

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 9<sup>th</sup> day of January, 1991, by and between the State of New York, by Robert Abrams, Attorney General, the State of Maryland, by J. Joseph Curran, Jr., Attorney General ("the Attorneys General") and Mitsubishi Electronics America, Inc. (hereinafter referred to as "MELA"). The terms of this Settlement Agreement shall be available to all States and the District of Columbia as provided under the terms of Section 7 herein.

WHEREAS, the Attorneys General will, within 20 days of the execution of this Settlement Agreement or no earlier than February 1, 1991, whichever is later, file a Complaint for damages and injunctive relief against MELA, alleging violations of federal and state antitrust laws on their own behalf and as parens patriae on behalf of natural person citizens of New York State and Maryland who have purchased Mitsubishi Products, as defined herein, during the period of the alleged conspiracy;

WHEREAS, MELA denies the allegations set forth in the Attorney Generals' Complaint; and

WHEREAS, the parties have determined it to be in their best interests to resolve this dispute and enter into this Settlement Agreement;

NOW, THEREFORE, WITNESSETH:

SECTION 1. DEFINITIONS

As used herein:

A. "Mitsubishi Product" or "Mitsubishi Products" means all consumer electronic products distributed by the Audio/Video Division of Mitsubishi Electric Sales America, Inc. (hereinafter referred to as "MESA"), which was merged into MELA on August 1, 1990, under the Mitsubishi or MGA brand names for which manufacturer's suggested prices or minimum advertised prices were issued by MESA to authorized Mitsubishi dealers who resold such products to end-user consumers.

B. "Relevant Mitsubishi or MGA Products" means the consumer electronics products distributed by the Audio/Video Division of MESA identified in Attachment A hereto.

C. "Qualified Purchaser" means a natural person or a Plaintiff that is a consumer (not a corporation, partnership, sole proprietorship or other business entity) and that was the initial purchaser of one or more of the Relevant Mitsubishi or MGA Products between January 1, 1988 and December 31, 1988 and, in the event that the Qualified Purchaser is a natural person, resided within the States of New York or Maryland or any Settling State, as defined herein, at the time of such purchase or purchases, and purchased the Relevant Mitsubishi or MGA Product or Products for other than a business use.

D. "Plaintiffs" means the States of New York and Maryland in their sovereign and proprietary capacities, on behalf of their bureaus, agencies and departments, and as parens patriae on behalf of all natural person citizens of New York State and Maryland who purchased Mitsubishi Products between January 1, 1988 and December 31, 1988.

E. "Defendant" means Mitsubishi Electronics America, Inc. ("MELA") and its successors and assigns, subsidiaries, divisions and other organizational units of any kind, which sold Mitsubishi Products, and its officers, directors, employees, agents, representatives and other persons acting on its behalf.

F. "Settlement Account" means an interest-bearing escrow account established by Plaintiffs and Defendant and administered by a Trustee appointed pursuant to paragraph 4L for the purpose of implementing this Settlement Agreement. The principal of the Settlement Account shall be funded as described in Section 4.

G. "Administration Costs" means all out-of-pocket expenses reasonably necessary to administer this Settlement Agreement and pay valid claims of Qualified Purchasers including, but not limited to, notice by first class mail to all potential Qualified Purchasers identified pursuant to this Settlement Agreement, notice by publication, printing and copying, review and verification of claims, postage and mailing costs.

H. "Administration Account" means an interest-bearing account established by Plaintiffs and Defendant and administered by a Trustee appointed pursuant to paragraph 4L for the purpose of paying Administration Costs. The principal of the Administration Account shall be funded as described in Section 4.

I. "Settling States" means those States and the District of Columbia which opt to enter into the terms of this Settlement Agreement as provided in Section 7B.

