (Tear The Roof Off the Sucker)”

Geto Boys, “Homie Don’t Play That” samples “Pumpin’ It Up”

Ice Cube, “Dirty Mack” samples “Unfunky UFO”

Ice Cube, “Ghetto Bird” samples “Aquaboogie (A psychoalphadiscobetabioaquado loop),”

Ice Cube, “I Wanna Kill Sam” samples “Chocolate City,” “One of Those Funky Things”

Ice Cube, “Man’s Best Friend” samples “Atomic Dog”

Ice Cube, “Say Hi To The Bad Guy” samples “P-Funk (Wants To Get Funked Up)”

Ice Cube, “The Wrong Nigga To Fuck Wit” samples “Flashlight”

Ice Cube, “Who Got The Camera?” samples “I Got a Thing, You Got a Thing”

Ice-T, "Mind Over Matter" samples "I Bet You"
Jungle Brothers, "Tribe Vibe" samples "Big Footin'"
Jungle Brothers, "What U Waiting 4?" samples "Give Up The
Funk (Tear The Roof Off the Sucker)"
Kriss Kross, "Freak Da Funk" samples "Free Your Mind"
LL Cool J, "Nitro" samples "(Not Just) Knee Deep"
Madvillan, "Raid" samples "Computer Games"
MC Hammer, "Pumps and a Bump" samples "Atomic Dog"
MC Hammer, "Turn This Mutha Out" samples "Give Up The
Funk (Tear The Roof Off the Sucker)"
Mystikal, "Unpredictable" samples "Sir Nose D'Voidoffunk"
Nas, "One Love" samples "Come in Out of the Rain"
N.W.A., "100 Miles and Runnin'" samples "Get Off Your Ass
And Jam"
Outkast, "Elevators," "Come in Out of the Rain"
Outkast, "Pink & Blue" samples "The Goose"
Paris, "Bush Killa" samples "Atomic Dog"
Pete Rock and C.L. Smooth, "If It Ain't Rough, It Ain't Right"
samples "Come in Out of the Rain"
Pete Rock and C.L. Smooth, "The Basement" samples
"Atomic Dog"
PM Dawn, "Comatose" samples "Atomic Dog"
Public Enemy, "Bring the Noise" samples "Get Off Your Ass
And Jam"
Public Enemy, "Nighttrain" samples "Flashlight"
Public Enemy, "911 Is a Joke" samples "Flashlight"
Public Enemy, "Party for Your Right to Fight" samples "Butt-
To-Butt Resuscitation," "Do That Stuff"
Public Enemy, "Revolutionary Generation" samples "Deep"
Redman, "Blow Your Mind" samples "The Big Bang Theory,"
"Theme From the Black Hole"
Redman, "So Ruff" samples "Bop Gun"
Ruff Ryders, "Ryde or Die Boyz" samples "I'm Holding You
Responsible"
Run-D.M.C., "Bob Your Head" samples "Good Ole Music"

Salt-N-Pepa, "He's Gamin' On Ya" samples "Chocolate City"
Scarface, "Good Girl Gone Bad" samples "Good Ole Music"
Schoolly D, "Godfather of Funk" samples "Give Up The Funk
(Tear The Roof Off the Sucker)"

Sir Mix-A-Lot, "Sleepin' Wit My Fonk" samples "The
Pinocchio Theory"

Snoop Doggy Dogg, "The Shiznit" samples "Flashlight"

Snoop Doggy Dogg, "Who Am I (What's My Name)?"
samples "(Not Just) Knee Deep," "Give Up The Funk (Tear The
Roof Off the Sucker)"

Stetsasonic, "Speaking of a Girl Named Suzy" samples
"Atomic Dog"

A Tribe Called Quest, "Ham 'N' Eggs" samples "Nappy
Dugout"

Tone Loc, "Funky Cold Medina" samples "Get Off Your Ass
And Jam"

Too Short, "Hoes" samples "Take Your Dead Ass Home"

Too Short, "Gettin' It" samples "I'd Rather Be With You"

Too Short, "It's Your Life" samples "Dr. Funkenstein"

Tupac, "Holler If You Hear Me" samples "Atomic Dog"

Tupac, "Young Black Male" samples "Good Ole Music"

UGK, "Diamonds and Wood" samples "Munchies For Your
Love"

Warren G, "Regulate" samples "Mothership Connection (Star
Child)"

X-Clan, "Earth Bound" samples "Free Your Mind"

Yo-Yo, "Make Way For the Motherlode" samples
"Mothership Connection (Star Child)"

EXHIBIT B

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9 *Attorneys for Counterclaim Defendant and Counterclaimant*
10 GEORGE CLINTON

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 NENE MONTES, an individual,
14 Plaintiff,

15 v.

