

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

IN RE: COMPACT DISC MINIMUM
ADVERTISED PRICE ANTITRUST
LITIGATION

: MDL Docket No. 1361
: Judge D. Brock Hornby
:
: THIS DOCUMENT APPLIES
: TO ALL ACTIONS EXCEPT
: TROWBRIDGE et al. v. SONY
: MUSIC ENTERTAINMENT
: INC., et al., Docket No. 01-CV-
: 125-P-H

**AGREEMENT OF SETTLEMENT AND RELEASE WITH
MTS, INC. d/b/a TOWER RECORDS**

This Settlement Agreement, dated as of September 27, 2002, is made and entered by and among the following parties (as defined further in Section III, Paragraph 1) to the above-entitled Litigation: (i) the Plaintiff States, by and through their Attorneys General; (ii) the Named Class Plaintiffs (on behalf of themselves and each member of the Plaintiff Settlement Class), by and through their counsel of record in the Litigation; and (iii) MTS, Inc. d/b/a Tower Records ("Tower") by and through its counsel of record in the Litigation. This Settlement Agreement is intended by the parties to fully, finally and forever resolve, discharge and settle the Released Claims (as defined herein), upon and subject to the terms and conditions hereof.

**I. CLAIMS OF THE PLAINTIFF STATES
AND PLAINTIFF SETTLEMENT CLASS**

The Plaintiff States and the Named Class Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence developed to date in the Litigation supports the claims asserted. Nevertheless, counsel for the Plaintiffs recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against Tower through trial and

appeals. After conducting an extensive investigation involving substantial party and third-party discovery into the facts and issues raised by the Litigation, including Tower's financial condition, counsel for the Plaintiffs believe that the settlement set forth in this Settlement Agreement confers substantial benefits upon, and is in the best interests of, the Plaintiffs. Counsel for the Plaintiffs consider the settlement set forth in the Settlement Agreement to be fair, reasonable, and adequate, and in the best interests of the Plaintiffs.

II. TOWER'S DENIALS OF WRONGDOING AND LIABILITY

Tower believes that the claims asserted in the Litigation are meritless, and, consequently, has denied and continues to deny each and all of the claims and contentions alleged by the Plaintiffs, or arising from the activities, conduct, statements, acts or omissions alleged or that could have been alleged in the Litigation. Nonetheless, Tower has concluded that further conduct of the Litigation would be protracted and expensive. Tower has also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Litigation and has therefore determined that it is desirable and beneficial to it that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

III. TERMS OF SETTLEMENT AGREEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among counsel for the Plaintiff States and the Named Class Plaintiffs, and Tower, by and through its counsel of record, that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed on the merits and with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

FOR PURPOSES OF SETTLEMENT ONLY, and as used in this Settlement Agreement, the following terms shall have the meanings specified below:

1.1 "Alternative Distribution Plan" means the plan or method of allocating the portion of the Settlement Fund attributable to this Tower settlement, should the Distributor Defendants not settle or should the Distributor Defendants' settlement be terminated or canceled and the Distributor Defendants' remaining portion of the Settlement Fund returned to them. If the Distributor Defendants do not settle, this plan will be submitted to the court with the motion for preliminary approval of the Settlement Agreement, but is not part of the Settlement Agreement. If the Distributor Defendants' settlement is terminated or canceled, this plan will be submitted to the court within 45 days of such termination or cancellation. Plaintiffs will provide a substantially final copy of this plan to Tower at least ten (10) business days prior to filing it with the Court.

1.2 "BMG" means Bertelsmann Music Group, Inc.

1.3 "Cy Pres Distribution Plan" means the state-specific plan or method of allocation of that portion of the Settlement Fund (after payment of attorneys' fees, costs, and expenses) designated in the Distribution Plan or Alternative Distribution Plan for *cy pres* distribution. This Plan will be submitted to the Court with the motion for final approval of the Settlement Agreement and is not part of the Settlement Agreement. Plaintiffs shall provide Tower with a copy of the Cy Pres Distribution Plan at least ten (10) business days prior to filing their motion for final approval of the Settlement Agreement.

1.4 "Distribution Plan" means the plan or method of allocation of the Settlement Fund (after payment of attorneys' fees, costs, and expenses). This plan will be submitted to the Court with the motion for preliminary approval of the Settlement Agreement and is not part of this Settlement

Agreement. Plaintiffs will provide a copy of this plan to Tower at least ten (10) business days prior to filing it with the motion for preliminary approval of the Settlement Agreement.

1.5 "CD" means album-length prerecorded music compact discs.

1.6 "Cooperative Advertising or Other Promotional Funds" means any payment, rebate, charge-back or other consideration provided to a retailer by a Distributor Defendant in exchange for any type of advertising, promotion or marketing efforts by the retailer on behalf of a Distributor Defendant. This term also includes advertising, promotion, or marketing efforts by a Distributor Defendant on behalf of one or more identified retailers. Examples of cooperative advertising include, but are not limited to, free goods provided to a retailer by a Distributor Defendant, and payments for newspaper advertisements, radio and television advertisements, internet banner advertisements, posters and signs within a retailer's stores, pricing or positioning of Music Products within a retailer's stores, and point-of-purchase merchandising.

1.7 "Controlling Percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of Tower's capital stock issued, outstanding, and entitled to vote for the election of directors.

1.8 "Defendants" means all of the defendants named in the Litigation.

1.9 "Distributor Defendants" means EMD, WEA, Universal, Sony and BMG.

1.10 "Effective Date" means the first date by which all of the events and conditions specified in Paragraph 7.1 of this Settlement Agreement have been met and have occurred.

1.11 "EMD" means Capitol Records, Inc., EMI Music Distribution, Inc., Virgin Records America, Inc., Priority Records L.L.C. and all of their predecessors, successors, parents, subsidiaries, divisions, officers, directors, employees or agents, and related or affiliated entities.

1.12 "Escrow Agent" means Fifth Third Bank, whose duties are described more fully in Paragraph 3 below.

1.13 "Final", with respect to the Judgment to be rendered by the Court, means: (i) the date of final affirmance on an appeal of the Judgment, the expiration of the time for a petition for or a denial of a writ of certiorari to review the Judgment and, if certiorari is granted, the date of final affirmance for the Judgment following review pursuant to that grant; or (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceedings on certiorari to review the Judgment; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Judgment, *i.e.*, thirty (30) days after entry of the Judgment. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to the Distribution Plan, Alternative Distribution Plan, and/or application for attorneys' fees, costs or expenses, shall not in any way delay or preclude the Judgment from becoming final.

1.14 "Judgment" means the judgment to be rendered by the Court, substantially in the form attached hereto as Exhibit 1.

1.15 "Judgment Note" means the executed judgment note by Tower attached hereto as Exhibit 4.

1.16 "Lead Counsel for Plaintiff States" means Florida State Attorney General Robert Butterworth, c/o Lizabeth Leeds, PL-01, The Capitol, Tallahassee, Florida 32399-1050, and New York State Attorney General Eliot L. Spitzer, c/o Linda Gargiulo, Office of the Attorney General, 120 Broadway, New York, New York 10271-0332.