SECTION 2. AGREEMENT

Subject to the approval of the Court, the parties agree to compromise, settle and resolve fully and finally, any and all claims, actions or causes of action arising under any federal or state antitrust laws which are alleged in the Complaint attached hereto or in any complaint subsequently filed by any Settling States, which Plaintiffs or Settling States had, now have, or may have against Defendant as of the date of this Settlement Agreement.

SECTION 3. INJUNCTION

A. MELA agrees that, for a period of five (5) years from the date of this Settlement Agreement, it will not, in violation of any federal, New York or Maryland antitrust laws, enter into any contract, combination, conspiracy, agreement or arrangement with any New York or Maryland dealer to fix, lower, raise, peg, maintain or stabilize the retail prices at which Mitsubishi Products are sold to end-user consumers.

B. MELA agrees that, for a period of five (5) years from the date of this Settlement Agreement, it will not terminate, fail to fill orders of, or discriminate in delivery, credit or other terms provided to any authorized New York or Maryland dealer of Mitsubishi Products in order to coerce said dealer to adhere to any of MELA's suggested retail pricing policies in circumstances in which such conduct would constitute a violation of any federal, New York or Maryland antitrust laws.

C. ME LA agrees that, for a period of five (5) years from the date of this Settlement Agreement, it will not require any authorized New York or Maryland dealer to tag Mitsubishi Products with the manufacturer's suggested price without notifying such dealers that it is their right to determine independently the prices at which they will sell Mitsubishi Products to end-user consumers and that, in addition to the manufacturer's suggested price, such dealers may display a different price on the same or a different tag.

D. Within twenty (20) days after the Court enters the Final Judgment and Consent Decree in this matter (the "Final Judgment"), ME LA agrees to send the letter affixed as Attachment B hereto to all of its then current authorized New York and Maryland dealers of Mitsubishi Products.

E. For a period of five (5) years from the date of this Settlement Agreement, ME LA shall notify its authorized dealers of Mitsubishi Products that it is their right to determine independently the prices at which they will sell Mitsubishi Products to end-user consumers by affixing a notice of disclosure (the "Disclosure") to every list of suggested retail prices and minimum advertised prices for any Mitsubishi Product printed subsequent to the date of this Settlement Agreement. The Disclosure shall be in language substantially similar to that set forth in Attachment C hereto, in bold-face type, no smaller than the type-face used to print the language the Disclosure is intended to modify.

F. This Settlement Agreement shall not be construed in any way to limit the right of MELA to suggest to its authorized dealers retail prices for Mitsubishi Products or to engage in any other conduct that is otherwise permitted by federal, New York or Maryland antitrust laws.

SECTION 4. MONETARY PAYMENTS

A. No later than ten (10) days after the Court's preliminary approval of this Settlement Agreement, MELA shall pay into the Administration Account the sum of one million dollars (\$1 million) which, together with interest accrued thereon, will be used for the purpose of paying Administration Costs ("the administration payment"). The parties agree to undertake mutual best efforts to minimize the Administration Costs and to ensure that the administration payment will be sufficient to pay the Administration Costs, consistent with providing fair and adequate notice to all members of the parens patriae group and complying fully with all notice and settlement administration procedures agreed to herein. No additional payments shall be made by MELA into the Administration Account except as set forth in paragraph 4H. The balance, if any, remaining in the Administrative Account at the conclusion of the notice and claims period, including any interest accrued thereon, shall be returned to MELA.

B. No later than ten (10) days after the Court's final approval of this Settlement Agreement and the expiration of the time for any appeals, MELA shall pay into the Settlement Account the sum of five million dollars (\$5 million). However, in the

event that an appeal is filed within this period, this sum shall be placed in an interest bearing escrow account until the Court determines, after considering the merits of the appeal and the balance of hardships, whether such appeal shall stay further proceedings under this Settlement Agreement, including the distribution of refunds to consumers. Should such stay be issued, the \$5 million plus interest shall remain in the escrow account until the lifting of such stay or the final resolution of such appeal. Should no stay be issued, the \$5 million shall forthwith be paid into the Settlement Account.

