

# **NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL CANADIAN CLASS ACTION RE: UNPAID MECHANICAL AND VIDEO ROYALTIES AND COPYRIGHT INFRINGEMENT**

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS

## **I. THE PURPOSE OF THIS NOTICE**

Craig Northey has been appointed as the Representative Plaintiff on behalf of Class Members. This is the same action that was originally commenced in the name of the Estate of Chesney Henry "Chet" Baker Junior and Chet Baker Enterprises LLC.

The purpose of this notice is to advise that on May 30, 2011, the Ontario Superior Court of Justice certified the action as a class proceeding for the purposes of settlement and approved the settlement agreements which have been signed by the Representative Plaintiff and each of the defendants ("settlement agreements").

## **II. THE APPROVAL OF THE SETTLEMENT AGREEMENTS**

On May 30, 2011, the action was certified as a class proceeding for the purposes of settlement and the settlement agreements reached with Sony BMG Music (Canada) Inc., now Sony Music Entertainment Canada Inc., ("Sony"), EMI Group Canada Inc. ("EMI"), Universal Music Canada Inc. ("Universal"), Warner Music Canada Co. ("Warner"), (collectively, the "Record Companies"), the Canadian Musical Reproduction Rights Agency Ltd. ("CMRRA"), the Society for Reproduction Rights of Authors, Composers and Publishers (SODRAC) Inc. and SODRAC 2003 Inc. ("SODRAC") (collectively, the "Collective Society Defendants") were approved by the Ontario Superior Court of Justice. The fees, disbursements and taxes of Class Counsel are to be approved by the Court at a later time following notice to the class and the Record Companies.

The class proceeding was certified on behalf of the following class:

"Any rights holder who holds, or who has held at any time, rights in a musical work embodied in an audio product or a video product first released or distributed in Canada by any of the Record Label Defendants at any time up to and including December 31, 2012, for which rights the applicable Record Label Defendant was required to obtain a reproduction licence (including, in relation to video products, any necessary synchronization licence) but for which either no such licence has been obtained for the reproduction of the musical work or for which the required royalties have not been paid for the reproduction of the musical work despite the issuance of such a licence."

## **III. AMENDMENT TO THE CMRRA AND SODRAC SETTLEMENT AGREEMENT**

Pursuant to an amendment to the settlement agreement reached with CMRRA and SODRAC, the Collective Society Defendants have agreed to pay a sum of no less than \$3,927,782.09 into the settlement fund on account of "held royalties". Held royalties represent amounts which the Collective Society Defendants have received from the Record Companies and have been unable to match to a rightsholder or a reproduced musical work. Of those amounts, a credit of \$1,250,000.00 will be given to the Record Companies. Additional funds may be located by the Collective Society Defendants and will subsequently be paid into the settlement fund. The result of the amendment is that the settlement fund will be increased by an amount no less than \$2,677,782.09

#### **IV. EMI'S VIDEO ROYALTIES SETTLEMENT CONTRIBUTION**

Under the terms and conditions of EMI's settlement agreement, EMI had 180 days from the date of that agreement to make efforts to obtain licenses for Video Products, following which its unpaid Video Royalties were to be paid into the settlement fund. That period of time has passed, and accordingly those amounts will form part of the settlement. As a result, the class definition has been modified to reflect this fact.

#### **V. DISTRIBUTION OF SETTLEMENT FUNDS**

The Record Companies are now required to provide a "first report" within thirty (30) days which will provide information about the unpaid mechanical and/or video royalties on each of their respective pending lists. CMRRA and SODRAC are also required to provide a similar report which will provide information on "held royalties." On the same day, each Defendant will pay its settlement amount, adjusted in accordance with the settlement agreements, into the Settlement Trust. At the conclusion of the opt-out period (see below), a notice will be sent to class members advising them how to make a claim for settlement benefits. At the same time, Class Counsel and the Settlement Administrator will make extensive efforts to research, identify and locate eligible Class Members.

Second and Third Reports will be generated in respect of future unpaid royalty amounts. Amounts specified within these Reports will cause additional amounts to be paid into the Settlement Trust.

Qualifying Class Members will be paid settlement benefits having regard to standard industry royalty rates payable as of the time their works were reproduced by the Record Companies. These payments may be adjusted to reflect: claims experience levels; estimated Class Counsel fees, taxes and disbursements; the commission payable to the Settlement Administrator and costs of notice.

The settlement agreements also contemplate a distribution of certain amounts which cannot be paid directly, either because the Class Members cannot be located or for other valid reasons provided for in the settlement agreements. An objective Canadian market share analysis will be undertaken and those Class Members with Canadian market share during periods of time specified within the settlement agreements will be paid a portion of the undistributed sums according to their market share allocation. For more information in respect of the market share distribution, please review the settlement agreements on-line at: [www.pendinglistssettlement.com](http://www.pendinglistssettlement.com).

