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Via CM/ECF

October 27, 2023

Honorable J. Paul Oetken
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

*Re: National Association of the Deaf, et al., v. SiriusXM Holdings, Inc., et al.,
No. 1:21-cv-10542-JPO (S.D.N.Y.), Joint Status Letter*

Your Honor,

Pursuant to ECF No. 58, the Parties submit the following joint status letter.

Joint Position on Expert Discovery:

On October 6, 2023, in accordance with the Court's scheduling order, Plaintiffs served their expert disclosure of Thomas Logan. Defendants noticed Mr. Logan's deposition on October 26, 2023 and the Parties will work to schedule his deposition promptly. Defendants did not serve a rebuttal expert report. Subject to the expert's availability to sit for a deposition, the Parties believe they will meet the current deadline for the close of expert discovery of November 17, 2023.

Plaintiffs' Position on Settlement Conference Referral:

Without disclosing confidential settlement conversations, Plaintiffs are hopeful that further settlement conversations, including referral to a magistrate judge or the Court's mediation program, would be fruitful and permit a resolution of the case without the Parties spending significant additional resources on further litigation, including motion practice. Unfortunately, as of the date of this letter, it is not clear to Plaintiffs whether Defendants are or are not willing to discuss the possibility of settlement at this time.

Pursuant to this Court's Order, the Parties held a telephonic settlement conference on October 16, 2023.¹ Following the conference, on October 18, Plaintiffs requested via letter that

¹ The Parties initially scheduled to meet on October 5, 2023, within the deadline to discuss settlement ordered by the Court. ECF Nos. 57, 58. The conference was rescheduled to October 16, 2023, pursuant to a consented-to request by Defendants to extend the deadline for this conference. ECF No 59.

Defendants provide additional information about their interest in engaging in settlement discussions as their intent was not clear from the Parties' call. Defendants did not respond to this letter. After Plaintiffs reached out again on October 26, Counsel for the Parties conferred via telephone, at which time Defendants' counsel indicated they need additional time for their clients to decide if and how to respond to Plaintiffs' most recent settlement draft. Plaintiffs provided Defendants with this settlement draft in August 2022, and have reminded Defendants that we did so on October 20, 2022, and on October 4, 2023.

Throughout this case, Plaintiffs have been willing to negotiate with Defendants. Plaintiffs remain willing and would welcome a referral to the magistrate judge or the Court's mediation program for a settlement conference and temporary adjournment of the deadlines for summary judgment if Defendants confirm they intend to and will, in good faith, engage in the process. While Defendants' Answer in this case, filed in August 2022, states that Defendants are in the process of figuring out a plan to provide transcripts and/or captions for some podcasts in their podcast catalogue, fact discovery has now closed and there is no evidence of the contours of a plan in the record. Given the lack of clarity on whether Defendants' plan means there is currently common ground for settlement negotiations, Defendants' inability to confirm whether they are willing to discuss settlement within the timeframe set by the Court, and the upcoming deadlines for the closure of expert discovery and summary judgment, Plaintiffs believe it would be beneficial for the Parties to have a conference before Your Honor. We respectfully request one be scheduled at the Court's convenience to discuss the possibility of the settlement conference referral.

Given the uncertainty regarding the prospects for settlement, and to ensure that there are no unnecessary delays in this litigation, Plaintiffs believe that it would be beneficial to use this conference also to discuss this Court's individual rules regarding seriatim cross-motions for summary judgment and a schedule for such cross-motions.

Defendants' Position on Settlement Conference Referral:

As Plaintiffs are aware, the Defendants have been working to provide accessibility aids on the podcast content available on their platforms. These efforts have been ongoing and are continuing; the accessibility aids are expected to be released later this year. Defendants' counsel discussed this with Plaintiffs' counsel during the Parties' settlement conference and agreed to provide Plaintiffs with more detailed information as it becomes available from the Defendants Product and Technology Group; Defendants have not been able to do so as of today.

It is Defendants' position that it is thus premature for referral to the Magistrate Judge or the Court's mediation program until the Parties have an opportunity to discuss additional details regarding the forthcoming accessibility aids. Accordingly, Defendants respectfully request the opportunity to submit another status update by or before November 10, at which time the Parties will have a better sense of whether referral to the Magistrate Judge or to the Court's mediation program will be productive.

At this time, Defendants do not believe that the December 8 summary judgment deadline should be extended.

Respectfully submitted,

/s/ Joshua Rosenthal
Joshua Rosenthal
Disability Rights Advocates
For Plaintiffs

/s/ Allison Waks
Allison L. Waks
Jones Day
For Defendants