C. MELA's payments under paragraphs 4B, 4G and 4H have been determined to be in an amount to satisfy valid claims of Qualified Purchasers under the procedures described herein. MELA is making payment into the Settlement Account solely as compensatory damages. Plaintiffs have not sought the imposition of criminal or civil fines or penalties (or payments in lieu thereof) as parts of the settlement. Payments hereunder do not constitute, nor shall they be construed as or treated as, payments in lieu of treble damages, fines, penalties, punitive recoveries or forfeitures.

D. No later than thirty (30) days after the Court's final approval of this Settlement Agreement, MELA shall reimburse the States of New York and Maryland for the investigative costs and attorneys fees incurred by those States in the amount of \$75,000 to each State.

E. All Qualified Purchasers of Relevant Mitsubishi and MGA Products who make valid claims or who are otherwise eligible to receive Consumer Refunds under Section 5 shall be paid in the amounts specified in the schedule below, except where the Attorney General of any Plaintiff or Settling State increases the payment pursuant to paragraph 4J(1) (the "Consumer Refund"):

SCHEDULE OF CONSUMER REFUNDS

Model No. CS 1345	\$20 per item
Model No. CS 1945	24 per item
Model No. CS 2045	27 per item
Model No. CS 2013	37 per item
Model No. CS 2014	37 per item
Model No. CS 2054	42 per item
Model No. CS 2653	54 per item
Model No. CS 2654	54 per item

The foregoing Consumer Refunds to Qualified Purchasers who present valid claims or who are otherwise eligible to receive Consumer Refund payments shall be paid from the Settlement Account.

F. MELA has represented to the Plaintiffs that it believes that MESA sold approximately 242,654 units of Relevant Mitsubishi and MGA Products to authorized dealers in all of the States and the District of Columbia during the period January 1, 1988 through December 31, 1988. These approximately 242,654 units are the only units for which Consumer Refunds may be paid.



G. In the event that valid claims of Qualified Purchasers in all of the Plaintiffs and Settling States exceed the amount, plus interest accrued thereon, deposited in the Settlement Account pursuant to paragraph 4B, MELA shall make additional payments to the Settlement Account as necessary to pay valid claims of Qualified Purchasers in the amounts specified in the Schedule of Consumer Refunds set forth in paragraph 4E, subject to the provisions of paragraph 4J. Such additional payments by MELA shall not exceed a total of \$2.95 million.

H. In the event that more than approximately 242,654 units of Relevant Mitsubishi and MGA products were sold by MESA to authorized dealers during the period January 1, 1988 through December 31, 1988, MELA shall pay such additional sums into the Settlement Account, including accrued interest thereon, as necessary to reimburse an equal number of Qualified Purchasers making valid claims or who are otherwise eligible to receive Consumer Refunds under Section 5, in the amounts specified in the Schedule of Consumer Refunds set forth in paragraph 4E, and make such a proportionate additional payment into the Administration Account.

I. An amount not to exceed \$50,000 shall be drawn from the Administration Account and placed in an account for a period of nine months after the day of Final Judgment to enable the Trustee to pay miscellaneous Administration Costs that may arise, with the balance to be distributed to MELA at the end of nine months in accord with Paragraph 4A. An amount not to exceed \$50,000 shall likewise be drawn from the Settlement Account and placed in an account for a period of nine months after the day of

Final Judgment to enable the Trustee to pay late claims, with the balance to be distributed to Plaintiffs and Settling States in accord with Paragraph 4J.