Further notice will follow within 120 days, advising Class Members of the specific process for claiming settlement benefits.

#### **VI. FUTURE MECHANICAL LICENSING PLATFORM**

The settlement will cause the creation of a revised Canadian mechanical licensing platform for Audio Products to be implemented no later than January 1, 2013. An industry working group will be established to create Canadian Licensing Practices in respect of mechanical licensing and administration. The function of the working group is to create practices which will minimize mechanical reproduction of unlicensed Audio Products in the future. In addition, the following four step process will be implemented: (1) The Record Companies will submit mechanical

licensing requests thirty days before the release of any new Audio Products; (2) CMRRA and SODRAC will make efforts to match Musical Works and issue mechanical licenses where possible; (3) A publicly-available licensing website will allow for public review and submission of ownership claims of unidentified Musical Works; and (4) After conclusion of the first three steps, Musical Works which remain unidentified will be deemed unlocatable and CMRRA-SODRAC Inc. ("CSI") will apply for a license pursuant to the *Copyright Act*. Royalties payable in respect of these Musical Works will be paid into an interest bearing trust account where they can be claimed at a later time should a qualifying Rightsholder be located.

## VII. OPTING OUT OF THE PROCEEDINGS

If you would like to exclude yourself from the settlement agreements, you can opt out by sending the Opt Out Form, which is attached to this Notice, to Class Counsel by regular mail or fax by no later than Tuesday, August 2, 2011, to:

Harrison Pensa <sup>LLP</sup>  
Attention: Jonathan J. Foreman  
450 Talbot Street  
P.O. Box 3237  
London, ON N6A 4K3

Fax: 519-667-3362

If you do not opt out of the settlement agreements in the manner required by this notice, you will be bound by the terms of the proposed settlement agreements and will be barred from instituting or continuing any legal action against the Defendants in relation to the subject matter of the action.

## VIII. CLASS COUNSEL AND CLASS COUNSEL FEES

The law firms of Harrison Pensa <sup>LLP</sup> and Bates Barristers <sup>LLP</sup> represent Class Members. Class Counsel can be reached at 1-866-924-5859, by e-mail at [pendinglists@harrisonpensa.com](mailto:pendinglists@harrisonpensa.com), or by mail at: Harrison Pensa <sup>LLP</sup> 450 Talbot Street, London, ON N6A 4K3 Attention: Jonathan Foreman.

At a later time, Class Counsel will seek court approval of their legal fees, applicable taxes and disbursements. Class Counsel will collectively be requesting reasonable contingent legal fees as a percentage of the settlement fund, plus disbursements and applicable taxes. The contingent legal fees, taxes and disbursements will be determined by the Court following delivery of the First Reports and on notice to the Class Members and the Record Companies. The Record Companies have agreed to make partial contributions towards the legal fees of Class Counsel in the amount of \$600,000.00.

## IX. SUMMARY OF THE CASE

### ***The Class Action***

A proposed class action was initiated in Ontario against Sony, EMI, Universal, Warner (collectively, the "Record Companies"), CMRRA and SODRAC, in which it is alleged that the Record Companies are liable for infringing copyright in certain musical works, either by reproducing those musical works in sound recordings or video products first released or

distributed in physical formats in Canada up to and including December 31, 2012, without securing licences from the owners of copyright to reproduce those musical works or, where such licences were obtained, by failing to pay the required royalties (collectively, the "Proceedings"). Various allegations are also made against the Defendants CMRRA and SODRAC. Online digital downloads and other digital products are not at issue in the class action.

### ***The "Pending Lists"***

The class action pertains to a process whereby the Record Companies maintain lists, usually referred to as "Pending Lists", pursuant to mechanical licensing agreements with CMRRA and SODRAC. Those lists itemize musical works that have been reproduced or distributed by the Record Companies in sound recordings (and in some cases, video products) released in physical formats in Canada, for which the Record Companies have not, for various reasons and despite ongoing efforts, secured licences from and/or paid royalties to the owners of copyright in those musical works.

### ***The Settlement Agreements***

The total settlement funds, currently estimated to be approximately CDN \$50,311,192.09, to be adjusted in accordance with the terms of the settlement agreements, will be allocated to the class, less deductions for Class Counsel fees, taxes and disbursements, costs of administration payable to CSI, and costs of notice.

### ***Settlement Documents***

Complete copies of the settlement agreements are available at [www.pendinglistssettlements.com](http://www.pendinglistssettlements.com).

## **X. QUESTIONS ABOUT THE SETTLEMENT**

If you would like copies of the settlement agreements or you would like to obtain an Opt-Out Form, please visit the settlement website at [www.pendinglistssettlement.com](http://www.pendinglistssettlement.com) or contact Class Counsel. Copies of the settlement agreements can also be mailed to you at a cost of \$10, which represents the cost of photocopying and mailing. This notice contains only a summary of the settlement and Class Members are encouraged to review the settlement agreements in their entirety.