1.17 "Lead Counsel for the Plaintiff Settlement Class" means Joseph C. Kohn and Steve Steingard, KOHN, SWIFT & GRAF, P.C., One South Broad Street, Suite 2100, Philadelphia, PA 19107.

1.18 "Lead Counsel for Plaintiffs" means Lead Counsel for Plaintiff States and Lead Counsel for the Plaintiff Settlement Class.

1.19 "Litigation" means the actions consolidated for pretrial purposes in this Multi District Litigation ("MDL") proceeding, listed on Exhibit 2 hereto, and not including, *Trowbridge, et al. v. Sony Music Entertainment, Inc.*, Docket No. 01-CV-125-P-H.

1.20 "MAP" means Minimum Advertised Price, and includes all Minimum Advertised Price programs and policies solicited, adopted, administered, or enforced by any Defendant in this Litigation.

1.21 "Music Product" means prerecorded music CDs, cassettes, and/or vinyl albums.

1.22 "Named Class Plaintiffs" means the plaintiffs named in the private class action lawsuits consolidated for pretrial purposes in this MDL proceeding, listed on Exhibit 2 hereto, and not including the plaintiffs in *Trowbridge, et al. v. Sony Music Entertainment, Inc.*, Docket No. 01-CV-125-P-H.

1.23 "Notice Period" means the period of a minimum of forty-five (45) days, or such other time period as set by the Court, during which counsel for the Plaintiffs will disseminate notice to the natural persons in the Plaintiff States and members of the Plaintiff Settlement Class.

1.24 "Notice Plan" means a plan specifying the manner and content of the program whereby the public is notified of this Settlement Agreement. The Notice Plan shall specify the manner in which the public is notified of this settlement, which shall consist, at a minimum, of publication of notice of this settlement in newspapers and other media within ninety (90) days of entry of the Preliminary Approval Order. The Notice Plan shall also specify the form of such notice, which shall include, at a minimum, a short form notice for publication in newspapers and other media, and a long form notice to be mailed to those persons requesting more information regarding

the settlement. The Settling Parties intend that a single Notice Plan shall be developed to provide notice of this Settlement Agreement and settlements with other Defendants in the Litigation. The Notice Plan must be submitted to and approved by the Court. Plaintiffs will provide Tower a copy of the Notice Plan at least ten (10) days prior to filing the motion for preliminary approval of the Settlement Agreement.

1.25 "Plaintiffs" means the Plaintiff States and the Plaintiff Settlement Class as these terms are defined herein.

1.26 "Plaintiff Settlement Class" means all natural persons in the States of Colorado, Georgia, Kentucky, Louisiana, Nebraska, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, South Dakota, the District of Columbia and the U.S. Territories of Guam and American Samoa, and all non-natural persons or entities in the United States and its Territories who purchased Music Products from one or more Retailers during the period January 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees; and also excluding those persons or entities who timely and validly request exclusion from participation in this Litigation in response to the notice provided under the Notice Plan (i.e., those persons or entities who exercise their right to "opt out" of participation in this Litigation).

1.27 "Plaintiff States" means the States identified in Paragraph 1.37 in their sovereign capacities as *parens patriae* on behalf of all natural persons residing in the States, who purchased Music Products from Retailers during the period from January 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees, as well as those persons who timely and validly request exclusion from participation in this Litigation in response to the notice provided under the Notice Plan (i.e., those persons or entities who exercise their right to "opt out" of participation in this Litigation).

1.28 "Preliminary Approval Order" means an order, as described in Paragraph 5.2, substantially in the form of Exhibit 3.

1.29 "Prime Rate" means the average of the prime interest rates per annum of the three largest banking institutions (measured by total assets) in the continental United States then publishing a prime interest rate.

1.30 "Related Parties" means Tower's past or present directors, officers, employees, partners, principals, agents, insurers, co-insurers, reinsurers, shareholders, attorneys, including Tower's counsel, accountants, auditors, banks or investment banks, associates, personnel or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, or affiliated entities.

1.31 "Released Claims" shall mean all claims, demands, rights, liabilities, and causes of action, whether known or unknown, asserted or that could have been asserted against Tower or any of its Related Parties or any Released Persons in connection with the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act alleged in the Litigation, whether under federal law or under the laws of any of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands, including without limitation claims arising under the federal and/or state antitrust laws, as well as claims arising under any state or federal unfair acts, practices or competition laws or other laws or the common law. Released claims include without limitation any claim arising out of or relating to any minimum advertised price ("MAP") policy related to Music Products or to any conspiracy, whether horizontal or vertical, involving MAP related to Music Products and any effect of MAP on purchases of Music Products from Retailers, or any other claim related to MAP policies relating to Music Products, except that the Released Claims do not include claims arising out of or relating to direct

purchases from Music Clubs, as that term is addressed in *Trowbridge, et al. v. Sony Music Entertainment Inc., et al.*, Docket No. 01-CV-125-P-H.

1.32 "Released Persons" means Tower and all of its Related Parties.

1.33 "Retailer" means any entity, rack jobber, third-party distributor or any other person or business entity engaged in the sale, at retail, of Music Product. "Retailer" shall not include any Music Clubs, as that term is addressed in *Trowbridge, et al. v. Sony Music Entertainment, Inc.*, Docket No. 01-CV-125-P-H.

1.34 "Settlement Fund" means the fund into which Tower shall deposit all monies to be paid by Tower to Plaintiffs, in exchange for the settlement and release of all claims identified in this Settlement Agreement, together with any interest earned on such monies. This fund shall be the same as that into which Distributor Defendants shall deposit monies under their settlement agreement with Plaintiffs.

1.35 "Settling Parties" means the Plaintiffs and Tower.

1.36 "Sony" means Sony Music Entertainment, Inc.

1.37 "States" means Florida, New York, Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Mexico, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming.

1.38 "Universal" means Universal Music and Video Distribution Corporation, Universal Music Group, Inc., and UMG Recordings, Inc.

1.39 "WEA" means Time Warner, Inc., Warner-Elektra-Atlantic Corp., WEA, Inc., Warner Music Group, Inc, Warner Bros. Records, Inc., Atlantic Recording Corporation, Elektra Entertainment Group, Inc., and Rhino Entertainment Company.

1.40 "Written Direction" means a written notification directed to the Escrow Agent relating to disbursements from the Settlement Fund, signed by the Lead Counsel for Plaintiff States and Lead Counsel for Plaintiff Settlement Class. Each Written Direction shall include a certification by the Plaintiffs' Lead Counsel that the instructions in the notification are being made pursuant to a finalized Settlement Agreement.

2. The Settlement Terms

2.1 Except as provided in Paragraphs 2.1.4 and 2.1.4 (i) of this Settlement Agreement, Tower shall pay to Plaintiffs two hundred seventy-five thousand (\$275,000) in cash.

2.1.1 Tower shall make its payments in twelve (12) consecutive monthly installments; the first eleven (11) installments shall be in the amount of twenty-two thousand nine hundred sixteen dollars and 66 cents (\$22,916.66) and the twelfth (12th) installment shall be in the amount of twenty-two thousand nine hundred sixteen dollars and 74 cents (\$22,916.74). The first payment shall be made by wire transfer to the Plaintiffs, c/o the Escrow Agent, within ten (10) business days after Tower's counsel has received notice from Lead Counsel for the Plaintiff States that the Distributor Defendants and the other Retailer Defendants have executed their Settlement Agreements with the Plaintiffs. Each subsequent payment shall be made thereafter by wire transfer to the Plaintiffs, c/o the Escrow Agent, each month on the same day as that on which the first payment was made.