16 KAPLAN, KENEGOS & KADIN; et
17 al.,
18 Defendants.

19 RON BREMBRY; BRUCE
20 PETERSON; RAYMOND SPRUELL,
21 individually, d/b/a ASSOCIATION
22 PARLIAMENT FUNKADELIC
MEMBERS 73-81; FUNK MOB
MUSIC, LLC; KAPLAN, KENEGOS &
KADIN

23 Counter-Claimants,

24 vs.

25 NENE MONTES; TERCER MUNDO,
26 INC., CHARLY ACQUISITIONS LTD;
27 GEORGE CLINTON; DOES 101-200,
inclusive,

28 Counter-Defendants.

FILED
CLERK, U.S. DISTRICT COURT
JUN 17 2005
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature]

P send
ENTER
NO JSB
US

ENTERED
CLERK, U.S. DISTRICT COURT
JUN 20 2005
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature]

Case No. CV03-8955-R

[PROPOSED] FINDINGS OF FACT
AND CONCLUSIONS OF LAW

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AS REQUIRED BY FRCP, RULE 77(d).

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[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW

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GEORGE CLINTON,

Cross-Claimant,

vs.

NENE MONTES; TERCER MUNDO,
RON BREMBRY; BRUCE
PETERSON; RAYMOND SPRUELL,
individually, d/b/a/ ASSOCIATION
PARLIAMENT FUNKADELIC
MEMBERS 73-81; FUNK MOB
MUSIC, LLC; KAPLAN, KENEGOS &
KADIN, JERRY KAPLAN; JOAN
KENEGOS; DAVID SCOTT KADIN;
AND DOES 1-10,

Cross-Claim Defendants.

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Findings of Fact and Conclusions of Law

This cause came on for trial and the Court, Honorable Manuel L. Real presiding, having heard the testimony and examined the evidence, both oral and documentary, and considered the stipulations of the parties, finds the facts and states the conclusions of law as follows:

Findings of Fact

1. Plaintiff Nene Montes (“Montes”) defaulted and is no longer a party to the action. Counterclaimants Ron Brembry (“Brembry”), Bruce Peterson (“Peterson”), Ramond Spruell (“Spruell”), individually and doing business as Association Parliament Members 73-81 (“APF”), and Funk Mob Music, LLC (together the “APF parties”) seek a judicial declaration that they own four master sound recordings by the musical group Funkadelic. Crossclaimant George Clinton (“Clinton”) asks that the Court declare that he is the owner of the Masters. There are no remaining claims asserted by or against Defendant Kaplan, Kenegos & Kadin.

2. In or about 1974, Clinton entered into a recording agreement with Warner Bros. Records Inc. (“Warner Bros.”) which granted to Warner Bros. ownership of any master recordings that he created pursuant to the agreement.

3. Clinton created the master recordings for the Funkadelic albums “Hard Core Jollies,” “One Nation under a Groove,” Uncle Jam Wants You” and “Electric Spanking of War Babies” (the “Masters”), and certain live performances of said albums, pursuant to the Warner Bros. agreement.

4. During the period 1979 through 1985, Montes acted as the manager or co-manager of Clinton and his companies, initially as an individual and after December, 1981, through a company he formed, Tercer Mundo, Inc. (“Tercer Mundo”).

5. The APF parties assert that Clinton signed five December 11, 1981, assignments purporting to grant to Tercer Mundo all rights to the Masters and other

1 of Clinton's musical properties for no consideration stated in the documents or
2 otherwise provided to Clinton. See Exhibit 1 for identification.

3 6. The APF parties purport to trace their chain-of-title from Tercer Mundo
4 through grants from Tercer Mundo to the law firm Rosenfeld, Meyer & Susman
5 ("RM&S") and grants from RM&S to them, followed by a public sale of a security
6 interest in the Masters.

7 7. Clinton did not sign the December 11, 1981, assignments purporting to
8 grant rights in the Masters to Montes' company, Tercer Mundo. See Exhibit 1 for
9 identification.

10 8. In August, 1982, Clinton entered into a settlement agreement with
11 Warner Bros. which provided, among other things, that Warner Bros. would
12 relinquish its ownership and control of the Masters to Clinton if a third party
13 distributor agreed in writing to pay to Warner Bros. a royalty of 5% of net sales of
14 albums that embodied the Masters; the settlement agreement further provided that,
15 when Warner Bros. had received a total of \$283,333.34, the royalty payments would
16 cease. Exhibit 2 in evidence.

