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October 20, 2015

Via E-Mail (to John@debeyinvestments.com)

Mr. John Guerrier De'Bey
President & COO
De'Bey Music Investments

Re: *Merlin's Withholding of Vevo Royalties For Fraud By VIDYPS 79 Artists*

Dear Mr. Guerrier De'Bey,

I am in receipt of your e-mail of yesterday. I write to point out certain legal and factual inaccuracies therein.

VIDYPS 79 d.o.o. ("VIDYPS"), as a record label and aggregator of video content, is responsible for ensuring that (a) the content that it provides to VEVO pursuant to VEVO's license with MERLIN, is non-infringing, and (b) VIDYPS and/or the creators of the content delivered by VIDYPS do not violate VEVO's terms of use, or cause MERLIN and/or VIDYPS to breach Merlin's agreement with VEVO. Activities designed to artificially inflate views of the videos delivered by VIDYPS, thereby defrauding VEVO by inducing VEVO to pay royalties that it would not otherwise be obligated to pay, are plainly in violation of VEVO's terms of use and MERLIN's agreement with VEVO.

You cannot seriously dispute that your artists Axl Hazarika and Elektrokore Music (the "VIDYPS Artist Fraudsters") committed fraud by artificially inflating views of their videos and, as a result, VIDYPS was paid moneys by MERLIN to which it was not entitled. Rather, you argue that (a) VIDYPS is not obligated to repay the money to which it was not entitled because it has already paid the money to the VIDYPS Artist Fraudsters and can't get it back; (b) MERLIN is withholding moneys that belong to other VIDYPS artists that did not commit fraud; and (c) it is VEVO and not MERLIN that has the right to repayment and only VEVO has standing. None of these arguments has any merit.

First, the fact that the VIDYPS Artist Fraudsters have already been paid for their fraudulent activity does not mean that MERLIN should be the party that is out of pocket as a result. The indemnities flow down the chain: MERLIN indemnified VEVO for and with respect to its actions and the content it is licensing; VIDYPS indemnified MERLIN for and with respect to its

actions and the content it delivers; and, presumably, the VIDYPS Artist Fraudsters indemnified VIDYPS. That the VIDYPS Artist Fraudsters may be judgment proof or may have absconded with the money paid to them by their record label VIDYPS is a risk borne by VIDYPS and, frankly, is VIDYPS's problem, not MERLIN's. Why you believe MERLIN should be responsible for absorbing the loss occasioned by a fraud committed by certain of your label's artists is beyond me.

Second, VEVO paid royalties to MERLIN, who in turn (ignorant of the VIDYPS Artist Fraudsters' fraudulent activities) paid the sum it believed due under MERLIN's Membership Agreement with VIDYPS, dated October 2, 2012 ("VIDYPS's Merlin Membership Agreement") to VIDYPS, which is the party with whom MERLIN has the contractual relationship. When VIDYPS is paid moneys to which it is not entitled (because, for example, one of VIDYPS's artists committed fraud, or delivered infringing content) MERLIN's legal recourse is to withhold moneys from VIDYPS, the party with whom it is in contractual privity. *See, e.g.*, VIDYPS's Merlin Membership Agreement, Cl. 6.4. It is not obligated to chase VIDYPS's artists for the money. That is, again, VIDYPS's concern. But VIDYPS needs to reimburse MERLIN. And while you claim that by withholding money from VIDYPS MERLIN is somehow taking money from other VIDYPS artists who have not committed fraud, in reality, if those other artists do, in fact, go unpaid, that is VIDYPS's fault. VIDYPS can pay MERLIN the $93,582.18 that it owes MERLIN (in which case, the other moneys on hold will be released) or it can pay its other artists the shortfall, and it can then seek to recoup its losses from the VIDYPS Artist Fraudsters. What it has no right to do is to saddle MERLIN with the loss. VIDYPS's artists are in contractual privity with VIDYPS, not MERLIN, and it is VIDYPS's obligation to pay them. If an artist steals from his label, the label can't say to its other artists "Sorry, I can't pay you this week because one of our artists stole money from us."

Third, your argument that only VEVO has standing is meritless. VEVO has already deducted from MERLIN's account $95, 981.72 that it had been fraudulently induced by your label's artists to pay. Thus, the claim plainly belongs to MERLIN, and only MERLIN has been damaged and has standing to sue.

Finally, with respect to your threat to file a "class action lawsuit," what exactly would this "class" consist of? We are dealing with an outstanding amount of $93,582.18. If there is a legal issue, it is whether MERLIN or VIDYPS is to absorb that loss which was occasioned by the fraud of the VIDYPS Artist Fraudsters. While we believe it is clear that the loss is VIDYPS's to bear, any legal action would be between two parties fighting about a sum certain (which is less than the federal jurisdictional threshold amount). Even if somehow certain of VIDYPS's other artists were entitled to be plaintiffs in such an action, that would not make the action a "class"

action as, presumably, you can identify all of your artists who you claim have not been paid and name them.

The foregoing is not a complete recitation of all of MERLIN's claims, defenses, or remedies, all of which are expressly reserved.

Very truly yours,

Frank P. Scibilia

cc: Charlie Lexton, Esq.