2.1.2 Tower may prepay any amount remaining in whole or in part without premium or penalty after affording Plaintiffs five (5) business days' written notice. No partial prepayment shall extend or postpone the due dates for any remaining payments.

2.1.3. If Tower fails to make any payment called for under this agreement, and such default continues for thirty (30) calendar days after Plaintiffs give written notice to Tower of such default, the effect of such default is as follows:

(i) Notwithstanding Paragraph 2.1.1, the remaining amounts payable by Tower to the Plaintiffs shall be accelerated, and shall become immediately due and payable without any further action, notice, demand, or protest required on the part of Plaintiffs.

(ii) Plaintiffs shall, in their sole discretion, file the Judgment Note, described below at Paragraph 2.1.7, along with any other necessary documents, in any and all federal or state jurisdictions as may be necessary for securing a lien or a levy of execution upon any or all property or earnings of Tower. However, nothing in this paragraph shall be interpreted as precluding Plaintiffs from requesting or obtaining relief from the court in this Litigation consistent with this Settlement Agreement as well once the court enters the Preliminary Approval Order, should Tower default, and then fail to cure its default within 30 days after Plaintiffs give written notice to Tower of such a default.

(iii) Tower acknowledges that the Plaintiffs rely on it to make its payments on time in accordance with this Settlement Agreement as timely payments are necessary for Plaintiffs to coordinate this settlement with other settlements in this Litigation, and arrange for the distribution of cash from this settlement and other settlements in this Litigation at a single point in time. Because a default and failure to cure by Tower would therefore deprive Plaintiffs of a material benefit of this Settlement Agreement, and because it may prove impracticable to calculate all of the losses, expenses, and distribution costs which Plaintiffs would incur from such a default and failure to cure, Tower agrees to pay a late payment charge of twenty thousand dollars (\$20,000) to compensate Plaintiffs. Tower agrees that this charge would reasonably compensate Plaintiffs for losing the

benefit of their bargain, that it is not a penalty, and that it would also constitute a reasonable estimate of the losses, expenses, and distribution costs Plaintiffs may incur should it default, and then fail to cure such default. However, excepting any interest owed under the terms of Paragraph 2.1.6, Plaintiffs will not be entitled to be reimbursed for any fees and costs, including attorney's fees, incurred in filing and enforcing the Judgment Note other than the twenty thousand dollars (\$20,000) late payment charge.

2.1.4 If, Tower should merge with, consolidate with, or be acquired by another corporation or individual, or if Tower should sell or transfer a Controlling Percentage of its capital stock to another corporation or individual, or if Tower should sell at least 70% of the fair market value of its United States assets to another corporation or individual, the effect of any such event is as follows:

(i) The amount payable under Paragraph 2.1 shall be three hundred and twenty-five thousand dollars (\$325,000), less any cash payments made to Plaintiffs pursuant to Paragraph 2.1.1, in cash by wire transfer to the Plaintiffs, c/o the Escrow Agent. This amount (or any reduced amount thereof) shall be immediately due and payable without any further action, notice, demand, or protest required on the part of Plaintiffs.

(ii) The obligation imposed by this paragraph shall continue to have force and effect until either the Effective Date of the Settlement Agreement, or the last day upon which Tower makes the payments required by Paragraph 2.1.1, or if Tower should default, and then fail to cure its default within 30 days after receiving written notice of such default, the date on which the amount owed is recovered pursuant to Paragraph 2.1.3, whichever is later.

2.1.5 Until either the Effective Date of the Settlement Agreement or, if Tower should default, and then fail to cure its default within 30 days after receiving written notice of such default,

the date on which the amount owed is recovered, whichever is later, Tower shall notify the Plaintiffs in writing immediately if any of the events specified in paragraph 2.1.4 have occurred.

2.1.6 In the event that any payments under this Settlement Agreement are not paid when due (whether at stated maturity, by acceleration after default, or otherwise), such payments shall bear interest at the Prime Rate, calculated on a per annum basis, for the period commencing on the due date until the same are paid in full, and such interest shall be payable on demand.

2.1.7 Simultaneously with the execution of this Settlement Agreement, Tower will execute and deliver to Plaintiffs the Judgment Note, a copy of which is attached hereto as Exhibit 4.

2.2 Tower warrants that, as of the date of this Settlement Agreement, it is not insolvent, nor will its payments to the Settlement Fund render Tower insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code. If a case is commenced with respect to Tower under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the payment of the principal amount of the Settlement Fund and any accrued interest, or any portion thereof, by or on behalf of Tower, to be a preference, voidable transfer, fraudulent transfer or similar transaction, then the Settlement Agreement, releases given and judgment entered in favor of Tower pursuant to this Settlement Agreement shall be voidable, at the option of the Plaintiffs.

2.3 No part of the cash payments described in this Settlement Agreement shall constitute, nor shall they be construed or treated as constituting, a payment in lieu of treble damages, fines, penalties, forfeitures or punitive recoveries.

2.4 Upon the Effective Date, all remaining interest or right of Tower in or to the Settlement Fund shall be absolutely and forever extinguished.

2.5 Injunction

2.5.1 The Settling Parties hereby agree that the Court shall enter a temporary injunction including substantially the following provisions upon preliminary approval of the Settlement, and shall enter a permanent injunction including substantially the following provisions upon final approval of the Settlement.

2.5.2 For a period of five (5) years, Tower shall not, directly, indirectly, or through any corporation, subsidiary, division, or other device:

(i) Solicit, demand, request, advocate, or encourage any Distributor or wholesaler of Music Product to adopt or implement any policy, practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price or price level at which any Music Product is advertised, promoted, offered or sold.

(ii) Solicit, demand, request, advocate, or encourage any Distributor or wholesaler of Music Product to adopt or implement any policy, practice or plan which sets the price or price level at which any Music Product is advertised, promoted, offered or sold.

(iii) Nothing in this Paragraph shall prohibit Tower from individually soliciting, demanding, requesting, advocating or encouraging any Distributor Defendant to provide Cooperative Advertising or Other Promotional Funds to Tower, or to provide any discounts, rebates, or reductions on any wholesale prices for Music Product to Tower, on the condition that such funds, or such discounts, rebates, or reductions, are passed through in whole or in part to the consumer (hereinafter "Pass-Through Funds").

2.5.3 For a period of five (5) years, Tower shall include the terms of such injunction in any and all manuals either containing any advertising policy statements applicable to the to the purchase, distribution, and/or sale of Music Products, or containing any pricing policy statements applicable to

the purchase, distribution, and/or sale of Music Products, or containing any other statements setting forth list prices, or codes indicative of such prices, applicable to Music Products. Tower shall make reasonable efforts to ensure that any employee or manager who interacts with distributors or wholesalers of Music Products as part of their regular duties are aware of the terms of the injunction.