17 9. The alleged agreement between Montes and Warner Bros. entitled
18 "Override Agreement" does not comply with the override provisions of the August,
19 1982, settlement agreement because, among other things, Montes is not a third party
20 distributor, and it was not presented to or accepted by Warner Bros. See Exhibit 4 for
21 identification; Exhibits 104-107, 117, 118 in evidence.

22 10. When Clinton filed bankruptcy papers in 1984, he did not list the
23 Masters as an asset in his bankruptcy papers because he believed in good faith that he
24 did not own the Masters at that time. Exhibit 5 in evidence.

25 11. Clinton did not sign the October 27, 1984, affidavit purportedly
26 notarized by a friend of Montes. See Exhibit 7 for identification.

27 12. In 1992, after meetings among Counterclaimants Brembry, Peterson
28 and Spruell and Montes, said Counterclaimants became the sole shareholders of a

1 California corporation named Dementia, Inc., which had previously been wholly
2 owned by Montes; the name of the corporation was changed to Association
3 Parliament Funkadelic Members 73-81 and it was later reincorporated in California.

4 13. On September 18, 1992, Montes assigned to APF a 50% interest in the
5 cash and other proceeds of a lawsuit by APF and Montes against Boladian (the
6 Litigation), which would include claims that Montes owned the Masters and other
7 musical properties. Exhibit 113 in evidence.

8 14. In or about 1992, Montes or Tercer Mundo entered into an agreement
9 with Charly Records granting to Charly Records the right to distribute albums
10 embodying the Masters outside of the United States.

11 15. On or about August 16, 1993, Tercer Mundo entered into an agreement
12 with Priority Records, Inc. ("Priority"), a third party distributor, pursuant to which
13 Priority agreed to distribute albums embodying the Masters and agreed to pay to
14 Warner Bros. an override royalty in compliance with the August, 1982, settlement
15 agreement between Clinton and Warner Bros. Exhibit 8.

16 16. Priority released such albums and made at least the initial payment of
17 the override royalty to Warner Bros. See Exhibits 27 and 108 in evidence.

18 17. Clinton retained counsel in the United Kingdom and attempted,
19 unsuccessfully, to enjoin the distribution by Charly Records of albums embodying
20 the Masters and attempted, through an intermediary, to stop Priority from distributing
21 albums embodying the Masters.

22 18. On July 31, 1995, APF assigned back to Tercer Mundo the 50%
23 interest in the Litigation (Exhibit 115 in evidence); the APF parties contend that the
24 July 31, 1995, assignment was procured by Montes through fraudulent
25 representations that they would receive one-half of the proceeds of the Litigation,
26 which they never received.

27 19. On or about September 21, 1995, Tercer Mundo granted to the law
28 firm, Rosenfeld, Meyer & Susman ("RM&S"), which was representing APF and

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1 Tercer Mundo as plaintiffs in the Litigation, all of Tercer Mundo's rights in the
2 Masters, and masters of live performances of said albums, as security for an
3 indebtedness of \$275,000. Exhibit 15 in evidence.

4 20. On April 15, 1996, a Financing Statement was filed with the Secretary
5 of State of California purporting to reflect an assignment from Tercer Mundo to
6 RM&S of Tercer Mundo's rights in the Masters, and masters of live performances of
7 said albums, as security for an indebtedness. Exhibit 16 in evidence.

8 21. In 1997, the Litigation was settled by an agreement that is under seal,
9 which included a substantial payment by Boladian to Montes, none of which was
10 ever paid to the APF parties.

11 22. On or about June 12, 2000, in an agreement settling a lawsuit
12 previously brought by APF against RM&S and Tercer Mundo, APF purported to
13 grant liens against the Masters to certain attorney lien holders, including a lien to
14 RM&F in the amount of \$1,400,000. Exhibit 14 in evidence.

15 23. In January, 2001, the federal court in Florida, in an action between
16 Clinton and Arman Boladian ("Boladian"), determined that Boladian was the owner
17 of certain copyrights in musical compositions written by Clinton, applying the
18 doctrine of estoppel; that action did not involve the Masters. Exhibit 30 in evidence.

19 24. On April 25, 2001, a Financing Statement was filed with the Secretary
20 of State of California purporting to reflect an assignment from RM&S to APF of
21 RM&S's rights in the Masters, and masters of live performances of said albums.
22 Exhibit 18 in evidence.