J. Plaintiffs and Settling States shall be entitled to the funds in the Settlement Account as of the date of Final Judgment. If all valid claims for Consumer Refunds made by Qualified Purchasers are not sufficient to exhaust the \$5 million Settlement Account specified in paragraph 4B, the residue of such Settlement Account and interest accrued thereon ("the residue") shall first be used to pay Administration Costs, if any, in excess of the administration payments provided for in paragraph 4A, and second shall be used and disposed of as follows: The Attorney General of each Plaintiff or each Settling State shall determine the use and disposition of such portion of the residue which equals the entire residue multiplied by such State's percentage share of the national sales of the Relevant Mitsubishi and MGA Products, as specified in Attachment D hereto. That portion of the residue may be used by each Plaintiff and Settling State solely for one or more of the following purposes, as determined by the Attorney General of each Plaintiff and each Settling State, at her or his exclusive option:

(1) Increased Consumer Refunds to Qualified Purchasers who have filed claims, on a proportional or per capita basis, and/or the first class postage costs for each such Qualified Purchaser;

(2) Antitrust enforcement by the Attorney General of such State;

- (3) Payment into a state antitrust revolving fund;
- (4) Payment into the treasury of such State; or
- (5) Payment into a fund exclusively dedicated to assisting State Attorneys General defray the costs of experts, economists and consultants in multistate antitrust investigations and litigation.

K. MELA's payment of five million dollars (\$5 million) into the Settlement Account pursuant to paragraph 4B, any payments by MELA into the Settlement Account pursuant to paragraphs 4G and 4H hereto, and any payments by MELA into the Administration Account under paragraphs 4A and 4H, shall be reduced proportionally by the percentage share of national sales of Relevant Mitsubishi and MGA Products, as listed in Attachment D hereto, attributable to the States that do not exercise their option to enter into this Settlement Agreement under the procedures set forth in Section 7.

L. The Settlement and Administration Accounts shall be managed by a Trustee jointly appointed by the Plaintiffs and the Defendant. The Trustee shall be responsible for investing, maintaining, administering and distributing the monies of the Settlement and Administration Accounts, pursuant to the terms of this Settlement Agreement and any additional instructions made in writing by the Plaintiffs and the Defendant. The Trustee shall invest the Settlement Account in obligations of, or guaranteed by, the United States of America or any of its departments or agencies, to obtain the highest available return on investment. Subject to the approval of the Plaintiffs and Defendant, the

Trustee may make other investments offering a higher return with similar security. The Trustee shall allow representatives of the Defendant access, on reasonable terms, to all claim forms and other documents in connection with administration of the Settlement and Administration Accounts. The Trustee shall not act in a manner contrary to the terms of this Settlement Agreement.

M. Within ninety (90) days after final approval of this Settlement Agreement and entry of a Final Judgment by the Court, the Attorney General of each Plaintiff and Settling State shall mail a Consumer Refund check to every Qualified Purchaser residing in their respective State, who has presented a valid claim or is otherwise eligible to participate in the settlement pursuant to Section 5. The Consumer Refund checks shall be negotiable instruments governed by the applicable provisions of the Uniform Commercial Code and shall be valid for five (5) months from the date of issuance of the check. Each Consumer Refund check shall be in the amount specified in the Schedule of Consumer Refunds set forth in paragraph 4E for the particular product or products for which a valid claim is made.

SECTION 5. CLAIMS PROCEDURE

A. Within thirty (30) days of the date the States of New York and Maryland file their complaint against MELA, MELA will preliminarily identify by reasonable and legal means persons who are potential Qualified Purchasers by producing to the Plaintiffs:

(1) warranty cards or computer runs from warranty cards that identify retail purchasers of Relevant Mitsubishi and MGA Products between January 1, 1988, through and including December 31, 1988;

(2) records maintained by Mitsubishi dealers pursuant to paragraph III(K) of the 1988 Dealer Agreement, and produced to MECLA, that identify retail purchasers of Relevant Mitsubishi and MGA Products between January 1, 1988, through and including December 31, 1988.