2.6 Class Certification

2.6 Tower agrees to the certification of the Plaintiff Settlement Class for purposes of this Settlement Agreement and the settlement herein. Counsel for the Plaintiff Settlement Class shall be solely responsible for filing (but shall supply copies to Tower five (5) business days in advance of such filings) of all motions and other pleadings necessary to obtain certification of the Plaintiff Settlement Class, except that Tower shall inform the Court that it consents to such class certification.

3. Settlement Administration

3.1 The Escrow Agent for purposes of administering the Settlement Fund is Fifth Third Bank of Columbus, Ohio.

3.2 The Escrow Agent shall invest the cash payment made pursuant to Paragraph 2.1 above in obligations of, or obligations guaranteed by, the United States of America or any of its departments or agencies, or in pre-refunded or escrowed municipal bonds which are federally insured, to obtain the highest available return on investment consistent with the preservation of principal, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. Tower shall bear no risk related to the investment of the Settlement Fund.

3.3 The Escrow Agent shall only disburse the Settlement Fund pursuant to and consistent with the Court Orders preliminarily and finally approving this Settlement Agreement, and other applicable Court orders.

3.4 Subject to further order and/or directions as may be made by the Court or by the Plaintiffs pursuant to a Written Direction, the Escrow Agent is authorized to execute such transactions on behalf of the Plaintiffs as are consistent with the terms of this Settlement Agreement.

3.5 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the Court.

3.6 All costs of administering the Settlement Fund, including but not limited to notice, administering and distributing the Settlement Fund, and taxes and other expenses, are the sole responsibility of the Plaintiffs and shall be paid out of the Settlement Fund, as provided herein.

3.7 Tax Treatment of Settlement Fund

3.7.1 Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent and, as required, Settling Parties shall jointly and timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 3.7, including the "relation-back election" (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

3.7.2 For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg.

§ 1.468B-2(k and l)). Such returns (as well as the election described in Paragraph 3.7.1) shall be consistent with this Paragraph 3.7 and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 3.7.3.

3.7.3 All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Tower with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes ("Taxes"), and (ii) expenses and costs incurred in connection with the operation and implementation of this Paragraph 3.7 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph 3.7) ("Tax Expenses"), shall be paid out of the Settlement Fund; in all events Tower and its insurers shall have no liability or responsibility for the Taxes or the Tax Expenses or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority. The Escrow Agent shall indemnify and hold Tower and its insurers harmless for Taxes and Tax Expenses (including, without limitation, taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the settlement and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Plaintiffs any funds necessary to pay such amounts including the establishment for adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1) (2)); Tower and its insurers are not responsible and

shall have no liability therefor or for any reporting requirements that may relate thereto. The parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Paragraph 3.7.

3.7.4 For the purpose of this Paragraph 3.7, references to the Settlement Fund shall include the Settlement Fund and any earnings thereon.

4. Settlement Disbursements

4.1 Portions of the Settlement Fund shall be used by the Plaintiffs to pay costs (including attorneys' fees) and administrative expenses incurred in litigating against any of the defendants in the Litigation, including, but not limited to, fees, costs and administrative expenses related to implementation of this Settlement. Portions of the Settlement Fund may also be used by the Plaintiffs, with court approval, to fund litigation against any remaining, non-settling defendants in the Litigation. In particular, such portions of the Settlement Fund shall be disbursed, or as indicated below, Plaintiffs shall request court approval for disbursement of such portions of the Settlement Fund, as follows.

4.2 A portion of the Settlement Fund shall be used to pay all costs and expenses in providing proper notice of this settlement to the Plaintiffs, the fees and expenses of the Escrow Agent, the costs and expenses of administering this settlement, including without limitation, costs and expenses necessary to secure court approval of the Settlement Agreement, such as expert affidavits, and the processing and payment of claims, and all taxes. Notice and administration costs and the fees of the Escrow Agent shall be paid by the Escrow Agent out of the Settlement Fund, following entry of the Preliminary Approval Order, as these costs accrue, upon submission to the Escrow Agent of invoices for these costs.

4.3 A portion of the Settlement Fund shall be used to reimburse counsel for the Plaintiff States for attorneys' fees, expenses and costs incurred in this Litigation in an amount to be approved by the Court. Such payment shall be apportioned among the States in their sole discretion and such apportionments shall then be used by each State's Attorney General for one or more of the following purposes to be chosen at his or her sole discretion:

- a. Reimbursement of attorneys' fees and expenses incurred by such state;
- b. Antitrust or consumer protection enforcement by the attorney general of such state;
- c. Deposit into a state antitrust or consumer protection account, (e.g., revolving account, trust account), for use in accordance with the state laws governing that account;
- d. Deposit into a fund exclusively dedicated to assisting the state Attorney General to defray the cost of experts, economists, and consultants in multistate antitrust investigations and litigations.

4.4 A portion of the Settlement Fund shall be used to reimburse counsel for the Plaintiff Settlement Class for attorneys' fees, expenses and costs incurred in this Litigation in an amount to be approved by the Court. Allocation of attorneys' fees among counsel for the Plaintiff Settlement Class shall be decided upon by Lead Counsel for the Plaintiff Settlement Class based upon a formula to be agreed upon exclusively among themselves, subject to Court approval.

4.5 A portion of the Settlement Fund may, with Court approval, be deposited by counsel for the Plaintiff States and/or counsel for the Plaintiff Settlement Class, into a cost share account, or other similar account, to fund the expenses and costs of future litigation against any remaining, non-settling defendants in this Litigation.

4.6 The Escrow Agent shall promptly pay the Court-ordered attorneys' fees, expenses and costs provided for under Paragraphs 4.3, 4.4, and 4.5 from the Settlement Fund after the Effective Date.

4.7 The procedure for and the allowance or disallowance by the Court of any attorneys' fees, costs and expenses, including the fees of experts and consultants, to be paid out of the Settlement Fund, are not part of the settlement set forth in the Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in the Settlement Agreement, and any order or proceedings relating to the payment of any fees, costs or expenses, or any fee and/or expense application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement, or affect or delay the finality of the Judgment approving the Settlement Agreement and the settlement of the Litigation set forth herein.

4.8 Tower and its Related Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment to counsel for the Plaintiffs from the Settlement Fund that may occur before the Effective Date. Tower and its Related Parties shall have no responsibility for, and no liability whatsoever with respect to, the allocation among counsel for the Plaintiffs, and any other person who may assert some claim thereto, or any fee and/or expense award that the Court may make in the Litigation; and Tower need take no position with respect to such matters.

4.9 Distribution of Settlement Fund

4.9.1 The Plaintiffs shall submit their proposed Distribution Plan or Alternative Distribution Plan to the Court for approval along with their Motion for Preliminary Approval.

4.9.2. The Distribution Plan shall specify the manner in which all funds remaining in the Settlement Fund after payment of the costs and fees set forth above shall be distributed. The

Distribution Plan may provide that some or all of the remaining funds in the Settlement Fund may be distributed for the general benefit of the Plaintiffs in the form of a *cy pres* distribution.

Notwithstanding any of the foregoing, if the Distributor Defendants do not settle or if the Distributor Defendants settlement is terminated or canceled and the Distributors Defendants' portion of the Settlement Funds are returned to the them, and this Settlement Agreement remains in effect, then the Plaintiffs may apply to the court for an Alternative Distribution Plan. The Alternative Distribution Plan may provide that some or all of the Settlement Fund (a) may be used to prosecute this Litigation against the remaining Defendants; (b) may be held until completion of the Litigation or until other settlements are obtained and then distributed in accordance with funds obtained through litigation or such other settlements; or (c) may be distributed for the general benefit of the Plaintiffs in the form of a *cy pres* distribution.