23 25. On or about May 24, 2001, the APF parties claim to have acquired title
24 to the Masters, and masters of live performances of said albums following a public
25 sale at which no one bid for the property. See Exhibits 20-23 in evidence.

26 26. At no time did Clinton state to any of the APF parties or anyone else
27 that he had assigned his rights in the Masters to Tercer Mundo or Montes.
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Conclusions of Law

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2 1. Tercer Mundo acquired no rights in the Masters pursuant to the alleged
3 December 11, 1981, assignments, which Clinton did not sign.

4 2. The alleged "Override Agreement" between Montes and Warner Bros
5 has no force or effect.

6 3. Clinton is not estopped from claiming his ownership rights in the
7 Masters in this action because of the failure to list the Masters as assets in the 1984
8 bankruptcy proceedings.

9 4. Clinton did not assign or license his rights in the Masters to Montes,
10 Tercer Mundo or anyone else.

11 5. As a result of compliance with the override terms of the August, 1982,
12 settlement agreement between Clinton and Warner Bros. by virtue of the agreement
13 in 1993 by Priority, a third party distributor, to distribute albums embodying the
14 Masters and pay the override royalty to Warner Bros., Clinton acquired ownership of
15 the Masters in 1993.

16 6. Neither Tercer Mundo nor Montes had any rights in the Masters to
17 assign or license to anyone from 1981 to the present.

18 7. Laches, an equitable doctrine, is not a defense to Clinton's claims and
19 Clinton is not guilty of laches, having attempted to prevent the unauthorized use of
20 the Masters.

21 8. The purported grant of rights in the Masters, and masters of live
22 performances of said albums, from Tercer Mundo to RM&F reflected in the
23 September 21, 1955, agreement and the April 15, 1996, Financing Statement is
24 invalid and of no force and effect.

25 9. The liens against and assignment of rights in the Masters purportedly
26 granted by APF to RM&F pursuant to the settlement agreement dated June 12, 2000,
27 and the Financing Statement dated April 25, 2001, are invalid and of no force or
28 effect.

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10. The APF parties acquired no rights in and to the Masters by virtue of the purported public sale of RM&F's rights.

11. The decision in the Florida litigation between Clinton and Boladian is not relevant to this action.

12. Clinton is not judicially estopped from claiming his ownership rights in the Masters in this action by virtue of the holding of the Florida District Court in the litigation between Clinton and Boladian, which dealt only with the ownership of certain copyrights in musical compositions that are not the subject of this action.

13. Clinton is the sole owner of all rights in and to the Masters, and the masters of live performances of said albums, and has been the sole owner of said rights since 1993.

Dated: June 8, 2005

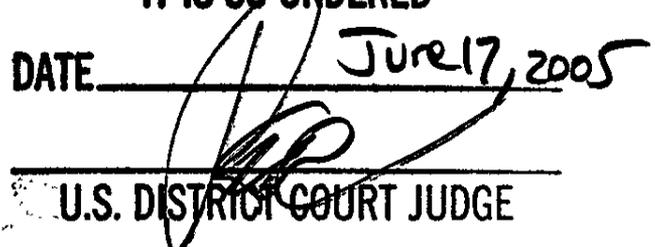
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By: 
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Attorneys for Counterclaim Defendant and Counterclaimant **GEORGE CLINTON**

IT IS SO ORDERED

DATE June 17, 2005


U.S. DISTRICT COURT JUDGE

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss

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I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Fox & Spillane LLP, 1880 Century Park East, Suite 1004, Los Angeles, California 90067. On June 9, 2005, I served the within documents:

[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW

- I sent such document from facsimile machine (310) 229-9380 on June 9, 2005. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (310) 229-9380 which confirms said transmission and receipt. The transmission was reported as complete and without error. A copy of the transmission report is attached to this Proof of Service. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed Federal Express envelope with postage paid on account and deposited with Federal Express at Los Angeles, California, addressed as set forth below.
- by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

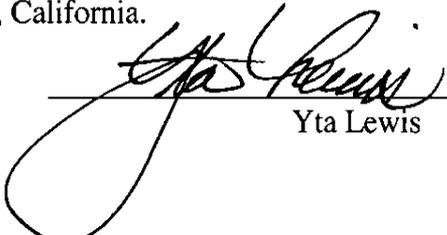
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury in accordance with the laws of the United States of America that the foregoing is true and correct of my own personal knowledge, and that I am employed in an office of a member of the Bar of the Court at whose direction this service was made.

Executed on June 9, 2005, at Los Angeles, California.



Yta Lewis