B. Within thirty (30) days following preliminary approval of this Settlement Agreement by the Court, Plaintiffs will give notice of this settlement, in forms agreed to by the parties and approved by the Court, by first class mail to all persons preliminarily identified pursuant to paragraph 5A as potential Qualified Purchasers. Plaintiffs and Settling States will also give notice of this settlement by publication in the form and manner set forth in the letter agreement between the States of New York and Maryland and MECLA which is attached hereto as Attachment J, provided that the notice form and manner specified in Attachment J is approved by the Court.

C. Except as provided in paragraph 5D, a claim, within the time schedule, in a format and by a procedure agreed to by the parties and approved by the Court, must be properly made by any potential Qualified Purchaser as a condition to receiving a Consumer Refund.

D. Potential Qualified Purchasers identified pursuant to paragraph 5A(1) shall receive notice by first class mail of

their eligibility to participate in this settlement together with a letter indicating that, unless they elect not to participate in the Settlement, they will receive a Consumer Refund.

SECTION 6. COOPERATION AND IMPLEMENTATION

A. The parties shall apply to the Court for preliminary and final approval of this Settlement Agreement as soon as practicable after the execution of this Settlement Agreement. The parties to this Settlement Agreement shall have the obligation to defend this Settlement Agreement against any and all objections or challenges.

B. The parties agree to cooperate fully to implement the terms and conditions of this Settlement Agreement, and specifically to make reasonable efforts to identify potential Qualified Purchasers. MELA will request its current authorized dealers of Mitsubishi Products to produce to MELA any records maintained by said dealers and called for by paragraph 5A(2) of this Settlement Agreement.

C. Any Settling State may petition for costs and attorney's fees in an amount not to exceed one per cent (1%) of the pro rata share of the settlement of each Settling State, as determined by the percentage of each such State's share of the national sales to dealers of the Relevant Mitsubishi and MGA Products, as specified in Attachment D hereto, or a minimum of one thousand dollars (\$1,000.00) for each Settling State, which Settling States may use for any purposes. Defendant agrees not to oppose any such petition. Such attorney's fees and costs

shall be considered as Administration Costs to the extent funds are available in the Administration Account and the interest accrued thereon, without the addition of any funds from the Settlement Account as provided for in paragraph 4J.

D. The parties agree that a Final Judgment, in a form substantially similar to that attached hereto as Attachment E, may be entered by the Court following final approval of this Settlement Agreement in accordance with 15 U.S.C. § 15c.

E. Upon final approval of this Settlement Agreement and entry of the Final Judgment by the Court, Plaintiffs and Settling States will dismiss their claims against Defendant and all other defendants with prejudice. Plaintiffs and Settling States will not sue any authorized Mitsubishi dealer or other person not named as a defendant, who has made all reasonable efforts to comply with MELA's requests made pursuant to paragraph 6B, as to any of the claims alleged in the Complaint.

F. Within ten (10) days after entry of the Final Judgment by the Court and the expiration of the time for any appeals, Plaintiffs and Settling States shall execute and deliver to MELA a Release of all claims against Defendant in the form attached hereto as Attachment F. However, in the event that an appeal is filed within this period and such appeal stays further proceedings under this Settlement Agreement, the release shall not be executed until the lifting of such stay or the final resolution of such appeal.

G. This Settlement Agreement shall not be used or construed by any person as an admission of liability by MELA to any party or person.

H. If for any reason this Settlement Agreement is not approved by the Court, is disapproved on any appeal, or is voided pursuant to Section 9, all payments into the Settlement Account, the principal remaining in the Administration Account, and all interest on both accounts, shall be refunded to MELA. In either event, Plaintiffs shall retain full rights to assert any and all causes of action against MELA and all dealers of Mitsubishi Products.

SECTION 7. BENEFIT AND BINDING EFFECT

A. The terms of this Settlement Agreement shall be binding on, and shall inure to the benefit of, the parties and their successors. The parties expressly disclaim any intention to create rights under this Settlement Agreement that may be enforced by any other person under any circumstances whatsoever, except as specified by paragraph 7B.