4.9.3. To the extent the Distribution Plan or the Alternative Distribution Plan provides that the Settlement Fund will be distributed *cy pres*, the Plaintiffs will prepare and submit with their motion for final approval of the Settlement Agreement a state-specific Cy Pres Distribution Plan which shall detail the distribution of such portion of the Settlement Fund. Distribution under the Cy Pres Distribution Plan shall be to not-for-profit corporations and/or charitable organizations and/or governmental or public entities, with express conditions ensuring that the funds be used to further music-related purposes or programs reasonably targeted to benefit a substantial number of the natural persons who purchased Music Products from one or more Retailers during the time period from January 1, 1995 to December 22, 2000. Funds to be distributed under the Cy Pres Distribution Plan cannot supplant existing or reasonably anticipated funding. Plaintiffs shall provide Tower with a copy of the Cy Pres Distribution Plan at least ten (10) business days prior to filing their motion for final approval of the Settlement Agreement.

4.9.4. It is understood and agreed by the Settling Parties that any proposed Distribution Plan, Alternative Distribution Plan, or Cy Pres Distribution Plan is not a part of the Settlement Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in the Settlement Agreement, and any order or proceedings relating to the Distribution Plan, Alternative Distribution Plan or Cy Pres Distribution Plan shall not operate to terminate or cancel the Settlement Agreement or affect the finality of the Court's Judgment approving the Settlement Agreement and the settlement set forth herein, or any other orders entered pursuant to the Settlement Agreement. To the extent the Distribution Plan, Alternative Distribution Plan or Cy Pres Distribution Plan are disapproved by this Court or on appeal, the Plaintiffs shall be obligated to amend the Distribution Plan, Alternative Distribution Plan or Cy Pres Distribution Plan so as to obtain approval.

4.9.5. The Released Persons shall have no responsibility for, and no liability whatsoever with respect to, the allocation among the Plaintiffs, and any other person who may assert some claim thereto, of any funds remaining in the Settlement Fund after payment of the costs and fees set forth above in Paragraph 4, and Tower need take no position with respect to such matters.

5. Notice Order and Settlement Hearing

5.1 Within thirty (30) days after execution of this Settlement Agreement by counsel for the Plaintiffs, counsel for the Plaintiffs shall file a motion for preliminary approval of this Settlement Agreement with the Court (the "Preliminary Approval Motion"). Plaintiffs may file a single Preliminary Approval Motion seeking approval of all settlements reached in the Litigation. The Preliminary Approval Motion shall include the Settlement Agreement and its Exhibits, as well as the Notice Plan and the Distribution Plan or Alternative Distribution Plan. The Preliminary Approval Motion shall request entry of a Preliminary Approval Order substantially in the form of Exhibit 4

hereto. Such Preliminary Approval Order shall include, among other things: (i) the preliminary approval of the settlement set forth in this Settlement Agreement as fair, reasonable and adequate and in the best interests of the Plaintiffs, (ii) conditional approval of certification of the Plaintiff Settlement Class, (iii) approval of the Notice Plan, and (iv) a schedule for a hearing by the Court after notice is given (the "Settlement Hearing") to approve the settlement of the Litigation as set forth herein. At least ten (10) business days prior to filing their motion requesting entry of the Preliminary Approval Order, the Plaintiffs shall provide a substantially final copy of such motion (including all exhibits and attachments of such motion) to Tower.

5.2 Within sixty (60) days following the conclusion of the Notice Period, counsel for the Plaintiffs shall file a single motion applicable to all settlements reached in the Litigation, seeking final approval by the Court of the settlement of this Litigation with respect to Tower, including a determination by the Court: (i) whether the settlement set forth in this Settlement Agreement shall be approved finally as fair, reasonable and adequate, (ii) whether the Plaintiff Settlement Class shall be certified, (iii) whether Judgment approving the settlement, substantially in the form of Exhibit 1, should be entered, and (iv) whether an award of attorneys' fees and expenses should be made to counsel for the Plaintiffs.

5.3 Tower may elect to terminate this Settlement Agreement if, after the date fixed by the Court for natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class to exclude themselves from participation in this Litigation, more than five hundred thousand (500,000) natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class elect to exclude themselves in the manner provided for in the Notice. Within thirty (30) days following the date fixed by the Court for natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class to exclude themselves, Lead Counsel for the Plaintiffs shall

provide to Tower by facsimile and Certified Mail or Federal Express, written notice of the identity of all natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class who have opted out. Tower's option to terminate the Settlement Agreement shall be exercised, if at all, within ten (10) business days of receipt by facsimile of the information required to be provided by such notice. Tower's election to terminate the Settlement Agreement shall be by written notice served upon all Lead Counsel for the Plaintiffs by facsimile and by Certified Mail or Federal Express, and Tower shall file a copy of such notice with the Court. No hearing on approval of this Settlement Agreement shall be held sooner than ten (10) business days after the final date for Tower's exercise of its option to terminate the agreement, unless Tower agrees otherwise in writing. In the event Tower exercises this option, this Settlement Agreement shall be null and void.

6. Releases

6.1 Upon the Effective Date, the Plaintiffs shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Persons.

6.2 With respect to any and all Released Claims, the counsel for the Plaintiffs stipulate and agree that, upon the Effective Date, Plaintiffs shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of §1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

6.3 Upon the Effective Date, the Plaintiffs shall be deemed to have, and by operation of the Final Judgment shall have waived any and all provisions, rights and benefits conferred by any

law of any state or territory of the United States or principle of common law, which is similar, comparable or equivalent to §1542 of the California Civil Code.

6.4 Upon the Effective Date, as defined in Paragraph 7.1, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of the Plaintiffs and their counsel from all claims, arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Litigation or the Released Claims.

7. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

7.1 The Effective Date of the Settlement Agreement shall be conditioned upon the occurrence of all of the following events:

7.1.1 The Court has entered the Judgment, or a judgment substantially in the form of Exhibit 1; and

7.1.2 The Judgment has become Final, as defined in Paragraph 1.13 above.

7.2 If the Court denies preliminary approval or refuses to enter the Judgment as to Tower, then within ten (10) business days of the entry of an order denying such approval or refusing to enter such judgment, this Settlement Agreement shall be canceled and terminated, subject to Paragraph 7.4 herein, unless Lead Counsel for the Plaintiff States, Lead Counsel for the Plaintiff Settlement Class, and counsel for Tower mutually agree in writing prior to the expiration of such ten (10) business days to proceed with the Settlement Agreement.