Any questions about this action or matters conveyed in this Notice should be directed to Class Counsel and should **not** be directed to the Court.

## **XI. INTERPRETATION**

This notice contains a summary of some of the terms of the settlement. Any capitalized terms not defined in the Notice are defined in the Key Terms of Settlement Between the Plaintiff, CMRRA, SODRAC, EMI, Sony, Universal and Warner ("CSI Term Sheet"). If there is a conflict between the provisions of this notice and the settlement agreements, including the appendices to the settlement agreements, the terms of the settlement agreements shall prevail.

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**THIS NOTICE HAS BEEN AUTHORIZED BY  
THE ONTARIO SUPERIOR COURT OF JUSTICE**

**UNPAID MECHANICAL AND VIDEO ROYALTIES AND  
COPYRIGHT INFRINGEMENT CLASS ACTION**

**OPT-OUT FORM**

I \_\_\_\_\_ (print full name), wish to opt-out of the Canadian Class Action  
Re: Unpaid Mechanical and Video Royalties and Copyright Infringement in relation to the  
musical works listed in the attached Schedule "A" to this opt-out form.

I understand and accept the consequences of opting out, including but not limited to;

1. Class counsel cannot represent me and are not permitted to assist me in any way.
2. I will be responsible for all legal fees and costs that may be incurred by me if I choose to pursue my own individual claim.
3. I will not be bound by this action and therefore I will not be entitled to receive any payments from the settlements.

I confirm that I am legally entitled to opt-out of this litigation in relation to each and every one of the musical works listed in Schedule A to this opt-out form and that I do not require the consent of any third party in order to do so.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Please complete the following form in its entirety and attach the necessary documentation. If you require additional space, please provide the required information on separate paper. Please return the complete form to the address below **on or before Tuesday, August 2, 2011**

Copyright Holder's Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Alternative Telephone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Mechanical Rights Society: \_\_\_\_\_

Performing Rights Society: \_\_\_\_\_

**Instructions:**

1. Please fill out the attached Schedule A, listing **each musical work in which you are claiming rights and in respect of which you wish to opt-out of the settlement.**
2. Attach evidence available to establish your ownership of rights in the musical work in Canada (for example, a SOCAN registration or royalty statement).
3. Attach copies of any publishing agreements which are applicable to each musical work. If you are a party to a publishing agreement that gives any third party the right to administer your share of the copyright in any musical work, or to conduct or settle litigation in relation to that work, you may not be legally entitled to opt-out in relation to that work.
4. If the musical work(s) are not subject to a publishing agreement, please complete the following statutory declaration.

I, \_\_\_\_\_, solemnly declare that the musical work(s) listed in Schedule A attached – or the works specified below, if not all the works listed in Schedule A – are not subject to any agreement pursuant to which any third party (including but not limited to a professional music publishing company, and including any entity owned or controlled by me) is entitled to license, administer and/or collect royalties in relation to all or any part of the percentage of copyright in the musical work that is owned or controlled by me (a “Publishing Agreement”), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath. I understand and accept that swearing a false declaration and/or including false information with this declaration constitutes unlawful perjury.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DECLARED BEFORE ME

\_\_\_\_\_  
at \_\_\_\_\_  
this \_\_\_\_ day of \_\_\_\_\_  
2011.

\_\_\_\_\_  
*Commissioner for Taking Affidavits*  
*(or as may be)*

\_\_\_\_\_

Please send the completed opt-out form by mail or fax to the following:

Harrison Pensa <sup>LLP</sup>  
Attention: Jonathan J. Foreman  
450 Talbot Street  
P.O. Box 3237  
London, ON N6A 4K3

Tel: 1-866-924-5859  
Fax: 519-667-3362

**Note: In order to opt-out of the action, this form must be properly completed and received by the Class Counsel, no later than Tuesday, August 2, 2011**

## SCHEDULE “A”

This form is to be completed separately in relation to each musical work  
in respect of which the class member wishes to opt-out.

Title of Musical Work: \_\_\_\_\_

Any other title by which the Musical Work is known, if applicable: \_\_\_\_\_

Name(s) of composer(s) of the Musical Work: \_\_\_\_\_

Name(s) of lyricist(s) of the Musical Work: \_\_\_\_\_

Percentage of copyright in the Musical Work owned or controlled by you: \_\_\_\_\_

International Standard Musical Work Code (ISWC), if known: \_\_\_\_\_

Provide the following information in relation to each product on which the musical work appears, if known:

Title of Product	Recording Artist(s) under whose name product was released	Record Label	Label Catalogue Number	Universal Product Code (UPC)	International Code Product Number (ICPN)	International Standard Recording Code (ISRC) of Musical Work