B. The terms of this Settlement Agreement may be entered into by the Attorney General of any State, including the Corporation Counsel of the District of Columbia, who within sixty (60) days after the execution date of this Settlement Agreement, takes the following action (the "Settling Attorneys General"):

(1) (a) Executes a Settlement Agreement, in the form of Attachment I hereto, and

(b) Files the executed Settlement Agreement and a Complaint against MELA, substantially in the form of Attachment G hereto, alleging an unlawful conspiracy to fix, maintain or stabilize resale prices of Mitsubishi Products in



violation of the antitrust laws, in the United States District Court for the District of Maryland as a related case hereto, and executes a release substantially in the form of Attachment F hereto; or

(2) Designates the Attorney General of the State of New York or the Attorney General of the State of Maryland or both to represent such State pursuant to § 4G of the Clayton Act, 15 U.S.C. § 15g, and to file a Complaint and sign a Settlement Agreement on behalf of such State; and serves notice, substantially in the form of Attachment H hereto, by first class mail upon Defendant and the States of New York and Maryland expressly notifying them of its intent to participate in the terms of this Settlement Agreement.

C. MELA shall sign each Settlement Agreement with a Settling Attorney General in the form of Attachment I hereto within ten (10) business days after receipt of notice pursuant to paragraph 7B.

#### SECTION 8. TERM

This Settlement Agreement shall become effective as of the day and year first written above, and shall terminate five (5) years after the date hereof.

#### SECTION 9. AGREEMENT VOIDABLE

A. This Agreement may be voided at the option of either MELA or jointly by the Attorneys General of New York and Maryland if, by the expiration of ninety (90) days after its

execution, the Attorneys General of a number of states accounting for eighty per cent (80%) of the national sales of Relevant Mitsubishi and MGA Products to dealers, as set forth in Attachment D hereto, have not adopted the terms herein by following the procedures of paragraphs 7B(1) or 7B(2).

B. Defendant must exercise its option to void this Settlement Agreement by notifying the Attorneys General of the States of New York and Maryland in writing within ten (10) days after the expiration of the ninety day (90) opt-in period described in paragraph 9A. The Attorneys General of New York and Maryland must jointly exercise their option to void this Settlement Agreement by notifying MELA in writing within ten (10) days after expiration of said ninety day period. This Settlement Agreement shall not be voidable after the expiration of said ten (10) day period. The parties shall not submit this Settlement Agreement to the Court for its preliminary approval until said ten (10) day period has expired with neither party having elected to void this Settlement Agreement.

#### SECTION 10. MISCELLANEOUS

This Settlement Agreement and the Attachments contain the entire agreement and understanding of the parties. There are no additional promises or terms of the Settlement Agreement other than those contained herein. This Settlement Agreement shall not be modified except in writing signed by each of the parties hereto or by their authorized representative.

AGREED AND CONSENTED TO:

DATED:

January 9, 1991

Mitsubishi Electronics  
America, Inc.

By:

Richard A. Whiting

RICHARD A. WHITING  
STEPTOE & JOHNSON  
COUNSEL FOR MELA

DATED:

New York, New York  
January 7, 1991

ROBERT ABRAMS  
ATTORNEY GENERAL  
OF THE STATE OF NEW YORK

By:

Lloyd Constantine

LLOYD CONSTANTINE  
ASSISTANT ATTORNEY GENERAL  
CHIEF, ANTITRUST BUREAU

DATED:

January 8, 1991

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL OF THE  
STATE OF MARYLAND

By:

Robert N. McDonald

ROBERT N. MC DONALD  
ASSISTANT ATTORNEY GENERAL  
CHIEF, ANTITRUST DIVISION

SO ORDERED: \_\_\_\_\_  
(Preliminary Approval)

SO ORDERED: \_\_\_\_\_  
(Final Approval)

Preliminary  
Approval by  
letter dated  
4/30/91 (attached)  
NO SIGNATURE ON  
SETTLEMENT AGREEMENT