7.3 Refund of monies paid by Tower shall be as follows:

7.3.1 In the event the Settlement Agreement shall terminate, or be canceled, or shall not become effective for any reason, the Escrow Agent shall refund to Tower the portion of the Settlement Fund (including accrued interest) attributable to the cash contribution from Tower, less

the non-refundable portion (described below), by sending such refund to its counsel herein. Such refund shall be made at the request of Tower, but shall occur no sooner than five (5) business days, but no later than ten (10) business days after written notification of the termination, cancellation, or failure to become effective is sent to the Escrow Agent by counsel for Tower or Lead Counsel for the Plaintiff States or the Plaintiff Settlement Class. Tower shall be responsible for any penalty incurred by virtue of an early withdrawal of funds by the Escrow Agent in response to a request by Tower for a refund. The non-refundable portion will be equivalent to Tower's share (in proportion to Tower's cash contribution to the Settlement Fund) of: (i) the total cost of notice then expended by Plaintiffs for all settlements in the Litigation, and (ii) the fees and costs of administration, including taxes, then accrued in good faith by the Escrow Agent. In the event of a refund under this paragraph 7.3, Tower shall be entitled to an accounting of any such expenses. Additionally, in the event of a refund under this paragraph 7.3, Tower shall be entitled to any tax refund owing to the Settlement Fund. At the request of counsel for Tower, the Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund to Tower. If the Effective Date does not occur, or if the Settlement Agreement is terminated pursuant to its terms, the Plaintiffs shall have no obligation to refund to Tower the non-refundable portion of the Settlement Fund.

7.3.2 In the event that, pursuant to Paragraphs 4.1 and 4.5 above, Plaintiffs have withdrawn monies from the Settlement Fund with court approval in order to fund litigation against any remaining, non-settling Defendants in the Litigation, and in the event that this Settlement Agreement shall terminate, be canceled, or shall not become effective for any reason, Plaintiffs shall refund to Tower that portion of the funds so withdrawn which are attributable to its cash contribution to the Settlement Fund. Plaintiffs shall send that refund to counsel for Tower no sooner than five (5)

business days but no later than ten (10) days after either Lead Counsel for the Plaintiff States or Lead Counsel for the Plaintiff Settlement Class receive a written request from counsel for Tower.

7.4 In the event that the Settlement Agreement is not approved by the Court or the settlement set forth in the Settlement Agreement is terminated or fails to become effective in accordance with its terms, the Parties shall be restored to their respective positions in the Litigation as of April 30, 2002. In such event the terms and provisions of this Settlement Agreement, with the exception of Paragraphs 3.1-3.6, 3.7, 7.2-7.4, 8.2, 8.3, 8.12-8.14 herein, shall have no further force and effect and shall not be used in this Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated, as to such Parties, as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the amount of any attorneys' fees, costs, expenses and interest awarded by the Court to the States, the Plaintiff Settlement Class or any of their counsel shall constitute grounds for cancellation or termination of the Settlement Agreement.

7.5 Following the Effective Date, counsel for plaintiffs in each case consolidated for pretrial purposes in this Litigation, identified on Exhibit 2, shall file in those actions a copy of the Judgment and any other documents necessary to effect a dismissal with prejudice of those actions against Tower.

8. Miscellaneous Provisions

8.1 The Settling Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement, and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Settlement Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement. The Settling Parties will exercise their best efforts to obtain entry of the Judgment (attached hereto as Exhibit 1)

by the Court. The Settling Parties will not seek to appeal such entry or approval, modify the Judgment (or the terms set forth therein), or take any action, directly or indirectly, which might prevent or delay entry of the Judgment. The Settling Parties shall each use their best efforts to respond to any objections directed to the Settlement Agreement and to defend the terms of this Settlement Agreement and/or the Judgment should any objections be filed, or any appeal be taken, by anyone other than the Settling Parties.

8.2 The Settling Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims which are contested and shall not be deemed an admission by Tower as to the merits of any claim or defense. The Settling Parties agree that the amounts to be paid to the Settlement Fund, and the other terms of the Settlement Agreement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after investigation into the facts and issues raised by the Litigation and after consultation with experienced legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without reasonable basis.

8.3 Neither the Settlement Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of negotiating, implementing or otherwise relating to the Settlement Agreement or the settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of Tower or its Related Parties, or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Tower or its Related Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Tower and/or its

Related Parties may file the Settlement Agreement and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment, bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

8.4 All notices, requests, demands, or other communications between the parties under this Settlement Agreement shall be in writing. The recipients of such notice for each party shall be those counsel who are signatories to this Settlement Agreement. Notice shall be sufficiently given as follows:

- (i) Personal delivery. When personally delivered to the recipient. Notice is effective on delivery.
- (ii) First class mail. When mailed first class to the last address of the recipient known to the party giving notice. Notice is effective three mail delivery days after deposit in a United States Post Service Office or mailbox.
- (iii) Certified mail. When mailed certified mail, return receipt requested. Notice is effective on receipt if delivery is confirmed by a return receipt.
- (iv) Overnight delivery. When delivered by overnight delivery, charges prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.
- (v) Telex or facsimile transmission. When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice. Notice is effective on receipt provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (b) the receiving party delivers a written confirmation of such receipt. Any

notice given by telex or fax shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

8.4.1 Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or an omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

8.4.2 Any party may change its address or telex or fax number by giving the other party notice of the change in any manner permitted by this Settlement Agreement.

8.5 All of the Exhibits to the Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

8.6 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

8.7 The Settlement Agreement and the Exhibits attached hereto constitute the entire agreement among the parties hereto and no representations, warranties or inducements have been made to any party concerning the Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own costs.

8.8 Lead Counsel for the Plaintiff States and Lead Counsel for the Plaintiff Settlement Class, on behalf of the Plaintiffs, are expressly authorized by the Plaintiff States and the Plaintiff Settlement Class to take all appropriate action required or permitted to be taken by the Plaintiffs pursuant to the Settlement Agreement to effectuate its terms.

8.9 Each counsel or other person executing the Settlement Agreement or any of its Exhibits on behalf of any party hereto hereby warrants that such person has the full authority to do so.

8.10 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

8.11 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

8.12 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms for the Settlement Agreement, and all parties hereto submit to the exclusive jurisdiction of the United States District Court for the District of Maine for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

8.13 All agreements made and orders entered during the course of the Litigation related to the confidentiality of information shall survive this Settlement Agreement.

8.14 The Settlement Agreement and any related documents shall be subject to, governed by and construed, interpreted and enforced pursuant to the laws of the State of New York.

8.15 Each party and its counsel have participated fully in the review and revision of this Settlement Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Settlement Agreement.

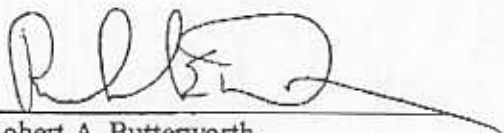
8.16 Upon final resolution of the Litigation as to all defendants in the Litigation, Defendants and their respective counsel will arrange for the disposition of document and other information they have received from other parties or non-parties to the Litigation in accordance with the Confidentiality Order entered in this Action on January 5, 2001.

8.17 Nothing herein shall be construed as setting any precedent with respect to the States Attorneys General and counsel for the Plaintiff Settlement Class.

8.18 None of the Settling Parties, nor counsel for any of them, will make any public statement or comment to the media, either directly or indirectly, regarding the Litigation, the Settlement Agreement or the settlement embodied herein without the consent of the other parties prior to noon Eastern Daylight Time on Monday, September 30, 2002.

Dated: September 27, 2002

LEAD COUNSEL FOR PLAINTIFF STATES:



Robert A. Butterworth
Attorney General of Florida
By: RICHARD E. DORAN
Deputy Attorney General
Patricia A. Connors
Chief, Antitrust Section
Lizabeth A. Leeds
Senior Assistant Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050

ELLIOT SPITZER
Attorney General of New York
JAY HIMES
Chief, Antitrust Bureau
By: Emily Granrud
Assistant Attorney General
120 Broadway, Suite 26-01
New York, New York 10271

LEAD COUNSEL FOR THE PRIVATE PLAINTIFFS:

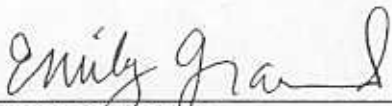
8.17 Nothing herein shall be construed as setting any precedent with respect to the States Attorneys General and counsel for the Plaintiff Settlement Class.

8.18 None of the Settling Parties, nor counsel for any of them, will make any public statement or comment to the media, either directly or indirectly, regarding the Litigation, the Settlement Agreement or the settlement embodied herein without the consent of the other parties prior to noon Eastern Daylight Time on Monday, September 30, 2002.

Dated: September 27, 2002

LEAD COUNSEL FOR PLAINTIFF STATES:

ROBERT A. BUTTERWORTH
Attorney General of Florida
By: RICHARD E. DORAN
Deputy Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050



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120 Broadway, Suite 26-01
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LEAD COUNSEL FOR THE PRIVATE PLAINTIFFS:

Joseph C. Kohn

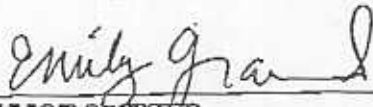
8.17 Nothing herein shall be construed as setting any precedent with respect to the States Attorneys General and counsel for the Plaintiff Settlement Class.

8.18 None of the Settling Parties, nor counsel for any of them, will make any public statement or comment to the media, either directly or indirectly, regarding the Litigation, the Settlement Agreement or the settlement embodied herein without the consent of the other parties prior to noon Eastern Daylight Time on Monday, September 30, 2002.

Dated: September 27, 2002

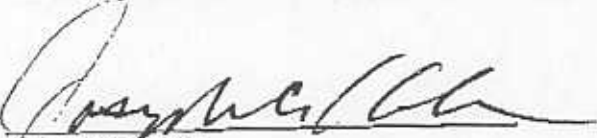
LEAD COUNSEL FOR PLAINTIFF STATES:

ROBERT A. BUTTERWORTH
Attorney General of Florida
By: RICHARD E. DORAN
Deputy Attorney General
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JAY HIMES
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LEAD COUNSEL FOR THE PRIVATE PLAINTIFFS:



Joseph C. Kohn

Steven M. Steingard
KOHN, SWIFT & GRAF, P.C.
One South Broad Street
Suite 2100
Philadelphia, Pennsylvania 19107

COUNSEL FOR MTS, INC.:



Nancy I. Ruskin
Brobeck Phleger & Harrison LLP
1633 Broadway 47th Floor
New York, New York 10019

Steven M. Steingard
KOHN, SWIFT & GRAF, P.C.
One South Broad Street
Suite 2100
Philadelphia, Pennsylvania 19107

COUNSEL FOR MTS, INC.:

A handwritten signature in black ink, reading "Nancy I. Ruskin". The signature is written in a cursive style with a large initial "N" and "R". A horizontal line is drawn across the signature.

Nancy I. Ruskin
Brobeck Phleger & Harrison LLP
1633 Broadway 47th Floor
New York, New York 10019

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JUDGMENT NOTE

Recitals

WHEREAS, the States of Florida, New York, Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming, through their Attorneys General, ("Plaintiff States" as set out in their complaint in the MDL 1361 consolidated action In re Compact Disc Minimum Advertised Price Litigation), and the Named Class Plaintiffs (on behalf of themselves and each member of the Plaintiff Settlement Class as set out in their complaint in the MDL 1361 consolidated action In re Compact Disc Minimum Advertised Price Litigation), by and through their counsel of record in the MDL 1361 consolidated action In re Compact Disc Minimum Advertised Price Litigation, have filed Complaints for damages, injunctive relief, and, in the case of the Plaintiff States, civil penalties against defendant MTS, Inc./Tower Records (hereinafter referred to as "Tower").

WHEREAS Plaintiff States and the Named Class Plaintiffs (hereinafter referred to collectively as "Plaintiffs") entered into an Agreement on Settlement and Release on August, 2002 with Tower in the MDL 1361 consolidated action In re Compact Disc Minimum Advertised Price Litigation (hereinafter referred to as the "Tower Settlement Agreement").

WHEREAS, for purposes of this Note, the term "Controlling Percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of Tower's capital stock issued, outstanding, and entitled to vote for the election of directors.

WHEREAS, for purposes of this Note, the term "Prime Rate" means the average of the prime interest rates per annum of the three largest banking institutions (measured by total assets) in the continental United States then publishing a prime interest rate.

///

1 NOW, THEREFORE, FOR VALUE RECEIVED, Tower agrees as follows:

2 Agreement

3 1. FOR VALUE RECEIVED, THE MAKER OF THIS NOTE, Tower, whose
4 corporate headquarters and principal office is located at 2500 Del Monte Street, West Sacramento,
5 California 95691, promises through its authorized agent Michael T. Solomon, President, MTS, Inc.
6 (dba "Tower Records") to pay to the order of Plaintiffs, c/o their Escrow Agent, Fifth Third Bank,
7 located at 21 East State Street Columbus, Ohio 43215, the principal amount of two hundred seventy-
8 five thousand in cash (\$275,000) unless any of the events described in Paragraph 5 of this Note
9 occur, in which case the Maker agrees to pay three hundred twenty-five thousand in cash (\$325,000).

10 2. This Note shall be payable to the Plaintiffs, c/o the Escrow Agent, in twelve (12)
11 consecutive monthly installments; the first eleven (11) installments of which shall be in the amount
12 of twenty-two thousand nine hundred sixteen dollars and 66 cents (\$22,916.66) and the twelfth (12th
13) installment of which shall be in the amount of twenty-two thousand nine hundred sixteen dollars
14 and 74 cents (\$22,916.74). The first payment shall be made by wire transfer to the Plaintiffs, c/o
15 the Escrow Agent, within ten (10) business days after Tower's counsel has received notice from Lead
16 Counsel for the Plaintiff States that the Distributor Defendants and the other Retailer Defendants
17 have all executed their Settlement Agreements with the Plaintiffs. Each subsequent payment shall
18 be made by wire transfer to the Plaintiffs, c/o the Escrow Agent, each month on the same day as that
19 on which the first payment was made.

20 3. Upon default and failure to cure within 30 days of written notice or upon any of
21 the events described in Paragraph five of this Note, the entire unpaid principal amount shall become
22 immediately due and payable without any further action, notice, demand, or protest required on the
23 part of Plaintiffs.

24 4. Upon default and failure to cure within 30 days of written notice, the Maker of
25 this Note agrees to pay twenty thousand dollars (\$20,000) as a late charge. The Maker agrees that
26 this charge would reasonably compensate Plaintiffs for losing a material benefit of the Tower
27 Settlement Agreement, that it is not a penalty, and that it would also constitute a reasonable estimate
28 of the losses, expenses, and distribution costs Plaintiffs may incur should it default, and then fail to

1 cure such default. However, excepting any interest owed under the terms of Paragraph six below,
2 Plaintiffs will not be entitled to be reimbursed for any fees and costs, including attorney's fees,
3 incurred in filing and enforcing the Judgment Note other than the twenty thousand dollars (\$20,000)
4 late payment charge.

5 5. If, while the Maker of this Judgment Note is making any of the payments
6 required by Paragraph two above, the Maker should merge with, consolidate with, or be acquired by
7 another corporation or individual, or if the Maker should sell or transfer a Controlling Percentage
8 of its capital stock to another corporation or individual other than to current shareholders and/or to
9 the parent company, Tower Records, Inc., or if the Maker should sell at least 70% of the fair market
10 value of its United States assets to another corporation or individual, the Maker of this Note
11 promises to pay three hundred and twenty-five thousand dollars (\$325,000) in cash by wire transfer
12 to the Plaintiffs, c/o the Escrow Agent, less any cash payments previously made to Plaintiffs pursuant
13 to Paragraph two of this Judgment Note.

14 6. The Maker of the Judgment Note agrees that, in the event that any payments
15 called for under this Note are not paid when due (whether at stated maturity, by acceleration after
16 default, or otherwise), such payments will bear interest at the Prime Rate, calculated on a per annum
17 basis, for the period commencing on the due date until the same are paid in full, and such interest
18 shall be payable on demand. The Maker of this Note promises to pay any interest owed at the Prime
19 Rate to the extent permitted by law and/or by equity. If a court in a state or federal jurisdiction
20 should find this paragraph of the Judgment Note to be void and unenforceable, the Maker of this
21 Note agrees to pay the lawful interest rate applicable in that jurisdiction.

22 7. If any of the events described in Paragraphs three through six should occur, the
23 Maker of this Judgment Note, through its authorized agent, irrevocably authorizes and empowers
24 any or all attorneys for Plaintiffs to appear for Maker in any and all courts in which they are
25 authorized to practice and (1) to enter judgment against Maker for the entire unpaid balance of the
26 Note including interest and/or (2) to sign for Maker an agreement for entering in any competent court
27 an action to confess judgment against the Maker the entire unpaid balance of the Note including
28 interest.

1 8. Such confession of judgment shall be with release and waiver of all errors
2 and rights, including, but not limited to, the right to appeal, without any stay of execution.
3 Maker further waives all relief from any and all appraisement or exemption laws now in force
4 or hereinafter enacted. If a copy of this Note, verified by affidavit, shall be filed in any
5 proceeding or action wherein judgment is to be confessed, it shall not be necessary to file the
6 original hereof and such verified copy shall be sufficient warrant for any attorney of any court
7 of record to appear for and confess judgment against the Maker as provided herein.
8 Judgment may be confessed from time to time under the aforesaid powers which shall not be
9 exhausted by any exercise thereof.

10 9. Maker acknowledges, by and through its authorized agent that it
11 understands the meaning and effect of the confession contained in the foregoing paragraph.
12 Specifically, Maker understands among other things that (1) it is relinquishing the right to
13 have notice, an opportunity to be heard, and the right to have burden of proof of default rest
14 on Plaintiffs prior to the entry of judgment; (2) the entry of judgment may result in a lien on
15 the property of Maker; (3) Maker will bear the burden and expense of attacking the judgment
16 and challenging execution of the lien and sale of the property covered thereby; and (4) enough
17 of the property of maker may be taken to pay the principal amount, interest, costs and
18 attorneys' fees owing to Plaintiffs.

19 10. Waiver by Plaintiffs of any default hereunder shall not constitute a waiver of any
20 subsequent default.

21 11. This Judgment Note shall be subject to, governed by and construed, interpreted
22 and enforced pursuant to the laws of the State of New York applicable to contracts made and to be
23 performed in the State of New York.

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1 12. Any provision hereof found to be illegal, invalid, or unenforceable for any reason
2 shall not affect the validity, legality, and enforceability of the remainder hereof.

3 IN WITNESS WHEREOF, the undersigned Maker, by and through its authorized agent and
4 counsel, has caused this Judgment Note to be duly executed.

5 Date: August 29, 2002

6 **AUTHORIZED AGENT FOR MTS, INC.:**

7

8 _____ [SEAL]

9 Michael T. Solomon
10 President
11 MTS, Inc. (dba "Tower Records")
12 2500 Del Monte Street
13 West Sacramento, California 95691
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MAINE

3 _____
4 IN RE: COMPACT DISC MINIMUM :
5 ADVERTISED PRICE ANTITRUST :
6 LITIGATION :
7 _____ :
8 _____ :

MDL Docket No. 1361
Judge D. Brock Hornby

THIS DOCUMENT APPLIES
TO ALL ACTIONS EXCEPT
TROWBRIDGE et al. v. SONY
MUSIC ENTERTAINMENT
INC., et al., Orig. Dkt. No. 00-
CIV-6065 (S.D.N.Y.)

9
10
11 **CERTIFICATE OF ATTORNEY IN SUPPORT OF CONFESSION OF JUDGMENT**

12 1. I, Grace J. Bergen, am an attorney licensed to practice law in the State of
13 California, and am General Counsel for Defendant MTS, Inc. (dba "Tower Records").

14 2. I participated in the mediation conference of April 30, 2002 as General Counsel
15 for MTS, Inc. at which was signed a document entitled an outline of settlement, and subsequently
16 reviewed and executed the August, 2002 Agreement of Settlement and Release with MTS, Inc.

17 3. I have examined the Judgment Note, including a Confession of Judgment, which
18 MTS, Inc. has agreed to execute as part of the August, 2002 Agreement of Settlement and Release
19 with MTS, Inc. This Certificate is attached to that Judgment Note.

20 4. I have examined the proposed judgment contained in the Judgment Note,
21 reviewed the statement and confession of judgment contained therein, and carefully considered all
22 rights and defenses which MTS, Inc. may waive by executing the Judgment Note.

23 5. As required by *Cooper, Selvin & Strassberg v. Soda Dispensing System, Inc.*, 622
24 N.Y.S.2d 312, 313 (1995), I represent that Michael T. Solomon, President of MTS, Inc., is
25 authorized under all pertinent corporate documents, including any shareholder agreements, to
26 execute the Judgment Note, including, but not limited to, the statement and confession of judgment,
27 on behalf of MTS, Inc.

28 6. As required by California Code of Civil Procedure, § 1132(b), I have advised Michael T.
Solomon, President of MTS, Inc., the signatory of the Judgment Note, of the rights and defenses
which MTS, Inc. is waiving by entering into the confession of judgment as part of the Judgment Note

1 7. In order to implement the August, 2002 Agreement of Settlement and Release with MTS,
2 Inc., and, as required by California Code of Civil Procedure, § 1132(b), I have advised Michael T.
3 Solomon to execute the Judgment Note on behalf of MTS, Inc.

4 I declare under penalty of perjury under the laws of the United States and the States of New
5 York and California that the foregoing is true and correct.

6 **Dated:** August 29, 2002

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9 **COUNSEL FOR MTS, INC.:**

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11 _____
12 Grace J. Bergen
13 MTS, Inc. (dba "Tower Records")
14 2500 Del Monte Street
15 West Sacramento, California 95691
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